

**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Commission's</b>	<b>)</b>	<b>Case Nos.</b>	<b>17-1843-EL-ORD</b>
<b>Review of Ohio Adm.Code Chapters</b>	<b>)</b>		<b>17-1844-EL-ORD</b>
<b>4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27,</b>	<b>)</b>		<b>17-1862-EL-ORD</b>
<b>4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31,</b>	<b>)</b>		<b>17-1845-GA-ORD</b>
<b>4901:1-32, 4901:1-33, and 4901:1-34</b>	<b>)</b>		<b>17-1846-GA-ORD</b>
<b>regarding Rules Governing Competitive</b>	<b>)</b>		<b>17-1847-GA-ORD</b>
<b>Retail Electric Service and Competitive</b>	<b>)</b>		<b>17-1848-GA-ORD</b>
<b>Retail Natural Gas Service.</b>	<b>)</b>		<b>17-1849-GA-ORD</b>
			<b>17-1850-GA-ORD</b>
			<b>17-1851-GA-ORD</b>
			<b>17-1852-GA-ORD</b>

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**INITIAL COMMENTS**  
**OF**  
**THE RETAIL ENERGY SUPPLY ASSOCIATION**

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**October 8, 2021**

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## **I. INTRODUCTION**

The Retail Energy Supply Association (“RESA”)<sup>1</sup> files the following initial comments on the existing rules in Ohio Administrative Code Chapters 4901:1-21, 4901:1-24, 4901:1-27, 4901:1-28, and 4901:1-29. RESA proposes limited revisions, and seeks important clarifications for suppliers and their customers in Ohio. First, RESA supports the revisions proposed in the August 3, 2021 Entry in these proceedings because they incorporate earlier rulings of the Public Utilities Commission of Ohio (“Commission”) that provide greater flexibility in the certification process. Second, the proposal does not address enrollment-related flexibility previously allowed by the Commission in a series of decisions. RESA, therefore, recommends that the Commission continue to allow that flexibility through its decision and/or revisions to the rules. In addition to being practical, beneficial and desired by customers, continuing the current flexibility for enrolling and verifying enrollments will promote effective competition and other policies of the State of Ohio in Ohio Revised Code Sections (“R.C.”) 4928.02 and 4929.02.

Third, RESA suggests targeted changes to improve consistency between the competitive retail electric service (“CRES”) and competitive retail natural gas service (“CRNGS”) rules that will continue the Commission’s and Staff’s previous efforts. Fourth, RESA proposes a change in the CRES and CRNGS rules that has been explored by the Electronic Data Interface (“EDI”) Working Group and would allow, during the rescission period, a supplier to initiate cancellation of an enrollment through existing systems (and not limit those cancellations to customer calls to the utility’s call centers). Fifth, RESA proposes practical and lawful changes for the definitions for

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<sup>1</sup> The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

“small commercial customer” in the CRES rules, and for “governmental aggregation program” in the CRES and CRNGS rules. Finally, RESA recommends a small revision to the letter of authority (“LOA”) requirements in the CRES and CRNGS rules, again to implement more consistency and correspond with another recent Commission decision.

## **II. BACKGROUND**

The Commission opened these dockets in 2017 to review the CRES and CRNGS rules under the typical five-year review. RESA participated in the Commission’s workshop in October 2017, providing a number of suggestions to the Staff. In 2019, the General Assembly passed R.C. 121.95(F), which states:

Beginning on the effective date of this section and ending on June 30, 2023, a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions. The state agency may not satisfy this section by merging two or more existing regulatory restrictions into a single surviving regulatory restriction.

R.C. 121.95 took effect on October 17, 2019.

The Commission is subject to this requirement per R.C. 121.95(A). As explained in R.C. 121.95(B), rules that require or prohibit an action are “regulatory restrictions.” Rules that include the words “shall,” “must,” “require,” “shall not,” “may not,” and “prohibit” are considered to contain regulatory restrictions. A plain reading of the statute indicates that in addition to the words listed above, which are already presumed to be regulatory restrictions if they appear in a rule, rules that require or prohibit an action are also “regulatory restrictions.”

RESA has taken into consideration the above regulatory restriction requirements and prepared a targeted and limited number of recommendations below. RESA believes that its recommended revisions can be implemented by the Commission in compliance with R.C. 121.95.

### **III. COMMENTS**

#### **A. Recommendations for the Certification Rules: The Commission should adopt the proposed revisions to Chapters 4901:1-24 and 4901:1-27.**

Chapters 4901:1-24 and 4901:1-27 contain the rules for applications for and renewals of certificates to provide competitive energy services. The Commission previously waived several rules and expanded the scope of some provisions through an Entry issued on its own initiative. *In the Matter of the Commission's Consideration of a New Electronic Certification Processing System for Providers of Competitive Retail Electric Service and Competitive Retail Natural Gas Service and the Waiver of Applicable Procedural Rules Contained in Ohio Adm.Code Chapters 4901:1-24 and 4901:1-27*, Case No. 20-1077-GE-WVR, Entry (June 3, 2020). RESA is not aware of any issues raised by the changes effected by the Entry, and the changes have proved to be improvements over the existing rules.

In these proceedings, the Commission proposes to codify those revisions in Chapters 4901:1-24 and 4901:1-27. RESA supports those changes and encourages the Commission to adopt them.

#### **B. Recommendations for Existing Waivers: The Commission should clarify and continue them.**

##### **1. Inbound calls involving natural gas enrollments: The Commission should continue to allow natural gas enrollments from inbound customer calls to suppliers to be completed without requiring a third-party verification.**

The CRNGS rules require suppliers to successfully conduct an audio third-party verification ("TPV") in order to complete an enrollment of a customer who was solicited telephonically, in addition to recording the sales portion of the call with the customer. *See* Rule

4901:1-29-06(E)(1).<sup>2</sup> In 2018, the Commission waived the TPV requirement when the telephonic CRNGS enrollment was the result of the customer calling in to the supplier. *In the Matter of the Joint Application of Direct Energy Services, LLC, Direct Energy Business, LLC, Dominion Energy Solutions, Inc., Interstate Gas Supply, Inc., and Southstar Energy Services, LLC for a Waiver of a Provision of Rule 4901:1-29-06(E)(1) of the Ohio Administrative Code*, Case No. 17-2358-GA-WVR, Entry (November 14, 2018). The Commission concluded that there was good cause to waive the TPV requirement for inbound calls and granted it “until the Commission issues an order addressing the TPV requirement for telephonic enrollment in the pending five-year rule review in Case No. 17-1847-GA-ORD.”<sup>3</sup> *Id.* at ¶ 18. The Commission extended the waiver to all competitive retail natural gas service (“CRNGS”) suppliers in May 2019. *Id.*, Second Entry on Rehearing at ¶ 19 (May 22, 2019).

In these proceedings, the Commission’s proposes no changes to Rule 4901:1-29-06(E)(1) and the August Entry issuing the rules for comment did not address the intent with respect to the current waiver. It is, therefore, unclear whether the Commission intends its adoption of Rule 4901:1-29-06 (which could include other changes) to have the effect of terminating the long-standing TPV waiver for natural gas enrollments resulting from inbound calls from customers.

RESA urges the Commission to not reinstitute a dual recording process for enrolling customers telephonically on a natural gas product when the call is initiated on an inbound basis by the customer. RESA is not aware of any issues that have resulted since the waiver took effect in November 2018, nor any other reason or evidence upon which to base a reversion to a dual

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<sup>2</sup> There is no similar requirement under the CRES rules. *See* Rule 4901:1-21-06(D)(2), which states “[t]o 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....”

<sup>3</sup> Under the waiver, the Commission’s other requirements remained in place. Transfer of a call by a telemarketer to a call center representative after a prospective customer expressed interest in an offer is not an “inbound call” under the waiver. *Id.* at ¶ 17.

recording process for CRNGS enrollments prompted by inbound customer calls to the supplier.

As such, RESA recommends Rule 4901:1-29-06(E)(1) be revised as follows:

To enroll a customer telephonically, a retail natural gas supplier or governmental aggregator shall make **(a)** a date- and time-stamped audio recording of the sales portion of the call, if the customer is enrolled, and **(b)** before the completion of the enrollment process, **except when the enrollment results from an inbound call from the customer,** a date- and time-stamped audio recording by an independent third-party verifier that verifies, at a minimum, the following....

Alternatively, the Commission could expressly include in its decision in these proceedings an indefinite extension of the waiver in place today. This latter approach is less ideal because the text of the rule would not reflect the Commission's requirements.

**2. The Commission should continue to allow enrollments to be completed through use of advanced technology.**

The CRNGS and CRES rules require suppliers to enroll customers through certain specific methods – via mail/facsimile, in person, telephonically or through the internet – and to use an audio TPV in order to complete an enrollment of a customer who was solicited door-to-door. *See* Rules 4901:1-21-06 and 4901:1-29-06. In 2019, the Commission waived several requirements in those rules, allowing some suppliers the flexibility to also use advanced technologies in the enrollment process:

- Allowed use of a combination of telephonic and electronic steps for the TPV process for door-to-door enrollments. *In the Matter of the Application of AEP Energy, Inc. for a Partial Waiver of Ohio Adm. Code 4901:1-29-06 and 4901:1-21-06*, Case Nos. 18-371-EL-WVR and 18-372-GA-WVR, Entry (July 17, 2019). The Commission decided the waiver would be “granted only until the Commission issues an order addressing the TPV requirements in the pending five-year rule review in Case No[s]. 17-1843-EL-ORD and 17-1847-GA-ORD.” *Id.*, Entry at ¶ 14.
- Allowed use of a digital verification process for door-to-door enrollments. *In the Matter of the Application of Direct Energy Business, LLC and Direct Energy Services, LLC for Waivers of Certain Provisions of Ohio Adm. Code 4901:1-21 and 4901:1-29, to Permit Third-Party Verification by Digital Confirmation*, Case No. 18-382-GE-WVR, Entry (September 26, 2019) and

Entry on Rehearing (November 21, 2019). The Commission decided the waiver would be “granted only until the Commission issues an order addressing enrollment requirements in the pending five-year rule review in Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD.” *Id.*, Entry at ¶ 16.

- Allow use of digital chats to enroll customers. *In the Matter of the Joint Application of Constellation NewEnergy, Inc., and Constellation NewEnergy-Gas Division, LLC for Waivers of Ohio Adm.Code 4901:1-21-06(C) and 4901:1-29-06(B)*, Case No. 18-604-GE-WVR, Entry (September 26, 2019). The Commission decided the waivers would be “granted only until the Commission issues an order addressing the enrollment and TPV requirements in the pending five-year rule review in Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD.” *Id.*, Entry at ¶ 15.

In these proceedings, the Commission proposes no changes to the suppliers’ enrollment and TPV requirements in Rule 4901:1-21-06 and 4901:1-29-06, and the August Entry issuing the rules for comment did not address the intent with respect to these waivers. It is, therefore, unclear whether the Commission intends its decision on Rules 4901:1-21-06 and 4901:1-29-06 (which could include other changes) to have the effect of terminating the flexibility to use advanced technologies and non-audio verification processes.

RESA urges the Commission to not terminate the chat enrollment option and to not mandate an audio-only process for conducting TPVs with customers who seek to enroll following a door-to-door solicitation. Customers like the alternative processes that have been permitted and, as the Commission found previously, flexibility can be more convenient for consumers and enhance the ability for consumers to choose suppliers. *Direct Energy, supra*, Entry on Rehearing at ¶ 9.

RESA is not aware of any issues that have resulted with the use of these other technologies, nor any other reason or evidence upon which to eliminate the chat enrollment process or mandate audio-only verifications. The Commission can incorporate the flexibility in its rules. Alternatively, the Commission could expressly include in its decision in these proceedings an indefinite extension of these waivers in place today.

**C. Recommendations for Greater Consistency: The Commission should continue to improve consistency among the rules.**

**1. Computation of time for rescission: The Commission should adopt a uniform period for rescission rights for natural gas and electric supply contracts.**

The CRES and CRNGS rules provide for a limited right of rescission. The electric rescission rules provide that a customer may elect to rescind in seven calendar days. The gas rescission rules, however, provide that a customer may elect to rescind in seven business days. Compare, e.g., Rules 4901:1-21-06(D)(1)(e) and 4901:1-29-06(D)(5). There is no statutory basis for the difference.

While there is no statutory basis for the difference, the difference inserts unnecessary complexity into the rules for the same kinds of transactions. RESA is not aware of any practical reason for using calendar days for one kind of transaction and business days for the other.

Additionally, the difference creates a potentially confusing situation for those customers that contract for both gas and electric service and then elect to rescind that contract. Under this circumstance, the customer's rescission rights vary based on the product. This difference in the time allotted for a rescission also comes with the cost of monitoring two separate rescission dates.

The use of business days in Ohio law is not the norm. In Ohio statutes, the use of business days to designate a time in which to take an action appears only 25 times, and only a handful of those instances are for periods exceeding five days. Moreover, Ohio law typically provides that a period to act is measured in calendar days. R.C. 1.14 and 1.45.<sup>4</sup>

Thus, it makes sense to amend the gas rules to provide for a seven-calendar day right of rescission. There is nothing to suggest that customers would be adversely affected by the change,

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<sup>4</sup> The Commission's own rules regarding computation of time take a similar approach. See Rule 4901:1-07(A) (calendar days).



and it would reduce unnecessary complexity, particularly for those suppliers that market both gas and electric products.

The CRNGS rules with the recommended changes are set out below:

**Rule 4901:1-29-06<sup>5</sup>**

(D) Mailings, facsimiles, and direct enrollment

\* \* \*

- (5) Where enrollment occurs by direct solicitation, customers shall be advised both verbally and in the contract that:
  - (a) The incumbent natural gas company will be sending a confirmation notice of the transfer of service.
  - (b) The customer is allowed a seven-~~business~~calendar-day period from the confirmation notice postmark date to rescind the enrollment.

\* \* \*

(E) Telephonic enrollment

\* \* \*

- (1)(h) Customers are advised both verbally and in the contract of all of the following:
  - (i) The incumbent natural gas company will be sending a confirmation notice of the transfer of service.
  - (ii) The customer is allowed a seven-~~business~~calendar-day period from the confirmation notice postmark date to rescind the enrollment.

\* \* \*(F) Internet enrollment

\* \* \*

- (2) The internet enrollment website shall, at a minimum, include:

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<sup>5</sup> The reference to a seven-business-day rescission period in Rule 4901:1-29-06(H) is already proposed to be eliminated in the Staff proposal and, therefore, RESA has not included a redline to the language in Rule 4901:1-29-06 here.

\* \* \*

- (b) A statement advising customers both at the website and in the contract that:

\* \* \*

- (ii) The customer is allowed a seven-~~business~~calendar-day period from the confirmation notice postmark date to rescind the enrollment.

### **Rule 4901:1-29-11**

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

\* \* \*

- (E) The seven-~~business~~calendar-day period during which a customer has to rescind such contract without penalty and the methods for customers to make such rescission by contacting the incumbent natural gas company (orally or in writing).

### **2. TPV questions: The Commission should adopt a uniform set of questions for verification of enrollments.**

As noted earlier, suppliers are required to conduct TPVs under certain circumstances. *See* Rules 4901:1-21-06(D)(1)(h) and 4091:1-29-06(D)(6)(b), both of which require items referenced in other rules. The lists of required questions to be asked during the supplier TPV process, however, are not consistent. For example, the CRNGS rules require the customer's acceptance of the principal terms and conditions of the contract, while the CRES rules does not. Compare Rules 4901:1-29-06(D)(6)(b) which requires the list in (E)(1)(f) and 4901:1-21-06(D)(1)(h), which omits the list in (D)(2)(a)(iv). Another example is the CRNGS requirement that the customer provide the utility account number, but the CRES rule is less definitive because the customer has to provide

the utility account number, *if applicable*. Compare Rules 4901:1-29-06(D)(6)(b) which requires (E)(1)(j) and 4901:1-21-06(D)(1)(h) which requires (D)(2)(a)(vi)(i). A final example is different wording regarding customer consent – the CRNGS rules require a statement and customer acknowledgement that the customer *has given consent* to enroll, which reflects that the customer previously consented. The CRES rules, however, require a statement and customer acknowledgement that the customer wishes to enroll, which reflect a current desire to enroll. Compare Rules 4901:1-29-06(D)(6)(b) which requires (E)(1)(d) and 4901:1-21-06(D)(1)(h) which requires (D)(2)(a)(iv). The inconsistencies cause unnecessary confusion. The inconsistencies also complicate the TPVs more than necessary. The Commission should make the TPV questions consistent for natural gas and electric enrollment verifications.

**D. Recommendation for the Ability to Submit Enrollment Cancellations: The Commission should adopt a provision to address a supplier’s determination that a customer enrollment should not be effected**

There are occasions when a customer completes the contract process but then contacts the supplier rather than the distribution utility seeking to rescind. Under these circumstances, it makes little sense to redirect the customer. Current rules, however, require the customer to contact the electric or gas distribution utility. To simplify the process, the supplier should be permitted to notify the utility to initiate the customer’s decision to rescind her enrollment.<sup>6</sup> To accomplish this result, Rules 4901:1-21-11 and 4901:1-29-06 should be amended to include new provisions set out below.<sup>7</sup>

**Rule 4901:1-21-11**

**(J) Following a customer enrollment, if the customer provides a notice of rescission to the CRES provider prior to the end of the rescission**

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<sup>6</sup> Provisions to allow this process are in discussion with the EDI Working Group.

<sup>7</sup> Provisions addressing the rescission process also appear in the electric and natural gas utility service rules. The Commission should consider a revision to Rules 4901:1-10-29(F)(1) and 4901:1-13-14(F)(3) so that these rules are consistent with the changes proposed to Rules 4901:1-21-11 and 4901:1-29-06.

**period, the CRES provider may notify the distribution utility of the rescission.**

**Rule 4901:1-29-06**

**(M) Following a customer enrollment, if the customer provides a notice of rescission to the natural gas supplier or governmental aggregator prior to the end of the rescission period, the natural gas supplier or governmental aggregator may notify the incumbent natural gas company of the rescission. Upon notification of the rescission, the incumbent natural gas company shall comply with division (I) of this rule.**

**E. Recommendation for the CRES Definition of “Small Commercial Customer”: The Commission should revise the definition of small commercial customer in Rule 4901:1-21-01(JJ)<sup>8</sup>**

Under the electric and gas marketing rules, the Commission imposes additional responsibilities on suppliers if a customer is defined as a small commercial customer. For both sets of rules, a small commercial customer is defined as one that is not a mercantile customer. *See* Rule 4901:1-21-01(JJ) and 4901:1-29-01(AA). In the case of electric service, a small commercial customer is a nonresidential customer that uses less than seven hundred thousand kilowatt hours per year or is not part of a national account involving multiple facilities in one or more states<sup>9</sup> In the case of gas service, a small commercial gas customer is a nonresidential customer that consumes less than five hundred thousand cubic feet of natural gas per year at a single location within this state or consumes natural gas, other than for residential use, or does not consume natural

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<sup>8</sup> The use of the term “small commercial customer” appears in other electric chapters of the rules, including Chapter 4901:1-24. However, the term does not appear to have any operative effect.

<sup>9</sup> Under R.C. 4928.01(A)(19), a mercantile customer is a mercantile customer is a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states.

gas as part of an undertaking having more than three locations within or outside of this state.<sup>10</sup> Customers in these classes are both large users of gas, electricity, or both and deemed sophisticated. Customers below the usage thresholds of mercantile customers, in turn, are treated as unsophisticated purchasers by Commission rules. Because the level of usage is so high, particularly for electric customers, the definitions unnecessarily treat as unsophisticated a large range of customers.

As a practical matter, there is no need for the Commission to set the thresholds so high. There is no evidence to suggest that these sophisticated buyers need the additional protections that apply to transactions between them and energy suppliers. Further, the threshold for electric customers, as measured as a multiple of an average residential customer's consumption, is substantially higher than the gas threshold.<sup>11</sup>

The current definition of small commercial customer for electricity also creates contracting issues that are detrimental to buyers and sellers. For example, a buyer with an annual usage of 500,000 KWh a year that is approached through a direct solicitation would be subject to seven-day rescission requirements. Rule 4901:1-21-06(D)(1)(e). Despite the large commitment that the supplier would be making, it could not prudently begin to secure resources to support that contract in the wholesale markets until the rescission period ended. Because wholesale prices change daily,

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<sup>10</sup> Under R.C. 4929.01(L)(1), a mercantile customer is a customer that consumes, other than for residential use, more than five hundred thousand cubic feet of natural gas per year at a single location within this state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside of this state.

<sup>11</sup> The threshold of 700,000 KWh annually for small commercial electric customers is approximately 77 times higher than an average residential customer's consumption assuming average annual residential consumption of 9,000 kWh annually. The threshold of 500,000 cubic feet or 500 Mcf for small commercial gas customers is approximately 4.2 times higher than an average residential customer's consumption assuming average annual residential consumption of 120 Mcf. See <https://puco.ohio.gov/static/industry-information/statistical-reports/ohio-utility-rate-survey/2015+and+earlier/2014+URS.pdf>.

this delay could lead to pricing issues that would undermine the bargain, thus setting up barriers and complications that are unwarranted.

In drawing an appropriate line, the Commission should consider a reasonable multiple of residential usage to establish a threshold for the definition of a small commercial electric customer. In rate studies, the Commission has assumed residential monthly electric usage of 750 KWh. *See* <https://puco.ohio.gov/static/industry-information/statistical-reports/ohio-utility-rate-survey/2015+and+earlier/2014+URS.pdf> (viewed Oct. 3, 2021). If the Commission multiplied the assumed residential monthly electricity consumption level by five to recognize differences in usage patterns, the Commission could establish a reasonable threshold of 3750 KWh a month or 45,000 kWh annually as the benchmark for a small electric customer. This multiple of the average residential customer usage would more closely align with current threshold for small commercial gas customers, which is still relatively high and encompasses more sophisticated commercial natural gas users.

The following alternative is offered as a model:

**Rule 4901:1-21-01(JJ)**

**“Small commercial customer” means a commercial customer that consumes 45,000 KWh or less annually at a single or multiple locations ~~is not a mercantile commercial customer.~~**

**F. Recommendation for the Definition of “Governmental Aggregation”: The Commission should revise the definitions to not limit a governmental aggregation program’s term.**

The Commission’s rules limit the time period for governmental aggregation programs. In Rule 4901:1-28-01(E), the Commission defines a natural gas governmental aggregation program as “the aggregation program established by the governmental aggregator with a fixed aggregation term, which shall be a period of not less than one year and no more than two years.” Similarly, in

Rule 4901:1-21-01(U), the Commission defines an electric governmental aggregation program as “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.” The authorizing statutes, however, do not cap the period of time for governmental aggregation programs. *See* R.C. 4928.20, 4929.26 and 4929.27. The authorizing statutes do establish the opportunity for aggregation participants to opt out of the aggregation. *See* R.C. 4928.20(D), 4929.26(D) and 4929.27. That language, however, does not authorize the Commission to cap the time period for aggregation programs.

The Commission can only exercise that authority which has been specifically delegated to it by the General Assembly. *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St.3d 87, citing *Columbus S. Power Co. v. Pub. Util. Comm.* (1993), 67 Ohio St.3d 535, 620 N.E.2d 835; *Pike Natural Gas Co. v. Pub. Util. Comm.* (1981), 68 Ohio St.2d 181, 22 O.O.3d 410, 429 N.E.2d 444; *Consumers’ Counsel v. Pub. Util. Comm.* (1981), 67 Ohio St.2d 152, 21 O.O.3d 96, 423 N.E.2d 820; and *Dayton Communications Corp. v. Pub. Util. Comm.* (1980), 64 Ohio St.2d 302, 18 O.O.3d 478, 414 N.E.2d 1051. A review of the above-referenced statutes makes clear that the definitions of governmental aggregation programs go further than the statutory authority, substituting the Commission’s opinion as to the time period for an aggregation program. The governmental authority – not the Commission – can and should decide the time period for themselves. Accordingly, the Commission should revise its rules as follows:

**Rule 4901:1-28-01(E)**

“Governmental aggregation program” means the aggregation program established by the governmental aggregator with a fixed aggregation term; ~~which shall be a period of not less than one year and no more than two years.~~

**Rule 4901:1-21-01(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.~~

**G. Recommendation for the Letters of Authority: The Commission should revise the required format to be consistent with another recent revision.**

Earlier this year, the Commission revised the LOA requirements for the gas and natural gas companies in Rule 4901:1-13-12(D)(3). *In the Matter of the Commission’s Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code*, Case No. 19-1429-GA-ORD, Finding and Order at ¶ 108 and Attachment A page 36-37 (February 24, 2021). Now, that rule requires the gas and natural gas companies to use an LOA consent form that is either on a separate piece of paper or in separate electronic format and that is at least 14-point type “as described in this rule.” The specific revisions to the rule previously approved by the Commission are as follows:

The consent form shall be on a separate piece of paper **or separate electronic format** 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~~ **fourteen-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 gas or natural gas company) to release the information set forth above. By my signature, I freely give (name of the gas or natural gas company) permission to release the information designated above." The information that the gas or natural gas company 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.

*Id.* Those changes took effect on August 5, 2021.

The CRES and CRNGS rules contain provisions regarding the handling of customer-specific information, including requirements associated with the format for the LOA customer consent form that had matched the LDC rule prior to these recent changes. *See* Rules 4901:1-



21(E) and 4901:1-29-09(A). Now, however, there is a mismatch. The Commission should revise the CRES and CRNGS rules to allow greater flexibility on the type size, and to put into place consistency the Commission had in place before. There is no rational reason that the format for customer consents forms must vary or that the Commission rules must require them to be different.

Accordingly, RESA proposes the following revisions to the supplier rules:

**Rule 4901:1-21-10(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~~ fourteen-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.”

**Rule 4901:1-29-09(A) A retail natural gas supplier or governmental aggregator (and/or its agent) shall:**

- (1) Not disclose or use a customer’s account number or any customer information for any purpose other than for operation, maintenance, assignment, and transfer of a customer’s account, or for performing collection and credit reporting activities, and not disclose or use a customer’s social security number for any purpose other than to perform a credit check, without the customer’s express written or electronic authorization on a release form or pursuant to a court or commission order.

Forms requiring a customer to circle or to check off preprinted types of information to be released may not be used. The release form shall:

- (a) Be on a separate piece of paper.
- (b) Be clearly identified on its face as a release of personal information and all text shall be in at least ~~sixteen-point~~ **fourteen-point** type.
- (c) Contain the following statements prominently, just prior to the signature, in type larger and darker than the type in surrounding sentences: "I realize that, under the rules and regulations of the public utilities commission of Ohio, I may refuse to allow (name of the retail natural gas supplier or governmental aggregator) to release the information set forth above. By my signature, I freely give (name of the retail natural gas supplier or governmental aggregator) permission to release the information designated above."
- (d) Specify the information to be released.

#### IV. CONCLUSION

RESA appreciates the opportunity to provide these comments. For the reasons set forth above, RESA recommends that the Commission adopt a number of clarifications and revisions to the rules that will improve the CRES and CRNGS rules, while also fitting within Ohio's requirements for regulatory restrictions.

Respectfully Submitted,

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### **CERTIFICATE OF SERVICE**

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Summary: Comments Initial Comments of The Retail Energy Supply Association electronically filed by Frank P. Darr on behalf of Retail Energy Supply Association