

**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 Certain)	
Provisions of Chapters 4901:1-21 and)	Case No. 18-0382-GE-WVR
4901:1-29, O.A.C., to Permit Third-Party)	
Verification by Digital Confirmation.)	

**REPLY COMMENTS OF DIRECT ENERGY BUSINESS, LLC
AND DIRECT ENERGY SERVICES, LLC**

Direct Energy Business, LLC and Direct Energy Services, LLC (collectively, Direct) offer the following Reply Comments in support of the waiver requested in this proceeding.

REPLY COMMENTS

In addition to Direct, OCC, Staff, Columbia, and RESA also filed Initial Comments. Direct will address these parties' comments in reverse order.

A. RESA

RESA supports the waiver. "The application in this proceeding presents such an improvement, follows Ohio policy, and will further develop Ohio's competitive retail energy markets if approved." (RESA Comments at 2). Direct agrees.

B. Columbia

Next, "Columbia does not object to giving customers the option of third-party verification through a digital platform. However, Columbia requests the Commission ensure that Direct must still provide the TPVs to Columbia upon request, pursuant to Ohio Adm. Code 4901:1-29-06(D)(6)(b)(v)." (Columbia Comments at 1). Direct is happy to honor Columbia's request.

C. Staff

Staff's summary of the waiver request accurately captures the essence of what Direct is attempting to accomplish. (Staff Comments at 2-3). Like Staff, Direct recognizes a rulemaking would be the "ideal venue" to evaluate changes to the TPV requirements. But like Direct, Staff also recognizes that "this process takes time." Innovation will not always line up with the five-year interval for rulemaking. Staff recognizes that "there may be benefits of lessons learned from approval of this waiver" and therefore recommends that it be approved. (*Id.* at 4).

Staff's approval contains three conditions: (1) that the waiver only apply to the "verbal" requirement and not the general requirement to conduct a TPV; (2) that all other TPV requirements continue to apply; and (3) that the waiver expire when final rules are issued in Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD. (*Id.* at 5). While Direct generally does not object to Staff's first two conditions, it would request clarity that due to the nature of digital TPV, the verification process will not be conducted "before the completion of the telephone call" as currently required under Ohio Admin. Code 4901:1-21-06(D)(2)(a), but rather will be conducted after the call has ended when the customer selects the text or email option.

As to Staff's third condition, if the waiver is to expire upon issuance of final rules in the pending rulemakings, the order in this proceeding should clarify that Direct is not prohibited from re-applying for a waiver under the new rules, if necessary. The merits of any future waiver request would obviously need to be decided on the facts and circumstances at the time it is filed. With this understanding, Direct is fine with the third condition.

D. OCC

This brings us to OCC. OCC claims the waiver will "deny consumers the protection of the third-party verification system that independently confirms a customer has chosen to

purchase energy service.” (OCC Comments at 2). This statement is wrong on two levels. First, *no system* of third-party verification “independently” confirms an enrollment decision. Any system will require interaction with the customer. The current rules require the interaction to take place verbally over the telephone. The waiver would permit interaction the way customers are increasingly choosing to interact—by digital text and other electronic means. A system for TPV will remain in place. The only change is how people will be permitted to interact with the system—*if they so choose*. Anyone who wishes to talk to a verifier over the phone will continue to have the option to do so.

OCC cannot identify a single reason why digital TPV is bad for consumers. The best it can do is mischaracterize Direct’s application and claim it contains “false assumptions” about whether existing rules “require” telephonic TPV, or whether a verifier is able to confirm whether a customer has left the property. (*Id.* at 2-3). Whether the current rules expressly or impliedly require telephonic TPV misses the very point of the filing, which is to obtain a waiver so that an additional means of offering a third-party verification using the same questions as a verbal TPV may be offered. The only way a telephone verifier in a different location can “confirm” whether a sales agent has left the property is to ask the customer. The verifier is not in a position to “confirm” anything other than what they are told. The digital TPV process uses the same question as the verbal TPV and has the customer respond via the text system.

OCC then delves into speculation over whether customers would prefer to re-ask verification questions over the telephone versus re-reading questions on their mobile device or computer, and whether hanging up the phone is a superior method of cancelling an enrollment versus deleting an email or closing an app. (*Id.* at 3-4). Again, granting the waiver does not remove the customer’s right to have a verbal TPV if that is their preference. Rather the process

will offer a non-verbal option for those customers who prefer an electronic approach. The waiver will preserve both options. And in both options, the same confirmation questions will be presented.

OCC's remaining comments focus on the geo-tracking feature, something that is not required in current rules. OCC's criticism of this feature seems to misconstrue what is presented as an additional protection as something lacking when compared to existing rules. Existing rules, as noted above, rely solely on a customer's response to a question. Direct presented geo-location in addition to telephone number, owner name and premise verification, and a customer identity question, three additional verifications not required by current rules. Rather than simply relying on electronic TPV, Direct has taken three additional steps beyond existing verbal TPV rules to avoid fraud. The fact that a geo-tag may place a salesperson on the front porch instead of the driveway 50 feet away will not diminish consumer protections. Nor is the geo-location feature a substitute for a confirmation question that asks whether the salesperson has left the property.

Granting this waiver will allow Staff and the Commission to confirm a salesperson's location within a reasonable margin of error—without having to take anyone's word for it. Digital TPV enhances consumer protection by capturing information that is not available under the current rules. Suggesting that granting the waiver will put customers at risk when the process proposed by Direct includes three additional protections beyond existing rules and given that digital TPV is an *option*, not a *requirement*, for a customer is absurd.

The Initial Comments collectively offer many reasons to grant the requested waiver and none to deny the request. OCC's outlier views should be rejected and the waiver granted.

Date: August 22, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document is being served via electronic mail this 22nd day of August, 2019, upon the following:

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Summary: Reply Comments electronically filed by Ms. Rebekah J. Glover on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC