

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's)	Case Nos. 17-1843-EL-ORD
Review of Ohio Adm. Code Chapters)	17-1844-EL-ORD
4901:1-21, 4901:1-23, 4901:1-24,)	17-1862-EL-ORD
4901:1-27, 4901:1-28, 4901:1-29,)	17-1845-GA-ORD
4901:1-30, 4901:1-31, 4901:1-32,)	17-1846-GA-ORD
4901:1-33, and 4901:1-34 Regarding)	17-1847-GA-ORD
Rules Governing Competitive Retail)	17-1848-GA-ORD
Electric Service and Competitive Retail)	17-1849-GA-ORD
Natural Gas Service.)	17-1850-GA-ORD
)	17-1851-GA-ORD
)	17-1852-GA-ORD

ENERGY HARBOR LLC'S INITIAL COMMENTS

I. INTRODUCTION

Energy Harbor LLC ("Energy Harbor") submits its Initial Comments pursuant to the September 8, 2021 Entry in the above-captioned proceedings, which concern proposed modifications to Ohio Administrative Code Chapters 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34. Specifically, the Commission has opened this docket to review administrative rules regarding competitive retail electric service and competitive retail natural gas service. Energy Harbor supports the proposed amendments to the above Ohio Administrative Code Chapters, as set forth in the relevant Attachments¹ to the Entry, and submits its Initial Comments to raise additional modifications that were not included in the proposed amendments but affect all CRES and CRNGS providers.

Energy Harbor respectfully requests modification of the proposed rules in the manner and for the reasons set forth below.

¹ Attachments A, C, E, G, I, K, M, O, Q, S, and U.

II. COMMENTS

A. Proposed Correction to OAC 4901:1-21-06(D)(1)(h) Regarding Door-to-Door TPV Minimum Requirements.

Staff has not proposed any changes to OAC 4901:1-21-06(D)(1)(h), but in its current form, this provision contains an error that affects the minimum TPV requirements for door-to-door sales. Currently, OAC 4901:1-21-06(D)(1)(h) incorrectly excludes the requirements of OAC 4901:1-21-06(D)(2)(a)(vi) from the minimum TPV requirements for door-to-door sales.² This exclusion is likely an error, as subsection (D)(2)(a)(vi) requires that a customer accept “each of the principal terms and conditions for the service that will be provided” as part of enrolling a customer. That seems to be an appropriate citation as part of obtaining customer consent and verifying enrollment. It seems that the exclusion of subsection (D)(2)(a)(vi) from the minimum TPV requirements for door-to-door sales is an error, and OAC 4901:1-21-06(D)(1)(h) should instead exclude the requirements of OAC 4901:1-21-06(D)(2)(a)(vii)—not (vi)—from the minimum TPV requirements for door-to-door sales. Accordingly, Energy Harbor proposes that OAC 4901:1-21-06(D)(1)(h) be modified to state the following:

(h) CRES providers conducting contract sales to residential customers through door-to-door solicitation shall provide for independent third-party verification (TPV) to ensure the validity of the enrollment prior to submission to the electric utility. The TPV shall be conducted in accordance with paragraph (D)(2)(a) of rule 4901:1-21-06 of the Administrative Code, excluding paragraph (D)(2)(a)(vii) of rule 4901:1-21-06 of the Administrative Code and the process shall include the following:

The proposed modification above corrects this error and properly reflects that the minimum TPV requirements for door-to-door sales must include each of the principal terms and conditions for the service that will be provided, as presumably intended.

² See OAC 4901:1-21-06(D)(1)(h).

B. Proposed Amendments to OAC 4901:1-21-06(D)(1)(h) and OAC 4901:1-29-06(D)(6)(b) to Allow for the Verification Process of Door-to-Door Enrollments to be Completed Through a Digital Link Provided Via Text or Email.

In addition to the proposed correction to the minimum TPV requirements for door-to-door enrollments, Energy Harbor also proposes that OAC 4901:1-21-06(D)(1)(h) and OAC 4901:1-29-06(D)(6)(b) be amended to allow confirmation and verification of customer enrollments through a digital link provided to the customer via text message or email, while continuing to follow the existing rule disclosure requirements for CRES³ and CRNGS⁴ third-party verifications. Currently, the existing rules require that verifications be completed through a telephone TPV process, requiring “verbal” confirmations from the customer.⁵ As other suppliers have similarly requested through previous waivers,⁶ Energy Harbor simply seeks to remove the verbal and audio requirements included in OAC 4901:1-21-06(D)(1)(h), OAC 4901:1-21-06(D)(2)(a), OAC 4901:1-29-06(D)(6)(b), and OAC 4901:1-29-06(E)(1) for TPVs that are conducted for door-to-door enrollments. All other requirements and disclosures for third-party verifications of door-to-door enrollments would apply, except that a customer could choose to answer the required disclosures via text (written) responses—that are accessed by the customer through a digital link provided via text or email—instead of only via verbal responses through a telephone call. By allowing for this additional option for a customer to complete the verification process, customers are provided another efficient, effective, and appropriate way to confirm their choice to enroll in competitive retail energy services.

³ See OAC 4901:1-21-06(D)(1)(h) and OAC 4901:1-21-06(D)(2)(a).

⁴ See OAC 4901:1-29-06(D)(6)(b) and OAC 4901:1-29-06(E)(1).

⁵ See OAC 4901:1-21-06(D)(2)(a) and OAC 4901:1-29-06(E)(1) (requiring specific “verbal” statements, questions, and requests be included as part of verifying a customer’s enrollment).

⁶ See, e.g., *In the Matter of the Application of Star Energy Partners, LLC, for a Partial Waiver of Rule 4901:1-21-06 of the Ohio Administrative Code*, Case No. 17-2398-EL-WVR, Application (Nov. 21, 2017); see also *In the Matter of the Application of RPA Energy, Inc. for Waivers of Certain Provisions of Chapters 4901:1-21 and 4901:1-29 of the Ohio Administrative Code, to Permit Third-Party Verification by Digital Confirmation*, Case No. 21-0157-GE-WVR, Application (Feb. 18, 2021).

Energy Harbor therefore proposes that OAC 4901:1-21-06(D)(1)(h) and OAC 4901:1-29-06(D)(6)(b) be modified to allow for third-party verifications to be completed through text (written) customer responses in lieu of verbal responses via telephone voice communications, at the option of the customer. Accordingly, Energy Harbor proposes that OAC 4901:1-21-06(D)(1)(h) be modified to include the following language:

(iv) The CRES provider must retain the audio or written recording of the customer's enrollment for one year after the contract with the customer is terminated.

(v) The CRES provider must provide a copy of the independent TPV to staff within three business days of any such request.

The third-party verification may be conducted through a digital link provided to the customer via text or email, in lieu of through an audio recording as stated in paragraph (D)(2)(a) of rule 4901:1-21-06 of the Administrative Code, if the customer elects this option. All other requirements stated in this subsection (h) shall be met.

Likewise, Energy Harbor also proposes that the below portions of OAC 4901:1-29-06(D)(6)(b) be modified as follows:

(iv) The retail natural gas supplier or governmental aggregator must retain the audio or written recording of the customer's enrollment for one year after the contract with the customer is terminated.

(v) The retail natural gas supplier or governmental aggregator must provide a copy of the independent third-party verification to the incumbent natural gas company or the staff within three business days of any such request.

The third-party verification may be conducted through a digital link provided to the customer via text or email, in lieu of through an audio recording as stated in paragraph (E)(1) of rule 4901:1-29-06 of the Administrative Code, if the customer elects this option. All other requirements stated in this subsection (b) shall be met.

C. Proposed Amendments to OAC 4901:1-21-06(D)(2) and OAC 4901:1-29-06(E) to Expand Telephone Enrollments to Include a Digital “Chat” Enrollment Process as a Permissible Form of Enrolling Customers.

Energy Harbor also proposes that the telephone enrollment provisions for electric and gas, OAC 4901:1-21-06(D)(2) and OAC 4901:1-29-06(E), be amended to expand telephone enrollments to include a digital “chat” enrollment process as a permissible form of enrolling customers with CRES providers and CRNGS providers, and that independent third-party verification not be required for such digital enrollments. Energy Harbor seeks this expansion of the telephone enrollments rules because technology has evolved such that this form of business communication—specifically, online chats—is now commonplace, with several retailers across multiple industries already including an option on their websites where customers can interact via online conversations with live representatives. Further, providing a digital chat option for enrollment simply adds another choice for customer enrollment, which benefits customers by providing them with another efficient, effective, and appropriate way for customers to enroll in competitive retail energy services, while still maintaining the same levels of consumer protection that are already present through the current telephone enrollment channels.

Importantly, the Commission has previously granted a waiver to allow implementation of a digital “chat” enrollment process as a substitute for telephonic enrollment communications, when requested by customers, but that waiver was only granted “until the Commission issues an order addressing the enrollment and TPV requirements in the pending five-year rule review in Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD.”⁷ Energy Harbor now seeks to modify OAC 4901:1-21-06(D)(2) and OAC 4901:1-29-06(E), respectively, to permanently implement the waiver

⁷ See *In the Matter of the Joint Application of Constellation NewEnergy, Inc., and Constellation NewEnergy-Gas Division, LLC, for Waivers of Ohio Adm. Code 4901:1-21-06(C) and 4901:1-29-06(B)*, Case No. 18-604-GE-WVR, Entry (Sept. 26, 2019).

granted in Case No. 18-604-GE-WVR and allow for a digital chat enrollment process as a permissible form of customer enrollment that would apply to all CRES and CRNGS providers.

To do so, Energy Harbor suggests modification of the language contained in OAC 4901:1-21-06(D)(2) and OAC 4901:1-29-06(E) to explicitly allow for a digital “chat” enrollment process as a permissible form of customer enrollment, subject to the same telephone enrollment provisions currently set forth in those provisions, except that no independent third-party verification shall be required for digital chat enrollments. The digital chat enrollment process should also only be available to CRES and CRNGS providers who comply with the following: (1) maintain the entire chat transcript of the customer’s enrollment for one year after the contract with the customer is terminated; and (2) provide a copy of the chat transcript to the customer, commission, or its staff within three business days of a request. Finally, while Energy Harbor believes this technology provides sufficient customer protections and that any CRES or CRNGS provider that meets the above criteria should be allowed to utilize the digital chat enrollment process, Energy Harbor welcomes any additional conditions that the Commission would like to impose on CRES and CRNGS providers for customer protection. Accordingly, Energy Harbor proposes that OAC 4901:1-21-06(D)(2) be modified to include a new subsection (f) that states the following:

(f) A residential or small commercial customer may enroll with a CRES provider through digital chats via text or internet prompts instead of a telephone voice communication. To enroll a residential or small commercial customer through digital chat, a CRES provider shall comply with all of the following:

- (1) The enrollment shall be conducted in accordance with the requirements for enrolling customers telephonically set forth in paragraph (D)(2)(a) of rule 4901:1-21-06 of the Administrative Code.
- (2) Following the digital chat enrollment, the CRES provider shall:
 - (a) Maintain the entire chat transcript of the customer’s enrollment for one year after the contract with the customer is terminated.
 - (b) Provide a copy of the chat transcript to the customer, commission, or its staff within three business days of a request.

Likewise, Energy Harbor also proposes that OAC 4901:1-29-06(E) be modified to include a new section (E)(5) that states the following:

(5) A customer may enroll with a retail natural gas supplier or governmental aggregator through digital chats via text or internet prompts instead of a telephone voice communication. To enroll a customer through digital chat, a retail natural gas supplier or governmental aggregator shall comply with all of the following:

- (a) The enrollment shall be conducted in accordance with the requirements for enrolling customers telephonically set forth in paragraph (E)(1) of rule 4901:1-29-06 of the Administrative Code, except that an independent third-party verification shall not be required.
- (b) Following the digital chat enrollment, the retail natural gas supplier or governmental aggregator shall:
 - (i) Maintain the entire chat transcript of the customer's enrollment for one year after the contract with the customer is terminated.
 - (ii) Provide a copy of the chat transcript to the customer, commission, or its staff within three business days of a request.

III. CONCLUSION

Energy Harbor LLC respectfully requests that the Commission modify the proposed rules as set forth in these Initial Comments.

Date: October 8, 2021

Respectfully submitted,

/s/ N. Trevor Alexander

N. Trevor Alexander (0080713)

Kari D. Hehmeyer (0096284)

Benesch Friedlander Coplan and Aronoff
41 South High Street, Suite 2600

Columbus, Ohio 43215

Tel: (614) 223-9300

Fax: (614) 223-9330

talexander@beneschlaw.com

khehmeyer@beneschlaw.com

Attorneys for Energy Harbor LLC

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Summary: Comments Initial Comments of Energy Harbor LLC electronically filed by Ms. Kari
D Hehmeyer on behalf of Energy Harbor LLC