

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

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 electric service (CRES) rules contained in Ohio Adm.Code Chapters 4901:1-21 and 4901:1-24, 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 - (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted;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 4901:1-21 and 4901:1-24. In addition, the Commission noted that the rules for competitive retail natural gas service (CRNGS) are being reviewed in *In re Rules for Competitive Retail Natural Gas Serv. Contained in Chapters 4901:1-27 through 4901:1-34 of the Ohio Adm. Code*, Case No. 12-925-GA-ORD (CRNGS Rules Case) at the same time as the CRES 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 4901:1-21 and 4901:1-24, 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); Direct Energy Services, LLC, and Direct Energy Business, LLC (jointly, Direct Energy); Border Energy Electric Services, Inc.; the Retail Electric Supply Association and Interstate Gas Supply, Inc. (jointly, RESA/IGS); Dominion Retail, Inc. (Dominion Retail); FirstEnergy Solutions Corp. (FES); Duke Energy Retail Sales, LLC (DERS); Interstate Gas Supply, Inc. (IGS); the Northeast Ohio Public Energy Council (NOPEC); the Dayton Power and Light Company (DP&L); Ohio Power Company (AEP Ohio); Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy); Duke Energy Ohio, Inc. (Duke); the office of the Ohio Consumers' Counsel (OCC); and Ohio Partners for Affordable Energy (OPAE). Reply comments were filed by Eagle, Direct Energy, RESA/IGS, Dominion Retail, FES, DERS, NOPEC, DP&L, AEP Ohio, FirstEnergy, Duke, OCC, OPAE, and the Ohio Poverty Law Center (OPLC).
- (8) Thereafter, by Finding and Order (Order) issued December 18, 2013, the Commission amended Ohio Adm.Code 4901:1-21-01 through 4901:1-21-12, 4901:1-21-14, 4901:1-21-16 through 4901:1-21-18, 4901:1-24-02, and 4901:1-24-04 through 4901:1-24-16. Further, the Commission ordered that existing Ohio Adm.Code 4901:1-21-13, 4901:1-21-15, 4901:1-24-01, and 4901:1-24-03 be adopted with no changes. In the Order, the Commission noted that a Commission investigation remained open in *In re Comm. Investigation of Ohio's Retail Elec. Serv. Mkt.*, Case No. 12-3151-EL-COI (*CRES Investigation Case*). The Commission emphasized that, although certain issues in the *CRES Investigation Case* overlapped with issues in the rules proceeding, it was necessary to move forward with adoption of the rules due to the timeline of the five-year review mandated by R.C. 119.032. Additionally, the Commission noted that the adoption of the rules did not preclude further review in the *CRES Investigation Case* and

further review of the rules at a later date due to the CRES *Investigation Case*.

- (9) On January 17, 2014, applications for rehearing were filed by OPAE, Direct Energy, FES, IGS, OCC and OPLC (jointly, Consumer Groups), and RESA. Memoranda contra were filed by OPAE, FirstEnergy, OCC, IGS, RESA, and FES. Thereafter, by Entry issued February 13, 2014, the Commission granted all of the applications for rehearing for the purpose of further consideration of the issues specified in the applications for rehearing.
- (10) Initially, prior to considering the applications for rehearing, the Commission finds that, upon further consideration of the internal implementation of proposed Ohio Adm.Code 4901:1-24-04, addressing filing of an application, that this language should be deleted. In so finding, the Commission notes that no stakeholders advocated for this rule, which was intended to increase internal administrative efficiency, and, in fact, several stakeholders opposed it. Further, the Commission notes that, as CRES providers are no longer required to file applications for certification renewal under a new case number, several modifications to proposed Ohio Adm.Code 4901:1-24-09, addressing certification renewal, are necessary. As part of this change, the Commission has moved the portion of proposed Ohio Adm.Code 4901:1-24-09 addressing expired certificates into proposed Ohio Adm.Code 4901:1-24-04 and retitled the rule "Expired certificates." These changes are reflected in the attached rules.
- (11) In its application for rehearing, OPAE first argues that the Order is unreasonable and unlawful pursuant to R.C. 4929.02(A), (B), (C), and (I) because proposed Ohio Adm.Code 4901:1-21-11(F) fails to require affirmative customer consent when contract renewals contain material changes. More specifically, OPAE asserts that contracts with automatic renewal clauses should not be exempted from the requirement of affirmative consent and that the rule as proposed gives undue emphasis to termination fees in the context of affirmative consent.

In its memorandum contra, RESA asserts that automatic contracts do not conflict with the law or policy of Ohio and,

further, that customers can negotiate their CRES contract terms if they have concerns or terminate their renewed contract if they are no longer satisfied. In its memorandum contra, IGS echoes RESA's argument.

In its memorandum contra, FES asserts that the statutes cited by OPAGE support the Commission's decision declining to adopt OPAGE's suggestion on the basis that adding the unnecessary step that OPAGE recommends will increase CRES provider costs and create inefficiencies in the renewal process, which will increase prices for customers. Additionally, FES asserts that there is no violation of contract law or flaw in the current renewal practices.

The Commission denies OPAGE's application for rehearing on this issue. Initially, the Commission notes that this issue was raised and addressed in the Order. Order at 42. As argued by FES, renewal provisions are contained in the original signed contract. Further, the Commission believes that the current renewal rules as proposed provide sufficient consumer protection and that changes are unnecessary and would increase costs and create inefficiencies.

- (12) OPAGE next argues that the Order unlawfully and unreasonably violates R.C. 4928.02(A), (B), (C), and (I) by failing to require CRES providers to inform a customer about the outcome of variable rate products based on the customer's recent historical usage. More specifically, OPAGE contends that proposed Ohio Adm.Code 4901:1-21-05(A) should require variable rate contracts to identify the specific index, formula, or methodology that is external to the supplier's own manipulation or discretion in order to allow customers to make a rational and informed decision.

In its memorandum contra, RESA argues that OPAGE's suggestion will require every CRES supplier to detail how every new variable offer to every residential and small commercial customer would have fared if conditions were the same as prior months—which would be an extremely difficult, time-consuming, and expensive undertaking. Additionally, RESA contends that this undertaking would produce no benefit because past energy prices are not indicative of future prices, especially those that track indices. In its memorandum contra, IGS joins RESA's argument.

In its memorandum contra, FES argues that the requirement proposed by OP&E presents an unnecessary administrative burden which is inconsistent with common business practices. FES points out that the rule already requires a clear and understandable explanation of the factors that will cause the price to vary and that requiring CRES providers to calculate and disseminate 12 months of usage for customers is unrealistic and unreasonable.

The Commission denies OP&E's application for rehearing on this issue. Initially, the Commission notes that this issue was raised and thoroughly addressed in the order. Order at 13-14. As asserted by RESA, IGS, and FES, requiring CRES suppliers to detail how every new variable offer would have fared would be a difficult and expensive undertaking for CRES suppliers. Further, as asserted by RESA and IGS, such a requirement would also produce minimal benefit, as past energy prices are not necessarily the best indicator of future prices.

- (13) OP&E's final argument is that the Order is unreasonable pursuant to R.C. 4928.02(A), (B), (C), and (I) by failing to require that consumers be provided with meaningful access to customer complaint data regarding CRES business practices, which prevents customers from making informed decisions when selecting a CRES provider. More specifically, OP&E contends that the best source of information for customers on how CRES suppliers operate is other customers and that the Commission should put information regarding customer complaints and marketer business practices into a user friendly format and make it available to the public in order to help customers make informed decisions.

In its memorandum contra, RESA argues that such a forum could be vulnerable to targeting by those who wish to harm the subject of the complaint or register complaints to hamstringing a competitor. RESA also comments that, to the extent the public wishes to comment on CRES providers, there are ample forums that do not have the governmental authority of the Commission's website. In its memorandum contra, IGS joins RESA's argument.

The Commission denies OPAC's application for rehearing on this issue. Although the Commission is not necessarily opposed to some type of forum that provides customer complaint data, the Commission emphasizes that OPAC has provided no specific proposal either in its original comments or in its application for rehearing for incorporation of such a system into this chapter. Consequently, the Commission finds it inappropriate to incorporate such a nebulous idea into the chapter at this time.

- (14) In their joint application for rehearing, the Consumer Groups contend that the Commission erred by not requiring CRES providers to make available to OCC their residential promotional and advertising material targeted for residential customers upon request as part of proposed Ohio Adm.Code 4901:1-21-05. More specifically, The Consumer Groups emphasize that OCC only seeks to receive materials for residential customers and argue that the Commission was unreasonable in failing to add this requirement.

In its memorandum contra, RESA points out that R.C. 4928.19 does not require that marketing materials targeted to residential customers be given to OCC, but merely that the Commission and OCC engage in cooperative efforts to educate consumers. RESA argues that these marketing materials do not need to be at OCC's disposal in order for OCC to carry out its statutory functions. In its memorandum contra, IGS echoes RESA's argument.

In its memorandum contra, FES argues that Staff's ability to review these materials is more than sufficient to protect customers and, if a customer seeks OCC assistance with regard to promotional materials, OCC can obtain the CRES materials from the actual customer or find them posted online.

The Commission denies the Consumer Groups' application for rehearing on this issue. As discussed by RESA, R.C. 4928.19 does not provide OCC with authority to require such marketing materials. Further, as pointed out by FES, OCC could obtain CRES materials from a customer or on the internet while investigating a residential customer complaint.

- (15) In their second assignment of error, the Consumer Groups argue that the Commission erred by not requiring that the total annual electric costs need to be included on customers' bills as part of proposed Ohio Adm.Code 4901:1-21-18. The Consumer Groups argue that, although customers can request this information from the utility, requiring customers to take such action is an unnecessary burden when the information could easily be provided to customers on their bill.

In its memorandum contra, RESA argues that the Commission appropriately rejected this request in the Order on the basis that it could cause customer confusion and customers can obtain the information from other resources. RESA points out that total costs from one year to the next are not always comparable because rates and usage change, and that customers can request prior bills and usage data. Further, RESA points out that customers concerned with budgeting already have the option of electing budget billing. In its memorandum contra, IGS joins RESA's argument.

In its memorandum contra, FirstEnergy asserts that OCC provided no evidence that customers desire this information on their bills; that customers can obtain this information from readily available sources; and that the Companies are in a better position to assess the expected level of customer confusion, as they field the bulk of questions from customers regarding electric bills. Consequently, FirstEnergy asserts that the Commission appropriately rejected OCC's recommendation in the Order.

The Commission denies the Consumer Groups' application for rehearing on this issue. The Commission notes, initially, that this issue was raised and thoroughly addressed in the Order. Order at 51. The Commission agrees with RESA, IGS, and FirstEnergy that including this information on a bill could result in customer confusion and is also minimally valuable, as customers can obtain this information by reviewing their previous bills or requesting their 12-month billing history.

- (16) In its application for rehearing, Direct Energy first argues that the Order is unreasonable as it relates to proposed Ohio Adm.Code 4901:1-21-06(D)(1)(h)(ii), because the presence of

the agent during the third-party verification (TPV) does not differentiate between residential and small commercial customer door-to-door sales. More specifically, Direct Energy argues that, unlike residential customer sales, small commercial sales agents are ordinarily building a longer term relationship with the specific customer that continues after the initial door-to-door contract and, further, small commercial customers are less likely to be intimidated by having an agent present during the TPV. Consequently, Direct Energy argues that this rule should be modified to permit a door-to-door sales agent to be on a small commercial customer's property before, during, and after the TPV.

In its memorandum contra, OPAE asserts that it is the only entity filing comments in this docket that represents small commercial customers, and that OPAE does not agree that small commercial customers need less protection than residential customer, as they may not have the sophistication and knowledge to distinguish them from residential customers. Consequently, OPAE disagrees that the rule on TPV should not apply to door-to-door solicitations of small commercial customers.

The Commission denies Direct Energy's application for rehearing on this issue. The Commission believes that both residential and small commercial customers should receive this protection before, during, and after TPV following door-to-door solicitation.

- (17) Next, Direct Energy argues that proposed Ohio Adm.Code 4901:1-21-06(D)(1)(h)(ii) does not provide flexibility as it relates to a door-to-door agent returning to the customer's premises after the TPV. Direct Energy contends that a customer may wish to ask the door-to-door agent questions that the TPV is not permitted to answer and that the Commission should, consequently, permit such agents to return if the customer so requests.

In its memorandum contra, OPAE argues that the rule preserves the validity and effectiveness of the independent TPV process.

The Commission denies Direct Energy's application for rehearing on this issue. Initially, the Commission notes that this issue was raised and thoroughly addressed in the Order. Order at 27. As discussed above, the Commission believes customers should receive this protection before, during, and after TPV following a door-to-door solicitation. The Commission is unaware that there are many customer complaints that sales agents are required to leave before the TPV process necessitating a change to this proposed rule.

- (18) In its application for rehearing, FES asserts that proposed Ohio Adm.Code 4901:1-21-06(D)(1)(d) should be amended because it is not necessary to protect customers and places needless burdens on market participants. FES argues that there is no need to send a customer a signed copy of a contract if a full copy of the contract was included in the enrollment materials initially provided to the customer, and points out that FES' recommendation is consistent with the corresponding rule in the *CRNGS Rules Case*, Ohio Adm.Code 4901:1-29-06(C)(4).

The Commission agrees that it may be more efficient during direct mail solicitations to not require a copy of a signed contract to be sent to a customer where the customer already received a full copy of the contract with his or her enrollment materials, and also agrees that changing this provision would make this rule consistent with the corresponding rule in the *CRNGS Rules Case*, Ohio Adm.Code 4901:1-29-06(C)(4). Consequently, the Commission grants FES' application for rehearing on this issue and has modified proposed Ohio Adm.Code 4901:1-21-06(D)(1)(d) accordingly.

- (19) Next, FES argues that proposed Ohio Adm.Code 4901:1-21-06(D)(2)(c) should be modified to make the gas and electric process more uniform. FES argues that this proposed rule requires a CRES provider, after obtaining proper enrollment consent from a customer, to delay sending the enrollment request to the EDU for at least three business days. FES recommends modifying this rule to only require that the enrollment request be sent within five business days, arguing that the two-day delay is unnecessary to protect customers because customers already have seven days to

rescind a contract pursuant to Ohio Adm.Code 4901:1-21-11(E). Alternately, FES requests modifying the rule to require the enrollment request to be sent within three business days, which parallels with the corresponding CRNGS rule in Ohio Adm.Code 4901:1-29-06(E)(4).

The Commission denies FES' application for rehearing on this issue. Initially, the Commission notes that this issue was raised and addressed in the Order. Order at 30-31. Further, the Commission notes that, pursuant to Ohio Adm.Code 4901:1-21-11(E), customers have seven *calendar* days to rescind a CRES contract. In contrast, under Ohio Adm.Code 4901:1-29-06(E)(4), the corresponding CRNGS rule, customers have seven *business* days to rescind a CRNGS contract. Consequently, as the rescission period is triggered by the postmark date on the electric utility's confirmation notice, pursuant to Ohio Adm.Code 4901:1-29-06(E), the Commission notes the two-day delay is intended to ensure customers have an opportunity to review terms and conditions prior to expiration of the rescission period. Further, the Commission finds that the CRES and CRNGS rules should not exactly parallel on this matter, given the shorter length of the seven calendar-day period, as opposed to the seven business-day period.

- (20) Finally, FES argues on rehearing that proposed Ohio Adm.Code 4901:1-24-14, governing financial security, should be deleted or amended because it is unnecessary and creates unreasonable variation in requirements across the Ohio utility territories. More specifically, FES argues that leaving financial security requirements up to each EDU results in inconsistency across the state; results in improper vagueness of the rule; does not consider the more than adequate existing financial capability requirements of the Commission's CRES licensing procedures; and does not account for the minimal financial risk borne by an EDU when a CRES provider defaults. Additionally, FES argues that, when EDUs overestimate the risks of CRES provider default, they impose needlessly large financial security requirements on CRES providers. As a result, FES argues, CRES providers must charge customers a higher price to cover the additional financial burden.

The Commission finds that FES' application for rehearing on this issue should be denied. Initially, the Commission notes that this issue was raised and addressed in the Order, and, as set forth in the Order, proposed Ohio Adm.Code 4901:1-24-14 is not a new provision, but was merely moved and renumbered. Order at 61-62. The Commission additionally emphasizes that R.C. 4928.08(B) requires CRES providers to provide "a financial guarantee sufficient to protect customers and electric distribution utilities from default." The Commission acknowledges, however, that a review of the financial security requirement, including whether it presents a barrier to CRES providers and/or benefits to customers, may be helpful. Consequently, although the Commission denies rehearing on this matter at this time, the Commission directs Staff to hold an informal workshop to review the financial security requirement, as it pertains to electric and natural gas, to ensure that the requirement does not present obstacles to competition and that the requirement benefits customers. Staff should invite stakeholders to the workshop including distribution utilities and competitive providers.

- (21) In its application for rehearing, IGS argues that the Order is unlawful as it relates to proposed Ohio Adm.Code 4901:1-21-06(D)(1)(h)(iii), because it fails to allow a customer to choose whether or not to have the sales agent remain with the customer during the TPV process or return after the TPV process. More specifically, IGS argues that customers should be permitted to consent to the sales agent being present during the TPV if the customer affirmatively consents and the consent is recorded as part of the TPV.

In its memorandum contra, OPAE argues that the rule, as proposed by the Commission, preserves the validity and effectiveness of the independent TPV process.

The Commission denies IGS' application for rehearing on this issue. The Commission notes, initially, that this issue was raised and thoroughly addressed in the Order. Order at 27. As discussed above, the Commission believes customers should receive this protection before, during, and after TPV following a door-to-door solicitation.

- (22) In its first assignment of error, RESA argues that, under proposed Ohio Adm.Code 4901:1-21-01(JJ), the Commission should modify the definition of "small commercial customer" so that it includes only the unsophisticated low-volume commercial customers who will benefit from the regulation. RESA contends that the Commission is over-regulating what are actually large commercial and industrial customers. In its application for rehearing, IGS indicates that it supports RESA's argument on this issue.

In its memorandum contra, FirstEnergy asserts that, while adding a definition of a small commercial customer may be a valid recommendation, it would be difficult for FirstEnergy to apply this definition since their system is not designed to recognize customers at this particular demand level. Consequently, FirstEnergy argues that the Commission's resolution of the issue, which left it to the EDU's individual tariff, was reasonable and lawful.

In its memorandum contra, FES supports the Commission's threshold for small commercial customers, which FES argues ensures adequate information and protections are furnished to the customers that need them.

The Commission denies RESA's application for rehearing on this issue. Initially, the Commission notes that this issue was raised and fully addressed in the Order. Order at 6. Further, as asserted by FirstEnergy and FES, the Commission continues to find that this is an issue most appropriately resolved by the EDUs' individual tariffs and that the rule as proposed by the Commission ensures adequate protections for the appropriate customers.

- (23) In its second assignment of error, RESA argues that proposed Ohio Adm.Code 4901:1-21-05(C)(7) should use the term "door-to-door" solicitation rather than "direct solicitation," because only in door-to-door solicitations are the sales agents not readily linked to their employer. Additionally, RESA argues that door-to-door agents should be allowed to provide a defense before being found in violation of this rule. In its application for rehearing, IGS indicates that it supports RESA's argument on this issue.

In its memorandum contra, OCC contends that any time a CRES provider is soliciting customers, it is crucial that the customer understand the CRES provider is not associated with the electric utility, and that photo identification helps to remove any ambiguity, whether the agent is door-to-door or working in a public venue.

The Commission denies RESA's and IGS' application for rehearing on this issue. The Commission notes, initially, that this issue was raised and thoroughly addressed in the Order. Order at 17. Per definition, "direct solicitation" includes door-to-door solicitation as well as solicitation at a place other than the providers' place of business, and the use of the term "direct solicitation" in this rule was purposeful. The Commission believes it is not unreasonable for sales agents engaged in any direct solicitation to ensure customers are not misled as to who is providing the service.

- (24) In its third assignment of error, RESA contends that proposed Ohio Adm.Code 4901:1-21-05(C)(11) should be deleted because the Commission is not in a position to judge whether an ordinance has been violated, and a community is free to prosecute a CRES provider if an ordinance is violated.

In its memorandum contra, OCC asserts that the Commission has a duty to protect customers from unfair practices. Further, OCC argues that this rule does not put the Commission in the position to judge whether an ordinance violation has occurred, but merely explains that a customer who does not comply with all ordinances has per se committed an unfair practice.

The Commission denies RESA's application for rehearing on this issue and notes that this issue was raised and fully addressed in the Order. Order at 19. The Commission believes that sales agents' compliance with local ordinances is important when conducting solicitations and, further, emphasizes that Commission enforces the rule, not the ordinance.

- (25) In its fourth assignment of error, RESA contends that, under proposed Ohio Adm.Code 4901:1-21-05(E), door-to-door sales should be permitted until 8:00 p.m., rather than 7:00 p.m., or, at a minimum, until 8:00 p.m. during daylight

savings time. In its application for rehearing, IGS indicates that it supports RESA's argument on this issue.

The Commission denies RESA's and IGS' applications for rehearing on this issue. As stated in the Order, in which this issue was raised and fully addressed, the Commission believes that 7:00 p.m. is the appropriate time to cease door-to-door sales. Order at 15.

- (26) In its fifth assignment of error, RESA argues that proposed Ohio Adm.Code 4901:1-21-06(D)(1)(i) should be modified to permit contract terms and conditions to be provided via electronic media. In its application for rehearing, IGS indicates that it supports RESA's argument on this issue.

In its memorandum contra, OPAE asserts that customers may not necessarily have access to e-mail and electronic services necessitating written copies of contracts with actual signatures. Similarly, in its memorandum contra, OCC argues that terms and conditions in CRES contracts are complicated and may not be easily readable on a small electronic display. Further, OCC asserts that there is no assurance that the version the customer read on the display would be the same terms and conditions eventually e-mailed to the customer, and that the terms and conditions will likely be needed as part of the TPV process that occurs at the conclusion of the sale.

The Commission finds that RESA's and IGS' arguments have merit, to an extent. The Commission agrees to modify the rule to allow customers to receive terms and conditions via electronic copy if (1) the customer agrees to receive an electronic copy rather than a paper copy; (2) the customer is offered an unsigned paper copy with a version number identical to the electronic copy; and (3) receipt of the e-mail can be verified. Consequently, the Commission grants RESA's and IGS' applications for rehearing on this issue and has modified proposed Ohio Adm.Code 4901:1-21-06(D)(1)(i) accordingly.

- (27) In its sixth assignment of error, RESA criticizes proposed Ohio Adm.Code 4901:1-21-06(D)(1)(h), which addresses the TPV process for door-to-door solicitations. RESA contends that this provision should only be applicable to door-to-door

solicitations of residential customers, not small commercial customers; that the word "before" should be removed because a sales agent logically would be present at the customer's property before the TPV; and that sales agents should not be precluded from returning to a customer's property after the TPV process unless the customer directs otherwise. In its application for rehearing, IGS indicates that it supports RESA's argument on this issue.

In its memorandum contra, OPAC argues that the rule clearly refers to the TPV process; thus, the wording is not a universal prohibition of return. Additionally, OPAC argues that the rule preserves the validity and effectiveness of the independent TPV process. Similarly, OCC opposes RESA's suggestions in its memorandum contra and asserts that this rule will aid in deterring customer intimidation or coercion by marketers and that, if customers have questions after the TPV process, the customer can certainly contact the marketer with those inquiries.

The Commission denies RESA's and IGS' applications for rehearing on this issue. Initially, the Commission notes that this issue was raised and fully addressed in the Order. Order at 27. Further, the Commission finds that, at the time of the TPV, the customer has already agreed to enroll and all pertinent information should have been provided to the customer. Further, the TPV provides verification that the customer received accurate information from the sales agent; thus, there should be no need for the sales agent to be present or to return to the premises. Further, as pointed out by OCC, if the customer has received all pertinent information, the customer could choose to contact the marketer with any questions.

- (28) In its seventh assignment of error, RESA contends that proposed Ohio Adm.Code 4901:1-21-06(D)(2)(b)(i) should require retail contracts be sent within one business day of the EDU confirming the enrollment, instead of within one business day of the telephonic enrollment. RESA asserts that this will prevent a disqualified customer from having a null contract if the enrollment is rejected by the EDU. In its application for rehearing, IGS indicates that it supports RESA's argument on this issue.

The Commission denies RESA's and IGS' applications for rehearing on this issue. The Commission notes, initially, that this issue was raised and addressed in the Order. Order at 30. The Commission finds that the vast majority of these customers will be enrolled and believes that these customers should receive the contract before receiving the rescission letter.

- (29) In its eighth assignment of error, RESA disputes proposed Ohio Adm.Code 4901:1-21-11(F)(3)(c)(iii), which requires confirmation that a customer has opened a contract renewal e-mail where it is sent by e-mail, on the basis that there is no practical way for the CRES provider to know a customer has opened the e-mail if the customer does not accept the e-mail request by the sender to send a reply. In its application for rehearing, IGS indicates that it supports RESA's argument on this issue.

The Commission agrees with RESA and IGS that the current wording of this rule should be changed, and has modified proposed Ohio Adm.Code 4901:1-21-11(F)(3)(c)(iii) to require inclusion of a mechanism that records by time and date both the submission and receipt of the renewal notice. Consequently, the Commission grants RESA's and IGS' applications for rehearing on this issue.

- (30) In its ninth assignment of error, RESA recommends proposed Ohio Adm.Code 4901:1-21-12(B)(7)(e) be modified to remove the term "monthly" and instead use the unit price or the flat rate if it is something other than per kilowatt-hour to accommodate hourly or daily priced options.

The Commission denies RESA's application for rehearing on this issue. The Commission declines to modify this rule; however, clarifies that suppliers wishing to offer hourly or daily priced options may do so under the current variable rate rule, as long as the product is clearly explained in the contract terms and conditions.

- (31) In its tenth assignment of error, RESA argues that proposed Ohio Adm.Code 4901:1-24-05(B)(1)(e) is unnecessarily broad and burdensome and should be modified to only require statements about past and pending regulatory or judicial actions that are actually related to the applicant's technical,

managerial, and financial abilities to provide CRES service. In its application for rehearing, IGS indicates that it supports RESA's argument on this issue.

In its memorandum contra, OCC asserts that the Commission's rulings are necessary for the administrative efficiency of having on hand the information that it can, in its judgment, and not the judgment of marketers, determine to be relevant for protecting the public interest in the certification process.

The Commission denies RESA's and IGS' applications for rehearing on this issue. As stated in the Order, in which this issue was raised and fully addressed, the Commission finds that limiting the rule as suggested by RESA and IGS would undermine the intent of the rule, which is to require companies to provide full disclosure and to permit the Commission to use its judgment in assessing the information. Order at 55.

- (32) In its eleventh assignment of error, RESA contends that proposed Ohio Adm.Code 4901:1-24-08 should be modified to better measure the time for extensions—either the original six-year extension period or any additional extension requests—to match up with the renewal cycle. More specifically, RESA urges a language change to proposed Ohio Adm.Code 4901:1-24-08(A) to ensure that exhibits are afforded protective treatment from the time of filing until six years after the certificate date. As to proposed Ohio Adm.Code 4901:1-24-08(D), RESA requests additional language to provide that any extension of a protective order will coincide with the CRES provider's two-year certification cycle, rather than for an 18-month period. In its application for rehearing, IGS indicates that it supports RESA's argument on this issue.

The Commission finds that RESA's and IGS' applications for rehearing should be denied on this issue. As to the request to modify proposed Ohio Adm.Code 4901:1-24-08(A), the Commission finds that the change is unnecessary. Pursuant to Ohio Adm.Code 4901-1-24(D), it is the Commission's practice to maintain exhibits filed under seal as confidential pending ruling on a motion for protective order. Further, when such rulings are granted, it is the Commission's

practice to time the confidential period from the date of the certificate.

As to RESA's and IGS' requests to modify proposed Ohio Adm.Code 4901:1-24-08(D), the Commission finds that this change is also unnecessary. The Commission notes that, although the current version of Ohio Adm.Code 4901-1-24(F) provides that protective orders automatically expire 18 months after the date of issuance, the current version of Ohio Adm.Code 4901-1-24(D)(4) specifically provides that motions for protective order filed in conjunction with CRES marketers' renewal certification application cases are automatically approved for a 24-month period beginning with the date of the certificate. Further, the Commission is currently reviewing Ohio Adm.Code Chapter 4901-1 and has proposed revisions to Ohio Adm.Code 4901-1-24 providing that all motions for protective order filed pursuant to Ohio Adm.Code 4901-1-24 automatically expire 24 months after the date of issuance. *In re Comm. Rev. of Rules*, Case No. 11-776-AU-ORD, Finding and Order (Jan. 22, 2014) at Attachment A, 34-35. The Commission also notes that it has not been Commission practice to extend protective treatment for CRES certification information beyond the initial 6-year period; however, the Commission notes that any decision to grant a motion to extend protective treatment would be granted in conjunction with the expiration date of the certificate in order to simplify the process for an applicant. Consequently, the Commission finds that the modifications requested by RESA and IGS are unnecessary. Finally, the Commission notes that it intends to issue a procedural entry in the future that clarifies the process for outstanding and future motions for protective order.

- (33) In its twelfth assignment of error, RESA argues that proposed Ohio Adm.Code 4901:1-21-11(H) should be clarified to explain that a "material change" takes place when the agreement is mutually modified, not every time the modification is exercised. In its application for rehearing, IGS indicates that it supports RESA's argument on this issue.

The Commission denies RESA's and IGS' applications for rehearing on this issue. The Commission clarifies that a

price adjustment agreed upon in an existing contract is not a material change for which additional customer consent is required, but does not believe any change to the proposed rule is necessary.

- (34) Finally, in its thirteenth assignment of error, RESA contends that proposed Ohio Adm.Code 4901:1-21-12(B)(7) now requires all fees to be listed. RESA seeks clarification that this is not a requirement that all cost components, such as postage, account handling, etc., be included unless any of those charges are variable. RESA recommends instead that the rule require disclosure of any fees not already included in the per-unit price. In its application for rehearing, IGS indicates that it supports RESA's argument on this issue.

The Commission clarifies that the change to Ohio Adm.Code 4901:1-21-12(B)(7) was made to require disclosure of all fees including those by brokers, governmental aggregators, etc., and does not require disclosure of cost components such as postage. However, the Commission does not find that any changes to the proposed rule are necessary.

- (35) The amended chapters are posted at: www.puco.ohio.gov/puco/rules. To minimize the expense of this proceeding, the Commission will serve a paper copy of this Finding and Order only. All interested persons are directed to download the attachments to this Finding and Order from the above website or contact the Commission's docketing division to request a paper copy.

It is, therefore,

ORDERED, That the applications for rehearing filed by FES, RESA, and IGS are granted, in part, and denied, in part. It is, further,

ORDERED, That the applications for rehearing filed by OPAC, Direct Energy, and the Consumer Groups are denied. It is, further,

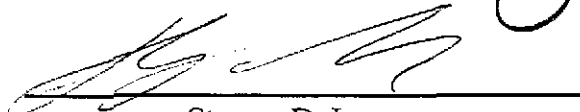
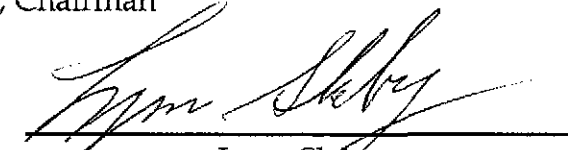
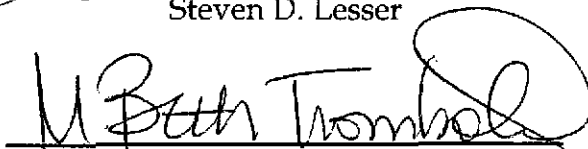
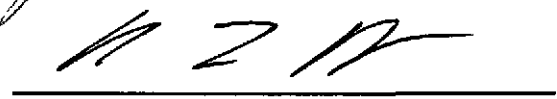
ORDERED, That amended Ohio Adm.Code 4901:1-21-06, 4901:1-21-11, 4901:1-24-04, and 4901:1-24-09, as attached to the Order and revised by this Entry on Rehearing, be adopted and be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission in accordance with R.C. 111.15(D) and (E). It is, further,

ORDERED, That the final rules be effective on the earliest date permitted. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapters 4901:1-21 and 4901:1-24 shall be in compliance with R.C. 119.032. It is, further,

ORDERED, That, in accordance with finding (35), a copy of this Entry on Rehearing 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 Entry on Rehearing be served upon the Electric-Energy List-Serve.

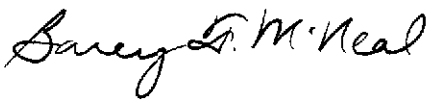
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman
Steven D. Lesser
Lynn Slaby
M. Beth Trombold
Asim Z. Haque

MWC/sc

Entered in the Journal

FEB 26 2014



Barcy F. McNeal
Secretary

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4901:1-21-01 Definitions.

As used in chapter:

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

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

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- (X) "Net metering" shall have the meaning set forth in division (A)(31) of section 4928.01 of the Revised Code.
- (Y) "OCC" means the Ohio consumers' counsel.
- (Z) "Other sources" means known electric energy generation resources that cannot reasonably be included within any of the specific fuel categories.
- (AA)"Person" shall have the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.
- ~~(BB)~~ "Postmark" means a mark, including a date, stamped or imprinted on a piece of mail which serves to record the date of its mailing, which in no event shall be earlier than the date on which the item is actually deposited in the mail. For electronic mail, postmark means the date the electronic mail was transmitted.
- ~~(BB)~~~~(CC)~~ "Power broker" means a person certified by the commission, who provides power brokerage.
- ~~(CC)~~~~(DD)~~ "Power brokerage" means assuming the contractual and legal responsibility for the sale and/or arrangement for the supply of retail electric generation service to a retail customer in this state without taking title to the electric power supplied.
- ~~(DD)~~~~(EE)~~ "Power marketer" means a person, certified by the commission, who provides power marketing services.
- ~~(EE)~~~~(FF)~~ "Power marketing" means assuming the contractual and legal responsibility for the sale and provision of retail electric generation service to a retail customer in this state and having title to electric power at some point during the transaction.
- ~~(FF)~~~~(GG)~~ "Residential customer" means a customer of a competitive retail electric service for residential purposes.
- ~~(GG)~~~~(HH)~~ "Retail electric service" shall have the meaning set forth in division (A)(27) of section 4928.01 of the Revised Code.
- ~~(HH)~~~~(II)~~ "Retail electric generation service" means the provision of electric power to a retail customer in this state through facilities provided by an electric distribution utility and/or a transmission entity in this state. The term encompasses the services performed by retail electric generation providers, power marketers, and power brokers, but does not encompass the service provided by an electric utility pursuant to section 4928.14 or division (D) of section 4928.35 of the Revised Code.

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~~(H)~~(II) "Small commercial customer" means a commercial customer that is not a mercantile commercial customer.

~~(J)~~(KK) "Solicitation" means any communication intended to elicit a customer's agreement to purchase or contract for a CRES.

~~(K)~~(LL) "Staff" means the commission staff or its authorized representative.

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

~~(M)~~(NN) "Unknown purchased resources" means electric energy generation resources neither owned nor operated by a competitive retail generation supplier where the electric energy generation source(s) or process cannot be identified after making all reasonable efforts to identify the source or process used to produce the power.

4901:1-21-02 Purpose and scope.

(A) The rules in this chapter:

- (1) Apply to persons offering or providing any retail electric service which has been declared competitive pursuant to section 4928.03 of the Revised Code including retail electric generation, aggregation, power marketing, and power brokerage.
- (2) Are intended to:
 - (a) Provide minimum standards for service quality, safety, and reliability.
 - (b) Provide consumers with sufficient information to make informed decisions about competitive retail electric service (CRES).
 - (c) Protect consumers against misleading, deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of CRES and in the administration of any contract for that service.

(B) After notice and, if necessary, an opportunity for hearing, the commission may require CRES providers to take any appropriate action necessary to comply with these rules and the state's policy as stated in section 4928.02 of the Revised Code upon:

- (1) The commission's own motion.
- (2) Formal or informal complaints brought to the commission.
- (3) The application of any CRES provider.

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- (C) The commission may, upon an application or a motion by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown. Any CRES provider requesting a waiver of any requirement in this chapter shall serve notice of the request upon the Ohio consumers' counsel and all electric utilities operating in Ohio.
- (D) The rules in this chapter shall not relieve CRES providers from complying with all applicable federal, state, and local laws.
- (E) The rules in this chapter supersede any inconsistent provisions, terms, and conditions of each CRES provider's contracts or other documents describing service offerings for customers or potential customers in Ohio.

4901:1-21-03 General provisions.

- (A) Competitive retail electric service (CRES) providers shall not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to, without limitation, the following activities:
 - (1) Marketing, solicitation, or sale of a CRES.
 - (2) Administration of contracts for CRES.
 - (3) Provision of CRES, including interactions with consumers.
- (B) CRES providers shall not cause or arrange for the disconnection of distribution service, or employ the threat of such actions, as a consequence of contract termination, customer nonpayment, or for any other reason.
- (C) CRES providers shall not change or authorize the changing of a customer's supplier of retail electric service without the customer's prior consent, as provided for under rule 4901:1-21-06 of the Administrative Code. For the purpose of procuring CRES, this requirement does not apply to governmental aggregation pursuant to division (A) of section 4928.10 of the Revised Code, or for programs funded by the universal service fund for whom the Ohio ~~department of~~ development services agency procures electric services pursuant to section 4928.52 of the Revised Code or the assignment of contracts where such assignment occurs in accordance with the rules in Chapter 4901:1-24 of the Administrative Code.
- (D) For the purposes of market monitoring and providing the public comparative information from CRES providers' residential ~~standard~~ contract offers, CRES providers shall furnish ~~to~~ in a manner designated by the director of the service

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monitoring and enforcement department, ~~or the director's designee~~ the following information, ~~transmitted by e-mail or facsimile~~ at least one current offer for posting on the apples-to-apples chart within four calendar days of making such offers to Ohio customers.:

- ~~(1) For fixed-rate contracts, the price per kilowatt hour for generation service.~~
- ~~(2) For variable-rate contracts, an explanation of the factors that will cause the price to vary, and the frequency of such variation.~~
- ~~(3) For all standard contracts, a listing of any recurring and nonrecurring charges not provided under paragraphs (D)(1) and (D)(2) of this rule, and a statement of the length of contract term.~~
- ~~(4) Other information as the staff may deem necessary.~~

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

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

4901:1-21-05 Marketing, ~~and solicitation,~~ and customer information.

- (A) Each competitive retail electric service (CRES) provider that offers retail electric generation service to residential or small commercial customers shall provide, in marketing materials that include or accompany a service contract, sufficient information for customers to make intelligent cost comparisons against offers they receive from other CRES providers.

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Offers shall at a minimum include:

- (1) For fixed-rate offers, the cost per kilowatt hour for generation service and, if applicable, transmission service.
- (2) For per cent-off discounted rates, an explanation of the discount and the basis on which any discount is calculated.
- (3) For variable rate offers, 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.
- (4) For flat-monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract.
- (5) The amount of any other recurring or nonrecurring CRES provider charges.
- (6) A statement that the customer will incur additional service and delivery charges from the electric utility.
- (7) A statement of any contract contingencies or conditions precedent.

~~(1) For fixed rate offers, such information shall, at minimum, include:~~

- ~~(a) The cost per kilowatt hour for generation service.~~
- ~~(b) The amount of any other recurring or nonrecurring CRES provider charges.~~
- ~~(c) A statement that the customer will incur additional service and delivery charges from the electric utility.~~
- ~~(d) A statement of any contract contingencies or conditions precedent.~~

~~(2) For variable rate offers, such information shall, at a minimum, include:~~

- ~~(a) A clear and understandable explanation of the factors that will cause the price to vary, including any related indices, and how often the price can change and, for discounted rates, an explanation of the discount and the basis on which any discount is calculated.~~
- ~~(b) The amount of any other recurring or nonrecurring CRES provider charges.~~
- ~~(c) A statement that the customer will incur additional service and delivery charges from the electric utility.~~
- ~~(d) A statement of any contract contingencies or conditions precedent.~~

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- (B) A CRES provider's promotional and advertising material that is targeted for residential and small commercial customers shall be provided to the commission or its staff within ~~five calendar~~ three business days of a request by the commission or its staff.
- (C) No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:
- (1) Soliciting customers to enroll at either of the following times:
 - (a) After suspension, rescission, or conditional rescission of its certification by the commission.
 - (b) After denial of certification renewal by the commission.
 - (2) Failing to comply with paragraph (A) or (B) of this rule.
 - (3) Failing to provide in or with its advertisements and promotional materials that make an offer for sale, a toll-free telephone number (and address for printed materials) which the potential customer may call or write to request detailed information regarding the price, terms, conditions, limitations, restrictions, and, if applicable, environmental characteristics of the service offered.
 - (4) Soliciting via telephone calls initiated by the CRES provider (or its agent) without first taking both of the following actions:
 - (a) Obtaining the list of Ohio individuals who have requested to be placed on the federal trade commission's "do not call" registry by the appropriate area code.
 - (b) Obtaining monthly updates of the federal trade commission's "do not call" registry for the appropriate area code.
 - (5) Engaging in telephone solicitation of individuals who have been placed on the federal trade commission's "do not call" registry and who are not otherwise exempted.
 - (6) Engaging in telephone solicitation to residential customers either before nine a.m. or after nine p.m.
 - (7) Engaging in direct solicitation to residential customers where the CRES provider's sales agent fails to wear and display a valid CRES provider photo

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identification. The format for this identification shall be preapproved by the staff.

- (8) Advertising or marketing offers that:
- (a) Claim that a specific price advantage, savings, or guarantee exists if it does not.
 - (b) Claim to provide a CRES when such an offer is not a bona fide offer to sell such services.
 - (c) Offer a fixed price for CRES without disclosing the cost per kilowatt hour and all recurring and nonrecurring charges.
 - (d) Offer a variable price for CRES without disclosing all recurring and nonrecurring charges.
 - (e) Fail to disclose all material limitations, exclusions, contract contingencies, conditions precedent and offer expiration dates.
 - (f) Offer a variable price for competitive retail electric service that is not based on verifiable factors.
 - (g) Fail to conspicuously disclose an affiliate relationship with an existing Ohio electric utility.
 - (h) Lead the customer to believe that the CRES provider is soliciting on behalf of or is an agent of an Ohio electric utility when no such relationship exists.
- (9) Marketing, advertising, or claiming that the environmental characteristics of any generation service energy source(s) provide an environmental advantage that does not exist.
- (10) Engaging in any solicitation that ~~leads~~ will lead the customer to believe that the CRES provider is soliciting on behalf of or is an agent of ~~an any entity other than the CRES provider~~ Ohio electric utility when no such relationship exists.
- (11) Engaging in direct solicitation to customers without complying with all applicable ordinances and laws of the customer's jurisdiction.
- (D) CRES providers shall perform criminal background checks on all employees and agents engaged in door-to-door marketing and enrollment. The criminal background check shall be done by an independent contractor and the CRES provider shall confirm that the independent contractor has performed a

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comprehensive criminal background check on its employees or agents in accordance with this rule.

- (E) In the absence of local ordinances or regulations and to ensure the safety of all involved, CRES providers, and their agents shall not conduct door-to-door marketing, solicitation, or enrollment outside the hours of nine a.m. to seven p.m.

4901:1-21-06 Customer enrollment and consent.

- (A) Except as provided in paragraph (B) of this rule, competitive retail electric service (CRES) providers shall coordinate customer enrollment with the electric utility in accordance with the procedures set forth in the applicable electric utility tariff.
- (B) Percentage of income payment plan (PIPP) customers will be coordinated exclusively by the Ohio ~~department of development services agency~~ pursuant to section 4928.54 of the Revised Code.
- (1) CRES providers are prohibited from knowingly enrolling PIPP and arrearage crediting program customers.
- (2) Customers pending enrollment with a CRES provider who subsequently become approved for PIPP or the electric utility's arrearage crediting program shall not be switched to the CRES provider.
- (3) Electric utility customers who have switched to a CRES provider and subsequently become approved for the electric utility's arrearage crediting program shall be transferred to the electric utility's standard offer service at the next regularly scheduled meter read date after the electric ~~utility's utility~~ enrolls the customer in the program.
- (4) Until the Ohio ~~department of development services agency~~ has in place a mechanism for the administration and operation of the low-income customer assistance programs, customers who have switched to a CRES provider and subsequently become approved for PIPP shall be transferred to the electric utility's standard offer service at the next regularly scheduled meter read date after the electric utility receives notice of the customer's participation in PIPP. ~~Any switching fees shall be added to the customer's arrearages, not current charges~~ Such customers shall not be assessed switching fees.

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- (5) When the host electric utility is not purchasing the receivables of the affected CRES provider, the CRES provider shall submit to the host electric utility the pre-PIPP arrearages for the PIPP participant within sixty calendar days of the customer's transfer to the electric utility's standard offer service or the Ohio ~~department of development services agency~~'s selected CRES provider pursuant to section 4928.54 of the Revised Code.
- (C) CRES providers are prohibited from enrolling potential customers without their consent and proof of that consent as delineated in paragraph (D) of this rule. This requirement does not apply to automatic governmental aggregation pursuant to division (A) of section 4928.20 of the Revised Code and PIPP customers who will be coordinated exclusively by the Ohio ~~department of development service agency~~ pursuant to section 4928.54 of the Revised Code.
- (D) Residential and small commercial enrollment.
 - (1) Mailings, facsimiles, and direct solicitation.
 - (a) Where enrollment occurs by mail, facsimile, or direct solicitation, the customer's signature on a contract shall constitute consent.
 - (b) Consistent with rule 4901:1-21-05 of the Administrative Code, prior to entering into a contract for service, CRES providers shall provide each customer with enrollment documents that contain, at a minimum, understandable pricing, the terms and conditions of service, the dollar amount of all recurring and nonrecurring charges (including any fees for early termination of the contract), the applicable generation resource mix and environmental characteristics, and the duration of the contract.
 - (c) Before obtaining a signature from the applicant, CRES providers shall provide each customer a reasonable opportunity to read all enrollment documents and shall answer any and all questions posed by any applicant about information contained in the documents.
 - (d) Immediately upon obtaining the customer's signature, CRES providers shall provide the applicant a legible copy of the signed contract. This provision does not apply to direct mail enrollments where the CRES provider has already provided the customer with a separate, complete copy of the terms and conditions for the customer's records. The copy of the terms and conditions must be identical to the signed copy returned by the customer and include a matching version number.

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

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(i) Terms and conditions print specifications

The terms and conditions must be provided to the residential customer at the time of sale. Paper copies of terms and conditions and must be printed in dark ink on white or pastel paper and be ten-point type or greater. Electronic copies of the signed contract may be provided in the following conditions:

- (i) The customer has agreed to receive an electronic copy of the contract and provides his/her electronic mail address.
- (ii) The third-party verification conducted in accordance with paragraph (D)(1)(h) of this rule shall include a verbal statement and the customer's acknowledgment that the customer consents to receive a copy of the terms and conditions via electronic mail.
- (iii) The customer is offered an unsigned paper copy which includes a version number that matches the signed electronic copy.
- (iv) The terms and conditions are electronically mailed to the customer at the time of sale.
- (v) The CRES provider shall provide a mechanism by which both the submission and receipt of the electronic terms and conditions are recorded by time and date.
- (j) The representative of a CRES provider shall leave the premises of a customer when requested to do so by the customer or the owner or occupants of the premises.
- (k) CRES providers shall remove a customer's name from the marketing/sales database upon the customer's request.

(2) Telephonic enrollment

- (a) To enroll a residential or small commercial customer telephonically, a CRES provider shall make a date and time stamped audio recording verifying before the completion of the telephone call, at a minimum, all of the following:
 - (i) The CRES provider's or independent third-party verifier's identity and the exact purpose of the call
 - (ii) A verbal statement and the customer's acknowledgement that the call is being recorded.

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

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a written contract that details the terms and conditions that were summarized in the telephone call.

~~(vii)~~ (viii) A verbal statement and the customer's acknowledgement that the customer has seven calendar days from the postmark date of the electric utility's confirmation notice to cancel the contract without penalty and a reminder that the electric utility will give the customer a cancellation number to confirm any cancellation of the contract during the cancellation period.

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

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

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

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

- (b) Following telephonic enrollment, the CRES provider shall comply with all of the following:
- (i) Within one ~~calendar~~ business day, send the customer a written contract that details the terms and conditions summarized in the telephone call and the generation resource mix and environmental characteristics information pursuant to rule 4901:1-21-09 of the Administrative Code. Such contract shall in no way alter the terms and conditions to which the customer agreed in the telephone call.
 - (ii) Retain the audio recording of the customer's enrollment for one year after the contract with the customer is terminated.
 - (iii) Provide a copy of the audio recording to the customer, commission, or the staff within ~~five calendar~~ three business days of a request.
- (c) The CRES provider shall send an electronic enrollment request to the electric utility no sooner than three ~~calendar~~ business days and no later than five ~~calendar~~ business days after sending the customer the written contract, unless a later start date is agreed to in the contract.

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- (d) The CRES provider shall not initiate ~~enrollment with the~~ switch of a customer's electric service with the electric utility prior to the completion of the enrollment transaction with the customer.
 - (e) If a CRES provider during a telephone enrollment engages an electric utility on a three-way call, the CRES provider shall immediately disclose they are present on the call with the customer.
- (3) Internet enrollment.
- (a) Where enrollment occurs by internet, prior consent shall be obtained by encrypted customer input on a provider's internet web site.
 - (b) *The internet enrollment web site shall, at a minimum, include all of the following:*
 - (i) A copy of the CRES provider's customer contract with all terms and conditions as required by rule 4901:1-21-12 of the Administrative Code.
 - (ii) A conspicuous statement, within the body of the electronic version of the contract, that residential and small commercial customers may cancel their enrollment within seven calendar days following a confirmation notice from the electric utility.
 - (iii) A statement that the electric utility will be sending a confirmation notice of the transfer of service and that the customer should contact the electric utility to rescind the contract and a reminder that the electric utility will give the customer a cancellation number to confirm any cancellation of the contract during the cancellation period.
 - (iv) A conspicuous prompt for the customer to print or save a copy of the contract.
 - (c) The CRES provider shall not initiate ~~enrollment with the~~ switch of a customer's electric service with the electric utility prior to the completion of the enrollment transaction with the customer.
 - (d) The CRES provider shall send an electronic enrollment request to the electric utility within three ~~calendar~~ business days following completion of the enrollment transaction with the customer, unless a later start date is agreed to in the contract.

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- (e) Any electronic version of the contract shall be identified by version number, in order to ensure the ability to verify the particular contract to which the customer assents.
- (f) Throughout the duration of the contract, the CRES provider shall retain and, within three ~~calendar~~ business days of the customer's request, provide to the customer an ~~e-mail~~ electronic mail message, paper, or facsimile of the terms and conditions of the numbered contract version to which the customer assents.
- (g) The CRES provider shall require the customer to complete an electronic customer consent form in a format retrievable by the CRES provider that includes the following:
 - (i) The customer's agreement to the terms and conditions.
 - (ii) An electronic agreement version number.
 - (iii) The name of the CRES provider.
 - (iv) The date the customer electronically enrolled.
 - (v) The name of the account holder.
 - (vi) The electric utility account number or other customer identification number provided by the electric utility and used for customer choice purposes.
 - (vii) The account holder's U.S. mailing address.
- (h) The CRES provider shall provide a mechanism by which both the submission and receipt of the electronic customer consent form are recorded by time and date.
 - (i) After the customer completes the electronic customer consent form, the internet enrollment process shall disclose conspicuously that the customer has been enrolled and the CRES provider shall provide the customer a unique enrollment confirmation number.
- (E) In customer enrollment, if the electric distribution utility rejects a customer from enrollment, the CRES provider shall notify the customer within five business days from the electric distribution company's notification of rejection that the customer will not be enrolled or enrollment will be delayed, along with the reason(s) therefor.

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4901:1-21-07 Credit and deposits.

- (A) Each competitive retail electric service (CRES) provider must establish reasonable and nondiscriminatory creditworthiness standards and may require a deposit or other reasonable demonstration of creditworthiness from a customer as a condition of providing service.
- (B) In the application of such standards, deposits, or creditworthiness procedures, the CRES provider shall:
 - (1) Disclose in service contracts with customers its policies regarding creditworthiness and deposits, including the amount of any deposit, the allocation of the deposit, and the return of any deposit balance.
 - (2) Accept a reasonable and nondiscriminatory cash deposit as sufficient evidence of the customer's creditworthiness to initiate service.
 - (3) Disclose whether interest will be paid on deposits, and the applicable rate of interest.
 - (4) Provide the customer a receipt for any deposit within ~~fourteen calendar~~ten business days of the date that the deposit is collected.
 - (5) Return the deposit within ~~ten calendar~~seven business days if the customer cancels the contract during the rescission period.
 - (6) Apply the deposit to the final bill and promptly refund any excess to the customer when service is terminated.
 - (7) Not require an applicant to pay the balance due another CRES provider as a condition of establishing credit or providing competitive retail electric service.

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

(A) Customer access

- (1) Each competitive retail electric service (CRES) provider shall ensure customers reasonable access to its service representatives to make inquiries and complaints, discuss charges on customer bills, terminate competitive service, and transact any other pertinent business.
- (2) Telephone access shall be toll-free or local and afford customers prompt answer times during normal business hours.

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- (3) Each CRES provider shall provide a twenty-four hour automated telephone message instructing callers to report any service interruptions or electrical emergencies to their electric utility.

(B) Customer complaints

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

- ~~(2)~~ (1) Each CRES provider shall investigate customer complaints (including customer complaints referred by the electric utility) and provide a status report within ~~five calendar~~ three business days following receipt of the complaint to:

- (a) The customer, when the complaint is made directly to the CRES provider.
- (b) The customer and staff, when a complaint is referred to the CRES provider by the staff.

- ~~(3)~~ (2) If an investigation is not completed within ~~fourteen calendar~~ ten business days, the CRES provider shall provide status reports, either orally or in writing, to the customer, or if applicable, to the customer and staff. Such status reports shall be provided at ~~five calendar~~ three business-day intervals until the investigation is complete, unless agreed to otherwise.

- ~~(4)~~ (3) The CRES provider shall inform the customer, or the customer and staff, of the results of the investigation, orally or in writing, no later than ~~five calendar~~ three business days after completion of the investigation. The customer or staff may request the report in writing.

- ~~(5)~~ (4) If a residential or small commercial customer disputes the CRES provider's report, the CRES provider shall inform the customer that the staff is available to help resolve informal complaints. The CRES provider shall provide the consumer with the current address, the toll-free and TTY numbers number of the commission's call center, the telephone number through which hearing and speech impaired customers may contact the commission, and the commission's website.

- ~~(6)~~ (5) Each CRES provider shall retain records of customer complaints, investigations, and complaint resolutions for one year after the occurrence of such complaints, and shall provide such records to the staff within ~~five calendar~~ three business days of request.

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~~(7)~~—(6) Each CRES provider shall make good faith efforts to resolve disputes, and cooperate with the resolution of any joint issues with the electric utility.

(C) Slamming complaints.

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

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

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

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customers, unless the customer would have been subject to such a requirement had the unauthorized switch not occurred.

- (12) If the electric utility switches a CRES provider's customer to the electric utility's standard offer service without authorization by the customer, without the authorization of the appropriate CRES provider or pursuant to a commission order, the electric utility shall take all of the following actions:
- (a) Not charge, or shall credit the customer, any switching fees and shall return the customer to the previous CRES provider, making the corrective switch at the next regularly scheduled meter reading date following receipt of the enrollment request from the previous CRES provider.
 - (b) By the next billing cycle, take all three of the following actions:
 - (i) Credit or refund to the customer any fees previously charged for switching the customer to the CRES provider.
 - (ii) Either of the two following actions:
 - (a) If reported to staff within thirty calendar days after being issued a bill by the alleged slammer, absolve the customer of any liability for any charges assessed by the slamming electric utility to the customer and refund to the customer any charges collected from the customer.
 - (b) If reported to staff more than thirty calendar days after being issued a bill by the alleged slammer, credit the customer any fees the slamming electric utility charged in excess of the amount the customer would have paid its previous CRES provider for the same usage.
 - (iii) If the customer can not be returned to the original contract terms with its previous CRES provider, the slamming electric utility shall credit or refund to the customer, the value of the customer's contract with the customer's previous supplier of electric service for the remaining term of the contract immediately prior to the slam.
 - (c) Reimburse the CRES provider for any incremental costs incurred by the CRES provider to correct the unauthorized switch, within thirty calendar days of receiving an itemized invoice of the incurred incremental costs.

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4901:1-21-09 Environmental disclosure.

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

(1) Contents of environmental disclosure data shall include:

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

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

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

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

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

CRES providers shall also report the air emissions of nitrogen oxides, sulfur dioxide, and carbon dioxide associated with the generation of power being offered under the supply contract.

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

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

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January - disclose projected data for current calendar year.

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

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

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

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

(D) Environmental disclosure to customers shall include:

(1) Content:

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

(2) Format:

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

- (a) A pie chart shall be provided which illustrates on a percentage basis the various generation resources, as detailed in paragraph (C)(1)(a) of this rule, used in the generation of the power offered under the contract. The percentages shall be rounded to the nearest ~~whole number~~ one-half percent. The pie chart shall not include colors, but shall include the use of shading and labels to more clearly communicate the information as set forth in appendices A and B to this rule. To the extent the pie chart included in appendices A and B to this rule cannot be replicated, CRES providers shall exercise reasonable efforts to simulate the required shading to the extent possible.
- (b) A table shall be provided which illustrates the typical environmental characteristics associated with the generation resource categories detailed in paragraph (C)(1)(a) of this rule.

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

Biomass power - results in air emissions and solid waste.

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

Hydro power - results in wildlife impacts.

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

Nuclear power - results in radioactive waste.

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

Other sources - results in unknown impacts.

Solar power - results in no significant impacts.

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

Wind power - results in wildlife impacts.

- (c) The product-specific air emissions shall be presented in a bar chart, along with a regional average emission reference. The product-specific emission rates shall appear as a percentage of the average regional emission rate for each of the three types of air emissions. Percentages shall be calculated from comparison of product-specific and average regional emission rates on a basis of pounds emitted per megawatt hour.
- (d) The figures reflecting the generation of radioactive wastes shall be presented in a table. High-level radioactive waste shall be reported in pounds per one thousand kilowatt hour (kWh), while low-level radioactive waste is to be reported in cubic feet per one thousand kWh. Any radioactive waste greater than zero but less than ".0001" shall be depicted as <0.0001.

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

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

Low-level radioactive waste - means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-

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product material as defined in section 11(E)(2) of the "Atomic Energy Act of 1954," 68 Stat. 921, 42 U.S.C. 2014(e)(2), as amended by the Price-Anderson Amendments Act of 2005, 119 Stat. 779.

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

The CRES provider, at its election, shall ~~include with either post on its website or mail a printed copy to~~ each customer under contract, its most recent projection of environmental disclosure data, consistent with the schedule presented in paragraph (C)(3) of this rule and the format depicted by appendix A to this rule.

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

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- (b) Quarterly comparisons of actual to projected data.

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

These items will be disclosed to customers via the CRES provider's website, bill inserts, or by separate mailing. ~~The quarterly environmental disclosure can be accomplished electronically if a customer agrees to such an approach.~~

- (E) Environmental disclosure to the commission shall include:

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

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

4901:1-21-10 Customer information.

- (A) Upon customer request and if the competitive retail electric service (CRES) provider possesses such information, a CRES provider shall timely provide to the customer, no more than twice within a twelve-month period, up to twenty-four months of the customer's payment history without charge.
- (B) CRES providers shall not disclose a customer's account number without the customer's ~~written consent, electronic authorization and proof of that consent as delineated in paragraph (E) of this rule~~, or appropriate order, except for the following purposes:
- (1) A CRES provider's collections and credit reporting activities.
 - (2) Participation in programs funded by the universal service fund, pursuant to section 4928.52 of the Revised Code, such as the percentage of income payment plan programs.
 - (3) Governmental aggregation, pursuant to section 4928.20 of the Revised Code.

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- (4) Assignment of a customer contract to another CRES provider.

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

- (C) CRES providers shall not disclose a customer's social security number without the customer's written consent as delineated in paragraph (E) of this rule, ~~electronic authorization~~, or a court order, except for the following purposes:

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

- (D) ~~The CRES provider providers shall not disclose a must obtain the customer's energy usage data that is more granular than the monthly historical consumption data, provided in paragraph (E)(1) of rule 4901:1-10-29 of the Administrative Code, without signature on the customer's written consent as delineated form prior to releasing the customer's account number or social security number, except as set forth in paragraph (B) or (C) (E)(1) of this rule, or appropriate order. The consent form shall be on a separate form and shall be clearly identified on its face as a release of personal information and all text appearing on the consent form shall be in at least sixteen-point type. The following statement shall appear prominently on the consent form, just prior to the signature, in type darker and larger than the type in surrounding sentences: "I realize that under the rules and regulations of the public utilities commission of Ohio, I may refuse to allow (name of the CRES provider) to release the information set forth above. By my signature, I freely give (name of the CRES provider) permission to release the information designated above." The information that the CRES provider seeks to release shall be specified on the form. Forms requiring a customer to circle or to check off preprinted types of information to be released may not be used.~~

- (E) Customer information release consent format.

- (1) Written consent shall be on a separate piece of paper and shall be clearly identified on its face as a release of personal information and all text appearing on the consent form shall be in at least sixteen-point type. The following statement shall appear prominently on the consent form, just prior to the signature, in type darker and larger than the type in surrounding

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sentences: "I realize that under the rules and regulations of the public utilities commission of Ohio, I may refuse to allow (name of the CRES provider) to release the information set forth above. By my signature, I freely give (name of the CRES provider) permission to release the information designated above." The written consent form for the release of customer energy usage data shall specify the identity of any recipients of the data, type and granularity of the data being collected, and uses for which the data is being collected. Forms requiring a customer to circle or to check off preprinted types of information to be released may not be used.

- (2) Electronic consent shall be in a substantially similar format to the written consent in paragraph (E)(1) of this rule. The following statement shall appear prominently: "I realize that under the rules and regulations of the public utilities commission of Ohio, I may refuse to allow (name of the CRES provider) to release the information set forth above. By providing my electronic signature, I freely give (name of electric utility) permission to release the information designated above."

4901:1-21-11 Contract administration.

- (A) Competitive retail electric service (CRES) providers, except automatic governmental aggregation pursuant to division (A) of section 4928.20 of the Revised Code, and percentage of income payment plan customers for whom the Ohio ~~department of development services agency~~ procures electric services pursuant to section 4928.52 of the Revised Code, shall arrange for the provision of competitive retail electric service by contracting with their customers. In their administration of such contracts, CRES providers are prohibited from engaging in unfair, deceptive, misleading, and unconscionable acts and practices.
- (B) CRES providers shall arrange for the provision of CRES to residential and small commercial customers in compliance with rule 4901:1-21-06 of the Administrative Code.
- (C) CRES providers shall maintain copies of individual customer contracts for no less than two years after each such contract terminates. Copies may be saved in electronic formats if such preserves the image of the original signatures on signed documents.
- (D) In its administration of residential and small commercial contracts, a CRES provider shall also comply with the following requirements:
- (1) A CRES provider shall not assign customer contract(s) to another CRES provider without:

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- (a) Providing a minimum of fourteen calendar days written notice to the director of the service monitoring and enforcement department or the director's designee and any affected electric utility before the contract assignment. Such notice shall include:
 - (i) The name of the CRES provider to whom the contracts will be assigned.
 - (ii) The type of contracts to be assigned (i.e., residential, small commercial).
 - (iii) The number of contracts to be assigned.
 - (iv) The electric utility service territories involved.
 - (v) The date of the proposed assignment.
 - (vi) A copy of the customer notification.
- (b) Providing written notice to the customer prior to the customer's next bill that includes a statement that following the assignment the customer's service will continue under the same rates, terms, and conditions established under the original contract and includes the new CRES provider's name, toll-free number, and address.
- (2) When assigned a contract previously administered by another CRES provider, the CRES provider to whom the contract is assigned shall comply with all terms and conditions in effect for the contract before the assignment occurred.
- (3) A CRES provider shall comply in a timely manner with all valid notices from customers to cancel or terminate the contract as provided for by the contract and by these rules.
- (4) A CRES provider shall assign a number to each version of its standard contract form (including changes in contract price), retain such forms for no less than two years, and provide copies to staff within ~~five calendar~~ three business days of request.
- (E) Residential and small commercial customers shall have the right to rescind their contracts, within seven calendar days following the postmark date on the electric utility's confirmation notice:
 - (1) By calling the electric utility at the designated local or toll-free number
 - (2) By written notice to the electric utility, which is effective as of the date of the postmark.

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(F) Contract renewals

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

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the rate at which the customer contract will renew, or in the case of a variable rate, the applicable formula.

- (a) In the event that the CRES provider provides the second notice by telephone, the CRES provider or opt-in governmental aggregator must confirm that the customer of record is on the line, clearly explain both the new contract price and the manner in which the customer may cancel the contract, record the entire conversation, and retain such recording in a manner consistent with rule 4901:1-21-06 of the Administrative Code.
 - (b) In the event that the CRES provider provides the second notice on the customer's monthly bill, such notice must be in a different color, highlighted, or otherwise differentiated from the remainder of the bill.
 - (c) In the event that the CRES provider provides the second notice by electronic mail, the notice must:
 - (i) State "Important notice regarding your electric service contract" in the subject area of the message.
 - (ii) Be from an electronic mail e-mail address that is readily identifiable as the CRES provider.
 - (iii) Includes a receipt returned to the sender which confirms that the addressee has opened the document mechanism by which both the submission and receipt of the renewal notice is recorded by date and time.
 - (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 CRES provider shall notify the customer of any changes, describe or highlight each change, and also obtain the customer's affirmative consent to such changes pursuant to any of the enrollment procedures established in rule 4901:1-21-06 of the Administrative Code. In addition, the CRES provider shall notify the customer that no response will result in the customer automatically reverting to the electric utility unless the customer chooses another CRES provider. The notice shall be provided at least forty-five calendar days, but not more than ninety calendar days in advance of the contract expiration date, and

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comply with paragraphs (F)(2)(a) to (F)(2)(c) of this rule. This paragraph shall not apply to contract renewals which renew on a month-to-month basis.

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

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

- (H) In instances where the customer and the CRES provider agree to a material change to an existing contract, the CRES provider shall obtain proof of consent and provide details of the revised contract terms and conditions as delineated in paragraph (D) of rule 4901:1-21-06 of the Administrative Code.

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

4901:1-21-12 Contract disclosure.

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

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

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- ~~(b)(c)~~ For variable-rate offers, either of the following options: such information shall, at minimum, include: a clear and understandable explanation of the factors that will cause the price to vary, including any related indices, and how often the price can change; for discounted rates, an explanation of the discount and the basis on which any discount is calculated; the amount of any other recurring or nonrecurring CRES provider charges; and a statement that the customer will incur additional service and delivery charges from the electric utility.
- (i) A clear and understandable formula, based on publicly available indices or data that the CRES provider will use to determine the rate that will be charged. In the event that the CRES provider chooses to follow this option, the indices or data on which the price is based must be clearly identified in the contract terms and conditions.
- (ii) A clear and understandable explanation of the factors that will cause the price to vary including any related indices and how often the price can change. In the event that the CRES provider chooses to follow this option, no early termination fee may be charged.
- ~~(d)~~ For offers based upon kilowatt hours, the unit price per kilowatt hour.
- ~~(e)~~ For flat-monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract.
- ~~(8)~~ The amount of any other recurring or nonrecurring CRES provider charges and a statement that the customer will incur additional service and delivery charges from the electric utility.
- ~~(8)(9)~~ The terms and conditions of service, including any restrictions, limitations, contingencies, or conditions precedent associated with the service or product offered.
- ~~(9)(10)~~ Procedures for handling complaints and disputes, including the following statement:
- "If your complaint is not resolved after you have called your electric supplier and/or your electric utility, or for general utility information, residential and business customers may contact the public utilities 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)."

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- ~~(10)~~-(11) 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>."
- ~~(11)~~-(12) Billing intervals and any late payment fees.
- ~~(12)~~-(13) Contract duration, including the estimated starting and expiration dates and a commitment that service shall begin with the next available meter reading after processing of the request by the electric utility and the CRES provider;
- ~~(13)~~-(14) If the contract contains an automatic renewal provision and the terms of such provision do not require the customer's affirmative consent, a conspicuous, highlighted statement indicating that the CRES provider can renew this contract without the customer's affirmative consent even when there is a change in the rate or other terms and conditions.
- ~~(14)~~-(15) Any credit, deposit, and collection procedures, including terms and conditions associated with the return of any deposit at the time of contract termination.
- ~~(15)~~-(16) For generation service contracts, an incorporation by reference of information (accompanying the contract) regarding the approximate generation resource mix and environmental characteristics of the power supplies.
- ~~(16)~~-(17) Who will bill for the CRES provider's service(s).
- ~~(17)~~-(18) A notification that the CRES provider is prohibited from disclosing a customer's social security number and/or account number(s) without the customer's consent except for the CRES provider's own collections and credit reporting, participation in programs funded by the universal service fund pursuant to section 4928.52 of the Revised Code, or assigning a customer contract to another CRES provider;
- ~~(18)~~-(19) A statement informing customers that if they switch back to (name of electric utility) they may or may not be served under the same rates, terms, and conditions that apply to other customers served by the electric utility.
- ~~(19)~~-(20) A statement indicating to the customer whether the CRES provider offers budget billing for the generation portion of the bill.

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- ~~(20)~~-(21) A statement informing customers that the failure to pay electric utility charges may result in the customer being disconnected in accordance with the electric utility tariff.
- (22) If, due to a change in market conditions, the CRES provider wishes to lower the price per kilowatt hour 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.

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4901:1-21-13 Net metering contracts.

- (A) An electric services company providing retail electric generation service may offer net metering to its customers by developing a contract for net metering that is consistent with the requirements of rules 4901:1-21-11 and 4901:1-21-12 of the Administrative Code. Such contract shall be made available upon request to qualifying customer generators.
- (1) A qualifying customer generator is one whose generating facilities are:
- (a) Fueled by solar, wind, biomass, landfill gas, or hydropower, or use a microturbine or a fuel cell.
 - (b) Located on a customer generator's premises.
 - (c) Operated in parallel with the electric utility's transmission and distribution facilities.
 - (d) Intended primarily to offset part or all of the customer generator's requirements for electricity.
- (2) Notwithstanding paragraph (A)(1) of this rule, a hospital, as defined in section 3701.01 of the Revised Code, may become a qualifying customer generator by meeting the requirements of paragraphs (A)(1)(b) and (A)(1)(c) of this rule.
- (3) Net metering arrangements shall be made available regardless of the date the customer's generating facility was installed.
- (B) Net metering shall be accomplished using a single meter capable of registering the flow of electricity in each direction. A customer's existing single-register meter that is capable of registering the flow of electricity in both directions satisfies this requirement. If the customer's existing electrical meter is not capable of measuring

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the flow of electricity in two directions, the customer generator shall be responsible for all expenses involved in purchasing and installing such a meter.

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

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

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excluding the first billing after the starting date of competitive retail electric service.

- (8) The amount billed for the current period, any unpaid amounts due from previous periods, any payments or credits applied to the customer's account during the current period, any late payment charges or gross and net charges, if applicable, any nonrecurring charges, and the total amount due and payable.
- (9) The due date for payment to keep the account current. Such due date shall be no less than:
 - (a) Fourteen calendar days after the postmark date on the bill for residential customers. For residential bills issued from outside the state of Ohio the due date shall not be less than twenty-one calendar days after the postmark date.
 - (b) Twenty-one calendar days after the postmark date on the bill for nonresidential customers.
- (10) The current balance of the account, if a residential customer is billed according to a budget plan.
- (11) Options and instructions on how customers may make their payments.
- (12) For each provider whose charges appear on the bill, a listing of the provider's toll-free telephone number and address for customer billing questions or complaints.
- (13) The following notice:

"If your complaint is not resolved after you have called (name of CRES provider), or for general utility information, residential and business customers may contact the public utilities commission 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>."
- (14) The applicable electric utility's twenty-four hour local or toll-free numbers for reporting service emergencies.

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- (15) An identification of estimated bills or bills not based upon actual end-of-period meter readings for the period.
- (16) An explanation of any codes and abbreviations used.
- (D) If applicable, each CRES provider shall, upon request, provide customers with the name and street address/location of the nearest payment center and/or authorized payment agent.
- (E) If applicable, when a customer pays the bill at a payment center or to an authorized payment agent, such payment shall be credited to the customer's account as of the day it is received by such payment center or agent.
- (F) Each CRES provider shall establish policies and procedures for handling billing disputes and requests for payment arrangements.
- (G) Each CRES provider shall credit any customer partial payments in the following order:
 - (1) Billed and past due CRES provider charges.
 - (2) Billed and due current CRES provider charges.
 - (3) Other past due and current nonregulated charges.

Budget billing payments and payments in full of the undisputed amount related to a bona fide dispute do not constitute partial payments. Payments made on accounts for which there is a bona fide dispute shall be credited to the undisputed portion of the account.
- (H) Any CRES provider wishing to issue billing statements online shall comply with the following guidelines:
 - (1) A customer shall not be required to use online billing.
 - (2) No enrollment or usage fees shall be assessed to a customer who chooses to receive bills and/or customer information online.
 - (3) The online billing statement shall include all requirements listed in paragraph (C) of this rule.
 - (4) The CRES provider shall maintain a secure and encrypted site that is to be accessed only by the customer of record after completing a secure registration process.

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- (5) Any fees to accept online payments shall be clearly disclosed in payment window(s).
- (6) Any payment made online shall be treated as a payment made at the company's business office and shall be posted to the account in accordance with paragraph (E) of this rule. The time needed to post the payment to the account shall be clearly stated.
- (7) If a customer chooses to use online billing, the customer shall not be restricted to making payments online in the future. All payment methods shall continue to be available to the customer.

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

- (A) Any competitive retail electric service (CRES) provider that fails to comply with Chapter 4928. of the Revised Code, any rule in this chapter, or any commission order adopted thereunder may, after opportunity for hearing, be subject to any and all of the following available under the law, including but not limited to:
 - (1) Forfeiture to the state of not more than ten thousand dollars for each such failure. Each day's continuance of the violation is a separate offense.
 - (2) Suspension, rescission, conditional rescission, or revocation of the CRES provider's certificate or denial of a request for renewal of a certificate.
 - (3) Rescission of a customer contract.
 - (4) Restitution or damages to the customer/consumer.
- (B) Enforcement of any rule in this chapter or any commission order adopted thereunder will be conducted in accordance with Chapter 4901:1-23 of the Administrative Code.

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

- (A) Prior to applying for certification from the commission, a governmental aggregator seeking to form an opt-out aggregation shall complete all of the requirements specified in divisions (A) to (C) of section 4928.20 of the Revised Code, including adopting an ordinance or resolution authorizing an opt-out aggregation, conducting a general or special election in accordance with division (B) of section

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4928.20 of the Revised Code for authorization from electors to form the aggregation, and approving a plan for operation and governance of the aggregation as specified by division (C) of section 4928.20 of the Revised Code.

- (B) The operation and governance plan adopted shall detail the services to be provided under the aggregation and specify all customer rights and obligations under the aggregation. The plan shall be sufficiently detailed to allow customers to readily understand the services that the governmental aggregator is to provide and to compare those services to similar services provided by competitive suppliers. The governmental aggregator shall write the plan in clear and plain language so that customers can easily understand it. The plan shall, at a minimum, contain all of the following:
- (1) A detailed description of services that the governmental aggregator is to provide under the aggregation, noting whether the service is to be provided directly by the governmental aggregator or by a party contracted by the governmental aggregator.
 - (2) A description of the processes that the governmental aggregator will use to determine the rates that will be charged, including the applicable surcharge that may be charged to customers pursuant to division (I) of section 4928.20 of the Revised Code.
 - (3) A description of the process that the governmental aggregator will use to notify customers if the governmental aggregator chooses to implement division (J) of section 4928.20 of the Revised Code, including a description of the potential impact on the customers in the aggregation program.
 - (4) A detailed description of the governmental aggregator's plan for providing the required opt-out disclosure notices to customers. The plan shall describe the steps that the governmental aggregator will take to ensure that all eligible customers residing within the governmental aggregator's boundaries are notified. The plan shall also identify the time frames associated with the opt-out disclosure notice.
 - (5) A detailed description of the process for developing the pool of customer accounts that will be included in the aggregation, including the steps that the governmental aggregator will take to identify and exclude from the pool customers who have opted out of the aggregation and customers that are otherwise ineligible.
 - (6) A detailed description of the governmental aggregator's opt-out process and opt-out methodologies. The process shall include provisions for customers to

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opt out, including returning a postcard or similar notice to the governmental aggregator. The process may include, in addition, other opt-out methods, such as telephonic or internet notice, provided that these alternative methods allow for verification of a customer's election to opt out of the aggregation.

- (7) A detailed description of the customer classes that the governmental aggregator intends to include in its aggregation pool.
- (8) The governmental aggregator's plan for billing customers, including an identification of billing intervals and the identity of the entity that will transmit the bill to the customer.
- (9) A listing of any credit or deposit procedures and policies that the governmental aggregator will employ in the event the customer fails to pay its bill(s).
- (10) A detailed description of the governmental aggregator's customer service procedures and dispute resolution processes, including notice of the customer's right to contact the commission and the commission's toll-free ~~and TTY numbers~~ number and telephone number through which hearing and speech impaired customers may contact the commission. These procedures and processes shall comply with the requirements specified in rule 4901:1-21-08 of the Administrative Code.
- (11) A detailed description of the policies associated with a customer moving into the aggregation or within the aggregation where the electric utility considers the customer that is moving to be a new customer. If the policies provide that these customers will be automatically included in the aggregation, the governmental aggregator shall provide the customer an opportunity to opt out of the aggregation in accordance with the procedures set forth in rule 4901:1-21-17 of the Administrative Code.
- (12) A detailed description of the policies associated with a customer moving within the aggregation where the customer is not assigned a new account number by the electric utility. A customer in these circumstances shall maintain the rate that the customer was charged at its previous location or, if the rate at the new location is higher than at the customer's previous location, the customer shall have the opportunity to opt out of the aggregation without penalty, pursuant to the procedures set forth in rule 4901:1-21-17 of the Administrative Code.

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- (13) A description of the governmental aggregator's policies regarding the ability of a customer who has previously opted out of the aggregation to join the aggregation, including identification of any associated conditions.
- (C) A governmental aggregator shall keep its operation and governance plan available for public inspection and shall, upon request, provide a copy of the plan to any existing or potential customer of the aggregation.
- (D) A governmental aggregator shall not alter its operation and governance plan in any way that materially affects the customers of the aggregation without first providing notice to all affected customers and providing these customers the opportunity to opt out of the aggregation according to the procedures established for the initial opt-out disclosure notice set forth in rule 4901:1-21-17 of the Administrative Code. The notice shall set forth the changes to the plan, inform the customer of its right to opt out of the aggregation without penalty, and identify the method and time frame for the customer to opt out.
- (E) Notwithstanding paragraph (D) of this rule, if a governmental aggregator elects not to receive standby service from the electric utility under an approved electric security plan during the term of the governmental aggregation program pursuant to division (J) of section 4928.20 of the Revised Code, the governmental aggregation shall not alter its governmental aggregation program in a manner that would require conducting an additional opt-out for the duration of its governmental aggregation program.
- (F) No governmental aggregator shall send an opt-out disclosure notice to potential customers of an aggregation prior to the governmental aggregator being certified by the commission as a competitive retail electric service provider.
- (G) A governmental aggregator may choose to have the CRES provider perform certain functions as the governmental aggregator's agent. However, the governmental aggregator is still responsible for ensuring that the requirements of this chapter are met.

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

- (A) Prior to including a customer's electric account or accounts in an aggregation, a governmental aggregator shall provide each customer written notice that the customer's account(s) will be automatically included in the aggregation unless the customer affirmatively opts out of the aggregation. The notice, clearly marked

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from the outside "important notice regarding your electric service" written in plain language, shall, at a minimum, include:

- (1) A summary of the actions that the governmental entity took to authorize the aggregation.
- (2) A description of the services that the governmental aggregator will provide under the aggregation.
- (3) Disclosure of the price that the governmental aggregator will charge customers for electric generation service. ~~If the price is a~~ For fixed-rate contracts, the governmental aggregator shall provide express the price in cents per kilowatt hour, and if applicable, for generation and transmission service. If the governmental aggregator offers a variable rate, the governmental aggregator shall provide an understandable description of the factors that will cause the price to vary (including any associated indices) and disclose how frequently the rate will change. If the governmental aggregator charges different rates to different rate classes within the aggregation, the governmental aggregator shall disclose the applicable rate(s) to customers within each rate class.
- (4) An itemized list and explanation of all fees and charges that are not incorporated into the rates charged for electricity generation that the governmental aggregator will charge to the customer for participating in the aggregation, including any early termination penalties and any surcharges, or portions thereof, that may be assessed pursuant to division (I) of section 4928.20 of the Revised Code. The early termination penalties shall not apply to a customer that moves out of the governmental aggregator's territory.
- (5) Disclosure of the dates covered by the governmental aggregation program, including an estimated service commencement date, and notice that the customer may opt out of the aggregation at least every three years without penalty.
- (6) A statement informing customers that choose to opt out of the governmental aggregation program prior to the commencement of the governmental aggregation program that they will be served by the standard service offer established pursuant to section 4928.14 of the Revised Code or until the customer chooses an alternative supplier of electric service.
- (7) A statement informing customers that, if they switch back to (name of electric utility), they may not be served under the same rates, terms, and conditions that apply to other customers served by the electric utility.

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- (8) If the governmental aggregator elects not to receive standby service from the electric utility under an approved electric security plan during the term of the governmental aggregation program pursuant to division (J) of section 4928.20 of the Revised Code, a statement informing customers that any customer returning to the electric utility after the commencement of the governmental aggregation program will pay the market price of power incurred by the electric utility to serve that consumer plus the amount attributable to the electric utility's compliance with the alternative energy resource provisions of section 4928.64 of the Revised Code, unless such customer becomes ineligible pursuant to paragraph (E)(1)(a) or (E)(1)(g) of this rule, or any customer who moves within the aggregation boundaries where the electric utility considers the customer that is moving to be a new customer.
 - (9) Disclosure of any credit and/or deposit policies and requirements.
 - (10) Disclosure of any limitations or conditions on customer acceptance into the aggregation.
 - (11) A description of the process and associated time period for customers to opt out of the aggregation. The process shall include provisions for customers to return a postcard or similar notice to the governmental aggregator or its agent. The process may include, in addition, other opt-out methods, such as telephonic or internet notice, provided that these alternative methods allow for verification of a customer's election to opt out of the aggregation. The time period for a customer to choose to opt out of the aggregation shall extend at least twenty-one days from the date of the postmark on the written notice. If a customer's return postcard or notice is postmarked before the opt-out deadline has elapsed, the customer shall be deemed to have opted out of the aggregation.
 - (12) A local or toll free telephone number, with the available calling hours, that customers may call with questions regarding the formation or operation of the aggregation.
- (B) At least every three years from the establishment of its governmental aggregation program, a governmental aggregator shall provide notice to all customers served by the governmental aggregation of their right to opt out of the aggregation and take service pursuant to the electric utility's standard service offer without penalty. This notice shall follow the procedures established for the initial opt-out notice set forth in this rule and shall prominently disclose to customers all changes to the terms and conditions associated with the aggregation. The governmental aggregator shall not send an opt-out notice to the same customer account during

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the period covered by the aggregation where such customer account has previously opted out.

- (C) No governmental aggregator or electric services company serving a governmental aggregation may impose any terms, conditions, fees, or charges on any customer served by a governmental aggregation unless the particular term, condition, fee, or charge was clearly disclosed to customers at the time the customer chose not to opt out of the aggregation.
- (D) List of eligible governmental aggregation customers.
 - (1) To assist in the preparation and dissemination of required opt-out notices, a governmental aggregator that is certified by the commission shall request that an electric utility provide, for all customers residing within the governmental aggregator's boundaries, including those customers who have opted off the pre-enrollment list, the following information:
 - (a) An updated list of names, addresses, account numbers, rate codes, percentage of income payment plan codes, load data, and other related customer information, consistent with the information that is provided to other CRES providers.
 - (b) An identification of customers who are currently in contract with an electric services company or in a special arrangement with the electric utility.
 - (c) On a best efforts basis, an identification of mercantile customers.
 - (2) The governmental aggregator shall use the list of eligible aggregation customers to distribute its opt-out notices within thirty calendar days of the date the list is received from the electric utility.
 - (3) The governmental aggregator shall remove from its list of eligible aggregation customers the accounts of customers who appear on the commission's "do not aggregate" list sixty calendar days prior to the distribution of its opt-out notice.
 - (4) The governmental aggregator shall not, without the customer's consent or an appropriate order, disclose or use for any purpose, other than formation and operation of its aggregation, a customer's account number, social security number, or any information regarding customers who opted off of an electric utility's pre-enrollment list. Before a governmental aggregator releases any customer account number, service delivery identification number, or any information related to a customer who has opted off of an electric utility's pre-enrollment list for any purpose other than those specified in this rule, unless

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the release is pursuant to a court or commission order, the governmental aggregator shall obtain the customer's written consent or electronic authorization. Before a governmental aggregator releases a customer's social security number for any purpose other than those specified in this rule, unless the release is pursuant to a court order, the governmental aggregator shall obtain the signature of the customer on a written release. The release shall be on a separate form. The release shall be clearly identified on its face as a release of personal information and all text appearing on the release shall be in at least sixteen-point type. The following statement shall appear prominently on the release, just prior to the signature, in type darker and larger than the type in surrounding sentences: "I realize that under the rules and regulations of the public utilities commission of Ohio, I may refuse to allow (name of aggregator) to release the information set forth above. By my signature, I freely give (name of aggregator) permission to release the information designated above." The information that the governmental aggregator seeks to release shall be specified on the form. Forms requiring a customer to circle or to check off preprinted types of information to be released may not be used.

(E) Notice of governmental aggregation and opt-out notice.

- (1) Each governmental aggregator shall ensure that only eligible customers are included in its aggregation. For purposes of this rule, the following customers are not eligible and shall not be included in an aggregation:
 - (a) A customer that is not located within the governmental aggregator's boundaries.
 - (b) A customer who appears on the commission's "do not aggregate" list.
 - (c) A customer that has opted out of the aggregation.
 - (d) A customer in contract with a certified electric services company other than the current supplier of the governmental aggregation.
 - (e) A customer that has a special arrangement with the electric utility.
 - (f) A mercantile customer that has not provided affirmative consent to join the aggregation.
 - (g) A customer who enrolls in the percentage of income payment plan pursuant to section 4928.52 of the Revised Code.
- (2) If accounts of customers who appear on the commission's "do not aggregate" list, accounts from outside the governmental aggregator's governmental

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boundaries, accounts of customers who have opted out of the aggregation, accounts of customers in contract with an electric services company, accounts of customers with a special arrangement under Chapter 4901:1-38 of the Administrative Code, or accounts of mercantile customers who did not opt into the governmental aggregation are switched to the governmental aggregation, the governmental aggregator shall promptly inform the customer and take all necessary actions to have the customer switched back to the customer's former service provider. In addition, if the customer's former rate was less than the rate charged by the governmental aggregator, then the governmental aggregator shall reimburse the customer the difference between the customer's former rate and the governmental aggregator's rate multiplied by the customer's usage during the time that the customer was served by the governmental aggregator.

- (3) If a customer is enrolled in a governmental aggregation program at the time the customer first appears on the "do not aggregate" list, the governmental aggregator shall remove the customer from the governmental aggregation program at the next opt-out opportunity that is available to the customer under section 4928.20 of the Revised Code.
- (4) If a mercantile customer was enrolled in an opt-out governmental aggregation program that the mercantile customer subsequently became ineligible for, the governmental aggregator shall remove the mercantile customer from the governmental aggregation program at the next opt-out opportunity that is available to the customer under section 4928.20 of the Revised Code unless that mercantile customer affirmatively consents to remain in the governmental aggregation program.
- (F) The governmental aggregator shall docket with the commission's docketing division the final opt out and any supplemental opt outs no more than thirty days but no less than ten days prior to sending the opt outs to customers. The notice to the commission shall include the beginning and ending dates of the twenty-one day opt-out period and the identification of the selected CRES provider.
- (G) Upon its election for its customers to not receive standby service from the electric utility pursuant to the electric utility's approved electric security plan for those customers who return to the electric utility during the governmental aggregation program, a governmental aggregator shall file written notice with the commission and the electric utility. Such notice shall explain the process that the governmental aggregator will use to notify customers, including a description of the potential impact on customers in the aggregation program.

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4901:1-21-18 Consolidated billing requirements.

- (A) This rule applies to a competitive retail electric service (CRES) provider that issues customers a consolidated electric bill that includes both electric utility and CRES provider charges for electric services. Nothing in this rule affects the obligations of the electric utility to provide disconnection notices.
- (B) A supplier agreement between an electric utility and a CRES provider must provide that if the CRES provider collects customer payments on behalf of the electric utility, the customer's liability to the electric utility ceases to the extent of the payment made and applicable to the customer's account.
- (C) Consolidated bills shall be accurate, rendered at monthly intervals, and shall contain clear and understandable form and language. All consolidated customer bills issued by or on behalf of an electric utility and a CRES provider must include at least the following information:
 - (1) The customer's name, billing address, and service address.
 - (2) The electric utility's twenty-four hour, local or toll-free number for reporting service emergencies.
 - (3) The dates of the service period covered by the bill.
 - (4) Current electric charges, separated from gas charges, if these charges appear on the same bill, but only to the extent that the biller provides both electric and gas services.
 - (5) Applicable billing determinants: beginning meter read, ending meter read, demand meter read, multipliers, consumption, and demand.
 - (6) Identification of estimated bills.
 - (7) Any nonrecurring charge(s).
 - (8) Net-metered usage for customer generators, if applicable.
 - (9) Each charge for nontariffed and/or nonregulated service or product, if applicable, and the name and toll-free number of each provider of such service(s).
 - (10) Amount due for previous billing period.

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- (11) Total payments, late payment charges or gross/net charges, and total credits applied during the billing period.
 - (12) Total consolidated amount due and payable, or, if applicable, the total consolidated budget bill amount.
 - (13) Due date for payment to keep the account current. The due date for residential bills shall not be less than fourteen calendar days from the date of postmark. For residential bills being issued from outside the state of Ohio the due date shall not be less than twenty-one calendar days.
 - (14) Name and address of company to whom payments should be made.
 - (15) The following notice:

"If your complaint is not resolved after you have called your electric supplier and/or your electric utility, or for general utility information, residential and business customers may contact the public utilities commission of Ohio (PUCO) for assistance at 1-800-686-7826 (toll free) from eight a.m. to five p.m. weekdays, or at <http://www.puco.ohio.gov>. Hearing or speech impaired customers may contact the PUCO via 7-1-1 (Ohio relay service).

The Ohio consumers' counsel (OCC) represents residential utility customers in matters before the PUCO. The OCC can be contacted at 1-877-742-5622 (toll free) from eight a.m. to five p.m. weekdays, or at <http://www.pickocc.org>."
 - (16) An explanation of codes and abbreviations used.
 - (17) At a minimum, definitions for the following terms, or like terms used by the company, if applicable: customer charge, delivery charge, estimated reading, generation charge, kilowatt hour (kWh), shopping incentive or shopping credit, late payment charge, and transition charge.
 - (18) The price-to-compare for residential bills and a notice that such customers can obtain a written explanation of the price-to-compare from their electric utility.
- (D) In addition to the information required pursuant to paragraph (C) of this rule, each consolidated bill issued must include, in that portion of the bill which details the charges from the electric utility, at least the following information:
- (1) Electric utility account number.
 - (2) Applicable rate schedule.

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- (3) A numerical statement of the customer's historical consumption for each of the preceding twelve months, and both the total and average consumption for such twelve-month period.
 - (4) Specific tariffed charges to the extent applicable: customer charge, delivery charge, transition charge, shopping incentive or shopping credit, and other conceptually similar tariffed charges.
 - (5) If the customer is on a budget plan with the electric utility only, the monthly budget amount and current balance of electric utility account.
 - (6) Current charges.
 - (7) The electric utility's local or toll-free number and address for questions and complaints.
- (E) In addition to the information required pursuant to paragraph (C) of this rule, each consolidated bill issued must include, in that portion of the bill which details the charges from the CRES provider, at least the following information:
- (1) Customer's CRES account number, if different from the electric utility account number.
 - (2) To the extent applicable, itemization for each charge including: for fixed-price offers, the unit price per kWh for competitive service; for all other offers for electric generation service, an explanation of how the rate is derived; and any other information the customer would need to recalculate the bill for accuracy.
 - (3) If the customer is on a budget plan with the CRES provider only, the monthly budget amount and the current balance of the CRES account.
 - (4) Current charges.
 - (5) A highlighted notice of any change in rates, terms, or conditions appearing on the first two consecutive bills following the occurrence of any such changes and a clear explanation of each change.
 - (6) For flat-monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract.
- (F) Consolidated bill format. Any new consolidated bill format proposed by a CRES provider shall be filed with the commission for approval. If an application for a consolidated bill format is not acted upon by the commission within forty-five

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days after it is filed, the consolidated bill format shall be deemed approved on the forty-sixth day after filing.

(G) Transfer of customer billing information.

- (1) The non-billing electric utility shall furnish the applicable required bill content information to the billing party in a timely manner and in a mutually agreed upon electronic format for inclusion in the consolidated customer bill.
- (2) The billing CRES provider shall include in the consolidated bill all required bill content information furnished by the nonbilling electric utility.
- (3) An entity ordered by the commission to provide any bill content, message, insert, or notice remains responsible to provide such information to its customers, although the information may be provided through the consolidated bill.

(H) Partial payment priority.

- (1) A customer's partial payment shall be credited in the following order:
 - (a) Billed and past due CRES provider charges or, if applicable, CRES provider payment arrangement or past due CRES provider budget billing.
 - (b) Billed and past due electric utility distribution, standard offer generation, and transmission charges or, if applicable, electric utility payment arrangement or past due electric utility budget billing.
 - (c) Billed and due current electric utility distribution and transmission charges or current electric utility budget billing.
 - (d) Billed and due current CRES provider charges or current CRES provider budget billing.
 - (e) Other past due and current nonregulated charges, excluding CRES charges.
- (2) Exceptions to the partial payment priority.
 - (a) Payments in full of the undisputed amount related to a bona fide dispute do not constitute partial payments. Payments made on accounts for which there is a bona fide dispute shall be credited to the undisputed portion of the account.

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- (b) If a customer pays an agreed-upon electric utility and/or CRES budget payment amount, then that payment shall be considered payment in full for the current bill.
- (I) Upon the customer's switch from a CRES provider, the billing party shall identify for the customer and state on the bill as of what date the billing party will no longer remit payments to the previous CRES provider and any outstanding balance due to the previous CRES provider.
- (J) Any CRES provider wishing to issue consolidated billing statements online shall comply with the following guidelines:
 - (1) A customer shall not be required to use online billing.
 - (2) No enrollment or usage fees shall be assessed to a customer who chooses to receive bills and/or customer information online.
 - (3) The online billing statement shall include all requirements listed in paragraphs (C), (D), and (E) of this rule.
 - (4) The CRES provider shall maintain a secure and encrypted site that is to be accessed only by the customer of record after completing a secure registration process.
 - (5) Any fees to accept online payments shall be clearly disclosed in payment window(s).
 - (6) Any payment made online shall be treated as a payment made at the company's business office and shall be posted to the account in accordance with paragraph (E) of rule 4901:1-21-14 of the Administrative Code. The time needed to post the payment shall be clearly stated.
 - (7) If a customer chooses to use online billing, the customer shall not be restricted to making payments online in the future. All payment methods shall continue to be available to the customer.

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4901:1-24-01 Definitions.

As used in this chapter:

- (A) "Abandonment" means ceasing to provide competitive retail electric service(s) to one or more classes of customers in one or more electric distribution service territories prior to the expiration of customers' contracts.
- (B) "Aggregation" means combining the electric load of multiple retail customers through an agreement with the customers or formation of a governmental aggregation pursuant to section 4928.20 of the Revised Code for the purposes of purchasing retail electric generation service on an aggregated basis.
- (C) "Aggregator" means a person, certified by the commission, who contracts with customers to combine the customers' electric load for the purpose of purchasing retail electric generation service on an aggregated basis. The term, as used in this chapter, does not include a governmental aggregator.
- (D) "Applicant" means a person who files an application for certification or certification renewal under this chapter.
- (E) "Application form" means a form, approved by the commission, that an applicant seeking certification or certification renewal as a competitive retail electric service provider shall file with the commission as set forth in this chapter.
- (F) "Billing and collection agent" shall have the meaning set forth in division (A)(2) of section 4928.01 of the Revised Code.
- (G) "Certified territory" shall have the meaning set forth in division (A)(3) of section 4928.01 of the Revised Code.
- (H) "Competitive retail electric service" (CRES) has the meaning set forth in division (A)(4) of section 4928.01 of the Revised Code, and includes the services provided by retail electric generation providers, power marketers, power brokers, aggregators, and governmental aggregators.
- (I) "Commission" means the public utilities commission of Ohio.
- (J) "CRES provider" means a person or entity, under certification by the commission who supplies or offers to supply a CRES.

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- (K) "Electric cooperative" shall have the meaning set forth in division (A)(5) of section 4928.01 of the Revised Code.
- (L) "Electric distribution utility" shall have the meaning set forth in division (A)(6) of section 4928.01 of the Revised Code.
- (M) "Electric services company" shall have the meaning set forth in division (A)(9) of section 4928.01 of the Revised Code.
- (N) "Electric utility" shall have the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (O) "Filing under seal" means personally delivering to the commission's docketing division a sealed envelope containing information intended to be kept proprietary and confidential. This action must be accompanied by the filing and docketing of a "motion for protective order," pursuant to rule 4901-1-24 of the Administrative Code.
- (P) "Governmental aggregator" shall have the meaning set forth in division (A)(13) of section 4928.01 of the Revised Code.
- (Q) "Mercantile customer" shall have the meaning set forth in division (A)(19) of section 4928.01 of the Revised Code.
- (R) "Person" shall have the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.
- (S) "Power broker" means a person, certified by the commission, who provides power brokerage.
- (T) "Power brokerage" means assuming the contractual and legal responsibility for the sale and/or arrangement for the supply of retail electric generation service to a retail customer in this state without taking title to the electric power supplied.
- (U) "Power marketer" means a person, certified by the commission, who provides power marketing services.
- (V) "Power marketing" means assuming the contractual and legal responsibility for the sale and provision of retail electric generation service to a retail customer in this state and having title to electric power provided at some point during the transaction.

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- (W) "Retail electric generation provider" means a person, certified by the commission, who provides retail electric generation service in this state.
- (X) "Retail electric generation service" means the provision of electric power to a retail customer in this state through facilities provided by an electric distribution utility and/or a transmission entity in this state. The term encompasses the services performed by retail electric generation providers, power marketers, and power brokers, but does not encompass the service provided by an electric utility pursuant to sections 4928.141, 4928.142, and 4928.143 or division (D) of section 4928.35 of the Revised Code.
- (Y) "Service agreement" means the initial agreement and any amendments or supplements thereto entered into by the applicant and any provider of a service necessary to transport, schedule, and deliver CRES to the retail customer (e.g., transmission service, ancillary services, scheduling coordination, and distribution service).
- (Z) "Small commercial customer" means a commercial customer that is not a mercantile customer.
- (AA) "Staff" means the commission staff or its authorized representative.

4901:1-24-02 Purpose and scope.

Under the rules in this chapter:

- (A) Any electric utility, electric services company, electric cooperative, or governmental aggregator which intends to offer or provide a competitive retail electric service (CRES) to consumers in this state shall obtain a certificate to operate from the commission prior to commencing operations.
- (B) An electric cooperative or governmental aggregator that is a municipal electric utility which provides a customer both a CRES and a ~~non-CRES non-CRES~~ through transmission or distribution facilities it solely or jointly owns or operates is not required to obtain a certificate.
- (C) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

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- (D) These rules do not apply to a billing and collection agent if it is a fully independent agent, not affiliated with or otherwise controlled by an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent that the agent is under contract with such utility, company, cooperative, or aggregator solely to provide billing and collection for retail electric service on behalf of the utility, company, cooperative, or aggregator. Nothing in this rule exempts such utility, company, cooperative, or aggregator from liability for the acts of its billing and collection agents.

4901:1-24-03 General prohibitions.

- (A) No person shall offer, contract, or provide a competitive retail electric service in this state without a valid certificate.
- (B) Nothing in this rule is intended to prohibit a person from conducting market research or advertisements designed solely to ascertain and raise customer awareness and/or improve name recognition.
- (C) Enforcement of any rule in this chapter or commission order adopted thereunder will be conducted in accordance with Chapter 4901:1-23 of the Administrative Code.

4901:1-24-04 Expired certificates.

Any CRES provider or governmental aggregator that fails to file an application for certification renewal pursuant to rule 4901:1-24-09 of the Administrative Code prior to the expiration date on the certificate must file a new application for certification in a new case and may request, no later than sixty days after the expiration date on the certificate, to extend its previous certificate during the pendency of the new application review. If the motion is filed in conformance with rule 4901:1-24-07 or 4901:1-24-13 of the Administrative Code, it shall be deemed automatically approved unless, within three business days of filing, the commission or an attorney examiner appointed by the commission rules otherwise.

4901:1-24-05 Application content.

- (A) An application for certification shall be made on forms supplied by the commission. The application forms shall provide for sufficient information to

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enable the commission to assess an applicant's managerial, financial, and technical capability to provide the service it intends to offer and its ability to comply with commission rules or orders adopted pursuant to Chapter 4928. of the Revised Code.

- (B) The applicant shall complete the appropriate application form (e.g., retail electric generation provider, aggregator, power broker, or governmental aggregator) in its entirety and supply all required attachments, affidavits, and evidence of capability specified by the form at the time an application is filed.
- (1) Retail electric generation providers and power marketers shall file general, technical, managerial, and financial information as set forth in the application. This information includes but is not limited to:
- (a) Ownership and organizational descriptions.
 - (b) Managerial experience and capabilities.
 - (c) Credit ratings and relevant financial information including financial statements, financial arrangements, and forecasted financial statements.
 - (d) Technical ability and experience in scheduling and providing power under contract agreements.
 - (e) 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 or findings against applicant or past rulings finding against the applicant.
- (2) Aggregators and power brokers shall file general, managerial, and financial information as set forth in the application. This information includes but is not limited to:
- (a) Ownership and organizational descriptions.
 - (b) Managerial experience and capabilities.
 - (c) Credit ratings and relevant financial information including financial statements, financial arrangements, and forecasted financial statements.

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- (d) Financial capability as depicted on publicly available information and applicable credit ratings.
 - (e) 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 or findings against the applicant, or past rulings finding against the applicant.
- (3) Governmental aggregators shall file general information as set forth in the application. This information includes but is not limited to:
 - (a) Copies of its 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 and in accordance with the application instructions, the required number of conformed copies, including all supporting attachments and affidavits, with the commission's docketing division.
 - (1) The date that the commission's docketing division stamps an application received shall serve as the official filing date with the commission.
 - (2) In accordance with rule 4901:1-24-10 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 any competitive retail electric service to a customer in this state. The affidavit shall be accompanied by an explanation as to why such information is not available for inclusion with the application.
- (D) All CRES providers 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.

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4901:1-24-06 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:

- (A) The information provided by the applicant on its application form and supporting attachments is complete, true, and accurate to the best knowledge of the applicant.
- (B) The applicant will timely file an annual report of its intrastate gross receipts, gross earnings, and sales of kilowatt-hours of electricity pursuant to division (A) of section 4905.10, division (A) of section 4911.18, and division (F) of section 4928.06 of the Revised Code.
- (C) The applicant will timely pay any assessment made pursuant to sections 4905.10, 4911.18, or division (F) of section 4928.06 of the Revised Code.
- (D) The applicant will comply with all applicable commission rules or orders adopted pursuant to Chapter 4928., Title XLIX of the Revised Code.
- (E) The applicant will cooperate with the commission and its staff in the investigation of any consumer complaint regarding any service offered or provided by the applicant.
- (F) The applicant will comply with section 4928.09 of the Revised Code regarding consent to the jurisdiction of Ohio courts and the service of process.

4901:1-24-07 Motions.

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

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4901:1-24-08 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 a protective order covering information not covered under paragraph (A) of this rule. If the motion is filed in conformance with rule 4901:1-24-07 of the Administrative Code, it shall be automatically approved on the thirty-first day after the date of filing and the information shall be afforded protective treatment for a period of six years from the date of the certificate for which the information is being provided, unless the commission or an attorney examiner appointed by the commission rules otherwise.
- (C) At the expiration of the six-year period provided for in paragraphs (A) and (B) of this rule, the information will be automatically released into the open record.
- (D) An applicant wishing to extend a protective order beyond the six-year time period provided for in paragraphs (A) and (B) of this rule must comply with paragraph (F) of rule 4901-1-24 of the Administrative Code.

4901:1-24-09 Certification renewal.

- (A) No less than thirty and no more than sixty calendar days prior to the expiration date indicated on the competitive retail electric service provider's certificate, the provider shall file an application with the commission for certification renewal on forms supplied by the commission.
- (B) Any renewal application filed fewer than thirty calendar days prior to the expiration date indicated on the certificate, but no later than the expiration date on the certificate, shall be filed with a motion requesting an extension of the certificate. If the motion is filed in conformance with rules 4901:1-24-07 or 4901:1-24-13 of the Administrative Code, it shall be deemed automatically approved unless, within three business days of its filing, the commission or an attorney examiner appointed by the commission rules otherwise.
- (C) The applicant shall, as instructed by the renewal form, update the information supplied with an applicant's initial certification application.

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4901:1-24-10 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 4928.08 of the Revised Code on the thirty-first day after the official filing date.
- (1) Upon good cause shown, the commission, or an attorney examiner appointed by the commission, may suspend an application.
- (2) If the commission, or an attorney examiner appointed by the commission, has acted to suspend an application, the commission will:
- (a) Docket its decision, and notify the applicant of the reasons for such suspension and may direct the applicant to furnish any additional information as the commission deems necessary to evaluate the application.
- (b) Act to approve or deny the application within ninety calendar days from the date that the application was suspended.
- (c) At its discretion, set the matter for hearing.
- (B) In evaluating an application, the commission will consider the information contained in the applicant's application, supporting attachments and evidence, and recommendations of its staff.
- (C) The commission will act to approve an application if it finds that all of the following are true:
- (1) The applicant is managerially, financially, and technically fit and capable of performing the service it intends to provide.
- (2) The applicant is managerially, financially, and technically fit and capable of complying with all applicable commission rules and orders.
- (3) The applicant is able to provide reasonable financial assurances sufficient to protect electric distribution utility companies and the customers from default.
- (D) When the commission approves an application, it will notify the applicant that its application has been approved and will issue the applicant a numbered certificate that specifies the service(s) for which the applicant is certified to provide and the dates for which the certificate is valid.

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

4901:1-24-11 Material changes to business operations.

- (A) Competitive retail electric service (CRES) providers shall inform the commission of any material change to the information supplied in a certification or certification renewal application within thirty calendar days of such material change.
 - (1) A CRES provider shall file such notice under the docket number assigned to the CRES provider's initial certification or most recent certification renewal application, whichever is the most recent.
 - (2) After notice and an opportunity for a hearing, the commission may suspend, rescind, or conditionally rescind a CRES provider's certificate if it determines that the material change will adversely affect the CRES provider's fitness or ability to provide the services it is certified to provide.
- (B) Material changes to the information contained in or supplied with a certification or certification renewal application include, but are not limited to, the following:
 - (1) Any significant change in ownership (being an ownership interest of five per cent or more) of the applicant or CRES provider.
 - (2) An affiliation or change in affiliation with an electric utility in this state.
 - (3) Retirement or other long-term changes to the operational status of generation resources relied upon by the provider to provide retail electric generation service.
 - (4) Revocation, restriction, or termination of any interconnection or service agreement with a transmission entity or electric utility relied upon by a CRES provider to provide retail electric generation service.
 - (5) The applicant or CRES provider's bond rating falls below BBB as reported by Standard & Poor's, or below Baa3 as reported by Moody's Investors Service.

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- (6) The applicant or CRES provider 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 CRES provider's fitness or ability to provide service in this state.
- (8) Any change in the contact person, business address, or telephone/fax number for staff use in investigating complaints.
- (9) Any change in the contact person, business address, or telephone/fax number for staff use in investigating regulatory or emergency matters.
- (10) Any change in the business address, or toll-free telephone/fax number for customer service and complaints.
- (11) Any change in the applicant's name or any use of a fictitious name.

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

- (A) A competitive retail electric service (CRES) provider shall not transfer its certificate to any person without prior commission approval.
 - (1) A CRES provider may apply for commission approval to transfer its certificate by filing a certificate transfer application.
 - (2) A transfer application shall be automatically approved on the thirty-first day after filing, unless the commission acts to suspend or reject the application.
- (B) A CRES provider shall not abandon the service(s) it provides under a certificate without filing an abandonment application and without commission approval. The CRES provider shall fulfill the terms of all existing contracts with customers or assign such contracts to another CRES provider prior to abandoning service.
 - (1) Abandonment applications shall be filed at least ninety calendar days prior to the effective date on which the CRES provider will cease providing service. The application shall include copies of any notices provided pursuant to paragraphs (B)(2), (B)(3), and (B)(4) of this rule.
 - (2) At least ninety calendar days prior to abandoning service, a CRES provider shall provide written notice to each electric utility in whose certified territory the CRES provider operates of its intent to cease providing service. That notice

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shall reflect that the CRES provider has filed an abandonment application with the commission.

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

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

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

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frames, that the CRES provider must take in order to have the suspension lifted.

- (2) The CRES provider shall continue to provide all services it is obligated to provide under contract to its existing customers but it shall not advertise, offer, or contract to provide any new CRES to existing customers nor advertise, offer, or contract to provide any CRES to potential customers during the suspension, unless the commission orders otherwise. Such suspensions and related prohibitions against advertising, offering, or entering into contracts apply statewide unless otherwise ordered by the commission.

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

The commission will delineate the specific conditions that the CRES provider must meet and establish a date by which the conditions must be met in order for the CRES provider to avoid permanent rescission of its certificate. Unless otherwise ordered by the commission, the CRES provider shall continue to provide all services it is obligated to provide under contract to its existing customers, but it shall not advertise, offer, or contract to provide any new CRES to existing customers nor advertise, offer, or contract to provide any CRES to potential customers during the pendency of the conditional rescission.

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

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

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

- (E) Reasons that the commission may suspend, rescind, or conditionally rescind a CRES provider's certificate include, but are not limited to:
- (1) A CRES provider's failure to timely pay any assessment made pursuant to sections 4905.10, 4911.18, or division (F) of section 4928.06 of the Revised Code.
 - (2) A CRES provider's failure to timely file an annual report of its intrastate gross receipts and sales of kilowatt-hours of electricity pursuant to sections 4905.10, 4911.18, or division (F) of section 4928.06 of the Revised Code as directed by commission rule or order.
 - (3) A finding by the commission that a CRES provider has materially underreported its intrastate gross receipts and/or sales of kilowatt-hours on reports required by rule 4901:1-24-07 of this chapter.
 - (4) A finding by the commission that any information reported to the commission subsequent to granting a certificate adversely affects a CRES provider's fitness or capability to provide any service covered by its certificate.
 - (5) A finding by the commission that a CRES provider deliberately omitted information or knowingly provided false information on a certification or certification renewal application, including supporting attachments.
 - (6) A finding by the commission that a CRES provider has provided CRES to a customer without being certified by the commission to provide such service.
 - (7) A finding by the commission that a CRES provider has violated any applicable commission rule or order adopted pursuant to Chapter 4928. of the Revised Code.
 - (8) A finding by the commission that a CRES provider has failed to consent to the jurisdiction of the courts of this state or has failed to designate an agent to accept service of process pursuant to section 4928.09 of the Revised Code.
 - (9) A finding by the commission that a CRES provider has engaged in an anticompetitive act.

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- (10) A finding that a CRES provider has failed to maintain appropriate default security or has otherwise failed in a material way to adhere to requirements contained in an electric utility's tariff governing supplier requirements approved by the commission.
- (11) A finding by the commission that a CRES provider has failed to comply with state laws or rules designed to protect consumers in this state or has otherwise engaged in any fraudulent, misleading, or unfair practice.

4901:1-24-14 Financial security.

- (A) Pursuant to a tariff filed with the commission in accordance with rule 4901:1-10-29 of the Administrative Code, an electric utility may require a retail electric generation service provider to issue and maintain financial security with the electric utility to protect the electric utility in the event that the retail electric generation service provider fails, in whole or in part, to deliver contracted retail generation service to a customer for which the electric utility supplied to the customer in its capacity as default supplier.
- (B) An electric utility may require a retail electric generation service provider to furnish financial and other information contained in its tariff to determine the type and/or amount of the financial security required for compliance with paragraph (A) of this rule.
- (C) If a retail electric generation service provider fails to maintain sufficient financial security to protect an electric utility from default by the retail electric generation service provider, the electric utility may apply for relief at the commission. In accordance with rule 4901:1-24-13 of the Administrative Code, the commission, upon its own motion or upon complaint, may suspend, rescind, or conditionally rescind a retail electric generation service provider's certificate for failure to maintain sufficient financial security at any electric utility as required by this rule.

4901:1-24-15 Regulatory assessments.

- (A) In accordance with sections 4905.10, 4911.18, and division (F) of section 4928.06 of the Revised Code, each competitive retail electric service (CRES) provider is subject to an annual assessment based upon its intrastate gross receipts or gross earnings (collectively "gross revenue") associated with the provision of each CRES which it is certified to provide.

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- (B) Each CRES provider that provides retail electric generation service shall, in the manner and on the date specified by the commission or its staff, file an annual report of the gross revenue derived from its intrastate sales of kilowatt-hours of electricity. For the purpose of the report, sales of kilowatt-hours of electricity are deemed to occur at the meter of a retail customer.
- (C) Each CRES provider that provides a CRES(s) in addition to, or other than, retail electric generation service shall, in the manner and on the date specified by the commission or its staff, file an annual report of the intrastate gross revenue derived from its provision of such service(s). For the purpose of the report, sales of kilowatt-hours of electricity are deemed to occur at the meter of a retail customer.
- (D) Each CRES provider shall maintain detailed records to support the information provided pursuant to paragraphs (B) and (C) of this rule. Such records and information are subject to audit by the commission.
- (E) In instances where a CRES provider underreports its gross revenue, the commission may, in computing an assessment made pursuant to paragraph (A) of this rule, include any gross revenues that were underreported in a prior year. The commission shall also, in addition to any other penalty under the Revised Code, assess the provider interest on the amount underreported at the rate stated in section 1343.01 of the Revised Code.
- (F) A governmental aggregator may authorize its electric services company, or a designated agent, to file, on its behalf, any report required by this rule.

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

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

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