

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Ohio)
Adm.Code Chapter 4901:1-43 Concerning)
Rules Involving Natural Gas Company) Case No. 15-871-GA-ORD
Infrastructure Development to Implement)
R.C. 4929.16 to 4929.167.)

ENTRY

The Commission finds:

- (1) In 2014, the General Assembly enacted Sub.H.B. No. 319 (H.B. 319), which became effective on March 23, 2015, in order to allow natural gas companies to file applications for an infrastructure development rider to recover costs of certain economic development projects. H.B. 319 created new sections in the Revised Code, R.C. 4929.16, 4929.161, 4929.162, 4929.163, 4929.164, 4929.165, 4929.166, and 4929.167. The newly adopted sections in the Revised Code direct the Commission to adopt rules pursuant to R.C. 111.15 to carry out the newly adopted sections. More specifically, the newly adopted sections direct the Commission to adopt rules setting forth the criteria for project approval and set forth specific factors for the Commission to consider. The Commission has opened this docket in order to consider and adopt the required rules in new Ohio Adm.Code Chapter 4901:1-43.
- (2) The Commission notes that, on January 10, 2011, the governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review any proposed rules to determine the impact that a rule has on small businesses and attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties.
- (3) Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must conduct a business impact analysis (BIA) regarding the rules. If there will be an adverse impact on business, 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.

- (4) On June 3, 2015, the Commission held a workshop in this proceeding to enable interested stakeholders to offer proposals for Staff's consideration in the initial adoption of rules to be adopted as Ohio Adm.Code Chapter 4901:1-43. At the workshop, Staff gave an overview of the rulemaking process and described, in general fashion, the rules that Staff is proposing for comment. Two stakeholders spoke at the workshop offering general comments in support of the rules.
- (5) Staff has reviewed H.B. 319 and the comments offered at the workshop. Staff now proposes the attached rules for comment to implement H.B. 319.
- (6) Staff's proposed rules are attached as Ohio Adm.Code Chapter 4901:1-43 (Attachment A), Staff's application templates (Attachment B), and the BIA (Attachment C), and are posted on the Commission's Docketing Information System (DIS) website at <http://dis.puc.state.oh.us/>. To minimize the expense of this proceeding, the Commission will serve a paper copy of this Entry only. Interested persons are directed to input the case number 15-871-GA-ORD into the Case Lookup Box to view this Entry, as well as Staff's proposed rules, Staff's application templates, and the BIA, or to contact the Commission's Docketing Division to request a paper copy.
- (7) The Commission requests comments from interested persons to assist in the review required by R.C. 111.15 and Executive Order 2011-01K. Initial and reply comments should be filed, via electronic filing or in hard copy, by January 19, 2016, and February 2, 2016, respectively.

It is, therefore,

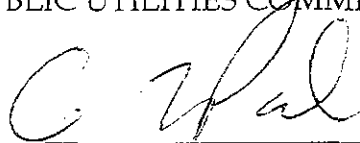
ORDERED, That a copy of this Entry, with the attached rules, application templates, and the BIA, be submitted to CSI in accordance with R.C. 121.82. It is, further,

ORDERED, That comments be filed in accordance with the timelines set forth in Finding (7). It is, further,

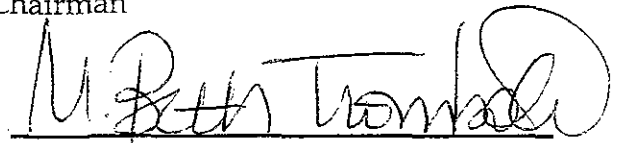
ORDERED, That notice of this Entry be served via the gas-pipeline industry list-serve. It is, further,

ORDERED, That a copy of this Entry be served upon all regulated natural gas companies, the Ohio Gas Association, the Ohio Oil and Gas Association, the Ohio Petroleum Council, Ohio Energy Group, Ohio Manufacturers Association, Ohio Consumers' Counsel, Ohio Development Services Agency, Columbus 2020, Mid-Ohio Regional Planning Commission, Industrial Energy Users Ohio, Columbus Chamber, Greater Springfield Chamber of Commerce, city of Gahanna, Union County Community Improvement Corporation, Ohio Economic Development Association, Regional Growth Partnership, Zanesville-Muskingum County Port Authority, Local Initiatives Support Corporation, Austin Powder Company, Eastern Ohio Development Alliance, Appalachian Partnership for Economic Growth, Clean Fuels Ohio, Ohio Propane Gas Association, and all other interested persons of record.

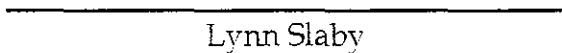
THE PUBLIC UTILITIES COMMISSION OF OHIO



Andre T. Porter, Chairman



M. Beth Trombold



Lynn Slaby



Asim Z. Haque

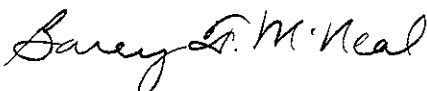


Thomas W. Johnson

MWC/sc

Entered in the Journal

DEC 09 2015



Barcy F. McNeal
Secretary

*****DRAFT – NOT FOR FILING*****

4901:1-43-01 Definitions

4901:1-43-02 Purpose and Scope

4901:1-43-03 Criteria and Review for Project Approval

4901:1-43-04 Application for Recovery

4901:1-43-05 Hearings

4901:1-43-01 Definitions

- (A) "Application" means an application for a natural gas infrastructure development rider pursuant to this chapter.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Infrastructure Development" shall have the meaning set forth in division (A) of section 4929.16 of the Revised Code.
- (D) "Infrastructure Development Costs" shall have the meaning set forth in division (B) of section 4929.16 of the Revised Code.
- (E) "Natural Gas Company" means a company that meets the definition of a natural gas company set forth in section 4905.03 of the Revised Code and that also meets the definition of a public utility under section 4905.02 of the Revised Code.
- (F) "Staff" means the staff of the commission or its authorized representative.

4901:1-43-02 Purpose and Scope

- (A) This chapter authorizes a natural gas company to file an application with the commission for approval of an infrastructure development rider to recover prudently incurred infrastructure development costs of one or more economic development projects approved under section 4929.163 or 4929.164 of the Revised Code.
- (B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

4901:1-43-03 Project Information and Approval Process

- (A) Pursuant to division (A) of section 4929.163 of the Revised Code, a natural gas company may file, prior to beginning construction, for approval of an economic development project through an economic development project application notice with the commission's docketing division. This notice shall contain the following information:
- (1) The name and location of the project.
 - (2) A background of the subject company of the economic development project.
 - (3) The level of total investment and capital expenditure by the subject company and the economic development impact. This description shall contain the following information:
 - (a) State and local taxable base increase.
 - (b) Anticipated number of new jobs created and jobs retained by the project.
 - (c) Description of the community served and the benefits to that community.
 - (4) A description of other projects that may compete with the proposed project, including the type, location, and time frame of competing projects.
 - (5) The level of infrastructure investment anticipated by the natural gas company. This description shall contain the following information:
 - (a) A description of how the infrastructure development costs are projected to generate a return less than the most recently authorized rate of return.
 - (b) A description of how the utility will not exceed the two dollar cap on an annual basis.
 - (c) For each project currently approved for the applicant natural gas company, the initial costs estimated, amount of costs recovered to date, and amount of costs remaining to be recovered. In addition, the cumulative balance of all approved projects in relation to the two dollar cap.
 - (6) A description of additional funding for the project including other alternative sources, any incentives with conditions and amount of funding and any additional information.
- (B) Following its review of the information set forth in paragraph (A) of this rule, and any other information consistent with section 4929.163 of the Revised Code, the commission may approve a project if both of the following apply:

- (1) The infrastructure development costs for the project are projected to generate a return on the company's investment that is less than the most recently authorized rate of return.
- (2) The amount of infrastructure development costs to be incurred by the company per calendar year, for the project and all other projects previously approved under this section, is not projected to exceed the product of two dollars multiplied by the aggregate number of the company's customers in this state.

(C) An application notice filed pursuant to division (A) of section 4929.163 of the Revised Code shall be subject to automatic approval not later than thirty days after the date of the application filing unless the application is suspended by the commission for good cause shown. If the application is suspended, the commission shall approve, deny, modify, or hold a hearing on the application not later than forty-five days after the date that the suspension begins.

(D) Pursuant to division (A) of section 4929.164 of the Revised Code, a natural gas company may file with the commission's docketing division a certified site project application notice for approval of an economic development project that has been certified by or submitted to the director of development services under the "SiteOhio" certification program. This notice shall contain the following:

- (1) The name and location of the project site.
- (2) A description and background of the site along with the anticipated impact to the community.
- (3) The level of infrastructure investment anticipated by the natural gas company. This description shall contain the following information:
 - (a) A description of how the infrastructure development costs are projected to generate a return less than the most recently authorized rate of return.
 - (b) A description of how the utility will not exceed the one dollar cap on an annual basis.
 - (c) For each project currently approved for the applicant natural gas company, the initial costs estimated, amount of costs recovered to date, and amount of costs remaining to be recovered. In addition, the cumulative balance of all approved projects in relation to the one dollar cap.
- (4) A copy of any "SiteOhio" applications, approvals or any other relevant materials.

- (E) Following its review of the information set forth in paragraph (D) of this rule, and any other information consistent with section 4929.164 of the Revised Code, the commission may approve a project if both of the following apply:
- (1) The infrastructure development costs for the project are projected to generate a return on the company's investment that is less than the most recently authorized rate of return.
 - (2) The amount of infrastructure development costs to be incurred by the company per calendar year, for the project and all other projects previously approved under this section, is not projected to exceed the product of one dollar multiplied by the aggregate number of the company's customers in this state.
- (F) An application filed pursuant to division (A) of section 4929.164 of the Revised Code shall be subject to automatic approval not later than ninety days after the date of the application filing unless the application is suspended by the commission for good cause shown. If the application is suspended, the commission shall approve, deny, modify, or hold a hearing on the application not later than forty-five days after the date that the suspension begins.

4901:1-43-04 Cost Recovery Rider Process

- (A) Each natural gas company which seeks recovery of economic development project costs shall first file an application with the commission's docketing division for an infrastructure development rider. The initial application shall include all information set forth upon forms as may be prescribed by the commission.
- (B) Each natural gas company with an approved infrastructure development rider shall update the rider on an annual basis pursuant to a schedule set forth by commission order. Each application to update the infrastructure development rider shall include all information set forth upon forms as may be prescribed by the commission.
- (C) The commission may order that consultants be hired, with costs billed to the natural gas company, to conduct prudence and/or financial reviews of the costs incurred and recovered through the infrastructure development rider.
- (D) Each annual application to update the infrastructure development rider should be made not less than seventy-five days prior to the proposed effective date of the updated rider.
- (E) If at anytime during the period between annual update filings, the natural gas company or staff determines that costs are or will be substantially different than the amounts authorized as the result of the natural gas company's previous application, the natural gas company should file, on its own initiative or by order of the commission, an interim application to adjust the infrastructure development rider in order to avoid excessive rate impacts for the following update filing.

- (F) Affected parties may file a motion to intervene and submit comments on any issues concerning any application filed under this rule within forty days of the date of the filing of the application.

4901:1-43-05 Hearings

Unless otherwise ordered, the commission shall approve the application or set the matter for hearing pursuant to divisions (B) and (D) of rule 4901:1-43-03 of the Administrative Code. Proposed rates will become effective on the seventy-sixth day subject to reconciliation adjustments following any hearing, if necessary, or in its subsequent filing.

TEMPLATE A

APPLICATION

Schedule I.D.	Schedule Name and Required Data
	<p>The following should be filed in an application with the Commission's Docketing Division under Case Code "EDP", for economic development plans, or "CSP", for certified site projects:</p> <p><u>Minimum Information Filing Requirements</u></p> <ol style="list-style-type: none"> 1. Testimony in support of the application. 2. An identification of service areas. 3. A <i>proposed legal notice</i>. A summary of the effect of the application on ratepayers. The name, case number, and filing date of the proceeding before the Commission. A statement that interested parties may request a copy of the application from the applicant or may obtain a copy from the Commission's web site, along with a toll-free telephone number for the applicant and the web site address for the Commission. A statement that comments may be provided to the Commission. A space should be left in the statement so that the Commission can insert the deadline for filing comments. 4. A certificate of service of the application for the chief executive of each municipal corporation, the board of township trustees of each township, the board of county commissioners of each county in which affected customers are located, and each party to the applicant's last rate or surcharge case. 5. Copy of proposed tariff schedules. 6. Summary of total projected economic development costs/revenues. Provide the total projected cost/revenue for each cost component. Include all costs and related revenues organized according to each Federal Energy Regulatory Commission ("FERC") account. Explain the rational for each cost/revenue component included in the infrastructure development rider. 7. Summary of proposed rates. For each rate class, provide the proposed infrastructure development rider rate calculation. Include the rational and components for the calculation. Provide all necessary support for the rate calculations. 8. Typical bill comparisons. Provide a typical bill comparison for each rate schedule affected by the proposed adjustments to the infrastructure development rider. 9. Reconciliation adjustment. For each rate class, provide the proposed infrastructure development reconciliation adjustment calculation. Include the rationale for each component of the calculation. Provide all necessary support for the reconciliation adjustment calculations.

TEMPLATE B Annual Update Application

Schedule I.D.	Schedule Name and Required Data
	The following should be filed in an application with the Commission's Docketing Division under Case Code "EDP", for economic development plans, or "CSP", for certified site projects:
A-1	Copy of proposed tariff schedules
A-2	Copy of redlined current tariff schedules
B-1	Summary of total projected economic development costs/revenues Provide the total actual cost/ revenue for each cost component. Include all costs and related revenues organized according to each Federal Energy Regulatory Commission ("FERC") account. Provide a list of all of the company's approved notices for applications in cases with codes "EDP" and "CSP" included in the costs.
B-2	Summary of current and proposed rates For each rate class, provide the current infrastructure development rider rate and proposed infrastructure development rider rate, the dollar difference and percentage change.
B-3	Typical bill comparisons Provide a typical bill comparison for each rate schedule affected by the proposed adjustments to the infrastructure development rider.
C-1	Actual economic development rider costs/revenues For each cost/revenue component, include the monthly actual infrastructure development rider costs/revenues by FERC account.
C-2	For each rate schedule, provide the monthly actual cost.
C-3	Actual rate calculation Provide the actual infrastructure development rider rate calculations. Provide all necessary support for the rate calculations.
D-1	Reconciliation adjustment Provide actual infrastructure development rider costs for each component used to calculate reconciliation adjustment.
D-2	Provide monthly revenues collected from each rate schedule.
D-3	Provide monthly over- and under- recovery calculations.
D-3a...z	Include all additional and necessary schedules for support.

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
Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: Natural Gas Infrastructure Development Rider

Rule Number(s): Ohio Adm.Code Chapter 4901:1-43

Date: December 9, 2015

Rule Type: New

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 draft rules implement new law, Sub.H.B. 319 (H.B. 319) of the 130th Ohio General Assembly, regarding natural gas infrastructure development riders. Specifically, this chapter:

- Authorizes a natural gas company to file an application with the Public Utilities Commission (Commission) for approval of an infrastructure development rider to

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CSIOhio@governor.ohio.gov

recover prudently incurred infrastructure development costs of one or more economic development projects approved under R.C. 4929.163 or 4929.164.

- Establishes criteria which a natural gas company must provide in its notice application with the Commission prior to construction.
- Creates a template application that the natural gas company must provide the Commission for approval when seeking recovery of economic development project costs.
- Creates a template annual report that a natural gas company with an approved infrastructure development rider must provide the Commission for approval.
- Establishes due process in the form of an administrative hearing when ordered by the Commission.

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

Rule	Statutory Authority – Ohio Revised Code
Ohio Adm.Code 4901:1-43	R.C. 4929.16, 4929.161, 4929.162, 4929.163, 4929.164, 4929.165, 4929.166, 4929.167

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 rules do not implement a federal requirement and are not being adopted to enable the state to obtain or maintain approval to administer and enforce a federal law or participate in a federal program.

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

These rules do not exceed any federal requirement.

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 Commission must balance the interest of state economic development, the protection of public health and safety, the preservation of environmental quality, the maintenance of a sound economy, as well as the conservation of energy and material resources. The Commission is required, pursuant to R.C. 4929.163 and 4929.164, to establish criteria for project approval. Further, the Commission is granted the authority, pursuant to R.C. 4929.167, to conduct financial audits of natural gas companies that have established infrastructure development costs in order to determine if those costs are in conformance with the Commission's orders.

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

The rules contained in this chapter govern natural gas companies which file an Economic Development Project Application notice set forth in Ohio Adm.Code 4901:1-43-03, as well as those companies which file an application for recovery under Ohio Adm.Code 4901:1-43-04. The success of the regulation in terms of outputs and outcomes will be measured by the Commission Staff in its review of these applications.

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 June 3, 2015, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the Commission's review for Ohio Adm.Code Chapter 4901:1-43 is 15-871-GA-ORD. The entry providing notice of the workshop was served upon the gas pipeline industry list serve, as well as various state and regional economic development organizations, industry trade associations, and other interested stakeholders. Approximately 22 stakeholders signed the provided sign-in sheet, which included various representatives from Direct Energy, Vectren, Columbia Gas, McMahan's Bottle Gas, Duke Energy, Ohio Propane Gas Association, Dominion, Jobs Ohio, Ohio Consumers' Counsel, and AmeriGas.

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

While there was limited stakeholder input provided during the workshop, Staff considered all recommendations made at the workshop when drafting the proposed revisions. Staff has taken these recommendations into account and the proposed revisions reflect said recommendations.

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?

No scientific data was provided or considered. In drafting this new chapter, the Commission takes into account all feedback from stakeholders and the general public.

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 alternative regulations were recommended. The Commission did not consider alternative regulations because the Commission is required to adopt these rules pursuant to H.B. 319.

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. The rules contained in Ohio Adm.Code Chapter 4901:1-43 are primarily regulatory in nature and are required by H.B. 319.

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

The Commission has widely publicized notice of the consideration of these rules to those individuals in the natural gas industry, as well as other governmental organizations and interest groups. The Commission has reviewed other Ohio regulations and found no duplicate, nor had a duplicate been identified by any stakeholder.

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 conducted a workshop on June 3, 2015, at the offices of the Commission to receive feedback from interested stakeholders and the general public. Next, the Commission will issue an entry that sets forth Staff's proposed rules where stakeholders will then have the opportunity to file written comments. Finally, following the comment period specified in the entry, the Commission will issue a Finding & Order adopting the proposed rules. All potential stakeholders will be notified that this chapter is under review by Staff and they will be provided an opportunity for feedback concerning the rules in this chapter. Thus, stakeholders will have the opportunity to express whether the proposed rules will be applied consistently and predictably.

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 Ohio Adm.Code Chapter 4901:1-43 includes the natural gas companies.

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

The proposed revisions were drafted in an effort to minimize any adverse impact on business, while promoting the policies set forth in R.C. 4929.162, 4929.163, 4929.164, 4929.165, 4929.166, and 4929.167. The proposed rules impact the identified business community in terms of employer time and cost of regulatory 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.

Other than the impact in terms of employer time and cost of regulatory compliance, the Commission does not anticipate any adverse impact stemming from Ohio Adm.Code Chapter 4901:1-43. In fact, the legislative intent of H.B. 319 was to promote economic development projects within the state of Ohio. To the extent that the Commission receives comments from the natural gas community indicating that the adverse impact of the proposed regulations is likely to be significant, the Commission will consider revisions to address such concerns.

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

The Commission does not make such a determination because the purpose of Ohio Adm.Code Chapter 4901:1-43 is to implement H.B. 319 as adopted by the Ohio General Assembly.

Regulatory Flexibility

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

No. Natural gas companies that serve Ohio are under the exclusive jurisdiction of the Public Utilities Commission of Ohio and may not be exempted from the requirements provided in Ohio Adm.Code Chapter 4901:1-43. However, the Commission Staff will work with the companies to assist them with the applicable requirements and provide guidance to achieve compliance.

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?

Small businesses are not responsible for compliance with this regulation; natural gas companies are the entities that are impacted by Ohio Adm.Code Chapter 4901:1-43. However, the Commission Staff regularly works with regulated entities, including small businesses, to ensure compliance with the rules in all other respects. In this rulemaking proceeding, stakeholders, the general public, as well as small businesses were invited to participate in the workshop in order to provide the Commission Staff with feedback so as to minimize or eliminate any adverse effects on business. Small businesses may contact the Commission Staff at any time and may submit written comments on the proposed revisions during the public comment period once the proposed rules are filed via Commission Entry.