

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of :  
AEP Energy, Inc. for a Partial Waiver of : Case No. 18-0371-EL-WVR  
the Ohio Administrative Code Rules :  
4901:1-21-06. :

In the Matter of the Application of :  
AEP Energy, Inc. for a Partial Waiver of : Case No. 18-0372-GA-WVR  
the Ohio Administrative Code Rule :  
4901:1-29-06. :

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**STAFF REVIEW AND RECOMMENDATION  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**April 8, 2019**

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**BACKGROUND**

On March 6, 2018, AEP Energy, Inc. (“Applicant” or “AEP Energy”) submitted an application to the Public Utilities Commission of Ohio (“Commission”) requesting a partial waiver of certain provisions set forth in Ohio Administrative Code (“Ohio Adm.Code”) 4901:1-21-06 and 4901:1-29-06 as they relate to third-party verification (“TPV”) of enrollment that are required for door-to-door sales. Specifically, the Applicant has requested a waiver of the provision of the rules that require a TPV be telephonic and instead allow the use of a combination of telephonic and electronic TPV in a manner intended to reach the substantial compliance with Ohio Adm. Code 4901:1-21-06(D)(1)(h) and 4901:1-29-06(D)(6)(b).

## **STAFF REVIEW**

Staff reviewed the application filed in these cases. In the application, the Applicant provided an outline of how its process to obtain customer consent and verification through a combination of the use of the Applicant-owned internet enabled computer tablets with GPS and the customer's own personal device would work with an approved waiver.

In summary, the application indicated that sales representatives, which the Applicant stated are direct employees, will record the customer responses to some of the currently required TPV questions. At the conclusion of the sales presentation and the recorded questions, the employee will request permission from the customer to send a text message or email with a verification link to complete the enrollment process. If the customer accepts the verification link, it will prompt the customer to enter their last name and will then disclose enrollment information obtained from the customer during the sales presentation. The customer will verify, acknowledge, and confirm through yes or no questions on their personal communication device. The questions are some that are required through the current TPV process, including price. Once the customer submits the completed disclosure statements, a TPV call will be initiated, and the employee will leave the property of the customer. The TPV will ask the following questions: ability to record the call, first and last name, account holder identity, if not speaking to the account holder, if the person is a spouse or holds power of attorney to authorize a switch provided by the account holder, a statement with recognition that AEP Energy is an independent

seller and customer can remain with utility or other supplier, if AEP Energy's sales representative has left the property, and if the field sales agent provided or emailed the customer with signed enrolled terms and welcome brochure. The Applicant's own field agent's tablet verifies via an electronic signature that the customer consents and acknowledges the specific statements set forth in Ohio Adm. Code 4901:1-29-06(D)(6)(A) acknowledgment form. The customer has the option to receive a physical copy of the terms and conditions and applicable acknowledgement form(s).

### **STAFF RECOMMENDATION**

Staff strongly believes that verifying the enrollment with the consumer in clear, plain language, using a template uniformly followed by all competitive retail electric service providers and competitive retail natural gas service providers, provides valuable safeguards that protect consumers' interests. The intent of the current TPV rule is to make sure that, to the greatest extent possible, the consumers understand what they are agreeing to and the terms of that agreement.

Currently, Ohio Adm. Code 4901:1-21-06(D)(1)(h) and 4901:1-29-06(D)(6)(b) are under review by Staff not only in response to the Applicant's waiver request, but also in the Commission's five year rule review in Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD. And while Staff believes that the ideal venue for evaluating these proposed changes is during the rule review process that is currently underway, it recognizes that this process takes time. Therefore, if the Commission grants the Applicant's request for waiver in these cases, Staff recommends that said waiver(s) should only be effective

during the pendency of the rule review for Ohio Adm. Code 4901:1-21-06 and 4901:1-29-06. Staff believes it is far more beneficial to the Commission and the industry to use the rulemaking process to address the Applicant's concerns because the rule review process is designed to allow all interested parties to provide their comments and clarifications and, ultimately, the result is that the rules will apply uniformly.

In conclusion, Staff recommends that the Commission address the Applicant's issues in the pending rule review. Alternatively, if the Commission does grant the waiver(s) in this application, Staff recommends that the waiver(s) be clearly limited to only the requirement for telephonic TPV verification in the rule and that the waiver(s) expires when the Commission issues its final rules in Case No. 17-1843-EL-ORD and 17-1847-GA-ORD.

Respectfully submitted,

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Interim Section Chief

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## **PROOF OF SERVICE**

I hereby certify that a true copy of the foregoing **Staff Review and Recommendation** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the following Parties of Record, this 8<sup>th</sup> day of April, 2019.

/s/ Thomas G. Lindgren

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### **Parties of Record:**

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Summary: Comments Staff Review and Recommendation electronically filed by Ms. Yvette L Yip on behalf of the Public Utilities Commission of Ohio