

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's)
Review of its Rules for Competitive)
Retail Natural Gas Service Contained in) Case No. 12-925-GA-ORD
Chapters 4901:1-27 Through 4901:1-34 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 natural gas service rules contained in Chapters 4901:1-27 through 4901:1-34, of the Ohio Administrative Code. (O.A.C.).
- (2) Section 119.032(C), Revised Code, requires that the Commission determine:
 - (a) Whether the rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
 - (b) Whether the rules need amendment or rescission to give more flexibility at the local level;
 - (c) Whether the rules need amendment to eliminate unnecessary paperwork; and
 - (d) Whether the rules duplicate, overlap with, or conflict with other rules.
- (3) In addition, on January 10, 2011, the governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt

to balance the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative, unintended consequences, or unnecessarily impede business growth.

- (4) 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 (BIA). 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.
- (5) The Commission's Staff has evaluated the rules contained in Chapters 4901:1-27 through 4901:1-34, O.A.C., as well as the comments received at the workshop held in this proceeding on August 6, 2012, and recommends amendments to several rules as shown in the attachment to this entry. A summary of the proposals is as follows:
 - (a) Throughout the rules contained in Chapters 4901:1-27 through 4901:1-34, O.A.C., Staff recommends various nonsubstantive changes intended to simplify and clarify language and to provide greater clarity in the organization of the rules.
 - (b) Staff recommends an addition to Rule 4901:1-27-04, O.A.C., to specify that an applicant for certification must specify whether there is any pending legal action against the applicant, or a past ruling finding against the applicant.
 - (c) Staff proposes adding sections to Chapter 4901:1-27, O.A.C., that clarify the procedure for the filing of motions by attorneys authorized to practice law in Ohio.
 - (d) Staff recommends, in Chapter 4901:1-27, O.A.C., that certain exhibits containing financial information be automatically granted protective treatment for a period of six years.

- (e) In Chapter 4901:1-27, O.A.C., Staff recommends that renewal applications be filed under a new case number.
- (f) Staff recommends that Chapter 4901:1-27, O.A.C., provide that, if a renewal application is filed fewer than 30 calendar days prior to the expiration date indicated on the certificate, it be filed with a motion requesting an extension of the expiration date which will be automatically approved, unless suspended, within three business days.
- (g) Staff proposes that Rule 4901:1-29-05, O.A.C., specifically include language prohibiting companies from engaging in direct solicitation of customers without complying with all applicable ordinances and laws of the customer's jurisdiction and knowingly taking advantage of a customer's inability to reasonably protect his/her interests because of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement in the definition of misleading, deceptive, or unconscionable acts or practices.
- (h) Staff recommends amending Rule 4901:1-29-05, O.A.C., to clarify the third-party verification process to ensure the validity of a customer's enrollment, including the requirements that: the retail natural gas supplier's or governmental aggregator's solicitor must leave the premises of a customer when requested to do so by the customer or the owner or occupants of the premises; the retail natural gas suppliers or governmental aggregators must remove a customer's name from the marking/sales database upon the customer's request; and the process where the customer and retail natural gas supplier or governmental aggregator agree to a material change to an existing contract must be clarified.
- (i) Staff recommends amending Rule 4901:1-29-09, O.A.C., to provide clarification regarding when a retail natural gas supplier or governmental

aggregator can disclose a customer's account number or social security number.


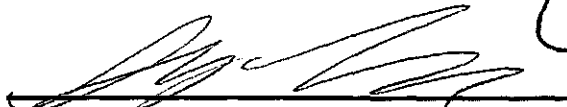
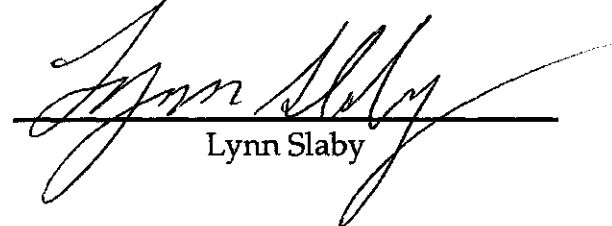
- (j) Amendments to Rules 4901:1-29-11 and 4901:1-29-12, O.A.C., reflect changes approved by the Commission in *In the Matter of the Amendment of Certain Rules of the Ohio Administrative Code to Implement Section 4911.021, Revised Code*, Case No. 11-4910-AU-ORD.
- (6) In addition, based on feedback received at the workshop held on August 6, 2012, as well as concerns raised by Staff, we pose the questions raised in Attachment A, for interested parties to address as part of their comments on the rules.
- (7) Attachments A through C, which contain the questions, Staff's proposed changes to Chapters 4901:1-27 through 4901:1-34, O.A.C., and the BIAs, are posted at: www.puco.ohio.gov/puco/rules. To minimize the expense of this proceeding, the Commission will serve a paper copy of only this entry. All interested persons are directed to download the attachments to this entry from the above website or to contact the Commission's Docketing Division to request a paper copy.
- (8) 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 should be filed, via electronic filing or in hard copy, by January 7, 2013. Reply comments should be filed by February 6, 2013.
- (9) As a final matter, we note that the rules for competitive retail electric service (CRES) 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 proposals explained above in finding (6)(c) through (f). Accordingly, we direct that a copy of this entry and attachments be served on all electric distribution utilities and all CRES providers so that they can provide comments on the procedural changes contained in Staff's recommended rule amendments.

It is, therefore,

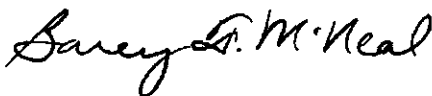
ORDERED, That all interested persons or entities wishing to file comments or reply comments with the Commission regarding Attachments A through C do so no later than January 7, 2013, and February 6, 2013, respectively. It is, further,

ORDERED, That a copy of this entry be served upon all regulated gas, natural service gas and electric companies, all competitive retail gas suppliers and electric service suppliers, the Ohio Consumers' Counsel, the Ohio Gas Association, Ohio Petroleum Council, and the Ohio Oil and Gas Association in accordance with finding (7).

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman
Steven D. Lesser
Andre T. Porter
Cheryl L. Roberto
Lynn Slaby

KLS/dah

Entered in the Journal
NOV 07 2012Barcy F. McNeal
Secretary

1. The Commission noted in *In the Matter of the Complaint of Buckeye Energy Brokers, Inc., v. Palmer Energy Company*, Case No. 10-693-GE-CSS (10-693), that there may be ambiguity in Chapter 4901:1-29, O.A.C. relative to distinguishing the activities of consultants and brokers. Specifically, in 10-693, the Commission stated our belief that it would be appropriate to further explore this issue in this case. One of the issues we identified to be incorporated within this examination is the manner in which entities are compensated for their services and whether they receive compensation notwithstanding the fact that an aggregator program may not actually commence or is short-lived. Another possible issue for consideration could be an analysis of what are the obligations of the consultant, to the extent that a supplier fails to provide the commodity required for the aggregation program. Are competitive retail natural gas service providers who conduct sales through agents that are compensated primarily or exclusively on a commission basis, incentivizing these agents to take unfair advantage of potential customers through deceptive sales practices? Would sales agents be less incentivized if they were employees of the seller and/or provided with some level of base salary?
2. Rule 4901:1-28-04(A), O.A.C., provides opt-out disclosure requirements for governmental aggregators which require written notice to potential customers that include, among other things, a summary of the actions that the governmental entity took to authorize the aggregation. Should aggregation incentives, such as financial contributions to the community, be disclosed in these opt-out notices or is media coverage of aggregation incentives adequate?
3. It is the policy of the state, under Section 4929.02, Revised Code, to promote diversity of natural gas supplies and suppliers by giving consumers effective choices over the selection of those supplies and suppliers. Should the Commission's rules regulate the availability of certain lengths and types of contracts for certain customer classes. Should the Commission's rules require a supplier to disclose all inducements to contract?
4. Rule 4901:1-29-06(E), O.A.C., requires competitive retail natural gas service providers, governmental aggregators, or independent third-party verifiers, to

make a date- and time-stamped audio recording that verifies the customer's acceptance of the offer before enrolling a customer telephonically. Should the rule also require the sales pitch segment of the call to also be recorded? Should the rules be clarified to require greater customer protections?

5. It is the policy of the state, under Section 4929.02, Revised Code, to promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods. Are there best practices from other states that should be incorporated in the rules to facilitate this promotion? Other state commissions post supplier complaint data on their web sites identifying the numbers and types of consumer complaints received by the commission's call center. If normalized, should complaint data be added to the Apples to Apples Chart?
6. Rule 4901:1-29-05(A)(2), O.A.C., identifies the information that must be included in variable-rate offers. In addition to or in substitution for this rule requirement, should "variable rate" be a defined term and include reference to the indices that the supplier is using as the basis for price, such as the NYMEX?
7. In issuing these rules for comment, there has been an attempt to harmonize the rules governing gas and electric suppliers. Are there additional revisions necessary?
8. Are additional rules necessary to protect customers as local distribution companies begin to exit the merchant function?

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4901:1-27-01 Definitions

As used in this chapter:

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

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natural gas supplier or governmental aggregator for the provision of competitive retail natural gas service.

- ~~(N)~~-(M) "Gas company" means a company that meets the definition of a gas company set forth in section 4905.03 of the Revised Code and that also meets the definition of a public utility under section 4905.02 of the Revised Code.
- (N) "Governmental aggregator" has the meaning set forth in division (K)(1) of section 4929.01 of the Revised Code. For purposes of this chapter, "governmental aggregator" specifically excludes a municipal corporation acting exclusively under Section 4 of Article XVIII, Ohio Constitution, as an aggregator for the provision of competitive retail natural gas service.
- (O) "Mercantile customer" has the meaning set forth in division (L) of section 4929.01 of the Revised Code.
- (P) "Natural gas company" has the meaning set forth in division (G) of section 4929.01 of the Revised Code.
- (Q) "Person" has the meaning set forth in division (H) of section 4929.01 of the Revised Code.
- (R) "Regulated sales service" means the provision of natural gas commodity service to consumers at the gas cost recovery rate or any alternate gas cost pricing mechanism approved by the commission pursuant to Chapter 4901:1-19 of the Administrative Code.
- (S) "Regulated sales service customer" means a person who has an agreement by contract and/or tariff with a natural gas company or gas company to receive regulated sales service.
- (T) "Retail natural gas aggregation service" means combining the natural gas load of multiple retail residential customers or small commercial customers via an agreement with the customers for the purpose of purchasing competitive retail natural gas service on an aggregated basis.
- (U) "Retail natural gas aggregator" means a person who contracts with customers to combine the customers' natural gas load for the purposes of purchasing competitive retail natural gas service on an aggregated basis.
- (V) "Retail natural gas brokerage service" means assuming the contractual and legal responsibility for the sale and/or arrangement for the supply of competitive

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retail natural gas service to a retail customer in this state without taking title to the natural gas.

- (W) "Retail natural gas broker" means a person who provides retail natural gas brokerage service.
- (X) "Retail natural gas marketing service" means assuming the contractual and legal responsibility for the sale and provision of competitive retail natural gas service to a retail natural gas service customer in this state and having title to natural gas at some point during the transaction.
- (Y) "Retail natural gas marketer" means a person who provides retail natural gas marketing service.
- (Z) "Retail natural gas service" has the meaning set forth in division (M) of section 4929.01 of the Revised Code.
- (AA) "Retail natural gas supplier" has the meaning set forth in division (N) of section 4929.01 of the Revised Code.
- (BB) "Small commercial customer" means a commercial customer which is not a mercantile customer under paragraph ~~(C)~~(P) of this rule.
- ~~(DD)~~——(CC) "Staff" means the commission staff.

4901:1-27-02 Purpose and scope:

Under the rules in this chapter:

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

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such supplier or aggregator solely to provide billing and collection for competitive retail natural gas service on behalf of the supplier or aggregator. Nothing in this rule exempts such supplier or aggregator from liability for the acts of its billing and collection agents.

4901:1-27-03 General prohibitions

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

4901:1-27-04 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.

4901:1-27-05 Application content

- (A) An application for certification or certification renewal shall be made on forms authorized by the commission. The application forms shall provide for sufficient information to enable the commission to assess an applicant's managerial, financial, and technical capability to provide the service it intends to offer, its ability to provide reasonable financial assurances sufficient to protect regulated sales service customers and natural gas companies from default, and its ability to comply with commission rules or orders.
- (B) The applicant shall complete the appropriate application form (e.g., retail natural gas marketer, retail gas aggregator/broker, or governmental aggregator) in its entirety and supply all required attachments, affidavits, and evidence of capability specified by the form at the time an application is filed.

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- (1) A natural gas marketer shall file general, technical, managerial, and financial information as set forth in the application. This information includes, but is not limited to:
 - (a) Ownership and organizational descriptions.
 - (b) Managerial experience and capabilities and prior regulatory or judicial actions.
 - (c) Balance sheets, credit ratings, and other relevant financial information including:
 - (i) Financial Exhibit 1.
 - (ii) Financial Exhibit 2.
 - (iii) Financial Exhibit 3.
 - (d) Technical ability and experience in nominating, scheduling, and providing natural gas to retail customers.
 - (e) Proof of an Ohio office and an employee in this state in accordance with division (G) of section 4929.22 of the Revised Code.
 - (f) Statements as to whether the applicant has ever been terminated from any 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 the applicant or past rulings finding against the applicant.
- (2) A retail natural gas aggregator/retail natural gas broker 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.

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

4901:1-27-06 Affidavits

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

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

4901:1-27-07 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 case upon the filing of a motion. Such motions shall include all 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.

4901:1-27-08 Protective orders:

- (A) An applicant may file (Financial Exhibit 1, Financial Exhibit 2, and Financial Exhibit 3) 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 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

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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-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.

4901:1-27-09 Certification renewal.

- (A) No less than thirty and no more than sixty days prior to the expiration date indicated on the retail natural gas supplier's or governmental aggregator's certificate, the retail natural gas supplier or governmental aggregator shall file an application with the commission for certification renewal on forms provided 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 rule 4901:1-27-07 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 forth in paragraph (B) of rule 4901:1-27-11 of the Administrative Code, to the information supplied with an applicant's initial or any subsequent certification application, whichever is the 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.
- (E) The commission will act to approve, deny, or suspend an application for certification renewal pursuant to the same processes, standards, and timelines delineated in rules 4901:1-27-10 or 4901:1-27-13, of the Administrative Code.

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4901:1-27-10 Application approval or denial

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

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- (E) Unless otherwise specified by the commission, a retail natural gas supplier's or governmental aggregator's initial or renewal certificate is valid for a period of two years, beginning and ending on the dates specified on the certificate.
- (F) If the commission acts to deny an application, in whole or in part, it will docket its decision and notify the applicant that its application, or parts of its application, has been denied, including the reason(s) for such denial.

4901:1-27-11 Material changes in business.

- (A) A retail natural gas supplier or governmental aggregator shall file with the commission notification of any material change to the information supplied in a certification or most recent certification renewal application within thirty days of such material change.
 - (1) A retail natural gas supplier or governmental aggregator shall file such notice under the docket number assigned to the retail natural gas supplier's or governmental aggregator's initial certification or most recent certification renewal application, whichever is the most recent. The supplier or aggregator shall also serve such notice upon all natural gas companies serving customers in the areas covered by certification of the retail natural gas supplier or governmental aggregator.
 - (2) After notice and an opportunity for a hearing, the commission may suspend, rescind, or conditionally rescind a retail natural gas supplier's or governmental aggregator's certificate if it determines that the material change will adversely affect the retail natural gas supplier's or governmental aggregator's fitness or ability to provide the services for which it is certified; or to provide reasonable financial assurances sufficient to protect natural gas companies and the regulated sales service customers from default.
- (B) Material changes to the information contained in or supplied with a certification or most recent certification renewal application include, but are not limited to, the following:
 - (1) Any significant change in ownership (being an ownership interest of five per cent or more) of the applicant or retail natural gas supplier.
 - (2) An affiliation with any public utility or change of an affiliation with a public utility in this state.
 - (3) Assignment of a portion of the customer base and contracts of a retail

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

4901:1-27-12: Transfer or abandonment of a certificate

- (A) A retail natural gas supplier or governmental aggregator shall not transfer its certificate to any person without prior commission approval.
 - (1) A retail natural gas supplier or governmental aggregator may apply for commission approval to transfer its certificate by filing a certificate transfer application.
 - (2) A transfer application shall be automatically approved on the thirty-first day after filing, unless the commission or attorney examiner acts to suspend or reject the application.
- (B) A retail natural gas supplier or governmental aggregator shall not abandon the

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operation(s) it provided under a certificate without fulfilling the terms of all existing contracts with customers or assigning such contracts to another retail natural gas supplier or governmental aggregator, and without commission approval.

- (1) Abandonment applications shall be filed at least ninety days before the effective date that the retail natural gas supplier or governmental aggregator will abandon operations. The application shall include copies of any notices provided pursuant to paragraphs (B)(2), (B)(3), and (B)(4) of this rule.
- (2) At least ninety days before abandoning operations in the state of Ohio, a retail natural gas supplier or governmental aggregator shall provide written notice to each natural gas company in whose service area the retail natural gas supplier or governmental aggregator operates of its intent to abandon operations in the state of Ohio. That notice shall reflect that the retail natural gas supplier or governmental aggregator has filed an abandonment application with the commission.
- (3) At least ninety days before abandoning operations, a retail natural gas supplier or governmental aggregator shall provide written notice to its existing customers and the office of the Ohio consumers' counsel of its intent to abandon operations. Such notice shall indicate the retail natural gas supplier's or governmental aggregator's intent to fulfill or assign customer contracts, including the effective date of such assignment, the effective date it will cease to provide service, and identify the commission's toll-free and Ohio relay service telephone numbers. That notice shall reflect that the retail natural gas supplier or governmental aggregator has filed an abandonment application with the commission. Such notice shall also inform existing customers that, if they do not choose an alternative supplier, their natural gas company will supply them under the applicable tariff service and provide instructions on how they can obtain service from an alternative retail natural gas supplier or governmental aggregator. Such notice shall be provided to the commission staff for its review and to the incumbent natural gas company, prior to customer dissemination.
- (4) The retail natural gas supplier or governmental aggregator shall provide notice of its abandonment to its existing customers by separate message that is mailed or otherwise directly delivered to the customer or by notice on customer billing statements. Where the retail natural gas supplier or governmental aggregator is providing the billing, the retail natural gas

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supplier or governmental aggregator shall provide notice of its abandonment. Where the natural gas company is billing for the retail natural gas supplier or governmental aggregator, the retail natural gas supplier or governmental aggregator may negotiate with the incumbent natural gas company to provide such notice of its abandonment on each billing statement rendered to existing customers. Abandonment notices shall begin at least ninety days before the effective date of the abandonment and shall continue monthly until the operation is abandoned.

- (5) If the commission does not act upon the application within ninety days of the filing date, the application shall be deemed automatically approved on the ninety-first day after the official filing date.

4901:1-27-13. Certification suspension, rescission, or conditional rescission.

- (A) After reasonable notice and the opportunity for a hearing, the commission may, upon its own motion or upon complaint, suspend, rescind, or conditionally rescind a retail natural gas supplier's or governmental aggregator's certificate, in whole or in part, for good cause shown.
- (B) If the commission suspends a retail natural gas supplier's or governmental aggregator's certificate:
- (1) The commission will notify the retail natural gas supplier or governmental aggregator of the reasons and effective dates for such suspension and specify the actions, including associated time frames, that the retail natural gas supplier or governmental aggregator must take in order to have the suspension lifted.
- (2) The retail natural gas supplier or governmental aggregator shall continue to provide all services it is obligated to provide under contract to its existing customers, but it shall not advertise, offer, or contract to provide any new competitive retail natural gas service to existing customers, nor advertise, offer, or contract to provide any competitive retail natural gas service to potential customers during the suspension, unless the commission orders otherwise. Such suspensions and related prohibitions against advertising, offering or entering into contracts apply statewide, unless otherwise ordered by the commission.

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(C) If the commission conditionally rescinds a retail natural gas supplier's or governmental aggregator's certificate:

- (1) The commission will delineate the specific conditions that the retail natural gas supplier or governmental aggregator must meet and establish a date by which the conditions must be met in order for the retail natural gas supplier or governmental aggregator to avoid permanent rescission of its certificate.
- (2) Unless otherwise ordered by the commission, the retail natural gas supplier or governmental aggregator shall continue to provide all services it is obligated to provide under contract to its existing customers, but it shall not advertise, offer, or contract to provide any new competitive retail natural gas service to existing customers, nor advertise, offer, or contract to provide any competitive retail natural gas service to potential customers throughout the duration of a conditional rescission of a certificate.

(D) If the commission rescinds a retail natural gas supplier's or governmental aggregator's certificate:

- (1) The commission will notify the retail natural gas supplier or governmental aggregator of the reasons for and effective date of such rescission.
- (2) Upon the effective date specified by the commission, a retail natural gas supplier or governmental aggregator whose certificate has been rescinded shall cease providing all competitive retail natural gas service for which it is no longer certified to provide.
- (3) Before the effective date of the certificate rescission, a retail natural gas supplier or governmental aggregator that provides competitive retail natural gas service to customers shall cooperate fully with each natural gas company in whose service area it provides such service to ensure that its existing customers will be served by another retail natural gas supplier, governmental aggregator or by the natural gas company on and after the effective date of the certificate rescission.
- (4) Before the effective date of the certificate rescission, a retail natural gas supplier or governmental aggregator whose certificate has been rescinded shall provide a written notice to each of its customers that indicates that its certificate has been rescinded and specifies the date(s) it will cease to provide service. Such notice shall be provided to the commission staff for its

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review and to the incumbent natural gas company prior to customer dissemination. Such notice shall also inform existing customers that, if they do not choose an alternative supplier, their natural gas company will supply them under the applicable tariff service and provide instructions on how they can obtain service from an alternative retail natural gas supplier or governmental aggregator.

(E) Reasons that the commission may suspend, rescind, or conditionally rescind a retail natural gas supplier's or governmental aggregator's certificate include, but are not limited to:

- (1) A retail natural gas supplier's or governmental aggregator's failure to timely pay any assessment made pursuant to section 4905.10 or section 4911.18 of the Revised Code.
- (2) A retail natural gas supplier's or governmental aggregator's failure to timely file an annual report of its intrastate receipts and sales of hundred cubic feet of gas pursuant to section 4905.10, or section 4911.18, or division (B) of section 4929.23 of the Revised Code.
- (3) A finding by the commission that a retail natural gas supplier or governmental aggregator has materially underreported its intrastate receipts and sales of hundred cubic feet of gas on reports required by rule 4901:1-30-01 of the Administrative Code.
- (4) A finding by the commission that any information reported to the commission subsequent to granting a certificate adversely affects a retail natural gas supplier's or governmental aggregator's fitness or capability to provide any service covered by its certificate.
- (5) A finding by the commission that a retail natural gas supplier or governmental aggregator knowingly omitted information or knowingly provided false information on a certification or certification renewal application, including supporting attachments.
- (6) A finding by the commission that a retail natural gas supplier or governmental aggregator has provided a competitive retail natural gas service without being certified by the commission to provide such service.
- (7) A finding by the commission that a retail natural gas supplier or governmental aggregator has violated any applicable commission rule or order adopted pursuant to Chapter 4929. of the Revised Code.

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- (8) A finding by the commission that a retail natural gas supplier or governmental aggregator has failed to consent to the jurisdiction of the courts of this state or has failed to designate an agent to accept service of process pursuant to section 4929.21 of the Revised Code.
- (9) A finding by the commission that a retail natural gas supplier or governmental aggregator has engaged in an anticompetitive act.
- (10) A finding that a retail natural gas supplier or the retail natural gas supplier of a governmental aggregator has failed to maintain appropriate financial security or has otherwise committed an act of default as defined by a natural gas company's tariff or by agreement between the natural gas company and the retail natural gas supplier or governmental aggregator.
- (11) A finding by the commission that a retail natural gas supplier or governmental aggregator has failed to comply with state laws or rules designed to protect consumers in this state, or has otherwise engaged in any fraudulent, misleading or unfair practice.
- (12) A finding by the commission that a retail natural gas supplier has failed to maintain an Ohio office and an employee in this state, in accordance with section 4929.22 of the Revised Code.
- (F) In the event of a material default, as defined by a natural gas company's tariff or by an agreement between the natural gas company and the retail natural gas supplier or governmental aggregator:
 - (1) The natural gas company shall serve a written notice of such default in reasonable detail and with a proposed remedy to the retail natural gas supplier or governmental aggregator and the commission.
 - (2) On or after the date the default notice has been served, the natural gas company may file with the commission a written request for authorization to terminate or suspend the retail natural gas supplier or governmental aggregator from participation with the natural gas company's supplier program.
 - (3) If the material default is due to reasons other than underdelivery or nondelivery, and if the commission, or an attorney examiner, does not issue an entry to suspend or reject the action proposed by the natural gas company within ten business days after receipt of the request, the natural gas company's request to terminate or suspend shall be deemed authorized

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on the eleventh business day.

- (4) If the default is due to underdelivery or nondelivery and, if the commission, or an attorney examiner, does not act within five business days after receipt of the request, the natural gas company's request to terminate or suspend shall be deemed authorized on the sixth business day.
- (5) Notwithstanding paragraphs (F)(2) and (3) of this rule, terminations or suspensions from a natural gas company's supplier program shall require authorization from the commission.
- (6) The natural gas company shall send notices pursuant to this section by email, fax, overnight mail or hand delivery to the commission and staff at the commission's offices. The natural gas company shall notify all commissioners, the chief of staff, the director of the service monitoring and enforcement services department, the director of the utilities department, the director of the legal department and the chief of the attorney general's public utilities section. The natural gas company shall send the notice to the address, e-mail, and fax number provided by the retail natural gas supplier or governmental aggregator in its aggregation agreement.

4901:1-27-14: Financial security

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

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4901:1-28-01 Definitions

As used in this chapter:

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

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under Section 4 of Article XVIII, Ohio Constitution, as an aggregator for the provision of competitive retail natural gas service.

- (F) "Mercantile customer" has the meaning set forth in division (L) of section 4929.01 of the Revised Code.
- (G) "Natural gas company" has the meaning set forth in division (G) of section 4929.01 of the Revised Code.
- (H) "Operations and governance plan" means a plan adopted by a governmental aggregator pursuant to division (C) of section 4929.26 of the Revised Code.
- (I) "Opt off" means an action by a person to remove ~~their~~-his/her name and associated account information from a natural gas company's pre-enrollment list.
- (J) "Opt-out notice" means a notice provided to the public pursuant to section 4929.26 of the Revised Code.
- (K) "Pre-enrollment list" means a list of customers and associated customer information compiled by a natural gas company pursuant to division (F) of section 4929.22 of the Revised Code and as directed by the commission.
- (L) "Retail natural gas service" has the meaning set forth in division (M) of section 4929.01 of the Revised Code.
- (M) "Retail natural gas supplier" has the meaning set forth in division (N) of section 4929.01 of the Revised Code.

4901:1-28-02 Purpose and Scope

The rules in this chapter:

- (A) Apply to a governmental aggregator's formation and operation of an opt-out governmental aggregation pursuant to Chapter 4929. of the Revised Code and to cooperation between natural gas companies and governmental aggregators.
- (B) 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.
- ~~(B) Nothing contained in this chapter shall preclude, in any way, the commission from altering, amending, or waiving, in whole or in part, any of these rules.~~

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(C) Are intended to:

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

4901:1-28-03. Formation and operation of an opt-out governmental aggregation and minimum requirements for operations and governance plans.

- (A) Prior to applying for certification at the commission, a governmental aggregator that will form an opt-out aggregation shall complete all of the requirements specified in divisions (A) to (D) of section 4929.26 of the Revised Code, including adopting an ordinance or resolution authorizing an opt-out aggregation, conducting a general or special election in accordance with division (B) of section 4929.26 of the Revised Code for authorization from electors to form the aggregation, and approving a plan for operation and governance of the aggregation as specified by division (C) of section 4929.26 of the Revised Code.
- (B) The operation and governance plan adopted shall detail the services that will be provided under the aggregation and specify all customer rights and obligations under the aggregation. The plan shall be sufficiently detailed to allow customers to readily understand the services that the governmental aggregator is to provide and to compare those services against similar services provided by competitive suppliers. The governmental aggregator shall write the plan in clear and plain language so that an average residential customer can easily understand it. The plan shall, at a minimum, contain all of the following:
 - (1) A detailed description of services the governmental aggregator is to provide under the aggregation, including noting whether the service is to be provided directly by the governmental aggregator or by a party contracted by the governmental aggregator.
 - (2) A description of the processes that the governmental aggregator will use

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to determine the rates that will be charged.

- (3) A detailed description of the governmental aggregator's plan for providing the required opt-out disclosure notices to eligible customers. The plan shall describe the steps that the governmental aggregator will take to ensure that all eligible customers residing within the governmental aggregator's governmental boundaries are notified. The plan shall also identify the time frames associated with the notice.
- (4) A detailed description of the process for developing the pool of customer accounts that may be included in the aggregation, including the steps that will be taken to identify and eliminate customers that are not eligible to participate in the aggregation and eligible customers who opt out of the aggregation.
- (5) The governmental aggregator's plan for billing customers, including an identification of billing intervals and the identity of the entity that will transmit the bill to the customer.
- (6) A listing of any credit or deposit procedures and the policies that the governmental aggregator will employ in the event that a customer fails to pay its bill.
- (7) A detailed description of the governmental aggregator's customer service procedures and dispute resolution processes, including notice of the customer's right to contact the commission and the commission's toll-free and TDD/TTY-Ohio relay service telephone numbers for its call center. These procedures and processes shall comport with the requirements specified in rule 4901:1-29-08 of the Administrative Code.
- (8) A detailed description of the policies associated with a customer moving into the aggregation or within the aggregation where the incumbent natural gas company considers the customer that is moving to be a new customer. If the policies provide that these customers will be automatically included in the aggregation, the governmental aggregator shall provide the customers an opportunity to opt-out of the aggregation in accordance with the procedures set forth in rule 4901:1-28-04 of the Administrative Code.
- (9) A detailed description of the policies associated with a customer moving within the aggregation where the customer is not assigned a new account

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number by the incumbent natural gas company. A customer in these circumstances may maintain the rate that the customer was charged at its previous location or, if the rate at the new location is higher than at the customer's previous location, the customer shall have the opportunity to opt out of the aggregation without penalty, pursuant to the procedures set forth in rule 4901:1-28-04 of the Administrative Code.

- (10) A description of the governmental aggregator's policies regarding the ability of a customer who had previously opted out of the aggregation to join the aggregation, including identification of any associated conditions.
- (C) A governmental aggregator shall keep its operation and governance plan available for public inspection and shall, upon request, provide a copy of the plan to any existing or potential customer of the aggregation.
- (D) A governmental aggregator shall not alter its operation and governance plan in any way that would materially affect the customers of the aggregation without first providing notice to all affected customers and providing these customers the opportunity to opt out of the aggregation according to the procedures established for the initial opt out disclosure notice set forth in rule 4901:1-28-04 of the Administrative Code. The notice shall set forth the changes to the plan, inform the customer of its right to opt out of the aggregation without penalty, and identify the method and time frame for the customer to opt out.
- (E) No governmental aggregator shall send an opt-out disclosure notice to potential customers of an aggregation prior to the governmental aggregator being certified by the commission.

4901:1-28-04 Opt-out disclosure requirements.

- (A) Prior to including a customer's natural gas account or accounts in an aggregation, a governmental aggregator shall provide each eligible customer written notice that the customer's account(s) will be automatically included in the aggregation unless the customer affirmatively opts out of the aggregation. The notice shall, at a minimum, include:

(1) The language on the front cover of the envelop or postcard providing the notice shall state "important natural gas aggregation information."

- ~~(1)~~(2) A summary of the actions that the governmental entity took to authorize the aggregation.

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- (2)-(3) A description of the services that the governmental aggregator will provide under the aggregation.
- (3)-(4) Disclosure of the price that the governmental aggregator will charge customers for competitive retail natural gas service. The price shall be: ~~expressed in dollars and/or cents per hundred cubic feet of gas ("Ccf") or thousand cubic feet of gas ("Mcf"), depending on the unit that is used by the natural gas company that serves the customer. If a variable rate is offered, it shall be accompanied by an understandable description of the factors that will cause the price to vary (including any associated indices) and disclosure of how frequently the rate will change. If different rates will be charged to different rate classes within the aggregation, the governmental aggregator shall disclose the applicable rate(s) to customers within the various rate classes.~~
- (a) Expressed in dollars and/or cents per hundred cubic feet of gas ("Ccf") or thousand cubic feet of gas ("Mcf"), depending on the unit that is used by the natural gas company that serves the customer. If a variable rate is offered, it shall be accompanied by an understandable description of the factors that will cause the price to vary (including any associated indices) and disclosure of how frequently the rate will change. If different rates will be charged to different rate classes within the aggregation, the governmental aggregator shall disclose the applicable rate(s) to customers within the various rate classes.
- (b) If a variable rate is offered, it shall be accompanied by an understandable description of the factors that will cause the price to vary (including any associated indices) and disclosure of how frequently the rate will change.
- (5) If different rates will be charged to different rate classes within the aggregation, the governmental aggregator shall disclose the applicable rate(s) to customers within the various rate classes.
- (4)-(6) An itemized list and explanation of all fees and charges that are not incorporated into the rates charged for natural gas that the governmental aggregator will charge the customer for participating in the aggregation, including any applicable switching fees or early termination penalties. These switching fees and/or early termination penalties shall not apply to a customer that moves out of the governmental aggregator's territory.

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- (5)-(7) Disclosure of the dates covered by the aggregation, including an estimated service commencement date and notice that the customer may opt out of the aggregation at least every two years without penalty.
- (6)-(8) Disclosure of any credit and/or deposit policies and requirements.
- (7)-(9) Disclosure of any limitations or conditions on customer acceptance into the aggregation.
- (8)-(10) A description of the process and associated time period for customers to opt out of the aggregation. The process shall include provisions for customers to return a post card or similar notice to the governmental aggregator or its agent. The process may include, in addition, other opt-out methods, such as telephonic or internet notice, provided that these methods provide for verification of a customer's election to opt out of the aggregation. ~~The time period for a customer to choose to opt out of the aggregation shall extend at least twenty one days from the date of the post mark on the written notice. A customer's return post card or notice that is post marked before the opt out deadline has elapsed shall be deemed to have opted out.~~
- (11) The time period for a customer to choose to opt out of the aggregation shall extend at least twenty-one days from the date of the post mark on the written notice. A customer's return post card or notice that is post marked before the opt out deadline has elapsed shall be deemed to have opted out.
- (9)-(12) A local or toll-free telephone number that customers can call with questions regarding the formation or operation of the aggregation, including associated calling hours.
- ~~(10) The language, on the front cover of the envelope or postcard shall state: "Important natural gas aggregation information".~~
- (B) At least every two years from the establishment of its initial aggregation pool, a governmental aggregator shall provide notice to all customers served by the aggregation of their right to opt out of the aggregation without penalty. This notice shall follow the procedures established for the initial opt-out notice set forth in this rule and shall prominently disclose to customers all changes to the terms and conditions associated with the aggregation.
- (C) No governmental aggregator or retail natural gas supplier serving a governmental aggregation shall impose any terms, conditions, fees, or charges

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on any customer served by a governmental aggregation unless the particular term, condition, fee, or charge was clearly disclosed to the customer at the time the customer chose not to opt out of the aggregation.

- (D) To assist its preparation and dissemination of required opt-out notices, a governmental aggregator that is certified by the commission may request that the incumbent natural gas company provide it with customer information consistent with paragraph (A) of rule 4901:1-28-05 of the Administrative Code. The governmental aggregator shall not, without the customer's express written consent or electronic authorization or pursuant to a court or commission order, ~~disclose or use for any purpose other than formation and operation of its aggregation a customer's account number or social security number or any customer information regarding customers. Before a governmental aggregator releases any customer account number, social security number, or any information related to a customer, the governmental aggregator shall obtain the customer's signature on a release. The release shall be on a separate piece of paper. The release shall be clearly identified on its face as a release of personal information and all text on the release shall be in at least sixteen-point type. The following statements shall appear prominently on the release, just prior to the signature, in type larger and darker than the type in the surrounding sentences: "I realize that, under the rules and regulations of the Public Utilities Commission of Ohio, I may refuse to allow (name of aggregator) to release the information set forth above. By my signature, I freely give (name of aggregator) permission to release the 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.~~

- (1) ~~Disclose or use for any purpose other than formation and operation of its aggregation a customer's account number or social security number or any customer information regarding customers. Before a governmental aggregator releases any customer account number, social security number, or any information related to a customer, the governmental aggregator shall obtain the customer's signature on a release. The release shall be on a separate piece of paper. The release shall be clearly identified on its face as a release of personal information and all text on the release shall be in at least sixteen-point type. The following statements shall appear prominently on the release, just prior to the signature, in type larger and darker than the~~

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~~type in the surrounding sentences: "I realize that, under the rules and regulations of the Public Utilities Commission of Ohio, I may refuse to allow (name of aggregator) to release the information set forth above. By my signature, I freely give (name of aggregator) permission to release the 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.~~

- (2) Release any customer account number, social security number, or any information related to a customer without first obtaining the customer's signature on a release form. Forms requiring a customer to circle or to check off preprinted types of information to be released may not be used. The release form shall:

- (a) Be on a separate piece of paper.
- (b) Be clearly identified on its face as a release of personal information and contain text shall be in at least sixteen-point type.
- (c) Contain the following statements prominently, just prior to the signature, in type larger and darker than the type in the surrounding sentences: "I realize that, under the rules and regulations of the public utilities commission of Ohio, I may refuse to allow (name of aggregator) to release the information set forth above. By my signature, I freely give (name of aggregator) permission to release the information designated above."
- (d) Specify on the form the information sought to be released.

- (E) Each governmental aggregator shall use its best efforts to ensure that only eligible customer accounts within its governmental boundaries and customers who have not opted out are included in its aggregation. If ineligible accounts, accounts from outside of the governmental aggregator's governmental boundaries, or accounts for customers who opted out of the aggregation are switched to the governmental aggregation, ~~the governmental aggregator shall promptly contact the natural gas company to have the customer switched back to the customer's former supplier. The governmental aggregator or the natural gas company, whichever is at fault for an improper switch, shall reimburse the customer for any switching fees that were paid by the customer as a result of the improper switch. In addition, if the customer's former rate was less than the rate~~

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~~charged by the governmental aggregator and the higher rate was paid by the customer, then the governmental aggregator or the natural gas company, whichever is at fault for an improper switch, shall reimburse the customer the difference between the customer's former rate and the governmental aggregator's rate multiplied by the customer's usage during the time that the customer was served by the governmental aggregator.~~

- (1) ~~The governmental aggregator shall promptly contact the natural gas company to have the customer switched back to the customer's former supplier. The governmental aggregator or the natural gas company, whichever is at fault for an improper switch, shall reimburse the customer for any switching fees that were paid by the customer as a result of the improper switch. In addition, if the customer's former rate was less than the rate charged by the governmental aggregator and the higher rate was paid by the customer, then the governmental aggregator or the natural gas company, whichever is at fault for an improper switch, shall reimburse the customer the difference between the customer's former rate and the governmental aggregator's rate multiplied by the customer's usage during the time that the customer was served by the governmental aggregator.~~
 - (2) The governmental aggregator or the natural gas company, whichever is at fault for an improper switch, shall reimburse the customer for any switching fees that were paid by the customer as a result of the improper switch.
 - (3) The governmental aggregator or the natural gas company, whichever is at fault for an improper switch, shall reimburse the customer for 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, if the customer's former rate was less than the rate charged by the governmental aggregator and the higher rate was paid by the customer.
- (F) The governmental aggregator shall docket with the commission's docketing division an advance notice of the governmental aggregation opt-out program with the final opt-out or any supplemental opt-out customer notification no more than thirty days, but no less than ten days, prior to sending the opt-out notification to customers. The advanced notice to the commission shall identify the affected community and natural gas company involved, include the beginning and ending dates of the twenty-one day opt-out period, and provide

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the identification of the selected competitive retail natural gas service supplier.

4901:1-28-05 Cooperation between natural gas companies and certified governmental aggregators

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

4901:1-29-01 Definitions

As used in this chapter:

- (A) ~~(A)~~ "Ancillary service" has the meaning set forth in division (B) of section 4929.01 of the Revised Code.
- (B) ~~(A)~~ "Billing and collection agent" has the meaning set forth in division (I) of section 4929.01 of the Revised Code.
- (C) ~~(B)~~ "Ccf" means one hundred cubic feet of natural gas.
- (D) ~~(C)~~ "Commission" means the public utilities commission of Ohio.
- (E) ~~(D)~~ "Commodity sales service" has the meaning set forth in division (C) of section 4929.01 of the Revised Code.

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- ~~(F)~~ ~~(E)~~ "Competitive retail natural gas service" has the meaning set forth in division (J) of section 4929.01 of the Revised Code.
- ~~(G)~~ ~~(F)~~ "Complaint" means any customer/consumer contact when such contact necessitates follow-up by or with the retail natural gas company or governmental aggregator to resolve a point of contention.
- ~~(H)~~ ~~(G)~~ "Consumer" has the meaning set forth in division (E) of section 4929.01 of the Revised Code.
- ~~(I)~~ ~~(H)~~ "Contract" means an agreement between a customer and retail natural gas supplier or governmental aggregator that specifies the terms and conditions for provision of a competitive retail natural gas service.
- ~~(J)~~ ~~(I)~~ "Customer" means a person who contracts with or is solicited by a retail natural gas supplier or governmental aggregator for the provision of a competitive retail natural gas service.
- ~~(K)~~ ~~(J)~~ "Deposit" means a sum of money a retail natural gas supplier or governmental aggregator collects from a customer as a precondition for initiating service.
- ~~(L)~~ ~~(K)~~ "~~Direct solicitation enrollment~~" means face-to-face ~~solicitation enrollment~~ of a customer initiated by a retail natural gas supplier or governmental aggregator at the home of a customer or at a place other than the normal place of business of the retail natural gas supplier or governmental aggregator and includes door-to-door solicitations.
- ~~(M)~~ ~~(L)~~ "Disclosure statement" means any communication between a customer and governmental aggregator including operation and governance plans and opt-out notices.
- ~~(N)~~ ~~(M)~~ "Distribution service" has the meaning set forth in division (F) of section 4929.01 of the Revised Code.
- ~~(O)~~ ~~(N)~~ "Eligible customer" means a person that is eligible to participate in a governmental aggregation in accordance with sections 4929.26 and 4929.27 of the Revised Code and does not include any of the following:
- (1) A person that is a ~~both a distribution service customer and a mercantile customer on the date of commencement of service to the governmental aggregation, or the person becomes a distribution service customer after the~~

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~~service commencement date and is also a mercantile customer.~~

- (2) A person that is supplied with commodity sales service pursuant to a contract with a retail natural gas supplier ~~that is in effect on the effective date of the ordinance or resolution authorizing the aggregation.~~
- (3) A person that is supplied with commodity sales service as part of the percentage of income payment plan program or similar or successor program adopted by the commission under Chapter 4905. or 4929. of the Revised Code.
- (4) A customer that has failed to discharge, or enter into a plan to discharge, all existing arrearages owed to or being billed by the incumbent natural gas company.
- ~~(P)~~ ~~(O)~~ "Existing customer" means a person who has a contract with a retail natural gas supplier or governmental aggregator for the provision of competitive retail natural gas service.
- ~~(Q)~~ ~~(P)~~ "Gas company" means a company that meets the definition of a gas company set forth in section 4905.03 of the Revised Code and that also meets the definition of a public utility under section 4905.02 of the Revised Code.
- (Q) "Governmental aggregator" has the meaning set forth in division (K)(1) of section 4929.01 of the Revised Code. For purposes of this chapter, "governmental aggregator" specifically excludes a municipal corporation acting exclusively under Section 4 of Article XVIII, Ohio Constitution, as an aggregator for the provision of competitive retail natural gas service.
- (R) "Mcf" means one thousand cubic feet of natural gas.
- (S) "Mercantile customer" has the meaning set forth in division (L) of section 4929.01 of the Revised Code.
- (T) "Natural gas company" has the meaning set forth in division (G) of section 4929.01 of the Revised Code.
- (U) "Opt-in governmental aggregator" means those governmental aggregators who perform aggregation pursuant to section 4929.27 of the Revised Code.

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- (V) "Opt-out governmental aggregator" means those governmental aggregators who perform automatic governmental aggregation pursuant to section 4929.26 of the Revised Code.
- (W) "Person" has the meaning set forth in division (H) of section 4929.01 of the Revised Code.
- (X) "Regulated sales service customer" means a person who has an agreement by contract and/or tariff with a natural gas company or gas company to receive regulated sales service.
- (Y) "Residential ~~customer~~customer" means a customer who contracts for a competitive retail natural gas service for residential purposes.
- (Z) "Retail natural gas service" has the meaning set forth in division (M) of section 4929.01 of the Revised Code.
- (AA) "Retail natural gas supplier" has the meaning set forth in division (N) of section 4929.01 of the Revised Code.
- (BB) "Small commercial customer" means a commercial customer which is not a mercantile commercial customer under paragraph (S) of this rule.
- (CC) "Solicitation" means any communication intended to elicit a customer's agreement to purchase or contract for a competitive retail natural gas service.
- (DD) "Staff" means the commission staff.
- (EE) "Toll-free" means telephone access provided to a customer without toll charges to the customer.
- ~~(FF)~~ ~~(FF) "TDD/TTY" means telecommunication device for the deaf/text telephone yoke as defined in 47 C.F.R. 64.601 as of January 1, 2006.~~

4901:1-29-02 Purpose and scope

- (A) The rules in this chapter:
 - (1) Apply to persons offering or providing any competitive retail natural gas service as defined by division (J) of section 4929.01 of the Revised Code.

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- (2) Apply to the services of natural gas companies as necessary to implement the rules of this chapter.
 - (3) Are intended to:
 - (a) Provide minimum standards for service quality, safety, and reliability.
 - (b) Provide customers with sufficient information to make informed decisions about competitive retail natural gas service.
 - (c) Protect customers against deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of competitive retail natural gas service and in the administration of any contract for that service.
 - (d) Promote nondiscriminatory access to competitive retail natural gas services, ensure timely enrollment with retail natural gas suppliers and governmental aggregators, maintain natural gas service, and timely and correctly switch retail natural gas suppliers and governmental aggregators.
 - (4) Apply to all jurisdictional customers unless otherwise specified.
- (B) After notice and an opportunity for hearing, the commission may require a retail natural gas supplier, governmental aggregator or natural gas company to take any appropriate action necessary to comply with these rules and the state's policy as stated in section 4929.02 of the Revised Code, upon any of the following:
- (1) The commission's own motion.
 - (2) Formal complaints brought to the commission.
 - (3) The application of any retail natural gas supplier, governmental aggregator, natural gas company, or any person.
- (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 or upon its own motion.
- (D) The rules in this chapter shall not relieve a retail natural gas suppliers-supplier or governmental aggregators-aggregator from complying with all applicable

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federal, state, and local laws.

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

4901:1-29-03 General provisions.

- (A) A Retail-retail natural gas suppliers-supplier or and governmental aggregators aggregator shall not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to, without limitation, the following activities:
 - (1) Marketing, solicitation, or sale of a competitive retail natural gas service.
 - (2) Administration of contracts for such service.
 - (3) Provision of such service, including interactions with consumers.
- (B) A Retail-retail natural gas suppliers-supplier shall maintain an employee and an office open for business in the state of Ohio. A criminal background check will be performed on all employees and agents of retail gas suppliers or governmental aggregators engaged in door-to-door enrollment.
- (C) A Retail-retail natural gas suppliers-supplier and governmental aggregators aggregator shall not cause or arrange for the disconnection of distribution

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service, or employ the threat of such actions, as a consequence of contract termination, customer nonpayment, or for any other reason.

- (D) A Retail-retail natural gas suppliers-supplier or and governmental aggregators aggregator shall not change or authorize the changing of a customer's supplier of competitive retail natural gas service without the customer's prior consent, as provided for under rule 4901:1-29-06 of the Administrative Code. For the purpose of procuring competitive retail natural gas services, this requirement does not apply to automatic governmental aggregation and for the percentage of income payment program, or a commission approved exemption pursuant to Section 4929.04(A) of the Revised Code.
- (E) Each All-retail natural gas suppliers-supplier and governmental aggregators aggregator shall include, in their-its 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 retail natural gas supplier or governmental aggregator shall file notice of such changes to the commission within thirty days of such material change, consistent with paragraphs (A) and (B)(8) of rule 4901:1-27-10 4901:1-27-11 of the Administrative Code.

4901:1-29-04 Records and retention

- (A) Each natural gas company (for records retention related to competitive retail natural gas services), each retail natural gas supplier and each governmental aggregator shall establish and maintain records and data sufficient to:
- (1) Verify its compliance with the requirements of any applicable commission rules.
 - (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 three business days of its request.

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4901:1-29-05 Marketing and Solicitation

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

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suspension, rescission, or conditional rescission of certification by the commission or after denial of certification renewal by the commission.

- (2) Failing to comply with paragraph (A) of this rule when soliciting a sale of competitive retail natural gas service and failing to disclose all terms, conditions, and limitations including but not limited to contract length, prices, fees and termination fees, or penalties and any discretionary charges.
- (3) Failing to provide in or with its advertisements and promotional materials that make an offer for sale, a toll-free/local telephone number (and address for printed materials) which the potential customer may call or write to request detailed information regarding the price, terms, conditions, limitations, and restrictions.
- (4) Soliciting via telephone calls initiated by the retail natural gas supplier or governmental aggregator (or its agent) without first obtaining the list of Ohio customers who have requested to be placed on the federal trade commission's "do not call" registry and obtaining ~~every thirty one days~~ monthly updates of the federal trade commission's "do not call" registry for the appropriate area code.
- (5) Engaging in ~~telephone~~ any solicitation that leads the customer to believe that the retail natural gas supplier or governmental aggregator or its agent is soliciting on behalf of or is an agent of an Ohio natural gas company where no such relationship exists of Ohio customers who have been placed on the federal trade commission's "do not call" registry.
- (6) Engaging in telephone solicitation ~~to~~ of residential customers either before nine a.m. or after nine p.m.;
- (7) Engaging in direct solicitation ~~to~~ of customers where the retail natural gas supplier's or governmental aggregator's sales agent fails to wear and display a valid retail natural gas supplier or governmental aggregator photo identification. The format for this identification shall be preapproved by the staff.
- (8) Engaging in direct solicitation of a customer without complying with all applicable ordinances and laws of the customer's jurisdiction.
- (9) Knowingly taking advantage of a customer's inability to reasonably protect

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their interests because of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement.

~~(8)~~ (10) Advertising or marketing offers that:

- (a) Claim that a specific price advantage, savings, or guarantee exists if it does not, ~~or may exist if it will not.~~
- (b) Claim to provide a competitive retail natural gas service when such an offer is not a bona fide offer to sell such services.
- (c) Offer a fixed price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service without disclosing all recurring and nonrecurring charges.
- (d) Offer a variable price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service without disclosing all recurring and nonrecurring charges.
- (e) Fail to disclose all material limitations, exclusions, and offer expiration dates.
- (f) Fail to fully disclose, in an appropriate and conspicuous type-size, an affiliate relationship or branding agreement on advertising or marketing offers that use ~~affiliated natural gas company~~ an Ohio utility's name and logo.

(11) Failing to provide accurate and timely updates to commission staff for the development of the apples-to-apples comparison chart.

4901:1-29-06 Customer enrollment and consent.

- (A) The retail natural gas supplier and governmental aggregator shall coordinate customer enrollment with the incumbent natural gas company in accordance with the procedures set forth in this chapter.
- (B) A Retail ~~retail~~ natural gas ~~suppliers~~ supplier and governmental ~~aggregators~~ aggregator ~~is~~ are prohibited from enrolling potential customers without ~~their~~ consent and proof of that consent as delineated in paragraphs (D), (E) and (F) of

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this rule. This requirement does not apply to opt-out governmental aggregation and for the percentage of income payment program.

~~(C) (C) The incumbent natural gas company shall provide a written notice to customers that allows customers to rescind their enrollment with a retail natural gas supplier or governmental aggregator within seven business days from the postmark date of the notice.~~

~~(D) (C) Mailings, facsimiles, and direct solicitation enrollment~~

- (1) Where enrollment occurs by mail, facsimile, or direct solicitation, the customer's signature on a contract shall constitute consent.
- (2) Consistent with rule 4901:1-29-05 of the Administrative Code, prior to entering into a contract for service, a retail natural gas suppliers-supplier or and governmental aggregators-aggregator shall provide each customer with enrollment documents that contain, at a minimum, clear and understandable pricing, terms and conditions of service, the dollar amount of all recurring and nonrecurring charges (including any fees for early termination of the contract), and the duration of the contract.
- (3) Before obtaining a signature from the applicant, a retail natural gas suppliers-supplier or and governmental aggregators-aggregator shall provide each customer a reasonable opportunity to read all enrollment documents and shall answer any and all questions posed by any applicant about information contained in the documents.
- (4) Immediately upon obtaining the customer's signature, a retail natural gas suppliers-supplier and governmental aggregators-aggregator shall provide the applicant a legible copy of the signed contract, ~~unless the retail natural gas supplier or governmental aggregator has already provided the customer with a separate, complete copy of the terms and conditions for the customer's records and the retail natural gas supplier or governmental aggregator has complied with paragraph (C) of rule 4901:1-29-10 of the Administrative Code.~~
- (5) Where enrollment occurs by direct solicitation, customers shall be advised both verbally and in the contract that: ~~(a) the incumbent natural gas company will be sending a confirmation notice of the transfer of service; (b)~~

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

- (a) The incumbent natural gas 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 incumbent natural gas company to rescind the enrollment.
- (6) Door-to-door enrollment of residential customers by a ~~Where the retail natural gas supplier or governmental aggregator conducts direct solicitation through "door-to-door" sales of residential customers, the retail natural gas supplier or governmental aggregator must comply with the following minimum requirements:~~
- (a) Acknowledgment forms
 - A Retail—retail natural gas suppliers—supplier or governmental aggregators—aggregator enrolling customers performing through door-to-door solicitation shall have the customer execute an acknowledgment form as part of and at the time of the door-to-door enrollment process. The acknowledgment form shall include, at a minimum, the following statements or questions:
 - (i) Did the representative state he/she was representing a [retail natural gas supplier or governmental aggregator] and was not from the natural gas company?
 - (ii) Did the representative explain that by signing the enrollment form you were entering into an agreement/contract for [retail natural gas supplier or governmental aggregator] to supply your natural gas?
 - (iii) Did the representative explain the price for natural gas under the contract you signed is \$_____ per [Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format] plus sales tax?

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- (iv) Did the representative explain that the contract term is ____ year(s)?
- (v) Did the representative orally explain your right to cancel?
- (vi) Did the representative leave two completed right to cancel notices with you?
- (vii) Did the representative disclose whether or not an early termination liability fee would apply if you cancel the contract before the expiration of the contract term? If such a fee does apply to your contract, did the representative disclose the amount of the fee?

(b) Third-party verification

~~An independent third party verification shall be conducted to ensure the validity of enrollment. The third party verifier must successfully contact and survey at least fifty per cent of all customers enrolled by door to door solicitation. The verification process should be performed prior to submitting the enrollment information to the incumbent natural gas company. The retail natural gas supplier or governmental aggregator must provide a copy of the survey to the incumbent natural gas company or the commission upon request within three business days of any such request. If the third party verification does not confirm that the residential customer enrolled with the retail natural gas supplier or governmental aggregator, then the retail natural gas supplier or governmental aggregator shall not submit the enrollment information of that residential customer to the incumbent natural gas company. A retail natural gas supplier or governmental aggregator enrolling customers through door-to-door solicitation shall provide for an independent third-party verification to ensure the validity of enrollment prior to submission to the incumbent natural gas company and shall not initiate enrollment with the incumbent natural gas company without a valid independent third-party verification. The independent third-party verification shall be conducted in accordance with rule 4901:1-29-06(D)(1) of the Administrative Code and the process shall include the following:~~

- (i) The representative of the retail natural gas supplier or governmental aggregator shall contact the independent third-party verifier at the

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conclusion of customer enrollment to initiate the independent third-party verification process.

- (ii) The independent third-party verifier must confirm with the customer that the representative of the retail natural gas supplier or governmental aggregator has left the property of the customer. The representative of the retail natural gas supplier or governmental aggregator is not to return before, during, or after the independent third-party verification process.
- (iii) The independent third-party verifier shall structure the independent third-party verification interview to give the customer adequate time to respond to questions and shall not prompt answers from the customer in their response.
- (iv) The retail natural gas supplier or governmental aggregator must retain the audio recording of the customer's enrollment for one year after the contract with the customer is terminated.
- (v) The retail natural gas supplier or governmental aggregator must provide a copy of the independent third-party verification to the incumbent natural gas company or the staff within three business days of any such request.

(c) Terms and conditions print specifications

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

(d) Uniform

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

- (e) The representative of a retail natural gas supplier's or governmental aggregator's solicitor shall leave the premises of a customer when requested to do so by the customer or the owner or occupants of the premises.

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(f) Retail natural gas suppliers or governmental aggregators shall remove a customer's name from the marking/sales database upon the customer's request.

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

~~(E)~~—(D) Telephonic enrollment

- (1) To enroll a customer telephonically, a retail natural gas supplier, governmental aggregator, or an independent third-party verifier shall make a date- and time-stamped audio recording before the completion of the enrollment that verifies, at a minimum, the following:
- (a) The retail natural gas supplier, governmental aggregator, or the independent third-party verifier identity and the exact purpose of the call.
 - (b) A verbal statement and the customer's acknowledgement that the call is being recorded.
 - (c) A verbal statement and customer's acknowledgement that the retail natural gas supplier or governmental aggregator is not the customer's natural gas company.
 - ~~(e)~~—(d) A verbal question and the customer's acknowledgement that the customer ~~wishes~~ has given consent to enroll with the retail natural gas supplier or governmental aggregator.
 - ~~(d)~~—(e) A verbal question and the customer's acknowledgement that the customer is the customer of record or is authorized to switch retail natural gas supplier ~~and or~~ governmental aggregator by the customer of record.
 - ~~(e)~~—(f) In accordance with rule 4901:1-29-11 of the Administrative Code, a verbal statement and the customer's acceptance of each of the principal terms and conditions for the service that will be provided, including, but

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not limited to:

- (i) The service(s) that will be provided.
- (ii) The price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format.
- (iii) The length of the contract term.
- (iv) An approximate service commencement date.
- (v) The contract termination date, and any fees for customer cancellation prior to such date.
- (vi) Any material limitations, conditions, or exclusions.
- (vii) Any fees or costs to the customer.
- (viii) If applicable, whether the retail natural gas supplier or governmental aggregator will perform a credit check and require a deposit, including the amount.
- (ix) Who will bill for the retail natural gas supplier's and governmental aggregator's service(s).
- (x) The enrollment confirmation number.
- ~~(f)~~—(g) A verbal statement and the customer's acknowledgement that the retail natural gas supplier or governmental aggregator will, within one business day, send the customer a written contract that details the terms and conditions that were summarized in the telephone call.
- ~~(g)~~—(h) Customers are advised both verbally and in the contract of all of the following:
 - (i) The incumbent natural gas company will be sending a confirmation notice of the transfer of service.
 - (ii) The customer is allowed a seven business day period from the confirmation notice postmark date to rescind the enrollment.
 - (iii) The customer should contact the incumbent natural gas company to rescind the enrollment.

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

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

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

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request or notify the incumbent natural gas company that the change of the retail natural gas supplier or governmental aggregator was not requested by the customer.

- (4) The incumbent natural gas company's toll-free or local telephone number.
- ~~(I)~~—(H) Within two business days after receiving a customer's request to rescind enrollment with the retail natural gas supplier or governmental aggregator, the incumbent natural gas company shall initiate such rescission and inform the retail natural gas supplier or governmental aggregator that such action has been taken.
- ~~(J)~~—(I) Customers may request an actual meter reading, at no cost to the customer, prior to the transfer of the service to the new retail natural gas supplier or governmental aggregator.
- ~~(K)~~—(J) Customers returning to the incumbent natural gas company's commodity service:
- (1) Any customer returning to the incumbent natural gas company's commodity service due to default, abandonment, slamming, or certification rescission of a retail natural gas supplier or governmental aggregator will not be liable for any costs associated with the switch.
 - (2) Any switching fee applicable to customers switching from one marketer to another marketer shall also apply to customers switching from a marketer to the incumbent natural gas company's commodity sales service.
 - (3) Customers participating in an opt-out governmental aggregation program will not be charged a switching fee upon returning to regulated sales service due to either termination of the aggregation or the aggregator switching suppliers.
 - (4) Any customer returned to the incumbent natural gas company's commodity service shall pay the applicable regulated sales service rate while taking such service.
 - (5) Within two business days after confirming the validated electronic data file for a retail natural gas supplier's or governmental aggregator's customer-drop request, the incumbent natural gas company shall mail the customer a notice stating:

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- (a) The incumbent natural gas company has received a request to drop the customer from competitive retail natural gas service with the named retail natural gas supplier or governmental aggregator.
- (b) The retail natural gas supplier's or governmental aggregator's toll-free telephone number.
- (K) In an instance where the customer and retail natural gas supplier or governmental aggregator agree to a material change to an existing contract, the retail natural gas supplier or governmental aggregator shall obtain proof of the customer's consent to the material change as delineated in paragraphs (C), (D), and (E) of this rule and in accordance with the applicable enrollment process for that customer.

4901:1-29-07: Credit and deposits.

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

- (A) Disclose in service contracts with customers its nondiscriminatory policies regarding creditworthiness and deposits, including the amount of any deposit, the allocation of the deposit, and the return of any deposit balance.
- (B) Accept a reasonable and nondiscriminatory deposit as sufficient evidence of the customer's creditworthiness to initiate service.
- (C) Disclose whether interest will be paid on deposits and the applicable rate of interest.
- (D) Provide the customer a receipt for any deposit within ten business days of the date that the deposit is collected.
- (E) Return the deposit within seven business days if the customer cancels the contract during the rescission period.
- (F) Apply the deposit to the final bill and promptly refund any excess to the customer when service is terminated.

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- (G) Not require an applicant to pay the balance due another retail natural gas supplier or governmental aggregator as a condition of establishing credit or providing competitive retail natural gas service.

4901:1-29-08 Customer access and complaint handling

(A) Customer access

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

(B) Customer complaints

- (1) Each retail natural gas supplier or governmental aggregator (and/or its agent) shall investigate customer complaints (including customer complaints referred by the natural gas company) and provide a status report within three business days following receipt of the complaint to:
 - (a) The customer, when the complaint is made directly to the retail natural gas supplier or governmental aggregator.
 - (b) The customer and staff, when a complaint is referred to the retail natural gas supplier or governmental aggregator by the staff.
- (2) If an investigation is not completed within ten business days, the retail natural gas supplier or governmental aggregator (and/or its agent) shall provide status reports to the customer, or if applicable, to the customer and staff. Such status reports shall be provided at three business day intervals until the investigation is complete, unless the action that must be taken will require more than three business days and the customer has been so notified.

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- (3) The retail natural gas supplier or governmental aggregator (and/or its agent) shall inform the customer, or the customer and staff, of the results of the investigation, orally or in writing, no later than three business days after completion of the investigation. The customer or staff may request the report in writing.
- (4) If a customer disputes the retail natural gas supplier's or governmental aggregator's (and/or its agent's) report, the retail natural gas supplier or governmental aggregator shall inform the customer that the staff is available to mediate complaints. The retail natural gas supplier or governmental aggregator (and/or its agent) shall provide the customer with the address, local/toll-free telephone numbers, and ~~TDD/TTY~~ Ohio relay service telephone number of the commission's call center.
- (5) Each retail natural gas supplier or governmental aggregator shall retain records of customer complaints, investigations, and complaint resolutions for two years after the occurrence of such complaints and shall provide such records to the staff within three business days of request.
- (6) Each retail natural gas supplier or governmental aggregator shall make good faith efforts to resolve disputes and cooperate with the resolution of any joint issues with the incumbent natural gas company.
- (C) If ~~a customer's customer contact~~ customer contact the incumbent natural gas company concerning competitive retail natural gas service issues, the incumbent natural gas company shall:
 - (1) Review the issue with the customer to determine whether it also involves the incumbent natural gas company.
 - (2) Cooperate with the resolution of any joint issues with the retail natural gas supplier or governmental aggregator.
 - (3) Refer the customer to the appropriate retail natural gas supplier or governmental aggregator in those instances where the issue lacks incumbent natural gas company involvement.
- (D) Slamming complaints
 - (1) A slamming complaint is a customer's allegation that the customer's retail natural gas supplier or governmental aggregator has been switched without

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the customer's authorization.

- (2) If a customer contacts a natural gas company, retail natural gas supplier, or governmental aggregator alleging that the customer's supplier has been switched without the customer's authorization, the natural gas company, retail natural gas supplier, or governmental aggregator shall:
 - (a) Provide the customer any evidence relating to the customer's enrollment.
 - (b) Refer the customer to the commission's call center.
 - (c) Provide the customer with the local/toll-free telephone numbers of the commission's call center.
 - (d) Cooperate with the staff in any subsequent investigations of the slamming complaint.
- ~~(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 natural gas supplier was authorized.
- ~~(3)~~ (4) Except as otherwise provided in Chapter 4901:1-28 of the Administrative Code or a commission-approved exemption pursuant to section 4929.04(A) of the Revised Code, if the retail natural gas supplier or governmental aggregator cannot produce valid documentation confirming that the customer authorized the switch, there shall be a rebuttable presumption that the customer was switched without authorization. Such documentation includes one of the following, in conformance with the requirements of rule 4901:1-29-06 of the Administrative Code:
 - (a) A signed contract, in the case of direct enrollment.
 - (b) An audio recording, in the case of telephonic enrollment.
 - (c) Electronic consent, in the case of internet enrollment.
- ~~(4)~~ (5) In the event that the customer was switched from one retail natural gas supplier or governmental aggregator to a different retail natural gas supplier or governmental aggregator without authorization, the customer's previous retail natural gas supplier or governmental aggregator shall re-

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enroll the customer without penalty under such customer's original contract price for the duration of the original term and send the incumbent natural gas company an electronic enrollment request. If the original retail natural gas supplier or governmental aggregator is unable to return the customer to the original contract price, the original retail natural gas supplier or governmental aggregator may enroll the customer in a new contract pursuant to the provisions of rule 4901:1-29-06 of the Administrative Code, or the customer may select a new retail natural gas supplier or return to the incumbent natural gas company's regulated sales service.

- (5) ~~(6)~~ ____ In the event that a customer was switched from a natural gas company regulated sales service commodity service to a retail natural gas supplier or governmental aggregator without authorization, the natural gas company shall switch the customer back to the natural gas company's regulated sales service without penalty.

4901:1-29-09 Customer information

- (A) A retail natural gas supplier or governmental aggregator (and/or its agent) shall:

- (1) Not disclose or use a customer's account number or any customer information for any purpose other than for operation, maintenance, assignment and transfer of a customer's account, and not disclose or use a customer's social security number for any purpose other than a to perform a credit check, without the customer's express written or electronic authorization on a release form or pursuant to a court or commission order. Forms requiring a customer to circle or to check off preprinted types of information to be released may not be used. The release form shall:

- (a) Be on a separate piece of paper.
- (b) Be clearly identified on its face as a release of personal information and all text shall be in at least sixteen-point type.
- (c) Contain the following statements prominently, just prior to the signature, in type larger and darker than the type in surrounding sentences: "I realize that, under the rules and regulations of the public utilities commission of Ohio, I may refuse to allow (name of the retail natural gas supplier or governmental aggregator) to release the information set forth above. By my signature, I freely give (name of the

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retail natural gas supplier or governmental aggregator) permission to release the information designated above."

- (d) Specify the information to be released.
- (2) Timely provide the customer's payment history for services rendered by the retail natural gas supplier or governmental aggregator (up to twenty-four months) to the customer without charge.
- (B) Customer account numbers obtained from participation in a natural gas company's standard choice offer program shall not be used by retail natural gas suppliers in the marketing materials of competitive retail natural gas service. Account numbers must be provided by the customer prior to enrollment in any alternative offer to the standard choice offer.
- (C) A natural gas company shall:
 - (1) Except as provided for in rule 4901:1-13-12 of the Administrative Code, not disclose or use a customer's social security number, account number or any customer information, without the customer's express written or electronic authorization on a release form or pursuant to a court or commission order.
 - (2) Upon request, timely provide a customer's usage history (twelve months) and payment history (twenty-four months) to the customer without charge.
 - (3) Provide generic customer and usage information, in a universal file format, to other retail natural gas suppliers on a comparable and nondiscriminatory basis.
 - (4) Provide customer-specific information to retail natural gas suppliers and governmental aggregators on a comparable and nondiscriminatory basis as prescribed in paragraph (C) of rule 4901:1-29-13 of the Administrative Code, unless the customer objects to the disclosure of such information.
 - (5) Prior to issuing any eligible-customer lists and at least four times per calendar year, provide all customers clear written notice, in billing statements or other communications, of their right to object to being included on such lists. Such notice shall include instructions for reporting such objection. This notice shall read as follows: "We are required to include your name, address, and usage information on a list of eligible customers that is made available to other retail natural gas suppliers or governmental aggregators. If you do not wish to be included on this list, please call

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_____ or write _____, or complete the appropriate form
on _____ website".

- (6) Not release such information unless and until the customer affirmatively indicates that the information may be released, if a customer reports such objection as provided in paragraphs (C)(4) and (C)(5) of this rule.

4901:1-29-10 Contract administration and renewals.

- (A) ~~Retail~~ A retail natural gas suppliers-supplier or and-opt-in governmental aggregators-aggregator shall arrange for the provision of competitive retail natural gas service by contracting with ~~their-its~~ customers. In ~~their-its~~ administration of such contracts, a retail natural gas suppliers-supplier or and-opt-in governmental aggregators-aggregator is ~~are~~ prohibited from engaging in unfair, deceptive, misleading, and unconscionable acts and practices.
- (B) ~~Retail~~ A retail natural gas suppliers-supplier or and-opt-in governmental aggregators-aggregator shall maintain copies of individual customer contracts for no less than two years after such contracts terminate.

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

- (C) For any contract where the customer's signature is not physically on the same document as the complete terms and conditions of such contract, the retail natural gas supplier or opt-in governmental aggregator must assign a unique version number to each version of the contract. Such version number must appear on the document containing the customer's actual signature, on the copy of the terms and conditions left with the customer, and on a master copy

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of the complete terms and conditions of the contract. Both the document containing the customer's physical signature and the master copy of the complete terms and conditions must be retained in accordance with this rule. This provision shall not apply where the retail natural gas supplier or opt-in governmental aggregator has obtained the customer's consent by telephone or internet enrollment.

~~(C)~~ (D) In its administration of customer contracts, a retail natural gas supplier and or an opt-in governmental aggregator shall also:

- (1) Not assign a customer contract to another retail natural gas supplier or opt-in governmental aggregator without:
 - (a) Providing a minimum of fourteen days written notice to the director of the service monitoring and enforcement department or the director's designee before the contract assignment. Such notice shall include:
 - (i) The name of the retail natural gas supplier or opt-in governmental aggregator to whom the contract(s) will be assigned.
 - (ii) The type of contract(s) to be assigned (e.g., residential, small commercial).
 - (iii) The number of contracts to be assigned.
 - (iv) The incumbent natural gas company involved.
 - (v) The date of the assignment.
 - (vi) A copy of the customer notification.
 - (b) Providing prior written notice to the customer.
- (2) When assigned a contract previously administered by another retail natural gas supplier or opt-in governmental aggregator, comply with all terms and conditions in effect for the contract before the assignment occurred.
- (3) Comply in a timely manner with all valid notices from customers to cancel or terminate the contract as provided for by the contract and by this chapter.
- (4) Assign a number to each version of its standard contract form (including changes in contract price), retain such forms for no less than two years, and provide copies to staff within three business days of request.

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

- (1) By calling the incumbent natural gas company at the designated toll-free or local telephone number.
- (2) By written notice to the incumbent natural gas company which is effective as of the date of the postmark.

~~(F)~~ The retail natural gas supplier or opt-in government aggregator 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 natural gas service contract's expiration." This notice may be combined with a renewal notice. 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 explaining the service to which the customer will default.

~~(E)~~ ~~(G)~~ Contract renewals shall comply with the provisions of this paragraph.

- (1) A material change, for purposes of contract renewals, includes but is not limited to any new fee or penalty or any change to an existing fee or penalty, any change from a fixed rate to a variable rate or vice versa, any increase in a fixed rate, any change to a formula used to calculate a variable rate, or any change to the factors used to determine a variable rate.
- (2) Contract renewal notices required under this paragraph shall, unless otherwise specified, meet the following minimum requirements:
 - (a) The notice shall be made by separate mailing (envelope or postcard), the front cover of which shall state: "Important notice regarding your natural gas service contract."
 - (b) The notice shall state the current contract's expiration date and length of any renewal period.
 - (c) The renewal period for contracts with renewal provisions shall not

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exceed the initial contract period.

- (d) The notice must clearly explain how the customer may terminate, renew, and/or extend the contract or, if the contract will renew automatically, the manner in which the customer may cancel the contract and the time period during which the customer must act to cancel the contract.
 - (e) If the renewed contract will contain any material change, as compared with the contract that is currently effective, then the notice shall clearly explain to the customer each such material change to the contract. However, if the contract renewal is covered by paragraph ~~(E)~~(F)(5) of this rule, then the inclusion of the new rate in the first notice shall be governed by that paragraph.
- (3) For contracts with a renewal period of six months or longer that contain no material changes (as defined in this rule), the retail natural gas supplier or opt-in governmental aggregator shall provide the required notice at least forty-five days, but not more than ninety days, in advance of the contract expiration date.
- (4) For renewals of six months or longer that contain any material change to the contract and, after renewal, will contain an early termination or cancellation option with a fee greater than twenty-five dollars for early termination or cancellation or contain no option for early termination or cancellation, the retail natural gas supplier or opt-in governmental aggregator shall comply with the following provisions:
- (a) ~~The retail natural gas supplier or opt-in governmental aggregator shall provide~~ Provide to the customer notice of the contract expiration at least forty-five days, but not more than ninety days, in advance of such expiration date.
 - (b) ~~The retail natural gas supplier or opt-in governmental aggregator shall obtain~~ Obtain the customer's affirmative consent to all material changes pursuant to any of the enrollment procedures established in rule 4901:1-29-06 of the Administrative Code.
 - (c) ~~The retail natural gas supplier or opt-in governmental aggregator shall notify~~ Notify the customer that no response will result in the customer automatically reverting to the natural gas ~~company~~ company's

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applicable tariff service unless the customer chooses another retail natural gas supplier or opt-in governmental aggregator.

- (5) For contract renewals of six months or longer that contain any material change and, after renewal, will contain an early termination or cancellation option with a fee of twenty-five dollars or less for early termination or cancellation, the retail natural gas supplier or opt-in governmental aggregator shall comply with the following provisions:
- (a) ~~The retail natural gas supplier or opt-in governmental aggregator shall provide~~ Provide the customer with two separate notices.
 - (b) Each notice shall state that the customer contract will renew at the new rate unless the customer affirmatively cancels the contract.
 - (c) The first notice shall be provided at least forty-five days, but not more than ninety days, in advance of the contract expiration date. The first notice need not include the new rate at which the customer contract will be renewed but, if it does not include that new rate, it must set forth the date on which the second notice will be delivered, the method of delivery that will be used for the second notice, and a statement that the second notice will include the new rate.
 - (d) The second notice may be in writing in accordance with the requirements of this rule, by telephone, by a notice on the customer's monthly bill, or by electronic mail. The notice shall be provided for customer receipt at least thirty-five days prior to contract expiration.
 - (i) In the event ~~that~~—the retail natural gas supplier or opt-in governmental aggregator provides notice by telephone, the retail natural gas supplier 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 4901:1-29-06 of the Administrative Code.
 - (ii) In the event ~~that~~—the retail natural gas supplier or opt-in governmental aggregator provides notice on the customer's monthly bill, such notice must be in a different color, highlighted, or

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otherwise differentiated from the remainder of the bill.

- (iii) In the event ~~that~~ the customer has affirmatively consented to receive notifications by electronic mail, ~~then~~ the retail natural gas supplier or opt-in governmental aggregator may provide notice by electronic mail. ~~which~~ The notice must: (a) state "Important notice regarding your natural gas service contract" in the subject area of the message, (b) be from an electronic mail address that is readily identifiable as the retail natural gas supplier or opt-in governmental aggregator, and (c) include a receipt returned to the sender which confirms that the addressee has opened the document.

~~(F)~~ (H) Each customer shall have the right to terminate the contract with a retail natural gas supplier or opt-in governmental aggregator, without penalty, in either of the following two circumstances:

- (1) The customer relocates outside the territory of the incumbent natural gas company or within the territory of an incumbent natural gas company that does not permit portability of the contract.
- (2) The contract allows the retail natural gas supplier or opt-in governmental aggregator to terminate the contract for any reason other than customer nonpayment 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 retail natural gas supplier or opt-in governmental aggregator from performing under the terms of the contract.

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

~~(H)~~ (H) ~~Account numbers and social security numbers shall be held pursuant to the following provisions:~~

- ~~(1)~~ (1) ~~Other than for operation, maintenance, assignment and transfer of a customer's account or, where a retail natural gas supplier is performing billing services, for commercial collection, a retail natural gas supplier shall not disclose a customer's account number without the customer's affirmative written or electronic authorization, which authorization must comply with~~

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~~paragraph (B) of rule 4901:1-29.9 of the Administrative Code, or pursuant to a court or commission order. Other than for credit checking and credit reporting by a retail natural gas supplier that is performing billing services, a retail natural gas supplier shall not disclose a customer's social security number without the customer's affirmative written consent or pursuant to a court order.~~

- ~~(2) (2) Other than for commercial collection, percentage of income payment plan aggregation, and governmental aggregation, a natural gas company shall not disclose a customer's account number without the customer's affirmative written or electronic authorization, which authorization must comply with paragraph (B) of rule 4901:1-29.9 of the Administrative Code, or pursuant to a court or commission order. Other than for credit checking and credit reporting, a natural gas company shall not disclose a customer's social security number without the customer's affirmative written consent or pursuant to a court order.~~

4901:1-29.11. Contract disclosure:

All retail natural gas supplier and opt-in governmental aggregator customer contracts shall include, but not be limited to, the following information, which shall be stated in clear and understandable language:

- ~~(A) (A) All retail natural gas supplier and opt-in governmental aggregator customer contracts shall include, but not be limited to, the following information:~~
- ~~(1) (A) A notification that switching fees may apply to a customer under the incumbent natural gas company's tariff.~~
- ~~(2) (B) A notification that the customer has the right to request from the retail natural gas supplier and or opt-in governmental aggregator up to twenty-four months of the customer's payment history for services rendered by the retail natural gas supplier or governmental aggregator without charge.~~
- ~~(B) (B) In addition, all retail natural gas supplier and opt-in governmental aggregator contracts with customers shall include, but not be limited to, the following information (to be stated in clear and understandable language):~~
- ~~(1) (C) The retail natural gas supplier's and or opt-in governmental aggregator's name, mailing address, internet address (if applicable), and a toll-free telephone~~

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number (with hours of operation and time zone reference) for customer contacts.

- (2) ~~(D)~~ The services to be provided by the retail natural gas supplier or opt-in governmental aggregator and those to be provided by the incumbent natural gas company, including which entity will bill for those services.
- (3) ~~(E)~~ The seven business-day period during which a customer has to rescind such contract without penalty and the methods for customers to make such rescission by contacting the incumbent natural gas company (orally or in writing).
- (4) ~~(F)~~ The respective policies, procedures, and any penalties for contract termination by the retail natural gas supplier ~~and or~~ opt-in governmental aggregator and by the customer after the rescission period, including any change in such policies, procedures, and penalties that will become effective upon renewal of the contract.
- (5) ~~(G)~~ A notification as to the consequences of nonpayment:
 - (a) ~~(1)~~ In the case where a retail natural gas supplier ~~and/or~~ opt-in governmental aggregator bills for its own services, a notification that, should the customer fail to pay the bill or fail to meet any agreed-upon payment arrangement, the customer's contract may be terminated by the retail natural gas supplier ~~and/or~~ opt-in governmental aggregator on fourteen days' notice and that early termination penalties may apply.
 - (b) ~~(2)~~ In the case where the natural gas company bills for the commodity service of a retail natural gas supplier ~~and/or~~ opt-in governmental aggregator, a notification that, should the customer fail to pay the bill or fail to meet any agreed-upon payment arrangement, the customer's service may be terminated in accordance with the incumbent natural gas company's tariffs and the customer's contract with its retail natural gas supplier ~~and/or~~ opt-in governmental aggregator may be automatically terminated, leading to early termination penalties.
- (6) ~~(H)~~ A statement that the contract automatically terminates if any of the following occurs:
 - (a) ~~(1)~~ The requested service location is not served by the incumbent natural gas company.

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- ~~(b)~~—(2)_____The customer moves outside the incumbent natural gas company service area or to an area not served by the retail natural gas supplier or opt-in governmental aggregator.
- ~~(c)~~—(3)_____The retail natural gas supplier or opt-in governmental aggregator returns the customer to the customer's incumbent natural gas company's sales-applicable tariff service, provided that the retail natural gas supplier or opt-in governmental aggregator is permitted to terminate the contract under the terms and conditions of the contract.
- ~~(7)~~—(I)_____Notification regarding contract termination by the customer:
- ~~(a)~~—(1)_____A statement that the customer has a right to terminate the contract without penalty in the event the customer relocates outside the service territory of the incumbent natural gas company or within the service territory of an incumbent natural gas company that does not permit portability of the contract.
- ~~(b)~~—(2)_____If the contract allows the retail natural gas supplier or opt-in governmental aggregator the right to terminate the contract for any reason other than those reasons set forth in paragraph ~~(F)~~~~(G)~~(2) of rule 4901:1-29-10 of the Administrative Code, then a statement that the customer has a right to terminate the contract without penalty at any time.
- ~~(8)~~—(I)_____An itemized list and explanation of all prices ~~in clear and understandable language~~ and fees associated with the service such that:
- ~~(a)~~—(1)_____For fixed-rate offers, such information shall, at minimum, include: the cost per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service; the amount of any other recurring or nonrecurring retail natural gas supplier or opt-in governmental aggregator charges; and a statement that the customer will incur additional charges for the incumbent natural gas company's services.
- ~~(b)~~—(2)_____For variable-rate offers, such information shall, at minimum, include the amount of any other recurring or nonrecurring retail natural gas supplier or opt-in governmental aggregator charges; a statement that the customer will incur additional charges for the incumbent natural gas company's services; and either of the following options:

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- (i) ~~(a)~~ A clear and understandable formula, based on publicly available indices or data, that the retail natural gas supplier or opt-in governmental aggregator will use to determine the rate that will be charged.
- (ii) ~~(b)~~ A clear and understandable explanation of the factors that will cause the price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, to vary (including any related indices) and how often the price can change. In the event that the retail natural gas supplier or opt-in governmental aggregator chooses to follow this option, ~~then~~ no early termination fee may be charged.
- (9) ~~(K)~~ The terms and conditions of service, including any restrictions and limitations associated with the service or product offered.
- (10) ~~(L)~~ Procedures for handling complaints and disputes, including the following:
- "If your complaint is not resolved after you have called (name of retail natural gas supplier or opt-in governmental aggregator), or for general utility information, residential and business customers may contact the Public-public utilities commission 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 www.puco.ohio.gov~~http://www.puco.ohio.gov~~. Hearing or speech impaired customers may contact the PUCO via 7-1-1 (Ohio relay service)."
- (11) ~~(M)~~ A statement that:
- "~~Residential customers may also contact the Ohio~~ 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 a.m. eight a.m. to 5:00 five p.m. weekdays, or at www.pickocc.org~~http://www.pickocc.org~~."
- (12) ~~(N)~~ Billing intervals and any late payment fees.
- (13) ~~(O)~~ Contract duration, including the estimated starting and expiration month and year.
- (14) ~~(P)~~ Whether the contract contains an automatic renewal provision and the

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terms of such provision.

- (15)-(Q) Any credit, deposit, and collection procedures, including terms and conditions associated with the return of any deposit at the time of contract termination.
- (16)-(R) Who will bill for the retail natural gas supplier's ~~and~~ or opt-in governmental aggregator's service(s).
- (17)-(S) A notification that the customer's social security number, ~~and/or~~ account number(s), or any customer information will not be released without the customer's affirmative express written consent except in accordance with rules 4901:1-28-04 and 4901:1-29-09 of the Administrative Code. ~~where such release is required by court order or by commission order or rule.~~
- (18)-(T) If applicable, a notification that, if the customer voluntarily returns to the incumbent natural gas company after choosing a retail natural gas supplier or opt-in governmental aggregator, the customer may be charged a price other than the incumbent natural gas company's ~~regulated sales service applicable~~ tariff rate.

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

- (A) A retail natural gas supplier ~~or~~ governmental aggregator (and/or its, or an agent) may bill customers directly for competitive retail natural gas services pursuant to this rule. A retail natural gas supplier or governmental aggregator may bill for consolidated services if it can demonstrate, pursuant to the standards contained in the incumbent natural gas company tariffs, to the incumbent natural gas company and the commission it has the capability to bill customers for such services.
- (B) Customer bills issued by or for retail natural gas suppliers and governmental aggregators shall be accurate and understandable, be rendered at intervals consistent with those of the customer's natural gas company, and contain sufficient information for customers to compute and compare the total cost of competitive retail natural gas service(s). Such bills shall also include:
- (1) The customer's name, billing address, service address, the customer's natural gas company account number, and if applicable, the retail natural gas supplier or governmental aggregator account number.

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- (2) The dates of service covered by the bill, an itemization of each type of competitive retail natural gas service covered by the bill, any related billing components, the charge for each type of natural gas service, and an itemization of all other fees and charges.
- (3) The customer's historical consumption during each of the preceding twelve months or each of the preceding months that the customer has been a customer of the retail natural gas supplier or governmental aggregator, whichever is less; with a total consumption and an overall average monthly consumption for such period.
- (4) The applicable billing determinants, including beginning meter reading(s), ending meter reading(s), multiplier(s), and any other consumption(s) adjustments.
- (5) The unit price charged per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service, as calculated by dividing current-period competitive retail natural gas service charges by the current-period consumption.
- (6) An identification of the retail natural gas supplier or governmental aggregator of each retail natural gas service appearing on the bill.
- (7) The amount billed for the current period, any unpaid amounts due from previous periods, any payments or credits applied to the customer's account during the current period, any late payment charges or gross and net charges, if applicable, and the total amount due and payable.
- (8) The due date for payment to keep the account current. Such due date shall be consistent with that provided by the incumbent natural gas company for its charges.
- (9) Current balance of the account, if a residential customer is billed according to a budget plan.
- (10) Options and instructions on how customers may make their payments.
- (11) A toll-free or local telephone number and address for customer billing questions or complaints must appear for any retail natural gas supplier or governmental aggregator whose charges appear on the bill.
- (12) The following statement: "If your complaint is not resolved after you have

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called (name the retail natural gas company or governmental aggregator), 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 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>."

- (13) The incumbent natural gas company's twenty-four hour local/toll-free telephone number for reporting service emergencies.
 - (14) Identification of estimated bills or bills not based upon actual end-of-period meter readings for the period.
 - (15) An explanation of any codes and abbreviations used.
- (C) If applicable, each retail natural gas supplier and governmental aggregator shall, upon request, provide customers with the name and street address/location of the nearest payment center and/or authorized payment agent and disclose any fee associated with using such payment center and/or agent.
 - (D) When a customer pays the bill at a payment center or to an authorized payment agent, such payment shall be credited to the customer's account as of the day it is received by such payment center or agent.
 - (E) Each retail natural gas supplier and governmental aggregator shall establish policies and procedures for handling billing disputes and requests for payment arrangements.
 - (F) Partial payments applied towards any past due amount on a bill or the balance due on a disconnection notice must be apportioned to past due natural gas company service and delivery charges, then to any current natural gas company service and delivery charges before being applied to any retail natural gas supplier or governmental aggregator charges, unless the customer pays the entire amount past due or more. In that case, any amount paid over the amount past due shall be applied first to natural gas company service and delivery

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charges.

- (G) Natural gas companies shall make dual billing and consolidated billing available to retail natural gas suppliers and governmental aggregators.
 - (1) If the retail natural gas supplier or governmental aggregator elects for its charges to be included on the incumbent natural gas company's consolidated bill:
 - (a) The retail natural gas supplier or governmental aggregator shall furnish the incumbent natural gas company sufficient bill contents as required by paragraph (B) of this rule.
 - (b) The incumbent natural gas company shall produce a consolidated bill including all such required contents provided by the retail natural gas supplier or governmental aggregator if it is not already on the customer's bill from the incumbent natural gas company. However, the consolidated bill may provide the following amounts on a consolidated basis only: budget amounts, past due balances, and payments applied.
 - (c) The consolidated bill shall state the name of the applicable retail natural gas supplier or governmental aggregator in close proximity to the retail natural gas supplier or governmental aggregator commodity charges.
 - (d) The incumbent natural gas company shall offer budget billing of retail natural gas supplier and governmental aggregator charges as a customer-elected option.
 - (2) If the retail natural gas supplier or governmental aggregator elects a dual billing arrangement, the incumbent natural gas company's bill shall include the name of the applicable retail natural gas supplier or governmental aggregator and a statement that such retail natural gas supplier or governmental aggregator is responsible for billing the retail natural gas supplier or governmental aggregator charges.
- (H) Customer bills issued by or for a natural gas company shall state the customer's historical consumption during each of the preceding twelve months, with a total and average consumption for such twelve-month period.
- (I) Natural gas companies shall prominently display the "apples to apples" notice on customer bills for customers in accordance with rule 4901:1-13-11 of the Administrative Code. ~~The staff shall review such notice.~~

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- (J) Natural gas companies shall comply with chapter 4901:1-18 of the Administrative Code regarding disconnection of ~~not disconnect~~ a customer's natural gas service ~~in the event the customer has registered a complaint with the commission's call center or filed a formal complaint with the commission which reasonably asserts a bona fide dispute. In that case, the company shall not disconnect service if the customer pays either the undisputed portion of the bill, if known or can reasonably be determined, or the amount billed for the same billing period in the previous year.~~
- (K) For the purposes of this rule, full payment of a budget amount due shall not be construed as a partial payment.
- (L) In the event the retail natural gas supplier and/or opt-in governmental aggregator bills for its own services, the retail natural gas supplier and/or governmental aggregator may terminate the contract for customer nonpayment only upon fourteen days' notice.
- (M) Any competitive retail natural gas service supplier that bills for both regulated and unregulated service shall comply with paragraphs (E) and (F) of rule 4901:1-13-11 of the Administrative Code.

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

- (A) At a minimum, the incumbent natural gas company tariff shall include provisions governing the relationship between the retail natural gas supplier and the governmental aggregator for competitive retail natural gas service. Such provisions shall address:
- (1) Nomination and deliveries.
 - (2) Billing (between the incumbent natural gas company and the retail natural gas supplier or governmental aggregator).
 - (3) Customer billing (options, collection, application of customer payments).
 - (4) Measurement of delivered volume.
 - (5) Shrinkage and retainable factors.
 - (6) Customer enrollment process information exchange.

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- (7) Dispute resolution process (between the incumbent natural gas company and the retail natural gas supplier or governmental aggregator).
 - (8) Standard operating rules.
 - (9) Performance standards of the retail natural gas supplier or governmental aggregator.
 - (10) Creditworthiness and default security.
 - (11) Supplier agreement.
 - (12) A listing and description of all fees and charges assessed to retail natural gas suppliers or governmental aggregators.
 - (13) Service termination and disconnection (of end-user customer).
 - (14) Conditions and processes for returning customers to the incumbent natural gas company's commodity service.
 - (15) Customer enrollment and switching.
 - (16) Supplier proof of certification.
- (B) A natural gas company shall execute a supplier agreement with each retail natural gas supplier and governmental aggregator to operate under the terms of the natural gas company's tariff. At a minimum, the supplier agreement shall include representations and warranties, indemnification, limitations on liability, default (breach), remedies, force majeure, commencement, and term.
- (C) Natural gas companies shall make eligible-customer lists available to certified retail natural gas suppliers and governmental aggregators via electronic media. Such lists shall be updated quarterly and shall, at a minimum, contain customer name, service and mailing addresses, load profile reference category, meter read date or schedule, and historical consumption data for each of the most recent twelve months.
- (D) Customers returning to the incumbent natural gas company.
- (1) Any customer returning to the incumbent natural gas company's commodity service due to default, abandonment, slamming, or certification rescission of a retail natural gas supplier or governmental aggregator will not be liable for any costs associated with the switch.

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- (2) Any switching fee applicable to customers switching from one marketer to another marketer shall also apply to customers switching from a marketer to a natural gas company's applicable tariff ~~regulated sales service~~.
- (3) Customers participating in an opt-out government aggregation program will not be charged a switching fee upon returning to ~~regulated sales a~~ natural gas company's applicable tariff service due to either termination of the aggregation or the aggregator switching suppliers.
- (4) Any customer returned to the incumbent natural gas company's ~~regulated sales applicable tariff~~ service 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 retail natural gas supplier's or governmental aggregator's customer drop request, the incumbent natural gas company shall mail the customer a notice stating both of the following:
 - (a) The incumbent natural gas company has received a request to drop the customer from competitive retail natural gas service or governmental aggregation with the named retail natural gas supplier or governmental aggregator.
 - (b) The retail natural gas supplier's or governmental aggregator's toll-free telephone number.
- (E) Within three business days of notifying a retail natural gas supplier of a customer cancellation the incumbent natural gas company shall provide to the customer by mail a notice stating all of the following:
 - (1) The incumbent natural gas company has received the cancellation request from the customer and has notified the customer's retail natural gas supplier of the cancellation.
 - (2) The date the incumbent natural gas company received the cancellation.
 - (3) The incumbent natural gas company's toll-free telephone number.

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~~4901:1-30-01~~ Regulatory assessment and reporting requirements.

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

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supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code shall also provide the public utilities commission of Ohio with such information as the public utilities commission of Ohio deems necessary.

(H) A governmental aggregator may authorize its retail gas supplier, or a designated agent, to file, on its behalf, any report required by this rule.

(I) Retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code shall provide an annual report in such form as the public utilities commission of Ohio directs. An annual report form will be made available on the public utilities commission of Ohio's web site. Such report shall be filed each year on a date determined by the public utilities commission of Ohio or its staff and shall contain the following information for the most recent calendar year:

- (1) The monthly and annual volume of natural gas sold, by customer class.
- (2) The monthly and annual volume of natural gas sold, by customer class, identified by natural gas company service territory.
- (3) Gross receipts of intrastate retail natural gas service(s).
- (4) The contact person for this information.

4901:1-31-01: Opening areas to competitive retail natural gas service.

(A) All ~~A~~ governmental aggregators ~~aggregator~~ or retail natural gas suppliers seeking an order from the public utilities commission of Ohio ordering a natural gas company, with more than fifteen thousand customers in this state, to provide fully open, equal and nondiscriminatory distribution service to nonmercantile customers must file a petition with the public utilities commission of Ohio to open markets (POM), which shall:

- (1) Be in the format prescribed on the staff-approved POM-form, which shall be available at the public utilities commission of Ohio's docketing division and electronically on the public utilities commission of Ohio's web site(www.pucio.ohio.gov).
- (2) Include, if applicable, a copy of the ordinance or resolution authorizing the creation of the governmental aggregation.

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

4901:1-32-01 Definitions

As used in this chapter:

- (A) "Commission" means the public utilities commission of Ohio.
- (B) "Natural gas company" means a natural gas company, as defined in section 4905.03 of the Revised Code, that is a public utility as defined in section 4905.02 of the Revised Code and excludes a retail natural gas supplier.

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4901:1-32-02 Purpose and scope

The rules in this chapter:

- (A) Apply to the recovery or modification of recovery of capacity and commodity costs, and costs incidental to those costs, and recovery of decertification costs.
- (B) 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.

4901:1-32-023 Filing and contents of requests for recovery of capacity and commodity costs

- (A) If a natural gas company seeks to recover, or modify the amount of recovery of, pursuant to section 4929.25 of the Revised Code, capacity and commodity costs, and costs incidental thereto, entered into on behalf of customers that take commodity sales service from other than the natural gas company, it must file an application for such. Such application shall be filed with the commission in the form of an application for approval of a migration cost recovery rider (XX-XX-GA-MCR).
- (B) In addition to a fully documented analysis and justification for the proposed migration cost recovery rider, the migration cost recovery rider application should provide the following information:
 - (1) Customer migration rates (both with and without percentage of income payment plan customers) since the inception of the competitive retail natural gas service program and the associated volumes.
 - (2) Customer migration due to governmental aggregation (both with and without percentage of income payment plan customers) since the inception of the competitive retail natural gas service program and the associated volumes.
 - (3) Description of existing capacity and commodity contracts including:
 - (a) Vendor/service provider and description of service being provided.
 - (b) Quantities - daily, seasonal, and annual.
 - (c) Term/applicable period.

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- (d) Rates/prices (including any reservation fees, minimum takes, and demand charges).
 - (e) Termination/buyout/buydown opportunities and costs.
 - (f) Any ratchet provisions in the contracts.
- (4) Contract cost mitigation opportunities (e.g., capacity release, off-system sales).
- (C) A complete set of work papers must be filed with a migration cost recovery rider application. Work papers must include, but are not limited to, any and all supporting work papers prepared by the natural gas company for the application and a narrative or other support of assumptions made of working paper schedule amounts. Work papers shall be marked, organized, and indexed according to the schedules to which they relate and must identify the witness that will sponsor them. Data contained in the work papers shall be footnoted so as to identify any source document used.
- (D) All schedules, testimonies, and work papers included in a migration cost recovery rider application must be available in spreadsheet, word processing, or electronic form.
- (E) A migration cost recovery rider application must include a complete set of testimony of company personnel or other expert witnesses. This testimony shall be in question-and-answer format and shall be in support of the natural gas company's proposed migration cost recovery recommendations. This testimony shall fully and completely address and support all schedules and significant issues identified by the company.
- (F) Concurrent with the filing of an application for migration cost recovery, the natural gas company shall provide notice of the proposed filing upon each party in its most recent gas cost recovery and base rate cases. At a minimum, that notice shall state that an electronic or paper copy of the migration cost recovery rider application, supporting workpapers and testimony is available from the natural gas company (with instructions as to how to obtain an electronic or paper copy), available for inspection at the natural gas company's main office, available for inspection at the commission offices, and available at any other sites at which the natural gas company will maintain a copy of the application, workpapers and testimony. If the natural gas company has a website,

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information as to how to request an electronic or paper copy shall be included therein.

4901:1-32.04 Filing and contents of requests for recovery of decertification costs

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

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4901:1-33-01 Not-for-profit customer declarations of nonmercantile status.

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

4901:1-34-01 Definitions.

As used in this chapter:

- (A) "Commission" means the public utilities commission of Ohio.
- (B) "Governmental aggregator" has the meaning set forth in division (K)(1) of section 4929.01 of the Revised Code. For purposes of this chapter, "governmental aggregator" specifically excludes a municipal corporation acting exclusively

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under Section 4 of Article XVIII, Ohio Constitution, as an aggregator for the provision of competitive retail natural gas service.

- (C) "Natural gas company" has the meaning set forth in division (G) of section 4929.01 of the Revised Code.
- (D) "Retail natural gas supplier" has the meaning set forth in division (N) of section 4929.01 of the Revised Code.
- (E) "Staff" means the staff of the public utilities commission of Ohio.

4901:1-34-02 Purpose and scope

- (A) The rules contained in this chapter prescribe procedures for the ~~commission~~ staff to administer and enforce the rules for the certification of retail natural gas service suppliers and governmental aggregators and the minimum requirements for competitive retail natural gas set forth in Chapters 4901:1-27 and 4901:1-29 of the Administrative Code, and commission orders issued thereunder.
- (B) This chapter also governs proceedings of the commission to:
 - (1) Investigate and determine a natural gas company's, retail natural gas supplier's, or governmental aggregator's compliance with Chapters 4901:1-13, 4901:1-27, 4901:1-28, and 4901:1-29 of the Administrative Code, and commission orders issued thereunder.
 - (2) Review settlement agreements and approve stipulations by the staff and the natural gas company, retail natural gas supplier, or governmental aggregator.
 - (3) Issue and enforce compliance orders.
 - (4) Assess forfeitures.
 - (5) Direct the attorney general to seek enforcement of commission orders, including orders authorizing forfeitures, and appropriate remedies in court to protect the public safety, reliability, and customer service.
- (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.

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

- (A) After an inspection, investigation, or complaint, a staff notice of probable noncompliance may be issued. The staff notice of probable noncompliance may be issued with a proposed corrective action and/or a proposed forfeiture.
- (B) The staff may issue an amended notice of probable noncompliance, proposed corrective action, or proposed forfeiture at any time prior to the commencement of a compliance proceeding or other commission proceeding brought pursuant to rule ~~4901:1-34-05~~ 4901:1-34-06 of the Administrative Code, in order to modify or include additional probable noncompliances or violations, facts, proposed forfeitures, and proposed compliance orders. Once the commission initiates a compliance or other proceeding pursuant to rule ~~4901:1-34-05~~ 4901:1-34-06 of the Administrative Code, this rule does not prevent the staff during the course of such proceeding from seeking a finding of violations not listed in the staff notice or amended staff notice of probable noncompliance (or rescinding or refraining from seeking a finding of violations) or from seeking a corrective action or proposed forfeiture that varies from previous staff notices issued under this rule, provided that the staff's proposed findings and/or violations relate to the same incident, type of incident, investigation, or audit(s).

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

- (A) Staff notices of probable noncompliance, proposed corrective actions, proposed forfeitures, and amendments thereto under rule 4901:1-34-03 of the Administrative Code, and investigative reports under rule ~~4901:1-34-05~~ 4901:1-34-06 of the Administrative Code, shall be served on the natural gas company, retail natural gas supplier, or governmental aggregator by certified United States mail, or hand delivery. Certified mail service and service by hand delivery is effective upon receipt by any employee, agent of, or person designated by the natural gas company, retail natural gas supplier, or governmental aggregator. Unless otherwise provided in this paragraph, service upon a natural gas company, retail natural gas supplier, or governmental

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aggregator shall be made at the address designated as the service address in the company's most recent annual financial report, in its certification application, or certification renewal application.

- (B) Each natural gas company, retail natural gas supplier, or governmental aggregator shall provide the commission with the company's or provider's current service address. If the service address has changed since the most recent annual report, certification application or certification renewal application was submitted to the commission, or the service address or business address has not been disclosed to the commission, service shall be made at any business address known to the commission.
- (C) If the certified mail envelope is returned with an endorsement showing failure of delivery, then service may be made by ordinary United States mail and is effective on the date of mailing.

4901:1-34-05. Settlement agreements and stipulations

- (A) If staff and the natural gas company, retail natural gas supplier, or governmental aggregator reach agreement regarding any of the following: the agreement must be reduced to writing, the violation of a rule within this chapter, and/or Chapter chapters 4901:1-13, 4901:1-27, 4901:1-28, or 4901:1-29 of the Administrative Code, the violation of any provision of Chapter 4929. of the Revised Code, the violation of a commission order; a proposed corrective action or remedy; or the amount of a forfeiture or other payment ~~the agreement must be reduced to writing in a settlement agreement.~~ Such agreement stipulation shall be signed by an officer of the company or its attorney and the assistant attorney general who serves as legal counsel for the ~~commission~~ staff. ~~Except as otherwise provided in paragraph (B) of this rule, the settlement agreement.~~ The stipulation shall not be effective until the stipulation is filed with and approved by and made the order of the commission.

~~(1) (1) The stipulation is filed with the commission for approval pursuant to a compliance or other proceeding.~~

~~(2) (2) The stipulation is approved by and made the order of the commission.~~

- (B) If the settlement agreement provides for the payment of a forfeiture or other payment by a natural gas company or retail natural gas supplier of one

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thousand dollars or less, the agreement shall be accepted by the commission and fully enforceable upon the natural gas company or retail natural gas supplier upon its execution.

- (C) ~~(B)~~ Unless contained in or otherwise provided in a stipulation, no statement or conduct during settlement negotiations is admissible in any commission proceeding regarding the noncompliance.
- (D) ~~(C)~~ Where a natural gas company or retail natural gas supplier has demonstrated to the staff's satisfaction, as confirmed in writing from the commission's director of the service monitoring and enforcement department or the director of utilities department or his/her designee, that the violation(s) listed in the staff notice (or amended staff notice) of probable noncompliance or investigative report has been corrected, ~~and where the company submits full payment of the proposed forfeiture prior to the execution of a written settlement agreement or final commission order,~~ the violation(s) listed in such staff notice of probable noncompliance or investigative report shall ~~only be considered by the commission as part of the company's or supplier's history of violations in only for purposes of determining the appropriate forfeiture or corrective action for any future violation. If a company pays a proposed forfeiture of more than one thousand dollars without executing a written settlement agreement, the payment shall be fully effective when approved by and made the order of the commission.~~

4901:1-34-06 Commission proceedings.

- (A) The commission may initiate a compliance or other proceeding upon its own initiative, after an incident has occurred, after a complaint is filed pursuant to section 4905.26 of the Revised Code, or after a staff notice of probable noncompliance is served.
- ~~(B) (B) The commission shall conduct such compliance or other proceeding in accordance with Chapter 4901-1 of the Administrative Code.~~
- ~~(C) (B)~~ Unless otherwise ordered by the commission or an attorney examiner, the staff shall file with the commission and serve upon the natural gas company, retail natural gas supplier, or governmental aggregator a written report of investigation (investigative report) in each proceeding within forty-five days after the commission issues an entry initiating a compliance proceeding. The

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investigative report shall present:

- (1) The findings on any alleged noncompliance specified in any staff notice or amended staff notice, which also may include:
 - (a) Noncompliances not included in any staff notice or amended staff notice, provided that such additional noncompliances relate to the same incident, investigation, or safety audit(s) referenced in the initial or amended staff notice.
 - (b) Staff's findings on the natural gas company's, retail natural gas supplier's, or governmental aggregator's practices and policies.
- (2) Staff's recommendations for commission action.

~~(D) (C)~~ The commission shall hold an evidentiary will provide reasonable notice and an opportunity for hearing on all proceedings initiated under this rule. The hearing may include evidence on the issues of proposed corrective action, compliance orders issued by the commission, forfeitures, enforcement of a commission order, and other remedies.

~~(D)~~ If the commission finds a natural gas company, retail natural gas supplier, or governmental aggregator has violated or is violating chapter 4929. of the Revised Code, or the rules and standards in chapter 4901:1-13, 4901:1-27, 4901:1-28, 4901:1-29, or 4901:1-34 of the Administrative Code, and or this chapter, or any order of the commission, the commission may, after an opportunity for hearing, impose the necessary remedies as set forth in rule 4901:1-34-08 of this chapter.

~~(E) (E)~~ If, after a hearing, the commission finds a natural gas company, retail natural gas supplier, or governmental aggregator has violated or is violating Chapter 4929. of the Revised Code, or Chapter 4901:1-27 or 4901:1-29 of the Administrative Code, this chapter, or any order adopted thereunder, the commission, by order:

- ~~(1) (1)~~ Shall require the natural gas company or retail natural gas supplier or governmental aggregator to comply with Chapter 4929. of the Revised Code, Chapter 4901:1-27 or 4901:1-29 of the Administrative Code, this chapter, or any commission order thereunder; and to undertake corrective action necessary to protect the public safety, reliability, and customer service. The commission is not restricted in the making of the compliance

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~~order by the terms of any proposed corrective action and/or forfeiture by the staff.~~

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

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

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

4901:1-34-08 Noncompliance.

A natural gas company, retail natural gas supplier, or governmental aggregator that fails to comply with the requirements of chapter 4929. of the Revised Code, the rules and standards in chapter 4901:1-13, 4901:1-27, 4901:1-28, 4901:1-29, or 4901:1-34 of the Administrative Code, and/or any commission order may, after opportunity for hearing, be subject to any and all of the following available under the law:

- (A) A natural gas company or retail natural gas supplier may be subject to a forfeiture to the state in an amount provided for in chapter 4905 of the Revised

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Code.

- (B) A natural gas company, retail natural gas supplier, or governmental aggregator may be subject to rescission of a customer contract.
- (C) A natural gas company, retail natural gas supplier, or governmental aggregator may be required to provide restitution to a customer.
- (D) A retail natural gas supplier or governmental aggregator may have its certificate suspended, rescinded, or conditionally rescinded.
- (E) A natural gas company, retail natural gas supplier, or governmental aggregator may be subject to any other corrective action necessary to protect the public safety, reliability, and customer service.

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CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio (PUCO)						
	Attention: Christine Pirik, Chief, Gas Section						
	Phone: 614-644-8955 Fax: 614-728-8373						
	christine.pirik@puc.state.oh.us						
Regulation/Package Title:	Certification of Governmental Aggregators and Retail Natural Gas Suppliers						
Rule Number(s):	4901:1-27-01, 4901:1-27-02, 4901:1-27-03, 4901:1-27-04, 4901:1-27-05, 4901:1-27-06, 4901:1-27-07, 4901:1-27-08, 4901:1-27-09, 4901:1-27-10, 4901:1-27-11, 4901:1-27-12, 4901:1-27-13, 4901:1-27-14.						
Date:	November 7, 2012						
Rule Type:	<table><tr><td><input checked="" type="checkbox"/> New</td><td><input checked="" type="checkbox"/> 5-Year Review</td></tr><tr><td><input checked="" type="checkbox"/> Amended</td><td><input checked="" type="checkbox"/> Rescinded</td></tr><tr><td></td><td><input type="checkbox"/> Change</td></tr></table>	<input checked="" type="checkbox"/> New	<input checked="" type="checkbox"/> 5-Year Review	<input checked="" type="checkbox"/> Amended	<input checked="" type="checkbox"/> Rescinded		<input type="checkbox"/> Change
<input checked="" type="checkbox"/> New	<input checked="" type="checkbox"/> 5-Year Review						
<input checked="" type="checkbox"/> Amended	<input checked="" type="checkbox"/> Rescinded						
	<input type="checkbox"/> 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 4901:1-27 of the Administrative Code (O.A.C.), sets forth the requirements for competitive retail natural gas service provider, retail natural gas aggregator, retail natural gas broker, and governmental aggregator certification. Specifically, this 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 Commission's authority to suspend, rescind, or conditionally rescind a certificate.

The proposed changes to Chapter 4901:1-27, O.A.C. include: nonsubstantive changes to Rules 4901:1-27-02, O.A.C., purpose and scope and Rule 4901:1-27-03, O.A.C., general prohibitions; adding a rule to facilitate docketing administration when filing a certificate under Rule 4901:1-27-04, O.A.C.; adding motion rules streamlining *pro hac vice* appearance in Rule 4901:1-27-07, O.A.C., and protective orders in Rule 4901:1-27-08, O.A.C.; adding a section to Rule 4901:1-27-09, O.A.C.; certification renewal paralleling the Commission's authority in Rule 4901:1-27-13, O.A.C.; to suspend, rescind, or conditionally rescind a certificate, and adding assignment of a portion of a customer base to the list of material changes requiring Commission notification.

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

Rule	Statutory Authority – Ohio Revised Code
4901:1-27-01	4929.01
4901:1-27-02	4905.06 4929.20
4901:1-27-03	
4901:1-27-04	
4901:1-27-05	
4901:1-27-06	
4901:1-27-08	
4901:1-27-09	
4901:1-27-10	
4901:1-27-11	
4901:1-27-12	
4901:1-27-07	4905.10, 4911.18

- 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 the standards required by Section 4929.20, Revised Code, for applicants to be certified as competitive retail natural gas service providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators.

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

The Commission monitors complaints from the applicant competitive retail natural gas service providers, retail natural gas aggregators, retail natural gas brokers, governmental aggregators, and their customers through staff interaction and the Commission'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, the Commission, in Case No. 12-925-GA-ORD, ordered a workshop to take place on August 6, 2012, to allow stakeholders the opportunity to propose revisions to Chapters 4901:1-27 through 4901:1-34. The workshop was publically noticed and filed in Case No.12-925-GA-ORD. Thirty-two individuals were in attendance at the August 6, 2012, workshop, including representatives from The Dayton Power and Light Company, Columbia Gas of Ohio, American Coalition for Clean Coal Energy, Duke Energy Ohio, Inc., American Electric Power, FirstEnergy Ohio, FirstEnergy Solutions, Duke Energy Retail, Dominion East Ohio (Dominion), Ohio Partners for Affordable Energy, the Ohio Consumers Counsel, Dominion Retail, the Retail Energy Supply Association, and Direct Energy.

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

Dominion, at the August 6, 2012, workshop requested Rule 4901:1-27-12, O.A.C., be amended to require the Commission to provide notice to incumbent utilities when it suspends, rescinds, or conditionally rescinds a certificate. Dominion also raised the question as to whether the Commission should limit the number of certificates issued under Rule 4901:1-27-06, O.A.C., to one participant or affiliate per company. Direct Energy responded that companies have legitimate business reasons to request multiple certificates under Rule 4901:1-27-06, O.A.C.

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 specific scientific data was used to develop this chapter. Rather, the certification of competitive retail natural gas service providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators is required by Section 4929.20(A), Revised Code, and has been in effect since 2002; thus, Staff's experience and the input of stakeholders was utilized to refine the rules.

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?

The certification of competitive retail natural gas service providers, retail natural gas aggregators, retail natural gas brokers, and governmental under Chapter 4901:1-27, O.A.C., is specifically mandated by Section 4929.20, Revised Code, thus regulatory alternatives were not available.

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.

The certification of competitive retail natural gas service providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators under Chapter 4901:1-27, O.A.C., is specifically mandated by Section 4929.20, Revised Code, thus, performance-based regulation is inappropriate.

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

The certification of competitive retail natural gas service providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators under Chapter 4901:1-27, O.A.C., is specifically mandated by Section 4929.20, Revised Code, thus the determination as to whether Section 4929.20, Revised Code, duplicated an existing Ohio regulation was performed by the Legislative Service Commission.

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.

Chapter 4901:1-27, O.A.C., is required by Section 4929.20, Revised Code and has been in effect since 2002 without complaints about inconsistent application of the Chapter. The proposed changes to the existing certification process are not substantive.

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 4901:1-27, O.A.C., establishes minimum managerial, technical, and financial standards for competitive retail natural gas service providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators and provides reasonable financial assurances to protect consumers and natural gas companies from default; reflecting the requirements of Section 4929.20, Revised Code.

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

Rule 4901:1-27-04, O.A.C., has no application fees but requires employer 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.

Chapter 4901:1-27, O.A.C., has been in effect since 2002 and reflects the requirements of Section 4929.20, Revised Code. 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.

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

Chapter 4901:1-27, O.A.C., reflects the requirements of Section 4929.20, Revised Code. Any proposed changes to the Chapter are not substantive, nor contrary to legislative intent.

Regulatory Flexibility

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

Chapter 4901:1-27, O.A.C. reflects the legislative intent of Section 4929.20, Revised Code, and provides for a streamlined certification requirements for all competitive natural gas service providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators to do business in Ohio.

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 Chapter 4901:1-27, O.A.C., is to ensure that competitive natural gas service providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators 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 Commission after notice and hearing. The Commission will fully comply with Section 119.14, Revised Code, and 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 and without providing due process to the small company.

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

The Commission staff routinely works with small businesses to assist with Chapter 4901:1-27, O.A.C., compliance.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Christine Pirik, Chief, Gas Section
Phone: 614-644-8955 Fax: 614-728-8373
christine.pirik@puc.state.oh.us

Regulation/Package Title: Aggregation with Prior Consent

Rule Number(s): 4901:1-28-01, 4901:1-28-02, 4901:1-28-03,
4901:1-28-04, 4901:1-28-05

Date: November 7, 2012

Rule Type:

<input 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

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 4901:1-28, of the Ohio Administrative Code (O.A.C.), sets forth the rules for governmental aggregation as specified in Section 4929.26, Revised Code, adoption of

ordinances or resolution for automatic aggregation and Section 4929.27, Revised Code, adoption of ordinances or resolution for aggregation with prior consent.

Specifically Chapter 4901:1-28, O.A.C., outlines the requirements for the formation and operation of governmental aggregation with prior consent and opt-out governmental aggregation, i.e. minimum requirements for operations and governance plans, opt-out disclosure requirements, and expectations for cooperation between natural gas companies and certified governmental aggregators.

The proposed changes to Chapter 4901:1-28, O.A.C., include: nonsubstantive changes to Rule 4901:1-28-01, O.A.C., definitions; Rule 4901:1-28-02, O.A.C., purpose and scope; and Rule 4901:1-28-04, O.A.C., opt-out notice requirements.

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

Rule	Statutory Authority – Ohio Revised Code
4901:1-28-01	4929.01
4901:1-28-02	4905.06
4901:1-28-03	4929.26
4901:1-28-04	4929.27
4901:1-28-05	

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 the standards required by Section 4929.27, Revised Code for establishing governmental aggregation with prior consent and amplify the Section

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

4929.26, Revised Code, requirements for ordinances or resolutions for automatic aggregation.

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

The Commission can monitor consumer complaints through its call center, as well as staff interaction with governmental aggregators.

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, the Commission, in Case No. 12-925-GA-ORD, ordered a workshop to take place on August 6, 2012, to allow stakeholders the opportunity to propose revisions to Chapters 4901:1-27 through 4901:1-34. The workshop was publically noticed and filed in Case No. 12-925-GA-ORD. Thirty-two individuals were in attendance at the August 6, 2012, workshop, including representatives from The Dayton Power and Light Company, Columbia Gas of Ohio, American Coalition for Clean Coal Energy, Duke Energy Ohio, Inc., American Electric Power, FirstEnergy Ohio, FirstEnergy Solutions, Duke Energy Retail, Dominion East Ohio (Dominion), Ohio Partners for Affordable Energy, the Ohio Consumers Counsel, Dominion Retail, the Retail Energy Supply Association, and Direct Energy.

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

A distribution company at the August 6, 2012, workshop suggested that Rule 4901:1-28-01(C), O.A.C., definition of “eligible customer” be modified so that a customer’s eligible status is not determined on the date ordinance or resolution were approved, but rather the date the customer enrolls with the governmental aggregator. Another distribution company suggested the rules governing opt-out disclosure requirements make clear on the envelope that the opt-out notice is enclosed.

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 scientific data was used to develop this chapter; rather the rules in this chapter are required by Sections 4929.26 and 4929.27, Revised Code, and have been in effect since 2002.

- 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?**

Chapter 4901:1-28, O.A.C., is specifically required by Sections 4929.26 and 4929.27, Revised Code, thus, regulatory alternatives were not available.

- 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.

Chapter 4901:1-28, O.A.C., is specifically required by Sections 4929.26 and 4929.27, Revised Code, thus, performance-based regulation was not considered.

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

Chapter 4901:1-28, O.A.C., are the rules required by Sections 4929.26 and 4929.27, Revised Code, thus, the determination as to whether the statutes and resulting rules duplicated an existing Ohio regulation was performed by the Legislative Service Commission.

- 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.**

Chapters 4901:1-28, O.A.C., are the rules required by Sections 4929.26 and 4929.27 Revised Code, and have been in effect since 2002 without complaints regarding inconsistent application of the Chapter. The proposed changes to the existing rules are not substantive.

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 4901:1-28, O.A.C., outlines the rules that municipal corporations, board of township trustees, or board of county commissioners would follow to form and operate a government aggregation either with prior consent or an opt-out aggregation. The rules delineate the minimum requirements for operations and governance plans, opt-out disclosure requirements, as well as expectations for cooperation between natural gas companies and certified governmental aggregators.

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

Chapter 4901:1-28, O.A.C., contains the rules for the formation and operation of governmental aggregations with prior consent and opt-out governmental aggregation. Costs may vary greatly depending upon the size of the community being aggregated and the type of governmental aggregation being formed.

- 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.

Chapter 4901:1-28, O.A.C., is specifically required by Sections 4929.26 and 4929.27, Revised Code, is voluntarily on the part of a municipal corporation, board of township trustees, or board of county commissioners that wishes to initiate aggregations with prior consent or opt-out governmental aggregation on behalf of its citizens.

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

Chapter 4901:1-28, O.A.C., contains the rules implementing Sections 4929.26 and 4929.27 Revised Code, the rules for forming a governmental aggregation with prior consent or opt-out governmental aggregation. These rules are voluntary on the part of municipal corporations, board of township trustees, or boards of county commissioners. There is no adverse impact to the regulated business community since businesses that are already supplied with commodity sales service through a contract with a retail natural gas supplier are ineligible to join a government aggregation group.

Regulatory Flexibility

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

No. The rules contained in Chapter 4901:1-28, O.A.C., are the rules required by Sections 4929.26 and 4929.27, Revised Code for governmental aggregation with prior consent and opt-out governmental aggregation.

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 Chapter 4901:1-28, O.A.C., is to reflect the legislative intent of Sections 4929.26 and 4929.27, Revised Code, for governmental aggregation with prior consent and opt-out governmental aggregation. 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 Commission after notice and hearing. The Commission will fully comply with Section 119.14 Revised Code, and 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 and without providing due process to the small company.

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

The Commission staff routinely works with small business to assist with Chapter 4901:1-28, O.A.C. compliance.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Christine Pirik, Chief, Gas Section
Phone: 614-644-8955 Fax: 614-728-8373
christine.pirik@puc.state.oh.us

Regulation/Package Title: Minimum Standards for Competitive Retail
Natural Gas Service

Rule Number(s): 4901:1-29-01, 4901:1-29-02, 4901:1-29-03, 4901:1-29-04,
4901:1-29-05, 4901:1-29-06, 4901:1-29-07, 4901:1-29-08,
4901:1-29-09, 4901:1-29-10, 4901:1-29-11, 4901:1-29-12,
4901:1-29-13.

Date: November 7, 2012

Rule Type:

- | | |
|---|---|
| <input checked="" type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input checked="" 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 4901:1-29 of the Ohio Administrative Code (O.A.C.), sets forth the minimum standards for competitive retail natural gas service providers and governmental aggregators. Specifically the chapter outlines rules for marketing and solicitation, customer enrollment, credit and deposits, customer access and complaint handling, customer information, contract administration and renewals, contract disclosure, customer billing and payments, and coordination between natural gas companies, and retail natural gas suppliers and governmental aggregators.

The proposed changes to Chapter 4901:1-29, O.A.C., include: nonsubstantive changes to Rule 4901:1-29-01, O.A.C., "definitions" and Rule 4901:1-29-02, O.A.C., purpose and scope. See the response to question #8 below for other proposed amendments.

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

Rule	Statutory Authority – Ohio Revised Code
4901:1-29-01	4929.01
4901:1-29-01 through 11 and 4901:1-29-13	4929.22
4901:1-29-04	4929.23
4901:1-29-02, 4901:1-29-04, 4901:1-29-06, 4901:1-29-08	4905.06
4901:1-29-12	4929.29

- 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?**

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.

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

- 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)?**

Chapter 4901:1-29, O.A.C., reflects the requirements of Section 4929.22, Revised Code, and sets forth the minimum competitive standards for competitive retail natural gas service providers and governmental aggregators. Specifically, this chapter outlines rules for marketing and solicitation, customer enrollment, credit and deposits, customer access and complaint handling, customer information, contract administration and renewals, contract disclosure, customer billing and payments, and coordination between natural gas companies, and retail natural gas suppliers and governmental aggregators.

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

The Commission monitors consumer complaints, as well as complaints from competitive retail natural gas service providers and governmental aggregators through staff interaction and the Commission'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.***
- 8. On July 2, 2012, the Commission, in Case No. 12-925-GA-ORD, ordered a workshop to take place on August 6, 2012, to allow stakeholders the opportunity to propose revisions to Chapters 4901:1-27 through 4901:1-34. The workshop was publically noticed and filed in Case No.12-925-GA-ORD. Thirty-two individuals were in attendance at the August 6, 2012, workshop, including representatives from The Dayton Power and Light Company, Columbia Gas of Ohio, American Coalition for Clean Coal Energy, Duke Energy Ohio, Inc., American Electric Power, FirstEnergy Ohio, FirstEnergy Solutions, Duke Energy Retail (Duke), Dominion East Ohio (Dominion), Ohio Partners for Affordable Energy, the Ohio Consumers Counsel, Dominion Retail, the Retail Energy Supply Association (RESA), and Direct Energy.**

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

In general, the distribution companies and retail natural gas suppliers were in favor of harmonizing the competitive gas and competitive electric rules; making Chapters 4901:1-21 and 4901:1-29, O.A.C., more consistent, where feasible. Staff concurs and is proposing to mirror rules that are not industry specific. Additional stakeholder proposals included, from retail natural gas supplier Direct Energy and distribution company Duke, to tighten up enrollments rules in Rule 4901:1-29-06, O.A.C. Specifically, with respect to door-to-door solicitation, they propose that the rules require 100 percent third-party verification for customer enrollment at the door. Duke also proposed requiring solicitor background checks on retail natural gas suppliers enrolling through door-to-door solicitation. Staff, in response, proposed amended Rule 4901:1-29-03, O.A.C., reflecting that proposal.

Direct Energy asserted that Rule 4901:1-29-10, O.A.C., for contract administration and renewal needed to be simplified around notice and customer consent requirements. Staff will review this proposed change after the rules go out for comment.

Dominion suggested the meter reading rules for initiating service in Rule 4901:1-29-06, O.A.C., correspond with those in the Minimum Gas Service Standards in Chapter 4901:1-13, O.A.C. Dominion further suggested the retail natural gas suppliers be required to notify customers and utilities in advance of a contract assignment. Staff agreed with this proposal and added a requirement to Rule 4901:1-29-10, O.A.C., that would require a retail natural gas supplier to notify the distribution company in addition to the Commission, 14 days in advance of a contract assignment.

RESA further proposed making Rule 4901:1-29-04, O.A.C., more amenable to going paperless. Staff is open to this suggestion and will review it after the rules go out for comment.

Another distribution company proposal was to add to the Rule 4901:1-29-05, O.A.C., which contains a list of unfair, deceptive, or unconscionable acts or practices, a prohibition against leading a customer to believe the retail natural gas supplier or governmental aggregator is affiliated with the natural gas distribution company when there is no affiliation. In addition, under Rule 4901:1-29-05, O.A.C., Staff is proposing to require retail natural gas suppliers to provide accurate and timely updates to the Commission Apples to Apples price comparison chart.

10. 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 scientific data was used to develop this chapter. Rather the rules in this chapter are required by Section 4929.22, Revised Code.

11. 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?

Chapter 4901:1-29, O.A.C., is specifically required by Section 4929.22, Revised Code, thus, regulatory alternatives were not available.

12. 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.

Chapter 4901:1-29, O.A.C., is specifically required by Section 4929.22, Revised Code, thus, performance-based regulation was not considered.

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

Chapter 4901:1-29, O.A.C., is required by Section 4929.22, Revised Code, and specifies the minimum service requirements for retail natural gas supplier or governmental aggregator services, which are subject to certification.

14. 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.

Chapter 4901:1-29, O.A.C., is required by Section 4929.22, Revised Code, and has been in effect since 2002. All parties have due process rights before the Commission for any complaints regarding inconsistent application of the chapter.

Adverse Impact to Business

15. 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 4901:1-29, O.A.C., establishes minimum service requirement or retail natural gas suppliers and governmental aggregators regarding the marketing, solicitation, sales, or provision directly or through its billing and collection agent of any competitive retail natural gas service that is subject to certification, reflecting the requirements of Section 4929.22, Revised Code.

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

Chapter 4901:1-29, O.A.C., establishes minimum service requirements for retail natural gas suppliers and governmental aggregators. This chapter does not include requirements for licensing fees, rather, it reflects consumer protections required by Section 4929.22, Revised Code.

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.

Chapter 4901:1-29, O.A.C., establishes minimum service requirements for retail natural gas suppliers and governmental aggregators regarding the marketing, solicitation, sales, or provision directly or through its billing and collection agent of any competitive retail natural gas service is subject to certification. The rules are required by Section 4929.22, Revised Code.

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

Chapter 4901:1-29, O.A.C., establishes minimum service requirements for retail natural gas suppliers and governmental aggregators and reflects Section 4929.22, Revised Code.

Regulatory Flexibility

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

Chapter 4901:1-29, O.A.C., is required by Section 4929.22, Revised Code and specifies the minimum service requirements for all retail natural gas suppliers and governmental aggregators subject to Commission certification.

18. 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 4901:1-29, O.A.C., is to reflect the legislative intent of Section 4929.22, Revised Code, and is not on seeking penalties for first-time paperwork offenses. Fines or penalties for violation of this chapter may only be ordered by the Commission after notice and hearing. The Commission will fully comply with Section 119.14, Revised Code, and 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 and without providing due process to the small company.

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

The Commission staff routinely works with small businesses to assist with Chapter 4901:1-29, O.A.C., compliance.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Christine Pirik, Chief, Gas Section
Phone: 614-644-8955 Fax: 614-728-8373
christine.pirik@puc.state.oh.us

Regulation/Package Title: Reporting Requirements

Rule Number(s): 4901:1-30-01

Date: November 7, 2012

Rule Type:

- | | |
|---|---|
| <input checked="" type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input type="checkbox"/> Amended | <input checked="" 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

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 4901:1-30 of the Ohio Administrative Code (O.A.C.), sets forth the rule that requires competitive retail natural gas service providers or governmental aggregators subject to certification under Section 4929.20, Revised Code, to provide annual report information, including monthly and annual volumes of natural gas sold by: customer class identified; by

service territory; and the gross receipts of intrastate retail natural gas service(s). The amendment to this rule incorporates the regulatory assessment provisions that were previously contained in Chapter 4901:1-27, O.A.C., in the present chapter.

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

Rule	Statutory Authority – Ohio Revised Code
4901:1-30-01	4929.23
	4905.10
	4911.18

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?

No.

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

No applicable.

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)?

Section 4929.23(B), Revised Code, specifically requires the Commission to require each retail natural gas service providers or governmental aggregator subject to certification under Section 4929.20, Revised Code to file an annual report of such receipts and sales from the provision of competitive retail natural gas service. The amendment to this rule also incorporates rules for the annual assessment based upon intrastate gross receipts or gross earnings that each retail natural gas service provider and government aggregator is subject to, pursuant to Sections 4905.10 and 4911.18, Revised Code.

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

The Commission monitors whether or not companies comply with annual reporting requirements and pay their annual assessment.

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.*

8. On July 2, 2012, the Commission, in Case No. 12-925-GA-ORD, ordered a workshop to take place on August 6, 2012, to allow stakeholders the opportunity to propose revisions to Chapters 4901:1-27 through 4901:1-34. The workshop was publically noticed and filed in Case No.12-925-GA-ORD. Thirty-two individuals were in attendance at the August 6, 2012, workshop, including representatives from The Dayton Power and Light Company, Columbia Gas of Ohio, American Coalition for Clean Coal Energy, Duke Energy Ohio, Inc., American Electric Power, FirstEnergy Ohio, FirstEnergy Solutions, Duke Energy Retail, Dominion East Ohio, Ohio Partners for Affordable Energy, the Ohio Consumers Counsel, Dominion Retail, the Retail Energy Supply Association, and Direct Energy.

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

No input was provided on this particular rule.

10. 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 scientific data was used to develop this rule. Rule 4901:1-30-01, O.A.C., is specifically required by Sections 4905.10, 4911.18, and 4929.23, Revised Code and has been in effect since 2002.

11. 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?

Rule 4901:1-30, O.A.C., is specifically required by Sections 4905.10, 4911.18, and 4929.23, Revised Code, thus, regulatory alternatives were not available.

12. 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.

Rule 4901:1-30, O.A.C., is specifically required by Sections 4905.10, 4911.18, and 4929.23, Revised Code, thus, performance-based regulation was not considered.

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

Rule 4901:1-30, O.A.C., is specifically required by Sections 4905.10, 4911.18, and 4929.23, Revised Code, thus, the determination as to whether the statute duplicated an existing Ohio regulation was performed by the Legislative Service Commission.

14. 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.

Rule 4901:1-30, O.A.C., is specifically required by Sections 4905.10, 4911.18, and 4929.23, Revised Code, and has been in effect since 2002 without complaints regarding inconsistent application of the Chapter.

Adverse Impact to Business

15. 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;

Rule 4901:1-30, O.A.C., sets forth the requirements for retail natural gas suppliers or governmental aggregators subject to certification under Section 4929.20, Revised Code to provide annual report information, including monthly and annual volume of natural gas sold by customer class identified and service territory, as well as the gross receipts of intrastate retail natural gas service(s) and the company contact person as required by Section 4929.23, of the Revised Code. The rules also govern the payment of the annual assessment by each retail natural gas service provider or government aggregator pursuant to Sections 4905.10 and 4911.18, Revised Code. The scope of the impacted business community would vary by retail natural gas supplier or the type of governmental aggregation being formed.

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

There are no fees required by this rule and the regulatory assessment varies greatly depending upon the size of the retail natural gas supplier or the type of governmental aggregation being formed, but is statutorily mandated.

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.

Rule 4901:1-30, O.A.C., is specifically required by Ohio statute, and the cost to business will vary depending on the intrastate gross receipts or gross earnings associated with the supplier or aggregator.

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

Rule 4901:1-30, O.A.C., is specifically required by Sections 4905.10, 4911.18, and 4929.23, Revised Code.

Regulatory Flexibility

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

Rule 4901:1-30, O.A.C., is required by Sections 4905.10, 4911.18, and 4929.23, Revised Code. The statute does not provide any exemptions or alternative means of compliance for these reporting requirements depending upon the size of the business.

18. 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 Rule 4901:1-30, O.A.C., is to reflect the legislative intent of Sections 4905.10, 4911.18, and 4929.23, Revised Code, for retail natural gas suppliers and governmental aggregation to pay an annual assessment and provide annual report information. 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 Commission after notice and hearing. The Commission will fully comply with Section 119.14, Revised Code and 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 and without providing due process to the small company.

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

The Commission staff routinely works with small business' to assist with Chapter 4901:1-30, O.A.C. compliance.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Christine Pirik, Chief, Gas Section
Phone: 614-644-8955 Fax: 614-728-8373
christine.pirik@puc.state.oh.us

Regulation/Package Title: Opening Areas to Competitions

Rule Number(s): 4901:1-31-01

Date: November 7, 2012

Rule Type:

- | | |
|---|---|
| <input 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

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 4901:1-31, Ohio Administrative Code (O.A.C.), provides the process by which a retail natural gas supplier, government aggregator, or municipal corporation may petition the Commission for an order instructing a natural gas company with more than 15,000 customers

in this state that it must provide fully open, equal, and nondiscriminatory distribution service to non-mercantile customers. Amendments to this rule were purely for clarification and to maintain stylistic consistency within the rules.

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

Rule	Statutory Authority – Ohio Revised Code
4901:1-31-01	4929.29

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?

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.

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

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)?

Chapter 4901:1-31, O.A.C., reflects the requirements of Section 4929.29, Revised Code, which provide a process for a retail natural gas supplier, government aggregator, or municipal corporation to petition the Commission for an order, ordering a natural gas company to provide fully open, equal, and nondiscriminatory distribution service.

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

The Commission can monitor whether petitions to open the market are received and processed expeditiously.

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, the Commission, in Case No. 12-925-GA-ORD, ordered a workshop to take place on August 6, 2012, to allow stakeholders the opportunity to propose revisions to Chapters 4901:1-27 through 4901:1-34. The workshop was publically noticed and filed in Case No. 12-925-GA-ORD. Thirty-two individuals were in attendance at the August 6, 2012, workshop, including representatives from The Dayton Power and Light Company, Columbia Gas of Ohio, American Coalition for Clean Coal Energy, Duke Energy Ohio, Inc., American Electric Power, FirstEnergy Ohio, FirstEnergy Solutions, Duke Energy Retail, Dominion East Ohio, Ohio Partners for Affordable Energy, the Ohio Consumers Counsel, Dominion Retail, the Retail Energy Supply Association, and Direct Energy.

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

No input was provided on this topic.

- 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 scientific data was used to develop this chapter; rather, the rule in this chapter are required by Section 4929.29, Revised Code.

- 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?**

Chapter 4901:1-31, O.A.C., is specifically required by Section 4929.29, Revised Code, thus, regulatory alternatives were not available.

- 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.

Chapter 4901:1-31, O.A.C., is specifically required by Section 4929.29, Revised Code, thus, performance-based regulation was not considered.

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

Chapter 4901:1-31, O.A.C., is required by Section 4929.29, Revised Code, and specifically implements that section of the Revised Code.

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.

Chapter 4901:1-31, O.A.C., is required by Section 4929.29, Revised Code, and has been in effect since 2002. Revisions to this rule were only to assure stylistic consistency within the rules. No substantive changes were made.

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 4901:1-31, O.A.C., establishes a process for opening areas to competitive retail natural gas service, pursuant to Section 4929.29, Revised Code. Accordingly, this rule has the potential to impact competitive retail natural gas service providers and government aggregators by providing them with additional markets.

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

This rule does not have an adverse impact on business.

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.*

None.

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

No adverse impact to business.

Regulatory Flexibility

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

Chapter 4901:1-31, O.A.C. is required by Section 4929.29, Revised Code.

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?

Not applicable. If a petition to open is not made in compliance with Commission rules and practices, it would be dismissed without prejudice.

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

The Commission staff routinely works with small businesses to assist them in understanding the Commission's rules.

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Christine Pirik, Chief, Gas Section
Phone: 614-644-8955 Fax: 614-728-8373
christine.pirik@puc.state.oh.us

Regulation/Package Title: Determination of Allowable Capacity and Commodity Costs

Rule Number(s): 4901:1-32-01, 4901:1-32-02, 4901:1-32-03, 4901:1-32-04

Date: November 7, 2012

Rule Type:

<input checked="" type="checkbox"/> New	<input checked="" type="checkbox"/> 5-Year Review
<input checked="" type="checkbox"/> Amended	<input checked="" 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

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 4901:1-32, Ohio Administrative Code (O.A.C.), provides for the recovery of capacity and commodity costs, and costs incidental to those costs, as well as decertification costs. These rules provide that a request to recover or modify the recovery, pursuant to Section 4929.25, Revised Code costs for capacity and commodity, must be made through a migration cost recovery rider application. The chapter also provides a process for reviewing that application. Additionally, the rule provides a process for a natural gas company to

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

recover costs associated with the continuation, suspension, rescission, or conditional rescission of a particular retail natural gas supplier or government aggregator's certification. Amendments to this rule were mainly to add a purpose and scope to this rule, which resulted in renumbering of subsequent rules.

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

Rule	Statutory Authority – Ohio Revised Code
4901:1-32-01	4929.20
through	4929.25
4901:1-32-04	

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?

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.

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

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)?

Chapter 4901:1-32, O.A.C., reflects the requirements of Sections 4929.20 and 4929.25, Revised Code.

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

The Commission monitors whether applications are filed with the Commission pursuant to this chapter.

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, the Commission, in Case No. 12-925-GA-ORD, ordered a workshop to take place on August 6, 2012, to allow stakeholders the opportunity to propose revisions to Chapters 4901:1-27 through 4901:1-34. The workshop was publically noticed and filed in Case No. 12-925-GA-ORD. Thirty-two individuals were in attendance at the August 6, 2012, workshop, including representatives from The Dayton Power and Light Company, Columbia Gas of Ohio, American Coalition for Clean Coal Energy, Duke Energy Ohio, Inc., American Electric Power, FirstEnergy Ohio, FirstEnergy Solutions, Duke Energy Retail, Dominion East Ohio, Ohio Partners for Affordable Energy, the Ohio Consumers Counsel, Dominion Retail, the Retail Energy Supply Association, and Direct Energy.

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

No input was provided on this topic.

- 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 scientific data was used to develop this chapter; rather, the rules in this chapter are required by Sections 4929.20 and 4929.25, Revised Code.

- 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?**

Chapter 4901:1-32, O.A.C., is specifically required by Sections 4929.20 and 4929.25, Revised Code, thus, regulatory alternatives were not available.

- 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.

Chapter 4901:1-32, O.A.C., is specifically required by Sections 4929.20 and 4929.25, Revised Code, thus, performance-based regulation was not considered.

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

Chapter 4901:1-32, O.A.C., is required by Sections 4929.20 and 4929.25, Revised Code, and specifically implements that section of the Revised Code.

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.

Chapter 4901:1-32, O.A.C., is required by Sections 4929.20 and 4929.25, Revised Code, and has been in effect since 2002. Revisions to this rule were only to assure stylistic consistency within the rules. No substantive changes were made.

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;

Only, if the approval of an application pursuant to this section impacts rates paid by the business community, will businesses be impacted by this rule.

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

This rule does not have an adverse impact on business beyond the potential for a rate increase.

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.*

None.

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

No adverse impact to business.

Regulatory Flexibility

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

Chapter 4901:1-32, O.A.C., is required by Sections 4929.20 and 4929.25, Revised Code.

- 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?**

Not applicable.

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

The Commission staff routinely works with small businesses to assist them in understanding the Commission's rules.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Christine Pirik, Chief, Gas Section
Phone: 614-644-8955 Fax: 614-728-8373
christine.pirik@puc.state.oh.us

Regulation/Package Title: Not-for-Profit Customer Declarations of
Mercantile Status

Rule Number(s): 4901:1-33-01

Date: November 7, 2012

Rule Type:

- | | |
|---|---|
| <input 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

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 4901:1-33, Ohio Administrative Code (O.A.C.), provides for the filing of non-mercantile status by not-for-profit customers as required by Section 4929.01, Revised Code.

Amendments to this rule were purely for clarification and to maintain stylistic consistency within the rules.

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

Rule	Statutory Authority – Ohio Revised Code
4901:1-33-01	4929.01

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?

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.

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

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)?

Chapter 4901:1-33, O.A.C., provides for the filing of non-mercantile status by not-for-profit customers as required by Section 4929.01, Revised Code.

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

The Commission monitors whether such declarations are filed.

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, the Commission, in Case No. 12-925-GA-ORD, ordered a workshop to take place on August 6, 2012, to allow stakeholders the opportunity to propose revisions to Chapters 4901:1-27 through 4901:1-34. The workshop was publically noticed and filed in Case No. 12-925-GA-ORD. Thirty-two individuals were in attendance at the August 6, 2012, workshop, including representatives from The Dayton Power and Light Company, Columbia Gas of Ohio, American Coalition for Clean Coal Energy, Duke Energy Ohio, Inc., American Electric Power, FirstEnergy Ohio, FirstEnergy Solutions, Duke Energy Retail, Dominion East Ohio, Ohio Partners for Affordable Energy, the Ohio Consumers Counsel, Dominion Retail, the Retail Energy Supply Association, and Direct Energy.

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

No input was provided on this topic.

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 scientific data was used to develop this chapter; rather the rule in this chapter is required by Section 4929.01, Revised Code.

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?

Chapter 4901:1-33, O.A.C., is specifically required by Section 4929.01, Revised Code, thus regulatory alternatives were not available.

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.

Chapter 4901:1-33, O.A.C., is specifically required by Section 4929.01, Revised Code, thus, performance-based regulation was not considered.

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

Chapter 4901:1-33, O.A.C., is specifically required by Section 4929.01, Revised Code, and specifically implements that section of the Revised Code.

- 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.**

Chapter 4901:1-33, O.A.C., is specifically required by Section 4929.01, Revised Code, and has been in effect since 2002. Revisions to this rule were only to assure stylistic consistency within the rules. No substantive changes were made.

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 4901:1-33, O.A.C., is specifically required by Section 4929.01, Revised Code, and may provide benefits to not-for-profit customers who declare their non-mercantile status.

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

This rule does not have an adverse impact on business.

- 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.***

None.

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

No adverse impact to business.

Regulatory Flexibility

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

Chapter 4901:1-33, O.A.C., is specifically required by Section 4929.01, Revised Code.

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?

Not applicable.

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

The Commission staff routinely works with small businesses to assist them with understanding Commission's rules.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Christine Pirik, Chief, Gas Section
Phone: 614-644-8955 Fax: 614-728-8373
christine.pirik@puc.state.oh.us

Regulation/Package Title: Noncompliance

Rule Number(s): 4901:1-34-01, 4901:1-34-02, 4901:1-34-03, 4901:1-34-04,
4901:1-34-05, 4901:1-34-06, 4901:1-34-07, 4901:1-34-08.

Date: November 7, 2012

Rule Type:

- | | |
|---|---|
| <input checked="" type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input checked="" 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

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 4901:1-34, Ohio Administrative Code (O.A.C.), prescribes the procedures for Commission staff to administer and enforce the rules for certification of retail natural gas suppliers and governmental aggregators and the minimum requirements for competitive retail natural gas service providers. Rule amendments include: Rule 4901:1-34-02, O.A.C.,

purpose and scope, clarifying that this chapter also applies to governmental aggregations under Rule 4901:1-28, O.A.C., and that the Commission has the authority to waive any rule in this chapter; making corrections to rule references within Rules 4901:1-34-03 and 4901:1-34-04, O.A.C.; simplifying the title for Rule 4901:1-34-05, O.A.C., and specifying that any settlement agreements under the rule must be in writing and must be filed and approved by the Commission; simplifying the verbiage without changing the substance of Rules 4901:1-34-06 and 4901:1-34-08, O.A.C.; and removing an incorrect location reference for the Commission offices in Rule 4901:1-34-07, O.A.C.

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

Rule	Statutory Authority – Ohio Revised Code
4901:1-34-01	4929.01
4901:1-34-02 through 4901:1-34-08	4929.24, 4905.54

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?

No.

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

Not applicable.

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)?

Chapter 4901:1-34, O.A.C., prescribes the procedures for Commission staff to administer and enforce the rules for the certification of retail natural gas suppliers and governmental aggregators and the minimum requirements for competitive retail natural gas service providers as set forth in Chapters 4901:1-27 and 4901:1-29, O.A.C.

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

The Commission monitors stakeholder complaints concerning its enforcement process.

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, the Commission, in Case No. 12-925-GA-ORD, ordered a workshop to take place on August 6, 2012, to allow stakeholders the opportunity to propose revisions to Chapters 4901:1-27 through 4901:1-34. The workshop was publically noticed and filed in Case No.12-925-GA-ORD. Thirty-two individuals were in attendance at the August 6, 2012, workshop, including representatives from The Dayton Power and Light Company, Columbia Gas of Ohio, American Coalition for Clean Coal Energy, Duke Energy Ohio, Inc., American Electric Power, FirstEnergy Ohio, FirstEnergy Solutions, Duke Energy Retail, Dominion East Ohio, Ohio Partners for Affordable Energy, the Ohio Consumers Counsel, Dominion Retail, the Retail Energy Supply Association, and Direct Energy.

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

Despite the opportunity, we received no stakeholder input on this chapter.

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 scientific data was used to develop Chapter 4901:1-34, O.A.C.; however, this chapter is specifically required by Sections 4929.24 and 4905.54, Revised Code, and has been in effect since 2002.

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?

Chapter 4901:1-34, O.A.C., is specifically required by Sections 4929.24 and 4905.54, Revised Code, thus, regulatory alternatives were not available.

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.

Chapter 4901:1-34, O.A.C., is specifically required by Sections 4929.24 and 4905.54, Revised Code, thus, performance-based regulation was not considered.

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

Chapter 4901:1-34, O.A.C., is specifically required by Sections 4929.24 and 4905.54, Revised Code, thus, the determination as to whether the statutes duplicated existing Ohio regulations were performed by the Legislative Service Commission.

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.

Chapter 4901:1-34, O.A.C., is specifically required by Sections 4929.24 and 4905.54, Revised Code, and has been in effect since 2002 without complaints regarding inconsistent application of the Chapter.

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 4901:1-34, O.A.C., sets forth the procedures for Commission staff to administer and enforce the rules for certification of retail natural gas suppliers and governmental aggregators and the minimum requirements for competitive retail natural gas service providers. These procedural rules help to establish a competitive marketplace which benefits suppliers and customers by clearly delineating Commission authority to enforce Commission rules against violators.

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

There are no fees required by this Chapter and only rule violators are potentially impacted by fines, if they are found by the Commission to be out of compliance. The

Commission staff works extensively with all regulated companies toward rule compliance with the least amount of employer time and attorney costs.

- 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.***

See the response to question to 14 (b) above.

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

Chapter 4901:1-34, O.A.C., is specifically required by Sections 4929.24 and 4905.54, Revised Code.

Regulatory Flexibility

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

Chapter 4901:1-34, O.A.C. is required by Sections 4929.24 and 4905.54, Revised Code. These statutes do not provide any exemptions or alternative means of compliance based upon the size of the business. However, the Commission staff works extensively with all regulated companies, in particular small businesses toward rule compliance.

- 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 Chapter 4901:1-34, O.A.C., is to reflect the legislative intent of Sections 4929.24 and 4905.54, Revised Code, and to articulate Commission authority to enforce rules governing retail natural gas suppliers and governmental aggregators. 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 Commission after notice and hearing. The Commission will fully comply with Section 119.14, Revised Code, and 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 and without providing due process to the small company.

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

The Commission staff routinely works with small businesses to assist them with understanding the Commission's rules.