

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	Case No. 18-371-EL-WVR
AEP Energy, Inc. for a Partial Waiver of	)	
OAC Rules 4901:1-29-06 and 4901:1-21-06.	)	Case No. 18-372-GA-WVR

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**AEP ENERGY, INC. REPLY COMMENTS  
(April 22, 2019)**

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AEP Energy, Inc. (AEPE) is a competitive retail electric services and a competitive retail natural gas services provider as defined in R.C. 4928.01 and 4929.01, respectively, and is certified to provide competitive retail electric service (CRES) and competitive retail natural gas service (CRNGS) under R.C. 4928.08 and 4929.20, and is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16 and 4929.24. On March 6, 2018, AEPE submitted an application to the Commission requesting a partial waiver of the third-party verification (TPV) provision of Ohio Adm. Code 4901:1-21-06(D) and Ohio Adm. Code 4901:1-29-06(D), as it applies to providing for an independent third-party verifier to ensure the validity of the enrollment of a customer through a direct solicitation by door-to-door sales. Specifically, AEPE requested a partial waiver of the provision of the rules that requires a full review of the sales transaction by the TPV entity and to permit the customer to provide a portion of such required information through tablets that provide for the ability for the customers to use their own smart devices to execute the regulatory safeguards in the existing TPV enrollment process.

By an Entry entered in the Journal on March 5, 2019, the attorney examiner granted the Office of Consumer's Counsels' (OCC) intervention in this Application and instructed that all motions to intervene be filed by April 8, 2019, comments on the Application to be filed by April 8, 2019, and any reply comments to be filed by April 22, 2019. On or about April 8, 2019, AEPE, the Office of Consumers' Counsel (OCC) and the Staff of the Public Utilities Commission ("Staff") submitted comments. Pursuant to this Entry, AEPE submits the following reply comments to the OCC and Staff.

### Reply to the Staff's Positions

In Staff's Comments, Staff recommends that AEPE's waivers should only be effective during the pendency of the rule review for Ohio Adm. Code 4901:1-21-06 and 4901:1-29-06 in Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD. So long as all previously granted waivers to these rules are subject to the same limitation as to duration, AEPE has no objection to limiting the effective period of the waiver proposed herein to a final non-appealable Order in the pending rule review proceedings, subject to a reasonable implementation period, such as ninety (90) days, to revise business operations to comply with any such third party verification procedures adopted or retained in such proceedings.

The Staff's preferred recommendation is that the Commission address AEPE's waiver request in these pending rule review proceedings. AEPE opposes this Staff recommendation for the reasons stated by the Staff – the rule review process takes time. Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD has been pending since August 2017. Admittedly the review of all of the existing rules governing electric and gas competition is a complex and arduous undertaking. However, in the meantime, a competitor has a competitive advantage in the enrollment of customers in a more customer friendly and cost effective manner than what AEPE can achieve, with both companies using in-house trained and supervised field sales agents.

### Reply to the OCC's Positions

AEPE is seeking a waiver of the third party verification requirements similar to that granted by the Commission to Interstate Gas Supply, Inc. by a Finding and Order dated November 20, 2014 in Case Nos. 14-1740-EL-WVR and 14-1741-GA-WVR. However, unlike Interstate Gas Supply's waiver request, AEPE is proposing to retain a portion of the third party verification process, the effect of which is to address the concerns raised by OCC in their Comments.

OCC claims that “A marketer’s ability to track and prove that its salesperson was on a customer’s property is irrelevant to demonstrating that the customer actually consented to a change in utility service supplier.” (OCC Comments, p. 7). Global Positioning System (GPS) technology is so ubiquitous in our society that it is difficult to respond to this statement. But with respect to demonstrating actual consent to changing a service supplier, the abbreviated form of TPV which AEPE is proposing clearly addresses this aspect of OCC’s criticism. While AEPE is open to adding an additional third party verification question to those AEPE proposes – such as OCC’s suggestion of obtaining “the customer’s acknowledgment that he/she has consented to enroll with AEP Energy” (OCC Comments, p. 6). However, a recitation of each and every commercial term is unnecessary, where the customer **on the customer’s own electronic device** is acknowledging those commercial terms through a “yes”/“no” response process. Furthermore, these commercial terms are being provided to the customer either physically or electronically, and the receipt of which is acknowledged by the customer in the TPV being conducted.

AEPE’s experience in using third party vendors to conduct door-to-door sales agent was typical of this industry’s business model – independently contracted sales agents being compensated with a fee per enrollment, with little, if any, base pay compensation, inadequate training on the regulatory requirements, poor supervision by the vendor, a random solicitation approach through neighborhoods, and with the sales agent having no further contact with the customer after the sale. However, AEPE uses its own employees that are compensated primarily with base pay (including benefits) and sales commission only represents an appropriate incentive to their compensation, with company employees providing supervision and training to the field sales team. This business model is more expensive to follow, but in itself provides greater safeguards against fraudulent enrollment activity. Additionally, however, AEPE is proposing to use a combination of technology – both Company software and equipment and the customer’s personal electronic device – along with the added safeguard of a shortened third party verification process to safeguard against the abuses about which OCC is concerned.

AEPE's enrollment process is, in many ways, superior to existing process upon which OCC holds out as almost infallible in guarding against fraudulent enrollments. Through the availability of GPS information, electronic communications between the customer on the customer's own device, and the shortened TPV recorded audio of the customer's responses to the questions in the TPV script, this enrollment process provides additional safeguards that do not exist in traditional door-to-door enrollments. AEPE will know the time and place of each enrollment solicitation, have an electronic record of the customer's responses to the commercial terms of the product offering, and a record of the prompt delivery of terms and conditions of executed contracts via email (or physical delivery if email delivery is not possible).

### Conclusion

AEPE is seeking only a partial waiver of the TPV enrollment process. AEPE is proposing to retain the TPV process to verify the customer's identity, while using a tablet process to verify the customer's agreement to the commercial terms. The Commission has already granted a more expansive waiver of these same requirements to a competitor of AEPE. Granting this waiver pending the Commission final review of and changes, if any, to the customer enrollment process is a reasonable approach for those companies which hire and train as company employees the personnel used in door-to-door sales enrollments.

For the foregoing reasons, AEPE respectfully requests that its partial waiver of the TPV requirements be granted.

Respectfully Submitted,

/s/ F. Mitchell Dutton

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## **CERTIFICATE OF SERVICE**

I hereby certified that a true copy of the foregoing AEP Energy, Inc.'s Reply Comments was served upon the persons listed below via electronic transmission this 22<sup>nd</sup> day of April 2019.

/s/ F. Mitchell Dutton

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**4/22/2019 2:08:20 PM**

**in**

**Case No(s). 18-0372-GA-WVR**

Summary: Comments AEP Energy, Inc. Reply Comments electronically filed by Mr. F Mitchell Dutton on behalf of AEP Energy, Inc.