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 Infrastructure Development to Implement R.C. 4929.16 to 4929.167.	)))))	Case No. 15-0871-GA-ORD

COMMENTS OF
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO

I. INTRODUCTION

In accordance with the Commission's December 9, 2015 Entry in this case, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) files its initial comments to Staff's proposed rules of Ohio Adm. Code Chapter 4901:1-43, concerning the Natural Gas Infrastructure Development Rider.

II. COMMENTS

DEO would begin by noting that it has reviewed the comments filed today by Columbia Gas of Ohio, Inc. and Duke Energy Ohio, Inc., and it generally supports their comments.

A. General Comments

R.C. 4929.165 requires that "[a] natural gas company that has established an infrastructure development rider under section 4929.161 of the Revised Code shall file an annual report with the public utilities commission." The rules, however, do not contain any provisions that *expressly* address the filing of annual reports. It appears to DEO that the annual update filings required under Rule 4901:1-43-04(B) may be intended to satisfy the statutory annual-report requirements, and the Company requests that the Commission clarify whether this is correct.

B. Ohio Adm. Code 4901:1-43-01

Paragraph (A): "Application" is defined to mean "an application for a natural gas infrastructure development rider pursuant to this chapter." The rules, however, do not consistently use the term in this sense.

The rules cover *two* kinds of applications (for project approval, and for rider approval) and the defined term only covers the latter (rider approval). No defined term covers an application for project approval. But although the definition is limited to rider approval, the term "application" is used to refer to *both* kinds of application throughout the rules. This creates the possibility of confusion.

For example, to receive approval of a project (as opposed to a rider), the rule requires the LDC to file an "*application notice*," Rule 4901:1-43-03(A), which is not a defined term. But the same rule goes on and ceases using the term "application notice," instead using the term "application." Division -03(C) establishes an automatic-approval date "unless *the application* is suspended by the commission" and states that the Commission shall "approve, deny, modify, or hold a hearing *on the application*" within a certain time. (Emphasis added.) Because this rule covers *project* approval, not rider approval, the use of the term "application" appears inconsistent with the definition.

Likewise, Rule 4901:1-43-02(B) states that a waiver may be granted "upon *an application* or a motion filed by a party." (Emphasis added.) Again, the term "application" only pertains to rider filings, so it is not clear whether -02(B)'s use of this term is meant to imply that rules may only be waived in rider filings, and not project filings.

To avoid potential confusion in cases arising under the rules, DEO recommends that the Commission address this issue. The Commission could distinguish the two forms of application as used in the rules and include definitions for "rider application" and "project application."

Alternatively, the Commission could keep the "application" and "application notice" distinction and define the latter term. There are likely other solutions as well, as it may not be necessary to distinguish the two types of filings in every instance. However they are defined, DEO recommends that the terms be used with care and consistently.

C. Ohio Adm. Code 4901:1-43-03

Paragraph (A)(3): For utilities filing a project application notice, this provision requires the utility to provide "[t]he level of total investment and capital expenditure by the subject company and the economic development impact," including "[s]tate and local taxable base increase," "[a]nticipated number of new jobs created and retained by the project," and "[d]escription of the community served and the benefits to that community."

Some of the information required by this paragraph will not be known to the utility, and utilities will likely have to rely upon figures provided by the subject company, particularly with respect to tax and job impacts. None of this information is required by statute, so revisions to this provision would be permissible. DEO recommends that, at a minimum, this paragraph be amended to require the provision of such information only "to the extent known to the company at the time of filing."

Paragraph (A)(4): This paragraph requires utilities to describe "other projects that may compete with the proposed project, including the type, location, and time frame of competing projects."

DEO has several concerns with this provision, which again requests information that is not required by statute. First, it is not clear to DEO precisely what information this provision is seeking—projects that compete with the proposed project for infrastructure funding, projects that ultimately compete for business in the economy, locations that compete to serve the underlying business, or something else? Depending on what is intended, some of this information may not

be known to the utility and may be proprietary. Moreover, this requirement has the potential to be broad and even burdensome—a description of all competing businesses, including type, location, and time frame, could require a great deal of research and analysis for little apparent benefit.

DEO recommends that this provision be clarified and, to mitigate its potentially burdensome impact, be limited to information known to the utility.

Paragraph (A)(6): This paragraph requires the utility to describe "additional funding for the project including other alternative sources, any incentives with conditions and amount of funding and any additional information."

Similar concerns present themselves as with -03(A)(3) and (4). The information will again likely be unknown to the utility, so companies will need to rely on the entity requesting gas service. Such information may be proprietary. It is again a potentially very broad topic, and the extent to which the utility would be required to seek out and identify "alternative sources" of funding is not clear and could be very burdensome. DEO recommends that this paragraph also be clarified, and at a minimum amended to require information only "to the extent known to the company at the time of filing."

Paragraphs (C) and (F): It appears to DEO that these provisions are intended to establish automatic-approval deadlines for different forms of project applications. DEO has two comments regarding this rule. First, the rules at times use the term "application," which refers to rider filings, not project filings.

Additionally, the rule states that application notices "shall be subject to automatic approval within thirty days," which does not actually establish an automatic-approval date. Being "subject to automatic approval" is not the same thing as being "automatically approved." This

formulation results in vagueness both as to whether and on what precise day automatic approval will occur within the thirty (or ninety) possible days.

Other Commission rules state the precise date on which filings "shall be deemed automatically approved." *See, e.g.*, Ohio Adm. Code 4901:1-24-10(A), 4901:1-27-10(A). DEO recommends that the rule be amended along the same lines and proposes the following language:

> An application notice . . . shall be ~~subject to automatic approval not more than thirty [ninety] days~~ deemed automatically approved on the thirtieth [or "ninetieth"] day after the date ~~of the application filing~~ the application notice is filed ***.

D. Ohio Adm. Code 4901:1-43-04

General comment: The title of this rule given in the table of contents does not match the title given by the rule itself.

Paragraph (E): This provision requires a utility, on its own initiative or Staff's, to file an "interim application" if it is determined that costs will be "substantially different than . . . authorized." Given the small size of the rider (a maximum of $3.00 per customer per year is 25 cents a month), DEO does not believe that an interim filing requirement will ever be necessary, as no amount of cost differential will have a substantial impact on customers. DEO does not believe that this provision is necessary.

E. Ohio Adm. Code 4901:1-43-05

This section governs "Hearings." DEO has several comments regarding this rule and recommends that this entire paragraph be revised and clarified to reflect the Commission's actual intent. DEO notes a number of specific concerns below.

First, it is not clear whether this provision covers hearings for "applications" only (*i.e.*, rider filings) or is also meant to include "application notices" (*i.e.*, project filings). The rule contains cross-references to the section on project filings in Rule 4901:1-43-03, but the defined

term "application" and the reference to "rates" both suggest a rider filing. This should be clarified.

Second, it is not clear what it means that the Commission "shall approve the application or set the matter for hearing *pursuant to divisions (B) and (D) of rule 4901:1-43-03*." (Emphasis added.) Neither of the cross-referenced divisions deals with hearings. DEO presumes that the cross-references are incorrect. It may be that the intent was to refer to paragraphs (C) and (F), both of which refer to the setting of hearings, and both of which establish automatic-approval deadlines. The introductory phrase, "unless otherwise ordered," also suggests that the rules are intended to incorporate the automatic-approval provisions, but then goes on to suggest that affirmative approval is required. Again, the intent is unclear.

Third, the rule states that proposed rates "will become effective on the seventy-sixth day." The rule does not state from what day these 76 days are measured—presumably the date of the rider update filing, but this should be made express.

Fourth, it is not clear whether proposed rates are subject to automatic approval or require Commission action. The second sentence suggests that rates will be automatically approved on the 76th day, while the first sentence suggests that the Commission must act (it "shall approve the application or set the matter for hearing"). Perhaps there is a way to harmonize the two sentences, but the rule is ambiguous at a minimum and should be clarified.

Finally, the rule states that proposed rates are effective "subject to reconciliation adjustments following any hearing, if necessary, or in its subsequent filing." This sentence presents two issues. First, the term "reconciliation adjustment" is not clearly defined. Based on the Template B requirements, DEO believes the adjustment is to reconcile costs authorized for recovery and costs actually recovered, but this should be set forth clearly in the rule to avoid later

disputes. Second, in the phrase "its subsequent filing," DEO recommends replacing the pronoun "its" with "the natural gas company's." DEO believes that this is what is intended, but the pronoun is vague in this context, since the utility is not previously referenced in the rule.

F. Template A

Sections 3 and 4: These sections call for a proposed legal notice and service to various political subdivisions. Such notice is not required by statute, and DEO believes that for such a small rider (25 cents or less per customer per month), the costs of providing a legal notice would be disproportionate and unnecessary. DEO recommends removing this requirement, or only requiring it "if ordered by the Commission."

Sections 6 and 7: The word "rationale" is misspelled twice as "rational" and should be corrected.

Section 9: As noted above, the term "reconciliation adjustment" is not defined, and does not explain what is being reconciled against what. If it has not already been clarified elsewhere in the rule, it should be clarified here.

G. Template B

Schedule C-2: This schedule requests, "For each rate schedule, provide the monthly actual cost." It is not clear to DEO what this is calling for. Given that the statute requires the company to "recover the same amount from every customer," R.C. 4929.162(C), it appears that C-2 simply calls for the company to multiply the amount of the monthly rider charge by the number of customers served under each rate schedule. Whether or not something else is intended, DEO recommends that the Commission clarify this description to confirm what is expected.

III. CONCLUSION

DEO appreciates the opportunity to comment on the proposed rules. For the foregoing reasons, DEO respectfully requests that the Commission act in accordance with its comments.

Dated: January 19, 2016

Respectfully submitted,

/s/ Andrew J. Campbell

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Summary: Comments electronically filed by Ms. Rebekah J. Glover on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio