

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Adoption of Chapter )</b>	
<b>4901:1-42, Ohio Administrative Code )</b>	
<b>Regarding Green Pricing Programs, to )</b>	<b>Case No. 12-2157-EL-ORD</b>
<b>Implement Am. Sub. S.B. 315. )</b>	

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**REPLY COMMENTS OF FIRSTENERGY SOLUTIONS CORP.**

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**I. INTRODUCTION**

Pursuant to the Commission's Entry of October 17, 2012, FirstEnergy Solutions Corp. ("FES") hereby files its Reply Comments regarding the proposed rules for Green Pricing Programs and creation of Chapter 4901:1-42 of the Ohio Administrative Code.

As explained in FES' initial Comments, several of the proposed rules go beyond the requirements contained in Am. Sub. S.B. 315 ("S.B. 315"). In the Reply Comments below, FES highlights concerns to comments filed by other stakeholders.

**II. REPLY COMMENTS**

**A. Disclosure of Marketing Materials**

FES disagrees with the positions taken by Citizen's Power ("Citizen") and Ohio Power with regards to Proposed Rule 4901:1-42-03(B). FES contends that any form of review that deviates from the language of S.B. 315, is overreaching and in stark opposition with legislative intent.

Citizen's proposed change wrongly assumes that Section B requires approval for green marketing materials. Ohio Power echoes this interpretation, in seeking clarification, however, Section B does not mention or even imply approval, nor should it.

S.B. 315 allows the Commission to “...*periodically review* any green pricing program...”

The submission of materials 10 business days prior to distribution is far more intrusive and unnecessary than a periodic review. More importantly, there is no authority for such a process.

Additionally, this arbitrary requirement completely ignores the reality of a competitive marketplace, failing to properly strike the balance presented in Executive Order 2011-01K, “Establishing the Common Sense Initiative.” Ten business days is simply too long, and will prevent CRES providers from responding to the competitive marketplace in a timely and efficient manner. Stifling competition in this method is in direct conflict with State Policy (R.C. 4928.02) and The Commission’s Mission to foster competition, and will undoubtedly impede the growth of retail competition.

As previously stated in FES’ initial comments, if Staff finds that some form of Section B is necessary, the Rule should be amended to read, “Any program or marketing materials being used by an Ohio EDU or CRES that address green pricing programs shall be provided to commission staff for review within four calendar days of making such offers to Ohio Customers.” This language coincides with Section 4901:1-23-03(D) of the Administrative Code and allows Staff to be aware of marketing activities and prepare for questions that may arise from customers [but does not require Commission or Staff “approval”].

## **B. Green Pricing Resources**

FES requests clarification of 4901:1-42-03(F) for green pricing programs meeting 100% of a customer’s electricity use. Requiring a CRES provider that is offering a 100% renewable product to provide 101.5% (100% voluntary plus the current 1.5% AEPS)

renewable power should be left up to the contract between the CRES and the customer. While the Commission's prohibitions on deceptive marketing should be adhered to, CRES providers and their customers should be free to negotiate agreements that are truly 100% renewable or "100% Plus" agreements that include products 100% backed by voluntary renewable generation *and* the additional quantity required by the AEPS benchmarks. The key is that the nature of the product be readily apparent to both parties, so that it is clear there is no double-counting, and no violations of the Commission's existing rules against misleading marketing practices by CRES providers.

FES disagrees with Citizen Power's proposal to the extent it suggests the entirety of the 100% renewable resources come from in-state sources. Citizen Power itself references the Green-e National Standard Version 2.0. Without specifically endorsing this standard as a yardstick for the Commission's use, FES notes that even this standard does not require the electricity or renewable energy credits to come solely from in-state renewable resources as Citizen Power proposes, and neither should the proposed rules.

### III. CONCLUSION

For the foregoing reasons, FES respectfully requests that the Commission consider the above comments and adopt FES's recommendations.

Respectfully Submitted,

/s/ Scott J. Casto

Scott J. Casto (0085756)

Mark A. Hayden (0081077)

FIRSTENERGY SERVICE COMPANY

76 S. Main Street

Akron, OH 44308  
(330) 761-7835  
(330) 384-5316 (fax)  
scasto@firstenergycorp.com  
haydenm@firstenergycorp.com

*Attorneys for FirstEnergy Solutions Corp.*

# CERTIFICATE OF SERVICE

A copy of the foregoing was served upon the following by electronic mail this 4<sup>th</sup> day of December, 2012.

/s/ Scott J. Casto

Scott J. Casto  
scasto@firstenergycorp.com

Theodore S. Robinson  
Citizen Power, Inc.  
2121 Murray Avenue  
Pittsburgh, PA 15217  
robinson@citizenpower.com

M. Howard Petricoff  
Stephen M. Howard  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay St.  
P.O. Box 1008  
mhpetricoff@vorys.com  
smhoward@vorys.com

Jennifer L. Lause  
Direct Energy  
112 E. Mithoff St.  
Columbus, OH 43206  
Jennifer.Lause@directenergy.com

Barth E. Royer  
Bell & Royer Co., LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927  
BarthRoyer@aol.com

Steven T. Nourse  
American Electric Power Service  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, OH 43215  
stnourse@aep.com

Gary A. Jeffries  
Dominion Resources Services, Inc.  
501 Martindale Street, Suite 400  
Pittsburgh, PA 15212-5817  
Gary.A.Jeffries@dom.com

Terry L. Etter  
Ohio Consumers' Counsel  
10 West Broad St. Suite 1800  
Columbus, OH 43215-3485  
etter@occ.state.oh.us

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Summary: Comments Reply Comments of FirstEnergy Solutions Corp. electronically filed by Mr. Scott J Casto on behalf of FirstEnergy Solutions Corp. and Mr. Scott Jeffrey Casto