

Common Sense  
InitiativeMike DeWine, Governor  
Jon Husted, Lt. Governor

Carrie Kuruc, Director

**Business Impact Analysis**Agency, Board, or Commission Name: Public Utilities Commission of Ohio

Rule Contact Name and Contact Information:

Angela Hawkins, Legal Director ([Angela.Hawkins@puco.ohio.gov](mailto:Angela.Hawkins@puco.ohio.gov)) Phone: 614-466-0463

Regulation/Package Title (a general description of the rules' substantive content):

Ohio Adm.Code Chapter 4901-42 Green Pricing Program StandardsRule Number(s): 4901-1-42-01; 4901:1-42-02; 4901:1-42-03Date of Submission for CSI Review: February 24, 2021Public Comment Period End Date: April 7, 2021**Rule Type/Number of Rules:**

New/ rules

No Change/ 2 rules (FYR? Yes)Amended/1 rules (FYR? Yes)Rescinded/      rules (FYR?     )

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies

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

CSIPublicComments@governor.ohio.gov

should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- \_\_\_\_\_ a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- \_\_\_\_\_ b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- \_\_\_\_\_ c. ☒ Requires specific expenditures or the report of information as a condition of compliance. *The rule maintains prior compliance reporting requirements.*
- \_\_\_\_\_ d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **Regulatory Intent**

2. Please briefly describe the draft regulation in plain language.

*Please include the key provisions of the regulation as well as any proposed amendments.*

4901-1-42 - Generally, this rule sets forth regulations applicable to the provision of electric green pricing programs. The purpose for the amendment to this rule is to clarify that the rule applies to both EDUs and CRES providers.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Rule	Statutory Authority- Ohio Revised Code
4901-1-42	4928.70

4. 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.*

No.

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

Not Applicable.

6. 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 public purpose for the regulation is to comply with the legislative direction provided in R.C. 4928.70

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

The PUCO will measure success based on the continued management of the green pricing program, as legislatively directed.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

*Not applicable*

### **Development of the Regulation**

9. 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.*

On November 24, 2020, in Case No. 20-1195-EL-ORD, the PUCO issued an entry by U.S. mail and email indicating that a workshop would be conducted on January 6, 2021, so that interested persons could offer comments on the 5-year rule review. The workshop was held as scheduled.

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

Two interested parties provided testimony at the virtual workshop. The comments offered at the workshop were generally supportive of the continuing plan for administering the program.

**11. 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?**

No scientific data was used to develop the draft rules.

**12. 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?**

Since the rule complies with legislative direction, no regulatory alternative would suffice.

**13. 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.***

As the purpose of the rule clarification is to maintain compliance with legislative direction in managing the program, performance-based regulations would not achieve the necessary compliance.

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

The PUCO has sole jurisdiction over the green pricing program and has found no duplicate, nor has a duplicate regulation been identified by any stakeholder.

**15. 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 PUCO will act to ensure that green pricing program participants are fully aware of these regulations. The opportunity for continued feedback and input from interested

stakeholders always exists through interaction with PUCO staff and better ensures that implementation of this rule occurs consistently and predictably.

### **Adverse Impact to Business**

**16. 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; and**

The impacted business community will be green pricing program participants, who will comply with these rules.

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

The rules were drafted in an effort to minimize any adverse impact on businesses. Any adverse impact results from the time and expense of notifying the PUCO of program compliance.

**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.*

Any adverse impact in terms of dollars and hours to comply should be minimal, as the rule merely clarifies the program participation requirements as legislatively directed.

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

The maintenance of the green pricing program, as legislatively directed, justifies the minimal impact on the regulated business community of adopting these rules.

### **Regulatory Flexibility**

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

As the compliance requirements are minimal, alternative compliance is not practical.

**19. 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?**

The amended and new rules do not impose specific fines or penalties for failure to comply. Fines or penalties for violation of these rules may only be ordered by the PUCO

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

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

after notice and hearing. The PUCO will fully comply with R.C. 119.14 and it is not the PUCO's intent to seek and recover administrative fines or civil penalties on any small business for a first-time paperwork violation.

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

PUCO staff works with affected entities, including small businesses if applicable, to assist such companies with compliance.