



# Common Sense Initiative

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Joseph Baker, Director

## MEMORANDUM

**TO:** Jeffrey Jones, Public Utilities Commission of Ohio

**FROM:** Michael Bender, Business Advocate

**DATE:** April 18, 2024

**RE:** CSI Review – CRES Providers – Certification (OAC 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)

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Commission as provided for in ORC 107.54.

### Analysis

This rule package consists of six amended rules and ten no-change rules and proposed by the Public Utilities Commission of Ohio (PUCO) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on September 8, 2021, and the public comment period was held open through October 22, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on September 8, 2021. The PUCO issued its Finding and Order for this rule package on February 21, 2024, and finalized its determination on April 17, 2024.

Ohio Administrative Code (OAC) 4901:1-24-01 specifies definitions related to competitive retail electric service (CRES). Originally submitted as a no-change rule, the rule is amended to update language. OAC 4901:1-24-02 requires any electric utility, electric services company, electric cooperative, or governmental aggregator that intends to provide CRES to consumers in the state of

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Ohio to obtain certification from the PUCO before beginning operations. OAC 4901:1-24-03 prohibits anyone from offering, contracting, or providing CRES in the state of Ohio without valid certification. OAC 4901:1-24-04 provides for the filing of a new application for certification of any CRES provider or governmental aggregator that fails to file for renewal of existing certification prior to the expiration date on the certificate. The rule is amended to clarify that the new application must be filed under the existing certification case number and to allow the previous certificate to be extended for up to ninety days upon such a filing. OAC 4901:1-24-05 provides for the content on an application for certification with the PUCO.

OAC 4901:1-24-06 requires applicants filing for certification to submit affidavits attesting to the completeness, truth, and accuracy of their application and their intention to comply with certain statutes of the ORC and with applicable PUCO rules and orders. OAC 4901:1-24-07 specifies that motions filed by an applicant must be done by an attorney who is authorized to practice law in the state of Ohio, although an out-of-state attorney may seek permission to appear in any case before the PUCO. Originally submitted as a no-change rule, the rule is amended to add a citation and remove a provision requiring motions filed by out-of-state attorneys to contain certain information and documentation. OAC 4901:1-24-08 provides for the information that an applicant can file under seal and for the filing of a motion for protective order for information not covered. The rule is amended to add credit reports and credit ratings to the list of documentation that an applicant may file under seal without filing a corresponding motion for protective order. OAC 4901:1-24-09 provides for certification renewal by a CRES provider. The rule is amended to give CRES providers a longer period of time, ninety days prior to the certification's expiration date rather than sixty, to file for renewal and to specify that if a renewal application is filed fewer than thirty days prior to the expiration date on a certificate but not after it, then the existing certificate will automatically be extended thirty-one days from when the renewal application is accepted by the PUCO. OAC 4901:1-24-10 provides for the approval or denial of an application for certification or certification renewal by the PUCO.

OAC 4901:1-24-11 requires a CRES provider to file notifications of material change to the information contained in a certification or certification renewal application with the PUCO within thirty days of such change occurring. OAC 4901:1-24-12 provides for the transfer of certificate and abandonment of service by a CRES provider. The rule is amended to clarify that abandonment applications must be filed under the existing certification case number. OAC 4901:1-24-13 provides for the suspension, rescission, or conditional rescission of a CRES provider's certificate in whole or in part by the PUCO after reasonable notice and the opportunity for a hearing. OAC 4901:1-24-14 allows an electric utility to require a retail electric generation service provider to issue and maintain a financial security with the company. OAC 4901:1-24-15 requires each CRES provider to be subject to an annual assessment by the PUCO, which includes the filing of annual reports of the gross revenue derived from intrastate sales of kilowatt-hours of electricity and the provision of other services and

allows the PUCO to assess the provider interest on underreported gross revenues. OAC 4901:1-24-16 specifies that those who fail to comply with the rules of this chapter or any PUCO order issued thereunder may be subject to certain forms of remedy.

During early stakeholder outreach, the PUCO conducted a workshop on October 3, 2017, to obtain feedback from interested stakeholders and the public regarding OAC 4901:1-24. No input was provided with respect this chapter. During the CSI public comment period, the PUCO received comments from the Citizens' Utility Board of Ohio, Interstate Gas Supply, Inc. (IGS), the Retail Energy Supply Association (RESA), Constellation New Energy Inc. and Constellation NewEnergy – Gas Division, LLC, Industrial Energy Users – Ohio (IEU-Ohio), Energy Harbor LLC, the Ohio Consumers' Counsel (OCC), SouthStar Energy Services LLC (SouthStar), Ohio Rural Electric Cooperatives, Inc., Mission:data Coalition, Columbia Gas of Ohio, Inc., the Northeast Ohio Public Energy Council (NOPEC), SFE Energy Ohio, Inc., Statewise Energy Ohio, Inc., the East Ohio Gas Company dba Dominion Energy Ohio (Dominion), the Ohio Power Company dba AEP Ohio, AEP Energy, Inc., as well as Reliant Energy Northwest LLC, Direct Energy Business Marketing LLC, Direct Energy Services LLC, XOOM Energy Ohio, LLC, Stream Ohio Gas & Electric, LLC, Energy Plus Holdings LLC, Energy Plus Natural Gas LLC, Green Mountain Energy Company, and Independence Energy Group LLC (collectively, the NRG Suppliers).

Many commenters, specifically RESA, SouthStar, IGS, AEP Ohio, Dominion, NOPEC, OCC, and the NRG Suppliers, requested that the PUCO improve consistency between CRES and competitive retail natural gas service rules. The PUCO assured the commenters that it would attempt to achieve further consistency between such rules in subsequent rulemaking. The OCC opposed allowing credit reports and credit ratings to be filed under seal, while IEU-Ohio and RESA supported including them in the list of exhibits that receive automatic protective treatment when filed with a CRES certification application. The PUCO agreed that credit reports and credit ratings should be allowed to be filed under seal, pointing out that nothing in the rules prohibits parties from contesting the confidential nature of such information in a proceeding. The PUCO rejected suggestions by commenters for changes that it considered to be outside the scope of the review but revised the rules to update language and eliminate duplicative or unnecessary requirements.

The business community impacted by the rules includes CRES companies subject to PUCO jurisdiction such as retail electric generation providers, aggregators, power brokers, power marketers, and governmental aggregators. The adverse impacts created by the rules include the time and costs needed to compile certification and certification renewal applications, the annual assessment that each CRES provider is subject to, the annual reports that each CRES must file, financial securities that electric utilities may require of retail electric generation service providers, and potential monetary forfeiture or suspension, rescission, or conditional rescission of a CRES provider's certificate by the PUCO for good cause shown. The PUCO states that the adverse impacts to business

are justified to comply with the legislative requirements of ORC 4928.06 and 4928.08 to set forth certification requirements for all CRES providers to do business in Ohio.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that the Commission should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.