

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF OHIO ADM.CODE CHAPTERS
4901:1-21, 4901:1-23, 4901:1-24, 4901:1-
27, 4901:1-28, 4901:1-29, 4901:1-30,
4901:1-31, 4901:1-32, 4901:1-33, AND
4901:1-34 REGARDING RULES
GOVERNING COMPETITIVE RETAIL
ELECTRIC SERVICE AND COMPETITIVE
RETAIL NATURAL GAS SERVICE.

CASE NOS. 17-1843-EL-ORD
17-1844-EL-ORD
17-1862-EL-ORD
17-1845-GA-ORD
17-1846-GA-ORD
17-1847-GA-ORD
17-1848-GA-ORD
17-1849-GA-ORD
17-1850-GA-ORD
17-1851-GA-ORD
17-1852-GA-ORD

ENTRY

Entered in the Journal on September 8, 2021

I. SUMMARY

{¶ 1} The Commission directs that all interested persons or entities wishing to file comments or reply comments with the Commission regarding the competitive retail electric service and competitive retail natural gas service rules in Ohio Adm.Code Chapters 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34 do so no later than October 8, 2021, and October 22, 2021, respectively.

II. DISCUSSION

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require 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 and competitive retail natural gas service (CRNGS) rules in Ohio Adm.Code Chapters 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34.

{¶ 3} R.C. 106.03(A) requires that the Commission determine whether the rules:

- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
- (b) Need amendment or rescission to give more flexibility at the local level;
- (c) Need amendment or rescission to eliminate unnecessary paperwork;
- (d) Incorporate a text or other material by reference and, if so, whether the citation accompanying the incorporation by reference would reasonably enable the Joint Committee on Agency Rule Review or a reasonable person to whom the rules apply to find and inspect the incorporated text or material readily and without charge and, if the rule has been exempted in whole or in part from R.C. 121.71 to 121.74 because the incorporated text or material has one or more characteristics described in R.C. 121.75(B), whether the incorporated text or material actually has any of those characteristics;
- (e) Duplicate, overlap with, or conflict with other rules;
- (f) Have an adverse impact on businesses, as determined under R.C. 107.52;
- (g) Contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and
- (h) Require liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

{¶ 4} Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in 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} On October 3, 2017, the Commission held a workshop in these proceedings to enable interested stakeholders to propose revisions to the rules in Ohio Adm.Code Chapters 4901:1-10,¹ 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34 for the Commission's consideration. Representatives of different interested stakeholders attended the workshop, with comments offered by several of the stakeholders.

{¶ 6} According to R.C. 121.95, a state agency, including the Commission, cannot adopt a new regulatory restriction unless it simultaneously removes two or more existing regulatory restrictions.

{¶ 7} In light of R.C. 121.95, only limited amendments are being proposed for this set of five-year rule reviews.

{¶ 8} Staff has evaluated the rules contained in these chapters. Following its review, Staff recommends the following amendments to the rules:

- (a) The amendments found within Ohio Adm.Code Chapter 4901:1-24 and portions of the amendments found within Ohio Adm.Code Chapter 4901:1-27 codify the waivers implemented in the June 3, 2020 Commission Entry issued in Case No. 20-1077-GE-WVR.

¹ Subsequently, in Case No. 17-1842-EL-ORD, the Commission proceeded separately with the five-year review of Ohio Adm.Code Chapter 4901:1-10. The case caption for these proceedings has been modified accordingly.

- (b) The amendments found within Ohio Adm.Code Chapter 4901:1-29 and the remaining portions of amendments found within Ohio Adm.Code Chapter 4901:1-27 reconcile the rule amendments made to Ohio Adm.Code Chapter 4901:1-13 in the most recent five-year rule review cases, Case Nos. 13-2225-GA-ORD and 19-1429-GA-ORD. These cases consolidated provisions relating to natural gas companies by moving them from the CRNGS rule chapters to the minimum gas service standards chapter, Ohio Adm.Code Chapter 4901:1-13. Accordingly, the proposed amendments remove these certain provisions from the CRNGS rule chapters to avoid duplication.

{¶ 9} Attached to this Entry are the proposed amendments to Ohio Adm.Code Chapters 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34 (Attachments A, C, E, G, I, K, M, O, Q, S, and U) and the BIAs (Attachments B, D, F, H, J, L, N, P, R, T, and V), which are also posted on the Commission's Docketing Information System (DIS) website at <http://dis.puc.state.oh.us>. To minimize the expense of these proceedings, the Commission will serve a paper copy of this Entry only. All interested persons are directed either to input one of the case numbers listed in the case caption above into the Case Lookup box in DIS to view the corresponding documents, or to contact the Commission's Docketing Division to request a paper copy.

{¶ 10} The Commission requests comments from interested persons to assist in the review required by R.C. 111.15 and R.C. 106.03. Comments should be filed, via electronic filing or in hard copy, by October 8, 2021. Reply comments should be filed by October 22, 2021. All interested persons are directed to file their comments in the case dockets for 17-1843-EL-ORD, et al.

III. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That all interested persons or entities wishing to file comments or reply comments with the Commission regarding the proposed rules do so no later than October 8, 2021, and October 22, 2021, respectively, and file these comments in the case dockets for 17-1843-EL-ORD, et al. It is, further,

{¶ 13} ORDERED, That a copy of this Entry, with the rules and the BIAs, be submitted to CSI, in accordance with R.C. 121.82. It is, further,

{¶ 14} ORDERED, That a copy of this Entry be sent to the electric-energy and gas-pipeline list-serves. It is, further,

{¶ 15} ORDERED, That a copy of this Entry be served upon all investor-owned electric utilities in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, all regulated gas and natural gas companies, all certified retail natural gas suppliers, the Ohio Consumers' Counsel, the Ohio Gas Association, the Ohio Petroleum Council, the Ohio Oil and Gas Association, and all other interested persons of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Dennis P. Deters

MJS/mef

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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) "Customer energy usage data" means data collected from a customer's meter, which is identifiable to a retail customer.
- (M) "Deposit" means a sum of money a CRES provider collects from a customer as a precondition for initiating service.
- (N) "Direct solicitation" means face-to-face solicitation of a customer initiated by a certified electric services company at a place other than the normal place of business of the provider.
- (O) "Distribution service" means the physical delivery of electricity to consumers through facilities provided by an electric distribution utility.
- (P) "Electric cooperative" shall have the meaning set forth in division (A)(5) of section 4928.01 of the Revised Code.
- (Q) "Electric distribution utility" shall have the meaning set forth in division (A)(6) of section 4928.01 of the Revised Code.
- (R) "Electric generation service" means retail electric generation service.
- (S) "Electric utility" shall have the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (T) "Environmental disclosure data" means both generation resource mix and environmental characteristics.
- (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.
- (V) "Governmental aggregator" shall have the meaning set forth in division (A)(13) 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.
- (X) "Net metering" shall have the meaning set forth in division (A)(31) of section 4928.01 of the Revised Code.

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- (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.
- (CC) "Power broker" means a person certified by the commission, who provides power brokerage.
- (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.
- (EE) "Power marketer" means a person, certified by the commission, who provides power marketing services.
- (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.
- (GG) "Residential customer" means a customer of a competitive retail electric service for residential purposes.
- (HH) "Retail electric service" shall have the meaning set forth in division (A)(27) of section 4928.01 of the Revised Code.
- (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.
- (JJ) "Small commercial customer" means a commercial customer that is not a mercantile commercial customer.

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

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

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

(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.

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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.

(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.

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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 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 contract offers, CRES providers shall furnish in a manner designated by the director of the service monitoring and enforcement department, at least one current offer for posting on the apples-to-apples chart within four calendar days of making such offers to Ohio customers.

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4901:1-21-04 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 three business days of its request.

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4901:1-21-05 Marketing, 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.

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.
- (B) A CRES provider's promotional and advertising material that is targeted for residential and small commercial customers shall be provided to the commission or its staff within three business 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.

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- (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 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.

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- (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 will lead the customer to believe that the CRES provider is soliciting on behalf of or is an agent of any entity other than the CRES provider.
- (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 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.

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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 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 enrolls the customer in the program.
 - (4) Until the Ohio 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. 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 the customer's transfer to the electric utility's standard offer service or the Ohio 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 development services agency pursuant to section 4928.54 of the Revised Code.
- (D) Residential and small commercial enrollment.

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(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.
- (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 seven calendar days to rescind the contract; and, (iii) the customer must contact the electric utility to rescind the contract.
- (f) The CRES provider shall not initiate 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 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

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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 TPV 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 TPV 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.

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- (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.
 - (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.
 - (iv) A verbal question and the customer's acknowledgement that the customer wishes to enroll with the provider.
 - (v) A verbal question and the customer's acknowledgement that the customer is the customer of record at the customer's electric utility or is authorized to switch providers by the customer of record.
 - (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.

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- (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.
 - (i) If applicable, whether the provider will perform a credit check and require a deposit, including the amount.
 - (j) Who will bill for the provider's service(s).
 - (vii) A verbal statement and the customer's acknowledgement that the provider will, within one business day, send the customer a written contract that details the terms and conditions that were summarized in the telephone call.
 - (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.
 - (ix) A toll-free telephone number the customer can call to cancel the contract.
 - (x) If applicable, a verbal request for and the customer's provision of the customer's electric utility account number.
 - (xi) A verbal request for and the customer's provision of the customer's mailing address.
 - (xii) A unique enrollment confirmation number.
- (b) Following telephonic enrollment, the CRES provider shall comply with all of the following:
- (i) Within one 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

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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 three business days of a request.
 - (c) The CRES provider shall send an electronic enrollment request to the electric utility no sooner than three business days and no later than five 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 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.

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- (c) The CRES provider shall not initiate 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 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 business days of the customer's request, provide to the customer an electronic mail message, paper copy, 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

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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 ten business days of the date that the deposit is collected.
 - (5) Return the deposit within 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.

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

(A) Customer access

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

(B) Customer complaints

- (1) Each CRES provider shall investigate customer complaints (including customer complaints referred by the electric utility) and provide a status report within three business days following receipt of the complaint to:
 - (a) The customer, when the complaint is made directly to the CRES provider.
 - (b) The customer and staff, when a complaint is referred to the CRES provider by the staff.
- (2) If an investigation is not completed within 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 three business-day intervals until the investigation is complete, unless agreed to otherwise.
- (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 three business days after completion of the investigation. The customer or staff may request the report in writing.
- (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 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.

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- (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 three business days of request.
- (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 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.

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- (b) An audio recording, in the case of telephonic enrollment.
 - (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.

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

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- (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.

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.

(2) Methodology for determining environmental disclosure data shall include:

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- (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 first to May thirty-first, 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) into its annual and quarterly environmental disclosures. The CRES provider shall provide statements, when applicable:
- (a) That the CRES provider sold RECs from one of its electric generating facilities.
 - (b) That the CRES provider 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:
 - 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.

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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 one-half per cent. The pie chart shall not include colors, but shall include the use of shading and labels to more clearly communicate the information as set forth in appendices A and B to this rule. To the extent the pie chart included in appendices A and B to this rule cannot be replicated, CRES providers shall exercise reasonable efforts to simulate the required shading to the extent possible.
- (b) A table shall be provided which illustrates the typical environmental characteristics associated with the generation resource categories detailed in paragraph (C)(1)(a) of this rule.

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

Biomass power - results in air emissions and solid waste.

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

Hydro power - results in wildlife impacts.

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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.

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-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.

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- (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 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.

(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.

(E) Environmental disclosure to the commission shall include:

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

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

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4901:1-21-10 Customer information.

- (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 consent 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.
 - (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, 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) CRES providers shall not disclose a 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 the customer's written consent as delineated in paragraph (E)(1) of this rule, or appropriate order.
- (E) Customer information release consent format.

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- (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 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."

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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 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:
 - (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.

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- (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 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.
- (F) Contract renewals
- (1) The provisions of this paragraph apply to 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.

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- (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 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 address that is readily identifiable as the CRES provider.
 - (iii) Includes a 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.

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(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 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.

(I) 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.

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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) If 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 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):
- (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.

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- (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, and, if applicable, transmission service.
 - (b) For per cent-off discounted rates, an explanation of the discount and the basis on which any discount is calculated.
 - (c) For variable-rate offers, either of the following options:
 - (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.
- (9) The terms and conditions of service, including any restrictions, limitations, contingencies, or conditions precedent associated with the service or product offered.
- (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)."
- (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>."

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- (12) Billing intervals and any late payment fees.
- (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;
- (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.
- (15) Any credit, deposit, and collection procedures, including terms and conditions associated with the return of any deposit at the time of contract termination.
- (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.
- (17) Who will bill for the CRES provider's service(s).
- (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.
- (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.
- (20) A statement indicating to the customer whether the CRES provider offers budget billing for the generation portion of the bill.
- (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 the flow of electricity in two directions, the customer generator shall be responsible for all expenses involved in purchasing and installing such a meter.

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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, 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

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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.

(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.

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- (E) If applicable, when a customer pays the bill at a payment center or to an authorized payment agent, such payment shall be credited to the customer's account as of the day it is received by such payment center or agent.
- (F) Each CRES provider shall establish policies and procedures for handling billing disputes and requests for payment arrangements.
- (G) Each CRES provider shall credit any customer partial payments in the following order:
- (1) Billed and past due CRES provider charges.
 - (2) Billed and due current CRES provider charges.
 - (3) Other past due and current non-regulated 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.
 - (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.

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

- (A) Prior to applying for certification from the commission, a governmental aggregator seeking to form an opt-out aggregation shall complete all of the requirements specified in divisions (A) to (C) of section 4928.20 of the Revised Code, including adopting an ordinance or resolution authorizing an opt-out aggregation, conducting a general or special election in accordance with division (B) of section 4928.20 of the Revised Code for authorization from electors to form the aggregation, and approving a plan for operation and governance of the aggregation as specified by division (C) of section 4928.20 of the Revised Code.
- (B) The operation and governance plan adopted shall detail the services to be provided under the aggregation and specify all customer rights and obligations under the aggregation. The plan shall be sufficiently detailed to allow customers to readily understand the services that the governmental aggregator is to provide and to compare those services to similar services provided by competitive suppliers. The governmental aggregator shall write the plan in clear and plain language so that customers can easily understand it. The plan shall, at a minimum, contain all of the following:
 - (1) A detailed description of services that the governmental aggregator is to provide under the aggregation, noting whether the service is to be provided directly by the governmental aggregator or by a party contracted by the governmental aggregator.
 - (2) A description of the processes that the governmental aggregator will use to determine the rates that will be charged, including the applicable surcharge that may be charged to customers pursuant to division (I) of section 4928.20 of the Revised Code.
 - (3) A description of the process that the governmental aggregator will use to notify customers if the governmental aggregator chooses to implement division (J) of section 4928.20 of the Revised Code, including a description of the potential impact on the customers in the aggregation program.
 - (4) A detailed description of the governmental aggregator's plan for providing the required opt-out disclosure notices to customers. The plan shall describe 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

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to identify and exclude from the pool customers who have opted out of the aggregation and customers that are otherwise ineligible.

- (6) A detailed description of the governmental aggregator's opt-out process and opt-out methodologies. The process shall include provisions for customers to opt out, including returning a postcard or similar notice to the governmental aggregator. The process may include, in addition, other opt-out methods, such as telephonic or internet notice, provided that these alternative methods allow for verification of a customer's election to opt out of the aggregation.
- (7) A detailed description of the customer classes that the governmental aggregator intends to include in its aggregation pool.
- (8) The governmental aggregator's plan for billing customers, including an identification of billing intervals and the identity of the entity that will transmit the bill to the customer.
- (9) A listing of any credit or deposit procedures and policies that the governmental aggregator will employ in the event the customer fails to pay its bill(s).
- (10) A detailed description of the governmental aggregator's customer service procedures and dispute resolution processes, including notice of the customer's right to contact the commission and the commission's toll-free 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.

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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 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. For fixed-rate contracts, the governmental aggregator shall provide the price 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.

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

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aggregator shall not send an opt-out notice to the same customer account during the period covered by the aggregation where such customer account has previously opted out.

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

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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 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

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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.
 - (11) Total payments, late payment charges or gross/net charges, and total credits applied during the billing period.

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- (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.
 - (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.

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- (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 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.

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- (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.
- (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.

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- (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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4901:1-21-19 Disclosures of renewable energy resource compliance costs.

- (A) As used in this rule, "renewable energy resource" has the meaning set forth in division (A)(37) of section 4928.01 of the Revised Code.
- (B) Each competitive retail electric service (CRES) provider shall list on all customer bills sent by the CRES provider that do not include electric distribution utility (EDU) charges the individual customer cost of compliance with the renewable energy resource requirements for the applicable billing period.
 - (1) The cost of compliance with the renewable energy resource requirements shall be calculated as the sum of the following:
 - (a) The customer's usage in megawatt-hours for the applicable billing period, multiplied by the statutory solar percentage requirement pursuant to division (B)(2) of section 4928.64 of the Revised Code for the year in which the bill is issued, multiplied by the average of the Ohio solar and other solar renewable energy credit (REC) costs for CRES providers as reported in the commission's most recent compliance report provided to the general assembly; and
 - (b) The customer's usage in megawatt-hours for the applicable billing period, multiplied by the statutory non-solar percentage requirement pursuant to division (B)(2) of section 4928.64 of the Revised Code for the year in which the bill is issued, multiplied by the average of the Ohio non-solar and other non-solar REC costs for CRES providers as reported in the commission's most recent compliance report provided to the general assembly. The statutory non-solar requirement shall equal the total renewable requirement net of the solar requirement.
 - (2) In the event that the commission's compliance report provided to the general assembly does not include separate REC costs for Ohio and other resources, the CRES solar and CRES non-solar REC costs as presented in the report should be inserted into the calculation where applicable.
- (C) Each CRES provider shall list on all customer bills sent by the CRES provider that include both EDU and CRES provider charges (consolidated bills) all of the following for the applicable billing period:
 - (1) The cost of compliance with the renewable energy resource requirements, calculated as set forth in paragraph (B)(1) of this rule.

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- (2) The EDU's cost of compliance with the energy efficiency savings requirements under section 4928.66 of the Revised Code, calculated as set forth in paragraph (B)(2) of rule 4901:1-10-35 of the Administrative Code.
- (3) The EDU's cost of compliance with the peak demand reduction requirements under section 4928.66 of the Revised Code, calculated as set forth in paragraph (B)(3) of rule 4901:1-10-35 of the Administrative Code.
- (D) Each of these costs shall be listed on each customer's monthly bill as a distinct line item.



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Agency Contact Info: Attention: Angela Hawkins, Legal Director
Phone: 614-466-0122
Fax: 614-728-8373
Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: Competitive Retail Electric Service (CRES) Providers

Rule Number(s): 4901:1-21-01, 4901:1-21-02, 4901:1-21-03, 4901:1-21-04, 4901:1-21-05, 4901:1-21-06, 4901:1-21-07, 4901:1-21-08, 4901:1-21-09, 4901:1-21-10, 4901:1-21-11, 4901:1-21-12, 4901:1-21-13, 4901:1-21-14, 4901:1-21-15, 4901:1-21-16, 4901:1-21-17, 4901:1-21-18, 4901:1-21-19

Date of Submission for CSI Review: September 8, 2021

Public Comment Period End Date: October 22, 2021

Rule Type/Number of Rules:

- | | |
|------------------------------------------------------------------|--------------------------------------------------------------------|
| <input type="checkbox"/> New/ <u>rules</u> (FYR? <u> </u>) | <input type="checkbox"/> X No Change/19 <u>rules</u> (FYR? YES) |
| <input type="checkbox"/> Amended/ <u>rules</u> (FYR? <u> </u>) | <input type="checkbox"/> Rescinded/ <u>rules</u> (FYR? <u> </u>) |

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common

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Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rules for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

- 2. Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

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

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This is a no change chapter.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

	Statutory Authority – O.R.C.	Amplifies – O.R.C.
Rule 4901:1-21-01	4928.10	4905.261, 4928.06, 4928.10
Rule 4901:1-21-02	4928.06, 4928.10	4928.10
Rule 4901:1-21-03	4928.06, 4928.10	4928.10
Rule 4901:1-21-04	4928.06, 4928.10	4928.10
Rule 4901:1-21-05	4928.06, 4928.10	4928.10
Rule 4901:1-21-06	4928.06, 4928.10, 4928.53	4928.10, 4928.54
Rule 4901:1-21-07	4928.06, 4928.10	4928.10
Rule 4901:1-21-08	4928.06, 4928.10	4928.10
Rule 4901:1-21-09	4928.06, 4928.10	4928.10
Rule 4901:1-21-10	4928.06, 4928.10	4928.10
Rule 4901:1-21-11	4928.06, 4928.10	4928.10
Rule 4901:1-21-12	4928.06, 4928.10	4928.10 , 4905.261, 4911.0211
Rule 4901:1-21-13	4928.06, 4928.10, 4928.67	4928.67
Rule 4901:1-21-14	4928.06, 4928.10	4905.261, 4911.021, 4928.07, 4928.10
Rule 4901:1-21-15	4928.06, 4928.08	4928.08 , 4928.10
Rule 4901:1-21-16	4928.06, 4928.20	4928.20
Rule 4901:1-21-17	4928.06, 4928.10, 4928.20	4928.10, 4928.20
Rule 4901:1-21-18	4905.04, 4928.06, 4928.10, 4905.22	4905.06, 4905.22 , 4905.30, 4928.07, 4928.10, 4928.11, 4928.67, 4911.021
Rule 4901:1-21-19	4928.65	4928.65

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

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

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

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

Not Applicable.

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

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

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

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

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not Applicable.

Development of the Regulation

9. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Commission conducted a workshop on October 3, 2017, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the commission's review of Ohio Adm.Code 4901:1-21 is 17-1843-EL-ORD. The entry providing notice of the workshop was served upon all investor-owned electric utilities in the state of Ohio, all competitive retail electric service providers in the state of Ohio, and the Electric-Energy industry list-serve. The workshop was held in conjunction with other electric

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and natural gas industry rules workshops, including the rules in Ohio Adm.Code 4901:1-10, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34.

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

At the workshop held on October 3, 2017, comments were offered by various stakeholders. At this time, this chapter is not being revised. However, the Commission will consider any comments or reply comments addressing this rule chapter that are filed by stakeholders and the general public in Case No. 17-1843-EL-ORD.

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

No scientific data was provided or considered. In adopting any changes to Ohio Adm.Code 4901:1-21, the Commission takes into account feedback from stakeholders and the general public.

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

No alternative regulations were considered because the provision of competitive retail electric service is a capital-intensive industry. Therefore, more stringent regulation is appropriate in order to provide adequate consumer protection. Accordingly, when it initially adopted this chapter, the Commission adopted rules that it considers best suited to meet these goals. Here, Staff proposes no change to the rules; therefore, no alternative to Staff's proposal was considered.

13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

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

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

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Ohio Adm.Code 4901:1-21 does not duplicate the rules of other state entities, as the jurisdiction for these companies falls squarely under the Commission per Ohio Revised Code Title 49. Furthermore, no duplicate has been identified by stakeholders.

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

Upon completion of the rulemaking process, any ultimate changes to Ohio Adm.Code 4901:1-21 will be attached to the Commission’s finding and order and served upon all interested parties.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community; and

Ohio Adm.Code 4901:1-21 applies to competitive retail electric service companies that are subject to the Commission’s jurisdiction. Businesses will not be impacted from this rule review because this chapter contains no revisions.

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

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

c. Quantify the expected adverse impact from the regulation.

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

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

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

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

Regulatory Flexibility

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

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

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

The focus of Commission regulation is ensuring that all regulated competitive retail electric service providers provide adequate competitive retail electric service at just and reasonable rates and with consumer protections. The focus is not on seeking penalties for first-time paperwork offenses. To that end, the Commission will fully comply with R.C. 119.14 and would not seek to recover administrative fines or civil penalties on any small business for a first-time paperwork violation unless such violation falls within one of the exceptions set forth in paragraph (C) of that section. Further, the Commission would provide due process to the small company.

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

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 17-1843-EL-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry. Also, Commission Staff routinely works with small regulated competitive retail electric service companies to assist such companies with Ohio Adm.Code 4901:1-21 compliance.

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4901:1-23-01 Purpose and scope.

- (A) The rules contained in this chapter prescribe procedures for staff of the public utilities commission of Ohio to administer and enforce the electric reliability, customer service, and safety code set forth in Chapters 4901:1-21 and/or 4901:1-10 of the Administrative Code and commission orders issued thereunder.
- (B) This chapter also governs customer service, reliability, and safety proceedings of the public utilities commission of Ohio to:
 - (1) Investigate and determine an electric utility's or competitive retail electric service provider's compliance with Chapters 4901:1-21 and/or 4901:1-10 of the Administrative Code and commission orders issued thereunder.
 - (2) Review settlement agreements and approve stipulations by the staff and the electric utility or competitive retail electric service provider.
 - (3) Issue and enforce compliance orders.
 - (4) Assess forfeitures.
 - (5) Direct the attorney general to seek enforcement of commission orders, including orders authorizing forfeitures, and appropriate remedies in court to protect the public safety, reliability, and customer service.
- (C) As used in this chapter:
 - (1) "Commission" means the public utilities commission of Ohio.
 - (2) "Competitive retail electric service provider" means a provider of competitive retail electric service, subject to certification under section 4928.08 of the Revised Code.
 - (3) "Electric utility" includes electric distribution utilities, as that term is defined in division (A)(6) of section 4928.01 of the Revised Code, and electric transmission owners.
 - (4) "Staff" means the commission staff or its authorized representative.
- (D) 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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4901:1-23-02 Staff notice of probable noncompliance, proposed corrective action, and proposed forfeiture.

- (A) After an inspection, investigation, or complaint, a staff notice of probable noncompliance may be issued. The staff notice of probable noncompliance may be issued with a proposed corrective action and/or a proposed forfeiture;
- (B) The staff may issue an amended notice of probable noncompliance, proposed corrective action, or proposed forfeiture at any time prior to the commencement of a compliance proceeding or other commission proceeding brought pursuant to rule 4901:1-23-05 of the Administrative Code, in order to modify or include additional probable noncompliance or violations, facts, proposed forfeitures, and proposed compliance orders. Once the commission initiates a compliance or other proceeding pursuant to rule 4901:1-23-05 of the Administrative Code, this rule does not prevent the staff during the course of such proceeding, from seeking a finding of violations not listed in the staff notice or amended staff notice of probable noncompliance (or rescinding or refraining from seeking a finding of violations) or from seeking a corrective action or proposed forfeiture that varies from previous staff notices issued under this rule, provided that the staff's proposed findings and/or violations relate to the same incident, type of incident, investigation, or audit(s).
- (C) Any staff notice of probable noncompliance, proposed corrective action, proposed forfeiture, or amendments thereto shall be served pursuant to rule 4901:1-23-03 of the Administrative Code.

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4901:1-23-03 Service of staff notices of probable noncompliance, proposed corrective action, and proposed forfeiture.

- (A) Staff notices of probable noncompliance, proposed corrective actions, proposed forfeitures, and amendments thereto under rule 4901:1-23-02 of the Administrative Code and investigative reports under rule 4901:1-23-05 of the Administrative Code shall be served on the electric utility or competitive retail electric service (CRES) provider by certified United States mail. Service is effective upon receipt by any employee, agent of, or person designated by the electric utility or CRES provider. Unless otherwise provided in this paragraph, service upon an electric utility or CRES provider shall be made at the address designated as the service address in the company's most recent annual financial report, in its certification application, or certification renewal application.
- (B) Each electric utility or CRES provider shall provide the commission with its current service address. If the service address has changed since the most recent annual report was submitted to the commission, or the service address or business address has not been disclosed to the commission, service shall be made at any business address known to the commission.
- (C) If the service envelope is returned with an endorsement showing failure of delivery, then service may be made by ordinary United States mail and is effective on the date of mailing.

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4901:1-23-04 Settlement agreements and stipulations.

- (A) If staff and the electric utility or competitive retail electric service (CRES) provider reach agreement regarding the violation of a rule within this chapter or Chapter 4901:1-21 or 4901:1-10 of the Administrative Code, the violation of a commission order, a proposed corrective action or remedy, or the amount of a forfeiture or other payment, then the agreement must be reduced to writing in a settlement agreement. Such agreement shall be signed by an officer of the company or its attorney and the assistant attorney general who serves as legal counsel for staff. Except as otherwise provided in paragraph (B) of this rule, the settlement agreement shall not be effective until both of the following have occurred:
- (1) The stipulation is filed with the commission for approval pursuant to a compliance or other proceeding.
 - (2) The stipulation is approved by and made the order of the commission.
- (B) If the settlement agreement provides for the payment of a forfeiture or other payment by an electric utility or CRES provider of ten thousand dollars or less, the agreement shall be deemed accepted by the commission and fully enforceable upon the electric utility or CRES provider upon its execution.
- (C) Unless contained in or otherwise provided in a stipulation, no statement or conduct during settlement negotiations is admissible in any commission proceeding regarding the noncompliance.
- (D) Where an electric utility or competitive retail electric service provider has demonstrated to the staff's satisfaction, as confirmed in writing by the staff, that the violation(s) listed in the staff notice (or amended staff notice) of probable noncompliance or investigative report has been corrected and where the company submits full payment of the proposed forfeiture prior to the execution of a written settlement agreement or final commission order, the violation(s) listed in such staff notice of probable noncompliance or investigative report shall only be considered by the commission as part of the company's history of violations in determining the appropriate forfeiture or corrective action for any future violation. If a company pays a proposed forfeiture of more than one thousand dollars without executing a written settlement agreement, the payment shall be fully effective when approved by and made the order of the commission.

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4901:1-23-05 Commission proceedings.

- (A) The commission may initiate a compliance or other proceeding upon its own initiative, or after an incident has occurred, after a complaint is filed pursuant to section 4905.26 of the Revised Code, or after a staff notice of probable noncompliance is served.
- (B) The commission shall conduct such compliance or other proceedings in accordance with Chapter 4901-1 of the Administrative Code.
- (C) Unless otherwise ordered by the commission or an attorney examiner assigned to the proceeding, the staff shall file with the commission and serve upon the electric utility or competitive retail electric service (CRES) provider a written report of investigation (investigative report) in each proceeding, within forty-five calendar days after the commission issues an entry initiating a compliance proceeding. The investigative report shall present:
 - (1) The findings on any alleged noncompliance specified in any staff notice or amended staff notice, which may include:
 - (a) Noncompliances not included in any staff notice or amended staff notice, provided that such additional noncompliances relate to the same incident, investigation, or safety audit(s) referenced in the initial or amended staff notice.
 - (b) Staff's findings on the electric utility or CRES provider's practices and policies.
 - (2) Staff's recommendations for commission action.
- (D) The commission shall hold an evidentiary hearing on all proceedings initiated under this rule. The hearing may include evidence on the issues of proposed corrective action, compliance orders issued by the commission, forfeitures, enforcement of a commission order, and other remedies.
- (E) If, after a hearing, the commission finds an electric utility or CRES provider has violated or is violating Chapter 4928 of the Revised Code, or Chapter 4901:1-21 or 4901:1-10 of the Administrative Code, this chapter, or any order adopted thereunder, the commission, by order:
 - (1) Shall require the electric utility or CRES provider to comply with Chapter 4928 of the Revised Code, Chapter 4901:1-21 or 4901:1-10 of the Administrative Code, this chapter, or any commission order thereunder, and to undertake corrective action necessary to protect the public safety, reliability, and customer service. The commission is not restricted in the making of the compliance order by the terms of any proposed corrective action and/or forfeiture by staff.

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- (2) May assess forfeitures upon an electric utility or CRES provider of not more than ten thousand dollars for each day of each violation.
- (3) May direct the attorney general to seek enforcement of commission orders, including orders authorizing forfeitures, and appropriate remedies in court.
- (4) May determine other appropriate remedies to protect the public safety, reliability, and customer service.

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4901:1-23-06 Payment of forfeitures and other payments.

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



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Agency Contact Info: Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122

Fax: 614-728-8373

Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: Electric Companies and CRES Providers- Reliability, Customer Service and Safety

Rule Number(s): 4901:1-23-01, 4901:1-23-02, 4901:1-23-03, 4901:1-23-04, 4901:1-23-05, 4901:1-23-06

Date of Submission for CSI Review: September 8, 2021

Public Comment Period End Date: October 22, 2021

Rule Type/Number of Rules:

☐ New/ rules (FYR?)

☐ Amended/ (FYR?)

☒ X No Change/ 6 rules (FYR? YES)

☐ Rescinded/ rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing

regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rules for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Adm.Code 4901:1-23 establishes the procedures for Staff to administer and enforce the electric reliability, customer service, and safety standards set forth in Ohio Adm.Code 4901:1-21 and 4901:1-10, as well as Commission orders issued thereunder.

This is a no change chapter.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

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	Statutory Authority – O.R.C.	Amplifies – O.R.C.
Rule 4901:1-23-01	4928.09, 4905.04, 4905.06, 4928.08, 4928.10, 4928.11, 4928.16	4928.16
Rule 4901:1-23-02	4928.09, 4905.04, 4905.06, 4928.08, 4928.10, 4928.11, 4928.16	4928.06
Rule 4901:1-23-03	4928.09, 4905.04, 4905.06, 4928.08, 4928.10, 4928.11, 4928.16	4929.16
Rule 4901:1-23-04	4928.10, 4905.06	4928.16
Rule 4901:1-23-05	4928.10, 4905.06	4928.16, 4905.54
Rule 4901:1-23-06	4928.10, 4905.06	4928.16

- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.**

None of the rules in Ohio Adm.Code 4901:1-23 implement a federal requirement.

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

While most of the rules in Ohio Adm.Code 4901:1-23 are not specifically required by the federal government, they are enabled by R.C. 4905.04, 4905.06, 4905.13, 4905.22, 4905.28, 4905.70, 4928.06, 4928.13, and 4928.151.

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

Each of the rules in Ohio Adm.Code 4901:1-23 are necessary and proper for administration of the policies of the state of Ohio. These rules provide the operative functions for Commission proceedings, settlement agreements and stipulations, payment of forfeitures and other payments, and notice of probable noncompliance.

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

The rules in Ohio Adm.Code 4901:1-23 are not outcome-based regulations. There is no measure of success or failure for these rules. These rules contain procedural and administrative provisions for the proper functioning of the Commission.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not Applicable.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Commission conducted a workshop on October 3, 2017, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the commission's review of Ohio Adm.Code 4901:1-23 is 17-1844-EL-ORD. The entry providing notice of the workshop was served upon all investor-owned electric utilities in the state of Ohio, all competitive retail electric service providers in the state of Ohio, and the Electric-Energy industry list-serve. The workshop was held in conjunction with other electric and natural gas industry rules workshops, including the rules in Chapters 4901:1-10, 4901:1-21, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34.

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

No input was provided related to Ohio Adm.Code 4901:1-23. The Commission has issued an entry requesting comments and reply comment to receive additional stakeholder input on the rules in Ohio Adm.Code 4901:1-23.

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

No scientific data was provided or considered. In adopting any changes to Ohio Adm.Code 4901:1-23, the Commission takes into account feedback from stakeholders and the general public.

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

No alternative regulations were considered by the Commission. The Commission did not consider regulatory alternatives because the rules in Ohio Adm.Code 4901:1-23 have been consistently applied. Additionally, Staff proposes no change to the rules; therefore, no alternative to Staff's proposal was considered. Finally, Ohio Adm.Code 4901:1-23-02(C) provides that the Commission may, upon an application or motion filed by a party and good cause shown, waive any requirement of this chapter, except for those requirements mandated by statute.

13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

No performance-based regulations were considered. The rules in Ohio Adm.Code 4901:1-23 contain procedural and administrative provisions. The rules do not contain performance-based or outcome-based regulations.

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

The Commission has reviewed other Ohio regulations and found no duplicate. Furthermore, no duplicate has been identified by stakeholders.

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

Upon completion of the rulemaking process, the changes made to Ohio Adm.Code 4901:1-23 will be attached to the Commission's finding and order and served upon all interested parties.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community; and

The scope of the business community impacted by Ohio Adm.Code 4901:1-23 includes all electric utilities in the state of Ohio. Businesses will not be impacted from this rule review because this chapter contains no revisions. However, businesses may be affected if they

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are found to be in noncompliance with the Commission's rules and forfeitures may be assessed against them.

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

Staff is not proposing any changes to the current rule chapter. However, Ohio Adm.Code 4901:1-23-06 provides for payment of forfeitures and other payments for businesses found to be out of compliance with the Revised Code, the Ohio Administrative Code, or a Commission Order.

c. Quantify the expected adverse impact from the regulation.

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

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

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

The Commission has not identified an adverse impact on business since there are no proposed changes to Ohio Adm.Code 4901:1-23. Additionally, the regulatory intent justifies the continued need for these rules because these rules provide the procedures for the Commission to administer and enforce the Ohio Administrative Code and the Commission's orders issued thereunder.

Regulatory Flexibility

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

Yes, Ohio Adm.Code 4901:1-23-02(C) provides that the Commission may, upon an application or motion filed by a party and good cause shown, waive any requirement of this chapter, except for those requirements mandated by statute. Accordingly, so long as the requirement is not one mandated by statute, small businesses may seek a waiver of compliance with the provisions of this Chapter.

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

Ohio Adm.Code 4901:1-23-02(C) provides that the Commission may, upon an application or motion filed by a party and good cause shown, waive any requirement of this chapter, except for those requirements mandated by statute. The Commission will consider the nature of the violation, as well as the violation history of the offender, when determining whether to issue a waiver of a provision of the Chapter.

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

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 17-1844-EL-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry.

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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.
- (K) "Electric cooperative" shall have the meaning set forth in division (A)(5) of section 4928.01 of the Revised Code.

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- (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.
- (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,

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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.

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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 through transmission or distribution facilities it solely or jointly owns or operates is not required to obtain a certificate.
- (C) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.
- (D) These rules do not apply to a billing and collection agent if it is a fully independent agent, not affiliated with or otherwise controlled by an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent that the agent is under contract with such utility, company, cooperative, or aggregator solely to provide billing and collection for retail electric service on behalf of the utility, company, cooperative, or aggregator. Nothing in this rule exempts such utility, company, cooperative, or aggregator from liability for the acts of its billing and collection agents.

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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.

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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 under the existing certification case number ~~in a new case~~ and may request, no later than sixty days after the expiration date on the certificate, to extend its previous certificate for up to ninety days while ~~during the pendency of~~ the new application is review~~ed~~. 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.

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4901:1-24-05 Application content.

- (A) An application for certification shall be made on forms supplied by the commission. The application forms shall provide for sufficient information to enable the commission to assess an applicant's managerial, financial, and technical capability to provide the service it intends to offer and its ability to comply with commission rules or orders adopted pursuant to Chapter 4928. of the Revised Code.
- (B) The applicant shall complete the appropriate application form (e.g., retail electric generation provider, aggregator, power broker, or governmental aggregator) in its entirety and supply all required attachments, affidavits, and evidence of capability specified by the form at the time an application is filed.
 - (1) Retail electric generation providers and power marketers shall file general, technical, managerial, and financial information as set forth in the application. This information includes but is not limited to:
 - (a) Ownership and organizational descriptions.
 - (b) Managerial experience and capabilities.
 - (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 the Administrative Code, the commission may deny without prejudice any application that is not complete or does not include the attachments, documentation, and affidavits required by the application form.
 - (3) In accordance with this chapter, in instances where information and/or documentation required by these rules is not available at the time of filing an application, an applicant may substitute a notarized affidavit by an officer of the applicant stating that the applicant will file such information and/or documentation with the commission at least ten business days prior to offering or providing any competitive retail electric service (CRES) 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 section 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.

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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, credit reports, and credit ratings 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.

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4901:1-24-09 Certification renewal.

- (A) No less than thirty and no more than ~~ninety~~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) ~~If A~~any renewal application is 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, then the existing certificate automatically will be extended 31 days from the date the renewal application was accepted by the Commission. ~~shall be filed with a motion requesting an extension of the certificate. 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 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.
- (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.

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- (F) If the commission acts to deny, in whole or in part, an application, it will notify the applicant that its application, or parts of its application, has been denied, including the reason(s) for such denial.

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

- (A) Competitive retail electric service (CRES) providers shall inform the commission of any material change to the information supplied in a certification or certification renewal application within thirty calendar days of such material change.
- (1) A CRES provider shall file such notice under the docket number assigned to the CRES provider's initial certification or most recent certification renewal application, whichever is the most recent.
 - (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.
 - (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.

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- (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.

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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 under the existing certification case number 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 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

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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.

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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 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.

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- (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 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 section 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 section 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 the Administrative Code.
 - (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.

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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.

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4901:1-24-15 Regulatory assessments.

- (A) In accordance with sections 4905.10, 4911.18, and division (F) of section 4928.06 of the Revised Code, each competitive retail electric service (CRES) provider is subject to an annual assessment based upon its intrastate gross receipts or gross earnings (collectively "gross revenue") associated with the provision of each CRES which it is certified to provide.
- (B) Each CRES provider that provides retail electric generation service shall, in the manner and on the date specified by the commission or its staff, file an annual report of the gross revenue derived from its intrastate sales of kilowatt-hours of electricity. For the purpose of the report, sales of kilowatt-hours of electricity are deemed to occur at the meter of a retail customer.
- (C) Each CRES provider that provides a CRES(s) in addition to, or other than, retail electric generation service shall, in the manner and on the date specified by the commission or its staff, file an annual report of the intrastate gross revenue derived from its provision of such service(s). For the purpose of the report, sales of kilowatt-hours of electricity are deemed to occur at the meter of a retail customer.
- (D) Each CRES provider shall maintain detailed records to support the information provided pursuant to paragraphs (B) and (C) of this rule. Such records and information are subject to audit by the commission.
- (E) In instances where a CRES provider underreports its gross revenue, the commission may, in computing an assessment made pursuant to paragraph (A) of this rule, include any gross revenues that were underreported in a prior year. The commission shall also, in addition to any other penalty under the Revised Code, assess the provider interest on the amount underreported at the rate stated in section 1343.01 of the Revised Code.
- (F) A governmental aggregator may authorize its electric services company, or a designated agent, to file, on its behalf, any report required by this rule.

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

In addition to penalties specified in rule 4901:1-24-13 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.



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Agency Contact Info: Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122

Fax: 614-728-8373

Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: CRES Providers - Certification

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

Date of Submission for CSI Review: September 8, 2021

Public Comment Period End Date: October 22, 2021

Rule Type/Number of Rules:

☐ New/ rule (FYR?)

☐ X Amended/ 4 rules (FYR? Yes)

☐ X No Change/ 12 rules (FYR? Yes)

☐ Rescinded/ rule (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing

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regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rules for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☒ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

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

The proposed changes to Ohio Adm.Code 4901:1-24-04 include requiring certified retail electric service (CRES) providers or governmental aggregators with expired certificates, who wish to refile for certification, to file a new application under the existing certificate case

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number, the amendment allows such a filing to extend the previous certificate up to 90 days. Under Ohio Adm.Code 4901:1-24-08, an applicant may file certain additional documentation under seal without filing a corresponding motion for protective order. Under Ohio Adm.Code 4901:1-24-09, if renewal applications are filed fewer than 30 days prior to the expiration date of the certificate then the existing certification will automatically extend 31 days, plus the amendment gives CRES providers and governmental aggregators a longer period of time during which it can file such renewal. Under Ohio Adm.Code 4901:1-24-12, the amendment clarifies that an abandonment application should be filed under the existing certification case.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

	Statutory Authority – O.R.C.	Amplifies – O.R.C.
Rule 4901:1-24-01	4928.06, 4928.08	4928.08 , 4928.16
Rule 4901:1-24-02	4928.06, 4928.08	4928.08 , 4928.16
Rule 4901:1-24-03	4928.06, 4928.08	4928.08 , 4928.16
Rule 4901:1-24-04	4928.06, 4928.08	4928.08 , 4928.16
Rule 4901:1-24-05	4928.06, 4928.08	4928.08 , 4928.16
Rule 4901:1-24-06	4928.06, 4928.08	4928.08 , 4928.16
Rule 4901:1-24-07	4928.06, 4928.08	4928.06, 4928.08
Rule 4901:1-24-08	4928.06, 4928.08	4928.06, 4928.08
Rule 4901:1-24-09	4928.06, 4928.08	4928.08 , 4928.16
Rule 4901:1-24-10	4928.06, 4928.08	4928.08 , 4928.16
Rule 4901:1-24-11	4928.06, 4928.08	4928.08 , 4928.16
Rule 4901:1-24-12	4928.06, 4928.08	4928.08 , 4928.16
Rule 4901:1-24-13	4928.06, 4928.08	4928.08 , 4928.16
Rule 4901:1-24-14	4928.06, 4928.08	4928.14, 4928.16
Rule 4901:1-24-15	4928.06, 4928.08	4928.06, 4928.08 , 4905.10, 4911.18
Rule 4901:1-24-16	4928.06, 4928.08	4905.54, 4928.08 , 4928.16

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

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

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

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

Not Applicable.

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

The rules in this chapter establish the standards required by R.C. 4928.06 and 4928.08 for applicants to be certified CRES providers.

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

The Commission can monitor complaints from the CRES providers and their customers through staff interaction and the Commission's call center.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not Applicable.

Development of the Regulation

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Commission conducted a workshop on October 3, 2017, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the commission's review of Ohio Adm.Code 4901:1-24 is 17-1862-EL-ORD. The entry providing notice of the workshop was served upon all investor-owned electric utilities in the state of Ohio, all competitive retail electric service providers in the state of Ohio, and the Electric-Energy industry list-serve. The workshop was held in conjunction with other electric and natural gas industry rules workshops, including the rules in Chapters 4901:1-10, 4901:1-21, 4901:1-23, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34.

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

No input was provided related to Ohio Adm.Code 4901:1-24. The Commission has issued an entry requesting comments and reply comment to receive additional stakeholder input on the rules in Ohio Adm.Code 4901:1-24.

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

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

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

The certification of CRES providers under Ohio Adm.Code 4901:1-24 is specifically mandated by R.C. 4928.06 and 4928.08, thus regulatory alternatives were not available.

13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

The certification of CRES providers under Ohio Adm.Code 4901:1-24 is specifically mandated by R.C. 4928.06 and 4928.08, thus performance-based regulation is inappropriate for this chapter.

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

The certification of CRES providers under Ohio Adm.Code 4901:1-24 is specifically mandated by R.C. 4928.06 and 4928.08; thus, the determination as to whether R.C. 4928.06 and 4928.08 duplicated an existing Ohio regulation was performed by the Legislative Service Commission.

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

Upon completion of the rulemaking process, the changes made to Ohio Adm.Code 4901:1-24, will be attached to the Commission's finding and order and served upon all interested parties.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community; and

Ohio Adm.Code 4901:1-24 establishes minimum managerial, technical, and financial standards for CRES companies that are subject to Commission jurisdiction.

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

CRES companies that are subject to Commission jurisdiction must devote time to complete the certification application required under this chapter, as well as renewal applications. Furthermore, Ohio Adm.Code 4901:1-24-15, pursuant to R.C. 4905.10, 4911.18, and 4928.06(F), each CRES provider is subject to an annual assessment based upon its intrastate gross receipts or gross earners associated with the provision of each CRES which it is certified to provide. This specific rule also requires CRES providers and governmental aggregators to file an annual report of gross revenue device from its intrastate sales of kilowatt-hours of electricity. Ohio Adm.Code 4901:1-24-14 notes that, pursuant to the tariff filed with the Commission in accordance with Ohio Adm.Code 4901:1-10-29, an electric utility may require a CRES provider to issue and maintain financial security with the electric utility to protect the electric utility in the event the CRES provider fails to deliver contracts retail general service to a customer. This chapter also make the CRES provider subject to a potential forfeiture if it fails to comply with the rules in the chapter or corresponding statutes.

c. Quantify the expected adverse impact from the regulation.

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

The hours and costs for an applicant to compile a certification application including ownership and organizational descriptions, managerial experience and capabilities, balance sheets, credit ratings, and other relevant financial information that will vary depending upon the size of the supplier and the service areas in which supplier intends to operate. See the answer to Question 40(b) for the other types of potential impacts, the costs of which will depend on each specific CRES provider.

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

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Ohio Adm.Code 4901:1-24 directly reflects the requirements of R.C. 4928.06 and 4928.08. Further, Staff's proposed changes to the chapter are relatively minor and are not contrary to legislative intent.

Regulatory Flexibility

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

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

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

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

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

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 17-1862-EL-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry. Also, Commission Staff routinely works with small regulated competitive retail electric service companies to assist such companies with Ohio Adm.Code 4901:1-24 compliance.

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4901:1-27-01 Definitions.

As used in this chapter:

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

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- (M) "Gas company" means a company that meets the definition of a gas company set forth in section 4905.03 of the Revised Code and that also meets the definition of a public utility under section 4905.02 of the Revised Code.
- (N) "Governmental aggregator" has the meaning set forth in division (K)(1) of section 4929.01 of the Revised Code. For purposes of this chapter, "governmental aggregator" specifically excludes a municipal corporation acting exclusively under Section 4 of Article XVIII, Ohio Constitution, as an aggregator for the provision of competitive retail natural gas service.
- (O) "Mercantile customer" has the meaning set forth in division (L) of section 4929.01 of the Revised Code.
- (P) "Natural gas company" has the meaning set forth in division (G) of section 4929.01 of the Revised Code.
- (Q) "Person" has the meaning set forth in division (H) of section 4929.01 of the Revised Code.
- (R) "Regulated sales service" means the provision of natural gas commodity service to consumers at the gas cost recovery rate or any alternate gas cost pricing mechanism approved by the commission pursuant to Chapter 4901:1-19 of the Administrative Code.
- (S) "Regulated sales service customer" means a person who has an agreement by contract and/or tariff with a natural gas company or gas company to receive regulated sales service.
- (T) "Retail natural gas aggregation service" means combining the natural gas load of multiple retail residential customers or small commercial customers via an agreement with the customers for the purpose of purchasing competitive retail natural gas service on an aggregated basis.
- (U) "Retail natural gas aggregator" means a person who contracts with customers to combine the customers' natural gas load for the purposes of purchasing competitive retail natural gas service on an aggregated basis.
- (V) "Retail natural gas brokerage service" means assuming the contractual and legal responsibility for the sale and/or arrangement for the supply of competitive retail natural gas service to a retail customer in this state without taking title to the natural gas.
- (W) "Retail natural gas broker" means a person who provides retail natural gas brokerage service.
- (X) "Retail natural gas marketing service" means assuming the contractual and legal responsibility for the sale and provision of competitive retail natural gas service to a retail natural gas service customer in this state and having title to natural gas at some point during the transaction.

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- (Y) "Retail natural gas marketer" means a person who provides retail natural gas marketing service.
- (Z) "Retail natural gas service" has the meaning set forth in division (M) of section 4929.01 of the Revised Code.
- (AA) "Retail natural gas supplier" has the meaning set forth in division (N) of section 4929.01 of the Revised Code.
- (BB) "Small commercial customer" means a commercial customer which is not a mercantile customer under paragraph (P) of this rule.
- (CC) "Staff" means the commission staff.

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4901:1-27-02 Purpose and scope.

Under the rules in this chapter:

- (A) Any retail natural gas supplier or governmental aggregator that intends to offer or provide a competitive retail natural gas service in this state shall obtain a certificate to operate from the commission before commencing operations.
- (B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.
- (C) This chapter does not apply to a billing and collection agent if it is a fully independent agent, not affiliated with or otherwise controlled by a retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code, to the extent that the agent is under contract with such supplier or aggregator solely to provide billing and collection for competitive retail natural gas service on behalf of the supplier or aggregator. Nothing in this rule exempts such supplier or aggregator from liability for the acts of its billing and collection agents.

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4901:1-27-03 General prohibitions.

- (A) No retail natural gas supplier or governmental aggregator shall offer, contract for, or supply competitive retail natural gas 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 public awareness and/or improve name recognition.
- (C) Enforcement of any rule in this chapter or commission order adopted thereunder will be conducted in accordance with Chapter 4901:1-34 of the Administrative Code.

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4901:1-27-04 Expired certificates.

Any retail natural gas supplier or governmental aggregator that fails to file an application for certification renewal pursuant to rule 4901:1-27-09 of the Administrative Code prior to the expiration date on the certificate must file a new application for certification under the existing certification case number in a new case and may request, no later than sixty days after the expiration date on the certificate, to extend its previous certificate for up to ninety days while during the pendency of the new application is reviewed. If the motion is filed in conformance with rule 4901:1-27-07 of the Administrative Code, it shall be deemed automatically approved unless, within three business days of filing, the commission or an attorney examiner appointed by the commission rules otherwise.

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4901:1-27-05 Application content.

- (A) An application for certification or certification renewal shall be made on forms supplied by the commission. The application forms shall provide for sufficient information to enable the commission to assess an applicant's managerial, financial, and technical capability to provide the service it intends to offer, its ability to provide reasonable financial assurances sufficient to protect customers and natural gas companies from the consequences of default, and its ability to comply with commission rules or orders.
- (B) The applicant shall complete the appropriate application form (e.g., retail natural gas marketer, retail gas aggregator/broker, or governmental aggregator) in its entirety and supply all required attachments, affidavits, and evidence of capability specified by the form at the time an application is filed.
 - (1) A natural gas marketer shall file general, technical, managerial, and financial information as set forth in the application. This information includes, but is not limited to:
 - (a) Ownership and organizational descriptions.
 - (b) Managerial experience and capabilities.
 - (c) Credit ratings and relevant financial information including financial statements, financial arrangements, and forecasted financial statements.
 - (d) Technical ability and experience in nominating, scheduling, and providing natural gas to retail customers.
 - (e) Proof of an Ohio office and an employee in this state in accordance with division (G) of section 4929.22 of the Revised Code.
 - (f) Statements as to whether the applicant has ever been terminated from any choice program; if applicant's certification has ever been revoked or suspended; if applicant has ever been in default for failure to deliver; or if there are pending or past regulatory or judicial actions against the applicant or past rulings finding against the applicant.
 - (2) A retail natural gas aggregator/retail natural gas broker shall file general, managerial, and financial information as set forth in the application. This information includes, but is not limited to:
 - (a) Ownership and organizational descriptions.

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- (b) Managerial experience and capabilities.
 - (c) Credit ratings and relevant financial information, including financial statements, financial arrangements, and forecasted financial statements.
 - (d) Proof of an Ohio office and an employee in this state in accordance with division (G) of section 4929.22 of the Revised Code.
 - (e) Financial capability as depicted on publicly available information, and applicable credit ratings.
 - (f) Statements as to whether the applicant's certification has ever been revoked or suspended or if there are pending or past regulatory or judicial actions against the applicant or past rulings finding against the applicant.
- (3) A governmental aggregator shall file general information as set forth in the application. This information includes, but is not limited to:
- (a) Copies of its operation and governance plans.
 - (b) Descriptions of experience.
- (C) An applicant for certification or certification renewal shall file a completed and notarized original application signed by a principal officer of the applicant in accordance with the application instructions, including all supporting attachments and affidavits, with the commission's docketing division.
- (1) The date that the commission's docketing division stamps an application received shall serve as the official filing date with the commission.
 - (2) In accordance with rule 4901:1-27-10 of the Administrative Code, the commission may deny without prejudice any application that is not complete or does not include the attachments, documentation, and affidavits required by the application form.
 - (3) In accordance with this chapter, in instances where information and/or documentation required by these rules is not available at the time of filing an application, an applicant may substitute a notarized affidavit by an officer of the applicant stating that the applicant will file such information and/or documentation with the commission at least ten business days prior to offering or providing competitive retail natural gas service to a customer in this state. The affidavit shall be accompanied by an explanation as to why such information is not available for inclusion with the application.

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- (D) All retail natural gas suppliers or governmental aggregators shall include in their certification application, the name, telephone number, and electronic mail address of a contact person who will respond to commission concerns pertaining to consumer complaints. If any of the required information relating to the contact person should change, the retail natural gas supplier or governmental aggregator shall file notice of such changes with the commission within thirty days of such material change in accordance with paragraph (B)(8) of rule 4901:1-27-11 of the Administrative Code.

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4901:1-27-06 Affidavits.

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

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

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4901:1-27-07 Motions.

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

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4901:1-27-08 Protective orders.

- (A) An applicant may file financial statements, financial arrangements, ~~and~~ forecasted financial statements, credit reports, and credit ratings under seal. If these exhibits are filed under seal, they will be afforded protective treatment for a period of six years from the date of the certificate for which the information is being provided.
- (B) An applicant may file a motion for protective order covering information not covered under paragraph (A) of this rule. If the motion is filed in conformance with rule 4901:1-27-07 of the Administrative Code, it shall be automatically approved on the thirty-first day after the date of filing and the information shall be afforded 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 file a motion that complies with rule 4901-1-24 of the Administrative Code.

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4901:1-27-09 Certification renewal.

- (A) No less than thirty and no more than ~~ninety~~sixty days prior to the expiration date indicated on the retail natural gas supplier's or governmental aggregator's certificate, the retail natural gas supplier or governmental aggregator shall file an application with the commission for certification renewal on forms provided by the commission.
- (B) ~~If A~~any renewal application is 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, then the existing certificate automatically will be extended 31 days from the date the renewal application was accepted by the Commission. ~~shall be filed with a motion requesting an extension of the certificate. If the motion is filed in conformance with rule 4901:1-27-07 of the Administrative Code, it shall be deemed automatically approved unless, within three business days of its filing, the commission or an attorney examiner appointed by the commission rules otherwise.~~
- (C) The applicant shall, as instructed by the renewal form, update the information supplied with an applicant's initial certification application.
- (D) The commission will act to approve, deny, or suspend an application for certification renewal pursuant to the same processes, standards, and timelines delineated in rule 4901:1-27-10 or 4901:1-27-13 of the Administrative Code.

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4901:1-27-10 Application approval or denial.

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

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

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

- (A) A retail natural gas supplier or governmental aggregator shall file with the commission notification of any material change to the information supplied in a certification or most recent certification renewal application within thirty days of such material change.
- (1) A retail natural gas supplier or governmental aggregator shall file such notice under the docket number assigned to the retail natural gas supplier's or governmental aggregator's initial certification or most recent certification renewal application, whichever is the most recent.
- (2) After notice and an opportunity for a hearing, the commission may suspend, rescind, or conditionally rescind a retail natural gas supplier's or governmental aggregator's certificate if it determines that the material change will adversely affect the retail natural gas supplier's or governmental aggregator's fitness or ability to provide the services for which it is certified; or to provide reasonable financial assurances sufficient to protect natural gas companies and the regulated sales service customers from default.
- (B) Material changes to the information contained in or supplied with a certification or most recent certification renewal application include, but are not limited to, the following:
- (1) Any significant change in ownership (being an ownership interest of five per cent or more) of the applicant or retail natural gas supplier.
- (2) An affiliation with any public utility or change of an affiliation with a public utility in this state.
- (3) Retirement or other long-term changes to the operational status of supply resources relied upon by the retail natural gas supplier or the retail natural gas supplier of a governmental aggregator to provide competitive retail natural gas service.
- (4) Revocation, restriction, or termination of any interconnection or service agreement with a pipeline company or natural gas company relied upon by a retail natural gas supplier or the retail natural gas supplier of a governmental aggregator to provide competitive retail natural gas service.
- (5) The applicant or retail natural gas supplier's bond rating falls below BBB- as reported by Standard & Poors, Duff & Phelps, or Fitch IBCA or below Baa3 as reported by Moody's investor service.

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- (6) The applicant or retail natural gas supplier has or intends to file for reorganization, protection from creditors, or any other form of bankruptcy with any court.
- (7) Any judgment, finding, or ruling by a court or regulatory agency that could affect a retail natural gas supplier's or governmental aggregator's fitness or ability to provide service in this state.
- (8) Any change in the name of the applicant's regulatory contact, the staff contact for consumer complaints, and the customer service contact, the contact's business or electronic mail address, or telephone or fax number.
- (9) Any change in the applicant's name or any use of a fictitious name.

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

- (A) A retail natural gas supplier or governmental aggregator shall not transfer its certificate to any person without prior commission approval.
- (1) A retail natural gas supplier or governmental aggregator may apply for commission approval to transfer its certificate by filing a certificate transfer application.
- (2) A transfer application shall be automatically approved on the thirty-first day after filing, unless the commission or attorney examiner acts to suspend or reject the application.
- (B) A retail natural gas supplier or governmental aggregator shall not abandon the service(s) it provided under a certificate without filing an abandonment application and without commission approval. The retail natural gas supplier or governmental aggregator shall fulfill the terms of all existing contracts with customers or assign such contracts to another retail natural gas supplier or governmental aggregator prior to abandoning service.
- (1) Abandonment applications shall be filed under the existing certification case number at least ninety days prior to the effective date that the retail natural gas supplier or governmental aggregator will cease providing service. The application shall include copies of any notices provided pursuant to paragraphs (B)(2), (B)(3), and (B)(4) of this rule.
- (2) At least ninety days prior to abandoning service in the state of Ohio, a retail natural gas supplier or governmental aggregator shall provide written notice to each natural gas company in whose service area the retail natural gas supplier or governmental aggregator operates of its intent to cease providing service in the state of Ohio. That notice shall reflect that the retail natural gas supplier or governmental aggregator has filed an abandonment application with the commission.
- (3) At least ninety days prior to abandoning service, a retail natural gas supplier or governmental aggregator shall provide written notice to its existing customers and the office of the Ohio consumers' counsel of its intent to abandon service. Such notice shall indicate the retail natural gas supplier's or governmental aggregator's intent to fulfill or assign customer contracts, including the effective date of such assignment, the effective date it will cease to provide service, and identify the commission's toll-free and Ohio relay service telephone numbers. That notice shall reflect that the retail natural gas supplier or governmental aggregator has filed an abandonment application with the commission. Such notice shall also inform existing customers that, if they do not choose an alternative supplier, their natural gas company will supply them under the applicable tariff service and provide instructions on how they can obtain service from an alternative retail natural gas supplier or governmental

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aggregator. Such notice shall be provided to the commission staff for its review and to the incumbent natural gas company, prior to customer dissemination.

- (4) The retail natural gas supplier or governmental aggregator shall provide notice of its abandonment to its existing customers by separate message that is mailed or otherwise directly delivered to the customer or by notice on customer billing statements. Where the retail natural gas supplier or governmental aggregator is providing the billing, the retail natural gas supplier or governmental aggregator shall provide notice of its abandonment. Where the natural gas company is billing for the retail natural gas supplier or governmental aggregator, the retail natural gas supplier or governmental aggregator may negotiate with the incumbent natural gas company to provide such notice of its abandonment on each billing statement rendered to existing customers. Abandonment notices shall begin at least ninety days before the effective date of the abandonment and shall continue monthly until the operation is abandoned.
- (5) If the commission does not act upon the application within ninety days of the filing date, the application shall be deemed automatically approved on the ninety-first day after the official filing date.

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

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

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- (2) Upon the effective date specified by the commission, a retail natural gas supplier or governmental aggregator whose certificate has been rescinded shall cease providing all competitive retail natural gas service for which it is no longer certified to provide.
 - (3) Before the effective date of the certificate rescission, a retail natural gas supplier or governmental aggregator that provides competitive retail natural gas service to customers shall cooperate fully with each natural gas company in whose service area it provides such service to ensure that its existing customers will be served by another retail natural gas supplier, governmental aggregator or by the natural gas company on and after the effective date of the certificate rescission.
 - (4) Before the effective date of the certificate rescission, a retail natural gas supplier or governmental aggregator whose certificate has been rescinded shall provide a written notice to each of its customers that indicates that its certificate has been rescinded and specifies the date(s) it will cease to provide service. Such notice shall be provided to the commission staff for its review and to the incumbent natural gas company prior to customer dissemination. Such notice shall also inform existing customers that, if they do not choose an alternative supplier, their natural gas company will supply them under the applicable tariff service and provide instructions on how they can obtain service from an alternative retail natural gas supplier or governmental aggregator.
- (E) Reasons that the commission may suspend, rescind, or conditionally rescind a retail natural gas supplier's or governmental aggregator's certificate include, but are not limited to:
- (1) A retail natural gas supplier's or governmental aggregator's failure to timely pay any assessment made pursuant to section 4905.10 or section 4911.18 of the Revised Code.
 - (2) A retail natural gas supplier's or governmental aggregator's failure to timely file an annual report of its intrastate gross receipts and sales of hundred cubic feet of gas pursuant to section 4905.10, or section 4911.18, or division (B) of section 4929.23 of the Revised Code.
 - (3) A finding by the commission that a retail natural gas supplier or governmental aggregator has materially underreported its intrastate gross receipts and sales of hundred cubic feet of gas on reports required by rule 4901:1-30-01 of the Administrative Code.
 - (4) A finding by the commission that any information reported to the commission subsequent to granting a certificate adversely affects a retail natural gas supplier's or governmental aggregator's fitness or capability to provide any service covered by its certificate.

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- (5) A finding by the commission that a retail natural gas supplier or governmental aggregator knowingly omitted information or knowingly provided false information on a certification or certification renewal application, including supporting attachments.
- (6) A finding by the commission that a retail natural gas supplier or governmental aggregator has provided a competitive retail natural gas service without being certified by the commission to provide such service.
- (7) A finding by the commission that a retail natural gas supplier or governmental aggregator has violated any applicable commission rule or order adopted pursuant to Chapter 4929. of the Revised Code.
- (8) A finding by the commission that a retail natural gas supplier or governmental aggregator has failed to consent to the jurisdiction of the courts of this state or has failed to designate an agent to accept service of process pursuant to section 4929.21 of the Revised Code.
- (9) A finding by the commission that a retail natural gas supplier or governmental aggregator has engaged in an anticompetitive act.
- (10) A finding that a retail natural gas supplier or the retail natural gas supplier of a governmental aggregator has failed to maintain appropriate financial security or has otherwise committed an act of default as defined by a natural gas company's tariff or by agreement between the natural gas company and the retail natural gas supplier or governmental aggregator.
- (11) A finding by the commission that a retail natural gas supplier or governmental aggregator has failed to comply with state laws or rules designed to protect consumers in this state, or has otherwise engaged in any fraudulent, misleading or unfair practice.
- (12) A finding by the commission that a retail natural gas supplier has failed to maintain an Ohio office and an employee in this state, in accordance with section 4929.22 of the Revised Code.

~~(F) In the event of a material default, as defined by a natural gas company's tariff or by an agreement between the natural gas company and the retail natural gas supplier or governmental aggregator:~~

- ~~(1) The natural gas company shall serve a written notice of such default in reasonable detail and with a proposed remedy to the retail natural gas supplier or governmental aggregator and the commission.~~
- ~~(2) On or after the date the default notice has been served, the natural gas company may file with the commission a written request for authorization to terminate or suspend the retail natural~~

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~~gas supplier or governmental aggregator from participation with the natural gas company's supplier program.~~

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

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4901:1-27-14 Financial security.

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



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Agency Contact Info: Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122

Fax: 614-728-8373

Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: Governmental Aggregators and Retail Natural Gas Suppliers (CRNGS) - Certification

Rule Number(s): 4901:1-27-01, 4901:1-27-02, 4901:1-27-03, 4901:1-27-04, 4901:1-27-05, 4901:1-27-06, 4901:1-27-07, 4901:1-27-08, 4901:1-27-09, 4901:1-27-10, 4901:1-27-11, 4901:1-27-12, 4901:1-27-13, 4901:1-27-14

Date of Submission for CSI Review: September 8, 2021

Public Comment Period End Date: October 22, 2021

Rule Type/Number of Rules:

- | | |
|---------------------------------------------------------------|----------------------------------------------------------------|
| <input type="checkbox"/> New/ <u>rule</u> (FYR? ____) | <input type="checkbox"/> X No Change/ <u>9 rule</u> (FYR? Yes) |
| <input type="checkbox"/> X Amended/ <u>5 rules</u> (FYR? Yes) | <input type="checkbox"/> Rescinded/ <u>rule</u> (FYR? ____) |

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing

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regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rules for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☒ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Adm.Code 4901:1-27 sets forth the requirements for competitive retail natural gas service CRNGS provider, retail natural gas aggregator, retail natural gas broker, and governmental aggregator certification. Specifically, this chapter outlines the application process, the standards for application approval or denial, applicant responsibility for financial security, requirements for certification renewal, notification requirements for material changes in certificate information, transfer or abandonment of a certificate, and the Commission's authority to suspend, rescind, or conditionally rescind a certificate.

The proposed changes to Ohio Adm.Code 4901:1-27-04 include requiring CRNGS providers or governmental aggregators with expired certificates, who wish to refile for certification, to file a new application under the existing certificate case number, the amendment allows such a filing to extend the previous certificate up to 90 days. Under Ohio Adm.Code 4901:1-27-08,

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an applicant may file certain additional documentation under seal without filing a corresponding motion for protective order. Under Ohio Adm.Code 4901:1-27-09, if renewal applications are filed fewer than 30 days prior to the expiration date of the certificate then the existing certification will automatically extend 31 days, plus the amendment gives CRNGS providers and governmental aggregators a longer period of time during which it can file such renewal. Under Ohio Adm.Code 4901:1-27-12, the amendment clarifies that an abandonment application should be filed under the existing certification case. Furthermore, the proposed removal of Ohio Adm.Code 4901:1-27-13(F) accommodates/reconciles the rule changes made in Case No. 19-1429-GA-ORD. This was the most recent five-year rule review case of Ohio Adm.Code 4901:1-13 for the minimum gas service standards, which became effective on August 5, 2021. The above rule review moved Ohio Adm.Code 4901:1-27-13(F) to Ohio Adm.Code 4901:1-13-14(J). Therefore, the proposed change to Ohio Adm.Code 4901:1-27-13(F) was made to avoid duplication within different rule chapters.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

	Statutory Authority – O.R.C.	Amplifies – O.R.C.
Rule 4901:1-27-01	4929.10, 4929.20	4929.01, 4929.20
Rule 4901:1-27-02	4929.10, 4929.20	4929.01, 4929.20
Rule 4901:1-27-03	4929.10, 4929.20	4929.20 , 4929.30, 4905.04
Rule 4901:1-27-04	4929.10, 4929.20	4929.20
Rule 4901:1-27-05	4929.10, 4929.20	4929.20 , 4929.22
Rule 4901:1-27-06	4929.10, 4929.20	4929.20 , 4929.23, 4905.10, 4911.18, 4929.21
Rule 4901:1-27-07	4929.10, 4929.20	4929.20
Rule 4901:1-27-08	4929.10, 4929.20	4929.20
Rule 4901:1-27-09	4929.10, 4929.20	4929.20
Rule 4901:1-27-10	4929.10, 4929.20	4929.20
Rule 4901:1-27-11	4929.10, 4929.20	4929.20
Rule 4901:1-27-12	4929.10, 4929.20	4929.20
Rule 4901:1-27-13	4929.10, 4929.20	4929.20 , 4905.26
Rule 4901:1-27-14	<u>4929.10, 4929.20</u>	<u>4929.20 , 4905.26</u>

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

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

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

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

Not Applicable.

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

The rules in this chapter establish the standards required by R.C. 4929.20 for applicants to be certified as CRNGS providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators.

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

The Commission monitors complaints from the applicant CRNGS providers, retail natural gas aggregators, retail natural gas brokers, governmental aggregators, and their customers through staff interaction and the Commission's call center.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not Applicable.

Development of the Regulation

9. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Commission conducted a workshop on October 3, 2018, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for

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the commission's review of Ohio Adm.Code 4901:1-27, O.A.C., is 17-1845-GA-ORD. The entry providing notice of the workshop was served upon all investor-owned natural gas utilities in the state of Ohio, all competitive retail natural gas service providers in the state of Ohio, and the GAS-PIPELINE industry list-serve. The workshop was held in conjunction with other electric and natural gas industry rules workshops, including the rules in Chapters 4901:1-10, 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34.

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

At the workshop held on October 3, 2017, comments were offered by various stakeholders. Some recommendations from stakeholders have been incorporated in the proposed rules. The Commission will also consider any comments or reply comments addressing this rule chapter that are filed by stakeholders and the general public in Case No. 17-1845-GA-ORD.

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

No specific scientific data was used to develop this chapter. Rather, the certification of CRNGS providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators is required by R.C. 4929.20(A) and has been in effect since 2002; thus, Staff's experience and the input of stakeholders was utilized to refine the rules.

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

The certification of CRNGS providers, retail natural gas aggregators, retail natural gas brokers, and governmental under Ohio Adm.Code 4901:1-27 is specifically mandated by R.C. 4929.20, thus regulatory alternatives were not available.

13. Did the Agency specifically consider a performance-based regulation? Please explain.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The certification of CRNGS providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators under Ohio Adm.Code 4901:1-27 is specifically mandated by R.C. 4929.20, thus, performance-based regulation is inappropriate.

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

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

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

Ohio Adm.Code 4901:1-27 is required by R.C. 4929.20 and has been in effect since 2002 without complaints about inconsistent application of the Chapter.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community; and

Ohio Adm.Code 4901:1-27 establishes minimum managerial, technical, and financial standards for CRNGS providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators and provides reasonable financial assurances to protect consumers and natural gas companies from default; reflecting the requirements of R.C. 4929.20.

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

CRNGS companies that are subject to Commission jurisdiction must devote time to complete the certification application required under this chapter, as well as renewal applications. Furthermore, Ohio Adm.Code 4901:1-27-13, each CRNGS provider is subject to an annual assessment, pursuant to R.C. 4905.10 and 4911.18. This specific rule also requires, pursuant to R.C. 4905.10, 4911.18, and 4929.23(B), CRNGS must file an annual report based upon its intrastate gross receipts sale of hundred cubic feet of gas. Ohio Adm.Code 4901:1-24-14 notes that, pursuant to the tariff filed with the Commission in accordance with R.C. 4929.20(A), a natural gas company may require a CRNGS provider to issue and maintain financial security with the natural gas company to protect the natural gas company in the event the CRNGS provider fails to deliver contracts retail general service to a customer.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a

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“representative business.” Please include the source for your information/estimated impact.

Ohio Adm.Code 4901:1-27 has been in effect since 2002 and reflects the requirements of R.C. 4929.20. The hours and costs for an applicant to compile a certification application including ownership and organizational descriptions, managerial experience and capabilities, balance sheets, credit ratings, and other relevant financial information will vary depending upon the size of the supplier and the service areas in which supplier intends to operate. See the answer to Question 40(b) for the other types of potential impacts, the costs of which will depend on each specific CRNGS provider.

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

Ohio Adm.Code 4901:1-27 reflects the requirements of R.C. 4929.20. Any proposed changes to the Chapter are primarily substantive, nor contrary to legislative intent.

Regulatory Flexibility

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

Ohio Adm.Code 4901:1-27 reflects the legislative intent of R.C. 4929.20 and provides for a streamlined certification requirements for all CRNGS providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators to do business in Ohio.

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

The focus of Ohio Adm.Code 4901:1-27 is to ensure that CRNGS providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators are certified to do business in Ohio. The focus is not on seeking penalties for first-time paperwork offenses. Fines or penalties for violation of this chapter may only be ordered by the Commission after notice and hearing. The Commission will fully comply with R.C. 119.14 and not seek to recover administrative fines or civil penalties on any small business for a first-time paperwork violation, unless such violation falls within one of the exceptions set forth in paragraph (C) of that section and without providing due process to the small company.

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

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 17-1845-GA-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential

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revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry. Also, Commission Staff routinely works with small businesses to assist such companies with Ohio Adm.Code 4901:1-27 compliance.

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4901:1-28-01 Definitions.

As used in this chapter:

- (A) "Commission" means the public utilities commission of Ohio.
- (B) "Customer" means a person who contracts with or is solicited by a retail natural gas supplier or governmental aggregator for the provision of a competitive retail natural gas service.
- (C) "Eligible governmental aggregation customer" means a person that is eligible to participate in a governmental aggregation in accordance with sections 4929.26 and 4929.27 of the Revised Code and does not include any of the following:
 - (1) A person that is both a distribution service customer and a mercantile customer on the date of commencement of service to the governmental aggregation, or the person becomes a distribution service customer after the service commencement date and is also a mercantile customer.
 - (2) A person that is supplied with commodity sales service pursuant to a contract with a retail natural gas supplier.
 - (3) A person that is supplied with commodity sales service as part of the percentage of income payment plan program or similar or successor program adopted by the commission under Chapter 4905. or 4929. of the Revised Code.
 - (4) A person that has failed to discharge, or enter into a plan to discharge, all existing arrearages owed to or being billed by the incumbent natural gas company.
- (D) "Existing customer" means a person who has a contract with a retail natural gas supplier or governmental aggregator for the provision of competitive retail natural gas service.
- (E) "Governmental aggregation program" means the aggregation program established by the governmental aggregator with a fixed aggregation term, which shall be a period of not less than one year and no more than two years.
- (F) "Governmental aggregator" has the meaning set forth in division (K)(1) of section 4929.01 of the Revised Code. For purposes of this chapter, "governmental aggregator" specifically excludes a municipal corporation acting exclusively under Section 4 of Article XVIII, Ohio Constitution, as an aggregator for the provision of competitive retail natural gas service.
- (G) "Mercantile customer" has the meaning set forth in division (L) of section 4929.01 of the Revised Code.

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

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4901:1-28-02 Purpose and scope.

- (A) The rules in this chapter apply to a governmental aggregator's formation and operation of an opt-out governmental aggregation pursuant to Chapter 4929. of the Revised Code and to cooperation between natural gas companies and governmental aggregators.
- (B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.
- (C) Are intended to:
 - (1) Establish minimum requirements for formation and operation of governmental aggregations.
 - (2) Establish minimum requirements for a governmental aggregator's operation and governance plan.
 - (3) Establish minimum requirements for a governmental aggregator's opt-out notice to customers.
 - (4) Foster cooperation between natural gas companies and governmental aggregators.

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

- (A) Prior to applying for certification at the commission, a governmental aggregator that will form an opt-out aggregation shall complete all of the requirements specified in divisions (A) to (D) of section 4929.26 of the Revised Code, including adopting an ordinance or resolution authorizing an opt-out aggregation, conducting a general or special election in accordance with division (B) of section 4929.26 of the Revised Code for authorization from electors to form the aggregation, and approving a plan for operation and governance of the aggregation as specified by division (C) of section 4929.26 of the Revised Code.
- (B) The operation and governance plan adopted shall detail the services that will be provided under the aggregation and specify all customer rights and obligations under the aggregation. The plan shall be sufficiently detailed to allow customers to readily understand the services that the governmental aggregator is to provide and to compare those services against similar services provided by competitive suppliers. The governmental aggregator shall write the plan in clear and plain language so that an average residential customer can easily understand it. The plan shall, at a minimum, contain all of the following:
- (1) A detailed description of services the governmental aggregator is to provide under the aggregation, including noting whether the service is to be provided directly by the governmental aggregator or by a party contracted by the governmental aggregator.
 - (2) A description of the processes that the governmental aggregator will use to determine the rates that will be charged.
 - (3) A detailed description of the governmental aggregator's plan for providing the required opt-out disclosure notices to eligible governmental aggregation customers. The plan shall describe the steps that the governmental aggregator will take to ensure that all eligible governmental aggregation customers residing within the governmental aggregator's governmental boundaries are notified. The plan shall also identify the time frames associated with the notice.
 - (4) A detailed description of the process for developing the pool of customer accounts that may be included in the aggregation, including the steps that will be taken to identify and eliminate customers that are not eligible to participate in the aggregation and eligible governmental aggregation customers who opt out of the aggregation.
 - (5) The governmental aggregator's plan for billing customers, including an identification of billing intervals and the identity of the entity that will transmit the bill to the customer.

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- (6) A listing of any credit or deposit procedures and the policies that the governmental aggregator will employ in the event that a customer fails to pay its bill.
- (7) A detailed description of the governmental aggregator's customer service procedures and dispute resolution processes, including notice of the customer's right to contact the commission and the commission's toll-free and Ohio relay service telephone numbers for its call center. These procedures and processes shall comport with the requirements specified in rule 4901:1-29-08 of the Administrative Code.
- (8) A detailed description of the policies associated with a customer moving into the aggregation or within the aggregation where the incumbent natural gas company considers the customer that is moving to be a new customer. If the policies provide that these customers will be automatically included in the aggregation, the governmental aggregator shall provide the customers an opportunity to opt out of the aggregation in accordance with the procedures set forth in rule 4901:1-28-04 of the Administrative Code.
- (9) A detailed description of the policies associated with a customer moving within the aggregation where the customer is not assigned a new account number by the incumbent natural gas company. A customer in these circumstances may maintain the rate that the customer was charged at its previous location or, if the rate at the new location is higher than at the customer's previous location, the customer shall have the opportunity to opt out of the aggregation without penalty, pursuant to the procedures set forth in rule 4901:1-28-04 of the Administrative Code.
- (10) A description of the governmental aggregator's policies regarding the ability of a customer who had previously opted out of the aggregation to join the aggregation, including identification of any associated conditions.
- (C) A governmental aggregator shall keep its operation and governance plan available for public inspection and shall, upon request, provide a copy of the plan to any existing or potential customer of the aggregation.
- (D) A governmental aggregator shall not alter its operation and governance plan in any way that would materially affect the customers of the aggregation without first providing notice to all affected customers and providing these customers the opportunity to opt out of the aggregation according to the procedures established for the initial opt-out disclosure notice set forth in rule 4901:1-28-04 of the Administrative Code. The notice shall set forth the changes to the plan, inform the customer of its right to opt out of the aggregation without penalty, and identify the method and time frame for the customer to opt out.

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- (E) No governmental aggregator shall send an opt-out disclosure notice to potential customers of an aggregation prior to the governmental aggregator being certified by the commission.

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

- (A) Prior to including a customer's natural gas account or accounts in an aggregation, a governmental aggregator shall provide each eligible governmental aggregation customer written notice that the customer's account(s) will be automatically included in the aggregation unless the customer affirmatively opts out of the aggregation. The notice shall, at a minimum, include:
- (1) The language on the front cover of the envelope or postcard providing the notice shall state "important natural gas aggregation information."
 - (2) A summary of the actions that the governmental entity took to authorize the aggregation.
 - (3) A description of the services that the governmental aggregator will provide under the aggregation.
 - (4) Disclosure of the price that the governmental aggregator will charge customers for competitive retail natural gas service, including:
 - (a) Dollars and/or cents per hundred cubic feet of gas ("Ccf") or thousand cubic feet of gas ("Mcf"), depending on the unit that is used by the natural gas company that serves the customer, if the product is based on a per-unit price. For flat-monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract.
 - (b) If a variable rate is offered, an understandable description of the factors that will cause the price to vary (including any associated indices) and disclosure of how frequently the rate will change.
 - (c) A statement that the retail natural gas supplier's or governmental aggregator's rate is exclusive of all applicable state and local taxes.
 - (5) If different rates will be charged to different rate classes within the aggregation, the governmental aggregator shall disclose the applicable rate(s) to customers within the various rate classes.
 - (6) An itemized list and explanation of all fees and charges that are not incorporated into the rates charged for natural gas that the governmental aggregator will charge the customer for participating in the aggregation, including any applicable switching fees or early termination penalties. These switching fees and/or early termination penalties shall not apply to a customer that moves out of the governmental aggregator's territory.

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- (7) Disclosure of the dates covered by the governmental aggregation program, including an estimated service commencement date and notice that the customer may opt out of the aggregation at least every two years without penalty.
 - (8) Disclosure of any credit and/or deposit policies and requirements.
 - (9) Disclosure of any limitations or conditions on customer acceptance into the aggregation.
 - (10) A description of the process and associated time period for customers to opt out of the aggregation. The process shall include provisions for customers to return a post card or similar notice to the governmental aggregator or its agent. The process may include, in addition, other opt-out methods, such as telephonic or internet notice, provided that these methods provide for verification of a customer's election to opt out of the aggregation.
 - (11) The time period for a customer to choose to opt out of the aggregation shall extend at least twenty-one days from the date of the post mark on the written notice. A customer's return post card or notice that is post marked before the opt-out deadline has elapsed shall be deemed to have opted out.
 - (12) A local or toll-free telephone number that customers can call with questions regarding the formation or operation of the aggregation, including associated calling hours.
- (B) At least every two years from the establishment of its governmental aggregation program, a governmental aggregator shall provide notice to all customers served by the aggregation of their right to opt out of the aggregation without penalty. This notice shall follow the procedures established for the initial opt-out notice set forth in this rule and shall prominently disclose to customers all changes to the terms and conditions associated with the aggregation.
- (C) No governmental aggregator or retail natural gas supplier serving a governmental aggregation shall impose any terms, conditions, fees, or charges on any customer served by a governmental aggregation unless the particular term, condition, fee, or charge was clearly disclosed to the customer at the time the customer chose not to opt out of the aggregation.
- (D) To assist its preparation and dissemination of required opt-out notices, a governmental aggregator that is certified by the commission may request that the incumbent natural gas company provide it with customer information consistent with paragraph (A) of rule 4901:1-28-05 of the Administrative Code. The governmental aggregator shall not, without the customer's express written consent or electronic authorization or unless pursuant to a court or commission order:

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- (1) Disclose or use for any purpose other than formation and operation of its aggregation a customer's account number or social security number or any customer information regarding customers.
- (2) Release any customer account number, social security number, or any information related to a customer without first obtaining the customer's signature on a release form. Forms requiring a customer to circle or to check off preprinted types of information to be released may not be used. The release form shall:
 - (a) Be on a separate piece of paper.
 - (b) Be clearly identified on its face as a release of personal information and contain text that shall be in at least sixteen-point type.
 - (c) Contain the following statements prominently, just prior to the signature, in type larger and darker than the type in the surrounding sentences: "I realize that, under the rules and regulations of the public utilities commission of Ohio, I may refuse to allow (name of aggregator) to release the information set forth above. By my signature, I freely give (name of aggregator) permission to release the information designated above."
 - (d) Specify on the form the information sought to be released.
- (E) Each governmental aggregator shall use its best efforts to ensure that only eligible governmental aggregation customer accounts within its governmental boundaries and customers who have not opted out are included in its aggregation. If ineligible accounts, accounts from outside of the governmental aggregator's governmental boundaries, or accounts for customers who opted out of the aggregation are switched to the governmental aggregation:
 - (1) The governmental aggregator shall promptly contact the natural gas company to have the customer switched back to the customer's former supplier.
 - (2) The governmental aggregator or the natural gas company, whichever is at fault for an improper switch, shall reimburse the customer for any switching fees that were paid by the customer as a result of the improper switch.
 - (3) The governmental aggregator or the natural gas company, whichever is at fault for an improper switch, shall reimburse the customer for the difference between the customer's former rate and the governmental aggregator's rate multiplied by the customer's usage during the time that the customer was served by the governmental aggregator, if the customer's former rate was less than the rate charged by the governmental aggregator and the higher rate was paid by the customer.

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- (F) The governmental aggregator shall docket with the commission's docketing division an advance notice of the governmental aggregation opt-out program with the final opt-out or any supplemental opt-out customer notification no more than thirty days, but no less than ten days, prior to sending the opt-out notification to customers. The advanced notice to the commission shall identify the affected community and natural gas company involved, include the beginning and ending dates of the twenty-one day opt-out period, and provide the identification of the selected competitive retail natural gas service supplier.

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

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



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Agency Contact Info: Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122

Fax: 614-728-8373

Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: Governmental Aggregation

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

Date of Submission for CSI Review: September 8, 2021

Public Comment Period End Date: October 22, 2021

Rule Type/Number of Rules:

☐ New/___ rules

☐ Amended/___rules (FYR? ___)

☒ X No Change/5 rule (FYR? Yes)

☐ Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rules for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

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

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

This is a no change chapter.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

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	Statutory Authority – O.R.C.	Amplifies – O.R.C.
Rule 4901:1-28-01	4929.01, 4929.10, 4929.20	4929.01, 4929.22, 4929.26, 4929.27
Rule 4901:1-28-02	4929.10, 4929.20, 4929.27	4905.04, 4905.05, 4929.26, 4929.27 , 4929.28
Rule 4901:1-28-03	4929.10, 4929.20, 4929.27	4929.26
Rule 4901:1-28-04	4929.10, 4929.20, 4929.27	4929.26, 4929.22(F)
Rule 4901:1-28-05	4929.10, 4929.27	4929.26, 4929.28, 4905.04, 4905.5, 4929.22(F)

- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
If yes, please briefly explain the source and substance of the federal requirement.

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

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

Not Applicable.

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

The rules in this chapter establish the standards required by R.C. 4929.27 for establishing governmental aggregation with prior consent and amplify the R.C. 4929.26 requirements for ordinances or resolutions for automatic aggregation.

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

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

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

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If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not Applicable.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Commission conducted a workshop on October 3, 2017, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the commission's review of Ohio Adm.Code 4901:1-28 is 17-1846-GA-ORD. The Entry providing notice of the workshop was served upon all investor-owned natural gas utilities in the state of Ohio, all competitive retail natural gas service providers in the state of Ohio, and the GAS-PIPELINE industry list-serve. The workshop was held in conjunction with other electric and natural gas industry rules workshops, including the rules in Chapters 4901:1-10, 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34.

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

At the workshop held on October 3, 2017, comments were offered by various stakeholders. No changes to this rule chapter have been made, however. The Commission will also consider any comments or reply comments addressing this rule chapter that are filed by stakeholders and the general public in Case No. 17-1846-GA-ORD.

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

No scientific data was used to develop this chapter; rather the rules in this chapter are required by R.C. 4929.26 and 4929.27 and have been in effect since 2002.

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

Ohio Adm.Code 4901:1-28 is specifically required by R.C. 4929.26 and 4929.27, thus, regulatory alternatives were not available. Additionally, Staff proposes no change to the rules; therefore, no alternative to Staff's proposal was considered.

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

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

Ohio Adm.Code 4901:1-28, is specifically required by R.C. 4929.26 and 4929.27, thus, performance-based regulation was not considered.

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

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

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

Ohio Adm.Code 4901:1-28 are the rules required by R.C. 4929.26 and 4929.27 and have been in effect since 2002 without complaints regarding inconsistent application of the Chapter.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community; and

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

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

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

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c. Quantify the expected adverse impact from the regulation.

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

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

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

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

Regulatory Flexibility

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

No. The rules contained in Ohio Adm.Code 4901:1-28 are the rules required by R.C. 4929.26 and 4929.27 for governmental aggregation with prior consent and opt-out governmental aggregation.

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

The focus of Ohio Adm.Code 4901:1-28 is to reflect the legislative intent of R.C. 4929.26 and 4929.27 for governmental aggregation with prior consent and opt-out governmental aggregation. The focus is not on seeking penalties for first-time paperwork offenses. Fines or penalties for violation of this chapter may only be ordered by the Commission after notice and hearing. The Commission will fully comply with R.C. 119.14 and not seek to recover administrative fines or civil penalties on any small business for a first-time paperwork violation, unless such violation falls within one of the exceptions set forth in paragraph (C) of that section and without providing due process to the small company.

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

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 17-1846-GA-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry. Also, Commission Staff routinely works with small businesses to assist such companies with Ohio Adm.Code 4901:1-28 compliance.

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4901:1-29-01 Definitions.

As used in this chapter:

- (A) "Billing and collection agent" has the meaning set forth in division (I) of section 4929.01 of the Revised Code.
- (B) "Ccf" means one hundred cubic feet of natural gas.
- (C) "Commission" means the public utilities commission of Ohio.
- (D) "Commodity sales service" has the meaning set forth in division (C) of section 4929.01 of the Revised Code.
- (E) "Competitive retail natural gas service" has the meaning set forth in division (J) of section 4929.01 of the Revised Code.
- (F) "Complaint" means any customer/consumer contact when such contact necessitates follow-up by or with the retail natural gas supplier or governmental aggregator to resolve a point of contention.
- (G) "Consumer" has the meaning set forth in division (E) of section 4929.01 of the Revised Code.
- (H) "Contract" means an agreement between a customer and retail natural gas supplier or governmental aggregator that specifies the terms and conditions for provision of a competitive retail natural gas service.
- (I) "Customer" means a person who contracts with or is solicited by a retail natural gas supplier or governmental aggregator for the provision of a competitive retail natural gas service.
- (J) "Deposit" means a sum of money a retail natural gas supplier or governmental aggregator collects from a customer as a precondition for initiating service.
- (K) "Direct solicitation or enrollment" means face-to-face solicitation or enrollment of a customer initiated by a retail natural gas supplier or governmental aggregator at the home of a customer or at a place other than the normal place of business of the retail natural gas supplier or governmental aggregator and includes door-to-door solicitations.
- (L) "Disclosure statement" means any communication between a customer and governmental aggregator including operation and governance plans and opt-out notices.
- (M) "Distribution service" has the meaning set forth in division (F) of section 4929.01 of the Revised Code.

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- (N) "Existing customer" means a person who has a contract with a retail natural gas supplier or governmental aggregator for the provision of competitive retail natural gas service.
- (O) "Gas company" means a company that meets the definition of a gas company set forth in section 4905.03 of the Revised Code and that also meets the definition of a public utility under section 4905.02 of the Revised Code.
- (P) "Governmental aggregator" has the meaning set forth in division (K)(1) of section 4929.01 of the Revised Code. For purposes of this chapter, "governmental aggregator" specifically excludes a municipal corporation acting exclusively under Section 4 of Article XVIII, Ohio Constitution, as an aggregator for the provision of competitive retail natural gas service.
- (Q) "Mcf" means one thousand cubic feet of natural gas.
- (R) "Mercantile customer" has the meaning set forth in division (L) of section 4929.01 of the Revised Code.
- (S) "Natural gas company" has the meaning set forth in division (G) of section 4929.01 of the Revised Code.
- (T) "Opt-in governmental aggregator" means those governmental aggregators who perform aggregation pursuant to section 4929.27 of the Revised Code.
- (U) "Opt-out governmental aggregator" means those governmental aggregators who perform automatic governmental aggregation pursuant to section 4929.26 of the Revised Code.
- (V) "Person" has the meaning set forth in division (H) of section 4929.01 of the Revised Code.
- (W) "Regulated sales service customer" means a person who has an agreement by contract and/or tariff with a natural gas company or gas company to receive regulated sales service.
- (X) "Residential customer" means a customer who contracts for a competitive retail natural gas service for residential purposes.
- (Y) "Retail natural gas service" has the meaning set forth in division (M) of section 4929.01 of the Revised Code.
- (Z) "Retail natural gas supplier" has the meaning set forth in division (N) of section 4929.01 of the Revised Code.
- (AA) "Small commercial customer" means a commercial customer which is not a mercantile commercial customer under paragraph (R) of this rule.

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(BB) "Solicitation" means any communication intended to elicit a customer's agreement to purchase or contract for a competitive retail natural gas service.

(CC) "Staff" means the commission staff.

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

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4901:1-29-02 Purpose and scope.

(A) The rules in this chapter:

- (1) Apply to persons offering or providing any competitive retail natural gas service as defined by division (J) of section 4929.01 of the Revised Code.
- (2) Apply to the services of natural gas companies as necessary to implement the rules of this chapter.
- (3) Are intended to:
 - (a) Provide minimum standards for service quality, safety, and reliability.
 - (b) Provide customers with sufficient information to make informed decisions about competitive retail natural gas service.
 - (c) Protect customers against misleading, deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of competitive retail natural gas service and in the administration of any contract for that service.
 - (d) Promote nondiscriminatory access to competitive retail natural gas services, ensure timely enrollment with retail natural gas suppliers and governmental aggregators, maintain natural gas service, and timely and correctly switch retail natural gas suppliers and governmental aggregators.

(B) After notice and an opportunity for hearing, the commission may require a retail natural gas supplier, governmental aggregator or natural gas company to take any appropriate action necessary to comply with these rules and the state's policy as stated in section 4929.02 of the Revised Code, upon any of the following:

- (1) The commission's own motion.
- (2) Formal complaints brought to the commission.
- (3) The application of any retail natural gas supplier, governmental aggregator, natural gas company, or any person.

(C) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

(D) The rules in this chapter shall not relieve a retail natural gas supplier or governmental aggregator from complying with all applicable federal, state, and local laws.

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

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4901:1-29-03 General provisions.

- (A) A retail natural gas supplier or governmental aggregator shall not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to, without limitation, the following activities:
 - (1) Marketing, solicitation, or sale of a competitive retail natural gas service.
 - (2) Administration of contracts for such service.
 - (3) Provision of such service, including interactions with consumers.
- (B) A retail natural gas supplier shall maintain an employee and an office open for business in the state of Ohio.
- (C) A retail natural gas supplier or governmental aggregator shall not cause or arrange for the disconnection of distribution service, or employ the threat of such actions, as a consequence of contract termination, customer nonpayment, or for any other reason.
- (D) A retail natural gas supplier or governmental aggregator shall not change or authorize the changing of a customer's supplier of competitive retail natural gas service without the customer's prior consent, as provided for under rule 4901:1-29-06 of the Administrative Code. For the purpose of procuring competitive retail natural gas services, this requirement does not apply to automatic governmental aggregation and for the percentage of income payment program, or a commission approved exemption pursuant to division (A) of section 4929.04 of the Revised Code.
- (E) For the purposes of market monitoring and providing the public comparative information from retail natural gas suppliers' residential contract offers, retail natural gas suppliers shall furnish in a manner designated by the director of the service monitoring and enforcement department, at least one current offer for posting on the apples to apples chart within four calendar days of making such offers to Ohio customers.

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4901:1-29-04 Records and retention.

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

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

- (A) Each retail natural gas supplier and governmental aggregator that offers competitive retail natural gas service to customers shall provide, in marketing materials that include or accompany a service contract, sufficient information for customers to make informed cost comparisons.
- (1) For fixed-rate offers, such information shall, at minimum, include:
- (a) The cost per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for natural gas supply, if the product is based on a per-unit price or, for flat-monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract.
 - (b) The amount of any other recurring or nonrecurring retail natural gas supplier or governmental aggregator charges.
 - (c) A statement that the retail natural gas supplier's or governmental aggregator's rate is exclusive of all applicable state and local taxes and the incumbent natural gas company's service and delivery charges.
- (2) For variable-rate offers, such information shall, at minimum, include:
- (a) A clear and understandable explanation of the factors that will cause the price to vary (including any related indices) and how often the price can change.
 - (b) The amount of any other recurring or retail natural gas supplier or governmental aggregator charges.
 - (c) A statement that the retail natural gas supplier's or governmental aggregator's rate is exclusive of all applicable state and local taxes and the incumbent natural gas company's service and delivery charges.
- (B) Competitive retail natural gas suppliers serving a natural gas company's MVR tariff customers shall provide to the customer the information required in paragraph (A) of this rule upon enrollment.
- (C) A retail natural gas supplier's or governmental aggregator's promotional and advertising material shall be provided to the commission or its staff within three business days of a request by the commission or its staff.
- (D) No retail natural gas supplier or governmental aggregator may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the

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marketing, solicitation, or sale of a competitive retail natural gas service. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

- (1) Soliciting customers for a competitive retail natural gas service after suspension, rescission, or conditional rescission of certification by the commission or after denial of certification renewal by the commission.
- (2) Failing to comply with paragraph (A) of this rule when soliciting a sale of competitive retail natural gas service and failing to disclose all terms, conditions, and limitations, including but not limited to contract length, prices, fees and termination fees, or penalties, and any discretionary charges.
- (3) Failing to provide in or with its advertisements and promotional materials that make an offer for sale, a toll-free/local telephone number (and address for printed materials) which the potential customer may call or write to request detailed information regarding the price, terms, conditions, limitations, and restrictions.
- (4) Soliciting via telephone calls initiated by the retail natural gas supplier or governmental aggregator (or its agent) without first obtaining the list of Ohio customers who have requested to be placed on the federal trade commission's "do not call" registry and obtaining monthly updates of the federal trade commission's "do not call" registry for the appropriate area code.
- (5) Engaging in any solicitation that leads the customer to believe that the retail natural gas supplier or governmental aggregator or its agent is soliciting on behalf of or is an agent of any entity other than the competitive retail natural gas supplier or governmental aggregator.
- (6) Engaging in telephone solicitation of residential customers either before nine a.m. or after nine p.m.
- (7) Knowingly taking advantage of a customer's inability to reasonably protect their interests because of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement.
- (8) Advertising or marketing offers that:
 - (a) Claim that a specific price advantage, savings, or guarantee exists if it does not.
 - (b) Claim to provide a competitive retail natural gas service when such an offer is not a bona fide offer to sell such services.

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- (c) Offer a fixed price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service without disclosing all recurring and nonrecurring charges.
 - (d) Offer a variable price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service without disclosing all recurring and nonrecurring charges.
 - (e) Fail to disclose all material limitations, exclusions, and offer expiration dates.
 - (f) Fail to fully disclose, in an appropriate and conspicuous type-size, an affiliate relationship or branding agreement on advertising or marketing offers that use an Ohio utility's name and logo.
- (E) Retail natural gas suppliers or governmental aggregators when engaging in direct solicitation shall:
- (1) Perform a criminal background check on all employees and agents of retail natural gas suppliers or governmental aggregators engaged in door-to-door solicitation. The criminal background check shall be done by an independent contractor and the retail natural gas supplier or governmental aggregator shall confirm that the independent contractor has performed the comprehensive criminal background check on its employees or agents in accordance with this rule.
 - (2) Comply with all applicable ordinances and laws of the customer's jurisdiction, when engaged in direct solicitation door-to-door. Where the applicable ordinances and laws do not limit the hours of direct solicitation door-to-door, not solicit customers before the hour of nine a.m. or after the hour of seven p.m.
 - (3) Leave the premises of a customer when requested to do so by the customer or the owner or occupants of the premises, when engaging in direct solicitation door-to-door.
 - (4) Ensure when in direct solicitation of customers that the retail natural gas supplier's or governmental aggregator's sales agent displays a valid retail natural gas supplier or governmental aggregator photo identification, preapproved by the staff. The retail natural gas supplier or governmental aggregator shall display to a customer at the first opportunity their photo identification. If a customer is enrolled by a retail natural gas supplier or governmental aggregator, the retail natural gas supplier or governmental aggregator shall offer to leave a form of identification with the customer.

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

- (A) The retail natural gas supplier and governmental aggregator shall coordinate customer enrollment with the incumbent natural gas company in accordance with the procedures set forth in this chapter.
- (B) A retail natural gas supplier and governmental aggregator is prohibited from enrolling potential customers without consent and proof of that consent as delineated in paragraphs (C), (D), and (E) of this rule. This requirement does not apply to opt-out governmental aggregation and for the percentage of income payment program.
- (C) A retail natural gas supplier or governmental aggregator is prohibited from enrolling a potential customer that has failed to discharge, or enter into a plan to discharge, all existing arrearages owed to or being billed by the incumbent natural gas company including those customers enrolled in the percentage of income payment plan plus program (PIPP plus).
- (D) Mailings, facsimiles, and direct enrollment
 - (1) Where enrollment occurs by mail, facsimile, or direct solicitation, the customer's signature on a contract shall constitute consent.
 - (2) Consistent with rule 4901:1-29-05 of the Administrative Code, prior to entering into a contract for service, a retail natural gas supplier or governmental aggregator shall provide each customer with enrollment documents that contain, at a minimum, clear and understandable pricing, terms and conditions of service, the dollar amount of all recurring and nonrecurring charges (including any fees for early termination of the contract), and the duration of the contract.
 - (3) Before obtaining a signature from the applicant, a retail natural gas supplier or governmental aggregator shall provide each customer a reasonable opportunity to read all enrollment documents and shall answer any and all questions posed by any applicant about information contained in the documents.
 - (4) Immediately upon obtaining the customer's signature, a retail natural gas supplier and governmental aggregator shall provide the applicant a legible copy of the signed contract, unless the retail natural gas supplier or governmental aggregator has already provided the customer with a separate, complete copy of the terms and conditions for the customer's records and the retail natural gas supplier or governmental aggregator has complied with paragraph (C) of rule 4901:1-29-10 of the Administrative Code.

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- (5) Where enrollment occurs by direct solicitation, customers shall be advised both verbally and in the contract that:
- (a) The incumbent natural gas company will be sending a confirmation notice of the transfer of service.
 - (b) The customer is allowed a seven-business-day period from the confirmation notice postmark date to rescind the enrollment.
 - (c) The customer must contact the incumbent natural gas company to rescind the enrollment.
- (6) Direct enrollment of a residential or small commercial customer door-to-door by a retail natural gas supplier or governmental aggregator must comply with the following minimum requirements:

(a) Acknowledgment forms

A retail natural gas supplier or governmental aggregator enrolling customers through door-to-door solicitation shall have the customer execute an acknowledgement form as part of and at the time of the door-to-door enrollment process. The acknowledgment form shall include, at a minimum, the following statements or questions:

- (i) Did the representative state he/she was representing a [retail natural gas supplier or governmental aggregator] and was not from the natural gas company?
- (ii) Did the representative explain that by signing the enrollment form you were entering into an agreement/contract for [retail natural gas supplier or governmental aggregator] to supply your natural gas?
- (iii) Did the representative explain the price for natural gas under the contract you signed is _____ dollars per [Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format] plus sales tax?
- (iv) Did the representative explain that the contract term is _____ year(s)?
- (v) Did the representative explain your right to cancel?
- (vi) Did the representative leave two completed right to cancel notices with you?
- (vii) Did the representative disclose whether or not an early termination liability fee would apply if you cancel the contract before the expiration of the contract term? If such a fee does apply to your contract, did the representative disclose the amount of the fee?

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(b) Third-party verification

A retail natural gas supplier or governmental aggregator enrolling customers through door-to-door solicitation shall provide for an independent third-party verification to ensure the validity of enrollment prior to submission to the incumbent natural gas company and shall not initiate enrollment with the incumbent natural gas company without a valid independent third-party verification. The independent third-party verification shall be conducted in accordance with paragraph (E)(1) of rule 4901:1-29-06 of the Administrative Code and the process shall include the following:

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

(c) Terms and conditions print specifications

The terms and conditions must be provided to the residential customer at the time of sale. Paper copies of the 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.

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- (ii) The third-party verification conducted in accordance with paragraph (D)(6)(b) 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 retail natural gas supplier shall provide a mechanism by which both the submission and receipt of the electronic terms and conditions are recorded by time and date.
- (d) Retail natural gas suppliers or governmental aggregators shall remove a customer's name from the marketing/sales database upon the customer's request.
- (7) The retail natural gas supplier and governmental aggregator shall send an electronic enrollment request to the incumbent natural gas company within three business days following receipt of the contract executed by the customer, unless a later enrollment transmittal date is agreed to in the contract by the customer or if the customer rescinds the enrollment.

(E) Telephonic enrollment

- (1) To enroll a customer telephonically, a retail natural gas supplier or governmental aggregator, shall make a date- and time-stamped audio recording of the sales portion of the call, if the customer is enrolled, and before the completion of the enrollment process, a date- and time-stamped audio recording by an independent third-party verifier that verifies, at a minimum, the following:
 - (a) The retail natural gas supplier, governmental aggregator, or the independent third-party verifier identity and the exact purpose of the call.
 - (b) A verbal statement and the customer's acknowledgement that the call is being recorded.
 - (c) A verbal statement and customer's acknowledgement that the retail natural gas supplier or governmental aggregator is not the customer's natural gas company and that the customer may choose to remain with the natural gas company's applicable tariff or default service.
 - (d) A verbal question and the customer's acknowledgement that the customer has given consent to enroll with the retail natural gas supplier or governmental aggregator.

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- (e) A verbal question and the customer's acknowledgement that the customer is the customer of record or is authorized to switch the retail natural gas supplier or governmental aggregator for the customer of record.
- (f) In accordance with rule 4901:1-29-11 of the Administrative Code, a verbal statement and the customer's acceptance of each of the principal terms and conditions for the service that will be provided, including, but not limited to:
 - (i) The service(s) that will be provided.
 - (ii) The price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format if the product is based on a per-unit price, or for flat-monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract.
 - (iii) The length of the contract term.
 - (iv) An approximate service commencement date.
 - (v) The contract termination date, and any fees for customer cancellation prior to such date.
 - (vi) Any material limitations, conditions, or exclusions.
 - (vii) Any fees or costs to the customer.
 - (viii) If applicable, whether the retail natural gas supplier or governmental aggregator will perform a credit check and require a deposit, including the amount.
 - (ix) Who will bill for the retail natural gas supplier's and governmental aggregator's service(s).
 - (x) The enrollment confirmation number.
- (g) A verbal statement and the customer's acknowledgement that the retail natural gas supplier or governmental aggregator will, within one business day, send the customer a written contract that details the terms and conditions that were summarized in the telephone call.
- (h) Customers are advised both verbally and in the contract of all of the following:
 - (i) The incumbent natural gas company will be sending a confirmation notice of the transfer of service.

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- (ii) The customer is allowed a seven-business-day period from the confirmation notice postmark date to rescind the enrollment.
- (iii) The customer should contact the incumbent natural gas company to rescind the enrollment.
- (i) The incumbent natural gas company's toll-free or local telephone number that the customer can call to rescind the enrollment.
- (j) A verbal request for and the customer's provision of the customer's natural gas company's account number.
- (k) A verbal request for and the customer's provision of the customer's mailing address.
- (2) Following telephonic enrollment, the retail natural gas supplier or governmental aggregator shall:
 - (a) Within one business day, send the customer a written contract that details the terms and conditions summarized in the telephone call pursuant to rule 4901:1-29-11 of the Administrative Code. Such contract shall in no way alter the terms and conditions to which the customer agreed in the telephone call.
 - (b) Retain the audio recording of the customer's enrollment for one year after the contract with the customer is terminated.
 - (c) Provide a copy of the audio recording to the commission or its staff within three business days of a request.
- (3) The retail natural gas supplier or governmental aggregator shall not initiate enrollment with the incumbent natural gas company prior to the completion of the enrollment transaction with the customer.
- (4) The retail natural gas supplier or governmental aggregator shall send an electronic enrollment request to the incumbent natural gas company within three business days after sending the customer the written contract, unless a later enrollment transmittal date is agreed to in the contract by the customer or if the customer rescinds the enrollment.

(F) Internet enrollment

- (1) Where enrollment occurs by internet, prior consent shall be obtained by encrypted customer input on a retail natural gas supplier's or governmental aggregator's internet website.

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

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- (b) An electronic agreement version number.
 - (c) The name of the retail natural gas supplier or governmental aggregator.
 - (d) The date the customer electronically enrolled.
 - (e) The name of the account holder.
 - (f) The incumbent natural gas company account number.
 - (g) The account holder's U.S. mailing address.
- (8) The retail natural gas supplier or governmental aggregator shall provide a mechanism by which both the submission and receipt of the electronic customer consent form are recorded by time and date.
- (9) After the customer completes the electronic customer consent form, the internet enrollment process shall disclose conspicuously that the customer has been enrolled and the retail natural gas supplier or governmental aggregator shall provide the customer an enrollment confirmation number.
- (G) In customer enrollment, if the incumbent natural gas company rejects a customer from enrollment, the retail natural gas supplier or governmental aggregator shall notify the customer within three business days from the incumbent natural gas company's notification of rejection that the customer will not be enrolled or enrollment will be delayed, along with the reason(s).
- ~~(H) The incumbent natural gas company shall, within two business days of confirming a retail natural gas supplier's or governmental aggregator's valid electronic enrollment request and prior to commencing enrollment, mail the customer a competitively neutral confirmation notice stating:~~
- ~~(1) The incumbent natural gas company has received a request to enroll the customer for competitive retail natural gas service with the named retail natural gas supplier or governmental aggregator.~~
 - ~~(2) The date such service is expected to begin.~~
 - ~~(3) The customer has seven business days from the postmark date on the notice to contact the incumbent natural gas company to rescind the enrollment request or notify the incumbent natural gas company that the change of the retail natural gas supplier or governmental aggregator was not requested by the customer.~~
 - ~~(4) The incumbent natural gas company's toll-free or local telephone number.~~

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~~(I) Within two business days after receiving a customer's request to rescind enrollment with the retail natural gas supplier or governmental aggregator, the incumbent natural gas company shall initiate such rescission and inform the retail natural gas supplier or governmental aggregator that such action has been taken.~~

(~~H~~) Customers may request an actual meter reading prior to the transfer of the service to the new retail natural gas supplier or governmental aggregator in accordance with paragraph (G)(5) of rule 4901:1-13-04 of the Administrative Code.

(~~K~~) Customers returning to the incumbent natural gas company's commodity service:

- (1) Any customer returning to the incumbent natural gas company's commodity service due to default, abandonment, slamming, or certification rescission of a retail natural gas supplier or governmental aggregator will not be liable for any costs associated with the switch.
- (2) Any switching fee applicable to customers switching from one marketer to another marketer shall also apply to customers switching from a marketer to the incumbent natural gas company's commodity sales service.
- (3) Customers participating in an opt-out governmental aggregation program will not be charged a switching fee upon returning to regulated sales service due to either termination of the aggregation or the aggregator switching suppliers.
- (4) Any customer returned to the incumbent natural gas company's commodity service shall pay the applicable regulated sales service rate while taking such service.
- (5) Within two business days after confirming the validated electronic data file for a retail natural gas supplier's or governmental aggregator's customer-drop request, the incumbent natural gas company shall mail the customer a notice stating:
 - (a) The incumbent natural gas company has received a request to drop the customer from competitive retail natural gas service with the named retail natural gas supplier or governmental aggregator.

(b) The retail natural gas supplier's or governmental aggregator's toll-free telephone number.

(~~L~~) In an instance where the customer and retail natural gas supplier or governmental aggregator agree to a material change to an existing contract, the retail natural gas supplier or governmental aggregator shall obtain proof of the customer's consent to the material change as delineated in paragraphs (D), (E), and (F) of this rule and in accordance with the applicable enrollment process for that customer.

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4901:1-29-07 Credit and deposits.

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

- (A) Disclose in service contracts with customers its nondiscriminatory policies regarding creditworthiness and deposits, including the amount of any deposit, the allocation of the deposit, and the return of any deposit balance.
- (B) Accept a reasonable and nondiscriminatory deposit as sufficient evidence of the customer's creditworthiness to initiate service.
- (C) Disclose whether interest will be paid on deposits and the applicable rate of interest.
- (D) Provide the customer a receipt for any deposit within ten business days of the date that the deposit is collected.
- (E) Return the deposit within seven business days if the customer cancels the contract during the rescission period.
- (F) Apply the deposit to the final bill and promptly refund any excess to the customer when service is terminated.
- (G) Not require an applicant to pay the balance due another retail natural gas supplier or governmental aggregator as a condition of establishing credit or providing competitive retail natural gas service.

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

(A) Customer access

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

(B) Customer complaints

- (1) Each retail natural gas supplier or governmental aggregator (and/or its agent) shall investigate customer complaints (including customer complaints referred by the natural gas company) and provide a status report within three business days following receipt of the complaint to:
 - (a) The customer, when the complaint is made directly to the retail natural gas supplier or governmental aggregator.
 - (b) The staff, when a complaint is referred to the retail natural gas supplier or governmental aggregator by the staff.
- (2) If an investigation is not completed within ten business days, the retail natural gas supplier or governmental aggregator (and/or its agent) shall provide status reports to the customer, or if applicable, to the staff. Such status reports shall be provided at three business day intervals until the investigation is complete, unless the action that must be taken will require more than three business days and the customer has been so notified.
- (3) The retail natural gas supplier or governmental aggregator (and/or its agent) shall inform the customer, or the staff, of the results of the investigation, orally or in writing, no later than three business days after completion of the investigation. The customer or staff may request the report in writing.
- (4) If a customer disputes the retail natural gas supplier's or governmental aggregator's (and/or its agent's) report, the retail natural gas supplier or governmental aggregator shall inform the customer that the staff is available to mediate complaints. The retail natural gas supplier or governmental aggregator (and/or its agent) shall provide the customer with the address,

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local/toll-free telephone numbers, and Ohio relay service telephone number of the commission's call center.

- (5) Each retail natural gas supplier or governmental aggregator shall retain records of customer complaints, investigations, and complaint resolutions for two years after the occurrence of such complaints and shall provide such records to the staff within three business days of request.
- (6) Each retail natural gas supplier or governmental aggregator shall make good faith efforts to resolve disputes and cooperate with the resolution of any joint issues with the incumbent natural gas company.

~~(C) If a customer contacts the incumbent natural gas company concerning competitive retail natural gas service issues, the incumbent natural gas company shall:-~~

- ~~(1) Review the issue with the customer to determine whether it also involves the incumbent natural gas company.~~
- ~~(2) Cooperate with the resolution of any joint issues with the retail natural gas supplier or governmental aggregator.~~
- ~~(3) Refer the customer to the appropriate retail natural gas supplier or governmental aggregator in those instances where the issue lacks incumbent natural gas company involvement.~~

~~(D)~~ Slamming complaints

- (1) A slamming complaint is a customer's allegation that the customer's retail natural gas supplier or governmental aggregator has been switched without the customer's authorization.
- (2) If a customer contacts a ~~natural gas company,~~ retail natural gas supplier, or governmental aggregator alleging that the customer's supplier has been switched without the customer's authorization, the ~~natural gas company,~~ retail natural gas supplier, or governmental aggregator shall:
 - (a) Provide the customer any evidence relating to the customer's enrollment.
 - (b) Refer the customer to the commission's call center.
 - (c) Provide the customer with the local/toll-free telephone numbers of the commission's call center.
 - (d) Cooperate with the staff in any subsequent investigations of the slamming complaint.

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- (3) If a customer initiates a slamming complaint with staff within thirty calendar days after being issued a bill from the alleged slammer, the customer shall not be required to pay the current charges assessed by the alleged slammer until the staff determines that the change in the customer's natural gas supplier was authorized. This rule does not apply to governmental aggregation customers whose remedies are found in paragraph (E) of rule 4901:1-28-04 of the Administrative Code.
- (4) Except as otherwise provided in Chapter 4901:1-28 of the Administrative Code or a commission-approved exemption pursuant to division (A) of section 4929.04 of the Revised Code, if the retail natural gas supplier or governmental aggregator cannot produce valid documentation confirming that the customer authorized the switch, there shall be a rebuttable presumption that the customer was switched without authorization. Such documentation includes one of the following, in conformance with the requirements of rule 4901:1-29-06 of the Administrative Code:
- (a) A signed contract, in the case of direct enrollment.
 - (b) An audio recording, in the case of telephonic enrollment.
 - (c) Electronic consent, in the case of internet enrollment.
- (5) In the event that the customer was switched from one retail natural gas supplier or governmental aggregator to a different retail natural gas supplier or governmental aggregator without authorization, the customer's previous retail natural gas supplier or governmental aggregator shall re-enroll the customer without penalty under such customer's original contract price for the duration of the original term and send the incumbent natural gas company an electronic enrollment request. If the original retail natural gas supplier or governmental aggregator is unable to return the customer to the original contract price, the original retail natural gas supplier or governmental aggregator may enroll the customer in a new contract pursuant to the provisions of rule 4901:1-29-06 of the Administrative Code, or the customer may select a new retail natural gas supplier or return to the incumbent natural gas company's regulated sales service.
- ~~(6) In the event that a customer was switched from a natural gas company regulated sales service commodity service to a retail natural gas supplier or governmental aggregator without authorization, the natural gas company shall switch the customer back to the natural gas company's regulated sales service without penalty.~~

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4901:1-29-09 Customer information.

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

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

(a) Be on a separate piece of paper.

(b) Be clearly identified on its face as a release of personal information and all text shall be in at least sixteen-point type.

(c) Contain the following statements prominently, just prior to the signature, in type larger and darker than the type in surrounding sentences: "I realize that, under the rules and regulations of the public utilities commission of Ohio, I may refuse to allow (name of the retail natural gas supplier or governmental aggregator) to release the information set forth above. By my signature, I freely give (name of the retail natural gas supplier or governmental aggregator) permission to release the information designated above."

(d) Specify the information to be released.

(2) Timely provide the customer's payment history for services rendered by the retail natural gas supplier or governmental aggregator (up to twenty-four months) to the customer without charge.

(B) Customer account numbers obtained from participation in a natural gas company's standard choice offer program shall not be used by retail natural gas suppliers in the marketing materials of competitive retail natural gas service. Account numbers must be provided by the customer prior to enrollment in any alternative offer to the standard choice offer.

~~(C) A natural gas company shall:~~

~~(1) Except as provided for in rule 4901:1-13-12 of the Administrative Code, not disclose or use a customer's social security number, account number, or any customer information, without the customer's express written or electronic authorization on a release form or pursuant to a court or commission order.~~

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- ~~(2) Upon request, timely provide a customer's usage history (twelve months) and payment history (twenty four months) to the customer without charge.~~
- ~~(3) Provide generic customer and usage information, in a universal file format, to other retail natural gas suppliers on a comparable and nondiscriminatory basis.~~
- ~~(4) Provide customer specific information to retail natural gas suppliers and governmental aggregators on a comparable and nondiscriminatory basis as prescribed in paragraph (C) of rule 4901:1-29-13 of the Administrative Code, unless the customer objects to the disclosure of such information.~~
- ~~(5) Prior to issuing any eligible customer lists and at least four times per calendar year, provide all customers clear written notice, in billing statements or other communications, of their right to object to being included on such lists. Such notice shall include instructions for reporting such objection. This notice shall read as follows: "We are required to include your name, address, and usage information on a list of eligible customers that is made available to other retail natural gas suppliers or governmental aggregators. If you do not wish to be included on this list, please call _____ or write _____, or complete the appropriate form on _____ website."~~
- ~~(6) Not release such information unless and until the customer affirmatively indicates that the information may be released, if a customer reports such objection as provided in paragraphs (C)(4) and (C)(5) of this rule.~~

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

- (A) A retail natural gas supplier or opt-in governmental aggregator shall arrange for the provision of competitive retail natural gas service by contracting with its customers. In its administration of such contracts, a retail natural gas supplier or opt-in governmental aggregator is prohibited from engaging in unfair, deceptive, misleading, and unconscionable acts and practices.
- (B) A retail natural gas supplier or opt-in governmental aggregator shall maintain copies of individual customer contracts for no less than two years after such contracts terminate. Copies may be saved in electronic formats if such preserves the image of the original signatures on signed documents.
- (C) For any contract where the customer's signature is not physically on the same document as the complete terms and conditions of such contract, the retail natural gas supplier or opt-in governmental aggregator must assign a unique version number to each version of the contract. Such version number must appear on the document containing the customer's actual signature, on the copy of the terms and conditions left with the customer, and on a master copy of the complete terms and conditions of the contract. Both the document containing the customer's physical signature and the master copy of the complete terms and conditions must be retained in accordance with this rule. This provision shall not apply where the retail natural gas supplier or opt-in governmental aggregator has obtained the customer's consent by telephone or internet enrollment.
- (D) In its administration of customer contracts, a retail natural gas supplier or opt-in governmental aggregator shall:
 - (1) Not assign a customer contract to another retail natural gas supplier or opt-in governmental aggregator without:
 - (a) Providing a minimum of fourteen days written notice to the commission's staff and any affected natural gas company before the contract assignment. Such notice shall include:
 - (i) The name of the retail natural gas supplier or opt-in governmental aggregator to whom the contract(s) will be assigned.
 - (ii) The type of contract(s) to be assigned (e.g., residential, small commercial).
 - (iii) The number of contracts to be assigned.
 - (iv) The incumbent natural gas company involved.
 - (v) The date of the assignment.

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- (vi) A copy of the customer notification.
- (b) Providing prior written notice to the customer.
- (2) When assigned a contract previously administered by another retail natural gas supplier or opt-in governmental aggregator, comply with all terms and conditions in effect for the contract before the assignment occurred.
- (3) Comply in a timely manner with all valid notices from customers to cancel or terminate the contract as provided for by the contract and by this chapter.
- (4) Assign a number to each version of its standard contract form (including changes in contract price), retain such forms for no less than two years, and provide copies to staff within three business days of request.
- (E) A customer shall have the right to rescind his/her contracts, within seven business days following the postmark date on the natural gas company's confirmation notice:
 - (1) By calling the incumbent natural gas company at the designated toll-free or local telephone number.
 - (2) By written notice to the incumbent natural gas company which is effective as of the date of the postmark.
- (F) The retail natural gas supplier or opt-in government aggregator shall furnish written notice to residential and small commercial customers of pending contract expiration between forty-five and ninety calendar days before the contract expires. Such notice shall be made by separate mailing (envelope or postcard), or by conspicuously placed bill message or bill insert. The front cover of such mailing shall contain the following statement: "Important notice regarding your natural gas service contract's expiration." This notice may be combined with a renewal notice. This paragraph does not apply to the expiration of contract periods of one month or less. If the contract does not contain an automatic renewal clause, the notice shall include a statement explaining the service to which the customer will default.
- (G) Contract renewals.
 - (1) The provisions of this paragraph apply to all residential and small commercial contracts that contain automatic renewal clauses, except those which renew on a month-to-month basis.
 - (2) For contracts that contain an early termination or cancellation option with no fee for early termination or cancellation, upon renewal, the retail natural gas supplier or opt-in governmental aggregator shall, in a separate notice, notify customers of such expiration at

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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 retail natural gas supplier or opt-in governmental aggregator shall provide the customer with two separate notices that accurately describe or highlight any changes and state that the customer contract will renew at the specified rate unless the customer affirmatively cancels the contract. Such notices must clearly and accurately describe in understandable language the manner in which the customer may cancel the contract and the time during which the customer must act to cancel the contract. The first notice shall be in writing in accordance with the requirements of this rule and shall be provided at least forty-five calendar days, but no more than ninety calendar days in advance of the contract expiration date. The second notice may be in writing in accordance with paragraphs (G)(2)(a) to (G)(2)(c) of this rule, by telephone, by a notice on the customer's monthly bill, or by electronic mail. The second notice shall be provided at least thirty-five calendar days in advance of the contract expiration and must contain the rate at which the customer contract will renew, or in the case of a variable rate, the applicable formula.
- (a) In the event that the competitive retail natural gas supplier or opt-in governmental aggregator provides the second notice by telephone, the retail natural gas supplier or opt-in governmental aggregator must confirm that the customer of record is on the line, clearly explain both the new contract price and the manner in which the customer may cancel the contract, record the entire conversation, and retain such recording in a manner consistent with rule 4901:1-29-06 of the Administrative Code.

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- (b) In the event that the retail natural gas supplier or opt-in governmental aggregator provides the second notice on the customer's monthly bill, such notice must be in a different color, highlighted, or otherwise differentiated from the remainder of the bill.
 - (c) In the event that the retail natural gas supplier or opt-in governmental aggregator provides the second notice by electronic mail, the notice must:
 - (i) State "Important notice regarding your electric service contract" in the subject area of the message.
 - (ii) Be from an electronic mail address that is readily identifiable as the retail natural gas supplier or opt-in governmental aggregator.
 - (iii) Include a receipt returned to the sender which confirms that the addressee has opened the document.
 - (d) This paragraph shall not apply to contract renewals which renew on a month-to-month basis.
- (4) For contract renewals that contain an early termination or cancellation option with a fee greater than twenty-five dollars for early termination or cancellation or which contain no option for early termination or cancellation, upon renewal, the retail natural gas supplier or opt-in governmental aggregator shall notify the customer of any changes, describe or highlight each change, and also obtain the customer's affirmative consent to such changes pursuant to any of the enrollment procedures established in rule 4901:1-29-06 of the Administrative Code. In addition, the retail natural gas supplier or opt-in governmental aggregator shall notify the customer that no response will result in the customer automatically reverting to the natural gas company unless the customer chooses another retail natural gas supplier or opt-in governmental aggregator. The notice shall be provided at least forty-five calendar days, but not more than ninety calendar days, in advance of the contract expiration date, and comply with paragraphs (G)(2)(a) to (G)(2)(c) of this rule. This paragraph shall not apply to contract renewals which renew on a month-to-month basis.
- (H) Each customer shall have the right to terminate the contract with a retail natural gas supplier or opt-in governmental aggregator, without penalty, in either of the following two circumstances:
- (1) The customer relocates outside the territory of the incumbent natural gas company or within the territory of an incumbent natural gas company that does not permit portability of the contract.

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- (2) The contract allows the retail natural gas supplier or opt-in governmental aggregator to terminate the contract for any reason other than customer nonpayment or the occurrence of a force majeure event, including, but not limited to a change in any governing law or regulation that physically prevents or legally prohibits the retail natural gas supplier or opt-in governmental aggregator from performing under the terms of the contract.
- (I) No retail natural gas supplier or opt-in governmental aggregator contract shall limit or preclude a customer's right to make formal or informal complaints to the commission. A retail natural gas supplier or opt-in governmental aggregator shall not require a customer, as part of the terms of service, to engage in alternative dispute resolution.

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4901:1-29-11 Contract disclosure.

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

- (A) A notification that switching fees may apply to a customer under the incumbent natural gas company's tariff.
- (B) A notification that the customer has the right to request from the retail natural gas supplier or opt-in governmental aggregator up to twenty-four months of the customer's payment history for services rendered by the retail natural gas supplier or governmental aggregator without charge.
- (C) The retail natural gas supplier's or opt-in governmental aggregator's name, mailing address, internet address (if applicable), and a toll-free telephone number (with hours of operation and time zone reference) for customer contacts.
- (D) The services to be provided by the retail natural gas supplier or opt-in governmental aggregator and those to be provided by the incumbent natural gas company, including which entity will bill for those services.
- (E) The seven-business-day period during which a customer has to rescind such contract without penalty and the methods for customers to make such rescission by contacting the incumbent natural gas company (orally or in writing).
- (F) The respective policies, procedures, and any penalties for contract termination by the retail natural gas supplier or opt-in governmental aggregator and by the customer after the rescission period, including any change in such policies, procedures, and penalties that will become effective upon renewal of the contract.
- (G) A notification as to the consequences of nonpayment:
 - (1) In the case where a retail natural gas supplier or opt-in governmental aggregator bills for its own services, a notification that, should the customer fail to pay the bill or fail to meet any agreed-upon payment arrangement, the customer's contract may be terminated by the retail natural gas supplier or opt-in governmental aggregator on fourteen days' notice and that early termination penalties may apply.
 - (2) In the case where the natural gas company bills for the commodity service of a retail natural gas supplier and/or opt-in governmental aggregator, a notification that, should the customer fail to pay the bill or fail to meet any agreed-upon payment arrangement, the customer's service may be terminated in accordance with the incumbent natural gas company's tariffs

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and the customer's contract with its retail natural gas supplier and/or opt-in governmental aggregator may be automatically terminated, leading to early termination penalties.

(H) A statement that the contract automatically terminates if any of the following occurs:

- (1) The requested service location is not served by the incumbent natural gas company.
- (2) The customer moves outside the incumbent natural gas company service area or to an area not served by the retail natural gas supplier or opt-in governmental aggregator.
- (3) The retail natural gas supplier or opt-in governmental aggregator returns the customer to the customer's incumbent natural gas company's applicable tariff service, provided that the retail natural gas supplier or opt-in governmental aggregator is permitted to terminate the contract under the terms and conditions of the contract.

(I) Notification regarding contract termination by the customer:

- (1) A statement that the customer has a right to terminate the contract without penalty in the event the customer relocates outside the service territory of the incumbent natural gas company or within the service territory of an incumbent natural gas company that does not permit portability of the contract.
- (2) If the contract allows the retail natural gas supplier or opt-in governmental aggregator the right to terminate the contract for any reason other than those reasons set forth in paragraph (H)(2) of rule 4901:1-29-10 of the Administrative Code, then a statement that the customer has a right to terminate the contract without penalty at any time.

(J) An itemized list and explanation of all prices in clear and understandable language and all fees associated with the service such that:

- (1) For fixed-rate offers, such information shall, at minimum, include: the cost per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service, if the product is based on a per-unit price, or for flat-monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract; the amount of any other recurring or nonrecurring retail natural gas supplier or opt-in governmental aggregator charges; and a statement that the customer will incur additional charges for the incumbent natural gas company's services.
- (2) For variable-rate offers, such information shall, at minimum, include the amount of any other recurring or nonrecurring retail natural gas supplier or opt-in governmental aggregator charges; a statement that the customer will incur additional charges for the incumbent natural gas company's services; and either of the following options:

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- (a) A clear and understandable formula, based on publicly available indices or data, that the retail natural gas supplier or opt-in governmental aggregator will use to determine the rate that will be charged.
- (b) A clear and understandable explanation of the factors that will cause the price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, to vary (including any related indices) and how often the price can change. In the event the retail natural gas supplier or opt-in governmental aggregator chooses to follow this option, no early termination fee may be charged.
- (K) The terms and conditions of service, including any restrictions and limitations associated with the service or product offered.
- (L) Procedures for handling complaints and disputes, including the following:

"If your complaint is not resolved after you have called (name of retail natural gas supplier or opt-in governmental aggregator), or for general utility information, residential and business customers may contact the public utilities commission 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)."
- (M) A statement that:

"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>."
- (N) Billing intervals and any late payment fees.
- (O) Contract duration, including the estimated starting and expiration month and year.
- (P) Whether the contract contains an automatic renewal provision and the terms of such provision.
- (Q) Any credit, deposit, and collection procedures, including terms and conditions associated with the return of any deposit at the time of contract termination.
- (R) Who will bill for the retail natural gas supplier's or opt-in governmental aggregator's service(s).
- (S) A notification that the customer's social security number, account number(s), or any customer information will not be released without the customer's express written consent except in accordance with rules 4901:1-28-04 and 4901:1-29-09 of the Administrative Code.

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- (T) If applicable, a notification that, if the customer voluntarily returns to the incumbent natural gas company after choosing a retail natural gas supplier or opt-in governmental aggregator, the customer may be charged a price other than the incumbent natural gas company's applicable tariff rate.
- (U) If, due to a change in market conditions, the retail natural gas supplier wishes to lower the price per Ccf or Mcf charged to the customer under an existing contract, it may do so without consent provided there are no other changes to the terms and conditions to the contract.

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

- (A) A retail natural gas supplier or governmental aggregator (and/or its agent) may bill customers directly for competitive retail natural gas services pursuant to this rule. A retail natural gas supplier or governmental aggregator may bill for consolidated services if it can demonstrate, pursuant to the standards contained in the incumbent natural gas company tariffs, to the incumbent natural gas company and the commission it has the capability to bill customers for such services.
- (B) Customer bills issued by or for retail natural gas suppliers and governmental aggregators shall be accurate and understandable, be rendered at intervals consistent with those of the customer's natural gas company, and contain sufficient information for customers to compute and compare the total cost of competitive retail natural gas service(s). Such bills shall also include:
- (1) The customer's name, billing address, service address, the customer's natural gas company account number, and if applicable, the retail natural gas supplier or governmental aggregator account number.
 - (2) The dates of service covered by the bill, an itemization of each type of competitive retail natural gas service covered by the bill, any related billing components, the charge for each type of natural gas service, and an itemization of all other fees and charges.
 - (3) The customer's historical consumption during each of the preceding twelve months or each of the preceding months that the customer has been a customer of the retail natural gas supplier or governmental aggregator, whichever is less; with a total consumption and an overall average monthly consumption for such period.
 - (4) The applicable billing determinants, including beginning meter reading(s), ending meter reading(s), multiplier(s), and any other consumption(s) adjustments.
 - (5) The unit price charged per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, if the product is based on a per-unit price for competitive retail natural gas service, as calculated by dividing current-period competitive retail natural gas service charges by the current-period consumption. For monthly-rate offers, a specific listing of the rate being charged per month for the duration of the contract.
 - (6) An identification of the retail natural gas supplier or governmental aggregator of each retail natural gas service appearing on the bill.
 - (7) The amount billed for the current period, any unpaid amounts due from previous periods, any payments or credits applied to the customer's account during the current period, any late

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payment charges or gross and net charges, if applicable, and the total amount due and payable.

- (8) The due date for payment to keep the account current. Such due date shall be consistent with that provided by the incumbent natural gas company for its charges.
- (9) Current balance of the account, if a residential customer is billed according to a budget plan.
- (10) Options and instructions on how customers may make their payments.
- (11) A toll-free or local telephone number and address for customer billing questions or complaints must appear for any retail natural gas supplier or governmental aggregator whose charges appear on the bill.
- (12) The following statement: "If your complaint is not resolved after you have called (name the retail natural gas company or governmental aggregator), or for general utility information, residential and business customers may contact the public utilities commission of Ohio (PUCO) for assistance at 1-800-686-7826 (toll free) from eight a.m. to five p.m. weekdays, or at <http://www.puco.ohio.gov>. Hearing or speech impaired customers may contact the PUCO via 7-1-1 (Ohio relay service).

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

- (13) The incumbent natural gas company's twenty-four hour local/toll-free telephone number for reporting service emergencies.
 - (14) Identification of estimated bills or bills not based upon actual end-of-period meter readings for the period.
 - (15) An explanation of any codes and abbreviations used.
- (C) If applicable, each retail natural gas supplier and governmental aggregator shall, upon request, provide customers with the name and street address/location of the nearest payment center and/or authorized payment agent and disclose any fee associated with using such payment center and/or agent.
 - (D) When a customer pays the bill at a payment center or to an authorized payment agent, such payment shall be credited to the customer's account as of the day it is received by such payment center or agent.

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- (E) Each retail natural gas supplier and governmental aggregator shall establish policies and procedures for handling billing disputes and requests for payment arrangements.
- (F) Partial payments applied towards any past due amount on a bill or the balance due on a disconnection notice must be apportioned to past due natural gas company service and delivery charges, then to any current natural gas company service and delivery charges, before being applied to any retail natural gas supplier or governmental aggregator charges unless the customer pays the entire amount past due or more. In that case, any amount paid over the amount past due shall be applied first to natural gas company service and delivery charges.
- (G) Natural gas companies shall make dual billing and consolidated billing available to retail natural gas suppliers and governmental aggregators.
 - (1) If the retail natural gas supplier or governmental aggregator elects for its charges to be included on the incumbent natural gas company's consolidated bill:
 - (a) The retail natural gas supplier or governmental aggregator shall furnish the incumbent natural gas company sufficient bill contents as required by paragraph (B) of this rule.
 - (b) The incumbent natural gas company shall produce a consolidated bill including all such required contents provided by the retail natural gas supplier or governmental aggregator if it is not already on the customer's bill from the incumbent natural gas company. However, the consolidated bill may provide the following amounts on a consolidated basis only: budget amounts, past due balances, and payments applied.
 - (c) The consolidated bill shall state the name of the applicable retail natural gas supplier or governmental aggregator in close proximity to the retail natural gas supplier or governmental aggregator commodity charges.
 - (d) The incumbent natural gas company shall offer budget billing of retail natural gas supplier and governmental aggregator charges as a customer-elected option.
 - (2) If the retail natural gas supplier or governmental aggregator elects a dual billing arrangement, the incumbent natural gas company's bill shall include the name of the applicable retail natural gas supplier or governmental aggregator and a statement that such retail natural gas supplier or governmental aggregator is responsible for billing the retail natural gas supplier or governmental aggregator charges.
- (H) Customer bills issued by or for a natural gas company shall state the customer's historical consumption during each of the preceding twelve months, with a total and average consumption for such twelve-month period.

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- (I) Natural gas companies shall prominently display the "apples to apples" notice on customer bills for customers in accordance with rule 4901:1-13-11 of the Administrative Code.
- (J) Natural gas companies shall comply with Chapter 4901:1-18 of the Administrative Code regarding disconnection of a customer's natural gas service.
- (K) For the purposes of this rule, full payment of a budget amount due shall not be construed as a partial payment.
- (L) In the event the retail natural gas supplier or opt-in governmental aggregator bills for its own services, the retail natural gas supplier and/or governmental aggregator may terminate the contract for customer nonpayment only upon fourteen days' notice.
- (M) Any competitive retail natural gas service supplier that bills for both regulated and unregulated service shall comply with paragraphs (E) and (F) of rule 4901:1-13-11 of the Administrative Code.

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

~~(A) At a minimum, the incumbent natural gas company tariff shall include provisions governing the relationship between the retail natural gas supplier and the governmental aggregator for competitive retail natural gas service. Such provisions shall address:~~

~~(1) Nomination and deliveries.~~

~~(2) Billing (between the incumbent natural gas company and the retail natural gas supplier or governmental aggregator).~~

~~(3) Customer billing (options, collection, application of customer payments).~~

~~(4) Measurement of delivered volume.~~

~~(5) Shrinkage and retainable factors.~~

~~(6) Customer enrollment process information exchange.~~

~~(7) Dispute resolution process (between the incumbent natural gas company and the retail natural gas supplier or governmental aggregator).~~

~~(8) Standard operating rules.~~

~~(9) Performance standards of the retail natural gas supplier or governmental aggregator.~~

~~(10) Creditworthiness and default security.~~

~~(11) Supplier agreement.~~

~~(12) A listing and description of all fees and charges assessed to retail natural gas suppliers or governmental aggregators.~~

~~(13) Service termination and disconnection (of end-user customer).~~

~~(14) Conditions and processes for returning customers to the incumbent natural gas company's commodity service.~~

~~(15) Customer enrollment and switching.~~

~~(16) Supplier proof of certification.~~

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- ~~(B) A natural gas company shall execute a supplier agreement with each retail natural gas supplier and governmental aggregator to operate under the terms of the natural gas company's tariff. At a minimum, the supplier agreement shall include representations and warranties, indemnification, limitations on liability, default (breach), remedies, force majeure, commencement, and term.~~
- ~~(C) Natural gas companies shall make eligible customer lists available to certified retail natural gas suppliers and governmental aggregators via electronic media. Such lists shall be updated quarterly and shall, at a minimum, contain customer name, service and mailing addresses, load profile reference category, meter read date or schedule, and historical consumption data for each of the most recent twelve months.~~
- ~~(D) Customers returning to the incumbent natural gas company:~~
- ~~(1) Any customer returning to the incumbent natural gas company's commodity service due to default, abandonment, slamming, or certification rescission of a retail natural gas supplier or governmental aggregator will not be liable for any costs associated with the switch.~~
 - ~~(2) Any switching fee applicable to customers switching from one marketer to another marketer shall also apply to customers switching from a marketer to a natural gas company's applicable tariff service.~~
 - ~~(3) Customers participating in an opt-out government aggregation program will not be charged a switching fee upon returning to a natural gas company's applicable tariff service due to either termination of the aggregation or the aggregator switching suppliers.~~
 - ~~(4) Any customer returned to the incumbent natural gas company's applicable tariff service shall pay the applicable rate while taking such service.~~
 - ~~(5) Within two business days after confirming the validated electronic data file for a retail natural gas supplier's or governmental aggregator's customer drop request, the incumbent natural gas company shall mail the customer a notice stating both of the following:~~
 - ~~(a) The incumbent natural gas company has received a request to drop the customer from competitive retail natural gas service or governmental aggregation with the named retail natural gas supplier or governmental aggregator.~~
 - ~~(b) The retail natural gas supplier's or governmental aggregator's toll-free telephone number.~~
- ~~(E) Within three business days of notifying a retail natural gas supplier of a customer cancellation the incumbent natural gas company shall provide to the customer by mail a notice stating all of the following:~~

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- ~~(1) The incumbent natural gas company has received the cancellation request from the customer and has notified the customer's retail natural gas supplier of the cancellation.~~
- ~~(2) The date the incumbent natural gas company received the cancellation.~~
- ~~(3) The incumbent natural gas company's toll-free telephone number.~~



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Agency Contact Info: Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122

Fax: 614-728-8373

Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: Competitive Retail Natural Gas Service (CRNGS) – Minimum Standards

Rule Number(s): 4901:1-29-01, 4901:1-29-02, 4901:1-29-03, 4901:1-29-04, 4901:1-29-05, 4901:1-29-06, 4901:1-29-07, 4901:1-29-08, 4901:1-29-09, 4901:1-29-10, 4901:1-29-11, 4901:1-29-12, 4901:1-29-13, 4901:1-29-14

Date of Submission for CSI Review: September 8, 2021

Public Comment Period End Date: October 22, 2021

Rule Type/Number of Rules:

☐ New/ rules (FYR?)

☐ X Amended/6 rules (FYR? Yes)

☐ X No Change/7 rules (FYR? Yes)

☐ X Rescinded/1 rule (FYR? Yes)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing

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regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rules for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☒ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Adm.Code 4901:1-29 sets forth the minimum standards for competitive retail natural gas service providers and governmental aggregators. Specifically, the chapter outlines rules for marketing and solicitation, customer enrollment, credit and deposits, customer access and complaint handling, customer information, contract administration and renewals, contract disclosure, customer billing and payments, and coordination between natural gas companies, and retail natural gas suppliers and governmental aggregators.

The proposed changes to this chapter are solely focused on accommodating/reconciling the rule changes made in Case No. 13-2225-GA-ORD and Case No. 19-1429-GA-ORD. These were the most recent five-year rule review cases of Ohio Adm.Code 4901:1-13 for the minimum gas service standards, the latter of which became effective on August 5, 2021. The above rule reviews moved several of the rules found in Ohio Adm.Code 4901:1-29,

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regarding requirements for natural gas companies, to Ohio Adm.Code 4901:1-13. Therefore, the proposed changes to Ohio Adm.Code 4901:1-29 were made to avoid duplication within different rule chapters. For example, Ohio Adm.Code 4901:1-29-09(C) has been removed since the contents of the rule were moved to Ohio Adm.Code 4901:1-13-12 as a result of Case No. 19-1429-GA-ORD. Ohio Adm.Code 4901:1-29-13 has been rescinded since the rule was moved to Ohio Adm.Code 4901:1-13-14 in Case No. 13-2225-GA-ORD.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

	Statutory Authority – O.R.C.	Amplifies – O.R.C.
Rule 4901:1-29-01	4929.10, 4929.22, 4929.01	4929.01 , 4929.22, 4929.26, 4929.27
Rule 4901:1-29-02	4929.10, 4929.22, 4929.01	4929.22, 4905.04, 4905.05, 4929.24, 4929.30, 4929.01(L), 4929.01(N)
Rule 4901:1-29-03	4929.10, 4929.22, 4929.01	4929.22
Rule 4901:1-29-04	4929.10, 4929.22, 4929.23, 4905.06	4903.03, 4929.23, 4905.05
Rule 4901:1-29-05	4929.10, 4929.22	4929.22
Rule 4901:1-29-06	4929.10, 4929.22, 4905.06	4929.22, 4905.04, 4905.05, 4929.26(D)
Rule 4901:1-29-07	4929.10, 4929.22	4929.22
Rule 4901:1-29-08	4929.10, 4929.22, 4905.06	4929.22, 4929.23, 4905.04, 4905.05
Rule 4901:1-29-09	4929.10, 4929.22	4929.22 , 4905.04, 4905.05, 4905.06
Rule 4901:1-29-10	4929.10, 4929.22	4929.22 , 4929.27, 4905.04, 4905.05, 4905.06
Rule 4901:1-29-11	4929.10, 4929.22	4905.261, 4911.021, 4929.22 , 4929.27
Rule 4901:1-29-12	4929.10, 4929.22	4905.05, 4905.06, 4905.07, 4905.261,

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		4929.22 , 4929.26, 4929.27, 4911.021
Rule 4901:1-29-13	4929.10, 4929.22	4929.22 , 4929.26, 4929.27, 4905.04, 4905.05, 4905.06

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

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

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

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

Not Applicable.

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

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

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

The Commission monitors consumer complaints, as well as complaints from competitive retail natural gas service providers and governmental aggregators through staff interaction and the Commission's call center.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

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Not Applicable.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Commission conducted a workshop on October 3, 2017, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the commission's review of Ohio Adm.Code 4901:1-29 is 17-1847-GA-ORD. The Entry providing notice of the workshop was served upon all investor-owned natural gas utilities in the state of Ohio, all competitive retail natural gas service providers in the state of Ohio, and the GAS-PIPELINE industry list-serve. The workshop was held in conjunction with other electric and natural gas industry rules workshops, including the rules in Chapters 4901:1-10, 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-30, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34.

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

At the workshop held on October 3, 2017, comments were offered by various stakeholders. Although recommendations were offered, the intention of the proposed changes is to avoid duplication now that some of the rules within Ohio Adm.Code 4901:1-29 have been moved to Ohio Adm.Code 4901:1-13. The Commission will also consider any comments or reply comments addressing this rule chapter that are filed by stakeholders and the general public in Case No. 17-1847-GA-ORD.

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

No scientific data was used to develop this chapter. Rather the rules in this chapter are required by R.C. 4929.22.

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

Ohio Adm.Code 4901:1-29 is specifically required by R.C. 4929.22, thus, regulatory alternatives were not available.

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

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

Ohio Adm.Code 4901:1-29 is specifically required by R.C. 4929.22, thus, performance-based regulation was not considered.

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

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

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

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

Adverse Impact to Business

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

a. Identify the scope of the impacted business community; and

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

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

Ohio Adm.Code 4901:1-29 establishes minimum service requirements for retail natural gas suppliers and governmental aggregators regarding the marketing, solicitation, sales, or provision directly or through its billing and collection agent of any competitive retail natural gas service is subject to certification. This chapter does not include requirements for licensing fees, rather, it reflects consumer protections required by R.C. 4929.22.

This chapter requires specific procedures that need to be developed and implemented by each of the affected companies, which would include updating systems (phone, computer,

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software, etc.) to accommodate these rules. The companies will need to train staff and personnel to follow proper handling of customer information, customer billing and payments, proper complaint handling, proper marketing and solicitation, as well as customer enrollment procedures.

c. Quantify the expected adverse impact from the regulation.

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

Ohio Adm.Code 4901:1-29 establishes minimum service requirements for retail natural gas suppliers and governmental aggregators regarding the marketing, solicitation, sales, or provision directly or through its billing and collection agent of any competitive retail natural gas service is subject to certification. The rules are required by R.C. 4929.22. Quantifying the adverse impact in specific terms is difficult considering the different levels of regulation required by these rules.

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

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

Regulatory Flexibility

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

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

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

The focus of Ohio Adm.Code 4901:1-29 is to reflect the legislative intent of R.C. 4929.22 is not on seeking penalties for first-time paperwork offenses. Fines or penalties for violation of this chapter may only be ordered by the Commission after notice and hearing. The Commission will fully comply with R.C. 119.14 and not seek to recover administrative fines or civil penalties on any small business for a first-time paperwork violation, unless such violation falls within one of the exceptions set forth in paragraph (C) of that section and without providing due process to the small company.

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

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 17-1847-GA-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry. Also, Commission Staff routinely works with small businesses to assist such companies with Ohio Adm.Code 4901:1-29 compliance.

*****DRAFT - NOT FOR FILING*****

NO CHANGE

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

- (A) In accordance with sections 4905.10 and 4911.18 of the Revised Code, each retail natural gas supplier and governmental aggregator is subject to an annual assessment based upon its intrastate gross receipts or gross earnings (collectively "gross revenue") associated with the provision of each competitive retail natural gas service for which it is certified to provide.
- (B) Each retail natural gas supplier that supplies competitive retail natural gas service shall, in the manner and on the date specified by the commission or its staff, file an annual report of the gross revenue derived from its intrastate sales of natural gas. For the purpose of the report, sales of hundred cubic feet of natural gas are deemed to occur at the meter of a retail customer.
- (C) Each retail natural gas supplier and governmental aggregator that supplies competitive retail natural gas service(s) in addition to, or other than, natural gas shall, in the manner and on the date specified by the commission or its staff, file an annual report of the intrastate gross revenue derived from its provision of such service(s). For the purpose of the report, sales of hundred cubic feet of natural gas are deemed to occur at the meter of a retail customer.
- (D) Each retail natural gas supplier and governmental aggregator shall maintain detailed records to support the information provided pursuant to paragraphs (B) and (C) of this rule. Such records and information are subject to audit by the commission.
- (E) In instances where a retail natural gas supplier or governmental aggregator underreports its gross revenue, the commission may, in computing an assessment made pursuant to this rule, include any gross revenues that were underreported in a prior year. The commission shall also, in addition to any other penalty under the Revised Code, assess the retail natural gas supplier or governmental aggregator interest on the amount underreported at the rate stated in section 1343.01 of the Revised Code.
- (F) No retail natural gas supplier or governmental aggregator shall be assessed under this section until after the commission has removed from the base rates of the natural gas company, the amount of assessment under this section that is attributable to the value of commodity sales service for those customers that do not purchase that service from the natural gas company.
- (G) For purposes of meeting the requirements of this rule, a retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code shall also provide

*****DRAFT - NOT FOR FILING*****

the public utilities commission of Ohio with such information as the public utilities commission of Ohio deems necessary.

- (H) A governmental aggregator may authorize its retail gas supplier, or a designated agent, to file, on its behalf, any report required by this rule.
- (I) Each retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code shall provide an annual report in such form as the public utilities commission of Ohio directs. An annual report form will be made available on the public utilities commission of Ohio's web site. Such report shall be filed each year on a date determined by the public utilities commission of Ohio or its staff and shall contain the following information for the most recent calendar year:
 - (1) The monthly and annual volume of natural gas sold, by customer class.
 - (2) The monthly and annual volume of natural gas sold, by customer class, identified by natural gas company service territory.
 - (3) Gross receipts of intrastate retail natural gas service(s).
 - (4) The contact person for this information.



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Agency Contact Info: Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122

Fax: 614-728-8373

Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: CRNGS Providers – Reporting Requirements

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

Date of Submission for CSI Review: September 8, 2021

Public Comment Period End Date: October 22, 2021

Rule Type/Number of Rules:

☐ New/___ rules

☐ Amended/___ (FYR?___)

☒ **X No Change/1 rule (FYR? Yes)**

☐ Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rules for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Adm.Code 4901:1-30 sets forth the rule that requires competitive retail natural gas service providers or governmental aggregators subject to certification under R.C. 4929.20 to provide annual report information, including monthly and annual volumes of natural gas sold by: customer class identified; by service territory; and the gross receipts of intrastate retail natural gas service(s).

No amendments are proposed for Ohio Adm.Code 4901:1-30.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

	Statutory Authority – O.R.C.	Amplifies – O.R.C.
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Rule 4901:1-30-01	4929.10, 4929.23	4905.10, 4905.14, 4911.18, 4929.23
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- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

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

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

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

Not Applicable.

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

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

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

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

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not Applicable.

Development of the Regulation

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9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Commission conducted a workshop on October 3, 2017, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the commission's review of Ohio Adm.Code 4901:1-30 is 17-1848-GA-ORD. The Entry providing notice of the workshop was served upon all investor-owned natural gas utilities in the state of Ohio, all competitive retail natural gas service providers in the state of Ohio, and the GAS-PIPELINE industry list-serve. The workshop was held in conjunction with other electric and natural gas industry rules workshops, including the rules in Chapters 4901:1-10, 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34.

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

No input was provided related to Ohio Adm.Code 4901:1-30. The Commission has issued an Entry requesting comments and reply comment to receive additional stakeholder input on the rules in Ohio Adm.Code 4901:1-30.

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

No scientific data was used to develop this rule. Ohio Adm.Code 4901:1-30-01 is specifically required by R.C. 4905.10, 4911.18, and 4929.23 and has been in effect since 2002.

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

Ohio Adm.Code 4901:1-30 is specifically required by R.C. 4905.10, 4911.18, and 4929.23, thus, regulatory alternatives were not available. Additionally, Staff proposes no change to the rules; therefore, no alternative to Staff's proposal was considered.

13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Ohio Adm.Code 4901:1-30 is specifically required by R.C. 4905.10, 4911.18, and 4929.23, thus, performance-based regulation was not considered.

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

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

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

Ohio Adm.Code 4901:1-30 is specifically required by R.C. 4905.10, 4911.18, and 4929.23 and has been in effect since 2002 without complaints regarding inconsistent application of the Chapter.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community; and

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

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

According to Ohio Adm.Code 4901:1-30-01, pursuant to R.C. 4905.10, 4911.18, each retail natural gas supplier and governmental aggregator is subject to an annual assessment based upon its intrastate gross receipts or gross earners associated with the provision of each competitive retail natural gas service which it is certified to provide. This rule also requires the filing of an annual report that will require employee time/entity resources to compile.

c. Quantify the expected adverse impact from the regulation.

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

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

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

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

Regulatory Flexibility

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

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

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

The focus of Ohio Adm.Code 4901:1-30 is to reflect the legislative intent of R.C. 4905.10, 4911.18, and 4929.23 for retail natural gas suppliers and governmental aggregation to pay an annual assessment and provide annual report information. The focus is not on seeking penalties for first-time paperwork offenses. Fines or penalties for violation of this chapter may only be ordered by the Commission after notice and hearing. The Commission will fully comply with R.C. 119.14 and not seek to recover administrative fines or civil penalties on any small business for a first-time paperwork violation, unless such violation falls within one of the exceptions set forth in paragraph (C) of that section and without providing due process to the small company.

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

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 17-1848-GA-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed

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revisions during the open comment period once the proposed revisions have been released via Commission Entry. Also, Commission Staff routinely works with small businesses to assist such companies with Ohio Adm.Code 4901:1-30.

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

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



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Agency Contact Info: Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122

Fax: 614-728-8373

Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: CRNGS – Opening Areas to Competition

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

Date of Submission for CSI Review: September 8, 2021

Public Comment Period End Date: October 22, 2021

Rule Type/Number of Rules:

- | | |
|-------------------------------------------------------------------------|--------------------------------------------------------------|
| <input type="checkbox"/> New/___ rules | <input type="checkbox"/> No Change/ <u>1</u> rule (FYR? Yes) |
| <input checked="" type="checkbox"/> X Amended/ <u>1</u> rule (FYR? Yes) | <input type="checkbox"/> Rescinded/___ rules (FYR? ___) |

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rules for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☐ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Adm.Code 4901:1-31 provides the process by which a retail natural gas supplier, government aggregator, or municipal corporation may petition the Commission for an order instructing a natural gas company with more than 15,000 customers in this state that it must provide fully open, equal, and nondiscriminatory distribution service to non-mercantile customers.

This is a no change chapter.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

	Statutory Authority – O.R.C.	Amplifies – O.R.C.
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Rule 4901:1-31-01	4929.10, 4929.29	4929.26, 4929.27, 4929.29
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- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

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

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

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

Not Applicable.

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

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

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

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

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not Applicable.

Development of the Regulation

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

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The Commission conducted a workshop on October 3, 2017, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the commission's review of Ohio Adm.Code 4901:1-31 is 17-1849-GA-ORD. The Entry providing notice of the workshop was served upon all investor-owned natural gas utilities in the state of Ohio, all competitive retail natural gas service providers in the state of Ohio, and the GAS-PIPELINE industry list-serve. The workshop was held in conjunction with other electric and natural gas industry rules workshops, including the rules in Chapters 4901:1-10, 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-32, 4901:1-33, and 4901:1-34.

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

No input was provided related to Ohio Adm.Code 4901:1-31. The Commission has issued an Entry requesting comments and reply comment to receive additional stakeholder input on the rules in Ohio Adm.Code 4901:1-31.

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

No scientific data was used to develop this chapter; rather, the rule in this chapter are required by R.C. 4929.29.

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

Ohio Adm.Code 4901:1-31 is specifically required by R.C. 4929.29, thus, regulatory alternatives were not available. Additionally, Staff proposes no change to the rules; therefore, no alternative to Staff's proposal was considered.

13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Ohio Adm.Code 4901:1-31 is specifically required by R.C. 4929.29, thus, performance-based regulation was not considered.

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

Ohio Adm.Code 4901:1-31 is required by R.C. 4929.29 and specifically implements that section of the Revised Code.

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

Ohio Adm.Code 4901:1-31 is required by R.C. 4929.29 and has been in effect since 2002.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community; and

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

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

This chapter is required by Ohio statute. Any adverse impact would involve those entities who desire to file a petition pursuant to this rule. Such impact involves the time and resources required to compile such a petition and file it with the Commission.

c. Quantify the expected adverse impact from the regulation.

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

Any adverse impact would involve those entities who desire to file a petition pursuant to this rule. Such impact involves the time and resources required to compile such a petition and file it with the Commission.

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

Ohio Adm.Code 4901:1-31 is specifically required by 4929.29.

Regulatory Flexibility

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

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

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

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

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

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 17-1849-GA-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry. Also, Commission Staff routinely works with small businesses to assist such companies with Ohio Adm.Code 4901:1-31 compliance.

*****DRAFT - NOT FOR FILING*****

NO CHANGE

4901:1-32-01 Definitions.

As used in this chapter:

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

*****DRAFT - NOT FOR FILING*****

NO CHANGE

4901:1-32-02 Purpose and scope.

- (A) The rules in this chapter apply to the recovery or modification of recovery of capacity and commodity costs, and costs incidental to those costs, and recovery of decertification costs.
- (B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

*****DRAFT - NOT FOR FILING*****

NO CHANGE

4901:1-32-03 Filing and contents of requests for recovery of capacity and commodity costs.

- (A) If a natural gas company seeks to recover, or modify the amount of recovery of, pursuant to section 4929.25 of the Revised Code, capacity and commodity costs, and costs incidental thereto, entered into on behalf of customers that take commodity sales service from other than the natural gas company, it must file an application for such. Such application shall be filed with the commission in the form of an application for approval of a migration cost recovery rider (XX-XX-GA-MCR).
- (B) In addition to a fully-documented analysis and justification for the proposed migration cost recovery rider, the migration cost recovery rider application should provide the following information:
 - (1) Customer migration rates (both with and without percentage of income payment plan customers) for the most recent five years of the competitive retail natural gas service program and the associated volumes.
 - (2) Customer migration due to governmental aggregation (both with and without percentage of income payment plan customers) for the most recent five years of the competitive retail natural gas service program and the associated volumes.
 - (3) Description of existing capacity and commodity contracts including:
 - (a) Vendor/service provider and description of service being provided.
 - (b) Quantities - daily, seasonal, and annual.
 - (c) Term/applicable period.
 - (d) Rates/prices (including any reservation fees, minimum takes, and demand charges).
 - (e) Termination/buyout/buydown opportunities and costs.
 - (f) Any ratchet provisions in the contracts.
 - (4) Contract cost mitigation opportunities (e.g., capacity release, off-system sales).
- (C) A complete set of work papers must be filed with a migration cost recovery rider application. Work papers must include, but are not limited to, any and all supporting work papers prepared by

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the natural gas company for the application and a narrative or other support of assumptions made of working paper schedule amounts. Work papers shall be marked, organized, and indexed according to the schedules to which they relate and must identify the witness that will sponsor them. Data contained in the work papers shall be footnoted so as to identify any source document used.

- (D) All schedules, testimonies, and work papers included in a migration cost recovery rider application must be available in spreadsheet, word processing, or electronic form.
- (E) A migration cost recovery rider application must include a complete set of testimony of company personnel or other expert witnesses. This testimony shall be in question-and-answer format and shall be in support of the natural gas company's proposed migration cost recovery recommendations. This testimony shall fully and completely address and support all schedules and significant issues identified by the company.
- (F) Concurrent with the filing of an application for migration cost recovery, the natural gas company shall provide notice of the proposed filing upon each party in its most recent gas cost recovery and base rate cases. At a minimum, that notice shall state that an electronic or paper copy of the migration cost recovery rider application, supporting workpapers and testimony is available from the natural gas company (with instructions as to how to obtain an electronic or paper copy), available for inspection at the natural gas company's main office, available for inspection at the commission offices, and available at any other sites at which the natural gas company will maintain a copy of the application, workpapers and testimony. If the natural gas company has a website, information as to how to request an electronic or paper copy shall be included therein.

*****DRAFT - NOT FOR FILING*****

NO CHANGE

4901:1-32-04 Filing and contents of requests for recovery of decertification costs.

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



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Agency Contact Info: Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122

Fax: 614-728-8373

Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: Gas Companies and CRNGS Providers – Determination of Allowable Capacity and Commodity Costs

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

Date of Submission for CSI Review: September 8, 2021

Public Comment Period End Date: October 22, 2021

Rule Type/Number of Rules:

☐ New/___ rules

☐ Amended/___ (FYR? ___)

☒ **X No Change/4 rules (FYR? Yes)**

☐ Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rules for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☐ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Adm.Code 4901:1-32 provides for the recovery of capacity and commodity costs and costs incidental to those costs as well as decertification costs. These rules provide that a request to recover or modify the recovery, pursuant to R.C. 4929.25, costs for capacity and commodity, must be made through a migration cost recovery rider application. The chapter also provides a process for reviewing that application. Additionally, the rule provides a process for a natural gas company to recover costs associated with the continuation, suspension, rescission, or conditional rescission of a particular retail natural gas supplier or government aggregator's certification.

There are no proposed amendments to Ohio Adm.Code 4901:1-32.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

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	Statutory Authority – O.R.C.	Amplifies – O.R.C.
Rule 4901:1-32-01	4929.10, 4929.25	4929.25
Rule 4901:1-32-02	4929.10, 4929.25	4929.25
Rule 4901:1-32-03	4929.10, 4929.25	4929.25
Rule 4901:1-32-04	4929.10, 4929.20	4929.10, 4929.20(C)(2)

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

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

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

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

Not Applicable.

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

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

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

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

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not Applicable.

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Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Commission conducted a workshop on October 3, 2017, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the commission's review of Ohio Adm.Code 4901:1-32 is 17-1850-GA-ORD. The entry providing notice of the workshop was served upon all investor-owned natural gas utilities in the state of Ohio, all competitive retail natural gas service providers in the state of Ohio, and the GAS-PIPELINE industry list-serve. The workshop was held in conjunction with other electric and natural gas industry rules workshops, including the rules in Chapters 4901:1-10, 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-33, and 4901:1-34.

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

No input was provided related to Ohio Adm.Code 4901:1-32. The Commission has issued an Entry requesting comments and reply comment to receive additional stakeholder input on the rules in Ohio Adm.Code 4901:1-32.

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

No scientific data was used to develop this chapter; rather, the rules in this chapter are required by R.C. 4929.20 and 4929.25.

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

Ohio Adm.Code 4901:1-32 is specifically required by R.C. 4929.20 and 4929.25, thus, regulatory alternatives were not available. Additionally, Staff proposes no change to the rules; therefore, no alternative to Staff's proposal was considered.

13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

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Ohio Adm.Code 4901:1-32 is specifically required by R.C. 4929.20 and 4929.25, thus, performance-based regulation was not considered.

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

Ohio Adm.Code 4901:1-32 is required by R.C. 4929.20 and 4929.25 and specifically implements that section of the Revised Code.

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

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

Adverse Impact to Business

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

a. Identify the scope of the impacted business community; and

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

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

Any impacts would result from an entity requesting recovery of capacity and commodity costs and/or recovery of decertification costs. Costs includes employee time and entity resources required to compile an application that contains contents in line with the requirements of this rule (e.g. description of existing capacity and commodity contracts, contract cost mitigation opportunities, working paper schedule amounts, expert testimony, etc.). Furthermore, cost will include expenses associated with potentially litigating such proposal for recovery in front of the Commission, which could include a full administrative proceeding.

c. Quantify the expected adverse impact from the regulation.

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

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CSIPublicComments@governor.ohio.gov

The cost for each entity (e.g. employee time needed to compile the application, litigation costs, etc.) choosing to make such application filings will vary greatly depending on the specific entity and the extent of cost recovery requested.

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

Ohio Adm.Code 4901:1-32 is required by R.C. 4929.20 and 4929.25; therefore, the Commission was implementing requirements provided in statute.

Regulatory Flexibility

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

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

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

Not applicable.

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

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 17-1850-GA-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry. Also, Commission Staff routinely works with small businesses to assist such companies with Ohio Adm.Code 4901:1-32 compliance.

*****DRAFT - NOT FOR FILING*****

NO CHANGE

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

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



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Agency Contact Info: Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122

Fax: 614-728-8373

Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: Natural Gas – Not-for-profit Customer Declarations of Mercantile Status

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

Date of Submission for CSI Review: September 8, 2021

Public Comment Period End Date: October 22, 2021

Rule Type/Number of Rules:

☐ New/___ rules

☐ Amended/___ (FYR? ___)

☒ X No Change/ 1 rule (FYR? Yes)

☐ Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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CSIPublicComments@governor.ohio.gov

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rules for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

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

There are no proposed amendments to Ohio Adm.Code 4901:1-33.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

	Statutory Authority – O.R.C.	Amplifies – O.R.C.
Rule 4901:1-33-01	4929.01(L)(2), 4929.10	4929.01(L)(2)

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

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

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

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

Not Applicable.

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

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

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

The Commission monitors whether such declarations are filed.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not Applicable.

Development of the Regulation

9. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Commission conducted a workshop on October 3, 2017, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the commission's review of Ohio Adm.Code 4901:1-33 is 17-1851-GA-ORD. The Entry providing notice of the workshop was served upon all investor-owned natural gas utilities in the state of Ohio, all competitive retail natural gas service providers in the state of Ohio, and the GAS-PIPELINE industry list-serve. The workshop was held in conjunction with other electric and natural gas industry rules workshops, including the rules in Chapters 4901:1-10,

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4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, and 4901:1-34.

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

No input was provided related to Ohio Adm.Code 4901:1-33. The Commission has issued an Entry requesting comments and reply comment to receive additional stakeholder input on the rules in Ohio Adm.Code 4901:1-33.

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

No scientific data was used to develop this chapter; rather the rule in this chapter is required by R.C. 4929.01(L)(2).

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

Ohio Adm.Code 4901:1-33 is specifically required by R.C. 4929.01, thus regulatory alternatives were not available.

13. Did the Agency specifically consider a performance-based regulation? Please explain.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

Ohio Adm.Code 4901:1-33 is specifically required by R.C. 4929.01, thus, performance-based regulation was not considered.

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

Ohio Adm.Code 4901:1-33 is specifically required by R.C. 4929.01 and specifically implements that section of the Revised Code.

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

Ohio Adm.Code 4901:1-33 is specifically required by R.C. 4929.01 and has been in effect since 2002. No changes were made to this rule.

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Adverse Impact to Business

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

a. Identify the scope of the impacted business community; and

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

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

The cost for non-for-profit customers involves an entity filing the declaration of non-mercantile status with the Commission or filing of recission of such status. No other adverse impacts are contemplated.

c. Quantify the expected adverse impact from the regulation.

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

The adverse impact to these non-profits is minimal since the filing can be made by a simple form.

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

Ohio Adm.Code 4901:1-33 is specifically required by R.C. 4929.01, thus the Commission was implementing the legislature’s intent.

Regulatory Flexibility

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

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

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

Not applicable.

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

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 17-1851-GA-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry. Also, Commission Staff routinely works with small businesses to assist such companies with Ohio Adm.Code 4901:1-33 compliance.

*****DRAFT - NOT FOR FILING*****

4901:1-34-01 Definitions.

As used in this chapter:

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

*****DRAFT - NOT FOR FILING*****

4901:1-34-02 Purpose and scope.

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

*****DRAFT - NOT FOR FILING*****

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

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

*****DRAFT - NOT FOR FILING*****

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

- (A) Staff notices of probable noncompliance, proposed corrective actions, proposed forfeitures, and amendments thereto under rule 4901:1-34-03 of the Administrative Code, and investigative reports under rule 4901:1-34-06 of the Administrative Code, shall be served on the natural gas company, retail natural gas supplier, or governmental aggregator by certified United States mail, or hand delivery. Certified mail service and service by hand delivery is effective upon receipt by any employee, agent of, or person designated by the natural gas company, retail natural gas supplier, or governmental aggregator. Unless otherwise provided in this paragraph, service upon a natural gas company, retail natural gas supplier, or governmental aggregator shall be made at the address designated as the service address in the company's most recent annual financial report, in its certification application, or certification renewal application.
- (B) Each natural gas company, retail natural gas supplier, or governmental aggregator shall provide the commission with the company's or provider's current service address. If the service address has changed since the most recent annual report, certification application or certification renewal application was submitted to the commission, or the service address or business address has not been disclosed to the commission, service shall be made at any business address known to the commission.
- (C) If the certified mail envelope is returned with an endorsement showing failure of delivery, then service may be made by ordinary United States mail and is effective on the date of mailing.

*****DRAFT - NOT FOR FILING*****

4901:1-34-05 Stipulations.

- (A) If staff and the natural gas company, retail natural gas supplier, or governmental aggregator reach agreement regarding any of the following, the agreement must be reduced to writing: the violation of a rule within this chapter, and/or Chapter 4901:1-13, 4901:1-27, 4901:1-28, or 4901:1-29 of the Administrative Code; the violation of any provision of Chapter 4929. of the Revised Code, the violation of a commission order; a proposed corrective action or remedy; or the amount of a forfeiture or other payment. Such stipulation shall be signed by an officer of the company or its attorney and the assistant attorney general who serves as legal counsel for the staff. The stipulation shall not be effective until the stipulation is filed with and approved by and made the order of the commission.
- (B) If the stipulation provides for the payment of a forfeiture or other payment by a natural gas company or retail natural gas supplier of one thousand dollars or less, the stipulation shall be accepted by the commission and fully enforceable upon the natural gas company or retail natural gas supplier upon its execution.
- (C) Unless contained in or otherwise provided in a stipulation, no statement or conduct during settlement negotiations is admissible in any commission proceeding regarding the noncompliance.
- (D) Where a natural gas company or retail natural gas supplier has demonstrated to the staff's satisfaction, as confirmed in writing from the commission's director of the service monitoring and enforcement department or the director of utilities department or his/her designee, that the violation(s) listed in the staff notice (or amended staff notice) of probable noncompliance or investigative report has been corrected, the violation(s) listed in such staff notice of probable noncompliance or investigative report shall be considered by the commission as part of the company's or supplier's history of violations only for purposes of determining the appropriate forfeiture or corrective action for any future violation.

*****DRAFT - NOT FOR FILING*****

4901:1-34-06 Commission proceedings.

- (A) The commission may initiate a compliance or other proceeding upon its own initiative, after an incident has occurred, after a complaint is filed pursuant to section 4905.26 of the Revised Code, or after a staff notice of probable noncompliance is served.
- (B) Unless otherwise ordered by the commission or an attorney examiner, the staff shall file with the commission and serve upon the natural gas company, retail natural gas supplier, or governmental aggregator a written report of investigation (investigative report) in each proceeding within forty-five days after the commission issues an entry initiating a compliance proceeding. The investigative report shall present:
 - (1) The findings on any alleged noncompliance specified in any staff notice or amended staff notice, which also may include:
 - (a) Noncompliances not included in any staff notice or amended staff notice, provided that such additional noncompliances relate to the same incident, investigation, or safety audit(s) referenced in the initial or amended staff notice.
 - (b) Staff's findings on the natural gas company's, retail natural gas supplier's, or governmental aggregator's practices and policies.
 - (2) Staff's recommendations for commission action.
- (C) The commission will provide reasonable notice and an opportunity for hearing on all proceedings initiated under this rule. The hearing may include evidence on the issues of proposed corrective action, compliance orders issued by the commission, forfeitures, enforcement of a commission order, and other remedies.
- (D) If the commission finds a natural gas company, retail natural gas supplier, or governmental aggregator has violated or is violating Chapter 4929. of the Revised Code, or the rules and standards in Chapter 4901:1-13, 4901:1-27, 4901:1-28, 4901:1-29, or 4901:1-34 of the Administrative Code, and/or this chapter, or any order of the commission, the commission may, after an opportunity for hearing, impose the necessary remedies as set forth in rule 4901:1-34-08 of the Administrative Code.

*****DRAFT - NOT FOR FILING*****

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

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

*****DRAFT - NOT FOR FILING*****

4901:1-34-08 Noncompliance.

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

- (A) A natural gas company or retail natural gas supplier may be subject to a forfeiture to the state in an amount provided for in Chapter 4905. of the Revised Code.
- (B) A natural gas company, retail natural gas supplier, or governmental aggregator may be subject to rescission of a customer contract.
- (C) A natural gas company, retail natural gas supplier, or governmental aggregator may be required to provide restitution to a customer.
- (D) A retail natural gas supplier or governmental aggregator may have its certificate suspended, rescinded, or conditionally rescinded.
- (E) A natural gas company, retail natural gas supplier, or governmental aggregator may be subject to any other corrective action necessary to protect the public safety, reliability, and customer service.



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Agency Contact Info: Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122

Fax: 614-728-8373

Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: CRNGS Providers - Noncompliance

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

Date of Submission for CSI Review: September 8, 2021

Public Comment Period End Date: October 22, 2021

Rule Type/Number of Rules:

☐ New/ rules (FYR?)

☐ Amended/ rules (FYR?)

☒ X No Change/ 8 rule (FYR? Yes)

☐ Rescinded/ rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rules for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☐ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☒ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Adm.Code 4901:1-34 prescribes the procedures for Commission staff to administer and enforce the rules for certification of retail natural gas suppliers and governmental aggregators and the minimum requirements for competitive retail natural gas service providers.

This is a no change chapter.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

	Statutory Authority – O.R.C.	Amplifies – O.R.C.
Rule 4901:1-34- 01	4929.01, 4929.10, 4929.24, 4905.54	4929.01, 4929.24, 4905.54 , 4905.05, 4905.06, 4905.26

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Rule 4901:1-34-02	4929.10, 4929.24, 4905.54	4905.05, 4905.06, 4905.26, 4905.54 , 4929.01, 4929.24
Rule 4901:1-34-03	4929.10, 4929.24, 4905.54	4905.05, 4905.06, 4905.26, 4905.54 , 4929.01, 4929.24
Rule 4901:1-34-04	4929.10, 4929.24, 4905.54	4905.05, 4905.06, 4905.26, 4905.54 , 4929.01, 4929.24
Rule 4901:1-34-05	4929.10, 4929.24, 4905.54	4905.05, 4905.06, 4905.26, 4905.54 , 4929.01, 4929.24
Rule 4901:1-34-06	4929.10, 4929.24, 4905.54	4905.05, 4905.06, 4905.26, 4905.54 , 4929.01, 4929.24
Rule 4901:1-34-07	4929.10, 4929.24, 4905.54	4905.05, 4905.06, 4905.26, 4905.54 , 4929.01, 4929.24
Rule 4901:1-34-08	4929.10, 4929.24, 4905.54	4929.01, 4929.24, 4905.05, 4905.06, 4905.26, 4905.54

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

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

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

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

Not Applicable.

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

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

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

The Commission monitors stakeholder complaints concerning its enforcement process.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not Applicable.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Commission conducted a workshop on October 3, 2017, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the commission's review of Ohio Adm.Code 4901:1-34 is 17-1852-GA-ORD. The Entry providing notice of the workshop was served upon all investor-owned natural gas utilities in the state of Ohio, all competitive retail natural gas service providers in the state of Ohio, and the GAS-PIPELINE industry list-serve. The workshop was held in conjunction with other electric and natural gas industry rules workshops, including the rules in Chapters 4901:1-10, 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, and 4901:1-33.

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

The Commission has issued an Entry requesting comments and reply comment to receive additional stakeholder input on the rules in Ohio Adm.Code 4901:1-34.

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

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No scientific data was used to develop Ohio Adm.Code 4901:1-34.; however, this chapter is specifically required by R.C. 4929.24 and 4905.54 and has been in effect since 2002.

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

Ohio Adm.Code 4901:1-34 is specifically required by R.C. 4929.24 and 4905.54, thus, regulatory alternatives were not available.

13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Ohio Adm.Code 4901:1-34 is specifically required by R.C. 4929.24 and 4905.54, thus, performance-based regulation was not considered.

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

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

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

Ohio Adm.Code 4901:1-34 is specifically required by R.C. 4929.24 and 4905.54 and has been in effect since 2002 without complaints regarding inconsistent application of the Chapter.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community; and

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

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

There are no fees required by this Chapter and only rule violators are potentially impacted by fines, if they are found by the Commission to be out of compliance. The Commission staff works extensively with all regulated companies toward rule compliance with the least amount of employer time and attorney costs. Impacts to business, beyond a potential fine, is the cost associated with complying with a Staff investigation, including the time and resources required to reply to Staff inquiries, to negotiate potential settlements, to participate in a proceeding in front of the Commission (if needed).

c. Quantify the expected adverse impact from the regulation.

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

See the response to question to 136 (b) above. The adverse impact will vary greatly depending on the type and scope of investigation initiated by Commission Staff.

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

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

Regulatory Flexibility

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

Ohio Adm.Code 4901:1-34 is required by R.C. 4929.24 and 4905.54. These statutes do not provide any exemptions or alternative means of compliance based upon the size of the business. However, the Commission Staff works extensively with all regulated companies, particularly with small businesses toward rule compliance.

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

The focus of Ohio Adm.Code 4901:1-34 is to reflect the legislative intent of R.C. 4929.24 and 4905.54 and to articulate Commission authority to enforce rules governing retail natural gas suppliers and governmental aggregators. The focus is not on seeking penalties for first-time paperwork offenses. Fines or penalties for violation of this chapter may only be ordered by

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the Commission after notice and hearing. The Commission will fully comply with R.C. 119.14 and not seek to recover administrative fines or civil penalties on any small business for a first-time paperwork violation unless such violation, falls within one of the exceptions set forth in paragraph (C) of that section and without providing due process to the small company.

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

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 17-1852-GA-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry. Also, Commission Staff routinely works with small businesses to assist such companies with Ohio Adm.Code 4901:1-34 compliance.

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in

Case No(s). 17-1843-EL-ORD, 17-1844-EL-ORD, 17-1862-EL-ORD, 17-1845-GA-ORD, 17-1846-GA-OR

Summary: Entry directing that all interested persons or entities wishing to file comments or reply comments with the Commission regarding the competitive retail electric service and competitive retail natural gas service rules in Ohio Adm.Code Chapters 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34 do so no later than October 8, 2021, and October 22, 2021, respectively. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio