

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

- (1) R.C. 119.032 requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. At this time, the Commission is reviewing the competitive retail electric service (CRES) rules contained in Ohio Adm.Code Chapters 4901:1-21 and 4901:1-24, as required by R.C. 119.032.
- (2) R.C. 119.032(C) requires the Commission to determine whether:
 - (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted;
 - (b) The rules need amendment or rescission to give more flexibility at the local level;
 - (c) The rules need amendment or rescission to eliminate unnecessary paperwork, or whether the rule incorporates a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by R.C. 121.74, and whether the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76;
 - (d) The rules duplicate, overlap with, or conflict with other rules; and
 - (e) The rules have an adverse impact on businesses and whether any such adverse impact has been eliminated or reduced.

- (3) In addition, on January 10, 2011, the Governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small business; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.
- (4) Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against a business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the BIA.
- (5) By Entry issued on July 2, 2012, a workshop was scheduled at the offices of the Commission on August 6, 2012, to engage interested stakeholders on the appropriate revisions to the rules contained in Ohio Adm.Code Chapters 4901:1-21 and 4901:1-24. In addition, the Commission noted that the rules for competitive retail natural gas service (CRNGS) are being reviewed in *In re Rules for Competitive Retail Natural Gas Serv. Contained in Chapters 4901:1-27 through 4901:1-34 of the Ohio Adm. Code*, Case No. 12-925-GA-ORD (CRNGS Rules Case) at the same time as the CRES rules are being reviewed in this matter. The workshop was held as scheduled and stakeholder comments were offered by multiple stakeholders.
- (6) Staff evaluated the rules contained in Ohio Adm.Code Chapters 4901:1-21 and 4901:1-24, as well as the feedback received at the August 6, 2012 workshop and recommended amendments to several rules.
- (7) On November 7, 2012, the Commission issued Staff's proposed amendments, as well as the BIAs, and requested comments to assist in the review. Comments were filed by Eagle Energy, LLC (Eagle); Direct Energy Services, LLC, and Direct Energy Business, LLC (jointly, Direct Energy); Border Energy Electric Services, Inc. (Border); the Retail Electric Supply Association and Interstate Gas Supply, Inc. (jointly, RESA/IGS); Dominion Retail, Inc. (Dominion Retail); FirstEnergy

Solutions Corp. (FES); Duke Energy Retail Sales, LLC (DERS); Interstate Gas Supply, Inc. (IGS); the Northeast Ohio Public Energy Council (NOPEC); the Dayton Power and Light Company (DP&L); Ohio Power Company (AEP Ohio); Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy); Duke Energy Ohio, Inc. (Duke); the office of the Ohio Consumers' Counsel (OCC); and Ohio Partners for Affordable Energy (OPAE). Reply comments were filed by Eagle, Direct Energy, RESA/IGS, Dominion Retail, FES, DERS, NOPEC, DP&L, AEP Ohio, FirstEnergy, Duke, OCC, OPAE, and the Ohio Poverty Law Center (OPLC).

- (8) Mindful of the requirements expressed in Findings (2) and (3), the Commission has carefully reviewed the existing rules, the proposed Staff changes, and the comments filed by interested parties in reaching its decisions regarding the rules at issue. The Commission will address the more relevant comments below. Some minor, noncontroversial changes have been incorporated into the new proposed rules without Commission comment. Any recommended change that is not discussed below or incorporated into the proposed rules should be considered denied. The Commission also takes administrative notice of the docket in the *CRNGS Rules Case* and notes that changes made to the CRNGS rules in response to comments in the *CRNGS Rules Case* may have been incorporated into the new proposed CRES rules where appropriate and without further comment in this case. Further, the Commission has attached revised BIAs as Attachments B-1 and B-2.
- (9) The Commission notes that a Commission investigation is open in *In re Comm. Investigation of Ohio's Retail Elec. Serv. Mkt.*, Case No. 12-3151-EL-COI (*CRES Investigation Case*). In the *CRES Investigation Case*, the Commission issued certain questions for comment and received feedback regarding the extent to which barriers may exist to consumers' means to choose retail electric services to meet their needs. Although certain issues in the *CRES Investigation Case* overlap with issues in this rules proceeding, the Commission finds that, due to the timeline of this five-year review mandated by R.C. 119.032, it is necessary at this time to move forward with the adoption of these rules. However, the Commission notes that the adoption of these rules does not preclude further review in the *CRES Investigation Case*. Additionally, the adoption of these rules at this time does not preclude further review of these rules at a later date due to the *CRES Investigation Case*.

Ohio Adm.Code Chapter 4901:1-21 - Competitive Retail Electric Service Providers**Comments on Ohio Adm.Code 4901:1-21-01 - Definitions**

- (10) General. FirstEnergy recommends adding a definition for postmark, similar to the definition in the Electric Service and Safety Rules (ESS Rules), Ohio Adm.Code 4901:1-10-01(U) (FirstEnergy at 3-4). OCC proposes addition of a definition for agent so that individuals who work on behalf of CRES providers are labeled as agents and not independent contractors, subjecting these individuals to joint and several liability with the CRES provider. OCC also recommends addition of a definition for the term "customer energy usage data," in order to address concerns about the potential for violations of customer privacy in light of the technical capabilities that are available with automated metering infrastructure. (OCC at 3-4.)

DERS does not disagree with FirstEnergy's proposed definition for postmark, but suggests that the revised rule clearly require the inclusion of the date the letter was sent (DERS Reply at 1-2). FirstEnergy opposes OCC's recommended definition for customer energy usage data on the basis that it is too specific and should be broad enough to protect specific customer data regardless of meter type (FirstEnergy Reply at 1-2). OPAE supports OCC's recommended definitions for agent and customer energy usage data (OPAE Reply at 14).

The Commission agrees that postmark should be defined, but finds that the most appropriate definition to be used is the definition contained in the ESS Rules, Ohio Adm.Code 4901:1-10-01(U). The Commission declines to add a definition for "agent" on the basis that this term is commonly recognized and is not used in an inconsistent manner within this chapter. The Commission agrees that the term "customer energy usage data" should be defined and should be broad enough to protect customer data regardless of meter type. The Commission has modified this rule accordingly.

- (11) Paragraph (K). This rule defines customer. Eagle states in its comments that this definition would be better if it utilized the provision of "retail electric generation service" in Paragraph (HH) (Eagle at 6). The Commission disagrees that this modification is necessary, as CRES is defined in Paragraph (F).
- (12) Paragraph (M). This rule defines direct solicitation and provides that the definition encompasses door-to-door solicitations. In its comments,

Direct Energy proposes that the terms “direct enrollment” and “door-to-door” solicitation be defined separately and modified from Staff’s proposed language (Direct Energy at 1). The Commission agrees that the definition of direct solicitation should be amended to encompass more than door-to-door solicitation and has modified the definition of direct solicitation accordingly; however, the Commission declines to define the terms separately as proposed by Direct Energy.

- (13) Paragraph (V). This paragraph defines the term “market development period.” DERS comments that this term should be deleted because it has no further relevance and all such periods have terminated (DERS at 6). The Commission agrees and has deleted this definition.
- (14) Paragraph (II). This rule defines the term “small commercial customer.” Eagle states that this definition should encompass other customer classes, such as industrial and public authorities. Eagle recommends excluding residential and mercantile customers from the definition so that all other customer classes are included. (Eagle at 6.) In its comments, RESA/IGS argue that the existing definition is poor because it uses a threshold promulgated primarily for tax purposes. RESA/IGS argue that the level of demand set for defining a small commercial end user should be 25 kilowatts (kW) to exclude medium and large-end users. (RESA/IGS at 4-5.)

RESA/IGS oppose Eagle’s recommendation on the basis that each customer’s type of use is a significant factor in designing the appropriate regulatory structure (RESA/IGS Reply at 3). FES opposes RESA/IGS’ recommendation, and would only support such a change if there was a corresponding change to the eligible customer section of the governmental aggregation rules to clarify that nonmercantile customers are eligible (FES Reply at 10-11). NOPEC opposes RESA/IGS’ proposed definition on the basis that it contradicts Ohio law and would result in a near-impossible standard for a governmental aggregator to comply with related to the distinction between mercantile and nonmercantile customers (NOPEC Reply at 1-2). DP&L opposes RESA/IGS’ proposed changes, arguing that the proposed definition would conflict with the Ohio Revised Code definition for mercantile customers (DP&L Reply at 1). AEP Ohio argues that additional input from various stakeholders should be sought to determine the best number of kW to define a small commercial customer (AEP Ohio Reply at 3). FirstEnergy is not opposed to adding a definition for this term, but believes a better definition would encompass those customers taking service under an

electric utility's nonresidential rate designed for the smallest nonresidential customers (FirstEnergy Reply at 2-3). OPAE opposes RESA/IGS' recommendation (OPAE Reply at 15).

The Commission declines to adopt Eagle's proposed changes to this definition on the basis that the current definition appropriately defines the class for the purposes of this chapter. Further, the Commission declines to adopt RESA/IGS' proposed changes to this definition on the basis that the concerns of RESA/IGS are more appropriately addressed by the electric distribution utilities (EDUs) in their individual tariffs.

Comments on Ohio Adm.Code 4901:1-21-02 – Purpose and scope

- (15) Paragraph (A). Staff recommended that a subparagraph be added to this paragraph noting that the intent of this chapter is to promote nondiscriminatory access to CRES, ensure timely enrollment with CRES providers, maintain electric service, and timely and correctly switch CRES providers. Additionally, Staff recommended that the rules in this chapter apply to all jurisdictional customers unless otherwise specified.

Regarding Paragraph (A)(2)(d), Direct Energy and DERS comment that the wording is confusing and should be modified for clarity (Direct Energy at 2; DERS at 6). Further, regarding Paragraph (A)(3), DERS argues that R.C. Title 49 does not provide the Commission with jurisdiction over retail customers (DERS at 6-7). Similarly, in Paragraph (A)(3), NOPEC comments that the term "jurisdictional customers" is undefined, and requests clarification as to whether this term includes retail customers of Ohio electric distribution facilities (NOPEC at 2).

In Paragraph (A)(2)(c), the Commission finds that the term "misleading" should be inserted into the text in order to provide consistency with other sections of this chapter. Additionally, upon review of Paragraph (A)(2)(d), the Commission believes the entire paragraph is unnecessary and elects to delete the paragraph. Finally, the Commission agrees with DERS and NOPEC that Paragraph (A)(3) is unclear and elects to delete it entirely.

- (16) Paragraph (C). This rule discusses waiver of requirements of the chapter and requires that a CRES provider requesting such a waiver serve notice of the request upon OCC and all electric utilities operating in Ohio.

Direct Energy comments that this paragraph should be amended to provide that the Commission may waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown and upon its own motion (Direct Energy at 2). DERS comments that requiring notice to OCC and all Ohio electric utilities is unnecessary, as the Commission's publicly available docketing notices provide ample notice to any interested party (DERS at 7). Dominion Retail replies that, even if the Commission should adopt Direct Energy's suggestion, the good cause requirement should be present (Dominion Retail Reply at 2). OPAE agrees that motions for waivers should be granted only for good cause, but disagrees that the Commission should be permitted to waive rules on its own motion (OPAE Reply at 15).

The Commission agrees to add language providing that the Commission may waive such requirements for good cause shown in response to Direct Energy's and Dominion Retail's comments and in order for consistency with the CRNGS rules in the *CRNGS Rules Case*. However, the Commission declines to strike the requirement that service be provided on OCC and all Ohio electric utilities, as the Commission believes such parties are entitled to notice of waiver requests.

- (17) Paragraph (F). Staff recommended addition of this paragraph to provide that a governmental aggregator may choose to have a 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.

Eagle comments that a governmental aggregator should not be responsible for the enforcement of this chapter or any other chapter, as an aggregator does not have the expertise to comply with Commission rules beyond the administrative requirements to establish the aggregation program (Eagle at 6). NOPEC recommends amendment of this section to reflect that CRES providers will be joint and severally liable (NOPEC at 3). FES opposes NOPEC's recommendation on the basis that several liability is not currently the law, and liability is an issue that a CRES provider and governmental aggregator are free to negotiate amongst themselves (FES Reply at 7).

The Commission disagrees with Eagle that a governmental aggregator should not be responsible for ensuring the requirements of this chapter are met and also disagrees with NOPEC that this rule should be amended to reflect that CRES providers are jointly and severally liable.

However, the Commission finds, upon further review, that this paragraph should be moved to a new paragraph, Paragraph (G), in Ohio Adm.Code 4901:1-21-16.

Comments on Ohio Adm.Code 4901:1-21-03 – General provisions

- (18) General. In this rule, Staff recommended inclusion of language requiring an explanation for percent-off discounted rates, as well as the provision of CRES provider contact person information.

Eagle recommends a provision to require the CRES provider to clearly notify customers when the price is higher than the price-to-compare of the EDU. Additionally, Eagle recommends a rule requiring all price components be disclosed, such as grants that may be collected by the CRES provider and reimbursed to the municipality in the form of a hidden tax (Eagle at 6). FES urges the Commission to implement an electronic functionality that allows CRES providers to post market offers on the Commission's web page (FES at 2). OPAE comments, generally, that it is vital that the Commission act as a gatekeeper to prevent providers that have a history of investigations and adverse activities in other states from operating in Ohio. Thus, OPAE suggests that the Commission require electric providers who seek to engage in contracts with residential customers in Ohio to file a sufficient security or bond actionable by the Commission. OPAE offers Maine's licensing regulations as an example. Further, OPAE recommends that the regulations seek more detailed information from applications as to managerial qualifications. OPAE also argues that certification should be granted for a specific term and a renewable application should be submitted updating information, including formal investigations and enforcement actions in other states and customer complaint activity in Ohio. OPAE further recommends that the Commission require Staff to publish customer complaint reports that identify specific marketers and the types of complaints that have been filed by customers. (OPAE at 10, 46-47.)

Regarding Eagle's suggestion, Direct Energy opposes the proposal on the basis that EDU prices-to-compare are not currently publicly posted, but are only available on residential customers' bills, and Eagle does not explain any benefit that might be derived from this requirement (Direct Energy Reply at 2-3). FES opposes Eagle's recommendations on the basis that notifying customers about the status of the price relative to the price-to-compare of the EDU would be burdensome for the CRES provider, confusing for the customer, and of limited utility given that multi-year contracts providing a more

stable long-term product may be preferable for some customers. Further, FES opposes Eagle's suggestion that any grants be disclosed on the basis that the decision to disclose a grant should be up to the community. (FES Reply at 4-5.) OCC supports Eagle's recommendation regarding disclosure of grants to a municipality, as well as full disclosure of pricing information to customers and the Commission for purposes of market monitoring (OCC Reply at 4-5). OPAE agrees with Eagle's recommendations in this paragraph (OPAE Reply at 16). Regarding FES' suggestion, OCC replies that it encourages the Commission to ensure accurate and comparable information is available for customers, but believes Staff has the responsibility to evaluate information for accuracy and understandability and to avoid misleading or nonrepresentative information from appearing on its website (OCC Reply at 5-6). Responding to OPAE's suggestion, RESA/IGS comment that they support a complaint index that properly classifies consumer issues, but do not believe that the public needs to publish statements on the Commission's website (RESA/IGS Reply at 16-17). FES opposes OPAE's recommendations based on other jurisdictions licensing regulations on the basis that those jurisdictions are not comparable to Ohio's markets (FES Reply at 8-9).

The Commission notes that the price-to-compare is customer specific; consequently, implementing Eagle's suggestion regarding customer notification when a price exceeds the price-to-compare may be burdensome. Further, as noted by FES, customers may prefer certain aspects of a contract, such as a long-term stable contract, rather than a strictly lower price-to-compare. Consequently, the Commission declines to implement Eagle's suggestion on the basis that it may be burdensome, with minimal benefit. Further, the Commission also declines to implement Eagle's suggestion that grants received by a municipality be disclosed on the basis that, while all inducements to a customer should be memorialized in a contract offer, disclosure of grants or incentives to a municipality would not serve the purpose of aiding a customer in deciding whether to participate in a governmental aggregation. Finally, the Commission declines to adopt OPAE's recommendations on the basis that they present a minimal benefit and there is no demonstrated need at this time.

- (19) Paragraph (B). This rule discusses disconnection of distribution service. Direct Energy recommends an amendment to this paragraph to acknowledge situations where a supplier enters into a supplier

consolidated billing agreement with an EDU, or when an EDU adopts a purchase of receivables program (Direct Energy at 2).

DP&L opposes Direct Energy's recommendation on the basis that the electric utility should have the right to include past due CRES provider charges in the amount needed to avoid disconnection (DP&L Reply at 2). FirstEnergy argues that Direct Energy's proposal contradicts the prohibition on disconnecting customers for nonpayment of CRES charges set out in other rules and statutes, including R.C. 4928.10(D)(3), is unnecessary, and should be rejected (FirstEnergy Reply at 3). OCC argues that Direct Energy's proposal is contrary to the statutory provisions concerning the minimum service requirements for competitive services, which provide requirements for the disconnection of electric service by the EDU and not competitive providers (OCC Reply at 4).

The Commission notes that no purchase of receivables program is being considered as part of this rules proceeding. Consequently, the Commission finds that Direct Energy's recommendations should not be adopted at this time; however, the Commission notes that parties are not precluded from future discussion of this issue in other proceedings. Further, the Commission notes that the power to disconnect remains with the EDU pursuant to R.C. 4928.10(D).

- (20) Paragraph (D). This rule discusses the information CRES providers are required to furnish to Staff prior to making offers to customers.

Direct Energy recommends that this paragraph be amended to specify that it applies only to offers extended to generally all residential Ohio customers and to modify the timeframe from four to five business days. Additionally, Direct Energy proposes that the phrase "if the product is a per unit price" be added to the end of Paragraph (D)(1) to reflect the possibility that CRES providers could offer a product not tied to a unit price. (Direct Energy at 2-3.) DERS argues that Staff's proposed language including "explanation of the discount" is unclear, and DERS proposes alternate language (DERS at 7). Also, in Paragraph (D)(2), NOPEC recommends alternate language (NOPEC at 3). In Paragraph (D)(1), AEP Ohio recommends clarification to reflect the price per kilowatt hour (kWh) for both generation and transmission service (AEP Ohio at 2). Finally, FES proposes adding a new subparagraph, Paragraph (D)(6), to reflect that Paragraph (D) does not apply to renewal offers or offers that are not open to the general public. FES contends that this would address situations where

CRES providers may opt to provide offers to a specific set of customers only or to offer renewals that are not for the general public. (FES at 2.)

DERS replies to AEP Ohio that what fits under the standard service offer (SSO) of one EDU may not be appropriate under another (DERS Reply at 2).

The Commission believes that the rule as initially proposed by Staff is adequate for achieving the goal of providing a database of offers which allows for market monitoring and public information. However, for consistency between the rules in this case and the *CRNGS Rules Case*, and in reflection of the comments made by the stakeholders, the Commission has modified the rule to be more general and not to exclude any one type of offer, and has retained calendar days rather than business days. Additionally, the Commission notes that, subsequent to Staff submitting its initial proposed changes, the Commission modified its apples-to-apples chart so that CRES providers now make changes to their posting directly onto the chart, rather than submitting information to Staff. The Commission has modified this rule accordingly. Finally, the Commission declines to adopt the language proposed by FES on the basis that it would undermine the intent of the rule, which is to ensure a competitive marketplace where customers have free choice based upon all available information.

- (21) Paragraph (E). This rule sets forth that CRES providers must provide contact information for a contact person who can address concerns regarding customer complaints. Eagle recommends the Commission define the term “days” (Eagle at 6). RESA/IGS recommend, if the changes in Ohio Adm.Code Chapter 4901:1-24 are adopted, this paragraph should refer to Ohio Adm.Code 4901:1-24-11 (RESA/IGS at 5). DERS comments that it agrees with the content of the rule, but believes the rule should be in Ohio Adm.Code Chapter 4901:1-24, because that chapter relates to certification (DERS at 8). The Commission disagrees with Eagle’s and RESA/IGS’ proposed changes, but agrees that this paragraph is more appropriately included in Ohio Adm.Code Chapter 4901:1-24, and has moved the paragraph to a new paragraph, Paragraph (D), in Ohio Adm.Code 4901:1-24-05.

Comments on Ohio Adm.Code 4901:1-21-04 – Records and record retention

- (22) DERS suggests that this rule be amended to provide that the maintenance of electronic records is sufficient to comply with all Commission mandates (DERS at 8). In Paragraph (C), which requires

records to be provided to Staff within five calendar days of request, Eagle, RESA/IGS, and FES contend that calendar days should be replaced with business days to remain consistent with other Staff changes (Eagle at 5; RESA/IGS at 24; FES at 3). However, FES adds that the time period should be ten business days (FES at 3). In reply, RESA/IGS agree that electronic retention should be an acceptable means for retaining CRES-related documents (RESA/IGS Reply at 17). The Commission has never opposed electronic records retention and it is not prohibited by this rule. Consequently, the Commission does not believe DERS' recommended language is necessary. Additionally, The Commission finds that the time period in Paragraph (C) should be three business days to be consistent with Ohio Adm.Code 4901:1-29-04(C), in the *CRNGS Rules Case*, and has modified the rule accordingly.

Comments on Ohio Adm.Code 4901:1-21-05 - Marketing and solicitation

- (23) General. This rule governs marketing and solicitation by CRES providers and Staff proposed various changes pertaining to requirements for direct solicitation, prohibited acts, and criminal background checks for employees.

DP&L proposes adding a new paragraph to this rule, Paragraph (E), to require an Electric Choice education statement on marketing materials (DP&L at 1). OCC supports the development of an Electric Choice education statement (OCC Reply at 10). Duke recommends an addition to this rule requiring CRES providers to notify the appropriate electric utility of upcoming marketing and solicitation plans to allow the utility to prepare its call center for inquiries. Duke also requests that, before upcoming marketing, CRES providers provide the utility with copies of its marketing materials when possible, or at least general information. (Duke at 2.)

Regarding DP&L's comment, DERS does not dispute the need for education, but points out that it would increase costs (DERS Reply at 3-4). Direct Energy opposes Duke's recommendation on the basis that marketing materials are competitively sensitive (Direct Energy Reply at 6). FES opposes Duke's recommendation on the basis that this presents an additional burden to CRES providers and calls for the disclosure of competitively sensitive and confidential marketing activities (FES Reply at 1-2). DP&L supports Duke's recommendation (DP&L Reply at 3).

While the Commission believes education on Electric Choice is important, the Commission disagrees that creation of a new rule, as

suggested by DP&L is necessary. Regarding the suggestion that CRES providers be required to provide marketing materials to a utility prior to marketing efforts, the Commission finds this would constitute an unnecessary burden on CRES providers and could stifle competition.

- (24) Paragraph (A). This rule discusses information that CRES providers are required to provide in marketing materials.

DERS recommends that this paragraph be amended to address percent-off offers because they are now common (DERS at 8). AEP Ohio reiterates that Paragraph (A)(1)(a) should be amended to include both generation and transmission service (AEP Ohio at 2). OPAE recommends the Commission require suppliers to disclose price in a uniform manner as part of their marketing materials, which would require inclusion of all fixed and recurring charges, such as minimum monthly charges or other unavoidable fees. Additionally, particularly for variable rate contract disclosures, OPAE recommends that the disclosures inform the customer of an example of how the price of the contract would have changed in the past 12 to 24 months if the contract had been in place. Further, OPAE argues that variable rate contracts should be required to identify the specific index, formula, or methodology that is external to the supplier's own manipulation or discretion to govern their terms in order to allow customers to make a rational and informed decision (OPAE at 31-35, 44).

OPAE agrees with AEP Ohio's recommendation regarding generation and transmission service (OPAE Reply at 17). Direct Energy opposes OPAE's recommendation regarding price disclosure in a uniform manner on the basis that CRES providers may bring products to customers that are not tied to a specific per-kWh charge (Direct Energy Reply at 18). RESA/IGS oppose OPAE's proposals regarding disclosure in a uniform manner on the basis that they would limit and stifle the scope of product offerings CRES providers can make and conflict with the state energy policy set forth in R.C. 4928.02(B). Further, RESA/IGS oppose the proposal for variable rate contracts that CRES providers disclose how the price of the contract would have changed over the past 12 to 24 months. RESA/IGS argue that OPAE's proposals would be difficult, time consuming, and expensive, and would accomplish little customer benefit, therefore, running afoul of R.C. 121.82. (RESA/IGS Reply at 4-9.)

The Commission agrees with DERS' and AEP Ohio's recommendations and has modified the rule accordingly. Regarding OPAE's proposals, the Commission disagrees with RESA/IGS'

comment that regulation of solicitations is a barrier to competition; however, the Commission believes that OPAC's recommendations present an administrative burden which would be inconsistent with common business practices. Consequently, the Commission declines to adopt OPAC's recommendations.

- (25) Paragraph (B). In this rule requiring provision of promotional and advertising materials to Staff, Staff recommended changing five calendar days to three business days. Direct Energy and RESA/IGS recommend that, in order to maintain consistency with the CRNGS rules, the proposed three business days be changed to five business days (Direct Energy at 3; RESA/IGS at 6). OCC argues that the paragraph should also require OCC to be provided with materials targeted to residential customers, because it would allow OCC to better educate customers (OCC at 5). FES opposes OCC's request on the basis that it would add processing time and effort (FES Reply at 9-10).

The Commission disagrees that the time frame set forth in this paragraph should be modified to five business days. Further, the Commission declines to adopt OCC's recommendation on the basis that there may be reasons for the Commission or Staff to review promotional materials unrelated to residential customer service.

- (26) Paragraph (C). This paragraph prohibits CRES providers from engaging in marketing, solicitation, or sales acts or practices that are unfair, misleading, deceptive, or unconscionable and lists multiple prohibited acts as subparagraphs, which will be discussed separately.

NOPEC proposes adding a paragraph to this rule providing that: "If a residential or small commercial customer resides in a community with an opt-out governmental aggregation program, a CRES provider shall not solicit, or enter into a CRES contract with, such customer prior to: (i) an electric account being established for that customer with the applicable EDU; and (ii) the customer having the opportunity to participate in the community's opt-out governmental aggregation program" (NOPEC at 5). Duke proposes time limits for door-to-door marketing only from 9:00 a.m. to 9:00 p.m. local time (Duke at 2). OPAC comments that door-to-door sales should only occur during the hours of 9:00 a.m. to 7:00 p.m. from October 1 to March 31, and during the hours of 9:00 a.m. to 8:00 p.m. from April 1 to September 30, or stricter limits if required by a local ordinance. (OPAC at 41-42.)

Direct Energy opposes NOPEC's proposal on the basis that it would establish aggregation as a preferred channel for customers and a CRES provider would have no way of knowing whether a customer has received an opt-out notice (Direct Energy Reply at 14-15). RESA/IGS oppose NOPEC's proposal, arguing that suppliers should be permitted to compete for the opportunity to serve customers and there is no need for NOPEC's proposed restriction (RESA/IGS Reply at 12). DERS agrees with the time limitations on door-to-door marketing proposed by Duke (DERS Reply at 3). OCC opposes Duke's recommendations on the basis that 9:00 a.m. is too early for marketing because it may awaken customers, and 9:00 p.m. is too late because it would be dark and customers may be unable to see the identification of the marketer. OCC recommends door-to-door marketing only be permitted from 10:00 a.m. until dusk. (OCC Reply at 9-10.) Direct Energy opposes OPAC's recommendation pertaining to marketing during different times of the year, and advocates that the time permitted should be between 9:00 a.m. and 9:00 p.m., unless stricter limits are imposed by a local ordinance (Direct Energy Reply at 19).

The Commission declines to adopt NOPEC's recommendation on the basis that it may create a barrier to competition. Regarding the comments pertaining to the time frame for marketing, the Commission finds that language should be added limiting door-to-door direct solicitation to the hours between 9:00 a.m. and 7:00 p.m. The Commission believes this time limitation strikes a reasonable balance between the times proposed by the commenters. The Commission has added this requirement as a new paragraph, Paragraph (E).

- (27) Paragraph (C)(2). This paragraph prohibits failure to comply with Paragraphs (A) and (B) of this rule. DERS recommends this paragraph refer only to Paragraph (A) and specify it only applies when soliciting a sale of CRES (DERS at 8-9). The Commission finds that DERS' recommendation should not be adopted because it would negate the intent of the rule, which is to monitor the market and ensure that the competitive market is not being undermined by the use of deceptive marketing materials.
- (28) Paragraph (C)(3). This paragraph requires a toll-free telephone number to be included with advertisements. RESA/IGS recommend revision of this rule to exclude advertising and promotional activities in which provision of a telephone number is impractical, such as activities for branding purposes (RESA/IGS at 7). DERS does not object to reasonable limitations on the mandated use of telephone numbers, but

suggests that telephone numbers provided by marketing agents should be working numbers that connect to an individual who can answer questions (DERS Reply at 6).

The Commission declines to adopt RESA/IGS' proposed revision, at this time, on the basis that it would undermine the intent of the rule, which is to prevent misleading practices, and on the basis that customers should have a telephone number to call with questions about an offer.

- (29) Paragraph (C)(5). This paragraph prohibits telephone solicitation of individuals on the federal do-not-call registry. Direct Energy recommends that Paragraph (C)(5) be modified to require compliance with the state do-not-call registry (Direct Energy at 3-4). DERS recommends Paragraph (C)(5) include language to require soliciting suppliers to affirmatively state there is no relationship with the EDU (DERS at 9-10.) DP&L supports DERS' proposed addition, but disagrees with deleting the language prohibiting telephone solicitation of individuals on the do-not-call registry (DP&L Reply at 2-3). OCC supports DERS' recommendation (OCC Reply at 8).

The Commission declines to adopt Direct Energy's recommendations on the basis that there is no such thing as a state do-not-call registry. Additionally, the Commission finds that DERS' recommended language should not be adopted because it is unnecessary, as rules are already in place to require disclosure of existence or lack of existence of affiliate relationships. However, the Commission does agree that it is necessary to clarify that a CRES provider is not allowed to insinuate that it is an agent of anyone besides itself, and has incorporated this requirement into Paragraph (C)(10).

- (30) Paragraph (C)(7). This paragraph requires CRES providers' agents to wear photo identification, which must be preapproved by Staff. Direct Energy believes the Commission should delete this paragraph in its entirety because there is no reason for the Commission to preapprove an agent's badge. Further, Direct Energy argues that, if the Commission retains this provision, it should only pertain to door-to-door solicitation. (Direct Energy at 4.) RESA/IGS contend that this paragraph should be amended to refer to door-to-door solicitation only and should also provide that failure to wear and display such identification *may* be an unfair, misleading, deceptive, or unconscionable act (RESA/IGS at 8-9). OCC states that it supports identification badges; however, OCC states that it has received complaints that some CRES agents represent themselves as being

associated with an electric utility; consequently, OCC recommends that the identification include the name of the CRES provider (OCC at 6.) OPAE recommends that CRES providers' agents' identification badges must accurately identify the supplier, display the agent's photograph, display the agent's full name, be prominently displayed, and display a customer service telephone number for the supplier. OPAE also recommends that agents conducting door-to-door activities be prohibited from wearing apparel or accessories or carrying equipment containing branding elements that suggest a relationship that does not exist with a distribution utility, government agency, or another supplier. (OPAE at 41-42.)

DERS states, in reply, that solicitations by door-to-door representatives necessitate different protections than face-to-face approaches and comments that actual door-to-door sales should require a mandated Commission-approved badge and business card (DERS Reply at 4-5).

The Commission declines to adopt Direct Energy's recommendation that the Commission delete this entire paragraph on the basis that doing so would undermine the intent of the rule, which is to prevent misleading and deceptive practices. The Commission also declines to adopt RESA/IGS' recommendation on the basis that it is unnecessary, as due process rights are guaranteed to all companies. Next, the Commission declines to adopt OCC's proposed language on the basis that the format of the badge will be left to the individual companies to design, and is required to be approved by Staff. Finally, the Commission declines to adopt OPAE's recommended changes on the basis that no need has been demonstrated for such a requirement.

- (31) Paragraph (C)(8). This paragraph prohibits specific types of advertising or marketing offers.

Eagle recommends this paragraph either prohibit affiliates from adopting a similar name to the EDU or, at a minimum, adopt the disclosure requirements found to be reasonable in *Ohio Consumers Counsel v. Dominion Retail, Inc.*, Case No. 09-257-GA-CSS (Eagle at 7). In Paragraph (C)(8)(g), Direct Energy suggests conspicuous disclosure, at the first practical opportunity, of any affiliate relationship with an existing Ohio electric utility on advertisement or marketing offers that use an Ohio utility's name and logo (Direct Energy at 4). Additionally, in Paragraph (C)(8)(g), OPAE comments that a provider should be required to identify the name of the provider he represents and state that he is not working for the customer's EDU or other supplier (OPAE at 41).

In reply to Eagle's comments, Direct Energy comments that, as a threshold matter, the Commission must first determine whether use of a similar name is misleading (Direct Energy Reply at 5). FES opposes Eagle's recommendation on the basis that it would be unconstitutional to implement such a requirement (FES Reply at 5). AEP Ohio opposes Eagle's recommendation, commenting that infringement on a company's right to choose its own name is not an area appropriate for Commission review (AEP Ohio Reply at 2). FES opposes Direct Energy's recommendations on the basis that they are unnecessary, as the current rule is consistent and clear (FES Reply at 2-3). OCC comments that it supports improvements to the rules that result in customers being better informed about marketers and any affiliation with the EDU (OCC Reply at 7-8).

The Commission finds that Eagle's suggested language should not be adopted on the basis that the Commission does not believe that an unaffiliated CRES supplier should necessarily be prohibited from using the incumbent utility's name and/or logo, absent other circumstances indicating that the use of the name and/or logo is unfair, misleading, or deceptive. *See Ohio Consumers Counsel v. Interstate Gas Supply d/b/a Columbia Retail Energy*, Case No. 10-2395-GA-CSS, Opinion and Order (Aug. 15, 2012). Additionally, the Commission declines to adopt Direct Energy's proposed language on the basis that it is unnecessary and weakens the rule by requiring a determination of intent. Finally, the Commission finds that OPAE's recommendations are unnecessary, as there are other safeguards in this chapter.

- (32) Paragraph (C)(11). In this paragraph, Staff proposed language requiring CRES providers to follow all local ordinances when engaged in direct solicitation.

Eagle argues that door-to-door marketing should be prohibited, particularly in communities that have implemented a governmental aggregation program (Eagle at 3, 6-7). RESA/IGS criticize the proposed rule on the basis that it gives the Commission authority to decide whether an act violates a local ordinance, which is outside of the Commission's expertise; that it does not specify door-to-door solicitation; and because a local ordinance may not impact whether a solicitation was unfair, misleading, deceptive, or unconscionable (RESA/IGS at 9-10). OPAE agrees with this subsection as proposed by Staff (OPAE at 41).

Direct Energy opposes Eagle's recommendation on the basis that the Commission has no jurisdiction to prohibit door-to-door sales and that this proposal would equate to establishing aggregation as the sole channel for retail competition (Direct Energy Reply at 4-5). RESA/IGS oppose Eagle's recommendation on the basis that it conflicts with R.C. 4928.02(G) and would eliminate competitive options (RESA/IGS Reply at 10-11). DERS opposes Eagle's recommendation on the basis that Eagle does not explain its concern with competition in aggregated areas or why customers would be confused (DERS Reply at 5-6). OCC opposes RESA/IGS' recommendation, arguing that the responsibility is on the marketer to ensure compliance with local ordinances and the Commission has a duty to protect customers from unfair, deceptive, or unconscionable acts (OCC Reply at 8-9). OPAE disagrees with RESA/IGS, contending that the rule does not require the Commission to find a local law has been violated, but merely to take appropriate action where a local government has found a violation of a law or ordinance (OPAE Reply at 19).

The Commission initially finds that Eagle's requested deletion of this section and banning of door-to-door solicitation in communities that have governmental aggregation programs in place should be denied on the basis that door-to-door solicitation is an acceptable method of sales in Ohio and prohibiting those types of sales may inhibit competition. Further, Eagle has offered no compelling reason why door-to-door should be prohibited. The Commission next finds that RESA/IGS' suggestions should not be adopted on the basis that Staff's proposed language is appropriate.

- (33) Paragraph (D). In this paragraph, Staff recommended that CRES providers perform criminal background checks on employees/agents engaged in door-to-door operations.

Direct Energy requests the use of the term "solicitation" instead of "marketing" (Direct Energy at 5). Border Energy recommends that this provision be expanded to include third-party companies engaged by CRES providers to perform door-to-door marketing and enrollment (Border at 1-2). RESA/IGS comment that the language in Paragraph (D) should be modified to allow CRES providers to have third parties conduct the background check, and that the background checks should apply only to door-to-door solicitations, not all marketing activities (RESA/IGS at 10). DERS agrees with Staff's proposed paragraph (DERS at 10). OCC recommends a provision be added to state that the performance of background checks on CRES provider

employees/agents or governmental aggregators does not limit the liability of the CRES provider for actions of its employees or agents (OCC at 7). OPAE recommends suppliers be required to develop and implement standards and qualifications for employees and agents that interact with retail customers, including conducting criminal background checks, and training on laws and ethical sales practices. OPAE also recommends a training and disciplinary program. (OPAE at 36-43.)

DERS agrees that third parties should be permitted to perform the background checks per Border's suggestion, but comments that the CRES provider must remain responsible because the Commission has no authority over third parties (DERA Reply at 6). OCC agrees with RESA/IGS that a CRES provider does not necessarily have to perform the background check itself, but asserts that the CRES provider has responsibility for oversight of any third party performing background checks (OCC Reply at 9).

Regarding Direct Energy's comments, the Commission believes that the term "marketing" is appropriate. Finally, as to OCC's recommended provision regarding liability, the Commission believes the provision is unnecessary and is overly prescriptive. Regarding Border's and RESA/IGS' comments, the Commission finds the language should be modified to allow third parties to perform the background checks. Additionally, in the interest of consistency, and in accordance with industry recommendations relating to the rule in the *CRNGS Rules Case*, Ohio Adm.Code 4901:1-29-05(E), the Commission has added a provision pertaining to performance of the criminal background check to this paragraph.

Comments on Ohio Adm.Code 4901:1-21-06 - Customer enrollment and consent

- (34) General. This rule governs customer enrollment and Staff recommended changes to several paragraphs.

Eagle recommends addition of a paragraph to this rule requiring an EDU to permit enrollment as long as the CRES provider has provided a minimum of five business days' notice prior to the meter reading date (Eagle at 8). Direct Energy also recommends addition of a paragraph to this rule in order to allow a customer to enroll with a CRES provider without requiring the customer to have his utility bill in hand: "Each electric utility shall provide in its tariff the ability for a CRES provider to enroll a customer by providing a secure pin known

to the account holder, such as a social security number, driver's license registration number, or other unique identifier" (Direct Energy at 5).

As to Eagle's comment, RESA/IGS reply that they conceptually support additional flexibility of electronic data interchange (EDI) transaction requirements (RESA/IGS Reply at 13-14). DP&L opposes Eagle's and Direct Energy's recommendations on the basis that they would require extensive statewide electric utility billing system changes (DP&L Reply at 4-5). FirstEnergy urges the Commission to reject Direct Energy's proposed language on the basis that the current systems are designed and in place to switch customers based off an account number and changes in enrollment should first be vetted with the Ohio EDI working group (OEWG) (FirstEnergy Reply at 5). OCC asserts that, while the account number may not always be convenient for marketers, requiring it has proven effective in preventing slamming and using an alternative number could cause customer confusion (OCC Reply at 11). OPAE opposes Direct Energy's suggestion that anything other than an account number may be used to enroll a customer (OPAE Reply at 21-22).

The Commission declines to adopt Eagle's recommendation on the basis that, as pointed out by DP&L, it would require extensive utility billing system changes that would run afoul of R.C. 121.82. Regarding Direct Energy's proposal, the Commission finds that, at this time, customers should continue to be switched solely by account numbers. The Commission acknowledges, however, that this issue has been discussed extensively in the *CRES Investigation Case*. Consequently, the Commission notes that this finding does not preclude further discussion of this issue in other proceedings.

- (35) Paragraph (A). This paragraph requires CRES providers to coordinate customer enrollment with the EDU as set forth in the applicable tariff.

DERS comments that, if EDUs remain in a position to create their own enrollment requirements, the development of the competitive market remains hampered. Consequently, DERS recommends EDUs be required to allow enrollment on the basis of account numbers, not customer numbers, names, addresses, or social security numbers, and that EDUs should be required to allow CRES providers to rescind an enrollment request on behalf of a customer up to four days before the service start date. (DERS at 10.) Similarly, IGS urges the Commission to modify this chapter to require account numbers of eligible customers to be provided to CRES suppliers on the basis that it would reduce the likelihood that the wrong customer is enrolled with a

supplier and would also make it easier for customers to enroll with competitive suppliers (IGS at 4-5).

RESA/IGS reply that the various types of information discussed by DERS are appropriate to validate customer switch requests because many customers do not know their account numbers and do not have an old bill, particularly when the solicitation occurs outside of a customer's home. However, RESA/IGS support DERS' recommendation that EDUs must allow CRES providers to rescind an enrollment up to four calendar days before the service start date. (RESA/IGS Reply at 12-14.) DERS responds to IGS that the rules should not be changed to include critical enrollment information in the customer list, or, in the alternative, the Commission should strengthen the anti-slamming rules (DERS Reply at 3). DP&L comments that it supports DERS' recommendation that EDUs allow enrollment on the basis of account numbers only. Additionally, DP&L agrees that DERS' second recommendation would be beneficial for customers, but notes that it would require sufficient implementation time for the utility due to the change in rescission time, and supports DERS' suggestion to allow the customer to rescind by contacting the CRES provider. (DP&L Reply at 3-4.) FirstEnergy comments that the purpose of not including account numbers included on preenrollment lists is to prevent slamming (FirstEnergy Reply at 4).

As previously discussed, the Commission finds that, at this time, customers should continue to be switched solely by account numbers. Further, the Commission finds that, at this time, account numbers should not be provided on customer lists given to CRES providers. The Commission notes, however, that both of these issues have been discussed in the *CRES Investigation Case*, and emphasizes that the Commission's finding in the current proceeding does not preclude further discussion of these issues in other proceedings.

- (36) Paragraph (B). In this paragraph, OCC argues that the requirement to pay switching fees in Paragraph (B)(4) may discourage some customers from applying for a percentage of income payment plan (PIPP). Therefore, OCC recommends the provision requiring that "[a]ny switching fees shall be added to the customer's arrearages, and not current charges. Such customer shall not be assigned switching fees" be deleted. (OCC at 10-11.) OPAE supports OCC's recommendation (OPAE Reply at 21). The Commission agrees that customers applying for PIPP should not be assessed switching fees and has modified this section accordingly.

- (37) Paragraph (C). In this paragraph, IGS states that clarification is needed that governmental aggregators must have affirmative consent from customers to charge cancellation fees, on the basis that customers who are served under opt-out aggregation are less likely to be aware of the terms under which they are being served (IGS at 1-3). FES opposes IGS' recommendation on the basis that the Revised Code allows for cancellation fees in a governmental aggregation and because any cancellation fee would be properly disclosed in a governmental aggregation program opt-out notice (FES Reply at 6-7). DERS opposes IGS' recommendation on the basis that nothing in the applicable statutes sets forth terms that must or must not be included in the contract with the CRES provider (DERS Reply at 7). OPAE opposes IGS' recommendation, arguing that IGS is trying to inhibit governmental aggregations (OPAE Reply at 22).

The Commission declines to adopt IGS' recommendations on the basis that, as pointed out by FES, the Revised Code does not prohibit early termination fees in governmental aggregation programs and any early termination fee is required to be disclosed in the opt-out notice. Customers give their consent to the terms of the aggregation agreement, including any early termination fees, if they do not opt out of the governmental aggregation.

- (38) Paragraph (D)(1). This paragraph governs mailings, facsimiles, and direct solicitation for residential and small commercial enrollment.

OCC comments that it supports Staff's proposal because it helps provide protection for customers. Additionally, OCC recommends addition of a new subparagraph, Paragraph (D)(1)(m), that would require CRES providers to review enrollment tapes from rejected third-party verification (TPV) and to ban agents who have failed to comply with the rules from performing direct solicitations. (OCC at 8-9.)

RESA/IGS oppose OCC's recommendation on the basis that a CRES provider should not be required to strictly respond to such incidents as proposed by OCC, as these responses may or may not make sense in any particular instance (RESA/IGS Reply at 18).

The Commission declines to adopt OCC's proposed changes on the basis that they are unnecessary and are strict and rigid guidelines that, as pointed out by RESA/IGS, may not be appropriate in certain circumstances. Further, requiring CRES providers to review all

rejected TPV enrollment tapes in order to ferret out certain agents would be unduly burdensome and costly for businesses.

- (39) Paragraph (D)(1)(b), (D)(1)(d). Paragraph (D)(1)(b) requires CRES providers, prior to entering into a contract, to provide customers with enrollment documents containing specified information. Paragraph (D)(1)(d) requires CRES providers to provide an applicant a legible copy of the signed contract immediately upon obtaining a signature.

Regarding Paragraph (D)(1)(b), Direct Energy comments that it would be beneficial to give customers the option to view this specified information via a website or e-mail. For Paragraph (D)(1)(d), Direct Energy recommends that the following language be added to give customers the opportunity to print and retain information at their own convenience: "In the case of mail or facsimile enrollment, the CRES provider may satisfy this rule by including language in the contract that encourages the customer to make a copy of the signed agreement." (Direct Energy at 5-6.) FES claims that it is inefficient to photocopy a signed customer enrollment form as soon as it is received in order to send it back to the customer and requests clarification that there is no need to send a customer an additional contract if the customer already received one with his enrollment materials (FES at 3-4.)

The Commission disagrees with Direct Energy's recommendations on the basis the Commission believes customers in these situations should have a hard copy in order to review the terms agreed to. Additionally, the Commission disagrees with FES' recommendation on the basis that it would undermine the intent of the rule, which is to ensure customers have full disclosure at the time of the sale and a hard copy.

- (40) Paragraph (D)(1)(e). In this provision regarding enrollment by direct solicitation, Staff recommended changing seven-day period to seven business days, and providing that a customer must contact the electric utility to rescind the contract. Direct Energy recommends two modifications, including that the subsection include door-to-door solicitation, and that business days be changed to calendar days (Direct Energy at 5-6). Similarly, Dominion Retail opposes the change to business days on the basis that seven calendar days will always encompass two weekend days which may be a more convenient time for customers to handle rescission issues (Dominion Retail at 1-2). FES recommends that the word "must" be changed to "may" because customers who call to rescind are often confused by the terms of the contract and requiring them to contact the electric utility does not give

them the opportunity to be educated on the terms of the contract (FES at 4-5). AEP Ohio does not support the change to business days on the basis that this change will cause information technology system changes and added costs (AEP Ohio at 3).

RESA/IGS contend that all time frames set forth in this chapter should be in business days, and comment that a business day is not difficult for the public to understand (RESA/IGS Reply at 19). Dominion Retail points out that, in this paragraph, the Commission should retain the seven calendar-day standard because: it is a time frame relating to an action that the customer must take, and it may be difficult for a customer to distinguish between business days, weekends, and holidays; changes would be required to the utilities' information technology (IT) systems; and there is no evidence that the current seven calendar-day time period has caused any problems (Dominion Retail Reply at 3-4). DERS agrees with FES' recommendation, and also points out that allowing rescission through communication with the CRES provider is simpler for the customer (DERS Reply at 8). DP&L supports Direct Energy's, AEP Ohio's, and Dominion Retail's comment that business days should be changed to calendar days (DP&L Reply at 4).

The Commission agrees that the time period in which a customer may rescind a contract should not be changed to business days, but should remain calendar days in order to prevent customer confusion. Additionally, the Commission does not find that the addition of the term "door-to-door" solicitation is necessary, as the definition of direct solicitation has been amended to include door-to-door solicitation. Further, the Commission declines to adopt FES' recommended change in terminology from "must" to "may" on the basis that it would undermine the intent of the rule, which is to provide full disclosure at the time of sale.

- (41) Paragraph (D)(1)(g). This provision requires a CRES provider to send an electronic enrollment request to the electric utility within three calendar days of the transaction unless an alternative start date is agreed to. Eagle, RESA/IGS, and FES all comment that calendar days should be changed to business days (Eagle at 5; RESA/IGS at 24; FES at 5). FES also believes the time period should be changed to five days, in order to allow CRES providers enough time to process enrollments for large direct mail campaigns (FES at 5). The Commission finds that the appropriate time frame is three business days and has modified this provision accordingly.

- (42) Paragraph (D)(1)(h). This provision provides guidelines for CRES providers conducting door-to-door solicitation and TPV. Eagle recommends the Commission delete this paragraph, again asserting that door-to-door solicitation is unreasonable (Eagle at 7). Direct Energy comments that the term "after" in Paragraph (D)(1)(h)(ii) is problematic because there are many situations that occur during a TPV that would warrant an agent returning to the premises. Direct Energy recommends addition of a provision that specifies that, where enrollment occurs by door-to-door solicitation, an audio-recorded TPV and the customer's signature on the contract shall constitute consent. Direct Energy also contends that a new provision should be added that prohibits a TPV from being compensated on the basis of customer enrollment in order to ensure that the verifier was acting as a truly independent party. (Direct Energy at 7, 9.) Border requests deletion of this entire provision on the basis that it hampers a CRES provider's ability to solicit customers door-to-door. In the alternative, Border recommends CRES providers be permitted to either use TPV or allow the salesperson to record the customer verification using video technology. (Border at 2-3.) In Paragraph (D)(1)(h)(iv), RESA/IGS recommend the phrase "after the contract with the customer is terminated" be changed to "after the enrollment date of the customer," and that the retention period be for one year after the date the customer is enrolled (RESA/IGS at 11). DERS recommends two amendments to Paragraph (D)(1)(h), including requiring questions about who the representative stated he/she was representing and whether the representative provided the customer with a written copy of his/her identification information. Further, DERS suggests EDUs be directed to notify their customers that all legitimate door-to-door solicitations from CRES providers must begin with this identification process and the provision of written information. (DERS at 11.)

Direct Energy supports a requirement that CRES providers review a percentage of TPV recordings, but argues that this rule should not be so prescriptive as to require a CRES provider to review all tapes because of the administrative burdens (Direct Energy Reply at 8). DERS opposes Border's recommendation regarding video recordings on the basis that it could intimidate the customer. Further, DERS opposes RESA/IGS' recommendation for a language change to "after the enrollment date of the customer" on the basis that the delay would hurt the customer, as the customer would have less time to examine the terms before the rescission period expires. (DERS Reply at 8-9.) OCC opposes Direct Energy's request that agents be permitted to return to the property during TPV due to the potential for coercion or

intimidation. Further, OCC opposes Border's recommendation for videotaping the entire transaction on the basis that there are privacy concerns about what is being videotaped and how the tapes will be used. (OCC Reply at 13-14.) OPAE agrees with Border that entire conversations between door-to-door marketers and customers should be recorded, and also agrees with OCC that CRES providers should review recordings where the customer rejects the contract during the TPV (OPAE Reply at 20).

The Commission declines to implement Eagle's request to ban door-to-door marketing for the reasons set forth above. The Commission declines to adopt Direct Energy's recommended exception to the rule allowing an agent to return to the premises on the basis that this would undermine the rule requiring independent TPV. Additionally, the customer should have been left with a contact phone number in order to obtain answers to any questions the sales agent did not answer. The Commission disagrees with Border's recommendation that all transactions be videotaped on the basis of privacy concerns. The Commission disagrees with RESA/IGS' requested language regarding records retention on the basis that it would undermine the intent of the rule, which is to require retention of records in the event a dispute arises regarding the rights and obligations of the parties to the contract. The Commission declines to adopt DERS' recommendation regarding additional TPV questions on the basis that the information is already required and, further, declines to adopt DERS' proposal on the basis that it may be an unnecessary requirement placed on the EDUs to police the activities of CRES providers, as well as a potential barrier to competition. Finally, the Commission finds that, upon review, the need to provide the information in Paragraph (D)(1)(h)(v) to the EDU upon request is unnecessary and has amended this paragraph accordingly.

- (43) Paragraph (D)(1)(i). In this paragraph, Staff proposed provisions regarding print specifications for terms and conditions and recommended that conditions be provided to the residential customer on white paper at the time of sale. Direct Energy and RESA/IGS claim that, if the door-to-door sale is made using an electronic medium, it makes more sense to have the terms and conditions provided to the customer via e-mail, and that, if e-mail is not available, the sales representative should be able to produce the terms and conditions on an electronic screen, if available (Direct Energy at 8; RESA/IGS at 11). DERS opposes RESA/IGS' recommendation on the basis that it is unclear whether this concept includes any step that would allow the

customer to get a copy of the terms and conditions that were displayed or to read the terms and conditions before enrollment (DERS Reply at 7).

The Commission disagrees that conditions may be provided to a customer electronically in order to satisfy this rule. The Commission finds that permitting the terms and conditions to be provided via e-mail or displayed on an electronic screen would not adequately ensure full disclosure at the time of the sale, and ensure the customer is provided a hard copy, in order to know what he/she agreed to.

- (44) Paragraph (D)(1)(j). In this paragraph, Staff recommended a provision requiring door-to-door solicitors to display a valid photo identification of the approved CRES provider or governmental aggregator, which must be in a format approved by Staff.

Direct Energy argues that this entire paragraph should be deleted or, in the alternative, that the Commission should develop a format template (Direct Energy at 8). Dominion Retail requests that the title of this section be changed to "Photo Identification" rather than "Uniform" (Dominion Retail at 2-3). DERS suggests that the rule require the solicitor to provide a copy of the identification card to each solicited customer that includes the solicitor's name, company, name of supplier, a toll-free number for the employer and supplier, and Commission/OCC contact information (DERS at 11-12). DP&L supports DERS' proposed requirement (DP&L Reply at 4). OCC supports Staff's recommendation and opposes Direct Energy's proposal that Staff's preapproval of identification be deleted (OCC Reply at 6).

The Commission agrees that this paragraph should be deleted, in light of Ohio Adm.Code 4901:1-21-05(C)(7), as the name of the sales representative will be on the required identification badge and the contract if the customer signs up for service.

- (45) Paragraph (D)(1)(k). In this paragraph, Staff recommended a provision requiring a CRES representative to leave the premises of a customer when so requested by the customer. Direct Energy suggests that the word "expressly" be inserted immediately before the word "requested" (Direct Energy at 8-9). OCC opposes Direct Energy's recommendation on the basis that it could be interpreted to not require an agent to leave the property immediately upon request (OCC Reply at 14). The Commission declines to adopt Direct Energy's

recommended change and agrees that it could be interpreted to not require an agent to leave the property immediately upon request.

- (46) Paragraph (D)(2). In this paragraph, Staff proposed changes to the rules regarding telephonic enrollment. AEP Ohio requests addition of a new subsection to this paragraph requiring a CRES provider during a telephone enrollment on a three-way call to disclose its presence because it receives many three-way calls in which a customer describes account information and a CRES provider on the line does not identify itself (AEP Ohio at 2.) DP&L supports AEP Ohio's proposal (DP&L Reply at 4). The Commission agrees with AEP Ohio's recommendation on the basis that it will assist in protecting customer privacy and the Commission has added language to Paragraph (D)(2)(e).
- (47) Paragraph (D)(2)(a). In Paragraph (D)(2)(a)(iii), Staff proposed a requirement that there must be a verbal statement and the customer's acknowledgment that the CRES provider is not the customer's current electric utility company. In Paragraph (D)(2)(a)(viii), Staff has proposed a change from seven calendar days to seven business days. In Paragraph (D)(2)(a)(ix), Staff proposed that, in telephone solicitations, the customer must be advised verbally and in contract of certain information, including a seven business-day rescission period.

DERS states that it agrees with Staff's addition, but that it would be appropriate to obtain TPV that the customer understands the CRES provider is not representing the utility or obtaining enrollment on behalf of the utility, that other CRES providers can provide the service, and that the customer can remain a customer of the EDU (DERS at 11). In Paragraph (D)(2)(a)(iv), Eagle suggests the provision "wishes to enroll" be replaced by the phrase "a customer has given the consent to enroll" (Eagle at 7). In Paragraph (D)(2)(a)(viii), AEP Ohio recommends the Commission retain the original language of the rule in order to avoid costs caused by information technology problems (AEP Ohio at 3). Similarly, Dominion Retail supports the original language on the basis that customers would have at least one weekend to handle any issues (Dominion Retail at 1-2). In Paragraph (D)(2)(a)(ix), AEP Ohio argues that it supports the original rule to avoid costs caused by information technology problems (AEP Ohio at 3). In contrast, OCC states that it supports the seven business-day period for customers to rescind (OCC at 10). FES requests that the word "must" be changed to "may" (FES at 5). In Paragraph

(D)(2)(a)(x), Eagle suggests requiring a local telephone number in addition to the toll-free number (Eagle at 7).

Direct Energy opposes Staff's addition to (D)(2)(a)(iii) and DERS' recommendation on the basis that the TPV process already proposed is sufficient (Direct Energy Reply at 19).

The Commission agrees with DERS' recommendations to add questions to the TPV and has modified Paragraph (D)(2)(a) accordingly. As to Paragraph (D)(2)(a)(iv), the Commission does not believe Eagle's suggested change is necessary. Regarding Paragraph (D)(2)(a)(viii), the Commission agrees that the appropriate time frame is seven calendar days and has modified this paragraph accordingly. Accordingly, the Commission agrees to delete proposed Paragraph (D)(2)(a)(ix) on the basis of AEP Ohio's comments. Finally, as to Paragraph (D)(2)(a)(x), the Commission declines to adopt Eagle's suggestion on the basis that it is unnecessary.

- (48) Paragraph (D)(2)(b). This paragraph requires CRES providers to take certain actions following telephone enrollment. In Paragraph (D)(2)(b)(i), Staff proposed changing calendar days to business days.

RESA/IGS argue that the obligation to send a written contract be triggered not upon enrollment, but rather by confirmation of the enrollment by the utility (RESA/IGS at 11-12). In Paragraph (D)(2)(b)(i), FES recommends changing one business day to two business days to allow more time to properly process enrollments. Additionally, in Paragraph (D)(2)(b)(iii), FES and RESA/IGS request that calendar days be replaced with business days to remain consistent with other changes in the chapter. (FES at 5-6; RESA/IGS at 24.)

Initially, as to Paragraph (D)(2)(b)(i), the Commission disagrees with RESA/IGS' recommendation regarding the timing of the obligation to send the written contract on the basis that it would undermine the intent of the rule, which is to provide full disclosure at the time of sale. The Commission also disagrees that this time period should be changed to two business days. Finally, regarding Paragraph (D)(2)(b)(iii), the Commission agrees that the appropriate time frame should be three business days and has modified this paragraph accordingly.

- (49) Paragraph (D)(2)(c). In Paragraph (D)(2)(c), Staff recommended changing calendar days to business days. FES recommends the following language change on the basis that it would be more efficient

for CRES providers to treat all enrollments the same: “[t]he CRES provider shall send an electronic enrollment request to the electric utility within five business days following the completion of the enrollment transaction with the customer, unless a later start date is agreed to in the contract” (FES at 6.) RESA/IGS agree with FES’ recommendation (RESA/IGS Reply at 13). DERS disagrees with FES’ proposal, which would eliminate the minimum two-day delay in submitting enrollment requests to the EDU in the case of telephonic enrollment, on the basis that it is important for customers to have an opportunity to review the terms and conditions before enrollment is submitted (DERS Reply at 8). The Commission declines to adopt FES’ proposed language change on the basis that the language proposed by Staff is appropriate for the reasons set forth in DERS’ reply.

- (50) Paragraph (D)(2)(d). In this paragraph, the Commission finds that, for clarity and consistency, the language initially proposed by Staff should be replaced with “The CRES provider shall not initiate the switch of a customer’s electronic service with the electric utility prior to the completion of the enrollment transaction with the customer.” The Commission believes this modification will make this paragraph more consistent with proposed Paragraph (D)(1)(f).
- (51) Paragraph (D)(3). In Paragraph (D)(3)(b)(ii), Eagle, RESA/IGS, and DERS all request that calendar days be changed to business days. In Paragraph (D)(3)(d), Eagle, RESA/IGS, FES, and DERS all recommend changing calendar days to business days. Additionally, FES requests three calendar days be changed to five business days. In Paragraph (D)(3)(f), Eagle, RESA/IGS, and DERS all request that calendar days be changed to business days. (Eagle at 5; RESA/IGS at 24; DERS at 11; FES at 7.)

For Paragraph (D)(3)(b)(ii), the Commission disagrees that business days are the appropriate time frame and in order to prevent customer confusion, declines to modify this paragraph in order to prevent customer confusion. In Paragraph (D)(3)(c), the Commission finds that, for purposes of clarity and consistency, the language initially proposed by Staff should be replaced with: “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” in order to make this paragraph more consistent with Paragraph (D)(1)(f). Regarding Paragraph (D)(3)(d) and (D)(3)(f), the Commission agrees that business days are appropriate and has modified these paragraphs accordingly.

- (52) Paragraph (E). In this proposed paragraph, Staff recommended that, in instances where the customer and CRES provider agree to material changes in an existing contract, the CRES provider must provide proof of consent and proof of the revised contract terms.

Direct Energy recommends deletion of this paragraph on the basis that material change provisions are common in retail markets and there is no obvious reason to require affirmative consent for CRES customers. Further, if this paragraph is not deleted, Direct Energy requests addition of a sentence specifically excluding renewal contracts. (Direct Energy at 10.) RESA/IGS also advocate that this paragraph be deleted because it will create higher risks for CRES providers and is, therefore, contrary to R.C. 121.82. In the alternative, RESA/IGS propose that, at minimum, instead of adopting this paragraph, the Commission should adopt a rule requiring residential and small commercial contracts to contain language that no amendment to a contract will be valid without notice to the customer with at least 15-days-advance notice and a period allowing the customer to rescind the contract without penalty. (RESA/IGS at 12-13.) FES requests clarification that this section is not intended to apply to contract renewal offers that contain a change in terms in order to resolve any conflict between Ohio Adm.Code 4901:1-21-06(E) and 4901:1-21-11 (FES at 7). OPAE comments that regulations should ensure an affirmative customer consent is required to make a material change in terms of an existing contract (OPAE at 45).

OCC recommends that automatic renewal contracts without written consent be prohibited and strongly recommends the Commission adopt this paragraph as proposed (OCC Reply at 15-16). OPAE also opposes Direct Energy's argument requesting an exception for renewal contracts on the basis that modifying material terms of a contract makes it a new contract and should require affirmative agreement (OPAE Reply at 23).

The Commission believes that the rules, as proposed by Staff, adequately address the minimum appropriate requirements for executing material changes to contracts, including renewal contracts. The Commission finds that the substantial benefits of consumer protection against material changes without consent outweigh the costs for CRES providers or governmental aggregators to acquire customer consent prior to making such changes. However, the Commission believes that a more appropriate location for this

paragraph is in Ohio Adm.Code 4901:1-21-11, and has moved this paragraph accordingly.

- (53) Paragraph (F). In this proposed paragraph, Staff recommended that, if the EDU rejects a customer from enrollment, the CRES provider shall notify the customer within three business days from the notification of rejection that the customer will not be enrolled or that enrollment will be delayed, along with the reasons. RESA/IGS argue that the notification period is insufficient and should be expanded to five business days (RESA/IGS at 14). FES seeks clarification as to which methods of notification are acceptable (FES at 7). The Commission agrees with RESA/IGS to expand the notification period to five business days and has modified this paragraph accordingly. The Commission disagrees with FES that clarification is necessary as to which methods of notification are acceptable, as Staff is available to consult with companies regarding rules compliance.
- (54) Paragraph (G). This proposed paragraph requires the EDU to send a confirmation notice to the customer prior to commencing service. Direct Energy requests this proposed paragraph be reworded to "prior to the customer commencing * * *" for clarity (Direct Energy at 10). FES argues that "must" should be changed to "may" (FES at 5). Further, AEP Ohio recommends that the Commission retain the original seven day period (AEP at 3). FirstEnergy comments that the term "electric distribution company" should be changed to "electric distribution utility" in this paragraph. Further, FirstEnergy asserts that the proposed language in Paragraph (G)(3) be conformed to the language in Ohio Adm.Code 4901:1-10-29(F)(1)(c). (FirstEnergy at 5-6.) The Commission has determined that this paragraph should be deleted.
- (55) Paragraphs (H), (I). In this paragraph, Staff proposed language addressing customers' requests to rescind enrollment with a CRES provider and providing that customer may request an actual meter reading prior to the transfer of service to the new CRES provider.

Eagle recommends deletion of Paragraph (I) since it will increase costs (Eagle at 7). DP&L recommends deletion of Paragraph (I) on the basis that it will add administrative burden and undue additional expense to the EDU (DP&L at 2). FirstEnergy also argues that the proposed change would put an EDU in the position of violating the rule due to circumstances beyond its control; consequently, FirstEnergy recommends removal of this addition (FirstEnergy at 7-8). The Commission agrees that Paragraphs (H) and (I) should be deleted.

- (56) Paragraph (I). In this paragraph, Staff proposed language governing a customer returning to the EDU's SSO. Eagle recommends adding new paragraphs to this section (Eagle at 7-8). FES recommends deletion of "regulated sales service" because there is no definition for regulated service sales rate (FES at 7). FirstEnergy recommends several changes in terminology (FirstEnergy at 5.) DP&L recommends deletion of portions of this paragraph (DP&L at 2). OCC comments that the Commission should adopt a new subparagraph in order to protect PIPP customers from being assessed charges associated with returning to the SSO (OCC at 11). The Commission finds that this paragraph should be deleted in its entirety.

Comments on Ohio Adm.Code 4901:1-21-07 – Credit and deposits

- (57) Paragraph (A). This paragraph requires CRES providers to establish reasonable and nondiscriminatory creditworthiness standards. OCC recommends modification of this paragraph to require that the reasonable and nondiscriminatory creditworthiness standards be in writing, and also that the deposit must be disclosed as an average annual monthly bill plus 30 percent (OCC at 12). OPAE supports OCC's proposal that marketer credit standards should be in writing (OPAE Reply at 24). The Commission declines to adopt OCC's recommendations on the basis that they are unnecessary, so long as the credit standards are available to be disclosed to the customers.
- (58) Paragraph (B). In this paragraph, RESA/IGS recommend changing calendar days to business days (RESA/IGS at 24). Eagle suggests that Paragraph (B)(4) be changed to ten business days and Paragraph (B)(5) be changed to seven business days in order to remain consistent with the CRNGS rules (Eagle at 8). The Commission agrees that, in Paragraph (B)(4), ten business days is the appropriate time frame, and in Paragraph (B)(5), seven business days is the appropriate timeframe, and has modified these paragraphs accordingly.

Comments on Ohio Adm.Code 4901:1-21-08 – Customer access, slamming complaints, and complaint handling procedures

- (59) Paragraph (B). This paragraph governs customer complaints. Direct Energy recommends that five business days be substituted for three business days throughout this paragraph (Direct Energy at 10-11). FES recommends a CRES provider not be required to provide an initial status report, should have a full ten business days to compile the record, and should provide a status report every five business days until the investigation is completed (FES at 8). DERS requests a

modification that requires each EDU to include in its tariffs a process by which a CRES provider can make a payment to a customer account for the purpose of providing a credit in the event a provider and customer resolve a complaint issue that results in a credit to the customer (DERS at 12). OCC argues that customers displeased with a CRES provider's resolution should be informed about the Commission's formal and informal processes for dispute resolution and that the language should explain that the text telephone (TTY) number is the number through which hearing and speech impaired customers may contact the Commission (OCC at 12-13).

DP&L opposes DERS' recommendation on the basis that this is an electric utility requirement that does not belong in this chapter, and also because it would be unnecessary and burdensome (DP&L Reply at 5). FirstEnergy contends that DERS' recommendation is a more appropriate topic for the OEWG, not a rulemaking procedure. FirstEnergy supports FES' recommendation. (FirstEnergy Reply at 6.)

Initially, the Commission finds that three business days is the appropriate time frame and declines Direct Energy's recommendation. Additionally, the Commission finds that FES' recommendation should not be adopted, as the appropriate time frame is three business days, which is consistent with the rules in the *CRNGS Rules Case*. The Commission further finds that DERS' recommendation is not properly decided in this proceeding, but it more appropriate for discussion in the OEWG. Finally, the Commission declines to adopt OCC's proposed change on the basis that Staff's proposed language is sufficient.

- (60) Paragraph (C). This paragraph governs slamming complaints. Eagle and RESA/IGS comment that calendar days should be changed to business days (RESA/IGS at 24; Eagle at 5.) Direct Energy recommends that Paragraph (C)(4) be modified to include the language to clarify that any type of documentation will suffice. Direct Energy further argues that the documentation includes, "but is not limited to," the listing of sample types of valid documentation in subsections (a) to (c), or that the sample types be deleted altogether. (Direct Energy at 11.) OCC recommends additions of new subparagraphs, Paragraphs (C)(6)(d) and (C)(6)(e), to require CRES providers to: review all enrollments performed by an employee who engaged in slamming to verify they are valid; provide a report to the Commission and OCC; and to cease employment with the employee (OCC at 13-14).

Direct Energy opposes OCC's proposal on the basis that the Commission should not regulate employment practices of CRES providers and OCC's proposal does not require verification that a slam actually occurred (Direct Energy at 10). RESA/IGS opposes OCC's recommendations on the basis that a CRES provider should not be forced to respond to incorrect switching or slamming in specific ways that may not be appropriate in certain circumstances (RESA/IGS Reply at 20). FES opposes OCC's recommendations on the basis that the Commission does not have authority to require CRES providers to terminate employees and that the current rules are sufficient to prevent slamming incidents and penalize CRES providers (FES Reply at 10). DERS comments that, although slamming is a serious offense, any rule promulgated should recognize that not all enrollments without consent are the result of slamming behavior (DERS Reply at 10).

The Commission finds that Direct Energy's recommended language is unnecessary. Although the Commission finds that all documentation provided to the Commission regarding slamming should be complete and include all relevant documents, recordings, etc., all responses to Commission inquiries should be in writing. Additionally, the Commission disagrees with OCC's proposed language on the basis that companies should not be bound to specific and rigid responses where they may not be appropriate for the situation. The Commission also believes that companies should have latitude in handling employee matters. Further, the Commission finds it is unnecessary to require these companies to review every single enrollment performed by such an employee where no other slamming incidents have been alleged, on the basis that it may be burdensome, with minimal benefit.

Comments on Ohio Adm.Code 4901:1-21-09 - Environmental disclosure

- (61) Paragraph (C). In this paragraph delineating environmental disclosure data, Staff recommended deletion of unknown purchased resources. Staff further recommended the addition of a section requiring a CRES provider, when it calculates its generation resource mix, to assume that purchased energy has the same generation resource mix for the regional generation resource mix as the 12-month period from June 1 to May 1. In Paragraph (C)(3)(c), Staff proposed an addition requiring CRES providers to produce statements, when applicable, on whether they complied with the renewable energy resources benchmarks in annual and quarterly environmental disclosures.

Direct Energy claims that the phrase “when applicable” is confusing and requests clarification if the Commission seeks an affirmative statement that the CRES provider did comply with the renewable energy resource benchmark (Direct Energy at 11). RESA/IGS argue that any benefit gained by this requirement is outweighed by the time and effort needed to develop the information (RESA/IGS at 15). FES suggests restoring the term “unknown purchased resources” as a specific category on the basis that it is not always possible for a CRES provider to know the source of all purchased generation (FES at 8).

In response to Direct Energy, the Commission clarifies that the phrase “when applicable” refers to whether the CRES provider is required to comply with the alternative energy portfolio standards. If a CRES provider had no sales prior to the current year, that provider would not be required to file a report for that year making a statement of whether it had complied. All CRES providers with sales prior to the current year are expected to make an affirmative or negative statement of compliance with the alternative energy portfolio standards. Additionally, the Commission disagrees with RESA/IGS’ comment that there are minimal benefits to this requirement; to the contrary, the Commission finds that customers and potential customers may be very interested in whether a CRES provider has complied with the alternative energy portfolio standards. Finally, the Commission disagrees with FES that unknown purchased resources should be restored to this paragraph, as this category is not informative to customers or potential customers. The Commission notes that most CRES providers purchase all electricity from the market, so those CRES providers would have a 100 percent unknown generation mix. If CRES providers use a regional mix to represent their unknown purchases, customers will have information approximating the generation mix provided.

- (62) Paragraph (D). This paragraph governs environmental disclosure to customers. Direct Energy and FES both comment that CRES providers should be allowed to include a link to environmental disclosures on their websites (Direct Energy at 12; FES at 8-9). RESA/IGS argue that posting of environmental information on CRES providers’ websites, in lieu of quarterly mailings, would simplify the manner in which the information is presented (RESA/IGS at 14-16). Dominion Retail comments that Paragraph (D)(3)(b) is unduly burdensome and contrary to the objective of R.C. 121.82 and recommends that the data need not be provided to customers, but that the information should be posted on the CRES provider’s website and customers should be

advised by mail that the information can be viewed there (Dominion Retail at 3-4). FES comments that customers could be directed to contact the CRES provider for a copy to ensure complete and timely access (FES at 8-9).

Direct Energy opposes Dominion Retail's suggestion that customers be advised by mail, contending that disclosure should be accomplished electronically (Direct Energy at 10). Dominion Retail urges the Commission to adopt RESA/IGS' proposed revision of this paragraph (Dominion Retail Reply at 6). FirstEnergy supports FES', Dominion Retail's, and Direct Energy's recommendations that environmental disclosures be provided via a website link (FirstEnergy Reply at 6).

In response to the comments that CRES providers should be permitted to post environmental information on their websites, the Commission agrees and has modified Paragraphs (D)(3)(a) and (D)(3)(b) accordingly.

Comments on Ohio Adm.Code 4901:1-21-10 - Customer information

- (63) General. Staff initially proposed no changes to this rule governing customer information. RESA/IGS propose the Commission expressly find that, upon request, the EDUs should provide customer account numbers to CRES providers for the purpose of customer enrollment (RESA/IGS at 16-17). AEP Ohio recommends adoption of additional privacy rules regarding customer usage information (AEP Ohio at 3). OCC expresses similar concerns with the use of automated metering infrastructure and smart meters, and recommends adoption of a new paragraph requiring CRES providers or governmental aggregators to conduct a privacy impact assessment (OCC at 16).

DP&L opposes RESA/IGS' proposal on the basis that an account number is personally identifiable information and should not be released without customer consent (DP&L Reply at 6). FirstEnergy notes that the Commission has already begun reviewing privacy of customer information (FirstEnergy Reply at 7). OCC supports AEP Ohio's proposed privacy rules, opposes RESA/IGS' proposal, and argues that the disclosure of account numbers without customer consent for any purpose not currently provided for in the rules should be banned (OCC Reply at 16-17). OPAE opposes RESA/IGS' proposal, commenting that marketers should not have access to account numbers until provided by the customers (OPAE Reply at 22).

The Commission disagrees with RESA/IGS' recommendation that CRES providers receive customers' account numbers from a utility upon request for enrollment purposes, finding that the only party authorized to disclose a customer account number is the customer. Additionally, the Commission again emphasizes the importance of preventing slamming. The Commission agrees with AEP Ohio that the addition of rules to address privacy protections for customer information should be implemented. The Commission has implemented these changes in Paragraphs (D) and (E). Regarding OCC's proposal, the Commission believes that requiring companies to continue to advise customers of the impact of sharing information after the customer has consented to its release may be burdensome. The Commission believes it is the customer's responsibility to understand the implications of consenting to disclosure of his/her information.

- (64) Paragraphs (C) and (D). In these paragraphs, Eagle suggests that the reference to a customer's social security number be deleted and a new rule be inserted that prohibits a CRES provider from requesting a social security number (Eagle at 8). RESA/IGS express the same concern and suggest that other specific customer information, such as a license number or birthdate, be used (RESA/IGS at 16).

Direct Energy opposes Eagle's suggestion on the basis that social security numbers are a key component to any collection activity and that CRES providers are required to keep the information confidential other than for collection and legal process under the existing rules (Direct Energy Reply at 11). DP&L opposes RESA/IGS' recommendation on the basis that it would require extensive billing system and EDI changes (DP&L Reply at 6). AEP Ohio opposes RESA/IGS' recommendation on the basis that it would be difficult to verify the correct customer switching based on information the utility does not always track, such as a license number or birthdate, and could lead to unwanted switching (AEP Ohio Reply at 3-4).

The Commission declines to adopt Eagle's suggestion, as requesting social security numbers from customers is a standard business practice, and the Commission finds that customers should remain in control of their personal information. Further, the Commission declines to adopt RESA/IGS' recommendation on the basis that it may prove to be burdensome.

Comments on Ohio Adm.Code 4901:1-21-11 – Contract administration

- (65) General. In this rule, Staff recommended modifications to make the rule applicable to residential and small commercial contracts. OCC recommends addition of the following paragraph, Paragraph (I), in order to require CRES providers to demonstrate the adequacy and understandability of contracts involving residential customers: "CRES providers shall periodically use survey data or other statistically valid measures to verify that contracts being used for enrolling customers have adequate and understandable pricing and terms and conditions as required by R.C. 4928.10" (OCC at 16-17).

Direct Energy opposes OCC's proposal on the basis that it would be costly and contravene R.C. 121.82 (Direct Energy Reply at 11). FES opposes OCC's recommendation on the basis that they are unnecessary (FES Reply at 10). DERS opposes OCC's recommendation on the basis that implementing surveys would be expensive and would be passed on to customers and that OCC's proposed language would be difficult to quantify or define (DERS Reply at 10).

The Commission declines to adopt OCC's recommended addition on the basis that it is an unnecessary burden on CRES providers.

- (66) Paragraph (C). In this paragraph, RESA/IGS request clarification that CRES providers may satisfy their retention policy with scanned or electronically stored copies of service contracts (RESA/IGS at 17). The Commission agrees and has modified this paragraph accordingly.
- (67) Paragraph (D). RESA/IGS and Eagle request that calendar days be changed to business days throughout this rule (RESA/IGS at 24; Eagle at 5). RESA/IGS oppose the change from five days to three days (RESA/IGS at 17). The Commission finds that three business days is the appropriate time frame.
- (68) Paragraph (E). In this paragraph, Eagle and DERS request use of business days rather than calendar days (Eagle at 5; DERS at 13). DERS adds that contract rescission should be allowed by contacting the CRES provider, followed by the CRES provider immediately notifying the EDU (DERS at 12-13). Lastly, FES believes that the rescission period should be five business days (FES at 9).

Direct Energy argues that this provision should be measured by calendar days in order to create a more understandable timeframe for customers, and, consequently, should remain at seven days (Direct

Energy Reply at 8). DP&L opposes FES' proposal that the period should be five business days, as this change would require unnecessary process and system changes (DP&L Reply at 6).

The Commission believes the appropriate time frame is seven calendar days, a process has been in place for many years, because modifying the time frame would require software changes that would be a financial and administrative burden.

- (69) Paragraph (F). This section governs contract renewals. Staff proposed modifying this section to apply to residential and small commercial contracts, to delete a reference to electronic mail, and to refer to e-mail rather than electronic mail.

Eagle and RESA/IGS contend that calendar days should be changed to business days (Eagle at 5; RESA/IGS at 24). RESA/IGS also complain that it will be difficult to comply with the requirement in Paragraph (F)(3)(c)(iii) because a CRES provider cannot force a recipient to return the receipt in order to ensure compliance with the rule, and recommends that this requirement be modified so that the receipt returned confirms the addressee has opened the document, because a CRES provider cannot force the recipient to return the receipt. (RESA/IGS at 17-18.) FES proposes to eliminate everything in Paragraph (F)(2) prior to "the CRES provider shall," and to delete Paragraphs (F)(3) and (F)(4) entirely, on the basis that customers will benefit from less confusion, more consistent renewal process, and lower renewal prices (FES at 9). DERS argues that, in certain circumstances, customer contracts may be designed such that early termination or cancellation fees vary; for example, a contract may have an early termination fee for the initial one-year term, and no such fee after automatic renewal. Consequently, DERS recommends rewording of Paragraphs (F)(2), (F)(3), and (F)(4). (DERS at 13.) FirstEnergy supports Staff's proposal to change electronic mail to e-mail in two sections, but comments that the reference to electronic mail in Paragraph (F)(3) should not be eliminated (FirstEnergy at 8). OPAE comments that the renewal of an existing contract should be allowed to occur without affirmative customer consent only if the underlying terms and prices do not change or if the renewal is limited to a month-to-month contract with the original terms and no termination fee (OPAE at 45).

RESA/IGS agree that the renewal provisions are confusing and propose changes to simplify this paragraph. RESA/IGS support DERS'

proposal to allow amendment to customer contracts in certain circumstances. (RESA/IGS Reply at 14-15, 20.)

The Commission disagrees with FES that portions of Paragraph (F)(2) and the entirety of Paragraphs (F)(3) and (F)(4) should be stricken. The Commission finds that changes and renewals of contracts should be executed in the spirit of choice, which means that companies will need to compete for renewals and cannot change the terms of a contract using an opt-out method. The Commission does agree with DERS' recommendation that Paragraphs (F)(2), (F)(3), and (F)(4) should be modified to apply to contracts that contain early termination fees after automatic renewal and has modified these paragraphs accordingly. Additionally, the Commission agrees with FirstEnergy that the reference to electronic mail should not be removed from the rule and has modified Paragraph (F)(3) accordingly. Additionally, the Commission has elected to replace e-mail with electronic mail for consistency. Finally, the Commission does not believe the suggestion regarding return receipts by RESA/IGS is necessary and believes Staff's initial proposed language is sufficient.

- (70) Paragraphs (H), (I). The Commission finds that Staff's initial proposed Ohio Adm.Code 4901:1-21-06(E) should be moved to a new paragraph, Paragraph (H), and that existing Paragraph (H), discussing formal or informal complaints, should be moved to a new paragraph, Paragraph (I).

Comments on Ohio Adm.Code 4901:1-21-12 – Contract disclosure

- (71) General. In this rule, Staff recommended the addition of "transmission service" to required price disclosures, the addition of a disclosure requirement for recurring/nonrecurring CRES charges, and a provision allowing the lowering of charges by the CRES provider without the customer's consent in certain circumstances.

OCC comments that it supports Staff's proposals because it provides benefits for customers (OCC at 17). OPAE recommends that other contract terms must be highlighted, including nonrecurring fees, in a manner that allows the prospective customer to compare the essential contract terms among suppliers. OPAE concludes that the regulation of contract disclosure is particularly important for the retail energy market due to the significant need for affordable energy services and the implications for health and safety if these services are not available at reasonable prices and terms. (OPAE at 12-13.)

The Commission declines to adopt OPAE's recommendations on the basis that they are unnecessary.

- (72) Paragraph (B)(5). In Paragraph (B)(5), Eagle and RESA/IGS assert that calendar days should be changed to business days (Eagle at 5; RESA/IGS at 24). The Commission finds that Staff's proposed time frame is appropriate.
- (73) Paragraph (B)(7), (B)(8). In Paragraph (B)(7)(a), Staff recommended deleting the requirement that a CRES provider include the amount of any other recurring or nonrecurring CRES provider charges, and including a statement that the customer will incur additional service and delivery charges from the electric utility in Paragraph (B)(8). In Paragraph (B)(7)(b), Staff proposed that CRES providers give an explanation of the discount for percent-off discounted rates and state the basis on which any discount is calculated. In Paragraph (B)(7)(c), Staff recommended that, for variable-rate offers, CRES providers give customers either a clear and understandable formula, or a clear and understandable explanation of the factors that will cause the price to vary.

Eagle believes Paragraph (B) should prohibit the EDU from identifying billing components when such components are unavoidable (Eagle at 8). Direct Energy requests revision of Paragraph (B)(7)(a) to require a per kWh charge when the product offered is priced per kWh and not for products which are not on a per-unit price basis (Direct Energy at 12). In Paragraph (B)(7)(b), DERS argues that the requirement to give an explanation and basis for the discount is unclear and proposes alternate language (DERS at 14). NOPEC also recommends modifications to Paragraph (B)(7)(b) (NOPEC at 3). Direct Energy believes the prohibition of a CRES provider from charging an early termination fee should be deleted from Paragraph (B)(7)(c)(ii) because the rule fails to account for the risk factors of certain types of variable rate hybrid offers (Direct Energy at 12-13). DERS argues that clear and understandable should be deleted because this phrase is already provided for in the introductory language and is repetitive (DERS at 14).

Direct Energy opposes DERS' recommendation for Paragraph (B)(7)(b) on the basis that this requirement could prevent certain products from being brought to the market (Direct Energy Reply at 11-12). AEP Ohio opposes Eagle's recommendation on the basis that customers have the right to see the various components of what they would be billed whether the charges are avoidable or not (AEP Ohio Reply at 2).

Initially, the Commission disagrees with Eagle's recommendation and agrees with AEP Ohio that customers should be able to see various components of their bills, whether avoidable charges or not. Further, the Commission has modified Paragraph (B)(7) to clarify that all fees must be disclosed. Next, the Commission agrees with Direct Energy's recommendation to provide a per kWh charge when the offer is priced per kWh, and finds that a specific listing of the rate to be charge per month should be provided for flat-monthly rate offers. The Commission has added this language as Paragraphs (B)(7)(d) and (B)(7)(e). The Commission disagrees with Direct Energy's recommendation for deletion of the prohibition on early termination fees on variable-rate offers on the basis that it is longstanding policy that, if a company wishes to secure the privilege of charging variable prices, it is unfair to refuse the customer the right to terminate the contract without penalty.

- (74) Paragraphs (B)(10), (11). These paragraphs govern procedures for handling complaints and disputes and provide required language. In Paragraph (B)(11), Staff proposed amending the language to indicate that OCC represents customers before the Commission, and providing a toll-free number at which OCC can be contacted.

In Paragraphs (B)(10) and (B)(11), Dominion Retail contends that the Commission should grant a blanket waiver in its order providing that departure from the language in the rule is limited to changes in capitalization and numerical references, which do not change the intent, application, or structure of the required language companies may utilize the more typical format for required notices and statements (Dominion Retail at 4-5). In Paragraph (B)(11), RESA/IGS comment that the OCC web address should be provided instead of the toll-free number because the number currently directs customers to OCC's website (RESA/IGS at 18). OCC and OPAE oppose RESA/IGS' recommendation (OCC Reply at 18; OPAE Reply at 24).

The Commission finds it unnecessary to grant Dominion Retail's request for a blanket waiver, as the Commission has already held in *In re Amendment of Certain Rules*, Case No. 11-4910-AU-ORD, et al., Finding and Order (May 9, 2012) (*Rules Amendment Case*), that, for Ohio Adm.Code 4901:1-21-12, inter alia, any utility wishing to make capitalization and/or numeric reference changes as specified in that Finding and Order need not file a request for a waiver of the applicable rules. Further, the Commission disagrees with RESA/IGS' proposed change on the basis that Staff's proposed language utilizes language

adopted by the Commission in the *Rules Amendment Case* pursuant to R.C. 4911.021.

- (75) Paragraphs (B)(14), (B)(16). In Paragraph (B)(14), Eagle comments that automatic renewal provisions without the consumer's written authorization should be prohibited (Eagle at 8). In Paragraph (B)(16), Direct Energy suggests the rule be clarified to allow for a reference to a website where the information can be found (Direct Energy at 13). In reply to Eagle, Direct Energy recommends that automatic renewal provisions should be clearly disclosed in the terms and conditions of an offer, but that a customer should not need to provide written authorization for a renewal (Direct Energy Reply at 12). OPAE supports Eagle's proposal (OPAE Reply at 24).

The Commission declines to adopt Eagle's recommended changes prohibiting automatic renewal on the basis that the terms and conditions of any contract, including renewal provisions, are negotiable between the company and customer. Further, affirmative assent to the terms of a contract constitutes written authorization; therefore, provided the automatic renewal provisions are disclosed and otherwise comply with the Ohio Administrative Code, they should be permitted. Regarding Direct Energy's recommendation, the Commission finds that a change to the rule is unnecessary, but that, as this data is not a material term or condition, companies are free to provide it in whatever manner they deem appropriate.

- (76) Paragraphs (B)(19), (B)(21), (B)(22). In Paragraph (B)(19), Eagle claims that, if a different tariff does not exist, this provision is unnecessary and has a dampening impact on aggregation programs. Consequently, Eagle suggests "if applicable" be inserted into the rule. (Eagle at 8.) In Paragraph (B)(21), Direct Energy argues that this rule should include CRES provider charges in accordance with the proposed changes to Ohio Adm.Code 4901:1-21-03. In Paragraph (B)(22), Direct Energy suggests amending this subsection to provide that a CRES provider may make such a change, as long as there are no other material changes to the terms and conditions of the contract. (Direct Energy at 13.)

The Commission disagrees with Eagle's recommendation and finds it unnecessary. As the Commission has rejected Direct Energy's previous argument related to CRES provider charges and disconnection, the Commission finds that the proposed change to Paragraph (B)(21) is also unnecessary. Finally, the Commission

declines to adopt Direct Energy's recommendation for Paragraph (B)(22) on the basis that it is sufficient as initially proposed by Staff.

Comments on Ohio Adm.Code 4901:1-21-13 - Net metering contracts

- (77) Paragraph (A). DERS suggests the Commission amend this paragraph to require all EDUs to identify net-metered accounts in preenrollment lists. DERS reasons that R.C. 4928.02 describes net metering as a critical issue and plainly states that it is a goal to ensure the availability of market choices to meet the needs of specific customers. (DERS at 14-15.) DP&L opposes DERS' suggestion on the basis that this is a requirement for the utility that does not belong in this chapter (DP&L Reply at 6).

The Commission agrees with DP&L that utilities are required to file net metering tariffs and offer net metering services to distribution customers; however, CRES providers are not required to offer net metering. Additionally, the Commission notes that net metering is addressed in the ESS Rules, Ohio Adm.Code 4901:1-10-28, which are currently under review. Consequently, the Commission finds that the issue of identifying net metering or other types of accounts would be more appropriately addressed through the OEWG to develop or modify EDI transaction standards and procedures consistent with this Order and any requirements implemented as part of the Commission's review of Ohio Adm.Code 4901:1-10-28.

Comments on Ohio Adm.Code 4901:1-21-14 - Customer billing and payments

- (78) Paragraph (A). DERS contends that this paragraph should be amended to cross reference rules applicable to consolidated billing in Ohio Adm.Code 4901:1-10-33. DERS further notes that the Commission's rules should require EDUs that provide consolidated billing services to allow the customer's CRES provider to request and receive a copy of the customer's bill, for so long as the provider is the provider of record or the bill contains any amount due to the CRES provider (DERS at 15). OPAE opposes consolidated billing of residential customers (OPAE Reply at 25). FirstEnergy opposes DERS' recommendation on the basis that it is unnecessary and would increase costs to customers (FirstEnergy Reply at 8).

The Commission declines to adopt the proposed comments on the basis that they are unnecessary and the existing language is appropriate.

- (79) Paragraph (C). Paragraph (C)(5) requires bills to include the unit price per kWh charged for competitive service. In Paragraph (C)(9), Staff recommended that, for residential bills issued from outside the state of Ohio, the due date shall not be less than 21 calendar days after the postmark date. In Paragraph (C)(13), Staff recommended stylistic changes.

In Paragraph (C)(5), Direct Energy recommends that a per kWh charge be required when the product offered is priced per kWh and not for products which are not on a per-unit price basis (Direct Energy at 13). In Paragraph (C)(9), Eagle and RESA/IGS argue that calendar days should be switched to business days in this section (Eagle at 5; RESA/IGS at 24). In Paragraph (C)(13), RESA/IGS argue that the toll-free number should be deleted and replaced with a web address (RESA/IGS at 18). OPAE opposes RESA/IGS' recommendation regarding Paragraph (C)(13) (OPAE Reply at 25).

The Commission agrees with Direct Energy's recommendation and has modified the language in Paragraph (C)(5) accordingly. Finally, the Commission declines to modify the time frames in Paragraph (C)(9) on the basis that Staff's proposed time frames are appropriate. The Commission declines to adopt RESA/IGS' proposed changes on the basis that, as discussed above in Finding (74), inclusion of OCC's telephone number is appropriate, as this language was adopted by the Commission in the *Rules Amendment Case* pursuant to R.C. 4911.021.

Comments on Ohio Adm.Code 4901:1-21-16 - Formation and operation of an opt-out governmental aggregation

- (80) General. In this rule, Staff recommended that governmental aggregators provide a telephone number specifically for individuals that are hearing and speech impaired. Eagle encourages the Commission to broaden this rule and take ownership of opt-in programs similar to the CRNGS rules (Eagle at 9). Direct Energy argues that Eagle's proposal contravenes the parameters of the Commission's authority (Direct Energy Reply at 12-13).

The Commission declines to adopt Eagle's recommendations on the basis that contract administration rules will apply in cases of opt-in contracts. However, based on our review of Ohio Adm.Code Chapter 4901:1-21, the Commission finds that, as previously discussed, Ohio Adm.Code 4901:1-21-02(F) is more appropriately placed as a new paragraph in this rule, Paragraph (G).

Comments on Ohio Adm.Code 4901:1-21-17 - Opt-out disclosure requirements

- (81) General. In this rule, DERS discusses mistakes occurring in listings originally obtained from the EDU, including: what entity should be liable for any monetary impact of such mistakes including customers who were not actually located within the aggregator's boundaries if the EDU's list included them; what efforts should the EDU be expected to make in this regard; what best efforts are expected of an EDU in identifying mercantile customers; and what liability would an aggregator or the CRES provider have for errors by the EDU. Additionally, DERS proposes that, if an EDU fails to provide accurate lists, it should be held responsible for any monetary harm that results, as is the case for gas utilities. (DERS at 15-16.) FirstEnergy responds to DERS that the responsibility of appropriately switching customers must lie with the entity doing the switching, not the EDU, and, further, argues that DERS' proposed rule is unnecessary because an EDU is not permitted to charge switching fees to customer accounts that switch to or from a governmental aggregation (FirstEnergy Reply at 11-12). The Commission declines to adopt DERS' recommendations. As argued by FirstEnergy, the responsibility of switching lies with the entity doing to switch, not the EDU; consequently, DERS' recommendations are unnecessary.
- (82) Paragraph (A). AEP Ohio comments that it has received customer complaints stating that the aggregation initial notice appears similar to junk mail. Consequently, AEP Ohio requests that the rule require the notice to be "clearly marked from the outside 'important notice regarding your electric service.'" Additionally, in Paragraph (A)(3), AEP Ohio requests a modification reflecting that, for fixed-rate contracts, the price per kWh for generation and transmission service should be expressed. (AEP Ohio at 3.) DERS opposes AEP Ohio's recommendation on the basis that it would increase CRES provider costs (DERS Reply at 10). DP&L supports AEP Ohio's proposal on the basis that it would help ensure customer notice of aggregation enrollment (DP&L Reply at 6-7).

The Commission agrees with AEP Ohio's recommendation regarding clear marking of aggregation notices, and, as this practice is already widely used, the Commission does not believe there will be adverse impact. The Commission has modified this paragraph accordingly. Further, the Commission agrees with AEP Ohio's request for modification to Paragraph (A)(3) reflecting that the price per kWh for

generation service for fixed-rate contracts should be expressed, and the Commission has modified this paragraph accordingly.

- (83) Paragraph (B). In this paragraph, Direct Energy argues that, to provide consistency with the rules in the *CRNGS Rules Case*, a subparagraph should be added requiring a governmental aggregator to provide notice to all customers served of their right to opt out of aggregation every two years (Direct Energy at 14). FES opposes Direct Energy's recommendation on the basis that customers have the right to opt out without a switching fee every three years and receive an opt-out notice prior to enrollment (FES Reply at 3). NOPEC also opposes Direct Energy's recommendation on the basis that R.C. 4928.20(D) provides that persons enrolled in aggregation programs may opt out without a fee every three years (NOPEC Reply at 4-5). The Commission declines to adopt Direct Energy's recommendation on the basis that three years is the appropriate time frame pursuant to R.C. 4928.20(D).
- (84) Paragraph (D). In Paragraph (D)(1)(a), Eagle argues that, since the updated customer list may be several months old, the EDU should provide a current customer list of names and relevant information (Eagle at 9). In Paragraph (D)(2), RESA/IGS and FES request a change from calendar days to business days (RESA/IGS at 24; FES at 10). AEP Ohio argues that it is impractical for an EDU to continually update lists per each request, if a list was just recently created with little or minimal changes and such a requirement would run against R.C. 121.82 (AEP Ohio Reply at 2-3). The Commission declines to adopt Eagle's proposed language on the basis that monthly updates are a fair practice for all parties. Additionally, the Commission disagrees with RESA/IGS' and FES' suggestion and finds that the 30-calendar-day period currently set forth in this paragraph is the appropriate time frame.

Comments on Ohio Adm.Code 4901:1-21-18 - Consolidated billing requirements

- (85) General. This rule governs consolidated billing requirements and Staff recommended several changes to several subparagraphs. Eagle comments that it does not believe this language is necessary (Eagle at 9). DERS comments that this rule should include a process with regard to collections so that: all EDU consolidated billing could separately identify outstanding balances with those balances remaining on the bill until paid or resolved; a consistent payment process across the state would contain information included on the bills; EDUs would not

be authorized to negotiate payment plans; and CRES providers' outstanding balances would be factored into disconnection decisions (DERS at 3-5). RESA/IGS agree with DERS that there are deficiencies with the consolidated billing provisions and more consistency is warranted, proposing that the best solution is the adoption of a purchase of receivables program (RESA/IGS Reply at 16). The Commission declines to adopt DERS' proposed changes on the basis that these issues are more appropriately negotiated between the EDUs and the CRES providers.

- (86) Paragraph (C). In this rule, Staff recommended changes to 14 calendar days for residential due dates and 21 calendar days for out-of-state mailings. In Paragraphs (C)(2) and (C)(9), Eagle recommends the option of a local telephone number be permitted (Eagle at 9). Additionally, in Paragraph (C)(13), Eagle does not believe the additional language is necessary since the Commission, as a tariff provision for each EDU, has authorized the due date, and comments that calendar days should be changed to business days (Eagle at 5, 9). In Paragraph (C)(15), RESA/IGS recommend that the mandatory instructions for referring customers to OCC should be modified to include OCC's web address (RESA/IGS at 19). In Paragraph (C)(17), OCC recommends deleting shopping incentive or shopping credit and transition charge on the basis that these terms are relics of earlier aspects of competitive electric choice that are no longer applicable (OCC at 17-18). In Paragraph (C)(18), Eagle recommends that the price-to-compare needs to be corrected or a disclaimer should be added by the EDU in cases where the retail rate structure may not result in a uniform price-to-compare (Eagle at 9).

OCC opposes RESA/IGS' recommendation regarding referring customers to OCC's web address (OCC Reply at 19). FirstEnergy opposes Eagle's recommendation for Paragraph (C)(18) on the basis that it would add costs to the production of bills and would cause customer confusion (FirstEnergy Reply at 13). OCC supports Eagle's recommendation regarding Paragraph (C)(18) (OCC Reply at 5).

Regarding Paragraphs (C)(2), (C)(9), and (C)(13), the Commission declines to adopt Eagle's proposed changes on the basis that they are unnecessary, as nothing prohibits provision of a local telephone number and Staff's current language governing due dates is appropriate. As to Paragraph (C)(15), the Commission disagrees with RESA/IGS' recommendation regarding OCC's telephone information for the reasons stated previously. Regarding OCC's recommendations

for Paragraph (C)(17), the Commission finds these recommendations unnecessary. Finally, regarding Paragraph (C)(18), the Commission declines to adopt Eagle's recommendations on the basis that there is no uniform price-to-compare.

- (87) Paragraph (D). In Paragraph (D)(3), OCC recommends the following addition in order to help consumers budget for the following year: "The total annual costs shall be listed along with total consumption" (OCC at 18). FirstEnergy opposes OCC's recommendation on the basis that it could add to customer confusion and a customer could obtain this information through other means, making it of little value (FirstEnergy Reply at 13). The Commission disagrees with OCC's proposed language for the reasons set forth by FirstEnergy.
- (88) Paragraph (E). In Paragraph (E), the Commission finds, in order for consistency with proposed Ohio Adm.Code 4901:1-21-05(A), it is appropriate to require a specific listing of the rate to be charged per month for flat-monthly rate offers. The Commission has incorporated these changes into a new paragraph, Paragraph (E)(6).
- (89) Paragraph (F). In this paragraph, RESA/IGS recommend changing days to business days (RESA/IGS at 24). The Commission disagrees and finds that the original time frame is appropriate.
- (90) Paragraph (H). In this paragraph, discussing partial payment priority, FES recommends adding a new subparagraph to this rule to provide that CRES charges shall remain on a customer bill until fully paid because, once a past-due CRES balance is removed from the bill, many customers forget them or believe they are no longer obligated to pay them (FES at 10).

Direct Energy supports FES' proposal, but also encourages the Commission to require EDUs to provide notice to CRES providers of the specific amount paid by customers each month (Direct Energy Reply at 13). RESA/IGS agree with FES that there are deficiencies with the consolidated billing provisions and more consistency is warranted, proposing that the best solution is the adoption of a purchase of receivables program (RESA/IGS Reply at 16). DERS agrees with FES' proposal (DERS Reply at 11). DP&L opposes FES' request on the basis that it is unnecessary (DP&L Reply at 7). AEP Ohio opposes FES' recommendation, arguing that utilities should be allowed to return unpaid CRES charges to the CRES provider after a reasonable amount of time so that CRES providers can collect any unpaid amounts in a timely manner (AEP Ohio Reply at 4).

FirstEnergy comments that it currently maintains CRES charges until a bill is final, at which time the CRES charges are removed and transferred to the CRES provider for collection (FirstEnergy Reply at 12).

The Commission finds that FES' recommendation should not be adopted at this time because it is unnecessary; however, the Commission notes that this finding does not preclude future discussion of purchase of receivables program in other proceedings.

Ohio Adm.Code Chapter 4901:1-24 - Minimum requirements for competitive retail electric service certification.

Comments on Ohio Adm.Code 4901:1-24-01- Definitions

- (91) Paragraph (I). In this paragraph, Eagle suggests that the phrase "supply a CRES" should be changed to "supply competitive retail electric service" (Eagle at 9). The Commission disagrees that this changes is necessary, as CRES is defined in Paragraph (H).
- (92) Paragraph (S), (T), (U), (V). In these sections, Eagle suggests that Paragraphs (S) and (T) be consolidated into a single definition, as well as Paragraphs (U) and (V) (Eagle at 10). The Commission declines to combine these definitions on the basis that the Commission believes all of these definitions are necessary for clarity.
- (93) Paragraph (Z). In this rule, Eagle suggests that commercial be changed to nonresidential (Eagle at 10). The Commission disagrees that this change is necessary.

Comments on Ohio Adm.Code 4901:1-24-04 - Filing of an application

- (94) General. Staff proposed language for this rule requiring each application for certification or renewal to be assigned a new case number. Dominion Retail argues that there is no compelling reason for this new procedure and the existing practice should be retained in order to facilitate researching the certification history of a particular supplier, broker, or aggregator. Alternately, Dominion Retail suggests that, if the rule change recommended by Staff is adopted, the provision should be effective on the effective date of the rule, not the effective date of the chapter, as the chapter has been in effect for many years. Additionally, Dominion Retail suggests reordering the wording on the basis that it is awkward. (Dominion Retail at 5-7.) DERS suggests that the Commission's renewal forms be modified to identify the preceding case number (DERS at 17).

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

Comments on Ohio Adm.Code 4901:1-24-05 - Application content

- (95) Paragraph (B)(1), (B)(2). Paragraph (B)(1) provides that CRES provider and power marketer applicants must complete the appropriate application form and supply all required attachments. Paragraph (B)(1)(b) addresses managerial experience and capabilities and prior regulatory or judicial actions. In Paragraph (B)(1)(c), Staff recommended that applicants be required to provide information about financial capability, including balance sheets, credit ratings, and other financial information, including three financial exhibits. Paragraph (B)(2) provides that aggregator and power broker applicants must complete the appropriate application form and supply all required attachments. Paragraph (B)(2)(b) requires applicants to provide balance sheets, credit ratings, and relevant financial information including three financial exhibits. In Paragraph (B)(2)(d), Staff recommended that aggregators and power brokers provide proof of an Ohio office and Ohio employee.

In both paragraphs, Eagle suggests that the rule be organized such that the filing requirements that pertain to all applicants be consolidated into a single rule, with a separate rule created to address additional filing requirements unique to a filing class (Eagle at 10). Direct Energy comments that the language in (B)(1)(b) should be clarified to exclude certain situations, by including the following language: “or if there are pending or past legal action or findings against applicant that are related to applicant’s technical, managerial or financial abilities to provide CRES service. The applicant need not include in its statements information related to any calls, inquiries, or resolutions from informal complaints or inquiries to a Commission, consumer advocate, or other third party entity that takes or processes informal complaints or inquiries.” (Direct Energy at 14.) RESA/IGS similarly argue the

section should exclude certain situations (RESA/IGS at 20). RESA/IGS argue the proposed requirement in Paragraph (B)(2)(d) should be deleted (RESA/IGS at 19). Dominion Retail asserts that portions of this rule should be eliminated on the basis that the Commission does not need a rule on what information the application forms can require, and that the requirement in Paragraph (B)(1)(b) calling for description of "prior judicial or regulatory actions" may be unnecessary in light of the new requirement for disclosure of pending legal actions or past rulings. Additionally, Dominion Retail asserts that subparagraphs (B)(1)(c)(i), (ii), and (iii) and (B)(2)(b)(i), (ii), and (iii) should be eliminated because the financial exhibits they refer to are undefined and the nomenclature is inconsistent with the financial exhibit designations specified in the current versions of the application form. (Dominion Retail at 7-9.) OCC recommends addition of a new paragraph, Paragraph (B)(1)(g), requiring information on consumer interactions in other jurisdictions in order to allow the PUCO to evaluate the suitability of applicants (OCC at 20).

Direct Energy disagrees with Dominion Retail's assertion on the basis that such additional information can provide insight to applicants about the type of information the Commission is interested in reviewing, and supports Staff's proposed language. Direct Energy opposes OCC's proposed addition on the basis that it would administratively burden CRES providers and the Commission, as "consumer interaction" could include countless statements that customers make in hundreds of forums. (Direct Energy Reply at 13-14.) Dominion Retail agrees that the information proposed by Staff should be provided in the application, but believes the requirements should be set forth as an instruction in the application rather than included in the rule itself (Dominion Retail Reply at 14). OPAE does not disagree with RESA/IGS' recommendation, but believes the language should be modified to specify the information applicants must report; however, OPAE opposes RESA/IGS' recommendation to delete proposed Paragraph (B)(2)(d), arguing that the Commission's general supervisory authority is adequate to support this rule (OPAE Reply at 25-26).

The Commission declines to adopt Eagle's recommendation that Paragraphs (B)(1) and (B)(2) be combined on the basis that they are two different process for two different applications. The Commission agrees with Dominion Retail that the reference to prior regulatory or judicial actions in Paragraph (B)(1)(b) is redundant in light of proposed Paragraph (B)(1)(f), and has deleted it. The Commission also finds

that, in order to be consistent with revisions to the rules in the *CRNGS Rules Case*, the requirements for CRES providers and aggregators/power brokers should be made consistent to the extent the requirements are applicable, and the Commission has modified Paragraph (B)(2) accordingly. Regarding Paragraphs (B)(1)(c) and (B)(2)(b), the Commission disagrees with Dominion Retail's proposal to eliminate all references to financial exhibits; however, the Commission agrees, for clarity, to modify the nomenclature and specifically refer to financial statements, financial arrangements, and forecasted financial statements, in order to parallel the language in the certification applications. The Commission also disagrees with Dominion Retail's request to eliminate all subparagraphs of this rule, finding that the rules should specify what documentation will be requested of applications. The Commission agrees with commenters to delete proposed Paragraphs (B)(1)(e) and (B)(2)(d). In Paragraph (B)(1)(f), the Commission agrees that language regarding past or present actions or findings should be added and has amended this paragraph accordingly. However, the Commission declines to limit legal actions or findings to only those relating to an applicant's technical, managerial, or financial abilities. The Commission finds that this would undermine the intent of the rule, which is to require companies to provide full disclosure. Finally, the Commission disagrees with OCC that a new paragraph should be added on the basis that it would be inappropriate to require applications to include possible violations and disputes from other jurisdictions.

- (96) Paragraph (B)(3). In Paragraph (B)(3)(a), Staff recommended that governmental aggregators file general information on their operational plans. Eagle recommends that the word "governance" be added (Eagle at 10). Eagle also recommends that "related" be added in Paragraph (B)(3)(b) (Eagle at 10). The Commission agrees that "governance" should be added to Paragraph (B)(3)(a); however, the Commission declines to add "related" to Paragraph (B)(3)(b), on the basis that it is unnecessary.
- (97) Paragraph (D). As discussed more thoroughly above in Finding (21), the Commission has moved proposed Ohio Adm.Code 4901:1-21-03(E) to this new paragraph on the basis that it is more appropriately located in this location.

Comments on Ohio Adm.Code 4901:1-24-06 - Affidavits

- (98) Paragraph (D). In this section, Staff recommended that the applicant file an affidavit stating that the applicant will comply with all

Commission rules or orders pursuant to Title XLIX of the Revised Code. RESA/IGS recommend changing this to "Title 49" (RESA/IGS at 20). Dominion Retail agrees (Dominion Retail Reply at 16). The Commission declines to adopt RESA/IGS' recommended change, as the particular format used in Staff's proposed language is consistent with the rule drafting manual adopted by the Ohio Legislative Service Commission.

Comments on Ohio Adm.Code 4901:1-24-08 - Protective orders

- (99) General. In this rule, Staff recommended the addition of a provision allowing for automatic approval of motions for protective orders in certain circumstances. Dominion Retail supports Staff's proposal (Dominion Retail Reply at 16).
- (100) Paragraph (A). In this paragraph, Staff proposed that certain financial information could be filed under seal and kept under seal for a period of six years.

Dominion Retail suggests that the reference to Exhibit C-4 be eliminated from the proposed rule because it is unclear why this type of information should be afforded confidential treatment, as it would typically be public information. Further, Dominion Retail recommends that the rule provide that financial exhibits filed under seal be afforded protection for six years from the date of the certificate or renewal certificate. (Dominion Retail at 10.) DERS recommends clarification in the rule that no motion for protective order needs be filed in order to file Exhibits C-3, C-4, or C-5 under seal (DERS at 17).

RESA/IGS disagree with Dominion Retail, commenting that the Commission has repeatedly granted protective orders for the information provided as Exhibit C-4 by both CRES suppliers and CRNGS providers (RESA/IGS Reply at 20-21).

Initially, the Commission finds that this paragraph should be modified to refer to financial statements, financial arrangements, and forecasted financial statements in order to correspond with the Commission's rewording of Ohio Adm.Code 4901:1-24-05. Further, the Commission declines to adopt Dominion Retail's recommendation on the basis that Exhibit C-4, financial arrangements, consists of information that the Commission finds should be included in the provision allowing for the automatic grant of a protective order. Finally, the Commission declines to adopt Dominion Retail's or DERS' recommendations for additional wording, finding that the rule clearly encompasses both

initial and renewal certificates and because the rule clearly does not require a motion for protective order for financial statements, financial arrangements, or forecasted financial statements filed under seal.

- (101) Paragraph (C). In this paragraph, Staff recommended, at the end of the six-year period, the financial information should be released into the open record.

RESA/IGS suggest that extension of a protective order beyond the six-year period should coincide with the CRES provider's certification cycle, instead of limiting the protective order to the 18-month time period set forth in Ohio Adm.Code 4901:1-24. RESA/IGS state that this practice would eliminate some of the existing troubles CRES providers have experienced with protective orders. (RESA/IGS at 21.) Dominion Retail agrees with RESA/IGS (Dominion Retail Reply at 18).

The Commission declines to adopt RESA/IGS' recommendation on the basis that individual CRES providers are in a better position to track the expiration dates of their protective orders every six years and file appropriate motions to extend than the Commission is to calculate and impose a protective order that coincides with that individual CRES provider's certification cycle.

Comments on Ohio Adm.Code 4901:1-24-09 - Certification renewal

- (102) This rule governs the procedures for certification renewal. Eagle recommends changing calendar days to business days throughout this rule (Eagle at 5). FES requests that the entire rule be removed on the basis that states with a similar competitive landscape do not require a renewal process (FES at 10).

Dominion Retail supports Staff's proposal (Dominion Retail Reply at 18). DERS agrees with FES' proposal, commenting that the period submissions are a burden (DERS Reply at 11).

The Commission disagrees that Eagle's recommended change would be beneficial. Additionally, the Commission declines to adopt FES' recommended change on the basis that applications for renewal of a certificate afford protections for consumers and, further, the Commission agrees with DERS that it is unclear how FES' proposed plan for periodical submissions would be less burdensome for businesses than the certification renewal application. However, upon the Commission's review of this rule, the Commission finds that language should be modified in Paragraph (B), and that Paragraph (D)

should be deleted for clarity. Further, the Commission finds that the certification renewal process should require update of more information than just material changes and has modified Paragraph (C) accordingly.

Comments on Ohio Adm.Code 4901:1-24-10 - Application approval or denial

- (103) Paragraph (A). In this section, RESA/IGS comment that, inadvertently, the Commission has implied in Paragraph (A)(2)(c) that the Commission can hold a hearing after the 90-day suspension period set forth in Paragraph (A)(2)(b); however, RESA/IGS assert that R.C. 4928.08(A) requires the Commission to do the opposite. RESA/IGS assert that, consequently, these sections should be switched. (RESA/IGS at 21.) Dominion Retail recommends addition of language clarifying that the application may be for certification or certification renewal as written in the corresponding rule in the *CRNGS Rules Case*. Additionally, Dominion Retail agrees with RESA/IGS and proposes alternate language. (Dominion Retail Reply at 19-20).

The Commission disagrees with RESA/IGS and Dominion Retail that the recommended changes are necessary and finds that Staff's proposed language is appropriate. However, the Commission does find that language should be added clarifying that the application may be for certification or certification renewal.

- (104) Paragraph (C). In Paragraph (C)(3), FES requests clarification of the term "reasonable financial assurances" (FES at 11). The Commission disagrees that the term "reasonable financial assurances" needs clarification and notes that instructions in the application form will provide additional guidance. The Commission does find, however, that the phrase "regulated sales service" should be deleted.
- (105) Paragraph (E). Eagle recommends that the certification period discussed in this section be extended to three years (Eagle at 10). The Commission disagrees on the basis that R.C. 4928.08(C) requires biennial certification.

Comments on Ohio Adm.Code 4901:1-24-11 - Material changes to business operations

- (106) General. Dominion Retail recommends that, in order to be consistent with the rule in the *CRNGS Rules Case*, Ohio Adm.Code 2901:1-27-11(B), a new paragraph, Paragraph (B)(12), should be added reading:

"[a]ny change in the applicant's name or any use of a fictitious name should be labeled a material change." (Dominion Retail at 10-11.) The Commission agrees and has added a new paragraph, Paragraph (B)(11), containing this language.

- (107) Paragraph (A). In Paragraph (A)(1), Dominion Retail urges elimination of the reference to the most recent renewal certification application on the basis that Dominion Retail opposes the proposed requirement that renewal applications be filed in separate dockets (Dominion Retail at 11). In Paragraph (A)(2), FES requests clarification of the term "reasonable financial assurances" (FES at 11).

The Commission declines to adopt Dominion Retail's recommendation for Paragraph (A)(1) on the basis that the Commission has not adopted Dominion Retail's corresponding proposal that the Commission not require renewal applications be filed in separate dockets. However, the Commission will delete the second sentence in Paragraph (A)(1) on the basis that it is unnecessary, as the terms of supplier agreements cover the notice requirements relevant to each EDU. Regarding Paragraph (A)(2), the Commission disagrees that the term "reasonable financial assurances" is vague, but agrees to eliminate this entire portion of the sentence on the basis that the provision relates to financial security to protect EDUs, which the Commission finds is unnecessary as it is already required in company tariffs.

- (108) Paragraph (B). In Paragraph (B)(3), RESA/IGS argue that Staff should not consider any assignment to be a material change because Ohio Adm.Code 4901:1-21-11(D)(11) already requires CRES providers to give notice to Staff when a residential or small commercial contract is signed. Consequently, RESA/IGS recommend Paragraph (B)(3) be deleted (RESA/IGS at 22). In Paragraph (B)(6) FES recommends that BB- be changed to BB+ and Baa3 be changed to Ba1, on the basis that the difference between these ratings is minimal and the effect of adopting these proposed ratings does not materially alter the risk of CRES provider default (FES at 11). Dominion Retail agrees with RESA/IGS that Paragraph (B)(3) should be eliminated (Dominion Retail Reply at 20).

The Commission agrees with RESA/IGS and Dominion Retail that Paragraph (B)(3) should be deleted. Additionally, the Commission disagrees with FES to modify the ratings in Paragraph (B)(6) on the basis that the Commission believes it would be inappropriate to lower the reporting threshold.

Comments on Ohio Adm.Code 4901:1-24-12 - Transfer or abandonment of certificate

- (109) Paragraph (B). In this rule, Eagle recommends changing every reference to calendar days to business days (Eagle at 5). The Commission declines to make Eagle's change and finds that calendar days are appropriate.

Comments on Ohio Adm.Code 4901:1-24-13 - Certification suspension, rescission, or conditional rescission

- (110) Paragraph (A). In this section, OPAC states that, although it agrees with Staff's proposal for enforcement of the regulations, the language would allow the Commission to conditionally rescind a certification that is overly restrictive and would appear to require the Commission to make one or more findings, which suggests a lengthy process. OPAC recommends that, instead, the Commission should be able to issue an order that conditionally rescinds a certificate on grounds similar to a temporary injunction, or where the Commission has sufficient evidence to allow a reasonable person to conclude that a violation of the regulations has occurred or is likely to occur and will result in harm to customers. (OPAC at 46.)

The Commission declines to adopt OPAC's recommendation on the basis that reasonable notice and the opportunity for a hearing prior to conditional rescission or rescission are required pursuant to R.C. 4929.20(C)(1). Additionally, the Commission is unaware of any issues with the current process or the specific need for an injunction-type process.

- (111) Paragraph (B) and (C). In this section, RESA/IGS comment that the Commission does not have statutory authority to make a blanket prohibition on all advertising, and that there are constitutional limitations on the prohibition of advertising by a regulatory commission pursuant to *Cent. Hudson Gas & Elec. v. Comm.*, 447 U.S. 557 (1980) (RESA/IGS at 22). Dominion Retail disagrees that this rule presents a commercial free speech issue because the Commission has a valid interest in preventing customer confusion and suppliers are already prohibited from engaging in unfair, misleading, deceptive, or unconscionable marketing practices (Dominion Retail Reply at 21-22).

The Commission disagrees with RESA/IGS that these paragraphs present a Constitutional violation. The Commission notes that companies will be permitted to continue to serve existing customers;

however, the Commission finds that it is appropriate to prohibit a CRES provider or governmental aggregator from soliciting and enrolling new customers while its business practices are either under investigation or have been found to be unfair, misleading, deceptive, or unconscionable.

- (112) Paragraph (E). In this section, Direct Energy recommends that only an omission of *material* information would provide reason for suspension of a CRES provider's certificate (Direct Energy at 14). RESA/IGS propose that this section be deleted on the basis that the General Assembly does not mandate CRES providers to have an Ohio office and employee, and the Commission does not have authority to so require (RESA/IGS at 23). Dominion Retail agrees with RESA/IGS' proposal (Dominion Retail Reply at 22).

The Commission declines to adopt Direct Energy's recommendation on the basis that the current list of omissions is adequate and insertion of the word "material" is unnecessary. However, the Commission agrees with RESA/IGS that Paragraph (E)(12) should be deleted.

- (113) Paragraph (F). RESA/IGS contend that this section should begin with "The EDU" (RESA/IGS at 23). The Commission finds that, upon review, this paragraph should be deleted in its entirety.

Comments on Ohio Adm.Code 4901:1-24-14 – Financial security

- (114) General. FES objects to this section and recommends its deletion on the basis that Ohio Adm.Code 4901:1-24-09 and 4901:1-24-11 provide that licensed suppliers are unlikely to default on their obligations. FES argues that this new section will lead to increased costs, less CRES providers willing to make retail offers in the state, and inconsistent application as each EDU implements its own tariff. Further, FES argues that this new section could be abused by an EDU that does not want shopping in its service territory; that migration and default risk have already been addressed in the wholesale bidding process; the rule provides an avenue for intrusive requests for information from CRES providers, without any limitations on how that information may be used; and the rule fails to provide for protection of confidential CRES provider information. (FES at 11-14.) DERS agrees with FES that this new rule should be deleted (DERS Reply at 11).

Initially, the Commission notes that this section is not new, but has merely been renumbered and renamed from Ohio Adm.Code 4901:1-24-08, default of retail electric generation providers. Additionally, the

Commission does not believe that this section should be deleted because it provides important protection for the EDU from CRES provider default.

- (115) Paragraph (B). In this section, RESA/IGS point out that, although the term "financial instrument" is used, the remainder of the rule refers to financial security. Consequently, RESA/IGS recommend that financial security be used throughout the entire rule for clarity. (RESA/IGS at 23.) The Commission agrees and has modified this paragraph accordingly.

Comments on Ohio Adm.Code 4901:1-24-15 ~ Regulatory assessments

- (116) Paragraph (F). Eagle recommends that this paragraph provide that any CRES shall timely provide to a governmental aggregator or designated agent all information necessary to comply with the Commission's reporting filing requirements (Eagle at 10). The Commission declines to adopt Eagle's recommendation on the basis that it is unnecessary.
- (117) In conclusion, the Commission finds that Ohio Adm.Code 4901:1-21-01 through 4901:1-21-12, 4901:1-21-14, 4901:1-21-16 through 4901:1-21-18, 4901:1-24-02, and 4901:1-24-04 through 4901:1-24-16, should be amended as set forth herein. Further, the Commission notes that no amendments have been made to Ohio Adm.Code 4901:1-21-13, 4901:1-21-15, 4901:1-24-01, and 4901:1-24-03.

It is, therefore,

ORDERED, That attached amended Ohio Adm.Code 4901:1-21-01 through 4901:1-21-12, 4901:1-21-14, 4901:1-21-16 through 4901:1-21-18, 4901:1-24-02, and 4901:1-24-04 through 4901:1-24-16 be adopted. It is, further,

ORDERED, That existing Ohio Adm.Code 4901:1-21-13, 4901:1-21-15, 4901:1-24-01, and 4901:1-24-03 be adopted with no changes. It is, further,

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

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

It is, further,

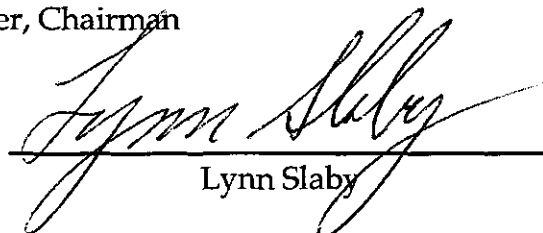
ORDERED, That a copy of this Finding and Order be served upon all regulated natural gas service and electric companies, all competitive retail gas suppliers and electric service providers, and OCC. It is, further,

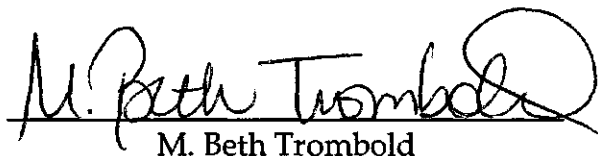
ORDERED, That a copy of this Finding and Order be served upon the Electric-Energy List-Serve.

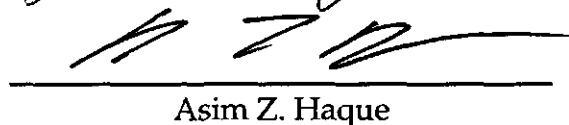
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Lynn Slaby

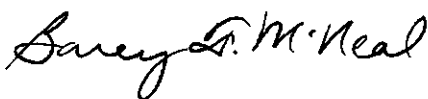

M. Beth Trombold


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Entered in the Journal

DEC 18 2013



Barcy F. McNeal
Secretary

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4901:1-21-01 Definitions.

As used in chapter:

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

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

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

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

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

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

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

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

4901:1-21-02 Purpose and scope.

(A) The rules in this chapter:

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

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

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

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

4901:1-21-03 General provisions.

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

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

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

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

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

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

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

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Offers shall at a minimum include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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- (f) The CRES provider shall not initiate ~~enrollment~~ the switch of a customer's electric service with the electric utility prior to the completion of the enrollment transaction with the customer.
- (g) The CRES provider shall send an electronic enrollment request to the electric utility within three ~~calendar~~ business days following completion of the enrollment transaction with the customer, unless a later start date is agreed to in the contract.
- (h) CRES providers conducting contract sales through door-to-door solicitation shall provide for independent third-party verification (TPV) to ensure the validity of the enrollment prior to submission to the electric utility. The TPV shall be conducted in accordance with paragraph (D)(2)(a) of rule 4901:1-21-06 of the Administrative Code, excluding paragraph (D)(2)(a)(vi) of rule 4901:1-21-06 of the Administrative Code and the process shall include the following:
 - (i) The sales agent shall contact the party responsible for the TPV at the conclusion of the sales transaction and provide the necessary contract tracking information to initiate the TPV process.
 - (ii) The independent third-party verifier must confirm with the customer that the sales agent has left the property of the customer. The sales agent is not to return before, during or after the TPV process.
 - (iii) The independent third-party verifier shall structure the TPV interview to give the customer adequate time to respond to questions and shall not lead the customer in their response.
 - (iv) The CRES provider must retain the audio recording of the customer's enrollment for one year after the contract with the customer is terminated.
 - (v) The CRES provider must provide a copy of the independent third-party verification to staff within three business days of any such request.
- (i) Terms and conditions print specifications
The terms and conditions must be provided to the residential customer at the time of sale and must be printed in dark ink on white or pastel paper and be ten-point type or greater.

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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.

~~(iii)~~ (iv) A verbal question and the customer's acknowledgement that the customer wishes to enroll with the provider.

~~(iv)~~ (v) A verbal question and the customer's acknowledgement that the customer is the customer of record at the customer's ~~local distribution~~ electric utility or is authorized to switch providers by the customer of record.

~~(v)~~ (vi) In accordance with rule 4901:1-21-12 of the Administrative Code, a verbal statement and the customer's acceptance of each of the principal terms and conditions for the service that will be provided, including, but not limited to, all of the following:

(a) The service(s) that will be provided.

(b) The price.

(c) The length of the contract term.

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- (d) An approximate service commencement date.
 - (e) The contract termination date, and any fees for customer cancellation prior to such date.
 - (f) Any material limitations, exclusions, contract contingencies, or conditions precedent.
 - (g) Any fees or costs to the customer.
 - (h) Whether or not the CRES provider offers budget billing for the generation portion of the bill.
 - ~~(h)~~—(i) If applicable, whether the provider will perform a credit check and require a deposit, including the amount.
 - ~~(i)~~—(j) Who will bill for the provider's service(s).
 - ~~(vi)~~—(vii) A verbal statement and the customer's acknowledgement that the provider will, within one ~~calendar~~ business day, send the customer a written contract that details the terms and conditions that were summarized in the telephone call.
 - ~~(vii)~~—(viii) A verbal statement and the customer's acknowledgement that the customer has seven calendar days from the postmark date of the electric utility's confirmation notice to cancel the contract without penalty and a reminder that the electric utility will give the customer a cancellation number to confirm any cancellation of the contract during the cancellation period.
 - ~~(viii)~~—(ix) A toll-free telephone number the customer can call to cancel the contract.
 - ~~(ix)~~—(x) If applicable, a verbal request for and the customer's provision of the customer's electric utility account number.
 - ~~(x)~~—(xi) A verbal request for and the customer's provision of the customer's mailing address.
 - ~~(xi)~~—(xii) A unique enrollment confirmation number.
- (b) Following telephonic enrollment, the CRES provider shall comply with all of the following:

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- (i) Within one ~~calendar~~business day, send the customer a written contract that details the terms and conditions summarized in the telephone call and the generation resource mix and environmental characteristics information pursuant to rule 4901:1-21-09 of the Administrative Code. Such contract shall in no way alter the terms and conditions to which the customer agreed in the telephone call.
 - (ii) Retain the audio recording of the customer's enrollment for one year after the contract with the customer is terminated.
 - (iii) Provide a copy of the audio recording to the customer, commission, or the staff within ~~five calendar~~three business days of a request.
 - (c) The CRES provider shall send an electronic enrollment request to the electric utility no sooner than three ~~calendar~~business days and no later than five ~~calendar~~business days after sending the customer the written contract, unless a later start date is agreed to in the contract.
 - (d) The CRES provider shall not initiate ~~enrollment with the~~ switch of a customer's electric service with the electric utility prior to the completion of the enrollment transaction with the customer.
 - (e) If a CRES provider during a telephone enrollment engages an electric utility on a three-way call, the CRES provider shall immediately disclose they are present on the call with the customer.
- (3) Internet enrollment.
- (a) Where enrollment occurs by internet, prior consent shall be obtained by encrypted customer input on a provider's internet web site.
 - (b) The internet enrollment web site shall, at a minimum, include all of the following:
 - (i) A copy of the CRES provider's customer contract with all terms and conditions as required by rule 4901:1-21-12 of the Administrative Code.
 - (ii) A conspicuous statement, within the body of the electronic version of the contract, that residential and small commercial customers may 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

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notice of the transfer of service and that the customer should contact the electric utility to rescind the contract and a reminder that the electric utility will give the customer a cancellation number to confirm any cancellation of the contract during the cancellation period.

- (iv) A conspicuous prompt for the customer to print or save a copy of the contract.
- (c) The CRES provider shall not initiate ~~enrollment with the~~ switch of a customer's electric service with the electric utility prior to the completion of the enrollment transaction with the customer.
- (d) The CRES provider shall send an electronic enrollment request to the electric utility within three ~~calendar-business~~ days following completion of the enrollment transaction with the customer, unless a later start date is agreed to in the contract.
- (e) Any electronic version of the contract shall be identified by version number, in order to ensure the ability to verify the particular contract to which the customer assents.
- (f) Throughout the duration of the contract, the CRES provider shall retain and, within three ~~calendar-business~~ days of the customer's request, provide to the customer an ~~e-mail~~ electronic mail message, paper, or facsimile of the terms and conditions of the numbered contract version to which the customer assents.
- (g) The CRES provider shall require the customer to complete an electronic customer consent form in a format retrievable by the CRES provider that includes the following:
 - (i) The customer's agreement to the terms and conditions.
 - (ii) An electronic agreement version number.
 - (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.

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- (vii) The account holder's U.S. mailing address.
 - (h) The CRES provider shall provide a mechanism by which both the submission and receipt of the electronic customer consent form are recorded by time and date.
 - (i) After the customer completes the electronic customer consent form, the internet enrollment process shall disclose conspicuously that the customer has been enrolled and the CRES provider shall provide the customer a unique enrollment confirmation number.
- (E) In customer enrollment, if the electric distribution utility rejects a customer from enrollment, the CRES provider shall notify the customer within five business days from the electric distribution company's notification of rejection that the customer will not be enrolled or enrollment will be delayed, along with the reason(s) therefor.

4901:1-21-07 Credit and deposits.

- (A) Each competitive retail electric service (CRES) provider must establish reasonable and nondiscriminatory creditworthiness standards and may require a deposit or other reasonable demonstration of creditworthiness from a customer as a condition of providing service.
- (B) In the application of such standards, deposits, or creditworthiness procedures, the CRES provider shall:
 - (1) Disclose in service contracts with customers its policies regarding creditworthiness and deposits, including the amount of any deposit, the allocation of the deposit, and the return of any deposit balance.
 - (2) Accept a reasonable and nondiscriminatory cash deposit as sufficient evidence of the customer's creditworthiness to initiate service.
 - (3) Disclose whether interest will be paid on deposits, and the applicable rate of interest.
 - (4) Provide the customer a receipt for any deposit within ~~fourteen calendar~~ten business days of the date that the deposit is collected.
 - (5) Return the deposit within ~~ten calendar~~seven business days if the customer cancels the contract during the rescission period.

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- (6) Apply the deposit to the final bill and promptly refund any excess to the customer when service is terminated.
- (7) Not require an applicant to pay the balance due another CRES provider as a condition of establishing credit or providing competitive retail electric service.

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

(A) Customer access

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

(B) Customer complaints

- ~~(1) As used in this rule, customer complaint means a customer contact when such contact necessitates follow up by or with the supplier of the customer's electric service to resolve a point of contention.~~
- ~~(2)~~ (1) Each CRES provider shall investigate customer complaints (including customer complaints referred by the electric utility) and provide a status report within ~~five calendar~~ three business days following receipt of the complaint to:
 - (a) The customer, when the complaint is made directly to the CRES provider.
 - (b) The customer and staff, when a complaint is referred to the CRES provider by the staff.
- ~~(3)~~ (2) If an investigation is not completed within ~~fourteen calendar~~ ten business days, the CRES provider shall provide status reports, either orally or in writing, to the customer, or if applicable, to the customer and staff. Such status reports shall be provided at ~~five calendar~~ three business-day intervals until the investigation is complete, unless agreed to otherwise.

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

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

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

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

(C) Slamming complaints.

(1) A slamming complaint is a customer's allegation that the customer's supplier of electric service has been switched without the customer's authorization.

(2) If a customer contacts the CRES provider alleging that the customer's supplier has been switched without the customer's authorization, the CRES provider shall take the following actions:

(a) Provide the customer with the enrollment information contained in its records.

(b) Refer the customer to the commission and provide the customer with the commission's current address, the toll-free and TTY numbers—number of the commission's call center, the telephone number through which hearing and speech impaired customers may contact the commission, and the commission's website.

(c) Cooperate with staff in any subsequent investigations of the slamming complaint, including assisting staff in determining the amount of any restitution owed to the customer pursuant to paragraph (C)(5) of this rule if

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the customer was switched without authorization from the customer's supplier of electric service.

- (3) If a customer initiates a slamming complaint with staff within thirty calendar days after being issued a bill from the alleged slammer, the customer shall not be required to pay the current charges assessed by the alleged slammer until the staff determines that the change in the customer's electric service provider was authorized.
- (4) Except as provided in rules 4901:1-21-16 and 4901:1-21-17 of the Administrative Code, if the CRES provider cannot produce valid documents confirming that the customer authorized the switch, there shall be a rebuttable presumption that the customer was switched without authorization. Such documents shall include one of the following, in conformance with the requirements of rule 4901:1-21-06 of the Administrative Code:
 - (a) A signed contract, in the case of direct enrollment.
 - (b) An audio recording, in the case of telephonic enrollment.
 - (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.

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- (c) If the customer can not be returned to the original contract terms with its previous supplier of electric service, the slamming CRES provider shall credit or refund to the customer the value of the customer's contract with the customer's previous supplier of electric service for the remaining term of the contract immediately prior to the slam.
- (6) In the event the customer was switched without authorization, the customer's previous CRES provider shall take all of the following actions:
 - (a) Re-enroll the customer without penalty under such customer's original contract price and terms, including substantially similar inducements to enter such contract. If the original CRES provider is unable to return the customer to the original contract price, the original CRES provider may enroll the customer in a new contract pursuant to the provisions of rule 4901:1-21-06 of the Administrative Code, or the customer may select a new CRES provider, or return to the electric utility's standard offer service.
 - (b) Issue the customer a credit on the first bill following the customer's re-enrollment, for any exit fees previously charged the customer as a result of the unauthorized switch, or directly reimburse the customer for such fees.
 - (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

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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.
- (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

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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.

4901:1-21-09 Environmental disclosure.

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

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

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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:

- (a) At the time of certification, CRES providers shall submit for commission review their proposed methodology for determining their environmental disclosure data.
- (b) The actual environmental disclosure data, to be provided quarterly, shall be verifiable. CRES providers shall maintain documentation sufficient to demonstrate the accuracy of the actual environmental disclosure data.
- (c) When calculating the generation resource mix, the CRES provider shall assume that purchased energy has the same generation resource mix as the regional generation resource mix for the twelve-month period of June 1 to May 31, as provided by the CRES provider's regional transmission organization or independent system operator.

- (3) Each CRES provider shall submit to staff for its review and approval a proposal for incorporating the use of any renewable energy credits (RECs) ~~within~~ into its annual and quarterly environmental disclosures. ~~At a minimum, such submittal would be required for the following~~ The CRES provider shall provide statements, when applicable:

- (a) ~~A~~ That the CRES provider sells ~~sold~~ RECs from one of its electric generating facilities.

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(b) ~~A-That the CRES provider purchases-purchased~~ RECs as a means of complying, in part or whole, with a renewable energy resource benchmark under the state's alternative energy portfolio standard requirements.

(c) Whether the CRES provider complied with the renewable energy resource benchmark under the state's alternative energy portfolio standard requirements.

(4) Timing for disclosing environmental data:

(a) Certified CRES providers shall annually project their environmental disclosure data for the current calendar year.

(b) Certified CRES providers shall make quarterly comparisons of actual to projected environmental disclosure data.

(c) Each certified CRES provider shall publish the required environmental disclosure data each year according to the following schedule:

January - disclose projected data for current calendar year.

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

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

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

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

(D) Environmental disclosure to customers shall include:

(1) Content:

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

(2) Format:

The environmental disclosure data shall be provided in a standardized format to facilitate comparisons by customers. This data shall be disclosed in not less

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than ten-point type. The presentation of this data shall comply with each of the following requirements:

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

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

Biomass power - results in air emissions and solid waste.

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

Hydro power - results in wildlife impacts.

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

Nuclear power - results in radioactive waste.

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

Other sources - results in unknown impacts.

Solar power - results in no significant impacts.

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

Wind power - results in wildlife impacts.

- (c) The product-specific air emissions shall be presented in a bar chart, along with a regional average emission reference. The product-specific emission rates shall appear as a percentage of the average regional emission rate for

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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.
- (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.

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(3) Timing:

(a) Annual projection.

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

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

(b) Quarterly comparisons of actual to projected data.

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

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

(E) Environmental disclosure to the commission shall include:

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

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

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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 ~~written consent, electronic authorization and proof of that consent as delineated in paragraph (E) of this rule~~, or appropriate order, except for the following purposes:
- (1) A CRES provider's collections and credit reporting activities.
 - (2) Participation in programs funded by the universal service fund, pursuant to section 4928.52 of the Revised Code, such as the percentage of income payment plan programs.
 - (3) Governmental aggregation, pursuant to section 4928.20 of the Revised Code.
 - (4) Assignment of a customer contract to another CRES provider.

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

- (C) CRES providers shall not disclose a customer's social security number without the customer's ~~written consent as delineated in paragraph (E) of this rule, electronic authorization, or a court order~~, except for the following purposes:
- (1) A CRES provider's own credit evaluation.
 - (2) Electric utility's or CRES provider's own collection and/or credit reporting.
 - (3) Participation in programs funded by the universal service fund, pursuant to section 4928.52 of the Revised Code, such as the percentage of income payment plan programs.
 - (4) Assignment of a customer contract to another CRES provider.
- (D) ~~The CRES provider providers shall not disclose a must obtain the customer's energy usage data that is more granular than the monthly historical consumption data, provided in paragraph (E)(1) of rule 4901:1-10-29 of the Administrative Code, without signature on the customer's written consent as delineated form prior to releasing the customer's account number or social security number, except as set~~

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~~forth in paragraph (B) or (C) (E)(1) of this rule, or appropriate order. The consent form shall be on a separate form and shall be clearly identified on its face as a release of personal information and all text appearing on the consent form shall be in at least sixteen-point type. The following statement shall appear prominently on the consent form, just prior to the signature, in type darker and larger than the type in surrounding sentences: "I realize that under the rules and regulations of the public utilities commission of Ohio, I may refuse to allow (name of the CRES provider) to release the information set forth above. By my signature, I freely give (name of the CRES provider) permission to release the information designated above." The information that the CRES provider seeks to release shall be specified on the form. Forms requiring a customer to circle or to check off preprinted types of information to be released may not be used.~~

(E) Customer information release consent format.

- (1) Written consent shall be on a separate piece of paper and shall be clearly identified on its face as a release of personal information and all text appearing on the consent form shall be in at least sixteen-point type. The following statement shall appear prominently on the consent form, just prior to the signature, in type darker and larger than the type in surrounding sentences: "I realize that under the rules and regulations of the public utilities commission of Ohio, I may refuse to allow (name of the CRES provider) to release the information set forth above. By my signature, I freely give (name of the CRES provider) permission to release the information designated above." The written consent form for the release of customer energy usage data shall specify the identity of any recipients of the data, type and granularity of the data being collected, and uses for which the data is being collected. Forms requiring a customer to circle or to check off preprinted types of information to be released may not be used.
- (2) Electronic consent shall be in a substantially similar format to the written consent in paragraph (E)(1) of this rule. The following statement shall appear prominently: "I realize that under the rules and regulations of the public utilities commission of Ohio, I may refuse to allow (name of the CRES provider) to release the information set forth above. By providing my electronic signature, I freely give (name of electric utility) permission to release the information designated above."

4901:1-21-11 Contract administration.

- (A) Competitive retail electric service (CRES) providers, except automatic governmental aggregation pursuant to division (A) of section 4928.20 of the Revised Code, and percentage of income payment plan customers for whom the

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~~Ohio department of development services agency~~ procures electric services pursuant to section 4928.52 of the Revised Code, shall arrange for the provision of competitive retail electric service by contracting with their customers. In their administration of such contracts, CRES providers are prohibited from engaging in unfair, deceptive, misleading, and unconscionable acts and practices.

- (B) CRES providers shall arrange for the provision of CRES to residential and small commercial customers in compliance with rule 4901:1-21-06 of the Administrative Code.
- (C) CRES providers shall maintain copies of individual customer contracts for no less than two years after each such contract terminates. Copies may be saved in electronic formats if such preserves the image of the original signatures on signed documents.
- (D) In its administration of residential and small commercial contracts, a CRES provider shall also comply with the following requirements:
 - (1) A CRES provider shall not assign customer contract(s) to another CRES provider without:
 - (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 ~~five calendar~~ three business days of request.
- (E) Residential and small commercial customers shall have the right to rescind their contracts, within seven calendar days following the postmark date on the electric utility's confirmation notice:
- (1) By calling the electric utility at the designated local or toll-free number
 - (2) By written notice to the electric utility, which is effective as of the date of the postmark.
- (F) Contract renewals
- (1) The provisions of this paragraph apply to all residential and small commercial contracts that contain automatic renewal clauses except those which renew on a month-to-month basis.
 - (2) For contracts that contain an early termination or cancellation option with no fee for early termination or cancellation, upon renewal, the CRES provider shall, in a separate notice, notify customers of such expiration at least forty-five calendar days, but not more than ninety calendar days, in advance of the contract expiration date. Such notice shall accurately describe or highlight any changes and state that the customer contract will renew at the specified rate unless the customer affirmatively cancels the contract. Such notices must clearly and accurately describe the manner in which the customer may cancel the contract and the time during which the customer must act to cancel the contract.
 - (a) The notice shall be made by separate mailing (envelope or postcard), the front cover of which shall state: "Important notice regarding your electric service contract."

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- (b) The notice shall, at a minimum, state any renewal period and how the customer may terminate, renew, and/or extend the contract.
 - (c) The renewal period for contracts with renewal provisions shall not exceed the initial contract period.
- (3) For contract renewals that contain an early termination or cancellation option with a fee of twenty-five dollars or less for early termination or cancellation, upon renewal, the CRES provider shall provide the customer with two separate notices that accurately describe or highlight any changes and state that the customer contract will renew at the specified rate unless the customer affirmatively cancels the contract. Such notices must clearly and accurately describe in understandable language the manner in which the customer may cancel the contract and the time during which the customer must act to cancel the contract. The first notice shall be in writing in accordance with the requirements of this rule and shall be provided at least forty-five calendar days, but no more than ninety calendar days in advance of the contract expiration date. The second notice may be in writing in accordance with paragraphs (F)(2)(a) to (F)(2)(c) of this rule, by telephone, by a notice on the customer's monthly bill, or by electronic mail. The second notice shall be provided at least thirty-five calendar days in advance of the contract expiration and must contain 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.

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- (ii) Be from an electronic mail e-mail address that is readily identifiable as the CRES provider.
 - (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 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.

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

4901:1-21-12 Contract disclosure.

(A) All competitive retail electric service (CRES) provider customer contracts shall include, but not be limited to, the following information:

- (1) Alf applicable, a notification that the electric utility may charge switching fees to the customer.
- (2) A notification that the customer has the right to request from the CRES provider, twice within a ~~twelve-month~~ twelve-month period, up to twenty-four months of the customer's payment history without charge.

(B) All CRES provider contracts with residential and small commercial customers shall include, but not be limited to, the following information (to be stated in clear and understandable language):

- (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.

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- (b) If the contract allows the CRES provider to terminate the contract for any reason other than the customer's failure to pay or the occurrence of a force majeure event, including but not limited to, a change in any governing law or regulation that physically prevents or legally prohibits the CRES provider from performing under the terms of the contract.
- (7) An itemized list and explanation of all prices and all fees associated with the service such that:
 - (a) For fixed-rate offers, such information shall, at minimum, include the cost per kilowatt hour for generation service; ~~the amount of any other recurring or nonrecurring CRES provider charges, and a statement that the customer will incur additional service and delivery charges from the electric utility, and, if applicable, transmission service.~~
 - (b) For percent-off discounted rates, an explanation of the discount and the basis on which any discount is calculated.
 - ~~(b)(c)~~ (c) For variable-rate offers, either of the following options: such information shall, at minimum, include: a clear and understandable explanation of the factors that will cause the price to vary, including any related indices, and how often the price can change; for discounted rates, an explanation of the discount and the basis on which any discount is calculated; the amount of any other recurring or nonrecurring CRES provider charges; and a statement that the customer will incur additional service and delivery charges from the electric utility.
 - (i) A clear and understandable formula, based on publicly available indices or data that the CRES provider will use to determine the rate that will be charged. In the event that the CRES provider chooses to follow this option, the indices or data on which the price is based must be clearly identified in the contract terms and conditions.
 - (ii) A clear and understandable explanation of the factors that will cause the price to vary including any related indices and how often the price can change. In the event that the CRES provider chooses to follow this option, no early termination fee may be charged.
 - (d) For offers based upon kilowatt hours, the unit price per kilowatt hour.
 - (e) For flat-monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract.

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~~(8)~~ The amount of any other recurring or nonrecurring CRES provider charges and a statement that the customer will incur additional service and delivery charges from the electric utility.

~~(8)-(9)~~ The terms and conditions of service, including any restrictions, limitations, contingencies, or conditions precedent associated with the service or product offered;

~~(9)-(10)~~ Procedures for handling complaints and disputes, including the following statement:

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

~~(10)-(11)~~ The Ohio consumers' counsel (OCC) represents residential utility customers in matters before the PUCO. The OCC can be contacted at 1-877-742-5622 (toll free) from eight a.m. to five p.m. weekdays, or at <http://www.pickocc.org>."

~~(11)-(12)~~ Billing intervals and any late payment fees.

~~(12)-(13)~~ Contract duration, including the estimated starting and expiration dates and a commitment that service shall begin with the next available meter reading after processing of the request by the electric utility and the CRES provider;

~~(13)-(14)~~ If the contract contains an automatic renewal provision and the terms of such provision do not require the customer's affirmative consent, a conspicuous, highlighted statement indicating that the CRES provider can renew this contract without the customer's affirmative consent even when there is a change in the rate or other terms and conditions.

~~(14)-(15)~~ Any credit, deposit, and collection procedures, including terms and conditions associated with the return of any deposit at the time of contract termination.

~~(15)-(16)~~ For generation service contracts, an incorporation by reference of information (accompanying the contract) regarding the approximate

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generation resource mix and environmental characteristics of the power supplies.

- (16)-(17) Who will bill for the CRES provider's service(s).
- (17)-(18) A notification that the CRES provider is prohibited from disclosing a customer's social security number and/or account number(s) without the customer's consent except for the CRES provider's own collections and credit reporting, participation in programs funded by the universal service fund pursuant to section 4928.52 of the Revised Code, or assigning a customer contract to another CRES provider;
- (18)-(19) A statement informing customers that if they switch back to (name of electric utility) they may or may not be served under the same rates, terms, and conditions that apply to other customers served by the electric utility.
- (19)-(20) A statement indicating to the customer whether the CRES provider offers budget billing for the generation portion of the bill.
- (20)-(21) A statement informing customers that the failure to pay electric utility charges may result in the customer being disconnected in accordance with the electric utility tariff.
- (22) If, due to a change in market conditions, the CRES provider wishes to lower the price per kilowatt hour charged to the customer under an existing contract, it may do so without consent provided there are no other changes to the terms and conditions to the contract.

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4901:1-21-13 Net metering contracts.

- (A) An electric services company providing retail electric generation service may offer net metering to its customers by developing a contract for net metering that is consistent with the requirements of rules 4901:1-21-11 and 4901:1-21-12 of the Administrative Code. Such contract shall be made available upon request to qualifying customer generators.
- (1) A qualifying customer generator is one whose generating facilities are:
- (a) Fueled by solar, wind, biomass, landfill gas, or hydropower, or use a microturbine or a fuel cell.
 - (b) Located on a customer generator's premises.

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- (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.

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.

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- (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 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.

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(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.

(E) If applicable, when a customer pays the bill at a payment center or to an authorized payment agent, such payment shall be credited to the customer's account as of the day it is received by such payment center or agent.

(F) Each CRES provider shall establish policies and procedures for handling billing disputes and requests for payment arrangements.

(G) Each CRES provider shall credit any customer partial payments in the following order:

- (1) Billed and past due CRES provider charges.
- (2) Billed and due current CRES provider charges.
- (3) Other past due and current nonregulated charges.

Budget billing payments and payments in full of the undisputed amount related to a bona fide dispute do not constitute partial payments. Payments

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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.

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- (3) Rescission of a customer contract.
- (4) Restitution or damages to the customer/consumer.
- (B) Enforcement of any rule in this chapter or any commission order adopted thereunder will be conducted in accordance with Chapter 4901:1-23 of the Administrative Code.

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

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

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- (4) A detailed description of the governmental aggregator's plan for providing the required opt-out disclosure notices to customers. The plan shall describe the steps that the governmental aggregator will take to ensure that all eligible customers residing within the governmental aggregator's boundaries are notified. The plan shall also identify the time frames associated with the opt-out disclosure notice.
- (5) A detailed description of the process for developing the pool of customer accounts that will be included in the aggregation, including the steps that the governmental aggregator will take to identify and exclude from the pool customers who have opted out of the aggregation and customers that are otherwise ineligible.
- (6) A detailed description of the governmental aggregator's opt-out process and opt-out methodologies. The process shall include provisions for customers to opt out, including returning a postcard or similar notice to the governmental aggregator. The process may include, in addition, other opt-out methods, such as telephonic or internet notice, provided that these alternative methods allow for verification of a customer's election to opt out of the aggregation.
- (7) A detailed description of the customer classes that the governmental aggregator intends to include in its aggregation pool.
- (8) The governmental aggregator's plan for billing customers, including an identification of billing intervals and the identity of the entity that will transmit the bill to the customer.
- (9) A listing of any credit or deposit procedures and policies that the governmental aggregator will employ in the event the customer fails to pay its bill(s).
- (10) A detailed description of the governmental aggregator's customer service procedures and dispute resolution processes, including notice of the customer's right to contact the commission and the commission's toll-free ~~and TTY numbers~~ number and telephone number through which hearing and speech impaired customers may contact the commission. These procedures and processes shall comply with the requirements specified in rule 4901:1-21-08 of the Administrative Code.
- (11) A detailed description of the policies associated with a customer moving into the aggregation or within the aggregation where the electric utility considers the customer that is moving to be a new customer. If the policies provide that these customers will be automatically included in the aggregation, the

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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.
- (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.

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(G) A governmental aggregator may choose to have the CRES provider perform certain functions as the governmental aggregator's agent. However, the governmental aggregator is still responsible for ensuring that the requirements of this chapter are met.

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

- (A) Prior to including a customer's electric account or accounts in an aggregation, a governmental aggregator shall provide each customer written notice that the customer's account(s) will be automatically included in the aggregation unless the customer affirmatively opts out of the aggregation. The notice, clearly marked from the outside "important notice regarding your electric service" written in plain language, shall, at a minimum, include:
- (1) A summary of the actions that the governmental entity took to authorize the aggregation.
 - (2) A description of the services that the governmental aggregator will provide under the aggregation.
 - (3) Disclosure of the price that the governmental aggregator will charge customers for electric generation service. ~~If the price is a~~ For fixed-rate contracts, the governmental aggregator shall provide ~~express the price in cents per kilowatt hour, and if applicable, for generation and transmission service.~~ If the governmental aggregator offers a variable rate, the governmental aggregator shall provide an understandable description of the factors that will cause the price to vary (including any associated indices) and disclose how frequently the rate will change. If the governmental aggregator charges different rates to different rate classes within the aggregation, the governmental aggregator shall disclose the applicable rate(s) to customers within each rate class.
 - (4) An itemized list and explanation of all fees and charges that are not incorporated into the rates charged for electricity generation that the governmental aggregator will charge to the customer for participating in the aggregation, including any early termination penalties and any surcharges, or portions thereof, that may be assessed pursuant to division (I) of section 4928.20 of the Revised Code. The early termination penalties shall not apply to a customer that moves out of the governmental aggregator's territory.
 - (5) Disclosure of the dates covered by the governmental aggregation program, including an estimated service commencement date, and notice that the

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customer may opt out of the aggregation at least every three years without penalty.

- (6) A statement informing customers that choose to opt out of the governmental aggregation program prior to the commencement of the governmental aggregation program that they will be served by the standard service offer established pursuant to section 4928.14 of the Revised Code or until the customer chooses an alternative supplier of electric service.
- (7) A statement informing customers that, if they switch back to (name of electric utility), they may not be served under the same rates, terms, and conditions that apply to other customers served by the electric utility.
- (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.

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- (12) A local or toll free telephone number, with the available calling hours, that customers may call with questions regarding the formation or operation of the aggregation.
- (B) At least every three years from the establishment of its governmental aggregation program, a governmental aggregator shall provide notice to all customers served by the governmental aggregation of their right to opt out of the aggregation and take service pursuant to the electric utility's standard service offer without penalty. This notice shall follow the procedures established for the initial opt-out notice set forth in this rule and shall prominently disclose to customers all changes to the terms and conditions associated with the aggregation. The governmental aggregator shall not send an opt-out notice to the same customer account during 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.

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- (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 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.

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- (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 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

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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.

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.

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- (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.
- (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.

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- (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.
 - (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.

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- (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.
 - (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.

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- (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.
- (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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“No Change”

4901:1-24-01 Definitions.

As used in this chapter:

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

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

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

4901:1-24-02 Purpose and scope.

Under the rules in this chapter:

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

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

4901:1-24-03 General prohibitions.

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

4901:1-24-04 Filing of an application.

Beginning on the effective date of this rule, each application for certification or certification renewal shall be assigned a new case number in sequential order as the case is received, beginning with XX-7000, by the commission's docketing division.

4901:1-24-05 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.

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- (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.
 - (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

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or findings against the applicant, or past rulings finding against the applicant.

- (3) Governmental aggregators shall file general information as set forth in the application. This information includes but is not limited to:
- (a) Copies of its operation and governance plans.
 - (b) Descriptions of experience.
- (C) An applicant for certification or certification renewal shall file a completed and notarized original application signed by a principal officer of the applicant and in accordance with the application instructions, the required number of conformed copies, including all supporting attachments and affidavits, with the commission's docketing division.
- (1) The date that the commission's docketing division stamps an application received shall serve as the official filing date with the commission.
 - (2) In accordance with rule 4901:1-24-10 of this chapter, the commission may deny without prejudice any application that is not complete or does not include the attachments, documentation, and affidavits required by the application form.
 - (3) In accordance with this chapter, in instances where information and/or documentation required by these rules is not available at the time of filing an application, an applicant may substitute a notarized affidavit by an officer of the applicant stating that the applicant will file such information and/or documentation with the commission at least ten business days prior to offering or providing any competitive retail electric service to a customer in this state. The affidavit shall be accompanied by an explanation as to why such information is not available for inclusion with the application.
- (D) All CRES providers shall include, in their certification application, the name, telephone number, and electronic mail address of a contact person who will respond to commission concerns pertaining to consumer complaints.

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:

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

4901:1-24-07 Motions.

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

4901:1-24-08 Protective orders.

- (A) An applicant may file financial statements, financial arrangements, and forecasted financial statements under seal. If these exhibits are filed under seal, they will be afforded protective treatment for a period of six years from the date of the certificate for which the information is being provided.
- (B) An applicant may file a motion for a protective order covering information not covered under paragraph (A) of this rule. If the motion is filed in conformance with

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rule 4901:1-24-07 of the Administrative Code, it shall be automatically approved on the thirty-first day after the date of filing and the information shall be afforded protective treatment for a period of six years from the date of the certificate for which the information is being provided, unless the commission or an attorney examiner appointed by the commission rules otherwise.

- (C) At the expiration of the six-year period provided for in paragraphs (A) and (B) of this rule, the information will be automatically released into the open record.
- (D) An applicant wishing to extend a protective order beyond the six-year time period provided for in paragraphs (A) and (B) of this rule must comply with paragraph (F) of rule 4901-1-24 of the Administrative Code.

4901:1-24-09 Certification renewal.

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

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.

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- (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.
- (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.

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

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

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

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effective date of such assignment, the effective date it will cease to provide service, and should identify the commission's toll-free number as well as the number through which hearing and speech impaired customers may contact the commission. That notice shall also provide instructions to the customers on how they may obtain replacement service(s).

- (4) The CRES provider shall also provide notice of its abandonment to its existing customers by separate message that is mailed or otherwise directly delivered to the customer or by notice on customer billing statements. Where the CRES provider is billing the customers, the CRES provider shall provide notice of its abandonment. Where the electric utility is providing billing, the CRES provider may negotiate with the electric utility to provide such notice of its abandonment on each billing statement rendered to existing customers. Abandonment notices shall begin at least ninety calendar days prior to the effective date of the abandonment and shall continue to provide such notice on all subsequent monthly billing statements until the service is abandoned.
- (5) If the commission does not act upon the application within ninety calendar days of the filing date, the application shall be deemed automatically approved on the ninety-first day after the official filing date.

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

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

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prohibitions against advertising, offering, or entering into contracts apply statewide unless otherwise ordered by the commission.

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

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

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

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

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(E) Reasons that the commission may suspend, rescind, or conditionally rescind a CRES provider's certificate include, but are not limited to:

- (1) A CRES provider's failure to timely pay any assessment made pursuant to sections 4905.10, 4911.18, or division (F) of section 4928.06 of the Revised Code.
- (2) A CRES provider's failure to timely file an annual report of its intrastate gross receipts and sales of kilowatt-hours of electricity pursuant to sections 4905.10, 4911.18, or division (F) of section 4928.06 of the Revised Code as directed by commission rule or order.
- (3) A finding by the commission that a CRES provider has materially underreported its intrastate gross receipts and/or sales of kilowatt-hours on reports required by rule 4901:1-24-07 of this chapter.
- (4) A finding by the commission that any information reported to the commission subsequent to granting a certificate adversely affects a CRES provider's fitness or capability to provide any service covered by its certificate.
- (5) A finding by the commission that a CRES provider deliberately omitted information or knowingly provided false information on a certification or certification renewal application, including supporting attachments.
- (6) A finding by the commission that a CRES provider has provided CRES to a customer without being certified by the commission to provide such service.
- (7) A finding by the commission that a CRES provider has violated any applicable commission rule or order adopted pursuant to Chapter 4928. of the Revised Code.
- (8) A finding by the commission that a CRES provider has failed to consent to the jurisdiction of the courts of this state or has failed to designate an agent to accept service of process pursuant to section 4928.09 of the Revised Code.
- (9) A finding by the commission that a CRES provider has engaged in an anticompetitive act.
- (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.

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- (11) A finding by the commission that a CRES provider has failed to comply with state laws or rules designed to protect consumers in this state or has otherwise engaged in any fraudulent, misleading, or unfair practice.

4901:1-24-14 Financial security.

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

4901:1-24-15 Regulatory assessments.

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

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

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

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

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

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio (PUCO)
	Attention: Angela Hawkins, Legal Director
	Phone: 614-466-0122 Fax: 614-728-8373
	Angela.hawkins@puc.state.oh.us
Regulation/Package Title:	Chapter 4901:1-21 / Competitive Retail Electric Service (CRES) Companies
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
Date:	December 18, 2013
Rule Type:	<input type="checkbox"/> New <input checked="" type="checkbox"/> 5-Year Review <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Rescinded <input checked="" type="checkbox"/> No Change

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Adm.Code Chapter 4901:1-21 governs the furnishing of competitive retail electric service to the public by any such companies subject to the Public Utilities Commission of

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Ohio's (PUCO) 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.

The proposed changes to this chapter include non-substantive amendments, addition of definitions to Ohio Adm.Code 4901:1-21-01, modifications of discount rates disclosures in Ohio Adm.Code 4901:1-21-02, requirements to follow local ordinances in Ohio Adm.Code 4901:1-21-05, modification of the procedures for customer enrollment in Ohio Adm.Code 4901:1-21-06, expansion of provisions to contracts with small commercial companies in Ohio Adm.Code 4901:1-21-11, modification of the contract disclosure provisions of Ohio Adm.Code 4901:1-21-12, and modification of the provisions relating to customer billing and payments contained within Ohio Adm.Code 4901:1-21-14 and 4901:1-21-18.

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

All of the proposed rules in Ohio Adm.Code Chapter 4901:1-21 will be adopted in accordance with the authority granted to the PUCO in R.C. 44905.04, 4905.22, 4928.06, 4928.08, 4928.10, 4928.20, 4928.53, and 4928.67.

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

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

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

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

Not applicable.

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

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

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

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

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. If applicable, please include the date and medium by which the stakeholders were initially contacted.

On July 2, 2012, in Case No. 12-1924-EL-ORD, the PUCO ordered a workshop be held for all interested parties to provide feedback on the existing rules on August 6, 2012. Copies of the entry scheduling the workshop were sent by US Mail and e-mail to (a) all regulated competitive retail electric service companies, (b) the office of the Ohio Consumers' Counsel (OCC), (c) the Ohio Partners for Affordable Energy (OPAE), (d) the regulated electric utility companies, and (e) any other interested persons of record. The workshop was held and broadcasted via webcast with multiple parties providing suggestions and input on the existing rules. Thirty-two individuals were in attendance at the August 6, 2012, workshop including representatives from Retail Energy Supply Association (RESA), Dayton Power and Light Company, Columbia Gas, American Coalition for Clean Coal Energy, Duke Energy Ohio, American Electric Power (AEP), FirstEnergy Ohio, FirstEnergy Solutions, Duke Energy Retail, Dominion East Ohio Gas, OPAE, OCC, Dominion Retail, and Direct Energy.

In addition to the workshop, the PUCO's existing rule review process will provide parties the opportunity to file written comments and reply comments on any proposed changes to the draft rules.

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

All companies were supportive of measures to make Ohio Adm.Code 4901:1-21 and 4901:1-29 (governing competitive retail natural gas service) more consistent with each other. The companies support a move from calendar day deadlines to business day deadlines throughout both sets of rules. The companies also support the implementation of 100 percent use of third-party verifications for enrollments in Ohio Adm.Code 4901:1-21-06. The companies were in support of stronger rules for door-to-door solicitations, and a separate rule section for these solicitations in Ohio Adm.Code 4901:1-21-05. Specifically, some of the companies suggested that the rules prohibit solicitations after dark, prohibit misleading of residents, and

require background checks on agents. Staff implemented these suggestions into the proposed rules to the extent possible.

Direct Energy suggested “loosening up” the contract renewal provisions in Ohio Adm.Code 4901:1-21-11. Additionally, Direct Energy suggested removal of the requirement of disclosure of kilowatt-hour rates in Ohio Adm.Code 4901:1-21-12. Staff is waiting for further comment on this recommendation before acting.

Duke Energy Ohio recommended increased notification of mass marketing campaigns by the suppliers. Staff is waiting for further comment on this recommendation before acting.

Dominion Retail suggested reconsideration of the environmental disclosure rules in Ohio Adm.Code 4901:1-21-09, so that the process could be paperless to the greatest extent possible. Staff is waiting for further comment on this recommendation before acting.

FirstEnergy Solutions commented that the process in Ohio Adm.Code 4901:1-21-06 requiring return of the customer’s signature in direct mail enrollments is unduly burdensome. FirstEnergy Solutions also suggested that the time frame in Ohio Adm.Code 4901:1-21-06 for responding to electronic enrollment be changed from three calendar days to five business days. FirstEnergy Solutions also requested changes be made to the contract renewal provisions in Ohio Adm.Code 4901:1-21-1 to make them less convoluted. Staff implemented the deadline changes recommended by FirstEnergy Solutions, but is waiting for further written comments on the other recommendations via the PUCO’s rule process before acting.

Dominion East Ohio suggested a limit be placed on the maximum number of rates any supplier could offer. Duke Energy supported this suggestion. Dominion further recommended modifying the definition of “eligible customer” in Ohio Adm.Code 4901:1-21-16 to utilize the date of customer enrollment with a supplier rather than the date an ordinance or resolution is passed in determining customer eligibility. Finally, Dominion suggested that the requirement in Ohio Adm.Code 4901:1-21-17 that the companies advise customers of their right to opt-off customer lists four times a year be changed to two times a year. The definition of eligible customer was deemed appropriate by staff, but the other suggestions were not acted upon pending further written comment.

RESA recommended a working definition of “small commercial” be included in Ohio Adm.Code 4901:1-21-01. RESA further recommended making the document retention schedules in Ohio Adm.Code 4901:1-21-11 more amenable to going paperless. Staff is amenable to these suggestions, but is waiting on further comment.

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AEP suggested that telephone enrollments under Ohio Adm.Code 4901:1-21-06 should be allowed only with the customer of record. Direct Energy responded by suggesting that, if that rule is to go into effect, the electric distribution utility should be required to disclose all information relating to the customer of record and authorized decision makers. The company also requested a definition of “generation service” be added to Ohio Adm.Code 4901:1-21-01. Further, the company requested improved customer information protections under Ohio Adm.Code 4901:1-21-10 so that a supplier would be required to announce itself on a three-way call with a customer. Finally, AEP recommended that identification be placed on aggregator opt-out envelopes in Ohio Adm.Code 4901:1-21-17. Staff is not opposed to these recommendations, but is waiting for further written comment from the shareholders.

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

No proposed rules in this chapter were based on scientific data.

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

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, the PUCO adopted rules that it considers best suited to meet these goals.

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

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

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 PUCO does not believe that performance-based regulation is appropriate for this chapter.

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

Ohio Adm.Code Chapter 4901:1-21 does not duplicate the rules of other state entities, as the jurisdiction for these companies falls squarely under the PUCO per Ohio Revised Code Title 49.

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

Upon completion of the rulemaking process, the rule changes made in Ohio Adm.Code Chapter 4901:1-21 will be attached to the PUCO's finding and order and served on all regulated competitive retail electric service companies, OCC, electric distribution utilities, and any other interested person of record.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

Ohio Adm.Code Chapter 4901:1-21 applies to all competitive retail electric service provider companies that are subject to Commission jurisdiction.

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

As this chapter prescribes the relationship between customers and the competitive retail electric service providers serving them, the primary identified business community is the competitive retail electric service providers. This chapter may impact the identified business community in that there is a time cost involved with compliance with these rules if the service providers need to reprogram their billing and/or training systems to reflect the proposed rule revisions. However, in light of the fact that the majority of the modifications to the rules clarify the rules contained within this chapter, and that the major substantive amendments reflect procedures already widely in use by the businesses, it is improbable that any service providers will need to significantly upgrade any programs or revise internal protocols. Additionally, while unlikely, there may be

nominal costs associated with disclosure requirements during the enrollment process. As a result of the continuation of these rules without substantive amendments that do not reflect procedures already widely in use, the nature of any adverse impact is minimized. Additionally, the substantive revisions allow for the Commission to more closely align its rules regarding the provision of competitive retail electric services with the rules regarding the provision of competitive retail natural gas services. This alignment will allow companies a means to more easily participate in both energy markets and will provide for a more consistent application of law that will minimize any regulatory burden and costs.

c. Quantify the expected adverse impact from the regulation.

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

The impact in terms of time will, in most instances, be minimal as competitive retail electric service providers already adhere to Ohio Adm.Code Chapter 4901:1-21 and the proposed revisions are unlikely to add any additional burdens on these businesses.

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

The PUCO 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

16. 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 PUCO may require specific actions.

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

The focus of PUCO 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 PUCO 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 PUCO would provide due process to the small company.

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

The PUCO staff routinely works with small regulated competitive retail electric service companies to assist such companies with Ohio Adm.Code Chapter 4901:1-21 compliance.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Angela Hawkins, Legal Director
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Regulation/Package Title: Chapter 4901:1-24 / Minimum Requirements for
Competitive Retail Electric Service (CRES) 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, and 4901:1-24-16

Date: December 18, 2013

Rule Type:

- | | |
|---|---|
| <input checked="" type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |
| | <input type="checkbox"/> No Change |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

- 1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.**

Ohio Adm.Code Chapter 4901:1-24 sets forth the requirements for any electric utility, electric services company, electric cooperative, or governmental aggregator that intends to offer or provide a competitive retail electric service (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 PUCO's authority to suspend, rescind, or conditionally rescind a certificate.

Staff renumbered the subsections within this Chapter in order to be consistent with the rules regarding competitive retail natural gas service certification contained in Ohio Adm.Code Chapter 4901:1-29. The proposed changes to Ohio Adm.Code Chapter 4901:1-24 include the addition of a rule to facilitate docketing administration when filing a certificate under Ohio Adm.Code 4901:1-24-04, rules regarding admissions pro hac vice in Ohio Adm.Code 4901:1-24-07, rules regarding protective orders in Ohio Adm.Code 4901:1-24-08, additional rules within Ohio Adm.Code 4901:1-24-09 regarding certification renewal paralleling the PUCO's authority in Ohio Adm.Code 4901:1-24-13 to suspend, rescind, or conditionally rescind a certificate, and addition of rules regarding assignment of a portion of a customer base to the list of material changes requiring PUCO notification. The suggested rules will increase the size of Ohio Adm.Code Chapter 4901:1-21 to sixteen rules.

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

All of the proposed rules contained in Ohio Adm.Code Chapter 4901:1-24 will be adopted in accordance with the authority granted to the PUCO in R.C. 4928.06, 4928.08, 4905.10 and 4911.18.

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

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

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

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

Not applicable.

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

The rules in this chapter establish the standards required by R.C. 4928.06 and 4928.08 for applicants to be certified as competitive retail electric service providers.

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

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

Development of the Regulation

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.***

On July 2, 2012, in Case No. 12-1924-EL-ORD, the PUCO ordered a workshop be held on August 6, 2012, in order for interested parties to provide feedback on the existing rules in Ohio Adm.Code Chapter 4901:1-24. Copies of the entry scheduling the workshop were sent by US Mail and e-mail to (a) all regulated competitive retail electric service companies, (b) the office of the Ohio Consumers' Counsel (OCC), (c) the Ohio Partners for Affordable Energy (OPAE), (d) the regulated electric utility companies, and (e) any other interested persons of record. The workshop was held and broadcasted via webcast with multiple parties providing suggestions and input on the existing rules. Thirty-two individuals were in attendance at the August 6, 2012, workshop including representatives from Retail Energy Supply Association (RESA), Dayton Power and Light, Columbia Gas, American Coalition for Clean Coal Energy, Duke Energy Ohio, American Electric Power, FirstEnergy Ohio, FirstEnergy Solutions, Duke Energy Retail, Dominion East Ohio Gas, OPAE, OCC, Dominion Retail, and Direct Energy.

In addition to the workshop, the PUCO's existing rule review process will provide parties the opportunity to file written comments and reply comments on any proposed changes to the draft rules.

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

The stakeholders contributing to the workshop discussion were all in support of staff's proposal to make the certification processes uniform for both the competitive retail electric service industry and competitive retail natural gas service industry to the extent possible. Dominion East Ohio Gas requested that Ohio Adm.Code 4901:1-24-12 be amended to require the PUCO to provide notice to incumbent utilities when the PUCO suspends, rescinds, or conditionally rescinds a certificate under this Chapter. Dominion also suggested that the PUCO limit the number of certificates under Ohio Adm.Code 4901:1-24-06 to one participant or affiliate per company. Direct Energy opposed this suggestion by Dominion, responding that companies have legitimate business reasons to request multiple certificates under Ohio Adm.Code 4901:1-24-06. *(NOTE: The numbers listed identify the provisions in the current rules where changes were suggested. The chapters were renumbered in the drafting or the proposed rules.)*

The Attorney Examiners present at the workshop made clear that the workshop was in addition to, and not a substitute for, the PUCO's established rule review process.

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

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

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

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

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

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

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

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

The certification of competitive retail electric service providers under Ohio Adm.Code Chapter 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.

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

Upon completion of the rulemaking process, the rule changes made in Ohio Adm.Code Chapter 4901:1-24 will be attached to the PUCO's finding and order and served on all regulated competitive retail electric service companies, OCC, electric distribution utilities, and any other interested person of record.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

Ohio Adm.Code Chapter 4901:1-24 establishes minimum managerial, technical, and financial standards for competitive retail electric service providers that are subject to Commission jurisdiction.

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

This chapter prescribes the certification requirements for competitive retail electric service providers and governmental aggregators to do business. The identified business community is the competitive retail electric service providers. There is no application fee associated with this chapter. This chapter may impact the identified business community in that there is a time cost involved in compliance with these rules in completing the certification application if the service provider is a first time applicant, in renewing a certificate, and/or in training to reflect the proposed rule

revisions. However, in light of the fact that the majority of modifications clarify the rules contained within this chapter and that the major substantive amendments reflect procedures already widely in use by the businesses, it is improbable that any service providers will need to significantly upgrade any programs or revise internal protocols. As a result of the continuation of these rules without substantive amendments that do not reflect procedures already widely in use, the nature of any adverse impact is minimalized. Additionally, the substantive revisions allow for the Commission to more closely align its rules regarding the provision of competitive retail natural gas services with the rules regarding the provision of competitive retail electric services. This alignment not only will allow a means for companies to more easily participate in both energy markets, but also will provide for a more consistent application of law that will minimize any regulatory burden and costs.

c. Quantify the expected adverse impact from the regulation.

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

Ohio Adm.Code Chapter 4901:1-24 has been in effect since 2000 and reflects the requirements of R.C. 4928.06. The impact in terms of time will, in more instances, be minimal, as competitive retail electric service providers already adhere to Ohio Adm.Code Chapter 4901:1-24, and the proposed revisions are unlikely to add any additional burdens on businesses.

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

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

Regulatory Flexibility

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

No. Ohio Adm.Code Chapter 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.

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

The focus of Ohio Adm.Code Chapter 4901:1-24 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 PUCO after notice and hearing. The PUCO 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 PUCO would provide due process to the small company.

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

The PUCO staff routinely works with small regulated competitive retail electric service companies to assist such companies with Ohio Adm.Code Chapter 4901:1-24 compliance.