

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
OHIO ADM.CODE CHAPTERS 4901:1-21
AND 4901:1-29, TO PERMIT THIRD-PARTY
VERIFICATION BY DIGITAL
CONFIRMATION.

CASE NO. 18-382-GE-WVR

ENTRY

Entered in the Journal on September 26, 2019

I. SUMMARY

{¶ 1} The Commission grants, to the extent set forth in this Entry, Direct Energy Business, LLC and Direct Energy Services, LLC's request for a waiver of 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), which require an independent third-party verification by telephone to ensure the validity of a customer enrollment that occurs through door-to-door solicitation. Direct Energy Business, LLC and Direct Energy Services, LLC are authorized to complete the verification process through digital confirmation.

II. DISCUSSION

{¶ 2} Direct Energy Business, LLC and Direct Energy Services, LLC (Applicants) are each an electric services company and retail natural gas supplier as defined in R.C. 4928.01 and 4929.01, are certified to provide competitive retail electric service (CRES) and competitive retail natural gas service (CRNGS) under R.C. 4928.08 and 4929.20, and are subject to the jurisdiction of this Commission pursuant to R.C. 4928.16 and 4929.24.

A. *Summary of the Application and Procedural History*

{¶ 3} On March 2, 2018, Applicants submitted an application to the Commission requesting a partial waiver of the third-party verification (TPV) provisions of Ohio Adm.Code 4901:1-21-06(D)(1)(h), 4901:1-21-06(D)(2)(a), Ohio Adm.Code 4901:1-29-06(D)(6)(b), and 4901:1-29-06(E)(1), as they apply to providing for an independent third-

party verifier to ensure the validity of the enrollment of a customer through a direct solicitation. Specifically, Applicants request a waiver of the provision of the rules that requires the CRES or CRNGS sales agent to contact the TPV entity at the conclusion of the sales transaction and provide the necessary information to initiate the TPV call process. Applicants propose that customers will be provided the ability to complete the TPV by either: (1) responding to an interactive email or text using their own device (digital TPV); or, (2) opting to confirm the provider change through the traditional TPV telephone communication. Applicants submit that the waiver maintains the benefit of the regulatory safeguards in the existing TPV enrollment process, while offering an alternative confirmation process that may be more convenient to customers. Under Applicants' proposed process, customers who elect to complete digital TPV will verify, acknowledge, and confirm specified information through a series of "yes/no" questions on their personal electronic devices. After responding to all of the questions, the customers will receive a final confirmation of the decision to switch providers. Upon e-signing the verification form, the customers will receive a "Thank you" page and a "Welcome Kit" email. Within the "Welcome Kit" email will be a signed copy of the contract and another disclosure of the right to cancel within the applicable time period. Applicants emphasize that their sales agents' tablets have a global positioning system (GPS) mechanism that blocks enrollment attempts where a sales agent is within a customer's presence. Applicants assert that customers who avail themselves of digital TPV are provided with greater convenience, while also enhancing Applicants' ability to identify and prevent fraud, as well as to investigate complaints and monitor compliance.

{¶ 4} On June 26, 2019, the attorney examiner issued an Entry that: (1) granted separate motions to intervene as filed by both the Ohio Consumers' Counsel (OCC) and Columbia Gas of Ohio, Inc. (Columbia Gas); and, (2) invited all interested stakeholders to file comments in this case.

{¶ 5} Comments regarding the application were filed separately by Applicants, OCC, Columbia Gas, Staff, and the Retail Energy Supply Association (RESA) on August 8, 2019. Reply comments were filed by Applicants and OCC on August 22, 2019.

B. Summary of the Comments

{¶ 6} On August 8, 2019, Staff filed its review and recommendation. Staff reviewed the application filed in this case and recommends that the waiver be approved subject to the following conditions: (1) with respect to the communications required by 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), the waiver only applies to the method of communication – Applicants are still required to capture all of the information provided for in these rules using digital, rather than verbal, responses; (2) all other requirements and disclosures for telephonic and door-to-door third-party verification must be met through the digital platform; and, (3) the waiver expires when the Commission issues its final rules in Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD. Staff finds that the proposed TPV digital process maintains consistent consumer protections such that it should be permitted while the rule analysis continues. During this time, Staff will closely monitor customer complaints regarding the enrollment process.

{¶ 7} On August 8, 2019, Applicants filed initial comments. Applicants provide information concerning the implementation of their optional digital TPV program in four other states (Pennsylvania, Michigan, Maryland, and Delaware) between May 2018 and January 2019. Overall, nearly 23,000 of approximately 74,000 choice sales in these states occurred using the newly offered digital TPV process (the remaining 51,000 continued to use traditional telephone TPV). Applicants assert that the initial high participation rate demonstrates the customer appetite for the alternative confirmation plan. Further, Applicants note that the quality of enrollments is not impacted by the confirmation choice, as 75 percent of customers using voice-based TPV ultimately verified enrollment, which favorably compares to the 78 percent verification rate for digital TPV. Applicants also note that the digital TPV plan has been augmented to provide additional anti-fraud measures, as

customers now verify their name at the outset of the process and their date of birth at the close of the process.

{¶ 8} On August 8, 2019, Columbia Gas filed initial comments. Columbia Gas does not object to the proposed waiver so long as it does not impact Applicants' obligation to provide TPV confirmations to Columbia Gas upon request, as provided for in Ohio Adm.Code 4901:1-29-06(D)(6)(b)(v).

{¶ 9} On August 8, 2019, RESA filed initial comments. RESA supports the waiver application, asserting that the digital TPV option provides an efficient, alternative confirmation process that customers may favor. Further, RESA notes that the digital TPV process involved in this waiver request is similar to the combination telephonic and electronic TPV process that the Commission authorized via a waiver in July 2019. *See In re AEP Energy, Inc.*, Case No. 18-371-EL-WVR, et al., Entry (July 17, 2019).

{¶ 10} On August 8, 2019, OCC filed comments. OCC opposes the waiver application, asserting that Applicants have not demonstrated good cause for the departure from the verification process set forth in Ohio Adm.Code 4901:1-21-06(D)(1)(h) and Ohio Adm.Code 4901:1-29-06(D)(6)(b). OCC maintains that the enhanced consumer comprehension and cancellation/rejection benefits described by Applicants are overstated, as they are no different than what is provided by traditional telephonic TPV. OCC also raises concerns regarding the accuracy of the geolocation tracking system described in the application and how that might impact customer interaction with on-site salespersons.

{¶ 11} On August 22, 2019, Applicants filed reply comments. In addressing the Columbia Gas comments, Applicants agree to provide, at Columbus Gas' request, specific TPV confirmation data regarding new enrollees. As for the Staff comments, Applicants clarify that their proposed digital TPV confirmations will occur in lieu of traditional telephonic TPV. Further, Applicants request clarification that any temporary waiver will not preclude a future waiver request. As for the OCC comments, Applicants stress the

optional nature of the proposed digital TPV – enrolling customers will retain the right to use telephonic TPV. Further, as to OCC’s geolocation tracking concerns, Applicants stress the redundancy that results from the fact that a customer confirms the severed salesperson contact at the outset of the digital TPV. By maintaining this customer confirmation practice, Applicants demonstrate that alleged geolocation tracking limitations do not impact the safeguards against obtaining customer TPV in the presence of in-person salespersons.

{¶ 12} On August 22, 2019, OCC filed reply comments. OCC continues to oppose the waiver application, asserting that Applicants have not demonstrated good cause for the departure from the traditional verification process. OCC restates its concerns regarding the accuracy of the geolocation tracking system described in the application and how that might impact customer interaction with on-site salespersons. OCC also argues that, if the application is approved, even on a temporary basis, then Applicants should be required to develop performance metrics to include the number and reasons given for customers who decline enrollment or rescind contracts within seven days of enrollment.

C. Commission Conclusion

{¶ 13} The Commission notes that Ohio Adm.Code Chapters 4901:1-21 and 4901:1-29, which apply to CRES and CRNGS providers, are intended to provide minimum standards for service quality, safety, and reliability; provide customers with sufficient information to make informed decisions about CRES/CRNGS; protect customers against deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of CRES/CRNGS and in the administration of any contracts for such services; and promote nondiscriminatory access to CRES/CRNGS, ensure timely enrollment with retail electric/natural gas suppliers and governmental aggregators, maintain electric/natural gas service, and timely and correctly switch retail electric/natural gas suppliers and governmental aggregators. Ohio Adm.Code 4901:1-21-02(A) and 4901:1-29-02(A). In their application, Applicants request a waiver of Ohio Adm.Code 4901:1-21-06(D)(1)(h) and 4901:1-21-06(D)(2)(a) (Electric TPV Rules) and Ohio Adm.Code 4901:29-06(D)(6)(b) and

4901:1-29-06(E)(1) (Gas TPV Rules) to give customers the option of third-party verification through a digital confirmation platform. Specifically, the waiver would expand references in these rules to the terms “audio recording,” “telephonically,” “telephone call,” “verbal,” and “call” such that a customer’s election to pursue digital TPV would be deemed compliant with these rules. Employing the waiver, when the digital TPV process is selected, the customer’s verification will occur through text or internet prompts instead of a telephonic voice communication. The verification information is not changed – only the medium for the communication.

{¶ 14} The Commission has reviewed the following information: Applicants’ request for a waiver; the comments by Applicants, OCC, Columbia Gas, Staff, and RESA; and the reply comments by Applicants and OCC. Initially, we note that Ohio Adm.Code 4901:1-21-02(C) and Ohio Adm.Code 4901:1-29-02(C) provide that the Commission may, upon an application or a motion filed by a party, waive any requirement of Ohio Adm.Code Chapter 4901:1-21 and Ohio Adm.Code Chapter 4901:1-29, respectively, other than a requirement mandated by statute, for good cause shown. The Commission finds that Applicants have shown good cause for the requested waiver. Accordingly, Applicants’ request for a waiver of the provisions of the Electric TPV Rules and Gas TPV Rules is granted, subject to Staff’s conditions and recommendations. Applicants are authorized to confirm enrollments using digital TPV when requested by customers.

{¶ 15} Pursuant to this waiver, Applicants are authorized to substitute digital enrollment verification in lieu of telephonic verification when that substitution is selected by the enrolling customer. When the digital enrollment verification is requested, the customer will verify, acknowledge, and confirm TPV information through “yes/no” questions on the customer’s personal communication device after the salesperson has left the customer’s property. Applicants must continue ensuring that all specific items listed in the rules are verified with the customer in clear, plain language regardless of whether the responses are electronic or telephonic.

{¶ 16} Although Applicants request the rule waiver for an indefinite period of time, the Commission finds that the waiver should be granted only until the Commission issues an order addressing enrollment requirements in the pending five-year rule review in Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD.

{¶ 17} Finally, the Commission notes that this waiver is limited to the purpose of only this case and does not impact the Commission's ability to reconsider this issue in any future proceeding.

III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That Applicants' application for waiver be granted to the extent set forth in this Entry. It is, further,

{¶ 20} ORDERED, That a copy of this Entry be served upon all parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

MLW/mef

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