

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of)	
Constellation NewEnergy, Inc. and)	
Constellation NewEnergy – Gas Division)	Case No. 18-0604-GE-WVR
LLC for Waivers of Enrollment)	
Requirements in Rules 4901:1-21-06(C))	
and 4901:1-29-06(B), Ohio Administrative)	
Code.)	

**JOINT APPLICATION OF
CONSTELLATION NEWENERGY, INC.
AND
CONSTELLATION NEWENERGY – GAS DIVISION, LLC
FOR WAIVERS OF ENROLLMENT REQUIREMENTS IN RULES 4901:1-21-06(C)
AND 4901:1-29-06(B), OHIO ADMINISTRATIVE CODE**

I. Introduction

Constellation NewEnergy, Inc. and Constellation NewEnergy - Gas Division, LLC have been authorized for years to provide competitive retail services in Ohio and have been active and innovative participants in the market and in further developing the market. Constellation NewEnergy, Inc. holds Certificate No. 00-3E(9) as a Competitive Retail Electric Service (“CRES”) supplier. Constellation NewEnergy - Gas Division, LLC holds Certificate No. 09-153G(5) as a Competitive Retail Natural Gas Service (“CRNGS”) supplier. They are collectively referred to herein as “Constellation.”

Constellation seeks waivers, to the extent they are deemed necessary, from Rules 4901:1-21-06(C) and 4901:1-29-06(B) to allow Constellation to enroll retail customers in Ohio through an online, interactive process. Constellation’s proposal is asking for authority to use a more advanced methodology than what is in the Commission’s minimum standards. Online, interactive processes or “chats” are used and desired today by customers, both residential and commercial. This desire is widespread – sixty-two percent of customers *expect* live chats to be

available on mobile devices and eight-two percent of customers would use the chats if available.¹ Constellation seeks to offer this enrollment option for its retail services to Ohio customers who desire it.

II. Existing Requirements of Enrollment for CRES and CRNGS

The Ohio Administrative Code sets forth minimum service requirements for CRES and CRNGS suppliers while enrolling retail customers on competitive energy services. The enrollment requirements for CRES are set forth in Ohio Administrative Code Rule 4901:1-21-06 and the enrollment requirements for CRNGS are set forth in Ohio Administrative Code Rule 4901:1-29-06. Those minimum standards prohibit a supplier from enrolling potential customers without their consent and proof of that consent “as delineated” in the enrollment rules:

CRES Rule 4901:1-21-06(C): “CRES providers are prohibited from enrolling potential customers without their consent and proof of that consent as delineated in paragraph (D) of this rule.”

CRNGS Rule 4901:1-29-06(B): “A retail natural gas supplier and governmental aggregator is prohibited from enrolling potential customers without consent and proof of that consent as delineated in paragraphs (C), (D), and (E) of this rule.”

As delineated in those enrollment rules, customer consent and enrollments may occur in-person, online, via mail solicitation, via facsimile, and via telephone. The Ohio Administrative Code enrollment processes do not allow for other enrollment methodologies or specifically allow for the more advanced enrollment scenario where the supplier and the customer interact in real-time, through interactive communications online. Yet, technology has evolved in such a way that frequently customers communicate with businesses in real-time, interactive communications online. As noted, this type of communication is highly desired and appeals to many customers. Moreover, this type of communication is common today in many online retail transactions or

¹ Source: Moxie Software.

interactions, and is familiar to customers across many industries including cable, wireless service, insurance, banking and many more. Constellation is successfully using this functionality to enroll customers in nine other jurisdictions: Connecticut, Delaware, District of Columbia, Georgia, Maryland, Massachusetts, New Jersey, Pennsylvania, and Texas.

With success in other jurisdictions, Constellation would like to start this new form of enrollment and consent in Ohio as soon as possible. Thus, to the extent necessary, Constellation seeks waivers of Rules 4901:1-21-06(C) and 4901:1-29-06(B) to allow Constellation to implement this technology.

III. Constellation's Proposed Enrollment Option

As a leading supplier of energy and energy-related services, Constellation strives to communicate with customers in the manner that the customers desire. As indicated above, increasingly, customers desire to communicate through electronic means. Constellation's web site already includes a link through which a customer or prospective customer can engage with Constellation in an on-line conversation with a live representative. Constellation proposes to take that functionality one step further, allowing customers to enroll in its retail electric and natural gas services via a customer-friendly, real-time, online conversation with a Constellation representative.

To the extent necessary, Constellation requests waivers of Rules 4901:1-21-06(C) and 4901:1-29-06(B) to allow it to use chat enrollment as a form of consent when enrolling customers. Through the chat enrollment process, a prospective customer will be able to ask questions of the live representative and, when ready to enroll, be able to move immediately to that step without having to move backwards to an online enrollment web page or having to contact a call center representative. Customers may still enroll through the existing online

process or by contacting a call center representative; the joint waiver request simply seeks to also offer the customer the ability to complete the enrollment process through the online “chat” mechanism. This will allow Constellation to provide a better customer experience for those customers who desire to enroll in real-time, interactive communications.

In using the online “chat” enrollment process, Constellation will follow the processes set forth below. The “chat” representative will respond to the customer’s questions, as well as provide specific disclosures. A date/time-stamped transcript of the online “chat” conversation will be recorded and saved to reflect that the customer is enrolling in the Constellation competitive service. Specifically, the chat will include the following:

- A statement that the online conversation is being saved (i.e., recorded).
- A question and the customer’s acknowledgment that the customer is the customer of record or is authorized to switch for the customer of record, and that they are consenting to enroll with Constellation.
- Disclosure of the principal terms and conditions for the service(s), including:
 - the service(s) that will be provided;
 - the price, length of the contract term, approximate service commencement date, and contract termination date;
 - any cancellation fees prior to termination, material limitations/conditions/exclusions, fees or costs to the customer;
 - any credit check or deposit requirement;

- who will bill for the services, including budget billing options for the competitive portion of the bill, if offered; and
 - the enrollment confirmation number.
- A statement that the supplier will send the customer a written contract within one (1) business day either to the customer's email address or mailing address (based on the information the customer provides), which details the terms and conditions summarized during the chat conversation.²
- Advise the customer that the utility will send a confirmation notice of the transfer of service via U.S. mail, and that they may rescind the enrollment within 7 calendar days (electric) or 7 business days (gas), as applicable, by contacting the utility at the utility's toll-free or local telephone number.

The customer will have the opportunity to request a copy of the transcript, which will be immediately sent to the customer's email address following completion of the chat if the customer selects that option from the pop-up window that will appear at the conclusion of the conversation. The transcript is in a real-time format and includes the full conversation, the date and time of the conversation and the name of the representative. Constellation will retain the transcript along with other information in accordance with the Commission's record retention policies, and will provide the transcript to the customer, upon request.

In addition to the consumer protections inherent with the above-listed steps that would be followed under this proposed enrollment and consent process, Constellation is including further

² As well, the customer will be able to see the terms and conditions online and download them, if desired.

protections specifically for the handling of confidential customer information. The Constellation representatives who will perform the enrollment via the online “chat” are employed by a company that has been certified as compliant with Payment Card Industry Data Security Standards. They are specially trained to follow a specific safety protocol when handling confidential customer information and the company is assessed so that it continually meets this certification “gold standard.” Among the safety protocols is a prohibition against the use of writing instruments, telephones, and similar items in the room in which the representatives conduct business to prevent the confidential customer information from being inappropriately stored. As such, enrollments via the online “chat” would be performed by highly skilled representatives who will utilize greater security measures to keep customer information safe.

In addition to internal quality assurance controls by the vendor, Constellation will monitor enrollments on a weekly basis to assess their validity. For example, the IP address of the enrollee will be captured from the chat and saved to the customer’s information stored in Constellation’s systems. On a weekly basis, Constellation will review those enrollments to ensure that there are not excessive enrollments from a single IP address. Moreover, customer information submitted will be subject to protocols to preserve the confidentiality of that information.

Constellation will continue to offer Ohio customers the opportunity to enroll in its retail services via the current “traditional” enrollment processes and Constellation is not proposing an exception or a waiver of them. Rather, Constellation is seeking waivers from Rules 4901:1-21-06(C) and 4901:1-29-06(B), to the extent specific authorization is necessary, to allow Constellation to utilize the additional “chat” methodology as a form of consent to enroll prospective customers in its electric and natural gas services.

IV. Good Cause Exists for Constellation's Waiver Requests: They are Permissible under Ohio Law, Further Ohio Policy, are Reasonable and in the Public Interest

The Commission should conclude that good cause exists for Constellation's waiver requests because they are permissible under Ohio law, further Ohio policy, are reasonable, and are in the interest of customers. First, Constellation's request is not prohibited under Ohio's competitive service statutes. The Ohio General Assembly addressed many aspects of CRES and CRNGS in Ohio Revised Code Chapters 4928 and 4929, but was silent about enrollment methodologies.

Second, the Ohio General Assembly directed the Commission to adopt minimum service requirements for providing CRES and CRNGS and in doing so, the Ohio General Assembly did not prohibit an online, interactive enrollment mechanism under the Commission's rules. *See*, Ohio Revised Code Sections 4928.10 and 4929.22. The Commission proceeded to adopt minimum enrollment standards in Ohio Administrative Code Chapters 4901:1-21 and 4901:1-29. *See, In the Matter of the Commission's Promulgation of Rules for Minimum Competitive Retail Electric Service Standards Pursuant to Chapter 4928, Revised Code*, Case No. 99-1611-EL-ORD, Finding and Order (April 6, 2000), and *In the Matter of the Commission's Promulgation of Rules for Competitive Retail Natural Gas Service and its Providers Pursuant to Chapter 4929, Revised Code*, Case No. 01-1371-GA-ORD, Finding and Order (November 20, 2001). The Commission did not consider a chat enrollment at the time.

Third, the Commission has the right to waive any of its administrative rules in Chapters 4901:1-21 and 4901:1-29, including the rules identified by Constellation herein. *See*, Rules 4901:1-21-02(C) and 4901:1-29-02(C), both of which state: "The commission may, upon an application or a motion by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown."

Next, the Commission should recognize that this enrollment mechanism is an advancement of the Commission's existing *minimum* enrollment requirements rules. This enrollment mechanism is based on newer technology that is readily present today. As such, the waiver requests can further develop the competitive market in Ohio. On that basis, the waiver requests could be found to be permissible.

Also, the Commission should find the waiver requests in this joint application to be permissible under Ohio law because they dovetail with Ohio's statutory policies for the electric and natural gas industries. The State of Ohio's electric services policy, set forth in Ohio Revised Code Section 4928.02, states in part that it is the policy of the state to:

- (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;

* * *

- (G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment* * *.

Similarly, Constellation's joint application is consistent with the State of Ohio's policy as to natural gas services and goods. Specifically, Ohio Revised Code Section 4929.02 states in relevant part that it is the policy to:

- (A)(3) Promote diversity of natural gas supplies and suppliers by giving customers effective choices over the selection of those supplies and suppliers;

* * *

(A)(6) Recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment * * *.

As noted earlier, customers not only expect to have live chats available, they desire the opportunity to enroll via a chat mechanism. Also, customers are successfully using the mechanism in multiple jurisdictions. Altogether, this demonstrates that the waiver requests are reasonable and will be in the interest of the public.

The Commission should conclude that the proposed enrollment mechanism is permissible under Ohio law, furthers Ohio's competitive policies, is reasonable, and is in the interest of customers. Based on the above, Constellation has demonstrated good cause for its requested waivers.

V. Conclusion

Constellation respectfully requests that the Commission waive Rules 4901:1-21-06(C) and 4901:1-29-06(B), to the extent necessary, so that Constellation may utilize an additional form of consent to enroll customers via an online, real-time "chat" conversation. There is no adverse impact by the requested permission; rather, Ohio customers will be given the opportunity to enroll with Constellation through their desired form of communication with the appropriate safeguards. As demonstrated, the requested waivers will further develop the competitive markets, are consistent with Ohio policy, are reasonable, and are in the public interest. Constellation submits that good cause for its requested waivers has been shown and there is no reason for delay in promptly ruling on this joint application.

In accordance with Rule 4901:1-21-02(C), Constellation is serving this joint waiver request on the Ohio Consumer's Counsel and the Ohio electric distribution utilities.

Respectfully Submitted,

/s/ Michael J. Settineri

Michael J. Settineri (0073369), Counsel of Record

Gretchen L. Petrucci (0046608)

Vorys, Sater, Seymour and Pease LLP

52 E. Gay Street

Columbus, OH 43215

Telephone 614-464-5462

Facsimile 614-719-5146

msettineri@vorys.com

glpetrucci@vorys.com

*Attorneys for Constellation NewEnergy, Inc. and
Constellation NewEnergy-Gas Division, LLC*

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 10th day of April 2018 upon all persons/entities listed below:

Ohio Consumers' Counsel	larry.sauer@ooc.ohio.gov
Ohio Power Company	stnourse@aep.com
Ohio Edison Company Toledo Edison Company The Cleveland Electric Illuminating Company	cdunn@firstenergycorp.com
The Dayton Power and Light Company	mschuler@aes.com
Duke Energy Ohio, Inc.	rocco.dascenzo@duke-energy.com

/s/ Gretchen L. Petrucci
Gretchen L. Petrucci

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/10/2018 4:01:14 PM

in

Case No(s). 18-0604-GE-WVR

Summary: Application Joint Application for Waivers of Enrollment Requirements in Rules 4901:1-21-06(C) and 4901:1-29-06(B), Ohio Administrative Code electronically filed by Mr. Michael J. Settineri on behalf of Constellation NewEnergy Inc. and Constellation NewEnergy-Gas Division, LLC