

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122 Fax: 614-728-8373

Regulation/Package Title: Green Pricing Programs

Rule Number(s): Adoption of Ohio Adm.Code Chapter 4901:1-42

Date: April 2, 2014

Rule Type:

- New
 5-Year Review
 Amended
 Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.

The proposed Ohio Adm.Code Chapter 4901:1-42 is in response to Am. Sub. S.B. 315, which adopted R.C. 4905.70 regarding Green Pricing Programs. The specific language of the

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

statute states, “4928.70. (A) The public utilities commission may periodically review any green pricing program offered in this state as part of competitive retail electric service. At the conclusion of a review, the commission may make recommendations to improve or expand the program subject of the review. (B) The commission shall adopt rules necessary to carry out purposes of this section.” As ordered by this statute, the Commission is adopting rules necessary to carry out purposes of this section and proposes that they be contained in a new chapter, Ohio Adm.Code Chapter 4901:1-42.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

The adoption of Ohio Adm.Code Chapter 4901:1-42 is in response to Am. Sub. S.B. 315, which adopted R.C. 4928.70.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

The regulation does not implement a federal requirement; it implements a state requirement as set forth in R.C. 4928.70. Ohio Adm.Code Chapter 4901:1-42 would contain rules necessary to carry out the implementation of Green Pricing Programs.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The regulation includes provisions not specifically required by the federal government, but specifically required by the state of Ohio as found in Am. Sub. S.B. 315, which adopted R.C. 4928.70.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The rules contained in the proposed chapter prescribe the implementation and review of green pricing programs in the state of Ohio. The agency feels that there needs to be regulation in this area because the Ohio legislature has ordered regulation in this area via Am. Sub. S.B. 315.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The success of this regulation will be determined through feedback provided to the Commission by customers and utilities. There will be no measurable outputs or outcomes as a result of this regulation.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Commission conducted a workshop on August 16, 2012, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the Commission's adoption of Ohio Adm.Code Chapter 4901:1-42 is 12-2157-EL-ORD. The entry providing notice of the workshop was served upon all investor-owned electric utilities in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, and the Electric-Energy industry list-serve.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Numerous stakeholders attended the workshop in Case No. 12-2157-EL-ORD. The Commission received increased stakeholder input during the formal comment period pursuant to Commission rulemaking procedures. Comments were filed by seven stakeholders and reply comments were filed by five stakeholders.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

In proposing the adoption of Ohio Adm.Code Chapter 4901:1-42, the Commission takes into account feedback from stakeholders and the general public. No scientific data was used to develop the rule or measurable outcomes of the rule.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

No alternatives were considered. No regulatory alternatives were considered because the rules were revised strictly to bring them into accordance with Am. Sub. S.B. 315.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required *outcome*, but don't dictate the process the regulated stakeholders must use to achieve compliance.

No performance-based regulations were considered. These were not considered because the rules were revised specifically to bring them into accordance with Am. Sub. S.B. 315.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Commission has reviewed other Ohio regulations and found no duplicate. Furthermore, these changes are in response to the directives of the General Assembly through the adoption of Am. Sub. S.B. 315.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Commission's plan for implementation of Ohio Adm.Code Chapter 4901:1-42 is for the Energy and Environment Division of the Commission to implement and adopt measures that will ensure consistent and predictable application of the regulation, as well as to provide guidance to stakeholders when necessary.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The scope of the business community impacted by the adoption of Ohio Adm.Code Chapter 4901:1-42, includes any business engaged in the purchase of retail energy where green pricing programs are offered. Businesses in these areas will be positively impacted by having the opportunity to purchase another product; green power. No business will be forced or ordered to purchase this product, and thus no negative impact on business will exist.

Additionally, businesses providing a green pricing program or offering a green pricing product may be impacted by this rule. Businesses offering a green pricing

product will be required to provide a copy of their marketing and program materials to Commission Staff, will be required to verify that the product being offered is actually a green product, and will be required to verify that the resources used to produce the green product are not also used for compliance with the state of Ohio's alternative energy portfolio standard. These adverse impacts are minimal and provide a form of consumer protection. Additionally, the extent of the adverse impact that may exist is far less than the benefit to consumers of having the option to receive green products.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

As indicated above, the proposed revisions were drafted in an effort to minimize any adverse impact on business, while complying with the directives of the Ohio General Assembly in Am. Sub. S.B. 315. No adverse impact on business would exist for businesses with the option to purchase a green pricing product. Businesses offering a green pricing product will be required to provide a copy of their marketing and program materials to Commission Staff, will be required to verify that the product being offered is actually a green product, and will be required to verify that the resources used to produce the green product are not also used for compliance with the state of Ohio's alternative energy portfolio standard. These adverse impacts are minimal and provide a form of consumer protection. Additionally, the extent of the adverse impact that may exist is far less than the benefit to consumers.

Additionally, the Commission will not be adopting a pre-approval process, which was originally proposed to stakeholders. Rather, the Commission finds that the rules should recognize that Staff should be provided with any marketing or program materials that are provided to customers, or that relate to products currently existing in the market. This will assist Staff in following the development of the market and knowing what products are being offered. Further, since these materials are already being provided to customers, the adverse impact of providing an additional copy to Commission Staff is minimal.

- c. **Quantify the expected adverse impact from the regulation. The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.**

Businesses offering a green pricing product will be required to provide a copy of their marketing and program materials to Commission Staff, will be required to verify that the product being offered is actually a green product, and will be required to verify that the resources used to produce the green product are not also used for compliance with the state of Ohio’s alternative energy portfolio standard.

While it is difficult to quantify the adverse impact to business, the Commission believes that the adverse impact will be primarily in time to comply. The Commission notes that many businesses will be required to report certain information to the Commission regarding green pricing programs, pursuant to Ohio Adm.Code Chapters 4901:1-21 and 4901:1-25. Additionally, Ohio Adm.Code Chapter 4901:1-42 does not require the development of program or marketing materials, only that a copy of any program or marketing materials be provided to the Commission Staff.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Commission believes that the consumer protection resulting from this rule far exceeds any adverse impact to business that may exist. If consumers decide to purchase a green pricing product, then they must be assured that the product they are purchasing actually is a green product. Additionally, the Commission monitors the market and seeks to ensure that the Revised Code is followed. The rules in Ohio Adm.Code Chapter 4901:1-42, as adopted, do not provide a measurable adverse impact to business or establish Commission regulation of the deregulated market. Rather, they provide reports to the Commission so that it may monitor the market to determine if the Revised Code is being followed and to determine if the market is functioning properly without misleading or deceiving customers.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The rules in Ohio Adm.Code Chapter 4901:1-42 does contain an exemption or alternative means of compliance in that no utility or competitive retail electric service provider is

required to offer green pricing programs to their customers. Furthermore, if the utility or competitive retail electric service provider does provide a green pricing program, no customer would be required to participate or purchase a green pricing product.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not Applicable.

18. What resources are available to assist small businesses with compliance of the regulation?

The Commission works with small businesses to ensure compliance with the rules. In Case No. 12-2157-EL-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission any anticipated negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry.