

**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**REPLY COMMENTS OF THE DAYTON POWER AND LIGHT COMPANY  
D/B/A AES OHIO**

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On February 24, 2021, the Public Utilities Commission of Ohio (“PUCO” or “the Commission”) issued an Entry setting forth minor revisions to Ohio Administrative Code Chapter 4901:1-42 based upon the Staff’s review. The Commission also set forth a procedural schedule whereby Comments were due on March 24, 2021, and Reply Comments are due on April 7, 2021. Comments were filed by the Retail Electric Supply Association (“RESA”) and Interstate Gas Supply, Inc. (“IGS”) and Citizens’ Utility Board of Ohio. The Dayton Power and Light Company d/b/a AES Ohio (“AES Ohio” or “the Company”) hereby submits these Reply Comments in response to RESA and IGS.

**A. R.C. 4928.70 Grants the Commission Power to Periodically Review Competitive Services; It Does Not Establish that All Green Pricing Programs are Competitive.**

Relying upon a misreading of R.C. 4928.70, RESA and IGS (collectively referred to as “the Marketers”) argue that the statute establishes that green pricing programs are part of competitive retail electric service and can only be offered by electric distribution utilities (“EDUs”) through an electric security plan (“ESP”).<sup>1</sup> RESA goes so far as to encourage the

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<sup>1</sup> Comments of the Retail Electric Supply Association (“RESA Comments”) at pp. 5-7 (March 24, 2021); Initial Comments of Interstate Gas Supply, Inc. (“IGS Comments”) at pp. 2-3 (March 24, 2021).

Commission to withhold authorization of green pricing programs by EDUs and discontinue EDUs' increased efforts to offer green products.<sup>2</sup> Alternatively, RESA suggests a change to 4901:1-42-03 that "[a]n Ohio EDU shall maintain sufficient documentation to verify that its green pricing program is in compliance with its authorization under section 4928.143 and section 4928.17 of the Revised Code."<sup>3</sup> Similarly, IGS argues that any costs associated with the marketing and administration of green pricing programs are collected on a bypassable basis.<sup>4</sup> The Commission should decline to adopt the Marketers' requested edits.

R.C. 4928.70 grants the Commission oversight of green pricing offered by CRES providers as opposed to a declaration that green programs are competitive. The Commission is vested with the power to "supervise and regulate public utilities."<sup>5</sup> Public utilities include, but are not limited to, electric light companies engaging in retail electric service.<sup>6</sup> But the Commission has limited regulatory oversight over those parties engaged in competitive retail electric service.<sup>7</sup> R.C. 4928.70, however, grants the Commission the ability to "periodically review any green pricing program offered in this state as part of competitive retail electric service," which would not otherwise be subject to review.

It would be illogical to read R.C. 4928.70 as a limit on the Commission preventing it from approving requests from EDUs to conduct regulated retail electric green pricing services. While there is no doubt that EDUs have the authority to implement green pricing programs under an approved ESP pursuant to R.C. 4928.143, that is not the only avenue through an EDU may

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<sup>2</sup> RESA Comments at p. 7.

<sup>3</sup> RESA Comments at p. 8.

<sup>4</sup> IGS Comments at p. 3.

<sup>5</sup> R.C. 4905.04.

<sup>6</sup> R.C. 4905.03.

<sup>7</sup> R.C. 4928.01 *et. seq.*

implement a green pricing program. Indeed, “green pricing” is not a defined term under the Ohio Revised Code, necessarily including services beyond those that have been deemed competitive pursuant to R.C. 4928.03 (e.g. “retail electric generation, aggregation, power marketing, and power brokerage services”). And the Commission’s broad definition of “green pricing program” – “an electric product in which the product is marketed based on its fuel source and/or emissions profile”<sup>8</sup> – could certainly include more than the types of products that have been deemed competitive.

Reading 4928.70 as a grant of power over CRES suppliers, as opposed to a declaration that green programs are competitive, is also consistent with state policy. The Commission is required to:

- encourage innovation and market access for cost-effective supply and demand side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure;<sup>9</sup>
- ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over selection of those supplies and suppliers;<sup>10</sup>
- provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;<sup>11</sup> and
- encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency program and alternative energy resources in their businesses.<sup>12</sup>

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<sup>8</sup> O.A.C. 4901:1-42-01(E).

<sup>9</sup> R.C. 4928.02(D)

<sup>10</sup> R.C. 4928.02(C).

<sup>11</sup> R.C. 4928.02(J).

<sup>12</sup> R.C. 4928.02(M).

For these reasons, the Commission should reject any notion that EDUs can only offer green pricing programs as part of an ESP or otherwise prophylactically limit the EDUs' ability to offer green pricing programs and thereby deny the Marketer's requested edits.

**B. The Commission Should Accept Staff's Edit to 4901:1-42-02(A).**

For the same reasons set forth in sub-section A of these Reply Comments, the Commission should also deny the Marketers requests to reject Staff's recommended edits to 4901:1-42-02(A).<sup>13</sup> The Commission has the ability to periodically review CRES green product offerings pursuant to R.C. 4928.70, but also has plenary authority to review any green product offerings by EDUs. Staff's common-sense edit makes the green pricing rules applicable to those periodic reviews of CRES offerings as well as any offerings by EDUs such that there is one consistent set of rules for both types of products. This aligns with the Staff's intentions<sup>14</sup> as well as RESA's understanding that 4901:1-42-01 *et seq.* applies to both EDUs and CRES providers.<sup>15</sup>

Respectfully submitted,

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<sup>13</sup> RESA Comments at pp. 2-4; IGS Comments at pp. 2-3.

<sup>14</sup> Entry at ¶ 6 (February 24, 2021) (Staff recommended edits to 4901:1-42-02(A) to "clarify[] that the rule applies to electric distribution utilities and competitive retail electric service providers."

<sup>15</sup> RESA Comments at p. 4.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on the persons stated below via electronic transmission, this 7<sup>th</sup> day of April 2021.

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