

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Santanna)
Natural Gas Corporation d/b/a Santanna Energy)
Services for Waivers of Certain Provisions of) Case No. 23-0171-GE-WVR
Ohio Adm.Code Chapters 4901:1-21-06 and)
4901:1-29-06, to Permit Electronic Enrollment)
and Third-Party Verification by Digital)
Confirmation.

**REPLY COMMENTS
BY
SANTANNA NATURAL GAS CORPORATION**

Pursuant to the Entry issued on May 5, 2023 in the above-captioned proceeding before the Public Utilities Commission of Ohio (Commission), Santanna Natural Gas Corporation d/b/a Santanna Energy Services (Santanna) hereby submits its Reply Comments in support of its Application for Waiver of Certain Enrollment and Verification Requirements for door-to-door sales, as amended, in order to utilize new technology and offer customers the additional option to digitally/electronically complete and verify their enrollment at the customer's convenience.

I. INTRODUCTION

On March 1, 2023 and as amended on April 12, 2023 and June 5, 2023, Santanna filed a pro-consumer application to waive certain provisions included in Ohio Adm.Code 4901:1-21-06(D)(1) and 4901:1-29-06(D) governing the enrollment and third-party verification (TPV) processes for new customers enrolled through *door-to-door sales* in order to offer customers additional options to digitally/electronically complete and verify their enrollment at the customer's convenience (collectively, Application). Santanna's narrow waiver request is sought to the extent that two rules governing the enrollment and TPV processes for new customers require wet signatures, audio recordings, or verbal TPVs when completing and confirming a door-to-door

sale.¹ Santanna is *not* seeking to waive any rules regarding telephonic sales or the TPVs conducted after a telephonic sale. More specifically, Santanna seeks a waiver of various provisions of the rules set forth in Ohio Adm.Code **4901:1-21-06(D)(1)**(a), (c), (d), (h)(i) through (iv), and (i) and (i)(ii), and **4901:1-29-06(D)**(1), (3), (4), (6)(a) and (b)(i) through (iv), and (c) and (c)(ii). Additionally, to the extent that the door-to-door TPV rules specifically require that door-to-door TPVs be conducted in accordance with the requirements set forth in the telephonic TPV rules, Santanna is seeking waiver of Ohio Adm.Code 4901:1-21-06(D)(2)(a)(i) through (viii) and (x) through (xi), and 4901:1-29-06(E)(1) if necessary.

The initial comments filed by Columbia Gas of Ohio, Inc. (Columbia) on May 26, 2023 state their non-opposition to Santanna’s Application for waiver,² and the initial comments filed by Staff on June 8, 2023 support Santanna’s Application and “recommend[] that the Commission grant the waiver requested.”³ Only the comments filed jointly by the Office of the Ohio Consumers’ Counsel (OCC) and other consumer groups (collectively, Consumers) oppose Santanna’s Application, erroneously claiming that granting the requested waiver would somehow jeopardize customer protections.⁴

The Consumers’ arguments are incorrect and should be rejected. Santanna’s proposed digital/electronic enrollment and TPV processes contain numerous additional protections for customers, such as not allowing customers to even begin the TPV process until they have confirmed that the sales agent has left the property, requiring extra customer identity verification

¹ See Second Amended Application (June 5, 2023).

² Comments in Response to Amended Application of Columbia Gas of Ohio, Inc. at 1 (May 26, 2023) (hereinafter, Columbia Comments).

³ Staff Comments at 5 (June 8, 2023).

⁴ Comments of Legal Aid Society of Columbus, Legal Aid Society of Southwest Ohio, Office of The Ohio Consumers’ Counsel, Ohio Poverty Law Center and Southeastern Ohio Legal Services (May 23, 2023) (hereinafter, Joint Comments).

protocols, and providing geolocation and time-stamps of the TPV to further confirm that the sales agent has left the customer's premise.

For all of the reasons stated herein and in Santanna's Application, Santanna's request for a limited waiver is just and reasonable and should be granted as recommended by Staff.

II. REPLY COMMENTS

In contrast to both Staff and Columbia's supportive comments, the Joint Comments erroneously claim that a waiver of the above rules would jeopardize customer protections and cause customers harm.⁵ The Commission has already rejected many of the unfounded concerns raised by OCC in other similar waiver cases. Additionally, the Joint Comments attempt to claim that Santanna is a bad actor; however, the Joint Comments offer no evidence to support such baseless assertions. Not only are such unfounded accusations harmful and improper, they are beyond the scope of this waiver proceeding.

By their own admission, the Consumers are not merely attempting to prevent *Santanna* from offering customers additional options for completing enrollment and verification (a convenience to said customers), they are advocating "for an outright ban of door-to-door marketing of energy services to consumers."⁶ OCC admits that it has previously sought to convince the Commission to "*block the knock*,"⁷ arguing that "*the rules should be changed to outright ban door-to-door sales to consumers*."⁸

But this waiver proceeding is *not* the appropriate venue for OCC's or others' crusade. As Staff noted in its comments regarding amending the door-to-door enrollment and TPV rules, "any

⁵ Joint Comments at 3–4.

⁶ *Id.* at 8.

⁷ *Id.*

⁸ *Id.* at 3.

rule revisions should be conducted during the rulemaking process.”⁹ Santanna agrees. Santanna also agrees with Staff that “the rule review process [. . .] is timely” and a far more extensive procedure compared to a waiver application.¹⁰ Innovation will not always align with the Commission’s five-year rule reviews. Therefore, Santanna appreciates Staff’s consideration and support for a waiver of various provisions set forth in Ohio Adm.Code 4901:1-21-06(D)(1) and 4901:1-29-06(D) to the extent that those rules require wet signatures, audio recordings, or verbal TPVs following a door-to-door sale until the Commission issues its final rules in Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD.

The Joint Comments demonstrate a persistent determination to transform this waiver proceeding into an improper rulemaking or Commission investigation into the merits of door-to-door sales. For that reason alone, many of the arguments should be dismissed as simply irrelevant. And of the arguments that remain, the Commission has already rejected those arguments in previous waiver proceedings and should do so again here.

A. Santanna’s Proposed Digital/Electronic Enrollment and TPV Processes Protect and Benefit Customers.

Contrary to the Joint Comments’ assertions, Santanna’s proposed digital/electronic enrollment and TPV processes will not “weaken” consumer protections.¹¹ Rather, as explained and detailed in its Application, digital/electronic enrollment and TPV enable better, faster, more accurate enrollment and enrollment verification, and a greatly enhanced customer experience, without diminishing any customer protections afforded by the Commission.¹²

⁹ Staff Comments at 5.

¹⁰ *Id.* at 4–5.

¹¹ Joint Comments at 5.

¹² *See* Second Amended Application.

As outlined in the Application, the digital/electronic enrollment and TPV processes include the following customer protections:

1. During the door-to-door enrollment process for both electric and/or gas sales, the customer will be given the *option* to complete the TPV confirmation process *either* by verbal or digital/electronic means following a completed sale.¹³
2. GPS tracking and geolocation features are built into the digital/electronic TPV platform to track and confirm that the sales agent has left the property prior to the account holder being able to complete the digital/electronic TPV process.¹⁴
3. The digital/electronic TPV process requires confirmation from the account holder that the sales agent has left the property and is no longer in the vicinity of the account holder.¹⁵
4. The digital/electronic TPV process includes several additional identification confirmation questions prior to the start of the TPV.¹⁶
5. During the digital/electronic TPV process, should the account holder select “No” in response to a question requiring a “Yes,” the TPV will fail and the enrollment will not be completed and no switch will occur.¹⁷
6. At the end of the verification process, the account holder will be provided with a final confirmation of his decision to switch, and will electronically sign the verification form.¹⁸
7. Santanna’s enrollment and verification software provides recorded time-stamps (hour, minute, and second) of when the customer begins the TPV, as well as several other important steps of the TPV process.¹⁹
8. GPS tracking and geolocation information and time-stamps are reviewed and confirmed by Santanna’s Quality Assurance Team.²⁰
9. The Quality Assurance Team will implement automated distance alerts and perform a review and confirmation of the sales agent’s location in relation to the

¹³ *Id.* at 6.

¹⁴ *Id.* at 7–8.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 9.

²⁰ *Id.*

customer during the TPV process to ensure that the agent has left the property during the TPV process.²¹

These protections are designed to “protect consumers’ interests,” while also offering them the ease and convenience of completing the TPV process electronically and at the customer’s own pace. Santanna agrees with Staff that “verifying the enrollment with the consumer in clear, plain language, [. . .] while striving to shield consumers from misleading and deceptive practices, provide valuable safeguards that protect consumers’ interests.”²² As stated by Staff, Santanna’s “Application, as amended, appears to provide such safeguards” by ensuring “that, to the greatest extent possible, consumers understand the nature and terms of any agreement they enter.”²³

The Joint Comments’ criticisms that the entirety of the digital/electronic TPV process is inferior to verbal TPV and that Santanna’s proposed GPS tracking and geolocation features are somehow insufficient to protect consumers, are baseless and misrepresent and misconstrue both the verbal TPV process and Santanna’s proposed features for a digital/electronic TPV process.

1. The Joint Comments Distort the Verbal TPV Process.

The Joint Comments repeatedly argue that the verbal TPV process provides better customer protection than a digital/electronic process because “back-and-forth interactive verbal communication remains the best protection for customers to verify whether they want to switch natural gas or electric marketers.”²⁴ This misrepresents the verbal TPV process. Verbal TPVs follow scripted TPV questions and they do not deviate from the TPV script. There is no true “interaction” as the Joint Comments claim, simply a series of questions to which the customer responds “yes” or “no.” In this respect, the verbal TPV is no different from Santanna’s proposed

²¹ *Id.*

²² Staff Comments at 4.

²³ *Id.*

²⁴ Joint Comments at 6–8, 10–12.

digital/electronic TPV process. Both methods ask customers identical questions, and both methods only allow customers to answer “yes” or “no” to a series of scripted and predetermined questions.

The difference between the two methods is that, with digital/electronic TPV, customers are able to take their time and read the questions multiple times before responding to ensure better and fuller comprehension of what they are agreeing to. Additionally, the digital/electronic TPV process actually *removes* a potential pressure point for some customers who may feel less comfortable saying “no” during a verbal TPV as compared to simply checking “no” in response to a written question.

In short, the current rules require verbal TPVs. Santanna seeks only to offer customers the *additional option* to complete enrollment and verification through digital/electronic means following a door-to-door sale. The ability to engage in a verbal TPV remains an option for customers to choose, and, therefore no protections are lost. If a customer prefers a verbal TPV for the purported “interactive” nature of it, they can choose it. Regardless of which option a customer selects, the same questions and confirmations will be used as required by the Commission rules.

2. The Joint Comments Miscomprehend the Digital/Electronic TPV GPS Tracking and Geolocation Features.

The Joint Comments also misconstrue Santanna’s proposed GPS tracking and geolocation features.²⁵ The Joint Comments incorrectly assert that Santanna intends to use these features as a “substitute” for the TPV question confirming that the sales agent has left the property.²⁶ At no time has Santanna ever indicated that the GPS and geolocation features will *replace* the TPV question confirming that the sales agent has left the property.²⁷

²⁵ *Id.* at 12–14.

²⁶ *Id.* at 13.

²⁷ See all filed versions of the Application, none of which indicates that the GPS tracking and geolocation features will *replace* the TPV question confirming that the sales agent has left the property.

In addition to completely misunderstanding the purpose of Santanna's GPS tracking and geolocation features, the Joint Comments ignore the fact that these features actually provide *additional* customer protections. GPS and geolocation features are neither required by the current rules nor present in the verbal TPV process, but they offer an additional customer protection unique to digital/electronic TPV by further demonstrating that the customer is not being improperly influenced by a sales agent.

Under the existing rules, the only way to confirm whether a sales agent has left the property is to ask the customer.²⁸ The customer's response to the question is the only confirmation that the sales agent has left the property. In contrast, not only does the digital/electronic TPV include a question asking the customer to confirm that the sales agent has left the property, the GPS tracking and geolocation features will provide *additional* confirmation of whether the sales agent has actually left the property. By comparing the agent's location to that of the customer's premises during the various time-stamped steps of the digital/electronic TPV process, Santanna now has an *additional* method of confirming that the sales agent left the premises. In this way, Santanna's proposed digital/electronic TPV process *enhances* customer protections by capturing information that is simply not available through the verbal TPV process. Suggesting that granting the waiver will decrease customer protections is illogical.

Moreover, arguments criticizing GPS tracking and geolocation features are nearly identical to those raised by OCC in a prior waiver case, which were correctly rejected by the Commission.²⁹

²⁸ See Ohio Adm.Code 4901:1-21-06(D)(1)(h)(ii) and 4901:1-29-06(D)(6)(b)(ii).

²⁹ See *In the Matter of the Application of Direct Energy Business, LLC and Direct Energy Services, LLC for Waivers of Certain Provisions of Chapters 4901:1-21 and 4901:1-29, O.A.C., to Permit Third-Party Verification by Digital Confirmation*, Case No. 18-382-GE-WVR, Comments by the Office of the Ohio Consumers' Counsel (August 8, 2019).

As in the previous waiver case, the Commission should reject the Joint Comments' arguments regarding Santanna's proposed GPS and geolocation features.

B. Good Cause to Grant Santanna's Requested Waiver Exists.

Contrary to the Joint Comments' assertions otherwise,³⁰ Santanna's Application demonstrates that good cause exists to grant the waiver requested and, therefore, the Commission should allow Santanna to employ digital/electronic enrollment and TPV processes.

First, in addition to Santanna's proposed digital/electronic TPV being nearly identical to a verbal TPV, customers will have the option of verifying the sale through a digital/electronic TPV *or* a verbal TPV.³¹ This part of the enrollment process cannot be skipped over, and since the customer selects the TPV method that he wants during enrollment, the sales agent is present to answer any and all questions that the customer might have about the different TPV methods.

Second, as discussed above, by offering an additional means to confirm that the sales agent has left the property, Santanna's proposed GPS tracking and geolocation features provide protections above and beyond what is required by the rules and what is available through the verbal TPV process.

Third, Staff agrees that good cause exists to grant the waiver and supports Santanna's Application for a waiver. More specifically, Staff stated that it "recommends that the Commission grant the waiver requested in [Santanna's] Application."³² Additionally, Columbia stated that it "does not object to Santanna's proposed waivers."³³

³⁰ Joint Comments at 8–20.

³¹ Second Amended Application at 5.

³² Staff Comments at 5.

³³ Columbia Comments at 1.

Fourth, the Commission has previously found good cause to grant a waiver substantially similar to the one requested by Santanna.³⁴ In that case, Staff also supported the waiver to allow a digital TPV following a door-to-door enrollment,³⁵ and OCC raised many of the same arguments that it raised in this proceeding.³⁶ Over the objections of OCC, the Commission agreed with the applicant and Staff, rejected OCC's arguments, and approved the waiver.³⁷ The waiver requested by Santanna in this proceeding provides the same good cause, has Staff's support, and therefore, should also be approved.

C. The Joint Comments Should be Rejected as Irrelevant.

The Joint Comments assert that "*the rules should be changed to outright ban door-to-door sales to consumers by energy marketers.*"³⁸ As the Consumers themselves admit, this is not the first time that OCC has raised this argument.³⁹ However, the Joint Comments' advocacy on this issue is entirely outside the scope of this proceeding.⁴⁰ This is a waiver application case, not a rulemaking proceeding or a Commission investigation into the merits of door-to-door sales. The Consumers' prejudice against door-to-door sales unfairly colors all of their comments and should be rejected.

Additionally, the Consumers improperly raise baseless, inappropriate, and harmful assertions that Santanna is a bad actor with no supporting evidence.⁴¹ Contrary to the Consumers'

³⁴ Case No. 18-382-GE-WVR, Entry at ¶ 1.

³⁵ Staff Comments at 4, *referencing* Case No. 18-382-GE-WVR, Entry at ¶ 1.

³⁶ *See* Case No. 18-382-GE-WVR, Comments by the Office of the Ohio Consumers' Counsel.

³⁷ Case No. 18-382-GE-WVR, Entry at ¶ 1.

³⁸ Joint Comments at 3.

³⁹ *Id.* at 8.

⁴⁰ *See* Santanna's Reply to OCC's Memo Contra Santanna's Motion for Protective Order (May 30, 2023); Santanna's Memo Contra OCC's Motion to Compel Discovery (June 15, 2023).

⁴¹ Joint Comments at 4.

claim that Santanna has been thwarting OCC's attempts to obtain discovery,⁴² Santanna has been nothing but cooperative throughout the discovery process.⁴³ The information that Santanna has not provided is irrelevant to this proceeding or privileged—and subject to a pending motion for a protective order. Any accusations to the contrary are misplaced.⁴⁴

The Joint Comments also attempt to rely upon the missteps or bad deeds of *other* suppliers to cast a pall over Santanna. While Santanna agrees that customers should be protected from the unscrupulous conduct of bad actors and that safeguards should be in place to shield customers from misleading and deceptive practices, Santanna's waiver proceeding is not the appropriate forum to hear any such complaints by OCC or others. Santanna's proposed digital/electronic enrollment and TPV processes do not lack such safeguards, which Staff confirmed: “[the] Application, as amended, appears to provide such safeguards.”⁴⁵ Any alleged misconduct by other suppliers is irrelevant to Santanna's Application and should be dismissed out of hand. Similarly, any arguments regarding banning door-to-door sales in general are outside the scope of this proceeding and also should be dismissed.

D. The Commission Should Reject the Consumers' Recommendations For Restrictive Conditions.

The Joint Comments provide a series of “recommendations,” which in reality are additional attempts to thwart Santanna's request to offer an additional option to customers and to further an anti-door-to-door sales agenda. A zero-tolerance policy or one strike and you are out policy⁴⁶ are

⁴² *Id.* at 4 and 18–20.

⁴³ For additional details and arguments explaining why OCC's discovery requests are improper, *see* Santanna Motion for Protective Order (May 5, 2023); Santanna's Reply to OCC's Memo Contra Santanna's Motion for Protective Order; Santanna's Memo Contra OCC's Motion to Compel Discovery.

⁴⁴ *Id.*

⁴⁵ Staff Comments at 4.

⁴⁶ Joint Comments at 20.

unjust and unreasonable and go far beyond even what the existing rules require. The Commission has not adopted such a zero-tolerance policy in any of the previously approved waiver applications and it should not do so here.

Further, the Commission should reject any recommendations that go beyond current rule requirements or that are proposed rule amendments. The proposed requirement that Santanna inform customers of the option of a *live* verbal TPV⁴⁷ is beyond the scope of the current rules and should be rejected. As explained previously, Santanna intends to offer customers the option of a digital/electronic TPV or a verbal TPV.⁴⁸ Additionally, while the recommendation to present the digital/electronic and verbal TPV options in a “neutral manner” may not be problematic on its face, it is undefined and subjective. Therefore, it too should be rejected.

E. Staff’s Conditions.

Staff’s recommended approval contains the following four conditions: (1) that only the requirements included in Ohio Adm.Code 4901:1-21-06(D)(1) (a), (c), (d), (h)(i) through (iv), (i) and (i)(ii), and 4901:1-29-06(D)(1), (3), (4), (6)(a) and (b)(i) through (iv), and (c) and (c)(ii) be waived to the extent that these rules require wet signatures, audio recordings, or verbal TPVs following a door-to-door sale; (2) that the waiver only applies to enrollments resulting from door-to-door solicitations; (3) that the digital/electronic TPV is completed on a customer-owned device; and (4) that the waiver expires when the Commission issues its final rules in Case No. 17- 1843-EL-ORD and 17-1847-GA-ORD or three years after the Commission issues an order approving the Application, whichever comes first.⁴⁹

⁴⁷ *Id.* at 21.

⁴⁸ Second Amended Application at 9.

⁴⁹ Staff Comments at 5.

The first three conditions outlined by Staff are consistent with Santanna’s Application and acceptable to Santanna. Santanna would, however, request that the Commission also specifically grant any necessary waivers to the extent that the Commission’s door-to-door TPV rules cross-reference the telephonic TPV rules and require that door-to-door TPVs be conducted in accordance with the requirements set forth in the telephonic TPV rules.⁵⁰

As for the fourth condition, Santanna requests that the condition be rejected with regard to the three-year limitation. The Commission should grant Santanna’s waiver in the same manner and for the same period as it has granted waivers to other suppliers, Santanna’s competitors. Similar to those prior waivers that have been approved, Santanna’s waiver should be effective “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.”⁵¹

⁵⁰ Ohio Adm.Code 4901:1-21-06(D)(1)(h) and 4901:1-29-06(D)(6)(b). *See also* Second Amended Application at 5–6.

⁵¹ Case No. 18-382-GE-WVR, Entry ¶ 16. *See also In the Matter of the Application of AEP Energy, Inc. for a Partial Waiver of Ohio Adm.Code 4901:1-29-06 and 4901:1-21-06*, Case Nos. 18-371-EL-WVR et al., Entry at ¶ 14 (July 17, 2019); *In the Matter of the Joint Application of Constellation NewEnergy, Inc. and Constellation NewEnergy – Gas Division LLC for Waivers of Enrollment Requirements in Rules 4901:1-21-06(C) and 4901:1-29-06(B), Ohio Administrative Code*, Case No. 18-604-GE-WVR, Entry ¶ 15 (September 29, 2019).

III. CONCLUSION

As demonstrated by Santanna's Application, and as supported by Staff's recommendation for approval, good cause has been shown to approve the requested waiver. The Joint Comments fail to raise any contrary persuasive arguments, fail to provide any substantiated evidence, and fail to explain why Commission precedent should not be followed. Accordingly, Santanna respectfully requests that the Commission approve its Application for a limited waiver.

Respectfully submitted,

/s/ Kimberly W. Bojko

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CERTIFICATE OF SERVICE

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/s/ Kimberly W. Bojko

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Summary: Comments Santanna Reply Comments on TPV Waiver (23-0171-GE-WVR) electronically filed by Mrs. Kimberly W. Bojko on behalf of Santanna Natural Gas Corporation.