

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of :
Constellation NewEnergy, Inc. and : Case No. 18-0604-GE-WVR
Constellation NewEnergy-Gas Division :
for a Waiver of Rules 4901:1-21-06(C) :
and 4901:1-29-06(B) of the Ohio
Administrative Code

**COMMENTS
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF
OHIO**

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August 1, 2019

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BACKGROUND

On April 10, 2018, Constellation NewEnergy, Inc. and Constellation NewEnergy-Gas Division, LLC. (“Applicant”) 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. Specifically, the Applicant has requested the use of an online, interactive process also known as a chat.

COMMENTS

Staff reviewed the Application filed in this case. In the application, the Applicant states that its website includes a link through which a visitor may interact with a live representative using an interactive chat function. The Applicant wishes to use this chat function to enroll customers.

In its application, the Applicant outlines the online chat enrollment process. The Applicant states that transcripts of online chat conversations will be recorded and saved, and that chat representatives will provide specific disclosures to customers regarding the principal terms and conditions of service and the customer's rights. According to the application, the transcript will be saved and the customer will have the opportunity to request a copy. The transcripts and other unspecified information will be retained in accordance with the Commission's records retention rules.

The chat representatives performing the enrollment via the proposed online chat function will be employed by "a company that has been certified as compliant with Payment Card Industry Data Security Standards".¹ This vendor will have internal quality assurance controls, and the Applicant will monitor enrollments weekly. The IP addresses of the prospective customers will be captured and they will be monitored to ensure that there are no excessive enrollments from a single IP address.

¹ In the Matter of the 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, Case No. 18-0604-GE-WVR, Application at 6 (April 10, 2018).

STAFF RECOMMENDATION

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

The regulatory scheme for Competitive Retail Electric Service ("CRES") and Competitive Retail Natural Gas Service ("CRNGS") enrollments are set forth in Ohio Adm.Code 4901:1-21-06 and 4901:1-29-06. Currently, Ohio Adm.Code 4901:1-21-06 and 4901:1-29-06 are under review by Staff in the Commission's five year rule review in Case No. 17-1843-EL-ORD and 17-1846-GA-ORD. While Staff believes that the ideal venue for evaluating proposed changes to these rules 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 this case, Staff recommends that it should adopt the additional requirements proposed by Staff below and it should only be effective during the pendency of the rule review for Ohio Adm.Code 4901:1-21-06 and 4901:1-29-06.

While it is not explicit in the application, it appears that the Applicant is requesting a waiver from the five prescribed methods of enrollment outlined in the rules (mailings, facsimiles, direct solicitation, telephonic, and internet enrollments). In doing so, it appears that the Applicant is requesting to enroll customers via interactive chat

while following the rule requirements of telephonic enrollment.² Pages 4-5 of the application appear to follow the structure of Ohio Adm.Code 4901:1-21-6(D)(2)—Telephonic enrollment for CRES providers. With that understanding, Staff believes that the application does not go far enough to comply with all of the rules that Ohio Adm.Code 4901:1-21-6(D)(2) requires of telephonic enrollment for electric service. Specifically, the application does not provide how chat enrollment would mimic the following telephonic enrollment requirements:

1. That the chat transcript must include the CRES provider's identity and the exact purpose of the chat;³
2. That the chat transcript must include a statement and the customer's acknowledgment 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;⁴
3. That the chat transcript must include a toll-free telephone number the customer can call to cancel the contract;⁵
4. That the chat transcript must include, if applicable, a request for and the customer's provision of the customer's electric utility account number;⁶

² Ohio Adm.Code 4901:1-21-6(D)(2).

³ Ohio Adm.Code 4901:1-21-6(D)(2)(a)(i)

⁴ Ohio Adm.Code 4901:1-21-6(D)(2)(a)(iii).

⁵ Ohio Adm.Code 4901:1-21-6(D)(2)(a)(ix).

⁶ Ohio Adm.Code 4901:1-21-6(D)(2)(a)(x).

5. That the chat transcript must include a request for and the customer's provision of the customer's mailing address;⁷ and
6. That the CRES provider shall provide a copy of the chat transcript to the customer, *commission*, or the *staff* within three business days of a request.⁸

Staff believes that all of these requirements of telephonic enrollment under 4901:1-21-06(D)(2) should be followed for interactive chat enrollments, not just those proposed in the Applicant's application. Similarly, for enrollment in natural gas service via Applicant's proposed interactive chat process, Staff also believes that all of the requirements of Ohio 4901:1-29-06(E) should be followed, not just those proposed in the Applicant's application. It is worth noting that because telephone enrollment for natural gas service requires independent third-party verification—unlike telephonic enrollment for electric service—Staff believes that if the Commission were to grant the waiver, the requirement of third-party verification for natural gas telephonic enrollment might need to be waived for natural gas chat enrollments.

In conclusion, Staff recommends that the Commission grant the waiver in this Application, with the condition that the waiver provide that all requirements of telephonic enrollment, Ohio Adm.Code 4901:1-21-06(D)(2) and 4901:1-29-06(E), must be followed for interactive chat enrollment, minus the requirement that third-party verification must occur for natural gas chat enrollment. Staff also recommends that the waiver be clearly limited to only enrollments as a result of an interactive chat on the Applicant's website,

⁷ Ohio Adm.Code 4901:1-21-6(D)(2)(a)(xi).

⁸ Ohio Adm.Code 4901:1-21-6(D)(2)(b)(iii) (emphasis added).

and that the waiver expires when the Commission issues its final rules in Case No. 17-1843-EL-ORD and 17-1847-GA-ORD.

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Staff Comments** 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 1st day of August, 2019.

/s/ Andrew B. Shaffer

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Summary: Comments electronically filed by Mr. Andy Shaffer on behalf of Staff of the Public Utilities Commission of Ohio