

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

INITIAL COMMENTS OF INTERSTATE GAS SUPPLY, INC.

I. INTRODUCTION

Ohio law provides the Commission with the ability to periodically review the green pricing programs offered in Ohio as part of competitive retail electric service, and at the conclusion of that review, provide recommendations to improve or expand these programs.¹ On February 24, 2021, the Commission issued amended rules for comment in Ohio Adm.Code Chapter 4901:1-42, which implement the review of the green pricing programs offered by electric distribution utilities (“EDUs”) and competitive retail electric service (“CRES”) providers.

Based upon the current rules, it is clear that the intent of this review is to ensure that these programs are being offered transparently in the marketplace for the benefit of customers. As such, Interstate Gas Supply, Inc. (“IGS” or “IGS Energy”) submits the following recommended improvements to these rules in order to ensure that customers are adequately protected from unreasonable marketing practices. Specifically, IGS recommends ensuring the programs do not run afoul with state law and policy regarding generation service in Ohio. Additionally, the Commission should clarify the rules to ensure

¹ R.C. 4928.70(A).

that carbon-free resources are not permitted to “double count” their environmental attributes. Therefore, IGS respectfully requests modifications of the proposed rules in the manner and for the reasons outlined in the comments below.

II. COMMENTS

A. The Commission should reject Staff’s proposal to remove statutory language from the rules.

Currently, the purpose and scope of the rules incorporates language from R.C. 4928.70(A) which states that the Commission may “review any green pricing program offered in this state as part of competitive retail electric service.” However, Staff’s lone recommendation for this chapter is to remove this language from the rule.² Staff asserts that this will “delete language unnecessary to determining application of the rule provisions, thereby clarifying that the rule applies to electric distribution utilities and competitive retail electric service providers.”³ This should be rejected.

The Commission should be concerned that Staff believes its application of the law through the rules becomes clearer by removing the part of law that actually establishes its application. Inclusion of statutory text is never “unnecessary” in a rule because it is through this very text that the Commission has the authority to create rules.

In fact, this language is quite necessary as it incorporates the classification of green pricing programs as “part of competitive retail electric service.” The Commission’s jurisdiction over competitive retail electric service is quite limited, as is the ability for an Ohio EDU to offer such a service.⁴ Indeed, Ohio EDUs are only able to offer competitive

² Entry, Att. A at 1.

³ Entry at ¶ 6.

⁴ See R.C. 4928.05(A)(1); 4928.141.

retail electric service under an approved standard service offer (“SSO”).⁵ As such, authority for an EDU to offer a green pricing program, which is “part of competitive retail electric service,” must occur through an SSO proceeding. Removal of the statutory language could signal something to the contrary, and therefore, Staff’s recommendation should be denied, and the statutory text should remain.

B. The Commission should protect ratepayers from subsidizing the cost of an EDU’s green pricing program.

It is well established that an EDU is prohibited from using revenues from noncompetitive distribution service to subsidize its competitive retail electric service.⁶ Because any green pricing program is part of competitive retail electric service, this principle must be extended to all of the marketing and administration of these products when offered by an EDU.

Consistent with the intent of the rules to ensure consumers are protected from unreasonable marketing practices, the rules should be amended to include the following new provision in Ohio Adm.Code 4901:1-42-03:

(G) Any Ohio EDU offering a green pricing program shall ensure that any costs associated with the marketing and administration of the program are collected on a bypassable basis.

This improvement will ensure that no anticompetitive subsidies are flowing between shopping and non-shopping customers in violation of state law and policy. Further, this is

⁵ *Id.*

⁶ See R.C. 4928.02(H); see also *Industrial Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St. 3d 486, 487 (2008); *Elyria Foundry Co. v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 316-317 (2007).

consistent with the treatment of the costs associated with other voluntary default service programs.⁷ Therefore, the Commission should adopt this customer protection.

C. Not amending Ohio Adm.Code Chapter 4901:1:42 in order to properly account for nuclear resources could equate to misleading double counting.

R.C. 4928.70(A) empowers the Commission to periodically review a green pricing program offered in this state as part of competitive retail electric service and at the conclusion of that review make recommendations to improve or expand the program. In light of this process IGS believes it is vital that the Commission take appropriate measures to ensure that the green pricing programs in Ohio continue to be fair and void of double counting or other misleading practices. Specifically, IGS implores the Commission to adopt rules prohibiting the ability to count nuclear resources towards any state's Renewable Portfolio Standard ("RPS"), or similar program providing value for an environmental attribute associated with a generation resource, and then also marketing the same nuclear resource to customers as part of an Ohio green pricing program. Failure to implement such a rule would permit a nuclear resource to sell their zero emission capability twice—once to a state (or federal program) and a second time to retail customers.

To avoid this and other similar forms of double counting a new definition should be adopted directly into Chapter 4901:1-42 while maintaining the current complete prohibition of double counting found in Ohio Adm.Code 4901:1-42-03(F). IGS

⁷ *In the Matter of the Filing by Ohio Edison Co., The Cleveland Electric Illuminating Co. and The Toledo Edison Co. of a Grid Modernization Plan*, Case Nos. 16-481-EL-UNC, et al., Stipulation (Nov. 9, 2018) at 18 (requiring the cost associated with the implementation, administration, and marketing of SSO time-of-use rates to be collected on a bypassable basis); *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid*, Case Nos. 18-1875-EL-GRD, et al., Stipulation (Oct. 23, 2020) at 11-12.

recommends the following definition of double counting be inserted during this rulemaking in order to clarify and ensure all Ohioans currently, or in the future, who proactively choose a green pricing plan are receiving the true and full attributes of the energy they are purchasing. IGS proposes the following definition, adopted and amended from 4901:1-40-01, be added to 4901:1-42-01:

(C) "Double-counting" means utilizing renewable energy, renewable energy credits, nuclear resource credits, zero emission credits, energy efficiency savings, or any other similar credit regardless of generation source to do any of the following:

(1) Satisfy multiple Ohio state renewable energy requirements or such requirements for more than one state.

(2) Receive state or federal nuclear resource credits or zero emission credits for attributes also used to support voluntary product offerings.

(3) Support multiple voluntary product offerings.

(4) Substantiate multiple marketing or public relations claims.

(5) Some combination of these.

The change would add very few, if any, hurdles to the current green pricing rules while providing stability to the competitive retail market and security to customers who choose these voluntary programs.

III. CONCLUSION

For the foregoing reasons, IGS recommends that the Commission adopts IGS' recommendations regarding the proposed rules of Ohio Adm.Code Chapter 4901:1-42.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this *Initial Comments of Interstate Gas Supply, Inc.* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on March 24, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on the stakeholders subscribed to this proceeding.

/s/ Bethany Allen
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Summary: Comments Initial Comments of Interstate Gas Supply, Inc. electronically filed by Bethany Allen on behalf of Interstate Gas Supply, Inc.