

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

CASE NO. 22-267-GE-COI

ENTRY

Entered in the Journal on January 31, 2024

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

{¶ 2} R.C. 4928.08(B) 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(A) 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 that service and providing reasonable financial assurances sufficient to protect customers and natural gas companies from default.

{¶ 3} On July 22, 2013, in Case No. 13-1453-EL-CRS, the Commission granted XOOM Energy's application for certification as a CRES provider in this state. XOOM

Energy timely filed renewal applications for certification as a CRES provider every two years pursuant to Ohio Adm.Code 4901:1-24-09, and each renewal application was automatically approved by the Commission pursuant to R.C. 4928.08. XOOM Energy's most recent renewal application was filed on May 20, 2021, and amended on May 25, 2021; however, the automatic approval of this renewal application was suspended by the attorney examiner on June 17, 2021. *In re the Application of XOOM Energy Ohio, LLC for Certification as a Competitive Retail Electric Service Provider*, Case No. 13-1453-EL-CRS.

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

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

{¶ 6} On April 18, 2022, Staff filed a letter in the above-captioned docket, stating that, after reviewing customer contacts from both January 1, 2021, to June 21, 2021, and

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

{¶ 7} Staff states that, on June 21, 2021, a notice of probable non-compliance (notice) was sent to XOOM Energy; however, after many discussions, XOOM Energy and Staff were unable to resolve the issues raised in the notice. Staff found probable non-compliance violations by XOOM Energy sales representatives of: Ohio Adm.Code 4901:1-21-06(C) for enrolling customers without consent; Ohio Adm.Code 4901:1-21-06(D)(2)(a) for improperly enrolling customers telephonically without following all of the required procedures; Ohio Adm.Code 4901:1-29-06(D)(3)(a) for enrolling customers via the internet without consent; Ohio Adm.Code 4901:1-29-06(E)(1) for failing to properly use an independent, third-party verifier when enrolling customers telephonically; and Ohio Adm.Code 4901:1-29-06(F)(1) for failing to obtain proper prior consent by encrypted customer input on XOOM Energy's website before enrolling customers via the internet. As a result of its conclusions indicating probable non-compliance with statutory and rule requirements, Staff recommends that the Commission open a formal proceeding to review XOOM Energy's compliance with Ohio law.

{¶ 8} On April 20, 2022, the attorney examiner issued an Entry finding that a hearing should be held at which XOOM Energy will have the opportunity to respond to Staff's findings and show cause as to why action should not be taken on its CRES and CRNGS certifications. The Entry also established a procedural schedule under which motions to intervene were to be filed by May 10, 2022, a Staff Report was to be filed by May 25, 2022, and an evidentiary hearing was scheduled for June 8, 2022.

{¶ 9} On April 29, 2022, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene, which the attorney examiner granted by Entry on May 20, 2022.

{¶ 10} On June 24, 2022, XOOM Energy filed an unopposed motion to suspend the procedural schedule.

{¶ 11} On June 30, 2022, by Entry, the attorney examiner granted XOOM Energy's unopposed motion to suspend the procedural schedule.

{¶ 12} The parties filed status updates in the case on September 30, 2022, and July 10, 2023, following the suspension of the procedural schedule.

{¶ 13} On August 2, 2023, XOOM Energy filed a Joint Stipulation and Recommendation (Stipulation) signed by XOOM Energy and Staff. The Stipulation purports to resolve all issues identified by Staff in its April 18, 2022 letter requesting the Commission open an investigation into XOOM Energy and the issues identified by Staff in the notice.

{¶ 14} On August 3, 2023, OCC filed a letter indicating that it neither supports nor opposes the Stipulation.

{¶ 15} At this time, the attorney examiner finds this matter should be set for hearing and that the parties should pre-file and present testimony in support or opposition to the Stipulation.

{¶ 16} Accordingly, the parties should adhere to the following procedural schedule:

(a) Testimony shall be due by February 27, 2024.

(b) An evidentiary hearing will be conducted in this matter for 10:00 a.m., on March 5, 2024, at the offices of the Commission, 11th Floor, Hearing Room 11-C, 180 East Broad Street, Columbus, Ohio

43215. All parties or interested persons should register at the lobby desk and then proceed to the 11th floor in order to participate in the hearing.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That the procedural schedule as set forth in Paragraph 16 be adopted. It is, further,

{¶ 19} ORDERED, That a hearing be conducted on March 5, 2024, at 10:00 a.m., as set forth in Paragraph 16. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Jesse M. Davis

By: Jesse M. Davis
Attorney Examiner

NJW/mef

**This foregoing document was electronically filed with the Public Utilities
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Case No(s). 22-0267-GE-COI

Summary: Attorney Examiner Entry setting a procedural schedule: testimony due February 27, 2024; and, a hearing on March 5, 2024 at 10:00 a.m. at the offices of the Commission, Hearing Room 11-C, as detailed herein electronically filed by Ms. Mary E. Fischer on behalf of Jesse M. Davis, Attorney Examiner, Public Utilities Commission of Ohio.