

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of)	
Constellation NewEnergy, Inc. and)	
Constellation NewEnergy – Gas Division,)	Case No. 18-0604-GE-WVR
LLC for Waivers of Enrollment)	
Requirements in Rules 4901:1-21-06(C))	
and 4901:1-29-06(B), Ohio Administrative)	
Code.)	

**JOINT REPLY COMMENTS OF
CONSTELLATION NEWENERGY, INC.
AND
CONSTELLATION NEWENERGY – GAS DIVISION, LLC**

I. Introduction

Constellation NewEnergy, Inc. and Constellation NewEnergy – Gas Division, LLC (collectively “Constellation”) submit the following reply comments in support of their joint waiver request (if deemed necessary) to allow for the use of online chat enrollments. As recognized by the Retail Energy Supply Association, live chats represent an advancement in the competitive retail electric and natural gas markets, and the Commission would be following Ohio’s statutory policy on providing for flexible regulatory treatment by approving the use of an online chat enrollment process.

OCC and OP&E, however, oppose the use of online chat enrollment on the mistaken belief that it will weaken consumer protections. OCC and OP&E are wrong. Constellation’s waiver Application listed multiple customer protections including requiring customer acknowledgement of the switch and ensuring that the customer can receive a complete copy of the chat transcript via email upon request. Staff’s initial comments also undercut OCC’s and OP&E’s opposition. Staff highlighted the importance of verifying enrollment with consumers in

clear, plain language, using a uniform template, but recognizes that verification of enrollment does not always have to be through a third-party telephonic verification.

Staff, while supporting the Application, is requesting additional protective requirements. Constellation agrees to Staff's additional requirements but not to Staff's request that the waiver expire when new rules are issued. Instead, Constellation offers a compromise whereby the waiver would be ongoing subject to any modifications that are imposed in any subsequent Commission decision. Doing so avoids a situation where customers lose the ability to use the online chat enrollment process upon issuance of a rulemaking decision if the decision does not impact the waiver or only result in minor modifications to the approved chat enrollment process. The compromise will also provide certainty to Constellation and lower its investment risk to support chat enrollment in Ohio.

Constellation appreciates the Commission's consideration of the Application to allow for the use of chat enrollment. Importantly, with the safeguards presented in the Application and with Staff's additional safeguards, consumers using chat enrollment will receive a high level of consumer protection in conjunction with an enrollment process that is desired by consumers.

II. Comments

A. Ohio law supports the use of chat enrollment.

An important point that Constellation raised in its Application and that RESA noted in its initial comments is that Ohio law supports the use of chat enrollment. Revised Code Sections 4928.02(C) and 4929.02(A)(3) make clear that it is Ohio's policy to ensure or promote the diversity of electric and natural gas suppliers and supplies by giving consumers effective choices. Commission approval of the waiver application and permission to use chat enrollments would be consistent with those policies because approval will promote competitive supplies and give consumers another avenue for making their supplier choice. In addition, Revised Code Sections

4928.02(G) and 4929.02(A)(6) state that there should be recognition of the competitive electric and natural gas markets through development and implementation of flexible regulatory treatment. Commission approval of the waiver Application (which would constitute flexible regulatory treatment) will encourage development of the electric and natural gas markets by permitting the use of more advanced technology during the enrollment process. As stated by RESA, “the proposal before the Commission in this matter can provide customers with another efficient, effective and appropriate way for Ohio to enroll in competitive retail energy services.” The Commission should find that Ohio law supports chat enrollments and grant the waiver Application.

B. Chat enrollment will provide enhanced consumer protection as it is a written form of enrollment and not a telephonic enrollment.

An important fact missed by OPAE and OCC is that **the chat enrollment is not a telephonic enrollment**. A chat enrollment is a **written** form of communication. As both OPAE and OCC know, third-party verifications (TPVs) are not required for enrollments using a written process (mail solicitation, facsimile, or internet enrollments). Yet, OPAE argues that enrollment via Constellation’s chat process *may* increase deceptive practices and provide incomplete, misleading information to consumers. OPAE Comments at 6. Likewise, OCC argues there will be “reduced consumer protections” or manipulations if the chat methodology is used. OCC Initial Comments at 3, 6. OCC believes that the chat methodology will not protect customers unless a third-party verification (“TPV”) is also conducted. OCC Initial Comments at 6.

To the contrary, the use of a written chat enrollment process will provide enhanced consumer protections. As outlined in the Application, these protections include:

- The customer *controls* the chat. Customers will move forward with the chat enrollment at their own pace because the customer can step away, pause or end the chat as the customer chooses. (Application at 3-4)

- Customers can *receive a transcript* of the chat conversation *immediately* following completion of the chat or upon request later on. (Application at 5)
- The transcript includes the *entire* conversation, in a real-time format which is currently not available to customers through the traditional enrollment mechanisms in Ohio. (Application at 5)
- Constellation will review the chat enrollments weekly for *validity and compliance*, including review of the IP addresses of the enrollees and submission of customer information per the protocols. (Application at 6)
- Customers will be able to view and download the terms and conditions of the contract during the chat process. (Application at 5, footnote 2)
- Customers will receive *within one business day* the written contract containing the terms and conditions agreed upon during the chat. (Application at 5)
- Customers *will be able to rescind* the enrollment through the applicable rescission period. (Application at 5)

Neither OPAE nor OCC explain how chat enrollment will lead to deceptive practices or incomplete, misleading information. For example, OCC simply characterizes a chat as a conversation (ignoring the fact that it is a written conversation), and claims that a TPV is necessary. OPAE's and OCC's conjecture ignores the protections proposed in the Application for chat enrollment and is not based on any specificity. OPAE's and OCC's comments should be rejected.

C. Constellation's Application identifies the rules that should be waived, if necessary.

OCC's contention that Constellation has not specified the rules to be waived overlooks both pages 2 and 6 of the Application and the case caption where the rules are listed. In the Application, Constellation explained that Rules 4901:1-21-06(C) and 4901:1-29-06(B) prohibit a supplier from enrolling a customer in any other way except by obtaining customer consent and proof of that consent through methodologies spelled out in the cross-referenced rules.

Constellation is asking the Commission to waive this prohibition in the two rules (if the Commission deems a waiver necessary) and allow Constellation to use the chat enrollment process as an alternative form of enrollment.

Unlike OCC, Staff acknowledged the two specific rules for which a waiver is sought and construed Constellation's request as asking for a waiver of all "traditional" enrollment methodologies (mailings, facsimiles, direct solicitation, telephonic, and internet enrollments). *See* Staff Initial Comments at 1 and 3. Importantly, Constellation is not asking the Commission to waive any specific requirements for enrolling a customer in-person, via mail solicitation, via facsimile, via telephone or through the internet process. *See* Application at 6. Instead, Constellation seeks a waiver (if necessary) from Rules 4901:1-21-06(C) and 4901:1-29-06(B) which limit a supplier to the current methods in the Commission's rules for obtaining customer consent and proof of that consent. The new method for obtaining customer consent and proof of that consent (as recognized by Staff) would be through the online chat enrollment experience.

D. The waiver should remain in effect subject to any future ruling that would directly modify it.

The Staff recommends approval of Constellation's waiver request, but also recommends that "it should only be effective during the pendency of the rule review[s] for Ohio Adm.Code 4901:1-21-06 and 4901:1-29-06." Staff Initial Comments at 3. Constellation appreciates Staff's support of the waiver request but disagrees with this limitation for several reasons.

First, Constellation presumes that Staff is referring to the two currently pending cases involving Rules 4901:1-21-06 and 4901:1-29-06 – namely, Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD. Those two matters have been pending since late 2017. It is unclear how long they will be pending and thus, it is unclear how long the waiver might be in effect under Staff's

recommendation. If the waiver were to end when new rules issue, Constellation's investment in setting up Ohio chat enrollment will be at risk.

Second, given the size and scope of those rule reviews, it is possible the Commission will address the rules at different times. If that were to occur, the waiver related to the electric rule might be in effect for a different time than the waiver related to the natural gas rule. This would be through no fault of Constellation and be arbitrary. The end result, however, would be that customers would be able to use chat enrollment for one energy service but then have to utilize a different means if desiring to also enroll for the other energy service.

Third, the Commission's decision in those rule reviews may not impact the waiver. If that happens and the waiver was required to end per Staff's condition, Constellation would have to apply for the waiver again for it to be reestablished. Moreover, customers would lose the ability to use chat enrollment during that period, Constellation would have to make modifications to its systems, and the interruption would have an impact on Constellation's contracts with its service providers.

Rather than limit the time period for the waiver to the issuance of new rules, Constellation proposes a compromise. Specifically, Constellation proposes that the Commission approve the waiver subject to any decision (including a rule issuance) that would modify the terms and conditions of the waiver. The compromise would continue to subject the approved online chat enrollment process to modification if new rules are issued. The process would also be subject to any other Commission decisions issued outside of a rulemaking case given that the Commission has ongoing jurisdiction over Constellation as an Ohio competitive supplier, and can revoke the waiver or modify the waiver if future circumstances change. Just as important,

under the compromise, Constellation will have much needed certainty to move forward and implement the chat enrollment methodology for Ohio customers.

III. Conclusion

To conclude, Constellation respectfully requests that the Commission waive Rules 4901:1-21-06(C) and 4901:1-29-06(B), to the extent necessary, so that Constellation may utilize an additional form of consent to enroll customers via an online, real-time “chat” conversation. Contrary to OCC’s and OP&E’s claims, there will be no decrease in consumer protections given that the chat enrollment is a written enrollment process with a full transcript of the enrollment process available to consumers (and Staff). The record in this proceeding supports the granting of the requested waivers, which will further develop the competitive markets, are consistent with Ohio policy, are reasonable, and are in the public interest.

Respectfully Submitted,

/s/ Gretchen Petrucci

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8/15/2019 5:13:22 PM

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Case No(s). 18-0604-GE-WVR

Summary: Comments -- Joint Reply Comments electronically filed by Mrs. Gretchen L. Petrucci on behalf of Constellation New Energy Inc. and Constellation NewEnergy - Gas Division, LLC