

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF THE GREEN PRICING
PROGRAMS CHAPTER 4901:1-42 OF THE
OHIO ADMINISTRATIVE CODE.

CASE NO. 20-1195-EL-ORD

ENTRY

Entered in the Journal on October 20, 2021

I. SUMMARY

{¶ 1} The Commission adopts, with no changes, the current rules contained in Ohio Adm.Code Chapter 4901:1-42, entitled Review of Green Pricing Programs.

II. DISCUSSION

A. *Procedural Background*

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. Ohio Adm.Code Chapter 4901:1-42 concerns the Commission's rules for reviewing green pricing program standards.

{¶ 3} R.C. 106.03(A) requires that the Commission determine whether the rules:

- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
- (b) Need amendment or rescission to give more flexibility at the local level;
- (c) Need amendment or rescission to eliminate unnecessary paperwork;
- (d) Incorporate a text or other material by reference and, if so, whether the citation accompanying the incorporation by reference would reasonably enable the joint committee on agency rule review or a reasonable person to whom the rules apply to find and inspect the incorporated text or material readily and without charge and, if the rule has been exempted in whole or in part from R.C. 121.71 to 121.74 because the incorporated text or material has one or more characteristics described in R.C. 121.75(B), whether the incorporated text or material actually has any of those characteristics;

- (e) Duplicate, overlap with, or conflict with other rules;
- (f) Have an adverse impact on businesses, as determined under R.C. 107.52;
- (g) Contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and
- (h) Require liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

{¶ 4} Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis (BIA). 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. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the BIA.

{¶ 5} On January 6, 2021, the Commission held a workshop in this proceeding to enable interested stakeholders to propose revisions to the rules in Ohio Adm.Code Chapter 4901:1-42 for the Commission's consideration. Representatives of two interested stakeholders offered comments at the workshop.

{¶ 6} By Entry issued February 24, 2021, the Commission invited all interested parties to file comments concerning Staff's proposal as to the rules, which was to amend only Ohio Adm.Code 4901:1-42-02 by deleting language that Staff felt was unnecessary in order to clarify the scope of the application of the rules as to both electric distribution utilities (EDUs) and competitive retail electric service (CRES) providers.

B. Consideration of Staff's Recommendation and the Comments

{¶ 7} Initial comments were filed by Retail Energy Supply Association (RESA), Interstate Gas Supply, Inc (IGS), and Citizens' Utility Board of Ohio (CUBO). Reply comments were filed by Ohio Power Company (AEP), RESA, Duke Energy Ohio, Inc. (Duke), IGS, The Dayton Power and Light Company (DP&L), and the Ohio Consumers' Counsel (OCC).

{¶ 8} Relative to Ohio Adm.Code 4901:1-42-01, IGS proposed a new definition of “double counting” of resources that is intended to ensure that green pricing program attributes are incapable of being marketed twice, once to a state or federal program and a second time to retail customers. IGS claims that the current rules could allow a green energy producer to claim benefits of certain resources (most notably, nuclear generation resources) for renewable portfolio standards (RPS) purposes while also marketing the same resources to customers as part of an Ohio green pricing program. Duke opposes IGS’ proposed revision, claiming that (1) the clarification is not needed, and (2) if clarification is considered, it is more appropriately considered pursuant to a review of Ohio Adm.Code 4901:1-40(I), which, by its incorporation into Ohio Adm.Code 4901:1-42-01(C), provides the current “double-counting” definition.

{¶ 9} The Commission finds that the existing definition of “double counting” adequately protects against the potential for improper overlapping marketing of green energy benefits. The prohibition against double counting green pricing resources is clearly described in Ohio Adm.Code 4901:1-42-03(F), which relies upon the “double counting” definition provided in Ohio Adm.Code 4901:1-42-01(C). As Duke notes, the Commission has previously employed the current rules in order to protect against the double counting between RPS compliance and green pricing program marketing. *See, In re the Review of Duke Energy Ohio, Inc’s Alternative Energy Recovery Rider*, Case No. 19-51-EL-RDR, Entry (Jan. 23, 2019) (*Duke Energy Case*). Further, in declining to modify the “double counting” definition, we note that IGS’ concerns as to the cross-marketing of nuclear generation resources is rendered moot based on the enactment of Am. Sub H. B. 128, which became effective of June 30, 2021, and eliminated state credits for nuclear generation resources. Accordingly, we find no need to amend the definition of “double counting.”

{¶ 10} Relative to Ohio Adm.Code 4901:1-42-02, RESA and IGS urge that Staff’s proposed change, deleting reference to a CRES provider, is unwarranted. RESA asserts that there is insufficient explanation for the proposed change, and IGS argues that the current rule restricts an EDU from offering green pricing programs except as authorized pursuant

to an approved standard service offer (SSO). In their reply comments, DP&L supports Staff's proposed change, and AEP opposes IGS' comments, as AEP maintains that EDUs are permitted to offer green pricing programs pursuant to approved tariffs such that the rationale for IGS' opposition to Staff's amendment is misplaced.

{¶ 11} Relative to Ohio Adm.Code 4901:1-42-02(A), we find that Staff's proposed elimination of the reference to CRES providers is unnecessary and could lead to confusion as to application of the green pricing rules. We note that there are several references within the current rules that are clear in describing that the green pricing rules apply to both EDUs and CRES providers. Moreover, the stricken language simply reiterates the language provided in the statute. R.C. 4928.70. Accordingly, there is no need for rule modification.

{¶ 12} Relative to Ohio Adm.Code 4901:1-42-03, RESA and IGS both argue for an expansion of the green pricing participation requirements as they relate to EDUs. RESA proposes the addition of language requiring EDUs to document that EDU green pricing programs are compliant with other revised code and administrative code sections, and IGS seeks language that requires EDUs to ensure that green pricing program marketing and administration costs are collected only on a bypassable basis. Further, RESA argues for the elimination of Section (B) of the rule, claiming that the current language exceeds the Commission's statutory authority, which is limited to solely conducting periodic reviews of green pricing customer plan offerings. Meanwhile, CUBO argues that that current rule should be expanded with respect to the information that must be included in customer marketing materials.

{¶ 13} Except with respect to OCC's general agreement with IGS' proposal to add language clarifying that EDUs can only recover marketing and administration costs on a bypassable basis (OCC actually favors even more restrictive language, which would clarify that such costs would be separately identified and only recoverable from customers that opt into the green pricing program), the remaining reply comments relative to Ohio Adm.Code 4901:1-42-03 oppose the proposals made by RESA, IGS, and CUBO. OCC rebuts RESA's

claim as to limitations on the Commission's authority to review marketing materials, and further claims that the Commission should expand the rule to require periodic financial audits of all green pricing programs. AEP, Duke and DP&L also oppose RESA's proposal to add reporting requirements specific to EDUs based on disputes as to RESA's interpretation of EDU program participation and claims that rule changes are unnecessary. Further, AEP, Duke, and DP&L oppose IGS' proposal to add rule language that addresses restrictions as to cost recovery by EDUs for marketing and administration costs other than on a bypassable basis, claiming that IGS' rule interpretation is in error and that clarifying language is unnecessary as to this issue. Further, RESA, IGS, and Duke argue against CUBO's proposal, claiming that the changes are unnecessary and potentially confusing to customers.

{¶ 14} Relative to Ohio Adm.Code 4901:1-42-03, we reject the proposed rule modifications. Initially, we disagree with RESA's claim that the marketer disclosure aspects of the rule exceed our authority as described in R.C. 4928.70, finding that the authority to conduct "periodic reviews" is supportive of required disclosure of program or marketing materials to Staff as is currently provided in the rule. We also reject CUBO's argument that the rule should be expanded with respect to the information that must be included in customer marketing materials, finding that the current regulatory framework provides sufficient consumer protections through the required compliance with Staff's reviews and recommendations as to consumer marketing information. Further, we reject the suggestions by RESA, IGS, and OCC as to (1) adding EDU compliance reporting requirements, and (2) clarifying the manner in which EDUs must administer the costs of marketing and operating green pricing programs. Based on our consideration of issues impacting an EDU's offering of a green pricing program, we maintain that our regulatory authority in this area is clear and that further rules are unnecessary. *Duke Energy Case*. We decline to adopt additional rules as to regulating these EDU programs, finding that they are (1) unnecessary, and (2) inconsistent with the existing provisions in Ohio Adm.Code 4901:1-42-03(A) through (E),

which consistently describe green pricing program requirements applicable to both EDUs and CRES providers.

C. Conclusion

{¶ 15} Upon consideration of Staff's proposal, the comments, and the reply comments in the case, the Commission finds that current Ohio Adm.Code Chapter 4901:1-42 should be adopted without modification. The Commission considered and rejected proposed changes to each of the rules. As to each of the proposed changes, the Commission finds that the current rules reasonably provide for the administration of the green pricing program. Accordingly, there is no need for modification to the rules.

{¶ 16} The rules are posted on the Commission's Docketing Information System website at <http://dis.puc.state.oh.us>. To minimize the expense of this proceeding, the Commission will serve only a paper copy of this Finding and Order. All interested persons are directed to input case number 20-1195 into the Case Lookup box to review this Finding and Order, as well as the rules, or to contact the Commission's Docketing Division to request a paper copy.

III. ORDER

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That Ohio Adm.Code 4901:1-42-01, 4901:1-42-02, and 4901:1-42-03 be adopted with no changes. It is, further,

{¶ 19} 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 division (D) of R.C. 111.15. It is, further,

{¶ 20} ORDERED, That the final rules be effective on the earliest date permitted by law. 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. 106.031. It is, further,

{¶ 21} ORDERED, That a copy of this Finding and Order, with the rules and BIA, be served upon the Common Sense Initiative at CSIPublicComments@governor.ohio.gov. It is, further,

{¶ 22} ORDERED, That a copy of this Finding and Order be sent to all Commission industry list-serves. It is, further,

{¶ 23} ORDERED, That a copy of this Finding and Order be served upon OCC and all other interested parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

MLW/hac

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Summary: Entry adopting, with no changes, the current rules contained in Ohio Adm.Code Chapter 4901:1-42, entitled Review of Green Pricing Programs. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio