

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	Case No. 18-371-EL-WVR
AEP Energy, Inc. for a Partial Waiver of	)	
OAC Rules 4901:1-29-06 and 4901:1-21-06.	)	Case No. 18-372-GA-WVR

---

**AEP ENERGY, INC. MEMORANDUM CONTRA TO THE OFFICE OF THE  
OHIO CONSUMERS' COUNSEL APPLICATION FOR REHEARING  
(August 23, 2019)**

---

**Background.**

AEP Energy, Inc. (AEPE) is a competitive retail electric services and a competitive retail natural gas services provider as defined in R.C. 4928.01 and 4929.01, respectively, and is certified to provide competitive retail electric service (CRES) and competitive retail natural gas service (CRNGS) under R.C. 4928.08 and 4929.20, and is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16 and 4929.24. On March 6, 2018, AEPE submitted an application to the Commission requesting a partial waiver of the third-party verification (TPV) provision of Ohio Adm. Code 4901:1-21-06(D) and Ohio Adm. Code 4901:1-29-06(D), as it applies to providing for an independent third-party verifier to ensure the validity of the enrollment of a customer through a direct solicitation by door-to-door sales. Specifically, AEPE requested a partial waiver of the provision of the rules that requires a full review of the sales transaction by the TPV entity and to permit the customer to provide a portion of such required information through tablets that provide for the ability for the customers to use their own smart devices to execute the regulatory safeguards in the existing TPV enrollment process.

By an Entry entered in the Journal on March 5, 2019, the attorney examiner granted the Office of Consumer's Counsel's (OCC) intervention in this Application. On or about April 8, 2019, AEPE, OCC and the Staff of the Public Utilities Commission ("Staff") submitted comments. On or about April 22, 2019 AEPE and OCC submitted reply comments. By an Entry entered in the Journal on July 17, 2019, the Commission granted AEP Energy's application for waiver to permit the customer to verify, acknowledge, and confirm certain specified information through yes or no questions on the customer's personal communication device and, once the customer submits the completed disclosure statements, an independent TPV call will be

initiated, and the employee will leave the property of the customer. The waiver request is granted only until the Commission issues an order addressing the TPV requirements in the pending five-year rule review in Case No. 17-1843-EL-ORD and 17-1847-GA-ORD. AEP Energy hereby submits its memorandum contra to the OCC's rehearing application.

### Memorandum Contra to the OCC's Application For Rehearing

The OCC does not raise any new arguments in opposition to AEPE's waiver request, other than citations to door-to-door complaints which will be addressed below and mischaracterizations of AEPE's waiver request. At the outset, OCC mistakenly claims on nine (9) occasions that AEPE's field sales agents enter or remain in the consumer's home<sup>1</sup>. AEPE's field sales agents remain on the property of the customer while the customer on a computer tablet answers certain "yes or no" questions, but then leaves the premises while a shortened recorded third party verification is completed. Even the five-year-old Columbus Dispatch article cited in footnote 7 of OCC's Rehearing Application correctly recites AEPE's then Energy Manager's firm rule that "an AEP Energy solicitor is not to enter the home, even if invited to do so." This rule remains unchanged.

AEPE also uses its own employees for door-to-door residential sales in Ohio. AEPE field sales agents are compensated primarily with base pay (including benefits) and sales commission only represents a portion of the total compensation. This business structure does not have the serious pitfalls of commission-only compensation that tends to unduly incentivize aggressive or harassing behavior that is a source of negative customer reaction. Aspects of complaints cited by OCC were in the nature of a lack of professionalism of third party vendor supplied commission-only field sales agents – which a recorded TPV process will not change – but hiring, training, and retaining employees as field sales agents does address.

In several footnotes OCC cites customer complaints regarding door-to-door solicitations, presumably to demonstrate some correlation between this waiver request application and the

---

<sup>1</sup> See, OCC Rehearing Application, p. i Section III.B.; p. 2 first full paragraph; p. 3 numbered paragraph 2; OCC Memo in Support, p.3, Section III.A. and p.4, second full paragraph; p.5 Section B; p. 6.

nature of these complaints. OCC does not explain how these complaints relate to this specific partial waiver of TPV requirements sought by AEPE. In the five-year-old Columbus Dispatch article cited by OCC, no mention is made of TPV. The companies that are the focus of complaint cases did not have a waiver of the TPV process and the nature of the complaints did not pertain to the TPV process. The only mention of third-party verification in the Staff report of PALMco/ Indra investigation occurs on page 14, where the CRES cites to a TPV recording to allegedly demonstrate compliance with product pricing disclosures. In the Verde Energy complaint cited by OCC, the compliance violations would not have been prevented by utilizing TPV, rather the CRES was allegedly frustrating the purpose of TPV prior to any TPV being initiated by instructing customers how to answer without consideration of whether the customer understood the contract. OCC's citation to these complaint cases does not support OCC's opposition to the partial waiver of the TPV requirements as requested by AEPE.

As a final matter, AEPE does not charge an early termination fee to Ohio residential gas or electric customers. Consequently, the OCC's concern with respect to customers not having a third party recorded verification of the material commercial terms (as opposed to AEPE's approach of the customer acknowledging each such material commercial term on a computer tablet) is significantly diminished because the customer can leave AEPE's supply at any time without penalty. A lengthy and tiresome third party verification process is one of the on-going customer complaints that AEPE has repeatedly heard from customers during their enrollment process.

### Conclusion

AEPE is seeking only a partial waiver of the TPV enrollment process. AEPE is proposing to retain the TPV process to verify the customer's identity, while using a tablet process to verify the customer's agreement to the commercial terms. The Commission has correctly granted this partial waiver of these requirements that still ensures that customers are fully aware of all material commercial terms and consent to receiving service from AEPE. OCC's Application for Rehearing simply rehashes matters that the parties have already addressed at length and

the Commission have already considered. For the foregoing reasons, OCC's Application for Rehearing should be denied.

Respectfully Submitted,

/s/ F. Mitchell Dutton

F. Mitchell Dutton  
Regulatory Counsel  
AEP Energy, Inc.  
1 Easton Oval  
Columbus, OH 43219  
Phone (614) 682-4350  
Email [mdutton@aepenergy.com](mailto:mdutton@aepenergy.com)

## **CERTIFICATE OF SERVICE**

I hereby certified that a true copy of the foregoing AEP Energy, Inc.'s Memorandum Contra to the OCC's Application For Rehearing was served upon the persons listed below via electronic transmission this 23rd day of August 2019.

/s/ F. Mitchell Dutton

F. Mitchell Dutton

Regulatory Counsel

AEP Energy, Inc.

mdutton@aepenergy.com

## **SERVICE LIST**

[john.jones@ohioattorneygeneral.gov](mailto:john.jones@ohioattorneygeneral.gov)

[thomas.lindgren@ohioattorneygeneral.gov](mailto:thomas.lindgren@ohioattorneygeneral.gov)

[terry.etter@occ.ohio.gov](mailto:terry.etter@occ.ohio.gov)

[amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)

Attorney Examiner:

[Stacie.Cathcart@puco.ohio.gov](mailto:Stacie.Cathcart@puco.ohio.gov)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**8/23/2019 3:52:40 PM**

**in**

**Case No(s). 18-0371-EL-WVR, 18-0372-GA-WVR**

Summary: Memorandum AEP Energy's Memorandum Contra to OCC Application for Rehearing electronically filed by Kristina L Woods on behalf of AEP Energy, Inc.