

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of :
Direct Energy Services, LLC, :
Direct Energy Business, LLC, :
Dominion Energy Solutions, Inc., :
Interstate Gas Supply, Inc., and :
SouthStar Energy Services, LLC :
for a Waiver of a Provision of :
Rule 4901-29-06(E)(1) of the Ohio :
Administrative Code. :

Case No. 17-2358-GA-WVR

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APPLICANTS' RESPONSE
TO
MOTION TO INTERVENE
OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

By their joint application of November 15, 2017, Direct Energy Services, LLC, Direct Energy Business, LLC, Dominion Energy Solutions, Inc., Interstate Gas Supply, Inc., and SouthStar Energy Services, LLC (collectively, "Applicants") seek a waiver of the provision of Rule 4901:1-29-06(E)(1), OAC, that appears to require third-party verification ("TPV") for telephonic enrollments by retail natural gas suppliers and governmental aggregators even if the entire call is recorded by the supplier or aggregator and the recording is archived and retained as required by Rule 4901:1-29-06(E)(2)(b), OAC.

On December 1, 2017, the Office of the Ohio Consumers' Counsel ("OCC") filed a motion to intervene in this proceeding. Applicants recognize that OCC typically represents the interests of residential customers in matters of this type, and does not oppose OCC's intervention in this case. However, based on certain statements in OCC's motion and the accompanying memorandum in support, Applicants question whether OCC understands the nature and narrow

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purpose of the waiver requested in the joint application. Applicants would offer the following observations.

OCC opens its motion with the statement that “(t)o protect consumers from an unlawful change of their natural gas supplier, Ohio Adm. Code 4901:1-29-06(E) contains requirements when natural gas marketers solicit customers by telephone.”¹ This statement is problematic in two respects. First, the primary purpose of the cited provision is not to prevent slamming as OCC seems to suggest. Rather, the purpose of Rule 4901:1-29-06(E) is to provide evidence that the representations and customer acknowledgments specified in its various subparagraphs were, in fact, made prior to enrolling the customer, thereby providing assurance that the customer had the information required to make an informed decision before contracting with the supplier. As explained in detail in the application, there is no need for TPV where the entire call, including the verification portion, has already been recorded by the supplier. Second, regardless of the purpose of the rule, the application specifically limits the requested waiver of the TPV requirement to telephonic enrollments triggered by customer-initiated inbound calls. Thus, contrary to OCC’s stated premise, the waiver would not apply “when natural gas marketers solicit customers by telephone.”

In support of its motion to intervene, OCC also states that it seeks to participate to “advance the position that consumers’ protections against unlawful changes of their natural gas supplier should not be diminished.”² Leaving aside OCC’s questionable interpretation of the purpose of Rule 4901:1-29-06(E), the point, for the purpose at hand, is that granting the requested waiver of the TPV requirement for telephonic enrollments will not diminish the

¹ OCC Motion to Intervene, 1.

² OCC Memorandum in Support, 2.

consumer protection where the supplier has already recorded and archived the entire call. In the event of a subsequent dispute, that recording provides irrefutable evidence as to whether the call center representative made, and the customer acknowledged, the representations required by the subparagraphs of Rule 4901:1-29-06(E). Rather than adding an additional layer of consumer protection, requiring the customer to remain on the line for a second recording of the same representations and acknowledgements that have already been captured in the supplier recording does nothing but inconvenience the customer, add costs for the supplier, and increase the likelihood that the enrollment will not be completed despite the customer's desire to enter into a contract with the supplier in question. In this same vein, Applicants would again emphasize that no party to the rulemaking proceeding, including OCC, ever suggested that TPV was necessary in instances where the supplier records the entire call, and the Commission itself never mentioned the need for such a measure in discussing the telephonic enrollment rule in Case No. 12-925-GA-ORD. Thus, although Applicants understand OCC's concern regarding the importance of consumer safeguards, it is far from clear why OCC would take the position that TPV is necessary to protect the customer in instances where the customer has initiated the transaction and where the entire call has been recorded by the supplier. Indeed, granting the waiver of the TPV requirement is in the customers' interest because it will eliminate the customer frustration resulting from a requirement that, in Applicants' view, makes no sense and provides no customer benefit.

OCC also appears to criticize the timing of the waiver application, noting that the rule has been in effect for three years and is currently subject to review in Case No. 17-1847-GA-ORD.³ If, by this comment, OCC intends to suggest that the Commission should not entertain the

³ OCC Motion, 1.

application for waiver at this time, but should wait to take up this issue in the context of the new rulemaking proceeding, Applicants adamantly disagree.

First, if the experience in Case No. 12-925-GA-ORD serves as a guide, we may be well over two years away from a final order in Case No. 17-1847-GA-ORD.⁴ Applicants should not have to wait until the pending rulemaking proceeding is completed to secure relief from the burdensome and unnecessary telephonic TPV requirement, particularly when, as explained in the joint application, there are strong indications that the Commission did not actually intend to require TPV where the supplier records the entire call, or, alternatively, did not intend that the TPV requirement would apply to customer-initiated inbound calls.⁵ If Applicants are right on either or both of these scores, the Commission should clarify its intent sooner rather than later.

Second, if the Commission did, in fact, intend to require TPV for telephonic enrollment where the customer initiates the call and where the entire call is recorded by the supplier, granting the waiver at this point will provide the Commission with valuable experience when it comes to consider whether to amend Rule 4901:1-29-06(E) in Case No. 17-1847-GA-ORD to eliminate this requirement. If there is a sharp uptick in customer complaints as a result of the waiver of the TPV requirement for customer-initiated calls, the Commission would have a solid basis for rejecting a proposed amendment that would eliminate the requirement. On the other hand, if this issue is kicked to the rulemaking proceeding, not only will prospective customers continue to be inconvenienced by the duplicative TPV process, but the Commission will have nothing before it when it addresses the issue in the rulemaking proceeding except for the exact

⁴ The previous CRNGS rulemaking was initiated by an entry dated March 12, 2012, but the rules approved therein did not take effect until December 1, 2014.

⁵ See Joint Application, 5-11.

same arguments advanced in the joint application in this case. Although Applicants are confident that there will be no increase in complaints regarding the legitimacy of verifications if the waiver is granted, surely it is better for the Commission to have actual data before it when considering amending the rule than to decide the matter in a vacuum.

As noted at the outset of this response, Applicants do not object to OCC's intervention in this case. However, to the extent the OCC statements addressed above are intended to represent grounds for denying the waiver request, Applicants submits that those grounds are without merit. For those reasons set forth in the joint application, the Commission should grant the requested waiver, or, alternatively, should clarify that the TPV requirement was not intended to apply to customer-initiated inbound calls.

Respectfully submitted,

Scott Dismukes

(By BER per 12/14/17 Email Authorization)
Scott Dismukes (0071769)
Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566-6000 – Phone
(412) 566-6099 – Fax
sdismukes@eckertseamans.com – Email

Attorney for
Direct Energy Services, LLC and
Direct Energy Business, LLC


Barth E. Royer (0016999)
Barth E. Royer, LLC
2740 East Main Street
Bexley, Ohio 43209
(614) 385-1937 – Phone
(614) 360-3529 – Fax
BarthRoyer@aol.com – Email

Attorney for
Dominion Energy Solutions, Inc.

Michael A. Nugent

(By BER per 12/14/17 Email Authorization)

Michael A. Nugent (0090408)

6100 Emerald Parkway

Dublin, Ohio 43016

(614) 659-5065 – Phone

(614)-659-5070 – Fax

mnugent@igsenergy.com – Email

Attorney for

Interstate Gas Supply, Inc.

Andrew Emerson

(By BER per 12/15/17 Email Authorization)

Andrew Emerson (0071994)

Porter, Wright, Morris & Arthur

41 South High Street

Columbus, Ohio 43215

(614) 227-2104 – Phone

(614) 227-2100 – Fax


aemerson@porterwright.com – Email

Attorney for

SouthStar Energy Services, LLC

Certificate of Service

I hereby certify that a copy of the foregoing was served by electronic mail on the following parties this 15th day of December 2017.


Barth E. Royer

Terry L. Etter
Assistant Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
terry.etter@occ.ohio.gov