

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY COMMENTS OF THE
RETAIL ENERGY SUPPLY ASSOCIATION**

Pursuant to the Commission’s Entry in this proceeding, the Retail Energy Supply Association (“RESA”),¹ submits these Reply Comments to the Initial Comments of the Ohio Consumers’ Counsel and Citizen’s Power that were filed on November 19, 2012.

I. Ohio Consumers’ Counsel’s Comments

A. Proposed Rules 1 and 2

At pages 2-3 of its Initial Comments, the OCC advocates that the Commission should replace the separate terms “EDU” and “CRES” with the singular term “Provider.” OCC believes that the distinction between EDUs and CRES providers is unnecessary. RESA respectfully disagrees.

As pointed out at page 7 of RESA’s Initial Comments, CRES providers in Ohio only have one environmental obligation -- to meet the renewable portfolio standards in Section

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization; they may not represent the individual views of any particular member of RESA.

4928.64, Revised Code. Since there is no other obligation for CRES providers, there can be no other double counting for purposes of state regulation. On the other hand, utilities also have conservation requirements. Further, a statute that grants the Commission only authority to provide CRES providers with advice on improving and advancing green programs does not authorize a matrix of rules designed to enforce efficient or conservation statutes that do not apply to CRES providers. Because CRES providers cannot be subject to double counting while utilities can, this fact alone makes it necessary to keep the terms “EDU” and “CRES” provider separate. OCC’s recommendation to replace the separate terms with the singular term “Provider” should be rejected.

With respect to OCC’s concern regarding the definition of “CRES” in proposed Rule 1(C), a very simple change is appropriate without ignoring the need to keep the terms “EDU” and “CRES” provider separate. RESA submits that the following definition should be used in Rule 1(C):

“CRES” means a provider of “competitive retail electric service” as defined in Division (A)(4) of section 4928.01 of the Revised Code.

OCC’s proposed change should be rejected.

B. Proposed Rule 2(A)

OCC seeks to change the first sentence of proposed rule 2(A) to replace the phrase “as authorized by” with the phrase “pursuant to.” RESA has no objection to this change.

OCC goes on to also propose a modification to the second sentence of proposed rule 2(A) because it purportedly is awkward and uses a roundabout approach to get its message across. OCC would propose that the second sentence read as follows:

These rules apply to all providers of retail electric service that have been deemed to be competitive under chapter 4928 of the Revised Code who offer a green pricing program to retail electric customers in Ohio.

RESA disagrees that OCC's proposal constitutes a more direct and complete statement.

RESA submits that the proposed second sentence of Rule 2(A) is clear as to whom the rules will apply. No change is needed in the second sentence. OCC's proposed change to the second sentence of Proposed Rule 2(A) should be rejected.

C. Proposed Rule 3(A)

At pages 5-6 of its Initial Comments, OCC proposes that Rule 3(A) specify the standard by which green pricing promotional materials will be judged. OCC wants the Commission to require that promotional materials comply with the marketing and solicitation provision of Rule 4901:1-21-05 of the Ohio Administrative Code. OCC also wants a \$10,000 forfeiture per occurrence for any violations.

There is no statutory authorization for the Commission to implement OCC's recommendations. The General Assembly did not instruct the Commission to review or edit marketing materials or to impose forfeitures. It only authorized periodic review of certain types of programs presumably to allow the Commission to be current on developments in the market and then, after concluding its review, have an advisory role. OCC's recommendations must be rejected out of hand.

D. Proposed Rule 3(C)

At page 7 of its Initial Comments, OCC proposes to revise Rule 3(C) in several ways.

Since the only purpose of the authorizing statute is to advise CRES providers on how to improve or expand their green pricing programs, there is not a clear need for all CRES providers

to report their monthly participation in green pricing programs or the monthly volume of megawatt hours for green pricing programs. This is particularly true for CRES providers who already report their renewable energy credits annually including the sales data for all power and the amounts of renewable energy credits. Because there is no need for the monthly participation and volume data in addition to the already-provided annual renewable energy report, this proposed rule along with the OCC changes, fail to meet the Common Sense Initiative mandate. Filling out monthly data for Ohio only is time-consuming and unnecessary and as such harms small businesses. The proposed rule and any OCC recommended amendments should be eliminated and rejected.

E. Proposed Rule 3(F)

Although RESA does not object to OCC's preference to use the phrase "alternative energy portfolio standard" in lieu of the acronym "AEPS," RESA submits that this proposed rule 3(F) be eliminated. The rule ostensibly requires a CRES provider to keep green pricing program documentation to verify that the resources used to support participation in the green pricing program are separate from the resources used for compliance with the Commission's renewable energy credits. No one has presented any reasons why a uniform, single system of verifying that the power being sold as green power is in fact from renewable sources cannot be used. Separate documentation systems will raise costs without a well-defined benefit. Proposed Rule 3(F) fails the Common Sense Initiative requirements and should be eliminated.

F. Proposed OCC Rule 3(H) and 3(I)

At pages 8-9 of its Initial Comments, OCC appears to recommend additional rules (H) and (I) as part of proposed Rule 3.

OCC proposed Rule 3(H) attempts to mirror Section 4928.70(A), Revised Code but leaves out an important fact. The Commission is only authorized to make recommendations to improve or expand a green pricing program at the conclusion of a review. This significant component has been left out of OCC's proposed rule and therefore OCC's Proposed Rule (H) must be rejected because it goes beyond the statutory authority delegated to the Commission.

OCC's proposed Rule 3(I) appears to have penalties and remedies imposed upon the failure to comply with Section 4928.70, Revised Code or any rule in this chapter. It is obvious that the Commission has no statutory authority to implement such penalties or remedies in this rule. Both OCC proposed Rules 3(H) and 3(I) should be rejected.

II. Citizen Power

A. Proposed Rule 3(A)

At pages 1-2 of its Comments, Citizen Power recommends that proposed Rule 3(A) should apply to both marketing materials and program materials. In addition, Citizen Power supports the application of the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims, citing 16 CFR 260.1-260.8 relating to guides for the use of environmental marketing claims in assessing the environmental claims in marketing and product materials. Citizen Power also recommends using the environmental marketing guidelines for electricity published by the National Association of Attorneys General in 1999 as a valuable resource regarding environmental claims in the retail electricity market context. Citizen Power recommended that the Commission explicitly include one or both of these resources in the text of rule 3(A) as a guideline for accurate portrayal of marketing claims.

There is no statutory authority for the Commission to review or edit or use these resources as standards for evaluating marketing material associated with green pricing programs.

Section 4928.70, Revised Code allows the Commission to periodically review any green pricing program offered in this state as part of competitive electric service. At the conclusion of the review, the Commission may make recommendations to improve or expand the program. It can also adopt rules necessary to carry out the purposes of Section 4928.70, Revised Code. The Commission simply does not have the statutory authority to enact such amendments to its rule. Citizen Power's recommendation should be rejected.

B. Proposed Rule 3(B)

Citizen Power recommends that proposed Rule 3(B) be modified to allow for de minimis modifications of previously accepted marketing materials without staff approval. See page 2 of the Citizen Power comments. While RESA does not object to the concept, it recommends that Rule 3(B) be eliminated in its entirety as the Commission is without statutory authority to adopt it.

C. Proposed Rule 3(F)

Citizen Power suggests that there be one exception to proposed Rule 3(F). See Citizen Power comments, P.2. Green pricing programs meeting 100% of a customer's electricity use with in-state renewable resources should not be required to go above 100% in order to additionally meet the AEPS for renewable resources. Citizen Power suggests that an EDU or a CRES provider that provides a 100% in-state renewable product could use the same resources to meet both their green pricing program requirements and their AEPS renewable bench marks. RESA has no objection to this concept but believes that no reason has been presented why a uniform, single system of verifying that the power being sold as green power is in fact from renewable sources cannot be used. Again, as mentioned above, separate documentation systems will raise costs without a well defined benefit. Subsection F fails the Common Sense Initiative

requirements. RESA submits that Subsection F of proposed Rule 3 should be eliminated in its entirety.

III. CONCLUSION

For the reasons presented above, all of the recommendations made by OCC (with the exception of the recommendation relating to the first sentence of proposed Rule 2(A)) and all of the recommendations of Citizen Power should be rejected and provisions (B), (C), (F), and (G) of Proposed Rule 4901:1-42-03 should be not be promulgated by the Commission as rules.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Comments was served on the following persons by electronic mail this 4th day of December, 2012.



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Summary: Comments Reply Comments electronically filed by M HOWARD PETRICOFF on behalf of Retail Energy Supply Association