

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of 4901:1-42)	
Ohio Administrative Code Regarding Green)	Case No. 12-2157-EL-ORD
Pricing Programs to Implement Am Sub)	
SB 315		

**REPLY COMMENTS OF DIRECT ENERGY SERVICES, LLC
AND DIRECT ENERGY BUSINESS, LLC**

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I. INTRODUCTION

These reply comments are provided pursuant to the Public Utilities Commission of Ohio's (the "Commission" or "PUCO") October 17, 2012 Entry in Case No. 12-2157-EL-ORD requesting comments concerning the Commission's proposed rules on green pricing programs by Competitive Retail Electric Service providers ("CRES providers") in Section 4928.70 (A), Ohio Rev. Code. Additionally, in Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," the Governor of the state of Ohio has set forth several factors to be considered in the review including a cost-benefit analysis of the rules and their effect on business growth.

On November 19, 2012, interested parties filed initial comments on the Staff's proposed changes, including: Citizen Power, FirstEnergy Solutions ("FES"), Ohio Power Company ("Ohio Power"), the Office of the Ohio Consumers' Counsel ("OCC"), and the Retail Energy Supply Association ("RESA").

Direct Energy Services, LLC and Direct Energy Business, LLC ("Direct Energy") respectfully submits the following reply comments in response to the October 17th Entry.

II. REPLY TO INITIAL COMMENTS

As a general matter, Direct Energy encourages the Commission to incorporate the proposed rules on green pricing programs into the existing rules governing competitive retail electric service (“CRES”) and Market Monitoring in the Ohio Administrative Code (“OAC”) Chapters 4901:1-21 and -25 rather than adopt the proposed rules which create a wholly separate rule section related to green pricing programs and go beyond the statutory authority of S.B. 315.

OCC’s initial comments suggest that the proposed rules’ distinction between electric distribution utilities (“EDUs”) and CRES providers is unnecessary and that the rules should apply to any green pricing program “provider.”¹ However, the distinction between EDUs and CRES providers already exists under Section 4928, Revised Code and the OAC. Although the proposed rules may not have an impact on utility provided green pricing programs, disclosure of marketing and other green pricing program materials, prior to those materials becoming public, puts CRES providers at a competitive disadvantage in the marketplace. Therefore, the Commission should avoid adopting rules that impose a requirement on CRES providers to disclose competitively sensitive information prior to such information becoming public.

A. Proposed Rules on Marketing Materials.

In response to proposed OAC 4901:1-42-03(A), requiring that any program materials distributed to customers accurately portray green pricing program products, OCC suggests that the green pricing rules should specify that marketing materials must comply with the marketing and solicitation provisions of CRES rules, as applied to existing and potential customers, and that those who violate such rules are subject to the same penalties as violation of CRES rules.² This proposal contravenes the Common Sense Initiative because existing rules already require that

¹ OCC Initial Comments, 2-3.

² OCC Initial Comments, 4-6.

“(n)o CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a (competitive retail electricity service) CRES,” OAC 4901:1-21-05(C). Therefore, the proposed rule should be rejected.

B. Semi-Annual Green Pricing Program Report.

OCC’s comments in response to proposed Rule 4901:1-42-03(C) suggest that a provider may have more than one green pricing program and that, if a provider has more than one program, the rules should specify that the provider must disclose the details of each green pricing program.³ Direct Energy encourages the Commission to consider that disclosing the specific details of a CRES provider’s green pricing program could require disclosure of competitively sensitive information. Further, OAC 4901:1-25-02 already contains reporting requirements for similar information. Therefore, Direct Energy recommends that the Market Monitoring rules that provide for automatic confidential treatment of competitively sensitive information be amended to include a carve-out for the green pricing data sought by the Staff.

C. Documentation of Green Pricing Program Resources.

Direct Energy supports the rules proposed in subsections E and F but again recommends that these rules be incorporated into the existing CRES provider rules in OAC 4901:1-21. Direct Energy also agrees with FES’s comment that verified audits of green pricing programs, such as the Green-e certification process, be acceptable verification for Sections (E) and (F).⁴ Further, while Green-e provides a widely accepted model of documentation of green pricing products could be documented, the Commission should not adopt Green-e certification as a requirement for CRES providers offering a green product program.

³ OCC Initial Comments, 7.

⁴ FES Initial Comments, 6.

III. CONCLUSION

Direct Energy encourages the Commission to promote the goals of the Common Sense Initiative and improve efficient compliance by modifying existing CRES provider and Market Monitoring rules to include green product requirements rather than creating a wholly separate rule section related to green pricing programs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Comments of Direct Energy Services, LLC and Direct Energy Business, LLC has been filed with the Public Utilities Commission of Ohio and was served this 4th day of December, 2012 by electronic mail delivery upon the persons listed below.

/s/ Jennifer L. Lause
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Summary: Reply Comments of Direct Energy electronically filed by Ms. Jennifer L. Lause on behalf of Direct Energy Business, LLC and Direct Energy Services, LLC