

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
INVESTIGATION INTO XOOM ENERGY
OHIO, LLC'S COMPLIANCE WITH THE
OHIO ADMINISTRATIVE CODE AND
POTENTIAL REMEDIAL ACTIONS FOR
NON-COMPLIANCE.

CASE NO. 22-267-GE-COI

ENTRY

Entered in the Journal on June 30, 2023

{¶ 1} XOOM Energy Ohio, LLC (XOOM Energy) is an electric services company as defined in R.C. 4928.01 and a retail natural gas supplier as defined in R.C. 4929.01; is certified to provide competitive retail electric service (CRES) under R.C. 4928.08 and to supply competitive retail natural gas service (CRNGS) under R.C. 4929.20; and is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16 and R.C. 4929.24. Accordingly, XOOM Energy is required to comply with the Commission's minimum CRES standards set forth in Ohio Adm.Code Chapter 4901:1-21, as well as the minimum CRNGS standards set forth in Ohio Adm.Code Chapter 4901:1-29.

{¶ 2} R.C. 4928.08 states that no electric services company shall provide CRES to a consumer in this state without first being certified by the Commission regarding its managerial, technical, and financial capability to provide such service and providing a financial guarantee sufficient to protect customers and electric distribution utilities from default. Similarly, R.C. 4929.20 states that no retail natural gas supplier shall provide CRNGS to a consumer without first being certified by the Commission regarding its managerial, technical, and financial capability to provide that service and providing reasonable financial assurances sufficient to protect customers and natural gas companies from default.

{¶ 3} On July 22, 2013, the Commission granted XOOM Energy's application for certification as a CRES provider in this state. *In re the Application of XOOM Energy Ohio, LLC*

for Certification as a Competitive Retail Electric Service Provider, Case No. 13-1453-EL-CRS. XOOM Energy timely filed renewal applications for certification as a CRES provider every two years pursuant to Ohio Adm.Code 4901:1-24-09, and each renewal application was automatically approved by the Commission pursuant to R.C. 4928.08. XOOM Energy's most recent renewal application was filed on May 20, 2021; automated approval of this renewal application was suspended by the attorney examiner on June 17, 2021.

{¶ 4} Additionally, on January 4, 2012, the Commission granted XOOM Energy's application for certification as a CRNGS supplier in this state. *In re the Application of XOOM Energy Ohio, LLC for Certification as a Competitive Retail Natural Gas Marketer*, Case No. 11-4795-GA-CRS. XOOM Energy timely filed renewal applications for certification as a CRNGS provider every two years pursuant to Ohio Adm.Code 4901:1-27-09, and each renewal application was automatically approved by the Commission pursuant to R.C. 4929.20. XOOM Energy's most recent renewal application was filed on November 29, 2021; automatic approval of this renewal application was suspended by the attorney examiner on December 22, 2021.

{¶ 5} Both R.C. 4928.08 and 4929.20 allow the Commission to suspend, rescind, or conditionally rescind the certification of any electric services company or retail natural gas supplier issued under these sections if the Commission determines, after reasonable notice and opportunity for hearing, that the electric services company or retail natural gas supplier has failed to comply with any applicable certification standards or has engaged in anticompetitive or unfair, deceptive, or unconscionable acts or practices in this state. Additionally, R.C. 4928.16 and 4929.24 grant the Commission the authority to order any remedy or forfeiture provided under R.C. 4905.54 to 4905.60 and 4905.64, and to order restitution to customers and rescission of customer contracts.

{¶ 6} On April 18, 2022, Staff of the Commission's Service Monitoring and Enforcement Department (Staff) filed a letter in the above-captioned docket, stating that, after reviewing customer contacts from both January 1, 2021, to June 21, 2021, and January 1,

2022, to March 1, 2022, during which time the Commission's call center received 19 complaints and 21 contacts, respectively, Staff believes that XOOM Energy has failed to comply with several sections of the Ohio Administrative Code with respect to its consumer enrollment practices. Staff states that the majority of the aforementioned contacts are related to enrollment disputes. Additionally, Staff states that one of XOOM Energy's independent channel partners was engaged in soliciting consumers via telephone and then enrolling them online via XOOM Energy's website while on the phone, which was completed by XOOM Energy's agent, not the consumer.

{¶ 7} Staff states that, on June 21, 2021, a notice of probable non-compliance (notice) was sent to XOOM Energy; however, after many discussions, XOOM Energy and Staff were unable to resolve the issues raised in the notice. Staff concluded that: XOOM Energy sales representatives provided misleading information during telemarketing efforts; XOOM Energy enrolled customers without proof of their consent as required by Ohio Adm.Code 4901:1-21-06(C); XOOM Energy did not properly enroll consumers telephonically by providing a date and time-stamped audio recording verifying specified information before the completion of the call; XOOM Energy did not properly enroll consumers via the internet; and that, for both internet and telephonic enrollments, XOOM Energy did not obtain proper verification and/or documentation as required by the Ohio Administrative Code which requires that consent shall be obtained by encrypted customer input on a provider's website. As a result of its conclusions indicating probable non-compliance with statutory and rule requirements, Staff recommends that the Commission open a formal proceeding to review XOOM Energy's compliance with Ohio law.

{¶ 8} On April 20, 2022, the Commission found that a hearing should be held at which XOOM Energy would, among other things, have the opportunity to respond to the findings contained in the Staff Report and show cause why its certification as a CRES provider and its certification as a CRNGS supplier should not be suspended, rescinded, or conditionally rescinded. The Commission established a procedural schedule whereby, among other deadlines, an evidentiary hearing was scheduled for June 8, 2022.

{¶ 9} On May 9, 2022, Staff and XOOM Energy filed a joint motion for continuance, explaining that Staff and the parties required additional time to explore the opportunity to resolve issues and explore settlement.

{¶ 10} By Entry on May 20, 2022, the attorney examiner granted intervention to the Ohio Consumers' Counsel (OCC) and established a procedural schedule whereby a Staff Report was to be filed by June 6, 2022, and an evidentiary hearing was scheduled for July 28, 2022.

{¶ 11} On June 6, 2022, Staff submitted its Staff report of investigation. An amended Staff report was filed on June 15, 2022.

{¶ 12} On June 24, 2022, XOOM Energy filed an unopposed motion to suspend the procedural schedule, citing a need for time to engage in further settlement negotiations with both Staff and OCC. The motion to suspend the procedural schedule was granted on June 30, 2022.

{¶ 13} By Entry issued on September 23, 2022, the attorney examiner ordered the parties to provide a status update as to their negotiations. On September 30, 2022, both OCC and XOOM Energy filed correspondence in this docket indicating that negotiations were ongoing.

{¶ 14} Since several months have passed since the last time the parties have provided a status update, the attorney examiner finds that an additional update is warranted. The parties therefore shall file a status update in this docket by July 10, 2023.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That the parties provide a status update as to their settlement negotiations by July 10, 2023. It is, further,

{¶ 17} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Jesse M. Davis

By: Jesse M. Davis
Attorney Examiner

JSA/dr

**This foregoing document was electronically filed with the Public Utilities
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in

Case No(s). 22-0267-GE-COI

Summary: Attorney Examiner Entry ordering that the parties provide a status update as to their settlement negotiations by July 10, 2023 electronically filed by Debbie S. Ryan on behalf of Jesse M. Davis, Attorney Examiner, Public Utilities Commission of Ohio.