

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's)
Review of its Rules for Competitive Retail) Case No. 12-1924-EL-ORD
Electric Service Contained in Chapters)
4901:1-21 and 4901:1-24 of the Ohio)
Administrative Code.)

ENTRY

The Commission finds:

- (1) Section 119.032, Revised Code, requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. At this time, the Commission is reviewing the competitive retail electric service rules contained in Chapters 4901:1-21 and 4901:1-24, of the Ohio Administrative Code (O.A.C.), as required by Section 119.032, Revised Code.
- (2) Additionally, in accordance with Section 121.82, Revised Code, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis. If there will be an adverse impact on businesses, as defined in Section 107.52, Revised Code, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to Section 121.82, Revised Code, to provide the Common Sense Initiative (CSI) office the draft rules and the business impact analysis. The Commission is to consider any recommendations made by CSI with regard to the draft rules and provide CSI with a memorandum explaining either how CSI's recommendations were incorporated into the rules or why the recommendations were not incorporated into the rules. The Commission has considered the current rule review procedures and revised them to incorporate the new CSI process.
- (3) By entry issued on July 2, 2012, the Commission scheduled a workshop to be held at the offices of the Commission on August 6, 2012, to elicit feedback on any proposed revisions to the rules which Commission Staff (Staff) may have and to permit stakeholders to propose their own revisions to the rules for Staff's consideration.

- (4) The workshop was held as scheduled and stakeholder comments were offered by multiple stakeholders.
- (5) Staff has evaluated the rules contained in Chapters 4901:1-21 and 4901:1-24, O.A.C., as well as the feedback received at the August 6, 2012, workshop, and recommends amendments to several rules as shown in the attachments to this entry. A summary of Staff's proposals is as follows:
 - (a) Throughout Chapters 4901:1-21 and 4901:1-24, O.A.C., Staff recommends various nonsubstantive changes in order to simplify language and organization.
 - (b) Throughout Chapters 4901:1-21 and 4901:1-24, O.A.C., Staff recommends various revisions to make these chapters more consistent with the Commission's rules regarding competitive retail natural gas service.
 - (c) Throughout Chapter 4901:1-21, O.A.C., Staff recommends that short time requirements be modified from calendar days to business days.
 - (d) In Rule 4901:1-21-3, O.A.C., Staff recommends that language be added requiring explanations for percent of discounted rates, as well as language requiring that certain information be included in CRES providers' certification applications.
 - (e) In Rule 4901:1-21-05, O.A.C., Staff recommends that language be added requiring direct solicitors to obey all local ordinances.
 - (f) In Rule 4901:1-21-06, O.A.C., Staff recommends addition of a rule requiring 100 percent usage of third-party verification for door-to-door sales, addition of an independent third-party verifier, addition of a requirement of disclosure of availability of budget billing, and addition of a requirement of written amendment when material terms have changed.
 - (g) In Rule 4901:1-21-08, O.A.C., Staff recommends addition of an option for local telephone access, as

well as deletion of the former section (B)(1) from this rule, as it is redundant with the definitions set forth in Rule 4901:1-21-01, O.A.C.

- (h) In Rule 4901:1-21-11, O.A.C., Staff recommends that the application of the rule be modified to include residential and small commercial contracts.
- (i) In Rule 4901:1-21-12, O.A.C., Staff recommends addition of transmission service to required price disclosures, addition of a disclosure requirement for recurring/nonrecurring CRES charges, and a provision allowing the lowering of charges by the CRES provider without the customer's consent in certain circumstances.
- (j) In Rules 4901:1-21-14 and 4901:1-21-18, O.A.C., Staff recommends, respectively, changes to permit 21 days for out-of-state billings to become due, and 14 days for residential bill due dates and 21 for out-of-state-mailings.
- (k) Throughout Chapter 4901:1-24, O.A.C., Staff recommends renumbering the rules to make them more consistent with the rules contained in Chapter 4901:1-29, O.A.C.
- (l) In Rule 4901:1-24-04, O.A.C., Staff recommends including a rule to facilitate docketing administration when filing a certificate.
- (m) In Rule 4901:1-24-07, O.A.C., Staff recommends addition of a rule regarding admission *pro hac vice*.
- (n) In Rule 4901:1-24-08, O.A.C., Staff recommends addition of a provision allowing for automatic approval of motions for protective orders in certain circumstances.
- (o) In Rule 4901:1-24-09, O.A.C., Staff recommends addition of a section regarding certification renewal that parallels the Commission's authority in Rule 4901:1-24-3, O.A.C.

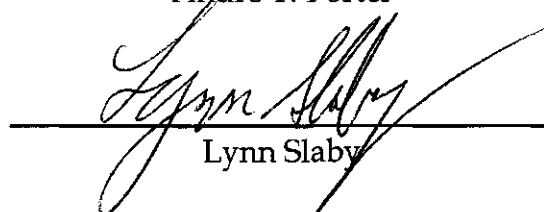
- (6) In order to avoid needless production of paper copies, the Commission will serve a paper copy of this entry only and will make Staff's proposed changes to Chapters 4901:1-21 and 4901:1-24, O.A.C., as well as the business impact analyses for this package of rules, available online at: www.puco.ohio.gov/puco/rules. All interested persons are directed to download the proposed rules from the above website, or to contact the Commission's Docketing Division to be sent a paper copy.
- (7) The Commission requests comments from interested persons to assist in the review required by Section 119.032(C), Revised Code, and Executive Order 2011-01K. Comments on the draft rules for Chapters 4901:1-21 and 4901:1-24, O.A.C., contained in Attachment A, and/or comments on the business impact analyses for Chapters 4901:1-21 and 4901:1-24, O.A.C., contained in Attachment B, should be filed, either via electronic filing or in hard copy, by January 7, 2013. Reply comments should be filed by February 6, 2013.
- (8) As a final matter, we note that the rules for competitive retail natural gas service (CRNGS) are also being reviewed at this time and the Commission is considering procedural revisions to those rules similar to the revisions proposed herein, e.g., the proposal explained above in finding (5)(a) through (o). Accordingly, we direct that a copy of this entry and attachments be served on all natural gas distribution utilities and all CRNGS providers so that they can provide comments on the procedural changes contained in Staff's recommended rule amendments.

It is, therefore,

ORDERED, That all interested persons file comments on the proposed rules for Chapters 4901:1-21 and 4901:1-24, O.A.C., contained in Attachment A, and/or comments on the business impact analyses for Chapters 4901:1-21 and 4901:1-24, O.A.C., contained in Attachment B, by January 7, 2013, and file any reply comments by February 6, 2013. It is, further,

ORDERED, That a copy of this entry be served upon all regulated natural gas service and electric companies, all competitive retail gas suppliers and electric service suppliers, the Ohio Consumers' Counsel, and the Common Sense Initiative office.

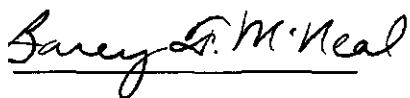
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman
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Entered in the Journal

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Secretary

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4901:1-21-01 Definitions.

"No Staff Changes Proposed"

As used in chapter:

- (A) "Aggregation" means combining the electric load of multiple retail customers via an agreement with the customers or formation of a governmental aggregation pursuant to section 4928.20 of the Revised Code for the purpose of purchasing retail electric generation service on an aggregated basis.
- (B) "Aggregator" means a person, certified by the commission, who contracts with customers to combine the customers' electric load for the purpose of purchasing retail electric generation service on an aggregated basis.
- (C) "Billing and collection agent" shall have the meaning set forth in division (A)(2) of section 4928.01 of the Revised Code.
- (D) "Biomass power" means a renewable generation resource that is primarily derived from the combustion of organic matter. Biomass fuels may be solid, liquid, or gas and are derived from feedstocks. Examples of such feedstocks include, but are not limited to: agricultural crops and residues, industrial wood and logging residues, farm animal wastes, the organic portion of municipal solid waste, and methane gas from landfills.
- (E) "Commission" means the public utilities commission of Ohio.
- (F) "Competitive retail electric service" (CRES) shall have the meaning set forth in division (A)(4) of section 4928.01 of the Revised Code, and includes the services provided by an electric services company, retail electric generation providers, power marketers, power brokers, aggregators, and governmental aggregators.
- (G) "Complaint" means any customer/consumer contact when such contact necessitates follow-up by or with the supplier of electric service or electric utility to resolve a point of contention.
- (H) "Consumer" means a person who uses CRES.
- (I) "Contract" means an agreement between a customer and an electric services company that specifies the terms and conditions for provision of CRES or services.
- (J) "Certified electric services company" means a person or entity, under

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certification by the commission, who supplies or offers to supply CRES. This term does not apply to an electric distribution utility in its provision of standard offer generation service.

- (K) "Customer" means a person who contracts with or is solicited by a CRES provider for the provision of CRES.
- (L) "Deposit" means a sum of money a CRES provider collects from a customer as a precondition for initiating service.
- (M) "Direct solicitation" means face-to-face solicitation of a customer initiated by a certified electric services company at the home of a customer or at a place other than the normal place of business of the provider, and includes door-to-door solicitations.
- (N) "Distribution service" means the physical delivery of electricity to consumers through facilities provided by an electric distribution utility.
- (O) "Electric cooperative" shall have the meaning set forth in division (A)(5) of section 4928.01 of the Revised Code.
- (P) "Electric distribution utility" shall have the meaning set forth in division (A)(6) of section 4928.01 of the Revised Code.
- (Q) "Electric generation service" means retail electric generation service.
- (R) "Electric utility" shall have the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (S) "Environmental disclosure data" means both generation resource mix and environmental characteristics.
- (T) "Governmental aggregation program" means the aggregation program established by the governmental aggregator with a fixed aggregation term, which shall be a period of not less than one year and no more than three years.
- (U) "Governmental aggregator" shall have the meaning set forth in division (A)(13) of section 4928.01 of the Revised Code.
- (V) "Market development period" shall have the meaning set forth in division (A)(17) of section 4928.01 of the Revised Code.
- (W) "Mercantile customer" shall have the meaning set forth in division (A)(19) of

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section 4928.01 of the Revised Code.

- (X) "Net metering" shall have the meaning set forth in division (A)(31) of section 4928.01 of the Revised Code.
- (Y) "OCC" means the Ohio consumers' counsel.
- (Z) "Other sources" means known electric energy generation resources that cannot reasonably be included within any of the specific fuel categories.
- (AA) "Person" shall have the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.
- (BB) "Power broker" means a person certified by the commission, who provides power brokerage.
- (CC) "Power brokerage" means assuming the contractual and legal responsibility for the sale and/or arrangement for the supply of retail electric generation service to a retail customer in this state without taking title to the electric power supplied.
- (DD) "Power marketer" means a person, certified by the commission, who provides power marketing services.
- (EE) "Power marketing" means assuming the contractual and legal responsibility for the sale and provision of retail electric generation service to a retail customer in this state and having title to electric power at some point during the transaction.
- (FF) "Residential customer" means a customer of a competitive retail electric service for residential purposes.
- (GG) "Retail electric service" shall have the meaning set forth in division (A)(27) of section 4928.01 of the Revised Code.
- (HH) "Retail electric generation service" means the provision of electric power to a retail customer in this state through facilities provided by an electric distribution utility and/or a transmission entity in this state. The term encompasses the services performed by retail electric generation providers, power marketers, and power brokers, but does not encompass the service provided by an electric utility pursuant to section 4928.14 or division (D) of section 4928.35 of the Revised Code.

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- (II) "Small commercial customer" means a commercial customer that is not a mercantile commercial customer.
- (JJ) "Solicitation" means any communication intended to elicit a customer's agreement to purchase or contract for a CRES.
- (KK) "Staff" means the commission staff or its authorized representative.
- (LL) "Toll-free" means telephone access provided to a customer without toll charges to the customer.
- (MM) "Unknown purchased resources" means electric energy generation resources neither owned nor operated by a competitive retail generation supplier where the electric energy generation source(s) or process cannot be identified after making all reasonable efforts to identify the source or process used to produce the power.

4901:1-21-02 Purpose and scope.

(A) The rules in this chapter:

- (1) Apply to persons offering or providing any retail electric service which has been declared competitive pursuant to section 4928.03 of the Revised Code including retail electric generation, aggregation, power marketing, and power brokerage.
- (2) Are intended to:
 - (a) Provide minimum standards for service quality, safety, and reliability.
 - (b) Provide consumers with sufficient information to make informed decisions about competitive retail electric service (CRES).
 - (c) Protect consumers against deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of CRES and in the administration of any contract for that service.
 - (d) Promote nondiscriminatory access to competitive retail electric services, ensure timely enrollment with CRES providers, maintain electric service, and timely and correctly switch CRES providers.
- (3) Apply to all jurisdictional customers unless otherwise specified.

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- (B) After notice and, if necessary, an opportunity for hearing, the commission may require CRES providers to take any appropriate action necessary to comply with these rules and the state's policy as stated in section 4928.02 of the Revised Code upon:
 - (1) The commission's own motion.
 - (2) Formal or informal complaints brought to the commission.
 - (3) The application of any CRES provider.
- (C) The commission may, upon an application or a motion by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown. Any CRES provider requesting a waiver of any requirement in this chapter shall serve notice of the request upon the Ohio consumers' counsel and all electric utilities operating in Ohio.
- (D) The rules in this chapter shall not relieve CRES providers from complying with all applicable federal, state, and local laws.
- (E) The rules in this chapter supersede any inconsistent provisions, terms, and conditions of each CRES provider's contracts or other documents describing service offerings for customers or potential customers in Ohio.
- (F) A governmental aggregator may choose to have the CRES provider perform certain functions as the governmental aggregator's agent. However, the governmental aggregator is still responsible for ensuring that the requirements of this chapter are met.

4901:1-21-03 General provisions.

- (A) Competitive retail electric service (CRES) providers 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 CRES.
 - (2) Administration of contracts for CRES.
 - (3) Provision of CRES, including interactions with consumers.
- (B) CRES providers shall not cause or arrange for the disconnection of distribution service, or employ the threat of such actions, as a consequence of contract

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termination, customer nonpayment, or for any other reason.

- (C) CRES providers shall not change or authorize the changing of a customer's supplier of retail electric service without the customer's prior consent, as provided for under rule 4901:1-21-06 of the Administrative Code. For the purpose of procuring CRES, this requirement does not apply to governmental aggregation pursuant to division (A) of section 4928.10 of the Revised Code, or for programs funded by the universal service fund for whom the Ohio department of development procures electric services pursuant to section 4928.52 of the Revised Code or the assignment of contracts where such assignment occurs in accordance with the rules in Chapter 4901:1-24 of the Administrative Code.
- (D) For the purposes of market monitoring and providing the public comparative information from CRES providers' residential standard contract offers, CRES providers shall furnish to the director of the service monitoring and enforcement department or the director's designee the following information, transmitted by e-mail or facsimile within four ~~calendar~~ business days of making such offers to Ohio customers:
- (1) For fixed-rate contracts, the price per kilowatt hour for generation service.
 - (2) For percent of discounted rates, an explanation of the discount, and the basis on which any discount is calculated.
 - ~~(2)~~ ~~(3)~~ ____ For variable-rate contracts, an explanation of the factors that will cause the price to vary, and the frequency of such variation.
 - ~~(3)~~ ~~(4)~~ ____ For all standard contracts, a listing of any recurring and nonrecurring charges not provided under paragraphs (D)(1) and (D)(2) of this rule, and a statement of the length of contract term.
 - ~~(4)~~ ~~(5)~~ ____ Other information as the staff may deem necessary.
- (E) All CRES providers shall include, in their certification application, the 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 CRES providers shall file notice of such changes to with the commission within thirty days of such material change, consistent with paragraphs (A) and (B)(8) of rule 4901:1-24-10 of the Administrative Code.

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4901:1-21-04 Records and record retention.

"No Staff Changes Proposed"

- (A) Each competitive retail electric service provider shall establish and maintain records and data sufficient to:
 - (1) Verify its compliance with the requirements of any applicable commission rules.
 - (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 staff within five calendar days of its request.

4901:1-21-05 Marketing and solicitation.

- (A) Each competitive retail electric service (CRES) provider that offers retail electric generation service to residential or small commercial customers shall provide, in marketing materials that include or accompany a service contract, sufficient information for customers to make intelligent cost comparisons against offers they receive from other CRES providers.
 - (1) For fixed-rate offers, such information shall, at minimum, include:
 - (a) The cost per kilowatt hour for generation service.
 - (b) The amount of any other recurring or nonrecurring CRES provider charges.
 - (c) A statement that the customer will incur additional service and delivery charges from the electric utility.
 - (d) A statement of any contract contingencies or conditions precedent.
 - (2) For variable-rate offers, such information shall, at a minimum, include:

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- (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 and, for discounted rates, an explanation of the discount and the basis on which any discount is calculated.
 - (b) The amount of any other recurring or nonrecurring CRES provider charges.
 - (c) A statement that the customer will incur additional service and delivery charges from the electric utility.
 - (d) A statement of any contract contingencies or conditions precedent.
- (B) A CRES provider's promotional and advertising material that is targeted for residential and small commercial customers shall be provided to the commission or its staff within three business ~~five calendar~~ days of a request by the commission or its staff.
- (C) No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:
- (1) Soliciting customers to enroll at either of the following times:
 - (a) After suspension, rescission, or conditional rescission of its certification by the commission.
 - (b) After denial of certification renewal by the commission.
 - (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 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, restrictions, and, if applicable, environmental characteristics of the service offered.
 - (4) Soliciting via telephone calls initiated by the CRES provider (or its agent) without first taking both of the following actions:

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- (a) Obtaining the list of Ohio individuals who have requested to be placed on the federal trade commission's "do not call" registry by the appropriate area code.
- (b) Obtaining monthly updates of the federal trade commission's "do not call" registry for the appropriate area code.
- (5) Engaging in telephone solicitation of individuals who have been placed on the federal trade commission's "do not call" registry and who are not otherwise exempted.
- (6) Engaging in telephone solicitation to residential customers either before nine a.m. or after nine p.m.:-
- (7) Engaging in direct solicitation to residential customers where the CRES provider's sales agent fails to wear and display a valid CRES provider photo identification. The format for this identification shall be preapproved by the staff.
- (8) Advertising or marketing offers that:
 - (a) Claim that a specific price advantage, savings, or guarantee exists if it does not.
 - (b) Claim to provide a CRES when such an offer is not a bona fide offer to sell such services.
 - (c) Offer a fixed price for CRES without disclosing the cost per kilowatt hour and all recurring and nonrecurring charges.
 - (d) Offer a variable price for CRES without disclosing all recurring and nonrecurring charges.
 - (e) Fail to disclose all material limitations, exclusions, contract contingencies, conditions precedent and offer expiration dates.
 - (f) Offer a variable price for competitive retail electric service that is not based on verifiable factors.
 - (g) Fail to conspicuously disclose an affiliate relationship with an existing Ohio electric utility.
 - (h) Lead the customer to believe that the CRES provider is soliciting on

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behalf of or is an agent of an Ohio electric utility when no such relationship exists.

- (9) Marketing, advertising, or claiming that the environmental characteristics of any generation service energy source(s) provide an environmental advantage that does not exist.
- (10) Engaging in any solicitation that leads the customer to believe that the CRES provider is soliciting on behalf of or is an agent of an Ohio electric utility when no such relationship exists.
- (11) Engaging in direct solicitation to customers without complying with all applicable ordinances and laws of the customer's jurisdiction.
- (D) CRES providers shall perform criminal background checks on all employees and agents engaged in door-to-door marketing and enrollment.

4901:1-21-06 Customer enrollment.

- (A) Except as provided in paragraph (B) of this rule, competitive retail electric service (CRES) providers shall coordinate customer enrollment with the electric utility in accordance with the procedures set forth in the applicable electric utility tariff.
- (B) Percentage of income payment plan (PIPP) customers will be coordinated exclusively by the Ohio department of development pursuant to section 4928.54 of the Revised Code.
 - (1) CRES providers are prohibited from knowingly enrolling PIPP and arrearage crediting program customers.
 - (2) Customers pending enrollment with a CRES provider who subsequently become approved for PIPP or the electric utility's arrearage crediting program shall not be switched to the CRES provider.
 - (3) Electric utility customers who have switched to a CRES provider and subsequently become approved for the electric utility's arrearage crediting program shall be transferred to the electric utility's standard offer service at the next regularly scheduled meter read date after the electric utility's utility enrolls the customer in the program.

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- (4) Until the Ohio department of development has in place a mechanism for the administration and operation of the low-income customer assistance programs, customers who have switched to a CRES provider and subsequently become approved for PIPP shall be transferred to the electric utility's standard offer service at the next regularly scheduled meter read date after the electric utility receives notice of the customer's participation in PIPP. Any switching fees shall be added to the customer's arrearages, not current charges.
 - (5) When the host electric utility is not purchasing the receivables of the affected CRES provider, the CRES provider shall submit to the host electric utility the pre-PIPP arrearages for the PIPP participant within sixty calendar days of the customer's transfer to the electric utility's standard offer service or the Ohio department of development's selected CRES provider pursuant to section 4928.54 of the Revised Code.
- (C) CRES providers are prohibited from enrolling potential customers without their consent and proof of that consent as delineated in paragraph (D) of this rule. This requirement does not apply to automatic governmental aggregation pursuant to division (A) of section 4928.20 of the Revised Code and PIPP customers who will be coordinated exclusively by the Ohio department of development pursuant to section 4928.54 of the Revised Code.
- (D) Residential and small commercial enrollment.
- (1) Mailings, facsimiles, and direct solicitation.
 - (a) Where enrollment occurs by mail, facsimile, or direct solicitation, the customer's signature on a contract shall constitute consent.
 - (b) Consistent with rule 4901:1-21-05 of the Administrative Code, prior to entering into a contract for service, CRES providers shall provide each customer with enrollment documents that contain, at a minimum, understandable pricing, the terms and conditions of service, the dollar amount of all recurring and nonrecurring charges (including any fees for early termination of the contract), the applicable generation resource mix and environmental characteristics, and the duration of the contract.
 - (c) Before obtaining a signature from the applicant, CRES providers shall provide each customer a reasonable opportunity to read all enrollment documents and shall answer any and all questions posed by any

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applicant about information contained in the documents.

- (d) Immediately upon obtaining the customer's signature, CRES providers shall provide the applicant a legible copy of the signed contract.
- (e) Where enrollment occurs by direct solicitation, customers shall be advised both verbally and in the contract that: (i) the electric utility will be sending a confirmation notice of the transfer of service; (ii) they are allowed a seven business days ~~day period~~ to rescind the contract; and (iii) the customer must ~~should~~ contact the electric utility to rescind the contract.
- (f) The CRES provider shall not initiate ~~enrollment~~ the switch of a customer's electric service with the electric utility prior to the completion of the enrollment transaction with the customer.
- (g) The CRES provider shall send an electronic enrollment request to the electric utility within three calendar days following completion of the enrollment transaction with the customer, unless a later start date is agreed to in the contract.
- (h) CRES providers conducting contract sales through door-to-door solicitation shall provide for independent third-party verification (TPV) to ensure the validity of the enrollment prior to submission to the electric utility. The TPV shall be conducted in accordance with 4901:1-21-06(D)(2)(a) excluding section (vi) of the Administrative Code and the process shall include the following:
 - (i) The sales agent shall contact the party responsible for the TPV at the conclusion of the sales transaction and provide the necessary contract tracking information to initiate the TPV process.
 - (ii) The independent third-party verifier must confirm with the customer that the sales agent has left the property of the customer. The sales agent is not to return before, during or after the TPV process.
 - (iii) The independent third-party verifier shall structure the TPV interview to give the customer adequate time to respond to questions and shall not lead the customer in their response.
 - (iv) The CRES provider must retain the audio recording of the

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customer's enrollment for one year after the contract with the customer is terminated.

- (v) The CRES provider must provide a copy of the independent third-party verification to the electric distribution utility or PUCO staff within three business days of any such request.

(i) 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.

(j) Uniform

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

- (k) The representative of a CRES provider shall leave the premises of a customer when requested to do so by the customer or the owner or occupants of the premises.

- (l) CRES providers shall remove a customer's name from the marketing/sales database upon the customer's request.

(2) Telephonic enrollment

- (a) To enroll a residential or small commercial customer telephonically, a CRES provider shall make a date and time stamped audio recording verifying before the completion of the telephone call, at a minimum, all of the following:

- (i) The CRES provider's or independent third-party verifier's identity and the exact purpose of the call
- (ii) A verbal statement and the customer's acknowledgement that the call is being recorded.
- (iii) A verbal statement and the customer's acknowledgement that the CRES provider is not the customer's current electric utility company.

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- ~~(iii)~~ ~~(iv)~~ ____ A verbal question and the customer's acknowledgement that the customer wishes to enroll with the provider.
- ~~(iv)~~ ~~(v)~~ ____ A verbal question and the customer's acknowledgement that the customer is the customer of record at the customer's local distribution utility or is authorized to switch providers by the customer of record.
- ~~(v)~~ ~~(vi)~~ ____ In accordance with rule 4901:1-21-12 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 all of the following:
- ~~(a)~~ The service(s) that will be provided.
 - ~~(b)~~ The price.
 - ~~(c)~~ The length of the contract term.
 - ~~(d)~~ An approximate service commencement date.
 - ~~(e)~~ The contract termination date, and any fees for customer cancellation prior to such date.
 - ~~(f)~~ Any material limitations, exclusions, contract contingencies or conditions precedent.
 - ~~(g)~~ Any fees or costs to the customer.
 - ~~(h)~~ Whether or not the CRES provider offers budget billing for the generation portion of the bill.
 - ~~(h)~~ ~~(i)~~ ____ If applicable, whether the provider will perform a credit check and require a deposit, including the amount.
 - ~~(i)~~ ~~(j)~~ ____ Who will bill for the provider's service(s).
- ~~(vi)~~ ~~(vii)~~ ____ A verbal statement and the customer's acknowledgement that the provider will, within one ~~calendar~~ business day, send the customer a written contract that details the terms and conditions that were summarized in the telephone call.
- ~~(vii)~~ ~~(viii)~~ ____ A verbal statement and the customer's acknowledgement

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that the customer has seven ~~calendar~~ business days from the postmark date of the electric utility's confirmation notice to cancel the contract without penalty and a reminder that the electric utility will give the customer a cancellation number to confirm any cancellation of the contract during the cancellation period.

(ix) Customers shall be advised both verbally and in the contract all of the following:

(a) The electric utility company will be 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.

(c) The customer must contact the electric distribution utility to rescind the enrollment.

~~(viii)~~ ~~(x)~~ A toll-free telephone number the customer can call to cancel the contract.

~~(ix)~~ ~~(xi)~~ If applicable, a verbal request for and the customer's provision of the customer's electric utility account number.

~~(x)~~ ~~(xii)~~ A verbal request for and the customer's provision of the customer's mailing address.

~~(xi)~~ ~~(xiii)~~ A unique enrollment confirmation number.

(b) Following telephonic enrollment, the CRES provider shall comply with all of the following:

(i) Within one ~~calendar~~ business day, send the customer a written contract that details the terms and conditions summarized in the telephone call and the generation resource mix and environmental characteristics information pursuant to rule 4901:1-21-09 of the Administrative Code. Such contract shall in no way alter the terms and conditions to which the customer agreed in the telephone call.

(ii) Retain the audio recording of the customer's enrollment for one year after the contract with the customer is terminated.

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- (iii) Provide a copy of the audio recording to the customer, commission, or the staff within five calendar days of a request.
 - (c) The CRES provider shall send an electronic enrollment request to the electric utility no sooner than three ~~calendar~~business days and no later than five ~~calendar~~business days after sending the customer the written contract, unless a later start date is agreed to in the contract.
 - (d) The CRES provider shall not initiate enrollment with the electric utility prior to the completion of the enrollment transaction with the customer.
- (3) Internet enrollment.
- (a) Where enrollment occurs by internet, prior consent shall be obtained by encrypted customer input on a provider's internet web site.
 - (b) The internet enrollment web site shall, at a minimum, include all of the following:
 - (i) A copy of the CRES provider's customer contract with all terms and conditions as required by rule 4901:1-21-12 of the Administrative Code.
 - (ii) A conspicuous statement, within the body of the electronic version of the contract, that residential and small commercial customers may cancel their enrollment within seven calendar days following a confirmation notice from the electric utility.
 - (iii) A statement that the electric utility will be sending a confirmation notice of the transfer of service and that the customer should contact the electric utility to rescind the contract and a reminder that the electric utility will give the customer a cancellation number to confirm any cancellation of the contract during the cancellation period.
 - (iv) A conspicuous prompt for the customer to print or save a copy of the contract.
 - (c) The CRES provider shall not initiate enrollment with the electric utility prior to the completion of the enrollment transaction with the customer.
 - (d) The CRES provider shall send an electronic enrollment request to the

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electric utility within three calendar days following completion of the enrollment transaction with the customer, unless a later start date is agreed to in the contract.

- (e) 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 assents.
- (f) Throughout the duration of the contract, the CRES provider shall retain and, within three calendar days of the customer's request, provide to the customer an e-mail, paper, or facsimile of the terms and conditions of the numbered contract version to which the customer assents.
- (g) The CRES provider shall require the customer to complete an electronic customer consent form in a format retrievable by the CRES provider that includes the following:
 - (i) The customer's agreement to the terms and conditions.
 - (ii) An electronic agreement version number.
 - (iii) The name of the CRES provider.
 - (iv) The date the customer electronically enrolled.
 - (v) The name of the account holder.
 - (vi) The electric utility account number or other customer identification number provided by the electric utility and used for customer choice purposes.
 - (vii) The account holder's U.S. mailing address.
- (h) The CRES provider shall provide a mechanism by which both the submission and receipt of the electronic customer consent form are recorded by time and date.
- (i) After the customer completes the electronic customer consent form, the internet enrollment process shall disclose conspicuously that the customer has been enrolled and the CRES provider shall provide the customer a unique enrollment confirmation number.

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- (E) In instances where the customer and the CRES provider agree to a material change to an existing contract, the CRES provider shall obtain proof of consent and provide details of the revised contract terms and conditions as delineated in paragraph (D) of this rule.
- (F) In customer enrollment, if the electric distribution company rejects a customer from enrollment, the CRES provider shall notify the customer within three business days from the electric distribution company's notification of rejection that the customer will not be enrolled or enrollment will be delayed, along with the reason(s) therefor.
- (G) The electric distribution company shall, prior to commencing competitive retail electric service, mail the customer a confirmation notice stating:

 - (1) The electric distribution company has received a request to enroll the customer for competitive retail electric service with the named CRES provider.
 - (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 electric distribution company to rescind the enrollment request or notify the electric distribution company that the change of the CRES provider was not requested by the customer.
 - (4) The electric distribution company's toll-free telephone number.
- (H) Within two business days after receiving a customer's request to rescind enrollment with the CRES provider, the electric distribution company shall initiate such rescission and inform the CRES provider or governmental aggregator that such action has been taken.
- (I) Customers may request an actual meter reading prior to the transfer of the service to the new CRES provider.
- (J) Customers returning to the electric distribution company's standard service offer.

 - (1) Any customer returning to the electric distribution company's standard service offer due to default, abandonment, slamming, or certification rescission of a CRES provider will not be liable for any costs associated with

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the switch.

- (2) Any switching fee applicable to customers switching from one marketer to another marketer shall also apply to customers switching from a marketer to electric distribution company's standard service offer.
- (3) 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 electric distribution company's standard service offer shall pay the applicable regulated sales service rate while taking such service.
- (5) Within two business days after confirming the validated electronic data file for a CRES provider's customer-drop request, the electric distribution company shall mail the customer a notice stating:
 - (a) The electric distribution company has received a request to drop the customer from competitive retail electric service with the named CRES provider.
 - (b) The CRES provider's toll-free telephone number.

4901:1-21-07 Credit and deposits.

"No Staff Changes Proposed"

- (A) Each competitive retail electric service (CRES) provider 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.
- (B) In the application of such standards, deposits, or creditworthiness procedures, the CRES provider shall:
 - (1) Disclose in service contracts with customers its policies regarding creditworthiness and deposits, including the amount of any deposit, the allocation of the deposit, and the return of any deposit balance.

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- (2) Accept a reasonable and nondiscriminatory cash deposit as sufficient evidence of the customer's creditworthiness to initiate service.
- (3) Disclose whether interest will be paid on deposits, and the applicable rate of interest.
- (4) Provide the customer a receipt for any deposit within fourteen calendar days of the date that the deposit is collected.
- (5) Return the deposit within ten calendar days if the customer cancels the contract during the rescission period.
- (6) Apply the deposit to the final bill and promptly refund any excess to the customer when service is terminated.
- (7) Not require an applicant to pay the balance due another CRES provider as a condition of establishing credit or providing competitive retail electric service.

4901:1-21-08 Customer access, slamming complaints, and complaint handling procedures.

(A) Customer access

- (1) Each competitive retail electric service (CRES) provider 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 or local and afford customers prompt answer times during normal business hours.
- (3) Each CRES provider shall provide a twenty-four hour automated telephone message instructing callers to report any service interruptions or electrical emergencies to their electric utility.

(B) Customer complaints

- ~~(1) (1) As used in this rule, customer complaint means a customer contact when such contact necessitates follow up by or with the supplier of the customer's electric service to resolve a point of contention.~~
- (2) ~~(1)~~ Each CRES provider shall investigate customer complaints

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(including customer complaints referred by the electric utility) and provide a status report within ~~five calendar~~ three business days following receipt of the complaint to:

- (a) The customer, when the complaint is made directly to the CRES provider.
 - (b) The customer and staff, when a complaint is referred to the CRES provider by the staff.
- (3) ~~(2)~~ ____ If an investigation is not completed within ~~fourteen calendar~~ ten business days, the CRES provider shall provide status reports, either orally or in writing, to the customer, or if applicable, to the customer and staff. Such status reports shall be provided at ~~five calendar~~ three business-day intervals until the investigation is complete, unless agreed to otherwise.
- (4) ~~(3)~~ ____ The CRES provider shall inform the customer, or the customer and staff, of the results of the investigation, orally or in writing, no later than ~~five calendar~~ three business days after completion of the investigation. The customer or staff may request the report in writing.
- (5) ~~(4)~~ ____ If a residential or small commercial customer disputes the CRES provider's report, the CRES provider shall inform the customer that the staff is available to help resolve informal complaints. The CRES provider shall provide the consumer with the current address, the toll-free and TTY numbers-number of the commission's call center, the telephone number through which hearing and speech impaired customers may contact the commission, and the commission's website.
- (6) ~~(5)~~ ____ Each CRES provider shall retain records of customer complaints, investigations, and complaint resolutions for one year after the occurrence of such complaints, and shall provide such records to the staff within ~~five calendar~~ three business days of request.
- (7) ~~(6)~~ ____ Each CRES provider shall make good faith efforts to resolve disputes, and cooperate with the resolution of any joint issues with the electric utility.
- (C) Slamming complaints.

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- (1) A slamming complaint is a customer's allegation that the customer's supplier of electric service has been switched without the customer's authorization.
- (2) If a customer contacts the CRES provider alleging that the customer's supplier has been switched without the customer's authorization, the CRES provider shall take the following actions:
 - (a) Provide the customer with the enrollment information contained in its records.
 - (b) Refer the customer to the commission and provide the customer with the commission's current address, the toll-free and TTY numbers number of the commission's call center, the telephone number through which hearing and speech impaired customers may contact the commission, and the commission's website.
 - (c) Cooperate with staff in any subsequent investigations of the slamming complaint, including assisting staff in determining the amount of any restitution owed to the customer pursuant to paragraph (C)(5) of this rule if the customer was switched without authorization from the customer's supplier of electric service.
- (3) If a customer initiates a slamming complaint with staff within thirty calendar days after being issued a bill from the alleged slammer, the customer shall not be required to pay the current charges assessed by the alleged slammer until the staff determines that the change in the customer's electric service provider was authorized.
- (4) Except as provided in rules 4901:1-21-16 and 4901:1-21-17 of the Administrative Code, if the CRES provider cannot produce valid documents confirming that the customer authorized the switch, there shall be a rebuttable presumption that the customer was switched without authorization. Such documents shall include one of the following, in conformance with the requirements of rule 4901:1-21-06 of the Administrative Code:
 - (a) A signed contract, in the case of direct enrollment.
 - (b) An audio recording, in the case of telephonic enrollment.
 - (c) Electronic consent, in the case of internet enrollment.

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- (5) If staff determines that the customer was switched without authorization, the CRES provider responsible for initiating the switch shall by the end of the succeeding billing period following the customer's return to the correct supplier of electric service, take all three of the following actions:
 - (a) Credit or refund to the customer any fees previously charged for switching the customer to and from the correct supplier of electric service.
 - (b) Either of the two following actions:
 - (i) If reported to staff within the thirty calendar days after being issued a bill from the alleged slammer, absolve the customer of any liability for charges assessed by the slamming CRES provider to the customer and refund to the customer any charges collected from the customer.
 - (ii) If reported to staff more than thirty calendar days after being issued a bill from the alleged slammer, credit the customer any fees the slamming CRES provider charged in excess of the amount the customer would have paid its previous supplier of electric service for the same usage.
 - (c) If the customer can not be returned to the original contract terms with its previous supplier of electric service, the slamming CRES provider shall credit or refund to the customer the value of the customer's contract with the customer's previous supplier of electric service for the remaining term of the contract immediately prior to the slam.
- (6) In the event the customer was switched without authorization, the customer's previous CRES provider shall take all of the following actions:
 - (a) Re-enroll the customer without penalty under such customer's original contract price and terms, including substantially similar inducements to enter such contract. If the original CRES provider is unable to return the customer to the original contract price, the original CRES provider may enroll the customer in a new contract pursuant to the provisions of rule 4901:1-21-06 of the Administrative Code, or the customer may select a new CRES provider, or return to the electric utility's standard offer service.
 - (b) Issue the customer a credit on the first bill following the customer's re-

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enrollment, for any exit fees previously charged the customer as a result of the unauthorized switch, or directly reimburse the customer for such fees.

- (c) Assist staff in determining the amount of any restitution owed the customer under this rule.
- (7) If staff informs the CRES provider that a customer was switched without the customer's authorization, the CRES provider that improperly initiated the switch shall within thirty calendar days reimburse the prior CRES provider and the electric utility for any reasonable incremental costs incurred by them to correct the unauthorized switch.
- (8) If staff determines that a customer's service was switched without the customer's authorization, staff shall notify the electric utility of such determination. After such notification, and if the electric utility is not at fault, the electric utility may then seek reimbursement from the CRES provider that improperly initiated the switch for any incremental costs incurred by the electric utility to correct the unauthorized switch including any switching fees. The electric utility shall provide the CRES provider an itemized list of any such incremental costs.
- (9) If correcting an unauthorized switch involves returning the customer to its previous CRES provider, the electric utility shall make the corrective switch at the next regularly scheduled meter reading date following receipt of the enrollment request from the previous CRES provider. Such corrective switch shall be made in accordance with the electric utility's normal practices and procedures for switching customers, except that the electric utility shall not charge or shall credit to the customer any switching fees and the electric utility is not required to issue the customer the notice required by paragraph (F)(1) of rule 4901:1-10-29 of the Administrative Code.
- (10) If correcting an unauthorized switch involves returning the customer to the electric utility's standard offer service, the electric utility shall make the corrective switch at the next regularly scheduled meter reading date in accordance with the electric utility's normal practices and procedures for switching customers, except that the electric utility shall not charge or shall credit to the customer any switching fees and that the electric utility is not required to issue the customer the notice required by paragraph (F)(1) of rule 4901:1-10-29 of the Administrative Code.

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- (11) If, as part of correcting an unauthorized switch, a customer who was taking standard offer service from the electric utility at the time of the unauthorized switch is returned to standard offer service, the customer shall not be subject to any minimum stay or other commission-approved alternative for returning customers, unless the customer would have been subject to such a requirement had the unauthorized switch not occurred.
- (12) If the electric utility switches a CRES provider's customer to the electric utility's standard offer service without authorization by the customer, without the authorization of the appropriate CRES provider or pursuant to a commission order, the electric utility shall take all of the following actions:
 - (a) Not charge, or shall credit the customer, any switching fees and shall return the customer to the previous CRES provider, making the corrective switch at the next regularly scheduled meter reading date following receipt of the enrollment request from the previous CRES provider.
 - (b) By the next billing cycle, take all three of the following actions:
 - (i) Credit or refund to the customer any fees previously charged for switching the customer to the CRES provider.
 - (ii) Either of the two following actions:
 - (a) If reported to staff within thirty calendar days after being issued a bill by the alleged slammer, absolve the customer of any liability for any charges assessed by the slamming electric utility to the customer and refund to the customer any charges collected from the customer.
 - (b) If reported to staff more than thirty calendar days after being issued a bill by the alleged slammer, credit the customer any fees the slamming electric utility charged in excess of the amount the customer would have paid its previous CRES provider for the same usage.
 - (iii) If the customer can not be returned to the original contract terms with its previous CRES provider, the slamming electric utility shall credit or refund to the customer, the value of the customer's contract with the customer's previous supplier of electric service for the

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remaining term of the contract immediately prior to the slam.

- (c) Reimburse the CRES provider for any incremental costs incurred by the CRES provider to correct the unauthorized switch, within thirty calendar days of receiving an itemized invoice of the incurred incremental costs.

4901:1-21-09 Environmental disclosure.

- (A) This rule establishes a process by which customers are assured of receiving information, in a timely and consistent manner, concerning the approximate retail electric generation resource mix and environmental characteristics associated with electrical power offered in Ohio's competitive marketplace.
- (B) This rule applies to all competitive retail electric service (CRES) providers of retail electric generation service. CRES providers offering or providing more than one contract for power supplies shall disclose the appropriate generation resource mix and environmental characteristics for each such contract.
- (C) Determination of environmental disclosure data.

- (1) Contents of environmental disclosure data shall include:

- (a) Approximate generation resource mix, which consists of the following:

CRES providers shall specifically identify each of the following generation sources used in their generation of power: biomass power, coal-fired power, hydro power, natural gas-fired power, nuclear power, oil-fired power, other sources, solar power, and wind power, ~~and unknown purchased resources.~~

CRES providers shall exercise all reasonable efforts to identify the power source or resources used to generate the power in question, and shall maintain documentation sufficient to demonstrate the steps taken to make such identification.

- (b) Environmental characteristics, which consists of the following:

CRES providers shall report the environmental characteristics typically associated with the generation of power being offered under each supply contract.

CRES providers shall also report the air emissions of nitrogen oxides,

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sulfur dioxide, and carbon dioxide associated with the generation of power being offered under the supply contract.

In addition, CRES providers shall report the generation of high- and low-level radioactive waste associated with the power being offered under the supply contract.

- (2) Methodology for determining environmental disclosure data shall include:
- (a) At the time of certification, CRES providers shall submit for commission review their proposed methodology for determining their environmental disclosure data.
 - (b) The actual environmental disclosure data, to be provided quarterly, shall be verifiable. CRES providers shall maintain documentation sufficient to demonstrate the accuracy of the actual environmental disclosure data.
 - ~~(c) When calculating the generation resource mix, the CRES provider shall assume that purchased energy has the same generation resource mix as the regional generation resource mix for the twelve-month period of June 1 to May 31, as provided by the CRES provider's regional transmission organization or independent system operator.~~
- (3) Each CRES provider shall submit to staff for its review and approval a proposal for incorporating the use of any renewable energy credits (RECs) ~~within~~ into its annual and quarterly environmental disclosures. ~~At a minimum, such submittal would be required for the following~~ The CRES provider shall provide statements, when applicable:
- (a) ~~A-That the~~ CRES provider sells ~~REC~~ sold RECs from one of its electric generating facilities.
 - (b) ~~A-That the~~ CRES provider purchases ~~REC~~ purchased RECs as a means of complying, in part or whole, with a renewable energy resource benchmark under the state's alternative energy portfolio standard requirements.
 - ~~(c) Whether the CRES provider complied with the renewable energy resource benchmark under the state's alternative energy portfolio standard requirements.~~

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(4) Timing for disclosing environmental data:

- (a) Certified CRES providers shall annually project their environmental disclosure data for the current calendar year.
- (b) Certified CRES providers shall make quarterly comparisons of actual to projected environmental disclosure data.
- (c) Each certified CRES provider shall publish the required environmental disclosure data each year according to the following schedule:

January - disclose projected data for current calendar year.

March - disclose actual data for the prior calendar year, compared to projected data for prior calendar year.

June - disclose actual data for the period January through March of current year, compared to projected data for current calendar year.

September - disclose actual data for the period January through June of current year, compared to projected data for current calendar year.

December - disclose actual data for the period January through September of current year, compared to projected data for current calendar year.

(D) Environmental disclosure to customers shall include:

(1) Content:

Each customer shall receive environmental disclosure data, as detailed in paragraph (C) of this rule.

(2) Format:

The environmental disclosure data shall be provided in a standardized format to facilitate comparisons by customers. This data shall be disclosed in not less than ten-point type. The presentation of this data shall comply with each of the following requirements:

- (a) A pie chart shall be provided which illustrates on a percentage basis the various generation resources, as detailed in paragraph (C)(1)(a) of this rule, used in the generation of the power offered under the contract. The

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percentages shall be rounded to the nearest ~~whole number~~one-half percent. The pie chart shall not include colors, but shall include the use of shading and labels to more clearly communicate the information as set forth in appendices A and B to this rule. To the extent the pie chart included in appendices A and B to this rule cannot be replicated, CRES providers shall exercise reasonable efforts to simulate the required shading to the extent possible.

- (b) A table shall be provided which illustrates the typical environmental characteristics associated with the generation resource categories detailed in paragraph (C)(1)(a) of this rule.

The general categories and assumptions to be depicted in the table are as follows:

Biomass power - results in air emissions and solid waste.

Coal-fired power - results in air emissions and solid waste.

Hydro power - results in wildlife impacts.

Natural gas-fired power - results in air emissions and solid waste.

Nuclear power - results in radioactive waste.

Oil-fired power - results in air emissions and solid waste.

Other sources - results in unknown impacts.

Solar power - results in no significant impacts.

~~Unknown purchased resources - results in unknown impacts.~~

Wind power - results in wildlife impacts.

- (c) The product-specific air emissions shall be presented in a bar chart, along with a regional average emission reference. The product-specific emission rates shall appear as a percentage of the average regional emission rate for each of the three types of air emissions. Percentages shall be calculated from comparison of product-specific and average regional emission rates on a basis of pounds emitted per megawatt hour.
- (d) The figures reflecting the generation of radioactive wastes shall be

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presented in a table. High-level radioactive waste shall be reported in pounds per one thousand kilowatt hour (kWh), while low-level radioactive waste is to be reported in cubic feet per one thousand kWh. Any radioactive waste greater than zero but less than ".0001" shall be depicted as <0.0001.

For use in the implementation of this rule, the following definitions shall apply:

High-level radioactive waste - means nuclear fuel that has been removed from a nuclear reactor.

Low-level radioactive waste - means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in section 11(E)(2) of the "Atomic Energy Act of 1954," 68 Stat. 921, 42 U.S.C. 2014(e)(2), as amended by the Price-Anderson Amendments Act of 2005, 119 Stat. 779.

- (e) The annual projection of approximate generation resource mix and environmental characteristics shall appear as depicted in appendix A to this rule. The regional average data, if available, will be updated by the commission by December first of each year or as conditions warrant. The quarterly comparisons of actual environmental disclosure data to projected environmental disclosure data, comprised of data specific to the power offered under the contract, shall appear as depicted in appendix B to this rule.
- (f) Each CRES provider shall maintain records detailing the magnitude of each environmental characteristic associated with the power offered under the contract. Such details shall be provided to customers and commission staff upon request and may be included on a CRES provider's website.
- (g) A CRES provider may include other information that it feels is relevant to the required environmental disclosure data, provided this additional information is distinctly separated from the required information. CRES providers shall maintain sufficient documentation to permit verification of the accuracy of any additional information that is disclosed.

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(3) Timing:

(a) Annual projection.

The CRES provider shall include with each customer contract, its most recent projection of environmental disclosure data, consistent with the schedule presented in paragraph (C)(3) of this rule and the format depicted by appendix A to this rule.

If a customer is under contract at the time the projected environmental disclosure data is revised, the revised environmental disclosure data shall be provided to the customer via bill insert or separate mailing. The annual environmental disclosure can be accomplished electronically if a customer agrees to such an approach.

(b) Quarterly comparisons of actual to projected data.

The comparison of actual to projected environmental disclosure data shall be provided to customers on a quarterly basis, consistent with both the schedule presented in paragraph (C)(3) of this rule and the format depicted by appendix B to this rule.

These items will be disclosed to customers via bill inserts or by separate mailing. The quarterly environmental disclosure can be accomplished electronically if a customer agrees to such an approach.

(E) Environmental disclosure to the commission shall include:

Each CRES provider shall electronically submit its annual projection and quarterly comparisons of environmental disclosure data to the deputy director of the utilities department or their designee consistent with the schedule presented in paragraph (C)(3)(c) of this rule. The information provided to staff shall be identical in content and format to that provided to customers.

(F) The generation resource mix disclosed pursuant to this rule should not be used as an indicator of the CRES provider's compliance with Section 4928.64 of the Revised Code.

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4901:1-21-10 Customer information.

"No Staff Changes Proposed"

(A) Upon customer request and if the competitive retail electric service (CRES) provider possesses such information, a CRES provider shall timely provide to the customer, no more than twice within a twelve-month period, up to twenty-four months of the customer's payment history without charge.

(B) CRES providers shall not disclose a customer's account number without the customer's written consent, electronic authorization, or appropriate order, except for the following purposes:

- (1) A CRES provider's collections and credit reporting activities.
- (2) Participation in programs funded by the universal service fund, pursuant to section 4928.52 of the Revised Code, such as the percentage of income payment plan programs.
- (3) Governmental aggregation, pursuant to section 4928.20 of the Revised Code.
- (4) Assignment of a customer contract to another CRES provider.

The CRES provider must use the consent form set forth in paragraph (D) of this rule unless authorization is obtained electronically.

(C) CRES providers shall not disclose a customer's social security number without the customer's written consent, electronic authorization, or a court order, except for the following purposes:

- (1) A CRES provider's own credit evaluation.
- (2) Electric utility's or CRES provider's own collection and/or credit reporting.
- (3) Participation in programs funded by the universal service fund, pursuant to section 4928.52 of the Revised Code, such as the percentage of income payment plan programs.
- (4) Assignment of a customer contract to another CRES provider.

(D) The CRES provider must obtain the customer's signature on the consent form prior to releasing the customer's account number or social security number, except as set forth in paragraph (B) or (C) of this rule. The consent form shall be

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on a separate form and shall be clearly identified on its face as a release of personal information and all text appearing on the consent form shall be in at least sixteen-point type. The following statement shall appear prominently on the consent form, 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 CRES provider) to release the information set forth above. By my signature, I freely give (name of the CRES provider) permission to release the information designated above." The information that the CRES provider 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.

4901:1-21-11 Contract administration.

- (A) Competitive retail electric service (CRES) providers, except automatic governmental aggregation pursuant to division (A) of section 4928.20 of the Revised Code, and percentage of income payment plan customers for whom the Ohio department of development procures electric services pursuant to section 4928.52 of the Revised Code, shall arrange for the provision of competitive retail electric service by contracting with their customers. In their administration of such contracts, CRES providers are prohibited from engaging in unfair, deceptive, misleading, and unconscionable acts and practices.
- (B) CRES providers shall arrange for the provision of CRES to residential and small commercial customers in compliance with rule 4901:1-21-06 of the Administrative Code.
- (C) CRES providers shall maintain copies of individual customer contracts for no less than two years after each such contract terminates.
- (D) In its administration of residential and small commercial contracts, a CRES provider shall also comply with the following requirements:
 - (1) A CRES provider shall not assign customer contract(s) to another CRES provider without:
 - (a) Providing a minimum of fourteen calendar days written notice to the director of the service monitoring and enforcement department or the director's designee and any affected electric utility before the contract assignment. Such notice shall include:

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- (i) The name of the CRES provider to whom the contracts will be assigned.
 - (ii) The type of contracts to be assigned (i.e., residential, small commercial).
 - (iii) The number of contracts to be assigned.
 - (iv) The electric utility service territories involved.
 - (v) The date of the proposed assignment.
 - (vi) A copy of the customer notification.
- (b) Providing written notice to the customer prior to the customer's next bill that includes a statement that following the assignment the customer's service will continue under the same rates, terms, and conditions established under the original contract and includes the new CRES provider's name, toll-free number, and address.
- (2) When assigned a contract previously administered by another CRES provider, the CRES provider to whom the contract is assigned shall comply with all terms and conditions in effect for the contract before the assignment occurred.
- (3) A CRES provider shall 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 these rules.
- (4) A CRES provider shall 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 staff within ~~five calendar~~ three business days of request.
- (E) Residential and small commercial customers shall have the right to rescind their contracts, within seven calendar days following the postmark date on the electric utility's confirmation notice:
- (1) By calling the electric utility at the designated local or toll-free number
 - (2) By written notice to the electric utility, which is effective as of the date of the postmark.

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(F) Contract renewals

- (1) The provisions of this paragraph apply to all—residential and small commercial contracts that contain automatic renewal clauses except those which renew on a month-to-month basis.
- (2) For contracts that contain an early termination or cancellation option with no fee for early termination or cancellation, the CRES provider shall, in a separate notice, notify customers of such expiration at least forty-five calendar days, but not more than ninety calendar days, in advance of the contract expiration date. Such notice shall accurately describe or highlight any changes and state that the customer contract will renew at the specified 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.
 - (a) The notice shall be made by separate mailing (envelope or postcard), the front cover of which shall state: "Important notice regarding your electric 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.
 - (c) The renewal period for contracts with renewal provisions shall not exceed the initial contract period.
- (3) For contract renewals that contain an early termination or cancellation option with a fee of twenty-five dollars or less for early termination or cancellation, the CRES provider shall provide the customer with two separate notices that accurately describe or highlight any changes and state that the customer contract will renew at the specified rate unless the customer affirmatively cancels the contract. Such notices must clearly and accurately describe in understandable language 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 calendar days, but no more than ninety calendar days in advance of the contract expiration date. The second notice may be in writing in accordance with paragraphs (F)(2)(a) to (F)(2)(c) of this rule, by telephone,

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by a notice on the customer's monthly bill, or by ~~electronic~~ mail. The second notice shall be provided at least thirty-five calendar days in advance of the contract expiration and must contain the rate at which the customer contract will renew, or in the case of a variable rate, the applicable formula.

- (a) In the event that the CRES provider provides the second notice by telephone, the CRES provider or 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 4901:1-21-06 of the Administrative Code.
 - (b) In the event that the CRES provider provides the second 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 CRES provider provides the second notice by ~~electronic mail~~ e-mail, the notice must:
 - (i) State "Important notice regarding your electric service contract" in the subject area of the message.
 - (ii) Be from an ~~electronic mail~~ e-mail address that is readily identifiable as the CRES provider.
 - (iii) Include a receipt returned to the sender which confirms that the addressee has opened the document.
 - (d) This paragraph shall not apply to contract renewals which renew on a month-to-month basis.
- (4) For contract renewals that contain an early termination or cancellation option with a fee greater than twenty-five dollars for early termination or cancellation or which contain no option for early termination or cancellation, the CRES provider shall notify the customer of any 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 4901:1-21-06 of the Administrative Code. In addition, the CRES provider shall notify the customer that no response will result in the customer automatically reverting to the electric utility unless the customer chooses another CRES provider. The notice shall be provided at least forty-five

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calendar days, but not more than ninety calendar days in advance of the contract expiration date, and comply with paragraphs (F)(2)(a) to (F)(2)(c) of this rule. This paragraph shall not apply to contract renewals which renew on a month-to-month basis.

- (G) The CRES provider shall furnish written notice to residential and small commercial customers of pending contract expiration between forty-five and ninety calendar days before the contract expires. Such notice shall be made by separate mailing (envelope or postcard), or by conspicuously placed bill message or bill insert. The front cover of such mailing shall contain the following statement: "Important notice regarding your electric service contract's expiration." This notice may be combined with a renewal notice specified in paragraph (F) of this rule. This paragraph does not apply to the expiration of contract periods of one month or less.

If the contract does not contain an automatic renewal clause, the notice shall include a statement that the customer will automatically default to the electric utility's standard offer service if the customer does not re-enroll with the current CRES provider or enroll with another CRES provider.

- (H) No CRES provider contract shall limit a residential or small commercial customer's right to make formal or informal complaints to the commission. A CRES provider shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution.

4901:1-21-12 Contract disclosure.

- (A) All competitive retail electric service (CRES) provider customer contracts shall include, but not be limited to, the following information:
- (1) A notification that the electric utility may charge switching fees to the customer.
 - (2) A notification that the customer has the right to request from the CRES provider, twice within a ~~twelve-month~~ twelve-month period, up to twenty-four months of the customer's payment history without charge.
- (B) All CRES provider contracts with residential and small commercial customers shall include, but not be limited to, the following information (to be stated in clear and understandable language):

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- (1) The CRES provider'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.
- (2) The services to be provided by the CRES provider and those to be provided by the electric utility, including which entity will bill for those services.
- (3) The number of days a customer has to cancel such contract without penalty and the methods for customers to make such cancellation by contacting the electric utility (orally, electronically, and in writing).
- (4) The respective policies, procedures, and any penalties for contract termination by the CRES provider and by the customer after the cancellation period.
- (5) A notification that the CRES provider may terminate the contract on at least fourteen calendar days written notice should the customer fail to pay the bill or fail to meet any agreed-upon payment arrangements.
- (6) The customer's right to terminate the contract without penalty in one of the following circumstances:
 - (a) If the customer moves outside the CRES provider's service area or into an area where the CRES provider charges a different price.
 - (b) If the contract allows the CRES provider to terminate the contract for any reason other than the customer's failure to pay or the occurrence of a force majeure event, including but not limited to, a change in any governing law or regulation that physically prevents or legally prohibits the CRES provider from performing under the terms of the contract.
- (7) An itemized list and explanation of all prices and fees associated with the service such that:
 - (a) For fixed-rate offers, such information shall, at minimum, include the cost per kilowatt hour for generation service; ~~the amount of any other recurring or nonrecurring CRES provider charges, and a statement that the customer will incur additional service and delivery charges from the electric utility, and, if applicable, transmission service.~~
 - ~~(b) For percent off discounted rates, an explanation of the discount and the basis on which any discount is calculated.~~

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- ~~(b)–(c)~~ For variable-rate offers, either of the following options: such information shall, at minimum, include: 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; for discounted rates, an explanation of the discount and the basis on which any discount is calculated; the amount of any other recurring or nonrecurring CRES provider charges; and a statement that the customer will incur additional service and delivery charges from the electric utility.
- ~~–(i)~~ A clear and understandable formula, based on publicly available indices or data that the CRES provider will use to determine the rate that will be charged. In the event that the CRES provider chooses to follow this option, the indices or data on which the price is based must be clearly identified in the contract terms and conditions.
- ~~–(ii)~~ 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. In the event that the CRES provider chooses to follow this option, then no early termination fee may be charged.
- ~~–(8)~~ The amount of any other recurring or nonrecurring CRES provider charges and a statement that the customer will incur additional service and delivery charges from the electric utility.
- ~~(8)–(9)~~ The terms and conditions of service, including any restrictions, limitations, contingencies, or conditions precedent associated with the service or product offered,
- ~~(9)–(10)~~ Procedures for handling complaints and disputes, including the following statement:
- "If your complaint is not resolved after you have called your electric supplier and/or your electric utility, or for general utility information, residential and business customers may contact the Public Utilities Commissionpublic utilities commission of Ohio (PUCO) for assistance at 1-800-686-7826 (toll free) or for TTY at 1-800-686-1570 (toll free) from 8:00eight a.m. to 5:00five p.m. weekdays, or at http://www.puco.ohio.gov. www.PUCO.ohio.gov.
- ~~(10)–(11)~~ "Residential customers may also contact the The Ohio Consumers' Counselconsumers' counsel (OCC) represents residential utility customers in

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- matters before the PUCO. The OCC can be contacted for assistance with complaints and utility issues at 1-877-742-5622 (toll free) from 8:00 eight a.m. to 5:00 five p.m. weekdays, or at ~~www.pickocc.org~~<http://www.pickocc.org>."
- ~~(11)~~ (12) _____ Billing intervals and any late payment fees.
- ~~(12)~~ (13) _____ Contract duration, including the estimated starting and expiration dates and a commitment that service shall begin with the next available meter reading after processing of the request by the electric utility and the CRES provider;
- ~~(13)~~ (14) _____ If the contract contains an automatic renewal provision and the terms of such provision do not require the customer's affirmative consent, a conspicuous, highlighted statement indicating that the CRES provider can renew this contract without the customer's affirmative consent even when there is a change in the rate or other terms and conditions.
- ~~(14)~~ (15) _____ Any credit, deposit, and collection procedures, including terms and conditions associated with the return of any deposit at the time of contract termination.
- ~~(15)~~ (16) _____ For generation service contracts, an incorporation by reference of information (accompanying the contract) regarding the approximate generation resource mix and environmental characteristics of the power supplies.
- ~~(16)~~ (17) _____ Who will bill for the CRES provider's service(s).
- ~~(17)~~ (18) _____ A notification that the CRES provider is prohibited from disclosing a customer's social security number and/or account number(s) without the customer's consent except for the CRES provider's own collections and credit reporting, participation in programs funded by the universal service fund pursuant to section 4928.52 of the Revised Code, or assigning a customer contract to another CRES provider;
- ~~(18)~~ (19) _____ A statement informing customers that if they switch back to (name of electric utility) they may or may not be served under the same rates, terms, and conditions that apply to other customers served by the electric utility.
- ~~(19)~~ (20) _____ A statement indicating to the customer whether the CRES provider offers budget billing for the generation portion of the bill.

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~~(20)~~ ~~(21)~~ A statement informing customers that the failure to pay electric utility charges may result in the customer being disconnected in accordance with the electric utility tariff.

~~(22)~~ If, due to a change in market conditions, the CRES provider wishes to lower price per kWh charged to the customer under an existing contract, it may do so without consent provided there are no other changes to the terms and conditions to the contract.

4901:1-21-13 Net metering contracts.

"No Staff Changes Proposed"

- (A) An electric services company providing retail electric generation service may offer net metering to its customers by developing a contract for net metering that is consistent with the requirements of rules 4901:1-21-11 and 4901:1-21-12 of the Administrative Code. Such contract shall be made available upon request to qualifying customer generators.
- (1) A qualifying customer generator is one whose generating facilities are:
- (a) Fueled by solar, wind, biomass, landfill gas, or hydropower, or use a microturbine or a fuel cell.
 - (b) Located on a customer generator's premises.
 - (c) Operated in parallel with the electric utility's transmission and distribution facilities.
 - (d) Intended primarily to offset part or all of the customer generator's requirements for electricity.
- (2) Notwithstanding paragraph (A)(1) of this rule, a hospital, as defined in section 3701.01 of the Revised Code, may become a qualifying customer generator by meeting the requirements of paragraphs (A)(1)(b) and (A)(1)(c) of this rule.
- (3) Net metering arrangements shall be made available regardless of the date the customer's generating facility was installed.
- (B) Net metering shall be accomplished using a single meter capable of registering the flow of electricity in each direction. A customer's existing single-register

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meter that is capable of registering the flow of electricity in both directions satisfies this requirement. If the customer's existing electrical meter is not capable of measuring the flow of electricity in two directions, the customer generator shall be responsible for all expenses involved in purchasing and installing such a meter.

4901:1-21-14 Customer billing and payments.

- (A) This rule applies to competitive retail electric service (CRES) bills that do not include any electric utility charges. Requirements for consolidated billing appear in rule 4901:1-21-18 of the Administrative Code.
- (B) A CRES provider may bill customers directly for competitive retail electric services or arrange for the electric utility to bill customers for such services according to a tariff approved by the commission.
- (C) Residential and small commercial customer bills issued by or for CRES providers shall be accurate and understandable, be rendered at monthly intervals consistent with those of the customer's electric utility, and contain sufficient information for customers to compute and compare the total cost of competitive retail electric service(s). Such bills shall also include:
 - (1) The customer's name, billing address, service address, electric utility account number, and, if applicable, the CRES account number.
 - (2) The dates of service covered by the bill, an itemization of each type of competitive service covered by the bill, any related billing components, the charge for each type of service, and any other information the customer would need to recalculate the bill for accuracy.
 - (3) The applicable billing determinants, including beginning meter reading(s), ending meter reading(s), demand meter reading(s), multiplier(s), consumption(s), and demands.
 - (4) For customer generators with net-metering contracts, a statement of the net-metered generation.
 - (5) The unit price per kilowatt hour charged for competitive service, as calculated by dividing the current-period competitive service charges by the current-period consumption.
 - (6) An identification of the provider of each service appearing on the bill.

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- (7) A notice in boldface type containing clear explanation for any change of providers, rates, terms, or conditions of service. Such notice shall appear on the first two consecutive bills following the occurrence of any such changes, excluding the first billing after the starting date of competitive retail electric service.
- (8) 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, any nonrecurring charges, and the total amount due and payable.
- (9) The due date for payment to keep the account current. Such due date shall be no less than:
 - (a) Fourteen calendar days after the postmark date on the bill for residential customers. For residential bills issued from outside the state of Ohio the due date shall not be less than twenty-one calendar days after the postmark date.
 - (b) Twenty-one calendar days after the postmark date on the bill for nonresidential customers.
- (10) The current balance of the account, if a residential customer is billed according to a budget plan.
- (11) Options and instructions on how customers may make their payments.
- (12) For each provider whose charges appear on the bill, a listing of the provider's toll-free telephone number and address for customer billing questions or complaints.
- (13) The following notice:

"If your complaint is not resolved after you have called (name of CRES provider), or for general utility information, residential and business customers may contact the Public Utilities Commission public utilities commission of Ohio (PUCO) for assistance at 1-800-686-7826 (toll free) ~~or for TTY at 1-800-686-1570 (toll free)~~ from 8:00 eight a.m. to 5:00 five p.m. weekdays, or at http://www.puco.ohio.govwww.PUCO.ohio.gov. Hearing or speech impaired customers may contact the PUCO via 7-1-1 (Ohio relay

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service).

~~Residential customers may also contact the~~ The Ohio Consumers' Counsel
consumers' counsel (OCC) represents residential utility customers in matters
before the PUCO. The OCC can be contacted for assistance with complaints
and utility issues at 1-877-742-5622 (toll free) from 8:00~~eight~~ a.m. to 5:00~~five~~
p.m. weekdays, or at ~~www.pickocc.org~~<http://www.pickocc.org>."

- (14) The applicable electric utility's twenty-four hour local or toll-free numbers for reporting service emergencies.
- (15) An identification of estimated bills or bills not based upon actual end-of-period meter readings for the period.
- (16) An explanation of any codes and abbreviations used.
- (D) If applicable, each CRES provider shall, upon request, provide customers with the name and street address/location of the nearest payment center and/or authorized payment agent.
- (E) If applicable, 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.
- (F) Each CRES provider shall establish policies and procedures for handling billing disputes and requests for payment arrangements.
- (G) Each CRES provider shall credit any customer partial payments in the following order:
 - (1) Billed and past due CRES provider charges.
 - (2) Billed and due current CRES provider charges.
 - (3) Other past due and current ~~non-regulated~~ non-regulated charges.
- Budget billing payments and payments in full of the undisputed amount related to a bona fide dispute do not constitute partial payments. Payments made on accounts for which there is a bona fide dispute shall be credited to the undisputed portion of the account.
- (H) Any CRES provider wishing to issue billing statements online shall comply with the following guidelines:

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- (1) A customer shall not be required to use online billing.
- (2) No enrollment or usage fees shall be assessed to a customer who chooses to receive bills and/or customer information online.
- (3) The online billing statement shall include all requirements listed in paragraph (C) of this rule.
- (4) The CRES provider shall maintain a secure and encrypted site that is to be accessed only by the customer of record after completing a secure registration process.
- (5) Any fees to accept online payments shall be clearly disclosed in payment window(s).
- (6) Any payment made online shall be treated as a payment made at the company's business office and shall be posted to the account in accordance with paragraph (E) of this rule. The time needed to post the payment to the account shall be clearly stated.
- (7) If a customer chooses to use online billing, the customer shall not be restricted to making payments online in the future. All payment methods shall continue to be available to the customer.

4901:1-21-15 Noncompliance with rules or orders.

"No Staff Changes Proposed"

- (A) Any competitive retail electric service (CRES) provider that fails to comply with Chapter 4928. of the Revised Code, any rule in this chapter, or any 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 ten thousand dollars for each such failure. Each day's continuance of the violation is a separate offense.
 - (2) Suspension, rescission, conditional rescission, or revocation of the CRES provider's certificate or denial of a request for renewal of a certificate.
 - (3) Rescission of a customer contract.
 - (4) Restitution or damages to the customer/consumer.

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- (B) Enforcement of any rule in this chapter or any commission order adopted thereunder will be conducted in accordance with Chapter 4901:1-23 of the Administrative Code.

4901:1-21-16 Formation and operation of an opt-out governmental aggregation.

- (A) Prior to applying for certification from the commission, a governmental aggregator seeking to form an opt-out aggregation shall complete all of the requirements specified in divisions (A) to (C) of section 4928.20 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 4928.20 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 4928.20 of the Revised Code.
- (B) The operation and governance plan adopted shall detail the services to 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 to similar services provided by competitive suppliers. The governmental aggregator shall write the plan in clear and plain language so that customers can easily understand it. The plan shall, at a minimum, contain all of the following:
- (1) A detailed description of services that the governmental aggregator is to provide under the aggregation, 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, including the applicable surcharge that may be charged to customers pursuant to division (I) of section 4928.20 of the Revised Code.
 - (3) A description of the process that the governmental aggregator will use to notify customers if the governmental aggregator chooses to implement division (J) of section 4928.20 of the Revised Code, including a description of the potential impact on the customers in the aggregation program.
 - (4) A detailed description of the governmental aggregator's plan for providing the required opt-out disclosure notices to customers. The plan shall describe

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the steps that the governmental aggregator will take to ensure that all eligible customers residing within the governmental aggregator's boundaries are notified. The plan shall also identify the time frames associated with the opt-out disclosure notice.

- (5) A detailed description of the process for developing the pool of customer accounts that will be included in the aggregation, including the steps that the governmental aggregator will take to identify and exclude from the pool customers who have opted out of the aggregation and customers that are otherwise ineligible.
- (6) A detailed description of the governmental aggregator's opt-out process and opt-out methodologies. The process shall include provisions for customers to opt out, including returning a postcard or similar notice to the governmental aggregator. The process may include, in addition, other opt-out methods, such as telephonic or internet notice, provided that these alternative methods allow for verification of a customer's election to opt out of the aggregation.
- (7) A detailed description of the customer classes that the governmental aggregator intends to include in its aggregation pool.
- (8) 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.
- (9) A listing of any credit or deposit procedures and policies that the governmental aggregator will employ in the event the customer fails to pay its bill(s).
- (10) 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 TTY numbers number and telephone number through which hearing and speech impaired customers may contact the Commission. These procedures and processes shall comply with the requirements specified in rule 4901:1-21-08 of the Administrative Code.
- (11) A detailed description of the policies associated with a customer moving into the aggregation or within the aggregation where the electric utility considers the customer that is moving to be a new customer. If the policies

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provide that these customers will be automatically included in the aggregation, the governmental aggregator shall provide the customer an opportunity to opt out of the aggregation in accordance with the procedures set forth in rule 4901:1-21-17 of the Administrative Code.

- (12) 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 electric utility. A customer in these circumstances shall 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 4901:1-21-17 of the Administrative Code.
- (13) A description of the governmental aggregator's policies regarding the ability of a customer who has 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 materially affects 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 4901:1-21-17 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.
- (E) Notwithstanding paragraph (D) of this rule, if a governmental aggregator elects not to receive standby service from the electric utility under an approved electric security plan during the term of the governmental aggregation program pursuant to division (J) of section 4928.20 of the Revised Code, the governmental aggregation shall not alter its governmental aggregation program in a manner that would require conducting an additional opt-out for the duration of its governmental aggregation program.
- (F) No governmental aggregator shall send an opt-out disclosure notice to potential customers of an aggregation prior to the governmental aggregator being

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certified by the commission as a competitive retail electric service provider.

4901:1-21-17 Opt-out disclosure requirements.

"No Staff Changes Proposed"

- (A) Prior to including a customer's electric account or accounts in an aggregation, a governmental aggregator shall provide each 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, written in plain language, 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 electric generation service. If the price is a fixed rate, the governmental aggregator shall express the price in cents per kilowatt hour. If the governmental aggregator offers a variable rate, the governmental aggregator shall provide an understandable description of the factors that will cause the price to vary (including any associated indices) and disclose how frequently the rate will change. If the governmental aggregator charges different rates to different rate classes within the aggregation, the governmental aggregator shall disclose the applicable rate(s) to customers within each rate class.
 - (4) An itemized list and explanation of all fees and charges that are not incorporated into the rates charged for electricity generation that the governmental aggregator will charge to the customer for participating in the aggregation, including any early termination penalties and any surcharges, or portions thereof, that may be assessed pursuant to division (I) of section 4928.20 of the Revised Code. The 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 governmental aggregation program, including an estimated service commencement date, and notice that the customer may opt out of the aggregation at least every three years without penalty.

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- (6) A statement informing customers that choose to opt out of the governmental aggregation program prior to the commencement of the governmental aggregation program that they will be served by the standard service offer established pursuant to section 4928.14 of the Revised Code or until the customer chooses an alternative supplier of electric service.
- (7) A statement informing customers that, if they switch back to (name of electric utility), they may not be served under the same rates, terms, and conditions that apply to other customers served by the electric utility.
- (8) If the governmental aggregator elects not to receive standby service from the electric utility under an approved electric security plan during the term of the governmental aggregation program pursuant to division (J) of section 4928.20 of the Revised Code, a statement informing customers that any customer returning to the electric utility after the commencement of the governmental aggregation program will pay the market price of power incurred by the electric utility to serve that consumer plus the amount attributable to the electric utility's compliance with the alternative energy resource provisions of section 4928.64 of the Revised Code, unless such customer becomes ineligible pursuant to paragraph (E)(1)(a) or (E)(1)(g) of this rule, or any customer who moves within the aggregation boundaries where the electric utility considers the customer that is moving to be a new customer.
- (9) Disclosure of any credit and/or deposit policies and requirements.
- (10) Disclosure of any limitations or conditions on customer acceptance into the aggregation.
- (11) 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 postcard or similar notice to the governmental aggregator or its agent. The process may include, in addition, other opt-out methods, such as telephonic or internet notice, provided that these alternative methods allow 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 postmark on the written notice. If a customer's return postcard or notice is postmarked before the opt-out deadline has elapsed, the customer shall be deemed to have opted out of the aggregation.

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- (12) A local or toll free telephone number, with the available calling hours, that customers may call with questions regarding the formation or operation of the aggregation.
- (B) At least every three years from the establishment of its governmental aggregation program, a governmental aggregator shall provide notice to all customers served by the governmental aggregation of their right to opt out of the aggregation and take service pursuant to the electric utility's standard service offer 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. The governmental aggregator shall not send an opt-out notice to the same customer account during the period covered by the aggregation where such customer account has previously opted out.
- (C) No governmental aggregator or electric services company serving a governmental aggregation may 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 customers at the time the customer chose not to opt out of the aggregation.
- (D) List of eligible governmental aggregation customers.
- (1) To assist in the preparation and dissemination of required opt-out notices, a governmental aggregator that is certified by the commission shall request that an electric utility provide, for all customers residing within the governmental aggregator's boundaries, including those customers who have opted off the pre-enrollment list, the following information:
- (a) An updated list of names, addresses, account numbers, rate codes, percentage of income payment plan codes, load data, and other related customer information, consistent with the information that is provided to other CRES providers.
- (b) An identification of customers who are currently in contract with an electric services company or in a special arrangement with the electric utility.
- (c) On a best efforts basis, an identification of mercantile customers.
- (2) The governmental aggregator shall use the list of eligible aggregation

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customers to distribute its opt-out notices within thirty calendar days of the date the list is received from the electric utility.

- (3) The governmental aggregator shall remove from its list of eligible aggregation customers the accounts of customers who appear on the commission's "do not aggregate" list sixty calendar days prior to the distribution of its opt-out notice.
 - (4) The governmental aggregator shall not, without the customer's consent or an appropriate order, disclose or use for any purpose, other than formation and operation of its aggregation, a customer's account number, social security number, or any information regarding customers who opted off of an electric utility's pre-enrollment list. Before a governmental aggregator releases any customer account number, service delivery identification number, or any information related to a customer who has opted off of an electric utility's pre-enrollment list for any purpose other than those specified in this rule, unless the release is pursuant to a court or commission order, the governmental aggregator shall obtain the customer's written consent or electronic authorization. Before a governmental aggregator releases a customer's social security number for any purpose other than those specified in this rule, unless the release is pursuant to a court order, the governmental aggregator shall obtain the signature of the customer on a written release. The release shall be on a separate form. 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 aggregator) to release the information set forth above. By my signature, I freely give (name of aggregator) permission to release the 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) Notice of governmental aggregation and opt-out notice.
- (1) Each governmental aggregator shall ensure that only eligible customers are included in its aggregation. For purposes of this rule, the following customers are not eligible and shall not be included in an aggregation:

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- (a) A customer that is not located within the governmental aggregator's boundaries.
 - (b) A customer who appears on the commission's "do not aggregate" list.
 - (c) A customer that has opted out of the aggregation.
 - (d) A customer in contract with a certified electric services company other than the current supplier of the governmental aggregation.
 - (e) A customer that has a special arrangement with the electric utility.
 - (f) A mercantile customer that has not provided affirmative consent to join the aggregation.
 - (g) A customer who enrolls in the percentage of income payment plan pursuant to section 4928.52 of the Revised Code.
- (2) If accounts of customers who appear on the commission's "do not aggregate" list, accounts from outside the governmental aggregator's governmental boundaries, accounts of customers who have opted out of the aggregation, accounts of customers in contract with an electric services company, accounts of customers with a special arrangement under Chapter 4901:1-38 of the Administrative Code, or accounts of mercantile customers who did not opt into the governmental aggregation are switched to the governmental aggregation, the governmental aggregator shall promptly inform the customer and take all necessary actions to have the customer switched back to the customer's former service provider. In addition, if the customer's former rate was less than the rate charged by the governmental aggregator, then the governmental aggregator 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.
- (3) If a customer is enrolled in a governmental aggregation program at the time the customer first appears on the "do not aggregate" list, the governmental aggregator shall remove the customer from the governmental aggregation program at the next opt-out opportunity that is available to the customer under section 4928.20 of the Revised Code.
- (4) If a mercantile customer was enrolled in an opt-out governmental aggregation program that the mercantile customer subsequently became

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ineligible for, the governmental aggregator shall remove the mercantile customer from the governmental aggregation program at the next opt-out opportunity that is available to the customer under section 4928.20 of the Revised Code unless that mercantile customer affirmatively consents to remain in the governmental aggregation program.

- (F) The governmental aggregator shall docket with the commission's docketing division the final opt out and any supplemental opt outs no more than thirty days but no less than ten days prior to sending the opt outs to customers. The notice to the commission shall include the beginning and ending dates of the twenty-one day opt-out period and the identification of the selected CRES provider.
- (G) Upon its election for its customers to not receive standby service from the electric utility pursuant to the electric utility's approved electric security plan for those customers who return to the electric utility during the governmental aggregation program, a governmental aggregator shall file written notice with the commission and the electric utility. Such notice shall explain the process that the governmental aggregator will use to notify customers, including a description of the potential impact on customers in the aggregation program.

4901:1-21-18 Consolidated billing requirements.

- (A) This rule applies to a competitive retail electric service (CRES) provider that issues customers a consolidated electric bill that includes both electric utility and CRES provider charges for electric services. Nothing in this rule affects the obligations of the electric utility to provide disconnection notices.
- (B) A supplier agreement between an electric utility and a CRES provider must provide that if the CRES provider collects customer payments on behalf of the electric utility, the customer's liability to the electric utility ceases to the extent of the payment made and applicable to the customer's account.
- (C) Consolidated bills shall be accurate, rendered at monthly intervals, and shall contain clear and understandable form and language. All consolidated customer bills issued by or on behalf of an electric utility and a CRES provider must include at least the following information:
 - (1) The customer's name, billing address, and service address.
 - (2) The electric utility's twenty-four hour, local or toll-free number for reporting

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- service emergencies.
- (3) The dates of the service period covered by the bill.
 - (4) Current electric charges, separated from gas charges, if these charges appear on the same bill, but only to the extent that the biller provides both electric and gas services.
 - (5) Applicable billing determinants: beginning meter read, ending meter read, demand meter read, multipliers, consumption, and demand.
 - (6) Identification of estimated bills.
 - (7) Any nonrecurring charge(s).
 - (8) Net-metered usage for customer generators, if applicable.
 - (9) Each charge for ~~non-tariffed~~ non-tariffed and/or ~~nonregulated~~ non-regulated service or product, if applicable, and the name and toll-free number of each provider of such service(s).
 - (10) Amount due for previous billing period.
 - (11) Total payments, late payment charges or gross/net charges, and total credits applied during the billing period.
 - (12) Total consolidated amount due and payable, or, if applicable, the total consolidated budget bill amount.
 - (13) Due date for payment to keep the account current. The due date for residential bills shall not be less than fourteen calendar days from the date of postmark. For residential bills being issued from outside the state of Ohio the due date shall not be less than twenty-one calendar days.
 - (14) Name and address of company to whom payments should be made.
 - (15) The following notice:

"If your complaint is not resolved after you have called your electric supplier and/or your electric utility, or for general utility information, residential and business customers may contact the public utilities commission of Ohio (PUCO) for assistance at 1-800-686-7826 (toll free) from eight a.m. to five p.m. weekdays, or at <http://www.puco.ohio.gov>. Hearing or speech

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impaired customers may contact the PUCO via 7-1-1 (Ohio relay service).

The Ohio consumers' counsel (OCC) represents residential utility customers in matters before the PUCO. The OCC can be contacted at 1-877-742-5622 (toll free) from eight a.m. to five p.m. weekdays, or at <http://www.pickocc.org>."

- (16) An explanation of codes and abbreviations used.
 - (17) At a minimum, definitions for the following terms, or like terms used by the company, if applicable: customer charge, delivery charge, estimated reading, generation charge, kilowatt hour (kWh), shopping incentive or shopping credit, late payment charge, and transition charge.
 - (18) The price-to-compare for residential bills and a notice that such customers can obtain a written explanation of the price-to-compare from their electric utility.
- (D) In addition to the information required pursuant to paragraph (C) of this rule, each consolidated bill issued must include, in that portion of the bill which details the charges from the electric utility, at least the following information:
- (1) Electric utility account number.
 - (2) Applicable rate schedule.
 - (3) A numerical statement of the customer's historical consumption for each of the preceding twelve months, and both the total and average consumption for such twelve-month period.
 - (4) Specific tariffed charges to the extent applicable: customer charge, delivery charge, transition charge, shopping incentive or shopping credit, and other conceptually similar tariffed charges.
 - (5) If the customer is on a budget plan with the electric utility only, the monthly budget amount and current balance of electric utility account.
 - (6) Current charges.
 - (7) The electric utility's local or toll-free number and address for questions and complaints.
- (E) In addition to the information required pursuant to paragraph (C) of this rule,

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each consolidated bill issued must include, in that portion of the bill which details the charges from the CRES provider, at least the following information:

- (1) Customer's CRES account number, if different from the electric utility account number.
 - (2) To the extent applicable, itemization for each charge including: for fixed-price offers, the unit price per kWh for competitive service; for all other offers for electric generation service, an explanation of how the rate is derived; and any other information the customer would need to recalculate the bill for accuracy.
 - (3) If the customer is on a budget plan with the CRES provider only, the monthly budget amount and the current balance of the CRES account.
 - (4) Current charges.
 - (5) A highlighted notice of any change in rates, terms, or conditions appearing on the first two consecutive bills following the occurrence of any such changes and a clear explanation of each change.
- (F) Consolidated bill format. Any new consolidated bill format proposed by a CRES provider shall be filed with the commission for approval. If an application for a consolidated bill format is not acted upon by the commission within forty-five days after it is filed, the consolidated bill format shall be deemed approved on the forty-sixth day after filing.
- (G) Transfer of customer billing information.
- (1) The non-billing electric utility shall furnish the applicable required bill content information to the billing party in a timely manner and in a mutually agreed upon electronic format for inclusion in the consolidated customer bill.
 - (2) The billing CRES provider shall include in the consolidated bill all required bill content information furnished by the nonbilling electric utility.
 - (3) An entity ordered by the commission to provide any bill content, message, insert, or notice remains responsible to provide such information to its customers, although the information may be provided through the consolidated bill.

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(H) Partial payment priority.

- (1) A customer's partial payment shall be credited in the following order:
 - (a) Billed and past due CRES provider charges or, if applicable, CRES provider payment arrangement or past due CRES provider budget billing.
 - (b) Billed and past due electric utility distribution, standard offer generation, and transmission charges or, if applicable, electric utility payment arrangement or past due electric utility budget billing.
 - (c) Billed and due current electric utility distribution and transmission charges or current electric utility budget billing.
 - (d) Billed and due current CRES provider charges or current CRES provider budget billing.
 - (e) Other past due and current ~~nonregulated~~ non-regulated charges, excluding CRES charges.
- (2) Exceptions to the partial payment priority.
 - (a) Payments in full of the undisputed amount related to a bona fide dispute do not constitute partial payments. Payments made on accounts for which there is a bona fide dispute shall be credited to the undisputed portion of the account.
 - (b) If a customer pays an agreed-upon electric utility and/or CRES budget payment amount, then that payment shall be considered payment in full for the current bill.
- (I) Upon the customer's switch from a CRES provider, the billing party shall identify for the customer and state on the bill as of what date the billing party will no longer remit payments to the previous CRES provider and any outstanding balance due to the previous CRES provider.
- (J) Any CRES provider wishing to issue consolidated billing statements online shall comply with the following guidelines:
 - (1) A customer shall not be required to use online billing.
 - (2) No enrollment or usage fees shall be assessed to a customer who chooses to

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receive bills and/or customer information online.

- (3) The online billing statement shall include all requirements listed in paragraphs (C), (D), and (E) of this rule.
- (4) The CRES provider shall maintain a secure and encrypted site that is to be accessed only by the customer of record after completing a secure registration process.
- (5) Any fees to accept online payments shall be clearly disclosed in payment window(s).
- (6) Any payment made online shall be treated as a payment made at the company's business office and shall be posted to the account in accordance with paragraph (E) of rule 4901:1-21-14 of the Administrative Code. The time needed to post the payment shall be clearly stated.
- (7) If a customer chooses to use online billing, the customer shall not be restricted to making payments online in the future. All payment methods shall continue to be available to the customer.

4901:1-24-01 Definitions.

"No Staff Changes Proposed"

As used in this chapter:

- (A) "Abandonment" means ceasing to provide competitive retail electric service(s) to one or more classes of customers in one or more electric distribution service territories prior to the expiration of customers' contracts.
- (B) "Aggregation" means combining the electric load of multiple retail customers through an agreement with the customers or formation of a governmental aggregation pursuant to section 4928.20 of the Revised Code for the purposes of purchasing retail electric generation service on an aggregated basis.
- (C) "Aggregator" means a person, certified by the commission, who contracts with customers to combine the customers' electric load for the purpose of purchasing retail electric generation service on an aggregated basis. The term, as used in this chapter, does not include a governmental aggregator.
- (D) "Applicant" means a person who files an application for certification or

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certification renewal under this chapter.

- (E) "Application form" means a form, approved by the commission, that an applicant seeking certification or certification renewal as a competitive retail electric service provider shall file with the commission as set forth in this chapter.
- (F) "Billing and collection agent" shall have the meaning set forth in division (A)(2) of section 4928.01 of the Revised Code.
- (G) "Certified territory" shall have the meaning set forth in division (A)(3) of section 4928.01 of the Revised Code.
- (H) "Competitive retail electric service" (CRES) has the meaning set forth in division (A)(4) of section 4928.01 of the Revised Code, and includes the services provided by retail electric generation providers, power marketers, power brokers, aggregators, and governmental aggregators.
- (I) "Commission" means the public utilities commission of Ohio.
- (J) "CRES provider" means a person or entity, under certification by the commission who supplies or offers to supply a CRES.
- (K) "Electric cooperative" shall have the meaning set forth in division (A)(5) of section 4928.01 of the Revised Code.
- (L) "Electric distribution utility" shall have the meaning set forth in division (A)(6) of section 4928.01 of the Revised Code.
- (M) "Electric services company" shall have the meaning set forth in division (A)(9) of section 4928.01 of the Revised Code.
- (N) "Electric utility" shall have the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (O) "Filing under seal" means personally delivering to the commission's docketing division a sealed envelope containing information intended to be kept proprietary and confidential. This action must be accompanied by the filing and docketing of a "motion for protective order," pursuant to rule 4901-1-24 of the Administrative Code.
- (P) "Governmental aggregator" shall have the meaning set forth in division (A)(13) of section 4928.01 of the Revised Code.

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- (Q) "Mercantile customer" shall have the meaning set forth in division (A)(19) of section 4928.01 of the Revised Code.
- (R) "Person" shall have the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.
- (S) "Power broker" means a person, certified by the commission, who provides power brokerage.
- (T) "Power brokerage" means assuming the contractual and legal responsibility for the sale and/or arrangement for the supply of retail electric generation service to a retail customer in this state without taking title to the electric power supplied.
- (U) "Power marketer" means a person, certified by the commission, who provides power marketing services.
- (V) "Power marketing" means assuming the contractual and legal responsibility for the sale and provision of retail electric generation service to a retail customer in this state and having title to electric power provided at some point during the transaction.
- (W) "Retail electric generation provider" means a person, certified by the commission, who provides retail electric generation service in this state.
- (X) "Retail electric generation service" means the provision of electric power to a retail customer in this state through facilities provided by an electric distribution utility and/or a transmission entity in this state. The term encompasses the services performed by retail electric generation providers, power marketers, and power brokers, but does not encompass the service provided by an electric utility pursuant to sections 4928.141, 4928.142, and 4928.143 or division (D) of section 4928.35 of the Revised Code.
- (Y) "Service agreement" means the initial agreement and any amendments or supplements thereto entered into by the applicant and any provider of a service necessary to transport, schedule, and deliver CRES to the retail customer (e.g., transmission service, ancillary services, scheduling coordination, and distribution service).
- (Z) "Small commercial customer" means a commercial customer that is not a mercantile customer.

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(AA) "Staff" means the commission staff or its authorized representative.

4901:1-24-02 Purpose and scope.

Under the rules in this chapter:

- (A) Any electric utility, electric services company, electric cooperative, or governmental aggregator which intends to offer or provide a competitive retail electric service (CRES) to consumers in this state shall obtain a certificate to operate from the commission prior to commencing operations.
- (B) An electric cooperative or governmental aggregator that is a municipal electric utility which provides a customer both a CRES and a ~~non-CRES~~ ~~non-CRES~~ through transmission or distribution facilities it solely or jointly owns or operates is not required to obtain a certificate.
- (C) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.
- (D) 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 an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent that the agent is under contract with such utility, company, cooperative, or aggregator solely to provide billing and collection for retail electric service on behalf of the utility, company, cooperative, or aggregator. Nothing in this rule exempts such utility, company, cooperative, or aggregator from liability for the acts of its billing and collection agents.

4901:1-24-03 General prohibitions.

- (A) No person shall offer, contract, or provide a competitive retail electric service in this state without a valid certificate.
- (B) Nothing in this rule is intended to prohibit a person from conducting market research or advertisements designed solely to ascertain and raise customer awareness and/or improve name recognition.

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(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.

4901:1-24-04 Filing of an application.

Beginning on the effective date of this chapter, each application for certification or certification renewal shall be assigned a new case number in sequential order as the case is received, beginning with XX-7000 by the commission's docketing division.

4901:1-24-05 Application content.

(A) An application for certification shall be made on forms supplied 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 and its ability to comply with commission rules or orders adopted pursuant to Chapter 4928. of the Revised Code.

(B) The applicant shall complete the appropriate application form (e.g., retail electric generation provider, aggregator, power 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 electric generation providers and power 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) Financial capability as depicted in publicly available information, balance sheets, credit ratings, and other relevant financial information including:

(i) Financial Exhibit 1.

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- (ii) Financial Exhibit 2.
 - (iii) Financial Exhibit 3.
 - (d) Technical ability and experience in scheduling and providing power under contract agreements.
 - (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 choice program; if applicant's certification has ever been revoked or suspended; if applicant has ever been in default for failure to deliver; or if there is pending legal action against applicant or past rulings finding against the applicant.
- (2) Aggregators and power brokers shall file general, 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 including:
 - (i) Financial Exhibit 1.
 - (ii) Financial Exhibit 2.
 - (iii) Financial Exhibit 3.
 - (c) Managerial 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.

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- (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 in accordance with the application instructions, the required number of 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 4901:1-24-06 of this chapter, 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 any competitive retail electric 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.

4901:1-24-06 Affidavits.

Application approval or denial. 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, gross earnings, and sales of kilowatt-hours of electricity pursuant to division (A) of section 4905.10, division (A) of section 4911.18, and division (F) of section 4928.06 of the Revised Code.
- (C) The applicant will timely pay any assessment made pursuant to sections 4905.10, 4911.18, or division (F) of section 4928.06 of the Revised Code.

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- (D) The applicant will comply with all applicable commission rules or orders adopted pursuant to Chapter 4928., 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 4928.09 of the Revised Code regarding consent to the jurisdiction of Ohio courts and the service of process.

4901:1-24-07 Motions.

- (A) Motions filed by an applicant (e.g., motions for extension of the certificate and motions for protective order) must be filed by an attorney authorized to practice law in the State of Ohio.
- (B) An out-of-state attorney may seek permission to appear pro hac vice before the commission in any activity of a case upon the filing of a motion. Motions shall include all of the information and documents required by rule XII, section 2(a)(6) of the "Supreme Court Rules for the Government of the Bar" of Ohio.

4901:1-24-08 Protective orders.

- (A) An applicant may file Exhibit C-3 Financial Statements, Exhibit C-4 Financial Arrangements, and Exhibit C-5 Forecasted Financial Statements under seal. If these exhibits are filed under seal, they will be afforded protective treatment for a period of six years from the date of the certificate for which the information is being provided..
- (B) An applicant may file a motion for a protective order covering information not covered under paragraph (A) of this rule. If the motion is filed in conformance with rule 4901:1-27-07 of the Administrative Code, it shall be automatically approved on the thirty-first day after the date of filing and the information shall be afforded protective treatment for a period of six years from the date of the certificate for which the information is being provided, unless the commission or an attorney examiner appointed by the commission, rules otherwise.
- (C) At the expiration of the six-year period provided for in paragraphs (A) and (B) of this rule, the information will be automatically released into the open record.(D) An applicant wishing to extend a protective order beyond the six-

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year time period provided for in paragraphs (A) and (B) of this rule must comply with paragraph (F) of rule 4901:1-24 of the Administrative Code.

4901:1-24-09 Certification renewal.

- (A) No less than thirty and no more than sixty calendar days prior to the expiration date indicated on the competitive retail electric service provider's certificate, the provider shall file an application with the commission for certification renewal on forms supplied by the commission.
- (B) Any renewal application filed fewer than thirty calendar days prior to the expiration date indicated on the certificate, but no later than the expiration date on the certificate, shall be filed with a motion requesting a thirty-day extension of the expiration date of the current certificate. If the motion is filed in conformance with rules 4901:1-24-07 or 4901:1-24-13 of the Administrative Code, it shall be deemed automatically approved unless, within three business days of its filing, the commission or an attorney examiner appointed by the commission rules otherwise.
- (C) The applicant shall, as instructed by the application form, update and describe any material changes, as set for the in paragraph (B) of rule 4901:1-24-11 of the Administrative Code, to the information supplied with an applicant's initial or any certification application, whichever is most recent.
- (D) If an applicant fails to file a timely renewal application or an application along with a motion for an extension of the current unexpired certificate, an applicant is prohibited from acquiring new customers until a new certificate is issued.

4901:1-24-10 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 4928.08 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 an application.
 - (2) If the commission, or an attorney examiner appointed by the commission, has acted to suspend an application, the commission will:

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- (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 calendar days from the date that the application was suspended.
 - (c) At its discretion, set the matter for hearing.
- (B) In evaluating an application, the commission will consider the information contained in the applicant's application, supporting attachments and evidence, and recommendations of its staff.
- (C) The commission will act to approve an application if it finds that all of the following are true:
 - (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 of complying with all applicable commission rules and orders.
 - (3) The applicant is able to provide reasonable financial assurances sufficient to protect electric distribution utility companies and the regulated sales service customers from default.
- (D) When the commission approves an application, it will notify the applicant that its application has been approved and will issue the applicant a numbered certificate that specifies 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 competitive retail electric service provider's initial or renewal certificate is valid for a period of two years, beginning and ending on the dates specified on the certificate.
- (F) If the commission acts to deny, in whole or in part, an application, it will 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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4901:1-24-11. Material changes to business operations.

- (A) Competitive retail electric service (CRES) providers shall inform the commission of any material change to the information supplied in a certification or certification renewal application within thirty calendar days of such material change.
- (1) A CRES provider shall file such notice under the docket number assigned to the CRES provider'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 electric distribution utility 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 CRES provider's certificate if it determines that the material change will adversely affect the CRES provider's fitness or ability to provide the services it is certified to provide; or to provide reasonable financial assurances sufficient to protect the EDU and the regulated sales service customers from default.
- (B) Material changes to the information contained in or supplied with a certification or certification renewal application include, but are not limited to, the following:
- (1) Any significant change in ownership (being an ownership interest of five percent or more) of the applicant or CRES provider.
 - (2) An affiliation or change in affiliation with an electric utility in this state.
 - (3) Assignment of a portion of the customer base and contracts of a retail natural gas supplier or governmental aggregator to another public utility in this state.
 - (4) Retirement or other long-term changes to the operational status of generation resources relied upon by the provider to provide retail electric generation service.
 - (5) Revocation, restriction, or termination of any interconnection or service agreement with a transmission entity or electric utility relied upon by a CRES provider to provide retail electric generation service.

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- (6) The applicant or CRES provider's bond rating falls below "BBB- as reported by Standard & Poor's", or below "Baa3" as reported by "Moody's Investors Service".
- (7) The applicant or CRES provider has or intends to file for reorganization, protection from creditors, or any other form of bankruptcy with any court.
- (8) Any judgment, finding, or ruling by a court or regulatory agency that could affect a CRES provider's fitness or ability to provide service in this state.
- (9) Any change in the contact person, business address, or telephone/fax number for staff use in investigating complaints.
- (10) Any change in the contact person, business address, or telephone/fax number for staff use in investigating regulatory or emergency matters.
- (11) Any change in the business address, or toll-free telephone/fax number for customer service and complaints.

4901:1-24-12 Transfer or abandonment of a certificate.

- (A) A competitive retail electric service (CRES) provider shall not transfer its certificate to any person without prior commission approval.
 - (1) A CRES provider 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 acts to suspend or reject the application.
- (B) A CRES provider shall not abandon the service(s) it provides under a certificate without filing an abandonment application and without commission approval. The CRES provider shall fulfill the terms of all existing contracts with customers or assign such contracts to another CRES provider prior to abandoning service.
 - (1) Abandonment applications shall be filed at least ninety calendar days prior to the effective date on which the CRES provider will cease providing service. 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 calendar days prior to abandoning service, a CRES provider shall provide written notice to each electric utility in whose certified

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territory the CRES provider operates of its intent to cease providing service. That notice shall reflect that the CRES provider has filed an abandonment application with the commission.

- (3) At least ninety calendar days prior to abandoning service, a CRES provider shall provide written notice to its customers and the office of the Ohio consumer's counsel of its intent to abandon service. Such notice shall indicate the CRES provider'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 should identify the commission's toll-free number as well as the number through which hearing and speech impaired customers may contact the Commission. That notice shall also provide instructions to the customers on how they may obtain replacement service(s).
- (4) The CRES provider shall also 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 CRES provider is billing the customers, the CRES provider shall provide notice of its abandonment. Where the EDU is providing billing, the CRES provider may negotiate with the EDU to provide such notice of its abandonment on each billing statement rendered to existing customers. Abandonment notices shall begin at least ninety calendar days prior to the effective date of the abandonment and shall continue to provide such notice on all subsequent monthly billing statements until the service is abandoned.
- (5) If the commission does not act upon the application within ninety calendar days of the filing date, the application shall be deemed automatically approved on the ninety-first day after the official filing date.

4901:1-24-13 Certification suspension, rescission, or conditional rescission.

- (A) After notice and the opportunity for a hearing, the commission may, upon its own motion or upon complaint, suspend, rescind, or conditionally rescind a competitive retail electric service (CRES) provider's certificate, in whole or in part, for good cause shown.
- (B) If the commission suspends a CRES provider's certificate:
 - (1) The commission will notify the CRES provider of the reasons and effective

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dates for such suspension and specify the actions, including associated time frames, that the CRES provider must take in order to have the suspension lifted.

- (2) The CRES provider 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 CRES to existing customers nor advertise, offer, or contract to provide any CRES 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.

(C) If the commission conditionally rescinds a CRES provider's certificate:

The commission will delineate the specific conditions that the CRES provider must meet and establish a date by which the conditions must be met in order for the CRES provider to avoid permanent rescission of its certificate. Unless otherwise ordered by the commission, the CRES provider 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 CRES to existing customers nor advertise, offer, or contract to provide any CRES to potential customers during the pendency of the conditional rescission.

(D) If the commission rescinds a CRES provider's certificate:

- (1) The commission will notify the CRES provider of the reasons for and effective date of such rescission.
- (2) Upon the effective date specified by the commission, a CRES provider whose certificate has been rescinded shall cease providing all CRES for which it is no longer certified to provide.
- (3) Prior to the effective date of the certificate rescission, a CRES provider that provides retail electric generation service to customers shall cooperate fully with each electric utility in whose certified territory it provides such service to ensure that its customers will be served by another CRES provider or by the electric utility on and after the effective date of the certificate rescission.
- (4) Prior to the effective date of the certificate rescission, a CRES provider whose certificate has been rescinded shall provide a written notice to each of

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its customers that indicates that the CRES provider's 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 EDU prior to customer dissemination. Such notice shall also inform customers that, if they do not choose an alternative provider, they will be served by their electric utility and shall provide instructions on how they can obtain service from an alternative CRES provider.

(E) Reasons that the commission may suspend, rescind, or conditionally rescind a CRES provider's certificate include, but are not limited to:

- (1) A CRES provider's failure to timely pay any assessment made pursuant to sections 4905.10, 4911.18, or division (F) of section 4928.06 of the Revised Code.
- (2) A CRES provider's failure to timely file an annual report of its intrastate gross receipts and sales of kilowatt-hours of electricity pursuant to sections 4905.10, 4911.18, or division (F) of section 4928.06 of the Revised Code as directed by commission rule or order.
- (3) A finding by the commission that a CRES provider has materially underreported its intrastate gross receipts and/or sales of kilowatt-hours on reports required by rule 4901:1-24-07 of this chapter.
- (4) A finding by the commission that any information reported to the commission subsequent to granting a certificate adversely affects a CRES provider's fitness or capability to provide any service covered by its certificate.
- (5) A finding by the commission that a CRES provider deliberately omitted information or knowingly provided false information on a certification or certification renewal application, including supporting attachments.
- (6) A finding by the commission that a CRES provider has provided CRES to a customer without being certified by the commission to provide such service.
- (7) A finding by the commission that a CRES provider has violated any applicable commission rule or order adopted pursuant to Chapter 4928. of the Revised Code.
- (8) A finding by the commission that a CRES provider has failed to consent to the jurisdiction of the courts of this state or has failed to designate an agent

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to accept service of process pursuant to section 4928.09 of the Revised Code.

- (9) A finding by the commission that a CRES provider has engaged in an anticompetitive act.
 - (10) A finding that a CRES provider has failed to maintain appropriate default security or has otherwise failed in a material way to adhere to requirements contained in an electric utility's tariff governing supplier requirements approved by the commission.
 - (11) A finding by the commission that a CRES provider 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 CRES provider has failed to maintain an Ohio office and an employee in this state, in accordance with section 4929.25 of the Revised Code.
- (F) In the event of a material default as defined by a CRES provider's tariff or by an agreement between the EDU and the CRES provider:
- (1) The CRES provider shall serve written notice of such default in reasonable detail and with a proposed remedy to the CRES provider and the commission.
 - (2) On or after the date the default notice has been served, the EDU may file with the commission a written request for authorization to terminate or suspend the CRES provider from participation with the EDU's supplier program.
 - (3) If the material default is due to reasons other than under delivery or non delivery, and if the commission, or an attorney examiner, does not issue an entry to suspend or reject that action proposed by the EDU within ten business days after receipt of the request, the EDU's request to terminate or suspend shall be deemed authorized on the eleventh business day.
 - (4) If the default is due to under delivery or non delivery and, if the commission, or an attorney examiner, does not act within five business days after receipt of the request, the EDU's request to terminate or suspend shall be deemed authorized on the sixth business day.

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- (5) Notwithstanding paragraphs (F)(2) and (3) of this rule, terminations or suspensions from an EDU's supplier program shall require authorization from the commission.
- (6) The EDU 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 EDU shall notify all commissioners, the chief of staff, the director of the services 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 EDU shall send the notice to the address, email, and fax number provided by the CRES provider.

4901:1-24-14 Financial security.

- (A) Pursuant to a tariff filed with the commission in accordance with rule 4901:1-10-29 of the Administrative Code, an electric utility may require a retail electric generation service provider to issue and maintain a financial instrument with the electric utility to protect the electric utility in the event that the retail electric generation service provider fails, in whole or in part, to deliver contracted retail generation service to a customer for which the electric utility supplied to the customer in its capacity as default supplier.
- (B) An electric utility may require a retail electric generation service provider to furnish financial and other information contained in its tariff to determine the type and/or amount of the financial instrument required for compliance with paragraph (A) of this rule.
- (C) If a retail electric generation service provider fails to maintain sufficient financial security to protect an electric utility from default by the retail electric generation service provider, the electric utility may apply for relief at the commission. In accordance with rule 4901:1-24-12 of the Administrative Code, the commission, upon its own motion or upon complaint, may suspend, rescind, or conditionally rescind a retail electric generation service provider's certificate for failure to maintain sufficient financial security at any electric utility as required by this rule.

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4901:1-24-15 Regulatory assessments.

- (A) In accordance with sections 4905.10, 4911.18, and division (F) of section 4928.06 of the Revised Code, each competitive retail electric service (CRES) provider is subject to an annual assessment based upon its intrastate gross receipts or gross earnings (collectively "gross revenue") associated with the provision of each CRES which it is certified to provide.
- (B) Each CRES provider that provides retail electric generation 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 kilowatt-hours of electricity. For the purpose of the report, sales of kilowatt-hours of electricity are deemed to occur at the meter of a retail customer.
- (C) Each CRES provider that provides a CRES(s) in addition to, or other than, retail electric generation service 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 kilowatt-hours of electricity are deemed to occur at the meter of a retail customer.
- (D) Each CRES provider 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 CRES provider underreports its gross revenue, the commission may, in computing an assessment made pursuant to paragraph (A) of 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 provider interest on the amount underreported at the rate stated in section 1343.01 of the Revised Code.
- (F) A governmental aggregator may authorize its electric services company, or a designated agent, to file, on its behalf, any report required by this rule.

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4901:1-24-16 Noncompliance with rules or orders.

In addition to penalties specified in rule 4901:1-24-12 of the Administrative Code, any person subject to certification under section 4928.08 of the Revised Code that fails to comply with any rule in this chapter or with sections 4928.01 to 4928.10 of the Revised Code or any commission order issued thereunder may be subject to any and all remedies available under the law, including but not limited to the following:

- (A) Forfeiture to the state of not more than ten thousand dollars for each failure. Each day's continuance of the violation is a separate offense.
- (B) Rescission of a customer contract.
- (C) Restitution or damages to the customer/consumer.

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CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Elizabeth Stevens, Legal Director
Phone: 614-466-0122 Fax: 614-728-8373
Elizabeth.stevens@puc.state.oh.us

Regulation/Package Title: Chapter 4901:1-21 / Competitive Retail Electric Service
(CRES) Companies

Rule Number(s): 4901:1-21-01, 4901:1-21-02, 4901:1-21-03, 4901:1-21-04,
4901:1-21-05, 4901:1-21-06, 4901:1-21-07, 4901:1-21-08,
4901:1-21-09, 4901:1-21-10, 4901:1-21-11, 4901:1-21-12,
4901:1-21-13, 4901:1-21-14, 4901:1-21-15, 4901:1-21-16,
4901:1-21-17, 4901:1-21-18

Date: October 24, 2012

Rule Type:

- | | |
|---|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |
| | <input checked="" type="checkbox"/> No Change |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

- 1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.**

Chapter 4901:1-21, Ohio Administrative Code (O.A.C.), governs the furnishing of competitive retail electric service to the public by any such companies subject to the Public Utilities Commission of Ohio's (PUCO) jurisdiction. Specifically, this chapter, inter alia, sets forth the requirements for marketing and solicitation, customer enrollment, credit and deposit procedures, billings, customer information, consumer protections, notification of customer rights, meter reading, quality and adequacy of service, customer bill format, and payment responsibilities.

The proposed changes to this chapter include non-substantive amendments, addition of definitions to Rule 4901:1-21-01, O.A.C., modifications of discount rates disclosures in Rule 4901:1-21-02, O.A.C., requirements to follow local ordinances in Rule 4901:1-21-05, O.A.C., modification of the procedures for customer enrollment in Rule 4901:1-21-06, O.A.C., expansion of provisions to contracts with small commercial companies in Rule 4901:1-21-11, O.A.C., modification of the contract disclosure provisions of Rule 4901:1-21-12, O.A.C., and modification of the provisions relating to customer billing and payments contained within Rules 4901:1-21-14 and 4901:1-21-18, O.A.C.

- 2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

All of the proposed rules in Chapter 4901:1-21, O.A.C., will be adopted in accordance with the authority granted to the PUCO in Sections 44905.04, 4905.22, 4928.06, 4928.08, 4928.10, 4928.20, 4928.53, and 4928.67, Revised Code.

- 3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

If yes, please briefly explain the source and substance of the federal requirement.

No rule in this chapter implements a federal requirement or is being adopted or amended to enable Ohio to obtain or maintain approval to administer or enforce a federal law.

- 4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

- 5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The rules in this chapter establish standards to be met by companies that provide competitive retail electric service to Ohio residential and business consumers.

- 6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The PUCO can monitor complaints from the competitive retail electric service providers and their customers through staff interaction and the PUCO's call center.

Development of the Regulation

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. If applicable, please include the date and medium by which the stakeholders were initially contacted.**

On July 2, 2012, in Case No. 12-1924-EL-ORD, the PUCO ordered a workshop be held for all interested parties to provide feedback on the existing rules on August 6, 2012. Copies of the entry scheduling the workshop were sent by US Mail and e-mail to (a) all regulated competitive retail electric service companies, (b) the office of the Ohio Consumers' Counsel (OCC), (c) the Ohio Partners for Affordable Energy (OPAЕ), (d) the regulated electric utility companies, and (e) any other interested persons of record. The workshop was held and broadcasted via webcast with multiple parties providing suggestions and input on the existing rules. Thirty-two individuals were in attendance at the August 6, 2012, workshop including representatives from Retail Energy Supply Association (RESA), Dayton Power and Light Company, Columbia Gas, American Coalition for Clean Coal Energy, Duke Energy Ohio, American Electric Power (AEP), FirstEnergy Ohio, FirstEnergy Solutions, Duke Energy Retail, Dominion East Ohio Gas, OPAЕ, OCC, Dominion Retail, and Direct Energy.

In addition to the workshop, the PUCO's existing rule review process will provide parties the opportunity to file written comments and reply comments on any proposed changes to the draft rules.

- 8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

All Companies were supportive of measures to make Rules 4901:1-21 and 4901:1-29, O.A.C. (governing competitive retail natural gas service), more consistent with each other. The companies support a move from calendar day deadlines to business day deadlines throughout

both sets of rules. The companies also support the implementation of 100 percent use of third-party verifications for enrollments in Rule 4901:1-21-06, O.A.C. The companies were in support of stronger rules for door-to-door solicitations, and a separate rule section for these solicitations in Rule 4901:1-21-05, O.A.C. Specifically, some of the companies suggested that the rules prohibit solicitations after dark, prohibit misleading of residents, and require background checks on agents. Staff implemented these suggestions into the proposed rules to the extent possible.

Direct Energy suggested “loosening up” the contract renewal provisions in Rule 4901:1-21-11, O.A.C. Additionally, Direct Energy suggested removal of the requirement of disclosure of kilowatt-hour rates in Rule 4901:1-21-12, O.A.C. Staff is waiting for further comment on this recommendation before acting.

Duke Energy Ohio recommended increased notification of mass marketing campaigns by the suppliers. Staff is waiting for further comment on this recommendation before acting.

Dominion Retail suggested reconsideration of the environmental disclosure rules in Rule 4901:1-21-09, O.A.C., so that the process could be paperless to the greatest extent possible. Staff is waiting for further comment on this recommendation before acting.

FirstEnergy Solutions commented that the process in Rule 4901:1-21-06, O.A.C., requiring return of the customer’s signature in direct mail enrollments is unduly burdensome. FirstEnergy Solutions also suggested that the time frame in Rule 4901:1-21-06, O.A.C., for responding to electronic enrollment be changed from three calendar days to five business days. FirstEnergy Solutions also requested changes be made to the contract renewal provisions in Rule 4901:1-21-1, O.A.C., to make them less convoluted. Staff implemented the deadline changes recommended by FirstEnergy Solutions, but is waiting for further written comments on the other recommendations via the PUCO’s rule process before acting.

Dominion East Ohio suggested a limit be placed on the maximum number of rates any supplier could offer. Duke Energy supported this suggestion. Dominion further recommended modifying the definition of “eligible customer” in Rule 4901:1-21-16, O.A.C., to utilize the date of customer enrollment with a supplier rather than the date an ordinance or resolution is passed in determining customer eligibility. Finally, Dominion suggested that the requirement in Rule 4901:1-21-17, O.A.C., that the companies advise customers of their right to opt-off customer lists four times a year be changed to two times a year. The definition of eligible customer was deemed appropriate by staff, but the other suggestions were not acted upon pending further written comment.

RESA recommended a working definition of “small commercial” be included in Rule 4901:1-21-01, O.A.C. RESA further recommended making the document retention schedules in Rule 4901:1-21-11, O.A.C., more amenable to going paperless. Staff is amenable to these suggestions, but is waiting on further comment.

AEP suggested that telephone enrollments under Rule 4901:1-21-06, O.A.C., should be allowed only with the customer of record. Direct Energy responded by suggesting that, if that rule is to go into effect, the electric distribution utility should be required to disclose all information relating to the customer of record and authorized decision makers. The company also requested a definition of “generation service” be added to Rule 4901:1-21-01, O.A.C. Further, the company requested improved customer information protections under Rule 4901:1-21-10, O.A.C., so that a supplier would be required to announce itself on a three-way call with a customer. Finally, AEP recommended that identification be placed on aggregator opt-out envelopes in Rule 4901:1-21-17, O.A.C. Staff is not opposed to these recommendations, but is waiting for further written comment from the shareholders.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

No proposed rules in this chapter were based on scientific data.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

No alternative regulations were considered because the provision of competitive retail electric service is a capital intensive industry. Therefore, more stringent regulation is appropriate in order to provide adequate consumer protection. Accordingly, the PUCO adopted rules that it considers best suited to meet these goals.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

No performance-based regulations were considered because the provision of competitive retail services is a capital intensive industry requiring stringent regulation in order to provide adequate consumer protections to the public. Accordingly, the PUCO does not believe that performance-based regulation is appropriate for this chapter.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Chapter 4901:1-21, O.A.C., does not duplicate the rules of other state entities, as the jurisdiction for these companies falls squarely under the PUCO per Ohio Revised Code Title 49.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Upon completion of the rulemaking process, the rule changes made in Chapter 4901:1-21, O.A.C., will be attached to the PUCO's finding and order and served on all regulated competitive retail electric service companies, OCC, electric distribution utilities, and any other interested person of record.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Chapter 4901:1-21, O.A.C., applies to competitive retail electric service companies that are subject to PUCO jurisdiction.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The rules impact the identified business community in that there is a cost of compliance with the training and supervision of the company sales staff and ensuring that billing is done in accordance with consumer protection provisions of the state of Ohio.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The impact in terms of time will, in most instances, be small. For example, only when there is a series of complaints that demonstrate a trend toward noncompliance will the PUCO require action on the part of the company that is not a standard part of the costs of training a sales staff, and conducting the basic accounting procedures required of any company.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The PUCO is the only state agency charged with ensuring that regulated companies provide adequate, competitive retail electric service at a fair price and with consumer protections.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. The rules address the procedures required in order protect the consumers of Ohio. However, the regulated companies are allowed substantial latitude in complying with the rules. It is only when incidents of non-compliance have occurred that the PUCO may require specific actions.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The focus of PUCO regulation is ensuring that all regulated competitive retail electric service providers provide adequate competitive retail electric service at just and reasonable rates, and with consumer protections. The focus is not on seeking penalties for first-time paperwork offenses. To that end, the PUCO will fully comply with Section 119.14, Revised Code, and would not seek to recover administrative fines or civil penalties on any small business for a first-time paperwork violation unless such violation falls within one of the exceptions set

forth in paragraph (C) of that section. Further, the PUCO would provide due process to the small company.

18. What resources are available to assist small businesses with compliance of the regulation?

The PUCO staff routinely works with small regulated competitive retail electric service companies to assist such companies with Chapter 4901:1-21, O.A.C., compliance.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Elizabeth Stevens, Legal Director
Phone: 614-466-0122 Fax: 614-728-8373
elizabeth.stevens@puc.state.oh.us

Regulation/Package Title: Chapter 4901:1-24 / Minimum Requirements for
Competitive Retail Electric Service (CRES) Certification.

Rule Number(s): 4901:1-24-01, 4901:1-24-02, 4901:1-24-03, 4901:1-24-04,
4901:1-24-05, 4901:1-24-06, 4901:1-24-07, 4901:1-24-08,
4901:1-24-09, 4901:1-24-10, 4901:1-24-11, 4901:1-24-12,
4901:1-24-13, 4901:1-24-14, 4901:1-24-15, and 4901:1-24-16.

Date: October 24, 2012

Rule Type:

- | | |
|---|---|
| <input checked="" type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |
| | <input type="checkbox"/> No Change |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

19. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.

Chapter 4901:1-24, Ohio Administrative Code (O.A.C.), sets forth the requirements for any electric utility, electric services company, electric cooperative, or governmental aggregator that intends to offer or provide a competitive retail electric service (CRES) to consumers in Ohio. Specifically, the chapter outlines the application process, the standards for application approval or denial, applicant responsibility for financial security, requirements for certification renewal, notification requirements for material changes in certificate information, transfer or abandonment of a certificate, and the PUCO's authority to suspend, rescind, or conditionally rescind a certificate.

Staff renumbered the subsections within this Chapter in order to be consistent with the rules regarding competitive retail natural gas service certification contained in Chapter 4901:1-29, O.A.C. The proposed changes to Chapter 4901:1-24, O.A.C., include the addition of a rule to facilitate docketing administration when filing a certificate under Rule 4901:1-24-04 O.A.C., rules regarding admissions pro hac vice in Rule 4901:1-24-07, O.A.C., rules regarding protective orders in Rule 4901:1-24-08, O.A.C., additional rules within Rule 4901:1-24-09, O.A.C., regarding certification renewal paralleling the PUCO's authority in Rule 4901:1-24-13, O.A.C., to suspend, rescind, or conditionally rescind a certificate, and addition of rules regarding assignment of a portion of a customer base to the list of material changes requiring PUCO notification. The suggested rules will increase the size of Chapter 4901:1-21, O.A.C., to sixteen rules.

20. Please list the Ohio statute authorizing the Agency to adopt this regulation.

All of the proposed rules contained in Chapter 4901:1-24, O.A.C., will be adopted in accordance with the authority granted to the PUCO in Sections 4928.06, 4928.08, 4905.10 and 4911.18, Revised Code.

21. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No rule in this chapter implements a federal requirement or is being adopted or amended to enable Ohio to obtain or maintain approval to administer or enforce a federal law.

22. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

23. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The rules in this chapter establish the standards required by Sections 4928.06 and 4928.08, Revised Code, for applicants to be certified as competitive retail electric service providers.

24. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The PUCO can monitor complaints from the applicant competitive retail electric service providers and their customers through staff interaction and the PUCO's call center.

Development of the Regulation

25. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.*

On July 2, 2012, in Case No. 12-1924-EL-ORD, the PUCO ordered a workshop be held on August 6, 2012, in order for interested parties to provide feedback on the existing rules in Chapter 4901:1-24, O.A.C. Copies of the entry scheduling the workshop were sent by US Mail and e-mail to (a) all regulated competitive retail electric service companies, (b) the office of the Ohio Consumers' Counsel (OCC), (c) the Ohio Partners for Affordable Energy (OPAE), (d) the regulated electric utility companies, and (e) any other interested persons of record. The workshop was held and broadcasted via webcast with multiple parties providing suggestions and input on the existing rules. Thirty-two individuals were in attendance at the August 6, 2012, workshop including representatives from Retail Energy Supply Association (RESA), Dayton Power and Light, Columbia Gas, American Coalition for Clean Coal Energy, Duke Energy Ohio, American Electric Power, FirstEnergy Ohio, FirstEnergy Solutions, Duke Energy Retail, Dominion East Ohio Gas, OPAE, OCC, Dominion Retail, and Direct Energy.

In addition to the workshop, the PUCO's existing rule review process will provide parties the opportunity to file written comments and reply comments on any proposed changes to the draft rules.

26. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The stakeholders contributing to the workshop discussion were all in support of staff's proposal to make the certification processes uniform for both the competitive retail electric service industry and competitive retail natural gas service industry to the extent possible. Dominion East Ohio Gas requested that Rule 4901:1-24-12, O.A.C., be amended to require the PUCO to provide notice to incumbent utilities when the PUCO suspends, rescinds, or conditionally rescinds a certificate under this Chapter. Dominion also suggested that the PUCO limit the number of certificates under Rule 4901:1-24-06, O.A.C., to one participant or affiliate per company. Direct Energy opposed this suggestion by Dominion, responding that companies have legitimate business reasons to request multiple certificates under Rule 4901:1-24-06, O.A.C. *(NOTE: The numbers listed identify the provisions in the current rules where changes were suggested. The chapters were renumbered in the drafting or the proposed rules.)*

The Attorney Examiners present at the workshop made clear that the workshop was in addition to, and not a substitute for, the PUCO's established rule review process.

27. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

No specific scientific data was used to develop this chapter; rather the certification of competitive retail electric service providers is required by sections 4928.06 and 4928.08, Revised Code.

28. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The certification of competitive retail electric service providers under Chapter 4901:1-24, O.A.C., is specifically mandated by Sections 4928.06 and 4928.08, Revised Code, thus regulatory alternatives were not available.

29. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The certification of competitive retail electric service providers under Chapter 4901:1-24, O.A.C., is specifically mandated by Sections 4928.06 and 4928.08, Revised Code, thus performance-based regulation is inappropriate for this chapter.

30. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The certification of competitive retail electric service providers under Chapter 4901:1-24, O.A.C., is specifically mandated by Sections 4928.06 and 4928.08, Revised Code; thus, the determination as to whether Sections 4928.06 and 4928.08, Revised Code, duplicated an existing Ohio regulation was performed by the Legislative Service Commission.

31. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Upon completion of the rulemaking process, the rule changes made in Chapter 4901:1-24, O.A.C., will be attached to the PUCO's finding and order and served on all regulated competitive retail electric service companies, OCC, electric distribution utilities, and any other interested person of record.

Adverse Impact to Business

32. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Chapter 4901:1-24, O.A.C., establishes minimum managerial, technical, and financial standards for competitive retail electric service companies that are subject to PUCO jurisdiction.

- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

Rule 4901:1-24-04, O.A.C., has no application fees; however, there is a cost of compliance because the competitive retail electric service companies that are subject to PUCO jurisdiction must devote time to complete the application.

- c. Quantify the expected adverse impact from the regulation.**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

The hours and costs for an applicant to compile a certification application including ownership and organizational descriptions, managerial experience and capabilities, balance sheets, credit ratings, and other relevant financial information will vary depending upon the size of the supplier and the service areas in which supplier intends to operate.

- 33. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

Chapter 4901:1-24, O.A.C., directly reflects the requirements of Sections 4928.06 and 4928.08, Revised Code. Further, Staff's proposed changes to the chapter are not substantive and are not contrary to legislative intent.

Regulatory Flexibility

- 34. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

No. Chapter 4901:1-24, O.A.C., reflects the legislative intent of Sections 4928.06 and 4928.08, Revised Code, and sets forth certification requirements for all competitive retail electric service providers in order to do business in Ohio.

35. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The focus of Chapter 4901:1-24, O.A.C., is to ensure that competitive retail electric service providers are certified to do business in Ohio. The focus is not on seeking penalties for first-time paperwork offenses. Fines or penalties for violation of this chapter may only be ordered by the PUCO after notice and hearing. The PUCO will fully comply with Section 119.14, Revised Code, and will not seek to recover administrative fines or civil penalties on any small business for a first-time paperwork violation unless such violation falls within one of the exceptions set forth in paragraph (C). Further, the PUCO would provide due process to the small company.

36. What resources are available to assist small businesses with compliance of the regulation?

The PUCO staff routinely works with small regulated competitive retail electric service companies to assist such companies with Chapter 4901:1-24, O.A.C., compliance.