

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Investigation into RPA Energy, Inc.'s)	
Compliance with the Ohio)	Case No. 22-441-GE-COI
Administrative Code and Potential)	
Remedial Actions for Non-)	
Compliance.)	

**INITIAL BRIEF SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**On Behalf of the Staff of the
Public Utilities Commission of Ohio**

January 6, 2023

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I. INTRODUCTION

RPA Energy, Inc., dba Green Choice Energy's ("RPA" or the "Company") does not deserve to operate in Ohio as a certified competitive supplier for electric or natural gas. Staff's investigation only focused on a 7-month window, and in that period of time RPA has committed thousands of days of violations that cover nearly every type of violation a supplier can commit. For 118 days, RPA violated a Commission health and safety order that was meant to protect vulnerable citizens from COVID. For 322 days, RPA violated data request rules by refusing to supply Staff with the information it needed to conduct a full investigation. For 730 days, RPA violated data maintenance rules by deleting sales call recordings that did not result in successful sales. For 200 days, engaged in a pricing scam that extended from the door-to-door, telephone sales call, and TPV scripts to the action door-to-door, telephone sales calls, and TPVs. Oftentimes, the actual interaction with customers was worse than the scripted deceptions. And this list is not all inclusive.

Given RPA's wanton disregard for Commission rules and a Commission order, at the expense of customers' finances, a healthy competitive market, the Commission's enforcement powers, and Ohio citizens' health and safety, Staff recommends the Commission assess RPA a forfeiture of \$1,500,000.00, rescind or suspend RPA's certificate, and order RPA to make certain notifications and rerates for impacted customers. These recommendations are reasonable in light of the scope of RPA's violations and the Commission's discretion to impose more severe sanctions.

Staff's main concern in its Amended Staff Report was the rescission or suspension of RPA's certificate and providing accurate information to and rerating impacted customers. Staff recommends that the Commission order RPA contact each customer enrolled from February 1, 2021 to May 1, 2021 and notify the customer of the Commission's findings and provide accurate details about the customer's enrollment. If the Commission does not rescind or suspend RPA's certificates, then Staff also recommends that the Commission order RPA to advise the customers who enrolled between February 1 and May 1, 2021 that they will be returned to their utilities' default service on certain date unless they contact RPA to affirm their enrollment. For customers who enrolled through door to door or telemarketing means from May 1, 2021 to June 30, 2021, Staff recommends that the Commission order RPA to rerate these customers back to the utilities' default service rate and notify these customers that, as a result of the Commission's findings, the customer will be issued a refund and they will be returned to the utility standard service offer. For customers who filed a complaint with the

Commission, RPA Energy, or any other entity, Staff recommends that the Commission order RPA to rerate all customers back to the utilities' default service rate.

Staff's main concern in its Amended Staff Report was restitution and the revocation of the RPA's certificate. As for restitution, Staff recommends, herein, that RPA return all customers gained through door-to-door marketing in violation of the Commission's door-to-door health and safety order to their applicable utilities and that RPA pay restitution to those customers. To address RPA's misleading, deceptive and unconscionable marketing offers to consumers, Staff recommends, herein, that RPA returns all customers gained from January 1, 2021, to July 20, 2021 through telephone marketing to their applicable utilities and that RPA pay restitution to those customers. Finally, Staff recommends that RPA loses its Ohio competitive supplier certificates for electric and gas.

II. CASE BACKGROUND AND HISTORY

The Public Utilities Commission of Ohio's ("PUCO" or "Commission") Service Monitoring and Enforcement Department ("SMED"), which operates the Commission's Call Center ("Call Center") and the Reliability and Service Analysis Division ("RSAD"), monitors service quality and compliance with Commission rules.¹

¹ Amended Staff Report, p.1.

RPA is a licensed competitive supplier in Ohio serving customers, for both electric and natural gas in Ohio² from 2016 to the present³, and thus, subject to the jurisdiction of this Commission⁴, the minimum CRES standards as set forth in Ohio Adm.Code Chapter 4901:1-21, and the minimum CRGNS standards set forth in Ohio Adm.Code Chapter 4901:1-29. Brian Trombino is the CEO, president and sole shareholder for RPA.⁵

As earlier as February of 2019, Staff made RPA's, Brian Trombino, aware of its concerns with regards to RPA using autodialers, spoofing (using numbers that appeared to customers to be Duke Energy), misleading and deceptive practices (RPA promising customer rate reductions on their Duke utility bills and offering "1-month fixed rates" when all 1-month rates are necessarily variable rates).⁶ Nonetheless, Staff essentially let RPA off with a warning allowing RPA to investigate and correct its own compliance issues without Staff issuing a notice of probable non-compliance ("PNC") or initiating a formal administrative action.

In February of 2021, Staff reviewed customer contacts from the Commission's call center and became concerned with RPA's marketing, and enrollment practices.⁷ During Staff's investigation into a customer contact to the Call Center, RPA provided a sales call

² *Id.* - RPA also operates as a competitive supplier in Pennsylvania, Illinois, New Jersey, Maryland, Delaware, and Washington DC. This is a fact that is only relevant in this case with regards to RPA noncompliance with Staff's data request discussed later. Specifically, RPA responded to Staff's data request for audio recordings by mixing in audio recordings from other states, thereby complicating Staff's investigation.

³ *Id.*, also *see* RPA Energy's certificate cases: Case No. 16-0892-EL-CRS and Case No. 16-0893-GA-CRS. RPA Energy's CRES certificate expires on November 18, 2022, and its CRNG certificate expires on July 20, 2022.

⁴ *See* R.C. 4928.16 and 4929.24.

⁵ Amended Staff Report, p.1.

⁶ *Id.*, Bate-Stamped p. 20, Exhibit 1, February 2019 email from Nedra Ramsey to Brian Trombino.

⁷ *Id.* Amended Staff Report, p.1.

audio recording to Staff.⁸ After reviewing the submitted sales call audio recording, Staff suspected that the recording was modified, but could not confirm it with the consumer.⁹ Staff would continue to monitor RPA without issuing a PNC or initiating a formal administrative action.¹⁰

On June 4, 2021, the Chief of RSAD, Barbara Bossart, was solicited on her personal cellphone by a sales agent representing RPA Energy, but she did not complete the enrollment.¹¹ On June 7, 2021, Mrs. Bossart completed the enrollment.¹² The Call Center, through an investigation, requested the sales recording, third-party verification recording, and the contract.¹³ After listening to the call recordings, it was clear to Mrs. Bossart that parts of her conversation with the sales agent were not included in the call.¹⁴ Staff requested from RPA all sales call recordings for the week of June 6, 2021.¹⁵ During that week RPA signed-up 699 customers.¹⁶ Staff only received a small fraction of the sales calls and TPVs for the week of June 6, 2021.¹⁷

⁸ *Id.*; Also see Farris Calls - Confidential flash drive (Footnote 10 folder).

⁹ *Id.* Amended Staff Report, p.2.

¹⁰ *Id.* at p.2.

¹¹ *Id.* PUCO Consumer Case Number 00693651 (bate stamped pp. 909 – 1410); Also see Barbara Bossart's Prefile Testimony

¹² *Id.* PUCO Consumer Case Number 00693651 (bate stamped pp. 909 – 1410); Also see Barbara Bossart's Prefile Testimony

¹³ *Id.* PUCO Consumer Case Number 00693651 (bate stamped pp. 909 – 1410)

¹⁴ *Id.*, citing PUCO Consumer Case Number 00693651 (bate stamped pp. 909 – 1410); Also see Barbara Bossart's Prefiled Testimony, pp. 5-6.

¹⁵ Nedra Prefiled Testimony, Q/A 43.

¹⁶ See Samantha Boerstler Prefile Testimony, Q/A 10 (bate stamped pp. 3004-3005); Also see Data Request 10a and 10e.

¹⁷ See Nedra Ramsey Prefiled Testimony, Q/A – Staff should have received 699 sales calls, instead, Staff received a total of 103 recordings, some were sales calls, some were TPVs, and several were solicitation calls made to Delaware and New Jersey consumers. *Also See* Confidential Flash Drive, Southeast 0531-0606 Folder, 06-03-2021 folder, 06-04-2021 folder, AGR 0531-0606 folder, MBM June 6 Part 3 folder, MBM June 6 Part 1 folder, Telestar June 0531-0606 folder.

Staff reviewed the Company's marketing, sales, enrollment, and contract administration practices from January 1, 2021, to July 20, 2021.¹⁸ During this time, the Call Center received twenty-five customer contacts relating to RPA Energy's provision of CRES and CRNGS.¹⁹ These contacts were a mix of consumers solicited and/or enrolled via door-to-door solicitation and telemarketing.²⁰ Staff reviewed these customer contacts and investigations to determine RPA Energy's compliance with the Commission's rules and orders.²¹

Staff also sent RPA Energy data requests for additional information related to their solicitation and enrollment practices.²² Staff reviewed the Company's data request responses for compliance with the Commission's rules and order.²³ The information Staff reviewed in its investigation into RPA Energy's compliance for the period of January 1, 2021 to July 20, 2021 included: consumer statements about door-to-door and telemarketing solicitations, the Company's responses to customer contacts, sales and third-party verification ("TPV") call recordings, sales and TPV scripts, contracts and administration practices, the Company's quality assurance plan, and their responses to specific Staff questions.²⁴

¹⁸ Amended Staff Report at pp. 2-3. Also see, Nedra's Prefile Testimony; Q/A 8 (bate stamped 1446 – 1447)

¹⁹ *Id.* at p.3; See Amended Staff Report Attachments from Bate-Stamped pp. 22-1426 (PUCO Case Numbers 00656313, 00660823, 00664386, 00668806, 00671118, 00672275, 00672405, 00677013, 00679073, 00680143, 00682929, 00688180, 00690097, 00693258, 00693262, 00693263, 00693264, 00693651, 00696256, 00696561, 00696617, 00697335, 00698115, 00698524, and 00701524).

²⁰ Amended Staff Report p. 3.

²¹ Amended Staff Report at p. 3.

²² See Nedra Ramsey's Prefile Testimony; Q/A 11 (bate stamped 1147- 1148)

²³ Amended Staff Report p. 3.

²⁴ Amended Staff Report p. 3.

In the midst of Staff’s initial investigation, in June of 2021, at the request of Staff, RPA Energy suspended marketing (both door-to-door and telemarketing).²⁵ Prior to suspending such marketing activities in Ohio, the following vendors were used to market door-to-door on RPA Energy’s behalf: Millennium Brilliant Minds, LLC, US Direct Marketing, North American Venture Capital, LLC, Energy Group Consultants, TBS Marketing, TI Sales Group, and UTO Marketing. Telemarketing activity was conducted on the Company’s behalf by: HA Solutions, AGR, Telestars, South East Energy Consultants, and Strong Marketing (who also completed in-store marketing).²⁶

On October 6, 2021, Staff sent a notice of probable non-compliance (“Notice”) to RPA Energy.²⁷ Staff concluded that RPA was engaged in unfair, misleading, deceptive, and unconscionable acts and practices in violation of numerous Commission rules.²⁸ Staff and RPA were not able to fully agree on a corrective action plan as identified in the Notice.²⁹

On April 18, 2022, Staff issued a letter to the Commission requesting a Commission Ordered Investigation (“COI”) case be opened for Staff to continue to investigate the alleged unfair, misleading, deceptive, or unconscionable acts or practices of the Company, as outlined in the letter.³⁰

²⁵ *Id.* at p. 2.

²⁶ *Id.*

²⁷ Amended Staff Report, bate-stamped pp. 14-19 (Notice of Probable Non-compliance).

²⁸ Amended Staff Report pp. 2 – 6.

²⁹ *Id.* at p.1.

³⁰ Staff Letter (April 18, 2022).

On April 20, 2022, the Commission issued an Entry opening the COI.³¹ In its entry, the Commission found that the matter “should be opened to investigate alleged unfair, deceptive, or unconscionable acts or practices in this state by RPA Energy, Inc.”³² To assist Staff in its review of audio recordings submitted by RPA Energy to the Commission in response to customer complaints, Call Center investigations, and data requests, Staff contracted with Owen Forensic Services, LLC.³³ Staff sent several recordings to Owen Forensic Services, LLC for examination and authentication.³⁴ After examination, Owen Forensic Services, LLC identified several acoustic anomalies in the recordings³⁵, but due to RPA Energy’s refusal to provide critical information about the recordings, even after Staff legal counsel exchanged emails with RPA, the full evaluation could not be completed.³⁶

After opening this case and filing of the Staff Report, Staff again requested information regarding how recordings are stored, exported, and saved to help determine authenticity of the sales call recordings.³⁷ In addition, Staff again requested the Company provide a sales call that was not provided when requested prior to the Staff Report filing.³⁸ RPA’s Counsel of Record advised, “The company is not obligated to respond to

³¹ Commission Entry (April 20, 2022) at ¶ 1, Emphasis added – RPA, through counsel, has asserted at times throughout the proceedings that Staff’s authority to investigate was limited to gathering information for the PNC, however, the Commission specifically allowed for this COI to be opened to allow for further investigation.

³² *Id.* at ¶ 16.

³³ Amended Staff Report at p. 3.

³⁴ *Id.* at p. 3 and bate-stamped p. 1429-1435 (Owen Forensic Report).

³⁵ *Id.*

³⁶ Amended Staff Report at p. 3.

³⁷ *Id.* at p. 3 and bate-stamped p. 1441-1443 (June 2022 email communications between RPA and Staff).

³⁸ Amended Staff Report at p. 3.

Staff DRs at this stage of the proceeding and, based on my advice, will not be revisiting prior DRs or responses.”³⁹

On June 10, 2022, Staff filed its Staff Report. On July 21, 2022, Staff filed an amended Staff Report which explains Staff’s investigation and findings regarding the Company’s compliance with Ohio’s laws, rules, and Commission Orders.⁴⁰ The main difference between the Staff Report and the Amended Staff Report is the inclusion of violations for RPA thwarting Staff’s investigation by refusing to respond to Staff’s data requests. Staff did not increase the recommended forfeiture amount for those violations. However, Staff did state, on the cover page, as follows:

Although Staff has not increased the forfeiture amount as a result of the additional violation[s], that does not mean that Staff believes that the new violations do not warrant a forfeiture. Staff has simply made the determination that the current forfeiture amount and other sought after relief adequately represents the severity of all the violations. Further, Staff believes that the new violations alone would warrant the assessed forfeiture amount.⁴¹

Staff’s main concern was and remains the sought-after relief for rerates and the revocation of RPA’s competitive supplier certificates.

On October 26, 2022 and November 10, 2022, the hearing was held.⁴² At the hearing Staff witnesses were repeatedly questioned about how a \$1.5 million penalty is reached in this matter. At the conclusion of the hearing due dates for the initial and reply briefs were set for January 6, 2023 and January 27, 2023, respectively. On January 6,

³⁹ *Id.*

⁴⁰ Amended Staff Report.

⁴¹ Amended Staff Report, cover page.

⁴² Transcript Volume I (Caption) and Transcript Volume II (Caption).

2023, Staff timely filed this initial brief. This brief is structured to show how Staff's \$1.5 million penalty can be easily met, and to support the other remedies requested herein.

III. ARGUMENT

A. **RPA could be assessed a \$1.18 million forfeiture solely for its wanton violation of the Commission health and safety order concerning door-to-door marketing.**

RPA is regulated by the Commission⁴³ and must comply with any health and safety order issued by the Commission to protect at-risk populations⁴⁴. Yet, RPA chose to disregard a Commission health and safety order for months.

As a result of the Covid-19 pandemic, on March 17, 2020, the Commission ordered a halt to all door-to-door solicitation and in-person marketing activities in case number 20-0591-AU-UNC. Then on June 17, 2020, in case number 20-0591-AU-UNC, the Commission lifted the suspension of door-to-door and in-person solicitation while outlining requirements that CRES and CRNGS providers must adhere to. However, given the nature of door-to-door solicitations and the potential impact to the elderly, vulnerable populations, or others in their homes, the Commission laid out specific directives to ensure that CRES and CRNGS suppliers and their agents proceeded with caution and strict adherence to the relevant requirements and best practices issued by the Ohio Department of Health and any relevant local health authorities to ensure the health and

⁴³ See R.C. 4928.08, R.C. 4929.20, R.C. 4905.26, and R.C.4929.24.

⁴⁴ See R.C. 4928.02(I) and (L), R.C. 4929.02, Ohio Adm.Code 4901:1-21-02(B), and Ohio Adm.Code 4901:1-29-02.

safety of Ohioans.⁴⁵ One of the requirements was at least 48 hours prior to resuming such marketing, providers must report, in writing, to the director of SMED, the times, dates, duration, and locations where the provider intended to engage in door-to-door solicitation.⁴⁶ Providers were also required to adhere to the health safely requirements outlined by state and local health departments.⁴⁷

Although it is CRES and CRNGS providers responsible to know the rules and orders of the Commission, to ensure that all providers were aware of the order issued in June, Staff emailed the order and guidance to all certified providers.⁴⁸ Staff only became aware that RPA began marketing in Ohio due to receiving consumer complaints which documented RPA performing door-to-door marketing at least from February 27, 2021 until the Company ceased door to-door marketing per Staff's request on June 25, 2021, which is 118 days.⁴⁹ Not only were Ohio consumers concerned about the misleading and deceptive actions of RPA representatives, but they were also reporting concerns that representatives were not wearing face mask when approaching their homes.⁵⁰ In the first

⁴⁵ Public Utilities Commission Case No. 20-1040-GE-UNC, Entry on June 17, 2020, ¶ 1 and 16.

⁴⁶ *Id.* at ¶ 16.

⁴⁷ *Id.*

⁴⁸ Nedra Ramsey's Prefiled Testimony, Q&A 39.

⁴⁹ *Id.*; See also, Confidential Flash Drive, Footnote 21 folder (videos – Note videos of witness, Tokar's door-to-door experience shows RPA's door-to-door rep canvassing with a face mask and without social distancing). *See also*, Call Center Case Nos. (00701524) – Door-to-Door Marketing (D2D) approx. May 2021, Amended Staff Report (AMR), bate-stamped (BS) p. 1425; (00668806) -D2D Saturday, February 27, 2021, AMR BS p. 428; (00672405) – D2D approx. March 2021, AMR BS p. 750; (00679073) – D2D on April 6, 2021, AMR BS p. 760; (00680143) – D2D approx. April 2021, AMR BS p. 776; (00682929) – D2D on March 31, 2021, AMR BS p. 800; (00688180) – D2D approx. May of 2021, AMR BS p. 825; (00690097) – D2D approx. May 2021, AMR BS p. 871; (00693258) – D2D on June 2, 2021, AMR BS p. 874; (00696256) – D2D on June 10, 2021, AMR BS p. 1004; (00696561) – D2D approx. June 2021, AMR BS p. 1310; (00697335) – D2D approx. June 2021, AMR BS p. 1334; (00698115) – D2D approx. June 2021, AMR BS p. 1383; (00698524) – D2D June of 2021 (customer complaining that RPA reps not wearing a mask), AMR BS p. 1401.

⁵⁰ Nedra Ramsey's Prefiled Testimony, Q&A 39.

data request related to this investigation, Staff asked RPA about its compliance with the Commission order.⁵¹ In response, RPA stated that it forwarded the order to its vendors with instructions to comply with the Commission's directives.⁵²

It appears to Staff that RPA attempted to pass the responsibility of compliance to its vendors. However, the Commission stated in its order the following: "We also clarify that we will treat a violation of our rules or any relevant health code violations committed by an agent of a CRES provider or CRNGS supplier the same as if the violation were committed by an employee of the provider or supplier."⁵³ Thus, RPA violated the Commission's June 17, 2021 Order in two ways. First, RPA allowed its vendors to begin marketing in violation of the order without informing, in writing, the director of SMED, the times, dates, duration, and locations where the provider intended to engage in door-to-door solicitation. Second, the vendor acting on the behalf of RPA did not comply with health and safety directives to wear protective equipment such as facial coverings.

The violation of the Commission's Orders extending at least from February 27, 2021 to June 25, 2021 is unmitigated noncompliance. The direct and cross-examination testimony of RPA witness, Mr. Trombino, suggests that COVID is to blame for RPA's violation of the Commission Order, but offers no specific reasons as to how COVID prevented RPA from providing the required information to the Commission for nearly

⁵¹ Amended Staff Report p. 16

⁵² Nedra Ramsey Prefiled Testimony; Q/A 39 (bate stamped PP. 1481 – 1482)

⁵³ PUCO Case No. 20-0591-AU-UNC, Commission Order (June 17, 2021), ¶16.

four months.⁵⁴ Accordingly, based on the record, there are no mitigating reasons, COVID or otherwise, for RPA's non-compliance.

1. RPA wantonly violated the Commission's public health and safety door-to-door marketing order and the Commission should order RPA to pay a forfeiture.

Four exacerbating factors call for the maximum per day penalty for RPA violating the Commission's June 2020 Order regarding door-to-door marketing. The first factor is that the Commission's Order was meant to protect the health and safety of Ohioans. RPA allowing its reps to canvass neighborhoods without mask at a time when Ohio was still protecting its most vulnerable citizens makes the violation of the Commission Order highly egregious. The second factor is the ease with which RPA could have complied with the order. RPA could have chosen to simply not market or, if it chose to conduct door-to-door marketing, it simply needed to provide the basic information requested by the Commission and have its reps observe state and local health protocols. The third exacerbating factor is the either purposeful or wanton disregard for the Commission Order. RPA keeps track of its door-to-door marketers via geolocation⁵⁵, pays the marketers based on how much they sell⁵⁶, and has to switch customers to their service when a door-to-door sale is successful. So, RPA was aware that their vendors were marketing, and, if RPA was keeping records of compliance as it is required to do⁵⁷, would know that its door-to-door vendor did not inform the Commission of its marketing plans.

⁵⁴ Trombino's Prefiled Testimony at p. 6, lines 13-18.

⁵⁵ Transcript at p. 298, lines 9-16.

⁵⁶ Transcript Vol II at p. 305, line 22-25.

⁵⁷ Ohio Adm.Code 4901:1-29-04 or 4901:21-04.

And RPA engaged in this behavior even though it was aware that it was being investigated by Staff. The fourth factor is the gravity of the violation. Door-to-door marketing involves the hiring of vendors to canvass neighborhoods and interact with large numbers of potential customers. Each day of marketing and marketing without observing state and local health requirements would naturally involve numerous violations of the Commission's Order. The maximum allowable forfeiture based on this set of violations under R.C. 4905.54 is \$1,180,000.00, if calculated using 118 days the Commission health and safety order for door-to-door marketing.

This amount almost meets Staff's forfeiture assessment on its own. However, Staff's main concern is that the Commission provide restitution to customers and revoke RPA's certificates.

2. RPA should have to give restitution to all consumers it unlawfully added as customers in wanton violation of the Commission's public health and safety door-to-door marketing order

RPA was aware that the Commission restricted enrollment of customer through door-to-door marketing, as RPA admitted it forwarded on the email to its vendors. It is unfair for RPA to enroll customers in violation of a Commission order, while other CRES/CRNGS providers complied with the Commission Order. RPA should have returned to the SSO, all customers it obtained through door-to-door marketing after March 17, 2020. Further, the returned customer should have been refunded the difference between what they paid and the amount that they would have paid with their previous

supplier. Finally, any customer that was obtained from door-to-door marketing that has already left RPA should also be refunded for the time period that they were with RPA.

B. As stated in the Amended Staff Report, Staff's \$1.5 million forfeiture recommendation could be easily assessed for RPA's failure to comply with Staff's data requests.

1. Staff can investigate a customer complaint by requesting the maintained records and data of CRES and CRNGS providers whenever Staff chooses.

Ohio Adm.Code 4901:1-29-04 or 4901:1-21-04 define investigatory powers that Staff can rely upon when investigating a customer complaint. Ohio Adm.Code 4901:1-29-04 states as follows:

(A) Each natural gas company (for records retention related to competitive retail natural gas services), each retail natural gas supplier and each governmental aggregator shall establish and maintain records and data sufficient to:

(1) Verify its compliance with the requirements of any applicable commission rules.

(2) Support any investigation of customer complaints.

(B) Unless otherwise prescribed in this chapter, all records required by this chapter shall be retained for no less than two years.

(C) Unless otherwise prescribed by the commission or its authorized representatives, all records required by this chapter shall be provided to the staff within three business days of its request.

Ohio Adm.Code 4901:1-21-04 imposes the same rules on CRES providers as Ohio Adm.Code 4901:1-29-04 imposes on CRNGS providers. Further, Ohio Adm.Code 4901:1-29-04 amplifies R.C. 4903.03, which makes clear Staff's ability to examine the documents of providers and even subpoena witnesses to testify concerning such documents. Thus, Staff's investigatory powers extends throughout the hearing process.

Even more, Ohio Adm.Code 4901:1-29-04 authorized by R.C. 4905.06, which makes clear that Staff has supervisory authority over providers to examine their documents at any time to determine the providers compliance with the laws.

Accordingly, any CRNGS and/or CRES provider is required to do the following:

1) establish and maintain for two years⁵⁸ records and data sufficient to verify its compliance with the requirements of any applicable commission rules; (2) support any investigation of customer complaints; and (3) provide to the Staff any requested records required by Ohio Adm.Code 4901:1-29 or 4901:1-21 within three business days of Staff's request. *See* Ohio Adm.Code 4901:1-29-04(A) and 4901:1-21-04(A). Staff's ability to request maintained records and data is not limited in any way. Additionally, the requirement for providers to support any investigation of customer complaints is not limited in any way.

2. In order to investigate whether sales calls were modified by RPA, Staff repeatedly requested records and data that RPA was required to establish, maintain and provide to Staff upon request; and in violation of Ohio Adm.Code 4901:1-29-04 and 4901:1-21-04, RPA repeatedly denied Staff's request.

On February 18, 2022, Staff made data requests to RPA through RPA's counsel.⁵⁹ Items 1 and 2 of the data requests asked for details about the system used to record the sales calls and TPVs.⁶⁰ This information was needed to forensically examine the sales and TPV recordings provided by RPA to Staff and determine if the recordings were

⁵⁸ Unless otherwise prescribed in Ohio Adm.Code 4901:1-29 or 4901:1-21, which is not applicable in this matter.

⁵⁹ Trombino's Direct Testimony, p. 8/8 of Attachment BT-11.

⁶⁰ *Id.* at p. 7/8 of Attachment BT-11.

modified. On February 25, 2022, RPA claimed it did not have the information requested stating through its counsel as follows:

The company does not have this information. Sales recordings were prepared by the vendors mentioned above and independent entities (Trusted TPV and TPV.com) conducted and recorded TPVs.⁶¹

On March 4, 2022, Staff responded to RPA's claim that it did not have the requested information by asking RPA to reach out to its vendors for the information, stating, in part, as follows:

As for the system information, Staff needs this information, and the vendors are acting as an agent for RPA so this information should be accessible. We encourage RPA to reach out to the vendors and obtain this information.⁶²

On March 7, 2022, RPA responded through counsel, overcomplicating what was a simple request for RPA to reach out to its agents to inquire about the technical specifications for the vendors' recording and storage systems and to then provide that information to Staff.

RPA counsel stated, in part, as follows:

The company is also unable to provide the technical specifications for the vendors' recording and storage systems. The contracts with these vendors did not disclose these specifications, and even if the company asked the vendors to provide this information voluntarily, the company would not be in a position to verify the information without performing a physical site inspection. Even then, the company would be unable to verify that systems in use currently are the same systems (or versions) in use during the relevant time period.⁶³

On March 9, 2022, Staff responded through its counsel, asking RPA to simply try to obtain the requested information from its vendors so that Staff can complete its investigation, stating, in part, as follows:

⁶¹ *Id.* See Brian Trombino Prefile Testimony p. 7/8 of Attachment BT-11.

⁶² *Id.* at p. 6/8 of Attachment BT-11.

⁶³ *Id.* at p. 4/8 of Attachment BT-11.

Please request of the vendors to voluntarily provide the information requested and please perform a physical site inspection if needed and possible. We understand that RPA may not be able to verify that systems in use currently are the same systems (or version) in use during the relevant time period, but please ask the vendor to verify [these] things.⁶⁴

On March 11, 2022, after a phone call conversation between Staff's and RPA's counsel⁶⁵ and a subsequent email from RPA's counsel⁶⁶, Staff's counsel reiterated the need for RPA to, at least, try to obtain the requested system information, stating, in part, as follows:

We know that you may not be able to verify the information provided from the vendor and we know that there is a chance that the vendor will refuse to provide you with the requested information. However, we are asking that you simply attempt to acquire the information from the vendor.⁶⁷

On March 14, 2022, Staff followed-up its counsel's email with an additional email to RPA's counsel and Brian Trombino stating as follows:

Good morning, Brian and Mark:

In addition to the request Mr. Eubanks made last week, Staff has additional questions related to the system(s) used.

1. In what file format are the recordings archived on the server?
2. And in what file format are they exported and sent to others?
3. How many file formats can you choose between to export to others or are they only saved one way and exported one way? Can you choose in what file format to send to others? Can you choose how they are saved or is it automatic?
4. What kind of access do the employees have to these recordings?
5. If all calls are recorded and logged (in real time) please provide a copy of those logs to verify the time (length) of the call that has been provided to compare to the real time of the recorded conversation?⁶⁸

⁶⁴ *Id.* at p. 2/3 of Attachment BT-10.

⁶⁵ *Id.* at p. 1/3 of Attachment BT-10.

⁶⁶ *Id.* See Brian Trombino Prefile Testimony pp. 1 – 8 of Attachment BT-11.

⁶⁷ *Id.* (Emphasis added).

⁶⁸ *Id.* at p. 3/8 of Attachment BT-11.

On March 15, 2022, RPA continued to refuse to retrieve from its vendors the systems information or the additional information requested by Staff on March 14, 2022.⁶⁹ As part of his reasoning for not advising RPA to gather the requested information, RPA's counsel says that he could not in good conscience ask his client to provide inculpatory evidence to Staff. Specifically, RPA's counsel stated, in part, the following:

Reading between the lines, it appears as though Staff is suggesting that the vendors altered their call records or did not produce everything they were asked to produce. Under these circumstances, I cannot in good conscience advise the company to reach out to the vendors in an attempt to answer Staff's questions...⁷⁰

On June 17, 2022, Staff again requested the sales call information and information related to the recording equipment and the RPA refused to provide it.⁷¹

Staff was forced to file its Staff Report on June 10, 2022 without being able to complete its investigation into the authenticity of the recordings provided to Staff. After allowing RPA additional time to comply with Staff data request, Staff filed its Amended Staff Report including as violations RPA's refusal to comply with Adm.Code 4901:1-29-04 and 4901:1-21-04.

All of the information requested was information that would have allowed Staff to investigate the authenticity of the recordings provided to Staff by RPA.⁷² Accordingly, it is the type of information that is required to be established and maintained by RPA pursuant to Ohio Adm.Code 4901:1-29-04 or 4901:1-21-04. Even if RPA did not have

⁶⁹ *Id.* at p. 1/8 - 2/8 of Attachment BT-11.

⁷⁰ *Id.* at p. 1/8, paragraph 3.

⁷¹ Nedra Ramsey's Prefiled Testimony, Q/A 12.

⁷² Amended Staff Report, p. 3.

the requested information at the time of Staff's request, RPA was required to support Staff's investigation and obtain the information pursuant to Ohio Adm.Code 4901:1-29-04(A)(2) and 4901:1-21-04(A)(2).

3. RPA thwarting Staff's investigation, in violation of Ohio Adm.Code 4901:1-29-04 and 4901:1-21-04, warrants the assessment of a forfeiture.

Similar to RPA's violation of the Commission's Order, RPA thwarting Staff's investigation has a number of exacerbating factors that warrant the Commission ordering RPA to pay a forfeiture. The maximum forfeiture amount is \$10,000 per violation, and each day's continuance of the violation constitutes a separate offense.⁷³

The first exacerbating factors is that RPA made a business decision to not provide Staff with the requested information needed to determine the authenticity of the recordings provided to Staff.⁷⁴ If Owen Forensics was able to examine the authenticity of recordings, Staff could have potentially expanded the investigation, if warranted, to include all of the recordings RPA supplied to Staff. Depending on the scope and scale at which recordings were altered, the results could have supported additional forfeiture and remedies against RPA. However, Owen Forensics was not able to perform its forensic analysis because of RPA's refusal to provide the requested information to Staff. The Commission should not allow suppliers under investigation to make such calculated decisions to refuse to respond to Staff's data request without requiring them to pay the stiffest of forfeitures.

⁷³ See R.C. 4905.54.

⁷⁴ Brian Trombino's Direct Prefiled Testimony at p. 1/8, paragraph 3.

The second exacerbating factor is how easy it was for RPA to comply. RPA simply needed to reach out to its vendors to request the manual, make, and model of the software used to record the sales calls and TPVs and the additional technical data requested by Staff. RPA would not even try to obtain the information, despite the fact that the requested information should have been readily available to RPA's vendors.⁷⁵

The third exacerbating factor is that any legal arguments RPA has against Staff being able to use the requested information could have been still made to the Commission while providing the information to Staff. However, RPA never sought the Commission opinion in the interpretation of its own rules. Instead, RPA decided independently that Staff was not entitled to continue investigating once a Commission Ordered Investigation (COI) case is opened. Aside from the fact that the word "investigation" is in the designated name of the matter, the Commission specifically said that the matter was opened for the purpose of allowing Staff to continue its investigation.⁷⁶ Given these things, at the very least, RPA could have provided the requested information while seeking a ruling from the Commission concerning the admissibility of the evidence.

The fourth exacerbating factor is the high likelihood that Staff would have discovered multiple recordings were altered. Staff knows that Barbara Bossart's sales recordings were altered, as they did not have the opening robo-call and other conversations she had with the sale marketer.⁷⁷ Staff also knows that RPA's vendors have

⁷⁵ Transcript (Owen's Prefiled Cross Examination) at pp.232-233.

⁷⁶ Entry April 20, 2022 at ¶ 1.

⁷⁷ Confidential flash drive, Footnote 7 folder, PUCO Consumer Case No. 00693651.

gone so far as to completely falsify the TPVs for customers by having actors stand in the place of customers to make it look as if customers willingly signed-up for service.⁷⁸

Finally, the calls that were examined by Owen Forensics showed that there were acoustic anomalies that needed to be further investigated.⁷⁹

Staff could have recommended that RPA pay a forfeiture greater than Staff's recommended \$1.5 million for failing to provide Staff with the information it needed to assess the authenticity of the audio recordings RPA provided to Staff. Depending on how the Commission wishes to calculate the appropriate forfeiture amount, the days of violation from February 18, 2022 to January 6, 2023 are 322 days. As stated in the Amended Staff Report, these violations, alone, support Staff's \$1.5 million forfeiture recommendation.

Again, Staff's main concerns are rerates and the revocation of RPA's certificate. The violations discussed above, alone, also support the revocation of RPA's certificate, as Ohio cannot afford to have a supplier that does not respect Staff's investigatory powers. And, as is shown next, the above-stated violations were not the only data requests violations committed by RPA.

⁷⁸ Confidential flash drive, Footnote 17 folder, Footnote 18 folder, and Footnote 19 folder)

⁷⁹ Jennifer Owen's Prefiled Testimony at pp. 13-16.

C. RPA should pay a forfeiture for failing to provide Staff with all the sale call recordings for the week of June 6, 2021.

Staff requested from RPA all sales call recordings for the week of June 6, 2021.⁸⁰ During that week RPA signed-up 699 customers.⁸¹ Staff only received a small fraction of the sales calls and TPVs for the week of June 6, 2021.⁸² Staff should have received 699 sales calls, instead, Staff received a total of 103 recordings, some were sales calls, some were TPVs.⁸³

Even if Staff were to give RPA credit for the provided 103 sales call recordings, and they did not, RPA was still 596 recordings short of fulfilling Staff's data request. Accordingly, RPA could be assessed a forfeiture of up to \$10,000 for every recording that RPA did not supply multiplied by every day that Staff's data request has went unfulfilled. Again, RPA thwarted Staff's investigation and should have to pay a stiff forfeiture or other providers will make a similar business decision to not provide Staff with its data request to avoid the discovery of additional violations. Staff believes that the Commission should strongly defend Staff's authority to investigate CRES and CRNG suppliers. Staff believes that this violation alone would support Staff's recommended \$1.5 million forfeiture.

⁸⁰ Nedra Prefiled Testimony, Q/A 43

⁸¹ Samantha Boerstler Prefiled Testimony, Q/A 10 (bate stamped pp. 3004-3005); Also see Data Request 10a and 10e.

⁸² See Nedra Ramsey Prefiled Testimony, Q/A – Staff should have received 699 sales calls, instead, Staff received a total of 103 recordings, some were sales calls and some were TPVs. *Also See* Confidential Flash Drive, Southeast 0531-0606 Folder, 06-03-2021 folder, 06-04-2021 folder, AGR 0531-0606 folder, MBM June 6 Part 3 folder, MBM June 6 Part 1 folder, Telestar June 0531-0606 folder\.

⁸³ Nedra Ramsey Prefiled Testimony; Q/A 22 (bate stamped 1462)

D. RPA should pay a forfeiture for failing to establish and maintain records of unsuccessful sales calls.

During Staff's investigation of RPA's sales and marketing practices, Staff discovered that RPA does not establish and maintain all of its sales calls for no less than two years.⁸⁴ RPA's vendors record all sales calls, but do not maintain the sales calls that do not result in sales. This is clearly against the express language of Ohio Adm.Code 4901:1-29-04 and 4901:1-21-04, which require, in part, for providers to establish and maintain records and data sufficient to verify its compliance with the requirements of any applicable commission rules. One such rule is Ohio Adm.Code 4901:1-21-05(C), which states, in part, "no CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES." In order to verify compliance with Ohio Adm.Code 4901:1-21-05(C) for telephonic sales calls providers have to maintain all sales calls since the rule protects all consumers, not just consumers that have been duped by unlawful sales practices. As an example, Ohio Adm.Code 4901:1-21-05(C) (8)(a) states, in part, "Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following... advertising or marketing offers that... claim that a specific price advantage, savings, or guarantee exists if it does not." Emphasis added. This

⁸⁴ Trombino's Direct Testimony, Attachment BT-11, p. 1/8, paragraph 5 – Explaining why some solicitation calls were not supplied to Staff, RPA's counsel explains that only calls that result in sales are recorded. Counsel states, in part, "Staff has characterized the sales calls for Burnet and Jones as "follow-up sales calls" where the agents alluded to a prior call or calls. Staff has requested production of "all solicitation calls," which would include "the first solicitation." But because the "first solicitation" did not result in a sale, the vendor would not necessarily have retained the calls. That seems to be case here because [the] vendors were asked to produce all calls, and the "initial" calls were not part of their productions. The calls that did result in sales have been produced to Staff, in the same format and file name as provided by the vendor.

example of an unfair, misleading, deceptive, and unconscionable practice is not limited to successful sales; it applies to all advertising and marketing offers. As discussed later in this brief, Staff proves that RPA engaged in this unfair, misleading, deceptive, or unconscionable marketing practice during many of its successful sales calls. By not maintaining all sales recordings, RPA thwarts Staff's ability to fully investigate its compliance with any number of rule provisions that govern the telephonic marketing practices of providers, in violations of Ohio Adm.Code 4901:1-29-04 and 4901:1-21-04.

Once again, RPA has interpreted the rules for records retention against the express language of the rules to the detriment of Staff's investigations. Further RPA's interpretation allows RPA to avoid the assessment of additional forfeiture amounts that could have resulted from the investigation of unsuccessful sales calls.

Given the maximum penalties allow and the number of days of violation, Staff recommends that the Commission order RPA to pay a forfeiture commensurate with the egregious nature of RPA's conduct.

E. RPA should pay a forfeiture for failing to establish and maintain records to verify compliance for door-to-door marketing.

For the exact reasoning discussed above concerning the need for RPA to keep records of compliance for all sales call recordings, RPA needs to keep records of compliance for its door-to-door sales. Yet, RPA made no attempt to establish and maintain any records of compliance for door-to-door marketing.⁸⁵ Mr. Trombino testified

⁸⁵ Transcript at pp. 354-355 (Brian Trombino Cross Examination).

that after any door-to-door sale, as with all of RPA's sales, RPA places a welcome call to customers that have been signed-up through door-to-door marketing.⁸⁶ Mr. Trombino testifies that these calls and TPVs are the only form of monitoring door-to-door sales RPA does.⁸⁷ He believes there are questions in the welcome calls that assess whether the customers experienced unlawful sales tactics, but cannot think of any such questions on the stand.⁸⁸ However, the welcome calls that were provided by RPA to Staff have no questions that ascertain whether the customer experienced unlawful sales tactics.⁸⁹ Further, TPVs have no questions that are designed to verify whether door-to-door agents are using lawful marketing tactics.⁹⁰ And whether it is a welcome call or a TPV, even if such did monitor compliance – and they don't – welcome calls and TPVs would only monitor the activities of sales tactics that lead to a sale. Again, the requirement to verify compliance is not limited to interactions that lead to sales – it concerns all sales offers.

Thus, considering the increased difficulty of establishing and maintaining records of compliance for door-to-door sales, yet for the same reasons discussed regarding RPA's failure to maintain and establish records of compliance for all sales calls, RPA should be assessed for its failure to even try to establish and maintain any records of compliance for its door-to-door marketing over the past two years. Given the number of days of violation and the per day maximum of \$10,000 per day, this violation, alone, could support Staff's

⁸⁶ *Id. Transcript (Volume II) p. 296, line 17*

⁸⁷ *Id. Transcript (Volume II) p.*

⁸⁸ *Id.*

⁸⁹ *See* Staff's Exhibit 13.

⁹⁰ O.A.C 4901:1-21-06(D)(1)(h); Confidential flash drive, Footnote 55 folder, Confidential Attachment 6A; Footnote 12 folder, audio file call (22); Southeast 0531 to 0606 folder, audio file 000132192_*****8058_2

recommended forfeiture amount. Further, RPA's hands-off approach when it comes to monitoring its door-to-door vendors shows a lack of managerial capacity that merits the suspension or rescission of RPA's CRES and CRNGS certificates.

F. RPA should be assessed a forfeiture for modifying sales call recordings.

In violation of Ohio Adm.Code 4901:1-21-05(C) (unconscionable practices) and/or Ohio Adm.Code 4901:1-29-04 or 4901:1-21-04 (records retention), RPA modified sales call recordings before providing them to Staff. The preponderance of the evidence proves that this occurred, at least, 10 times.⁹¹

Staff believes that sales and TPV recordings were, more likely than not, modified in case number 00660823.⁹² RPA supposedly got the consumer to agree to enroll in a financially unfavorable variable rate product without the customer asking a single question. The sales call only took 5 minutes, and the TPV took approximately 4-5 minutes without the consumer asking a single question or asking the representative to repeat any of the information stated. No rate was ever disclosed to the customer in the sales call. Ultimately, the consumer received a refund in the amount of \$1,060.59 for 6 months of service. The product the customer was signed-up for was a first month rate of

⁹¹ Confidential flash drive, Footnote 4 folder: Barbara Bossart_006133054_5912(1), Footnote 10 folder: 005103301_*****0051, F****S SALES CALL and Footnote 15 folder: 009132614_*****6720_SalesCall; MBM June 6 Part 1 06-01-2021 folder: audio files *****2726 and *****5336; MBM June 6 Part 1 06-02-2021 folder: audio files 007132329_*****7096 and 006132438_*****2759; 06-04-2021 folder: audio files 000132847_*****8916 and 005132798_*****3717

⁹² Confidential flash drive, Footnote folders 10, F****S SALES CALL; Footnote folder 11: F****, B**** TPV and Footnote 7 folder, PUCO Case No. 00660823.

\$0.05/kWh plus a \$5.00 fee then subsequent rates of \$0.12 to \$0.13/kWh plus a \$5.00 monthly fee.

Staff believed the sales call and TPV were more likely than not modified in 00664386.⁹³ The sales call that lasted 6 minutes plus the time for the TPV. No rate was disclosed to the customer. The consumer supposedly agreed to enroll in a product that had an introductory rate of the utility's price-to-compare of \$0.0584/kWh plus a \$5.00 monthly fee, then a variable rate thereafter which was \$0.13/kWh plus a \$5.00 monthly fee, again, without asking a single question.

In addition to the information from the audio forensic expert, Staff received calls for the week of June 6, 2021 from RPA through data request that were concerning. In a number of calls,⁹⁴ Staff had similar concerns as described previously, no questions asked when rates were never mentioned, very short solicitation calls, etc. but Staff also received a few other peculiar sales call recordings.⁹⁵ In one instance, RPA provided three calls⁹⁶ for an enrollment. When playing the third call, the recording contains only the customer saying "yes" multiple times as well as providing her name and address multiple times and other information such as her account number. To be clear, there was no conversation at all because there was not even a representative asking questions. Then when listening to

⁹³ Confidential flash drive, Footnote 12 folder, PUCO Case No. 00664386_Redacted, 005103301_*****0051, and call (22).

⁹⁴ Confidential flash drive, MBM june6 Part 1 folder: audio files *****2726 and 007132329_*****7096.

⁹⁵ Confidential Flash Drive, MBM june6 Part 1 folder, audio files *****5336, 006132438_*****2759; *See also* Confidential Flash Drive, folder 06-04-2021, audio files 000132847_*****8916 and 005132798_*****3717.

⁹⁶ Confidential Flash Drive, Footnote 15 folder, 009132614_*****6720_SalesCall, *****6720_TPV and call (22).

the sales call again, Staff noticed there are parts of the call in which when the customer is speaking, you can hear background noise, like her TV playing, but then in other parts of the call when she's talking (particularly when she says her name, address, and "yes") there is no background noise. Some other parts you can hear a type of echo. All of these issues can be classified as anomalies.⁹⁷ In other recordings⁹⁸ received from RPA, there appears to be two different voices responding as the consumer. Unfortunately, we could not submit the calls to be properly analyzed because RPA refused to provide sufficient information to complete an analysis (uncompressed bit for bit recording and recording equipment information). Nonetheless, the peculiar nature of the various phone calls, based on Nedra Ramsey's, Staff witness, experience reviewing consumer sales calls, is evidence that RPA, more likely than not, modified the sales calls in the various recordings discussed above.

Given the fact that RPA withheld hundreds of recording and crucial information for forensic analysis, the number of modified calls are likely much higher. Furthermore, considering the fact that the majority of Staff's sales calls reviewed come from a 1-week window of the week of June 6, 2021, then one can imagine that over the course of a year RPA modified hundreds of calls. Accordingly, Staff recommends that Commission not only order RPA to pay a forfeiture for these violations, but that the Commission suspend or rescind RPA's certificates.

⁹⁷ See Jennifer Owen's Prefiled Testimony.

⁹⁸ Confidential Flash Drive, MBM june6 Part 1 folder, audio files *****8606 and 06-04-2021 folder, audio file 00132847_*****9816.

G. RPA should be assessed a forfeiture for forging Ohio consumers' signature on contracts and completed TPVs claiming to be the customer.

In violation of Ohio Adm.Code 4901:1-21-05(C) (misleading, deceptive, and unconscionable practices), RPA forged Ohio consumer's signatures on contracts and completed TPVs with imposters posing as the customer. The preponderance of the evidence proves that this occurred, at least, three times.⁹⁹

The PUCO Call Center investigated at least three consumer complaints and received sufficient information from the consumers and RPA to conclude that RPA door-to-door sales representatives slammed Ohio consumers. In PUCO case number 00696256,¹⁰⁰ the consumer reviewed the "signed" contracted and listened to the TPV RPA provided to support the enrollment. The consumer stated that the signature was not his signature and the voice on the TPV was not his. At hearing, after playing the TPV recording, RPA's counsel stipulated that the TPV recording was not the consumer voice.¹⁰¹ RPA identified the vendor related to this enrollment as Strong Marketing Group.

In PUCO case number 00672275,¹⁰² RPA claimed that the consumer's husband enrolled her account in December of 2019. The TPV indicted that her husband's name was James Johnson. The consumer stated that her husband is deceased; they had been separated since 1990; his name was not James; and she lives alone and doesn't know

⁹⁹ Confidential flash drive, Footnote 10 folder, 005103301_*****0051, F****S SALES CALL, Footnote 7 folder, Case Nos. 00660823 and 00664386,

¹⁰⁰ Confidential flash drive, Footnote 17 folder, Case Report-00696256_Redacted, TB Affidavit Redacted.

¹⁰¹ Transcript (Vol. I) at pp. 52-53

¹⁰² Confidential flash drive, Footnote 18 folder, Case Report-00672275_Redacted.

anyone by the name of James Johnson. At hearing, the consumer testified consistent with the case report.¹⁰³ TBS Marketing was the vendor that completed the enrollment.

In another complaint, PUCO case number 00698115,¹⁰⁴ after listening to the TPV and the consumers call to the PUCO Call center, it was very clear that the person claiming to be the consumer was not the consumer. The consumer has a thick accent, which gave the impression that English was not her first language while the person completing the TPV did not. The vendor identified for this enrollment was TI Sales Group.

Staff recommends that RPA be assessed a forfeiture for forging customer's signatures on contracts.

H. RPA should be assessed a forfeiture for posing to consumers as other entities or utilities or agents of the same.

In violation of Ohio Adm.Code 4901:1-21-05(C) (misleading and deceptive practices), RPA posed to consumers as other entities or utilities or agents of the same, at least, 9 times. Again, Staff believes that this violation warrants the recommended forfeiture.

The PUCO Call Center received a number of complaints¹⁰⁵ from consumers related to door-to-door solicitations. These were complaints received from consumers

¹⁰³ Transcript (Vol I) at pp. 26-36.

¹⁰⁴ Confidential flash drive, Footnote 19 folder, Case Report 00698115 and audio files 20210625_1317_+*****9432_16147285861 and REdc0f88226f023b13fe3c62fb1a4c2182.

¹⁰⁵ See Confidential flash drive, Footnote 7 folder, Case Nos. 00672405, 00679073, 00680143, 00682929, 00693258, 00690097, 00696561, & 00698115; and Confidential flash drive, Footnote 20 folder, audio file 20210519_1518_+1*****2150_16144640679.

immediately after the interaction takes place. They were people who had no incentive to fabricate what occurred. These consumers just wanted to bring this issue to the attention of the PUCO. In one case, 00693258,¹⁰⁶ a consumer reported that a sales representative claimed to be from Columbia Gas of Ohio. This consumer provided the doorbell camera recording which captured a lot of the interaction. TSI Sales Group was the vendor involved in this complaint. Other examples include consumers reporting that sales representatives claimed to be with Dayton Power & Light, claimed to be their current energy supplier, and claimed that they were there (at the consumer's home) to read their meter and update/change their gas bill.

Lastly, when soliciting consumers by telephone, RPA spoofed their number. This is to deliberately disguise who is calling.¹⁰⁷

I. RPA should be assessed a forfeiture for representing to consumers price advantages, guarantees, and savings where such did not exist.

In violation of Ohio Adm.Code 4901:1-21-05(C) (misleading, deceptive and unconscionable practices), RPA represented to consumers price advantages, guarantees, and savings that did not exist. Evidence of these violations begin with the RPA door-to-door and telephonic sales scripts which were used as training tools for RPA reps.¹⁰⁸ The scripts trained RPA reps to market to consumers an offer of “competitive variable rates” when, in fact, RPA did not provide its customers competitive variable rates. And while

¹⁰⁶ Confidential flash drive, Footnote 21 folder, PUCO Case No. 00693258 and video files 8593554356-2021-06-02, 8593578719-2021-06-02, and 8593597778-2021-06-02.

¹⁰⁷ Barbara Bossart's Prefiled Testimony p. 107

¹⁰⁸ Confidential flash drive, Footnote 25 folder, Confidential Residential Sales Scripts

the sales agents do not always follow the training script, as RPA gives its sales agents the freedom to ad-lib¹⁰⁹, Staff’s investigation found that the ad-libs of RPA reps, at least during telephonic solicitations, were worse than the sales script when it comes to marketing to consumers offers of price advantages that did not exist.

1. Fraudulent Price Claims in Door-to-Door Scripts

In the door-to-door sales script for RPA’s variable rate product, RPA sales representatives were required to inform consumers that under Green Choice Energy’s Retail Access Program (i.e. RPA), their first bill “will be at the price-to-compare, which is the utility price” and “after you will receive a competitive variable rate plan.”¹¹⁰ The factors that impact the “competitive variable rate plan” are not disclosed in the script.¹¹¹ Not being informed of the factors that make up the “competitive variable rate”, the consumers are left to believe that the variable rate plan would be competitive with the utilities’ price to compare, as the utilities’ price to compare was the only other pricing mentioned to them.¹¹²

The problem, however, is that the variable rate plan was not competitive with the utilities’ price to compare. Through consumer complaint investigations, Staff found that indeed the first month rates were “comparative” to the utilities’ price to compare.¹¹³

¹⁰⁹ Brian Trombino, Cross Examination, Transcript Vol. II at pp. 289-291.

¹¹⁰ Confidential Flash Drive, Footnote 23 Folder, Confidential Attachment 6B Marketing Script for d2d.

¹¹¹ *Id.*

¹¹² Nedra Ramsey Prefiled Testimony at Q/A 23.

¹¹³ *Samantha Boerstler’s Prefiled Testimony; Q/A 15 p. 9 -10*

However, the following month and all subsequent months' rates were over 150% more than the utilities' rates with the second month rate beginning at over \$0.12/kWh.¹¹⁴

RPA's rates were not even competitive with other market variable rates.¹¹⁵

Further, the variable rate was not a market rate, as the price is routinely and arbitrarily chosen to be over 150% the price to compare.¹¹⁶

Finally, the door-to-door scripts do not advised customers that they will be charged a \$5.00 monthly service fee on the variable rate.¹¹⁷

2. Fraudulent Price Claims in Telephonic Sales Scripts

In reviewing the sales script¹¹⁸ for telephone solicitation of RPA's variable rate product, it requires the sales agent to mention and explain the suppliers "Green Choice rewards program." It further states that "By enrolling with Green Choice you get a competitive rate for your energy supply. The rate that you will be charged for your energy supply will be a variable rate that can change from month-to-month based on market factors and you will be charged a \$5.00 monthly service fee."

Again, in practice, RPA's variable rates were more than 150% above the utilities' price to compare, were not even competitive with the average variable rate in the market, and were arbitrarily determined rates – not market rates.

¹¹⁴ Confidential flash drive, Footnote 7 folder, PUCO Case Nos. 00664386, 00660823, and 00672275.

¹¹⁵ Samantha Boerstler's Prefiled Testimony at p. 10, line 10 and p.4, line 14.

¹¹⁶ Brian Trombino's Prefiled Testimony at bate-stamped p. 10, lines 22-24

¹¹⁷ Confidential flash drive, Footnote 23 folder, Confidential Attachment 6B Marketing Script for d2d v and f

¹¹⁸ Confidential flash drive, Footnote 25 folder, Confidential Residential Sales Scripts

3. Misleading and Unconscionable Pricing Deceptions in TPV scripts

Within the TPV script provided, the representatives are advised to inform customers of the natural gas rate in Therms (Thermal British Units).¹¹⁹ No natural gas company in Ohio uses Therms¹²⁰ as their unit of measurement for natural gas.¹²¹ CenterPoint Energy, Columbia Gas of Ohio and Duke Energy use Ccf (100 cubic feet), and Dominion Energy Ohio uses MCF (1000 cubic feet).¹²²

4. Fraudulent Price Claims in Telephonic Sales Offers

The telephone solicitation calls presented the same or even worse marketing practices than the telephonic sales scripts when it comes to marketing to consumers offers of price advantages, guarantees, and savings that did not exist. In order to investigate pricing claims that reps made on actual telephonic sales calls, Staff reviewed call center investigation reports and some telephonic sales call audios from two of RPAs vendors (AGR and Southeast). Some of the common themes identified were:

- Consistent with the telephonic sales scripts, consumers were informed that they would receive a competitive variable rate based on market conditions. However, there was nothing competitive about RPA's rates.¹²³

¹¹⁹ See Samantha Boerstler's Prefiled Testimony at p. 7. Note - Ohio Adm.Code 4901:1-29-05(8)(c) and (d) require that offers marketed by competitive retail natural gas suppliers be in a price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format.

¹²⁰ *Id.* at pp. 7-8 - Therms to Ccf: therms X 1.037=Ccf. Therms to Mcf: therms X 10.37= Mcf.

¹²¹ *Id.* at p. 8.

¹²² *Id.* Also see Confidential flash drive, Footnote 55 folder, Confidential Attachment 6A

¹²³ See Confidential flash drive, Footnote 7 folder, PUCO Case Nos. 00660823 (associated audio file found on Confidential Flash Drive; Footnote 11 folder) and PUCO Case Nos. 00664386 (associated audio file found on Confidential Flash Drive, Footnote 12 folder).

- Sales representatives generally did not provide consumers with the rate they would be paying even when the customer asked.¹²⁴
- In the few calls where a rate was disclosed in the sales call, the TPV provided a different rate.¹²⁵
- From May 31, 2021 to June 6, 2021, RPAs vendors (Southeast and AGR) ran a price protection / switching scam that involved the vendors asking consumers whether they received details about a “price protection plan” as a bill notice. RPA knows that no such bill notice (from the utility) even went out to customers, but by acting as if such a notice went out with the bill, it gives this price protection scam some legitimacy. The vendors would then act as if he/she was just signing the customer up for an advantageous price protection plan, gather sign-up information from the consumer, and switched clearly confused customers to RPA.¹²⁶ When customers expressed their confusion, the vendor would also use other pricing or otherwise misleading, deceptive, or unconscionable tactics to keep the customers trusting in the price protection scam, as follows:
 - AGR and Southeast reps would not disclose to customers factors that would impact the variable rate.¹²⁷ (Note that the price protection plans were fixed rates, but the rates switched automatically to variable rates at the end of a 12-month period).
 - The consumers were told that the rate would be lower than the default service rate. In no case reviewed was this truthful.¹²⁸
 - Gas rates were provided in therms which are not a unit of measurement used in Ohio.¹²⁹ Using a unit of measure not used by the utilities in Ohio makes it difficult for a consumer to make a price comparison.¹³⁰ This tactic

¹²⁴ See Confidential flash drive, Footnote 7 folder, PUCO Case Nos. 00660823, 00664386, Confidential Flash Drive Southeast 0531-0606 folder, audio file 003132135_*****1949.

¹²⁵ Confidential flash drive, 06-04-2021 folder, audio file 00013720_*****4358; 06-03-2021 folder, audio files 009132614_*****6720 and 009312588_*****6319.

¹²⁶ See Confidential Flash Drive, Southeast 0531-0606 folder (See all the sales call recordings); See also Confidential Flash Drive, AGR 0531-0606 folder (See all the sales call recordings). Note that both folders have sales calls and TPV recordings. The TPV recordings identify as such at the beginning of the recording.

¹²⁷ *Id.*

¹²⁸ See Confidential Flash Drive, AGR 0531 to 0606 folder; audio files *****6994 and *****2826_1; Southeast 0531-0606 audio file 000132192_*****8058_2.

¹²⁹ See Confidential Flash Drive, AGR 0531 to 0606 folder, audio file *****0734;

¹³⁰ Nedra Ramsey Prefiled Testimony at Q/A 24.

was also coincidentally used by another RPA vendor, MBM, though that vendor did not run the price protection switching scam.¹³¹

- Another consumer who stated they did not wish to enroll was told “sir you’re gonna receive a lower rate than you have now.” The consumer was transferred to a supervisor to complete the enrollment and the rate offered was 10.12/kWh, which was clearly higher than the utility’s default rate. Additionally, there was no way for the RPA sales representative to know the rate the consumer had at the time of solicitation.¹³²
- In all of the AGR reps’ sales call audios, the reps continuously informed consumers that they would receive “price protection” and they needed to confirm information to see if the consumer “qualified” for the “benefit”.¹³³
- Another consumer was informed that the Company (RPA) was one of the “suppliers of Duke Energy”. The representative was calling to give the consumer a lower rate in comparison to the standard price to compare plus \$50 rewards. When the consumer asked if she would be changing suppliers, the sales representative informed her “no, you will not switch anything of Duke Energy.”¹³⁴
- Sales representatives in many instances, did not provide consumers with the rate they were “agreeing” to.¹³⁵
- The consumer should have seen a message on her bill or an insert regarding “price protection on her account” and she is eligible to receive this through the “state’s energy program.” They want her to be on the best program that is the least expensive. Ultimately, the rate of 10.12 cents/kWh was disclosed in the TPV.¹³⁶
- In one of the most egregious examples of the switching scam, and they are all bad, the RPA rep, Susan, says that due to the customer not responding to her bill notices, the customer is missing out a chance for price protection. Susan refuses to tell consumer what her rate will be despite the consumer asking several times and letting the RPA rep know that she currently only

¹³¹ See Confidential Flash Drive, MBM June6 Part 1 folder, audio file 006132438_*****2759.

¹³² Confidential Flash Drive AGR 0531 to 0606 folder; *****0734.

¹³³ Confidential Flash Drive, AGR 0531-0606 folder (See all the sales call recordings). Note that both folders have sales calls and TPV recordings. The TPV recordings identify as such at the beginning of the recording.

¹³⁴ Confidential Flash Drive, AGR 0531 to 0606 folder, audio file *****2826_1.

¹³⁵ For examples see Confidential Flash Drive, Southeast 0531 to 0606 folder, audio file 003132135_*****1949 and 008132373_*****9427.

¹³⁶ Confidential Flash Drive, Southeast 0531 to 0606 folder, audio files 003132135_*****1949 and 003132135_*****1949_2.

pays \$71.00 per month for electric with Duke. The only information that the RPA rep will tell the customer is that she is getting price protection through a fixed rate for 12 months. Through the stalling process, the RPA rep keeps asking questions of the consumer and gets the consumer information. After that, the consumer is strong-armed into signing up for service. The consumer was on disability and was already in such a financial bind that she could not afford to get gas at her home. Price was the major concern for this customer. RPA still switches the customer to RPA's uncompetitive nonmarket-based service.¹³⁷

5. Forfeiture for representing to consumers competitive variable rates, price savings, beneficial price protections plans that RPA did not offer to customers.

The record evidence proves that at least from January 1, 2021 to July 20, 2021 (dates of the customer contacts, audio recordings, and RPA rates reviewed by Staff), RPAs vendors, as a matter of consistent and persistent marketing practices, marketed offers promising competitive variable rates, price savings, and beneficial price protections plans to consumers that RPA did not provide to its customers. Accordingly, RPA should be assessed a forfeiture.

It's extremely detrimental to consumers and to all legitimate CRNGS and CRES providers to have unlawful providers who market to consumers a competitive rate and then provide their customers rates that are arbitrarily set at more than three times the price to compare. Consumers lose money and trust in the competitive market. Legitimate CRNGS and CRES providers lose potential future customers who have been made to believe that the utilities are the only source for reasonable rates. We must also account for the fact that RPA vendors used offers focused around fictitious bill notices that were said to include beneficial "price protection plans" to collect information and switch consumers

¹³⁷ Confidential Flash Drive, folder named Southeast 0531 to 0606, file 008132373_*****9427.

against their will. When the price protection scam was about to fail with a consumer the RPA reps promised savings, never discussed rates, discuss rates in incorrect units, and promised consumers that they did not have to change providers. Even worse, at times they preyed on financially distressed consumers. RPA's actions demand a forfeiture.

J. RPA should be assessed a penalty of for misleading, deceptive and unconscionable practices discovered by Staff's review of the telephonic recordings of vendor MBM reps.

In the files of the calls related to MBM's solicitation efforts on behalf of RPA in Ohio (several calls were for other states), several issues were identified by Staff.¹³⁸ First, the agents appeared to be reading from a script, though the script is not one of the scripts provided to Staff by RPA.¹³⁹ Second, in these calls, agents informed consumers that the reason for their call was to "explain the 100% renewable energy that RPA could offer."¹⁴⁰ However, renewable energy was not explained, though it would have been if the agents followed the scripts.¹⁴¹ The agents only told the consumers that their service will be "upgraded to 100% renewable energy".¹⁴² Third, all the consumers' utility account information was gathered before a rate was even mentioned.¹⁴³ Fourth, as already discussed earlier, the calls seem to be modified. The agents provide consumers with rate information by saying "our variable rate is" and provides the rate (electric, gas, or both). The representatives then say the rate could change monthly, and it will be shown on their

¹³⁸ Nedra Ramsey Prefiled Testimony at Q/A 24.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

utility bill. Quoting part of their sales offer, the reps state that “this rate is all inclusive but does not include the customer standard distribution cost and applicable taxes and the standard customer charge of \$5.00.” Staff witness, Nedra Ramsey, did not hear any consumers ask a single question. All the responses were some sort of agreement. These consumers were told that they would be charged a rate comparable to the utilities’ default rate for the first month, but, after that their rate was variable without limitations plus a \$5.00 monthly fee and these consumers did not ask a single question.¹⁴⁴ Fifth, the factors that impacted the variable rate were not disclosed.¹⁴⁵

RPA provided a total of 62 calls (minus the calls that were out of state calls) from Millennium Brilliant Minds (MBM) and they all conservatively had at least one violation on them. Once again, Staff was only supplied with 1/7 of the sale recordings it requested for the week of June 6, 2021. Second, the violations only represent one week of sales calls. If Staff were supplied with all the sales calls of MBM from January 1, 2021 to July 30, 2021, the number of violations would more likely than not extrapolate to the thousands. At the very least, RPA should have to pay the Staff-recommended forfeiture for the violations Staff discovered.

K. RPA should have to pay a forfeiture for its unlawful use of automated messages.

RPA used unlawful automated messages to market to consumers. In this case, an automated message is a recorded message played upon a consumer answering their

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

phone, which provides the consumer with information prior to the live sales representative getting on the line. RPA used these messages to offer a discount and a gift card to consumers.

These messages are unlawful for two reasons. First, these automated messages are unfair, misleading, deceptive, and/or unconscionable activities because the messages did not notify who the messages were from or provide a truthful reason for the call. It led consumers to believe that they were going to get a discount and a gift card, which turned out to be untrue. Second, in violation of Ohio Adm.Code 4901:1-29-04 or 4901:1-21-04, RPA did not record these automated messages like it did sales calls involving live representatives.

Despite RPA unlawfully deciding not to record its automated messages, Staff knows that RPA used automated messages. RPA sales representatives solicited Mrs. Bossart at least twice using a misleading automated message. However, when Staff was provided the sales call for Barbara Bossart, it did not include the automated message she heard at the beginning of the call. Further, in response to Staff data requests, RPA provided approximately 32 sales call recordings similar to the solicitation of Mrs. Bossart. In several of the recordings, it is apparent that information was provided to the consumer prior to the beginning of the recording in which the live sales representative answers the call.¹⁴⁶ These calls more likely than not contained automated messages before the recording began. Staff came to this conclusion because, during the recorded

¹⁴⁶ Confidential Flash Drive, MBM June 6 Part 3 folder, audio file *****2354 by scurtis-rich@sec.

portion of the call, the live sales representatives answered the call by stating “thank you for holding the line” or the line rings and the consumer answers by saying “yes”.¹⁴⁷

Staff believes the record evidence supports the conclusion that, more likely than not, RPA used automated messages at least during the week that Barbara Bossart was solicited by RPA (May 31, 2021 to June 6, 2021 – also happens to be the week in which Staff received the 32 sales call recordings mentioned above).

L. RPA should pay a forfeiture for spoofing consumers in Ohio.

Staff believes that RPA more likely than not spoofs Ohio consumers as a persistent and consistent unlawful sales tactic. First, in each solicitation of Mrs. Bossart, the number that appeared on the caller ID indicated that the call was originating from a local number (ex. 614-478-5676).¹⁴⁸ Second, at the end of January 2019, Staff received an email¹⁴⁹ from Duke Energy Ohio’s Associate General Counsel stating that Duke employees in Cincinnati were “still being harassed by the scam caller” previously reported. The calls were from numbers identical to that used by Duke Energy (513-287-XXXX) which led them to believe someone within Duke Energy was calling.¹⁵⁰ The employees were able to get the name of the entity that was calling, RPA.¹⁵¹ The evidence supports the conclusion that RPA regularly spoofed consumers. If the Company spoofed their number when soliciting Mrs. Bossart on two separate occasions by two different

¹⁴⁷ Nedra Ramsey’s Prefiled Testimony at Q/A 29.

¹⁴⁸ Barbara Bossart’s Prefiled Testimony at pp. 4-5.

¹⁴⁹ Confidential Flash Drive, Footnote 53 Folder, Email from Associate General Counsel at Duke Energy forwarded to Nedra Ramsey from Barbara Bossart on February 4, 2019 at 4:59 PM.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

representatives as well as spoofed Duke's number the previous year, it is more likely than not that this is a practice of the Company.

Spoofing is an unfair, misleading, deceptive, and/or unconscionable activity. By leading a customer to believe that another entity is calling, such as their utility company or their neighbor, it encourages consumers to answer calls they otherwise may not have. For example, some of the calls reviewed were answered by consumers who were driving.¹⁵² It could also result in consumers enrolling with RPA because they are confused. Also, this action is in violation of Ohio Admn.Code 4901:1-21-05(C)(10) and 4901:1-29-05(D)(5). RPA's violations warrant the Staff-recommended forfeiture.

M. Staff recommends that RPA be assessed a forfeiture for noncompliant TPV scripts

Ohio Adm.Code 4901:1-21-06(D)(2) and 4901:1-29-06(E)(1) provide the minimum requirements or elements of CRES and CRNGS TPVs, respectively. In its responses to Staff's data requests, RPA provided its TPV script.¹⁵³ Staff reviewed the script as well as RPA-provided TPV recordings. Staff's review found that the TPV script and the TPV recordings¹⁵⁴ were not in compliance with the Ohio Adm.Code. Elements that are missing for electric enrollments are:

1. The price per kWh

¹⁵² Nedra Ramsey's Prefiled Testimony at Q/A 35.

¹⁵³ Confidential flash drive, Footnote 55 folder, Confidential Attachment 6A.

¹⁵⁴ Example of electric TPV audio recordings: Confidential flash drive, Footnote 11 folder, F****S, B***N TPV; Footnote 12 folder, call (22); and Footnote 6 folder, Barbara Bossart TPV (1) .

2. A verbal statement and the customer's acknowledgement that the provider will, within one business day, send the customer a written contract that details the terms and conditions that were summarized in the telephone call.

Elements that are missing for natural gas enrollments are:¹⁵⁵

1. A verbal statement and the customer's acknowledgement that the provider will, within one business day, send the customer a written contract that details the terms and conditions that were summarized in the telephone call
2. The price per Ccf/Mcf.

These violations prevented customers from being provided with clear and understanding price, terms, and conditions for their CRES/CRNGS service at the time of sale.

N. Staff recommends that RPA lose its CRES and CRNGS certificates and provide rerates pays restitution for all customers signed-up from January 1, 2021 to July 30, 2021.

For all the misleading, deceptive, unconscionable, and otherwise unlawful acts committed by RPA discussed in this brief and proven at hearing¹⁵⁶, Staff recommends that the Commission order RPA to provide rerates to all customers enrolled by RPA from

¹⁵⁵ Examples of natural gas TPV audio recordings: PUCO Case Nos. 00696256; Confidential flash drive, folder Southeast 0531 to 0606, audio file 000132192_*****8058_2.

¹⁵⁶ Confidential Flash Drive, Footnote 51 folder, Complete Spreadsheet of violations – Staff Witness, Nedra Ramsey, counted over 159 discreet violation just in the 103 recordings that were provided to Staff for the week of June 6, 2021.

May 1, 2021 to June 30, 2021 through door to door or telemarketing means; order RPA to rerate all customers back to the utilities' default service rate who filed a complaint with the Commission, RPA, or any other entity; and that the Commission rescind RPA's CRES and CRNGS certificates after all customers are appropriately compensated. The need for rerating customers is already supported by Section III. A. and III. I. of this brief. The need for rerates is even greater when one considers that the misleading, deceptive, and unconscionable sales practices of RPA were so egregious and so persistent throughout all of RPA's vendors during the period of Staff investigation (January 1, 2021 to June 30, 2021).¹⁵⁷ Staff recommends that RPA pays the difference between what the customer would have paid with the provider the customer had before RPA and what the customer has paid while with RPA. Though the Staff Report's recommendation asked the Commission to order RPA to rerate those customers enrolled from May 1, 2021 to June 30, 2021, the Commission is not limited to Staff's recommendation. If, after the hearing and in consideration of all the evidence, the Commission determines that additional rerates are appropriate, Staff would fully support that conclusion.

Pursuant to R.C. 4928.08(D) and R.C. 4929.20(C)(1), the Commission may suspend, rescind, or conditionally rescind a CRES/CRNGS certificate if, after notice and an opportunity for a hearing, the Commission determines that the CRES/CRNGS supplier has failed to comply with any certification standards prescribed in the Commission's

¹⁵⁷ Nedra Ramsey's Prefiled Testimony at Q/A 40 – "Of the 103 calls we received in the data request, the vast majority of the recordings were very concerning to staff. These calls were from 4 different vendors and involved different sales agents. Of the consumer complaints received by the PUCO Call Center, at least 8 vendors were involved, and this included both door to door and telemarketing sales representatives."

rules. Further, R.C. 4928.08(D) gives the Commission the express authority to suspend, rescind, or conditionally rescind a CRES certificate if the Commission determines that the CRES supplier has engaged in anticompetitive or unfair, deceptive, or unconscionable acts or practices in Ohio. Ohio Adm.Code 4901:1-21-15(A)(2) and 4901:1-34-08(D) also set forth the Commission's authority to suspend, rescind, or conditionally rescind certificates.

Based on the preponderance of evidence presented by Staff at hearing, RPA interfered with Staff's investigation; submitted altered recordings to Staff in response to informal Staff investigations of call center customer contacts and in response to Staff data requests; RPA violated the Commission's consumer protection rules regarding CRES/CRNGS marketing and enrollment practices; and forged customer signatures on enrollment documents. RPA demonstrates a clear lack of the managerial capabilities necessary to comply with the Commission's rules, as evidenced by RPA's failure to oversee its vendors and agents, RPA's repeated inability to cooperate with Staff's investigation, and all of the rule violations Staff's investigation found despite RPA's lack of cooperation. For all these reasons, the Commission should rescind, or at the very least suspend, RPA's CRES and CRNGS certificates.

IV. CONCLUSION

This matter before the Commission, being the first to not be resolved through settlement, will set a precedent with regards to how strongly the Commission will defend its own rules and order, defend its Staff's ability to investigate, and defend Ohio

consumers from egregious and long-standing misleading, deceptive, and unconscionable marketing tactics that cost them millions of dollars. That is why Staff has recommended strong remedies to address the egregious unlawful actions of RPA.

Respectfully submitted,

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**On Behalf of the Staff of the
Public Utilities Commission of Ohio**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Initial Brief** on behalf of the Staff of the Public Utilities Commission of Ohio, has been served upon the below-named counsel via electronic mail, this 6th day of January 2023.

/s/ Robert Eubanks

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