

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 4901:1-21) Case No. 12-1924-EL-ORD
and 4901:1-24 of the Ohio Administrative)
Code.)

SUPPLEMENTAL FINDING AND ORDER

The Commission finds:

- (1) R.C. 119.032 requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. At this time, the Commission is reviewing the competitive retail 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 - (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted;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) By Entry issued 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.
- (5) 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.
- (6) On November 7, 2012, the Commission issued Staff's proposed amendments 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 Energy 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.

- (7) Thereafter, by Finding and 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.
- (8) 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. On February 26, 2014, the Commission granted, in part, and denied, in part, applications for rehearing filed by RESA, FES, and IGS, and denied applications for rehearing filed by OPAE, Direct Energy, and the Consumer Groups. As a result of the granting of portions of several applications for rehearing, the Commission amended proposed Ohio Adm.Code 4901:1-21-06, 4901:1-21-11, 4901:1-24-04, and 4901:1-24-09.
- (9) Upon further review of amended proposed Ohio Adm.Code 4901:1-21-06, when considered in conjunction with proposed Ohio Adm.Code 4901:1-21-01, the Commission has identified an unintended result. In an effort to harmonize provisions regarding consumer protections in the CRES rules with the CRNGS rules under consideration in the *CRNGS Rules Case*, the

Commission's Staff proposed revisions to both the CRES and CRNGS rules to require third-party verification (TPV) following direct, door-to-door enrollment of residential and small commercial customers. Under the CRNGS rule, proposed Ohio Adm.Code 4901:1-29-01, which incorporates R.C. 4929.01, a small commercial customer is defined as a nonresidential customer using five hundred or less thousand cubic feet of natural gas per year, and with fewer than three locations within or outside of Ohio. Contrastingly, under the CRES rule, proposed Ohio Adm.Code 4901:1-21-01, which incorporates R.C. 4928.01, a small commercial customer is defined as a nonresidential customer consuming seven hundred thousand or less kilowatt hours per year, and possessing no more than one facility within or outside of Ohio. Consequently, the modification to Ohio Adm.Code 4901:1-21-06 to require TPV for small commercial customers has unintentionally captured much larger commercial customers than were intended to be included in this rule.

In light of the unintended result when examining the definition of small commercial customer pursuant to Ohio Adm.Code 4901:1-21-01, the Commission finds that proposed Ohio Adm.Code 4901:1-21-06(D)(1)(h) should be modified to include only residential customers solicited door-to-door. The Commission believes that this amendment comports with R.C. 119.032(C), which requires the Commission to determine whether rules changes have an adverse impact on businesses and whether any such adverse impact has been eliminated or reduced.

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

It is, therefore,

ORDERED, That proposed Ohio Adm.Code 4901:1-21-06, is amended as set forth in Finding (9). It is, further,

ORDERED, That amended Ohio Adm.Code 4901:1-21-06, as attached to the Order and revised by this Supplemental Finding and Order, 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 shall be in compliance with R.C. 119.032. It is, further,


ORDERED, That, in accordance with finding (10), 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,

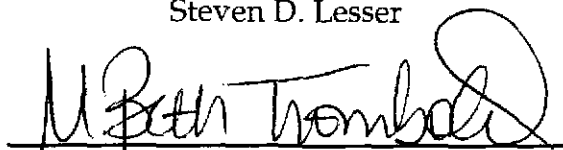
ORDERED, That a copy of this Supplemental Finding and Order be served upon the Electric-Energy List-Serve.

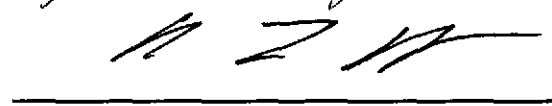
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser

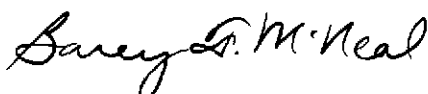

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Secretary

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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.
 - (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

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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 to residential customers 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.

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(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.

(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 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

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- (a) To enroll a residential or small commercial customer telephonically, a CRES provider shall make a date and time stamped audio recording verifying before the completion of the telephone call, at a minimum, all of the following:
- (i) The CRES provider's or independent third-party verifier's identity and the exact purpose of the call
 - (ii) A verbal statement and the customer's acknowledgement that the call is being recorded.
 - (iii) A verbal statement and the customer's acknowledgement that the CRES provider is not the customer's current electric utility company and that the customer may choose to remain with the electric utility company or enroll with another CRES provider.
 - ~~(iii)-(iv)~~ (iv) A verbal question and the customer's acknowledgement that the customer wishes to enroll with the provider.
 - ~~(iv)-(v)~~ (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)~~ (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.

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- (f) Any material limitations, exclusions, contract contingencies, or conditions precedent.
 - (g) Any fees or costs to the customer.
 - (h) Whether or not the CRES provider offers budget billing for the generation portion of the bill.
 - ~~(h)~~—(i) If applicable, whether the provider will perform a credit check and require a deposit, including the amount.
 - ~~(i)~~—(j) Who will bill for the provider's service(s).
 - ~~(vi)~~—(vii) A verbal statement and the customer's acknowledgement that the provider will, within one ~~calendar~~ business day, send the customer a written contract that details the terms and conditions that were summarized in the telephone call.
 - ~~(vii)~~—(viii) A verbal statement and the customer's acknowledgement 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:

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- (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.
 - (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

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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.
- (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.

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- (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.