**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of United Energy Trading, LLC Application for Waiver of Audio Recording Requirement in Rules 4901:1-29-06(E)(1). | )))) | Case No. 16-853-GA-WVR |

**COMMENTS**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

# I. Introduction

State regulators should ensure that Ohioans are protected from unfair marketing practices for natural gas, especially concerning door-to-door solicitation. United Energy Trading, LLC d/b/a Kratos Gas and Power ("Kratos") has filed an application that would undermine this consumer protection.

In Ohio, there are rules that protect customers from being switched to a gas marketer ("Marketer") without consent, including rules requiring that there be a process of third party verification ("TPV" or "verification") to ensure that the customer enrollment is valid. Specifically, Ohio Adm. Code 4901:1-29-06(D)(6)(b) requires Marketers to submit customer enrollments for an independent audio-recorded verification. The verification must comply with the audio recording requirements prescribed in Ohio Adm. Code 4901:1-29-06(E)(1). Accordingly, the Office of the Ohio Consumers' Counsel files these comments for consumer protection.

In its application dated April 21, 2016, Kratos requested that the Public Utilities Commission of Ohio ("PUCO") grant a waiver of the third party verification

requirements for door-to-door enrollments performed at customers' homes.[[1]](#footnote-1) In requesting the waiver, Kratos claims that after an independently-contracted sales agent completes a face-to-face interaction, a verification link will be sent to the customer via phone or email.[[2]](#footnote-2) The customer will use the verification link to access an electronic form where the terms of the contract can be affirmed or acknowledged.

## A. The PUCO should protect Ohioans by denying Kratos's waiver request. A phone or email link for confirming a door-to-door sale is not a reasonable replacement for an audio recording of a customer's consent to enrollment.

Ohio Revised Code 4929.22 requires the PUCO to establish the necessary minimum requirements for a Marketer or government aggregator regarding marketing, solicitation, and sale of competitive retail natural gas service. The PUCO established Ohio Adm. Code 4901:1-29-06(D)(6)(b), among other rules, consistent with R.C. 4929.22. The PUCO can only waive the requirements of Ohio Adm. Code 4901:1-29-06(D)(6)(b) if Kratos establishes "good cause."[[3]](#footnote-3) Kratos has not met its burden. Good cause does not exist to waive this rule.

The PUCO has found that customers who are enrolled through direct solicitation require additional protections, including an enrollment verification form and 100 percent third party verification of pertinent terms and conditions in Marketer contracts.[[4]](#footnote-4) Importantly, the competitive retail natural gas rules have evolved over time to protect Ohioans from aggressive and deceptive sales tactics.[[5]](#footnote-5) Audio recordings provide a level of quality control that is necessary to ensure that customers receive accurate and factual information about the Marketer contract before the enrollment is completed. Further, the audio recording memorializes the customer's understanding and acceptance of the terms and conditions of his or her contract and can provide a reliable source for resolving future disputes.

A link to a verification form (even with a date and time stamped record) lacks the authenticity that is inherent in an audio recorded verification. Additionally, the telephonic verification takes place after the Marketer's representative has left the customer's premises. This protects consumers by giving them an opportunity to consider the Marketer's offer without the Marketer's representative present. In contrast, a consumer could receive the link or email verification while the Marketer's representative is still at the consumer's residence, and the consumer could feel pressure to confirm the contract quickly and without full understanding of its terms.

Additionally, replying to a link does not prove that the accountholder is the person replying or that the accountholder intended to reply. Whereas a TPV provides a voice acknowledgment of the terms and conditions, anyone may reply to a link. A customer could inadvertently confirm the contract by clicking the link. The use of a phone or email link also increases the probability of fraudulent verification of the contract by someone other than the accountholder.

Kratos also relies on the fact that the PUCO granted a waiver to Interstate Gas Supply, Inc. ("IGS") in another case. But as IGS pointed out in its memorandum contra Kratos's application, IGS's application contained significant differences. IGS relies on a sales force composed of salary-based employees as opposed to Kratos's third party "pay-for-performance, commission-based" sales force.[[6]](#footnote-6) Furthermore, unlike Kratos, IGS had already developed its verification platform at the time of its waiver request, which allowed for regulatory assessment of its proposal.[[7]](#footnote-7) For these reasons and the reasons stated above, good cause does not exist to waive this rule.

## B. Kratos's claims about what is shown in "customer surveys" are not supported by information or evidence and are nonetheless irrelevant as a basis for the granting of its application.

Kratos claims that surveys were performed and that consumers indicated that telephonic TPV processes are redundant and time consuming.[[8]](#footnote-8) Kratos, therefore, argues that a more streamlined phone or email verification process should be used.

Kratos misses the point of the verification requirement entirely. The TPV process is intended to protect consumers from predatory marketing tactics[[9]](#footnote-9) and to make sure that a consumer's decision to obtain natural gas from a Marketer is as informed as possible. By requiring consumers to submit to a telephonic TPV, the rule forces Marketers to take an additional step that leaves no doubt that the customer intended to sign up for the Marketer's services. Kratos's proposed process does not protect customers from aggressive sales tactics. It is designed solely to make it easier for Kratos to enroll customers. Kratos's proposal conflicts with the goal of Ohio Adm. Code 4901:1-29-06(D)(6)(b).

Furthermore, even if the results of Kratos's surveys were relevant, Kratos did not provide the results of any such customer surveys with its waiver request. Accordingly, the PUCO cannot consider them in evaluating Kratos's application. *See Felton v. Felton*, 79 Ohio St. 3d 34, 43 (1997) ("A pleading is not admissible into evidence . . . and must not be considered as evidence by the court."). The Kratos surveys simply do not support the standard of good cause to waive the audio TPV requirement.

## C. The considerable amounts of money ($1.36 billion) that natural gas customers participating in customer choice have paid above Columbia's commodity price indicate the need for additional consumer protections regarding contract disclosure, not the waiver of existing standards.

According to data from Columbia Gas that was the subject of a news story this year, natural gas customers in the Columbia Gas service territory have paid $1.36 billion more for their gas commodity provided by Marketers than they would have paid through Columbia's commodity service (now known as the Standard Choice Offer).[[10]](#footnote-10) In the Dominion East Ohio service territory, the rate Kratos promotes on the Energy Choice Ohio website is more than what customers would pay for the Dominion Standard Choice Offer. For Dominion East Ohio customers, Kratos currently promotes offers of $3.35 per Mcf and $3.99 per Mcf.[[11]](#footnote-11) The Dominion Standard Choice Offer rate, in contrast, is currently much lower: $2.8670 per Mcf.[[12]](#footnote-12) These circumstances suggest the need for additional consumer protections (not less protection as Kratos proposes) regarding contracting and disclosure.

## D. The PUCO contemplated mobile enrollment and rejected it to protect consumers.

On page 6 of the Application, Kratos claims that the "requirement for an audio recording of the verification process clearly does not contemplate the use of a mobile internet protocol system [mobile enrollment system]."[[13]](#footnote-13) This is incorrect. The TPV rules were enacted on December 18, 2013,[[14]](#footnote-14) and at the time, other Marketers were engaging in door-to-door sales using mobile enrollment technology. At the time the current TPV rule was enacted, the PUCO was undoubtedly aware of the existence of mobile enrollment systems. Nonetheless, to protect consumers, the PUCO chose an audio recording of the verification process. Kratos may desire to use what it considers more advanced technology because that technology streamlines the enrollment process and makes it easier and cheaper for it to enroll customers. Streamlining the enrollment process or reducing the cost of the enrollment process does not present the PUCO with good cause for waiving rules that are intended to protect consumers from aggressive and deceptive marketing practices that could be very costly to Ohio consumers.

# II. Conclusion

The PUCO should protect consumers by denying Kratos's request for a waiver of the third party verification requirement under Ohio Adm. Code 4901:1-29-06(D)(6)(b). A waiver of this rule will harm customers. Kratos should be required to continue to provide Ohio customers with telephonic verification of customer enrollments as required by the PUCO's rule.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 18th day of July, 2016.

*/s/ Christopher Healey*

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1. Kratos operates in Dominion East Ohio's service territory. [↑](#footnote-ref-1)
2. Application For Waiver at 5 (Apr. 21, 2016). [↑](#footnote-ref-2)
3. Ohio Admin. Code 4901:1-29-02(C). [↑](#footnote-ref-3)
4. *In the Matter of the Commission's Review of its Rules for Competitive Retail Natural Gas Service Contained in Chapters 4901:1-27 through 4901:1-34 of the Ohio Administrative Code*, Case No. 12-925-GA-ORD, Finding and Order (December 18, 2013 at 42). [↑](#footnote-ref-4)
5. Dan Gearino, *More energy marketers using door-to-door sales*, The Columbus Dispatch (June 15, 2014) *available at* <http://www.dispatch.com/content/stories/business/2014/06/15/more-energy-marketers-using-door-to-door-sales.html>. [↑](#footnote-ref-5)
6. Memorandum Contra of Interstate Gas Supply, Inc. at 1-2 (May 6, 2016). [↑](#footnote-ref-6)
7. *Id.* at 2. [↑](#footnote-ref-7)
8. Application For Waiver at 6. [↑](#footnote-ref-8)
9. The concern that Marketers may engage in inappropriate door-to-door sales tactics is real. *See* Opinion and Order at 1, Case No. 02-1828-GA-CRS (Nov. 22, 2010) (citing a PUCO Staff report regarding "a significant number of contacts to the Commission's call center from consumers complaining about the marketing, solicitation, and customer enrollment practices of Just Energy's residential door-to-door sales agents in connection with the sale of CRNGS"); Notice of Material Default at 5, Case No. 15-1894-GA-UNC (Nov. 9, 2015) (Dominion East Ohio notice that Quake Energy, LLC engaged in marketing and sales tactics that were "unfair, misleading, deceptive, or unconscionable"). [↑](#footnote-ref-9)
10. Dan Gearino, *Ohio Customers are losing big on unregulated gas plans*, The Columbus Dispatch (April 5, 2016) *available at* http://www.dispatch.com/content/stories/business/2016/04/05/1-customers-losing-big-on-unregulated-natural-gas-plans.html. A copy of this article is also attached as OCC Exhibit 1. [↑](#footnote-ref-10)
11. *Apples to Apples Comparison charts: Dominion East Ohio*, Energy Choice Ohio, Public Utilities Commission of Ohio, http://energychoice.ohio.gov/ApplesToApplesComparision.aspx?Category=NaturalGas&TerritoryId=1&RateCode=1 (last visited July 15, 2016). [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. Application For Waiver at 6. [↑](#footnote-ref-13)
14. *In the Matter of the Commission's Review of its Rules for Competitive Retail Natural Gas Service contained in Chapters 4901:1-27 through 4901:1-24 of the Ohio Administrative Code,* Case No. 12-925-EL-ORD, Finding and Order at 67 (Dec. 18, 2013). [↑](#footnote-ref-14)