

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

CASE NO. 22-868-EL-ORD

FINDING AND ORDER

Entered in the Journal on November 30, 2022

I. SUMMARY

{¶ 1} The Commission adopts proposed amendments to the green pricing programs rules in Ohio Adm.Code Chapter 4901:1-42.

II. DISCUSSION

{¶ 2} R.C. 121.95, effective October 17, 2019, required state agencies, including the Commission, to create a base inventory of regulatory restrictions contained in each of their rules by December 31, 2019.

{¶ 3} R.C. 121.951(A)(1), effective June 8, 2022, requires the Commission to amend or rescind rules identified in its base inventory – using the criteria listed in R.C. 106.03(A) – as necessary to reduce the total number of regulatory restrictions by thirty percent over the course of three years.

{¶ 4} In performing the above review, R.C. 106.03(A) requires the Commission to determine, among other things, whether the rule should be amended or rescinded (including for the purpose of accomplishing the requirements of R.C. 121.951) because it exceeds or conflicts with the purpose, scope, or intent of the statute(s) under which the rule was adopted; creates a compliance or oversight burden that is greater than the burden that would be created if the agency accomplished the intended purpose of the restriction by other means; is no longer useful or beneficial; or duplicates, overlaps with, or conflicts with a federal or state law or rule. Additionally, the Commission must assess whether the rule has

an adverse impact on businesses, as determined under R.C. 107.52, or any other person or entity.

{¶ 5} In evaluating whether the rule has an adverse impact on business, the Commission must also prepare a business impact analysis (BIA) pursuant to R.C. 121.82. If there will be an adverse impact on businesses, as defined in R.C. 107.52, the Commission is tasked to incorporate features into the draft rules to eliminate or adequately reduce the adverse business impact. R.C. 121.82 also requires the Commission to provide a copy of the draft rules and BIA to the Common Sense Initiative office for comment.

{¶ 6} Staff evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-42 in order to reduce the number of regulatory restrictions pursuant to R.C. 121.951(A)(1). As a result of that review, Staff proposed substantive changes to reduce the total number of regulatory restrictions present as well as non-substantive changes to provide clarity.

{¶ 7} On October 19, 2022, the Commission issued an Entry seeking comments on the proposed amendments to Ohio Adm.Code Chapter 4901:1-42 and a BIA. Comments were due by November 2, 2022.

{¶ 8} No comments were received in response to the October 19, 2022 Entry.

III. CONCLUSION

{¶ 9} Under R.C. 121.95 and R.C. 121.951, the Commission was obligated to produce a base inventory of the regulatory restrictions contained in each of our rules and then, not later than June 30, 2025, reduce that total number of regulatory restrictions by 30 percent.

{¶ 10} During this process, the Commission is required to consider the criteria provided in R.C. 106.03(A), including the continued need for the rules, the nature of any complaints or comments received concerning the rules, and any relevant factors that have changed in the subject matter area affected by the rules. Pursuant to R.C. 106.03(A)(6) and R.C. 121.82(A), the Commission must also demonstrate that we have evaluated the impact

of the rule on businesses. The Commission has included stakeholders, has considered the impact of the rules on businesses and other entities in developing these revised rules, and has adhered to the requirement regarding the removal of regulatory restrictions.

{¶ 11} At this time, the Commission finds that the proposed amendments to Ohio Adm.Code Chapter 4901:1-42 should be adopted. To minimize the expense of this proceeding, interested persons who have not agreed to electronic service will be served a paper copy of this Finding and Order only. The rules are posted on the Commission's Docketing Information System website at <http://dis.puc.state.oh.us>. All interested persons are directed to input case number 22-868 into the Case Lookup box to view this Finding and Order, as well as the rules, or to contact the Commission's Docketing Division to request a paper copy.

IV. ORDER

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That amended Ohio Adm.Code 4901:1-42-01 and -03 be adopted. It is, further,

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

{¶ 15} 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 R.C. 111.15(D). It is, further,

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

{¶ 17} 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 4901:1-42 shall be in compliance with R.C. 106.03. It is, further,

{¶ 18} ORDERED, That a copy of this Finding and Order be sent to the electric-energy list-serve. It is, further,

{¶ 19} ORDERED, That a copy of this Finding and Order be served upon all Ohio electric distribution utilities, all Ohio certified competitive retail electric service providers, and the Ohio Consumers' Counsel.

COMMISSIONERS:

Approving:

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

MJA/dmh

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AMENDED

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~~ has 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~~ has the same meaning as set forth in section 4928.01 of the 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.

NO CHANGE

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.

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- (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.

AMENDED

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)~~ (C) 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)~~ (D) 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)~~ (E) Any 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.

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in

Case No(s). 22-0868-EL-ORD

Summary: Finding & Order adopting proposed amendments to the green pricing programs rules in Ohio Adm.Code Chapter 4901:1-42 electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio