

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)	
of its Rules for Competitive Retail Natural)	
Gas Service Contained in Chapters)	Case No. 12-925-GA-ORD
4901:1-27 through 4901:1-34 of the Ohio)	
Administrative Code)	

**SECOND APPLICATION FOR REHEARING
AND MEMORANDUM IN SUPPORT OF
DIRECT ENERGY SERVICES, LLC AND
DIRECT ENERGY BUSINESS, LLC**

Pursuant to Section 4903.10, Revised Code, and Rule 4901:1-35, Ohio Administrative Code, Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, "Direct Energy") respectfully file an Application for Rehearing in this matter. Specifically, Direct Energy alleges the February 26, 2014 Entry on Rehearing and adopted rules of the Public Utilities Commission of Ohio ("Commission") pursuant to the Finding and Order and Entry on Rehearing are unreasonable as it relates to adoption of Rule 4901:1-29-06(D)(6)(b)(ii), Ohio Administrative Code ("O.A.C."). Specifically, Direct Energy avers the Commission's modification to this rule is unreasonable in the following respect:

1. The adopted rule does not provide reasonable flexibility as it relates to a sales agent returning to the customer's premise after the third party verification ("TPV").

WHEREFORE, Direct Energy respectfully requests that the Commission grant its Application for Rehearing in this matter and modify its Entry on Rehearing and adopted Rule 4901:1-29-06(D)(6)(b)(ii), O.A.C., in the manner suggested by Direct Energy.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Section 4903.10, Revised Code, requires applications for rehearing from Commission orders be made within thirty (30) days after such order is entered upon the Commission's journal. Direct Energy hereby respectfully requests rehearing of the Commission's February 26, 2014 Entry on Rehearing and adopted Rule 901:1-29-06(D)(6)(b)(ii), O.A.C. Rule 4901:1-29-06(D)(6)(b)(ii), O.A.C., as adopted by the Commission in its February 26, 2014 Entry on Rehearing, reads as follows:

(b) A retail natural gas supplier or governmental aggregator enrolling customers through door-to-door solicitation shall provide for an independent third-party verification to ensure the validity of enrollment prior to submission to the incumbent natural gas company and shall not initiate enrollment with the incumbent natural gas company without a valid independent third-party verification. The independent third-party verification shall be conducted in accordance with paragraph (D)(1) of rule 4901:1-29-06 of the Administrative Code and the process shall include the following:

...

- (ii) The independent third-party verifier must confirm with the customer that the representative of the retail natural gas supplier or governmental aggregator has left the property of the customer. The representative of the retail natural gas supplier or governmental aggregator is not to return before, during, or after the independent third-party verification process.

Under the rule as adopted, a sales agent cannot return to the customer's property before, during, or after the TPV process.

On January 17, 2014, Direct Energy filed an Application for Rehearing in this docket related to the Commission's Finding and Order in this case. Direct Energy argued the Commission should amend the rule to permit a sales agent to return after the TPV should the customer request a return visit to answer questions regarding an enrollment. In its February 26 Entry on Rehearing, the Commission denied Direct Energy's request for rehearing, saying that it believes customers should receive the protections in the rule and that the Commission is unaware of many complaints that a sales agent was required to leave before the TPV. Entry on Rehearing

at 11. Direct Energy again applies for rehearing to gain clarification from the Commission regarding a sales agent's activities after the TPV to raise a circumstance in which it believes the Commission did not contemplate in its Entry on Rehearing.

Direct Energy seeks guidance from the Commission that a sales agent may re-engage the customer after the TPV, upon the customer's request or agreement, for purposes of continued relationship building or interaction. All enrollments through this sales channel for non-mercantile customers are required to also entail a TPV. Direct Energy supports this change; Direct Energy currently completes a TPV for all sales. However, the customer may desire the agent return after the TPV for purposes in addition to and different from that particular enrollment. For example, the customer and the sales agent may have pre-planned a meal or other activity such as a facility tour after the new contract is signed and enrollment completed. Direct Energy agents have pre-existing relationships with non-mercantile customers that date back many years and these types of interactions outside the contracting process are common.¹ Direct Energy also offers several services to business customers to help them manage their energy consumption or their energy spend. Returning to that particular business after a TPV would be a logical place to begin helping the customer sign up for a demand response program or take the time to understand all the ways Direct Energy might be able to help them improve their business.

Absent this change any of these additional interactions beneficial to the customer would have to happen at a separate date and time, which is inconvenient for the customer as well as the company representative, making these possible benefits to customers less likely. Direct Energy

¹ This clarification is necessitated in part by the Commission's decision not to adopt separate definitions of "door-to-door solicitation," which involves face-to-face solicitation without a previous appointment, and "direct enrollment," which involves a solicitation not at the supplier's place of business and is made by previous arrangement or when the consumer is previously known to the seller. Finding and Order at 23-24 (December 18, 2013). If this distinction were in place it would recognize the distinction between a true random door-to-door canvasser versus face-to-face meetings premised on a prior appointment or pre-existing relationship and eliminate the need for this clarification.

believes the Commission did not intend to prohibit this kind of commerce, especially among consenting parties with pre-existing relationships or pre-planned interactions. To blanket prohibit a sales agent who is a known commodity to return to the customer's premise after the TPV is unreasonable in light of these additional factors.

This change would also be consistent with the Commission's rationale in its February 26, 2014 Entry on Rehearing. Specifically, the clarification would still require the sales agent to leave before the TPV commences and during the TPV. The sales agent would only be permitted to return after the TPV is completed and only if the return was requested by the customer or agreed to before the TPV began. Additionally, there is no need to protect a business customer who wants the agent to return after the TPV for additional and different purposes than the enrollment. The business customer and the agent have agreed to the contact after the TPV. Customers should not feel pressure to complete a sale with someone who has a relationship with them (or is attempting to form a continuing relationship with them) that goes beyond just that particular sale. It is never in the sales agent's best interest (or the supplier's interest) to pressure a customer or influence a TPV. However, to the extent that the possibility of influencing a sale exists, it is minimized even further in the circumstances described herein inasmuch as that would run counter to the relationship-building purposes that Direct Energy seeks through this Application for Rehearing.

The definition of mercantile customer on the natural gas side is "a customer that consumes, other than for residential use, more than five hundred thousand cubic feet of natural gas per year at a single location within this state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside of this state. 'Mercantile customer' excludes a customer for which a declaration under division

(L)(2) of this section is in effect pursuant to that division.”² Many larger, sophisticated customers fall beneath the 500 MCF volumetric threshold in this definition. For example, a school district or municipality which does not aggregate load, which commonly employ facilities managers competent to understand and make contracts with a supplier, would fall into the category of a larger customer who does not meet the threshold to be considered a mercantile customer.

These types of customers are precisely the customers that Direct Energy has in mind as it relates to this Application for Rehearing. These customers are sophisticated enough to want the additional engagement of a sales representative after their commodity sale and the current rule prohibits that type of interaction. These are businesses that are used to being treated as clients of a sales agent. Indeed, the modification requested by Direct Energy would only apply to those customers who have requested or agreed to a return visit before the TPV began. Direct Energy acknowledges that because the definition of mercantile customer captures both large and small non-residential customers that there are smaller non-mercantile customers who might be impacted by this change. However, their protection is something they do every day in their business – just say no thank you to an additional offer of services and visit after the commodity sale. Customers of this size who want additional time with a Direct Energy representative should not be hindered in the manner proscribed by this rule.

Direct Energy respectfully requests rehearing of the rule to specifically permit a return to a non-residential customer’s premise after the TPV so long as the return visit was requested by

² Direct Energy also acknowledges it is not filing a similar Application for Rehearing in the docket containing the Commission’s review of its retail electric marketing rules in Case No. 12-1924-EL-ORD. Direct Energy and other suppliers have continued to raise concerns to Staff about the same prohibition as it relates to retail electric sales to non-mercantile commercial customers. Direct Energy believes a solution to this concern as it relates to retail electric marketing may be found with Staff (and ultimately introduced into the rules) and therefore Direct Energy is not filing a similar Application for Rehearing in that docket.

the customer or agreed upon by the customer and the sales agent prior to the TPV taking place. Direct Energy asks the Commission to amend the rule to state as follows (proposed addition underlined):

- (ii) The independent third-party verifier must confirm with the customer that the representative of the retail natural gas supplier or governmental aggregator has left the property of the customer. The representative of the retail natural gas supplier or governmental aggregator is not to return before, during, or after the independent third-party verification process. However, the representative of the natural gas supplier or governmental aggregator may return to the commercial customer's property after the TPV if the return visit by the representative was requested by the customer or agreed upon by the representative and the customer any time before the customer began the TPV.

Direct Energy believes this clarification would appropriately balance the Commission's intent to protect customers while not impeding commerce between two willing and knowledgeable representatives of their respective businesses.

CONCLUSION

For the reasons contained within, Direct Energy respectfully requests the Commission grant its Application for Rehearing and amend adopted Rule 4901:1-29-06(D)(6)(b)(ii), O.A.C., in the manner suggested by Direct Energy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Second Application for Rehearing was served this
24th day of March, 2014, by electronic mail upon the persons on the service list below:

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Summary: Application for Rehearing electronically filed by JOSEPH CLARK on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC