

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Direct     )  
Energy Business, LLC and Direct Energy     ) Case No. 18-0382-GE-WVR  
Services, LLC for Waivers of Certain     )  
Provisions of Chapters 4901:1-21 and     )  
4901:1-29, O.A.C., to Permit Third-Party     )  
Verification by Digital Confirmation.     )

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**COMMENTS ON CONSUMER PROTECTION FROM ENERGY MARKETING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

Direct Energy Business, LLC and Direct Energy Services, LLC (collectively, “Direct Energy”), a marketer of electricity and natural gas, is seeking permission to deny consumers the protection of the third-party verification system that independently confirms a consumer has chosen to purchase energy service. The Public Utilities Commission of Ohio (“PUCO”) should protect consumers and deny Direct Energy’s request.

Ohio law protects consumers against unlawful changes of their utility service provider.<sup>1</sup> The statutes require the PUCO to adopt rules prohibiting switching, or authorizing the switching of, a customer’s supplier of retail electric or natural gas service “without the prior consent of the customer in accordance with appropriate confirmation practices, which may include independent, third-party verification procedures.”

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<sup>1</sup> R.C. 4928.10(D)(4); R.C. 4929.22(D)(3).

The PUCO's rules require that changes to a consumer's utility service provider resulting from a door-to-door solicitation must be verified through a telephone call to an independent third-party verifier.<sup>2</sup> In this case, Direct Energy seeks to replace the consumer protection of a telephone call to an independent third-party verifier with electronic verification of consumers' changes to their utility service provider.

The Office of the Ohio Consumers' Counsel ("OCC") submits Comments on Direct Energy's proposal.<sup>3</sup> The PUCO may waive any rule, other than a requirement mandated by statute, for good cause shown.<sup>4</sup> In this case, Direct Energy has not shown good cause for its proposed waiver. Direct Energy's arguments to support its proposal are based on several false assumptions that undermine Direct Energy's contention that its proposal is more beneficial to consumers than the protections in the PUCO's rules. Further, the geolocation function in Direct Energy's proposal might not accurately determine whether the salesperson has left the customer's home, which could thwart the consumer protections in the PUCO's rules. The PUCO should protect consumers by rejecting Direct Energy's proposal.

## **II. RECOMMENDATIONS**

### **A. Direct Energy has not shown good cause for its request to deny consumers the protection of third-party verification of service enrollment. The PUCO should protect consumers by denying the Direct Energy's request.**

Direct Energy's arguments in support of its waiver request are based on several false assumptions. Chief among them is the statement that the PUCO's rules do not

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<sup>2</sup> Ohio Adm. Code 4901:1-21-06(D)(1)(h); Ohio Adm. Code 4901:1-29-06(D)(6)(b).

<sup>3</sup> See Entry (June 28, 2019), ¶6.

<sup>4</sup> Ohio Adm. Code 4901:1-21-02(C); Ohio Adm. Code 4901:1-29-02(C).

require third-party verification by telephone.<sup>5</sup> This is not true. Both the electric and natural gas marketing rules concerning door-to-door solicitation state that third-party verification must be conducted in accordance with third-party verification under the telephone solicitation rules.<sup>6</sup> Third-party verification for telephone solicitation is done by telephone, as evidenced by frequent references to “the call.”<sup>7</sup>

Direct Energy also contends that under the current rules neither it nor the independent third-party verifier is able to confirm whether the door-to-door salesperson has left the consumer’s property.<sup>8</sup> That’s not true. The PUCO’s rules require the independent third-party verifier to confirm with the customer that the sales agent has left the customer’s property.<sup>9</sup>

Direct Energy also claims that its proposal is better for consumer comprehension of the questions and disclosures than telephonic independent third-party verification.<sup>10</sup> According to Direct Energy, electronic verification allows consumers to reread the information if necessary. Direct Energy assumes that consumers would not ask the independent third-party verifier to repeat the information when verification is made by phone. But consumers can, and often do, ask the verifier to repeat a question or disclosure during telephonic verification. Further, the PUCO’s rules require the independent third-

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<sup>5</sup> Application (March 7, 2018), ¶7.

<sup>6</sup> Ohio Adm. Code 4901:1-21-06(D)(1)(h); Ohio Adm. Code 4901:1-29-06(D)(6)(b).

<sup>7</sup> See the subparagraphs in Ohio Adm. Code 4901:1-21-06(D)(2)(a); Ohio Adm. Code 4901:1-29-06(E)(1).

<sup>8</sup> Application, ¶10.

<sup>9</sup> Ohio Adm. Code 4901:1-21-06(D)(1)(h)(ii); Ohio Adm. Code 4901:1-29-06(D)(6)(b)(ii).

<sup>10</sup> Application, ¶13.

party verifier to structure the verification interview to give the customer adequate time to respond to questions.<sup>11</sup>

Direct Energy also asserts that its proposal would make it easier for consumers to decline switching to its services.<sup>12</sup> This assumes that the average consumer would not change his or her mind during the conversation with the independent third-party verifier. But consumers can, and often do, change their minds during telephonic verification and simply hang up or decline to switch their service.

The false assumptions relied on by Direct Energy undermine its arguments to support its application. Direct Energy has not shown good cause for its waiver request and the PUCO should deny it to safeguard consumers from deceptive or high-pressure door-to-door solicitations.

**B. Direct Energy’s proposed use of geolocation tracking may not accurately determine whether its salesperson has left the consumer’s home after a door-to-door sale, which could thwart the consumer protections of the PUCO’s rules.**

Direct Energy states that it would use a geolocator function to determine whether its door-to-door salesperson has left the customer’s home before third-party verification would begin.<sup>13</sup> Thus, the accuracy of the geolocation function is important in considering whether consumer protections would be lessened under Direct Energy’s proposal.

Depending on the device and system used, geolocation tracking can have a wide range of accuracy, especially in urban areas. Global positioning systems (“GPS”) are accurate between three and 15 meters (about ten feet to 50 feet), depending on the

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<sup>11</sup> Ohio Adm. Code 4901:1-21-06(D)(1)(h)(iii); Ohio Adm. Code 4901:1-29-06(D)(6)(b)(iii).

<sup>12</sup> *Id.*, ¶14.

<sup>13</sup> *Id.*, ¶9.c.

equipment used.<sup>14</sup> But even a variance of ten feet could mean that the geolocation function inaccurately shows whether the salesperson has left the customer's home. Further, GPS doesn't work well in urban areas and indoors.<sup>15</sup> Ohio law requires that the PUCO's rules consistently protect consumers.<sup>16</sup>

WiFi location tracking can be used to enhance GPS signals. This function tracks the location of devices relative to WiFi hotspots in a neighborhood.<sup>17</sup> But WiFi tracking will not work in areas where no WiFi is available or if the WiFi owner has opted out of the tracking function.<sup>18</sup>

Other tracking systems are less accurate. Mobile network location – which tracks a device's location through cell tower signals – is accurate only within three-quarters of a mile.<sup>19</sup> Internet Protocol based geolocation is typically accurate to a city or an area within a city.<sup>20</sup>

The inaccuracy of these systems could thwart the consumer protections in the PUCO's rules regarding switching of consumers' energy suppliers. The purpose of independent third-party verification is to provide assurance that a marketer's sales pitch does not unduly influence a consumer's choice of energy suppliers. Under the proposed waiver, however, the systems could show that a salesperson has left the customer's home when in fact the salesperson is still in the home and capable of manipulating the

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<sup>14</sup> See <https://www.lifewire.com/how-gps-works-1683296>.

<sup>15</sup> See *id.*

<sup>16</sup> R.C. 4928.10; R.C. 4929.22.

<sup>17</sup> See <https://www.lifewire.com/wifi-positioning-system-1683343>.

<sup>18</sup> *Id.*

<sup>19</sup> See [https://www.storelocatorwidgets.com/blogpost/20453/Everything\\_you\\_ever\\_wanted\\_to\\_know\\_about\\_HTML5\\_Geolocation\\_Accuracy](https://www.storelocatorwidgets.com/blogpost/20453/Everything_you_ever_wanted_to_know_about_HTML5_Geolocation_Accuracy).

<sup>20</sup> See <https://www.lifewire.com/does-ip-address-geolocation-really-work-818154>.

customer's responses to the independent third-party verifier. Conversely, the system could inaccurately show that the salesperson is still in the customer's home and cause the transaction to be cancelled against the customer's wishes.

Direct Energy's proposed system is an inadequate substitute for the independent third-party verifier asking the consumer whether the salesperson is still at the consumer's home. Direct Energy's application should be denied because good cause has not been shown, and customers would otherwise be placed at risk.

### **III. CONCLUSION**

Direct Energy has the burden to show good cause for its waiver request. It has not. The PUCO should not reduce the consumer protections in its rules concerning the switching of consumers' electric and natural gas suppliers. To protect consumers, the PUCO should deny Direct Energy's application and maintain the protection of third-party verification of a consumer's enrollment in the purchase of energy service.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Comments was served on the persons stated below via electronic transmission, this 8<sup>th</sup> day of August 2019.

*/s/ Terry L. Etter* \_\_\_\_\_

Terry L. Etter

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Summary: Comments Comments on Consumer Protection from Energy Marketing by The Office of the Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Terry L. Etter