

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Amendment of the	)	
Rules in Ohio Adm. Code Chapter	)	Case No. 17-1905-GA-ORD
4901:1-43 Regarding Recovery of	)	
Infrastructure Development Costs.	)	

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**COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

Through infrastructure development riders, consumers might pay up to \$1.50 per month to their natural gas company for its infrastructure development projects.<sup>1</sup> Before this money may be collected from customers, natural gas companies must apply for, and receive, approval of the projects from the Public Utilities Commission of Ohio (“PUCO”).<sup>2</sup> Natural gas companies may collect from customers only the prudently incurred expenses of their PUCO-approved projects.<sup>3</sup>

Ohio Adm. Code Chapter 4901:1-43 sets out the rules for natural gas companies to seek PUCO approval of infrastructure development projects for collection from customers through the rider. Ohio law requires the PUCO to review its rules every five years.<sup>4</sup> Since the last review of the rules, the General Assembly passed legislation that changed the statutory provisions allowing natural gas companies to collect additional

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<sup>1</sup> R.C. 4929.162(A).

<sup>2</sup> R.C. 4929.161.

<sup>3</sup> *Id.*

<sup>4</sup> R.C. 111.15(B).

prudently incurred expenses from customers for infrastructure development projects.<sup>5</sup>

The changes became effective June 30, 2017.<sup>6</sup>

The PUCO Staff has proposed changes to Ohio Adm. Code Chapter 4901:1-43 in an effort to make it consistent with the new law,<sup>7</sup> and the PUCO has sought comment on the proposed changes.<sup>8</sup> In response to the Entry, the Office of the Ohio Consumers' Counsel ("OCC") files these Comments on the proposed rule changes.<sup>9</sup>

## II. RECOMMENDATIONS

### A. **To make sure that consumers are charged only for prudently incurred expenses, applications for PUCO approval of natural gas companies' infrastructure development projects should include a cost/benefit analysis.**

Ohio Adm. Code 4901:1-43-03(A) sets out the items that must be included in a natural gas company's application for approval of infrastructure development projects that may be collected through the rider. The current rule requires the natural gas company to include the name and location of the project, the background of the subject company, the total investment and capital expenditure by the company including an economic development impact, disclosure of competing locations for the project, and the level of anticipated infrastructure investment by the company.<sup>10</sup>

The PUCO Staff proposes to add a requirement that the natural gas company's application include whether an economic development entity or chamber of commerce

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<sup>5</sup> See Entry (November 21, 2017), ¶2.

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*, ¶6.

<sup>8</sup> See *id.*, ¶8.

<sup>9</sup> Deletions to the rules are in red and additions in blue.

<sup>10</sup> See also R.C. 4929.163(C).

supports the project.<sup>11</sup> This is consistent with R.C. 4929.163(C)(4). But the PUCO Staff's proposed rule lacks an important consumer protection that should be included in applications filed at the PUCO for approval of economic development projects.

The PUCO Staff's proposed rules do not require that economic development projects demonstrate that benefits outweigh the cost before the PUCO orders consumers to pay the costs. Similar to all utility investments, the economic benefits of any given project must be sufficient to warrant collection of the costs from consumers. R.C. 4929.161 authorizes the PUCO to approve infrastructure development riders for collection of *prudently incurred* infrastructure development costs. A cost/benefit analysis is necessary to determine the prudence of customer money spent on economic development project(s).

Further, R.C. 4929.163 requires natural gas companies seeking PUCO approval of infrastructure development projects for collection from customers to file an "application." The current rule uses the word "notice" instead of "application" and the PUCO Staff's proposal does not change the language. To be consistent with R.C. 4929.163, the rule should use the word "application" instead of "notice."

To protect consumers, and to be consistent with the language in Ohio law, the following changes should be made to the PUCO Staff's proposed Ohio Adm. Code 4901:1-43-03(A):

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<sup>11</sup> Entry, Attachment A at 3. This is also required by R.C. 4929.163(C)(4).

(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 ~~notice~~ application with the commission's docketing division. This ~~notice~~ application shall contain all the following information.

\* \* \*

(7) An analysis demonstrating that the benefits of the proposed economic development project exceed the costs.

The word “notice” should also be changed to “application” in Ohio Adm. Code 4901:1-43-03(C). In addition, proposed Ohio Adm. Code 4901:1-43-01(H),<sup>12</sup> which defines “notice,” should be deleted.

**B. The PUCO should verify that consumers actually benefit from the infrastructure development expenses they pay.**

As part of the process for considering a natural gas company's infrastructure development rider, the PUCO requires the company to update its rider annually.<sup>13</sup> Under the rule, natural gas companies seeking to collect infrastructure development costs from consumers must provide “all information set forth upon forms as may be prescribed by the commission.” The PUCO Staff does not propose to change the rule.<sup>14</sup> However, the rule does not ensure that the infrastructure expenditures consumers actually provide the benefits the company promised.

The PUCO should verify that the benefits promised in the application – paid for by customers – actually occur. Ohio Adm. Code 4901:1-43-03 requires natural gas companies to provide, with their initial rider application, the level of total investment and

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<sup>12</sup> This is current Ohio Adm. Code 4901:1-43-01(G).

<sup>13</sup> Ohio Adm. Code 4901:1-43-04(B).

<sup>14</sup> See Entry, Attachment A at 6.

total economic development impact of the investment.<sup>15</sup> This includes only an estimate of jobs, tax base increases, and community benefits. The PUCO should follow-up to verify that the promised investment and job creation that customers are paying for is actually occurring.

To ensure that money customers are paying through the rider is producing the promised benefits, the following changes should be made to Ohio Adm. Code 4901:1-43-04(B):

(B) Each natural gas company with an approved infrastructure development rider shall update the rider rate on an annual basis as set forth by commission order. Each annual report to update the infrastructure development rider shall include all [the following information for each project for which expenses are being collected through the rider](#): ~~set forth upon forms as may be prescribed by the commission.~~

[\(1\) Actual increase in state and local taxable base.](#)

[\(2\) Actual number of new jobs created and jobs retained by the project.](#)

[\(3\) Benefits to the community.](#)

[\(4\) Any additional information requested by the commission.](#)

The above changes would allow the PUCO and interested stakeholders to verify that customers are in fact benefiting from the money they pay through their natural gas company's infrastructure development rider. The PUCO should adopt this change.

### **III. CONCLUSION**

Ohio law protects consumers by requiring that their natural gas company collect from them only prudently incurred infrastructure development expenses through the rider. OCC's proposed changes to Ohio Adm. Code 4901:1-43-03(A) would make the

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<sup>15</sup> Ohio Adm. Code 4901:1-43-01(A)(3) and (5).

rule consistent with Ohio law. And OCC's proposed changes to Ohio Adm. Code 4901:1-43-04(B) would ensure that the promised benefits of the projects consumers pay for actually accrue to consumers. The PUCO should adopt OCC's proposed rule changes.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing Comments was served upon the persons listed below via electronic transmission this 18<sup>th</sup> day of December 2017.

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Summary: Comments Comments by The Office of the Ohio Consumers' Counsel  
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