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CONSUMER PROTECTION SECTION

MAY 01 2020

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

IN THE MATTER OF:

LE Energy, LLC dba Utility Gas and Power
2680 Corporate Park Dr., Ste 100
Opelika, Alabama 36801

DOCKET NO. 565138

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance") is entered into this 28th day of April 2020, by Dave Yost, Attorney General of the State of Ohio ("Attorney General"), and LE Energy, LLC dba Utility Gas and Power ("LE Energy") (collectively, the "Parties").

WHEREAS, the Attorney General, citing reasonable cause to believe that violations of Ohio's consumer protection laws have occurred, conducted the Investigation pursuant to the authority granted by the Consumer Sales Practices Act (the "CSPA") R.C. 1345.06;

WHEREAS, the Attorney General, citing reasonable cause to believe that violations of the Telephone Consumer Protection Act (the "TCPA") 47 § U.S.C. 227 and 47 C.F.R. § 64.1200 have occurred, also conducted the Investigation pursuant to the authority granted by R.C. 109.87(C)(6);

WHEREAS, LE Energy cooperated in the Investigation;

WHEREAS, the Attorney General may, pursuant to R.C. 1345.06(F), terminate an investigation upon the acceptance of an Assurance of Voluntary Compliance;

WHEREAS, LE Energy denies that it committed any violations of law or that any violations of law took place, but desires to resolve the Investigation and avoid the expense and other costs of an ongoing Investigation and potential litigation;

WHEREAS, LE Energy contends that it complied with all applicable laws and required those entities working for it to do so as well and, under R.C. § 1345.06(F)(2), LE Energy's agreement to this Assurance is not evidence of violation of that chapter, and it shall not be construed against LE Energy as such evidence;

WHEREAS, LE Energy voluntarily enters into this Assurance with the Attorney General as it intends to continue to comply with all aspects of applicable consumer law, including by not limited to, the provisions of the CSPA, R.C. 1345.01 et seq. and its Substantive Rules, O.A.C. 109:4-3-01 et seq., the TCPA, 47 U.S.C. § 227 et seq. and 47 C.F.R. § 64.1200 and R.C. 109.87 (collectively, the "Consumer Laws"); and

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, the parties hereto agree as follows:

DEFINITIONS

1. The "Effective Date" of this Agreement is April 28, 2020.
2. "LE Energy" means LE Energy, LLC dba Utility Gas and Power, a limited liability company organized under the laws of the State of Michigan with its principal place of business at 2680 Corporate Park Dr., Suite 100 Opelika, Alabama 36801.
3. "LE Parties" means LE Energy and its officers, members, managers, agents, representatives, salespersons, employees, independent contractors, successors and assigns, and all persons acting or allegedly acting in concert or participation with it, directly or indirectly, through any corporate device, partnership or association.
4. "Affiliates" means, collectively, All Pro Communications, Inc. ("APC") and its Vendors, as that term is defined below in this Assurance.

5. “Investigation” means the Attorney General’s investigation of the LE Parties’ marketing, sales and business practices for actions occurring on or before the Effective Date and styled as *In the Matter of LE Energy, LLC dba Utility Gas and Power*, Docket No. 565138, which culminated in this Assurance.

6. “Action” and “Enforcement Action” mean any legal action or investigation initiated or filed by the Attorney General after the Effective Date brought in connection with or under the Attorney General’s authority granted by the Consumer Laws.

STATEMENT OF SPECIFIC FACTS

7. From May 2017 to March 2019, LE Energy was engaged in the business of advertising, soliciting, and offering services, related to the sale, arrangement for supply, and/or provision of customers’ retail natural gas and/or electricity products and services in the State of Ohio.

8. In connection with this, LE Energy used an independent contractor, APC to engage in telephone solicitations on its behalf.

9. In turn, APC contracted with third party independent contractors (the “Vendors”) to engage in telephone solicitations on LE Energy’s behalf to promote LE Energy’s goods and/or services.

10. Through telephone solicitations, the Vendors offered gas and/or electricity products and services to residential and small commercial customers on behalf of First Energy, Dominion East, Duke Energy, AEP, Columbia Gas of Ohio, and others.

THE STATE’S ALLEGATIONS

The Attorney General alleges that:

11. LE Energy is a “supplier” as it was, at all times relevant hereto, engaged in the business of effecting “consumer transactions,” either directly or indirectly, by soliciting or selling goods or services to “consumers” for purposes that were primarily for personal, family or household use, as those terms are defined in R.C. 1345.01(A), (C) and (D).

12. The Vendors engaged in “telephone solicitations” as that term is defined in 47 U.S.C. § 227(a)(4) and C.F.R. § 64.1200(f)(14).

13. LE Energy is a “seller” as that term is defined in C.F.R. § 64.1200(f)(9) as LE Energy is an entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase of goods or services which is transmitted to another person.

14. The Vendors utilized an “automatic telephone dialing system” as that term is defined in the TCPA, 47 § U.S.C. 227(a)(1) and C.F.R. § 64.1200(f)(2), to make some telephone calls.

15. The Vendors engaged in a pattern or practice of initiating telephone solicitations to residential telephone subscribers in the State of Ohio, whose telephone numbers were listed on the National Do Not Call Registry, without prior express consent from the subscriber or to a subscriber properly meeting exemptions.

16. At times, the Vendors initiated telephone solicitations to residential telephone subscribers after those subscribers requested no further solicitation calls.

17. Some recipients of some calls from the Vendors reported that the Vendors’ telephone solicitors failed to promptly identify the entity on whose behalf the solicitation was made or misrepresented that the Vendors were calling on behalf of the consumers’ current gas or electric supplier when such was not the case.

LE ENERGY'S COMPLIANCE OBLIGATIONS

18. LE Energy shall comply with the CSPA, R.C. 1345.02, the TCPA, 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200(c)(2), and R.C. 109.87 by refraining from placing telemarketing calls to residential telephone numbers on the National Do Not Call Registry maintained by the Federal Trade Commission, unless an exemption or safe harbor is applicable.

19. LE Energy shall comply with the CSPA, R.C. 1345.02, the TCPA, 47 U.S.C. § 227(c), 47 C.F.R. § 64.1200(c)(2), and R.C. 109.87 by refraining from placing telemarketing calls to telephone numbers of consumers or residential subscribers who have previously requested to receive no further calls from the seller or on the seller's behalf, unless an exemption or safe harbor is applicable.

20. LE Energy shall comply with the CSPA, R.C. 1345.02, the TCPA 47 U.S.C. § 227(b) and 47 C.F.R. § 64.1200(a)(2), and R.C. 109.87 by refraining from initiating telemarketing solicitations to cellular subscribers' telephone numbers using an automatic telephone dialing system without express prior written consent, unless an exemption or safe harbor is applicable.

21. LE Energy shall comply with the CSPA, R.C. 1345.02, by refraining from placing telemarketing calls using artificial or prerecorded messages to cellular or residential subscribers' telephone numbers without express prior written consent, unless an exemption or safe harbor is applicable.

22. LE Energy shall comply with the CSPA, R.C. 1345.02(B)(1) and (9), by refraining from placing telemarketing calls to consumers without promptly identifying the seller on whose behalf the call is being made.

23. LE Energy shall comply with the CSPA, R.C. 1345.02(A), and the TSSA, R.C. 4719.01 et seq., unless an exemption or safe harbor is applicable.

24. LE Energy shall require via contract that all third parties it hires to engage in telemarketing solicitations shall comply with the provisions in Paragraphs 18-23 of this Assurance.

25. Notwithstanding LE Energy's agreement to the foregoing provisions, this Assurance is not intended to impose any additional obligations or restrictions on the LE Parties beyond whatever law is in place on the Execution Date. To the extent any provisions of this Assurance cease to be unlawful, such provisions will be null and void and will cease to govern.

TERMINATION OF INVESTIGATION AND RELEASE

26. As part of the consideration for this Assurance, the Attorney General agrees to terminate the Investigation. The Attorney General releases LE Energy from all civil claims and penalties of any kind that could have been asserted against LE Energy, prior to the Effective Date, based on the allegations in this Assurance under the Consumer Laws or any other state or federal consumer protection laws relating to LE Energy's telemarketing practices.

27. Nothing in this Assurance creates any private right of action to enforce its terms; nor does anything in this Assurance waive or limit any private right of action.

GENERAL PROVISIONS

28. This Assurance shall be governed by the laws of the State of Ohio.

29. This Assurance does not constitute an approval by the Attorney General of any of LE Energy's business practices and LE Energy shall not represent directly or indirectly, or in any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of the LE Parties' business practices.

30. This Assurance sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings, whether written or oral, between the Parties and/or their respective counsel with respect to the subject matter

hereof. This Assurance may be amended by written agreement between the Parties, subject to any further requirements under state law.

31. The Parties acknowledge that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.

32. LE Energy and the Attorney General shall continue to negotiate in good faith, and resolve, through the Office of the Attorney General, any consumer complaints filed with this office after the Effective Date concerning LE Energy's conduct occurring prior to or after the Effective Date of this Assurance.

33. As of the Effective Date, the Attorney General is not aware of any other investigation(s) into LE Energy pending before any other government agency in the State of Ohio; however, the Attorney General has not inquired of any other such agencies as to the existence or non-existence of such investigation(s).

34. This Assurance is a public record and shall be maintained in the Attorney General's Public Inspection File.

STATUTORY DAMAGES

35. As part of the consideration for the termination of the Attorney General's investigation of the LE Parties under the CSPA, R.C. 1345.06, and R.C. 109.87(C)(6), LE Energy also agrees to pay statutory damages in the amount of \$8,400.00 to the Attorney General. The Attorney General shall distribute the statutory damages at his sole discretion to consumers who previously complained of the Vendors' telephone solicitation practices.

36. As part of the consideration for the termination of the Attorney General's investigation of the LE Parties under the CSPA, R.C. 1345.06, and R.C. 109.87(C)(6), LE Energy agrees to pay \$20,000.00 to the Attorney General's Consumer Protection Enforcement Fund.

37. The payments due to the Attorney General under this Assurance shall be made before the Effective Date of this Assurance by delivering a certified check or money order, made payable to the "Ohio Attorney General's Office," to the following address:

Ohio Attorney General's Office
Consumer Protection Section
Attn: Financial Specialist
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

PENALTIES FOR FAILURE TO COMPLY

38. As consideration for the relief agreed to herein, if the Attorney General believes that LE Energy has failed to comply with the terms of this Assurance, and if the failure to comply does not threaten the health or safety of the citizens of Ohio and/or does not create an emergency requiring immediate action, the Attorney General will notify LE Energy in writing of such failure to comply. In such a case, LE Energy shall have the right, but not an obligation, to provide a written response within 21 days of receiving written notice from the Attorney General of the alleged failure to comply. The Attorney General shall not initiate an enforcement proceeding until after the 21-days elapse. Nothing herein shall prevent the Attorney General from providing additional time beyond the 21-day period to respond.

39. The Attorney General may assert any claim that LE Energy has violated this Assurance in an Action to enforce this Assurance, or to seek any other relief afforded by law, including attorney fees, investigative costs, and a civil penalty.

40. This Assurance shall in no way exempt LE Energy from any other obligations imposed by law, and nothing contained in this Assurance shall relieve LE Energy of any legal responsibility for any acts or practices engaged in by LE Energy other than those acts specifically resolved by this Assurance.

41. Nothing in this Assurance shall in any way preclude the Attorney General from commencing any future investigative or enforcement action under any legal authority granted to the Attorney General with respect to any: (a) violations by LE Energy of the requirements of this Assurance; or (b) new actions by LE Energy after the Effective Date that result in any future allegation by the Attorney General against LE Energy (except that such actions will be subject to any applicable limitations in this Assurance).

WHEREFORE, the Parties hereto affix their signatures in recognition and acceptance of the terms contained herein on this 28th day of April 2020.

DAVE YOST
OHIO ATTORNEY GENERAL



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Counsel for the Ohio Attorney General

April 28, 2020

DATE

Natara Feller

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Counsel for LE Energy

April 28, 2020

DATE

Philip Cato

Philip Cato
President and COO
On behalf of:
LE Energy, LLC dba Utility Gas and Power
2680 Corporate Park Dr., Ste 100
Opelika, Alabama 36801

April 28, 2020

DATE