

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE JOINT  
APPLICATION OF CONSTELLATION  
NEWENERGY, INC., AND  
CONSTELLATION NEWENERGY-GAS  
DIVISION, LLC FOR WAIVERS OF OHIO  
ADM.CODE 4901:1-21-06(C) AND 4901:1-  
29-06(B).

CASE NO. 18-604-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, Constellation NewEnergy, Inc. and Constellation NewEnergy-Gas Division, LLC's request for a waiver of Ohio Adm.Code 4901:1-21-06(C) and 4901:1-29-06(B), which prohibit customer enrollments without proof of consent. Constellation NewEnergy, Inc. and Constellation NewEnergy-Gas Division, LLC are authorized to use online interactive written communications in order to enroll new customers.

#### II. DISCUSSION

{¶ 2} Constellation NewEnergy, Inc. and Constellation NewEnergy-Gas Division, 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 April 10, 2018, Applicants applied to the Commission, requesting waivers of Ohio Adm.Code 4901:1:21-06(C) and 4901:1-29-06(B) (Enrollment Rules) to allow Applicants to enroll retail customers in Ohio through an online interactive written communication process. Applicants contend that technology has evolved such that customers now favor this form of business communication. Applicants note that the current

Enrollment Rules provide that customer enrollments may occur in-person, online, via mail solicitation, via facsimile, and via telephone. Applicants propose to expand this list of approved protocols to also include an online interactive written communication process, which Applicants also refer to as “chats.” Applicants note that the proposed interactions are commonly used by retail customers, citing their use in industries such as cable, wireless service, insurance, and banking. Applicants further describe that they are using the proposed interactions in nine other jurisdictions: Connecticut, Delaware, District of Columbia, Georgia, Maryland, Massachusetts, New Jersey, Pennsylvania, and Texas. Applicants describe that their website already includes a link through which current customers can engage in on-line conversations with live representatives of Applicants. This “chat” feature would be expanded to allow prospective customers to engage a live representative with questions as part of the enrollment process. When satisfied with Applicants’ “chat” responses and ready to enroll, customers would then have the option to complete enrollment without having to access an online enrollment web page or having to call a customer service representative. Customers would still have the choice of enrolling through the existing online process or by contacting the call center. Further, Applicants offer quality and anti-fraud assurances regarding the integrity and security of the proposed customer communications.

{¶ 4} On May 3, 2018, the Ohio Consumers’ Counsel (OCC) filed a motion to intervene in this proceeding, which was granted by the attorney examiner on June 26, 2019.

{¶ 5} On August 1, 2019, additional motions to intervene were filed by Ohio Partners for Affordable Energy (OPAE) and Retail Energy Supply Association (RESA). The Commission grants these motions and notes that comments filed by these intervenors are compliant with the procedural schedule in the Entry issued on June 26, 2019.

**B. *Summary of the Comments***

{¶ 6} On August 1, 2019, Staff filed comments in support of granting the proposed waiver with certain modifications. Staff generally supports Applicants’ position that

technology has advanced to the point where “chats” are reasonable substitutes for most telephone communication requirements regarding CRES and CRNGS customer enrollments. Staff recommends that the “chat” script requirements offered by Applicants should be expanded so that they include all of the telephonic enrollment requirements set forth in Ohio Adm.Code 4901:1-21-06(D)(2) (CRES) and 4901:1-29-06(E) (CRNGS). Further, as CRNGS enrollments also require that customers be offered third-party verification (TPV), Staff notes that the verification issue must be addressed as part of the proposed “chat” communication. Staff also recommends that any waiver should be expressly limited to only enrollments that result from the interactive “chat” process and granted only until the Commission issues an order addressing the enrollment requirements in the pending five-year rule review in Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD.

{¶ 7} On August 1, 2019, RESA filed initial comments in support of the waiver application. RESA notes that the online “chat” waiver proposal merely adds another choice for customer enrollment. Further, RESA asserts that the proposal: (1) benefits customers by providing them with another efficient, effective, and appropriate way for Ohioans to enroll in competitive retail energy services; (2) will be efficient while gathering the necessary information; (3) will keep customer proprietary information safeguarded; and, (4) will not be onerous, overwhelming, or unduly lengthy. RESA maintains that the enrollment process reflects how many consumers communicate today with businesses – via online “chats.”

{¶ 8} On August 1, 2019, OCC filed comments in opposition to the application. OCC maintains that CRES and CRNGS legislative enrollment requirements were enacted in 1999 and 2001, respectively, which was after the advent of online “chat” technology, such that online “chat” enrollment could have been legislatively adopted. OCC disputes Applicants’ claim that customers will favor the added choice of online “chat” enrollment. OCC also claims that the application lacks specificity as to which rules would apply to the newly proposed enrollment method. Finally, OCC acknowledges that the proposed online “chat”

enrollment is similar to telephonic enrollment such that, if approved, CRNGS enrollments should remain conditioned on telephonic third-party verification.

{¶ 9} On August 1, 2019, OP&E filed comments in opposition to the application. OP&E notes that electric and gas provider enrollment rules were only recently adopted (CRES effective December 10, 2015, CRNGS effective December 1, 2014) such that waivers are inappropriate. Further, OP&E asserts that online “chat” enrollments may only increase deceptive practices and provide incomplete and misleading information to consumers.

{¶ 10} On August 15, 2019, Applicants filed reply comments. Applicants reiterate that waiver consideration is in line with the Commission’s goals of promoting flexible regulatory treatment of competitive electric and gas markets in furtherance of consumer choices. Applicants also clarify that they are requesting a waiver of all enrollment methodologies and the creation of a new, written methodology. As such, the TPV requirements associated with in-person or telephonic enrollments should not apply to the proposed, newly authorized “chat” enrollments. Applicants maintain that customers are more protected through the use of “chat” enrollments because they: (1) control the pace of the “chat”; (2) are able to receive an immediate, complete transcript of the “chat”; (3) are able to download contract terms and conditions during the “chat” process and receive a copy of the agreed upon contract within one business day of customer acceptance; and, (4) are able to rescind enrollment through the applicable rescission period. Finally, Applicants maintain that the requested waiver should be indefinite and subject to automatic modification pursuant to any future Commission decision, including any rule issuance.

{¶ 11} On August 15, 2019, OCC filed reply comments. OCC asserts that Applicants have not shown good cause for the waiver of the marketing rules and that customer efficiency fails to satisfy this requirement. OCC restates its position that the application is unclear such that it cannot be approved. OCC adds that it agrees with Staff regarding additional requirements that should be mandatory as part of any “chat” enrollment transcripts, which include the following requirements found in the Commission’s electric

marketing rules: (1) the marketer must identify himself/herself and the exact purpose of the “chat” should be conveyed to the potential customer; (2) the customer’s acknowledgement that the marketer is not the customer’s current electric utility company; (3) a statement that the customer may choose to remain with the electric utility company or enroll with another marketer; (4) a toll-free telephone number that the customer can call to cancel the contract; (5) a request for and the customer’s provision of the customer’s electric utility account number, if applicable; and, (6) a request for and the customer’s provision of the customer’s mailing address. OCC further agrees with Staff’s recommendations that: (1) the marketer must provide a copy of the “chat” to the customer, the Commission, or Staff within three business days of a request; (2) changes in a customer’s natural gas supplier through “chat” technology should comply with all the requirements of Ohio Adm.Code 4901:1-29-06(E); and, (3) any waiver be effective only during the pendency of the rule review in Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD. OCC also states that, should the waiver be granted, the Commission should require Applicants to maintain rescission and complaint records specific to the “chat” enrollment process. Finally, OCC restates that the waiver should be conditioned on Applicants’ requirement to use TPV to confirm all “chat” enrollments.

### *C. Commission Conclusion*

{¶ 12} 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 suppliers/retail natural gas suppliers and governmental aggregators, maintain electric/natural gas service, and timely and correctly switch retail electric suppliers/retail natural gas suppliers and governmental aggregators. Ohio Adm.Code 4901:1-21-02(A) and 4901:1-29-02(A). Applicants request a waiver of Ohio Adm.Code 4901:1-21-06(C) (CRES)

and Ohio Adm.Code 4901:1-29-06(B) (CRNGS) to give customers the option of enrollment through an online interactive process. Specifically, the waiver would expand the current telephonic enrollment methods such that a customer's election to pursue digital "chat" enrollment would be deemed compliant with the telephonic enrollment rules. Employing the waiver, when the digital "chat" enrollment process is selected, the customer's enrollment election will occur through text or internet prompts instead of a telephonic voice communication. The enrollment information is not changed from what would be provided if the enrollment were telephonic. Only the medium for the enrollment communication will be different. Further, for digital CRNGS enrollments authorized by this waiver, the requirement of independent third-party verification will be waived.

{¶ 13} The Commission has reviewed the following information: Applicants' request for a waiver; the comments by Applicants, OCC, OPAE, 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. Applicants' request for a waiver that expands telephonic enrollment rules to allow digital "chats" as a substitute for telephonic enrollment communications, when requested by customers, is intended to ensure substantial compliance with the rules, while complying with all other consumer protection requirements. Accordingly, the waiver is approved, subject to Staff's conditions and recommendations.

{¶ 14} Pursuant to this waiver, a customer's election to pursue digital "chat" enrollment is deemed compliant with the telephonic enrollment rules. As a result of this waiver, when the digital "chat" enrollment process is selected, the customer's enrollment election will occur through text or internet prompts instead of a telephonic voice

communication. The enrollment information is not changed from what would be provided if the enrollment were telephonic. Only the medium for the enrollment communication will be different. Further, for digital CRNGS enrollments authorized by this waiver, the requirement of independent third-party verification is waived.

{¶ 15} 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 the enrollment and TPV requirements in the pending five-year rule review in Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD.

{¶ 16} 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

{¶ 17} It is, therefore,

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

{¶ 19} ORDERED, That OPAE's and RESA's motions for intervention be granted. 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

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

**Commission of Ohio Docketing Information System on**

**9/26/2019 3:04:30 PM**

**in**

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

Summary: Entry that the Commission grants, to the extent set forth in this Entry, Constellation NewEnergy, Inc. and Constellation NewEnergy-Gas Division, LLC's request for a waiver of Ohio Adm.Code 4901:1-21-06(C) and 4901:1-29-06(B), which prohibit customer enrollments without proof of consent. Constellation NewEnergy, Inc. and Constellation NewEnergy-Gas Division, LLC are authorized to use online interactive written communications in order to enroll new customers. electronically filed by Docketing Staff on behalf of Docketing