

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of RPA)	
Energy, Inc. for Waivers of Certain)	
Provisions of Chapters 4901:1-21 and)	Case No. 21-0157-GE-WVR
4901:1-29, O.A.C., to Permit Third-Party)	
Verification by Digital Confirmation.)	
)	

**REPLY COMMENTS OF RPA ENERGY, INC.
D/B/A GREEN CHOICE ENERGY**

RPA Energy, Inc d/b/a Green Choice Energy submits these Reply Comments in response to Initial Comments filed on April 8 and 9, 2021.¹ These Reply Comments will first address Staff’s comments followed by OCC’s.

REPLY COMMENTS

RPA filed an application requesting a waiver of certain provisions of O.A.C. 4901:1-21 and 4901:1-29 in order to permit competitive electric and natural gas enrollment verification through digital means (text and email). Staff supports the waiver with certain conditions (Staff Comments at 4-5.) OCC opposes, but its objections are unfounded.

A. Staff

Staff’s summary of the waiver request accurately portrays what RPA is attempting to accomplish. (Staff Comments at 1-3.) RPA agrees with Staff that a rulemaking would be the “ideal venue” to evaluate changes to the TPV requirements. But, like Staff, RPA also recognizes that “this process takes time.” (*Id.* at 2.) Innovation will not always line up with the five-year interval for rulemaking.

¹ OCC initially filed comments on April 8, followed by “amended” comments on April 9.

Staff's approval contains four conditions: (1) that the waiver only apply to the "verbal" requirement and not the general requirement to conduct a TPV; (2) that the "disclosures" for telephonic enrollment apply; (3) that all other TPV requirements continue to apply; and (4) that the waiver expire when final rules are issued in Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD. (*Id.* at 4-5.)

a. Staff's first, third, and fourth conditions are reasonable, with certain modifications.

Staff's first and third conditions are generally reasonable and in-line with RPA's request. All TPV requirements would remain the same, albeit fulfilled "digitally" instead of "verbally." But one clarification is needed. Due to the nature of digital TPV, the verification process will not occur "before the completion of the telephone call" as currently required under Ohio Admin. Code 4901:1-21-06(D)(2)(a). Verification will be conducted after the call has ended, when the customer selects the text or email option. Otherwise, RPA agrees with these recommendations.

RPA also consents to Staff's fourth condition, with one clarification. If the waiver is to expire upon issuance of final rules in the pending rulemakings, the order in this proceeding should confirm that RPA is not prohibited from re-applying for a waiver under the new rules (if necessary). The merits of any future waiver request would obviously need to be decided on the facts and circumstances at the time it is filed. With this understanding, RPA is fine with the fourth condition.

b. The Commission should reject Staff's second condition because it is unnecessary and duplicative.

Staff's second condition, on the other hand, is unnecessary and duplicative. RPA's proposal already goes above and beyond what is required under the TPV rules. While it is not entirely clear, Staff appears to recommend applying the telephonic contract disclosure

requirements under R.C. 4901:1-21-06(D)(2)(a)(vi) to door-to-door TPV. In addition to current TPV requirements, Staff's amendment would necessitate "a verbal statement and the customer's acceptance of each of the principal terms and conditions for the service that will be provided, including:

- (a) The service(s) that will be provided;
- (b) The price;
- (c) The length of the contract term;
- (d) An approximate service commencement date;
- (e) The contract termination date, and any fees for customer cancellation prior to such date;
- (f) Any material limitations, exclusions, contract contingencies, or conditions precedent.
- (g) Any fees or costs to the customer;
- (h) Whether or not the CRES provider offers budget billing for the generation portion of the bill;
- (i) If applicable, whether the provider will perform a credit check and require a deposit, including the amount;
- (j) Who will bill for the provider's service(s).

R.C. 4901:1-21-06(D)(2)(a)(vi)

Staff's second recommendation is clear overkill and would be counterproductive to the benefits customers receive by using digital TPV. The door-to-door rules excluded these disclosures for a reason, they were unnecessary. While they may make sense for telephonic enrollments, because the customers do not have information in front of them, the same is not true for door-to-door sales transactions. Customers will have access to all this information firsthand.

Requiring additional yes/no questions for the above items during door-to-door enrollment is a step in the wrong direction.

Both the Electric TPV Rule and Gas TPV Rule already require the third-party verifier to make certain disclosures to the customer, including, among others, the verifier's identity, the purpose of the call, and notice that the call is being recorded. The verifier must then confirm with the customer the principal terms and conditions of the service to be provided, including the price, length of the contract, applicable termination fees, and any material limitations or conditions of the contract. The verifier must also provide the customer with a number to call to cancel the enrollment. *See* O.A.C. 4901:1-21-06(D)(2)(a)(i)-(xii); O.A.C. 4901:1-29-06(E)(1)(a)-(k).²

With digital TPV, *all* these protections remain. It is intended to dramatically simplify and expedite the verification process and enhance the customer experience. Further, it will bolster RPA Energy's ability to identify and prevent fraudulent activity, as well as the Commission's ability to investigate complaints and monitor compliance with applicable rules. The current TPV rules exempt the R.C. 4901:1-21-06(D)(2)(a)(vi) requirements. To add them here would be counterproductive and time-consuming for the customer.

B. OCC

OCC's initial comments offer no new arguments relevant to digital TPV that the Commission has not already rejected. Instead, OCC focuses on infractions irrelevant to the adequacy of digital TPV, without evidence of consumer protection violations by RPA or by other marketers to whom similar waivers have been granted.

² Incorporated by reference in O.A.C. 4901:1-21-06(D)(1)(h) and 4901:1-29-06(D)(2)(b), respectively.

a. Digital TPV benefits customers.

RPA's proposal will not "diminish" consumer protections, as OCC claims. (OCC Comments at 4.) Instead, digital TPV enables better, faster, more accurate enrollment verification and a greatly enhanced customer experience, while adding to consumer protections afforded by the Commission's rules.

As outlined in the Application, the digital TPV process includes the following protections:

- When the customer clicks the link in the email or text, they will be taken to a location permission and identity authentication page. The customer will be asked for consent to share their location and enter his or her name to identify his or her enrollment record. A geolocation feature built into the digital TPV platform will prevent the customer from starting the verification process until the salesperson has left the property.
- Once the customer's identity and location have been verified, the customer will be presented with the list of disclosures and consents required under the Electric TPV Rule and/or Gas TPV Rule.
- The customer must select "Yes" or "No" in response to each verification question.
- At the end of the verification questions, the customer will be provided with a final confirmation of his or her decision to switch, and e-sign the verification form.
- The customer will then see a "Thank You" page, and a "Welcome Kit" email will be sent automatically to the customer.
- Within the Welcome Kit, the customer will receive a signed copy of the contract and another disclosure of his or her right to cancel within the applicable time period.

- RPA Energy will maintain digital TPV records under the same rules and standards applicable to voice TPV.
- Screen shots of the digital TPV process described above are attached as Exhibit A. The content of these images is for illustrative purposes only.

(See Application at 4-5.)

The current rules require the interaction to take place verbally over the telephone. The waiver would permit interaction the way customers are increasingly choosing to interact—by digital text and other electronic means, with the added consumer protections above. A system for TPV will remain in place using the same questions as verbal TPV. The only change is how people will be permitted to interact with the system—*if they so choose*. Anyone who wishes to talk to a verifier over the phone will continue to have the option to do so. Those who prefer digital communication should have that option.

b. OCC fails to demonstrate any “harm” resulting from digital TPV.

OCC asserts that “allowing electronic verification of door-to-door utility sales transactions is unlawful because it puts consumers at risk of harm.” (OCC Comments at 4.) OCC points to other marketers’ infractions, none of which had the slightest thing to do with digital TPV.

RPA’s waiver request is the same or substantially similar to the waivers requested and approved in Case No. 18-0382-GE-WVR (Direct Energy), Case No. 18-0371-EL-WVR (AEP Energy), and Case No. 18-0604-GE-WVR (Constellation). OCC does not cite violations by any of these entities. And none of the entities cited were cited for violations having anything to do with digital TPV. Suffice it to say, the waiver requested here does not exempt RPA from compliance with the plethora of consumer protection rules. OCC’s comments about the price

consumers pay for competitive services are completely off the reservation and of no relevance here.

c. Customers who choose digital TPV have the same opportunities to re-evaluate questions and back-out of the transaction.

OCC then delves into speculation over whether customers would prefer to re-ask verification questions over the telephone versus re-reading questions on their mobile device or computer, and whether hanging up the phone is a superior method of cancelling an enrollment versus deleting an email or closing an app. (OCC Comments at 6.) All of this is uninformed speculation.

Again, granting the waiver does not remove the customer's right to have a verbal TPV if that is their preference. Rather the process will offer a non-verbal option for those customers who prefer an electronic option. The waiver will preserve both options. And in both options, the same confirmation questions will be presented. And for both options, the customer can "change his or mind" at any point during the process. (*Id.*)

d. Geo-location increases consumer protection.

OCC's remaining comments focus largely on the geo-tracking feature, something that is not required in current rules. OCC's criticism of this feature seems to misconstrue what is presented as an additional protection as something lacking when compared to existing rules. Existing rules, as noted above, rely solely on a customer's response to a question.

Whether the current rules expressly or impliedly require telephonic TPV misses the very point of the filing, which is to obtain a waiver so that an additional means of offering a third-party verification using the same questions as a verbal TPV may be offered. Rather than simply relying on electronic TPV, RPA has taken additional steps beyond existing verbal TPV rules to avoid fraud. The only way a telephone verifier in a different location can "confirm" whether a

sales agent has left the property is to ask the customer. The verifier is not in a position to “confirm” anything other than what they are told.

The fact that a geo-tag may place a salesperson on the front porch instead of the driveway 50 feet away will not diminish consumer protections. Nor is the geo-location feature a substitute for a confirmation question that asks whether the salesperson has left the property. Granting this waiver will allow Staff and the Commission to confirm a salesperson’s location within a reasonable margin of error—without having to take anyone’s word for it. It enhances consumer protection by capturing information that is not required under the rules.

The Commission should reject OCC’s unfounded arguments and approve the application with the modifications recommended herein.

CONCLUSION

RPA respectfully requests that the Commission approve the waiver application to reflect these Reply Comments.

Dated: April 22, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments was served by electronic mail this 22nd day of April, 2021 to the following:

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Summary: Comments Reply Comments electronically filed by Mr. Lucas A Fykes on behalf of RPA Energy, Inc.