

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

OPINION AND ORDER

Entered in the Journal on April 17, 2024

I. SUMMARY

{¶ 1} The Commission adopts the joint stipulation and recommendation entered into by Staff and XOOM Energy Ohio, LLC.

II. PROCEDURAL BACKGROUND

{¶ 2} XOOM Energy Ohio, LLC (XOOM Energy or XOOM) 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 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} On July 22, 2013, 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; 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.

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

{¶ 6} 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.

{¶ 7} On April 18, 2022, Staff of the Commission's Service Monitoring and Enforcement Department (Staff) filed a letter in the above-captioned docket, stating that, after reviewing customer contacts from both January 1, 2021, to June 21, 2021, and January 1, 2022, to March 1, 2022, during which time the Commission's call center received 19 complaints and 21 contacts, respectively, Staff believes that XOOM Energy has failed to comply with several sections of the Ohio Administrative Code with respect to its consumer enrollment practices. Staff states that the majority of the aforementioned contacts are related to enrollment disputes. Additionally, Staff states that one of XOOM's independent channel partners was engaged in soliciting consumers via telephone and then enrolling them online via XOOM's website while on the phone, which was completed by XOOM's agent, not the consumer.

{¶ 8} 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 six Commission rules: 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 4901:1-21-06(D)(3)(a) for enrolling customers via the internet without prior consent; Ohio Adm.Code 4901:1-29-06(B) for enrolling potential customers without consent and obtaining proof of that consent; Ohio Adm.Code 4901:1-29-06(E)(1) for failing to creating a date and time stamped audio recording of the sales portion of a call, and if the customer is enrolled, a date and time stamped audio recording by an independent, third-party verifier that verifies information specified in the rule; 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 recommended that the Commission open a formal proceeding to review XOOM Energy's compliance with Ohio law.

{¶ 9} On April 20, 2022, the attorney examiner issued an Entry finding that a hearing should be held at which XOOM 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 containing filing deadlines and scheduling an evidentiary hearing for June 8, 2022.

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

{¶ 11} On May 25, 2022, XOOM filed an interlocutory appeal, request for certification, application for review, and memorandum in support (Interlocutory Appeal) in which it contested OCC's granted intervention by the attorney examiner's May 20, 2022 Entry. OCC filed a memorandum contra XOOM's Interlocutory Appeal on May 31, 2022.

{¶ 12} Staff issued a written report of its investigation (Staff Report) on June 6, 2022, which it amended on June 15, 2022. In the Staff Report, Staff made nine main recommendations and requested that the Commission:

- (1) Find that XOOM violated the provisions identified in Section IV of the Staff Report;
- (2) Order XOOM to complete an audit of all independent representatives of their channel partner ACN, Inc. from December 1, 2020, to the date of the filing of the Staff Report;
- (3) For all enrollments that include an IP address outside of Ohio, order XOOM to return these customers to their utility's default service;
- (4) Order XOOM to rerate all customers from subsection (3) based on their utility's default service rate at the time of enrollment with XOOM;

- (5) Order XOOM to notify all customers that if they were billed an early termination fee from their former supplier, XOOM will credit or refund this fee;
- (6) Order XOOM to credit or refund the value of the contract for customers who cannot return to their previous CRES and/or CRNGS provider where the previous rate is lower than the contracted rate.
- (7) Order XOOM to send to Staff the letter specified in subsection (5) prior to sending the letter customers.
- (8) Order XOOM to pay a forfeiture of \$120,000.
- (9) Rescind, conditionally rescind, or suspend XOOM's CRES and CRNGS certificates for the violations identified in Section IV of the Staff Report.

{¶ 13} On June 21, 2022, XOOM filed a motion for protective order concerning 12 documents it provided to Staff that were subsequently the subject of a public records request made to the Commission by OCC.

{¶ 14} On June 24, 2022, XOOM filed an uncontested motion to suspend the procedural schedule, which the attorney examiner granted on June 30, 2022, to allow the parties to continue negotiations and work towards a settlement.

{¶ 15} On August 26, 2022, the attorney examiner, by Entry, denied certification of XOOM's Interlocutory Appeal.

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

{¶ 17} On August 2, 2023, XOOM filed a Joint Stipulation and Recommendation (Stipulation) signed by XOOM 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 and the issues identified by Staff in the Staff Report.

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

{¶ 19} On August 15, 2023, XOOM filed a motion to withdraw its Interlocutory Appeal.

{¶ 20} By Entry dated January 31, 2024, the attorney examiner scheduled a hearing in this matter for March 5, 2024.

{¶ 21} On February 27, 2024, XOOM filed the direct testimony of Bryce McKenney in support of the Stipulation.

{¶ 22} A hearing on this matter was held on March 5, 2024.

III. DISCUSSION

A. Summary of the Hearing Evidence

{¶ 23} At the hearing, Staff and XOOM presented as Joint Exhibit 1 the Stipulation, signed by both parties and both unopposed and unsupported by intervenor OCC. Staff submitted the Staff Report filed June 6, 2022, as Staff Exhibit 1, and the amendment filed on June 15, 2022, as Staff Exhibit 1A. XOOM presented as XOOM Ex. 1 the direct testimony of Bryce McKenney and the letter filed by OCC on August 3, 2023, as XOOM Exhibit 2.

{¶ 24} XOOM called witness Bryce McKenney to testify in favor of the Stipulation. Witness McKenney's testimony supports the Stipulation, submitting that it satisfies the Commission's three-part test, based on an analysis of each provision of the Stipulation provided in his direct testimony.

B. Summary of the Stipulation

{¶ 25} As previously stated, Staff and XOOM (Signatory Parties) filed a Stipulation signed on August 2, 2023. The Stipulation was intended by the Signatory Parties to resolve all outstanding issues in this proceeding. Below is a summary of the major provisions

agreed to by the Signatory Parties contained in the Stipulation. However, this summary is not intended to replace or supersede the Stipulation.

{¶ 26} [A.] XOOM responded appropriately to, and resolved unauthorized enrollments involving improper tactics used by an independent representative of ACN, Inc. XOOM implemented corrective actions relative to the independent representative of ACN, Inc. (Jt. Ex. 1 at 4.)

{¶ 27} [B.] XOOM implemented a daily alert report regarding e-mail domain use for multiple enrollments. XOOM agrees to continue using the daily alert reports for all Ohio consumer enrollments and will investigate e-mail domain enrollment anomalies. (Jt. Ex. 1 at 4.)

{¶ 28} [C.] For all Ohio residential consumer enrollments, regardless of whether the IP address of the consumer is within or outside of Ohio, XOOM shall utilize eIDVerify for a minimum of 24 months from the approval of the Stipulation by the Commission. (Jt. Ex. 1 at 4.)

{¶ 29} [D.] XOOM shall continue to include in its Code of Conduct for channel partner representatives that a violation of the Code of Conduct provision that prohibits marketing XOOM products via tele-sales or door-to-door marketing will result in immediate and permanent deactivation of the independent representative from XOOM campaigns. XOOM shall also update its Code of Conduct to reflect the responsibilities of channel partners in preventing representatives from marketing XOOM products through telemarketing or door-to-door sales (Jt. Ex. 1 at 4).

{¶ 30} [E.] For a subset of 284 customers whose enrollments were part of Staff's review of enrollments in the first six months of 2021 and involved ACN, Inc., XOOM agrees to take several actions:

- a. XOOM agrees to return such customers to their utilities' default service and rerate them based on the difference between the rates charged by XOOM

and the applicable utility default service rates. XOOM agrees to refund each customer an amount equal to \$75.00 for each account returned to default service.

- b. XOOM agrees to notify customers by letter about their return to their utilities' default service. Such notice, proposed by XOOM, shall be submitted to Staff for review and sent to OCC at that same time. The notification shall expressly state that the rates for utility default service have increased and as such may not provide the lowest price to consumers. Further, the notice shall direct consumers to consult the Commission's Apples-to-Apples comparison charts and OCC's Wise Energy Choices Fact Sheet. XOOM shall provide OCC a copy of the final form notification to be sent to consumers.
- c. For customers who provide verifiable evidence to XOOM that they were charged a switching fee, XOOM agrees to issue a full credit or refund for such switching fees charged.
- d. For customers who provide verifiable evidence to XOOM that their previous supplier charged an early termination fee as a result of switching to XOOM's service, XOOM agrees to issue a full credit or refund of such fees.
- e. XOOM agrees to provide documentation to OCC, subject to the existing protective agreement between XOOM and OCC, that confirms XOOM rerated and provided the \$75.00 refund to each of the consumers identified in Section E of the Stipulation. Further, XOOM will provide verification to OCC that it provided the notification identified in Section E.2 of the Stipulation to consumers.

(Jt. Ex. 1 at 4-6).

{¶ 31} [F.] For a subset of 25 consumers who contacted the Commission about their enrollment with XOOM in 2021 and 2022:

- a. XOOM agrees to return any consumers enrolled with it to their utilities' default service and rerate such consumers based on the difference between the rates charged by XOOM and the applicable default service rate, if the rates charged by XOOM exceed the default service rate. XOOM also agrees to refund each customer an amount equal to \$75.00 for each account being returned to default service.
- b. XOOM agrees to notify, via letter, consumers who were enrolled with XOOM about their return to utility default service. XOOM's proposed notification to consumers shall be subject to review by Staff and also be provided at the same time to OCC. Such notification shall expressly state that the rates for utility default service have increased and that said service may not provide the lowest price. XOOM shall also direct consumers to consult the Commission's Apples-to-Apples comparison charts and OCC's Wise Energy Choices Fact Sheet. XOOM shall also provide a copy to OCC of the final form notification to be sent to consumers.
- c. For any customers who provide verifiable evidence to XOOM showing that the customer was charged a switching fee when switched to XOOM's service shall be issued a full refund or credit from XOOM for any such fees.
- d. For any customers who provide verifiable evidence to XOOM showing that the customer was charged an early termination fee as a result of the switch to XOOM's service, XOOM agrees to issue a full refund or credit for any such fees.
- e. XOOM will provide documentation to OCC subject to the existing protective agreement between XOOM and OCC confirming that XOOM has rerated and

provided the \$75.00 refund to each of the enrolled customers identified in Section F of the Stipulation. XOOM will also provide verification to OCC that the notification described in Section F.2 of the Stipulation was provided to consumers.

(Jt. Ex. 1 at 6-8.)

{¶ 32} [G.] XOOM agrees that it shall, prior to sending letters to its customers about their return to the utility default service, provide a draft copy of such letter to Staff for its review and approval. (Jt. Ex. 1 at 8.)

{¶ 33} [H.] For every customer complaint received by XOOM directly or forwarded to it from the Commission about an unauthorized enrollment that occurred from January 1, 2021, to the present date by ACN Inc., that is confirmed by XOOM to be an unauthorized enrollment, XOOM will return all such customers not already addressed by Sections E and F above to the utilities' default service and provide rerates based on the difference between the rates charged by XOOM (if such rates exceed their utility's default rate) and the applicable utility default service rates. XOOM will provide documentation to OCC subject to the existing protective agreement between XOOM and OCC confirming any rerates by XOOM pursuant to Section H of the Stipulation. (Jt. Ex. 1 at 8.)

{¶ 34} [I.] XOOM agrees to a forfeiture of \$120,000 upon approval of the Stipulation by the Commission. XOOM agrees to submit payment by certified check, money order, or wired funds made payable to "Treasurer, State of Ohio," to: Public Utilities Commission Ohio, Attention: Fiscal Division, 180 E. Broad Street, Columbus, OH 43215-3793. The payment shall be made within 30 days of the Order approving the Stipulation and shall note the docket number assigned to this matter. (Jt. Ex. 1 at 8-9.)

{¶ 35} [J.] XOOM agrees to make a one-time donation of \$100,000 to the Dollar Energy Fund to fund grants to be used for bill payment assistance programs for Ohio

consumers within ten business days of a Commission Order approving the Stipulation (Jt. Ex. 1 at 9).

{¶ 36} [K.] Within ten business days following execution of the Stipulation, XOOM will file with the Commission a motion to withdraw its May 25, 2022 Interlocutory Appeal, contingent on the Commission approving the Stipulation (Jt. Ex. 1 at 9).

{¶ 37} Concerning procedural matters within the Stipulation, XOOM and Staff agree that the Stipulation is not an admission or finding of a violation or liability, shall not be cited in future proceedings outside of enforcement of its terms, and resolves all issues in the case as presented by Staff's April 18, 2022 letter and June 6, 2022 Staff Report, as amended on June 15, 2022. Further, the Stipulation is expressly conditioned on its adoption by the Commission in its entirety without material modification and provides the Signatory Parties the right to withdraw from the Stipulation in such an event, after the filing and denial of an application for rehearing. Finally, the parties to the Stipulation agree to support the Stipulation if it is contested and agree to not oppose an application for rehearing designed to defend its terms.

C. Consideration of the Stipulation

{¶ 38} Ohio Adm.Code 4901-1-30 authorizes two or more parties to Commission proceedings to enter into a written stipulation concerning the issues presented in the proceeding. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

{¶ 39} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio*

Edison Co., Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

{¶ 40} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994). The Supreme Court of Ohio stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 41} XOOM and Staff urge the Commission to approve the Stipulation in its entirety. OCC offers neither support nor opposition to the Stipulation. The Commission addresses the parties' specific arguments in the context of the three criteria for evaluating the reasonableness of the Stipulation below.¹

¹ While the parties may not have explicitly organized their respective arguments under each prong of the Commission's three-part test for analyzing the reasonableness of a settlement agreement, we have discussed each argument raised within this framework.

1. IS THE STIPULATION THE PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES?

{¶ 42} XOOM represents that the Stipulation is a comprehensive settlement of issues raised by parties with diverse interests, all of whom participated in an open process while being represented by able counsel and technical experts experienced in regulatory matters before the Commission (Joint Ex. 1 at 1-2). XOOM submits that OCC does not dispute that the Stipulation is the product of serious bargaining among capable and knowledgeable parties where its August 3, 2023 letter indicates that it does not oppose the Stipulation. (XOOM Ex. 1 at 15).

{¶ 43} We find that the first part of the three-part test is satisfied here. XOOM witness Bryce McKenney testified that the parties, including OCC, discussed and negotiated the issues in the Stipulation at length (XOOM Ex. 1 at 14). OCC acknowledged that negotiations occurred for more than a year and resulted in a compromise containing consumer protections (XOOM Ex. 2). Further, the evidence demonstrates that all parties, including OCC, were adequately represented by knowledgeable counsel, who have extensive experience practicing before the Commission in utility matters, during the settlement process. (Joint Ex. 1 at 2.)

2. DOES THE STIPULATION, AS A PACKAGE, BENEFIT RATEPAYERS AND THE PUBLIC INTEREST?

{¶ 44} XOOM believes the Stipulation, viewed as a package, benefits customers and the public interest. XOOM avers that the various components of the Stipulation, following an extensive investigation and analysis, satisfy or otherwise address each of the issues raised during Staff's investigation, conditions which Staff has agreed to by signing the Stipulation. Furthermore, after actively participating in the negotiations, OCC has not opposed the Stipulation, which is beneficial for all customers. (XOOM Ex. 1 at 5, 14-15; Joint Ex. 1 at 2.)

{¶ 45} XOOM submits that the key components of the Stipulation, found in sections A-K of the Stipulation, and summarized in Section B above, address each issue raised in Staff's April 18, 2022 letter. Further, XOOM, through these same terms, asserts that in 2021, XOOM promptly investigated the initial questioned enrollments linked to ACN, Inc., and properly resolved those questioned enrollments. XOOM argues that it implemented appropriate enhancements to its sales quality process based on Staff's investigation, as is evidenced in the Stipulation. XOOM further states that the Stipulation affirms XOOM has conducted an extensive audit of all enrollments between January and June 2021, prompted by representatives from ACN, Inc., and that XOOM agreed to reverse certain additional enrollments, returning those customers to their utilities' default service and rerating them, in addition to providing refunds per enrolled account of switching or early termination fees. Finally, XOOM submits that through the Stipulation, it agrees to pay a proposed forfeiture of \$120,000 and to make a donation of \$100,000 to the Dollar Energy Fund, which funds bill payment assistance programs for Ohio consumers. XOOM believes that these key terms show that the Stipulation, as a package, is to the benefit of ratepayers and the public interest. (XOOM Ex. 1 at 5-14.)

{¶ 46} We find that the second part of the three-part test is satisfied here. XOOM witness Bryce McKenney testified to the various conditions of the Stipulation and how each shows that XOOM reacted appropriately to Staff's concerns and committed to remedial measures. The Stipulation demonstrates that XOOM understands the gravity of the issues raised by Staff and the importance of compliance with the Commission's rules. (Joint Ex. 1 at 2, 4-9, XOOM Ex. 1 at 5-14.)

3. DOES THE STIPULATION VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE?

{¶ 47} XOOM and Staff submit that the Stipulation does not violate any important regulatory principle or practice. Further, XOOM witness Bryce McKenney testified to the various segments of the Stipulation, which he opines does not violate any regulatory

principle or practice, and verily, was not opposed by OCC and is signed by Staff, who brought forth the issues in this case to begin with. (Joint Ex. 1 at 1, XOOM Ex. 1 at 14-15.)

{¶ 48} We find that the third part of the three-part test is satisfied here. The Stipulation, through its numerous terms, does not violate any regulatory principle or practice. Rather, it requires XOOM to comply with the Commission's regulations, correct errors raised by Staff, and otherwise furthers the Commission's commitment to protect consumers while maintaining a competitive marketplace. (Joint Ex. 1 at 3-9.)

D. Consideration of XOOM's Motion for Protective Order and to Withdraw its Request to Certify an Interlocutory Appeal

{¶ 49} On June 21, 2022, XOOM filed a motion for protective order related to 12 documents XOOM submitted to Staff as part of its investigation that were subsequently the subject of a request for public records sent to the Commission from OCC, pursuant to R.C. 149.43. The 12 documents identified by XOOM are responses to Staff sent on July 6, 2021, July 12, 2021, August 6, 2021, August 12, 2021, September 9, 2021, September 21, 2021, October 29, 2021, November 12, 2021, December 15, 2021, February 18, 2022, May 10, 2022, and May 11, 2022. In its supporting memorandum, XOOM submits that these 12 documents are, individually and collectively, significant to its overall marketing strategy in Ohio and were marked confidential when provided to Staff. XOOM avers that the information contained within the 12 documents includes market-sensitive information, settlement communications, market strategy and activities, and enrollment quantities at specific, granular levels, and, therefore, collectively this information constitutes confidential trade secrets which should be protected from disclosure pursuant to Ohio Adm.Code 4901-1-24(D). XOOM asserts that the information it seeks to protect would satisfy the test set out by the Supreme Court of Ohio in to determine if certain information qualifies as a trade secret. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 513 (1997).

{¶ 50} Here, where the motion for protective order is unopposed, and the information sought to be protected, as it is described by XOOM, appears to be the type of information the Commission would grant protective treatment, we find XOOM's motion reasonable. Accordingly, the motion is granted.

{¶ 51} On August 15, 2023, pursuant to Section K of the Stipulation, XOOM filed a motion to withdraw its Interlocutory Appeal. Although the attorney examiner denied certification of the Interlocutory Appeal by Entry dated August 26, 2022, XOOM may challenge the propriety of that ruling pursuant to Ohio Adm.Code 4901-1-15(F). In light of the Commission's decision with respect to the Stipulation in this Opinion and Order, and XOOM's commitment to withdraw the Interlocutory Appeal as part of the Stipulation, we find XOOM's motion to withdraw to be reasonable and, therefore, grant the motion.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 52} On April 18, 2022, Staff filed a letter in this docket requesting that the Commission formally open a proceeding under which Staff could investigate and analyze marketing allegations against XOOM.

{¶ 53} On April 20, 2022, the Commission issued an Entry: (1) opening an investigation to address the alleged unfair, deceptive, or unconscionable acts or practices of XOOM; and, (2) providing XOOM an opportunity to respond to the allegations and to show cause why their certifications should not be suspended during the Staff investigation and establishing a procedural schedule.

{¶ 54} On June 6, 2022, and June 15, 2022, Staff filed its Report of Investigation and Amended Report of Investigation, respectively.

{¶ 55} On August 2, 2023, Staff and XOOM filed the Stipulation.

{¶ 56} On January 31, 2024, the Attorney Examiner filed an Entry establishing a procedural schedule.

{¶ 57} On February 27, 2024, XOOM filed the direct testimony of Bryce McKenney in support of the Stipulation.

{¶ 58} On March 5, 2024, a hearing was held in the case during which XOOM presented evidence in support of the Stipulation.

{¶ 59} The Stipulation is reasonable and should be adopted, as it: (1) is a product of serious bargaining among capable, knowledgeable parties; (2) as a package, benefits ratepayers and the public interest; and, (3) does not violate any important regulatory principle or practice.

V. ORDER

{¶ 60} It is, therefore,

{¶ 61} ORDERED, That the Stipulation between Staff and XOOM be approved, as further described in this Opinion and Order. It is, further,

{¶ 62} ORDERED, That XOOM's June 21, 2022 motion for protective order be granted. It is, further,

{¶ 63} ORDERED, That XOOM's August 15, 2023 motion to withdraw its Interlocutory Appeal be granted. It is, further,

{¶ 64} 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
John D. Williams

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

Summary: Opinion & Order that the Commission adopts the joint stipulation and recommendation entered into by Staff and XOOM Energy Ohio, LLC electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio.