

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. )

FINDING AND ORDER

The Commission finds:

- (1) R.C. 119.032 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 (CRNGS) rules contained in Ohio Adm.Code Chapters 4901:1-27 through 4901:1-34, as required by R.C. 119.032.
- (2) R.C. 119.032(C) requires the Commission to determine whether:
  - (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted;
  - (b) The rules need amendment or rescission to give more flexibility at the local level;
  - (c) The rules need amendment or rescission to eliminate unnecessary paperwork, or whether the rule incorporates a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by R.C. 121.74, and whether the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76;
  - (d) The rules duplicate, overlap with, or conflict with other rules; and
  - (e) The rules have an adverse impact on businesses and whether any such adverse impact has been eliminated or reduced.

- (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 business; attempt to balance properly 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 R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against a business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the BIA.
- (5) By Entry issued on July 2, 2012, a workshop was scheduled at the offices of the Commission on August 6, 2012, to engage interested stakeholders on the appropriate revisions to the rules contained in Ohio Adm.Code Chapters 4901:1-27 through 4901:1-34. In addition, the Commission noted that the rules for competitive retail electric service (CRES) are being reviewed in *In re Rules for Competitive Retail Electric Service in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code*, Case No. 12-1924-EL-ORD (CRES Rules Case) at the same time as the CRNGS rules are being reviewed in this matter. The workshop was held as scheduled and stakeholder comments were offered by multiple stakeholders.
- (6) Staff evaluated the rules contained in Ohio Adm.Code Chapters 4901:1-27 through 4901:1-34, as well as the feedback received at the August 6, 2012 workshop and recommended amendments to several rules.
- (7) On November 7, 2012, the Commission issued Staff's proposed amendments, as well as the BIAs, and requested comments to assist in the review. Comments were filed by Eagle Energy, LLC (Eagle); Border Energy Gas, Inc. (Border); Ohio Gas Marketers Association and Retail Energy Supply Association (jointly, OGMG/RESA);

Dominion Retail, Inc. (Dominion Retail); Duke Energy Retail Sales, LLC (DERS); Interstate Gas Supply, Inc. (IGS); Hess Corporation (Hess); the Northeast Ohio Public Energy Council (NOPEC); The East Ohio Gas Company d/b/a Dominion East Ohio and Vectren Energy Delivery of Ohio (jointly, DEO/VEDO); Columbia Gas of Ohio, Inc. (Columbia); Duke Energy Ohio, Inc. (Duke); Ohio Consumers' Counsel (OCC); and Ohio Partners for Affordable Energy (OPAE). Reply comments were filed by Eagle, OGMG/RESA, Dominion Retail, DERS, IGS, NOPEC, DEO/VEDO, OCC, OPAE, and the Ohio Poverty Law Center (OPLC).

- (8) Mindful of the requirements expressed in Findings (2) and (3), the Commission has carefully reviewed the existing rules, the proposed Staff changes, and the comments filed by interested parties in reaching its decisions regarding the rules at issue. The Commission will address the more relevant comments below. Some minor, noncontroversial changes have been incorporated into the new proposed rules without Commission comment. Any recommended change that is not discussed below or incorporated into the proposed rules should be considered denied. The Commission also takes administrative notice of the docket in the *CRES Rules Case* and notes that changes made to the CRES rules in response to comments in the *CRES Rules Case* may have been incorporated into the new proposed CRNGS rules where appropriate and without further comment in this case. Further, the Commission has attached revised BIAs as Attachments I-1 through I-8.
- (9) The Commission notes that a Commission investigation is open in *In re the Commission's Review of the Natural Gas Retail Market Development*, Case No. 13-1307-GA-COI (CRNGS Investigation Case). In the CRNGS Investigation Case, the Commission issued certain questions for comment and received feedback regarding the current standard choice offer (SCO) auctions and recommendations on how to further support a CRNGS marketplace in Ohio. Although certain issues in the CRNGS Investigation Case overlap with issues in this rules proceeding, the Commission finds that, due to the timeline of this five-year review mandated by R.C. 119.032, it is necessary at this time to move forward with the adoption of these rules. However, the Commission notes that the adoption of these rules does not preclude further review in the CRNGS Investigation Case. Additionally, the adoption of these rules at this time does not preclude further review of these rules at a later date due to the CRNGS Investigation Case.

**Ohio Adm.Code Chapter 4901:1-27 - Certification of Governmental Aggregators and Retail Natural Gas Suppliers**

**Comments on Ohio Adm.Code 4901:1-27-01 - Definitions**

- (10) General. OCC proposes adding a definition for the term “agent” in order to prevent a supplier’s designation of “independent contractor” from creating a loophole for the supplier’s responsibility (OCC at 11). OPAE agrees that the term “agent” should be defined (OPAE Reply at 26). The Commission disagrees that the term “agent” needs to be defined in order to clarify the responsibility of a CRNGS supplier or governmental aggregator toward those who work on their behalf. The concept of agency is well-established and does not need to be defined in the rules.

**Comments on Ohio Adm.Code 4901:1-27-02 - Purpose and scope**

- (11) Paragraph B. Staff recommended allowing the Commission to waive any requirement of this chapter upon application or a motion filed by a party. OGMG/RESA recommend the Commission modify this rule to allow the Commission to waive a rule upon its own motion, and that the rule should include a specific standard, such as good cause, for the Commission to use in weighing whether a motion or application should be approved (OGMG/RESA at 11). Dominion Retail agrees that a “good cause” standard should be included in this rule (Dominion Retail Reply at 13-14). OPAE agrees that motions to waive regulations should require a showing of “good cause” (OPAE Reply at 26).

The Commission agrees with OGMG/RESA, Dominion Retail, and OPAE that “good cause shown” should be added to this paragraph in order to parallel Ohio Adm.Code 4901:1-24-02(C) and the *CRES Rules Case*. However, the Commission disagrees that language should be added providing that the Commission may waive a rule upon its own motion, as it is unnecessary.

**Comments on Ohio Adm.Code 4901:1-27-03 - General prohibitions**

- (12) Paragraph A. This rule requires that no CRNGS supplier or governmental aggregator offer CRNGS without a valid certificate. DEO/VEDO recommend that the Commission limit CRNGS certificates to one participant/affiliate per company, unless the



separate certificates apply to distinct residential and nonresidential customer classes (DEO/VEDO at 1). OGMG/RESA disagree with DEO/VEDOs' recommendation on the basis that "one participant/affiliate per company" is unclear and there has been no demonstration of customer confusion or duplicative costs to justify the limitation (OGMG/RESA Reply at 15-16). Dominion Retail support DEO/VEDOs' recommendation (Dominion Retail Reply at 14).

The Commission declines to adopt DEO/VEDOs' recommendation on the basis that, provided suppliers are utilizing different trade names for distinct markets, there is no reason for restriction to one certificate as there has been no demonstration of customer confusion or increased costs.

#### **Comments on Ohio Adm.Code 4901:1-27-04 - Filing of an application**

- (13) General. In this rule, Staff proposed requiring a new case number for new applications for certification and certification renewal. Dominion Retail suggests that the proposed Ohio Adm.Code 4901:1-27-04 be abandoned and that the existing practice should be retained in order to maintain a supplier's certification and renewal certification filings in a single docket for efficiency purposes. Dominion Retail recommends that, if the new rule is to be kept, it should be modified so that the provision would take effect on the effective date of the rule, not the effective date of this chapter. (Dominion Retail at 9-10.) DERS comments that the Commission's renewal forms should be modified to identify the preceding case number in order to make it easier to locate the prior certification case (DERS at 3).

The Commission agrees to modify the language to refer to the effective date of the rule rather than the chapter; however the Commission declines to delete this proposed rule as it is intended to increase internal Commission administrative efficiency. In order to address Dominion Retail's concern regarding preserving the certification history of a company, the Commission agrees to adopt DERS' suggestion to modify the Commission's renewal forms to identify case numbers of prior certification cases. Further, the Commission notes that, as this rule modifies the docketing procedure for applications for certification or renewal, the Commission will issue a future entry to provide parties with notice of the date the new docketing procedure will be effective.

**Comments on Ohio Adm.Code 4901:1-27-05 – Application content**

- (14) General. The Commission notes that DERS commented, in conjunction with its comments on Ohio Adm.Code 4901:1-29-03(E), that the requirement for CRNGS suppliers and governmental aggregators to include contact information in the certification application is more appropriate in Ohio Adm.Code Chapter 4901:1-27. As discussed in conjunction with our analysis of Ohio Adm.Code 4901:1-29-03(E), the Commission agrees with DERS and finds that the appropriate location for this requirement is in a new paragraph, Ohio Adm.Code 4901:1-27-5(D), which the Commission has added to this rule.
- (15) Paragraph A. This proposed paragraph requires applications for certification or certification renewal to be made on forms authorized by the Commission. OGMG/RESA recommend that the word “authorize” in this paragraph be replaced by the terms “supplied” to be consistent with proposed Ohio Adm.Code 4901:1-27-09(A). OGMG/RESA also suggest that the phrase “adopted pursuant to Chapter 4929 of the Revised Code” be added to the end of this paragraph, and that the phrase “regulated sales service” be deleted. (OGMG/RESA at 11.) OPAE asserts that automatic approval or renewal of certificates should not be authorized (OPAE Reply at 26-27).

The Commission agrees with several of OGMG/RESAs’ recommendations and has substituted the word “supplied” for “authorized,” and removed the term “regulated sales service.” However, the Commission disagrees that it is necessary to cite the Revised Code in this paragraph. Further, the Commission declines to adopt OPAE’s recommendation that automatic approval or renewal of certificates should not be authorized.

- (16) Paragraph (B)(1) and (B)(2): Proposed Paragraph (B)(1), requires a natural gas marketer to file general, technical, managerial, and financial information with the appropriate application. Proposed Paragraph (B)(2) requires retail natural gas aggregators/brokers to file general, managerial, and financial information with the appropriate application.

In both paragraphs, Eagle suggests the rules be organized to consolidate the filing requirements into a single rule, and that a separate rule be created to address additional filing requirements

unique to a filing class (Eagle at 10). In proposed Paragraph (B)(1)(f), OGMG/RESA recommend the language regarding pending legal actions be clarified to exclude "situations involving hotline-style calls, workers' compensation claims, tax disputes, slip-and-fall cases, etc." and clarify that only legal actions and past rulings related to the applicant's technical, managerial, and financial abilities should be considered (OGMG/RESA at 11-12). Dominion Retail agrees with Staff's substantive changes to proposed Paragraph (B)(1)(f), but questions whether the phrase "prior regulatory or judicial actions" is still necessary in Paragraph (B)(1)(b). Further, Dominion Retail recommends that proposed subparagraphs (i), (ii), and (iii) to proposed Paragraphs (B)(1)(c) and (B)(2)(b) be eliminated because the definition of "financial exhibits" is unclear and the nomenclature is inconsistent. Dominion Retail also comments that inconsistencies could be resolved by deleting all subparagraphs to Paragraph (B). (Dominion Retail at 10-12.) DEO/VEDO recommend that proposed Paragraph (B)(2) contain requirements similar to Paragraph (B)(1)(f), requiring the disclosure of prior regulatory and legal actions, previous termination, revocation, suspension, and pending legal action (DEO/VEDO at 1-2). OCC recommends the addition of a new paragraph, Paragraph (B)(1)(g), requiring disclosure of applicants' interaction with consumers in other jurisdictions, such as notices or letters of probable noncompliance provided by a federal or other state regulatory agencies (OCC at 10-11).

OGMG/RESA disagree with OCC's recommendation on the basis that it is ambiguous and it would be impractical, unnecessary, and would likely lead to inappropriate conclusions (OGMG/RESA Reply at 16-19). OCC asserts that the Commission should not adopt the clarification sought by OGMG/RESA, asserting that hotline-style calls, workers' compensation claims, and tax disputes would impact an applicant's technical, managerial, and financial abilities, as well as interactions with consumers in other jurisdictions (OCC Reply at 12-13).

Regarding Eagle's recommendation that Paragraph (B) be reorganized, the Commission disagrees and finds that Staff's proposed organization is appropriate as there are two different processes for two different applications. The Commission agrees with Dominion Retail that the reference to prior regulatory or judicial actions in (B)(1)(b) is redundant with proposed Paragraph (B)(1)(f), and should be deleted. The Commission agrees that the filing

requirements for marketers should be similar to the filing requirements for aggregators and brokers, to the extent the requirements are applicable, and has slightly modified proposed Paragraph (B)(2) accordingly. Regarding Paragraphs (B)(1)(c) and (B)(2)(b), the Commission disagrees with Dominion Retail's proposal to eliminate all references to financial exhibits; however, the Commission agrees, for clarity, to modify the nomenclature and specifically refer to "financial statements," "financial arrangements," and "forecasted financial statements," in order to parallel the language in the certification applications. The Commission also disagrees with Dominion Retail's proposal to eliminate all subparagraphs to proposed Paragraph (B), finding that the rules should specify what documentation will be requested of applicants. Next, in proposed Paragraph (B)(1)(f), the Commission agrees with OGMG/RESA that past legal actions or findings should be included and has modified the language accordingly. However, the Commission disagrees that this paragraph should be limited to only legal actions or findings related to technical, managerial, or financial abilities. Finally, the Commission disagrees with OCC that a new paragraph should be added and agrees with OGMG/RESA that it would be inappropriate to require applications to include possible violations and disputes from other jurisdictions.

#### **Comments on Ohio Adm.Code 4901:1-27-06 – Affidavits**

- (17) Paragraph (D). This paragraph requires applicants to submit additional affidavits on forms prescribed by the Commission. OGMG/RESA recommend that Paragraph (D) reference R.C. Title 49 instead of XLIX (OGMG/RESA at 12). Dominion Retail agrees with OGMG/RESAs' recommendation (Dominion Retail Reply at 23). The Commission declines to adopt OGMG/RESAs' recommended change, as the particular format used in Staff's proposed language is consistent with the rule drafting manual adopted by the Ohio Legislative Service Commission.

#### **Comments on Ohio Adm.Code 4901:1-27-07 – Motions**

- (18) Paragraph (B). In this paragraph, Staff proposed language requiring an applicant to file motions by an attorney authorized to practice in Ohio, unless an out-of-state attorney has been granted permission to appear pro hac vice. DEO/VEDO suggest that this rule merely require that motions "include all the information and documents

required by the applicable Supreme Court Rules for the Government of the Bar of Ohio" (DEO/VEDO at 2). The Commission finds that Staff's proposed language is appropriate and declines to adopt the changes proposed by DEO/VEDO. The rule, as proposed by Staff, refers to the specific rule of the Supreme Court Rules for the Government of the Bar, and the Commission believes this specific reference makes the rule user and business friendly.

**Comments on Ohio Adm.Code 4901:1-27-08 - Protective orders**

- (19) Paragraph (A). In this rule, Staff proposed allowing an applicant to file certain financial exhibits under seal in order to receive protected status for a period of six years. Dominion Retail comments that it supports Staff's proposal to allow these exhibits and applications to be filed under seal; however, Dominion Retail recommends that the designations of "financial exhibits" be replaced with references to application Exhibits C-3 and C-5, or with a generic reference to exhibits containing confidential financial information. Dominion Retail also suggests that the rule be revised to provide that financial exhibits filed under seal be afforded protective treatment for a period of six years from the date of the certificate or the renewal certificate for which the information is being provided. (Dominion Retail at 13.) DERS recommends that this paragraph be modified to clarify that no motion for protective order needs to be filed in order to file application Exhibits C-3, C-4, and C-5 under seal and receive protected status (DERS at 4).

Initially, the Commission finds that this paragraph should be modified to refer to "financial statements," "financial arrangements," and "forecasted financial statements" in order to correspond with the Commission's rewording of Ohio Adm.Code 4901:1-27-05. Further, the Commission declines to adopt Dominion Retail's or DERS' recommendations for additional language, finding that the rule clearly encompasses both initial and renewal certificates and because the rule clearly does not require a motion for protective order for financial statements, financial arrangements, or forecasted financial statements filed under seal.

**Comments on Ohio Adm.Code 4901:1-27-09 - Certification renewal**

- (20) This rule governs the procedures for certification renewal. Eagle recommends that calendar days be changed to business days in this paragraph (Eagle at 5). OGMG/RESA recommend that, instead of

requiring a CRNGS supplier to file a certification renewal every two years, a CRNGS supplier's certificate should be "evergreen," or not expire as long as the CRNGS supplier files an update to material changes to maintain certification every year, and updates all other changes every two years (OGMG/RESA at 12). Dominion Retail disagrees with OGMG/RESA on the basis that it presents no real advantage, it is unclear what an "update" on all other changes would encompass, and it could increase burdens on Staff and other interested parties (Dominion Retail Reply at 27). In reply, OCC asserts that the Commission should eliminate or restrict the use of evergreen contracts on the basis that they present significant potential harm to customers (OCC Reply at 7-8).

The Commission declines to adopt Eagle's recommendation on the basis that calendar days are appropriate for this time frame. Additionally, the Commission declines to adopt OGMG/RESAs' proposed change on the basis that it is unclear what would constitute a material change and there is no clear indication that requiring updates for material changes in lieu of biannual renewal applications would lessen the administrative burden. However, upon review, the Commission finds that, to clarify the intent of the rule, language should be modified in Paragraph (B), and that proposed Paragraph (D) should be deleted.

**Comments on Ohio Adm.Code 4901:1-27-10 - Application approval or denial**

- (21) Paragraph (A). This proposed paragraph provides for automatic approval of an application if the Commission does not act on the application within 30 days of the filing date. OGMG/RESA suggest that the word "consideration" in proposed Paragraph (A)(1) be replaced with "automatic approval" of an application. OGMG/RESA further suggest that proposed Paragraph (A)(2) be revised to provide clarity about the suspension of an application and the timeframe for hearings, supplying additional information, and denying, or approving the application. (OGMG/RESA at 12-13.) Dominion Retail agrees with OGMG/RESAs' suggestion regarding terminology, with certain recommended modifications, and also recommends moving the good cause requirement to the end of proposed Paragraph (A)(1) (Dominion Retail Reply at 28-29). The Commission declines to adopt the commenters' proposed recommendations on the basis that Staff's proposed wording and Staff's proposed organization is appropriate.

- (22) Paragraph (B). This proposed paragraph requires the Commission to consider the information contained in the application, supporting evidence and attachments, evidence filed by any interested parties, and recommendations of Staff when evaluating an application. OGMG/RESA recommend that the phrase "evidence filed by interested parties" be replaced with the phrase "credible evidence filed by an entity who has demonstrated an interest of a level which would fulfill the requirement for intervention in a complaint brought under R.C. 4905.26" (OGMG/RESA at 13). Dominion Retail recommends revision of this paragraph to set forth separate standards for the Commission in considering whether to suspend an application or whether to approve an application (Dominion Retail Reply at 31).

The Commission declines to adopt OGMG/RESAs' and Dominion Retail's proposed changes on the basis that Staff's proposed language is appropriate. Prior to acting on any evidence filed by interested parties, the Staff considers the credibility of the evidence; further, prior to acting on any such evidence, the Commission provides applicants with appropriate due process.

- (23) Paragraph (C). This proposed paragraph requires applicants meet three different criteria before the Commission approves their applications. Eagle recommends the phrase "are true" be added after the word "following" (Eagle at 10). OGMG/RESA recommend that the phrase "the regulated sales service" in Paragraph (C)(3) be deleted because an applicant's reasonable financial assurances provide a benefit to all customers (OGMG/RESA at 13). Dominion Retail agrees with OGMG/RESAs' recommended deletion (Dominion Retail Reply at 31). The Commission declines to adopt Eagle's recommendation on the basis that certificate renewal applications must be signed and notarized and include a statement as to truth and accuracy. As to OGMG/RESAs' recommendation, the Commission agrees and has modified the language accordingly.
- (24) Paragraph (E). This proposed paragraph requires that a CRNGS or governmental aggregator's initial or renewal certificate be valid for a period of two years. Eagle recommends the certification term be extended to three years to be consistent its recommendation in the *CRES Rules Case* (Eagle at 10). OGMG/RESA recommend this paragraph be amended to read: "[a] retail natural gas supplier's or governmental aggregator's initial certificate is valid for an initial period of two years, and then for so long as the retail natural gas supplier provides updates to the commission at least every two years"

(OGMG/RESA at 13-14). Dominion Retail opposes OGMG/RESAs' recommendation for the same reasons set forth in Ohio Adm.Code 4901:1-27-09, on the basis that "updates" are unclear and there is no real advantage (Dominion Retail Reply at 32).

The Commission declines to adopt any of the commenters' proposed changes. With regard to Eagle's three-year proposal, the Commission notes that R.C. 4929.20(B) requires biennial certification. In addition, the Commission finds that the rule, as proposed by Staff, appropriately strikes a balance between providing an opportunity to review past operations and ensure finances are adequate to remain in business, while maintaining flexibility for the Commission, under certain circumstances, to establish a different term length. Further, as pointed out by Dominion Retail, it is unclear what would constitute OGMG/RESAs' suggested "updates" and no real advantage is demonstrated.

**Comments on Ohio Adm.Code 4901:1-27-11 – Material changes in business**

- (25) Paragraph (A). This proposed paragraph requires a CRNGS supplier or governmental aggregator to file with the Commission notification of any material change to the information supplied in its certification or certification renewal application.

DEO/VEDO propose that a CRNGS supplier notify both the Commission and the incumbent utility no less than 30 days prior to the effective date of a material change, not within 30 days after it occurs, on the basis that these changes can impact customers and leave the local distribution company (LDC) in a position of ignorance regarding the status of the CRNGS (DEO/VEDO at 2). Columbia recommends language be added to proposed Paragraph (A)(2) in order to clarify how the Commission proceeds once a notice of material change has been filed by a CRNGS supplier or governmental aggregator. Columbia proposes a new paragraph, Paragraph (A)(3), which would read: "[i]f the Commission does not act upon the notice of material change within ninety days of the filing date of such notice, the certification with the material changes shall be deemed automatically approved on the ninety-first day after the official filing date." (Columbia at 2.)

OGMG/RESA assert that notifying the Commission and incumbent utility within 30 days of material changes may not be practical or possible due to legal restrictions and should not be adopted.



However, OGMG/RESA do not object to notifying customers and the incumbent utility in advance of any change in name. (OGMG/RESA Reply at 20.) Dominion Retail asserts that Columbia's proposed language reflects a misunderstanding of the process because the Commission does not "approve" a notice of material change, nor does it become part of the certification. Thus, Dominion Retail argues there is no need for Columbia's recommendation. (Dominion Retail Reply at 32-33.)

Regarding proposed Paragraph (A)(1), the Commission finds that, as pointed out by OGMG/RESA, notification 30 days prior to material changes may not be practical or possible. Additionally, the Commission notes that CRNGS suppliers and governmental aggregators must already make a public filing of any material changes. Consequently, the Commission finds that the second sentence of proposed Paragraph (A)(1) should be deleted. Further, as to proposed Paragraphs (A)(2) and (A)(3), the Commission finds that Columbia's recommended language is unnecessary, as the Commission is unaware of any issues with the current process.

- (26) Paragraph (B). In this paragraph, Staff proposed a list of changes that the Commission will consider to be material changes to the information contained in a certification or certification renewal application.

OGMG/RESA recommend that proposed Paragraph (B)(3), discussing assignment of a portion of the customer base and contracts to another public utility, be eliminated because it is redundant in light of Ohio Adm.Code 4901:1-29-10(D)(1)(a). OGMG/RESA also suggest that proposed Paragraph (B)(9) be modified to read: "[a]ny change in the applicant's regulatory contact person, business address, or telephone/fax number for staff use in investigating complaints, regulatory, or emergency matters." (OGMG/RESA at 14.) DEO/VEDO, referencing their proposal for Paragraph (B)(10), reiterate their proposal that a CRNGS supplier notify both the Commission and the incumbent utility of any change in name (DEO/VEDO at 2).

Dominion Retail agrees with OGMG/RESAs' recommendation to eliminate proposed Paragraph (B)(3). Additionally, Dominion Retail agrees with the revisions to proposed Paragraph (B)(9) as recommended by OGMG/RESA. (Dominion Retail Reply at 33-34.)

DEO/VEDO disagree with OGMG/RESAs' recommendation to remove proposed Paragraph (B)(3) (DEO/VEDO Reply at 1).

Regarding proposed Paragraph (B)(3), the Commission agrees with OGMG/RESA and has eliminated this requirement from the list of examples of material changes on the basis that it is redundant with Ohio Adm.Code 4901:1-29-10(D)(1)(a), which requires notice to the Service Monitoring and Enforcement Department at least 14 days before a customer contract is assigned. As to OGMG/RESAs' suggestion for proposed Paragraph (B)(9) to include certain additional information, the Commission agrees and has modified the language accordingly. In addition, the Commission has included the contact's e-mail address. As to proposed DEO/VEDOs' proposal for Paragraph (B)(10), the Commission declines to adopt their proposed change on the basis that Paragraph (A)(1) already requires CRNGS suppliers and governmental aggregators to file a public notice of any material changes, which would include a change of name.

**Comments on Ohio Adm.Code 4901:1-27-12 - Transfer or abandonment of a certificate**

- (27) Paragraph (B). In this paragraph, Staff proposed requiring CRNGS suppliers or governmental aggregators to fulfill the terms of all existing contracts with customers or assigning such contracts before abandoning the operations provided under the certificate.

OGMG/RESA recommend the phrase "operation(s) it provided" be replaced with "services it provides" to be consistent with the terminology in other rules, and that other phrases be examined to determine if they should match similar phrases adopted in the corresponding proposed rules in the *CRES Rules Case*, Ohio Adm.Code 4901:1-24-12. Further, OGMG/RESA suggest that proposed Paragraph (B)(3) be revised to clarify the distinction between when a CRNGS supplier intends to assign customers to another entity and when customers will be returned to public-utility provided default service. (OGMG/RESA at 14-15.) DEO/VEDO agree with Staff's proposed revisions to Paragraph (B)(4) (DEO/VEDO at 2). Dominion Retail agrees with OGMG/RESAs' recommendations (Dominion Retail Reply at 34).

The Commission agrees with OGMG/RESA that the language in this paragraph should be modified to parallel the language in the *CRES Rules Case*, Ohio Adm.Code 4901:1-24-12(B), and notes that natural gas

companies may provide, but are not obligated to provide, billing service for CRNGS suppliers or governmental aggregators. The Commission has modified the language in Paragraph (B) accordingly.

**Comments on Ohio Adm.Code 4901:1-27-13 - Certificate suspension, rescission, or conditional rescission**

- (28) General. In this rule, OPAE recommends the Commission be able to issue an order that conditionally rescinds a certificate based on grounds similar to those used for a temporary injunction, in order to halt marketing and sales activities by a supplier while the more formal and lengthy adjudicatory process continues. The Commission declines to adopt OPAE's recommendation on the basis that reasonable notice and the opportunity for a hearing prior to conditional rescission or rescission of a certificate is required pursuant to R.C. 4929.20(C)(1). Additionally, the Commission is unaware of any issues with this current process or the specific need for an injunction-type process.
- (29) Paragraphs (B), (C), (D). Proposed Paragraph (B) requires CRNGS suppliers and governmental aggregators to continue to provide all services they are obligated to provide under contract to their existing customers if the Commission suspends their certificate. Proposed Paragraphs (B) and (C) provide different restrictions that would be placed on a CRNGS supplier's or governmental aggregator's certificate if the Commission conditionally rescinds the certificate.

In proposed Paragraphs (B) and (D), DEO/VEDO suggest the Commission notify the incumbent utility of any suspension or rescission action in order for the utility to have adequate time to make appropriate changes in its billing system. DEO/VEDO further recommend that proposed Paragraph (B)(2) be modified to require suspended suppliers or aggregators to continue to comply with all agreements with the incumbent utility. (DEO/VEDO at 3.) In proposed Paragraph (C)(2), OGMG/RESA recommend modifications to only prohibit advertising that is unfair, misleading, deceptive, or unconscionable, instead of prohibiting all advertising (OGMG/RESA at 16).

OPAE agrees with DEO/VEDOs' comments that LDCs should be notified of a suspension, rescission, or conditional rescission; however, OPAE asserts that this issue is better resolved through supplier tariffs. Further, OPAE comments that the Commission

should prohibit suspended marketers from marketing to customers. (OPAE Reply at 27.) Dominion Retail disagrees with OGMG/RESAs' recommendation regarding prohibition of advertising (Dominion Retail Reply at 35). DEO/VEDO generally do not oppose OGMG/RESAs' comments, but are unclear what constitutes advertising, and believe that a suspended CRNGS supplier should not be permitted to solicit customers during suspension (DEO/VEDO Reply at 2)

Regarding Paragraphs (B) and (D), the Commission declines to adopt DEO/VEDOs' recommendations on the basis that, if a supplier's certificate is suspended, it has no impact on existing customers, which is also generally true of conditional rescission. Additionally, if the Commission rescinds a supplier's certificate, Paragraph (D)(4) already requires the supplier to notify its customers and to provide the Staff and the natural gas utility a copy of the notice for review prior to dissemination. Thus, the Commission believes DEO/VEDOs' recommendations are unnecessary. Further, regarding Paragraph (B)(2), the Commission declines to adopt DEO/VEDOs' recommendation regarding the obligation of a CRNGS supplier or governmental aggregator to continue to comply with agreements with the incumbent natural gas company on the basis that this issue is better handled through a supplier agreement or through the natural gas company's tariffs. Regarding Paragraph (C)(2), the Commission declines to adopt OGMG/RESAs' proposed changes on the basis that the intent of the rule is to prohibit a CRNGS supplier or governmental aggregator from soliciting and enrolling new customers while its business practices are either under investigation or have been found to be unfair, misleading, deceptive, or unconscionable, causing its certificate to be suspended, rescinded, or conditionally rescinded.

- (30) Paragraph (E). This proposed paragraph allows the Commission to rescind a CRNGS supplier's or governmental aggregator's certificate if the CRNGS supplier or governmental aggregator fails to timely file an annual report of its intrastate receipts and sales of a hundred cubic feet (Ccf) of gas. OGMG/RESA suggest that the phrase "intrastate receipts" be replaced with "intrastate gross receipts" in order to use terminology consistent with R.C. 4905.10, Ohio Adm.Code 4901:1-30-01, and the corresponding rules in the *CRES Rules Case*, Ohio Adm.Code 4901:1-24-13(E)(2) and (E)(3) (OGMG/RESA at 15). Dominion Retail agrees with OGMG/RESA (Dominion Retail Reply at 36). The Commission agrees that the language in this paragraph

should parallel the underlying statute, the other CRNGS rules, and the rules in the *CRES Rules Case*, and has modified Paragraphs (E)(2) and (E)(3) accordingly.

- (31) Paragraph (F). This proposed paragraph addresses a material default, as defined by a natural gas company's tariff or by an agreement between the natural gas company and the CRNGS supplier or governmental aggregator.

DEO/VEDO comment that, as to proposed Paragraph (F)(4), regarding underdelivery or nondelivery, it is vital for utilities to have the ability to recall capacity from a defaulting supplier as soon as possible in order to meet customer demand and protect the integrity of the system. DEO/VEDO propose compressing the timeline of five business days to three business days, and changing the timeline for requests to terminate or suspend to the fourth business day instead of the sixth business day. Finally, as to proposed Paragraph (F)(6), addressing notices, DEO/VEDO comment that a single central physical and e-mail address for notices would be most appropriate. (DEO/VEDO at 3.)

The Commission declines to adopt DEO/VEDOs' recommended changes to proposed Paragraph (F)(4) on the basis that, if a utility wishes to compress the time frame, these issues are better negotiated within supplier agreements instead of the rules. Regarding proposed Paragraph (F)(6), the Commission believes it is more appropriate to retain Staff's proposed language on the basis that all of the parties discussed in this paragraph need to receive notice.

#### **Comments on Ohio Adm.Code 4901:1-27-14 - Financial security**

- (32) Paragraph (D). This proposed paragraph allows a natural gas company to apply for relief with the Commission if a CRNGS supplier fails to maintain sufficient financial security to protect a natural gas company from default by the CRNGS supplier.

OGMG/RESA recommend deleting the phrase "the regulated sales service" on the basis that an applicant's reasonable financial assurances provide a benefit to all customers (OGMG/RESA at 16). DEO/VEDO recommend that Paragraph (D) be modified to allow natural gas companies to terminate pooling services under the terms of Energy Choice Pooling Service agreements without applying to the Commission for relief if the supplier fails to maintain sufficient

financial security (DEO/VEDO at 4). Dominion Retail agrees with OGMG/RESAs' recommendation (Dominion Retail Reply at 36).

The Commission agrees with OGMG/RESA to eliminate the phrase "the regulated sales service." The Commission declines to adopt the other proposed change on the basis that it is largely a matter between the natural gas company and the CRNGS supplier whether or not the supplier has maintained sufficient financial security with the utility; however, Staff remains available and the Commission remains the adjudicator of complaints.

### **Ohio Adm.Code Chapter 4901:1-28 - Aggregation with Prior Consent**

#### **Comments on Ohio Adm.Code 4901:1-28-01 - Definitions**

- (33) General. The Commission notes that the series of questions included in the Entry issuing these rules for comment included a question inquiring whether the Commission rules should regulate the availability of certain lengths and types of contracts for certain customer classes. OGMG/RESA, Dominion Retail, DERS, and Hess comment that they oppose Commission regulation of these types of contract parameters, citing the state policy set forth in R.C. 4929.02 to promote the retail market for natural gas service (OGMG/RESA at 5-7; Dominion Retail at 4; DERS Reply at 2-3; Hess at 1-2). Although the Commission strives to further this statutory goal throughout the changes to this chapter, the Commission notes that R.C. 4929.02 also provides that state policy serves to "[p]romote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs." Consequently, the Commission finds that, in furtherance of maintaining quality options for consumers and discouraging seasonal products that may undercut these options, a new definition should be added to this rule as Paragraph (G), providing that: "'Governmental aggregation program' means the aggregation program established by the governmental aggregator with a fixed aggregation term, which shall be a period of not less than one year and no more than two years." The Commission notes that this addition parallels the corresponding rule in the *CRES Rules Case*, Ohio Adm.Code 4901:1-21-01(T). Further, the Commission notes that references to this newly defined term have been added in this chapter to Ohio Adm.Code 4901:1-28-04(A)(7) and 4901:1-28-04(B).

- (34) Paragraph (C). This paragraph defines the term “eligible customer,” which Staff proposed modifying by striking a portion of the language in Paragraphs (C)(1) and (C)(2).

OGMG/RESA recommend reinserting the following deleted language from Paragraph (C)(1): “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” (OGMG/RESA at 17). NOPEC comments that the language in Paragraph (C)(2) should be tied to the date on which the governmental aggregator obtains the list of eligible customers from the incumbent natural gas utility (NOPEC at 2). DEO/VEDO agree with Staff’s proposed change on the basis that LDCs have no practicable way to know whether a customer was receiving CRNGS on the date of the ordinance or resolution authorizing the aggregation and disagree with NOPEC’s proposal. (DEO/VEDO at 4; DEO/VEDO Reply at 2).

The Commission agrees with OGMG/RESA that the removed language from Paragraph (C)(1) should be reinserted. Additionally, the Commission agrees with NOPEC that Paragraph (C)(2) should be tied to the date on which the governmental aggregator obtains the list of eligible customers, and has modified this paragraph accordingly.

**Comments on Ohio Adm.Code 4901:1-28-04 - Opt-out disclosure requirements**

- (35) Paragraph (A). This paragraph provides the information that must be included in a governmental aggregator’s notice of a governmental aggregation and opt-out notice. Staff proposed adding language as Paragraph (A)(1) requiring that the language on the front cover of the envelope providing notice of automatic aggregation state “important natural gas aggregation information.” Additionally, as previously discussed, the Commission included a series of questions in the Entry issuing these rules for comment. One such question requested comments on whether aggregation incentives, such as financial contributions to a community, should be disclosed in opt-out notices.

Generally regarding Paragraph (A), OGMG/RESA contend that aggregation incentives, such as financial contributions to a community, should not be disclosed in opt-out notices, as these are already lengthy contracts and adding more words is likely to incent

customers not to read the information and because it could confuse potential participants. OGMG/RESA further comment that such incentives are typically disclosed and, in fact, are often touted through public relations activities surrounding aggregations. (OGMG/RESA at 4-5.) Dominion Retail asserts that no purpose is served by requiring governmental aggregators to disclose any inducements the community has received for selecting a particular CRNGS supplier, as this additional information would not assist customers in deciding whether to opt-out of an aggregation program (Dominion Retail at 4). OCC asserts that, in the disclosure of rates and the terms and conditions for service to individual customers, the Commission should also require the disclosure of any incentives provided to the community in the interest of transparency (OCC at 5; OCC Reply at 6-7). In Paragraph (A)(1), Dominion Retail suggests that the Commission grant a blanket waiver applying to the capitalization and numeric references as was granted in *In re Amendment of Certain Rules*, Case No. 11-4910-AU-ORD, et al., Finding and Order (May 9, 2012) (*Rules Amendment Case*) (Dominion Retail at 14). OGMG/RESA further recommend that Paragraph (A)(4)(a) be amended to include the phrase "if applicable to product offering" to recognize that a CRNGS supplier may offer products that are not priced on a per-unit basis (OGMG/RESA at 4-5, 16; OGMG/RESA Reply at 8-10). DERS states that the disclosure requirements relating to variable rates set forth in Paragraph (A)(4)(b) differ from the requirements in Ohio Adm.Code 4901:1-29-11(J)(2), and asserts that they should be identical because they are analogous (DERS at 5). In Paragraph (A)(4)(c), Eagle recommends modifications to require that all pricing shall include applicable taxes in order to show a truer price comparison to the customer (Eagle at 11).

OGMG/RESA oppose Eagle's suggestion to include sales tax in pricing on the basis that it is impractical (OGMG/RESA Reply at 22). Dominion Retail agrees that all inducements to a customer should be memorialized in the contract offer, but that an inducement to the governmental aggregator need not be included in the opt-out notice because it would not assist a customer in deciding whether to opt-out of an aggregation program (Dominion Retail Reply at 4). NOPEC supports the recommendation of OGMG/RESA and Dominion Retail that aggregation incentives should not be disclosed in opt-out notices, on the basis that incentives are positive developments for communities and are generally covered by media and marketing coverage. Further, NOPEC opposes DERS' suggestion that disclosure



requirements relating to variable rates in opt-out aggregation be identical to the disclosure requirements relating to CRNGS supplier contracts on the basis that it is unnecessary. (NOPEC Reply at 3-4.) OPAE contends that contributions should be listed on the opt-out notice in the interest of transparency. Further, OPAE comments that provisions should be included that require the opt-out notice to include the termination fee, if applicable, and that governmental aggregators should be required to notify customers if the proposed rate is higher than the standard offer. (OPAE Reply at 11, 28.)

The Commission agrees with OGMG/RESA, NOPEC, and Dominion Retail that a governmental aggregator should not be required to specifically disclose any inducements to a municipality in an opt-out notice. As argued by the commenters, all inducements to a customer should be memorialized in the contract offer; however, the Commission finds that disclosure of inducements to a municipality would not serve the purpose of aiding a customer in deciding whether to opt-out of an aggregation program and would add more length to the opt-out notice. The Commission finds that Dominion Retail's requested blanket waiver is unnecessary, as the Commission, in the *Rules Amendment Case*, found that, where the proposed rules follow the Legislative Service Commission stylistic requirements and a company wishes to make changes that are limited to capitalization and numeric reference, which do not change the intent, application, or structure of the required language, no waiver request is necessary.

Regarding OGMG/RESAs' proposed addition to Paragraph (A)(4)(a), the Commission declines to adopt the change on the basis that a customer needs some means of determining price. The Commission finds, however, that it is appropriate to require price information based on whether the product has per-unit price or a flat-monthly rate. Further, the Commission declines to adopt OPAE's recommendation that governmental aggregators should be required to notify their customers if their proposed rate is higher than the standard offer, since the customers bear responsibility to check their own bills. Additionally, the Commission declines to adopt DERS' recommendation on the basis that the notice requirements in this paragraph parallel the requirements in Ohio Adm.Code 4901:1-29-05(A). Finally, regarding Eagle's request for inclusion of applicable taxes, the Commission agrees with OGMG/RESA that it may be impractical to include taxes in the prices; however, the Commission finds that, as customers do pay sales tax, a new subsection should be

added as Paragraph (A)(4)(c) to note that rates are exclusive of all applicable state and local taxes.

- (36) Paragraph (D). In this paragraph, Staff recommended restricting a governmental aggregator who requests information from the incumbent natural gas company from releasing any information relating to the customer without obtaining the customer's signature.

Eagle recommends the reference to the social security number be deleted and that a rule be added to prohibit the request of a customer's social security number (Eagle at 11). OGMG/RESA assert that, although current need for social security numbers is minimal, future changes in the purchase of receivables market may make access to social security numbers necessary (OGMG/RESA Reply at 21-22). DEO/VEDO suggest several wording changes for clarity in this paragraph (DEO/VEDO at 4).

As to Eagle's recommendation, the Commission declines to make the requested change on the basis that the current rule requires the customer to express consent before disclosure of a social security number, and the Commission finds this to be a fair balance of the customer's privacy interest. However, the Commission agrees with DEO/VEDO and has modified the wording for clarity.

**Comments on Ohio Adm.Code 4901:1-28-05 - Cooperation between natural gas companies and certified governmental aggregators**

- (37) General. DEO/VEDO recommend addition of a new paragraph, Paragraph (D), to provide that governmental aggregators should be required to notify the incumbent utility of any change in suppliers at least 30 days prior to the change and to provide it with copies of any notices sent to customers informing them of the change in order to reduce customer confusion (DEO/VEDO at 5). The Commission believes that adding the language proposed by DEO/VEDO is unnecessary because the incumbent utility has control of when customers switch to a governmental aggregator.
- (38) Paragraph (A). In this paragraph, Staff proposed language requiring incumbent natural gas companies to provide, upon request, and on a best efforts basis, an updated list of eligible customers to governmental aggregators.

OGMG/RESA comment that, to be consistent with the rules in the *CRES Rules Case*, Paragraph (A) should incorporate a requirement that a CRNGS supplier must use the list of eligible customers within 30 days or must request a new list (OGMG/RESA at 16). DERS comments that it is concerned about the potential for litigation resulting from the unclear meaning of best efforts (DERS at 5).

In reply, OGMG/RESA assert that any information required to be provided to governmental aggregators should also be provided to CRNGS suppliers upon request (OGMG/RESA Reply at 22-23). DEO/VEDO assert that best efforts should be understood to mean to the maximum extent reasonable and practicable. Further, DEO/VEDO agree with OGMG/RESA that aggregators should work with current eligible aggregation customers when preparing opt-out letters and do not oppose this proposal, but believe aggregators should be subject to the LDC's normal fee in each instance a list is requested and provided. (DEO/VEDO Reply at 3.)

The Commission agrees with OGMG/RESA that a requirement should be added that governmental aggregators must use a list of eligible customers within 30 days of receipt in order to maintain consistency with the applicable rule in the *CRES Rules Case*, Ohio Adm.Code 4901:1-21-17(D)(2), and has added this as a new paragraph, Paragraph (B). The Commission declines to elaborate on the term "best efforts" as this term is a commonly understood legal standard used to obligate parties to make their best attempts to accomplish a goal. The Commission further declines to require provision of these lists to CRNGS suppliers and declines to permit any fees to be charged for the list.

**Ohio Adm.Code Chapter 4901:1-29 - Minimum requirements for competitive retail natural gas service certification**

**Comments on Ohio Adm.Code 4901:1-29-01 - Definitions**

- (39) General. OGMG/RESA suggest that the terms "direct enrollment" and "door-to-door solicitation" be separately defined and recommend modifications to these definitions to exclude from door-to-door solicitation any solicitation with a previous appointment or previous relationship. OGMG/RESA also propose a new definition for "documents, materials, acknowledgements, and signatures" as both paper and electronic formats. (OGMG/RESA at 16-17.) OCC recommends this rule define "agent" as "any individual or company

that is working on behalf of the CRNGS provider or government aggregator to solicit and/or enroll customers for CRNGS" (OCC at 11).

OGMG/RESA respond to OCC's proposed definition of "agent," and propose an alternate definition limited to just those persons conducting the marketing or sales activities on behalf of a single licensed supplier who are compensated by the supplier to perform the activities, and should exclude any employee of an independent organization which facilitates access to a supplier (OGMG/RESA Reply at 23-24). OCC recommends the Commission reject OGMG/RESAs' proposed definitions because they are subjective, and OCC reiterates its support for the current definition for direct solicitation (OCC Reply at 14-15).

The Commission disagrees with both OCC and OGMG/RESA regarding providing a definition for "agent," on the basis that the concept of agency is well established in law and does not need to be defined in these rules. The Commission agrees with OCC that the definition for "direct enrollment" should be "direct solicitation or enrollment." However, the Commission does not agree with OGMG/RESA that "door-to-door solicitation" should be distinguished from the definition of "direct enrollment" on the basis that the definition proposed by OGMG/RESA would limit the definition of door-to-door solicitation to exclude some locations where solicitations might occur, such as mall kiosks. Additionally, the Commission sees no reason to limit the definition of direct enrollment to solicitations made by a previous arrangement or when the consumer solicited is known to the seller. The Commission finds that the definition of "direct solicitation or enrollment" needs to include face-to-face sales transactions and has modified the definitions sections accordingly. Further, as to OGMG/RESAs' proposed definition for "documents, materials, acknowledgements, and signatures," the Commission declines to adopt this recommendation on the basis that any determination of appropriate format, paper or electronic, should be rule specific.

- (40) Paragraph (F). This paragraph contains the definition for "complaint." DEO/VEDO propose expanding the definition for "complaint" to include contacts that require follow-up by a natural gas company, when the complaint was initiated with the incumbent natural gas company. DEO/VEDO also recommend clarification of

the term "retail natural gas company" as used within this paragraph (DEO/VEDO at 5.)

The Commission disagrees with DEO/VEDOs' proposal to expand the definition of "complaint" to include contacts that require follow-up. Ohio Adm.Code 4901:1-29-08(C) already governs customer contact to the incumbent natural gas company around issues concerning the CRNGS suppliers, so it is unclear what issue DEO/VEDO seeks to solve by expanding the definition. The Commission does agree, however, that the reference should be changed from "retail natural gas company" to "retail natural gas supplier" for clarity.

- (41) Paragraph (N). In this paragraph, Staff proposed modifying the definition of "eligible customer" to eliminate the requirement that the person be both a distribution service customer and mercantile customer on the date of commencement of service to the governmental aggregation.

OGMG/RESA oppose Staff's proposed change to this definition in Paragraph (N)(1) and recommend that the definition revert back to the previous definition, which reflects the status of the customer on the date of commencement of service, in order to reflect the transient nature of the market (OGMG/RESA at 17). NOPEC proposes a change to the language in Paragraph (N)(2), to read: "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 date the incumbent natural gas utility provides the list of eligible customers to the governmental aggregator" (NOPEC at 2). DEO/VEDO support Staff's proposed language on the basis that the LDCs have no practicable way to know whether a customer was receiving CRNGS on that date (DEO/VEDO at 5).

The Commission agrees with OGMG/RESA that the original language of this rule, "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[.]" should be retained. Additionally, the Commission agrees with DEO/VEDO that there is no practicable way for LDCs to know whether a customer was receiving CRNGS on a specific date, but also understands NOPEC's position. Consequently, the Commission agrees to add NOPEC's alternative language utilizing the date "the incumbent natural gas utility provides the list of eligible

customers to the governmental aggregator.” Additionally, the Commission notes that the corresponding rule in the *CRES Rules Case*, Ohio Adm.Code 4901:1-21-17(D)(2), requires that the governmental aggregator use the eligible customer list within 30 calendar days of receipt. As discussed above, in Finding (38), the Commission has found that the requirement that the list be used within 30 calendar days should be added to Ohio Adm.Code 4901:1-28-05. The Commission believes this change will alleviate OGMG/RESAs’ concern that customers’ eligibility status changes over time and the time lag between when the natural gas company provides the eligible-customer list and the time actual aggregation enrollments are received.

**Comments on Ohio Adm.Code 4901:1-29-02 – Purpose and scope**

- (42) Paragraph (A). In Paragraph (A)(3)(c), DEO/VEDO recommend the Commission include “misleading” in the list of prohibited practices for consistency with the other CRNGS rules (DEO/VEDO at 5). DERS believes Paragraph (A)(4) is illegal because the Commission only has jurisdiction over natural gas companies and CRNGS suppliers, but not over their customers (DERS at 5-6). OGMG/RESA agree with DEO/VEDO and DERS (OGMG/RESA Reply at 25). The Commission agrees with DEO/VEDOs’ recommendation to include “misleading” in the list of prohibited practices. Further, the Commission agrees with DERS that, as in the *CRES Rules Case*, Paragraph (A)(4) is unclear, therefore, it has been deleted.
- (43) Paragraph (C). In this paragraph, Staff proposed allowing the Commission to waive any requirement of this chapter, other than a requirement mandated by statute, upon application or motion of any party. OGMG/RESA oppose the proposed removal of the language “for good cause shown or upon its own motion.” OGMG/RESA suggest this would allow the Commission to waive a rule for arbitrary or unsupported reasons. (OGMG/RESA at 18.) The Commission agrees that the language “for good cause shown” should be added back into this paragraph, as this language exists in the corresponding rules in the *CRES Rules Case*, Ohio Adm.Code 4901:1-21-02(C) and 4901:1-24-02(C). However, the Commission disagrees it is necessary for the Commission to waive a rule upon its own motion.
- (44) Paragraph (E). In this paragraph, Staff recommended eliminating the restriction that the rules of this chapter only supersede inconsistent provisions, terms, and conditions of CRNGS contracts entered into

after the effective date of this chapter. OGMG/RESA suggest this paragraph be clarified to provide that the Commission is not requiring material change letters or new terms and conditions to be sent to customers after the effective date of these rules (OGMG/RESA at 18). The Commission finds that the deleted language should be added back to clarify that there is no intent to require CRNGS suppliers to send out material change letters or new terms and conditions to their customers.

**Comments on Ohio Adm.Code 4901:1-29-03 – General**

- (45) Paragraph (B). In this paragraph, Staff proposed requiring that a criminal background check be performed on all employees and agents of CRNGS suppliers or governmental aggregators engaged in door-to-door enrollment.

OGMG/RESA suggest the phrase “criminal background check” be further defined to state that the background check will be comprehensive, at a minimum (OGMG/RESA at 18). OCC proposes Paragraph (B) be modified to include criminal background checks on all employees and agents of the CRNGS or governmental aggregators who are engaged in door-to-door solicitations, not just solicitations that result in enrollments. Additionally, OCC suggests the criminal background check should not be construed to limit any liability a CRNGS supplier or government aggregator may have in accordance with findings by the Commission or a court of law. (OCC at 12-13.)

OGMG/RESA do not oppose OCC’s recommendation, but propose that a clear distinction be made between “door-to-door” and “direct solicitation.” OGMG/RESA also point out that Pennsylvania requires comprehensive criminal background checks. (OGMG/RESA Reply at 25-26.) DERS agrees with OCC that background checks should be required for all personnel who are engaged in door-to-door solicitations. Further, DERS suggests language to clarify that a CRNGS supplier that uses door-to-door marketing is not required to complete background checks for all of its employees and agents. (DERS Reply at 5.) OPAE recommends this paragraph be amended to prohibit a supplier from employing individuals with a felony or misdemeanor conviction that is related to the employment or duties of the individual (OPAE Reply at 28).

The Commission agrees with OCC that criminal background checks should be performed on CRNGS suppliers or governmental

aggregators engaged in direct solicitation door-to-door. Further, the Commission agrees with OGMG/RESA that criminal background checks should be comprehensive and conducted by a reputable independent company and limited to employees or agents engaged in direct solicitation or enrollment door-to-door. The Commission finds that this includes CRNGS suppliers or governmental aggregators who contract with an independent contractor to perform door-to-door activities; however, the Commission believes that the CRNGS suppliers and governmental aggregators remain responsible and must confirm that the contractor has performed criminal background checks on its agents in accordance with this rule. Additionally, the Commission finds that the requirement for criminal background checks should be moved into a new paragraph, Ohio Adm.Code 4901:1-29-05(E)(1).

- (46) Paragraph (C). This rule provides that CRNGS and governmental aggregators shall not cause or arrange for the disconnection of distribution service as a consequence of contract termination, customer nonpayment, or for any other reason.

OGMG/RESA suggest that, in order to avoid a conflict with Ohio Adm.Code 4901:1-29-11, this paragraph be modified to reflect that it does not apply when a CRNGS supplier is utilizing a purchase of receivables program (OGMG/RESA at 18). DEO/VEDO disagree that Ohio Adm.Code 4901:1-29-11 and this paragraph are inconsistent and raise concerns that, since all the choice companies purchase receivables, this would become the new normal and constitute a major step, particularly given the frequency of exiting the merchant function occurring in DEO and Columbia territories (DEO/VEDO Reply at 3-4). OCC opposes OGMG/RESAs' recommendation on the basis that it is contrary to R.C. 4928.10(D), and would unlawfully expand the authority of CRNGS suppliers (OCC Reply at 16-17).

The Commission agrees with DEO/VEDO that there is no conflict between Ohio Adm.Code 4901:1-29-11 and this paragraph, and, consequently, finds no change is necessary to this rule. This paragraph governs CRNGS suppliers or opt-in governmental contract disclosures, while Ohio Adm.Code 4901:1-29-11(G)(1) allows a CRNGS supplier or governmental aggregator that bills for its own service to terminate the contract of a customer who fails to pay his bill, but the customer then defaults to the natural gas utility. Where the natural gas utility purchases a supplier's receivables, the supplier is compensated for the purchased commodity for all customers,



including those that have not paid their bill. Consequently, there is no reason for a supplier to disconnect a customer for nonpayment.

- (47) Paragraph (E). This paragraph lists certain information that CRNGS suppliers and governmental aggregators must provide in their certification applications. DEO/VEDO suggest this rule should require CRNGS suppliers to provide the incumbent natural gas company with the contact information for the individual who responds to Commission concerns pertaining to customer complaints. DEO/VEDO assert that it has been difficult to obtain this information, delaying or hindering the investigation of customer complaints. (DEO/VEDO at 6.) DERS comments that, since this paragraph requires certain information to be in the certification application, this requirement should be in Ohio Adm.Code Chapter 4901:1-27 (DERS at 6).

The Commission agrees that these requirements are more appropriate in the certification application section in Ohio Adm.Code 4901:1-27-05(D) and 4901:1-27-11(B)(8), and has moved them accordingly. The Commission disagrees, however, with DEO/VEDOs' recommendation regarding contact information on the basis that the regulatory contact person is required on the certification application, which is publicly available, and because Ohio Adm.Code 4901:1-27-11(A)(1) and (B)(8) already require CRNGS and governmental aggregators to file publicly with the Commission notification of a material change, including a change in the contact person.

#### **Comments on Ohio Adm.Code 4901:1-29-04 - Records and retention**

- (48) Paragraph (C). This paragraph provides that all records required by this chapter shall be provided to Staff within three business days of the request. OGMG/RESA recommend a change from three business days to five calendar days in order to be consistent with the rules in the *CRES Rules Case* or, alternately, a change to five business days (OGMG/RESA at 18-19). DERS recommends the rule specifically provide that the maintenance of records electronically is sufficient for compliance (DERS at 6). OGMG/RESA agree with DERS that maintaining records electronically should be sufficient for compliance (OGMG/RESA Reply at 26).

The Commission does not agree that it is necessary to specify that records may be maintained electronically, as there is nothing in the rule prohibiting electronic records. Further, the Commission

disagrees with the need to change three business days to five calendar days, on the basis that Staff is always willing to work with companies that need more time, but in an age of electronic records and ease of accessibility, there is no need to extend this time period by rule. Further, the Commission notes that it has also changed proposed Ohio Adm.Code 4901:1-21-04(C), in the *CRES Rules Case*, from five calendar days to three business days, so there is no inconsistency with the corresponding CRES rule.

**Comments on Ohio Adm.Code 4901:1-29-05 - Marketing and solicitation**

- (49) General. Duke recommends a rule requiring CRNGS suppliers and governmental aggregators to notify the incumbent natural gas utility of upcoming marketing and solicitation plans for door-to-door marketing, telemarketing, and direct mail marketing to allow the utility to prepare its call center. Additionally, Duke recommends suppliers and governmental aggregators be required to provide the incumbent natural gas utility with copies of its marketing materials, if possible, but at a minimum they should be required to provide general, nonproprietary information regarding the extent of the marketing effort, duration of the effort, and a description of the geographical area involved. (Duke at 1-2.)

OGMG/RESA disagree with Duke's proposals on the basis that requiring a CRNGS supplier to share its plans for marketing with the jurisdictional utility will not promote competition (OGMG/RESA Reply at 27-28). Dominion Retail opposes any requirement that the timing of a campaign or material be provided to the utility in advance (Dominion Retail Reply at 36).

The Commission declines to adopt Duke's recommendations on the basis that they are unnecessary would not promote competition.

- (50) Paragraph (A). This rule sets forth the information that CRNGS suppliers and governmental aggregators are required to provide in marketing materials that include or accompany a service contract.

OGMG/RESA recommend that, under Paragraph (A)(1)(a), the phrase "if a product is based on a per unit price" be added to the end of the sentence (OGMG/RESA at 19). Dominion Retail supports standardizing the definitions for "fixed rate" and "variable rate" offers under Paragraph (A)(2) in order to prevent suppliers from marketing offers as fixed rate when the underlying contract provides

for rate adjustments to pass through. Further, Dominion Retail comments that the definitional issue will take on greater significance if nonshopping customers are assigned to suppliers under a monthly variable rate (MVR) program upon an LDC's exit from the merchant function. (Dominion Retail at 7; Dominion Retail Reply at 10-11.) DERS recommends the requirement for marketing materials track Ohio Adm.Code 4901:1-29-11(J), contract disclosures, and include more detailed information around the price offered (DERS at 6). DEO/VEDO recommend the Commission either delete or enforce the provision in Paragraph (A)(2)(a), *i.e.*, that suppliers consistently include a clear and understandable explanation of the factors that will cause the price to vary. Moreover, DEO/VEDO suggest the Commission clarify whether this provision applies to competitive MVR prices. (DEO/VEDO at 6.)

OGMG/RESA disagree with DEO/VEDOs' comment that variable rate and MVR should be defined terms on the basis that it is unnecessary because the rule already requires disclosure of a clear and understandable explanation of the factors that will cause prices to vary (OGMG/RESA Reply at 12-13). Dominion Retail agrees with DEO/VEDO that MVR should be defined (Dominion Retail Reply at 11). DERS disagrees that the current rules provide enough parameters to serve as a definition for variable rate on the basis that variable rate contracts may be described as being based on an index, but the index should be one that is publicly available and easily accessible (DERS Reply at 4-5). OPAE agrees with DEO/VEDO regarding use of a reference index for variable rates (OPAE Reply at 13).

The Commission conceptually agrees with OGMG/RESA and DERS that the price disclosure requirement in Paragraph (A) for marketing and solicitation should closely track the price disclosure requirement for customer contract information in the corresponding rule in the *CRES Rules Case*, Ohio Adm.Code 4901:1-29-11(J); however, the Commission finds that, in this specific situation, the rules do not need to exactly mirror, since there is often less detail in a solicitation than in a term contract. The Commission also agrees with OGMG/RESA that new products' pricing may not be priced based on a per thousand cubic feet (Mcf) or per Ccf unit price, but shares OPAE's concern that customers should have some means of understanding the price of their commodity gas. Consequently, the Commission has modified Paragraph (A)(1)(a). Additionally, in response to DEO/VEDOs' comments regarding clarification and MVR prices, the Commission

notes that, in its orders authorizing MVR programs, the Commission has stressed the importance of customer education. Customers who are assigned to MVR suppliers and receive MVR service without a bilateral contract need clear disclosures to understand the price they are being charged so they can determine whether to stay with the assigned supplier or choose another. Consequently, the Commission finds that the title of this section should be modified to also refer to "customer information," to clarify that pricing disclosures also apply to assigned MVR customers. Further, the Commission has added a new paragraph, Paragraph (B), to provide that "[c]ompetitive retail natural gas suppliers serving a natural gas company's MVR tariff customers shall provide to the customer the information required in paragraph (A) of this rule upon enrollment."

- (51) Paragraph (B). This rule provides that a CRNGS supplier 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 Staff.

OGMG/RESA recommend a five-business-day time period for CRNGS suppliers or governmental aggregators to provide promotional and advertising material to the Commission or Staff, instead of three business days (OGMG/RESA at 19). Duke also recommends CRNGS suppliers or governmental aggregators be required to notify the incumbent natural gas companies of upcoming solicitation plans or, at least at a minimum, provide general nonproprietary information (Duke at 1). OCC suggests a CRNGS supplier's or government aggregator's promotional and advertising materials be provided, upon request, to OCC as well as the Commission or its Staff (OCC at 13).

OGMG/RESA oppose OCC's proposal on the basis that Staff may have reasons for a request unrelated to residential customer service and, therefore, outside OCC's jurisdiction (OGMG/RESA Reply at 28). DERS agrees that materials should be provided to OCC if requested in the context of assisting a customer; however, DERS disagrees that materials must be provided to OCC any time Staff makes a request (DERS Reply at 6).

The Commission disagrees with OGMG and declines to adopt a five-business-day limit on the basis that Staff's proposed time frame is appropriate and aligns with the proposed rule in the *CRES Rules Case*, Ohio Adm.Code 4901:1-21-05(B). Further, the Commission declines to

adopt OCC's recommendation on the basis that there may be reasons for the Commission or Staff to review promotional materials unrelated to residential customer service. Further, although the Commission agrees that, when possible, CRNGS suppliers and governmental aggregators should notify the incumbent natural gas company of upcoming solicitation plans that will impact call centers, the Commission does not believe this needs to be incorporated into a rule.

- (52) Paragraph (C). This paragraph provides that no CRNGS or governmental aggregator may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable, and the subparagraphs delineate specific forbidden acts.

OGMG/RESA express concern that the activities listed in Paragraphs (C)(1) to (11) are "per se" unfair, misleading, deceptive, or unconscionable, and recommend reorganizing Paragraph (C) by removing subsections (3), (4), (6), and (8) and putting them in a new subsection, Paragraph (D). OGMG/RESA further recommend that only intentional acts be prohibited by Paragraph (C) and that failure to comply must be material. Further, OGMG/RESA recommend rewriting the subsections to make them requirements as opposed to prohibitions. (OGMG/RESA at 20-21.) DEO/VEDO contend that they have received complaints that certain suppliers occasionally exert undue pressure on customers or use questionable tactics and, consequently, recommend the following be included as prohibited practices: implying or stating that the CRNGS is affiliated with the LDC; implying or stating that the LDC endorses the supplier's advertising or marketing offer; demanding to see the customer's gas bill; continuing solicitation after the customer has stated he/she wishes to end the conversation; and requesting to enter a customer's home. (DEO/VEDO at 6-7.) OCC recommends that Paragraph (C) be amended to specifically apply to employees and agents of CRNGS suppliers or governmental aggregators (OCC at 13-14).

DERS agrees that employees and agents should comply with the Commission's rules; however, points out that the Commission has no jurisdiction or authority over such individuals and would modify the language accordingly (DERS Reply at 6-7). OCC opposes OGMG/RESAs' proposal to remove items from the list of acts defined as unfair, misleading, deceptive, or unconscionable, asserting that it could cause potential harm to customers (OCC Reply at 19-20).

The Commission declines to add the word “intentionally” to Paragraph (C), as this would require consumers to bear the burden of proving a supplier intended to engage in unfair, misleading, deceptive, or unconscionable marketing acts and practices. Further, the Commission does not find it appropriate to require consumers to prove that a supplier has *materially* failed to disclose all terms and conditions. Additionally, the Commission does not find it necessary to move Paragraphs (C)(3), (C)(4), and (C)(6) into a new paragraph, finding that Staff’s proposed organization is appropriate. The Commission finds, however, that it is appropriate to modify the language in Paragraphs (C)(7) and (C)(8) to make them requirements, rather than prohibitions, and to move these requirements to a new paragraph, Paragraph (E). Finally, the Commission does not find it is appropriate to add “employees and agents” to Paragraph (C), because suppliers and aggregators are already responsible for the actions of those marketing and soliciting on their behalf.

- (53) Paragraph (C)(3). This paragraph requires provision of a toll-free or local telephone number in advertisements and promotional materials that make an offer for sale. OGMG/RESA recommend this paragraph be deleted, based upon the assertion that many companies use social media tools such as Twitter, Facebook, and smartphone applications as marketing channels and it may not be practical to provide a toll-free telephone number when using these types of branding materials. In the alternate, OGMG/RESA recommend modifying Paragraph (C)(3) to clarify that promotional or brand advertising need not contain contact information and that contact information may be something other than a telephone number. (OGMG/RESA at 20-21.) The Commission declines to delete or modify Paragraph (C)(3), at this time, on the basis that customers should be provided with a telephone number to obtain more information about the offer in the advertisements and promotional materials. At this time, the Commission does not find that alternate contact information would be appropriate.
- (54) Paragraphs (C)(4), (C)(6). Paragraph (C)(4) prohibits solicitation via telephone of customers on the Federal Trade Commission’s do-not-call registry, and Paragraph (C)(6) prohibits engaging in telephone solicitation of residential customers before 9:00 a.m. or after 9:00 p.m. OGMG/RESA recommend that (C)(4) and (C)(6) be amended to state “[f]ailure to comply with federal and state ‘do not call’ registry regulations” on the basis that they go beyond the scope of what is

required by the federal do-not-call registry (OGMG/RESA at 21). The Commission disagrees that Staff's proposed language goes beyond the federal requirements and declines to make any changes to these paragraphs.

- (55) Paragraph (C)(5). In this paragraph, Staff proposed prohibiting any solicitation that leads the customer to believe the supplier or government aggregator is soliciting on behalf of or as an agent of an Ohio natural gas company where no such relationship exists.

DERS proposes going further and requiring the CRNGS suppliers or governmental aggregators to affirmatively state that there is no relationship with the natural gas company and restructuring Paragraph (C)(5) accordingly (DERS at 6-7). OCC supports Staff's recommended change to Paragraph (C)(5) concerning protection against deceptive solicitation practices. However, OCC recommends the Commission expand the consumer protections in Paragraph (C)(5) to include employees or agents of CRNGS suppliers who claim they represent a governmental entity when no such relationship exists. (OCC at 14.)

OGMG/RESA do not oppose DEO/VEDOs' recommendation, as long as CRNGS suppliers are not prohibited from seeing a customer's gas bill if the customer has authorized it. Further, they do not oppose OCC's or DERS' additional language. (OGMG/RESA Reply at 26-29.) DEO/VEDO support DERS' and OCC's recommendations to require CRNGS agents to affirmatively state that they do not represent either the LDC or a government entity (DEO/VEDO Reply at 4). OCC agrees with DERS that the current rule is not stringent enough in requiring CRNGS suppliers to affirmatively state there is no relationship with the LDC when no relationship exists. (OCC Reply at 17-18).

The Commission acknowledges DEO/VEDOs' concerns, given the volume of complaints received by the Commission's call center related to customer confusion on the topic of whether a CRNGS supplier is the incumbent natural gas company. Consequently, the Commission agrees that language should be added prohibiting a CRNGS supplier from implying any endorsement by the utility and has modified Paragraph (C)(5) accordingly. The Commission does not recommend further language regarding affirmative disclosure that a CRNGS is unaffiliated with the natural gas company, on the basis

that this is already required in third-party verification (TPV) if the customer is enrolled.

- (56) Paragraphs (C)(7), (C)(8). Paragraph (C)(7) requires CRNGS suppliers' or governmental aggregators' sales agents to wear and display valid photo identification. In proposed Paragraph (C)(8), Staff recommended including language prohibiting the direct solicitation of a customer without complying with all applicable ordinances and laws of the customer's jurisdiction.

OGMG/RESA recommend Paragraphs (C)(7) and (C)(8) be amended to include door-to-door solicitation. OGMG/RESA further recommend that suppliers engaged in direct solicitation wear CRNGS supplier branded clothing. OGMG/RESA also complain that proposed Paragraph (C)(8) inappropriately puts the Commission in the place of deciding when an act violates a local ordinance. (OGMG/RESA at 21-22.) Duke proposes that, where not covered by a local ordinance, governmental aggregators, brokers/aggregators, and their agents should not conduct door-to-door marketing outside the hours of 9:00 a.m. and 9:00 p.m., local time (Duke at 1-2).

OGMG/RESA disagree with Duke's proposals on the basis that limitations on door-to-door marketing are better addressed by local communities, not the Commission (OGMG/RESA Reply at 27-28). OCC supports Staff's proposed language requiring that CRNGS suppliers have a duty to know local laws applicable in the areas in which they market and opposes OGMG/RESAs' proposal. Additionally, OCC agrees with Duke that time limits should be placed on door-to-door marketing; however, OCC proposes prohibiting such marketing prior to 10:00 a.m. and after dusk. (OCC Reply at 18-19.)

As to Paragraph (C)(7), the Commission notes that, as discussed above, in Finding (52), this paragraph has been moved into a new paragraph, Paragraph (E). Further, the Commission agrees with OGMG/RESAs' recommended changes concerning branded clothing and has added this terminology. Regarding Paragraph (C)(8), the Commission again notes that, as discussed above, this paragraph has been moved to new Paragraph (E). Additionally, the Commission has added language to this this paragraph limiting door-to-door direct solicitation to the hours between 9:00 a.m. and 7:00 p.m. The Commission believes this time limitation strikes a reasonable balance between the times proposed by the commenters.



- (57) Paragraph (C)(9). In this paragraph, Staff recommended including language prohibiting a CRNGS supplier or governmental aggregator from knowingly taking advantage of a customer's inability to reasonably protect his or her interests because of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreement in the definition of misleading, deceptive, or unconscionable acts or practices.

OGMG/RESA assert that the Commission should define the word "knowingly" as used in this paragraph, and that the term "ignorance" should be deleted from this paragraph (OGMG/RESA at 22-23).

The Commission declines to delete the word "ignorance" from the rule and also declines to provide a definition for the term "knowingly." Whether an act was completed knowingly may be determined on a case-by-case basis by the Commission and the Commission does not find it is appropriate to define this term in the rules.

- (58) Paragraph (C)(10). This paragraph prohibits specific advertising claims and offers.

OGMG/RESA recommend that Paragraph (C)(10)(f) be modified to read as follows: "[f]ailure to disclose (*e.g.* on the same line as the logo appears or in the introductory paragraph) in any mailing, the intent of which is to solicit a customer, in an appropriate and conspicuous type-size an affiliate relationship or branding agreement on advertising or marketing offers that use an Ohio utility's name and logo" (OGMG/RESA at 23). NOPEC asserts that Staff's proposed language is not strong enough and that the practice of allowing an unaffiliated and unregulated CRNGS supplier to use the incumbent utility's name and logo should be prohibited and added to the list of unfair, misleading, and deceptive acts and practices (NOPEC at 2-3).

IGS opposes NOPEC's proposal, arguing that intellectual property that is properly licensed should not be precluded simply because the licensee is unaffiliated with the owner of the intellectual property, and to do so would create an unfair barrier to the market (IGS Reply at 1-2). DEO/VEDO support NOPEC's proposal (DEO/VEDO Reply at 5).

The Commission declines to adopt NOPEC's proposal on the basis that the Commission does not believe that an unaffiliated CRNGS supplier should necessarily be prohibited from using the incumbent

utility's name and/or logo, absent other circumstances indicating that the use of the name and/or logo is unfair, misleading, or deceptive. *See Ohio Consumers Counsel v. Interstate Gas Supply d/b/a Columbia Retail Energy*, Case No. 10-2395-GA-CSS, Opinion and Order (Aug. 15, 2012).

- (59) Paragraph (C)(11). In this paragraph, Staff proposed adding failure to provide accurate and timely updates to Staff for the development of apples-to-apples comparison chart in the definition of misleading, deceptive, or unconscionable acts or practices.

OGMG/RESA recommend this paragraph be modified to require an intentional act for the purpose of gaining a competitive advantage or, alternately, implement a new paragraph, Paragraph (D), to encompass acts that are not permitted, but are not unfair, misleading, deceptive, or unconscionable (OGMG/RESA at 23-26). DERS recommends deleting this paragraph, asserting that failing to provide Staff with updates to the apples-to-apples chart should not cause the offer in question to be fraudulent (DERS at 7).

The Commission does not find the changes proposed by OGMG/RESA and DERS to be necessary; however, we do find that the failure to disclose timely accurate price information will be more appropriately located under the "general provisions rule" in proposed Ohio Adm.Code 4901:1-29-03, as a new paragraph, Paragraph (E). Consequently, the Commission has added the above language to Ohio Adm.Code 4901:1-29-03(E) and has deleted proposed Paragraph (C)(11).

**Comments on Ohio Adm.Code 4901:1-29-06 - Customer enrollment and consent**

- (60) General. In this rule, Columbia proposes addition of a new paragraph, Paragraph (L), to provide that customers may elect to enroll with CRNGS suppliers when they contact natural gas companies to initiate service in order to ease the administrative burden customers can face (Columbia at 2). OGMG/RESA also propose a new paragraph to require each CRNGS supplier to train its door-to-door agents and agrees with Columbia's suggestion (OGMG/RESA at 29). Dominion Retail suggests that such a notice as proposed by Columbia should be provided to the customer with the application form and the proposed form of the notice be submitted to Staff for approval (Dominion Retail Reply at 37).

The Commission finds that a number of issues would need to be explored prior to allowing a customer to sign up with a supplier when service is initiated, and does not believe this rulemaking is an appropriate time to enact such a provision. Further, the Commission agrees with OGMG/RESA that CRNGS suppliers should train their door-to-door agents; however, the Commission does not believe that this practice needs to be prescribed by rule.

- (61) Paragraph (B). This paragraph provides that CRNGS suppliers and governmental aggregators are prohibited from enrolling potential customers without consent and proof of that consent.

DERS states that the straight fixed variable rate design has been recently adopted by the Commission and, as a result, some consumers with little or no summer usage have chosen to disconnect service. As a result, if these customers are enrolled with a CRNGS supplier, their contract is terminated and the customer is lost to the supplier. Consequently, DERS recommends that, when these customers reconnect, they should return to the preexisting contract with the CRNGS supplier. (DERS at 7-8.) IGS proposes that opt-out governmental aggregators should not be able to charge cancellation fees without express consent. IGS points out that R.C. 4928.26 permits aggregators to enroll customers without their affirmative consent, but does not permit opt-out governmental aggregators to charge cancellation fees without affirmative consent. Consequently, IGS recommends addition of the following phrase at the end of Paragraph (B): "although this exclusion regarding consent does not relieve a governmental aggregator from obtaining affirmative consent by each customer of early termination fee provisions if such provisions are included in the terms of the program." (IGS at 1-3.)

OGMG/RESA agree with DERS' recommendations to Paragraph (B) (OGMG/RESA Reply at 29). NOPEC opposes IGS' recommendation that governmental aggregations be required to receive affirmative consent from customers to charge cancellation fees. NOPEC asserts that its current natural gas program has no early cancellation fee and there is no problem that needs to be addressed. Additionally, NOPEC asserts that terms and conditions are included in the opt-out notice sent to customers and are docketed with the Commission. (NOPEC Reply at 2.) DEO/VEDO oppose DERS' proposal that a customer who disconnects for the summer should automatically return to the preexisting contract with the CRNGS. DEO/VEDO point out that the companies' close out disconnected accounts after ten days and

reconnected customers are considered new customers. DEO/VEDO state that they do not oppose reconnected Choice customers going back to the supplier provided certain conditions are met, but oppose auto reenrollment. (DEO/VEDO Reply at 5-6.) OCC opposes DERS' recommendation for customers to be automatically reassigned to the CRNGS supplier, asserting that the customer should revert to the standard option with the opportunity to select the same or a different marketer (OCC Reply at 20).

The Commission agrees with DEO/VEDO and OCC that a disconnected CRNGS customer's contract is severed when disconnected and that, when reenrolled, that customer returns to the incumbent natural gas company. Additionally, suppliers may have contractual remedies in the form of early termination fees in the case of premature contract severance. The Commission also agrees with NOPEC that opt-out governmental aggregators are required under R.C. 4929.26 and Ohio Adm.Code 4901:1-28-04(A)(6), through the opt-out notice, to provide an itemized list of all fees and charges, including early termination penalties. Customers give their consent to the terms of the aggregation agreement, including early termination fees, if they do not opt-out of the governmental aggregation. Consequently, the Commission does not adopt any of the commenters' proposed changes.

- (62) Paragraph (C)(4). In this paragraph, Staff proposed always requiring the CRNGS or governmental aggregator to provide the applicant with a legible copy of the signed contract, and eliminating exceptions.

OGMG/RESA suggest that this paragraph be modified to allow a CRNGS supplier to provide the customer with a separate, complete copy for his or her records. OGMG/RESA argue that modification of the rule could be achieved by replacing the word "signed" with "agreed" in Paragraph (C)(4). (OGMG/RESA at 26-27.) NOPEC recommends the Commission not adopt the proposed changes to Paragraph (C)(4) and, instead, leave the rule as written on the basis that the language proposed to be deleted acknowledged the unique nature of opt-out governmental aggregations, including the lack of signed contracts between the customer and the opt-out governmental aggregator (NOPEC at 4-5). OPAC and DEO/VEDO disagree with OGMG/RESAs' suggestions and assert that customers should be given a hard copy of agreed-upon terms and conditions (OPAC Reply at 28; DEO/VEDO Reply at 6).

The Commission agrees with the changes proposed by OGMG/RESA and NOPEC, and will add back the language that was previously proposed to be deleted, providing for certain exceptions to the requirement.

- (63) Paragraph (C)(6). This paragraph addresses the minimum requirements to be complied with by CRNGS suppliers or governmental aggregators engaging in direct solicitation through door-to-door sales.

Eagle recommends prohibiting door-to-door solicitation (Eagle at 11). OGMG/RESA contend that Paragraph (C)(6) is confusing and should be reworded. Further, OGMG/RESA assert that, if TPV is used, it is unnecessary to give the customer a printed copy of an acknowledgment form, as long as all of the questions listed in Paragraph (C)(6)(a) are included in the TPV process. (OGMG/RESA at 27.) DEO/VEDO recommend an amendment to this rule requiring that the supplier terminate the solicitation and refrain from contacting the customer for 90 days, or a similar period, upon being informed that the customer is not interested in receiving the supplier's CRNGS (DEO/VEDO at 7). OCC states that Staff's proposed language is an improvement, particularly regarding use of TPV; however, OCC urges the Commission to require that the CRNGS supplier or government aggregator review the results of audio tapes or other documentation associated with enrollments that are rejected through the TPV process to determine whether an unfair, deceptive, or unconscionable sales practice occurred (OCC at 15).

OGMG/RESA oppose Eagle's proposal and DEO/VEDOs' proposal, arguing that there is no basis to prohibit door-to-door marketing, or for a 90-day moratorium, and a customer could change his or her mind before the passage of 90 days. Additionally, OGMG/RESA disagree with OCC's recommendation that CRNGS suppliers be required to review the results of audiotapes of rejected enrollments on the basis that this request fails the standards set forth by R.C. 121.82, because it would add great expense with a minimal benefit. (OGMG/RESA Reply at 6-8, 30-31.) IGS opposes Eagle's recommendation on the basis that it is anticompetitive (IGS Reply at 2-3).

The Commission disagrees with Eagle and DEO/VEDOs' respective recommendations that door-to-door solicitation should be banned or that a 90-day moratorium from soliciting disinterested customers is

warranted. The Commission finds, however, that customers enrolled through direct solicitation require additional protections, including an acknowledgement form and 100 percent TPV, and finds that Staff's proposed language is appropriate. The Commission also finds that CRNGS suppliers' liability for their door-to-door sales agents should not be limited only to those they train, but rather that CRNGS are responsible for all employees and agents soliciting on their behalf. Finally, the Commission has reworded Paragraph (C)(6) for clarity.

- (64) Paragraph (C)(6)(a). This paragraph governs the provision of acknowledgement forms as part of door-to-door marketing. OPAE recommends that the acknowledgement form in Paragraph (C)(6) is not an adequate substitute for affirmative regulations, and suggests that more affirmative regulations, such as those reflected in Pennsylvania's regulations, be adopted by the Commission (OPAE at 38-43).

The Commission agrees that the CRNGS suppliers and governmental aggregators should be required to use the acknowledgement form described in this rule, but declines to adopt the additional recommendations proposed by OPAE on the basis that they are unnecessary.

- (65) Paragraph (C)(6)(b). In this paragraph, Staff proposed language requiring that an independent TPV process be conducted for all door-to-door sales.

Border supports the proposed TPV requirement, but recommends companies have the flexibility to conduct either TPVs or allow the sales person to record the customer verification using video technology. Border also opposes the requirement that a sales person leave the premises during the TPV on the basis that it is overly burdensome and makes switching door-to-door difficult, and because Paragraph (D)(6)(e) already requires a sales person to leave at the request of the property owner (Border at 1-2.) OGMG/RESA support the requirement that a representative not return before or during the TPV, but contend that this paragraph should be modified to allow a representative to return after the TPV. Further, OGMG/RESA assert that this paragraph should be amended to include language prohibiting a TPV from being compensated on the basis of customer enrollment. (OGMG/RESA at 27-28.) DERS supports Staff's proposed language supplementing the requirements concerning TPV, but asserts that this paragraph should be amended to require TPV

questions concerning whether the representative stated who he or she was representing (DERS at 8). DEO/VEDO support Staff's proposed change to require TPV for all enrollments (DEO/VEDO at 7). OCC proposes that a new subparagraph be added to this paragraph to require that any CRNGS supplier's employee who fails to comply with Ohio Adm.Code 4901:1-29-05 and 4901:1-29-06 shall be banned from performing any future direct solicitations with consumers. OCC further recommends that the door-to-door enrollment rules require that the CRNGS supplier or government aggregators review the results of audio tapes or other documentation associated with the enrollments that are rejected through the verification process to determine if an employee or agent is engaged in unfair, deceptive, and unconscionable sales practices. (OCC at 16.)

OGMG/RESA agree with Border that CRNGS suppliers should be permitted to use video technology to record customer verification and that the Commission should not require a salesperson to leave the premises and not return (OGMG/RESA Reply at 29). OCC opposes Border's recommendation that customers may be videotaped, citing privacy concerns and intimidation. Additionally, OCC supports the continued use of the acknowledgement form and asserts that a salesperson should not be permitted to return to the customer's property due to increased risk of intimidation. (OCC Reply at 21-22.) OPAE opposes OGMG/RESAs' proposed changes, commenting that there should be no exception to Staff's proposed rule that a salesperson not be permitted to return to the customer's home (OPAE at 28-29).

The Commission declines to adopt the recommendation to permit videotaping of customer verification on the basis that this raises privacy concerns. The Commission also agrees that TPV should clarify the customer's enrollment options and has added language to Paragraph (D)(1)(c) requiring a statement that the customer may choose to remain with the natural gas company's applicable tariff or default service, or enroll with another CRNGS supplier. Further, the Commission finds that requiring a salesperson to leave during the TPV and not return is an important guard against coercion or reenrollment. However, the Commission disagrees that CRNGS suppliers and governmental aggregators should be required to review rejected TPV enrollment tapes in order to ferret out aggressive agents, on the basis that this would be unduly burdensome and costly for businesses.

- (66) Paragraph (C)(6)(c). OGMG/RESA contend that, if the door-to-door sale is made using an electronic medium, it would make more sense to have the terms and conditions provided to the customer via e-mail, or on an electronic screen (OGMG/RESA at 28). DEO/VEDO disagree with this proposal and believe the customer should be provided with a hard copy of the agreed-upon terms and conditions (DEO/VEDO Reply at 6). OPAE asserts that the Commission should not adopt OGMG/RESAs' recommendation, but should require provision of a signed contract to the customer (OPAE Reply at 28-29). The Commission disagrees with OGMG/RESA on the basis that residential customers should be provided with the terms and conditions of the contract at the time of the sale so that they know what terms they agreed to.
- (67) Paragraph (C)(6)(d). Dominion Retail and DEO/VEDO recommend changing the heading of this paragraph (Dominion Retail at 15; DEO/VEDO at 7). DERS recommends extending this rule to require solicitors to physically provide their identification card to each solicited customer in a format to be left with that customer (DERS at 8). The Commission agrees that door-to-door solicitors should be required to carry photo identification and leave a form of identification with an enrolled customer. However, the Commission also finds that this requirement should be reworded entirely and moved to new paragraph, Ohio Adm.Code 4901:1-29-05(E)(4), where it will apply to any direct solicitation.
- (68) Paragraph (C)(6)(e). In this paragraph, Staff recommended requiring a natural gas supplier's or governmental aggregator's solicitor to leave the premises of a customer when so requested by the customer. OGMG/RESA recommend the word "expressly" be inserted before the word "requested" (OGMG/RESA at 29). OCC opposes OGMG/RESAs' recommendation (OCC Reply at 23). OPAE asserts that OGMG/RESAs' recommendation will create unnecessary complications (OPAE Reply at 29).

The Commission believes it is unclear what a customer must do to "expressly" require a CRNGS supplier to leave the customer's premises, and, consequently, declines to add this language. Additionally, the Commission believes this requirement should be moved to new paragraph, Ohio Adm.Code 4901:1-29-05(E)(3), and has modified the language to clarify that it only applies to direct solicitation door-to-door.



- (69) Paragraph (D)(1). This paragraph provides that CRNGS suppliers, governmental aggregators, and independent third-party verifiers must make a date- and time-stamped audio recording that verifies the customer's acceptance of the offer before enrolling a customer telephonically. Additionally, Paragraph (D)(1)(c) requires a verbal statement that the CRNGS supplier or governmental aggregator is not the customer's natural gas company.

OGMG/RESA contend that the sales pitch segment of the call does not need to be recorded because complaints center around whether the customer is getting the service he/she bargained for and the current requirements capture all of the salient elements of the agreement (OGMG/RESA at 7). Dominion Retail comments that recording the entire phone call is already Dominion Retail's actual practice, and, thus, it supports this rule change (Dominion Retail at 5). DERS strongly supports the addition of Paragraph (D)(1)(c) and, further, states that it would be appropriate to obtain TPV that the customer understands he/she could continue to remain a customer of the utility and that other CRNGS suppliers could provide service (DERS at 9). Columbia proposes that this paragraph also require CRNGS suppliers, governmental aggregators, or independent TPVs to record the sales pitch segment of the call to provide support when a utility or the Commission is investigating a complaint (Columbia at 3). OCC asserts that recording the entire phone conversation would help ensure that CRNGS products and services are being marketed with integrity (OCC at 6-7; OCC Reply at 8-9).

OGMG/RESA disagree with the comments of OCC, Columbia, and DEO/VEDO that the Commission should require the entire sales pitch to be recorded, on the basis that OGMG/RESA does not believe any minimal benefit outweighs the costs of several minutes of additional data storage (OGMG/RESA Reply at 10-11). Dominion Retail reiterates its support for requiring the sales pitch to be recorded on the basis that it would provide irrefutable evidence of the representations made to the customer and would inhibit sales personnel from using unscrupulous tactics (Dominion Retail Reply at 8). DERS supports recording of the entire phone call to serve as both a record, as well as a deterrent for bad behavior. Further, DERS contends the recording should reflect that the marketer provided the customer with a telephone number to contact the CRNGS supplier with any questions and that TPV should also be required for all door-to-door solicitations (DERS Reply at 3-4). DEO/VEDO do not oppose DERS' proposal, but

suggest rewording of DERS' suggested TPV question that a customer understands he/she could remain a customer of the utility. DEO/VEDO suggest that, due to utilities exiting the merchant function, it would be more accurate if this question inquired whether the customer understands he/she could remain a customer of the utility's applicable tariff or default service. (DEO/VEDO Reply at 6-7.) OPAE agrees that the entire sales pitch during a solicitation by telephone should be recorded in order to allow the Commission to determine whether the rules were followed (OPAE Reply at 12).

The Commission agrees with various commenters that it is important to record the sales portion of the customer enrollment. Staff has received a significant number of complaints through the call center concerning customer confusion about the terms of the agreement entered into which results in discrepancies between the account of the call between the customer and the sales representative. Additionally, the Commission notes that the fact that certain CRNGS suppliers already record the entire call indicates its feasibility. Consequently, the Commission has modified the language in Paragraph (D)(1) to require an audio recording of the sales portion of the call by the CRNGS supplier or governmental aggregator. Additionally, regarding DERS' comments, as discussed more thoroughly above, in Finding (65), the Commission has modified Paragraph (D)(1)(c) to require a verbal statement that the customer may choose to remain with the natural gas company's applicable tariff or enroll with another supplier.

- (70) Paragraph (D)(1)(f). This paragraph requires a verbal statement of the principal terms and conditions for the service that will be provided, including the price per Ccf or Mcf. OGMG/RESA suggest the phrase "if the product is based on a per unit price" be added to Paragraph (D)(1)(f) (OGMG/RESA at 29). OPAE opposes OGMG/RESAs' suggestion, arguing that it would create an exemption from the responsibility to provide customers with a price per Mcf or Ccf (OPAE Reply at 29). The Commission agrees with OGMG/RESAs' concept and has added language to clarify that the price per Ccf or Mcf must be disclosed where the product is based on a per-unit price, and, where the product is a flat-monthly rate offer, a specific listing of the rate to be charged per month must be disclosed.
- (71) Paragraph (D)(2)(c). OGMG/RESA propose changing the requirement to provide a copy of the audio recording to Staff from three business days to five business days (OGMG/RESA at 29). The

Commission declines to adopt this proposal on the basis that no justification has been provided and the Commission does not believe the proposed time extension is necessary in the age of electronic files.

- (72) Paragraph (F). This paragraph requires a CRNGS supplier or governmental aggregator to notify a customer within three business days where the incumbent natural gas company rejects a customer from enrollment. OGMG/RESA propose to extend the time period from three business days to five business days (OGMG/RESA at 29). The Commission disagrees with OGMG/RESA that additional time is necessary, as electronic records should make audio files readily available to assist in resolving customer complaints.
- (73) Paragraph (I). This paragraph provides that customers may request an actual meter reading, at no cost to the customer, prior to transfer of the service to the CRNGS supplier or governmental aggregator. DEO/VEDO recommend this paragraph be amended to be consistent with the standards applicable to requesting an actual meter reading in the minimum gas service standards (MGSS Rules), Ohio Adm.Code 4901:1-13-04 (DEO/VEDO at 7-8). The Commission finds that, in order to be consistent with requirements governing all customers either moving or transferring service, the requirements for a customer requesting an actual meter read before a transfer to a CRNGS supplier or governmental aggregator should mirror the requirements under the MGSS Rules, Ohio Adm.Code 4901:1-13-04(G)(5), and has modified this paragraph accordingly.
- (74) Paragraph (J). Eagle recommends that a local telephone number be listed in the notice set forth in Paragraph (J)(5). OCC recommends the addition of a new paragraph, Paragraph (J)(6), to provide that: "CRNGS or government aggregated customers who subsequently enroll in the [percentage of income payment plan] PIPP Plus program shall not be assessed any charges or fees to return to the local incumbent natural gas company" (OCC at 17). OGMG/RESA respond that OCC has not alleged that such charges have ever occurred or that this is a problem, and do not believe this additional rule should be added based on a theoretical problem (OGMG/RESA Reply at 30).

The Commission declines to adopt Eagle's proposal on the basis that the notice requires a toll-free telephone number and the Commission does not believe the addition of a local telephone number is necessary. Additionally, the Commission declines to adopt OCC's

recommendation for an additional paragraph in this section on the basis that, at this time, no need for the suggested rule has been demonstrated.

- (75) Paragraph (K). In this paragraph, Staff proposed requiring the CRNGS supplier or governmental aggregator to obtain proof of the customer's consent to the material change where the customer and CRNGS supplier or governmental aggregator agree to a material change to an existing contract.

OGMG/RESA recommend the Commission not adopt Paragraph (K) or, alternately, note that this paragraph does not apply to contract renewals (OGMG/RESA at 29-31). OCC urges the Commission to reject OGMG/RESAs' recommendation to eliminate Paragraph (K) (OCC Reply at 23-24). OPAE replies that the term "material" should be defined as a change in the pricing terms, and that renewal of an existing contract should be allowed to occur without affirmative customer consent only if the underlying terms and price do not change or if the renewal is limited to a month-to-month contract with the original terms and no termination fee. Additionally, OPAE opposes OGMG/RESAs' suggestion that this paragraph be removed. (OPAE Reply at 29-31.)

The Commission believes the rules, as proposed by Staff, adequately address the minimum appropriate requirements for executing material changes to contracts, including renewal contracts. The Commission finds that the substantial benefits of consumer protection against material changes without consent outweigh the costs for CRNGS providers or governmental aggregators to acquire customer consent prior to making such changes. Consequently, the Commission declines to adopt the commenters' proposed changes.

**Comments on Ohio Adm.Code 4901:1-29-08 - Customer access and complaint handling**

- (76) Paragraph (B). This rule provides that a CRNGS supplier or governmental aggregator shall investigate customer complaints and provide a status report within three business days to the customer and Staff where appropriate.

In Paragraph (B)(1), OGMG/RESA propose that the CRNGS supplier or governmental aggregator be allowed five business days to gather relevant data and respond to the complaint. OGMG/RESA further

recommend that Paragraph (B)(1)(b) be modified to allow a CRNGS supplier or aggregator to provide a status report on the complaint to Staff, instead of to Staff and the customer, in order to allow the Commission to facilitate resolution of the complaint directly with the customer. OGMG/RESA suggest that, in Paragraph (B)(2), (B)(3), and (B)(4), the term of three business days be changed to five business days. (OGMG/RESA at 31-32.) DERS recommends this paragraph be modified to require each gas utility to include in its tariffs a process whereby a CRNGS supplier can make a payment to a customer account for the purposes of providing a credit (DERS at 9). DEO/VEDO suggest that this rule include a provision in Paragraph (B)(6), or as a new paragraph, to provide that Staff will inform the incumbent utility about the resolution of any CRNGS-related complaints where it has reason to believe that doing so may help the utility respond to similar customer inquiries or complaints (DEO/VEDO at 8). OCC recommends that Paragraph (B)(4) be amended to ensure that the CRNGS supplier or governmental aggregator inform the customer about the Commission's informal and formal complaint processes (OCC at 18).

OGMG/RESA do not object to DEO/VEDOs' recommendation for modification to this paragraph to require Staff to inform the incumbent utility about the resolution of CRNGS supplier-related complaints. OGMG/RESA oppose OCC's suggestion regarding Paragraph (B)(4) because Ohio Adm.Code 4901:1-29-11(L) and (M) already address contact information for the complaint process. (OGMG/RESA Reply at 32.) DEO/VEDO state that they do not necessarily oppose DERS' proposal that an LDC be required to include a tariff provision whereby a CRNGS supplier can make a payment to a customer account; however, they note that there may already be means by which CRNGS suppliers can make a cash payment, and that application of a credit would likely increase costs to manually support this request (DEO/VEDO Reply at 7-8).

Regarding DERS' proposal, the Commission agrees with DEO/VEDO that this is a matter better handled between CRNGS suppliers and the natural gas company that does not require a rule change. Additionally, as to Paragraphs (B)(1)(b), (B)(2), and (B)(3), the Commission agrees with OGMG/RESA that complaint status reports may be provided to the customer through correspondence with Staff and agrees to remove "customer" from these paragraphs. However, the Commission disagrees with changing the time period for

providing status updates on the basis that the three-day period is not overly burdensome on a supplier. Regarding Paragraph (B)(4), the Commission declines to adopt OCC's recommendations on the basis that this rule merely provides an interim mediation process and, if a customer's complaint is not resolved through this process, Staff already provides customers with information on the formal complaint process. Finally, regarding Paragraph (B)(7), the Commission agrees with DEO/VEDO that it is a good process to communicate to the natural gas company complaint resolution of any complaints where it may help the company in handling similar inquiries; however, the Commission disagrees that this requirement should be in the rules.

- (77) Paragraph (C). This rule provides the requirements that an incumbent natural gas company must follow when contacted by a customer with a complaint. DEO/VEDO recommend that this rule clarify that the incumbent utility may refer complaints to Staff where appropriate, *i.e.*, if the CRNGS supplier is uncooperative with the resolution process (DEO/VEDO at 8). OGMG/RESA do not object to DEO/VEDOs' recommendation (OGMG/RESA Reply at 32). While the Commission agrees with DEO/VEDO that this is a good practice, the Commission does not believe this needs to be included in the rules.
- (78) Paragraph (D). Paragraph (D)(3) states that a customer shall not be required to pay the current charges assessed by the alleged slammer until Staff determines that the change in the customer's natural gas supplier was authorized. Paragraph (D)(4) provides that, if the CRNGS 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. Paragraph (D)(5) provides that, if a customer switched from one CRNGS supplier or governmental aggregator to a different one, the customer's previous CRNGS supplier or governmental aggregator shall reenroll the customer without penalty.

In Paragraph (D)(3), Eagle recommends that calendar days be changed to business days (Eagle at 5). NOPEC suggests that the language in Staff's proposed Paragraph (D)(3) be removed from the rule or that the new language should not apply to governmental aggregators on the basis that the customer filing the complaint has the burden of proof in the complaint proceeding, but the proposed language presumes that the supplier or aggregator is guilty until proven innocent (NOPEC at 5). In Paragraph (D)(4), OGMG/RESA

suggest modification to allow documentation in any format (OGMG/RESA at 32). In Paragraph (D)(5), DEO/VEDO recommend addition of a provision prohibiting the previous supplier from charging an early termination fee where a customer was switched without authorization (DEO/VEDO at 8). OCC recommends the addition of a new subparagraph, Paragraph (D)(7), to require CRNGS suppliers to review all enrollments performed by an employee or agent who engaged in slamming to verify that all of those customers authorized the change, provide a report to OCC and the Commission, cease employment with the employee or agent who slammed, and pursue legal sanctions (OCC at 19).

OGMG/RESA do not object to DEO/VEDOs' recommendation for clarity to Paragraphs (D)(5); however, OGMG/RESA disagree with OCC's suggested addition on the basis that it is unnecessary (OGMG/RESA Reply at 32-33). OPAE opposes OGMG/RESAs' recommendation that documentation in any format should be permitted on the basis that only a signed piece of paper, TPV recording, or electronic receipt should suffice (OPAE Reply at 31-32).

Regarding Paragraph (D)(3), the Commission agrees with NOPEC and has modified the language to clarify that this rule does not apply to opt-out governmental aggregators, for which remedies are in Ohio Adm.Code Chapter 4901:1-28. Regarding Paragraph (D)(4), the Commission notes that the current rule directly ties verification of customer authorization to the rules governing customer enrollment and consent and, since Ohio Adm.Code 4901:1-29-06 covers all forms of enrollment, there is no need to add OGMG/RESAs' recommendations. As to Paragraph (D)(5), the Commission believes that the current rule's prohibition against charging the returning customer with a "penalty" clearly includes a prohibition against any early termination fees, and, consequently, finds no change is necessary. Finally, the Commission declines to add OCC's proposed paragraph on the basis that CRNGS suppliers and governmental aggregators are obligated to obey the rules and, if they become aware that one of their employees or agents is slamming customers, they have the responsibility to ensure the illegal activity is stopped. However, the Commission finds it is unnecessary to require these companies to review every single enrollment performed by such an employee where no other slamming incidents have been alleged, on the basis that it may be burdensome, with minimal benefit.

**Comments on Ohio Adm.Code 4901:1-29-09 - Customer information**

- (79) Paragraph (A). In this paragraph, Staff proposed forbidding the disclosure of any customer information for any purpose other than for operation, maintenance, assignment, and transfer of a customer's account. Staff also proposed forbidding waiver forms that require a customer to circle or check off preprinted types of information to be released.

OGMG/RESA recommend that the following sentence be added after the first sentence in proposed Paragraph (A)(1): "This rule does not prohibit a competitive retail natural gas supplier who has a business relationship with a retail customer from offering to that customer other products and services provided by the competitive retail natural gas supplier or its agents, vendors, and affiliates " (OGMG/RESA at 32). OCC opposes OGMG/RESAs' recommended change on the basis that a CRNGS supplier should not be permitted to disclose a customer's account number or social security number for the purpose of offering other products and services by the CRNGS supplier or its affiliates without explicit customer consent (OCC Reply at 24-25). OPAE also opposes OGMG/RESAs' proposal (OPAE Reply at 32).

The Commission declines to adopt OGMG/RESAs' recommendation and agrees with OCC and OPAE that CRNGS suppliers, and their agents and affiliates, are free to offer existing customers new products and services, but that the customers must maintain control of their account number and social security number. If the customer wishes to take advantage of a new offering, the customer must be the one to provide his or her number to purchase or enroll in the service.

- (80) Paragraph (B) and (C). In proposed Paragraph (B), Staff recommended forbidding customer account numbers obtained through an SCO program from being used in marketing materials of CRNGS. In Paragraph (C), Staff proposed requiring natural gas companies to: obtain a customer's consent before disclosing the customer's social security number; provide the customer's usage and payment history without charge; provide generic customer information in a universal format to other natural gas suppliers; provide customer specific information to CRNGS suppliers and governmental aggregators; and provide all customers written notice of their right to object to being included on such lists.



Eagle comments that the reference to the customer's social security number in proposed Paragraph (C)(1) should be deleted and a provision that prohibits retail suppliers from requesting such information be added (Eagle at 11). OGMG/RESA also recommend that references to account numbers be removed from these paragraphs and that the Commission permit CRNGS suppliers to use other means besides the customer account number and/or social security number for identifying customers during the enrollment process, such as birth date or driver's license number. OGMG and RESA recommend that such language be added into a new paragraph, Paragraph (D). (OGMG/RESA at 32-33.) IGS proposes that the last sentence of Paragraph (B), regarding customer provision of account numbers prior to enrollment in alternative offers, be struck from the proposed rule, and that the corresponding language be struck from proposed Paragraph (C) (IGS at 6-7). DEO/VEDO recommend that natural gas companies be required to inform customers of their right to opt off customer lists twice per year, instead of the current four times per year in proposed Paragraph (C)(5), due to mailing costs and minimal benefit, and that the meaning of the phrase "prior to issuance" is unclear (DEO/VEDO at 8-9).

OGMG/RESA agree with IGS regarding proposed Paragraphs (B) and (C) and with DEO/VEDO regarding customer lists being provided twice a year in proposed Paragraph (C)(5) (OGMG/RESA Reply at 33-34). DEO/VEDO do not oppose OGMG/RESAs' recommendation that an account number should not be required for customers who switch from SCO service to an alternate offer with the same supplier. Further, DEO/VEDO oppose OGMG/RESAs' recommendation that verification of a contract may occur by means other than an account number, to the extent it would allow enrollment to occur without an account number. DEO/VEDO also oppose OGMG/RESAs' proposed Paragraph (D) on the basis that it could erroneously provide an account number that a customer had not intended to enroll in choice where a customer has multiple service addresses and account numbers. DEO/VEDO further oppose IGS' recommendation that customer account numbers be included in required information on customer lists, as it could compromise customer privacy. Finally, DEO/VEDO oppose OGMG's suggested change to proposed Paragraph (C)(5) because LDCs do not facilitate offers. (DEO/VEDO Reply at 8-9.) OCC supports Eagle's recommended ban on the requests for social security numbers as an essential way to protect customer privacy. Further, OCC opposes IGS' proposal to have

utilities provide account numbers. OCC also argues there is no sufficient basis to reduce the number of notices required by proposed Paragraph (C)(5) as recommended by DEO/VEDO. (OCC Reply at 26-28.) OPAE supports Staff's proposed language and opposes IGS' and OGMG/RESAs' suggestions on the basis that an account number should be the only identifier as driver's license numbers and dates of birth are often public, and social security numbers should be private (OPAE Reply at 32).

The Commission declines to adopt any of the changes proposed by the commenters. As to proposed Paragraph (B), the Commission agrees with OCC and OPAE that requiring a customer to provide an account number before moving from being a supplier's SCO customer to a bilateral customer slows down the sales transaction and provides greater assurance that the customer is aware he or she is entering into a different agreement with the supplier that may entail early termination liability. Further, the Commission agrees with DEO/VEDO and OCC that the account number should remain the only means for identifying a customer before enrollment. As to proposed Paragraph (C)(1), the Commission opposes any changes on the basis that the language is appropriate and is consistent with the MGSS Rules, Ohio Adm.Code 4901:1-13-12(D). Further, the Commission disagrees with Eagle and OCC, and finds that CRNGS suppliers should be permitted to request a customer's social security number on the basis that customers should remain in control of their identification and maintain control over who they provide it to. As to proposed Paragraph (C)(5), the Commission agrees with DEO/VEDO that OGMG/RESAs' proposed language is inappropriate and would add to customer confusion. Consequently, the Commission declines to make any changes to Staff's proposed notice language or frequency. Finally, the Commission declines to adopt OGMG/RESAs' proposed new paragraph, Paragraph (D). The Commission agrees with the various reply comments that requiring the customer to provide his/her account number appropriately slows down the sales transaction and provides the customer with time to reflect before entering into a contract, whether solicited over the phone or at a mall kiosk.

**Comments on Ohio Adm.Code 4901:1-29-10 – Contract administration and renewals**

- (81) Paragraph (D). This rule lists the notice requirements when a CRNGS supplier or governmental aggregator assigns a customer contract to another CRNGS supplier or governmental aggregator.

OGMG/RESA propose to change Paragraph (D)(4) from requiring three business days to five business days to provide copies of each standard contract form (OGMG/RESA at 34). DEO/VEDO recommend that Paragraph (D)(1)(a) require that notice of contract assignment be provided to the incumbent utility and should be given at least 30 days prior to the assignment becoming effective. DEO/VEDO further propose that Paragraph (D)(1)(b) require that any prior written notice sent to a customer also be sent to the incumbent utility so that the utility is prepared to respond to customer inquiries. (DEO/VEDO at 9.) OGMG/RESA disagree with DEO/VEDOs' recommendation on the basis that there are no demonstrated problems with the current 14-day notice required (OGMG/RESA Reply at 34).

The Commission declines to adopt OGMG/RESAs' request for additional time to provide a standard contract on the basis that such a contract should be readily available. However, the Commission agrees that the incumbent natural gas company should also receive the notice and has modified Paragraph (D)(1)(a) accordingly.

- (82) Paragraph (F). Eagle recommends that calendar days be changed to business days in this paragraph (Eagle at 5). The Commission declines to adopt this recommendation on the basis that calendar days are appropriate.
- (83) Paragraph (G). This rule provides the requirements that a contract renewal must satisfy.

OGMG/RESA recommend that Paragraph (G)(5) only apply to contracts with an early termination fee or cancellation option with a fee up to \$25.00. Further, OGMG/RESA assert that an additional paragraph should be added as follows: "If a contract renewal has no early termination or cancellation fee such contract can be renewed for a fixed term not to exceed the initial contract term if the retail natural gas supplier provides the customer with one written notice." (OGMG/RESA at 34-35.)

DERS disagrees with OGMG/RESAs' specific restriction on automatic renewals, but would recommend a concrete limitation on the term of renewal, such as 12 or 18 months (DERS Reply at 7). DEO/VEDO do not support OGMG/RESAs' recommendation as written, but would not oppose the change for contracts up to one year (DEO/VEDO Reply at 10). OCC suggests that CRNGS suppliers be required to notify customers in writing if they are charged an MVR rate that exceeds the standard option rate for any two consecutive months (OCC Reply at 29).

The Commission has revised this entire paragraph in an effort to parallel the contract renewal process in the corresponding rule in the *CRES Rules Case*, Ohio Adm.Code 4901:1-21-11(F). Additionally, the Commission declines to adopt OGMG/RESAs' proposal for a contract renewal with a fixed term not to exceed the initial term. The Commission further declines to adopt OCC's suggestion when MVR rates exceed the standard option, on the basis that there is no demonstrated need, and customers bear the responsibility to check their own bills.

- (84) Paragraph (H). OGMG/RESA oppose the deletion of former Paragraph (H) relating to account numbers and social security numbers, on the basis that this provision is essential for CRNGS suppliers who want to use dual billing or consolidated billing without purchase of receivables (OGMG/RESA at 35). The Commission declines to reinsert this deleted paragraph; however, the Commission has inserted the language "or for performing collection and credit reporting activities" into Ohio Adm.Code 4901:1-29-09(A)(1), and believes this will address OGMG/RESAs' concerns.

**Comments on Ohio Adm.Code 4901:1-29-11 - Contract disclosure**

- (85) General. DERS proposes a new paragraph be added to this rule to specifically allow a CRNGS supplier to unilaterally amend a customer's contract to lower the rate being charged (DERS at 10). Additionally, OCC recommends the addition of a new paragraph, Paragraph (U), which would read as follows: "CRNGS providers and government aggregators shall periodically use survey data or other statistically valid measures to verify that contracts being used to enroll residential customers have adequate and understandable pricing and terms and conditions as required pursuant to R.C. 4929.22" (OCC at 20-21).

OGMG/RESA support DERS' proposal; however, they oppose OCC's proposal on the basis that it is unnecessary and would be difficult to quantify (OGMG/RESA Reply at 34-35).

The Commission agrees to adopt DERS' proposed language as a new paragraph, Paragraph (U). Additionally, the Commission declines to adopt OCC's proposed paragraph on the basis that there is no demonstrated need for this requirement.

- (86) Paragraph (E). This paragraph requires CRNGS supplier and governmental aggregator contracts to include information on the seven business-day period which a customer has to rescind a contract without penalty. DERS recommends an amendment to allow rescission by means of contact to the CRNGS supplier as late as four days prior to the start date and notification to the utility immediately by the CRNGS supplier (DERS at 10).

DEO/VEDO do not oppose allowing customers to contact the CRNGS supplier to rescind their contract, but prefer customers contact the LDC. Additionally, DEO/VEDO assert that four days is not enough time to give notice of rescission, but the minimum period should be 11 days prior to the next estimated read date. (DEO/VEDO Reply at 10-11.)

The Commission declines to make the proposed changes to this paragraph finding that the rule is appropriate as written. Further, the Commission believes that Staff's proposed seven-day rescission period is appropriate.

- (87) Paragraph (I). In this paragraph, Staff proposed eliminating the requirement of an itemized list and explanation of prices in a clear and understandable language.

OGMG/RESA propose that the following phrase be added to Paragraph (J)(1): "if the product is based on a per unit price" following "the cost per Ccf or Mcf" (OGMG/RESA at 35). DEO/VEDO comment that Staff has proposed deleting the requirement that certain statements be clear and understandable, although the clear and understandable requirement still exists under Ohio Adm.Code 4901:1-29-05(A)(2)(a), and recommend that the Commission either enforce this standard or delete it. Further, DEO/VEDO recommend the Commission clarify whether this provision applies to competitive MVR prices. (DEO/VEDO at 10.)

OGMG/RESA agree with DEO/VEDO that the Commission should clarify whether the clear and understandable provision applies to competitive MVR prices (OGMG/RESA Reply at 35). OPAE opposes OGMG/RESAs' proposed language (OPAE Reply at 32). OCC opposes Staff's proposal to remove the clear and understandable language on the basis that it could result in more customer confusion (OCC Reply at 29-30).

The Commission finds that deletion of the clear and understandable requirement has resulted in a lack of clarity and has added this language back into Paragraphs (J), (J)(2)(a), and (J)(2)(b). Additionally, the Commission agrees with OGMG/RESA that a clarification is needed in Paragraph (J)(1) and has amended the language accordingly to address both products based on per-unit prices and flat-monthly rate offers. The Commission finds, however, that no clarification is needed as to whether this provision applies to competitive MVR prices because customers assigned to MVR do not have contracts, making disclosure requirements related to MVR inappropriate for this rule. Finally, the Commission has modified the language in this paragraph to clarify that all fees must be disclosed.

- (88) Paragraphs (L) and (M). Dominion Retail recommends that stylistic differences between Paragraphs (L) and (M) in the capitalization of agency names and hours of operations be resolved, permitting the agency names to be capitalized and to present the hours of operation in numerical format (Dominion Retail at 15-16). The Commission disagrees that a waiver is necessary. As discussed above in the *Rules Amendment Case*, Finding and Order (May 9, 2012), the Commission found that, where the proposed rules follow the Legislative Service Commission stylistic requirements and a company wishes to make changes that are limited to capitalization and numeric reference, which do not change the intent, application, or structure of the required language, no waiver is necessary.

**Comments on Ohio Adm.Code 4901:1-29-12 - Customer billing and payments**

- (89) Paragraph (A). This rule provides that a CRNGS supplier or governmental aggregator may bill for consolidated services if it can demonstrate to the incumbent natural gas company and the Commission that it has the capability to bill customers for such services.

OGMG/RESA suggest that this paragraph be revised to read: “[a] retail natural gas supplier or governmental aggregator may bill customers directly for competitive retail natural gas services if it can demonstrate to the incumbent natural gas company and the commission that it has the capability to bill customers for such services” (OGMG/RESA at 35). DEO/VEDO recommend language be added to this paragraph to clarify that an incumbent utility is not obligated to allow a supplier to bill for consolidated services absent a requirement that the supplier assume the entire receivable risk with no authority to arrange for a disconnection (DEO/VEDO at 10).

OGMG/RESA oppose DEO/VEDOs’ amendment on the basis that OGMG/RESAs’ language is more appropriate and leaves flexibility for the utility and supplier (OGMG/RESA Reply at 36). DERS opposes DEO/VEDOs’ request for clarification on the basis that no CRNGS supplier is likely to move to supplier-consolidated billing if it must bear the risk of nonpayment with no ability to disconnect (DERS Reply at 8). DEO/VEDO strongly oppose OGMG’s recommendation to delete the provision allowing CRNGS suppliers to provide consolidated billing only if they demonstrate capability to do so “pursuant to the standards contained in the incumbent natural gas company tariffs,” arguing that it is not confusing and that a CRNGS supplier should be required to meet the same standards as an LDC (DEO/VEDO Reply at 11). OPAE opposes OGMG/RESAs’ proposed change, asserting that consolidated billing should not be permitted for residential customers (OPAE Reply at 33).

The Commission declines to adopt either of the commenters’ proposed changes. The Commission finds that the original language of this rule is appropriate and the commenters have not demonstrated that either change is necessary.

- (90) Paragraph (B). The rule lists requirements that customers’ bills must include, including the due date for payment to keep the account current and a statement referring customers to the Commission if their complaints have not been resolved after contacting the retail natural gas company or governmental aggregator.

OGMG/RESA recommend that Paragraph (B)(5) be amended to include the phrase: “if the product is based on a per unit price” before “the unit price charged per Ccf or Mcf.” OGMG/RESA also suggest that the toll-free number in Paragraph (B)(12) be deleted because OCC no longer operates a call center. (OGMG/RESA at 36.) OCC

comments that it supports the due dates for bills proposed in Paragraph (B)(8) and suggests that the requirement be added to the rules establishing minimum due dates for bills (OCC at 21).

OGMG/RESA disagree with OCC's recommendation on the basis that the current rule is satisfactory (OGMG/RESA Reply at 36). DEO/VEDO oppose OCC's recommendation on the basis that the MGSS Rules, Ohio Adm.Code 4901:1-13-11(C) directly address time periods in which bills must be due, while Ohio Adm.Code 4901:1-29-12(B)(8) merely requires that the due date be provided (DEO/VEDO Reply at 11-12). OCC opposes OGMG/RESAs' recommendation to remove OCC's toll-free number from CRNGS or governmental aggregator bills, stating that, although OCC does not operate a call center anymore, OCC is not prohibited from serving as a resource for residential customers (OCC Reply at 30). OPLC comments that it opposes OGMG/RESAs' recommendation that marketers should not be required to provide the toll-free number for OCC on the basis that customers should have full contact information for OCC (OPLC Reply at 1). Similarly, OPAE asserts that OCC's phone number should remain on bills (OPAE Reply at 33).

The Commission agrees with OGMG/RESA that the language in Paragraph (B)(5) should be modified, and the Commission has amended the language to address both products based on a per-unit price and monthly-rate offers. The Commission declines to adopt the other recommendations set forth by the commenters on the basis that OCC's suggestion regarding due dates in bills is more appropriately addressed in the MGSS Rules, Ohio Adm.Code Chapter 4901:1-13. Further, as stated above, the Commission finds that a blanket waiver is unnecessary. Additionally, the Commission finds that OCC's telephone number should remain in bills, as this language was adopted by the Commission in the *Rules Amendment Case* pursuant to R.C. 4911.021.

- (91) Paragraph (C). This paragraph requires each CRNGS supplier and governmental aggregator to provide customers, upon request, the location of the nearest payment center and to disclose any fees associated with payment. OCC recommends the following limitations to fees be added to Paragraph (C): "[a]ny charge and fee associated with paying a bill that includes natural gas company charges shall not exceed the amounts authorized by the Commission in Ohio Adm.Code 4901:1-13-11" (OCC at 22). DEO/VEDO support OCC's recommendation (DEO/VEDO Reply at 12). OGMG/RESA disagree



with OCC's recommendation on the basis that it is unnecessary (OGMG/RESA Reply at 36-37). The Commission agrees with OCC that the MGSS Rules, Ohio Adm.Code 4901:1-13-11, govern customer billing and payments; however, the Commission disagrees that any change is necessary in this paragraph.

- (92) Paragraph (F). This paragraph requires that partial payments applied toward any past due amount on a bill or the balance due on a disconnection notice must be apportioned to a past due natural gas company service and delivery charges. OGMG/RESA recommend this paragraph be modified to be consistent with the partial payment rules as applied to CRES suppliers (OGMG/RESA at 36). DERS proposes requiring natural gas companies to update their eligible customer lists more frequently than every quarter (DERS at 10). DEO/VEDO strongly oppose OGMG/RESAs' suggested changes of the payment priority posting of partial payments, contending that the suggested change would actually be inconsistent with the MGSS Rules, Ohio Adm.Code 4901:1-13-11(G) (DEO/VEDO Reply at 12). The Commission declines to adopt OGMG/RESAs' recommendations on the basis that, in this case, the CRES and CRNGS rules should not mirror due to differences between CRES and CRNGS. All natural gas companies purchase the receivables of the CRNGS suppliers, which is not the case for electric distribution companies.
- (93) Paragraph G. This rule provides what must be included in a CRNGS supplier's or governmental aggregator's and an incumbent natural gas company's consolidated bill. DEO/VEDO propose that this paragraph be modified to clarify that an incumbent utility, billing on behalf of a supplier, must be permitted to impose reasonable limits on the maximum number of rates per supplier and the minimum number of customers to be billed under a rate (DEO/VEDO at 10). OGMG/RESA argue that this proposed amendment should be rejected (OGMG/RESA Reply at 37). DERS also objects to this recommendation on the basis that it would be contrary to state policy and beyond the Commission's authority (DERS Reply at 8). The Commission declines to adopt the proposed change on the basis that DEO/VEDO have failed to justify why such a change is either appropriate or necessary.
- (94) Paragraph H. This rule provides that bills issued by a natural gas company must include the customers' natural gas consumption for the previous 12 months and include a total and average consumption over the 12-month period.

OCC recommends an addition to Paragraph (H) requiring disclosure of the total annual natural gas costs for the previous 12 months, as well as the total 12 months' consumption in order to allow customers to estimate what natural gas costs might be in the next 12 months (OCC at 23). DEO/VEDO disagree with OCC's proposal on the basis that additional information of this nature would increase printing and mailing costs with minimal benefit, stating that the apples-to-apples charts are a better comparison tool than evaluating historical rates (DEO/VEDO Reply at 12-13). OGMG/RESA oppose OCC's proposal on the basis that the current language is appropriate and the proposal is unnecessary (OGMG/RESA Reply at 38).

The Commission declines to adopt OCC's proposed changes on the basis that Ohio Adm.Code 4901:1-29-09(C)(2) already requires natural gas companies to provide customers with their payment history up to 24 months without charge.

**Comments on Ohio Adm.Code 4901:1-29-13 - Coordination between natural gas companies and retail natural gas suppliers and governmental aggregators**

- (95) Paragraph (C). This paragraph requires natural gas companies to make eligible-customer lists available to certified CRNGS suppliers and governmental aggregators via electronic media.

DERS recommends that the Commission consider requiring natural gas companies to update their eligible lists more frequently than every quarter (DERS at 10). IGS suggests that Paragraph (C) relating to eligible-customer lists be amended to require such lists to include customer account numbers in order to better customers' experiences and reduce costs. (IGS at 4-5.)

OGMG/RESA agree with IGS that account numbers should be provided on customer lists and agrees with DERS that lists should be updated more frequently than every quarter (OGMG/RESA Reply at 38). Dominion Retail supports IGS' proposal regarding provision of account numbers and, alternately, recommends assignment of unique enrollment identifier numbers to each customer account (Dominion Retail Reply at 39-40).

The Commission finds that it is acceptable for CRNGS suppliers to retain a customer's number where the customer in the past provided the number to the supplier and the supplier retained it; however, the

Commission does not believe this requires a change in the rule as recommended by IGS. Likewise, the Commission declines to adopt DERS' recommendation on the basis that provision of quarterly eligible customer lists is a minimum standard and Staff does not oppose CRNGS suppliers and natural gas companies working together to agree on more frequent provision of lists; however, the Commission does not believe this should be a requirement in the rules.

- (96) Paragraph (D). Dominion Retail proposes that the phrase "a natural gas company's applicable tariff service" in Paragraphs (D)(2), (D)(3), and (D)(4) should be replaced with "a natural gas company's default commodity service" (Dominion Retail at 16). The Commission disagrees and declines to modify Staff's proposed language, as it is appropriate.

#### **Ohio Adm.Code Chapter 4901:1-30 - Reporting Requirements**

##### **Comments on Ohio Adm.Code 4901:1-30-01 - Regulatory assessment and reporting**

- (97) Paragraph (G). OGMG/RESA request the paragraph be amended to provide that annual assessments and annual reports will be automatically deemed confidential and be protected. Further, OGMG/RESA assert that the Commission should be required to publish a pie chart demonstrating the current market share of governmental aggregators and CRNGS suppliers without identifying the aggregators or suppliers by name. (OGMG/RESA at 36.)

The Commission declines to find that annual assessments and annual reports will be automatically deemed confidential and protected, as these assessments and reports typically contain public information and it would be inappropriate to automatically afford protection to public information. Additionally, the Commission declines to adopt a requirement requiring the Commission to publish a pie chart on the basis that there is no demonstrated need for such a publication.

**Ohio Adm.Code Chapter 4901:1-32 – Determination of Allowable Capacity and Commodity Costs****Comments on Ohio Adm.Code 4901:32-02 – Purpose and scope**

- (98) DEO/VEDO recommend that this rule clarify that nothing precludes a natural gas company from mandatorily assigning capacity to CRNGS suppliers pursuant to a Commission-approved tariff or agreement (DEO/VEDO at 11). The Commission believes these issues are more appropriately covered in supplier agreements and tariffs and it would be unnecessary to include a clarification in the rule.

**Comments on Ohio Adm.Code 4901:1-32-03 – Filing and contents of requests for recovery of decertification costs**

- (99) Paragraph (B). In this paragraph, Staff recommended information that should be included in a migration cost recovery rider application. DEO/VEDO suggest that Staff replace “a fully documented analysis” with “an appropriately supported analysis” (DEO/VEDO at 11). Duke suggests that migration data should only be required for the most recent five years, because going further back would be extremely burdensome for a company (Duke at 2).

The Commission declines to adopt DEO/VEDOs’ suggested change on the basis that Staff’s language requiring a fully-documented analysis is appropriate. However, the Commission agrees that requiring migration data for all preceding years could be burdensome for companies and that the most recent five years would be the most relevant for the Commission’s consideration. Consequently, the Commission will adopt Duke’s recommendation that this data should only be required for the most recent five years and has modified the language in this paragraph accordingly.

**Ohio Adm.Code Chapter 4901:1-33 – Not-for-Profit Customer Declarations of Nonmercantile Status****Comments on Ohio Adm.Code 4901:1-33-01 – Not-for-profit customer declarations of nonmercantile status**

- (100) General. This rule requires a not-for-profit customer that meets certain criteria and intends to assert nonmercantile status to file a declaration of nonmercantile status with the Commission. DEO/VEDO suggest that Staff review this rule to determine whether it is still needed, as DEO has had only one customer refer to this

section during the very first NOPEC aggregation, and the customer did not file a declaration of nonmercantile status (DEO/VEDO at 11). The Commission declines to remove this rule at this time.

**Ohio Adm.Code Chapter 4901:1-34 - Noncompliance**

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

- (101) Paragraph (A). This rule requires Staff notices of probable noncompliance, proposed corrective actions, proposed forfeitures, and amendments under Ohio Adm.Code 4901:1-24-03 to be served by certified United States mail or hand delivery. OCC recommends amending the rule to require a copy of all notices of probable noncompliance involving residential customers be provided to OCC (OCC at 23-24).

The Commission declines to adopt OCC's recommendation. The Commission is the enforcer of the CRNGS rules and Staff's notice of probable noncompliance gives the CRNGS supplier or governmental aggregator the opportunity to respond with its version of the facts and interpretation of the rule in question. If Staff continues to believe noncompliance occurred, Staff files a report of its investigation, at which time any person or entity may file for intervention. Consequently, the Commission believes OCC's request is unnecessary.

**Comments on Ohio Adm.Code 4901:1-34-05 - Stipulations.**

- (102) Paragraph (A). In this paragraph, Staff recommended replacing the references to settlement agreements. Dominion Retail recommends that the wording in this rules not be changed (Dominion Retail at 16-17). The Commission believes that Staff's proposed change in terminology is appropriate and declines to reinsert the language proposed by Dominion Retail.
- (103) In conclusion, the Commission finds that Ohio Adm.Code 4901:1-27-01 through 4901:1-27-14, 4901:1-28-01 through 4901:1-28-05, 4901:1-29-01 through 4901:1-29-03, 4901:1-29-05, 4901:1-29-06, 4901:1-29-08 through 4901:1-29-13, 4901:1-30-01, 4901:1-31-01, 4901:1-32-01 through 4901:1-32-04, 4901:1-33-01, and 4901:1-34-02 through 4901:1-34-08 should be amended as set forth herein. Further, the Commission

notes that no amendments have been made to Ohio Adm.Code 4901:1-29-04, 4901:1-29-07, and 4901:1-34-01.

It is, therefore,

ORDERED, That attached amended Ohio Adm.Code 4901:1-27-01 through 4901:1-27-14, 4901:1-28-01 through 4901:1-28-05, 4901:1-29-01 through 4901:1-29-03, 4901:1-29-05, 4901:1-29-06, 4901:1-29-08 through 4901:1-29-13, 4901:1-30-01, 4901:1-31-01, 4901:1-32-01 through 4901:1-32-04, 4901:1-33-01, and 4901:1-34-02 through 4901:1-34-08 be adopted. It is, further,

ORDERED, That existing Ohio Adm.Code 4901:1-29-04, 4901:1-29-07, 4901:1-34-01 be adopted with no changes. It is, further,


ORDERED, That the adopted rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with Divisions (D) and (E) of R.C. 111.15. It is, further,

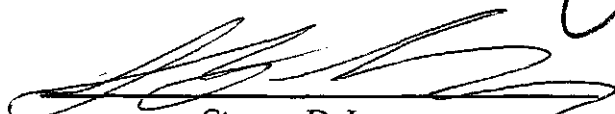
ORDERED, That the final rules be effective on the earlier date permitted. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapters 4901:1-27 through 4901:1-34 shall be in compliance with R.C. 119.032. It is, further,

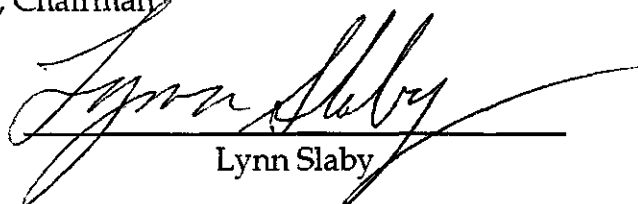
ORDERED, That a copy of this Finding and Order be served upon all regulated natural gas service and electric companies, all competitive retail gas suppliers and electric service providers, and OCC. It is, further,

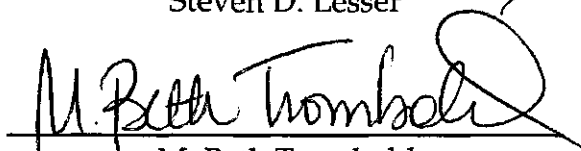
ORDERED, That a copy of this Finding and Order be served upon the Gas-Pipeline List-Serve.

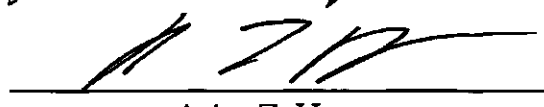
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

  
Lynn Slaby

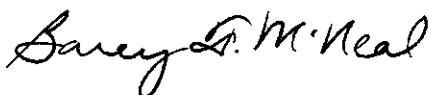
  
M. Beth Trombold

  
Asim Z. Haque

MWC/dah

Entered in the Journal

**DEC 18 2013**



Barcy F. McNeal  
Secretary

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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 natural



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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 retail

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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 ~~(O)~~(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, for good cause shown.**
- ~~(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

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Code, to the extent that the agent is under contract with such supplier or aggregator solely to provide billing and collection for competitive retail natural gas service on behalf of the supplier or aggregator. Nothing in this rule exempts such supplier or aggregator from liability for the acts of its billing and collection agents.

**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 rule, 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 supplied by the commission. The application forms shall provide for sufficient information to enable the commission to assess an applicant's managerial, financial, and technical capability to provide the service it intends to offer, its ability to provide reasonable financial assurances sufficient to protect customers and natural gas companies from the consequences of 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.
  - (c) Credit ratings and relevant financial information including financial statements, financial arrangements, and forecasted financial statements.
  - (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 are pending or past regulatory or judicial actions 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) Managerial experience and capabilities.
  - (c) Credit ratings and relevant financial information, including financial statements, financial arrangements, and forecasted financial statements.
  - (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.
  - (e) Financial capability as depicted on publicly available information, and applicable credit ratings.
  - (f) Statements as to whether the applicant's certification has ever been revoked or suspended or if there are pending or past regulatory or judicial actions against the applicant or past rulings finding against the applicant.

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- (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 operation 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 4901:1-27-10 of this chapter, the commission may deny without prejudice any application that is not complete or does not include the attachments, documentation, and affidavits required by the application form.
  - (3) In accordance with this chapter, in instances where information and/or documentation required by these rules is not available at the time of filing an application, an applicant may substitute a notarized affidavit by an officer of the applicant stating that the applicant will file such information and/or documentation with the commission at least ten business days prior to offering or providing 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.
- (D) All retail natural gas suppliers or governmental aggregators shall include in their certification application, the name, telephone number, and electronic 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 with the commission within thirty days of such material change in accordance with paragraph (B)(8) of rule 4901:1-27-11 of the Administrative Code.

**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 statements, financial arrangements, and forecasted financial statements under seal. If these exhibits are filed under seal, they will be afforded protective treatment for a period of six years from the date of the certificate for which the information is being provided.
- (B) An applicant may file a motion for protective order covering information not covered under paragraph (A) of this rule. If the motion is filed in conformance with rule 4901:1-27-07 of the Administrative Code, it shall be automatically approved on the thirty-first day after the date of filing and the information shall be afforded

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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 sixty days after the expiration date on the certificate, shall be filed with a motion requesting an extension of the 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 renewal form, update the information supplied with an applicant's initial certification application.
- (D) 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.

**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.

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- (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 customers from default.
- (D) When the commission approves an application, it will issue the applicant a numbered certificate that indicates the service(s) for which the applicant is certified to provide and the dates for which the certificate is valid.
- (E) Unless otherwise specified by the commission, a retail natural gas supplier's or governmental aggregator's initial or renewal certificate is valid for a period of two years, beginning and ending on the dates specified on the certificate.
- (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.



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**4901:1-27-11      Material changes to business operations.**

- (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.
  - (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) Retirement or other long-term changes to the operational status of supply resources relied upon by the retail natural gas supplier or the retail natural gas supplier of a governmental aggregator to provide competitive retail natural gas service.
  - (4) Revocation, restriction, or termination of any interconnection or service agreement with a pipeline company or natural gas company relied upon by a retail natural gas supplier or the retail natural gas supplier of a governmental aggregator to provide competitive retail natural gas service.
  - (5) The applicant or retail natural gas supplier's bond rating falls below BBB- as reported by Standard & Poors, Duff & Phelps, or Fitch IBCA or below Baa3 as

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reported by Moody's investor service.

- (6) The applicant or retail natural gas supplier has or intends to file for reorganization, protection from creditors, or any other form of bankruptcy with any court.
- (7) Any judgment, finding, or ruling by a court or regulatory agency that could affect a retail natural gas supplier's or governmental aggregator's fitness or ability to provide service in this state.
- (8) Any change in the name of the applicant's regulatory contact, the staff contact for consumer complaints, and the customer service contact, the contact's business or electronic mail address, or telephone or fax number.
- (9) 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 service(s) it provided under a certificate without filing an abandonment application and without commission approval. The retail natural gas supplier or governmental aggregator shall fulfill the terms of all existing contracts with customers or assign such contracts to another retail natural gas supplier or governmental aggregator prior to abandoning service.
  - (1) Abandonment applications shall be filed at least ninety days prior to the effective date that the retail natural gas supplier or governmental aggregator will cease providing service. The application shall include copies of any notices provided pursuant to paragraphs (B)(2), (B)(3), and (B)(4) of this rule.
  - (2) At least ninety days prior to abandoning service in the state of Ohio, a retail

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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 cease providing service 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 prior to abandoning service, 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 service. 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 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.

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**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.
- (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:

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- (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 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 gross 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 gross receipts and sales of

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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.
- (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.

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- (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 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)(3) and (F)(4) 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 electronic mail, 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, electronic mail, and fax number provided by the retail natural gas supplier or governmental aggregator in its aggregation agreement.

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**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 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 incumbent natural gas utility provides ordinance or resolution authorizing the list of eligible customers to the governmental aggregation aggregator.
  - (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~~ "Existing customer" means a person who has a contract with a retail natural gas supplier or governmental aggregator for the provision of competitive retail natural gas service.

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(E) "Governmental aggregation program" means the aggregation program established by the governmental aggregator with a fixed aggregation term, which shall be a period of not less than one year and no more than two years.

~~(E)~~(F) "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.

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

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

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

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

~~(M)~~(N) "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~~The rules in this chapter 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.

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

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- (1) A detailed description of services the governmental aggregator is to provide under the aggregation, including noting whether the service is to be provided directly by the governmental aggregator or by a party contracted by the governmental aggregator.
- (2) A description of the processes that the governmental aggregator will use to determine the rates that will be charged.
- (3) A detailed description of the governmental aggregator's plan for providing the required opt-out disclosure notices to eligible customers. The plan shall describe the steps that the governmental aggregator will take to ensure that all eligible customers residing within the governmental aggregator's governmental boundaries are notified. The plan shall also identify the time frames associated with the notice.
- (4) A detailed description of the process for developing the pool of customer accounts that may be included in the aggregation, including the steps that will be taken to identify and eliminate customers that are not eligible to participate in the aggregation and eligible customers who opt out of the aggregation.
- (5) The governmental aggregator's plan for billing customers, including an identification of billing intervals and the identity of the entity that will transmit the bill to the customer.
- (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

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shall provide the customers an opportunity to opt out of the aggregation in accordance with the procedures set forth in rule 4901:1-28-04 of the Administrative Code.

- (9) A detailed description of the policies associated with a customer moving within the aggregation where the customer is not assigned a new account number by the incumbent natural gas company. A customer in these circumstances 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~~ 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:

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- (1) The language on the front cover of the envelope 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.
- (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 including:~~
- (a) ~~Expressed in dollars~~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 the product is based on a per-unit price. For flat-monthly rate offers, if a variable rate is offered, it shall be accompanied by an understandable description-specific listing 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 to be charged to different rate classes within the aggregation, per month for the governmental aggregator shall disclose duration of the applicable rate(s) to customers within the various rate classescontract.
  - (b) If a variable rate is offered, 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.
  - (c) A statement that the retail natural gas supplier's or governmental aggregator's rate is exclusive of all applicable state and local taxes.
- (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 governmental aggregation program, 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.
- (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 governmental aggregation pool program, a governmental aggregator shall provide notice to all customers served by the aggregation of their right to opt out of the aggregation without penalty. This notice shall follow the procedures established for the initial opt-out notice set forth in this rule and shall prominently disclose to customers all changes to the terms and conditions associated with the aggregation.
- (C) No governmental aggregator or retail natural gas supplier serving a governmental aggregation shall impose any terms, conditions, fees, or charges on any customer served by a governmental aggregation unless the particular term, condition, fee, or charge was clearly disclosed to the customer at the time the customer chose not to opt out of the aggregation.

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(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 unless 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 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



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~~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 that 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 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.~~

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- (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~~opt out or any supplemental opt-out customer notification no more than thirty days, but no less than ten days, prior to sending the opt-out notification to customers. The advanced notice to the commission shall identify the affected community and natural gas company involved, include the beginning and ending dates of the twenty-one day opt-out period, and provide the identification of the selected competitive retail natural gas service supplier.

**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

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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) Governmental aggregators shall use the list of eligible customers to distribute opt-out disclosure notices within thirty calendar days of the date the list is received from the natural gas company.
- (C) 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.
- (D) Unless the customer notifies the incumbent natural gas company of the customer's intent to not join a governmental aggregation by returning a confirmation notice or providing some other notice as provided by that natural gas company's tariffs, the incumbent natural gas company shall switch customer accounts to or from a governmental aggregation under the same processes and time frames provided in published tariffs for switching other customer accounts.

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**4901:1-29-01      Definitions.**

As used in this chapter:

- ~~(A)~~ ~~"Ancillary service" has the meaning set forth in division (B) of section 4929.01 of the Revised Code.~~
- ~~(B)~~ ~~(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.
- ~~(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~~ supplier 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 or enrollment" means face-to-face solicitation or 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.

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~~(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 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 incumbent natural gas utility provides the ordinance or resolution authorizing the aggregation~~ list of eligible customers to the governmental aggregator.
- (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

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

- (R) "Mcf" means one thousand cubic feet of natural gas.
- (S) "Mercantile customer" has the meaning set forth in division (L) of section 4929.01 of the Revised Code.
- (T) "Natural gas company" has the meaning set forth in division (G) of section 4929.01 of the Revised Code.
- (U) "Opt-in governmental aggregator" means those governmental aggregators who perform aggregation pursuant to section 4929.27 of the Revised Code.
- (V) "Opt-out governmental aggregator" means those governmental aggregators who perform automatic governmental aggregation pursuant to section 4929.26 of the Revised Code.
- (W) "Person" has the meaning set forth in division (H) of section 4929.01 of the Revised Code.
- (X) "Regulated sales service customer" means a person who has an agreement by contract and/or tariff with a natural gas company or gas company to receive regulated sales service.
- (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.

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~~(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.
- (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 misleading, 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.

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- (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 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.



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- (C) ~~A Retail-retail natural gas suppliers-supplier and or governmental aggregators aggregator~~ shall not cause or arrange for the disconnection of distribution service, or employ the threat of such actions, as a consequence of contract termination, customer nonpayment, or for any other reason.
- (D) ~~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 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. For the purposes of market monitoring and providing the public comparative information from retail natural gas suppliers' residential contract offers, retail natural gas suppliers shall furnish in a manner designated by the director of the service monitoring and enforcement department, at least one current offer for posting on the apples to apples chart within four calendar days of making such offers to Ohio customers.

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

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

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- (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.

**4901:1-29-05      Marketing, and solicitation, and customer information.**

- (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, if the product is based on a per-unit price or, for flat-monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract.
    - (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.

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- (B) Competitive retail natural gas suppliers serving a natural gas company's MVR tariff customers shall provide to the customer the information required in paragraph (A) of this rule upon enrollment.
- (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.
- (E) No retail natural gas supplier or governmental aggregator may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a competitive retail natural gas service. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:
- (1) Soliciting customers for a competitive retail natural gas service after suspension, rescission, or conditional rescission of certification by the commission or after denial of certification renewal by the commission.
  - (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 any entity other than the competitive retail natural gas supplier or governmental aggregator. of Ohio customers who have been placed on the federal trade commission's "do not call" registry.

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- (6) Engaging in telephone solicitation ~~to~~of residential customers either before nine a.m. or after nine p.m.;
- (7) Knowingly taking advantage of a customer's inability to reasonably protect their interests because of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement.
- (8) Advertising or marketing offers that:
  - (a) Claim that a specific price advantage, savings, or guarantee exists if it does not, ~~or may exist if it will not.~~
  - (b) Claim to provide a competitive retail natural gas service when such an offer is not a bona fide offer to sell such services.
  - (c) Offer a fixed price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service without disclosing all recurring and nonrecurring charges.
  - (d) Offer a variable price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service without disclosing all recurring and nonrecurring charges.
  - (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.
- (E) Retail natural gas suppliers or governmental aggregators when engaging in direct solicitation shall:
  - (1) Perform a criminal background check on all employees and agents of retail natural gas suppliers or governmental aggregators engaged in door-to-door solicitation. The criminal background check shall be done by an independent contractor and the retail natural gas supplier or governmental aggregator shall confirm that the independent contractor has performed the comprehensive criminal background check on its employees or agents in accordance with this rule.

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- (2) Comply with all applicable ordinances and laws of the customer's jurisdiction, when engaged in direct solicitation door-to-door. Where the applicable ordinances and laws do not limit the hours of direct solicitation door-to-door, not solicit customers before the hour of nine a.m. or after the hour of seven p.m.
- (3) Leave the premises of a customer when requested to do so by the customer or the owner or occupants of the premises, when engaging in direct solicitation door-to-door.
- (4) Ensure when in direct solicitation of customers that the retail natural gas supplier's or governmental aggregator's sales agent wears branded clothing and displays a valid retail natural gas supplier or governmental aggregator photo identification, preapproved by the staff. The retail natural gas supplier or governmental aggregator shall display to a customer at the first opportunity their photo identification. If a customer is enrolled by a retail natural gas supplier or governmental aggregator, the retail natural gas supplier or governmental aggregator must leave a form of identification with the customer.

**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 (DC), (ED) and (FE) of 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

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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) 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) Direct enrollment of a residential customer door-to-door 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

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~~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 acknowledgement form as part of and at the time of the door-to-door enrollment process. The acknowledgement 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?
  - (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~~

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~~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 paragraph (D)(1) of rule 4901:1-29-06 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 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.



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(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.~~

(d) Retail natural gas suppliers or governmental aggregators shall remove a customer's name from the marketing/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, or governmental aggregator, or an independent third-party verifier shall make a date- and time-stamped audio recording of the sales portion of the call, if the customer is enrolled, and before the completion of the enrollment process, a date- and time- stamped audio recording by an independent third-party verifier 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 and that the customer may choose to remain with the natural gas

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company's applicable tariff or default service or enroll with another retail natural gas supplier.

- ~~(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 the retail natural gas supplier ~~and or~~ governmental aggregator ~~by~~ for 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 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 if the product is based on a per-unit price, or for flat-monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract.
  - (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.

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- (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~~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.
- (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.

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- (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 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~~ 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

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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 electronic mail message, 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:
    - (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

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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 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 prior to the transfer of the service to the new retail natural gas supplier or governmental aggregator in accordance with paragraph (G)(5) of rule 4901:1-13-04 of the Administrative Code.

~~(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.

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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 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:
    - (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.

**“No Change”**

**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:

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- (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.
- (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.



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(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.
- (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.

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- (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 customers~~ customer ~~contact~~ contacts 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 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

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staff determines that the change in the customer's natural gas supplier was authorized. This rule does not apply to governmental aggregation customers whose remedies are found in paragraph (E) of rule 4901:1-28-04 of the Administrative Code.

~~(3)~~ (4) Except as otherwise provided in Chapter 4901:1-28 of the Administrative Code or a commission-approved exemption pursuant to division (A) of section 4929.04 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-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.

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**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, or for performing collection and credit reporting activities, 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 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

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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 \_\_\_\_\_ 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) A retail natural gas supplier or opt-in governmental aggregator shall arrange for the provision of competitive retail natural gas service by contracting with its customers. In its administration of such contracts, a retail natural gas supplier or opt-in governmental aggregator is prohibited from engaging in unfair, deceptive, misleading, and unconscionable acts and practices.
- (B) A retail natural gas supplier or opt-in governmental aggregator shall maintain copies of individual customer contracts for no less than two years after such contracts terminate. Copies may be saved in electronic formats if such preserves the image of the original signatures on signed documents.

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- (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 of the complete terms and conditions of the contract. Both the document containing the customer's physical signature and the master copy of the complete terms and conditions must be retained in accordance with this rule. This provision shall not apply where the retail natural gas supplier or opt-in governmental aggregator has obtained the customer's consent by telephone or internet enrollment.
- (D) In its administration of customer contracts, a retail natural gas supplier or opt-in governmental aggregator shall:
- (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 commission's staff and any affected natural gas company 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.

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- (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.
- (E) A customer shall have the right to rescind 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.
- (G) Contract renewals.
- (1) The provisions of this paragraph apply to all residential and small commercial contracts that contain automatic renewal clauses, except those which renew on a month-to-month basis.
- (2) For contracts that contain an early termination or cancellation option with no fee for early termination or cancellation, upon renewal, the retail natural gas supplier or opt-in governmental aggregator shall, in a separate notice, notify customers of such expiration at least forty-five calendar days, but not more than ninety calendar days, in advance of the contract expiration date. Such notice shall accurately describe or highlight any changes and state that the customer contract will renew at the specified rate unless the customer affirmatively cancels the contract. Such notices must clearly and accurately describe the manner in which the customer may cancel the contract and the time during which the customer must act to cancel the contract.

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- (a) The notice shall be made by separate mailing (envelope or postcard), the front cover of which shall state: "Important notice regarding your electric service contract."
  - (b) The notice shall, at a minimum, state any renewal period and how the customer may terminate, renew, and/or extend the contract.
  - (c) The renewal period for contracts with renewal provisions shall not exceed the initial contract period.
- (3) For contract renewals that contain an early termination or cancellation option with a fee of twenty-five dollars or less for early termination or cancellation, upon renewal, the retail natural gas supplier or opt-in governmental aggregator shall provide the customer with two separate notices that accurately describe or highlight any changes and state that the customer contract will renew at the specified rate unless the customer affirmatively cancels the contract. Such notices must clearly and accurately describe in understandable language the manner in which the customer may cancel the contract and the time during which the customer must act to cancel the contract. The first notice shall be in writing in accordance with the requirements of this rule and shall be provided at least forty-five calendar days, but no more than ninety calendar days in advance of the contract expiration date. The second notice may be in writing in accordance with paragraphs (G)(2)(a) to (G)(2)(c) of this rule, by telephone, by a notice on the customer's monthly bill, or by electronic mail. The second notice shall be provided at least thirty-five calendar days in advance of the contract expiration and must contain the rate at which the customer contract will renew, or in the case of a variable rate, the applicable formula.
  - (a) In the event that the competitive retail natural gas supplier or opt-in governmental aggregator provides the second 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.
  - (b) In the event that the retail natural gas supplier or opt-in governmental aggregator provides the second notice on the customer's monthly bill, such notice must be in a different color, highlighted, or otherwise differentiated from the remainder of the bill.
  - (c) In the event that the retail natural gas supplier or opt-in governmental aggregator provides the second notice by electronic mail, the notice must:



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- (i) State "Important notice regarding your electric service contract" in the subject area of the message.
  - (ii) Be from an electronic mail address that is readily identifiable as the retail natural gas supplier or opt-in governmental aggregator.
  - (iii) Include a receipt returned to the sender which confirms that the addressee has opened the document.
  - (d) This paragraph shall not apply to contract renewals which renew on a month-to-month basis.
- (4) For contract renewals that contain an early termination or cancellation option with a fee greater than twenty-five dollars for early termination or cancellation or which contain no option for early termination or cancellation, upon renewal, the retail natural gas supplier or opt-in governmental aggregator shall notify the customer of any changes, describe or highlight each change, and also obtain the customer's affirmative consent to such changes pursuant to any of the enrollment procedures established in rule 4901:1-29-06 of the Administrative Code. In addition, the retail natural gas supplier or opt-in governmental aggregator shall notify the customer that no response will result in the customer automatically reverting to the natural gas company unless the customer chooses another retail natural gas supplier or opt-in governmental aggregator. The notice shall be provided at least forty-five calendar days, but not more than ninety calendar days, in advance of the contract expiration date, and comply with paragraphs (G)(2)(a) to (G)(2)(c) of this rule. This paragraph shall not apply to contract renewals which renew on a month-to-month basis.
- (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.

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(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.

**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) 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 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~~

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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.

~~(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

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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)~~(H)(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 all 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, if the product is based on a per-unit price, or for flat-monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract; 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:

~~(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.

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(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 Utilities Commission~~ public utilities commission of Ohio (PUCO) for assistance at 1-800-686-7826 (toll free) or for TTY at 1-800-686-1570 (toll free) from 8:00 ~~eight~~ a.m. to 5:00 ~~five~~ p.m. weekdays, or at ~~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 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

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governmental aggregator, the customer may be charged a price other than the incumbent natural gas company's ~~regulated sales service applicable tariff~~ rate.

- (U) If, due to a change in market conditions, the retail natural gas supplier wishes to lower the price per Ccf or Mcf charged to the customer under an existing contract, it may do so without consent provided there are no other changes to the terms and conditions to the contract.

**4901:1-29-12      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.
  - (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.

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- (5) The unit price charged per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, if the product is based on a per-unit price for competitive retail natural gas service, as calculated by dividing current-period competitive retail natural gas service charges by the current-period consumption. For monthly-rate offers, a specific listing of the rate being charged per month for the duration of the contract.
- (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 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.

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- (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 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.



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- (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.~~
- (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.

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- (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.
  - (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.

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- (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.
  - (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:

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- (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 rule, a retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised

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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.

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

- (A) ~~All~~ A governmental aggregators-aggregator or retail natural gas suppliers-supplier 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.puco.ohio.gov~~).
  - (2) Include, if applicable, a copy of the ordinance or resolution authorizing the creation of the governmental aggregation.
  - (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 POMpetition 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 POMpetition.
- (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.

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~~(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.~~



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**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.-

**4901:1-32-02      Purpose and scope.**

- (A) The rules in this chapter 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, for good cause shown.

**4901:1-32-03      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) for the most recent five years 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) for the most recent five years of the competitive retail natural gas service program and the associated volumes.

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- (3) Description of existing capacity and commodity contracts including:
  - (a) Vendor/service provider and description of service being provided.
  - (b) Quantities - daily, seasonal, and annual.
  - (c) Term/applicable period.
  - (d) Rates/prices (including any reservation fees, minimum takes, and demand charges).
  - (e) Termination/buyout/buydown opportunities and costs.
  - (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

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(with instructions as to how to obtain an electronic or paper copy), available for inspection at the natural gas company's main office, available for inspection at the commission offices, and available at any other sites at which the natural gas company will maintain a copy of the application, workpapers and testimony. If the natural gas company has a website, information as to how to request an electronic or paper copy shall be included therein.

**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.

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(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.

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**“No Change”**

**4901:1-34-01 Definitions.**

As used in this chapter:

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

**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.

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- (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, for good cause shown.**

**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

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delivery. Certified mail service and service by hand delivery is effective upon receipt by any employee, agent of, or person designated by the natural gas company, retail natural gas supplier, or governmental aggregator. Unless otherwise provided in this paragraph, service upon a natural gas company, retail natural gas supplier, or governmental aggregator shall be made at the address designated as the service address in the company's most recent annual financial report, in its certification application, or certification renewal application.

- (B) Each natural gas company, 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~~ 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 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.~~



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- (B) If the ~~settlement stipulation agreement~~ provides for the payment of a forfeiture or other payment by a natural gas company or retail natural gas supplier of one thousand dollars or less, the ~~agreement stipulation~~ 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) 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

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issues an entry initiating a compliance proceeding. The investigative report shall present:

- (1) The findings on any alleged noncompliance specified in any staff notice or amended staff notice, which also may include:
  - (a) Noncompliances not included in any staff notice or amended staff notice, provided that such additional noncompliances relate to the same incident, investigation, or safety audit(s) referenced in the initial or amended staff notice.
  - (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 order by the terms of any proposed corrective action and/or forfeiture by the staff.

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- ~~(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 Code.
- (B) A natural gas company, retail natural gas supplier, or governmental aggregator may be subject to rescission of a customer contract.

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- (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.

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio (PUCO)
	Attention: Angela Hawkins, Legal Director
	Phone: 614-466-6843 Fax: 614-728-8373
	Angela.hawkins@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:	December 18, 2013
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.

Ohio Adm.Code Chapter 4901:1-27, 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

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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 Ohio Adm.Code Chapter 4901:1-27 include: nonsubstantive changes to Ohio Adm.Code 4901:1-27-02, purpose and scope, and Ohio Adm.Code 4901:1-27-03, general prohibitions; adding a rule to facilitate docketing administration when filing a certificate under Ohio Adm.Code 4901:1-27-04; adding motion rules streamlining pro hac vice appearance in Ohio Adm.Code 4901:1-27-07, and protective orders in Ohio Adm.Code 4901:1-27-08; adding a section to Ohio Adm.Code 4901:1-27-09; certification renewal paralleling the Commission's authority in Ohio Adm.Code 4901:1-27-13; 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.**

<b>Rule</b>	<b>Statutory Authority Ohio Revised Code</b>
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 R.C. 4929.20 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 Ohio Adm.Code 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.

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**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 Ohio Adm.Code 4901:1-27-12 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 Ohio Adm.Code 4901:1-27-06 to one participant or affiliate per company. Direct Energy responded that companies have legitimate business reasons to request multiple certificates under Ohio Adm.Code 4901:1-27-06.

**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 R.C. 4929.20(A) 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 Ohio Adm.Code 4901:1-27 is specifically mandated by R.C. 4929.20, 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 Ohio Adm.Code Chapter 4901:1-27 is specifically mandated by R.C. 4929.20, 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 Ohio Adm.Code Chapter 4901:1-27 is specifically mandated by R.C. 4929.20, thus the determination as to whether R.C. 4929.20 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.**

Ohio Adm.Code Chapter 4901:1-27 is required by R.C. 4929.20 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;**

Ohio Adm.Code Chapter 4901:1-27 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 subject to Commission jurisdiction.

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

This chapter prescribes the requirements for competitive retail natural gas suppliers and governmental aggregators certified to do business. The primary identified business community is the certified retail natural gas suppliers and governmental aggregators. This chapter may impact the identified business community in that there is a time cost involved in completing the certification application, in renewing a certificate, or in training to reflect the proposed rule revisions. However, in light of the fact that the majority of modifications clarify the rules contained within this chapter and that the major substantive amendments reflect procedures already widely in use by the businesses, it is improbable that any service providers will need to significantly upgrade any programs or revise internal protocols. As a result of the

continuation of these rules without substantive amendment requiring measures that are not already widely in use, the nature of any adverse impact is minimized. Additionally, the substantive revisions allow for the Commission to align more closely its rules regarding the provision of competitive retail natural gas services with the rules regarding the provision of competitive retail electric service. This alignment not only allows companies a means to more easily participate in both energy markets, but also provides a more consistent application of law that will minimize any regulatory burden and 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.*

Ohio Adm.Code Chapter 4901:1-27 has been in effect since 2002 and reflects the requirements of R.C. 4929.20. The impacts in terms of time will, in most instances, be minimal as competitive retail natural gas providers and governmental aggregators already adhere to Ohio Adm.Code Chapter 4901:1-27, and the proposed revisions are unlikely to add any additional burdens on the businesses.

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

Ohio Adm.Code Chapter 4901:1-27 reflects the requirements of R.C. 4929.20. 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.**

Ohio Adm.Code Chapter 4901:1-27 reflects the legislative intent of R.C. 4929.20 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 Ohio Adm.Code Chapter 4901:1-27 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 R.C. 119.14 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 Ohio Adm.Code Chapter 4901:1-27, compliance.

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio (PUCO)
	Attention: Angela Hawkins, Legal Director
	Phone: 614-466-6843 Fax: 614-728-8373
	Angela.hawkins@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:	December 18, 2013
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.

Ohio Adm.Code Chapter 4901:1-28 sets forth the rules for governmental aggregation as specified in R.C. 4929.26, adoption of ordinances or resolution for automatic aggregation and R.C. 4929.27, adoption of ordinances or resolution for aggregation with prior consent.

Specifically Ohio Adm.Code Chapter 4901:1-28 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 Ohio Adm.Code Chapter 4901:1-28 include: nonsubstantive changes to Ohio Adm.Code 4901:1-28-01, definitions; Ohio Adm.Code 4901:1-28-02, purpose and scope; and Ohio Adm.Code 4901:1-28-04, opt-out notice requirements.

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

<b>Rule</b>	<b>Statutory Authority – Ohio Revised Code</b>
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 R.C. 4929.27 for establishing governmental aggregation with prior consent and amplify R.C. 4929.26, 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 Ohio Adm.Code 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 Ohio Adm.Code 4901:1-28-01(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 R.C. 4929.26 and 4929.27 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?**

Ohio Adm.Code 4901:1-28 is specifically required by R.C. 4929.26 and 4929.27, 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.*

Ohio Adm.Code Chapter 4901:1-28 is specifically required by R.C. 4929.26 and 4929.27, 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?**

Ohio Adm.Code Chapter 4901:1-28 is required by R.C. 4929.26 and 4929.27, 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.**

Ohio Adm.Code Chapter 4901:1-28 is required by R.C. 4929.26 and 4929.27 and has 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;**

Ohio Adm.Code Chapter 4901:1-28 outlines the rules to form and operate a governmental aggregation either with prior consent or an opt-out aggregation. The rules in Ohio Adm.Code Chapter 4901:1-28 apply to all competitive retail natural gas suppliers or governmental aggregators that are subject to Commission jurisdiction.

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

Ohio Adm.Code Chapter 4901:1-28 contains the rules for the formation and operation of governmental aggregations with prior consent and opt-out governmental aggregation. The primary identified business community is the competitive retail natural gas suppliers serving the aggregated communities. This chapter may impact the identified business community in that there is a time cost involved in compliance with these rules in forming and operating an opt-out governmental aggregation. However, in light of the fact that the majority of modifications clarify the rules contained within the chapter and that the major substantive amendments reflect procedures already widely in use by the businesses, it is improbable that any service providers will need to significantly upgrade any programs or revise internal protocols. As a result of the continuation of these rules without substantive amendment requiring measures that are not already widely in use, the nature of the adverse impact is minimized. Additionally, the substantive revisions allow for the Commission to align more closely its rules regarding the provision of competitive retail natural gas services with the rules regarding the provision of competitive retail electric service. This alignment not only allows companies a means to more easily participate in both energy markets, but also provides a more consistent application of law that will minimize any regulatory burden and 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.***

Ohio Adm.Code Chapter 4901:1-28 is specifically required by R.C. 4929.26 and 4929.27. The impact in terms of time will, in most instances, be minimal, as competitive retail natural gas suppliers and governmental aggregators already adhere



to Ohio Adm.Code Chapter 4901:1-28, and the proposed revisions are unlikely to add any additional burdens on the businesses.

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

Ohio Adm.Code Chapter 4901:1-28 contains the rules implementing R.C. 4929.26 and 4929.27, 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 Ohio Adm.Code Chapter 4901:1-28, are the rules required by R.C. 4929.26 and 4929.27 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 Ohio Adm.Code Chapter 4901:1-28, is to reflect the legislative intent of R.C. 4929.26 and 4929.27, 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 R.C. 119.14, 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 Ohio Adm.Code Chapter 4901:1-28 compliance.

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

**Agency Name:** Public Utilities Commission of Ohio (PUCO)  
Attention: Angela Hawkins, Legal Director  
Phone: 614-466-6843 Fax: 614-728-8373  
Angela.hawkins@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:** December 18, 2013

**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.**

Ohio Adm.Code Chapter 4901:1-29 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 Ohio Adm.Code Chapter 4901:1-29 include: nonsubstantive changes to Ohio Adm.Code 4901:1-29-01, definitions, and Ohio Adm.Code 4901:1-29-02, 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.**

<b>Rule</b>	<b>Statutory Authority – Ohio Revised Code</b>
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)?**

Ohio Adm.Code Chapter 4901:1-29 reflects the requirements of R.C. 4929.22 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.***

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 Ohio Adm.Code 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

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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.

**8. 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 Ohio Adm.Code Chapters 4901:1-21 and 4901:1-29 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 Ohio Adm.Code 4901:1-29-06. 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 Ohio Adm.Code 4901:1-29-03, reflecting that proposal.

Direct Energy asserted that Ohio Adm.Code 4901:1-29-10, 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 Ohio Adm.Code 4901:1-29-06 correspond with those in the Minimum Gas Service Standards in Ohio Adm.Code Chapter 4901:1-13. 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 Ohio Adm.Code 4901:1-29-10 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 Ohio Adm.Code 4901:1-29-04 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 Ohio Adm.Code 4901:1-29-05, 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 Ohio Adm.Code 4901:1-29-05, Staff is proposing to require retail natural gas suppliers to provide accurate and timely updates to the Commission Apples to Apples price comparison chart.

**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 R.C. 4929.22.

**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?**

Ohio Adm.Code Chapter 4901:1-29 is specifically required by R.C. 4929.22; 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.*

Ohio Adm.Code Chapter 4901:1-29 is specifically required by R.C. 4929.22; 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?**

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

**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.**

Ohio Adm.Code Chapter 4901:1-29 is required by R.C. 4929.22 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**

**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;**

Ohio Adm.Code Chapter 4901:1-29 establishes minimum service requirement for competitive retail natural gas suppliers and governmental aggregators regarding the marketing, solicitation, contract administration, and billing of competitive retail natural gas service, for which it is subject to Commission jurisdiction.

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

Ohio Adm.Code Chapter 4901:1-29 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 R.C. 4929.22. As this chapter prescribes the relationship between customers and the suppliers serving them, the primary identified business community is the retail natural gas suppliers and governmental aggregators. This chapter may impact the identified business community in that there is a time cost involved in compliance with these rules if the service providers need to program their billing and/or training systems to reflect the proposed rule revisions. However, in light of the fact that the majority of modifications clarify the rules contained within this chapter and that the major substantive amendments reflect procedures already widely in used by the businesses, it is improbable that any service providers will need to significantly upgrade any programs or revise internal protocols. In addition, while unlikely, there may be nominal costs associated with disclosure requirements during the enrollment process. As a result of the continuation of these rules without substantive amendment requiring measures that are not already widely in use, the nature of any adverse impact is minimized. Additionally, the substantive revisions allow for the Commission to align more closely its rules regarding the provision of competitive retail natural gas services with the rules regarding the provision of competitive retail electric service. This alignment not only allows companies a means to more easily participate in both energy markets, but also provides for a more consistent application of law that will minimize any regulatory burden and 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.*

Ohio Adm.Code Chapter 4901:1-29 establishes minimum service requirements for competitive retail natural gas suppliers and governmental aggregators regarding the marketing, solicitation, contract administration, and billing of any competitive retail natural gas service for which it is subject to certification. The impact in terms of time will, in most instances, be minimal, as competitive retail natural gas suppliers and governmental aggregators already adhere to Ohio Adm.Code Chapter 4901:1-29 and the proposed revisions are unlikely to add any additional burdens on businesses.

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

Ohio Adm.Code Chapter 4901:1-29 establishes minimum service requirements for retail natural gas suppliers and governmental aggregators and is required by R.C. 4929.22.

**Regulatory Flexibility**

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

Ohio Adm.Code Chapter 4901:1-29 is required by R.C. 4929.22 and specifies the minimum service requirements for all retail natural gas suppliers and governmental aggregators subject to Commission certification.

**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 Ohio Adm.Code Chapter 4901:1-29 is to reflect the legislative intent of R.C. 4929.22 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 R.C. 119.14 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 Ohio Adm.Code Chapter 4901:1-29 compliance.

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

<b>Agency Name:</b>	Public Utilities Commission of Ohio (PUCO)
	Attention: Angela Hawkins, Legal Director
	Phone: 614-466-6843 Fax: 614-728-8373
	Angela.hawkins@puc.state.oh.us
<b>Regulation/Package Title:</b>	Reporting Requirements
<b>Rule Number(s):</b>	4901:1-30-01
<b>Date:</b>	December 18, 2013
<b>Rule Type:</b>	
<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.

Ohio Adm.Code Chapter 4901:1-30 sets forth the rule that requires competitive retail natural gas service providers or governmental aggregators subject to certification under R.C. 4929.20 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 Ohio Adm.Code Chapter 4901:1-27 in the present chapter.

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[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

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

<b>Rule</b>	<b>Statutory Authority – Ohio Revised Code</b>
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)?**

R.C. 4929.23(B) specifically requires the Commission to require each retail natural gas service providers or governmental aggregator subject to certification under R.C. 4929.20 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 R.C. 4905.10 and 4911.18.

**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.***

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 Ohio Adm.Code 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 particular rule.

- 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 rule. Ohio Adm.Code 4901:1-30-01 is specifically required by R.C. 4905.10, 4911.18, and 4929.23 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?**

Ohio Adm.Code Chapter 4901:1-30 is specifically required by R.C. 4905.10, 4911.18, and 4929.23; 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.*

Ohio Adm.Code Chapter 4901:1-30 is specifically required by R.C. 4905.10, 4911.18, and 4929.23; 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?**

Ohio Adm.Code 4901:1-30 is specifically required by R.C. 4905.10, 4911.18, and 4929.23; thus, the determination as to whether the statute 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.**

Ohio Adm.Code 4901:1-30 is specifically required by R.C. 4905.10, 4911.18, and 4929.23 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;**

Ohio Adm.Code Chapter 4901:1-30 sets forth the requirements for retail natural gas suppliers or governmental aggregators subject to certification under R.C. 4929.20 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 R.C. 4929.23. The rules also govern the payment of the annual assessment by each retail natural gas service provider or government aggregator pursuant to R.C. 4905.10 and 4911.18. 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. Additionally, there is an adverse impact in the form of time required for employees to put together and file the annual report information with the Commission.

**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.*

Ohio Adm.Code 4901:1-30 is specifically required by Ohio statute, and the cost to businesses as far as the assessment will vary depending on the intrastate gross receipts or gross earnings associated with the supplier or aggregator. The impact in terms of time will, in most instances, be minimal, as competitive retail natural gas suppliers and governmental aggregators already adhere to the requirements of Ohio Adm.Code Chapter 4901:1-30 and there are no proposed revisions in this chapter.

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

Ohio Adm.Code 4901:1-30 is specifically required by R.C. 4905.10, 4911.18, and 4929.23.

**Regulatory Flexibility**

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

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

**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 Ohio Adm.Code Chapter 4901:1-30 is to reflect the legislative intent of R.C. 4905.10, 4911.18, and 4929.23 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 R.C. 119.14 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 Ohio Adm.Code Chapter 4901:1-30 compliance.

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

<b>Agency Name:</b>	Public Utilities Commission of Ohio (PUCO)
	Attention: Angela Hawkins, Legal Director
	Phone: 614-466-6843 Fax: 614-728-8373
	Angela.hawkins@puc.state.oh.us
<b>Regulation/Package Title:</b>	Opening Areas to Competitions
<b>Rule Number(s):</b>	4901:1-31-01
<b>Date:</b>	December 18, 2013
<b>Rule Type:</b>	
<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.

Ohio Adm.Code Chapter 4901:1-31 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-

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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.**

<b>Rule</b>	<b>Statutory Authority – Ohio Revised Code</b>
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)?**

Ohio Adm.Code Chapter 4901:1-31 reflects the requirements of R.C. 4929.29, 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 Ohio Adm.Code 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 R.C. 4929.29.

- 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?**

Ohio Adm.Code Chapter 4901:1-31 is specifically required by R.C. 4929.29; 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.*

Ohio Adm.Code Chapter 4901:1-31 is specifically required by R.C. 4929.29; 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?**

Ohio Adm.Code Chapter 4901:1-31 is required by R.C. 4929.29 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.**

Ohio Adm.Code Chapter 4901:1-31, is required by R.C. 4929.29 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;**

Ohio Adm.Code Chapter 4901:1-31 establishes a process for opening areas to competitive retail natural gas service, pursuant to R.C. 4929.29. 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.**

Ohio Adm.Code Chapter 4901:1-31 is required by R.C. 4929.29.

**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.

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

<b>Agency Name:</b>	Public Utilities Commission of Ohio (PUCO)
	Attention: Angela Hawkins, Legal Director
	Phone: 614-466-6843 Fax: 614-728-8373
	Angela.hawkins@puc.state.oh.us
<b>Regulation/Package Title:</b>	Determination of Allowable Capacity and Commodity Costs
<b>Rule Number(s):</b>	4901:1-32-01, 4901:1-32-02, 4901:1-32-03, 4901:1-32-04
<b>Date:</b>	December 18, 2013
<b>Rule Type:</b>	<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.

Ohio Adm.Code Chapter 4901:1-32 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 R.C. 4929.25, costs for capacity

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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 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.**

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

**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)?**

Ohio Adm.Code Chapter 4901:1-32 reflects the requirements of R.C. 4929.20 and 4929.25.

**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 Ohio Adm.Code 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 R.C. 4929.20 and 4929.25.

- 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?**

Ohio Adm.Code Chapter 4901:1-32 is specifically required by R.C. 4929.20 and 4929.25; 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.*

Ohio Adm.Code Chapter 4901:1-32 is specifically required by R.C. 4929.20 and 4929.25; 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?**

Ohio Adm.Code Chapter 4901:1-32 is required by R.C. 4929.20 and 4929.25 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.**

Ohio Adm.Code Chapter 4901:1-32 is required by R.C. 4929.20 and 4929.25 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.**

Ohio Adm.Code Chapter 4901:1-32 is required by R.C. 4929.20 and 4929.25.

- 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: Angela Hawkins, Legal Director
	Phone: 614-466-6843 Fax: 614-728-8373
	Angela.hawkins@puc.state.oh.us
Regulation/Package Title:	Not-for-Profit Customer Declarations of Mercantile Status
Rule Number(s):	4901:1-33-01
Date:	December 18, 2013
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.

Ohio Adm.Code Chapter 4901:1-33 provides for the filing of non-mercantile status by not-for-profit customers as required by R.C. 4929.01. 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)?

Ohio Adm.Code Chapter 4901:1-33 provides for the filing of non-mercantile status by not-for-profit customers as required by R.C. 4929.01.

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 Ohio

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Adm.Code 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 R.C. 4929.01.

**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?**

Ohio Adm.Code Chapter 4901:1-33 is specifically required by R.C. 4929.01; 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.*

Ohio Adm.Code Chapter 4901:1-33 is specifically required by R.C. 4929.01; 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?**

Ohio Adm.Code Chapter 4901:1-33, is specifically required by R.C. 4929.01 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.**

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Ohio Adm.Code Chapter 4901:1-33 is specifically required by R.C. 4929.01 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;**

Ohio Adm.Code Chapter 4901:1-33 is specifically required by R.C. 4929.01 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.**

Ohio Adm.Code Chapter 4901:1-33 is specifically required by R.C. 4929.01.

**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: Angela Hawkins, Legal Director
	Phone: 614-466-6843 Fax: 614-728-8373
	Angela.hawkins@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:	December 18, 2013
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.

Ohio Adm.Code Chapter 4901:1-34 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: Ohio Adm.Code 4901:1-34-02, purpose and scope, clarifying that this chapter also applies to governmental aggregations under Ohio Adm.Code 4901:1-28, and that the Commission has the authority to waive any rule in this

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chapter; making corrections to rule references within Ohio Adm.Code 4901:1-34-03 and 4901:1-34-04; simplifying the title for Ohio Adm.Code 4901:1-34-05, 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 Ohio Adm.Code 4901:1-34-06 and 4901:1-34-08; and removing an incorrect location reference for the Commission offices in Ohio Adm.Code 4901:1-34-07.

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

<b>Rule</b>	<b>Statutory Authority – Ohio Revised Code</b>
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)?**

Ohio Adm.Code Chapter 4901:1-34 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 Ohio Adm.Code Chapters 4901:1-27 and 4901:1-29.



**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 Ohio Adm.Code 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 Ohio Adm.Code Chapter 4901:1-34; however, this chapter is specifically required by R.C. 4929.24 and 4905.54 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?**

Ohio Adm.Code Chapter 4901:1-34 is specifically required by R.C. 4929.24 and 4905.54; 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.*

Ohio Adm.Code Chapter 4901:1-34 is specifically required by R.C. 4929.24 and 4905.54; 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?**

Ohio Adm.Code Chapter 4901:1-34 is specifically required by R.C. 4929.24 and 4905.54; 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.**

Ohio Adm.Code Chapter 4901:1-34 is specifically required by R.C. 4929.24 and 4905.54 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;**

Ohio Adm.Code Chapter 4901:1-34 sets forth the procedures for enforcement of the rules for certification and the minimum requirements for competitive retail natural gas suppliers. Ohio Adm.Code Chapter 4901:1-34 apply to all competitive retail natural gas suppliers and governmental aggregators that are subject to Commission jurisdiction.

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

This chapter prescribes the requirements for competitive retail natural gas suppliers and governmental aggregators certified to do business. The primary identified business community is the certified retail natural gas suppliers and governmental aggregators. This chapter may impact the identified business community in that there is a time cost involved in completing the certification application, in renewing a certificate, or in

training to reflect the proposed rule revisions. However, in light of the fact that the majority of modifications clarify the rules contained within this chapter and that the major substantive amendments reflect procedures already widely in use by the businesses, it is improbable that any service providers will need to significantly upgrade any programs or revise internal protocols. As a result of the continuation of these rules without substantive amendment requiring measures that are not already widely in use, the nature of any adverse impact is minimized. Additionally, the substantive revisions allow for the Commission to align more closely its rules regarding the provision of competitive retail natural gas services with the rules regarding the provision of competitive retail electric service. This alignment not only allows companies a means to more easily participate in both energy markets, but also a more consistent application of law that will minimize any regulatory burden and costs. Finally, although there are no fees required by this chapter, there are potential fines for companies in noncompliance.

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

The impact in terms of time will, in most instances, be minimal, as competitive retail natural gas suppliers and governmental aggregators already adhere to Ohio Adm.Code Chapter 4901:1-34 and the proposed revisions are unlikely to add any additional burdens on the businesses. Fines for noncompliance are set forth in R.C. Chapter 4905 and vary.

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

Ohio Adm.Code Chapter 4901:1-34 is specifically required by R.C. 4929.24 and 4905.54.

#### **Regulatory Flexibility**

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

Ohio Adm.Code Chapter 4901:1-34 is required by R.C. 4929.24 and 4905.54. 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 Ohio Adm.Code Chapter 4901:1-34 is to reflect the legislative intent of R.C. 4929.24 and 4905.54 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 R.C. 119.14 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.