

4901:1-24

Certification of Competitive Retail Electric Service Providers

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4901:1-24-01 **Definitions.**

As used in this chapter:

- (A) "Abandonment" means ceasing to provide competitive retail electric service(s) to one or more classes of customers in one or more electric distribution service territories prior to the expiration of customers' contracts.
- (B) "Aggregation" means combining the electric load of multiple retail customers through an agreement with the customers or formation of a governmental aggregation pursuant to section 4928.20 of the Revised Code for the purposes of purchasing retail electric generation service on an aggregated basis.
- (C) "Aggregator" means a person, certified by the commission, who contracts with customers to combine the customers' electric load for the purpose of purchasing retail electric generation service on an aggregated basis. The term, as used in this chapter, does not include a governmental aggregator.
- (D) "Applicant" means a person who files an application for certification or certification renewal under this chapter.
- (E) "Application form" means a form, approved by the commission, that an applicant seeking certification or certification renewal as a competitive retail electric service provider shall file with the commission as set forth in this chapter.
- (F) "Billing and collection agent" ~~has~~shall have the meaning set forth in division (A)(2) of section 4928.01 of the Revised Code.

- (G) "Certified territory" ~~has~~shall have the meaning set forth in division (A)(3) of section 4928.01 of the Revised Code.
- (H) "Competitive retail electric service" (CRES) has the meaning set forth in division (A)(4) of section 4928.01 of the Revised Code, and includes the services provided by retail electric generation providers, power marketers, power brokers, aggregators, and governmental aggregators.
- (I) "Commission" means the public utilities commission of Ohio.
- (J) "CRES provider" means a person or entity, under certification by the commission who supplies or offers to supply a CRES.
- (K) "Electric cooperative" ~~has~~shall have the meaning set forth in division (A)(5) of section 4928.01 of the Revised Code.
- (L) "Electric distribution utility" (EDU) ~~has~~shall have the meaning set forth in division (A)(6) of section 4928.01 of the Revised Code.
- (M) "Electric services company" ~~has~~shall have the meaning set forth in division (A)(9) of section 4928.01 of the Revised Code.
- (N) "Electric utility" ~~has~~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" ~~has~~shall have the meaning set forth in division (A)(13) of section 4928.01 of the Revised Code.
- (Q) "Mercantile ~~commercial~~-customer" ~~has the meaning set forth in division (A)(19) of section 4928.01 of the Revised Code~~means 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.
- (R) "Person" has the meaning set forth in section 1.59 of the Revised Code.
- (S) "Power broker" means a person, certified by the commission, who provides power brokerage.
- (T) "Power brokerage" means assuming the contractual and legal responsibility for the sale and/or arrangement for the supply of retail electric generation service to a retail customer in this state without taking title to the electric power supplied.

- (U) "Power marketer" means a person, certified by the commission, who provides power marketing services.
- (V) "Power marketing" means assuming the contractual and legal responsibility for the sale and provision of retail electric generation service to a retail customer in this state and having title to electric power provided at some point during the transaction.
- (W) "Retail electric generation provider" means a person, certified by the commission, who provides retail electric generation service in this state.
- (X) "Retail electric generation service" means the provision of electric power to a retail customer in this state through facilities provided by an electric distribution utility and/or a transmission entity in this state. The term encompasses the services performed by retail electric generation providers, power marketers, and power brokers, but does not encompass the service provided by an ~~EDU~~ [electric utility](#) pursuant to section 4928.14 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., e.g.~~ transmission service, ancillary services, scheduling coordination, and distribution service).
- (Z) "Small commercial customer" means a commercial customer that is not a mercantile ~~commercial~~ 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 ~~CRES~~ [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 nonCRES through transmission or distribution facilities it ~~solely~~ [solely](#) or jointly owns or operates is not required to obtain a certificate.
- (C) Nothing contained in this chapter shall in any way preclude the commission from altering, amending, or waiving, in whole or in part, any of these rules.
- (D) These rules do not apply to a billing and collection agent if it is a fully independent agent, not affiliated with or otherwise controlled by an electric utility, electric services company, electric

cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent that the agent is under contract with such utility, company, cooperative, or aggregator solely to provide billing and collection for retail electric service on behalf of the utility, company, cooperative, or aggregator. Nothing in this rule exempts such utility, company, cooperative, or aggregator from liability for the acts of its billing and collection agents.

4901:1-24-03 **General prohibitions.**

- (A) No person shall offer, contract, or provide a ~~CRES~~ 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) A CRES provider shall not contract with a residential customer for the provision of a CRES prior to being certified.~~

4901:1-24-04 **Application process.**

- (A) An application for certification shall be made on forms supplied by the commission. The application forms shall provide for sufficient information to enable the commission to assess an applicant's managerial, financial, and technical capability to provide the service it intends to offer and its ability to comply with commission rules or orders adopted pursuant to Chapter 4928. of the Revised Code.
- (B) The applicant shall complete the appropriate application form (e.g., retail electric generation provider, aggregator/~~power,~~ 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 and prior regulatory or judicial actions.
 - (c) Financial capability as depicted on publicly available information, balance sheets, and credit ratings.
 - (d) Technical ability and experience in scheduling and providing power under contract agreements.

- (2) Aggregators/~~power~~ 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 in providing aggregation services, financial capability as depicted on publicly available information, and applicable credit ratings.
 - (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 operational 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 ten 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 4901:1-24-06 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 ~~CRS~~ 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.

4901:1-24-06 **Application approval or denial.**

- (A) If the commission does not act upon an application 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 ~~its consideration of~~ an application.

- (2) If the commission, or an attorney examiner appointed by the commission has acted to suspend an application, the commission will:
- (a) Notify the applicant of the reasons for such suspension and may direct the applicant to furnish any additional information as the commission deems necessary to evaluate the application~~;~~.
 - (b) Act to approve or deny the application within ninety days from the date that the application was suspended~~;~~ ~~and~~.
 - (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 both of the following are true:
- (1) The applicant is managerially, financially, and technically fit and capable of performing the service it intends to provide~~;~~ ~~and~~.
 - (2) The applicant is managerially, financially, and technically fit and capable ~~to comply~~ of complying with all applicable commission rules and orders adopted pursuant to Chapter 4928. of the Revised Code.
- (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 ~~CRES~~ 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.

Regulatory assessments.

- (A) In accordance with sections 4905.10, 4911.18, and division (F) of section 4928.06 of the Revised Code, each ~~CRES~~ 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 ~~for~~ which it is certified to provide.
- (B) Each CRES provider that provides retail electric generation service shall, in the manner and on the date specified by the commission or its staff, file an annual report of the gross revenue derived from

its intrastate sales of kilowatt-hours of electricity. For the purpose of the report, sales of kilowatt-hours of electricity are deemed to occur at the meter of a retail customer.

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

[\(F\) A governmental aggregator may authorize its electric services company, or a designated agent, to file, on its behalf, any report required by this rule.](#)

4901:1-24-08 **Default of retail electric generation providers.**

- (A) Pursuant to a tariff filed with the commission in accordance with rule 4901:1-10-29 of the Administrative Code, an [EDU-electric utility](#) may require a retail electric generation service provider to issue and maintain a financial instrument with the [EDU-electric utility](#) to protect the [EDU-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 [EDU-electric utility](#) supplied to the customer in its capacity as default supplier.
- (B) An [EDU-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 instrument 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 [EDU-electric utility](#) from default by the retail electric generation service provider, the [EDU-electric utility](#) may apply for relief at the commission. In accordance with rule 4901:1-24-12 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 [EDU-electric utility](#) as required by this rule.

4901:1-24-09 **Certification renewal.**

- (A) No less than thirty and no more than ~~one hundred twenty~~ sixty days prior to the expiration date indicated on the ~~CRES~~ 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. If the provider files such renewal application less than thirty days prior to the expiration date indicated on the certificate, the provider shall file a motion to extend the expiration date on its current certificate for an additional thirty days. Such motion shall be deemed automatically approved, unless otherwise ruled upon by the commission or an attorney examiner within three business days of the filing of the motion.
- (B) The applicant shall, as instructed by the renewal form, update the information supplied with an applicant's initial certification application.
- (C) The commission will act to approve, deny, or suspend an application for certification renewal pursuant to the same processes and timelines delineated in rule 4901:1-24-06 of the Administrative Code, except that, without limitation, the commission may also consider an applicant's complaint history and operational performance in this state.

4901:1-24-10 **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 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 certification renewal application.
 - (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 ~~EDU~~ 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 ~~EDU~~-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 & Poors", ~~Duff & Phelps, or Fitch IBCA~~ or below "Baa3" as reported by "Moody's investors serviceInvestors 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 - ~~providers~~-provider's fitness or ability to provide service in this state.
- (8) Any change in the contact person, business address, or telephone/fax number for ~~commission~~ staff use in investigating complaints.
- (9) Any change in the contact person, business address, or telephone/fax number for ~~commission~~ 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.

4901:1-24-11 **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 days prior to the effective date ~~that~~-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 days prior to abandoning service, a CRES provider shall provide written notice to each ~~EDU~~electric utility in whose certified territory the CRES provider operates of its intent to cease providing service.
- (3) At least ninety days prior to abandoning service, a CRES provider shall provide written notice to its customers of its intent to abandon service. Such notice shall provide instructions to the customers on how they may obtain replacement service(s) and identify the commission's toll-free and TTY-~~TDD~~ telephone numbers.
- (4) The CRES provider shall also provide notice of its abandonment on each billing statement rendered to customers beginning at least ninety days prior to the effective date of the abandonment and continuing to provide such notice on all subsequent billing statements until the service is abandoned.
- (5) If the commission does not act upon the application within ninety days of the filing date, the application shall be deemed automatically approved on the ninety-first day after the official filing date.

4901:1-24-12 **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, 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.
- (C) If the commission suspends a CRES provider's certificate, 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.
- (D) If the commission conditionally rescinds a CRES provider's certificate, it 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. If, in the commission's sole discretion, the CRES provider does not meet the condition(s) set forth by the commission on or before the specified date, the provider's certificate will be rescinded. 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.

- (E) If the commission rescinds a CRES provider's certificate, it will notify the CRES provider of the reasons for and effective date of such rescission.
- (F) 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.
- (G) 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 ~~EDU~~ 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 EDU on and after the effective date of the certificate rescission.
- (H) 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 also inform customers that, if they do not choose an alternative provider, they will be served by their ~~EDU~~ electric utility and shall provide instructions on how they can obtain service from an alternative CRES provider.
- (I) 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 a 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 ~~EDU'S~~ electric utility's tariff governing supplier requirements approved by the commission.
- (11) A finding by the commission that a CRES provider has failed to comply with state laws or rules designed to protect consumers in this state.

4901:1-24-13 **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 ~~adopted~~ issued thereunder may be subject to, ~~after notice and the opportunity for a hearing,~~ any and all ~~of~~ remedies available under the law, including but not limited to the following:

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