

# THE PUBLIC UTILITIES COMMISSION OF OHIO

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

CASE NO. 22-441-GE-COI

## OPINION AND ORDER

Entered in the Journal on October 18, 2023

### I. SUMMARY

{¶ 1} The Commission orders RPA Energy, Inc. d/b/a Green Choice Energy to re-rate all customers enrolled between January 1, 2021 and July 20, 2021, and pay a forfeiture of \$1.44 million. Further, the Commission rescinds RPA's certificates to provide both competitive retail electric service and competitive retail natural gas service in Ohio.

### II. APPLICABLE LAW

{¶ 2} RPA Energy, Inc. d/b/a Green Choice Energy (RPA or the Company) 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, RPA 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.

{¶ 3} R.C. 4928.08 states that no electric services company shall provide a 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 a CRNGS to a consumer without first being certified by the Commission regarding its managerial, technical, and financial capability to provide such service and providing reasonable financial assurances sufficient to protect customers and natural gas companies from default.

{¶ 4} 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 bring an action under R.C. 4905.26 and 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.

### III. PROCEDURAL BACKGROUND

{¶ 5} On October 5, 2016, the Commission granted RPA's application for certification as a CRES provider in this state. RPA timely filed renewal applications for certification as a CRES provider every two years pursuant to Ohio Adm.Code 4901:1-24-09; its first renewal application was automatically approved by the Commission pursuant to R.C. 4928.08. RPA's most recent renewal application was filed on September 1, 2020; this renewal application was approved by the Commission on November 18, 2020. *In re the Application of RPA Energy, Inc. for Certification as a Competitive Retail Electric Service Provider in Ohio*, Case No. 16-892-EL-CRS. Additionally, on July 20, 2016, the Commission granted RPA's application for certification as a CRNGS supplier in this state. RPA 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. RPA's most recent renewal application was filed on June 21, 2022; this renewal application was suspended by attorney examiner entry on July 19, 2022. *In re the Application of RPA Energy Inc. for Certification as a Competitive Retail Natural Gas Marketer*, Case No. 16-893-GA-CRS.

{¶ 6} On April 18, 2022, Staff of the Commission's Service Monitoring and Enforcement Department filed a letter in the above-captioned docket, stating that, after reviewing customer contacts received by the Commission's call center from January 1, 2021, to October 1, 2021, as well as an audio recording provided by RPA, Staff believed that RPA has engaged in a pattern of misleading and deceptive practices to market and enroll customers during both door-to-door and telephonic sales practices. Staff stated that, on October 16, 2021, a notice of probable non-compliance (PNC) was sent to RPA; however, after many discussions, RPA and Staff were unable to resolve the issues raised in the PNC. As a result of its conclusions indicating probable non-compliance with statutory and rule requirements, Staff recommended that the Commission open a formal proceeding to review RPA's compliance with Ohio law. Further, Staff noted that, at the urging of Staff, RPA ceased marketing in Ohio after receiving the notice. Staff requested that the Commission order RPA to continue the suspension of marketing pending the outcome of the investigation.

{¶ 7} On April 20, 2022, the Commission found that a hearing should be held at which RPA would, among other things, have the opportunity to respond to the findings contained in the notice 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 motions to intervene were to be filed by May 18, 2022, a Staff Report was to be filed by June 10, 2022, testimony was to be filed by June 24, 2022, and an evidentiary hearing was scheduled for July 11, 2022. The procedural schedule was subsequently altered by Entries filed on June 22, 2022, July 26, 2022, and August 25, 2022.

{¶ 8} On April 27, 2022, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene in the case.

{¶ 9} On May 10, 2022, RPA filed a memorandum contra OCC's motion to intervene.

{¶ 10} On May 20, 2022, RPA filed a motion for protective order.

{¶ 11} On June 6, 2022, OCC filed a memorandum contra RPA's motion for protective order.

{¶ 12} On June 10, 2022, Staff filed its report of investigation (Staff Report), which it amended on July 21, 2022. Staff indicated that since the initial filing of its report, Staff discovered that a violation was omitted, adding two additional violations to those listed in its report. Staff made six main recommendations, requesting the Commission take the following actions:

- 1) Find that RPA has violated the code provisions identified in the Staff Report.
- 2) Rescind, conditionally rescind, or suspend RPA's certification, after all customers are notified and credited.
- 3) Order RPA to pay a forfeiture of \$1,500,000.
- 4) Order RPA to provide notice to each customer enrolled from February 1, 2021 to May 1, 2021, informing the customer of the terms of their respective contract, including the type of rate, the date of enrollment, the means by which the customer was enrolled, that the Commission believes the customer may have been misled by RPA during enrollment, and that RPA will return the customer to their utility's default service.
- 5) Order RPA to, for customers enrolled through door-to-door or telemarketing between May 1, 2021, and June 30, 2021, re-rate those

customers back to their respective utility's default service rate and send notice informing said customers that they will receive a refund of a specified amount.

- 6) Order RPA to re-rate all customers who filed a complaint with any entity disputing enrollment with RPA starting from February 1, 2022.

{¶ 13} On June 13, 2022, OCC filed a motion to compel RPA to respond to its requests for discovery.

{¶ 14} On June 15, 2022, OCC filed a motion to extend the procedural schedule.

{¶ 15} On July 6, 2022, by Entry, the attorney examiner granted OCC's motion to intervene, denied RPA's motion for protective order, and denied as moot OCC's motion to compel discovery.

{¶ 16} On July 11, 2022, RPA filed a motion to certify an interlocutory appeal of the July 6, 2022 Entry granting OCC's motion to intervene in the case. OCC filed a memorandum contra this motion on July 18, 2022.

{¶ 17} On July 26, 2022, by Entry, the attorney examiner converted the August 10, 2022 hearing into a prehearing conference, and rescheduled the hearing to commence on September 7, 2022.

{¶ 18} On August 15, 2022, by Entry, the attorney examiner denied RPA's motion for certification of its interlocutory appeal.

{¶ 19} On August 25, 2022, by Entry, the attorney examiner rescheduled the evidentiary hearing to commence on October 5, 2022.

{¶ 20} On September 16, 2022, RPA filed a motion to suspend the procedural schedule.

{¶ 21} On September 19, 2022, by Entry, the attorney examiner suspended the procedural schedule and scheduled a prehearing conference to occur on September 23, 2022.

{¶ 22} On September 30, 2022, Staff filed the direct testimony of Barbara Bossart, Jennifer E. Owen, Samantha Boerstler, and Nedra Ramsey. Also on September 30, 2022, RPA filed a motion for protective order and the direct testimony of Brian Trombino. Finally, on September 30, 2022, OCC filed the direct testimony of James D. Williams.

{¶ 23} On October 3, 2022, Staff filed both a motion to extend the deadline to file testimony and an amended version of the direct testimony of Nedra Ramsey. Also on October 3, 2022, Staff filed a motion for protective order.

{¶ 24} On October 4, 2022, by Entry, the attorney examiner granted Staff's motion to extend the filing deadline for testimony and rescheduled the evidentiary hearing to commence on October 19, 2022.

{¶ 25} On October 5, 2022, Staff filed a motion to allow four of its consumer witnesses to testify using remote access technology.

{¶ 26} On October 12, 2022, Staff filed both a motion to allow one of its expert witnesses to testify using remote access technology and a motion for subpoenas for its consumer witnesses.

{¶ 27} On October 17, 2022, by Entry, the attorney examiner granted Staff's motion for its consumer witnesses to testify using remote access technology, denied Staff's motion for one of its expert witnesses to testify using remote access technology, granted Staff's motion for subpoenas, and rescheduled the evidentiary hearing to commence on October 26, 2022.

{¶ 28} On October 19, 2022, Staff filed a motion to allow one of its witnesses to testify virtually or in-person on an alternative date.

{¶ 29} On October 21, 2022, the attorney examiner denied in-part and granted in-part Staff's motion for its expert witness, Jennifer Owen, to testify on an alternative date.

{¶ 30} On October 26, 2022, the evidentiary hearing commenced, as scheduled in the Entry of October 17, 2022, and resumed on November 10, 2022. During the evidentiary hearing, Barbara Bossart, Samantha Boerstler, Nedra Ramsey, Jennifer Owen, Edward Tokar, Sheila Barton-Johnson, and Tyler Beauregard testified for Staff, and Brian Trombino testified for RPA. At the conclusion of the hearing, the attorney examiner established a briefing schedule such that initial briefs would be due by January 6, 2023, and reply briefs would be due by January 27, 2023. The parties timely filed both initial briefs and reply briefs in accordance with the schedule established during the hearing.

#### IV. DISCUSSION

{¶ 31} At the hearing, Staff submitted into evidence the July 21, 2022 amended Staff Report, audio recordings of third-party verification (TPV) calls for consumer witnesses Barton-Johnson and Beauregard, a video of a door-to-door solicitation for consumer witness Tokar, case history reports related to customer contacts to the Commission's call center, and a confidential flash drive containing numerous audio files. RPA submitted into evidence an e-mail message from Alexa Torres. OCC submitted into evidence the direct testimony of James Williams. Additionally, as noted above, Barbara Bossart, Samantha Boerstler, Nedra Ramsey, Jennifer Owen, Edward Tokar, Sheila Barton-Johnson, and Tyler Beauregard testified for Staff, and Brian Trombino testified for RPA. Owing to the other parties having no cross-examination related to the testimony of James D. Williams, OCC did not call him to testify at the hearing (Tr. II at 217).

##### *A. Summary of the Staff Report*

{¶ 32} The Staff Report, as amended on July 21, 2022, purports to encapsulate all of Staff's involvement with RPA and the resulting findings of non-compliance. This includes Staff's investigations surrounding various contacts to the Commission's customer call center

and the October 16, 2021 PNC sent to RPA. In total, the Staff Report alleges 23 violations of the Commission's rules and regulations. (Staff Ex. 7 at 7-10.)

## 1. BACKGROUND

{¶ 33} In late February 2021, Staff reviewed customer contacts from the Commission's call center, which led to concerns over RPA's marketing and enrollment practices. After reviewing an audio recording of a sales call from RPA, Staff suspected the recording was modified. (Staff Ex. 7 at 2.)

{¶ 34} In June of 2021, Staff requested RPA cease all marketing in Ohio. RPA has voluntarily ceased all marketing and customer enrollment activities in Ohio since Staff made its request, as represented by RPA during the evidentiary hearing. As of the evidentiary hearing, RPA has not resumed marketing in Ohio. (Tr. I at 342.)

{¶ 35} From February of 2021 to June of 2022, Staff continued its investigation, engaging with RPA in conversations for the purposes of reaching a settlement on the PNC letter. Staff and RPA were unable to reach an agreement during that period. On April 18, 2022, Staff issued a letter to the Commission requesting the opening of a Commission Ordered Investigation (COI) case for RPA, to allow Staff to continue its investigation of the practices outlined in the PNC letter. The Commission opened this case docket on April 20, 2022, directing Staff to proceed with its investigation and to submit its report by June 10, 2022. Staff timely submitted its report and later amended it on July 21, 2022. (Staff Ex. 7 at 2.)

## 2. STAFF INVESTIGATION

{¶ 36} Staff states that RPA conducted its marketing in Ohio by both door-to-door solicitations and telemarketing calls, for which it contracted with several different vendors. Staff notes that in February of 2019, it reached out to RPA to inform the Company that Staff had received information indicating that Duke Energy's phone number was being spoofed during such calls using a misleading automated message and that live sales agents provided

misleading and deceptive information. Staff informed RPA that it would monitor the issue going forward. In February of 2021, Staff suspected that an RPA sales call was modified, but this could not be confirmed with the consumer, so it continued to monitor RPA. On June 4, 2021, Barbara Bossart, a member of Staff, was solicited by an agent representing RPA by phone, during which time she completed enrollment, following which Staff requested the sales call recording, TPV recording, and contract. After listening to the recording, Ms. Bossart suspected that parts of the call were not included in the recording. (Staff Ex. 7 at 2.)

{¶ 37} Staff notes that, during its investigation, it reviewed RPA's marketing, sales, enrollment, and contract administration practices from January 1, 2021, to July 20, 2021. During this period, the Commission's call center received 25 customer contacts related to RPA's provision of CRES and CRNGS. Staff reviewed the contacts, which stemmed from a mixture of door-to-door and telephonic solicitations, to determine RPA's compliance with Commission rules and orders. Staff sent RPA various data requests for additional information related to solicitation and enrollment practices. As part of its investigation, Staff reviewed consumer statements about solicitations from RPA, RPA's responses to customer contacts to the Commission's call center, sales and TPV call recordings, sales and TPV call scripts, contracts and administration practices, and the Company's quality assurance plan. Staff retained a forensic audio service to examine recordings it received from RPA of sales and TPV calls, which resulted in the discovery of acoustic anomalies in the recordings. Staff claims that, ultimately, a full evaluation could not be completed where RPA refused to provide critical information about the recordings. Finally, Staff states that, after filing the initial report of investigation, it again requested information regarding how RPA saves, stores, and exports sales and TPV calls to help Staff determine authenticity of those recordings. Additionally, Staff requested RPA provide a recording of a call it did not receive in response to a request made prior to filing of the initial report of investigation, which request RPA denied. (Staff. Ex. 7 at 2-3.)

### 3. STAFF FINDINGS

{¶ 38} During its investigation, Staff reviewed customer contacts to the Commission's call center, from which Staff found a concerning pattern of misleading and deceptive practices by both door-to-door and telephonic sales agents. In its report, Staff lists many different practices it observed during the course of the investigation, including (1) deceptive and misleading behavior by sales agents during solicitations, (2) RPA's submission of altered call recordings, (3) a call recording where the voice on the recording purporting to be that of the consumer did not match the consumer's voice, (4) deceptive marketing of variable rate contracts, and (5) misleading practice with respect to automated initialing of consumer contracts. (Staff Ex. 7 at 3-4.) Staff states that it reviewed numerous TPV recordings and identified within those recordings several issues. Staff notes that in at least one case of a door-to-door enrollment, the sales agent remained on the premise for at least part of the verification process. Further, Staff states that, largely, RPA's TPV recordings are not compliant with various provisions of the Ohio Administrative Code, including Ohio Adm.Code 4901:1-21-06 and 4901:1-29-06, where RPA's recordings did not include disclosure of a monthly fee or the factors which impact the variable monthly rate. (Staff Ex. 7 at 5.)

{¶ 39} Staff reviewed RPA's managerial, technical, and financial capabilities since its most recent certificate renewal in June of 2020. Staff remarks that it has concerns with respect to RPA's capabilities in these categories. Staff first states that when it sent RPA a data request concerning its compliance with the Commission's June 17, 2020 Entry allowing CRES and CRNGS providers to resume door-to-door marketing under the condition that they report to the Commission certain information at least 48 hours prior to beginning solicitation, RPA responded stating that it had forwarded the Commission's Order to its vendors on June 18, 2020 with instructions to comply. *See In re the Proper Procedures and Process for the Commission's Operations and Proceedings during the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, et al., Entry (June 17, 2020). Staff avers that RPA's resumption of door-to-door solicitations was done in violation of the Commission's

June 17, 2020 Entry. Further, Staff requested and reviewed sales scripts RPA's vendors are required to use when soliciting consumers. Staff also reviewed how RPA monitors its sales agents for compliance. Staff noted that RPA uses a compliance plan, with which all sales submitted for enrollment must comport, along with a scorecard document, which Staff also reviewed. Staff notes that in a separate case docket, RPA seeks a waiver from certain provisions of Ohio Adm.Code 4901:1-21-06 and 4901:1-29-06. In part, the waiver seeks to send consumers the terms and conditions of the agreement with RPA via e-mail or text message when enrollment results from a door-to-door solicitation. *See In re RPA Energy*, Case No. 21-157-GE-WVR, Application at 6-10 (February 18, 2021). Staff avers that as of the filing of its report, the Commission had not yet ruled on the request for waiver, but that it learned during its investigation that RPA had been sending contracts via text message to consumers and, for many cases, was not sending contracts to consumers within the timeframe required by the Commission's rules. Staff opines that where RPA could not provide original, unaltered records to support its enrollments, both its managerial capability and the authenticity of its enrollments are called into question. Staff concludes by stating that the information discovered during its investigation leads it to believe that RPA's deceptive sales practices and failure to comply with Commission rules are the result of a systemic issue under management oversight and possible direction and are a direct result of how the company is managed, rather than the actions of a single agent or vendor gone rogue. (Staff Ex. 7 at 5-6.)

#### 4. FINDINGS OF VIOLATIONS

{¶ 40} As a result of its investigation, Staff recommends that the Commission find that RPA violated the following provisions of the Revised Code and Administrative Code, and that RPA failed to comply with the Commission's June 17, 2020 Entry:

- 1) R.C. 4905.54, which provides that every public utility shall comply with orders, directions, and requirements of the Commission made under authority of Chapters 4901, 4903, 4905, 4907, and 4909 of the Revised Code. Further, R.C. 4905.54 states that the Commission may assess a

forfeiture of not more than \$10,000 per violation or failure against a public utility in violation of any of the provisions of the listed chapters and that each day's continuance of a violation or failure is a separate offense.

- 2) Ohio Adm.Code 4901:1-21-03(A), which provides that CRES providers shall not engage in unfair, misleading, or deceptive acts or practices with respect to marketing, solicitation, or sales, administration of contracts, or provision of CRES.
- 3) Ohio Adm.Code 4901:1-29-03(A), which provides that CRNGS providers shall not engage in unfair, misleading, or deceptive acts or practices with respect to marketing, solicitation, or sales, administration of contracts, or provision of CRNGS.
- 4) Ohio Adm.Code 4901:1-21-03(C), which provides that CRES providers shall not change or authorize the changing of a customer's supplier of retail electric service without the customer's prior consent, as provided for under rule 4901:1-21-06 of the Administrative Code.
- 5) Ohio Adm.Code 4901:1-21-04(A), which provides that each competitive retail electric service provider shall establish and maintain records and data sufficient to: (1) verify its compliance with the requirements of any applicable commission rules, and (2) support any investigation of customer complaints.
- 6) Ohio Adm.Code 4901:1-29-04(A), which provides that natural gas suppliers shall establish and maintain records and data sufficient to (1) verify its compliance with the requirements of any applicable commission rules, and (2) support any investigation of customer complaints.

- 7) Ohio Adm.Code 4901:1-29-03(D), which provides that a retail natural gas supplier or governmental aggregator shall not change or authorize the changing of a customer's supplier of competitive retail natural gas service without the customer's prior consent, as provided for under rule 4901:1-29-06 of the Administrative Code.
- 8) Ohio Adm.Code 4901:1-21-05(C), which provides that 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 CRES.
- 9) Ohio Adm.Code 4901:1-29-05(D), which provides, in part, that no CRNGS 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 CRNGS.
- 10) Ohio Adm.Code 4901:1-29-05(D), which provides, in part, that no CRNGS provider shall fail to disclose all terms, conditions, and limitations, including contract length, prices, fees, penalties, and discretionary charges when soliciting a sale of CRNGS.
- 11) Ohio Adm.Code 4901:1-29-05(D), which provides, in part, that no CRNGS provider or its agent shall engage in any solicitation that leads the customer to believe that the CRNGS provider is soliciting on behalf of or is an agent of any entity other than the CRNGS provider.
- 12) Ohio Adm.Code 4901:1-29-05(D), which provides, in part, that no CRNGS provider shall advertise or market offers that (a) claim that a specific price advantage, savings, or guarantee exists if it does not, \* \* \* (d) offer a variable price per Ccf or Mcf, whichever is consistent with

the incumbent natural gas company's billing format, for CRNGS without disclosing all recurring and nonrecurring charges.

- 13) Ohio Adm.Code 4901:1-21-05(C), which provides, in part, that no CRES provider or its agent shall engage in any solicitation that will lead the customer to believe that the CRES provider is soliciting on behalf of or is the agent of any entity other than the CRES provider.
- 14) Ohio Adm.Code 4901:1-21-06(D)(1)(d), which provides that CRES providers shall, during a door-to-door enrollment, immediately upon obtaining the customer's signature, provide them with a legible copy of the signed contract.
- 15) Ohio Adm.Code 4901:1-29-06(D)(4), which provides that, a CRNGS provider during a door-to-door solicitation, shall immediately upon obtaining the customer's signature, provide them with a legible copy of the signed contract unless the CRNGS provider has already given the customer a separate, complete copy of the terms and conditions of the contract.
- 16) Ohio Adm.Code 4901:1-21-06(D)(2)(b)(i), which provides that a CRES provider must, for telephonic enrollments, send the customer a written contract that details the terms and conditions summarized in the telephone call within one business day of enrollment, and that such contract shall in no way alter the terms and conditions to which the customer agreed during the call.
- 17) Ohio Adm.Code 4901:1-29-06(E)(2)(a), which provides that a CRNGS provider must, for telephonic enrollments, send the customer a written contract that details the terms and conditions summarized in the telephone call within one business day of enrollment and that such

contract shall in no way alter the terms and conditions to which the customer agreed during the call.

- 18) Ohio Adm.Code 4901:1-21-06(D)(1)(h)(ii), which provides that an independent, third-party verifier must confirm with the customer that the sales agent of the CRES provider has left the property of the customer and that the agent is not to return before, during, or after the TPV process.
- 19) Ohio Adm.Code 4901:1-29-06(D)(6)(b)(ii), which provides that an independent, third-party verifier must confirm with the customer that the sales agent of the CRNGS provider has left the property of the customer and that the agent is not to return before, during, or after the TPV process.
- 20) Ohio Adm.Code 4901:1-21-06(D)(2)(a), which provides the minimum requirements for TPVs for telephonic enrollments, which includes a requirement that 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.
- 21) Ohio Adm.Code 4901:1-29-06(E)(1), which provides that TPVs include a verbal statement and the customer's acceptance of each of the principal terms and conditions for the service that will be provided.
- 22) Ohio Adm.Code 4901:1-21-06(D)(2)(b), which provides, in part, that following telephonic enrollment, a CRES provider shall retain the audio recording of the customer's enrollment for one year after the contract with the customer is terminated.

- 23) Ohio Adm.Code 4901:1-29-06(E)(02), which provides, in part, that following telephonic enrollment, the CRNGS provider shall retain the audio recording of the enrollment for one year after the contract with the customer is terminated.

(Staff Ex. 7 at 6-10.)

## 5. STAFF CONCLUSION AND RECOMMENDATION

{¶ 41} Staff concludes its report of investigation by summarizing its findings, stating that it believes the evidence shows that RPA violated the provisions cited in the report, engaged in anticompetitive acts by misleading customers, and has otherwise engaged in fraudulent, misleading, deceptive, and unfair practices. Staff makes several recommendations to the Commission:

- 1) Find that RPA has violated the provisions listed in the staff report.
- 2) Rescind, conditionally rescind, or suspend RPA's certification as a CRES and CRNGS provider for the violations listed in the report, after all customers are notified and credited.
- 3) Order RPA to pay a forfeiture of \$1,500,000.
- 4) Order RPA to contact each customer enrolled between February 1, 2021 and May 1, 2021, provide them information concerning their enrollment, that the Commission believes they have been misled, the terms of their enrollment, and that they will be returned to their utility's default service unless they affirm their enrollment with RPA.
- 5) Order RPA to, for customers enrolled through door-to-door or telemarketing solicitations from May 1, 2021 to June 30, 2021, re-rate the customers back to the utilities' default service, notify customers by

mail that they will be issued a refund of a specified amount and be returned to their utility's default service.

- 6) Order RPA to re-rate back to their utilities' default service all customers who filed a complaint against RPA with the Commission, RPA, or any other entity, in which they dispute their enrollment from the time period starting after February 1, 2021.

(Staff Ex. 7 at 10-11.)

### ***B. Hearing Evidence and Arguments of the Parties***

{¶ 42} As mentioned above, during the hearing, Staff submitted into evidence a video of a door-to-door solicitation for consumer witness Tokar (Staff Ex. 1), audio recordings of TPV calls for consumer witnesses Barton-Johnson and Beauregard, respectively (Staff Ex. 2; Staff Ex. 3), the direct testimony of Samantha Boerstler (Staff Ex. 4)<sup>1</sup>, the errata to the testimony of Samantha Boerstler (Staff Ex. 5), the direct testimony of Barbara Bossart (Staff Ex. 6), the amended Staff Report (Staff Ex. 7), case history reports related to customer contacts to the Commission's call center (Staff Ex. 8), the direct testimony of Nedra Ramsey (Staff Ex. 9), the errata to the direct testimony of Nedra Ramsey (Staff Ex. 10), the direct testimony of Jennifer Owen (Staff Ex. 12), and confidential flash drives (Staff Ex. 11; Staff Ex. 13). RPA submitted into evidence the direct testimony of Brian Trombino (RPA Ex. 1; RPA Ex. 1C), and an e-mail message from Alexsa Torres (RPA Ex. 2). OCC submitted into evidence the direct testimony of James Williams (OCC Ex. 1). Additionally, as noted above, Barbara Bossart, Samantha Boerstler, Nedra Ramsey, Jennifer Owen, Edward Tokar, Sheila

---

<sup>1</sup> Not all of Staff's exhibits have visible page numbers and those that do "reset" when the document transitions from the narrative or pre-filed testimony to attachments or appendices. Where pagination is unclear, the page number references used throughout this Opinion and Order utilize the pagination of the .pdf versions of the submitted evidence as it was filed in this case docket.

Barton-Johnson, and Tyler Beauregard testified for Staff, and Brian Trombino testified for RPA.

{¶ 43} Staff requests the Commission find that RPA repeatedly committed numerous violations of Commission rules and orders during the period Staff closely analyzed, which was between February and June of 2021. Staff asks that the Commission rescind, conditionally rescind, or suspend RPA's certificates as a CRES and CRNGS provider, assess RPA a forfeiture of \$1,500,000, order RPA to re-rate customers enrolled during specific periods back to their utility's default service and to issue refunds to some of those customers.

{¶ 44} RPA admits that some of the violations occurred and that, while the vendors it retained to perform its marketing and solicitations in Ohio were responsible for the actual conduct that violated Commission rules and orders, it too bears some responsibility for the actions of its agents. RPA disputes most of the violations, especially the number and severity, as well as the fact that a forfeiture of \$1,500,000 and rescission of its CRES and CRNGS certificates are warranted. Rather, RPA argues that it took appropriate and timely remedial action by ending its relationship with the vendor whose conduct violated Commission rules and orders and further by returning all customers enrolled by that vendor to the utility's default service. Further, RPA disputes that the record evidence supports Staff's conclusions that RPA committed most of the violations listed in the Staff Report and discussed by Staff at the hearing.

{¶ 45} Staff avers that its recommendations are appropriate and necessary where RPA repeatedly and severely failed to comply with Commission regulations, which Staff posits is a sign of a systemic, company-wide issue of mismanagement. Staff, therefore, recommends the assessment of a forfeiture to RPA, possible rescission or suspension of RPA's certificates, and that RPA be ordered to re-rate certain customers and provide them a refund where applicable.

{¶ 46} Staff argues that RPA falsified TPV calls and altered sales call recordings (Staff Ex. 4 at 4-5; Staff Ex. 9 at 17-18). Staff states that the evidence supports its contention that RPA falsified enrollment contracts, charged unfair variable rates, and refused to cooperate with its investigation (Staff Ex. 4 at 5; Staff Ex. 9 at 5, 8-10; Tr. I at 26-36, 47-53). Staff alleges that RPA spoofed the phone number of a customer's utility when making marketing calls, causing customers to believe their utility, not RPA, was calling them, only to then identify as RPA once the customer had answered the call (Staff Ex. 6 at 6; Staff Ex. 9 at 13, 21, 35-38). Staff further asserts that RPA refused to provide vital information concerning sales calls' recordings, which Staff sought through various data requests to RPA, which the latter denied (Staff Ex. 7 at 4). Staff witnesses Ramsey and Boerstler testified to the customer contacts received by the Commission's call center, while witness Bossart testified to the calls she personally received from RPA, which she characterized as deceptive and misleading (Staff Ex. 4; Staff Ex. 9; Staff Ex. 6). Witness Bossart testified that the first call she received appeared to be spoofed, showing the prefix of her local high school. Ms. Bossart additionally testified that the sales agent told her she was currently on a commercial rate for electricity and RPA could switch her to a residential rate. Ms. Bossart explained she did not complete the TPV to enroll with RPA, but received a follow-up call, which she also terminated early after refusing to receive text messages from RPA. Staff witness Bossart received subsequent calls but terminated one and refused to answer the others. Bossart received an unrelated solicitation from RPA at a different time, during which an automated recording, which Staff dubs a robocall, informed her that she would receive a \$50 gift card for enrolling. According to testimony, the sales agent then informed Ms. Bossart she would receive \$50 in "rewards." Ms. Bossart was told again that she currently had a commercial rate, and that enrolling with RPA would reduce her monthly bill by 30 to 40 percent. Ms. Bossart subsequently completed the TPV but later rescinded the enrollment, testifying that she completed the enrollment so that the recordings would be saved. (Staff Ex. 6 at 3-8.) Staff asserts that Ms. Bossart's experiences show that RPA was engaged in deceptive and misleading practices in its marketing and enrollment efforts in Ohio when viewed in conjunction with the testimony of its consumer witnesses and

customer contacts received by the Commission's call center. Further, Staff alleges that, upon reviewing Ms. Bossart's call recordings, it found evidence that the recordings were altered. Staff witness Ramsey testified that there were several anomalies in the recordings that suggested the recordings were modified. (Tr. I at 204; Staff Ex. 9 at 17-18.) Staff also relied on the testimony of witness Jennifer Owen, a forensic audio expert. Ms. Owen testified that there were visual and acoustic anomalies on the call recordings from RPA but was ultimately unable to make a definitive conclusion because RPA had not provided specific information concerning the recordings. Ms. Owen's conclusion was that, despite being unable to complete a definitive analysis, the recordings were "highly suspect" in her opinion. (Staff Ex. 12 at 12; Tr. II at 227-228.) Moreover, Staff stated that RPA's sales and enrollment call scripts are noncompliant for various reasons, including that they contain inaccurate statements about variable rates, which Staff investigated and could find no evidence that justified the information in the script (Staff Ex. 7 at 5-7; Staff Ex. 9 at 23-24).

{¶ 47} Similarly, Staff argues that RPA forged enrollment contracts, as in the case of witness Bossart, about whose case witness Ramsey testified. Ms. Ramsey stated that when Ms. Bossart received a copy of her enrollment contract, it was already initialed "BB" though she had not marked it yet, since her enrollment was completed telephonically. Ms. Ramsey further testified that, during Staff's review of other consumer complaints, a customer alleged that the signature on the contract he received was not his own. (Staff Ex. 9 at 6, 13, 19.)

{¶ 48} Staff next alleges that RPA failed to maintain necessary records to comply with the Commission's rules and regulations for CRES and CRNGS providers, evidenced by RPA's inability to provide Staff with certain information during its investigation. Witness Ramsey testified during the hearing that upon Staff attempting to obtain information from RPA during its investigation, RPA responded that it did not have the information sought and that the information was in the sole custody of its third-party vendor. (Staff Ex. 9 at 8-10, 18.)

{¶ 49} Finally, Staff avers that RPA endangered the health of consumers by disregarding pandemic restrictions on door-to-door solicitations, including the Commission's June 17, 2020 Entry (Staff Ex. 7 at 5-6).

{¶ 50} At the hearing, Brian Trombino testified on behalf of RPA, and RPA submitted into evidence an e-mail message from Alexsa Torres. RPA argues that the record evidence does not support Staff's findings or recommendations. RPA avers that it requires its vendors to sign a contract agreeing that the vendor will follow all applicable Commission rules and regulations, along with RPA's code of conduct. (Tr. II at 353-354.) RPA argues further that it does not benefit from "turning a blind eye" to misconduct of any vendor it uses for marketing and enrollment purposes. To this end, RPA states that most of its 19 direct employees perform quality assurance duties, which include monitoring and supervising third party vendors. (Tr. II at 281.) RPA admits that it resumed door-to-door marketing in Ohio in Spring of 2021 but alleges that its vendors did not comply with the Commission's June 17, 2020 Entry, though RPA states it did still comply with the masking and social distancing requirements (RPA Ex. 1 at 4). RPA further states that, as mentioned above, once it had been informed of the issues by Staff, it took immediate action, ceasing all telemarketing in Ohio, terminating its relationship with the responsible vendor, and returning all customers enrolled by that vendor to their utility's standard service offer (SSO). (RPA Ex. 1 at 7, Tr. II at 342.) RPA argues that, in contrast with past enforcement cases, there was not a large customer outcry against RPA with hundreds of customer contacts to the Commission's call center. *See In re PALMco Power OH, LLC dba Indra Energy & PALMco Energy OH, LLC dba Indra Energy*, 19-957-GE-COI, Opinion and Order (Jan. 29, 2020); *In re Verde Energy USA Ohio, LLC*, Case No. 19-958-GE-COI, Opinion and Order (Feb. 26, 2020). RPA argues that this small number of contacts reviewed by Staff is not indicative of a pattern of misconduct or of systemic managerial issues with the Company. Further, RPA opines that many of the customer contacts, as described in the Staff Report, do not reflect Staff's findings that RPA committed any wrongdoing with respect to those consumers who called the Commission. Finally, RPA avers that, where different compliance obligations apply to

the sales method invoked to enroll a customer, Staff's conclusions and findings are difficult to understand and lack specificity. (RPA Initial Br. at 15-18.)

{¶ 51} With respect to allegations of deceptive and misleading practices, RPA avers that it did not engage in any such practices and that Staff's reliance on the call center records of customer contacts is improper where those records contain multiple hearsay statements and statements made in an effort to settle, both of which should be inadmissible. Concerning the solicitation of Barbara Bossart, RPA argues that Ms. Bossart's TPV call was, by Staff's admission, compliant. Conversely, RPA states that it never disputed that the sales call for Ms. Bossart was modified, as RPA reiterates that it promptly addressed the issue by terminating its arrangement with the offending vendor and rescinding that vendor's enrollments. To this point, RPA states that a vendor's misconduct does not reflect a systemic management issue and emphasizes RPA witness Brian Trombino's testimony that RPA does not condone the behavior exhibited by the vendor. Further, RPA states that at no point did RPA engage in solicitations that would lead the consumer to believe RPA was soliciting on behalf of a utility, further arguing that the evidence supports this conclusion. Next, RPA addresses the testimony of witness Edward Tokar. RPA avers that no misconduct occurred during the video recording showing an RPA vendor contacting Mr. Tokar at his home. RPA states that similar to witness Bossart's solicitation, following Mr. Tokar's complaint, RPA responded appropriately by contacting its vendor, requiring them to re-train all agents, and contacting customers enrolled by the agent who visited Mr. Tokar to confirm their enrollment, reverting them to their utility's SSO when they could not be reached. (RPA Initial Br. at 20-21; Tr. I at 15-17; Tr. II at 313; Staff Ex. 7 at 2, 760.)

{¶ 52} RPA next states that it did not enroll consumers without their consent during door-to-door solicitations. RPA disputes that it is entirely at fault in the cases of witnesses Beauregard and Barton-Johnson where its vendor engaged in misconduct and the Company worked to resolve those issues once it became aware of them. RPA avers that, while it listens to all call recordings, neither it nor Staff have any means of verifying that a voice on a call is the person the voice purports to be. RPA argues that it did everything within its means to

correct these incidents at the first point at which it could take such action. (RPA Initial Br. at 24-25; Staff Ex. 7 at 4; Tr. I at 38, 52-53.)

{¶ 53} RPA denies that it violated any rules or regulations with respect to variable rates. RPA avers that, where Staff characterizes RPA's offers of variable rates through terms such as a "great price" or "competitive variable rate" as unfair or deceptive, Staff is misreading the applicable rules. RPA cites Ohio Adm.Code 4901:1-21-05(C)(8)(a), which forbids marketing offers that "claim that a specific price advantage, savings, or guarantee exists if it does not." RPA argues that its marketing offers do not run afoul of this rule with respect to its oral offers made during solicitations, as the rule applies to its written contracts, which explain in detail the variable rate factors. (RPA Ex. 1 at 3, 6. RPA Initial Br. at 25-27; Staff Ex. 7 at 4; Staff Ex. 9 at 43-46.)

{¶ 54} Concerning altered call recordings and documents, RPA submits that Staff has not and cannot show that RPA relies on contracts with auto-generated initials, rather than recordings of TPVs, as proof of consent. RPA avers that upon completion of a TPV, its system generates a contract with the customer's initials, which is sent to the customer and retained by RPA for the purpose of providing them for compliance purposes. Finally, RPA states that Staff could not show that RPA modified any call recordings, averring that Staff's arguments on this allegation are too vague to respond to properly. (RPA Initial Br. at 28-29; Staff Ex. 7 at 4; Staff Ex. 9 at 12-13.)

{¶ 55} RPA next avers that its verifications comply with Commission rules and regulations, including compliance with Ohio Adm.Code 4901:1-21-06(D)(1)(h)(i)-(ii), which relates to door-to-door enrollments. According to RPA, Staff's claim that RPA's sales agent remained on premises for at least one door-to-door solicitation is not supported by the evidence. (Staff Ex. 7 at 799; RPA Initial Br. at 29-30.) With respect to the requirements of TPVs, RPA states that its TPVs contain all disclosures required by Commission rules and regulations. RPA argues that while Staff broadly cites Ohio Adm.Code 4901:1-21-06 and 4901:1-29-06, it does not specify which provisions it believes RPA violated because RPA's

TPVs are compliant with all provisions. Concerning price requirements, RPA avers that its contracts clearly disclose a five-dollar fee, which is also shown in the summary provided with every contract. RPA submits that to the extent Staff takes issue with the fee not being discussed during a sales call, no Commission rule requires it to do so. It is RPA's position that Staff did not identify any instance where a door-to-door customer did not receive a copy of their contract at the time of sale or shortly thereafter. RPA also takes issue with Staff's statement during the evidentiary hearing that RPA is required to provide telephonically enrolled customers with a contract within one business day. RPA avers that Ohio Adm.Code 4901:1-21-06(D)(2)(a)(vii) requires a verbal statement and acknowledgement that a CRES provider will send a contract within one business day, but not that the customer receive it in that time. Further, RPA states that it modified its TPV script immediately after the issue was brought to its attention. Finally, RPA opines that the record evidence, including the testimony of witness Bossart, supports that RPA provided contracts either the same day as enrollment, or within one day. (Staff Ex. 6 at 68, Tr. I at 123-124; Tr. II at 294; RPA Ex. 1, Attach.BT-13 at 6; RPA Initial Br. at 30-31.)

{¶ 56} Addressing Staff's claims with respect to its scripts, RPA claims that Staff does not demonstrate any violations because neither Ohio Adm.Code 4901:21-06 nor Ohio Adm.Code 4901:1-29-06 address the topic of call scripts. Instead, they govern marketing materials that include or accompany a service or contract, which RPA interprets to mean written service agreements and any other documents given to a customer, which RPA argues is governed by Ohio Adm.Code 4901:1-21-05(A). RPA avers that its scripts are internal, meant for training employees and not for marketing. Finally, RPA argues that the only requirement applicable to scripts and other similar material is Ohio Adm.Code 4901:1-21-05(B), requiring material to be produced to Staff within three business days of a request, which, according to RPA, it did when asked. (RPA Ex. 1, RPA Ex. 1C Attach. BT-3 CONFIDENTIAL; RPA Initial Br. at 31.)

{¶ 57} RPA contends that it has demonstrated its managerial capability in every respect except that it did resume door-to-door marketing without notifying Staff. RPA

disputes that it has engaged in any pattern of non-compliance. RPA avers that its enrollments comport with the Commission's requirements and that deviations from scripts during calls do not constitute a violation where the rules do not, it contends, govern scripts. RPA argues that Staff's allegations are conclusory, and that the evidence does not support that RPA's processes are representative of a pattern of misconduct where it is merely enrolling customers and its TPVs are passing its quality assurance process. Lastly, RPA opines that Staff misunderstands its request for a waiver in a separate case, which relates to allowing a TPV to be completed by text message, rather than phone call. *See In re the Application of RPA Energy, Inc. for Waivers of Certain Provisions of Chapters 4901:1-21 and 4901:1-29*, Case No. 21-157-GE-WVR, Application (Feb. 18, 2021). RPA argues that the Commission's June 17, 2020 Entry effectively required it to transition to delivering documents electronically, which RPA further avers is not prohibited by the Commission's rules. (RPA Initial Br. at 32-33.)

{¶ 58} Finally, RPA disputes that it has failed to comply with any record-keeping requirements found in the Commission's rules and regulations. Specifically, in the amended Staff Report, Staff alleges that RPA violated both Ohio Adm.Code 4901:1-21-03(C) and 4901:1-21-04(A) where it was unable to provide Staff with certain information or documents in response to its data requests. RPA disputes that it violated any rules where it alleges that it received vague requests from Staff and, despite this, worked diligently to provide Staff with some of what it requested, and to explain why it could not provide some of what Staff requested. RPA avers that it cannot have custody or control over information in its vendors' possession and could not verify such information even if the vendor did maintain it. RPA argues that it should not be found in violation of failing to provide something that it could not have provided and never had to provide. In closing, RPA states that it should not be found in violation or characterized as "refusing to cooperate" with Staff where it responded to data requests honestly by stating that it did not have possession of the information Staff requested and could not compel a vendor to furnish such information. (RPA Initial Br. at 33-36, Staff Ex. 9 at 8-10; RPA Ex. 1, Attachs. BT-10, BT-11, and BT-12.)

{¶ 59} OCC largely agrees with Staff and proffered the testimony of James D. Williams to assert that RPA engaged in the misconduct outlined in the Staff Report. OCC's sole disagreement concerns Staff's recommended corrective actions. OCC believes that each of the recommended corrective actions is not severe enough in light of RPA's alleged misconduct.

{¶ 60} First, OCC states that it believes the Commission should go beyond Staff's recommendations with respect to RPA. OCC argues that RPA's certificates to provide CRES and CRNGS in Ohio should be permanently rescinded where it engaged in a cognizable pattern of severe, widespread misconduct. OCC adds to this point that allowing RPA to return to operation in Ohio when it has, among other things, refused to fully cooperate with Staff's investigation and demonstrated an inability or unwillingness to operate in a manner that promotes and encourages development of Ohio energy choice policies would violate Ohio law. Further, OCC opines that should RPA be allowed to continue, other marketers will follow suit, further harming the competitive energy market. (OCC Ex. 1 at 13-14; OCC Initial Br. at 17.)

{¶ 61} Second, OCC argues that, while it is not opposed to a forfeiture of \$1.5 million as recommended by Staff, it asserts that a much higher amount is reasonable and warranted, in light of RPA's failure to follow Commission rules and regulations. OCC opines that \$1.5 million should be the minimum amount for a forfeiture, and that the record evidence supports a much higher amount. OCC asserts that where RPA allegedly violated over 22 Commission rules and regulations over time, and that the ultimate number of harmed consumers is unknown since many consumers may not have come forward with a formal or informal complaint, the forfeiture should be substantially higher than this minimum amount. OCC avers that in order for RPA to be fully held responsible for its alleged actions, the Commission should order it to disclose the total number of consumers it enrolled via telemarketing and door-to-door solicitations in each electric and natural gas distribution service territory where it has operated as a marketer, along with the monthly rate it charged. OCC also suggests that RPA should then be required to show that each

enrollment fully complies with the Commission's regulations and rules and those who were improperly enrolled should be re-rated back to their utility's SSO and provided a commensurate refund. (OCC Ex. 1 at 12-13; OCC Initial Br. at 18-20.)

{¶ 62} Finally, OCC avers that while it generally supports Staff's recommendation that RPA be required to re-rate and return certain consumers back to their utility's SSO, it believes that the notice requirement suggested by Staff is unreasonably limited and potentially harmful, as witness Williams testified. OCC recommends that all of RPA's CRES and CRNGS customers be re-rated and returned to their respective utility's SSO as Staff's current timeframe and complaint requirements to receive a re-rate and refund of the monthly service fee is unfair to consumers and should be expanded. Lastly, OCC recommends consumers be refunded the difference between what their charges were under their contract with RPA and what the charges would have been under their utility's SSO beginning the month in which their enrollment with RPA occurred. (OCC Ex. 1 at 14-15; OCC Initial Br. at 21-22.)

## V. COMMISSION CONCLUSION

{¶ 63} The Commission finds that the record evidence shows RPA has violated numerous rules and regulations and, therefore, should have its CRES and CRNGS certificates rescinded and be assessed a forfeiture of \$1.44 million. Further, RPA is ordered to re-rate any customers enrolled during the period of January 2021 to July 2021, as well as provide notice to their customers that they will be returned to their utility's SSO unless they choose an alternative supplier within 60 days of this Opinion and Order. The Commission has considered the record evidence and arguments of the parties; to the extent that a specific argument is not discussed in detail below, it has been thoroughly considered and is rejected.

{¶ 64} As a preliminary matter, the Commission rejects RPA's argument that it has been denied due process where it alleges that Staff has not provided enough specificity in alleging that RPA violated the Commission's rules and regulations. RPA argues that this is a denial of due process where it has not been given sufficient notice of Staff's allegations.

(RPA Initial Br. at 32.) We find RPA’s arguments unconvincing where RPA was twice given notice, having been contacted in February of 2021, and again on October 16, 2021, via the PNC letter from Staff. Further, RPA had an opportunity to be heard, pursuant to both R.C. 4928.08 and R.C. 4929.20, during the evidentiary hearing. RPA had ample opportunity during the hearing to cross-examine Staff’s witnesses and present its own evidence, which it did. (Staff Ex. 7 at 1; Tr. I at 14-22, 36-40, 43-46, 75-118, 132-163, 179-185, 188-210; Tr. II at 221-236, 241, 376, 378.) Further, to the extent that RPA relies on a statement in *Hannah v. Larche* that “the requirements of due process frequently vary with the type of proceeding involved” to argue that it is entitled to the same level of due process as in a criminal matter, we disagree and find that reliance misplaced (RPA Initial Br. at 15, citing *Hannah v. Larche*, 363 U.S. 420, 502-503, 80 S.Ct. 1502 (1960)). As discussed above, before rescinding or suspending the certificate(s) of a CRES or CRNGS provider, the Commission is required under R.C. 4928.08(D) and R.C. 4929.20(C)(1) to provide reasonable notice and an opportunity for hearing, both of which RPA has had, as noted in the foregoing discussion. Additionally, RPA was well aware of Staff’s findings and concerns far in advance of the hearing, as the PNC was sent to RPA in October of 2021, a full year ahead of the hearing date. (Staff Ex. 7 at 1, Exhibit 1.) We, therefore, reject RPA’s argument that it has been denied due process over the course of this proceeding.

{¶ 65} As is discussed more thoroughly below, Staff alleges that RPA violated 23 different Commission rules, regulations, and statutes over a period of approximately seven months, for a total of 159 discrete violations. (Staff Ex. 9 at 33; Staff Ex. 11 at Footnote 51 Folder; Staff Ex. 13 at Footnote 51 Folder.) The violations are discussed specifically below, sorted into categories based on the content of the rules, regulations, and statutes, as is reflected in the Staff Report.

#### ***A. Deceptive and Misleading Practices***

{¶ 66} We find that the evidence supports Staff’s contention that RPA has violated Ohio Adm.Code 4901:1-21-03(A), Ohio Adm.Code 4901:1-29-03(A), Ohio Adm.Code 4901:1-21-05(C), and Ohio Adm.Code 4901:1-29-05(D), which prohibit CRES and CRNGS

providers from engaging in various unfair, deceptive, and misleading practices such as misleading customers as to whom its agents represented during solicitations, providing misleading information concerning variable rates, and marketing offers that claim specific savings or guarantees that did not exist. As set out above, Staff proffered substantial evidence that RPA misled and deceived consumers during its telephonic and in-person solicitations, including the testimony of three consumers who testified to deceptive or misleading acts when solicited by RPA. As is discussed in detail below, RPA solicited each of the consumer witnesses who testified on behalf of Staff during the hearing, and each involved a deceptive act, ranging from outright dishonesty with respect to who enrolled with RPA, in violation of Ohio Adm.Code 4901:1-21-05(C) and Ohio Adm.Code 4901:1-29-05(D), to fraudulent completion of a TPV, in violation of Ohio Adm.Code 4901:1-21-03(C) and 4901:1-29-03(D), which prohibit a CRES or CRNGS provider, respectively, from authorizing or changing a customer's supplier of either retail electric or natural gas service without prior consent, as was the case with witnesses. Barton-Johnson and Beauregard. For example, witness Barton-Johnson testified that she was switched to RPA because a person she did not know, purportedly named James Johnson, enrolled with RPA on her behalf, despite her being the account holder. Witness Tyler Beauregard testified that he was enrolled with RPA without his consent and stated that he decided to not complete enrollment with RPA because the actual rate was not told to him until he received a text message with the terms of his contract, which he states contained a higher rate, not the lower rate the agent promised. Mr. Beauregard's experience alone shows that RPA violated Ohio Adm.Code 4901:1-29-05(D), prohibiting RPA from failing to provide all terms, conditions, and limitations, including price, to a customer, and both Ohio Adm.Code 4901:1-29-05(D) and 4901:1-21-05(C), both of which prohibit the sort of dishonest practices RPA engaged in by falsifying a TPV. Finally, witness Edward Tokar provided videos, one of which showed a sales agent from RPA claiming that Mr. Tokar was required to select a supplier, which is untrue where the utility has its SSO in place. Further, Mr. Tokar testified that he did not feel the agent was being honest with him, stating that the agent pressured him to sign a document, and on cross-examination he further stated that he "really did not

trust [the sales agent]" once he was asked to sign a document without having agreed to switch suppliers for gas service. (Staff Ex. 1; Staff Ex. 2; Staff Ex. 3; Tr. I at 8-14, 26-36, 40-43, 47-53.) Witnesses Bossart and Ramsey testified to the various cases attached to the Staff Report that were reviewed by Staff as part of its investigation. Ms. Bossart testified as to her personal experience being solicited by RPA, as detailed above, wherein she was promised a gift card, only to be told that in reality she would receive unspecified "rewards" in the amount of \$50. Further, Ms. Bossart testified that she was on two occasions told by the agent of RPA that she was currently on a commercial rate for her residential service, and that in one such instance, the agent represented that Ms. Bossart's utility had asked the agent to correct this error, which Ms. Bossart testified was inaccurate. (Staff Ex. 6 at 2-7.) During Ms. Bossart's solicitation, RPA violated Ohio Adm.Code 4901:1-29-05(D), which prohibits a CRNGS provider from marketing offers that claim specific price savings exist when it does not; here, Ms. Bossart's testimony reflects that she was told she would receive \$50 in the form of a gift card, but was ultimately told she would receive \$50 in value of "rewards." Staff witness Ramsey testified to other deceptive practices conducted by RPA in its marketing efforts, including spoofing its phone number to appear as either a local utility, or in witness Bossart's case, the prefix of the local high school. (Staff Ex. 9 at 5, 13, 21, 25-38; Staff Ex. 6 at 5.) "Spoofing" is the act of disguising a phone number to appear as the number of another caller, which is prohibited by Ohio Adm.Code 4901:1-21-03(A), 4901:1-21-05(C), 4901:1-29-03(A), and 4901:1-29-05(D).

{¶ 67} RPA argues that it did not engage in any deceptive or misleading practices. Frequently, however, rather than proffering evidence to show that no such conduct occurred, the Company merely showed that it took some form of remedial action after the violation(s) or stated that it should not be held entirely responsible for the actions of its vendors. Further, RPA argues that it is unclear what misconduct it committed and that the evidence reflects that it could not have detected any such misconduct by a vendor before being informed by the Commission. (Tr. II at 353-354; RPA Ex. 1 at 2; RPA Initial Br. at 24) We find RPA's arguments are unpersuasive. As we have noted, RPA's defense consisted

less of a refutation of Staff's evidence of misconduct than it does a deflection to its vendors or evidence of remedial action taken only after it had been informed of misconduct (RPA Ex. 1 Attachment BT-3 at 5; RPA Initial Br. at 2, 3-5, 21, 24, 32). Based on the testimony of witnesses Barton-Johnson, Beauregard, Bossart, and Tokar—all of which provide detailed accounts of RPA's agents engaging in deceptive acts, ranging from spoofing phone numbers, promises of savings that did not exist, failing to properly identify themselves as an agent of RPA, to providing misleading information about a variable rate and changing a customer's supplier without their consent while utilizing a falsified TPV—shows that RPA, who is ultimately responsible for the conduct of its vendors where it holds CRES and CRNGS certificates, violated many Commission rules and regulations, including Ohio Adm.Code 4901:1-21-03(A), 4901:1-21-03(C), 4901:1-21-05(C), 4901:1-29-03(A), 4901:1-29-03(D), 4901:1-29-05(C), and 4901:1-29-05(D).

{¶ 68} We find the record evidence shows that RPA violated Ohio Adm.Code 4901:1-21-05(C) and 4901:1-29-05(D), which prohibit, respectively, CRES and CRNGS providers from engaging in deceptive or misleading acts, where it provided modified call recordings to Staff in the course of its investigation. Staff alleges at least ten violations wherein RPA provided modified or altered TPV call recordings in response to Staff data requests during its investigation. (Staff Ex. 11 at Footnote 4 Folder, Footnote 10 Folder, Footnote 15 Folder, MBM June 6 Part 1 06-21-2021 Folder.) Ohio Adm.Code 4901:1-21-04 and 4901:1-29-04 provide, respectively, that CRES and CRNGS providers shall maintain and retain records sufficient to verify compliance with applicable Commission rules and support investigation of customer complaints for no less than two years and shall provide the same to Staff within three business days of Staff requesting such records. Here, as is discussed thoroughly below, RPA violated both Ohio Adm.Code 4901:1-21-04 and 4901:1-29-04 where it submitted to Staff records that Staff's expert witness found contain acoustic anomalies that, she opines, render them suspicious, which Staff argues means those recordings have been modified. Staff retained an audio forensic expert, Jennifer Owen, to analyze the recordings. While Staff witness Owen was not able to complete a full analysis, based on the

analysis she could complete with the information she had available, Ms. Owen concluded that there were acoustic anomalies in the call records she reviewed, which included that of Barbara Bossart. (Staff Ex. 12 at 11-17; Tr. II at 219, 227.) Further, as discussed above, there is the uncontroverted case of Tyler Beauregard, who was solicited by RPA, declined to enroll, but discovered later a TPV was completed using his name, but by someone who was not him, as was evidenced by Staff at the hearing by way of the TPV recording which featured a voice sharply distinct from Mr. Beauregard's own. (Staff Ex. 3, Tr. I at 48-52.) For its part, RPA does not dispute that its vendors altered or falsified sales calls in the cases of witnesses Bossart and Beauregard, respectively. (RPA Initial Br. at 19-20, 37; Tr. I at 52-53.) RPA's counterargument to the testimony of witness Owen primarily concerned the chain of custody issues mentioned in witness Owen's report, in which she indicated that while she believes the acoustic anomalies she found in the recordings provided to her were "red flags," she could not, to a degree of professional certainty, opine as to whether the recordings she analyzed were modified. (Tr. II at 224-236; Staff Ex. 12 at 15-17.) We disagree with RPA's argument that it should not be held responsible for the actions of its vendors where, as discussed previously, RPA holds the certificates and part of having the managerial capability to serve customers includes sufficient monitoring of contracted vendors. Witness Owen's report, coupled with the record evidence, most notably the testimony of Tyler Beauregard and Barbara Bossart, both of whose cases showed clearly that modified or falsified recordings were created and proffered, stand to show that RPA modified recordings of calls kept for quality assurance and verification. Further, even if we did not rely upon the expert testimony presented by Staff, we would still find that Staff showed by a preponderance of the evidence that RPA modified recordings it provided to Staff. We find therefore that RPA violated Ohio Adm.Code 4901:1-21-05(C) and 4901:1-29-05(D), which prohibit CRES and CRNGS providers, respectively, from engaging in unconscionable practices, a category that includes providing Staff with modified TPV recordings in response to an investigatory data request.

{¶ 69} Concerning Staff's allegations that RPA mishandled contracts with its customers, including forging signatures, we find the evidence supports Staff's contentions. Ohio Adm.Code 4901:1-21-05(C) and 4901:1-29-05(D) provide that no CRES or CRNGS provider may engage in unconscionable practices in the sale of CRES or CRNGS. Staff proffered as evidence three customer contacts to demonstrate that RPA forged consumer signatures on enrollment contracts, stating that in each case the customer stated that they did not sign a contract, but that they were ultimately enrolled with RPA anyway. One such customer was witness. Barton-Johnson, who testified that the person RPA claimed enrolled on her behalf was named James Johnson, but that she did not know a James Johnson, and her deceased ex-husband was not named James and had passed away in 1990 (Staff Ex. 4 at 3; Staff Ex. 13 at Footnote 10, 17- 19; Tr. I at 26-36, 52-53; Staff Initial Br. at 30-31). We reject the argument of RPA that it did not forge or otherwise allow customer signatures to adorn contracts for which those customers did not readily sign. RPA submits that it did not forge customers' initials on contracts where its system automatically generates a contract with initials of the customer imprinted and that a copy is then sent to the customer, but RPA does not rely on such documents as proof of consent. RPA asserts that it relies on the completed TPV as proof of consent for enrollment and that it is required to obtain consent by either a completed TPV or a signature on a contract, so it is not in violation where it had a completed TPV which it relied upon. (RPA Ex.1 at 2; RPA Initial Br. at 28-29; RPA Reply Br. at 16-17.) We find this argument unconvincing where Staff submitted cases of falsified recordings for TPVs, as discussed above, and where RPA is not absolved of a violation by not relying upon the product of the violation.

{¶ 70} Ohio Adm.Code 4901:1-21-05(C) and Ohio Adm.Code 4901:1-29-05(D) prohibit, respectively, CRES and CRNGS providers from engaging in deceptive marketing, sales, and solicitation practices, including engaging in any solicitation that will lead the customer to believe the CRES or CRNGS provider is soliciting on behalf of or is an agent of any entity other than the CRES or CRNGS provider. We find the evidence reflects that RPA's agents engaged in these prohibited deceptive acts, including misleading telephone

solicitations by way of spoofing its number to appear as that of another party, including both a local institution and an electric distribution utility. The evidence reflects that RPA engaged in spoofing its number to appear as another party. As discussed above, witness Bossart testified that RPA's number showed the prefix of her local high school on one call, and her own phone number's prefix on another call. (Staff Ex. 6 at 5, 107.) Further, based on customer complaints, Staff found that RPA engaged in several acts of spoofing numbers that appeared to be Duke Energy, using a prefix that is very common to various Duke numbers. (Staff Ex. 7 at 20; Staff Ex. 9 at 21, 34.) Finally, we find compelling that Staff related a pattern of such spoofing by RPA dating back to 2019, which Staff presented through the Staff Report and case histories. (Staff Ex. 7 at 20; Staff Ex. 9 at 37; Staff Reply Br. at 34.) We reject RPA's argument that it did not spoof its number because it takes steps to prevent this, and we reject RPA's attempt to parse the language of Ohio Adm.Code 4901:1-21-05(C)(1) to serve its immediate needs. RPA argues that "[t]he rules do not define or prohibit 'spoofing'" but instead states that the rules prohibit any solicitation that would lead a customer to believe someone other than the provider contacting them is doing so. This very statement would include spoofing, which by its nature, and as Staff has defined it, involves utilizing a displayed phone number that is associated with a party other than the caller, RPA in this case. While RPA may indeed not condone spoofing, as it states, that does not absolve it of spoofing numbers as evidenced by Staff. (Tr. II at 369; RPA Initial Br. at 5, RPA Reply Br. at 21-22.)

{¶ 71} However, we come to a contrary result when discussing RPA's statements regarding renewable generation sources. Specifically, Staff witness Boerstler testified that Staff found RPA noncompliant where its agents informed consumers that their supplied energy through RPA is generated through renewable generation sources. Staff contends that this is not in compliance with the rules where RPA cannot guarantee that the consumer's residence or business is directly being powered by electricity generated by a renewable resource. RPA challenges this where it states that it follows the standard in its industry by purchasing renewable energy credits, which represents that one megawatt of

renewable energy will be placed in the system for each credit (Tr. I at 102-109). We find that, where the Commission's precedent acknowledges that it is not possible to trace the movement of individual electrons from a generation facility, suppliers are in compliance with the Commission's rules and regulations where they purchase renewable energy credits to ensure that renewable energy commensurate with the terms of their contracts is injected into the electric grid. (Tr. I at 106-107.) *See, e.g. In re Moraine Wind LLC, et al*, 21-516-EL-REN, et al., Opinion and Order (Sept. 20, 2023), at ¶ 11, 17; *In re the Regulation of the Fuel Adjustment Clause Contained Within the Rate Schedules of the Ohio Power Co.*, 78-629-EL-FAC, Opinion and Order (Feb. 16, 1979) at 12; *In re the Application of Ohio Power Co. to Cancel Certain Special Power Agreements*, 75-161-EL-SLF, Opinion and Order (Aug. 4, 1976) at 14; *In re Columbus and S. Ohio Elec. Co.*, Case No. 77-545-EL-AIR, Opinion and Order (Mar. 31, 1978) at 19.

### ***B. Third-Party Verifications***

{¶ 72} Additionally, as noted in its Report, Staff identified several issues with RPA's TPVs. We find merit in these allegations. According to the Staff Report, in at least one door-to-door enrollment case, the sales agent appeared to have remained at the premise for part of, if not all, the verification process, in violation of Ohio Adm.Code 4901:1-21-06(D)(6)(b)(ii) and 4901:1-29-06(D)(6)(b)(ii) (Staff Ex. 7 at 6, 797-822.). We agree with Staff that RPA's TPV recordings are not fully compliant with the Ohio Administrative Code, evidenced by the TPV scripts produced by RPA to Staff, and the various recordings Staff reviewed during its investigation. (Staff Ex. 11 at Footnote 55 Folder Attachment 6A, Footnote 11 Folder, Footnote 12 Folder Call 22, and Footnote 6 Folder Barbara Bossart TPV, Staff Initial Br. at 43-44.) For example, in its review of the recordings, Staff indicated that the Company informs the consumers that a contract will be emailed or texted to them within five business days, when they must be transmitted within one day; and most recordings do not disclose the \$5.00 monthly fee, as required under Ohio Adm.Code 4901:1-21-06 and 4901:1-29-06. Further, the evidence supports Staff's contention that neither the TPV recordings nor the script disclose the factors which impact the monthly variable rate, as

required under Ohio Adm.Code 4901:1-21-06(D)(2) and 4901:1-29-06(E)(1). (Staff Ex. 9 at 32-33, Staff Ex. 11 at Footnote 23 Folder, Confidential Attachment 6B.)

{¶ 73} We find RPA's rejoinder unconvincing where it argues that its agent did not violate Ohio Adm.Code 4901:1-21-06(D)(1)(h)(i)-(ii), speculating that the customer in one of Staff's examples simply may have been calling their respective utility. This supposition does not refute Staff's allegation that the sales agent remained on the premises during the TPV, which is evidenced by the submitted TPV recording, nor does it support RPA's argument that no agent has remained on site during a TPV. (RPA Initial Br. at 29, Staff Ex. 7 at 5, 15, Staff Reply Br. at 31.) Similarly, we disagree with RPA that the record evidence does not support Staff's allegation that, in violation of Ohio Adm.Code 4901:1-21-06 and 4901:1-29-06, RPA's TPV scripts are noncompliant. RPA argues that Staff misreads or misapplies the applicable rules; however, as discussed above, Staff presented the testimony of Nedra Ramsey, who stated that Staff reviewed both RPA's TPV scripts and the TPV recordings sent to Staff by RPA. The recordings reviewed by Staff indicated that RPA did not disclose properly all of the information required by Ohio Adm.Code 4901:1-21-06(D)(2) and 4901:1-29-06(E)(1), which includes both the price per applicable unit and a statement that the provider will send a copy of the contract within one business day. Staff's investigation and review found that RPA's TPVs did not always state this information, in violation of the applicable rules. (RPA Ex. 1 Attachment BT-13 at 1, 6; Staff Ex. 9 at 32-33.) Finally, RPA argues that it did not violate Ohio Adm.Code 4901:1-21-06 or 4901:1-29-06 because those rules do not set requirements for TPV scripts, and only address requirements for marketing materials, and that no rules apply to scripts. We reject this argument where RPA's witness, Brian Trombino, testified that RPA created the scripts, that the TPV script is utilized for its TPV process, and that RPA expects its third-party verifier to follow it, but admitted that in some cases, including that of witness Barbara Bossart, that the script was deficient with respect to the contract provision. (Tr. II at 289-297.)

### *C. Managerial Capability*

{¶ 74} As noted above, R.C. 4928.08 provides 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 that service. Similarly, R.C. 4929.20 states that no retail natural gas supplier shall provide a CRNGS to a consumer without first being certified by the Commission regarding its managerial, technical, and financial capability to provide such service and providing reasonable financial assurances sufficient to protect customers and natural gas companies from default.

{¶ 75} We agree with Staff that RPA resumed in-person marketing without notifying the Commission's Service Monitoring and Enforcement Department (SMED) before doing so, in violation of both R.C. 4928.02(I) and (L), and R.C. 4929.20, which require regulated entities, such as RPA, to comply with any health and safety order issued by the Commission to protect at-risk populations. Staff proffers numerous cases during which RPA had solicited consumers door-to-door, during which time RPA was required to have informed SMED before resumption, but did not, regardless of its attempts to again shift blame to its vendor. (Staff Initial Br. at 11; Staff Ex. 13 at 428, 750, 760, 766, 800, 825 871, 874, 1004, 1310, 1334, 1383, 1401, Footnote 21 Folder; RPA Ex. 1 at 3, Attach. BT-3; RPA Initial Br. at 5-6.) We reject both RPA's argument that its vendor not informing SMED ultimately absolves it of any violation of the Commission's Order and its argument that Staff could not substantially show that this conduct occurred. RPA states that Staff simply assumed, based on scant cases and evidence, that RPA was marketing in person each day of the period. The Commission finds, however, that Staff cited numerous cases throughout Staff's identified 118-day period from February 27, 2021 to June 25, 2021, in which a consumer was solicited in-person. (RPA Reply Br. at 7-9; RPA Ex. 1 at 3; Staff Initial Br. at 11.)

{¶ 76} Ohio Adm.Code 4901:1-29-04 and 4901:1-21-04 require a CRNGS or CRES provider to establish and maintain records and data sufficient to verify its compliance with any applicable Commission rules, which include the minimum service standards. The

record evidence supports Staff's contention that RPA failed to maintain necessary records to support Staff's investigation of customer complaints. As discussed above, Staff showed that during its investigation, RPA refused to provide certain documents or data required to conduct a thorough investigation of customer complaints. (Staff Ex. 9 at 8-11; RPA Ex. 1, Attach. BT-11.) Over the course of nearly four months, Staff attempted to obtain information from RPA in order to thoroughly investigate claims made against RPA, and over the course of that time, RPA failed to provide the requisite information, stating either that it did not have the information or that it could not obtain that information from its vendor. (Staff Initial Br. at 16-19; Staff Ex. 7 at 3; Staff Ex. 9 at 8-10; RPA Ex. 1, Attach. BT-11.) RPA's rejoinder to this, which we reject, is that it goes beyond the minimum requirements of the standards and that Staff could not define the records it required RPA to maintain. We reject this argument where Staff plainly stated what records it required, which were those related to sales and marketing calls, including information concerning the welcome calls placed to new customers. (RPA Reply Br. at 13-14; Staff Initial Br. at 16-19, 25-26.)

{¶ 77} We find that RPA has, in violation of both Ohio Adm.Code 4901:1-21-04(A) and Ohio Adm.Code 4901:1-29-04(A), which require a CRES or CRNGS provider to cooperate in any investigation of a customer complaint, refused to cooperate with Staff during parts of its investigation into RPA's conduct. Witness Ramsey testified that RPA, as the certified entity, did not cooperate with Staff in its investigation where it refused to obtain or provide information Staff required to complete its analysis of recordings of calls provided by RPA. Further, the amended Staff Report remarks that at a certain point, RPA, on advice of counsel, refused to respond to further data requests from Staff. (Staff Ex. 7 at 3; Tr. I at 198-201; Staff Initial Br. at 15-20.) We find RPA's rejoinder unconvincing where it argued that its counsel advised it to refuse to respond to further inquiries from Staff because RPA was unable to obtain from the vendor certain information Staff requested. RPA's argument that it was not being uncooperative because it had corresponded with Staff before refusing to respond to further data requests does not absolve it of its refusal to provide information Staff required to fully investigate customer complaints. We reiterate that as the certificated

entity, RPA—not its vendors—is responsible for complying with the minimum service standards. And having sufficient arrangements in place with vendors to be able to respond to complaint investigations is a reasonable expectation of Staff in determining RPA’s managerial capability. (Tr. I at 198-201; RPA Initial Br. at 9, 33-35)

{¶ 78} To the extent we have found Staff to have met its burden of demonstrating the alleged violations, as discussed above, we now turn to the appropriate remedies based on the violations committed.

#### *D. Remedies*

{¶ 79} Staff has recommended, and RPA has challenged, a forfeiture amount of \$1.5 million (Staff Ex. 7 at 10; RPA Ex. 1 at 6; RPA Initial Br. at 2-3, 10). At the hearing, witness Ramsey testified in response to a query from the attorney examiner that Staff arrived at the amount of \$1.5 million by multiplying the over 150 violations committed by RPA by the base forfeiture amount of \$10,000, as allowed under R.C. 4905.54, which provides that every public utility shall comply with orders, directions, and requirements of the Commission, and that the Commission may assess a forfeiture of not more than \$10,000 per violation or failure and that each day’s continuance of a violation or failure is a separate offense. (Tr. I at 206-209, Staff Ex. 9 at 33, Staff Ex. 11 at Footnote 51 Folder, Staff Ex. 13 at Footnote 51 Folder.) Further, we agree with Staff that, where the severity of these violations was acute, as RPA engaged in significant misconduct by spoofing telephone numbers in outbound telemarketing, modifying recordings of sales calls, falsifying TPVs which are intended to verify that the customer agreed to be enrolled, remaining on-site during at least one TPV, failing to maintain records required by Staff to complete its investigation, and failing to comply with a Commission health and safety order during the recent pandemic, among other violations discussed above, Staff’s recommended forfeiture amount is warranted. As we determined that no violation of the Commission’s rules occurred based on RPA’s claims to consumers that the consumer was purchasing “100 percent renewable energy,” we find that the forfeiture amount should be reduced commensurate with the number of days and

violations Staff found that relate to those violations.<sup>2</sup> The forfeiture should therefore be reduced commensurate with the number of alleged violations related to RPA's statements to consumers offering them 100 percent renewable energy, from Staff's recommendation of \$1.5 million to \$1.44 million.

{¶ 80} Further, the Commission believes that making customers who have been harmed by these violations whole is of paramount importance. Therefore, we find that RPA should pay \$1,000,000 of the civil forfeiture immediately. The remainder of the civil forfeiture will be held in abeyance, subject to the following conditions:

- 1) RPA shall re-rate the customers ordered below in Paragraph 82 within 60 days of the issuance of this Opinion and Order;
- 2) RPA shall file an affidavit from its President and Chief Executive Officer, within 75 days of the issuance of this Opinion and Order, attesting that the re-rating of customers has been fully implemented;
- 3) Within 75 days of the issuance of this Opinion and Order, RPA shall provide to Staff sufficient documentation, as determined in Staff's sole discretion, that the re-rating of customers has been fully implemented.
- 4) RPA shall pay \$1,000,000 of the civil forfeiture within 30 days of the issuance of this Opinion and Order.

Once Staff has received sufficient documentation that the re-rating of customers has been fully implemented and the initial forfeiture paid, Staff file shall file a notice in this docket. After Staff has filed such notice, the Commission shall issue an order terminating any

---

<sup>2</sup> The Staff Report identifies six violations which related to RPA's claims concerning "100 percent renewable energy," where Staff has determined the forfeiture by multiplying the number of violations by the base forfeiture amount of \$10,000; removal of these violations from the total reduces the forfeiture amount by \$60,000. See Staff Ex. 7 at 295, 519, 521, 819, 863, 1369, 1391, 1415, Tr. I at 206-209.)

obligation of RPA to pay that part of the civil forfeiture held in abeyance. If the above conditions are not timely satisfied, the Commission will order RPA to pay the entire civil forfeiture of \$1.44 million.

{¶ 81} Pursuant to R.C. 4928.08(D), the Commission may suspend, rescind, or conditionally rescind the certification of any electric services company, if the Commission determines, after reasonable notice and opportunity for hearing, that the electric services company has failed to comply with any applicable certification standards or has engaged in anticompetitive, or unfair, deceptive, or unconscionable acts or practices in Ohio. Similarly, R.C. 4929.20(C)(1) provides that the Commission may suspend, rescind, or conditionally rescind the certification of any retail natural gas supplier if the Commission determines, after reasonable notice and opportunity for hearing, that the retail natural gas supplier has failed to comply with any applicable certification standards prescribed in rules adopted pursuant to R.C. 4929.20 or 4929.22. We find that the evidence shows that RPA has committed numerous violations of the Commission's rules and regulations prohibiting deceptive and misleading practices in marketing, soliciting, selling, and providing CRNGS and CRES. Further, RPA has failed to meet requirements that it comply with Staff's investigation of any complaint and that it maintain records to demonstrate its compliance with all Commission rules and regulations, as discussed in subsection C above. The evidence, as discussed above, shows that RPA lacks managerial capability to provide CRES and CRNGS in Ohio. Therefore, the Commission concludes that RPA's CRES and CRNGS certificates should be rescinded, and RPA should cease operations in Ohio in both marketing and provisioning CRES and CRNGS.

{¶ 82} RPA is hereby ordered to provide notice to each customer enrolled from February 1, 2021 to May 1, 2021, informing the customer of the terms of their respective contract, including the type of rate, the date of enrollment, the means by which the customer was enrolled, that the Commission believes the customer may have been misled by RPA during enrollment, and that RPA will return the customer to their utility's default service. Further, RPA is ordered, for customers enrolled through door-to-door or telemarketing

between May 1, 2021, and June 30, 2021, to re-rate those customers back to their respective utility's default service rate and send notice informing said customers that they will receive a refund of a specified amount. Finally, RPA is ordered to re-rate all customers who filed a complaint with any entity disputing enrollment with RPA starting from February 1, 2022.

## VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 83} RPA 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 CRES under R.C. 4928.08 and to supply 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, RPA 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.

{¶ 84} On October 16, 2021, a Staff sent a PNC to RPA; however, after many discussions, RPA and Staff were unable to resolve the issues raised in the notice.

{¶ 85} On April 18, 2022, Staff of the Commission's Service Monitoring and Enforcement Department filed a letter stating that, after reviewing customer contacts received by the Commission's call center from January 1, 2021, to October 1, 2021, as well as an audio recording provided by RPA, Staff believed that RPA has engaged in a pattern of misleading and deceptive practices to market and enroll customers during both door-to-door and telephonic sales practices. As a result of its conclusions indicating probable non-compliance with statutory and rule requirements, Staff recommended that the Commission open a formal proceeding to review RPA's compliance with Ohio law.

{¶ 86} On June 10, 2022, Staff filed the Staff Report, which it amended on July 21, 2022. Staff indicated that since the initial filing of its report, Staff discovered that a violation was omitted, adding two additional violations to those listed in its report. Staff made six

main recommendations following a finding of 23 violations of the Commission's rules and regulations.

{¶ 87} A hearing commenced on October 26, 2022, and resumed and concluded on November 10, 2022.

{¶ 88} Initial post-hearing briefs were filed on January 6, 2023, and reply briefs were filed on January 27, 2023.

{¶ 89} The Commission finds that RPA has violated numerous Commission rules and has shown that it lacks the managerial capability to comply with the Commission's minimum service standards for CRES and CRNGS providers sufficient to serve Ohio consumers in the retail natural gas and electricity markets. Accordingly, RPA should be assessed a forfeiture of \$1.44 million, and have its CRES and CRNGS certificates rescinded. Further, RPA shall, within 60 days of the issuance of this Opinion and Order, cease operations in Ohio, and provide notice to and re-rate consumers pursuant to Paragraph 82 above. Within 75 days of the issuance of this Opinion and Order, RPA shall inform Staff of the results of its compliance with the above orders.

## VII. ORDER

{¶ 90} It is, therefore,

{¶ 91} ORDERED, That RPA be assessed a forfeiture of \$1.44 million, as set forth in Paragraphs 79 and 80 of this Opinion and Order. It is, further,

{¶ 92} ORDERED, That RPA's CRES and CRNGS certificates be rescinded, and RPA cease all operations in Ohio, returning its current customers to their respective utilities' standard service offer within 60 days of the issuance of this Opinion and Order. It is, further,

{¶ 93} ORDERED, That RPA provide notice to consumers and re-rate those consumers within 60 days of the issuance of this Opinion and Order, pursuant to Paragraph 82. It is, further,

{¶ 94} ORDERED, That RPA advise the Commission's Service Monitoring and Enforcement Department within 75 days of the issuance of this Opinion and Order as to the status of all its customers' being transitioned to the applicable utility's SSO or an alternative supplier. It is, further,

{¶ 95} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

**COMMISSIONERS:**

*Approving:*

Jenifer French, Chair  
Daniel R. Conway  
Lawrence K. Friedeman  
Dennis P. Deters  
John D. Williams

JMD/dmh

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**10/18/2023 2:49:07 PM**

**in**

**Case No(s). 22-0441-GE-COI**

Summary: Opinion & Order that the Commission orders RPA Energy, Inc. d/b/a Green Choice Energy to re-rate all customers enrolled between January 1, 2021 and July 20, 2021, and pay a forfeiture of \$1.44 million. Further, the Commission rescinds RPA's certificates to provide both competitive retail electric service and competitive retail natural gas service in Ohio electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio.