

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Direct	)	
Energy Business, LLC and Direct Energy	)	
Services, LLC for Waivers of Certain	)	Case No. 18-0382-GE-WVR
Provisions of Chapters 4901:1-21 and	)	
4901:1-29, O.A.C., to Permit Third-Party	)	
Verification by Digital Confirmation.	)	

**APPLICATION**

By this Application, Direct Energy Business, LLC and Direct Energy Services, LLC (collectively, Direct) request waivers of certain rules governing the third-party verification (TPV) process for new customers enrolled through sales channels requiring TPV. The requested waivers will enable Direct to offer customers the ability to complete the verification process through digital confirmation. Digital TPV enables better, faster, more accurate enrollment verification and a greatly enhanced customer experience, without diminishing any consumer protections afforded by the Commission’s rules.

Accordingly, as authorized by Rules 4901:1-29-02(C) and 4901:1-21-02(C), O.A.C., Direct states:

1. Direct offers and provides competitive retail electric (CRES) and competitive retail natural gas (CRNG) goods and services to customers in fourteen states, including Ohio.
2. Direct markets and sells its products and services through various sales channels, including direct mail, internet, telephone, and door-to-door solicitation. Rule 4901:1-21-06, O.A.C and Rule 4901:1-29-06, O.A.C., require Direct to adhere to certain standards and follow certain procedures for customer enrollment, depending on the sales channel used, customer classification, and method of enrollment.

3. Ohio law prohibits a supplier from changing a customer's gas or electric provider without the customer's affirmative consent. Rule 4901:1-21-06, O.A.C and Rule 4901:1-29-06, O.A.C., contain various provisions intended to prevent such unauthorized switching, or "slamming," of residential and small commercial electric and gas customers, respectively.

4. The Commission's anti-slamming rules include provisions directed specifically to door-to-door solicitation. Suppliers that utilize this sales channel must employ a TPV process after a sale has been completed, but before the electric distribution utility (EDU) or gas local distribution company (LDC) processes the enrollment. *See* O.A.C. 4901:1-21-06(D)(1)(h)(the "Electric TPV Rule"); O.A.C. 4901:1-29-06(D)(6)(b) (the "Gas TPV Rule"). Telephonic sales of CRNG service are also subject to TPV. *See* O.A.C. 4901:1-29-06(E)(1).

5. The Electric TPV Rule and Gas TPV Rule are substantially similar.<sup>1</sup> Under both rules, the TPV process must be structured as follows:

- The sales agent must leave the property before the verification process begins;
- The customer must be given adequate time to respond to the verifier's questions, and the verifier may not lead the customer in his or her responses; and
- The supplier must retain an audio recording of the verification call for one year after the contract terminates and provide a copy to Commission Staff on request. *See* O.A.C. 4901:1-21-06(D)(1)(h)(ii)-(v); 4901:1-29-06(D)(6)(b)(ii)-(v).

6. Both the Electric TPV Rule and Gas TPV Rule require the third-party verifier to make certain disclosures to the customer, including, among others, the verifier's identity, the purpose of the call, and notice that the call is being recorded. The verifier must then confirm with the

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<sup>1</sup> The Electric TPV Rule applies only to residential customers. O.A.C. 4901:1-21-06(D)(1)(h). The Gas TPV Rule refers to "customers," and thus encompasses both residential and small commercial customers. O.A.C. 4901:1-29-06(D)(6)(b).

customer the principal terms and conditions of the service to be provided, including the price, length of the contract, applicable termination fees, and any material limitations or conditions of the contract. The verifier must also provide the customer with a number to call to cancel the enrollment. *See* O.A.C. 4901:1-21-06(D)(2)(a)(i)-(xii); O.A.C. 4901:1-29-06(E)(1)(a)-(k).<sup>2</sup>

7. Neither the Electric TPV Rule nor Gas TPV Rule expressly require that the TPV process be conducted by telephone. Both rules, however, mandates a list of “verbal” disclosures and verifications that must be communicated during the TPV “call” with the customer. *See id.*

8. By this Application, Direct requests a waiver of the Electric TPV Rule and Gas TPV Rule to give customers the option of third-party verification through a digital confirmation platform developed by a third-party vendor.

9. The proposed digital confirmation process will function much like traditional voice TPV. The main difference is that the verifier’s interaction with the customer will occur through text or internet prompts rather than voice communication. Here is how digital TPV works:

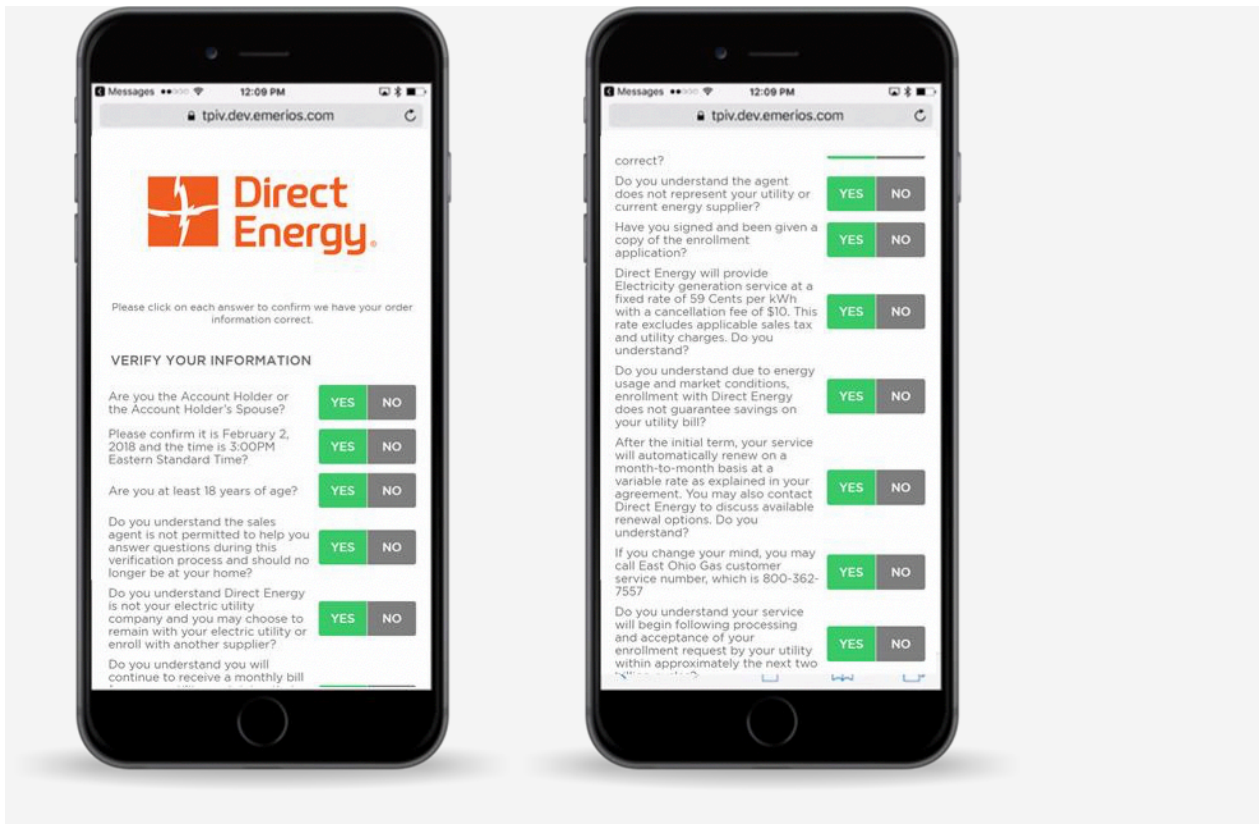
- a. At the conclusion of a door-to-door sale for CRES or CRNG service, as well as a telephone sale of CRNG service, the Direct salesperson will advise the customer of the option to complete third-party verification by either voice or digital confirmation.
- b. If the customer chooses digital confirmation, the salesperson will initiate an email or text to the customer. (As discussed below, the customer will not be able to initiate TPV until the salesperson leaves the property.)
- c. When the customer clicks the link in the email or text, they will be taken to a location permission and identity authentication page. The customer will be asked for consent to share their location and enter his or her name to identify his or her

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<sup>2</sup> Incorporated by reference in O.A.C. 4901:1-21-06(D)(1)(h) and 4901:1-29-06(D)(2)(b), respectively.

enrollment record. A geolocation feature built into the digital TPV platform will prevent the customer from starting the verification process until the salesperson has left the property.

- d. Once the customer’s identity and location have been verified, the customer will be presented with the list of disclosures and consents required under the Electric TPV Rule and/or Gas TPV Rule. The customer must select “Yes” or “No” in response to each verification question. The following pictures show how digital TPV will look to the customer (the content of these images is for illustrative purposes only):



- e. At the end of the verification questions, the customer will be provided with a final confirmation of his or her decision to switch, and e-sign the verification form.

- f. The customer will then see a “Thank You” page, and a “Welcome Kit” email will be sent automatically to the customer.
- g. Within the Welcome Kit, the customer will receive a signed copy of the contract and another disclosure of his or her right to cancel within the applicable time period.
- h. Direct will maintain digital TPV records under the same rules and standards applicable to voice TPV.

10. Digital TPV not only dramatically simplifies and expedites the verification process; it enhances the customer experience, while simultaneously bolstering Direct’s ability to identify and prevent fraudulent activity, as well as the Commission’s ability to investigate complaints and monitor compliance with applicable rules.

11. For example, under the current rules, neither Direct nor the third-party verifier are able to confirm whether the sales agent has left the customer’s property. With digital TPV, Direct is able to identify the location of both the sales agent and the customer in real-time. A distance alert function automatically blocks the enrollment if the sales agent is within a predetermined area of the customer. The distance alert function will also stop attempted enrollments where the customer’s location does not match the service address provided.

12. Digital TPV also addresses many of the problems inherent in voice communication. Consumers increasingly rely on cell phones, which are prone to interference and lost reception. Even with a strong signal, background noise and everyday distractions (children, pets, etc.) can be barriers to active listening and comprehension. Digital TPV eliminates these issues.

13. Similarly, under the Commission’s rules, voice TPV requires the verifier to disclose a significant amount of information. Digital TPV allows the customer to complete the verification process at his or her own pace, which maximizes the opportunity for comprehension. The customer is able to read and, if necessary, re-read the verification questions, rather than listen to them once.

14. Digital TPV also makes it easier for customers who feel they were put on the spot or pressured by a sales agent to back-out of an enrollment. Rather than saying “No” to the sales agent or verifier, the customer may decline the enrollment during the digital verification process, or elect not to start or complete the verification.

15. Finally, digital TPV gives customers the opportunity to maintain their own record of the verification process; something customers currently lack. This increases transparency and may aid in the investigation or resolution of any complaints that may come before the Commission.

16. One of the primary benefits of digital TPV is that it gives more control to the consumer. In that spirit, Direct will offer customers the choice of digital TPV or traditional voice TPV.

17. Accordingly, Direct requests waivers of the following highlighted provisions of the Electric TPV Rule and Gas TPV Rule:

Rule 4901:1-21-06(D)(1)(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)(vi) of rule 4901:1-21-06 of the Administrative Code and the process shall include the following:

(i) The sales agent shall contact the party responsible for the TPV at the conclusion of the sales transaction and provide the necessary contract tracking information to initiate the TPV process.

(ii) The independent third-party verifier must confirm with the customer that the sales agent has left the property of the customer. The sales agent is not to return before, during, or after the TPV process.

(iii) The independent third-party verifier shall structure the TPV interview to give the customer adequate time to respond to questions and shall not lead the customer in their response.

(iv) The CRES provider must retain the **audio 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.

Rule 4901:1-21-06(D)(2)(a): To enroll a residential or small commercial customer **telephonically**, a CRES provider shall make a date and time stamped **audio recording** verifying before the completion of the **telephone call**, at a minimum, all of the following:

(i) The CRES provider's or independent third-party verifier's identity and the exact purpose of the call

(ii) A **verbal** statement and the customer's acknowledgement that the call is being recorded.

(iii) A **verbal** statement and the customer's acknowledgement that the CRES provider is not the customer's current electric utility company and that the customer may choose to remain with the electric utility company or enroll with another CRES provider.

(iv) A **verbal** question and the customer's acknowledgement that the customer wishes to enroll with the provider.

(v) A **verbal** question and the customer's acknowledgement that the customer is the customer of record at the customer's electric utility or is authorized to switch providers by the customer of record.

(vi) [Not Applicable]

(vii) A **verbal** statement and the customer's acknowledgement that the provider will, within one business day, send the customer a written contract

that details the terms and conditions that were summarized in the **telephone call**.

(viii) A **verbal** statement and the customer's acknowledgement that the customer has seven calendar days from the postmark date of the electric utility's confirmation notice to cancel the contract without penalty and a reminder that the electric utility will give the customer a cancellation number to confirm any cancellation of the contract during the cancellation period.

(ix) A toll-free telephone number the customer can call to cancel the contract.

(x) If applicable, a **verbal** request for and the customer's provision of the customer's electric utility account number.

(xi) A **verbal** request for and the customer's provision of the customer's mailing address.

(xii) A unique enrollment confirmation number.

Rule 4901:1-29-06(D)(6)(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 (E)(1) of rule 4901:1-29-06** of the Administrative Code and the process shall include the following:

(i) The representative of the retail natural gas supplier or governmental aggregator shall contact the independent third-party verifier at the conclusion of customer enrollment to initiate the independent third-party verification process.

(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.

(iii) The independent third-party verifier shall structure the independent third-party verification interview to give the customer adequate time to respond to questions and shall not prompt answers from the customer in their response.



(iv) The retail natural gas supplier or governmental aggregator must retain the **audio 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.

Rule 4901:1-29-06(E)(1): To enroll a customer **telephonically**, a retail natural gas supplier or governmental aggregator, shall make a date- and time-stamped **audio recording** of the sales portion of the call, if the customer is enrolled, and before the completion of the enrollment process, a date- and time- stamped **audio recording** by an independent third-party verifier that verifies, at a minimum, the following:

(a) The retail natural gas supplier, governmental aggregator, or the independent third-party verifier identity and the exact purpose of the **call**.

(b) A **verbal** statement and the customer's acknowledgement that the call is being recorded.

(c) A **verbal** statement and customer's acknowledgement that the retail natural gas supplier or governmental aggregator is not the customer's natural gas company and that the customer may choose to remain with the natural gas company's applicable tariff or default service.

(d) A **verbal** question and the customer's acknowledgement that the customer has given consent to enroll with the retail natural gas supplier or governmental aggregator.

(e) A **verbal** question and the customer's acknowledgement that the customer is the customer of record or is authorized to switch the retail natural gas supplier or governmental aggregator for the customer of record.

(f) In accordance with rule 4901:1-29-11 of the Administrative Code, a **verbal** statement and the customer's acceptance of each of the principal terms and conditions for the service that will be provided, including, but not limited to:

(i) The service(s) that will be provided.

(ii) The price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format if the product is based on a per-unit price, or for flat-monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract.

(iii) The length of the contract term.

- (iv) An approximate service commencement date.
- (v) The contract termination date, and any fees for customer cancellation prior to such date.
- (vi) Any material limitations, conditions, or exclusions.
- (vii) Any fees or costs to the customer.
- (viii) If applicable, whether the retail natural gas supplier or governmental aggregator will perform a credit check and require a deposit, including the amount.
- (ix) Who will bill for the retail natural gas supplier's and governmental aggregator's service(s).
- (x) The enrollment confirmation number.
- (g) A **verbal** statement and the customer's acknowledgement that the retail natural gas supplier or governmental aggregator will, within one business day, send the customer a written contract that details the terms and conditions that were summarized in the telephone call.
- (h) Customers are advised both **verbally** and in the contract of all of the following:
  - (i) The incumbent natural gas company will be sending a confirmation notice of the transfer of service.
  - (ii) The customer is allowed a seven-business-day period from the confirmation notice postmark date to rescind the enrollment.
  - (iii) The customer should contact the incumbent natural gas company to rescind the enrollment.
- (i) The incumbent natural gas company's toll-free or local telephone number that the customer can call to rescind the enrollment.
- (j) A **verbal** request for and the customer's provision of the customer's natural gas company's account number.
- (k) A **verbal** request for and the customer's provision of the customer's mailing address.

18. In accordance with Rule 4901:1-21-02(C), Direct will serve a copy of this Application to the Ohio Consumers' Counsel and all electric utilities operating in Ohio. Direct will also serve a courtesy copy to each of the four major gas LDCs operating in Ohio.

19. The waivers requested herein are just, reasonable, and consistent with the public interest. Accordingly, Direct requests approval of this Application without a public hearing.

Dated: March 2, 2018

Respectfully submitted,

/s/ Mark A. Whitt

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application was served by electronic mail

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Summary: Text In the Matter of the Application for Waivers of Certain Provisions of Chapters 4901:1-21 and 4901:1-29, O.A.C., to Permit Third-Party Verification by Digital Confirmation electronically filed by Ms. Rebekah J. Glover on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC