

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION  
OF AEP ENERGY, INC. FOR A PARTIAL  
WAIVER OF OHIO ADM.CODE 4901:1-  
29-06 AND 4901:1-21-06.

CASE NO. 18-371-EL-WVR  
CASE NO. 18-372-GA-WVR

### ENTRY

Entered in the Journal on July 17, 2019

#### I. SUMMARY

{¶ 1} The Commission grants, to the extent set forth in this Entry, AEP Energy, Inc.'s request for a waiver of Ohio Adm.Code 4901:1-21-06(D)(1)(h) and 4901:1-29-06(D)(6)(b), which require an independent third-party verification by telephone to ensure the validity of a customer enrollment that occurs through door-to-door solicitation. AEP Energy, Inc. is authorized to use a combination telephonic and electronic third-party verification process.

#### II. DISCUSSION

{¶ 2} AEP Energy, Inc. (AEPE or the Applicant) is an electric services company and retail natural gas supplier as defined in R.C. 4928.01 and 4929.01, 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.

##### A. *Summary of the Application and Procedural History*

{¶ 3} On March 6, 2018, the Applicant 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, the

Applicant has requested a waiver of the provision of the rules that requires the CRES or CRNGS sales agent to contact the TPV entity at the conclusion of the sales transaction and provide the necessary information to initiate the TPV process. AEPE proposes using direct employees with tablets that provide for customers with the ability to use their own smart devices to obtain/benefit from the regulatory safeguards in the existing TPV enrollment process.<sup>1</sup> Under AEPE's proposed process, customers would verify, acknowledge, and confirm specified information through a series of yes/no questions on their personal communications devices. Following the completion of the questions, the customer would then receive a call from a TPV agent with access to the customer's responses, at which time the field sales agent would leave the customer's premises. A shortened TPV process would occur in which the TPV agent would obtain the customer's acknowledgement and confirmation of certain information. AEPE emphasizes that its employees' tablets have a global positioning system (GPS) mechanism that tracks the exact time and location of a customer enrollment and retains detailed records of the enrollment. AEPE asserts a partial waiver of the TPV requirements would result in an enrollment process that customers control on their own communication devices and that provides an enhanced record of the transaction, while minimizing the redundant and time-consuming means of conveying transactional information obtained from the customer during the field sales presentation.

{¶ 4} On March 5, 2019, the attorney examiner granted the Ohio Consumers' Counsel's (OCC) motion to intervene in these proceedings. Additionally, the attorney examiner set forth a procedural schedule requiring motions to intervene and comments to be filed by April 8, 2019, and reply comments by April 22, 2019.

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<sup>1</sup> AEPE notes that it is not seeking a waiver of the TPV rules for any door-to-door enrollment where the customer does not have a personal communications device capable of receiving a text message or email.

{¶ 5} On April 8, 2019, Staff, AEPE, and OCC filed comments. Additionally, on April 22, 2019, OCC and AEPE filed reply comments.

***B. Summary of the Comments***

{¶ 6} On April 8, 2019, Staff filed its review and recommendation. Staff states that it reviewed the application filed in these cases and believes that verifying the enrollment with the consumer in clear, plain language, using a template uniformly followed by all CRES and CRNGS providers, provides valuable safeguards that protect consumers' interests. Staff contends that 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. For that reason, Staff recommends that the Commission address the Applicant's issues in the pending five-year rule review of Ohio Adm.Code Chapters 4901:1-21 and 4901:1-29. Alternatively, Staff recommends that, if the Commission does grant the waiver requested in this application, it be limited to only the requirement for telephonic TPV verification in the rules and that the waiver expire when the Commission issues its final rules in Case No. 17-1843-EL-ORD and 17-1847-GA-ORD.

{¶ 7} AEPE filed comments on April 8, 2019. AEPE states that it 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. AEPE contends that the tablet enrollment process provides additional safeguards in excess of telephonic TPV because of the granular information retained regarding each customer enrollment, solicitation, and prompt delivery of terms and conditions of executed contracts via email delivery. AEPE avers that this enrollment process significantly benefits customers by providing them with a more customer-friendly enrollment experience. AEPE states that it is proposing to retain a portion of the TPV process that verifies the identity of the customer,

which makes fraudulent enrollment almost impossible because there is a voice print of the actual customer that is retained to verify the identity of the customer being enrolled. Further, AEPE argues that a key aspect of the waiver request is that AEPE's field sales business model uses in-house employees that are internally trained, compensated, and instructed on the regulatory compliance obligations around door-to-door sales enrollments. AEPE states that this comes at a higher cost of doing business and, therefore, AEPE seeks to be on equal footing with competitors using third-party vendors for field sales.

{¶ 8} OCC also filed comments on April 8, 2019. OCC recommends that the Commission reject AEPE's waiver request because consumers need the consumer protections provided by the Commission's rules. OCC argues that AEPE's proposal bypasses many of the consumer protections in the independent TPV process. OCC states that, under AEPE's proposal, a customer would have to respond to some of the required questions and answer the call from the third-party verifier under circumstances where the salesperson may influence the customer's response. OCC avers that this is contrary to the consumer protections provided under the Commission's rules and that the Commission should reject AEPE's proposed waiver. Further, OCC contends that AEPE has failed to show how using a GPS tracking function on a tablet and the electronic order verification form is a reasonable alternative for the independent TPV process. OCC argues that AEPE'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. Additionally, OCC contends that AEPE's proposal could harm customers by allowing door-to-door salespeople to be present while customers respond to some of the questions usually asked by the independent third-party verifier. According to OCC, the salespeople could unduly influence customers' responses to the questions. OCC states that the Commission should deny AEPE's application for waiver.

{¶ 9} On April 22, 2019, AEPE filed reply comments. AEPE states that it 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 90 days, to revise business operations to comply with any TPV procedures adopted or retained in such proceedings. However, AEPE opposes Staff's recommendation that the Commission address the waiver request in the pending rule review proceedings as the rule review process takes time. Additionally, AEPE contends that its proposal 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 TPV process will protect against the abuses about which OCC is concerned. AEPE argues that its enrollment process is, in many ways, superior to the existing process that OCC holds out as almost infallible in guarding against fraudulent enrollments. AEPE asserts that, through the availability of GPS information, electronic communications between the customer on the customer's own device, and the shortened TPV audio recording of the customer's responses to the questions in the TPV script, the proposed enrollment process provides additional safeguards that do not exist in traditional door-to-door enrollments. Noting that the Commission previously granted a more expansive waiver of the same requirements, AEPE adds that it proposes to retain a portion of the TPV process, which should address OCC's concerns. *In re Interstate Gas Supply, Inc.*, Case No. 14-1740-EL-WVR, et al., Finding and Order (Nov. 20, 2014), Entry on Rehearing (Jan. 21, 2015).

{¶ 10} OCC also filed reply comments on April 22, 2019. OCC states that neither AEPE nor Staff claims that good cause exists for AEPE's waiver request. OCC reiterates that AEPE's proposal would require consumers to respond to essential portions of the independent TPV in the presence of the door-to-door salesperson who could pressure or otherwise influence the customer to give a particular response. Additionally, OCC states that it opposes any grant of the application, even on a temporary basis. OCC contends

that the Commission should not subject Ohio consumers to experiments with reduced or eliminated protections from energy marketing that could cost them money, even if on a temporary basis. OCC argues that the Commission should deny AEPE's application for waiver to protect consumers.

**C. *Commission Conclusion***

{¶ 11} The Commission notes that Ohio Adm.Code Chapters 4901:1-21 and 4901:1-29, which apply to CRES and CRNGS providers, are intended to provide minimum standards for service quality, safety, and reliability; provide customers with sufficient information to make informed decisions about CRES/CRNGS; protect customers against deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of CRES/CRNGS and in the administration of any contracts for such services; and promote nondiscriminatory access to CRES/CRNGS, ensure timely enrollment with retail electric suppliers/retail natural gas suppliers and governmental aggregators, maintain electric/natural gas service, and timely and correctly switch retail electric suppliers/retail natural gas suppliers and governmental aggregators. Ohio Adm.Code 4901:1-21-02(A) and 4901:1-29-02(A). In its application, AEPE requests a waiver from Ohio Adm.Code 4901:1-21-06(D)(1)(h), which provides:

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.

Additionally, in its application, AEPE requests a waiver from Ohio Adm.Code 4901:1-29-06(D)(6)(b), which provides:

Direct enrollment of a residential or small commercial customer door-to-door by a retail natural gas supplier or governmental aggregator must comply with the following minimum requirements:

Third-party verification

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.

{¶ 12} The Commission has reviewed AEPE's request for a waiver, the comments filed by Staff, AEPE, and OCC, and OCC's and AEPE's reply comments. Initially, we note that Ohio Adm.Code 4901:1-21-02(C) and Ohio Adm.Code 4901:1-29-02(C) provide that the Commission may, upon an application or a motion filed by a party, waive any requirement of Ohio Adm.Code Chapter 4901:1-21 and Ohio Adm.Code Chapter 4901:1-29, respectively, other than a requirement mandated by statute, for good cause shown.



The Commission finds that the Applicant has shown good cause for the requested waiver. The Applicant's request for a waiver of the provision of Ohio Adm.Code 4901:1-21-06(D)(1)(h) and Ohio Adm.Code 4901:1-29-06(D)(6)(b) requiring TPV of the enrollment by telephone, and for approval to instead use a combination of telephonic and electronic TPV, is intended to ensure substantial compliance with the rules, while complying with all other consumer protection requirements.

{¶ 13} As noted by the Applicant, the customer will verify, acknowledge, and confirm certain specified information through yes or no questions on the customer's personal communication device and, once the customer submits the completed disclosure statements, an independent TPV call will be initiated, and the employee will leave the property of the customer. The Commission also emphasizes that a shortened TPV will still occur through an audio recording of the customer's responses to the questions in the TPV script. Additionally, the Applicant must continue ensuring that the other specific items listed in the rules are verified with the customer in clear, plain language.

{¶ 14} Although the Applicant requests the rule waiver for an indefinite period of time, the Commission finds that the waiver should be granted only until the Commission issues an order addressing the TPV requirements in the pending five-year rule review in Case No. 17-1843-EL-ORD and 17-1847-GA-ORD. Therefore, the Commission finds that the requested waiver of Ohio Adm.Code 4901:1-21-06(D)(1)(h) and Ohio Adm.Code 4901:1-29-06(D)(6)(b) should be granted, subject to Staff's alternative recommendations.

{¶ 15} Finally, the Commission notes that the waiver granted is limited to the purpose of these cases only and does not impact the Commission's ability to reconsider this issue in any future proceeding.

### III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That AEPE's application for waiver be granted to the extent set forth in this Entry. It is, further,

{¶ 18} ORDERED, That a copy of this Entry be served upon all parties of record.

COMMISSIONERS:

*Approving:*

Sam Randazzo, Chairman  
M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

SEC/sc

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Summary: Entry that the Commission grants, to the extent set forth in this Entry, AEP Energy, Inc.'s request for a waiver of Ohio Adm.Code 4901:1-21-06(D)(1)(h) and 4901:1-29-06(D)(6)(b), which require an independent third-party verification by telephone to ensure the validity of a customer enrollment that occurs through door-to-door solicitation. AEP Energy, Inc. is authorized to use a combination telephonic and electronic third-party verification process. electronically filed by Docketing Staff on behalf of Docketing