

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.)

FINDING AND ORDER

The Commission finds:

- (1) On June 11, 2012, the Governor of the state of Ohio signed in law Am. Sub. S.B. 315 (S.B. 315), which became effective on September 10, 2012. S.B. 315, *inter alia*, amended provisions of the Revised Code, including provisions which govern the rules and regulations for green pricing programs.
- (2) In addition, on January 10, 2011, the Governor issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.
- (3) Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against a business impact analysis. If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact.
- (4) By Entry issued on July 25, 2012, a workshop was scheduled at the offices of the Commission on August 16, 2012, to engage interested stakeholders on the appropriate revisions to the rules to implement S.B. 315. The workshop was held

as scheduled and stakeholder comments were offered by multiple stakeholders.

- (5) Staff evaluated the feedback received at the August 16, 2012 workshop and proposed a new chapter of rules, which would be Ohio Adm.Code Chapter 4901:1-42, to implement S.B. 315.
- (6) On October 17, 2012, the Commission issued an Entry seeking comments on Staff's proposal for Ohio Adm.Code Chapter 4901:1-42 and sent Staff's proposed rules and BIA to CSI for review and recommendations in accordance with R.C. 121.82. Comments were filed by Citizen Power, Inc. (Citizen), Direct Energy Services, LLC, and Direct Energy Business, LLC (collectively, Direct Energy), FirstEnergy Solutions Corp. (FES), Ohio Power Company (Ohio Power), the Ohio Consumers' Counsel (OCC), and Retail Energy Supply Association (RESA). Reply comments were filed by FES, Dominion Retail (Dominion), Direct Energy, RESA, and OCC.
- (7) At this time, the Commission finds that the rules in Ohio Adm.Code Chapter 4901:1-42 should be filed with the Joint Committee on Agency Rule Review (JCARR), the Secretary of State, and the Legislative Service Commission. The Commission has carefully reviewed the existing rules, the proposed Staff rules, and the comments filed by interested parties in reaching its decisions regarding these rules. The Commission addresses the more relevant comments below. Any comments or recommended changes not addressed below or incorporated into the proposed rules have been considered by the Commission and should be considered denied.

Ohio Adm.Code Chapter 4901:1-42 – Green Pricing Programs

Comments on Ohio Adm.Code 4901:1-42-01

- (8) Paragraph (C). OCC, Dominion Retail, and RESA each believe that Staff's proposal for the definition of "CRES" needs revised (OCC Comments at 3; Dominion Retail Reply at 2; RESA Reply at 1-2). Stakeholders point out that R.C.

4928.01(A)(4) defines competitive retail electric service, not *competitive retail electric service provider*.

- (9) The Commission agrees with OCC, Dominion Retail, and RESA, and finds that the definition of “CRES provider” should be a provider of competitive retail electric service, as competitive retail electric service is defined in R.C. 4928.01(A)(4).

Comments on Ohio Adm.Code 4901:1-42-02

- (10) Paragraph (A). OCC, Dominion Retail, and RESA assert that Paragraph (A) should indicate that the chapter is being adopted pursuant to R.C. 4928.70 (OCC Comments at 4; Dominion Retail Reply at 2; RESA Reply at 3).
- (11) The Commission agrees with the proposal by OCC, Dominion Retail, and RESA, and has revised Paragraph (A) to indicate that the chapter is being adopted pursuant to R.C. 4928.70.

Comments on Ohio Adm.Code 4901:1-42-03

- (12) Paragraph (A). Citizen Power asserts that this paragraph should be revised to indicate that marketing materials must also accurately portray the product. Additionally, Citizen Power recommends that this paragraph should specifically refer to the Federal Trade Commission (FTC) or National Association of Attorneys General (NAAG) guidelines for green electricity marketing. (Citizen Power Comments at 1-2.) OCC supports Citizen Power’s recommendation, while RESA opposes it (OCC Reply at 4; RESA Reply at 3).

Direct Energy and Dominion argue that Paragraph (A) is unnecessary, as the concepts are already adequately conveyed in existing Commission rules (Direct Energy Comments at 3; Dominion Reply at 4). OCC makes numerous proposals regarding Paragraph (A), including that penalty and enforcement language be added, that the rule specifically reference Ohio Adm.Code 4901:1-21-05, that the rule apply to materials provided to both current and potential new customers, and that the word “any” be replaced with the word “every” (OCC Comments at 5-6).

Further, OCC proposes that any violation of these rules be subject to the same \$10,000 forfeiture per occurrence as for violations of the CRES rules (OCC Reply at 3).

- (13) The Commission finds that Citizen Power's proposal to expand Paragraph (A) to apply to marketing materials should be adopted, as the intent of the rule is for it to apply to any program or marketing materials. Additionally, the other stakeholder proposals regarding Paragraph (A) should be denied. In regards to comments that Paragraph (A) is unnecessary because its concepts are already contained in Ohio Adm.Code 4901:1-21-05, the Commission notes that Paragraph (A) applies to both the electric utilities and CRES providers.
- (14) Paragraph (B). Ohio Power seeks clarification on whether the Commission intends to establish a process for Staff preapproval of program or marketing materials. Ohio Power asserts that a preapproval process would be unreasonable for several reasons. (Ohio Power Comments at 1-2.) Citizen Power proposes an exception to the 10-day requirement if a change to such program or marketing materials is de minimis or not related to the green component (Citizen Power Comments at 3). RESA and FES oppose Paragraph (B) in its entirety and argue that it exceeds the statutory authority, it is costly and unnecessary, and it represents a restraint on commercial speech (RESA Comments at 4-5; FES Comments at 3). Direct Energy opposes Paragraph (B) for the same reasons as RESA and FES, and adds that it may result in the unnecessary disclosure of confidential information (Direct Energy Comments at 4-5). In its reply comments, Dominion supported the arguments of RESA, FES, and Direct Energy (Dominion Reply at 4-5).

OCC disagrees with RESA, FES, and Direct Energy, and argues that companies' free speech rights would not be affected by Staff's proposed Paragraph (B). Additionally, to decrease any administrative burden, OCC proposes that program or marketing materials be submitted to Staff electronically. (OCC Reply at 7, 9-11.)

- (15) The Commission finds that the proposals and recommendations made by stakeholders should be granted, in part, and denied, in part. The Commission notes that it does not intend for Paragraph (B) to establish a preapproval requirement for program or marketing materials. Accordingly, the Commission has revised the rules to indicate that Staff should receive the program or marketing materials not later than four calendar days after the green pricing product is offered to customers.

Additionally, the Commission finds that if program or marketing materials are being distributed for an existing green pricing product, or a product that is already being offered, then the program or marketing materials should be provided to Staff not later than four calendar days after being distributed to customers. This rule does not prescribe what can or cannot be contained in the program or marketing materials, it does not establish a preapproval process for distribution of marketing or program materials, and it does not contain any limitations that would violate free speech rights. This rule requires that any program or marketing materials being distributed to customers also be provided to the Commission so that the Commission may stay informed of market activities and the products being offered. The Commission also believes that it will be administratively less burdensome for stakeholders to provide all program or marketing materials to Staff via email or facsimile.

- (16) Paragraph (C). RESA asserts that Paragraph (C) is time-consuming, unnecessary, and redundant, as CRES providers already report RECs annually (RESA Comments at 5). Direct Energy does not propose removing this paragraph, but recommends that the reporting requirement be incorporated within existing market monitoring reports instead, as the existing process would add efficiency and remove the burden of seeking separate confidential treatment of the green pricing reports (Direct Energy Comments at 4-5). FES objects to the filing of what it considers to be highly confidential information and believes that this paragraph should be removed in its entirety (FES Comments at 4-5). OCC proposes that the Paragraph (C) be

revised to reflect the potential for a company to offer more than one green pricing product. OCC also recommends that the paragraph be revised to indicate that the filings be made by a certain date, instead of on a certain date. (OCC Comments at 7.) Additionally, OCC supports Direct Energy's proposal for the reporting requirements to align with the market monitoring reports filed pursuant to Ohio Adm.Code 4901:1-25-02 (OCC Reply at 12).

- (17) The Commission finds that the provisions of Paragraph (C) should be incorporated into Ohio Adm.Code Chapter 4901:1-25. The Commission believes that this will minimize any administrative burden while addressing the confidentiality concerns raised in the comments.
- (18) Proposed Paragraph (D). Direct Energy argues that the information in Staff's proposed Paragraph (D) should be considered confidential by default. Additionally, Direct Energy indicates that it believes that filing motions for protective orders is administratively burdensome. (Direct Energy Comments at 6.) FES also opposes Paragraph (D) and recommends that it be removed altogether, as FES asserts that the information should be considered confidential by default.
- (19) The Commission finds that Ohio Adm.Code Chapter 4901:1-25 already adequately addresses this issue and Staff's proposed Paragraph (D) should not be adopted.
- (20) Paragraph (D). RESA and Direct Energy do not oppose the adoption of Paragraph (D), but seek clarification on retention requirements and assert that this paragraph might be more appropriate in Ohio Adm.Code Chapter 4901:1-21 (RESA Comments at 6; Direct Energy Comments at 7). FES contends that Green-e verification should be sufficient for certain renewable products and internal documentation should be sufficient for non-Green-e products. FES also notes that it believes requiring additional special reports would be burdensome and inefficient. (FES Comments at 6.) OCC disagrees with the permitting Green-e verification and asserts that the rule should be adopted as proposed. However, OCC argues that if a CRES provider wants to substitute Green-e certification documentation to satisfy the

rule, it should be permitted to do so only at the discretion of the Commission and through a filed waiver request (OCC Reply at 15).

- (21) The Commission finds that Paragraph (D) should be revised to indicate that the retention period for documentation should be no less than two years, which is consistent with Ohio Adm.Code Chapter 4901:1-21. Additionally, the Commission revises the requirement for documents to be provided to Staff promptly upon request, to within five calendar day of Staff's request. Further, the Commission notes that the rule does not dictate what type of documentation is required, so long as the EDU or CRES provider maintains sufficient documentation to verify that adequate resources were secured and retired to support the product offerings.
- (22) Paragraph (E). RESA opposes the adoption of Paragraph (E) because RESA believes it will raise costs without providing a verifiable benefit. RESA believes that a single, uniform system of verification should be adequate and that Paragraph (E) should be eliminated. (RESA Comments at 6; RESA Reply at 4.) OCC disagrees with RESA and argues that Paragraph (E) should be adopted (OCC Reply at 15-16). Citizen Power supports the adoption of Paragraph (E), except in instances where the provider is serving the customer with 100 percent in-state electricity (Citizen Power Comments at 2). Direct Energy does not oppose the adoption of Paragraph (E) but asserts that it might be more appropriate in Ohio Adm.Code Chapter 4901:1-21 (Direct Energy Comments at 7). FES reiterates its arguments relating to Paragraph (E) and contends that Green-e verification should be sufficient for certain renewable products and internal documentation should be sufficient for non-Green-e products. FES also notes that it believes requiring additional special reports to be burdensome and inefficient. (FES Comments at 6). Dominion argues that Paragraph (E) should be removed in its entirety so that there is no statutory prohibition against using the same resources for green pricing and alternative energy portfolio standard (AEPS) compliance (Dominion Reply at 6).

- (23) The Commission finds that revisions to Paragraph (E) should be adopted to bring clarity to the rule and to address record retention issues raised by commenters. The Commission also notes that it has already found that the same resources may not be used for green pricing and AEPS compliance, as the Commission has indicated that the use of RECs purchased and consumed under an electric utility's separate green pricing program for that utility's AEPS compliance would constitute double-counting of the RECs in violation of Ohio Adm.Code 4901:1-40-04(D)(4). *In re Review of Chapters 4901:5-1, 4901:5-3, 4901:5-7, Case No. 08-888-EL-ORD, Entry on Rehearing (June 17, 2009) at 21.*
- (24) Paragraph (F). RESA contends that Paragraph (F) is vague and redundant, and should therefore be eliminated. RESA believes there is no potential for double-counting because CRES providers only have a single environmental requirement. (RESA Comments at 7.) Direct Energy asserts that Paragraph (F) is redundant with Ohio Adm.Code Chapter 4901:1-40 (Direct Energy Comments at 7-8).
- (25) The Commission finds that the proposals by RESA and Direct Energy to eliminate Paragraph (F) should be denied. The Commission believes that Paragraph (F) is necessary in Ohio Adm.Code Chapter 4901:1-42 to reiterate and reinforce the requirement that resources should remain separate.

General Comments

- (26) OCC proposes two new paragraphs. OCC proposes a new paragraph to address Commission reviews of materials. OCC also proposes a new paragraph that would address enforcement and penalties if a party violates Ohio Adm.Code Chapter 4901:1-42. (OCC Comments at 5-6, 9.) RESA argues that both of OCC's proposals should be denied, as RESA asserts that they would exceed the Commission's statutory authority (RESA Reply at 5).
- (27) The Commission finds that OCC's proposals should be denied at this time. The Commission believes that the proposals are unnecessary and the issues raised by OCC are already adequately addressed in the rules.

Conclusion

- (28) In making its review, an agency is required to consider the continued need for the rules, the nature of any complaints or comments received concerning the rules, and any factors that have changed in the subject matter area affected by the rules. The Commission has evaluated the rules in Ohio Adm.Code Chapter 4901:1-42 and recommends amendments to several rules as shown in the attachment to this entry.
- (29) An agency must also demonstrate that it has included stakeholders in the development of the rule, that it has evaluated the impact of the rule on businesses, and that the purpose of the rule is important enough to justify the impact. The agency must seek to eliminate excessive or duplicative rules that stand in the way of job creation. The Commission has included stakeholders in the development of these rules and has sought to eliminate excessive or duplicative rules that stand in the way of job creation.
- (30) In order to avoid needless production of paper copies, the Commission will serve a paper copy of this entry only and will make the rules, as well as the business impact analysis, available online at: www.puco.ohio.gov/puco/rules. All interested persons may download the rules and the business impact analysis from the above website, or contact the Commission's Docketing Division to be sent a paper copy.

It is, therefore,

ORDERED, That attached new rules Ohio Adm.Code 4901:1-42-01, 4901:1-42-02, and 4901:1-42-03, be adopted. It is, further,


ORDERED, That the adopted rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with divisions (D) and (E) of R.C. 111.15. It is, further,

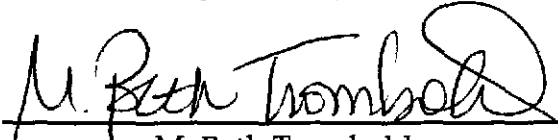
ORDERED, That the final rules be effective on the earliest date permitted. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapter 4901:1-42 shall be in compliance with R.C. 119.032. It is, further,

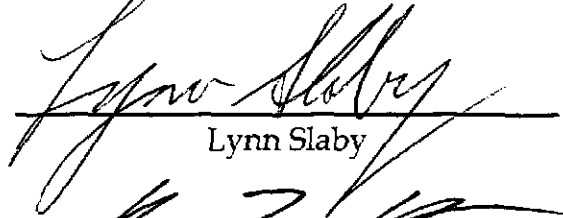
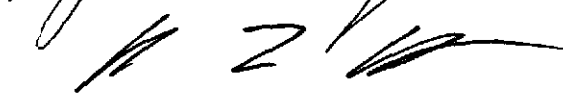
ORDERED, That a copy of this Finding and Order be served upon all electric utilities in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, the Electric-Energy industry list-serve, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser



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Entered in the Journal

APR 02 2014



Barcy F. McNeal
Secretary

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Angela Hawkins, Legal Director
Phone: 614-466-0122 Fax: 614-728-8373

Regulation/Package Title: Green Pricing Programs

Rule Number(s): Adoption of Ohio Adm.Code Chapter 4901:1-42

Date: 4/2/2014

Rule Type:

☒ New

☐ Amended

☐ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The proposed Ohio Adm.Code Chapter 4901:1-42 is in response to Am. Sub. S.B. 315, which adopted R.C. 4905.70 regarding Green Pricing Programs. The specific language of the statute states, “4928.70. (A) The public utilities commission may periodically review any green pricing program offered in this state as part of competitive retail electric service. At the conclusion of a review, the commission may make recommendations to improve or expand the program subject of the review. (B) The commission shall adopt rules necessary to carry out purposes of this section.” As ordered by this statute, the Commission is adopting rules necessary to carry out purposes of this section and proposes that they be contained in a new chapter, Ohio Adm.Code Chapter 4901:1-42.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

The adoption of Ohio Adm.Code Chapter 4901:1-42 is in response to Am. Sub. S.B. 315, which adopted R.C. 4928.70.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

The regulation does not implement a federal requirement; it implements a state requirement as set forth in R.C. 4928.70. Ohio Adm.Code Chapter 4901:1-42 would contain rules necessary to carry out the implementation of Green Pricing Programs.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The regulation includes provisions not specifically required by the federal government, but specifically required by the state of Ohio as found in Am. Sub. S.B. 315, which adopted R.C. 4928.70.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The rules contained in the proposed chapter prescribe the implementation and review of green pricing programs in the state of Ohio. The agency feels that there needs to be regulation in this area because the Ohio legislature has ordered regulation in this area via Am. Sub. S.B. 315.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The success of this regulation will be determined through feedback provided to the Commission by customers and utilities. There will be no measurable outputs or outcomes as a result of this regulation.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Commission conducted a workshop on August 16, 2012, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the Commission's adoption of Ohio Adm.Code Chapter 4901:1-42 is 12-2157-EL-ORD. The entry providing notice of the workshop was served upon all investor-owned electric utilities in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, and the Electric-Energy industry list-serve.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Numerous stakeholders attended the workshop in Case No. 12-2157-EL-ORD. The Commission received increased stakeholder input during the formal comment period pursuant to Commission rulemaking procedures. Comments were filed by seven stakeholders and reply comments were filed by five stakeholders.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

In proposing the adoption of Ohio Adm.Code Chapter 4901:1-42, the Commission takes into account feedback from stakeholders and the general public. No scientific data was used to develop the rule or measurable outcomes of the rule.

- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

No alternatives were considered. No regulatory alternatives were considered because the rules were revised strictly to bring them into accordance with Am. Sub. S.B. 315.

- 11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

No performance-based regulations were considered. These were not considered because the rules were revised specifically to bring them into accordance with Am. Sub. S.B. 315.

- 12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The Commission has reviewed other Ohio regulations and found no duplicate. Furthermore, these changes are in response to the directives of the General Assembly through the adoption of Am. Sub. S.B. 315.

- 13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The Commission's plan for implementation of Ohio Adm.Code Chapter 4901:1-42 is for the Energy and Environment Division of the Commission to implement and adopt measures that will ensure consistent and predictable application of the regulation, as well as to provide guidance to stakeholders when necessary.

Adverse Impact to Business

- 14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. Identify the scope of the impacted business community;**

The scope of the business community impacted by the adoption of Ohio Adm.Code Chapter 4901:1-42, includes any business engaged in the purchase of retail energy where green pricing programs are offered. Businesses in these areas will be positively impacted by having the opportunity to purchase another product; green power. No business will be forced or ordered to purchase this product, and thus no negative impact on business will exist.

Additionally, businesses providing a green pricing program or offering a green pricing product may be impacted by this rule. Businesses offering a green pricing product will be required to provide a copy of their marketing and program materials to Commission Staff, will be required to verify that the product being offered is actually a green product, and will be required to verify that the resources used to produce the green product are not also used for compliance with the state of Ohio's alternative energy portfolio standard. These adverse impacts are minimal and provide a form of consumer protection. Additionally, the extent of the adverse impact that may exist is far less than the benefit to consumers of having the option to receive green products.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

As indicated above, the proposed revisions were drafted in an effort to minimize any adverse impact on business, while complying with the directives of the Ohio General Assembly in Am. Sub. S.B. 315. No adverse impact on business would exist for *businesses with the option to purchase a green pricing product*. Businesses offering a green pricing product will be required to provide a copy of their marketing and program materials to Commission Staff, will be required to verify that the product being offered is actually a green product, and will be required to verify that the resources used to produce the green product are not also used for compliance with the state of Ohio's alternative energy portfolio standard. These adverse impacts are minimal and provide a form of consumer protection. Additionally, the extent of the adverse impact that may exist is far less than the benefit to consumers.

Additionally, the Commission will not be adopting a pre-approval process, which was originally proposed to stakeholders. Rather, the Commission finds that the rules should recognize that Staff should be provided with any marketing or program materials that are provided to customers, or that relate to products currently existing in the market. This will assist Staff in following the development of the market and knowing what products are being offered. Further, since these materials are already being provided to customers, the adverse impact of providing an additional copy to Commission Staff is minimal.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

Businesses offering a green pricing product will be required to provide a copy of their marketing and program materials to Commission Staff, will be required to verify that the product being offered is actually a green product, and will be required to verify that the resources used to produce the green product are not also used for compliance with the state of Ohio’s alternative energy portfolio standard.

While it is difficult to quantify the adverse impact to business, the Commission believes that the adverse impact will be primarily in time to comply. The Commission notes that many businesses will be required to report certain information to the Commission regarding green pricing programs, pursuant to Ohio Adm.Code Chapters 4901:1-21 and 4901:1-25. Additionally, Ohio Adm.Code Chapter 4901:1-42 does not require the development of program or marketing materials, only that a copy of any program or marketing materials be provided to the Commission Staff.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Commission believes that the consumer protection resulting from this rule far exceeds any adverse impact to business that may exist. If consumers decide to purchase a green pricing product, then they must be assured that the product they are purchasing actually is a green product. Additionally, the Commission monitors the market and seeks to ensure that the Revised Code is followed. The rules in Ohio Adm.Code Chapter 4901:1-42, as adopted, do not provide a measurable adverse impact to business or establish Commission regulation of the deregulated market. Rather, they provide reports to the Commission so that it may monitor the market to determine if the Revised Code is being followed and to determine if the market is functioning properly without misleading or deceiving customers.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The rules in Ohio Adm.Code Chapter 4901:1-42 does contain an exemption or alternative means of compliance in that no utility or competitive retail electric service provider is required to offer green pricing programs to their customers. Furthermore, if the utility or competitive retail electric service provider does provide a green pricing program, no customer would be required to participate or purchase a green pricing product.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not Applicable.

18. What resources are available to assist small businesses with compliance of the regulation?

The Commission works with small businesses to ensure compliance with the rules. In Case No. 12-2157-EL-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission any anticipated negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry.

*****DRAFT - NOT FOR FILING*****
"New Chapter"

4901:1-42-01 Definitions

- (A) "Commission" means the public utilities commission of Ohio.
- (B) "CRES provider" means a provider of "competitive retail electric service," as defined in division (A)(4) of section 4928.01 of the Revised Code.
- (C) "Double-Counting" has the meaning set forth in rule 4901:1-40-01 of the Administrative Code.
- (D) "EDU" means an electric distribution utility and shall have the meaning as set forth in division (A)(6) of section 4928.01 of the Revised Code.
- (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.
- (F) "Renewable energy credit" and "REC" means the environmental attributes associated with one megawatt-hour of electricity generated by a renewable energy resource.
- (G) "Renewable energy resource" shall have the meaning as set forth in section 4928.01, Revised Code.
- (H) "Retired" means permanently removing the resource from circulation so as to eliminate the potential for double-counting of the resource.
- (I) "Soliciting" means providing information to a potential future customer.

4901:1-42-02 Purpose and Scope

- (A) This chapter addresses the review of green pricing programs offered in this state as part of competitive retail electric service, pursuant to section 4928.70 of the Revised Code. Parties affected by these rules include all Ohio EDUs and CRES providers serving or soliciting retail electric customers in Ohio.
- (B) Upon an application or a motion filed by a party, the commission may waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

4901:1-42-03 Requirements

- (A) Any Ohio EDU or CRES providers offering a green pricing program shall ensure that any program or marketing materials distributed to customers accurately portray the product.
- (B) Any program or marketing materials being used by an Ohio EDU or CRES provider that address green pricing programs shall be provided to commission 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. Additionally, any program or marketing materials requested by staff should be provided to staff by email or facsimile within five calendar days.
- (C) Any Ohio EDU or CRES provider offering a green pricing program shall report participation statistics, consistent with the requirements of Chapter 4901:1-25 of the Administrative Code.
- (D) Any Ohio EDU or CRES provider offering a green pricing program shall maintain sufficient documentation to verify that adequate resources were secured and retired to support the product offerings. Such documentation, which shall be retained for no less than two years, shall be provided to commission staff within five calendar days of such a request.
- (E) Any Ohio EDU or CRES provider offering a green pricing program shall maintain sufficient 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 state's alternative energy portfolio standard as set forth in section 4928.64 of the Revised Code. Such documentation, which shall be

retained for no less than two years, shall be provided to commission staff within five calendar days of such a request.

- (F) An Ohio EDU or CRES provider offering a green pricing program shall not engage in double-counting of resources used to support participation in a green pricing program.