

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's	)	
Review of the Green Pricing Programs in	)	Case No. 20-1195-EL-ORD
Chapter 4901:1-42 of the Ohio	)	
Administrative Code.	)	

---

**REPLY COMMENTS ON PROPOSED RULES TO IMPLEMENT GREEN  
PRICING PROGRAM STANDARDS AFFECTING OHIOANS' ELECTRIC  
UTILITY SERVICE  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL,**

---

**I. INTRODUCTION**

Green energy is a good thing. However, consumers should choose green energy products and services in the competitive market, without paying subsidies to utilities. OCC, as the statutory residential consumer advocate, files these Reply Comments to protect Ohio residential consumers from being made to unlawfully subsidize electric utility green pricing programs. The Public Utilities Commission of Ohio ("PUCO"), as part of its five-year rule review of O.A.C. 4901:1-42-02, requested comments on its proposed rules for reviewing green pricing programs offered in this state.<sup>1</sup>

On March 24, 2021, the Citizens' Utility Board of Ohio ("CUBO"), Interstate Gas Supply, Inc. ("IGS"), and the Retail Energy Supply Association ("RESA") filed Comments on the draft rules. The Ohio Consumers' Counsel ("OCC") did not file initial

---

<sup>1</sup> See Entry at 2-3 (February 24, 2021).

comments but offers replies to some of the recommendations made by RESA and IGS in their comments.<sup>2</sup>

## **II. RECOMMENDATIONS**

### **A. The PUCO should protect consumers from being made to subsidize the price of the electric utilities' green pricing programs.**

In response to the PUCO's request for comments on its Staff's proposed rules, IGS proposed adding a new provision (G) in O.A.C. 4901:1-42-03 to prevent its customers(shopping customers) from having to pay for the EDUs' green pricing programs.<sup>3</sup> But IGS's recommendation, while protective of its customers, does not give standard offer customers and distribution customers the protection they need from subsidizing an electric utility's green pricing program.

The EDUs are prohibited by law from using non-competitive revenues (distribution) to subsidize their competitive retail electric services, including their green pricing programs.<sup>4</sup> Charging all customers, whether they have signed up for a green pricing program or not, violates the law. The PUCO should protect consumers from paying for services to which they have not affirmatively subscribed. It should do so by specifically prohibiting an EDU from charging standard service offer and distribution customers for the green pricing program. Subscribers who participate in the program should pay for the program.

Green pricing programs are not intended to be subsidy programs. Rather, these programs are a voluntary or "opt-in" competitive product for customers that are willing to

---

<sup>2</sup> The fact that OCC does not respond to all issues raised in RESA's and IGS's comments should not be construed as acquiescence to any issue not addressed in these Reply Comments.

<sup>3</sup> IGS Comments at 3-4 (March 24, 2021).

<sup>4</sup> R.C. 4928.02 (A)(8) (to promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods).

pay a premium to support renewable energy.<sup>5</sup> And any customers that do not “opt-in” should not pay for or subsidize any EDU’s green program. Charging consumers that do not “opt-in” would be an inappropriate subsidy and would violate state law and policy. The PUCO should not allow this.<sup>6</sup> Instead, the EDUs’ expenses for marketing and the administration of green pricing programs should be separately identified and collected only from those customers specifically and voluntarily opting in for a green energy program.

The PUCO should amend IGS’s proposed definition as follows to protect non-subscribing consumers from subsidizing EDUs’ green pricing programs:

(G) Any Ohio EDU offering a green pricing program shall ensure that all costs for the program, including any costs for marketing and administration, will be separately identified and collected on a bypassable basis, only collected from customers opting-in to the service offering.

**B. The PUCO should reject RESA’s recommendation to limit PUCO Staff’s review of green pricing marketing materials and should specifically require on-going periodic audits of the green pricing programs.**

O.A.C. 4901:1-42-03(B) provides that program or marketing materials must be submitted to PUCO staff not later than four calendar days after being distributed to customers. Or after the product included in such programs is offered to Ohio customers.<sup>7</sup>

Or within five days at any time at the request of Staff.<sup>8</sup> But RESA argues that O.A.C. 4901:1-42-3 (B) violates R.C. 4928.70 because the PUCO is limited to conducting

---

<sup>5</sup> O.A.C. 4901:1-42-01 (E) (“Green pricing program” means a program in which an Ohio electric distribution utility or CRES provider that offers an electric product in which the product is marketed based on its fuel source and/or emissions profile. Such programs may include the use of renewable energy credits).

<sup>6</sup> R.C. 4928.02 (A)(8).

<sup>7</sup> O.A.C. 4901:1-42-03(B).

<sup>8</sup> O.A.C. 4901:1-42-03(B).

“periodic reviews” and Staff is performing continuous reviews.<sup>9</sup> RESA recommended that Staff reviews should only occur after a PUCO order approving it.<sup>10</sup> The PUCO should not adopt RESA’s recommendation because it fails to protect consumers from “unfair, deceptive, and unconscionable acts and practices in the marketing, solicitation and sale” of competitive electric service. This is especially important to Ohio consumers that have been harmed by the Verde<sup>11</sup> and PALMco<sup>12</sup> deceptive practices violations. In fact, the PUCO should be *more aggressive* in reviewing these programs. To better protect consumers, the PUCO should reject RESA’s recommendation and should specifically require on-going periodic financial audits of all green pricing programs in addition to reviewing marketing materials. These audits should make certain that there is no cross subsidization from captive monopoly customers to the competitive ventures of the utilities,

The Staff’s ability to review marketing materials should not be constrained by a PUCO order pre-requisite as RESA recommends.<sup>13</sup> Rather, the PUCO should go further to protect consumers by requiring on-going audits of all aspects of competitive green pricing programs, including cost allocations for these programs.

---

<sup>9</sup> RESA Comments at 4.

<sup>10</sup> RESA Comments at 4.

<sup>11</sup> Verde refers to Verde Energy USA Ohio, LLC.; *See In re the Commission's Investigation into Verde Energy USA Ohio, LLC's Compliance with the OAC and Potential Remedial Actions for Non-Compliance*, Case No. 19-958-GE-COI.

<sup>12</sup> PALMco refers to PALMco Power OH, LLC, dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy; *See In re the Commission's Investigation into PALMco Power OH, LLC, dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Action*, Case No. 19-2153-GE-COI; *see also In re the Commission's Investigation into PALMco Power OH, LLC, dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Action*, Case No. 19-957-GE-COI.

<sup>13</sup> RESA Comments at 4.

Accordingly, the PUCO should reject RESA's recommendation and amend the rule to permit Staff review without a specific PUCO order. The PUCO should also require ongoing Staff audits of all green pricing programs and other competitive undertakings of the utilities to protect consumers.

### **III. CONCLUSION**

The PUCO should adopt OCC's recommendations to protect consumers. Consumers should not be forced to subsidize electric utility green pricing programs and should be better protected from potentially misleading marketing materials.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ Ambrosia E. Wilson  
Ambrosia E. Wilson (0096598)  
Counsel of Record  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, 7<sup>th</sup> Floor  
Columbus, Ohio 43215-4213  
Telephone: (614) 466-1292  
[Ambrosia.Wilson@occ.ohio.gov](mailto:Ambrosia.Wilson@occ.ohio.gov)  
(will accept service via email)

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Reply Comments was served on the persons stated below via electronic transmission this 7th day of April 2021.

/s/ Ambrosia E. Wilson

Ambrosia E. Wilson

Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

### **SERVICE LIST**

[John.jones@ohioattorneygeneral.gov](mailto:John.jones@ohioattorneygeneral.gov)

[mfleisher@dickinsonwright.com](mailto:mfleisher@dickinsonwright.com)

[Rocco.DAscenzo@duke-energy.com](mailto:Rocco.DAscenzo@duke-energy.com)

[Larisa.Vaysman@duke-energy.com](mailto:Larisa.Vaysman@duke-energy.com)

Attorney Examiner:

[Michael.williams@puco.ohio.gov](mailto:Michael.williams@puco.ohio.gov)

[Fdarr2019@gmail.com](mailto:Fdarr2019@gmail.com)

[Bethany.allen@igs.com](mailto:Bethany.allen@igs.com)

[Evan.betterton@igs.com](mailto:Evan.betterton@igs.com)

[Joe.oliker@igs.com](mailto:Joe.oliker@igs.com)

[stnourse@aep.com](mailto:stnourse@aep.com)

[twwolffram@aep.com](mailto:twwolffram@aep.com)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**4/7/2021 5:12:31 PM**

**in**

**Case No(s). 20-1195-EL-ORD**

Summary: Comments Reply Comments on Proposed Rules to Implement Green Pricing Program Standards Affecting Ohioans' Electric Utility Service by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Wilson, Ambrosia E.