

**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.                    )

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**APPLICATION FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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In a Finding and Order (“Order”) issued on April 2, 2014, the Public Utilities Commission of Ohio (“PUCO”) adopted rules for the PUCO’s periodic review of the green pricing programs offered to Ohio consumers as part of competitive retail electric service (“CRES”) in Ohio.<sup>1</sup> The rules are included in a new Chapter of the Ohio Administrative Code, Chapter 4901:1-42 (“Chapter 42”). The Office of the Ohio Consumers’ Counsel (“OCC”), on behalf of residential customers, files this Application for Rehearing of the Order.<sup>2</sup>

The PUCO’s Order is unreasonable in the following respects:

- The adopted rules give marketers of green pricing programs too much time to provide program or marketing materials to the PUCO Staff after either the materials are distributed to customers or the product included in such programs is offered to Ohio customers. This timing should be reduced allow the PUCO to more effectively respond to complaints and inquiries from customers in the first few days that green pricing programs are offered.

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<sup>1</sup> The rules define “green pricing program” as “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.” See Order, Attachment B, page 1 of 3.

<sup>2</sup> OCC files this Application for Rehearing pursuant to Ohio Adm. Code 4901-1-35.

- The PUCO did not make clear that the penalties contained in the CRES rules also apply to violations of the green pricing rules. To protect consumers, the penalties for noncompliance with the green pricing rules should be made clear.

The PUCO should modify the Order and make the changes to the rules recommended by OCC in this Application for Rehearing.

The grounds for this Application for Rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

*/s/ Terry L. Etter*

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

Amended Substitute Senate Bill 315 (“Am. Sub. S.B. 315”) authorizes the PUCO, among other things, to periodically review the green pricing programs offered to Ohio consumers as part of CRES in Ohio. The law also authorizes the PUCO to recommend ways to improve or expand the green pricing programs offered in Ohio. To implement the green pricing provisions of Am. Sub. S.B. 315, the PUCO set out for comment rules for Chapter 42 proposed by the PUCO Staff.<sup>3</sup>

In response to the October 17 Entry, OCC filed Comments and Reply Comments on the PUCO Staff’s proposed rules.<sup>4</sup> OCC suggested several changes to the proposed rules that would add needed consumer protections and clarity to the rules and would help to streamline them.

On April 2, 2014, the PUCO issued the Order in this proceeding adopting new Chapter 42. The Order made several modifications to the PUCO Staff’s proposed rules, including some changes recommended by OCC. OCC appreciates the PUCO’s effort to

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<sup>3</sup> See Entry (October 17, 2012).

<sup>4</sup> Also filing comments and/or reply comments were Direct Energy Services, LLC and Direct Energy Business, LLC (“Direct Energy”); Citizen Power, Inc.; FirstEnergy Solutions Corp. (“FES”); Ohio Power Company (“Ohio Power”); Retail Energy Supply Association (“RESA”); and Dominion Retail. See Order at 2.

adopt rules that balance the needs of consumers and marketers. Nevertheless, OCC urges the PUCO to grant the rehearing OCC seeks in this Application to provide additional consumer protections.

OCC's Application for Rehearing addresses two aspects of the rules that need greater consumer protection:

- The PUCO should change rule 3(B) to require marketers to provide the PUCO Staff with green pricing program and marketing materials at the time either the materials are distributed to customers or the green pricing program is offered to Ohio customers.
- The PUCO should make clear that the penalties contained in the CRES rules also apply to violations of the green pricing rules.

## **II. STANDARD OF REVIEW**

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." OCC filed Comments and Reply Comments in this proceeding.

R.C. 4903.10 requires that an application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." In addition, Ohio Adm. Code 4901-1-35(A)

states: “An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing.”

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” As shown herein, the statutory standard to modify the Order is met here.

### III. ARGUMENT

#### A. **The Adopted Rules Give Marketers of Green Pricing Programs Too Much Time to Provide Program or Marketing Materials to the PUCO Staff after Either the Materials Are Distributed to Customers or the Product Included in Such Programs is Offered to Ohio Customers.**

Proposed rule 3(B) would have required that “[a]ny 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 at least 10 business days prior to the initial distribution to existing or potential customers.”<sup>5</sup> In their comments, some program providers complained that the proposed rule would inappropriately create a pre-approval process for program and marketing materials.<sup>6</sup> Many program providers urged the

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<sup>5</sup> October 17 Entry, Attachment B, page 2 of 3.

<sup>6</sup> See Ohio Power Comments at 1-2; Direct Energy Comments at [2]-[3].

PUCO to delete or modify the proposed rule.<sup>7</sup> In its Reply Comments, OCC disagreed with the program providers, and urged the PUCO to retain the rule.<sup>8</sup>

In its Order, the PUCO modified Rule 3(B) to require that green pricing program and marketing materials be provided to the PUCO Staff within four days after the materials are distributed to customers or the program is offered to Ohio customers. The PUCO explained that it does not intend to institute a pre-approval process for green pricing program or marketing materials.<sup>9</sup> Instead, the rule merely allows the PUCO to “stay informed of market activities and the products being offered.”<sup>10</sup>

In order to protect consumers, OCC seeks rehearing on this issue. Rule 3(B) should be changed to require that program and marketing materials be provided to the PUCO Staff when the materials are first distributed to customers or when the green pricing program is first offered to customers. The PUCO should have green pricing program and marketing materials at the same time the programs and marketing materials are being disseminated to the public. This would allow the PUCO to more effectively respond to any consumer complaints or inquiries that may be made to the PUCO in the first days after the programs and/or marketing campaigns begin.

The change OCC seeks would not amount to a pre-approval process. The materials would be provided coincidentally with the beginning of the program or marketing campaign. The PUCO should grant OCC rehearing on this issue.

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<sup>7</sup> See Direct Energy Comments at [4]; RESA Comments at 5; FES Comments at [4].

<sup>8</sup> OCC Reply Comments at 4-11.

<sup>9</sup> Order at 5.

<sup>10</sup> Id.

**B. The PUCO Did Not Make Clear that the Penalties Contained in the CRES Rules Also Apply to Violations of the Green Pricing Rules.**

In its Comments, OCC urged the PUCO to specify that those who violate the green pricing rules are subject to the same penalties as those who violate the CRES rules: a forfeiture of up to \$10,000 per occurrence; suspension, rescission, conditional rescission, revocation or non-renewal of the provider's certificate; rescission of a customer contract; and/or restitution or damages to the customer.<sup>11</sup> OCC suggested language, in a proposed rule 3(I), for this purpose.<sup>12</sup>

In its Order, the PUCO denied OCC's proposed rule "at this time."<sup>13</sup> The PUCO only stated that it "believes that the proposals are unnecessary and the issues raised by OCC are already adequately addressed in the rules."<sup>14</sup> But Chapter 42 does not address penalties for violation of the green pricing rules. Thus, the PUCO's Order is unreasonable.

In order to enhance consumer protections in Chapter 42, the PUCO should make clear that a violation of the green pricing rules is also a violation of the CRES rules, and carries the same penalty as violations of the CRES rules. Otherwise, it is unclear what the penalty would be for violating the green pricing rules, and thus unclear that penalties serve to protect consumers. The PUCO should grant OCC rehearing on this issue.

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<sup>11</sup> OCC Comments at 5-6, citing Ohio Adm. Code 4901:1-21-15(A).

<sup>12</sup> Id., Attachment at 3.

<sup>13</sup> Order at 9.

<sup>14</sup> Id.

### III. CONCLUSION

OCC appreciates the PUCO's efforts to protect consumers in the green pricing rules. The PUCO's Order, however, should be modified to provide adequate consumer protections. The PUCO should grant the rehearing OCC seeks in this Application.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served by first class United States Mail, postage prepaid, to the persons listed below, on this 2<sup>nd</sup> day of May 2014.

*/s/ Terry L. Etter* \_\_\_\_\_

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Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.