

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s)	
Investigation into XOOM Energy Ohio,)	
LLC’s Compliance with the Ohio)	Case No. 22-267-GE-COI
Administrative Code and Potential)	
Remedial Actions for Non-Compliance)	

**DIRECT TESTIMONY OF
BRYCE MCKENNEY
ON BEHALF OF
XOOM ENERGY OHIO, LLC**

February 27, 2024

Q1. Please introduce yourself.

A1. My name is Bryce McKenney. I am a Director of Regulatory Affairs for NRG Energy, Inc. My business address is 3060 Kent Road, Silver Lake, Ohio 44224.

Q2. What are your current job responsibilities?

A2. I am responsible for regulatory affairs matters in Ohio, Kentucky, Indiana, Michigan, Illinois, and Wisconsin. Generally, I manage and oversee our work before the public utility commissions in those states. I also assist the regulatory affairs teams in other states and FERC matters as needed.

Q3. What is your educational background?

A3. I have an undergraduate degree in business with a major concentration in finance from Kent State University. I also have a Juris Doctor degree from Liberty University School of Law. I am a licensed and active attorney in the state of Ohio.

Q4. On whose behalf are you testifying today and have you testified previously?

A4. I am testifying on behalf of XOOM Energy Ohio, LLC ("XOOM"). XOOM is a subsidiary of NRG Energy, Inc. While I have presided over or represented clients in many Public Utilities Commission of Ohio ("Commission" or "PUCO") cases, this is my first-time presenting witness testimony.

Q5. Please describe briefly the operations of XOOM.

A5. XOOM provides competitive retail electric service and competitive retail natural gas services in Ohio. XOOM has been authorized since January 2012 to provide competitive

1 retail natural gas service (Case No. 11-4795-GA-CRS) and since July 2013 to provide
2 competitive retail electric service (Case No. 13-1453-EL-CRS). XOOM works with
3 channel partners whose independent representatives discuss the availability of XOOM's
4 services with customers. The independent representatives refer residential and small
5 commercial customers to XOOM's website, through which the customer enrolls on their
6 own by completing XOOM's internet enrollment process. Independent representatives
7 refer larger commercial customers to XOOM's Insides Sales group, which directly
8 discusses offers tailored to meet those customers' needs and provides the written contracts.
9

10 **Q6. What is the purpose of your testimony?**

11 A6. My testimony supports the Stipulation and Recommendation ("Stipulation") filed in this
12 proceeding. I urge the PUCO to promptly approve the unopposed Stipulation.
13

14 **Q7. What is the history of this proceeding?**

15 A7. In March 2021, XOOM learned through its daily alert process that an independent
16 representative of XOOM's channel partner ACN, Inc. ("ACN") directly enrolled customers
17 with XOOM. In addition, Staff notified XOOM that the Call Center of the PUCO had
18 received a complaint disputing an enrollment prompted by a specific independent
19 representative of ACN.
20

21 XOOM investigated and discovered a small group of independent representatives of
22 XOOM's channel partner ACN was enrolling customers through XOOM's website.
23 XOOM promptly remediated the situation for the customers who were affected,

1 deactivated the independent representatives involved, and enhanced its sales quality
2 process by implementing alerts related to email domains, implementing triggers for
3 verifying identification, updating the code of conduct, and having the channel partner
4 emphasize XOOM's no telephone sales policy. During that time, XOOM was in contact
5 with Staff regarding the consumer complaints and its internal investigation. In addition,
6 XOOM conducted a broader and more extensive review of numerous Ohio customer
7 records related to enrollments involving the channel partner. On June 21, 2021, Staff
8 issued a Notice of Probable Noncompliance letter ("Notice Letter"), alleging that XOOM
9 had violated three electric rules and three natural gas rules for enrolling customers without
10 consent, enrolling customers telephonically without an audio recording (and where
11 applicable a third-party verification), and enrolling customers by internet without consent.
12 Staff proposed several corrective actions, including credits/refunds to the affected
13 customers, an audit of all independent representatives of the involved channel partner
14 (ACN), remediation for all audited enrollments based on the proximity of the customers'
15 addresses to the IP addresses used for the internet enrollments, and a forfeiture of \$120,000.
16 XOOM and Staff engaged in multiple discussions of the issues, but had not reached a
17 resolution of the issues involved in the Notice Letter prior to the Commission initiating this
18 proceeding by Entry issued on April 20, 2022.

19
20 The Ohio Consumers' Counsel ("OCC") subsequently intervened in the proceeding. A
21 Staff Report was filed on June 6, and amended on June 15, 2022. XOOM, Staff and OCC
22 engaged in settlement discussions, which resulted in XOOM and Staff entering into a
23 Stipulation filed on August 2, 2023. It has been marked as Joint Ex. 1. OCC filed a letter

1 with the Commission the next day (August 3, 2023), stating in part that OCC “appreciates
2 the efforts of XOOM and the PUCO Staff to negotiate a Settlement that, with its consumer
3 protections, enabled OCC’s non-support and non-opposition on behalf of consumers.” A
4 copy of that letter has been marked as XOOM Ex. 2.

5
6 On January 31, 2024, the Attorney Examiner set a procedural schedule and my testimony
7 is filed pursuant to that schedule.

8
9 **Q8. Please describe the Stipulation.**

10 A8. The Stipulation is intended to resolve all issues related to the Commission’s investigation,
11 which is based on the Notice Letter. XOOM and Staff have agreed to, and OCC does not
12 oppose, the stipulated terms for resolving this proceeding, without the Stipulation being an
13 admission or a finding of violation or liability. While I list and discuss in greater detail
14 below the key components of the Stipulation (which are listed in Sections A-K of the
15 Stipulation), the resolution of the issues related to the Commission’s investigation (and
16 based on the Notice Letter) confirms that in 2021, XOOM promptly investigated the initial
17 questioned enrollments and those linked to a small group of independent representatives of
18 ACN; XOOM properly resolved those questioned enrollments, and XOOM implemented
19 appropriate enhancements to its sales quality process based on the investigation. The
20 Stipulation affirms that XOOM also conducted a more extensive audit of all enrollments
21 between January and June 2021 prompted by independent representatives from ACN and
22 XOOM has agreed to reverse certain additional enrollments – return certain additional
23 customers to utility default service and rerate them, plus as specified in the Stipulation give

1 a refund per enrolled account and pay any customer-verified switching fee or early
2 termination fee incurred. In addition, XOOM agrees to pay the Staff-proposed forfeiture
3 in the full proposed amount of \$120,000 and to make a sizeable donation to assist Ohioans
4 with paying their utility bills. The Stipulation is conditioned upon Commission approval
5 as is, without any material modification. The Stipulation was heavily negotiated by the
6 parties, is in the public interest, and is unopposed.

7
8 **Q9. Please describe the first key component (Section A) of the Stipulation.**

9 A9. Section A states that XOOM responded appropriately to and resolved the unauthorized
10 enrollments involving the improper tactics used by the independent representative. XOOM
11 implemented corrective actions relative to the independent representative.

12
13 Section A confirms that XOOM seriously investigated the issue flagged by its daily alert
14 process and the complaint referred by the Staff in March 2021. In addition, this provision
15 confirms that, for the initial enrollments confirmed as unauthorized, XOOM took proper
16 corrective actions for the customers and took proper corrective actions against the
17 independent representative involved. In particular, each involved independent
18 representative was deactivated and precluded from future work associated with XOOM.

19
20 **Q10. Please describe the second key component (Section B) of the Stipulation.**

21 A10. Section B states that XOOM implemented a Daily Alert report regarding e-mail domain
22 use for multiple enrollments and XOOM shall continue to use Daily Alert reports for all
23 Ohio consumer enrollments and investigate e-mail domain enrollment anomalies.

1 Section B confirms that XOOM seriously evaluated the situation that arose and, in response
2 to its findings, enhanced its daily alert process. More specifically, since May 2021, daily
3 alert reports have been identifying email domains used in the prior day, and enrollments
4 are being investigated in the event an e-mail domain is used for multiple internet
5 enrollments.

6
7 **Q11. Please describe the third key component (Section C) of the Stipulation.**

8 A11. Section C states that XOOM shall continue to use eIDVerify for all its Ohio residential
9 consumer enrollments regardless of whether the consumer's IP address is within or outside
10 of Ohio, for a minimum period of 24 months from the Commission's approval of the
11 Stipulation.

12
13 eIDVerify is a process widely used in multiple industries to confirm the person is who they
14 say they are. In the context of XOOM enrollments, eIDVerify was put into effect in May
15 2021 to confirm the individual completing the enrollment through the internet is the
16 residential customer listed in the enrollment. Section C confirms that XOOM enhanced its
17 analysis of Ohio residential enrollments through application of eIDVerify on all Ohio
18 residential enrollments. This enhancement will continue for at least two more years.

19
20 **Q12. Please describe the fourth key component (Section D) of the Stipulation.**

21 A12. Section D states that XOOM shall continue to include in its Code of Conduct for channel
22 partner independent representatives that a violation of the Code of Conduct provision that
23 prohibits marketing XOOM products via tele-sales or door-to-door marketing will result in

1 immediate and permanent deactivation of the independent representative from XOOM
2 campaigns. In addition, the XOOM Code of Conduct shall be updated to reflect the
3 responsibilities of channel partners in preventing independent representatives from
4 marketing XOOM products through telemarketing or door-to-door sales.

5
6 Section D ensures that XOOM's channel partners and the independent representatives will
7 continue to be informed and aware that they are not to engage in telemarketing or door-to-
8 door sales for XOOM. It makes clear that swift and permanent action will be taken for
9 violation of the policy.

10
11 **Q13. Please describe the fifth key component (Section E) of the Stipulation.**

12 A13. Section E states that, for an agreed-upon and identified subset of 284 customers whose
13 enrollments with XOOM were part of the review of enrollments in the first six months of
14 2021 and involved ACN, XOOM agrees to:

- 15 1. Return such customers to their utilities' default service, and re-rate
16 them and also refund to each such customer an amount equal to
17 \$75.00 for each account being returned to utility default service.
18 Some customers have gas and electric accounts, so a customer with
19 both gas and electric accounts with XOOM would receive a total of
20 \$150.00 (\$75.00 for the gas account and \$75.00 for the electric
21 account).
- 22 2. Notify such customers by letter about their return to the utility
23 default service, which notice the Staff will review and approve.

1 XOOM will provide the notice to OCC at the same time it is
2 provided to the Staff. The notice will: state that the rates for utility
3 default service have increased and that the utility default service
4 may not provide the lowest price to consumers; direct consumers to
5 consult the PUCO's Apples-to-Apples comparison charts for more
6 information; state the applicable utility's most current price-to-
7 compare; and contain a link to OCC's Wise Energy Choices Fact
8 Sheet on the OCC website. XOOM will provide a copy of the final-
9 form notification to OCC as well.

10 3. Refund or credit any customer-verified switching fee imposed when
11 the customer switched to XOOM's service.

12 4. Refund or credit any customer-verified early termination fee
13 imposed when the customer switched to XOOM's service.

14 5. XOOM will provide confirming documentation to OCC of the rerate
15 and the \$75 refund provided to each such customer, and provide
16 verification that the notification described in Section E.2 above was
17 provided to such customers.

18
19 Section E reverses the specified customer enrollments that were questioned without
20 harming such customers. XOOM will provide rerates and an additional \$75 per enrolled
21 account (gas and/or electric) directly to such customers. If certain fees are verified as
22 imposed when such customers were switched to XOOM's service, XOOM will credit or
23 refund them too. These steps will take place after XOOM provides an explanation to such

1 customers (pre-approved by the Staff) so that they are aware and understand the change
2 taking place with their electric and/or natural gas supply (as applicable). Finally, pursuant
3 to this provision, OCC will receive confirming documentation for this group of customers.
4

5 **Q14. Please describe the sixth key component (Section F) of the Stipulation.**

6 A14. Section F states that, for an agreed-upon and identified subset of 25 consumers who
7 contacted the Commission about their enrollment with XOOM in 2021 and 2022, XOOM
8 agrees

- 9 1. Return such customers to their utilities' default service, and re-rate
10 them and also refund to each such customer an amount equal to
11 \$75.00 for each account being returned to utility default service.
12 Again, some customers have both gas and electric accounts, so a
13 customer with both gas and electric accounts with XOOM would
14 receive a total of \$150.00 (\$75.00 for the gas account and \$75.00 for
15 the electric account).
- 16 2. Notify such customers by letter about their return to the utility
17 default service, which notice the Staff will review and approve.
18 XOOM will provide the notice to OCC at the same time it is
19 provided to the Staff. The notice will: state that the rates for utility
20 default service have increased and that the utility default service
21 may not provide the lowest price to consumers; direct consumers to
22 consult the PUCO's Apples-to-Apples comparison charts for more
23 information; state the applicable utility's most current price-to-

1 compare; and contain a link to OCC's Wise Energy Choices Fact
2 Sheet on the OCC website. XOOM will provide a copy of the final-
3 form notification to OCC as well.

4 3. Refund or credit any customer-verified switching fee imposed when
5 the customer switched to XOOM's service.

6 4. Refund or credit any customer-verified early termination fee
7 imposed when the customer switched to XOOM's service.

8 5. XOOM will provide confirming documentation to OCC of the rerate
9 and the \$75 refund provided to each such customer, and provide
10 verification that the notification described in Section F.2 above was
11 provided to such customers.

12
13 Section F reverses the specified 25 customer enrollments that were questioned without
14 harming such customers and does so in the same manner as agreed upon for the other
15 specified customer enrollments. XOOM will provide rerates and an additional \$75 per
16 enrolled account (gas and/or electric) directly to the specified 25 customers. If certain fees
17 are verified as imposed when such customers were switched to XOOM's service, XOOM
18 will credit or refund them too. These steps will take place after XOOM provides an
19 explanation to such customers (pre-approved by the Staff) so that they are aware and
20 understand the change taking place with their electric and/or natural gas supply (as
21 applicable). Finally, pursuant to Section F, OCC will receive confirming documentation
22 for this group of customers.

1 **Q15. Please describe the seventh key component (Section G) of the Stipulation.**

2 A15. In Section G, XOOM agrees to provide a draft copy of the customer letter for Staff's review
3 and approval before it is sent to the specified customers.

4
5 Section G ensures that the Staff can consider the notification to be given to customers,
6 provide input, and approve it before it is sent to the specified customers. This also ensure
7 that Staff knows in advance of the timing of the notification and the Commission's Call
8 Center can then be prepared in the event any of the notified customers call the Commission
9 about the notice.

10
11 **Q16. Please describe the eighth key component (Section H) of the Stipulation.**

12 A16. Section H states that XOOM will return to the utilities' default service and provide rerates
13 to every customer not already addressed by Sections E and F who complained (either via a
14 complaint forwarded by the Commission to XOOM or a complaint directly to XOOM)
15 about an unauthorized enrollment that occurred from January 1, 2021 to the present date
16 by ACN, and that is confirmed by XOOM to be an unauthorized enrollment. The rerates
17 will be based on the difference between the rates charged by XOOM (if such rates exceed
18 their utility's default rate) and the applicable utility default service rates. Also, XOOM
19 will provide confirming documentation to OCC of any rerates provided under Section H.

20
21 Section H is a catch-all provision. It ensures that, if in the unlikely event there are other
22 customer enrollments since January 1, 2021, from ACN independent representatives that
23 are found to be unauthorized, XOOM will reverse the enrollment without harming such

1 customers by returning and rerating any such customers. XOOM will also provide
2 confirming documentation to OCC related to these customers, if any.

3
4 **Q17. Please describe the ninth key component (Section I) of the Stipulation.**

5 A17. Section I states XOOM will pay a forfeiture of \$120,000 within 30 days of the
6 Commission's approval of the Stipulation.

7
8 Section I resolves the forfeiture issue. XOOM agrees to pay the forfeiture in the amount
9 that Staff proposed in the Notice Letter, and to do promptly – within 30 days of the
10 Commission's approval of the Stipulation.

11
12 **Q18. Please describe the tenth key component (Section J) of the Stipulation.**

13 A18. Section J states XOOM will make a one-time donation of \$100,000.00 to the Dollar Energy
14 Fund to fund grants to be used for bill payment assistance programs for Ohio consumers
15 within ten (10) business days of a Commission Order approving the Stipulation.

16
17 Through this commitment, XOOM will donate a significant amount of money that will
18 allow Ohio residential customers a further opportunity for obtaining assistance with paying
19 their utility bills. This commitment does not limit the availability of the donated money to
20 just XOOM customers; rather, the funds will be available to all Ohioans who are able to
21 obtain grants for their utility bills from the Dollar Energy Fund.

Q19. Please describe the eleventh key component (Section K) of the Stipulation.

A19. Section K states that XOOM will file, within 10 business days of executing the Stipulation, a motion to withdraw its May 25, 2022 Interlocutory Appeal, Request for Certification, Application for Review and Memorandum in Support with such motion contingent on the Commission approving this Stipulation.

XOOM made that withdrawal filing on August 15, 2023, timely completing this component of the Stipulation and resolving an outstanding debate.

Q20. Overall, what is your opinion of the Stipulation proposed in this proceeding and your recommendation to the Commission?

A20. The unopposed Stipulation is a reasonable and complete resolution of the issues involved in the Commission investigation (based on the Notice Letter). Customers who experienced unauthorized enrollments through inappropriate actions by certain ACN independent representatives were promptly remediated, or will be remediated under the terms of the Stipulation. XOOM conducted an extensive investigation of numerous enrollments, has improved processes as a result of the triggering incident and is committing to continue the enhancements as set forth in the Stipulation. XOOM will pay a forfeiture and make a donation that will help Ohioans struggling to pay their utility bills.

The Commission should approve the Stipulation as presented. It follows after extensive investigation and analysis of the triggering event and numerous customer enrollments. The parties, including OCC, discussed and negotiated the issues at length. Staff agreed with

1 the Stipulation's terms and signed the Stipulation. OCC does not oppose the Stipulation
2 and stated in its August 3, 2023 filing that it contains consumer protections. There are no
3 other parties in this proceeding. The Stipulation is beneficial for the affected customers
4 and others. The Stipulation is reasonable, does not violate any regulatory principle or
5 practice, and will fully resolve all issues in this matter.

6
7 It is my understanding based on the advice of counsel that, on numerous occasions and for
8 numerous years, the Commission has evaluated settlements in enforcement matters using
9 a reasonableness standard, and the Commission has recently reaffirmed the use of that
10 standard.¹ I am aware of no reason for the Commission to diverge from its long-standing
11 precedent and to review the Stipulation in some other manner.

12
13 **Q21. Does this conclude your testimony?**

14 **A21.** Yes, but I reserve the opportunity to supplement my testimony.

¹ See *In the Matter of the Commission Investigation into AES Ohio's Compliance with the Ohio Administrative Code and Potential Remedial Action*, Case No. 21-1220-EL-UNC, Finding and Order at ¶ 23 (November 30, 2023) and Entry on Rehearing at ¶ 23 (February 7, 2024).

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 27th day of February 2024.

Staff of the Public Utilities Commission of Ohio amy.botschnerobrien@ohioAGO.gov

Office of the Ohio Consumers' Counsel angela.obrien@occ.ohio.gov

/s/ Michael J. Settineri
Michael J. Settineri

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in

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

Summary: Testimony - Direct Testimony of Bryce McKenney electronically filed by
Mr. Michael J. Settineri on behalf of Xoom Energy Ohio, LLC.