

**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 MEMORANDUM CONTRA TO THE APPLICATION FOR REHEARING OF
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL
BY
CONSTELLATION NEWENERGY, INC. AND
CONSTELLATION NEWENERGY – GAS DIVISION, LLC**

I. INTRODUCTION

The Public Utilities Commission of Ohio properly authorized Constellation NewEnergy, Inc. and Constellation NewEnergy – Gas Division, LLC (collectively “Constellation”) to enroll customers through an on-line chat process. The Commission exercised its discretion and agreed in its September 26, 2019 decision to temporarily waive its rules (since they were deemed applicable) and allow customers a new enrollment opportunity that they have not had before in Ohio – enrolling in competitive retail services through an on-line chat conversation.

The Office of the Ohio Consumers’ Counsel (“OCC”) continues to ignore the benefits of chat enrollment, and asserts two arguments on rehearing that are inconsistent and wrong. Specifically, OCC claims that the customer’s ability to immediately receive the transcript of the chat conversation under the approved waiver will be a “poor” or “inadequate” substitute for a recording of a phone call with a third party, a recording that the customer today cannot see or access.¹ OCC’s other argument is that the Commission should have mandated that customers

¹ Note, under the Commission’s rules, third-party verification (“TPV”) recordings are required for telephonic enrollments of customers purchasing competitive retail natural gas services (not for telephonic enrollment of

receive that same chat transcript that the OCC claims is inadequate. OCC's argument is undercut by its statement that, at a minimum, customers should be able to request the transcript.² That is exactly what the application proposed and what the Commission approved. Given that customers will have the ability to request the chat transcript at the conclusion of the chat conversation and immediately receive it, there is no basis to find error in the Commission's decision to authorize enrollments through the on-line chat process. Moreover, OCC's consumer protection arguments are not new.³ OCC raised its consumer protection claims previously⁴ and the Commission rightly rejected them.⁵ For these reasons, the Commission should reject OCC's arguments and deny OCC's application for rehearing. The Commission's decision was just and reasonable.

II. ARGUMENT

A. **The transcript of a chat conversation will allow customers to have immediate documentation of the chat conversation and provide them with significant consumer protection.**

OCC argues that the TPV is the only way to protect the customers, claiming that the transcript of the chat conversation is an inadequate customer protection and that Constellation may "manipulate" the transcript.⁶ OCC overlooks what will be created and immediately

customers purchasing competitive retail electric services). Compare Rules 4901:1-21-06(D)(2) and 4901:1-29-06(E), Ohio Administrative Code. Constellation's on-line chat enrollment process includes a transcript of the chat for all enrollments through the chat process, whether the customer selects competitive retail natural gas services and/or competitive retail electric services.

² OCC Application for Rehearing at 5.

³ OCC Application for Rehearing at 2, 5-6.

⁴ OCC Initial Comments at 6; OCC Reply Comments at 5-6. OCC advocated for more than the Commission currently requires in telephonic enrollments, claiming that a TPV should be required for all chat enrollments in competitive retail natural gas services and competitive retail electric services.

⁵ The Commission disagreed, finding good cause for granting a waiver and finding that the chat enrollment process will substantially comply with the rules and includes compliance with numerous consumer protection requirements. Entry at ¶ 13.

⁶ OCC Application for Rehearing at 3-4.

available to the customers. As explained on pages 4 and 5 of the Constellation's application, the customer will not only see in writing the conversation as it is occurring, the customer will be able to receive a transcript of that conversation. That opportunity will be available at the completion of the chat, which is above and beyond what is required by the Commission's rules today. The many details from the application listed below show that the transcript is a significant protection for customers:

- Constellation will create a transcript of the chat conversation as it occurs.
- The transcript will be in a real-time format, just like the chat conversation. Certainly that will be easily understood by the customer.
- The transcript also will include the full conversation, the date and time of the conversation, and the name of the representative.
- The customer representatives involved in the chat conversation will be highly trained, specially certified and employ greater security measures than required under the Commission's rules.
- The customer will have the ability to immediately receive a copy of the transcript at the completion of the chat.
- Finally, Constellation will also retain the transcript in accordance with the Commission's record retention policies and provide it later upon request.

In contrast, the TPV that OCC touts does not provide the customer the same opportunity or high level of protection. In fact, customers who enroll telephonically are transferred to a third party for the TPV process, and the customer does not receive a transcript of that call. There is nothing inadequate about the creation and availability of the transcript proposed and approved in Constellation's chat enrollment process, and OCC's smear that Constellation may manipulate transcripts to "slam" customers is unwarranted and not based in fact. The chat enrollment transcript is more convenient, and provides significant and immediate protection to customers. OCC's first assignment of error should be rejected.

C. Customers will have immediate access to the chat transcript upon request – a mandate to email transcripts immediately to all customers is not necessary.

In its second assignment of error, OCC claims that the decision is unjust and unreasonable because the Commission did not require Constellation to email the transcripts to the customers at the end of the chat conversation. OCC contends that, at a minimum, a button should be available for the customer to click and have the transcript sent to them.⁷

Constellation, however, proposed exactly that as noted below:⁸

The customer will have the opportunity to request a copy of the transcript, which will be immediately sent to the customer's email address following completion of the chat if the customer selects that option from the pop-up window that will appear at the conclusion of the conversation.

Inasmuch as the Commission approved what OCC considers necessary, this argument should be found moot.

The Commission should also deny OCC's request for a mandate that Constellation provide customers with an immediate transcript of the chat. The minimum service requirements today do not mandate any supplier to email transcripts of conversations to the customers. Nothing in Commission's approval of a new medium – the chat enrollment – should justify a mandate like that requested here by OCC. Customers can reasonably determine if they would like a copy of the transcript at the end of the chat conversation. As well, the transcript will be available later upon request. OCC's second assignment of error should be denied.

III. CONCLUSION

The Commission's approval of Constellation's chat enrollment process was just and reasonable. The transcript will provide significant customer protection (on top of the many other aspects of the chat enrollment process) in a convenient manner, and customers can decide if and

⁷ OCC Application for Rehearing at 5.

⁸ Application at 5.

when they would like a copy of the transcript. OCC's consumer protection claims are meritless and the Commission should rejected them again.

Respectfully Submitted,

/s/ Gretchen L. Petrucci

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Summary: Memorandum -- Joint Memorandum Contra to the Application for Rehearing of the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Gretchen L. Petrucci on behalf of Constellation NewEnergy, Inc. and Constellation NewEnergy - Gas Division, LLC