

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY

COMMONWEALTH OF PENNSYLVANIA	:	CIVIL ACTION
BY ATTORNEY GENERAL	:	
MICHELLE A. HENRY	:	
	:	EQUITY
Petitioner,	:	
	:	
v.	:	Case No. 2019-CV-8434
	:	
TITAN GAS, LLC D/B/A	:	
TITAN GAS & POWER D/B/A	:	
CLEANSKY ENERGY D/B/A	:	
CLEAN SKY ENERGY	:	
	:	
Respondent.	:	

JOINT STIPULATED MOTION FOR ENTRY OF CONSENT ORDER REGARDING COMPLIANCE WITH AN ASSURANCE OF VOLUNTARY COMPLIANCE AND THE TELEMARKETER REGISTRATION ACT

The Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Michelle A. Henry (“Commonwealth” or “Petitioner”), hereby moves this Honorable Court to enter an Agreed Order pursuant to Section 201-8(a) of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (“Consumer Protection Law”) holding that Respondent Titan Gas, LLC d/b/a Titan Gas & Power d/b/a CleanSky Energy d/b/a Clean Sky Energy (“Titan”) shall comply with the terms of the Assurance of Voluntary Compliance signed and entered into by the Commonwealth and Titan (collectively, the “Parties”) and filed with this Court on November 15, 2019. In support of this Stipulated Motion, the Commonwealth avers the following:

1. Petitioner is the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Michelle A. Henry with offices located at Strawberry Square, 15th Floor, Harrisburg, Pennsylvania 17120.
2. Respondent Titan is a Texas Limited Liability Company registered to do business in the Commonwealth of Pennsylvania as a Foreign Limited Liability Company with the

Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations:
Corporations Section.

3. On November 15, 2019, the Commonwealth filed with the Dauphin County Court of Common Pleas, at No. 2019-CV-8434, an Assurance of Voluntary Compliance (“Assurance”) with Titan pursuant to Section 201-5 of the Consumer Protection Law, 73 P.S. § 201-5. A true and correct copy of the Assurance is attached hereto and incorporated herein as Exhibit A.

4. Settlement Terms (II)(A), (B) and (C) of the Assurance, under the subheading “Injunctive and Affirmative Relief,” provide as follows:

Respondent shall comply with any and all provisions of the [Pennsylvania Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (“Telemarketer Act”)] and any amendments thereto, and is permanently enjoined from any violation thereof. Respondent shall comply with any and all provisions of the Consumer Protection Law and any amendments thereto, and is permanently enjoined from any violation thereof. Respondent and any and all third-party telemarketers hired to act on Respondent’s behalf are permanently enjoined from initiating or causing to be initiated telephone solicitation calls to any Pennsylvania telephone subscriber who has registered his/her telephone number on the Pennsylvania [Do-Not-Call] List.”

Ex. A at pgs. 7-8 (original formatting omitted).

5. A violation of the Federal Trade Commission’s Telemarketing Sales Rule, 16 CFR § 310.1, *et seq.* (“TSR”) constitutes a violation of the Telemarketer Act. 73 P.S. § 2245(a)(9).

6. A violation of the Telemarketer Act is also a violation of the Consumer Protection Law. 73 P.S. § 2246(a).

7. Miscellaneous Term (IV)(K) of the Assurance provides that the “‘Filing Date and Effective Date’ of this Assurance of Voluntary Compliance shall be the day it is filed with the Court.” Ex. A at pg. 12.

8. Between the Effective Date of the Assurance and August 2023, Titan or a third-party telemarketer hired to act on behalf of Titan initiated Twenty-Nine Million Fifty-Seven

Thousand Four Hundred Eighty-Two (29,057,482) telephone solicitation calls to Pennsylvania consumers.

9. Of the aforementioned telephone solicitation calls, an extrapolated Two Million Seven Hundred Forty Thousand Four Hundred Eighty-Four (2,740,484) were placed to PA consumers registered on the Pennsylvania Do-Not-Call List.

POSITION OF THE COMMONWEALTH

10. The TSR declares that it is an abusive telemarketing practice for a seller to contact a person registered on a Do-Not-Call List unless the seller or telemarketer is able to demonstrate an express agreement, in writing, of the consumer's "authorization that calls made by or on behalf of a specific party may be placed to that person." 16 C.F.R. § 310.4(b)(iii)(B)(1).

11. Titan, or third party vendors acting on Titan's behalf, utilized online lead generation practices in an effort to obtain consumers' consent to be contacted for purposes of making telephone solicitation calls on behalf of Titan.

12. In connection with these lead generation practices, Titan, or third party vendors acting on Titan's behalf, directed consumers to websites with misleading offers of free samples, giveaways and/or incentives or offers unrelated to Titan's business services in an effort to obtain consumers' consent to be contacted for purposes of telemarketing solicitation on behalf of Titan.

13. The identities of these "marketing partners," if disclosed at all, were concealed behind a hyperlink.

14. The clear and conspicuous disclosure of the identity of the party from whom a consumer will receive telephone solicitation calls is required to render valid a consumer's written consent to authorize such calls.

15. It is therefore the Commonwealth's position that the prior express written consent relied upon by Titan to make telephone solicitation calls was obtained through the use of unlawful and deceptive lead generation practices, such that it is not effective consent.

16. It is the Commonwealth's further contention that telephone solicitation calls made on the basis of ineffective consent are in violation of the TSR and thereby the Telemarketer Act, and further cannot have been made as a result of error.

POSITION OF TITAN

17. It is the position of Titan that it has not violated the terms of the Assurance.

18. Titan maintains that calls made to PA consumers registered on the Pennsylvania Do-Not-Call List were made with the prior express written consent of such consumers, and thus are not prohibited by the Telemarketer Act or the Consumer Protection Law.

19. Further, in accordance with Section 2245(a)(2) of the Telemarketer Act, and to ensure compliance with the AVC since its filing, Titan has:

- (i) established and implemented written procedures to comply with the Telemarketer Act;
- (ii) trained personnel in the procedures implemented;
- (iii) required telemarketers acting on behalf of Titan to maintain and record lists of persons who may not be contacted; and,
- (iv) confirmed that any calls that may have been made in violation of the Telemarketer Act, the Consumer Protection Law and the Assurance of Voluntary Compliance are the result of error.

20. Under the above provisions of the Telemarketer Act, a seller or telemarketer who implements and confirms the procedures outlined in this section is not liable for violating the Telemarketer Act. 73 P.S. § 2241(a)(2).

GENERAL & MISCELLANEOUS TERMS

21. Section 201-8(a) of the Consumer Protection Law States:

Any person who violates ... any of the terms of an assurance of voluntary compliance duly filed in the court under section 5 of this act shall forfeit and pay to the Commonwealth a civil penalty of not more than five thousand dollars (\$5,000) for each violation. For purpose of this section, the court ... in which an assurance of voluntary compliance is filed shall retain jurisdiction, and the cause shall be continued; and, in such cases, the Attorney General ... may petition for recovery of civil penalties and any other equitable relief deemed necessary or proper.

73 P.S. § 201-8(a)

22. Notwithstanding the positions of the Parties, they have agreed to resolve the issues resulting from the conduct described herein by this Joint Stipulated Motion for the Entry of a Consent Order.

23. The Parties are amenable to the entry of a Consent Order in order to resolve the Attorneys General's concerns under the State Consumer Protection Laws as to the matters addressed in this Stipulation and thereby avoid significant expense, inconvenience, and uncertainty.

24. Respondent Titan has agreed to this Stipulation solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Respondent Titan expressly denies. Titan does not admit any violation of the Assurance of Voluntary Compliance or State Consumer Protection Laws and does not admit any wrongdoing that was or could have been alleged by any Attorney General.

25. No part of this Stipulated Motion for the Entry of a Consent Order, or any resulting Consent Order, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Respondent Titan. This document and its contents are not intended for use by any third party for any purpose, including submission to any court for any purpose.

26. This Stipulated Motion for the Entry of a Consent Order, and any resulting Consent Order, shall not be construed or used as a waiver or limitation of any defense otherwise available to Respondent Titan in any other action, or of Titan's right to defend from, or make any arguments in, any private individual action, class claims or suits, or any other governmental or regulatory action relating to the subject matter or terms of this Stipulated Motion for the Entry of a Consent Order, and any resulting Consent Order. This Stipulated Motion for the Entry of a Consent Order is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. Notwithstanding the foregoing, the Commonwealth may file an action to enforce the terms of this Stipulated Motion for the Entry of a Consent Order, and any resulting Consent Order.

27. It is the intent of the Parties that this Stipulated Motion for the Entry of a Consent Order, and any resulting Consent Order not be admissible in other cases or binding on the parties in any respect other than in connection with the enforcement of this Motion and any resulting Consent Order.

28. No part of this Stipulated Motion for the Entry of a Consent Order, or any resulting Consent Order shall create a private cause of action or confer any right to any third party for violation of any federal or state statute.

29. Titan shall pay the sum of One Hundred Sixty Thousand Dollars and 00/100 (\$160,000.00) in civil penalties pursuant to Section 201-8(a) of the Consumer Protection Law, 73

P.S. § 201-8(a), to the Commonwealth to be disbursed to the Commonwealth of Pennsylvania, Department of Treasury.

30. Part of those penalty amounts shall be distributed as statutory remittance pursuant to Section 2245(k)(2) of the Telemarketer Act, 73 P.S. § 2245(k)(2), to consumers who filed complaints before the entry of this Order.

31. Also, pursuant to Section 201-8(a)'s grant of authority to the Commonwealth to seek "other equitable relief deemed necessary or proper," Titan shall pay the Commonwealth Thirty-Five Thousand Dollars and 00/100 (\$35,000.00) for its fees and costs in obtaining this Order to be used for future public protection and educational purposes.

32. Titan shall provide a written report to the Commonwealth within thirty (30) days of this Order setting forth steps taken to ensure compliance with the Assurance and Telemarketer Registration Act.

WHEREFORE, the Commonwealth respectfully requests that this Honorable Court grant this Joint Stipulated Motion and, pursuant to Section 201-8(a) of the Consumer Protection Law issue the proposed Consent Order and other relief requested herein.

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FOR THE PETITIONER:

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

MICHELLE A. HENRY
ATTORNEY GENERAL

Date: 8/5/24

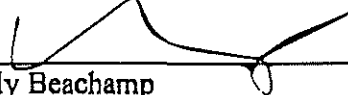
By: Mark W. Wolfe
Mark W. Wolfe (PA No. 327807)
Deputy Attorney General
Strawberry Square, 15th Floor
Harrisburg, PA 17120
Telephone: 717-772-3558
Email: mwolfe@attorneygeneral.gov

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CONSENTED TO BY THE RESPONDENT:

TITAN GAS, LLC

Date: 8/5/24

By: 
Andy Beachamp
Chief Regulatory and Compliance Officer
CleanSky Energy
3355 West Alabama St, Suite 500
Houston, TX 77098
Telephone: 346 327 3128 |
Email: ABeachamp@CleanSkyEnergy.com
For Respondent

Date: 8/5/2024

By: Renardo L. Hicks
Renardo L. Hicks, (PA ID No. 40404)
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Telephone: 717-237-6081
Email: rhicks@eckertseamans.com
Counsel for Respondent

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CLEAN SKY ENERGY	:	
	:	
Respondent.	:	

**CONSENT ORDER REGARDING
ASSURANCE OF VOLUNTARY COMPLIANCE**

AND NOW, this _____ day of _____, 2024, upon consideration of the *Joint Stipulated Motion for Entry of Consent Order Regarding Compliance with an Assurance of Voluntary Compliance and the Telemarketer Registration Act* (“Joint Stipulated Motion”) filed by the Commonwealth and Titan Gas, LLC d/b/a Titan Gas & Power d/b/a CleanSky Energy d/b/a Clean Sky Energy (“Titan”) seeking stipulated relief pursuant to Section 201-8(a) of the Consumer Protection Law, 73 P.S. § 201-8(a), it is hereby ordered that said Joint Stipulated Motion is GRANTED.

It is further ORDERED:

1. Respondent Titan shall comply with Settlement Terms (II)(A), (B) and (C) of the Assurance of Voluntary Compliance (“Assurance”) filed on November 15, 2019;
2. Titan shall ensure its business practices adhere to the terms of the Assurance and Telemarketer Registration Act and shall submit a written report to the Commonwealth detailing the steps taken to ensure compliance by no later than thirty (30) days from the entry of this Order;

3. Titan shall pay the sum of One Hundred Sixty Thousand Dollars and 00/100 (\$160,000.00) in civil penalties pursuant to Section 201-8(a) of the Consumer Protection Law to the Commonwealth to be disbursed to the Commonwealth of Pennsylvania, Department of Treasury and to consumers as statutory remittance pursuant to Section 2245(k)(2) of the Telemarketer Act.

4. Titan shall also pay the Commonwealth Thirty-Five Thousand Dollars and 00/100 (\$35,000.00) for its fees and costs in obtaining this Order to be used for future public protection and educational purposes.

5. Titan shall make the aforementioned payments to the Commonwealth within thirty (30) days of the entry of this Order;

6. This Order shall have the force and effect of a permanent injunction issued pursuant to Section 201-4 of the Consumer Protection Law, 73 P.S. § 201-4;

7. Titan's failure to comply with the terms of this Order may subject Titan to civil penalties and any other equitable relief deemed necessary or proper pursuant to Section 201-8(a) and/or 201-9 of the Consumer Protection Law;

8. Nothing contained in this Order, or the Joint Stipulated Motion shall be interpreted to replace, modify or otherwise alter the terms of the Assurance filed with this Court on November 15, 2019;

9. The terms of the Assurance remain in full force and effect; and

10. This Court shall retain jurisdiction over this matter.

BY THE COURT:

_____, J.

Distribution Legend:

Mark W. Wolfe (PA No. 327807)
Deputy Attorney General
Strawberry Square, 15th Floor
Harrisburg, PA 17120
Telephone: 717-772-3558
Email: mwolfe@attorneygeneral.gov
Counsel for Petitioner

Renardo L. Hicks, (PA ID No. 40404)
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Telephone: 717-237-6081
Email: rhicks@eckertseamans.com
Counsel for Respondent

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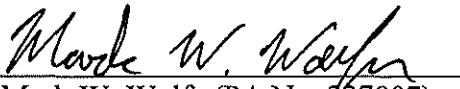
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by regular and certified mail, return receipt requested, and email on the undersigned date to the following:

Andy Beachamp
Chief Regulatory and Compliance Officer
CleanSky Energy
3355 West Alabama St, Suite 500
Houston, TX 77098
Email: ABeauchamp@CleanSkyEnergy.com
For Respondent

Renardo L. Hicks, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Email: rhicks@eckertseamans.com
Counsel for Respondent

Date: 8/5/24

By: 
Mark W. Wolfe (PA No. 627807)
Deputy Attorney General
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CLEAN SKY ENERGY	:	
	:	
Respondent.	:	

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 8/5/24

By: Mark W. Wolfe
Mark W. Wolfe (PA No. 327807)
Deputy Attorney General
Strawberry Square, 15th Floor
Harrisburg, PA 17120
Telephone: 717-772-3558
Email: mwolfe@attorneygeneral.gov