

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review     )  
of its Rules for Competitive Retail Natural     ) Case No. 06-423-GA-ORD  
Gas Service at Chapters 4901:1-27 Through     )  
4901:1-34, Ohio Administrative Code.     )

ENTRY ON REHEARING

The Commission finds:

- (1) On September 13, 2006, the Commission issued an opinion and order approving proposed amendments to the rules contained in Chapters 4901:1-27 through 4901:1-34, Ohio Administrative Code (O.A.C.). These chapters set forth the requirements for competitive retail natural gas service (CRNGS) suppliers.
- (2) Section 4903.10, Revised Code, indicates that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by filing an application within 30 days after the entry of the order upon the journal of the Commission.
- (3) On October 13, 2006, Columbia Gas of Ohio, Inc. (Columbia), The Ohio Gas Marketers Group (OGMG), Dominion Retail, Inc. (DRI), and the Office of the Ohio Consumers' Counsel (OCC) each filed an application for rehearing of the Commission's September 13, 2006 opinion and order. Memoranda contra were filed by Columbia and OGMG, on October 23, 2006.
- (4) In its only assignment of error, Columbia argues, as it did in its initial comments in this docket, that the Commission exceeded its statutory authority by adopting enforcement procedures, including forfeitures and any other remedies against natural gas companies, which are not found in the enabling legislation of Section 4929.10, Revised Code. Columbia contends that Section 4929.24(B)(2), Revised Code, is clear that the Commission only has authority to assess forfeitures and other remedies against retail natural gas suppliers. It argues that throughout Chapter 4901:1-34, O.A.C., there are references to enforcement procedures applicable to natural gas companies,

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for which it claims the Commission has no statutory authority under Chapter 4929.10, Revised Code.

- (5) We previously addressed this same argument made by Columbia, in our September 13, 2006 opinion and order, by noting that we had faced this same issue when Columbia questioned our authority to initially adopt enforcement procedures in this chapter. See, *In the Matter of the Commission's Promulgation of Rules for Competitive Retail Natural Gas Service and its Providers Pursuant to Chapter 4929, Revised Code*, Case No. 01-1371-GA-ORD, Opinion and Order at 23 (November 20, 2001) and Entry on Rehearing at 28-29 (April 9, 2002). In that proceeding we explained that Section 4905.54, Revised Code, gives the Commission authority to assess civil forfeitures against any public utility that "after due notice fails to comply with an order, direction, or requirement of the commission that was officially promulgated." Nothing in Chapter 29 abridges that authority. Inasmuch as these rules are orders, directions, or requirements of the Commission, officially and appropriately promulgated, the Commission clearly has the authority under Section 4905.54, Revised Code, to assess the specified forfeitures. The Commission would also note that these rules are not intended to expand the Commission's statutory authority. Therefore, we find no merit in Columbia's assignment of error and deny its application for rehearing.
- (6) In its application for rehearing, OGMG raises six assignments of error, three of which claim that the Commission erred in its drafting of the rules. OGMG claims that the Commission erred in Rule 4901:1-27-01(R), O.A.C., by using the word "regulate" instead of the word "regulated." OGMG also claims that the Commission erred by using the word "contract" rather than the word "contact" in Rule 4901:1-27-10(B)(8), O.A.C. Further, OGMG argues that the Commission erred by using the word "changes" instead of the word "charges" in Rule 4901:1-29-10(E)(3), O.A.C. Upon review, we find merit in these three assignments of error raised by OGMG and grant this portion of OGMG's application for rehearing.
- (7) OGMG next argues that, while the Commission amended Rule 4901:1-29-09(B), O.A.C., by allowing disclosure of information by court order, it should also have permitted the release of account numbers or social security numbers when the

Commission determines it appropriate to do so. OGMG also contends that the Commission erred by not allowing electronic authorization in the form of an internet message or recorded phone authorization for the release of both a customer's account number and social security number. OGMG also requests that, if the Commission grants rehearing with respect to this assignment of error, the same changes be made to parallel provision in Rules 4901:1-29-09(C), and 4901:1-29-11(B)(17) and (18), O.A.C.

- (8) Upon review, we find good cause to grant rehearing on this assignment of error. We agree with OGMG that there may be occasions, absent a court order, when the Commission determines that there is good cause to release customer account numbers. The rule should provide for that contingency. However, we do not agree that the Commission should have the power to authorize the release of a customer's social security number without the customer's written consent or a court order. Accordingly, Rule 4901:1-29-09(B), O.A.C., should be amended to include the words "or commission" within the phrase "pursuant to a court order" with regard to the release of a customer's account number. Because this provision is similarly found in Rules 4901:1-29-09(C), 4901:1-29-11(B)(17) and (18), O.A.C., they should similarly be amended. With respect to OGMG's assignment of error regarding electronic authorization in the form of an internet message, we grant rehearing to modify the rules to provide for electronic authorization with regard to account numbers. Nevertheless, we deny rehearing with regard to the portion of OGMG's assignment of error that requests allowing recorded phone authorization. Such communication is not in written form. We also deny rehearing with regard to allowing electronic authorization for the release of a customer's social security number, as we believe that the sensitivity of this information requires heightened protection.
- (9) In its next assignment of error, OGMG contends that Rule 4901:1-29-10(E)(3), O.A.C., addresses the required contents of a second notice for renewing contracts, but fails to define the term "new rate." It contends that this failure may lead to confusion and may be interpreted to mean a fixed price only. OGMG suggests that, after the existing phrase "must contain the new rate," there should be additional language that reads

"or, in the case of a variable rate, the new rate formula." According to OGMG, such a change would more accurately reflect the fact that pricing is both fixed and variable and would avoid future misunderstandings or litigation as to what information must be contained in the second notice.

- (10) Upon review, we agree with OGMG that its suggested language will reduce the confusion that could occur with the current language of the rule and will more accurately reflect the fact that pricing is both fixed and variable. Accordingly, Rule 4901:1-29-10(E)(3), O.A.C., should be amended to add the phrase "or, in the case of a variable rate, the new rate formula" to the end of the rule.
- (11) OGMG also argues that the Commission erred by failing to approve unambiguous language in Rule 4901:1-29-11(B)(5), O.A.C. According to OGMG, this rule sets forth the information that a CRNGS supplier should provide in its retail sales agreement and requires a CRNGS supplier to inform the retail customer of the procedure for termination for failure to pay for the commodity portion of the customer's gas bill. OGMG is concerned that, as currently drafted, the rule implies that, if a customer fails to pay its bill to the local distribution company (LDC), the LDC may terminate service to the customer and the CRNGS supplier will also send a written notice 14 days in advance of the commodity gas termination. OGMG surmises that this was not the Commission's intent, as reflected in the discussion in the opinion and order. OGMG further argues that this is impractical because the CRNGS supplier generally does not know that a customer in its pool has been shut off for nonpayment until the natural gas company sends the CRNGS an electronic drop notice. As a result, the 14-day notice from a CRNGS supplier would arrive after the customer has already been shut off. OGMG argues that this rule should be changed to avoid this confusion by breaking subsection (B)(5) into two parts and clarifying that the 14-day notice applies only if the CRNGS supplier or governmental aggregator is the billing agent.
- (12) Upon review, we agree with OGMG's assignment of error that the rule, as drafted, appears to be unclear and could cause confusion. We will revise the rule to clarify the different notification requirements depending upon whether the LDC is

doing the billing or the CRNGS supplier is billing on its own. We have added a provision that makes it clear that, in the event marketers begin to bill for their services, it will be essential to maintain the 14-day notification of contract termination in the event of non-payment. We are also adding a provision to Rule 4901:1-29-12 to require a CRNGS provider or governmental aggregator that bills for its own services to provide a 14-day notice prior to termination of the customer's contract.

- (13) In its application for rehearing, DRI raised four assignments of error. First, DRI argues that the Commission erred by failing to amend Rule 4901:1-28-04(E), O.A.C., to include language that would assign responsibility to the host natural gas company for reimbursing customers improperly transferred to a governmental aggregator in those instances where the improper transfer was caused by the error of the natural gas company, rather than the error of the governmental aggregator. DRI claims that the rule fails to take into account that a customer could have been improperly transferred due to the fault of the LDC, in which case, the liability for that mistake should fall on the LDC and not the governmental aggregator. DRI argues that to impose a strict liability standard on the governmental aggregator regardless of the underlying circumstances is unfair and allows the LDC to escape the consequences of its own negligence. Columbia opposes the effort of DRI to shift the liability for improper switching of customers by governmental aggregators. Columbia contends that aggregators should be responsible for ensuring that they are soliciting the appropriate set of potential customers.
- (14) Upon review, we grant rehearing on DRI's first assignment of error. We reviewed these arguments in our September 13, 2006 opinion and order. As we stated at that time, Ohio law places the burden of ensuring that only eligible customers are enrolled in governmental aggregation programs on the governmental aggregator and not on the LDCs. We further noted that it is the governmental aggregators and not LDCs who are prohibited from including ineligible customers in the governmental aggregation program. However, upon review of the arguments, it is clear that both the aggregator and the LDC share some responsibility in generating accurate customer lists. Nothing in the law suggests that the legislature intended this

prohibition to run exclusively against the aggregator. Indeed, we agree with DRI and OGMG that public policy demands that the party who caused a customer to be improperly transferred should be liable for the damages associated with the improper transfer. Thus, we believe that the rule should be amended to allow for the possibility that an improper switch could have occurred due to the fault of the LDC and that the rule as written does not allow for that event. OGMG had suggested language in its comments that provides for that possibility. After reviewing the arguments in the applications for rehearing, we find that such an amendment to this rule is appropriate. Accordingly, Rule 4901:1-28-04(E), O.A.C., should be amended to add such language.

- (15) Next, DRI argues that the Commission erred by, failing to amend Rule 4901:1-29-06(A), O.A.C., to include fixed deadlines by which customer enrollments must be effectuated and dropped customers returned to GCR service after all required enrollment or drop information has been submitted to the host natural gas company and by failing to include a requirement that natural gas utilities process enrollments and drops on a timely basis. DRI contends that the current system is not working as well as the LDCs claim and that some customers have waited two to three billing periods for service after completing the enrollment requirements. DRI disputes the assertions of the LDCs that deadlines would impose significant additional costs and would be unworkable from a practical standpoint. DRI requests that the Commission should examine these claims in the context of a workshop. In its memorandum contra, Columbia argues that DRI is improperly attempting to dictate to utilities the timing of customer enrollments in a manner that is inconsistent with the procedures of the CRNGS programs and inconsistent with information systems that are not easily revised. Columbia also argues that DRI has not demonstrated that current processes are not working. Columbia suggests that this issue should be considered at a workshop or technical conference.
- (16) Upon review, we deny DRI's second assignment of error. We considered this issue in our opinion and order and declined to adopt the changes requested by DRI. We noted that, since the inception of the gas choice programs, we have considered the processing and time periods associated with CRNGS customer

enrollment. We noted that the time period for enrollments and the processing of enrollments are not the same among the LDCs' programs. We agree, however, with the suggestions of both DRI and Columbia that this issue is better addressed in the context of a workshop. Therefore, we direct our staff to work further with the parties on this issue.

- (17) In its third assignment of error, DRI claims that the Commission erred by failing to amend paragraphs (E)(1)(g)(iii) and (F)(2)(b)(iii) of Rule 4901:1-29-06 and paragraph (A)(5) of Rule 4901:1-29-11, O.A.C., to accord customers who wish to rescind their gas supply contracts within the seven-business-day/no penalty window the option of contacting the CRNGS supplier rather than requiring the customer to contact the host natural gas company. DRI claims that the rule as written is confusing for customers who, when contacting the supplier with whom they have contracted, will have to be told that the supplier has no power to rescind its own contract. Additionally, DRI points out that it knows of no other contractual relationship in any business setting where rescission can be effected by contacting someone other than the other party to the contract. In its memorandum contra, Columbia argued that DRI's argument is simply a rehash of the same arguments it made in the original rulemaking. Further, Columbia claims that there has been no showing of any necessity to change the customer rescission process.
- (18) We find no merit in DRI's third assignment of error. We fully considered this issue in our September 13, 2006 opinion and order. We found that the current requirement to cancel enrollment only through the natural gas company should be unchanged. We determined that such a change would cause more problems than it potentially solves and could create greater opportunity to confuse customers. As we noted in our opinion and order, "Columbia correctly points out that we evaluated this issue at the time these rules were developed. Nothing since then convinces us that customer rescission should be handled in another manner." Additionally, while we recognize, as noted by DRI, that it is unusual to allow rescission of a contract only by contacting someone other than a party to that contract, we also recognize that this is a unique circumstance. As it is the LDC that must actually prevent the switch if the contract is rescinded and as there is a very short

time frame in which to take actions to prevent the switch, it is critical that the customer contact be made directly with the LDC. However, in the event that a customer contacts a CRNGS supplier to request rescission, we would encourage the CRNGS supplier to institute a three-way call with the LDC, in order to alleviate any possible customer confusion. We would also encourage LDCs and CRNGS suppliers to work together to develop an appropriate process for such three-way calls.

- (19) In its fourth assignment of error, DRI contends that the Commission erred by failing to amend paragraphs (C)(1) and (C)(5) of Rule 4901:1-29-09, O.A.C., to require host natural gas companies to assign a unique identifier to each customer account and to make such identifiers available to CRNGS suppliers upon request or as part of the information provided on the standard customer lists sent to suppliers. DRI claims that the Commission rejected the rule modification proposed by DRI involving the use of unique enrollment identifiers based on the claims that computer reprogramming and software would be required and would be costly to implement. DRI requests that the Commission address this issue in a workshop prior to rendering a final decision on the issue. In its memorandum contra, Columbia opposes DRI's proposed change to the rule. Columbia argues that customers already have a unique identifier, which is the customer account number, and there is no reason why utilities should be required to create another such number.
- (20) We find no merit to this assignment of error. DRI raised this issue in its comments and we fully considered this issue in our September 13, 2006 opinion and order. We determined that the current, unique identifiers are adequate and that the existing rules provide an adequate framework for the release of customer information. Further, as we noted, we found that this topic could be a technical issue for discussion at a workshop, should DRI or others have difficulties in this area. DRI has raised no new arguments demonstrating that the current rules are inadequate.
- (21) In its application for rehearing, OCC raises five assignments of error. OCC first argues that the Commission erred in not requiring suppliers, under Rules 4901:1-27-11(B)(3) and (4), O.A.C., to give OCC information that will enable OCC to assist



customers in understanding their situation and the rates they pay. OCC contends that, if provided the abandonment notices, OCC will be able to better respond to questions from customers. Similarly, OCC argues that suppliers should be required, under Rule 4901:1-29-03(E), O.A.C., to provide OCC with a contact person to answer questions about customer inquiries that OCC receives. OCC states that it has found that individual marketing representatives, who can be accessed through website phone numbers, often do not know the answers to OCC's questions.

- (22) We will grant, in part, OCC's first assignment of error. We find that it is reasonable to require that copies of abandonment notices be available to OCC at the same time as customers, to enable OCC's representatives to respond better to inquiries. Therefore, we have modified the language in Rule 4901:1-27-11(B)(3). With respect to designated contact persons, the Commission notes that we obtain contact information from the applications filed by CRNGS providers. When such information changes, this is considered a material change and the marketer is required to notify the Commission. However, Rule 4901:1-29-03(E), O.A.C., as currently drafted, only requires that contact information be provided to the Commission, not necessarily filed in the docket. In order to ensure that contact information is accessible to OCC, we are amending that rule to require actual filing of the initial contact information and any modifications of that information. We are also making a corresponding revision to Rule 4901:1-1-27-10(A), O.A.C.

The Commission similarly finds that Rule 4901:1-28-04, O.A.C., should be amended to require docketing of certain information. The Commission will amend that rule to add a new provision, mirroring the opt-out disclosure requirements for competitive retail electric service set forth in Rule 4901:1-21-17, O.A.C. This new provision will require government aggregators to docket advance notice of the governmental aggregation opt-out program with the final opt-out or any supplemental opt-out customer notification. The Commission finds that this provision would improve the opt-out notification process by informing affected parties about impending governmental aggregation opt-out programs and may ultimately serve to minimize unauthorized switching.

- (23) OCC next contends that the Commission erred in failing to require aggregators, under Rules 4901:1-28-04(E) and 4901:1-29-08(D)(4), O.A.C., to compensate wrongfully switched customers for the higher rates they pay during the remainder of their contract periods. OCC claims that the current rule only requires aggregators to reimburse the customers wrongfully switched for the switching fee and the difference between the customer's former rate and the governmental aggregator's rate multiplied by the customer's usage. OCC suggests that the rule should also require the aggregators to reimburse the customer for increased charges the customer may have to pay because the customer cannot return to the low rate that was charged prior to the wrongful switch. In the alternative, OCC suggests that the Commission require suppliers to honor their original contract price with the customer who was improperly switched to the aggregator. OCC argues that, by allowing an aggregator to wrongfully switch a customer without requiring the aggregator to make the customer whole, the Commission ignores its responsibility to customers under Chapter 4929, Revised Code. In its memorandum contra, OGMG argues that it may not be possible to honor the original contract terms of a wrongfully switched customer and opposes any request to amend this provision of the rule. According to OGMG, liability in this situation should be left for determination on a case-by-case basis. OGMG also argues that it is likely that the requested reinstatement would come at a significant time after the contract was issued because, mechanically, the unauthorized switch will not be recognized until at least one meter reading and billing cycle after the improper switch.
- (24) These claims repeat arguments that OCC made in its comments regarding these rules. We fully addressed these arguments in our September 13, 2006 opinion and order. We note, however, consistent with OGMG's comments, that our refusal to incorporate OCC's proposed remedy into the rule does not preclude us from determining, on a case-by-case approach, that such a remedy is an equitable way to address an improper switch under Section 4905.73, Revised Code. This assignment of error should be denied.
- (25) In its third assignment of error, OCC argues that the Commission erred in failing to require CRNGS suppliers who bill customers directly for both regulated and unregulated

service to engage authorized agents who must credit the customer's account immediately upon the customer's payment of a bill. OCC argues that it is not just and reasonable for utilities or suppliers who bill for utility service to require customers to pay bills before the due date by check or credit card because there is no place for customers to pay in person. OCC contends that customers who pay supplier bills that include regulated service should be permitted to pay those bills at an authorized service center and be charged no more than twice the cost of a first-class postage stamp as is provided under Rule 4901:1-13-11(E)(2), O.A.C.

- (26) This assignment of error was made previously by OCC in its initial comments and was rejected by the Commission. After further consideration of this issue, we agree with OCC that, because gas is a necessary commodity for residential customers, suppliers who bill directly for both regulated and unregulated service should be required to provide customer payment centers and/or authorized agents. Therefore, we will amend rule 4901:1-29-12, O.A.C., to provide that our minimum gas billing rules for authorized agents and/or payment centers, found in Rule 4901:1-13-11(E) and (F), O.A.C., applicable to natural gas companies, will similarly apply to CRNGS providers who directly bill their customers.
- (27) Next, OCC contends that the Commission erred in failing to require LDCs to permit customers who are no longer on the percentage-of-income payment plan (PIPP), but who are currently making payment arrangements for PIPP arrearages, to participate in choice programs. OCC points out that four of the LDCs already allow such customers to participate in choice programs, as long as they stay current on their arrearage payments. OCC claims that requiring LDCs to allow customers who are paying off or having their PIPP arrearages forgiven on choice will ensure that such customers will continue to have the incentive to keep current.
- (28) In our opinion and order, we noted that "[t]he current practice of the four LDCs with gas choice programs is to allow customers who are in the PIPP arrearage crediting program to participate in the choice programs, provided that these customers remain current on payment of gas bills...In light of the current practices of those LDCs, the Commission finds no

need to modify this rule." As this practice is consistent with Rules 4901:1-28-01(C) and 4901:1-29-01(O), O.A.C., we find that no change to the rules is necessary.

- (29) In its fifth assignment of error, OCC claims that the Commission erred in failing to require that LDCs treat customers returning to GCR service from individual contracts the same as customers returning from aggregation, who are not charged a switching fee. According to OCC, LDCs are not permitted to charge a switching fee to a returning customer who was part of an aggregation group and, therefore, LDCs should not be permitted to charge a switching fee for customers who return to the LDC from contracts with other competitive suppliers, especially when there has been no showing that there are actual costs associated with such a switch.
- (30) This issue was raised by OCC in its initial comments. We previously concluded that, when a customer is part of an aggregation, it is the aggregator that has the contract with the LDC, not the individual customer. Therefore, the aggregator is the customer and it is not appropriate to individually charge each member of the aggregation a switching fee when a participant in such a governmental aggregation program is returned to the LDC's regulated sales service due either to expiration of an aggregation agreement or the aggregator switching suppliers. OCC has raised no new argument that warrants us changing our decision.

It is, therefore,

ORDERED, That OGMG's, OCC's, and DRI's applications for rehearing be granted in part and denied in part, as set forth herein. It is, further,

ORDERED, That Columbia's application for rehearing be denied. It is, further,

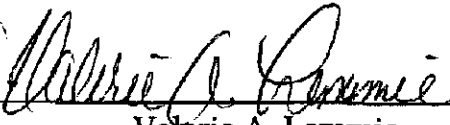
ORDERED, That copies of this entry on rehearing be served upon all certified retail natural gas service suppliers and all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

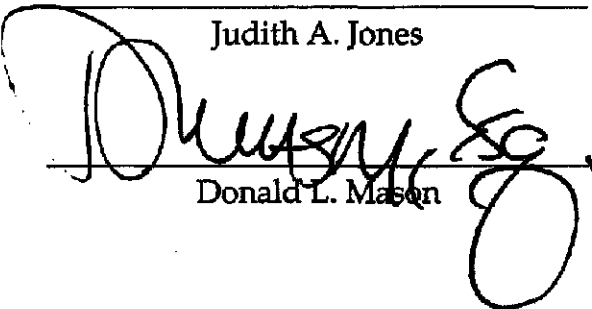
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Alan R. Schriber, Chairman

  
Ronda Hartman Fergus

  
Valerie A. Lemmie

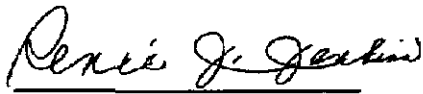
Judith A. Jones

  
Donald L. Mason

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Entered in the Journal

DEC 13 2006

  
Renee J. Jenkins  
Secretary

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:1-27-01      **Definitions.**

As used in this chapter:

- (A) "Abandonment" means to cease being a retail natural gas supplier or governmental aggregator in this state.
- (B) "Ancillary service" has the meaning set forth in division (B) of section 4929.01 of the Revised Code.
- (C) "Applicant" means a person who files an application for certification or certification renewal under this chapter.
- (D) "Application form" means a form, approved by the commission, that an applicant seeking certification or certification renewal as a retail natural gas service-supplier or as a governmental aggregator shall file with the commission as set forth in this chapter.
- (E) "Billing or collection agent" has the meaning set forth in division (I) of section 4929.01 of the Revised Code.
- (F) "Commission" means the public utilities commission of Ohio.
- (G) "Commodity sales service" has the meaning set forth in division (C) of section 4929.01 of the Revised Code.
- (H) "Comparable service" has the meaning set forth in division (D) of section 4929.01 of the Revised Code.
- (I) "Competitive retail natural gas service" has the meaning set forth in division (J) of section 4929.01 of the Revised Code.
- (J) "Consumer" has the meaning set forth in division (E) of section 4929.01 of the Revised Code.
- (K) "Contract" means an agreement between a customer and retail natural gas supplier or governmental aggregator that specifies the terms and conditions for provision of competitive retail natural gas service.
- (L) "Customer" means a ~~consumer as defined in division (E) of section 4929.01 of the Revised Code,~~ person who contracts with or is solicited by a retail natural gas supplier or governmental aggregator for the provision of a competitive retail natural gas service.

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- (M) "GCR" "Existing customer" means gas cost recovery, which is the quarterly updated gas cost adjustment determined in accordance with appendix A of rule 4901:1-14-05 of the Administrative Code a person who has a contract with a retail natural gas supplier or governmental aggregator for the provision of competitive retail natural gas service.
- (N) "Governmental aggregator" has the meaning set forth in division (K)(1) of section 4929.01 of the Revised Code. For purposes of this chapter, "governmental aggregator" specifically excludes a municipal corporation acting exclusively under Section 4 of Article XVIII, Ohio Constitution, as an aggregator for the provision of competitive retail natural gas service.
- (O) "Mercantile customer" has the meaning set forth in division (L) of section 4929.01 of the Revised Code.
- (P) "Natural gas company" has the meaning set forth in division (G) of section 4929.01 of the Revised Code.
- (Q) "Person" has the meaning set forth in division (H) of section 4929.01 of the Revised Code.
- (R) "Regulated sales service" means the provision of natural gas commodity service to consumers at the gas cost recovery rate or any alternate gas cost pricing mechanism approved by the commission pursuant to Chapter 4901:1-19 of the Administrative Code.
- (S) "Regulated sales service customer" means a person who has an agreement by contract and/or tariff with a natural gas company or gas company to receive regulated sales service.
- ~~(R)~~(T) "Retail natural gas aggregation service" means combining the natural gas load of multiple retail residential customers or small commercial customers via an agreement with the customers for the purpose of purchasing competitive retail natural gas service on an aggregated basis.
- ~~(S)~~(U) "Retail natural gas aggregator" means a person who contracts with customers to combine the customers' natural gas load for the purposes of purchasing competitive retail natural gas service on an aggregated basis.
- ~~(T)~~(V) "Retail natural gas brokerage service" means assuming the contractual and legal responsibility for the sale and/or arrangement for the supply of competitive retail natural gas service to a retail customer in this state without taking title to the natural gas.
- ~~(U)~~(W) "Retail natural gas broker" means a person who provides retail natural gas brokerage service.

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~~(V)~~(X) "Retail natural gas marketing service" means assuming the contractual and legal responsibility for the sale and provision of competitive retail natural gas service to a retail natural gas service customer in this state and having title to natural gas at some point during the transaction.

~~(W)~~(Y) "Retail natural gas marketer" means a person who provides retail natural gas marketing service.

~~(X)~~(Z) "Retail natural gas service" has the meaning set forth in division (M) of section 4929.01 of the Revised Code.

~~(Y)~~(AA) "Retail natural gas supplier" has the meaning set forth in division (N) of section 4929.01 of the Revised Code.

(BB) "Small commercial customer" means a commercial customer which is not a mercantile customer under paragraph (O) of this rule.



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4901:1-27-02      **Purpose and scope.**

Under the rules in this chapter:

- (A) Any retail natural gas supplier or governmental aggregator that intends to offer or provide a competitive retail natural gas service in this state shall obtain a certificate to operate from the commission before commencing operations.
- (B) Nothing contained in this chapter shall preclude, in any way, the commission from altering, amending, or waiving, in whole or in part, any of these rules.
- (C) These rules do not apply to a billing and collection agent if it is a fully independent agent, not affiliated with or otherwise controlled by a retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code, to the extent that the agent is under contract with such supplier or aggregator solely to provide billing and collection for competitive retail natural gas service on behalf of the supplier or aggregator. Nothing in this rule exempts such supplier or aggregator from liability for the acts of its billing and collection agents.

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4901:1-27-03

**General prohibitions.**

- (A) On or after July 26, 2002, no retail natural gas suppliers or governmental aggregators shall offer, contract for, or supply competitive retail natural gas service in this state without a valid certificate. This section shall not apply to contracts in effect before the effective date of this rule.
- (B) Nothing in this rule is intended to prohibit a person from conducting market research or advertisements designed solely to ascertain and raise ~~customer~~public awareness and/or improve name recognition.
- (C) Enforcement of any rule in this chapter or commission order adopted thereunder will be conducted in accordance with Chapter 4901:1-34 of the Administrative Code.

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4901:1-27-04      **Application process.**

- (A) An application for certification or certification renewal shall be made on forms authorized by the commission. The application forms shall provide for sufficient information to enable the commission to assess an applicant's managerial, financial, and technical capability to provide the service it intends to offer, its ability to provide reasonable financial assurances sufficient to protect GCR-regulated sales service customers and natural gas companies from default, and its ability to comply with commission rules or orders.
- (B) The applicant shall complete the appropriate application form (e.g., retail natural gas marketer, retail gas aggregator/broker, or governmental aggregator) in its entirety and supply all required attachments, affidavits, and evidence of capability specified by the form at the time an application is filed.
  - (1) Retail natural gas marketers shall file general, technical, managerial, and financial information as set forth in the application. This information includes, but is not limited to:
    - (a) Ownership and organizational descriptions.
    - (b) Managerial experience and capabilities and prior regulatory or judicial actions.
    - (c) Balance sheets, credit ratings, and other relevant financial information.
    - (d) Technical ability and experience in nominating, scheduling, and providing natural gas to retail customers.
    - (e) Proof of an Ohio office and an employee in this state in accordance with division (G) of section 4929.22 of the Revised Code.
    - (f) Statements as to whether the applicant has ever been terminated from any -  
~~customer-choice~~ program; if applicant's certification has ever been revoked or suspended; or if applicant has ever been in default for failure to deliver.
  - (2) Retail natural gas aggregators/retail natural gas brokers shall file general, technical, managerial, and financial information as set forth in the application. This information includes, but is not limited to:
    - (a) Ownership and organizational descriptions.
    - (b) Balance sheets, credit ratings, and other relevant financial information.

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- (c) Managerial, technical ability, and experience in providing aggregation services, financial capability as depicted on publicly available information, and applicable credit ratings.
  - (d) Proof of an Ohio office and an employee in this state in accordance with division (G) of section 4929.22 of the Revised Code.
- (3) Governmental aggregators shall file general information as set forth in the application. This information includes, but is not limited to:
  - (a) Copies of its operational plans.
  - (b) Descriptions of experience.
- (C) An applicant for certification or certification renewal shall file a completed and notarized original application signed by a principal officer of the applicant and ten conformed copies, including all supporting attachments and affidavits, with the commission's docketing division.
  - (1) The date that the commission's docketing division stamps an application received shall serve as the official filing date with the commission.
  - (2) In accordance with rule 4901:1-27-06 of the Administrative Code, the commission may deny without prejudice any application that is not complete or does not include the attachments, documentation, and affidavits required by the application form.
  - (3) In accordance with this chapter, in instances where information and/or documentation required by these rules is not available at the time of filing an application, an applicant may substitute a notarized affidavit by an officer of the applicant stating that the applicant will file such information and/or documentation with the commission at least ten business days prior to offering or providing competitive retail natural gas service to a customer in this state. The affidavit shall be accompanied by an explanation as to why such information is not available for inclusion with the application.

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4901:1-27-05      **Affidavits.**

In addition to all other affidavits required by this chapter, each applicant shall submit with its application, on forms prescribed by the commission, affidavits attesting that:

- (A) The information provided by the applicant on its application form and supporting attachments is complete, true, and accurate to the best knowledge of the applicant.
- (B) The applicant will timely file an annual report of its intrastate gross receipts and sales of hundred cubic feet of natural gas pursuant to division (A) of section 4905.10, division (A) of section 4911.18, and division (B) of section 4929.23 of the Revised Code.
- (C) The applicant will timely pay any assessment made pursuant to section 4905.10 or division (A) of section 4911.18 of the Revised Code.
- (D) The applicant will comply with all applicable commission rules or orders adopted pursuant to Title XLIX of the Revised Code.
- (E) The applicant will cooperate with the commission and its staff in the investigation of any ~~consumer~~-complaint regarding any service offered or provided by the applicant.
- (F) The applicant will comply with section 4929.21 of the Revised Code regarding consent to the jurisdiction of Ohio courts and the service of process.

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4901:1-27-06      **Application approval or denial.**

- (A) If the commission does not act upon an application within thirty days of the filing date, the application shall be deemed automatically approved pursuant to section 4929.20 of the Revised Code on the thirty-first day after the official filing date.
- (1) Upon good cause shown, the commission, or an attorney examiner appointed by the commission, may suspend its consideration of an application.
- (2) If the commission, or an attorney examiner appointed by the commission, acts to suspend an application, it will:
- (a) Docket its decision and notify the applicant of the reasons for such suspension and may direct the applicant to furnish any additional information as the commission deems necessary to evaluate the application
- (b) Act to approve or deny the application within ninety days from the date that the application was suspended; ~~and~~
- (c) At its discretion, set the matter for hearing.
- (B) In evaluating an application, the commission will consider the information contained in the application, supporting evidence and attachments, evidence filed by any interested parties, and recommendations of its staff.
- (C) The commission will act to approve an application if it finds ~~that~~ all of the following:
- (1) The applicant is managerially, financially, and technically fit and capable of performing the service it intends to provide;
- (2) The applicant is managerially, financially, and technically fit and capable to comply with all applicable commission rules and orders; ~~and~~
- (3) The applicant is able to provide reasonable financial assurances sufficient to protect natural gas companies and the ~~GCR~~ regulated sales service customers from default.
- (D) When the commission approves an application, it will issue the applicant a numbered certificate that indicates the service(s) for which the applicant is certified to provide and the dates for which the certificate is valid.
- (E) Unless otherwise specified by the commission, a retail natural gas supplier's or governmental aggregator's initial or renewal certificate is valid for a period of two years, beginning and ending on the dates specified on the certificate.

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- (F) If the commission acts to deny, in whole or in part, an application, it will docket its decision and notify the applicant that its application, or parts of its application, has been denied, including the reason(s) for such denial.

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4901:1-27-07      **Regulatory assessments.**

- (A) In accordance with sections 4905.10 and 4911.18 of the Revised Code, each retail natural gas supplier and governmental aggregator is subject to an annual assessment based upon its intrastate gross receipts or gross earnings (collectively "gross revenue") associated with the provision of each competitive retail natural gas service for which it is certified to provide. Any retail natural gas supplier and governmental aggregator that reports zero gross revenue shall not be assessed.
- (B) Each retail natural gas supplier that supplies competitive retail natural gas service shall, in the manner and on the date specified by the commission or its staff, file an annual report of the gross revenue derived from its intrastate sales of natural gas. For the purpose of the report, sales of hundred cubic feet of natural gas are deemed to occur at the meter of a retail customer.
- (C) Each retail natural gas supplier and governmental aggregator that supplies competitive retail natural gas service(s) in addition to, or other than, natural gas shall, in the manner and on the date specified by the commission or its staff, file an annual report of the intrastate gross revenue derived from its provision of such service(s). For the purpose of the report, sales of hundred cubic feet of natural gas are deemed to occur at the meter of a retail customer.
- (D) Each retail natural gas supplier and governmental aggregator shall maintain detailed records to support the information provided pursuant to paragraphs (B) and (C) of this rule. Such records and information are subject to audit by the commission.
- (E) In instances where a retail natural gas supplier or governmental aggregator underreports its gross revenue, the commission may, in computing an assessment made pursuant to this rule, include any gross revenues that were underreported in a prior year. The commission shall also, in addition to any other penalty under the Revised Code, assess the retail natural gas supplier or governmental aggregator interest on the amount underreported at the rate stated in section 1343.01 of the Revised Code.
- (F) No retail natural gas supplier or governmental aggregator shall be assessed under this section until after the commission has removed from the base rates of the natural gas company, the amount of assessment under this section that is attributable to the value of commodity sales service for those customers ~~of the company~~ that do not purchase that service from the natural gas company.
- (G) For purposes of meeting the requirements of this section, an annual report shall be filed in accordance with rule ~~4901:1-30~~ 4901:1-30-01 of the Administrative Code.



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4901:1-27-08      **Financial security.**

- (A) Pursuant to a tariff filed with the commission in accordance with division (A) of section 4929.20 of the Revised Code and rule 4901:1-29-13 of the Administrative Code, a natural gas company may require a retail natural gas supplier to issue and maintain a financial security with the natural gas company to protect the natural gas company and the ~~GCR-regulated sales service~~ customers from default.
- (B) A natural gas company may require a retail natural gas supplier to furnish financial and other information contained in the natural gas company's tariff to determine the type and/or amount of the financial security required for compliance with paragraph (A) of this rule.
- (C) A retail natural gas supplier may bring an action before the commission seeking review of the natural gas company's determination of ~~credit~~ financial security requirements or may seek staff mediation as to any dispute.
- (D) If a retail natural gas supplier fails to maintain sufficient financial security to protect a natural gas company and the ~~GCR-regulated sales service~~ customers from default by the retail natural gas supplier, the natural gas company may apply for relief at the commission.

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4901:1-27-09

**Certification renewal.**

- (A) No less than thirty and no more than one hundred twenty days prior to the expiration date indicated on the retail natural gas supplier's or governmental aggregator's certificate, the retail natural gas supplier or governmental aggregator shall file an application with the commission for certification renewal on forms approved~~approved~~ provided by the commission.
- (B) The applicant shall, as instructed by the application form, update and describe any material changes, as set forth in paragraph (B) of rule 4901:1-27-10 of the Administrative Code, to the information supplied with an applicant's initial or any subsequent certification application, whichever is the most recent.
- (C) The commission will act to approve, deny, or suspend an application for certification renewal pursuant to the same processes, standards, and timelines delineated in rule 4901:1-27-06 of the Administrative Code.

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4901:1-27-10

**Material changes in business.**

(A) Retail natural gas suppliers and governmental aggregators shall ~~inform~~ file with the commission a notification of any material change to the information supplied in a certification or most recent certification renewal application within thirty days of such material change.

(1) A retail natural gas supplier or governmental aggregator shall file such notice under the docket number assigned to the retail natural gas supplier's or governmental aggregator's initial certification or most recent certification renewal application, whichever is the most recent. The supplier or aggregator shall also serve such notice upon all natural gas companies serving customers in the areas covered by certification of the retail natural gas supplier or governmental aggregator.

(2) After notice and an opportunity for a hearing, the commission may suspend, rescind, or conditionally rescind a retail natural gas supplier's or governmental aggregator's certificate if it determines that the material change will adversely affect the retail natural gas supplier's or governmental aggregator's fitness or ability to provide the services for which it is certified; or to provide reasonable financial assurances sufficient to protect natural gas companies and the ~~GER-~~ regulated sales service customers from default.

(B) Material changes to the information contained in or supplied with a certification or most recent certification renewal application include, but are not limited to, the following:

(1) Any significant change in ownership (being an ownership interest of five per cent or more) of the applicant or retail natural gas supplier;

(2) An affiliation with any public utility or change of an affiliation with a public utility in this state;

(3) Retirement or other long-term changes to the operational status of supply resources relied upon by the retail natural gas supplier or the retail natural gas supplier of a governmental aggregator to provide competitive retail natural gas service;

(4) Revocation, restriction, or termination of any interconnection or service agreement with a pipeline company or natural gas company relied upon by a retail natural gas supplier or the retail natural gas supplier of a governmental aggregator to provide competitive retail natural gas service;

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- (5) The applicant or retail natural gas supplier's bond rating falls below BBB- as reported by Standard & Poors, Duff & Phelps, or Fitch IBCA or below Baa3 as reported by Moody's investor service.
- (6) The applicant or retail natural gas supplier has or intends to file for reorganization, protection from creditors, or any other form of bankruptcy with any court.
- (7) Any judgment, finding, or ruling by a court or regulatory agency that could affect a retail natural gas supplier's or governmental aggregator's fitness or ability to provide service in this state.
- (8) Any change in the applicant's regulatory contact.
- (9) Any change in the applicant's name or any use of a fictitious name.

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4901:1-27-11      **Transfer or abandonment of a certificate.**

- (A) A retail natural gas supplier or governmental aggregator shall not transfer its certificate to any person without prior commission approval.
- (1) A retail natural gas supplier or governmental aggregator may apply for commission approval to transfer its certificate by filing a certificate transfer application.
- (2) A transfer application shall be automatically approved on the thirty-first day after filing, unless the commission or attorney examiner acts to suspend or reject the application.
- (B) A retail natural gas supplier or governmental aggregator shall not abandon the operation(s) it provided under a certificate without fulfilling the terms of all existing contracts with customers or assigning such contracts to another retail natural gas supplier or governmental aggregator, and without commission approval.
- (1) Abandonment applications shall be filed at least ninety days before the effective date that the retail natural gas supplier or governmental aggregator will abandon operations. The application shall include copies of any notices provided pursuant to paragraphs (B)(2), (B)(3), and (B)(4) of this rule.
- (2) At least ninety days before abandoning operations in the state of Ohio, a retail natural gas supplier or governmental aggregator shall provide written notice to each natural gas company in whose service area the retail natural gas supplier or governmental aggregator operates of its intent to abandon operations in the state of Ohio. That notice shall reflect that the retail natural gas supplier or governmental aggregator has filed an abandonment application with the commission.
- (3) At least ninety days before abandoning operations, a retail natural gas supplier or governmental aggregator shall provide written notice to its existing customers and the office of the Ohio consumers' counsel of its intent to abandon operations. Such notice shall indicate the retail natural gas supplier's or governmental aggregator's intent to fulfill or assign customer contracts, including the effective date of such assignment, the effective date it will cease to provide service, and identify the commission's toll-free and TTY-TDD telephone numbers. That notice shall reflect that the retail natural gas supplier or governmental aggregator has filed an abandonment application with the commission. Such notice shall also inform existing customers that, if they do not choose an alternative supplier, their natural gas company will supply them and provide instructions on how they can obtain service from an alternative retail natural gas supplier or governmental aggregator. Such notice shall be provided

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to the commission staff for its review and to the incumbent natural gas company, prior to customer dissemination.

- (4) The retail natural gas supplier or governmental aggregator shall provide notice of its abandonment to its existing customers by separate message that is mailed or otherwise directly delivered to the customer or by notice on customer billing statements. Where the retail natural gas supplier or governmental aggregator is providing the billing, the retail natural gas supplier or governmental aggregator shall provide notice of its abandonment ~~on the customer billing statement~~. Where the natural gas company is billing for the retail natural gas supplier or governmental aggregator, the retail natural gas supplier or governmental aggregator may negotiate with the incumbent natural gas company to provide such notice of its abandonment on each billing statement rendered to existing customers. Abandonment notices shall begin at least ninety days before the effective date of the abandonment and shall continue monthly until the operation is abandoned.
- (5) If the commission does not act upon the application within ninety days of the filing date, the application shall be deemed automatically approved on the ninety-first day after the official filing date.

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4901:1-27-12

**Certification suspension, rescission, or conditional rescission.**

- (A) After reasonable notice and the opportunity for a hearing, the commission may, upon its own motion or upon complaint, suspend, rescind, or conditionally rescind a retail natural gas supplier's or governmental aggregator's certificate, in whole or in part, for good cause shown.
- (B) If the commission suspends a retail natural gas supplier's or governmental aggregator's certificate, the commission will notify the retail natural gas supplier or governmental aggregator of the reasons and effective dates for such suspension and specify the actions, including associated time frames, that the retail natural gas supplier or governmental aggregator must take in order to have the suspension lifted.
- (C) If the commission suspends a retail natural gas supplier's or governmental aggregator's certificate, the retail natural gas supplier or governmental aggregator shall continue to provide all services it is obligated to provide under contract to its existing customers, but it shall not advertise, offer, or contract to provide any new competitive retail natural gas service to existing customers, nor advertise, offer, or contract to provide any competitive retail natural gas service to potential customers during the suspension, unless the commission orders otherwise. Such suspensions and related prohibitions against advertising, offering or entering into contracts apply statewide, unless otherwise ordered by the commission.
- (D) If the commission conditionally rescinds a retail natural gas supplier's or governmental aggregator's certificate, it will delineate the specific conditions that the retail natural gas supplier or governmental aggregator must meet and establish a date by which the conditions must be met in order for the retail natural gas supplier or governmental aggregator to avoid permanent rescission of its certificate. If, in the commission's sole discretion, the retail natural gas supplier or governmental aggregator does not meet the condition(s) set forth by the commission on or before the specified date, the retail natural gas supplier's or governmental aggregator's certificate will be rescinded. Unless otherwise ordered by the commission, the retail natural gas supplier or governmental aggregator shall continue to provide all services it is obligated to provide under contract to its existing customers, but it shall not advertise, offer, or contract to provide any new competitive retail natural gas service to existing customers, nor advertise, offer, or contract to provide any competitive retail natural gas service to potential customers throughout the duration of a conditional rescission of a certificate.
- (E) If the commission rescinds a retail natural gas supplier's or governmental aggregator's certificate, the commission will notify the retail natural gas supplier or governmental aggregator of the reasons for and effective date of such rescission.

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- (F) Upon the effective date specified by the commission, a retail natural gas supplier or governmental aggregator whose certificate has been rescinded shall cease providing all competitive retail natural gas service for which it is no longer certified to provide.
- (G) Before the effective date of the certificate rescission, a retail natural gas supplier or governmental aggregator that provides competitive retail natural gas service to customers shall cooperate fully with each natural gas company in whose service area it provides such service to ensure that its existing customers will be served by another retail natural gas supplier, governmental aggregator or by the natural gas company on and after the effective date of the certificate rescission.
- (H) Before the effective date of the certificate rescission, a retail natural gas supplier or governmental aggregator whose certificate has been rescinded shall provide a written notice to each of its customers that indicates that its certificate has been rescinded and specifies the date(s) it will cease to provide service. Such notice shall be provided to the commission staff for its review and to the incumbent natural gas company prior to customer dissemination. Such notice shall also inform existing customers that, if they do not choose an alternative supplier, their natural gas company will supply them and provide instructions on how they can obtain service from an alternative retail natural gas supplier or governmental aggregator.
- (I) Reasons that the commission may suspend, rescind, or conditionally rescind a retail natural gas supplier's or governmental aggregator's certificate include, but are not limited to:
  - (1) A retail natural gas supplier's or governmental aggregator's failure to timely pay any assessment made pursuant to section 4905.10 or section 4911.18 of the Revised Code.
  - (2) A retail natural gas supplier's or governmental aggregator's failure to timely file an annual report of its intrastate receipts and sales of hundred cubic feet of gas pursuant to section 4905.10, or section 4911.18, or division (B) of section 4929.23 of the Revised Code.
  - (3) A finding by the commission that a retail natural gas supplier or governmental aggregator has materially underreported its intrastate receipts and sales of hundred cubic feet of gas on reports required by rule 4901:1-27-07 of the Administrative Code.
  - (4) A finding by the commission that any information reported to the commission subsequent to granting a certificate adversely affects a retail natural gas supplier's or governmental aggregator's fitness or capability to provide any service covered by its certificate.
  - (5) A finding by the commission that a retail natural gas supplier or governmental aggregator knowingly omitted information or knowingly provided false



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information on a certification or certification renewal application, including supporting attachments.

- (6) A finding by the commission that a retail natural gas supplier or governmental aggregator has provided a competitive retail natural gas service on or after July 26, 2002, ~~to a customer without~~ being certified by the commission to provide such service.
  - (7) A finding by the commission that a retail natural gas supplier or governmental aggregator has violated any applicable commission rule or order adopted pursuant to Chapter 4929. of the Revised Code.
  - (8) A finding by the commission that a retail natural gas supplier or governmental aggregator has failed to consent to the jurisdiction of the courts of this state or has failed to designate an agent to accept service of process pursuant to section 4929.21 of the Revised Code.
  - (9) A finding by the commission that a retail natural gas supplier or governmental aggregator has engaged in an anticompetitive act.
  - (10) A finding that a retail natural gas supplier or the retail natural gas supplier of a governmental aggregator has failed to maintain appropriate financial security or has otherwise committed an act of default as defined by a natural gas company's tariff or by agreement between the natural gas company and the retail natural gas supplier or governmental aggregator.
  - (11) A finding by the commission that a retail natural gas supplier or governmental aggregator has failed to comply with state laws or rules designed to protect consumers in this state, or has otherwise engaged in any fraudulent, misleading or unfair practice.
  - (12) A finding by the commission that a retail natural gas supplier has failed to maintain an Ohio office and an employee in this state, in accordance with section 4929.22 of the Revised Code.
- (J) In the event of a material default, as defined by a natural gas company's tariff or by an agreement between the natural gas company and the retail natural gas supplier or governmental aggregator, the natural gas company shall serve a written notice of such default in reasonable detail and with a proposed remedy to the retail natural gas supplier or governmental aggregator and the commission. On or after the date the default notice has been served, the natural gas company may file with the commission a written request for authorization to terminate or suspend the retail natural gas supplier or governmental aggregator from participation with the natural gas company's supplier program. Except for default due to underdelivery or nondelivery, if the commission, or an attorney examiner, does not issue an entry to suspend or reject the action proposed by the natural gas company within ten business

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days after receipt of the request, the natural gas company's request to terminate or suspend shall be deemed authorized on the eleventh business day. If the default is due to underdelivery or nondelivery and, if the commission, or an attorney examiner, does not act within five business days after receipt of the request, the natural gas - company' company's request to terminate or suspend shall be deemed authorized on the sixth business day. Terminations or suspensions from a natural gas company's supplier program shall require authorization from the commission.

The natural gas company shall send notices pursuant to this section by email, fax, overnight mail or hand delivery to the commission and staff at the commission's offices. The natural gas company shall notify all commissioners, the chief of staff, the director of the ~~consumer~~-service monitoring and enforcement services department, the director of the utilities department, the director of the legal department and the chief of the attorney general's public utilities section. The natural gas company shall send the notice to the address and fax number provided by the retail natural gas supplier or governmental aggregator in its aggregation agreement.

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4901:1-28-01      **Definitions.**

As used in this chapter:

- (A) "Commission" means the public utilities commission of Ohio.
- (B) "Customer" ~~means a consumer as defined in division (E) of section 4929.01 of the Revised Code, who contracts with or is solicited by a retail natural gas service supplier or governmental aggregator for the provision of a competitive retail natural gas service~~ any person who has an agreement, by contract and/or tariff, with a gas or natural gas company to receive service or any person who requests or makes application for retail natural gas service.
- (C) "Eligible customer" means a ~~customer person~~ that is eligible to participate in a governmental aggregation in accordance with sections 4929.26 and 4929.27 of the Revised Code and does not include any of the following: ~~a person that is a both a distribution service customer and a mercantile customer on the date of commencement of service to the governmental aggregation, or the person becomes a distribution service customer after the service commencement date and is also a mercantile customer; a person that is supplied with commodity sales service pursuant to a contract with a retail natural gas supplier that is in effect on the effective date of the ordinance or resolution authorizing the aggregation; a person that is supplied with commodity sales service as part of the percentage of income payment plan program or similar or successor program adopted by the commission under Chapter 4905, or 4929, of the Revised Code; or, a customer that has failed to discharge, or enter into a plan to discharge, all existing arrearages owed to or being billed by a natural gas company from which the person is receiving service.~~
- (1) A person that is a both a distribution service customer and a mercantile customer on the date of commencement of service to the governmental aggregation, or the person becomes a distribution service customer after the service commencement date and is also a mercantile customer.
- (2) A person that is supplied with commodity sales service pursuant to a contract with a retail natural gas supplier that is in effect on the effective date of the ordinance or resolution authorizing the aggregation.
- (3) A person that is supplied with commodity sales service as part of the percentage of income payment plan program or similar or successor program adopted by the commission under Chapter 4905, or 4929, of the Revised Code.
- (4) A person that has failed to discharge, or enter into a plan to discharge, all existing arrearages owed to or being billed by the incumbent natural gas company.

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(D) Existing customer means a person who has a contract with a retail natural gas supplier or governmental aggregator for the provision of competitive retail natural gas service.

~~(D)~~(E) "Governmental aggregator" has the meaning set forth in division (K)(1) of section 4929.01 of the Revised Code. For purposes of this chapter, "governmental aggregator" specifically excludes a municipal corporation acting exclusively under Section 4 of Article XVIII, Ohio Constitution, as an aggregator for the provision of competitive retail natural gas service.

~~(E)~~(F) "Mercantile customer" has the meaning set forth in division (L) of section 4929.01 of the Revised Code.

~~(F)~~(G) "Natural gas company" has the meaning set forth in division (G) of section 4929.01 of the Revised Code.

~~(G)~~(H) "Operations and governance plan" means a plan adopted by a governmental aggregator pursuant to division (C) of section 4929.26 of the Revised Code.

~~(H)~~(I) "Opt off" means an action by a ~~customer-person~~ to remove ~~the customer and the customer's~~ their name and associated account information from a natural gas company's pre-enrollment list.

~~(I)~~(J) "Opt-out notice" means a notice provided to ~~customers~~ the public pursuant to section 4929.26 of the Revised Code.

~~(J)~~(K) "Pre-enrollment list" means a list of customers and associated customer information compiled by a natural gas company pursuant to division (F) of section 4929.22 of the Revised Code and as directed by the commission.

~~(K)~~(L) "Retail natural gas service" has the meaning set forth in division (M) of section 4929.01 of the Revised Code.

~~(L)~~(M) "Retail natural gas supplier" has the meaning set forth in division (N) of section 4929.01 of the Revised Code.

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4901:1-28-02      **Purpose and scope.**

The rules in this chapter:

(A) Apply to a governmental aggregator's formation and operation of an opt-out governmental aggregation pursuant to Chapter 4929. of the Revised Code and to cooperation between natural gas companies and governmental aggregators.

(B) Nothing contained in this chapter shall preclude, in any way, the commission from altering, amending, or waiving, in whole or in part, any of these rules.

~~(B)~~(C) Are intended to:

- (1) Establish minimum requirements for formation and operation of governmental aggregations; .
- (2) Establish minimum requirements for a governmental aggregator's operation and governance plan;.
- (3) Establish minimum requirements for a governmental aggregator's opt-out notice to customers; and;.
- (4) Foster cooperation between natural gas companies and governmental aggregators.

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4901:1-28-03

**Formation and operation of an opt-out governmental aggregation  
and minimum requirements for operations and governance plans.**

- (A) Prior to applying for certification at the commission, a governmental aggregator that will form an opt-out aggregation shall complete all of the requirements specified in divisions (A) to (D) of section 4929.26 of the Revised Code, including adopting an ordinance or resolution authorizing an opt-out aggregation, conducting a general or special election in accordance with division (B) of section 4929.26 of the Revised Code for authorization from electors to form the aggregation, and approving a plan for operation and governance of the aggregation as specified by division (C) of section 4929.26 of the Revised Code.
- (B) The operation and governance plan adopted shall detail the services that will be provided under the aggregation and specify all customer rights and obligations under the aggregation. The plan shall be sufficiently detailed to allow customers to readily understand the services that the governmental aggregator is to provide and to compare those services against similar services provided by competitive suppliers. The governmental aggregator shall write the plan in clear and plain language so that an average residential ~~consumer~~ customer can easily understand it. The plan shall, at a minimum, contain all of the following:
- (1) A detailed description of services the governmental aggregator is to provide under the aggregation, including noting whether the service is to be provided directly by the governmental aggregator or by a party contracted by the governmental aggregator.
  - (2) A description of the processes that the governmental aggregator will use to determine the rates that will be charged.
  - (3) A detailed description of the governmental aggregator's plan for providing the required opt-out disclosure notices to eligible customers. The plan shall describe the steps that the governmental aggregator will take to ensure that all eligible customers residing within the governmental aggregator's governmental boundaries are notified. The plan shall also identify the time frames associated with the notice.
  - (4) A detailed description of the process for developing the pool of customer accounts that may be included in the aggregation, including the steps that will be taken to identify and eliminate customers that are not eligible to participate in the aggregation and eligible customers who opt out of the aggregation.
  - (5) The governmental aggregator's plan for billing customers, including an identification of billing intervals and the identity of the entity that will transmit the bill to the customer.

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- (6) A listing of any credit or deposit procedures and the policies that the governmental aggregator will employ in the event that a customer fails to pay its bill.
  - (7) A detailed description of the governmental aggregator's customer service procedures and dispute resolution processes, including notice of the customer's right to contact the commission and the commission's toll-free and TDD/TTY telephone numbers for its call center. These procedures and processes shall comport with the requirements specified in rule 4901:1-29-08 of the Administrative Code.
  - (8) A detailed description of the policies associated with a customer moving into the aggregation or within the aggregation where the incumbent natural gas company considers the customer that is moving to be a new customer. If the policies provide that these customers will be automatically included in the aggregation, the governmental aggregator shall provide the customers an opportunity to opt-out of the aggregation in accordance with the procedures set forth in rule 4901:1-28-04 of the Administrative Code.
  - (9) A detailed description of the policies associated with a customer moving within the aggregation where the customer is not assigned a new account number by the incumbent natural gas company. A customer in these circumstances ~~shall~~ may maintain the rate that the customer was charged at its previous location or, if the rate at the new location is higher than at the customer's previous location, the customer shall have the opportunity to opt out of the aggregation without penalty, pursuant to the procedures set forth in rule 4901:1-28-04 of the Administrative Code.
  - (10) A description of the governmental aggregator's policies regarding the ability of a customer who had previously opted out of the aggregation to join the aggregation, including identification of any associated conditions.
- (C) A governmental aggregator shall keep its operation and governance plan available for public inspection and shall, upon request, provide a copy of the plan to any existing or potential customer of the aggregation.
- (D) A governmental aggregator shall not alter its operation and governance plan in any way that would materially affect the customers of the aggregation without first providing notice to all affected customers and providing these customers the opportunity to opt out of the aggregation according to the procedures established for the initial opt out disclosure notice set forth in rule 4901:1-28-04 of the Administrative Code. The notice shall set forth the changes to the plan, inform the customer of its right to opt out of the aggregation without penalty, and identify the method and time frame for the customer to opt out.

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- (E) No governmental aggregator shall send an opt-out disclosure notice to potential customers of an aggregation prior to the governmental aggregator being certified by the commission.



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4901:1-28-04

**Opt-out disclosure requirements.**

- (A) Prior to including a customer's natural gas account or accounts in an aggregation, a governmental aggregator shall provide each eligible customer written notice that the customer's account(s) will be automatically included in the aggregation unless the customer affirmatively opts out of the aggregation. The notice shall, at a minimum, include:
- (1) A summary of the actions that the governmental entity took to authorize the aggregation.
  - (2) A description of the services that the governmental aggregator will provide under the aggregation.
  - (3) Disclosure of the price that the governmental aggregator will charge customers for competitive retail natural gas service. The price shall be expressed in dollars and/or cents per hundred cubic feet of gas ("Ccf") or thousand cubic feet of gas ("Mcf"), depending on the unit that is used by the natural gas company that serves the customer. If a variable rate is offered, it shall be accompanied by an understandable description of the factors that will cause the price to vary (including any associated indices) and disclosure of how frequently the rate will change. If different rates will be charged to different rate classes within the aggregation, the governmental aggregator shall disclose the applicable rate(s) to customers within the various rate classes.
  - (4) An itemized list and explanation of all fees and charges that are not incorporated into the rates charged for natural gas that the governmental aggregator will charge the customer for participating in the aggregation, including any applicable switching fees or early termination penalties. These switching fees and/or early termination penalties shall not apply to a customer that moves out of the governmental aggregator's territory.
  - (5) Disclosure of the dates covered by the aggregation, including an estimated service commencement date and notice that the customer may opt out of the aggregation at least every two years without penalty.
  - (6) Disclosure of any credit and/or deposit policies and requirements.
  - (7) Disclosure of any limitations or conditions on customer acceptance into the aggregation.
  - (8) A description of the process and associated time period for customers to opt out of the aggregation. The process shall include provisions for customers to return a post card or similar notice to the governmental aggregator or its agent. The process may include, in addition, other opt-out methods, such as telephonic or

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internet notice, provided that these methods provide for verification of a customer's election to opt out of the aggregation. The time period for a customer to choose to opt out of the aggregation shall extend at least twenty-one days from the date of the post mark on the written notice. A customer's return post card or notice that is post marked before the opt out deadline has elapsed shall be deemed to have opted out.

- (9) A local or toll-free telephone number that customers can call with questions regarding the formation or operation of the aggregation, including associated calling hours.
- (10) The language, on the front cover of the envelope or postcard shall state: "Important natural gas aggregation information".
- (B) At least every two years from the establishment of its initial aggregation pool, a governmental aggregator shall provide notice to all customers served by the aggregation of their right to opt out of the aggregation without penalty. This notice shall follow the procedures established for the initial opt-out notice set forth in this rule and shall prominently disclose to customers all changes to the terms and conditions associated with the aggregation.
- (C) No governmental aggregator or retail natural gas supplier serving a governmental aggregation shall impose any terms, conditions, fees, or charges on any customer served by a governmental aggregation unless the particular term, condition, fee, or charge was clearly disclosed to the customer at the time the customer chose not to opt out of the aggregation.
- (D) To assist its preparation and dissemination of required opt-out notices, a governmental aggregator that is certified by the commission may request that the incumbent natural gas company provide it with customer information consistent with paragraph (A) of rule 4901:1-28-05 of the Administrative Code. The governmental aggregator shall not, without the customer's express written consent, disclose or use for any purpose other than formation and operation of its aggregation a customer's account number or social security number or any customer information regarding customers who had opted off of the incumbent natural gas company's pre-enrollment list. Before a governmental aggregator releases any customer account number, social security number, or any information related to a customer who has opted off of the incumbent natural gas company's pre-enrollment list, the governmental aggregator shall obtain the customer's signature on a release. The release shall be on a separate piece of paper. The release shall be clearly identified on its face as a release of personal information and all text on the release shall be in at least sixteen-point type. The following statements shall appear prominently on the release, just prior to the signature, in type larger and darker than the type in the surrounding sentences: "I realize that, under the rules and regulations of the Public Utilities Commission of Ohio, I may refuse to allow (name of aggregator) to release the information set forth above. By my signature, I freely give (name of aggregator) permission to release the

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information designated above." The information that the governmental aggregator seeks to release shall be specified on the form. Forms requiring a customer to circle or to check off preprinted types of information to be released may not be used.

- (E) Each governmental aggregator shall use its best efforts to ensure that only eligible customer accounts within its governmental boundaries and customers who have not opted out are included in its aggregation. If ineligible accounts, accounts from outside of the governmental aggregator's governmental boundaries, or accounts for customers who opted out of the aggregation are switched to the governmental aggregation, the governmental aggregator shall promptly contact the natural gas company to have the customer switched back to the customer's former supplier. The governmental aggregator or the natural gas company, whichever is at fault for an improper switch, shall reimburse the customer for any switching fees that were paid by the customer as a result of the improper switch. In addition, if the customer's former rate was less than the rate charged by the governmental aggregator and the higher rate was paid by the customer, then the governmental aggregator or the natural gas company, whichever is at fault for an improper switch, shall reimburse the customer the difference between the customer's former rate and the governmental aggregator's rate multiplied by the customer's usage during the time that the customer was served by the governmental aggregator.
- (F) The governmental aggregator shall docket with the commission's docketing division an advance notice of the governmental aggregation opt-out program with the final opt-out or any supplemental opt-out customer notification no more than thirty days, but no less than ten days, prior to sending the opt-out notification to customers. The advanced notice to the commission shall identify the affected community and natural gas company involved, include the beginning and ending dates of the twenty-one day opt-out period, and provide the identification of the selected competitive retail natural gas service supplier.

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4901:1-28-05

**Cooperation between natural gas companies and certified governmental aggregators.**

- (A) Each natural gas company, each governmental aggregator and each retail natural gas supplier of a governmental aggregator shall cooperate to facilitate the proper formation and functioning of governmental aggregations. To assist a certified governmental aggregator's compliance with the opt-out disclosure notice requirements established in division (D) of section 4929.26 of the Revised Code, upon request, the incumbent natural gas company shall provide, on a best efforts basis, an updated list of eligible customers, including: names, account numbers, and service and mailing addresses for all eligible customers residing within the governmental aggregator's boundaries.
- (B) Charges and/or fees for services and information provided to governmental aggregators by natural gas companies shall be published in an approved tariff filed with the commission.
- (C) Unless the customer notifies the incumbent natural gas company of the customer's intent to not join a governmental aggregation by returning a confirmation notice or providing some other notice as provided by that natural gas company's tariffs, the incumbent natural gas company shall switch customer accounts to or from a governmental aggregation under the same processes and time frames provided in published tariffs for switching other customer accounts.

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4901:1-29-01      **Definitions.**

As used in this chapter:

- (A) "Ancillary service" has the meaning set forth in division (B) of section 4929.01 of the Revised Code.
- (B) "Billing and collection agent" has the meaning set forth in division (I) of section 4929.01 of the Revised Code.
- (C) "Ccf" means one hundred cubic feet of natural gas.
- (D) "Commission" means the public utilities commission of Ohio.
- (E) "Commodity sales service" has the meaning set forth in division (C) of section 4929.01 of the Revised Code.
- (F) "Competitive retail natural gas service" has the meaning set forth in division (J) of section 4929.01 of the Revised Code.
- (G) "Complaint" means ~~any consumer~~ customer/consumer contact in which the customer expresses dissatisfaction when such contact necessitates follow-up by or with the retail natural gas company or governmental aggregator to resolve a point of contention.
- (H) "Consumer" has the meaning set forth in division (E) of section 4929.01 of the Revised Code.
- (I) "Contract" means an agreement between a customer and retail natural gas supplier or governmental aggregator that specifies the terms and conditions for provision of a competitive retail natural gas service.
- (J) "Customer" means ~~a consumer as defined in section 4929.01 of the Revised Code,~~ person who contracts with or is solicited by a retail natural gas supplier or governmental aggregator for the provision of a competitive retail natural gas service.
- (K) "Deposit" means a sum of money a retail natural gas supplier or governmental aggregator collects from a customer as a precondition for initiating service.
- (L) "Direct solicitation" means face-to-face solicitation of a customer initiated by a retail natural gas supplier or governmental aggregator at the home of a customer or at a place other than the normal place of business of the retail natural gas supplier or governmental aggregator and includes door-to-door solicitations.

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- (M) "Disclosure statement" means any communication between a customer and governmental aggregator including operation and governance plans and opt-out notices.
- (N) "Distribution service" has the meaning set forth in division (F) of section 4929.01 of the Revised Code.
- (O) "Eligible customer" means a ~~customer~~ person that is eligible to participate in a governmental aggregation in accordance with sections 4929.26 and 4929.27 of the Revised Code and does not include any of the following: ~~a person that is a both a distribution service customer and a mercantile customer on the date of commencement of service to the governmental aggregation, or the person becomes a distribution service customer after the service commencement date and is also a mercantile customer; a person that is supplied with commodity sales service pursuant to a contract with a retail natural gas supplier that is in effect on the effective date of the ordinance or resolution authorizing the aggregation; a person that is supplied with commodity sales service as part of the percentage of income payment plan program or similar or successor program adopted by the commission under Chapter 4905. or 4929. of the Revised Code; or, a customer that has failed to discharge, or enter into a plan to discharge, all existing arrearages owed to or being billed by a natural gas company from which the person is receiving service.~~
- (1) A person that is a both a distribution service customer and a mercantile customer on the date of commencement of service to the governmental aggregation, or the person becomes a distribution service customer after the service commencement date and is also a mercantile customer.
- (2) A person that is supplied with commodity sales service pursuant to a contract with a retail natural gas supplier that is in effect on the effective date of the ordinance or resolution authorizing the aggregation.
- (3) A person that is supplied with commodity sales service as part of the percentage of income payment plan program or similar or successor program adopted by the commission under Chapter 4905. or 4929. of the Revised Code.
- (4) A customer that has failed to discharge, or enter into a plan to discharge, all existing arrearages owed to or being billed by the incumbent natural gas company.
- (P) ~~"GCR" means gas cost recovery, which is the quarterly updated gas cost adjustment determined in accordance with appendix A of rule 4901:1-14-05 of the Administrative Code~~ "Existing customer" means a person who has a contract with a retail natural gas supplier or governmental aggregator for the provision of competitive retail natural gas service.

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- (Q) "Governmental aggregator" has the meaning set forth in division (K)(1) of section 4929.01 of the Revised Code. For purposes of this chapter, "governmental aggregator" specifically excludes a municipal corporation acting exclusively under Section 4 of Article XVIII, Ohio Constitution, as an aggregator for the provision of competitive retail natural gas service.
- (R) "Mcf" means one thousand cubic feet of natural gas.
- (S) "Mercantile customer" has the meaning set forth in division (L) of section 4929.01 of the Revised Code.
- (T) "Natural gas company" has the meaning set forth in division (G) of section 4929.01 of the Revised Code.
- (U) "Opt-in governmental aggregator" means those governmental aggregators who perform aggregation pursuant to section 4929.27 of the Revised Code.
- (V) "Opt-out governmental aggregator" means those governmental aggregators who perform automatic governmental aggregation pursuant to section 4929.26 of the Revised Code.
- (W) "Person" has the meaning set forth in division (H) of section 4929.01 of the Revised Code.
- (X) "Regulated sales service customer" means a person who has an agreement by contract and/or tariff with a natural gas company or gas company to receive regulated sales service.
- ~~(X)~~(Y) "Residential customer" means a customer who contracts for a competitive retail natural gas service for residential purposes.
- ~~(Y)~~(Z) "Retail natural gas service" has the meaning set forth in division (M) of section 4929.01 of the Revised Code.
- ~~(Z)~~(AA) "Retail natural gas supplier" has the meaning set forth in division (N) of section 4929.01 of the Revised Code.
- ~~(AA)~~(BB) "Small commercial customer" means a commercial customer that which is not a mercantile commercial customer under paragraph (S) of this rule.
- ~~(BB)~~(CC) "Solicitation" means any communication intended to elicit a customer's agreement to purchase or contract for a competitive retail natural gas service.
- ~~(CC)~~(DD) "Staff" means the commission staff.

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~~(DD)~~(EE) "Toll-free" means telephone access provided to a customer without toll charges to the customer.

(FF) "TDD/TTY" means telecommunication device for the deaf/text telephone yoke as defined in 47 C.F.R. 64.601 as of January 1, 2006.



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4901:1-29-02      **Purpose and scope.**

(A) The rules in this chapter:

(1) Apply to persons offering or providing any competitive retail natural gas service as defined by division (J) of section 4929.01 of the Revised Code.

(2) Apply to the services of natural gas companies as necessary to implement the rules of this chapter.

(3) Are intended to:

(a) Provide minimum standards for service quality, safety, and reliability;

(b) Provide customers with sufficient information to make informed decisions about competitive retail natural gas service;

(c) Protect customers against deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of competitive retail natural gas service and in the administration of any contract for that service; and

(d) Promote nondiscriminatory access to competitive retail natural gas services, ensure timely enrollment with retail natural gas suppliers and governmental aggregators, maintain natural gas service, and timely and correctly switch retail natural gas suppliers and governmental aggregators.

(4) Apply to all jurisdictional customers unless otherwise specified.

(B) After notice and an opportunity for hearing, the commission may require a retail natural gas supplier, governmental aggregator or natural gas company to take any appropriate action necessary to comply with these rules and the state's policy as stated in section 4929.02 of the Revised Code, upon any of the following:

(1) The commission's own motion;

(2) Formal ~~or informal~~ complaints brought to the commission; ~~or~~

(3) The application of any ~~a~~-retail natural gas supplier, governmental aggregator ~~or~~, natural gas company, or any person.

(C) The commission may waive any requirement of this chapter, for good cause shown or upon its own motion.

(D) The rules in this chapter shall not relieve retail natural gas suppliers or governmental aggregators from complying with all applicable federal, state, and local laws.

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- (E) The rules of this chapter supersede any inconsistent provisions, terms, and conditions of the retail natural gas supplier's contracts entered into after the effective date of this chapter or other documents describing service offerings for customers or potential customers in Ohio or any inconsistencies found in the natural gas company tariffs.
- (F) Enforcement of any rule in this chapter or commission order adopted thereunder will be conducted in accordance with Chapter 4901:1-34 of the Administrative Code.
- (G) The rules in this chapter shall not apply to transactions which involve the supplying or the arranging for the supply of natural gas service to mercantile customers. However, "mercantile customer" excludes a customer for which a declaration has been filed under division (L)(2) of section 4929.01 of the Revised Code.
- (H) The governmental aggregator may choose to have the retail natural gas supplier perform certain functions as the governmental aggregator's agent. However, the governmental aggregator is still responsible for ensuring that the requirements of these rules are met.

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4901:1-29-03      **General provisions.**

- (A) Retail natural gas suppliers and governmental aggregators shall not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to, without limitation, the following activities:
- (1) Marketing, solicitation, or sale of a competitive retail natural gas service;
  - (2) Administration of contracts for such service; ~~or~~
  - (3) Provision of such service, including interactions with consumers.
- (B) Retail natural gas suppliers shall maintain an employee and an office open for business in the state of Ohio.
- (C) Retail natural gas suppliers and governmental aggregators shall not cause or arrange for the disconnection of distribution service, or employ the threat of such actions, as a consequence of contract termination, customer nonpayment, or for any other reason.
- (D) Retail natural gas suppliers and governmental aggregators shall not change or authorize the changing of a customer's supplier of competitive retail natural gas service without the customer's prior consent, as provided for under rule 4901:1-29-06 of the Administrative Code. For the purpose of procuring competitive retail natural gas services, this requirement does not apply to automatic governmental aggregation and for the percentage of income payment program.
- (E) All retail natural gas suppliers and governmental aggregators shall ~~provide~~ include, in their certification application, the commission's staff with a name, telephone number, and e-mail address of a contact person who will respond to commission concerns pertaining to consumer complaints. If any of the required information relating to the contact person should change, the retail natural gas supplier or governmental aggregator shall provide advance file notice of such changes to the commission within thirty days of such material change, consistent with paragraphs (A) and (B)(8) of rule 4901:1-27-10 of the Administrative Code.

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4901:1-29-04      **Records and retention.**

- (A) Each natural gas company (for records retention related to competitive retail natural gas services), each retail natural gas supplier and each governmental aggregator shall establish and maintain records and data sufficient to:
- (1) Verify its compliance with the requirements of any applicable commission rules;  
and,
  - (2) Support any investigation of customer complaints.
- (B) Unless otherwise prescribed in this chapter, all records required by this chapter shall be retained for no less than two years.
- (C) Unless otherwise prescribed by the commission or its authorized representatives, all records required by this chapter shall be provided to the ~~commission~~ staff within three business days of its request.

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4901:1-29-05      **Marketing and solicitation.**

- (A) Each retail natural gas supplier and governmental aggregator that offers competitive retail natural gas service to customers shall provide, in marketing materials that include or accompany a service contract, sufficient information for customers to make informed cost comparisons.
- (1) For fixed-rate offers, such information shall, at minimum, include:
- (a) The cost per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for natural gas supply;
  - (b) The amount of any other recurring or nonrecurring retail natural gas supplier or governmental aggregator charges;
  - (c) A statement that the retail natural gas supplier's or governmental aggregator's rate is exclusive of all applicable state and local taxes and the incumbent natural gas company's service and delivery charges.
- (2) For variable-rate offers, such information shall, at minimum, include:
- (a) A clear and understandable explanation of the factors that will cause the price to vary (including any related indices) and how often the price can change;
  - (b) The amount of any other recurring or retail natural gas supplier or governmental aggregator charges;
  - (c) A statement that the retail natural gas supplier's or governmental aggregator's rate is exclusive of all applicable state and local taxes and the incumbent natural gas company's service and delivery charges.
- (B) A retail natural gas supplier's or governmental aggregator's promotional and advertising material shall be provided to the commission or its staff within three business days of a request by the commission or its staff.
- (C) No retail natural gas supplier or governmental aggregator may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a competitive retail natural gas service. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:
- (1) Soliciting customers for a competitive retail natural gas service after suspension, rescission, or conditional rescission of certification by the commission or after denial of certification renewal by the commission;

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- (2) Failing to comply with paragraph (A) ~~or (B)~~ of this rule;
- (3) Failing to provide in or with its advertisements and promotional materials that make an offer for sale, a toll-free/local telephone number (and address for printed materials) which the potential customer may call or write to request detailed information regarding the price, terms, conditions, limitations, and restrictions;
- (4) Soliciting via telephone calls initiated by the retail natural gas supplier or governmental aggregator (or its agent) without first obtaining the list of Ohio customers who have requested to be placed on the ~~federal communications-trade commission's (FCC's)~~ "do not call" list registry and obtaining every thirty-one days updates of the ~~FCC's~~ federal trade commission's "do not call" list registry;
- (5) Engaging in telephone solicitation of Ohio customers who have been placed on the ~~FCC's~~ federal trade commission's "do not call" list registry;
- (6) Engaging in telephone solicitation to residential customers either before nine a.m. or after nine p.m.;
- (7) Engaging in direct solicitation to customers where the retail natural gas supplier's or governmental aggregator's sales agent fails to wear and display a valid retail natural gas supplier or governmental aggregator photo identification. The format for this identification shall be pre-approved by the staff;
- (8) Advertising or marketing offers that:
  - (a) Claim that a specific price advantage, savings, or guarantee exists if it does not, or may exist if it will not;
  - (b) Claim to provide a competitive retail natural gas service when such an offer is not a bona fide offer to sell such services;
  - (c) Offer a fixed price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service without disclosing all recurring and nonrecurring charges;
  - (d) Offer a variable price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service without disclosing all recurring and nonrecurring charges;

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(e) Fail to disclose all material limitations, exclusions, and offer expiration dates.

(f) Fail to fully disclose, in an appropriate and conspicuous type-size, an affiliate relationship on advertising or marketing offers that use affiliated natural gas company name and logo.

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4901:1-29-06      **Customer enrollment.**

- (A) The retail natural gas supplier and governmental aggregator shall coordinate customer enrollment with the incumbent natural gas company in accordance with the procedures set forth in this chapter.
- (B) Retail natural gas suppliers and governmental aggregators are prohibited from enrolling potential customers without their consent and proof of that consent as delineated in paragraphs (D), (E) and (F) of this rule. This requirement does not apply to opt-out governmental aggregation and for the percentage of income payment program.
- (C) The incumbent natural gas company shall provide a written notice to customers that allows customers to rescind their enrollment with a retail natural gas supplier or governmental aggregator within seven business days from the postmark date of the notice.
- (D) Mailings, facsimiles, and direct solicitation
  - (1) Where enrollment occurs by mail, facsimile, or direct solicitation, the customer's signature on a contract shall constitute consent.
  - (2) Consistent with rule 4901:1-29-05 of the Administrative Code, prior to entering into a contract for service, retail natural gas suppliers and governmental aggregators shall provide each customer with enrollment documents that contain, at a minimum, clear and understandable pricing, terms and conditions of service, the dollar amount of all recurring and nonrecurring charges (including any fees for early termination of the contract), and the duration of the contract.
  - (3) Before obtaining a signature from the applicant, retail natural gas suppliers and governmental aggregators shall provide each customer a reasonable opportunity to read all enrollment documents and shall answer any and all questions posed by any applicant about information contained in the documents.
  - (4) Immediately upon obtaining the customer's signature, retail natural gas suppliers and governmental aggregators shall provide the applicant a legible copy of the signed contract, unless the retail natural gas supplier or governmental aggregator has already provided the customer with a separate, complete copy of the terms and conditions for the customer's records and the retail natural gas supplier or governmental aggregator has complied with paragraph (C)(4) of rule 4901:1-29-10 of the Administrative Code.
  - (5) Where enrollment occurs by direct solicitation, customers shall be advised both verbally and in the contract that: (a) the incumbent natural gas company will be



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sending a confirmation notice of the transfer of service; (b) the customer is allowed a seven business day period from the confirmation notice postmark date to rescind the enrollment; and (c) the customer should contact the incumbent natural gas company to rescind the enrollment.

- (6) Where the retail natural gas supplier or governmental aggregator conducts direct solicitation through "door-to-door" sales of residential customers, the retail natural gas supplier or governmental aggregator must comply with the following minimum requirements:

(a) Acknowledgment forms

Retail natural gas suppliers or governmental aggregators performing door-to-door solicitation shall have the customer execute an acknowledgement form as part of and at the time of the door-to-door enrollment process. The acknowledgment form shall include at a minimum the following statements or questions:

- (i) Did the representative state he/she was representing [retail natural gas supplier or governmental aggregator] and was not from the natural gas company?
- (ii) Did the representative explain that by signing the enrollment form you were entering into an agreement/contract for [retail natural gas supplier or governmental aggregator] to supply your natural gas?
- (iii) Did the representative explain the price for natural gas under the contract you signed is \$\_\_\_\_\_ per [Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format] plus sales tax?
- (iv) Did the representative explain that the contract term is \_\_\_\_ year(s)?
- (v) Did the representative orally explain your right to cancel?
- (vi) Did the representative leave two completed right to cancel notices with you?

(b) Third-party verification

An independent third-party verification shall be conducted to ensure the validity of enrollment. The third-party verifier must successfully contact and survey at least ~~twenty-five~~ fifty per cent of all customers enrolled by door-to-door solicitation. The verification process should be performed prior to submitting the enrollment information to the incumbent natural gas company. The retail natural gas supplier or governmental aggregator must

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provide a copy of the survey to the incumbent natural gas company or the commission upon request within three business days of any such request. If the third-party verification does not confirm that the residential customer enrolled with the retail natural gas supplier or governmental aggregator, then the retail natural gas supplier or governmental aggregator shall not submit the enrollment information of that residential customer to the incumbent natural gas company.

**(c) Terms and conditions print specifications**

The terms and conditions must be provided to the residential customer at the time of sale and must be printed in dark ink on white or pastel paper and be ten-point type or greater.

**(d) Uniform**

Each door-to-door solicitor must display a valid photo identification of the approved retail natural gas supplier or governmental aggregator he/she represents. The format for this identification shall be pre-approved by the staff.

- (7) The retail natural gas supplier and governmental aggregator shall send an electronic enrollment request to the incumbent natural gas company within three business days following receipt of the contract executed by the customer, unless a later enrollment transmittal date is agreed to in the contract by the customer or if the customer rescinds the enrollment.**

**(E) Telephonic enrollment**

- (1) To enroll a customer telephonically, a retail natural gas supplier, governmental aggregator or an independent third-party verifier shall make a date- and time-stamped audio recording before the completion of the enrollment that verifies, at a minimum, the following:**
- (a) The retail natural gas supplier, governmental aggregator, or the independent third-party verifier identity and the exact purpose of the call;**
  - (b) A verbal statement and the customer's acknowledgement that the call is being recorded;**
  - (c) A verbal question and the customer's acknowledgement that the customer wishes to enroll with the retail natural gas supplier or governmental aggregator;**
  - (d) A verbal question and the customer's acknowledgement that the customer is the customer of record ~~with the incumbent natural gas company~~ or is**

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authorized to switch retail natural gas supplier and governmental aggregator by the customer of record;

- (e) In accordance with rule 4901:1-29-11 of the Administrative Code, a verbal statement and the customer's acceptance of each of the principal terms and conditions for the service that will be provided, including, but not limited to:

- (i) The service(s) that will be provided;
- (ii) The price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format;
- (iii) The length of the contract term;
- (iv) An approximate service commencement date;
- (v) The contract termination date, and any fees for customer cancellation prior to such date;
- (vi) Any material limitations, conditions, or exclusions;
- (vii) Any fees or costs to the customer;
- (viii) If applicable, whether the retail natural gas supplier or governmental aggregator will perform a credit check and require a deposit, including the amount;
- (ix) Who will bill for the retail natural gas supplier's and governmental aggregator's service(s); and
- (x) The enrollment confirmation number.

- (f) A verbal statement and the customer's acknowledgement that the retail natural gas supplier or governmental aggregator will, within one business day, send the customer a written contract that details the terms and conditions that were summarized in the telephone call;

- (g) Customers are advised both verbally and in the contract that all of the following:

- (i) The incumbent natural gas company will be sending a confirmation notice of the transfer of service;
- (ii) The customer is allowed a seven business day period from the confirmation notice postmark date to rescind the enrollment; and

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- (iii) The customer should contact the incumbent natural gas company to rescind the enrollment.
  - (h) The incumbent natural gas company's toll-free or local telephone number that the customer can call to rescind the enrollment;
  - (i) A verbal request for and the customer's provision of the customer's natural gas company's account number; ~~and,~~
  - (j) A verbal request for and the customer's provision of the customer's mailing address.
- (2) Following telephonic enrollment, the retail natural gas supplier or governmental aggregator shall:
  - (a) Within one business day, send the customer a written contract that details the terms and conditions summarized in the telephone call pursuant to rule 4901:1-29-11 of the Administrative Code. Such contract shall in no way alter the terms and conditions to which the customer agreed in the telephone call;
  - (b) Retain the audio recording of the customer's enrollment for one year after the contract with the customer is terminated; ~~and,~~
  - (c) Provide a copy of the audio recording to the commission or its staff within three business days of a request.
- (3) The retail natural gas supplier or governmental aggregator shall not initiate enrollment with the incumbent natural gas company prior to the completion of the enrollment transaction with the customer; ~~and,~~
- (4) The retail natural gas supplier or governmental aggregator shall send an electronic enrollment request to the incumbent natural gas company within three business days after sending the customer the written contract, unless a later enrollment transmittal date is agreed to in the contract by the customer or if the customer rescinds the enrollment.

**(F) Internet enrollment**

- (1) Where enrollment occurs by internet, prior consent shall be obtained by encrypted customer input on a retail natural gas supplier's ~~and~~ or governmental aggregator's internet website.
- (2) The internet enrollment website shall, at a minimum, include:

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- (a) A copy of the retail natural gas supplier's ~~and~~ or governmental aggregator's customer contract with all terms and conditions as required by rule 4901:1-29-11 of the Administrative Code<sub>2</sub>.
- (b) A statement advising customers both at the website and in the contract that:
  - (i) The incumbent natural gas company will be sending a confirmation notice of the transfer of service<sub>2</sub>.
  - (ii) The customer is allowed a seven business day period from the confirmation notice postmark date to rescind the enrollment<sub>2</sub>; ~~and~~.
  - (iii) The customer should contact the incumbent natural gas company to rescind the enrollment<sub>2</sub>; ~~and~~.
- (c) A prompt for the customer to print or save a copy of the contract.
- (3) The retail natural gas supplier or governmental aggregator shall not initiate enrollment with the incumbent natural gas company prior to the completion of the enrollment transaction with the customer.
- (4) The retail natural gas supplier or governmental aggregator shall send an electronic enrollment request to the incumbent natural gas company within three business days following the completion of the enrollment transaction with the customer, unless a later enrollment transmittal date is specified and agreed to in the contract by the customer or if the customer rescinds the enrollment.
- (5) Any electronic version of the contract shall be identified by version number, in order to ensure the ability to verify the particular contract to which the customer agrees.
- (6) Throughout the duration of the contract, the retail natural gas supplier or governmental aggregator shall retain and, within three business days of the customer's request, provide to the customer an e-mail, paper, or facsimile copy of the terms and conditions of the numbered contract version to which the customer contracted.
- (7) The retail natural gas supplier or governmental aggregator shall require the customer to complete an electronic customer consent form in a format retrievable by the retail natural gas supplier or governmental aggregator that includes ~~the following~~:
  - (a) The customer's agreement to the terms and conditions<sub>2</sub>.
  - (b) An electronic agreement version number<sub>2</sub>.

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- (c) The name of the retail natural gas supplier or governmental aggregator;
  - (d) The date the customer electronically enrolled;
  - (e) The name of the account holder;
  - (f) The incumbent natural gas company account number; ~~and~~
  - (g) The account holder's U.S. mailing address.
- (8) The retail natural gas supplier or governmental aggregator shall provide a mechanism by which both the submission and receipt of the electronic customer consent form are recorded by time and date.
- (9) After the customer completes the electronic customer consent form, the internet enrollment process shall disclose conspicuously that the customer has been enrolled and the retail natural gas supplier or governmental aggregator shall provide the customer an enrollment confirmation number.
- (G) In customer enrollment, if the incumbent natural gas company rejects a customer from enrollment, the retail natural gas supplier or governmental aggregator shall notify the customer within three business days from the incumbent natural gas company's notification of rejection that the customer will not be enrolled or enrollment will be delayed, along with the reason(s) therefor.
- (H) The incumbent natural gas company shall, prior to commencing competitive retail natural gas service, mail the customer a confirmation notice stating:
- (1) The incumbent natural gas company has received a request to enroll the customer for competitive retail natural gas service with the named retail natural gas supplier or governmental aggregator;
  - (2) The date such service is expected to begin;
  - (3) The customer has seven business days from the postmark date on the notice to contact the incumbent natural gas company to rescind the enrollment request or notify the incumbent natural gas company that the change of the retail natural gas supplier or governmental aggregator was not requested by the customer; ~~and~~
  - (4) The incumbent natural gas company's toll-free telephone number.
- (I) Within two business days after receiving a customer's request to rescind enrollment with the retail natural gas supplier or governmental aggregator, the incumbent natural gas company shall initiate such rescission and inform the retail natural gas supplier or governmental aggregator that such action has been taken.

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(J) Customers may request an actual meter reading prior to the transfer of the service to the new retail natural gas supplier or governmental aggregator.

(K) Customers returning to the incumbent natural gas company's commodity service.

(1) Any customer returning to the incumbent natural gas company's commodity service due to default, abandonment, slamming, or certification rescission of a retail natural gas supplier; or governmental aggregator will not be liable for any costs associated with the switch.

(2) ~~Any customer that is returned to the incumbent natural gas company's commodity service due to default, abandonment, slamming, or certification rescission of a retail natural gas supplier will not be liable for the balancing adjustment, actual adjustment, or reconciliation adjustment components of the GCR, if the customer chooses another retail natural gas supplier or a governmental aggregator within at least sixty days of being returned to the GCR switching fee applicable to customers switching from one marketer to another marketer shall also apply to customers switching from a marketer to the incumbent natural gas company's commodity sales service.~~

(3) ~~When a customer initiates service under a competitive retail natural gas service program, the applicable incumbent natural gas company GCR adjustments shall apply to the customer for an initial twelve month period. If a customer returns to the incumbent natural gas company during the initial twelve month period of the customer's participation in the competitive retail natural gas service program and the customer then chooses another retail natural gas supplier or governmental aggregator within at least sixty days, then the GCR adjustments will only apply for the remaining number of months left in the initial twelve month period. Customers participating in an opt-out governmental aggregation program will not be charged a switching fee upon returning to regulated sales service due to either termination of the aggregation or the aggregator switching suppliers.~~

(4) Any customer returned to the incumbent natural gas company's commodity service shall pay the applicable GCR-regulated sales service rate while taking such service.

(5) ~~After~~ Within two business days after confirming the validated electronic data file for a retail natural gas supplier's or governmental aggregator's customer-drop request, the incumbent natural gas company shall mail the customer a notice stating:

(a) The incumbent natural gas company has received a request to drop the customer from competitive retail natural gas service with the named retail natural gas supplier or governmental aggregator.

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- (b) The retail natural gas supplier's or governmental aggregator's toll-free telephone number.



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4901:1-29-07

**Credit and deposits.**

Each retail natural gas supplier or governmental aggregator must establish reasonable and nondiscriminatory creditworthiness standards and may require a deposit or other reasonable demonstration of creditworthiness from a customer as a condition of providing service. In the application of such standards, deposits, or creditworthiness procedures, the retail natural gas supplier or governmental aggregator shall:

- (A) Disclose in service contracts with customers its nondiscriminatory policies regarding creditworthiness and deposits, including the amount of any deposit, the allocation of the deposit, and the return of any deposit balance;
- (B) Accept a reasonable and nondiscriminatory deposit as sufficient evidence of the customer's creditworthiness to initiate service;
- (C) Disclose whether interest will be paid on deposits and the applicable rate of interest;
- (D) Provide the customer a receipt for any deposit within ten business days of the date that the deposit is collected;
- (E) Return the deposit within seven business days if the customer cancels the contract during the rescission period;
- (F) Apply the deposit to the final bill and promptly refund any excess to the customer when service is terminated; and
- (G) Not require an applicant to pay the balance due another retail natural gas supplier or governmental aggregator as a condition of establishing credit or providing competitive retail natural gas service.

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4901:1-29-08

**Customer access and complaint handling.**

**(A) Customer access**

- (1) Each retail natural gas supplier or governmental aggregator shall ensure customers reasonable access to its service representatives to make inquiries and complaints, discuss charges on customer bills, terminate competitive service, and transact any other pertinent business.
- (2) Telephone access shall be toll free and afford customers prompt answer times during normal business hours.
- (3) Each retail natural gas supplier or governmental aggregator shall provide a twenty-four hour automated telephone message instructing callers to report any service interruptions or natural gas emergencies to the incumbent natural gas company.

**(B) Customer complaints**

- (1) Each retail natural gas supplier or governmental aggregator (and/or its agent) shall investigate customer complaints (including customer complaints referred by the natural gas company) and provide a status report within three business days following receipt of the complaint to:
  - (a) The customer, when the complaint is made directly to the retail natural gas supplier or governmental aggregator; ~~or,~~
  - (b) The customer and ~~commission-staff~~, when a complaint is referred to the retail natural gas supplier or governmental aggregator by the ~~commission-staff~~.
- ~~(2) The governmental aggregator may choose to have the retail natural gas supplier perform certain functions as the governmental aggregator's agent. However, the governmental aggregator is still responsible for ensuring that the requirements of these rules are met.~~
- ~~(3)~~(2) If an investigation is not completed within ten business days, the retail natural gas supplier or governmental aggregator (and/or its agent) shall provide status reports to the customer, or if applicable, to the customer and ~~commission-staff~~. Such status reports shall be provided at three business day intervals until the investigation is complete, unless the action that must be taken will require more than three business days and the customer has been so notified.
- ~~(4)~~(3) The retail natural gas supplier or governmental aggregator (and/or its agent) shall inform the customer, or the customer and ~~commission-staff~~, of the results

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of the investigation, orally or in writing, no later than three business days after completion of the investigation. The customer or ~~commission~~ staff may request the report in writing.

~~(5)~~(4) If a customer disputes the retail natural gas supplier's or governmental aggregator's (and/or its agent's) report, the retail natural gas supplier or governmental aggregator shall inform the customer that the ~~commission~~ staff is available to mediate complaints. The retail natural gas supplier or governmental aggregator (and/or its agent) shall provide the customer with the address, local/toll-free telephone numbers, and TDD/TTY telephone number of the commission's public interest call center.

~~(6)~~(5) Each retail natural gas supplier or governmental aggregator shall retain records of customer complaints, investigations, and complaint resolutions for two years after the occurrence of such complaints and shall provide such records to the ~~commission~~ staff within three business days of request.

~~(7)~~(6) Each retail natural gas supplier or governmental aggregator shall make good faith efforts to resolve disputes and cooperate with the resolution of any joint issues with the incumbent natural gas company.

(C) If customers contact the incumbent natural gas company concerning competitive retail natural gas service issues, the incumbent natural gas company shall:

- (1) Review the issue with the customer to determine whether it also involves the incumbent natural gas company;<sub>2</sub>
- (2) Cooperate with the resolution of any joint issues with the retail natural gas supplier or governmental aggregator;~~and,~~
- (3) Refer the customer to the appropriate retail natural gas supplier or governmental aggregator in those instances where the issue lacks incumbent natural gas company involvement.

(D) Slamming complaints

- (1) A slamming complaint is a customer's allegation that the customer's retail natural gas supplier or governmental aggregator has been switched without the customer's authorization.
- (2) If a customer contacts a natural gas company, retail natural gas supplier or governmental aggregator alleging that the customer's supplier has been switched without the customer's authorization, the natural gas company, retail natural gas supplier or governmental aggregator shall:

(a) Provide the customer any evidence relating to the customer's enrollment;<sub>2</sub>

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- (b) Refer the customer to the commission's ~~public-interest call center~~;
  - (c) Provide the customer with the local/toll-free telephone numbers of the commission's ~~consumer service department; and call center~~.
  - (d) Cooperate with the staff in any subsequent investigations of the slamming complaint.
- (3) Except as otherwise provided in Chapter 4901:1-28 of the Administrative Code, if the retail natural gas supplier or governmental aggregator cannot produce valid documentation confirming that the customer authorized the switch, there shall be a rebuttable presumption that the customer was switched without authorization. Such documentation ~~include~~-includes one of the following, in conformance with the requirements of rule 4901:1-29-06 of the Administrative Code:
- (a) A signed contract, in the case of direct enrollment;
  - (b) An audio recording, in the case of telephonic enrollment; ~~or~~
  - (c) Electronic consent, in the case of internet enrollment.
- (4) In the event that the customer was switched from one retail natural gas supplier or governmental aggregator to a different retail natural gas supplier or governmental aggregator without authorization, the customer's previous retail natural gas supplier or governmental aggregator shall re-enroll the customer without penalty under such customer's original contract price for the duration of the original term and send the incumbent natural gas company an electronic enrollment request. If the original retail natural gas supplier or governmental aggregator is unable to return the customer to the original contract price, the original retail natural gas supplier or governmental aggregator may enroll the customer in a new contract pursuant to the provisions of rule 4901:1-29-06 of the Administrative Code, or the customer may select a new retail natural gas supplier or return to the incumbent natural gas company's ~~GCR-commodity~~ regulated sales service;
- (5) In the event that a customer was switched from a natural gas company regulated sales service commodity service to a retail natural gas supplier or governmental aggregator without authorization, the natural gas company shall switch the customer back to the natural gas company's ~~GCR-commodity~~ regulated sales service without penalty.

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4901:1-29-09

**Customer information.**

- (A) Upon customer request, a retail natural gas supplier or governmental aggregator (and/or its agent) shall timely provide the customer's payment history for services rendered by the retail natural gas supplier or governmental aggregator (up to twenty-four months) to the customer without charge.
- (B) Other than for operation, maintenance, assignment and transfer of a customer's account, no retail natural gas supplier or governmental aggregator shall disclose a customer's account number without a customer's affirmation-consent affirmative written or electronic authorization or pursuant to a court or commission order. No retail natural gas supplier or governmental aggregator shall disclose a social security number without first obtaining the signature of the customer on a release or pursuant to a court order. The release shall be on a separate piece of paper. The release shall be clearly identified on its face as a release of personal information and all text appearing on the release shall be in at least sixteen-point type. The following statement shall appear prominently on the release, just prior to the signature, in type darker and larger than the type in surrounding sentences: "I realize that, under the rules and regulations of the public utilities commission of Ohio, I may refuse to allow (name of the retail natural gas supplier or governmental aggregator) to release the information set forth above. By my signature, I freely give (name of the retail natural gas supplier or governmental aggregator) permission to release the information designated above." The information that the retail natural gas supplier or governmental aggregator seeks to release shall be specified on the form. Forms requiring a customer to circle or to check off preprinted types of information to be released may not be used. In addition, a customer's social security number shall not be used for any other purpose other than to perform a credit check.
- (C) A natural gas company shall:
- (1) Not disclose a customer's account number, without the customer's affirmative - consent-written or electronic authorization or pursuant to a court or commission order, except for purposes of commercial collection-and-credit-reporting, percentage of income payment plan aggregation, and governmental aggregation. In addition, a customer's social security number shall not be used for any other purpose other than to perform a credit check; and for credit reporting and shall not be otherwise disclosed without the customer's written consent or pursuant to a court order.
  - (2) Upon request, timely provide a customer's usage history (twelve months) and payment history (twenty-four months) to the customer without charge.
  - (3) Provide generic customer and usage information, in a universal file format, to other retail natural gas suppliers on a comparable and nondiscriminatory basis.

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(4) Provide customer-specific information to retail natural gas suppliers and governmental aggregators on a comparable and nondiscriminatory basis as prescribed in paragraph (C) of rule 4901:1-29-13 of the Administrative Code, unless the customer objects to the disclosure of such information;

(5) Prior to issuing any eligible-customer lists and at least four times per calendar year, provide all customers clear written notice, in billing statements or other communications, of their right to object to being included on such lists. Such notice shall include instructions for reporting such objection. This notice shall read as follows:

"We are required to include your name, address, and usage information on a list of eligible customers that is made available to other retail natural gas suppliers or governmental aggregators. If you do not wish to be included on this list, please call \_\_\_\_\_ or write \_\_\_\_\_, or complete the appropriate form on \_\_\_\_\_ website"; and

(6) If a customer reports such objection as provided in paragraphs (C)(4) and (C)(5) of this rule, the natural gas company shall not release such information unless and until the customer affirmatively indicates that the information may be released.

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4901:1-29-10

**Contract administration and renewals.**

- (A) Retail natural gas suppliers and opt-in governmental aggregators shall arrange for the provision of competitive retail natural gas service by contracting with their customers. In their administration of such contracts, retail natural gas suppliers and opt-in governmental aggregators are prohibited from engaging in unfair, deceptive, misleading, and unconscionable acts and practices.
- ~~(B) Retail natural gas suppliers and opt-in governmental aggregators shall arrange for the provision of competitive retail natural gas service to customers in compliance with rule 4901:1-29-06 of the Administrative Code.~~
- ~~(C)~~(B) Retail natural gas suppliers and opt-in governmental aggregators shall maintain copies of individual customer contracts for no less than two years after such contracts terminate.

For any contract where the customer's signature is not physically on the same document as the complete terms and conditions of such contract, the retail natural gas supplier or opt-in governmental aggregator must assign a unique version number to each version of the contract. Such version number must appear on the document containing the customer's actual signature, on the copy of the terms and conditions left with the customer, and on a master copy of the complete terms and conditions of the contract. Both the document containing the customer's physical signature and the master copy of the complete terms and conditions must be retained in accordance with this rule. This provision shall not apply where the retail natural gas supplier or opt-in governmental aggregator has obtained the customer's consent by telephone or internet enrollment.

- ~~(D)~~(C) In its administration of customer contracts, a retail natural gas supplier and an opt-in governmental aggregator shall also:
- (1) Not assign a customer contract to another retail natural gas supplier or opt-in governmental aggregator without:
- (a) Providing a minimum of fourteen days written notice to the director of the ~~consumer services~~ service monitoring and enforcement department or the director's designee before the contract assignment. Such notice shall include:
- (i) The name of the retail natural gas supplier or opt-in governmental aggregator to whom the contract(s) will be assigned;
- (ii) The type of contract(s) to be assigned (e.g., residential, small commercial);

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(iii) The number of contracts to be assigned;\_

(iv) The incumbent natural gas company involved;\_

(v) The date of the assignment;\_and\_

(vi) A copy of the customer notification;\_and\_

(b) Providing prior written notice to the customer.

(2) When assigned a contract previously administered by another retail natural gas supplier or opt-in governmental aggregator, comply with all terms and conditions in effect for the contract before the assignment occurred;\_

(3) Comply in a timely manner with all valid notices from customers to cancel or terminate the contract as provided for by the contract and by this chapter;\_and\_

(4) Assign a number to each version of its standard contract form (including changes in contract price), retain such forms for no less than two years, and provide copies to ~~commission~~ staff within three business days of request.

~~(E)~~(D) Customers shall have the right to rescind their contracts, within seven business days following the postmark date on the natural gas company's confirmation notice:

(1) By calling the incumbent natural gas company at the designated toll-free or local telephone number;\_

(2) By written notice to the incumbent natural gas company which is effective as of the date of the postmark.

~~(F)~~(E) Contract renewals

(1) For contracts with a renewal period of six months or longer that contain no material changes (as defined in this rule), the retail natural gas supplier and opt-in governmental aggregator shall in a separate notice notify customers of such expiration at least forty-five days, but not more than ninety days in advance of the contract expiration date.

(a) The notice shall be made by separate mailing (envelope or postcard), the front cover of which shall state: "Important notice regarding your natural gas service contract."

(b) The notice shall, at a minimum, state any renewal period and how the customer may terminate, renew, and/or extend the contract.



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- (c) The renewal period for contracts with renewal provisions shall not exceed the initial contract period.
- (2) For renewals of six months or longer that: (a) contain any material change to the contract, which includes but is not limited to, new fees or penalties, changes from a fixed rate to a variable rate, or vice versa, or an increase in a fixed rate, or changes to the factors used to determine the variable rate; and (b) contain an early termination or cancellation option with a fee greater than twenty-five dollars for early termination or cancellation or contain no option for early termination or cancellation, the retail natural gas supplier or opt-in governmental aggregator shall notify the customer of such changes, describe or highlight each change, and also obtain the customer's affirmative consent to such changes pursuant to any of the enrollment procedures established in rule 4901:1-29-06 of the Administrative Code. In addition, the retail natural gas supplier or opt-in governmental aggregator shall notify the customer that no response will result in the customer automatically reverting to the natural gas company unless the customer chooses another retail natural gas supplier or opt-in governmental aggregator. The notice shall be provided at least forty-five days, but not more than ninety days in advance of the contract expiration date, and comply with paragraphs ~~(F)(1)(a) to (F)(1)(e)~~ (E)(1)(a) to (E)(1)(c) of this rule.
- (3) For contract renewals of six months or longer that contain: (a) any material changes to the contract, which include, but are not limited to, new fees or penalties, ~~charges- changes~~ from a fixed rate to a variable rate, or vice versa, or an increase in a fixed rate, or ~~charges- changes~~ to the factors used to determine the variable rate, and (b) an early termination or cancellation option with a fee of twenty-five dollars or less for early termination or cancellation, the retail natural gas supplier or opt-in governmental aggregator shall provide the customer with two separate notices that accurately describe or highlight the changes, and state that the customer contract will renew at the new rate unless the customer affirmatively cancels the contract. Such notices must clearly and accurately describe the manner in which the customer may cancel the contract and the time during which the customer must act to cancel the contract. The first notice shall be in writing in accordance with the requirements of this rule and shall be provided at least forty-five days, but not more than ninety days, in advance of the contract expiration date, and comply with paragraphs (E)(1)(a) to (E)(1)(c) of this rule. The second notice may be in writing in accordance with the requirements of this rule, by telephone, by a notice on the customer's monthly bill, or by electronic mail. ~~The notices-notice shall be provided at least forty-five-twenty days, but not more than ninety days in advance of the-~~ prior to - contract expiration date, and comply with paragraphs (F)(1)(a) to (F)(1)(e) of this rule must contain the new rate at which the customer contract will renew or, in the case of a variable rate, the new rate formula.
- (a) In the event that the retail natural gas supplier or opt-in governmental aggregator provides notice by telephone, the retail natural gas supplier or

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opt-in governmental aggregator must confirm that the customer of record is on the line, clearly explain both the new contract price and the manner in which the customer may cancel the contract, record the entire conversation, and retain such recording in a manner consistent with rule 4901:1-29-06 of the Administrative Code.

- (b) In the event that the retail natural gas supplier or opt-in governmental aggregator provides notice on the customer's monthly bill, such notice must be in a different color, highlighted, or otherwise differentiated from the remainder of the bill.
- (c) In the event that the retail natural gas supplier or opt-in governmental aggregator provides notice by electronic mail, the notice must: (i) state "Important notice regarding your natural gas service contract" in the subject area of the message, (ii) be from an electronic mail address that is readily identifiable as the retail natural gas supplier or opt-in governmental aggregator, and (iii) include a receipt returned to the sender which confirms that the addressee has opened the document.

~~(G)~~(F) Retail natural gas suppliers and opt-in governmental aggregators shall send to customers written notice of pending contract expiration by separate mailing (envelope or postcard). The front cover of such mailing shall contain the following statement: "Important notice regarding your natural gas service contract's expiration."

The notice shall include a statement that the customer will automatically default to the incumbent natural gas company if the customer does not re-enroll with the current retail natural gas supplier or opt-in governmental aggregator or enroll with another retail natural gas supplier or opt-in governmental aggregator.

~~(H)~~(G) No retail natural gas supplier or opt-in governmental aggregator contract shall limit or preclude a residential or small commercial customer's right to make formal or informal complaints to the commission. A retail natural gas supplier or opt-in governmental aggregator shall not require a customer as part of the terms of service to engage in alternative dispute resolution.

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4901:1-29-11

**Contract disclosure.**

(A) All retail natural gas supplier and opt-in governmental aggregator customer contracts shall include, but not be limited to, the following information:

- (1) A notification that switching fees may apply to a customer under the incumbent natural gas company's tariff; ~~and,~~
- (2) A notification that the customer has the right to request from the retail natural gas supplier and opt-in governmental aggregator up to twenty-four months of the customer's payment history for services rendered by the retail natural gas supplier or governmental aggregator without charge.

(B) In addition, all retail natural gas supplier and opt-in governmental aggregator contracts with customers shall include, but not be limited to, the following information (to be stated in clear and understandable language):

- (1) The retail natural gas supplier's and opt-in governmental aggregator's name, mailing address, internet address (if applicable), and a toll-free telephone number (with hours of operation and time zone reference) for customer contacts;  
½
- (2) The services to be provided by the retail natural gas supplier or opt-in governmental aggregator and those to be provided by the incumbent natural gas company, including which entity will bill for those services;½
- (3) The seven business-day period during which a customer has to rescind such contract without penalty and the methods for customers to make such rescission by contacting the incumbent natural gas company (orally or in writing);½
- (4) The respective policies, procedures, and any penalties for contract termination by the retail natural gas supplier and opt-in governmental aggregator and by the customer after the rescission period;½
- (5) A notification ~~that the retail natural gas supplier and opt-in governmental aggregator may terminate the contract on at least fourteen days' written notice should the customer fail to pay the bill or fail to meet any agreed upon payment arrangements; as to the consequences of nonpayment:~~
  - (a) In the case where a retail natural gas supplier and/or opt-in governmental aggregator bills for its own services, a notification that, should the customer fail to pay the bill or fail to meet any agreed upon payment arrangement, the customer's contract may be terminated by the retail natural gas supplier and/or opt-in governmental aggregator on fourteen days' notice and that early termination penalties may apply.

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- (b) In the case where the natural gas company bills for the commodity service of a retail natural gas supplier and/or opt-in governmental aggregator, a notification that, should the customer fail to pay the bill or fail to meet any agreed upon payment arrangement, the customer's service may be terminated in accordance with the incumbent natural gas company's tariffs, and the customer's contract with its retail natural gas supplier and/or opt-in governmental aggregator may be automatically terminated, leading to early termination penalties.
- (6) ~~The~~ A statement that the contract automatically terminates if any of the following occurs:
- (a) The requested service location is not served by the incumbent natural gas company;
  - (b) The customer moves outside the incumbent natural gas company service area or to an area not served by the retail natural gas supplier or opt-in governmental aggregator; ~~or,~~
  - (c) The retail natural gas supplier or opt-in governmental aggregator returns the customer to the customer's incumbent natural gas company's sales service, provided that the retail natural gas supplier or opt-in governmental aggregator is permitted to terminate the contract under the terms and conditions of the contract.
- (7) ~~The~~ A statement that the customer has a right to terminate the contract without penalty in ~~the either~~ event:
- (a) The customer relocates; ~~or,~~
  - (b) The contract allows the retail natural gas supplier or opt-in governmental aggregator such a right for reasons other than customer nonpayment.
- (8) An itemized list and explanation of all prices in clear and understandable language and fees associated with the service such that:
- (a) For fixed-rate offers, such information shall, at minimum, include: the cost per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service; the amount of any other recurring or nonrecurring retail natural gas supplier or opt-in governmental aggregator charges; and a statement that the customer will incur additional charges for the incumbent natural gas company's services.

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- (b) For variable-rate offers, such information shall, at minimum, include: a clear and understandable explanation of the factors that will cause the price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, to vary (including any related indices) and how often the price can change; the amount of any other recurring or nonrecurring retail natural gas supplier or opt-in governmental aggregator charges; and a statement that the customer will incur additional charges for the incumbent natural gas company's services.
- (9) The terms and conditions of service, including any restrictions and limitations associated with the service or product offered;
- (10) Procedures for handling complaints and disputes, including the following:
- "If your complaint is not resolved after you have called ~~(name of retail natural gas supplier or opt-in governmental aggregator)~~, or for general utility information, residential and business customers may call the Public Utilities Commission of Ohio (PUCO) toll free at 1-800-686-7826 or for TDD/TTY toll free at 1-800-686-1570, from 8:00 a.m. to 5:30 p.m. weekdays or visit [www.puco.ohio.gov](http://www.puco.ohio.gov)."
- (11) A statement that:
- "The Ohio Consumers' Counsel (OCC) represents residential utility customers in matters before the PUCO. The OCC can be contacted toll free at 1-877-742-5622 from 8:00 a.m. to 5:00 p.m. weekdays or visit [www.pickocc.org](http://www.pickocc.org)."
- (12) Billing intervals and any late payment fees;
- (13) Contract duration, including the estimated starting and expiration month and year;
- (14) Whether the contract contains an automatic renewal provision and the terms of such provision;
- (15) Any credit, deposit, and collection procedures, including terms and conditions associated with the return of any deposit at the time of contract termination;
- (16) Who will bill for the retail natural gas supplier's and opt-in governmental aggregator's service(s);
- ~~(17) A notification that the customer's social security number and/or account number(s) shall not be released without the customer's affirmative written consent; and~~

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

- (17) A notification that, other than for operation, maintenance, assignment and transfer of a customer's account or, where a retail natural gas supplier is performing billing services, for commercial collection, a retail natural gas supplier shall not disclose a customer's account number without the customer's affirmative written or electronic authorization or pursuant to a court or commission order and that, other than for credit checking and credit reporting by a retail natural gas supplier that is performing billing services, a retail natural gas supplier shall not disclose a customer's social security number without the customer's affirmative written consent or pursuant to a court order.
- (18) A notification that, other than for commercial collection, percentage of income payment plan aggregation, and governmental aggregation, a natural gas company shall not disclose a customer's account number without the customer's affirmative written or electronic authorization or pursuant to a court or commission order and that, other than for credit checking and credit reporting, a natural gas company shall not disclose a customer's social security number without the customer's affirmative written consent or pursuant to a court order.
- (18)(19) A- If applicable, a notification that, if the customer voluntarily returns to the incumbent natural gas company after choosing a retail natural gas supplier or opt-in governmental aggregator, the customer may be charged a price other than the incumbent natural gas company's GCR-regulated sales service rate.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:1-29-12      **Customer billing and payments.**

- (A) A retail natural gas supplier, governmental aggregator, or an agent may bill customers directly for competitive retail natural gas services pursuant to this rule. A retail natural gas supplier or governmental aggregator may bill for consolidated services if it can demonstrate, pursuant to the standards contained in the incumbent natural gas company tariffs, to the incumbent natural gas company and the commission it has the capability to bill customers for such services.
- (B) Customer bills issued by or for retail natural gas suppliers and governmental aggregators shall be accurate and understandable, be rendered at intervals consistent with those of the customer's natural gas company, and contain sufficient information for customers to compute and compare the total cost of competitive retail natural gas service(s). Such bills shall also include:
  - (1) The customer's name, billing address, service address, the customer's natural gas company account number, and if applicable, the retail natural gas supplier or governmental aggregator account number;
  - (2) The dates of service covered by the bill, an itemization of each type of competitive retail natural gas service covered by the bill, any related billing components, the charge for each type of natural gas service, and an itemization of all other fees and charges;
  - (3) The customer's historical consumption during each of the preceding twelve months or each of the preceding months that the customer has been a customer of the retail natural gas supplier or governmental aggregator, whichever is less; with a total consumption and an overall average monthly consumption for such period.
  - (4) The applicable billing determinants, including beginning meter reading(s), ending meter reading(s), multiplier(s), and any other consumption(s) adjustments;
  - (5) The unit price charged per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service, as calculated by dividing current-period competitive retail natural gas service charges by the current-period consumption;
  - (6) An identification of the retail natural gas supplier or governmental aggregator of each retail natural gas service appearing on the bill;
  - (7) The amount billed for the current period, any unpaid amounts due from previous periods, any payments or credits applied to the customer's account during the current period, any late payment charges or gross and net charges, if applicable, and the total amount due and payable;

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

- (8) The due date for payment to keep the account current. Such due date shall be consistent with that provided by the incumbent natural gas company for its charges;
  - (9) Current balance of the account, if a residential customer is billed according to a budget plan;
  - (10) Options and instructions on how customers may make their payments;
  - (11) A toll-free or local telephone number and address for customer billing questions or complaints must appear for any retail natural gas supplier or governmental aggregator whose charges appear on the bill;
  - (12) The following statement: "If your complaint is not resolved after you have called ~~(name the retail natural gas company or governmental aggregator)~~ your gas company or for general utility information, residential and business customers may call the Public Utilities Commission of Ohio (PUCO) toll free at 1-800-686-7826 or for TDD/TTY toll free at 1-800-686-1570, from 8:00 a.m. to 5:30 p.m. weekdays, or visit [www.puco.ohio.gov](http://www.puco.ohio.gov)."
- The Ohio Consumers' Counsel (OCC) represents residential utility customers in matters before the PUCO. The OCC can be contacted toll free at 1-877-742-5622 from 8:00 a.m. to 5:00 p.m. weekdays, or visit [www.pickocc.org](http://www.pickocc.org)."
- (13) The incumbent natural gas company's twenty-four hour local/toll-free telephone number for reporting service emergencies;
  - (14) Identification of estimated bills or bills not based upon actual end-of-period meter readings for the period; and
  - (15) An explanation of any codes and abbreviations used.
- (C) If applicable, each retail natural gas supplier and governmental aggregator shall, upon request, provide customers with the name and street address/location of the nearest payment center and/or authorized payment agent and disclose any fee associated with using such payment center and/or agent.
  - (D) ~~If applicable, when~~ When a customer pays the bill at a payment center or to an authorized payment agent, such payment shall be credited to the customer's account as of the day it is received by such payment center or agent.
  - (E) Each retail natural gas supplier and governmental aggregator shall establish policies and procedures for handling billing disputes and requests for payment arrangements.



**\*\*\* DRAFT – NOT FOR FILING \*\*\***

- (F) Partial payments applied towards any past due amount on a bill or the balance due on a disconnection notice must be apportioned to past due natural gas company service and delivery charges, then to any current natural gas company service and delivery charges, before being applied to any retail natural gas supplier or governmental aggregator charges unless the customer pays the entire amount past due or more. In that case, any amount paid over the amount past due shall be applied first to natural gas company service and delivery charges.
- (G) Natural gas companies shall make dual billing and consolidated billing available to retail natural gas suppliers and governmental aggregators.
- (1) If the retail natural gas supplier or governmental aggregator elects for its charges to be included on the incumbent natural gas company's consolidated bill:
- (a) The retail natural gas supplier or governmental aggregator shall furnish the incumbent natural gas company sufficient bill contents as required by paragraph (B) of this rule;
  - (b) The incumbent natural gas company shall produce a consolidated bill including all such required contents provided by the retail natural gas supplier or governmental aggregator if it is not already on the customer's bill from the incumbent natural gas company. However, the consolidated bill may provide the following amounts on a consolidated basis only: budget amounts, past due balances, and payments applied;
  - (c) The consolidated bill shall state the name of the applicable retail natural gas supplier or governmental aggregator in close proximity to the retail natural gas supplier or governmental aggregator commodity charges; and
  - (d) The incumbent natural gas company shall offer budget billing of retail natural gas supplier and governmental aggregator charges as a customer-elected option.
- (2) If the retail natural gas supplier or governmental aggregator elects a dual billing arrangement, the incumbent natural gas company's bill shall include the name of the applicable retail natural gas supplier or governmental aggregator and a statement that such retail natural gas supplier or governmental aggregator is responsible for billing the retail natural gas supplier or governmental aggregator charges.
- (H) Customer bills issued by or for a natural gas company shall state the customer's historical consumption during each of the preceding twelve months, with a total and average consumption for such twelve-month period.
- (I) Natural gas companies shall prominently display the "apples to apples" notice on customer bills for customers. The ~~commission~~ staff shall review such notice.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

~~(J)~~ If a natural gas company acts as the billing agent for the retail natural gas supplier or governmental aggregator, customer partial payments shall be credited as follows:

~~Partial payments applied towards any past due amount on a bill or the balance due on a disconnection notice must be apportioned to past due natural gas company service and delivery charges, then to any current natural gas company service and delivery charges, before being applied to any retail natural gas supplier or governmental aggregator charges unless the customer pays the entire amount past due or more. In that case, any amount paid over the amount past due shall be applied first to natural gas company service and delivery charges.~~

~~(K)~~(J) Natural gas companies shall not disconnect a customer's natural gas service for nonpayment of competitive retail natural gas service charges or in the event of a bill dispute of such charges the customer has registered a complaint with the commission's call center or filed a formal complaint with the commission which reasonably asserts a bona fide dispute. In that case, the company shall not disconnect service if the customer pays either the undisputed portion of the bill, if known or can reasonably be determined, or the amount billed for the same billing period in the previous year.

~~(L)~~(K) For the purposes of this rule, full payment of a budget amount due shall not be construed as a partial payment.

(L) In the event the retail natural gas supplier and/or opt-in governmental aggregator bills for its own services, the retail natural gas supplier and/or governmental aggregator may terminate the contract for customer nonpayment only upon fourteen days' notice.

(M) Any competitive retail natural gas service supplier that bills for both regulated and unregulated service shall comply with paragraphs (E) and (F) of rule 4901:1-13-11 of the Administrative Code.

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4901:1-29-13      **Coordination between natural gas companies and retail natural gas suppliers and governmental aggregators.**

(A) At a minimum, the incumbent natural gas company tariff shall include provisions governing the relationship between the retail natural gas supplier and the governmental aggregator for competitive retail natural gas service. Such provisions shall address:

- (1) Nomination and deliveries;₂
- (2) Billing (between the incumbent natural gas company and the retail natural gas supplier or governmental aggregator);₂
- (3) Customer billing (options, collection, application of customer payments);₂
- (4) Measurement of delivered volume;₂
- (5) Shrinkage and retainable factors;₂
- (6) Customer enrollment process information exchange;₂
- (7) Dispute resolution process (between the incumbent natural gas company and the retail natural gas supplier or governmental aggregator);₂
- (8) Standard operating rules;₂
- (9) Performance standards of the retail natural gas supplier or governmental aggregator;₂
- (10) Creditworthiness and default security;₂
- (11) Supplier agreement;₂
- (12) A listing and description of all fees and charges assessed to retail natural gas suppliers or governmental aggregators;₂
- (13) Service termination and disconnection (of end-user customer);₂
- (14) Conditions and processes for returning customers to the incumbent natural gas company's commodity service;₂
- (15) Customer enrollment and switching; and₂
- (16) Supplier proof of certification.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

- (B) A natural gas company shall execute a supplier agreement with each retail natural gas supplier and governmental aggregator to operate under the terms of the natural gas company's tariff. At a minimum, the supplier agreement shall include representations and warranties, indemnification, limitations on liability, default (breach), remedies, force majeure, commencement, and term.
- (C) Natural gas companies shall make eligible-customer lists available to certified retail natural gas suppliers and governmental aggregators via electronic media. Such lists shall be updated quarterly and shall, at a minimum, contain customer name, service and mailing addresses, load profile reference category, meter read date or schedule, and historical consumption data for each of the most recent twelve months.
- (D) Customers returning to the incumbent natural gas company.
- (1) Any customer returning to the incumbent natural gas company's commodity service due to default, abandonment, slamming, or certification rescission of a retail natural gas supplier or governmental aggregator will not be liable for any costs associated with the switch.
  - (2) ~~Any customer that is returned to the incumbent natural gas company's commodity service due to default, abandonment, slamming, or certification rescission of a retail natural gas supplier will not be liable for the balancing adjustment, actual adjustment, or reconciliation adjustment components of the GCR if the customer chooses another retail natural gas supplier or governmental aggregator within at least sixty days of being returned to the GCR.~~ switching fee applicable to customers switching from one marketer to another marketer shall also apply to customers switching from a marketer to regulated sales service.
  - (3) ~~When a customer initiates service under a competitive retail natural gas service program, the incumbent natural gas company GCR adjustments shall apply to the customer for an initial twelve-month period. If a customer returns to the incumbent natural gas company during the initial twelve-month period of the customer's participation in the competitive retail natural gas service program and the customer then chooses another retail natural gas supplier or governmental aggregator within at least sixty days, then the GCR adjustments will only apply for the remaining number of months left in the initial twelve-month period.~~ Customers participating in an opt-out government aggregation program will not be charged a switching fee upon returning to regulated sales service due to either termination of the aggregation or the aggregator switching suppliers.
  - (4) Any customer returned to the incumbent natural gas company's ~~commodity~~ regulated sales service shall pay the applicable ~~GCR-regulated sales service rate~~ while taking such service.
  - (5) Within two business days after confirming the validated electronic data file for a retail natural gas supplier's or governmental aggregator's ~~drop request~~ customer

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drop request, the incumbent natural gas company shall mail the customer a notice stating both of the following:

- (a) The incumbent natural gas company has received a request to drop the customer from competitive retail natural gas service or governmental aggregation with the named retail natural gas supplier or governmental aggregator; ~~and~~.
- (b) The retail natural gas supplier's or governmental aggregator's toll-free telephone number.

(E) Within three business days of notifying a retail natural gas supplier of a customer cancellation the incumbent natural gas company shall provide to the customer by mail a notice stating all of the following:

- (1) The incumbent natural gas company has received the cancellation request from the customer and has notified the customer's retail natural gas supplier of the cancellation.
- (2) The date the incumbent natural gas company received the cancellation.
- (3) The incumbent natural gas company's toll-free telephone number.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:1-30-01      **Reporting requirements.**

- (A) A retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code shall provide an annual report ~~to~~ in such form as the public utilities commission of Ohio directs. An annual report form will be made available on the public utilities commission of Ohio's web site. Such report shall be filed each year on a date determined by the public utilities commission of Ohio or its staff and shall contain the following information for the most recent calendar year:
- (1) The monthly and annual volume of natural gas sold, by customer class;
  - (2) The monthly and annual volume of natural gas sold, by customer class, identified by natural gas company service territory;
  - (3) Gross receipts of intrastate retail natural gas service(s); ~~and~~
  - (4) The contact person for this information.
- (B) A retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code shall also provide the public utilities commission of Ohio with such information as the commission deems necessary.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:1-31-01

**Opening areas to competitive retail natural gas service.**

- (A) All governmental aggregators or retail natural gas suppliers seeking an order from the commission ordering a natural gas company, with more than fifteen thousand customers in this state, to provide fully open, equal and nondiscriminatory distribution service to nonmercantile customers must file a petition to open markets (POM), which shall:
- (1) Be in the format prescribed on the staff-approved POM form, which shall be available at the public utilities ~~commission's~~ commission of Ohio's docketing division and electronically on the public utilities ~~commission's~~ commission of Ohio's webpage web site (www.puco.ohio.gov);
  - (2) Include, if applicable, a copy of the ordinance or resolution authorizing the creation of the governmental aggregation; ~~and,~~
  - (3) Include a statement of all facts that justify the granting of the POM.
- (B) The legislative authority of a municipal corporation described in division (K)(2) of section 4929.01 of the Revised Code, upon the effective date of an ordinance adopted under Section 5 of Article XVIII of the Ohio Constitution, seeking an order from the public utilities commission of Ohio ordering a natural gas company, with fifteen thousand or more customers in this state, to provide distribution service on a fully open, equal and nondiscriminatory basis to mercantile and nonmercantile customers, shall file a POM, which shall:
- (1) Be in the format prescribed on the staff-approved POM form, which shall be available at the public utilities ~~commission's~~ commission of Ohio's docketing division and electronically on the public utilities ~~commission's~~ webpage - commission of Ohio's web site (www.puco.ohio.gov);
  - (2) Include a statement of all facts that justify the granting of the POM.
- (C) Fifteen copies of the POM shall be filed at the public utilities commission of Ohio. All POMs shall be filed in docket number XX-XXX-GA-POM. A copy of the POM shall be served upon the natural gas company.
- (D) Public utilities commission of Ohio's review of POMs and any hearing held on said petitions shall be consistent with ~~rules 4901-1-1 to 4901-1-36~~ Chapter 4901-1 of the Administrative Code.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:1-32-01      **Definitions.**

As used in this chapter:

(A) "Commission" means the public utilities commission of Ohio.

(B) "Natural gas company" ~~has the meaning set forth in division (G) of~~ means a natural gas company, as defined in section 4929.01 4905.03 of the Revised Code, that is a public utility as defined in section 49045.02 of the Revised Code and excludes a retail natural gas supplier..



**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:1-32-02      **Filing and contents of requests for recovery of capacity and commodity costs.**

- (A) If a natural gas company seeks to recover, or modify the amount of recovery of, pursuant to section 4929.25 of the Revised Code, capacity and commodity costs, and costs incidental thereto, entered into on behalf of customers that take commodity sales service from other than the natural gas company, it shall submit an application for such. Such application shall be filed with the commission in the form of an application for approval of a migration cost recovery rider (XX-XX-GA-MCR). Fifteen copies of the application shall be filed at the commission.
- (B) In addition to a fully documented analysis and justification for the proposed migration cost recovery rider, the migration cost recovery rider application should provide the following information:
  - (1) Customer migration rates (both with and without percentage of income payment plan customers) since the inception of the competitive retail natural gas service program and the associated volumes;
  - (2) Customer migration due to governmental aggregation (both with and without percentage of income payment plan customers) since the inception of the competitive retail natural gas service program and the associated volumes;
  - (3) Description of existing capacity and commodity contracts including:
    - (a) Vendor/service provider and description of service being provided;
    - (b) Quantities - daily, seasonal, and annual;
    - (c) Term/applicable period;
    - (d) Rates/prices (including any reservation fees, minimum takes, and demand charges);
    - (e) Termination/buyout/buydown opportunities and costs; and
    - (f) Any ratchet provisions in the contracts.
  - (4) Contract cost mitigation opportunities (e.g., capacity release, off-system sales).
- (C) A complete set of work papers must be filed with a migration cost recovery rider application. Work papers must include, but are not limited to, any and all supporting work papers prepared by the natural gas company for the application and a narrative or other support of assumptions made of working paper schedule amounts. Work papers shall be marked, organized, and indexed according to the schedules to which

# **\*\*\* DRAFT – NOT FOR FILING \*\*\***

they relate and must identify the witness that will sponsor it. Data contained in the work papers shall be footnoted so as to identify any source document used.

- (D) All schedules, testimonies, and work papers included in a migration cost recovery rider application must be available in spreadsheet, word processing, or an electronic form compatible with personal computers.
- (E) A migration cost recovery rider application must include a complete set of testimony of company personnel or other expert witnesses. This testimony shall be in question-and-answer format and shall be in support of the natural gas company's proposed migration cost recovery recommendations. This testimony shall fully and completely address and support all schedules and significant issues identified by the company.
- (F) Concurrent with the filing of an application for migration cost recovery, the natural gas company shall provide notice of the proposed filing upon each party in its most recent gas cost recovery and base rate cases. At a minimum, that notice shall state that an electronic or paper copy of the migration cost recovery rider application, supporting workpapers and testimony is available from the natural gas company (with instructions as to how to obtain an electronic or paper copy), available for inspection at the natural gas company's main office, available for inspection at the commission offices, and available at any other sites at which the natural gas company will maintain a copy of the application, workpapers and testimony. If the natural gas company has a website, information as to how to request an electronic or paper copy shall be included therein.
- (G) Commission review of proposed migration cost recovery rider applications and any hearings held on such proposals shall be consistent with ~~rules 4901-1-1 to 4901-1-36~~ Chapter 4901-1 of the Administrative Code.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:1-32-03      **Filing and contents of requests for recovery of decertification costs.**

- (A) Pursuant to section 4929.20 of the Revised Code, if a natural gas company seeks to recover, or modify the amount of recovery of incremental costs incurred by the company in connection with the commission's continuation, suspension, rescission, or conditional rescission of a particular retail natural gas supplier's or governmental aggregator's certification, it shall submit an application for such. Such application shall be filed with the commission in the form of an application for approval of an incremental decertification cost recovery rider (XX-XX-GA-DCR). Fifteen copies of the application shall be filed.
- (B) In addition to a fully documented analysis and justification for the proposed decertification cost recovery rider, the decertification cost recovery rider application should provide the following information:
  - (1) A reference to the commission order that resulted in the continuation, suspension, rescission, or conditional rescission of the retail natural gas supplier's or governmental aggregator's certification;
  - (2) A description of the source of the incremental costs incurred by the natural gas company, including costs incurred both prior to and subsequent to the commission order;
  - (3) A description of any efforts to mitigate the impact of the retail natural gas supplier's or governmental aggregator's decertification;
- (C) A complete set of work papers must be filed with a decertification cost recovery rider application. Work papers must include, but are not limited to, any and all supporting work papers prepared by the natural gas company for the application and a narrative or other support of assumptions made of working paper schedule amounts. Work papers shall be marked, organized, and indexed according to the schedules to which they relate and must identify the witness who will sponsor it. Data contained in the work papers shall be footnoted so as to identify any source document used.
- (D) All schedules and work papers included in a decertification cost recovery rider application must be available in spreadsheet, word processing or an electronic form compatible with personal computers.
- (E) Commission review of proposed decertification cost recovery rider applications and hearings, if any, held on such proposals shall be consistent with ~~rules 4901-1-1 to 4901-1-36~~ Chapter 4901-1 of the Administrative Code.

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4901:1-33-01

**Not-for-profit customer declarations of nonmercantile status.**

- (A) All not-for-profit customers that consume, other than for residential use, more than five hundred thousand cubic feet of natural gas per year at a single location within this state, or consume natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside this state, that ~~intends~~intend to assert nonmercantile status (NMS) must file a declaration of NMS, which shall:
- (1) Be in the format prescribed on the staff-approved NMS form, which shall be available at the ~~commission's~~public utilities commission of Ohio's docketing division and electronically on the ~~commission's webpage~~public utilities commission of Ohio's web site (www.puco.ohio.gov); and,
  - (2) Be effective upon filing.
- (B) All not-for-profit customers that intend to rescind a filed NMS statement, must file a rescission form, which shall:
- (1) Be in the format prescribed on the staff-approved NMS rescission ~~form~~form, which shall be available at the ~~commission's~~public utilities commission of Ohio's docketing division and electronically on the ~~commission's webpage~~public utilities commission of Ohio's web site (www.puco.ohio.gov); and,
  - (2) Be effective upon filing.
- (C) Fifteen copies of the declaration and/or rescission shall be filed. All declarations of - nonmercantile status NMS shall be filed in docket number XX-XXX-GA-NMS.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:1-34-01      **Definitions.**

As used in this chapter:

- (A) "Commission" means the public utilities commission of Ohio.
- (B) "Governmental aggregator" has the meaning set forth in division (K)(1) of section 4929.01 of the Revised Code. For purposes of this chapter, "governmental aggregator" specifically excludes a municipal corporation acting exclusively under Section 4 of Article XVIII, Ohio Constitution, as an aggregator for the provision of competitive retail natural gas service.
- (C) "Natural gas company" has the meaning set forth in division (G) of section 4929.01 of the Revised Code.
- (D) "Retail natural gas supplier" has the meaning set forth in division (N) of section 4929.01 of the Revised Code.
- (E) "Staff" means the staff of the public utilities commission of Ohio.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:1-34-02      **Purpose and scope.**

- (A) The rules contained in this chapter prescribe procedures for the commission staff to administer and enforce the rules for the certification of retail natural gas service - ~~providers-suppliers~~ and governmental aggregators and the minimum requirements for competitive retail natural gas set forth in Chapters 4901:1-27 and 4901:1-29 of the Administrative Code, and commission orders issued thereunder.
- (B) This chapter also governs proceedings of the commission to:
- (1) Investigate and determine a natural gas company's, retail natural gas supplier's, or governmental aggregator's compliance with Chapters 4901:1-13, 4901:1-27 and 4901:1-29 of the Administrative Code, and commission orders issued thereunder<sub>;</sub>
  - (2) Review settlement agreements and approve stipulations by the staff and the natural gas company, retail natural gas supplier, or governmental aggregator<sub>;</sub>
  - (3) Issue and enforce compliance orders<sub>;</sub>
  - (4) Assess forfeitures<sub>;</sub> and<sub>;</sub>
  - (5) Direct the attorney general to seek enforcement of commission orders, including orders authorizing forfeitures, and appropriate remedies in court to protect the public safety, reliability, and customer service.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:1-34-03      **Staff notice of probable noncompliance, proposed corrective action, and proposed forfeiture.**

- (A) After an inspection, investigation, or complaint, a staff notice of probable noncompliance may be issued. The staff notice of probable noncompliance may be issued with a proposed corrective action and/or a proposed forfeiture.
- (B) The staff may issue an amended notice of probable noncompliance, proposed corrective action, or proposed forfeiture at any time prior to the commencement of a compliance proceeding or other commission proceeding brought pursuant to rule 4901:1-34-05 of the Administrative Code, in order to modify or include additional probable noncompliances or violations, facts, proposed forfeitures, and proposed compliance orders. Once the commission initiates a compliance or other proceeding pursuant to rule 4901:1-34-05 of the Administrative Code, this rule does not prevent the staff during the course of such proceeding from seeking a finding of violations not listed in the staff notice or amended staff notice of probable noncompliance (or rescinding or refraining from seeking a finding of violations) or from seeking a corrective action or proposed forfeiture that varies from previous staff notices issued under this rule, provided that the staff's proposed findings and/or violations relate to the same incident, type of incident, investigation, or audit(s).
- ~~(C) Any staff notice of probable noncompliance, proposed corrective action, proposed forfeiture, or amendments thereto shall be served pursuant to rule 4901:1-34-04 of the Administrative Code.~~

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:1-34-03      **Staff notice of probable noncompliance, proposed corrective action, and proposed forfeiture.**

- (A) After an inspection, investigation, or complaint, a staff notice of probable noncompliance may be issued. The staff notice of probable noncompliance may be issued with a proposed corrective action and/or a proposed forfeiture.
- (B) The staff may issue an amended notice of probable noncompliance, proposed corrective action, or proposed forfeiture at any time prior to the commencement of a compliance proceeding or other commission proceeding brought pursuant to rule 4901:1-34-05 of the Administrative Code, in order to modify or include additional probable noncompliances or violations, facts, proposed forfeitures, and proposed compliance orders. Once the commission initiates a compliance or other proceeding pursuant to rule 4901:1-34-05 of the Administrative Code, this rule does not prevent the staff during the course of such proceeding from seeking a finding of violations not listed in the staff notice or amended staff notice of probable noncompliance (or rescinding or refraining from seeking a finding of violations) or from seeking a corrective action or proposed forfeiture that varies from previous staff notices issued under this rule, provided that the staff's proposed findings and/or violations relate to the same incident, type of incident, investigation, or audit(s).
- ~~(C) Any staff notice of probable noncompliance, proposed corrective action, proposed forfeiture, or amendments thereto shall be served pursuant to rule 4901:1-34-04 of the Administrative Code.~~



**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:1-34-04      **Service of staff notices of probable noncompliance, proposed corrective action, proposed forfeiture, and service of staff investigative reports.**

- (A) Staff notices of probable noncompliance, proposed corrective actions, proposed forfeitures, and amendments thereto under rule 4901:1-34-03 of the Administrative Code, and investigative reports under rule 4901:1-34-05 of the Administrative Code, shall be served on the natural gas company, retail natural gas supplier, or governmental aggregator by certified United States mail or hand delivery. Certified mail service and service by hand delivery is effective upon receipt by any employee, agent of, or person designated by the natural gas company, retail natural gas supplier, or governmental aggregator. Unless otherwise provided in this paragraph, service upon a natural gas company, retail natural gas supplier, or governmental aggregator shall be made at the address designated as the service address in the company's most recent annual financial report, in its certification application, or certification renewal application.
- (B) Each natural gas company, ~~or~~ retail natural gas supplier or governmental aggregator - shall provide the commission with the company's or provider's current service address. If the service address has changed since the most recent annual report, certification application or certification renewal application was submitted to the commission, or the service address or business address has not been disclosed to the commission, service shall be made at any business address known to the commission.
- (C) If the certified mail envelope is returned with an endorsement showing failure of delivery, then service may be made by ordinary United States mail and is effective on the date of mailing.

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4901:1-34-05

**Settlement agreements and stipulations.**

- (A) If staff and the natural gas company, retail natural gas supplier, or governmental aggregator reach agreement regarding any of the following: the violation of a rule within this chapter, or Chapter 4901:1-27 or 4901:1-29 of the Administrative Code, the violation of any provision of Chapter 4929. of the Revised Code, the violation of a commission order; a proposed corrective action or remedy; or the amount of a forfeiture or other payment, the agreement must be reduced to writing in a settlement agreement. Such agreement shall be signed by an officer of the company or its attorney and the assistant attorney general who serves as legal counsel for the commission staff. Except as otherwise provided in paragraph (B) of this rule, the settlement agreement shall not be effective until:
- (1) The stipulation is filed with the commission for approval pursuant to a compliance or other proceeding; ~~and,~~
  - (2) The stipulation is approved by and made the order of the commission.
- (B) If the settlement agreement provides for the payment of a forfeiture or other payment by a natural gas company or retail natural gas supplier of one thousand dollars or less, the agreement shall be accepted by the commission and fully enforceable upon the natural gas company or retail natural gas supplier upon its execution.
- (C) Unless contained in or otherwise provided in a stipulation, no statement or conduct during settlement negotiations is admissible in any commission proceeding regarding the noncompliance.
- (D) Where a natural gas company or retail natural gas supplier has demonstrated to the staff's satisfaction, as confirmed in writing from the commission's director of the ~~consumer services~~ service monitoring and enforcement department or the director of utilities department or his/her designee, that the violation(s) listed in the staff notice (or amended staff notice) of probable noncompliance or investigative report has been corrected and where the company submits full payment of the proposed forfeiture prior to the execution of a written settlement agreement or final commission order, the violation(s) listed in such staff notice of probable noncompliance shall only be considered by the commission as part of the company's history of violations in determining the appropriate forfeiture or corrective action for any future violation. If a company pays a proposed forfeiture of more than one thousand dollars without executing a written settlement agreement, the payment shall be fully effective when approved by and made the order of the commission.

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4901:1-34-06      **Commission proceedings.**

- (A) The commission may initiate a compliance or other proceeding upon its own initiative, after an incident has occurred, after a complaint is filed pursuant to section 4905.26 of the Revised Code, or after a staff notice of probable noncompliance is served.
- (B) The commission shall conduct such compliance or other proceeding in accordance with Chapter 4901-1 of the Administrative Code.
- (C) Unless otherwise ordered by the commission or an attorney examiner ~~assigned to the proceeding~~, the staff shall file with the commission and serve upon the natural gas company, retail natural gas supplier, or governmental aggregator a written report of investigation (investigative report) in each proceeding within forty-five days after the commission issues an entry initiating a compliance proceeding. The investigative report shall present:
  - (1) The findings on any alleged noncompliance specified in any staff notice or amended staff notice, which also may include:
    - (a) Noncompliances not included in any staff notice or amended staff notice, provided that such additional noncompliances relate to the same incident, investigation, or safety audit(s) referenced in the initial or amended staff notice; ~~and~~
    - (b) Staff's findings on the natural gas company's, retail natural gas supplier's, or governmental aggregator's practices and policies.
  - (2) Staff's recommendations for commission action.
- (D) The commission shall hold an evidentiary hearing on all proceedings initiated under this rule. The hearing may include evidence on the issues of proposed corrective action, compliance orders issued by the commission, forfeitures, enforcement of a commission order, and other remedies.
- (E) If, after a hearing, the commission finds a natural gas company, retail natural gas supplier, or governmental aggregator has violated or is violating Chapter 4929. of the Revised Code, or Chapter 4901:1-27 or 4901:1-29 of the Administrative Code, this chapter, or any order adopted thereunder, the commission, by order:
  - (1) Shall require the natural gas company or retail natural gas supplier or governmental aggregator to comply with Chapter 4929. of the Revised Code, Chapter 4901:1-27 or 4901:1-29 of the Administrative Code, this chapter, or any commission order thereunder; and to undertake corrective action necessary to protect the public safety, reliability, and customer service. The commission is

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not restricted in the making of the compliance order by the terms of any proposed corrective action and/or forfeiture by the staff;

- (2) May assess forfeitures upon a natural gas company or retail natural gas supplier of not more than one thousand dollars for each day of each violation. Each day's continuance of the violation is a separate offense;
- (3) May revoke the certificate of a retail natural gas supplier or governmental aggregator;
- (4) May direct the attorney general to seek enforcement of commission orders, including orders authorizing forfeitures, and appropriate remedies in court; and
- (5) May determine other appropriate remedies to protect the public safety, reliability, and customer service.

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4901:1-34-07      ***Payment of forfeitures and other payments.***

- (A) All forfeitures and other payments shall be paid by certified check or money order made payable to "Treasurer, State of Ohio," and shall be mailed or delivered to: "Public Utilities Commission of Ohio Fiscal Division, 180 East Broad Street, ~~Tenth~~ Thirteenth Floor, Columbus, Ohio 43215-3793".
- (B) All instruments of payment shall contain the identifying number of the violation/staff notice (e.g. docket number) for which payment is tendered.
- (C) No natural gas company or retail natural gas supplier may recover any forfeiture, or other payment in any pending or subsequent proceeding before the commission.

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4901:1-34-08      **Noncompliance with rules or orders.**

(A) Any natural gas company or retail natural gas supplier that fails to comply with the rules and standards in Chapters 4901:1-13, 4901:1-27, 4901:1-29 and 4901:1-34 of the Administrative Code or commission order adopted thereunder may, after opportunity for hearing, be subject to any and all of the following available under the law, including but not limited to:

(1) Forfeiture to the state of not more than one thousand dollars for each such failure.  
Each day's continuance of the violation is a separate offense;

(2) Rescission of a customer contract; and,

(3) Restitution to the customer.

(4) Suspension, rescission, or conditional rescission of certification.

(B) Any natural gas company that fails to comply with division (D) of section 4929.20 or division (C) of section 4929.29 of the Revised Code, may be subject to any and all of the following available under the law, including but not limited to:

(1) Forfeiture to the state of not more than one thousand dollars for each such failure.  
Each day's continuance of the violation is a separate offense; and,

(2) Corrective action to effectuate make compliance.

(C) Any governmental aggregator that fails to comply with the rules and standards in Chapters 4901:1-27, 4901:1-28, 4901:1-29 and 4901:1-34 of the Administrative Code or commission order adopted thereunder may after opportunity for hearing, be subject to any and all of the following available under the law, including but not limited to:

(1) Suspension, rescission, or conditional rescission of certification.

(2) Rescission of a customer contract.

(3) Restitution to a customer.