

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of :  
Direct Energy Business, LLC and Direct :  
Energy Services, LLC for Waivers of : Case No. 18-0382-GE-WVR  
Certain Provisions of Rules 4901:1-21- :  
06 and 4901:1-29-06 of the Ohio :  
Administrative Code. :

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

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**August 8, 2019**

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**BACKGROUND**

On March 2, 2018, Direct Energy Business, LLC and Direct Energy Services, LLC (“Applicant”) submitted an application to the Public Utilities Commission of Ohio (“Commission”) requesting a 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 approval to use a digital platform via either text or email to complete the verification process for enrollment.

**COMMENTS**

Staff reviewed the Application filed in this case. The Applicant states that it is requesting a waiver of the third-party verification (“TPV”) requirement to give customers the option of completing the “verification through a digital confirmation platform

developed by a third-party vendor.”<sup>1</sup> The proposed digital confirmation will function the same as the existing TPV process, except it will start when the customer accesses a link from their choice of a text message or email.

The application outlines the process for the digital TPV. At the conclusion of a door-to-door or telephone sale, the customer will have the option to complete the TPV through the traditional voice method or by using the proposed digital platform. If the customer chooses to complete the TPV through the digital platform, an email or text will be initiated by the salesperson. When accessing the digital TPV, the customer will be asked to share their location and enter their name. Next, the Applicant states that the required disclosures and comments for a voice TPV will be listed and the customer must select “Yes” or “No” as a response to each verification question. The final question will be a confirmation of the customer’s decisions to switch, along with an electronic signature page. The Applicant states that the Welcome Kit and contract will automatically be sent to the customer when the digital TPV is completed.

The Applicant also states in the application that it will maintain the digital TPV records using the same rules applicable to a voice TPV. The location information of both the salesperson and customer during the completion of the verification will also be retained. Applicant maintains that the digital TPV will allow the customer to take their time in reviewing and answering the disclosures and will also allow the customer to back-out of an enrollment if they choose not to complete the verification.

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<sup>1</sup> *In the Matter of the Application of Direct Energy Business, LLC and Direct Energy Services, LLC for Waivers of Certain Provisions of Rules 4901:1-21-06 and 4901:1-29-06 of the Ohio Administrative Code*, Case No. 18-0382-GE-WVR, Application at 8 (March 2, 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. Additionally, Staff does have concerns about the ability to identify the accurate location of the customer in relation to the sales representative. However, Staff believes that there may be benefits of lessons learned from approval of this waiver and it intends to monitor customer complaints regarding this enrollment process closely. Therefore, if the Commission grants the Applicant's request for waiver in this case, Staff recommends that it should adopt the additional requirements below proposed by Staff 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 the waiver application is not initially clear in its purpose, it appears that the Applicant is requesting a waiver from conducting a verbal TPV. In doing so, it appears that the Applicant is requesting to confirm customer enrollment through a link provided via text message or email, while following the existing rule requirements for competitive electric<sup>2</sup> and natural gas third-party verifications.<sup>3</sup> With that understanding, Staff believes that the list of disclosures and permissions required by the rules should match those provided to the customer through the digital platform. Staff also recommends that the format and content of the digital verification be submitted for review prior to its availability to customers.

In conclusion, Staff recommends that the Commission grant the waiver in this Application with the following conditions:

1. Only the verbal requirement included in Ohio Adm.Code 4901:1-21-06(D)(1)(h), 4901:1-21-06(D)(2)(a), 4901:1-29-06(D)(6)(b) and 4901:1-29-06(E)(1), be waived.
2. All other requirements and disclosures for telephonic and door-to-door third-party verification be met using text through the digital platform.
3. 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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<sup>2</sup> Ohio Adm.Code 4901:1-21-06(D)(1)(h) and 4901:1-21-06(D)(2)(a)

<sup>3</sup> Ohio Adm.Code 4901:1-29-06(D)(6)(b) and 4901:1-29-06(E)(1).

Respectfully submitted,

**Dave Yost**  
Ohio Attorney General

**John Jones**  
Section Chief

*/s/ Steven L. Beeler*

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## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **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 8<sup>th</sup> day of August, 2019.

*/s/ Steven L. Beeler*

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Summary: Comments electronically filed by Ms. Tonnetta Scott on behalf of PUC