

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE PROPER
PROCEDURES AND PROCESS FOR THE
COMMISSION'S OPERATIONS AND
PROCEEDINGS DURING THE DECLARED
STATE OF EMERGENCY AND RELATED
MATTERS.

CASE NO. 20-591-AU-UNC

IN THE MATTER OF THE JOINT
APPLICATION OF THE RETAIL ENERGY
SUPPLY ASSOCIATION AND CERTAIN
COMPETITIVE RETAIL SUPPLIERS FOR
WAIVER OF THE CURRENT SUSPENSION
OF IN-PERSON MARKETING TO
CUSTOMERS IN OHIO.

CASE NO. 20-1040-GE-UNC

ENTRY

Entered in the Journal on June 17, 2020

I. SUMMARY

{¶ 1} In light of the May 20, 2020 Order, and subsequent such Orders, issued by the Director of the Ohio Department of Health to responsibly rescind requirements of the Stay Safe Ohio Order, the Commission modifies its March 17, 2020 directive. Beginning immediately, all competitive retail electric service providers and competitive retail natural gas service suppliers may resume door-to-door marketing services, pursuant to all applicable requirements and best practices issued by the Ohio Department of Health and any relevant local health authority. However, given the nature of door-to-door solicitations and the potential impact to the elderly, vulnerable populations, or others in their homes, the Commission lays out specific directives below to ensure that competitive retail electric service providers and competitive retail natural gas service suppliers and their agents proceed with caution and strict adherence to the relevant requirements and best practices issued by the Ohio Department of Health and any relevant local health authorities to ensure the health and safety of Ohioans.

II. DISCUSSION

{¶ 2} R.C. 4928.08 states that no electric services company shall provide a competitive retail electric service (CRES) to a consumer in this state without first being certified by the Commission. R.C. 4928.16(A) states that the Commission has jurisdiction under R.C. 4905.26, upon initiative of the Commission, regarding the provision by an electric services company or governmental aggregator subject to certification under R.C. 4928.08 of any service for which it is subject to certification. Similarly, R.C. 4929.20 states that no retail natural gas supplier shall provide a competitive retail natural gas service (CRNGS) to a consumer without first being certified by the Commission. R.C. 4929.24 states that the Commission has jurisdiction under R.C. 4905.26, upon initiative of the Commission, regarding the provision by a retail natural gas supplier subject to certification under R.C. 4929.20 of any service for which it is subject to certification.

{¶ 3} R.C. 4928.02 states that it is the policy of this state to ensure retail electric service consumers protection against unreasonable sales practices and to protect at-risk populations. R.C. 4928.02(I) and (L). Ohio Adm.Code 4901:1-21-02(B) states that after notice and, if necessary, an opportunity for hearing, the Commission, upon its own motion, may require CRES providers to take any appropriate action necessary to comply with the state's policy as stated in R.C. 4928.02. Similarly, Ohio Adm.Code 4901:1-29-02 states that after notice and, if necessary, an opportunity for hearing, the Commission, upon its own motion, may require CRNGS suppliers to take any appropriate action necessary to comply with the state's policy as stated in R.C. 4929.02.

{¶ 4} AEP Energy, Inc., Direct Energy Business, LLC, Direct Energy Services, LLC, Energy Harbor LLC, Energy Professionals of Ohio, Interstate Gas Supply, Inc., and Vistra Energy Corp. are certified by the Commission to provide CRES and/or CRNGS in Ohio pursuant to R.C. 4928.08 and R.C. 4929.20, and are thereby subject to the Commission's jurisdiction pursuant to R.C. 4928.16 and R.C. 4929.24. The Retail Energy Supply Association is a national group of CRES and CRNGS suppliers.

{¶ 5} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 6} Pursuant to R.C. 3701.13, the Ohio Director of the Department of Health has the authority to issue orders and has supervisory authority over “all matters relating to the preservation of the life and health of the people” and the “ultimate authority in matters of quarantine and isolation.” On March 12, 2020, the Director of the Department of Health issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.”

{¶ 7} On March 12, 2020, the Commission opened Case No. 20-591-AU-UNC and directed all utility companies in this state to review their disconnection procedures in light of the state of emergency. *In re the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC (*Emergency Case*), Entry (Mar. 12, 2020) at ¶ 7. On March 13, 2020, the Commission directed all public utilities in this state to review their reconnection procedures and extended the winter reconnection order through May 1, 2020.

{¶ 8} Further, on March 17, 2020, through the *Emergency Case*, the Commission determined that marketing practices involving in-person contact like door-to-door and in-store marketing by CRES and CRNGS suppliers present unnecessary risks of spreading COVID-19 to all individuals, particularly with respect to at-risk populations in Ohio, and

that these practices were in conflict with the governor's Executive Order, the March 12, 2020 Order of the Director of the Ohio Department of Health, and the policy of this state. Accordingly, the Commission directed CRES providers and CRNGS suppliers to immediately suspend, for all customer classes, all door-to-door and in-store marketing to customers as well as any other sales or solicitation practice that involves in-person contact in this state for the duration of the emergency, unless otherwise ordered by the Commission. *Emergency Case*, Entry (March 17, 2020) at ¶ 7.

{¶ 9} On April 30, 2020, the Director of the Ohio Department of Health issued an Order to reopen certain businesses, subject to social distancing and other workplace safety requirements and sector specific provisions, including provisions for the consumer, retail, and services sector.

{¶ 10} On May 14, 2020, Retail Energy Supply Association, AEP Energy, Inc., Direct Energy Business, LLC, Direct Energy Services, LLC, Energy Harbor LLC, Energy Professionals of Ohio, Interstate Gas Supply, Inc., and Vistra Energy Corp. (collectively, Joint Applicants) filed a joint application in Case No. 20-1040-GE-UNC. Based on the most up-to-date guidance provided by the governor and the Director of the Ohio Department of Health, Joint Applicants request modifications to the in-person marketing restrictions imposed by the Commission through the *Emergency Case* on March 17, 2020. The Joint Applicants' primary recommendation is to remove the March 17, 2020 prohibition on direct marketing. In addition, Joint Applicants also provide recommendations regarding tabletop marketing, appointment-based in-person sales, and door-to-door sales, which they maintain will allow for safe, sanitary, reduced touch, and touchless interactions while restarting the retail energy economy. In sum, the Joint Applicants request the Commission to allow the recommencement of all in-person and door-to-door solicitations as soon as reasonably possible.

{¶ 11} By Entry dated May 19, 2020, the attorney examiner directed interested persons to file motions for intervention and comments in Case No. 20-1040-GE-UNC by May

26, 2020, to assist the Commission in its review of the Joint Applicants' application. Staff filed comments on May 26, 2020. If in-person solicitation were to resume, Staff generally recommends that CRES providers and CRNGS suppliers comply with all applicable guidelines issued by the Ohio Department of Health and the governor and all Commission rules and orders regarding marketing, soliciting, and enrolling customers, including the requirements contained in Ohio Adm.Code Chapters 4901:1-21 and 4901:1-29.

{¶ 12} The Office of the Ohio Consumers' Counsel (OCC) also filed comments on May 26, 2020, in Case No. 20-1040-GE-UNC and put forth two major points. First, OCC argues that the Joint Applicants' waiver request should be denied because under the Commission's rules, personal direct contact and interaction with customers cannot be avoided during direct solicitation and marketing, thereby increasing the risk of exposing both customers and marketing personnel to COVID-19. Second, OCC argues that the financial fallout from the pandemic has been very difficult for many Ohioans and a substantial majority of CRNGS offers available are higher than a standard choice natural gas offer. Because many Ohioans are experiencing financial harm due to the pandemic through layoffs and furloughs, OCC asserts that marketing for competitive energy services is not currently necessary.

{¶ 13} On May 20, 2020, the Director of the Ohio Department of Health issued an Order to responsibly rescind requirements of the Stay Safe Ohio Order and lift the mandatory requirements and restrictions that were needed during the initial phase of the COVID-19 pandemic. On May 29, 2020, the Director issued a revised Stay Safe Ohio Order that further lifts restrictions previously issued. Since May 29, 2020, the Director has issued additional Orders which open up various parts of the economy, including youth day camps, full dine-in service in restaurants and bars, and banquet facilities, subject to social distancing requirements.

{¶ 14} By Entry dated June 3, 2020, the Commission modified its March 17, 2020 directive by allowing CRES providers and CRNGS suppliers to resume marketing activities

at stores and other retail establishments, subject to arrangements between the CRES providers and CRNGS suppliers and the store; compliance with relevant requirements and best practices issued by the Ohio Department of Health, as well as any guidance or order from any relevant local health authority; and in accordance with all Commission rules and statutory mandates. The Commission also allowed CRES providers and CRNGS suppliers to start scheduling in-person appointments for non-residential customers.

{¶ 15} In light of the May 20, 2020 and subsequent Orders issued by the Director of the Ohio Department of Health to lift mandatory requirements and restrictions to safely open up the Ohio economy, the Commission now further modifies its March 17, 2020 directive to CRES providers and CRNGS suppliers. In our June 3, 2020 Entry in the *Emergency Case*, we noted that we were continuing to monitor and evaluate when door-to-door solicitation of CRES and CRNGS may resume. *Emergency Case*, et al., Entry (June 3, 2020) at ¶ 18. At this point, based on the Orders issued by the Director of the Ohio Department of Health, we find that door-to-door solicitation of CRES and CRNGS may resume, subject to all relevant requirements and best practices issued by the Ohio Department of Health and any relevant local health authority. Further, CRES providers and CRNGS suppliers may resume scheduling in-person appointments for residential customers.

{¶ 16} However, we are cognizant of the concerns raised by OCC in its May 26, 2020 comments and direct CRES providers and CRNGS suppliers to follow the directives laid out below when they resume door-to-door solicitation. The Director of the Ohio Department of Health has noted, in an Urgent Health Advisory on May 20, 2020, the ongoing nature of the public health emergency and advises that elderly and the vulnerable, due to other health conditions, are at higher risk for severe illness and are urged (but not required) to take additional precautions to stay at home. Given the nature of door-to-door solicitations and the potential impact to the elderly, vulnerable populations, or others in their homes, the Commission urges CRES providers and CRNGS suppliers to proceed with caution and strict adherence to the relevant requirements and best practices issued by the Ohio Department

of Health and any relevant local health authorities to ensure the health and safety of Ohioans. Before commencing any door-to-door solicitation campaign, the Commission directs CRES and/or CRNGS suppliers to report, in writing, to the Director of the Commission's Service Monitoring and Enforcement Department (SMED), or his designee, the times, dates, duration, and locations where a CRES and/or CRNGS supplier intends to engage in door-to-door solicitations at least 48 hours prior to beginning such solicitations. Further, in the event any CRES provider or CRNGS supplier, or their agent, receives, from a state or local enforcement authority, a warning or more formal citation for failure to comply with such requirements and best practices, including any applicable local "Do Not Knock" registry or solicitation permitting provisions, the CRES provider or CRNGS supplier shall immediately forward the warning or citation to the Director of SMED, or his designee.¹ We also clarify that we will treat a violation of our rules or any relevant health code violations committed by an agent of a CRES provider or CRNGS supplier the same as if the violation were committed by an employee of the provider or supplier. Additionally, Ohio Adm.Code 4901:1-21-06(D)(1)(j) and 4901:1-29-05(E)(3) require a CRES provider and a CRNGS supplier to leave the premises of a customer when requested to do so by the customer. If the Commission receives complaints that a CRES provider or CRNGS supplier, or its agent, fails to leave a customer's premises immediately upon request, the Commission will investigate and strictly enforce these provisions using our full statutory authority.

{¶ 17} Finally, the Commission notes that the above reasoning may also apply to the resumption of scheduling in-person appointments for residential customers. Such appointments can only be scheduled with the consent of the customer. Any meeting must also conform to any and all relevant requirements and best practices issued by the Ohio Department of Health, as well as any guidance or order from any relevant local health authority. Therefore, subject to the restrictions and reporting requirements set forth above,

¹ Examples of such local provisions include R.C. 505.94 (registration and regulation of transient vendors by a board of township trustees) and R.C. 715.64 (licensing of transient dealers and solicitors by a municipal corporation).

CRES providers and CRNGS suppliers may immediately resume door-to-door solicitations, including, but not limited to, scheduling in-person appointments with residential customers, within the parameters identified in this Entry.

III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That the Commission's March 17, 2020 directive to all CRES providers and all CRNGS suppliers to suspend door-to-door marketing be modified, as set forth in Paragraphs 15, 16, and 17. It is, further,

{¶ 20} ORDERED, That notice of this Entry be served via the Electric-Energy and Gas-Pipeline industry service lists and upon all parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

AS/mef

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Case No(s). 20-0591-AU-UNC, 20-1040-GE-UNC

Summary: Entry modifying the March 17, 2020 directive. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio