



## ADDENDUM

**TO:** Angela Hawkins, Legal Director, Public Utilities Commission of Ohio  
**FROM:** Mark Hamlin, Director of Regulatory Policy  
**DATE:** September 22, 2014  
**RE:** **CSI Review – Green Pricing (OAC 4901:1-42-01 through 4901:1-42-03)**

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On Sept 20, 2014 the Public Utilities Commission of Ohio (PUCO) provided the Common Sense Initiative (CSI) Office with a response to our recommendation dated March 1, 2013 concerning the rule package titled “Green Pricing.” The 2013 CSI memo had made the following two recommendations:

1. The PUCO should revise the language in the rule package, and specifically in OAC 4901:1-42-03, to align more directly with the statutory authority to *review* green pricing programs. Most notably, the Commission should remove the proposed requirement that providers submit program and marketing materials in advance to the Commission.
2. The PUCO should submit a revised Business Impact Analysis that acknowledges the adverse impact to businesses that could provide electricity under a green pricing program and that justifies those adverse impacts.

In its final Finding and Order dated April 2, 2014, the Commission issued a revised rule package incorporating the CSI recommendation, as well as a revised Business Impact Analysis. Consequently, the CSI Office concludes that the PUCO should now proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.



## MEMORANDUM

**TO:** Elizabeth Stevens, Legal Director, Public Utilities Commission of Ohio  
**FROM:** Mark Hamlin, Director of Regulatory Policy  
**DATE:** March 1, 2013  
**RE:** **CSI Review – Green Pricing (OAC 4901:1-42-01 through 4901:1-42-03)**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

### **Analysis**

This rule package consists of three new rules being proposed by the Public Utilities Commission of Ohio (PUCO), dealing with the review of green pricing programs that may be offered by retail electric service providers in Ohio. As noted in the BIA submitted by the PUCO, the rules are the result of Senate Bill 315, enacted in 2012, which created the new ORC 4928.70 and states the following:

- (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.

Generally, retail electric service providers are not required to offer programs that focus on electricity produced through renewable sources. However, the proposed rules provide a framework of regulations for companies that choose to do so based on a market for such services. The rules outline requirements such as semi-annual reporting to the PUCO, documentation that must be

maintained, and a requirement that program and marketing materials must be submitted to the PUCO at least 10 days prior to being distributed.

The BIA submitted by the PUCO notes that it conducted a workshop with stakeholders in August 2012. However, the BIA noted that the PUCO did not receive significant feedback on the proposals, and noted that because the rule package is creating new requirements, additional feedback would likely come after the actual rule text was proposed. This turned out to be correct, as 12 entries were filed offering comments on the rules after the CSI notification was sent. The comments expressed varying viewpoints of the overall value of the rules, but each provided some recommendations for improvement.

Among the providers who would potentially offer green pricing programs under the rules, a couple themes emerged in their comments. There was a general consensus that the PUCO was exceeding the authority it was given in ORC 4928.70. As described above, that statute authorizes the Commission to review green pricing programs and offer suggestions for improvement. However, the proposed rules establish regulations that are imposed prospectively as providers implement programs. More specifically, the requirement that providers submit program and marketing materials ten days before distribution was viewed by a number of commenters as a significant overreach by the PUCO and an overly burdensome requirement.

Moreover, the BIA submitted by the PUCO focused its analysis on the potential impact to businesses that might choose to *purchase* energy through a green pricing program. The Commission rightly noted that purchasing energy in this manner would be voluntary and thus, no adverse impact is created for these businesses. However, the BIA does not discuss any potential adverse impact to businesses that *provide* green energy programs. As a result, none of the concerns expressed by the commenters are addressed in the PUCO's analysis.

The CSI Office followed up with PUCO staff to determine whether it intended to make changes to the rules to address the concerns expressed, or whether it would either dispute or provide justifications for the potential adverse impacts raised by the commenters. The position of the PUCO staff was that because the Commission can only speak through its findings and orders, staff was not in a position to discuss any responses to the comments.

As described above, the PUCO did attempt to reach out to stakeholders early in the development of the rule, and it correctly anticipated that it would receive more feedback after the rules were formally submitted. However, the comments received raise legitimate concerns about the rule package as originally proposed by the PUCO. Without understanding how the PUCO intends to respond, the CSI Office cannot make a determination that the regulatory requirements of the rule package justify the adverse impact to businesses.

## **Recommendations**

As discussed above, the CSI Office makes the following recommendation:

1. The PUCO should revise the language in the rule package, and specifically in OAC 4901:1-42-03, to align more directly with the statutory authority to *review* green pricing programs. Most notably, the Commission should remove the proposed requirement that providers submit program and marketing materials in advance to the Commission.
2. The PUCO should submit a revised Business Impact Analysis that acknowledges the adverse impact to businesses that could provide electricity under a green pricing program and that justifies those adverse impacts.

## **Conclusion**

The CSI Office concludes that the PUCO should not proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review until it has addressed the recommendations above.