

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.

FINDING AND ORDER

Entered in the Journal on June 1, 2016

I. SUMMARY

{¶ 1} In this Finding and Order, the Commission adopts proposed rules contained in Ohio Adm.Code Chapter 4901:1-43 concerning natural gas company infrastructure development to implement R.C. 4929.16 to 4929.167.

II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} 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.

{¶ 3} 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.

{¶ 4} 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.

{¶ 5} 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 was proposing for comment. Two stakeholders spoke at the workshop offering general comments in support of the rules.

{¶ 6} Thereafter, by Entry issued December 9, 2015, the Commission issued for comment Staff's proposed rules to implement H.B. 319, as proposed Ohio Adm.Code Chapter 4901:1-43, proposed Templates A and B, and the BIA. Further, the Commission found that initial and reply comments should be filed by January 19, 2016, and February 2, 2016, respectively.

{¶ 7} Timely initial comments were filed by Duke Energy Ohio, Inc. (Duke), and Columbia Gas of Ohio, Inc. (Columbia), jointly, and by The East Ohio Gas Company d/b/a Dominion East Ohio (Dominion). Additionally, on January 20, 2016, Vectren Energy Delivery of Ohio, Inc. (Vectren), filed a motion for leave to file comments instant with initial comments. On January 25, 2016, the Ohio Propane Gas Association (OPGA) filed

comments in response to Duke/Columbia. Thereafter, collective reply comments were timely filed by Duke, Columbia, Dominion, and Vectren (collectively, the Local Distribution Companies [LDCs]). No party filed a memorandum contra Vectren's motion for leave to file comments instanter.

III. DISCUSSION

A. *Procedural Issue*

{¶ 8} In its motion for leave to file comments instanter, Vectren asserts that its comments were not submitted on time due to an inadvertent oversight. Vectren points out that its comments were filed only one day after the applicable deadline, and asserts that no party will be prejudiced by its filing.

{¶ 9} The Commission finds that Vectren's motion is reasonable and should be granted, as the comments were filed only one day after the applicable deadline and no party has asserted any prejudice.

B. *General Comments*

{¶ 10} In its general comments, Dominion initially states that it reviewed and supports the initial comments filed by Duke and Columbia.

{¶ 11} In its general comments, Vectren addresses the rate caps established under R.C. 4929.162, in the amount of \$1 and \$2, for projects approved under R.C. 4929.164 and 4929.163, respectively. Vectren initially asserts that it interprets R.C. 4929.162 as permitting investment above the rate caps, subject to deferral and recovery in a future rate case or other cost-recovery proceeding. Consequently, Vectren recommends that the rules clarify that natural gas companies may request such treatment in a project application. Further, Vectren argues that the language set forth in R.C. 4929.163 permits approval of any "economic development project" and would not exclude SiteOhio projects approved under R.C. 4929.164; thus, Vectren asserts that the statutes permit a single project to be approved

under both R.C. 4929.163 and 4929.164 and subject to an aggregate \$3 rate cap. Vectren claims that its interpretation of the statutes as permitting investment above the rate caps, as well as an aggregate \$3 cap on recovery, would encourage greater participation in the SiteOhio program and more meaningful economic development, as greater investment would be permitted.

{¶ 12} In their collective reply comments, the LDCs agree with Vectren's initial comments construing R.C. 4929.162 as permitting recovery of infrastructure development costs over multiple years and a deferral of prudently-incurred costs that exceed the annual rate caps set forth in the statute. The LDCs contend that reading R.C. Chapter 4929 in its totality indicates that the caps are intended to limit the pace of recovery of dollars from customers, not the total dollars associated with a company's approved projects. Further, the LDCs argue that, from a practical standpoint, construing the statute as requiring strict \$1 and \$2 rider rate caps on projects, without deferrals, will significantly limit H.B. 319 funding. The LDCs assert that recovery should be limited commensurate with the established rate caps, but accounting treatment in the form of a deferral of any costs in excess of the available recovery caps should be permitted. The LDCs point out that the Commission will always retain the ability to deny a project that it deems not valuable, as the Commission's approval is required for each project. Finally, the LDCs note that, even with a deferral in place, a customer will never pay more than \$.25 per month under the statute.

{¶ 13} Finally, in their collective reply comments, Columbia and Duke state that they generally agree with the comments filed by Dominion regarding clarifications to make the rules consistent with the language of H.B. 319.

{¶ 14} The Commission disagrees with Vectren's interpretation of the overall statutory scheme as permitting a project to be authorized under both R.C. 4929.163 and 4929.164, for an aggregate \$3 cap, also endorsed by the remaining LDCs in the collective reply comments. The Commission finds that the statutes are clear in setting forth two

separate types of projects under R.C. 4929.163 and 4929.164, and R.C. Chapter 4929 does not state or indicate in any way that projects may be approved under both statutes and the rate caps aggregated. Further, the Commission disagrees with Vectren's assertion that the statutes permit approval of an application projecting costs to be incurred beyond the statutory caps in a calendar year. The Commission notes that R.C. 4929.163(C)(2) provides that the Commission may approve a project if, among another criterion, the following applies: "[t]he 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." R.C. 4929.164(B)(2) contains the same language in reference to the \$1 cap. Additionally, the Commission notes that, given that the statutory caps limit both the company's cost recovery from customers and the Commission's approval of projected costs to be incurred by the company per calendar year, it is our expectation that the company's projections of costs to be incurred per calendar year provided in the application for project approval will not substantially deviate from actual costs incurred per calendar year as reflected in the annual report. Consequently, the Commission declines to adopt Vectren's recommendations.

C. *Proposed Ohio Adm.Code 4901:1-43-01*

{¶ 15} In its comments, Dominion addresses proposed Ohio Adm.Code 4901:1-43-01, recommending that the Commission distinguish the two forms of applications used in the rules and include definitions for "rider application" and "project application."

{¶ 16} The Commission agrees that clarity is needed regarding the different types of applications referred to in the rules. Rather than adopting Dominion's proposal, however, the Commission finds that clarity is best achieved by including definitions for "annual report" and "notice" and removing potentially confusing references to "application notice."

D. *Proposed Ohio Adm.Code 4901:1-43-03(A)*

{¶ 17} In proposed Ohio Adm.Code 4901:1-43-03(A)(3), Dominion asserts that some of the information required to be provided in the project application notices will not be known to the natural gas company, and, further, is not required by the statute. At minimum, Dominion requests that this information be required only to the extent known to the company at the time of filing. Similarly, Duke/Columbia point out that the proposed rule requires a description of the project to include the state and local taxable base increase from the project, arguing that a natural gas company will not know the impact on a broad scale.

{¶ 18} The Commission acknowledges that the information required under proposed Ohio Adm.Code 4901:1-43-03(A)(3)(a) may not be known to the natural gas company. Consequently, the Commission finds that the language should be modified to require only an estimated state and local taxable base increase.

{¶ 19} In proposed Ohio Adm.Code 4901:1-43-03(A)(4), Dominion asserts that a description of competing projects likewise is not required by the statute, is unclear, and could contain some information that is proprietary and/or not known to the natural gas company. Additionally, Duke/Columbia recommend clarification of proposed Ohio Adm.Code 4901:1-43-03(A)(4) to require natural gas companies, if able, to provide information on other proposed project locations, if known, that may compete with the proposed project location, rather than other projects that could use the H.B. 319 funding.

{¶ 20} The Commission acknowledges that some of the information discussed in proposed Ohio Adm.Code 4901:1-43-03(A)(4) may be unknown to the natural gas company or may be proprietary. Therefore, the Commission finds that the language should be modified to require a description "to the maximum extent practicable," and has further clarified the language to refer to "potential locations" and "potentially" competing projects.

{¶ 21} Duke/Columbia recommend elimination of proposed Ohio Adm.Code 4901:1-43-03(A)(5)(c), which requires natural gas companies to provide, for each project currently approved for the applicant, the initial costs estimated, amount of costs recovered to date, amount of costs remaining to be recovered, and the cumulative balance of all approved projects in relation to the \$2 cap. Duke/Columbia assert that this requirement is inconsistent with the requirements of the statute and places an overly burdensome requirement on natural gas companies and Staff. Additionally, regarding proposed Ohio Adm.Code 4901:1-43-03(A)(6), Dominion asserts that some of the required information is likely unknown to the natural gas company and is unclear. Consequently, Dominion recommends that this provision be removed.

{¶ 22} The Commission agrees that, in proposed Ohio Adm.Code 4901:1-43-03(A)(5)(c), the requirement that the notice contain the initial costs estimated, amount of costs recovered to date, and amount of costs remaining to be recovered, may not always be necessary for the Commission's review of a notice filed pursuant to R.C. 4929.163, and is unnecessary in the rule. Similarly, the Commission agrees that, in proposed Ohio Adm.Code 4901:1-43-03(A)(6), the requirement that the notice contain a description of additional funding for the project may also not be necessary for the Commission's review, and, consequently, should be eliminated from the rule. If Staff finds that such information is necessary in order to review the notice, the Commission may suspend the notice pursuant to proposed Ohio Adm.Code 4901:1-43-03(C) and Staff may request this information from the company, as acknowledged by Duke/Columbia in their comments. Additionally, the Commission finds that the portion of proposed Ohio Adm.Code 4901:1-43-03(A)(5)(c) requiring the company to provide the cumulative balance of all approved projects in relation to the \$2 cap is necessary for Staff's review, but can be obtained through the information required of the company in its annual report. Consequently, the Commission finds that this subsection should also be eliminated from the rule.

E. *Proposed Ohio Adm.Code 4901:1-43-03(B)*

{¶ 23} In proposed Ohio Adm.Code 4901:1-43-03(B)(2), Duke/Columbia recommend replacement of the word “incurred” with the word “recovered” in reference to the amount of infrastructure development costs.

{¶ 24} The Commission finds that Duke/Columbia’s recommendations should not be adopted in this section, given that R.C. 4929.163 uses the word “incurred.”

F. *Proposed Ohio Adm.Code 4901:1-43-03(C)*

{¶ 25} In its comments, Dominion asserts that proposed Ohio Adm.Code 4901:1-43-03(C) needs clarification, pointing out that it uses the term “application” when it is referring to rider filings. Additionally, Dominion argues that the language stating that application notices shall be subject to automatic approval does not actually establish an automatic approval date, and should state the precise date on which automatic approval will occur.

{¶ 26} The Commission agrees with Dominion’s comments regarding clarity and has modified this section to clearly refer to the notice and to specify that the notice is deemed automatically approved on the thirtieth day after the date of its filing unless suspended.

G. *Proposed Ohio Adm.Code 4901:1-43-03(D)*

{¶ 27} Duke/Columbia recommend elimination of proposed Ohio Adm.Code 4901:1-43-03(D)(3)(c), which requires participating natural gas companies to provide, for each project currently approved for the applicant, the initial costs estimated, amount of costs recovered to date, amount of costs remaining to be recovered, and the cumulative balance of all approved projects in relation to the \$1 cap. Duke/Columbia assert that this requirement is inconsistent with the requirements of the statute and places an overly burdensome requirement on the natural gas companies and Staff.

{¶ 28} The Commission agrees that the portion of proposed Ohio Adm.Code 4901:1-43-03(D)(3)(c) requiring the initial costs estimated, amount of costs recovered to date, and

amount of costs remaining to be recovered, may not be necessary for the Commission's review and should not be required in the rule. If Staff finds, in a particular situation, this information is necessary for its review, the Commission may suspend the notice pursuant to proposed Ohio Adm.Code 4901:1-43-03(F) and Staff may request the information from the company, as acknowledged by Duke/Columbia in their comments. Additionally, the Commission finds that the portion of proposed Ohio Adm.Code 4901:1-43-03(D)(3)(c) requiring the cumulative balance of all approved projects in relation to the \$1 cap is necessary for the Commission's review of notices filed pursuant to R.C. 4928.164, but can be obtained through the information required of the company in its annual report. Consequently, the Commission finds that this subsection should also be eliminated from the rule.

H. Proposed Ohio Adm.Code 4901:1-43-03(E)

{¶ 29} In proposed Ohio Adm.Code 4901:1-43-03(E), Duke/Columbia recommend replacement of the word "incurred" with the word "recovered" in reference to the amount of infrastructure development costs.

{¶ 30} The Commission finds that Duke/Columbia's recommendation should not be adopted in this section, given that R.C. 4929.164 uses the word "incurred."

I. Proposed Ohio Adm.Code 4901:1-43-03(F)

{¶ 31} Regarding proposed Ohio Adm.Code 4901:1-43-03(F), Dominion asserts that the term "application" in this rule is confusing because it is actually referring to rider filings. Further, Dominion asserts again that the language states the notices should be subject to automatic approval, but does not provide the precise date on which automatic approval will occur.

{¶ 32} As with the Commission's conclusion regarding proposed Ohio Adm.Code 4901:1-43-03(C), in Paragraph 26, the Commission again agrees with Dominion's comments

on this section and has modified proposed Ohio Adm.Code 4901:1-43-03(F) to clearly refer to the notice and to specify that the notice is deemed automatically approved on the ninetieth day after the notice filing unless suspended.

J. *Proposed Ohio Adm.Code 4901:1-43-04(A)*

{¶ 33} Duke/Columbia assert that proposed Ohio Adm.Code 4901:1-43-04(A) should specify that it pertains to applications for an infrastructure development rider “pursuant to R.C. 4929.161.”

{¶ 34} In its comments, Dominion asserts that the title of proposed Ohio Adm.Code 4901:1-43-04 set forth in the table of contents does not match the actual title of the rule.

{¶ 35} The Commission finds that Duke/Columbia’s proposal to specify the statute under which the rider falls is reasonable and should be adopted, and has amended the language in proposed Ohio Adm.Code 4901:1-43-04(A) accordingly. Additionally, the Commission notes the discrepancy discussed by Dominion and clarifies that the correct title is the title listed in the rule, rather than the title listed in the table of contents.

K. *Proposed Ohio Adm.Code 4901:1-43-04(B), (E)*

{¶ 36} Duke/Columbia assert that the proposed rules currently establish a rider rate based on a series of rider adjustments with each project application. Duke/Columbia assert that, additionally, Staff’s proposed Ohio Adm.Code 4901:1-43-04(E) may require an interim application under certain circumstances. Duke/Columbia express concern that, by using project applications to frequently update the rider rate, the proposed process introduces frequent rider rate fluctuation and less predictability for customers, as well as a burden upon natural gas companies to track a moving target for the capped rider rate. Duke/Columbia further assert that this proposed structure differs from the structure set forth in R.C. 4929.165(B) and other Commission-approved rider adjustments, which are adjusted one time during a 12-month period. Consequently, Duke/Columbia recommend

elimination of Ohio Adm.Code 4901:1-43-04(E), and request specification in proposed Ohio Adm.Code 4901:1-43-04(B) that it is an annual report which shall (1) detail the infrastructure development costs related to the project or projects; and (2) set forth the rider rate for the 12 months following the annual report.

{¶ 37} Additionally, Dominion asserts that, although R.C. 4929.165 requires “[a] natural gas company that has established an infrastructure development rider * * * [to] file an annual report with the public utilities commission,” the proposed rules contain no provisions expressly addressing the filing of annual reports. Dominion requests clarification as to whether the annual update filings required by Ohio Adm.Code 4901:1-43-04(B) are intended to satisfy the statutory annual report requirements.

{¶ 38} In proposed Ohio Adm.Code 4901:1-43-04(E), Dominion asserts that, given the small size of the rider, an interim filing should not be necessary, as there will be no substantial impact on customers.

{¶ 39} OPGA states that it opposes Duke/Columbia’s recommendation that the rider rate be adjusted annually for all projects undertaken on the basis that it will result in less transparency.

{¶ 40} In response to OPGA’s comments, the LDCs assert that setting a rider rate once annually, as opposed to adjusting the rider rate with each approved project, does not hamper transparency, and is consistent with the language and intent of the statute.

{¶ 41} The Commission agrees with Duke/Columbia that proposed Ohio Adm.Code 4901:1-43-04(E) should be removed, and that proposed Ohio Adm.Code 4901:1-43-04(B) should be modified to require rider updates on an annual basis pursuant to an annual report. Despite OPGA’s opposition to the latter recommendation on the basis that it may result in less transparency, the Commission agrees with Duke/Columbia that requiring the rider rate to be frequently updated would essentially require natural gas companies to track a moving target for the capped rider rate. Further, the Commission finds that, as reports to

update the rider must be filed annually, transparency will not be hampered. However, in lieu of Duke/Columbia's specific recommendations for additions to this proposed rule regarding the contents of the annual report, the Commission has made significant revisions to proposed Template B to reflect the substance of Duke/Columbia's recommendations.

L. Proposed Ohio Adm.Code 4901:1-43-04(C)

{¶ 42} Duke/Columbia comment that R.C. 4928.167 authorizes the Commission to conduct a financial audit to determine if costs incurred by the natural gas company and collected pursuant to the rider are in conformance with the Commission's orders. However, proposed Ohio Adm.Code 4901:1-43-04(C) permits the Commission to hire consultants to conduct prudence and/or financial reviews. Duke/Columbia assert that this is not specifically permitted by the statute, is unnecessary, and would serve to increase costs to customers.

{¶ 43} OPGA states its opposition to Duke/Columbia's proposal to remove the Commission's ability to hire an expert to review the prudence of expenditures.

{¶ 44} The LDCs assert that OPGA misunderstands the revisions to Ohio Adm.Code 4901:1-43-04(C) proposed by Duke/Columbia, and is erroneous in its belief that the proposed revisions would inhibit the Commission's ability to review expenditures for prudence. The LDCs specify that the only portion of the proposed rule opposed by the LDCs is that the Commission be authorized to hire "consultants" to conduct prudence audits. Arguing that each individual project will be subject to a prudence review prior to its approval and again when each annual report is filed, the LDCs assert that additional prudence reviews by hired consultants are duplicative, unnecessary, and will only increase costs to customers.

{¶ 45} The Commission finds that Duke/Columbia's, and the remaining LDCs' recommendation to remove the authorization for the Commission to hire consultants for purposes of prudence and/or financial reviews should not be adopted. The Commission

finds that the option to hire consultants for prudence and/or financial reviews may be necessary to undertake the audit contemplated by R.C. 4929.167.

M. *Proposed Ohio Adm.Code 4901:1-43-04(D)*

{¶ 46} Duke/Columbia further recommend that the annual accounting be termed an annual “report” rather than “application.” Further, Duke/Columbia assert that Staff’s proposed 75-day automatic approval requirement should be moved from proposed Ohio Adm.Code 4901:1-43-05 to proposed Ohio Adm.Code 4901:1-43-04(D) for clarity.

{¶ 47} The Commission agrees and has modified proposed Ohio Adm.Code 4901:1-43-04(D) accordingly.

N. *Proposed Ohio Adm.Code 4901:1-43-05*

{¶ 48} Regarding proposed Ohio Adm.Code 4901:1-43-05, Dominion asserts that it is unclear whether the rule covers hearings for applications or also application notices. Next, Dominion asserts that several of the cross-references appear to be incorrect, and that there is no date from which the effective date of the proposed rates can be measured. Additionally, Dominion argues that it is unclear whether the proposed rates are subject to automatic approval or require Commission action. Finally, Dominion claims that the term “reconciliation adjustment” is unclear as used in this rule, and should be clarified, and that it should be clarified that the term “subsequent filing” refers to the natural gas company’s subsequent filing.

{¶ 49} In light of the significant edits made to other sections in proposed Ohio Adm.Code Chapter 4901:1-43, the Commission finds that proposed Ohio Adm.Code 4901:1-43-05 is no longer necessary and should be deleted.

O. Proposed Template A

{¶ 50} Duke/Columbia request that natural gas companies should only be required to provide items in proposed Template A that are applicable to each individual project application. Duke/Columbia further recommend changes to Staff's proposed Template A, including removal of requirements for submission of a copy of proposed tariff schedules, summary of proposed rates, typical bill comparisons, and reconciliation adjustment. Duke/Columbia reason that this proposed structure may overly burden both the natural gas companies and Staff. Duke/Columbia further recommend that other requirements be removed from proposed Template A, including supporting testimony, identification of the service area, and summary of the effect of the application on ratepayers. Finally, Duke/Columbia recommend several changes in terminology.

{¶ 51} Dominion asserts that, in proposed Template A, proposed legal notice and service to various political subdivisions is not required by the statute, and any benefits are outweighed by the costs. Dominion also asserts that the term "reconciliation adjustment" should be defined.

{¶ 52} The Commission finds that proposed Template A should be deleted in its entirety. The Commission agrees with Duke/Columbia and Dominion that many of the requirements included in proposed Template A are unnecessary or redundant, including supporting testimony, identification of the service area, proposed legal notice and service to various political subdivisions, copy of proposed tariff schedules, summary of the effect of the application on ratepayers, and the reconciliation adjustment. The Commission believes that information essential to its review of applications, including the name, location and description of the project, total investment and capital expenditure by the subject company, and the level of infrastructure investment anticipated by the natural gas company, is already required by proposed Ohio Adm.Code 4901:1-43-03. Additionally, information concerning affected party intervention and comment submission is now set forth in

proposed Ohio Adm.Code 4901:1-43-04. Consequently, the Commission finds that proposed Template A is no longer necessary.

P. Proposed Template B

{¶ 53} Duke/Columbia recommend that natural gas companies be required only to provide items in proposed Template B that are applicable to each individual annual update. Additionally, Duke/Columbia recommend removal of the case codes and retitling Template B “Annual Report”.

{¶ 54} Dominion requests clarification in Section C-2 of proposed Template B as to what is required by the monthly actual cost for each rate schedule, given that R.C. 4929.162(C) requires the same amount to be recovered from every customer. Dominion asserts that it appears Section C-2 simply calls for the natural gas company to multiply the amount of the monthly rider charge by the number of customers served under each rate schedule, and requests clarification as to whether this is intended.

{¶ 55} Regarding Dominion’s request for clarification, the Commission finds that Dominion’s request should be denied. If Dominion believes the information requested in Template B is unclear, Dominion may discuss any questions with Staff. Regarding Duke/Columbia’s recommendations, the Commission agrees that proposed Template B should be retitled as recommended, the case codes removed, and that the other clarifying language recommended by Duke/Columbia is reasonable and should be adopted. Further, the Commission finds that, in Section B-2 of Template B, language should be added specifying that the proposed infrastructure development rider rate be provided “for the twelve months following the annual report” for additional clarity regarding the time period, in line with Duke/Columbia’s recommendation discussed in Paragraph 36.

IV. CONCLUSION

{¶ 56} Upon considering Staff's proposal and the initial and reply comments, the Commission concludes that a clean version of the attached rules,¹ proposed Ohio Adm.Code Chapter 4901:1-43, as set forth in Attachment A, should be adopted.

{¶ 57} The rules are posted on the Commission's Docketing Information System website at <http://dis.puc.state.oh.us/>. To minimize the expense of this proceeding, the Commission will serve notice of this Finding and Order upon the gas-pipeline industry list-serve. Interested persons are directed to input case number 15-871-GA-ORD in the Case Lookup box to view the rules, as well as this Finding and Order, or to contact the Commission's Docketing Division to request a paper copy.

V. ORDER

{¶ 58} It is, therefore,

{¶ 59} ORDERED, That proposed Ohio Adm.Code Chapter 4901:1-43, as set forth in Attachment A, be adopted. It is, further,

{¶ 60} ORDERED, That the new rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with Divisions (D) and (E) of R.C. 111.15. It is, further,

{¶ 61} ORDERED, That the final rules be effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapter 4901:1-43 shall be in compliance with R.C. 106.03. It is, further,

{¶ 62} ORDERED, That a copy of this Finding and Order be served via the gas-pipeline industry list-serve. It is, further,

¹ The Commission notes that Attachment A shows deletions from and additions to the rules originally proposed and attached to the December 9, 2015 Entry in strikethrough and underline, respectively.

{¶ 63} ORDERED, That a copy of this Finding and Order 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.

Commissioners Voting: Asim Z. Haque, Chairman; Lynn Slaby; M. Beth Trombold; Thomas W. Johnson.

MWC/sc

*****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~~ Project Information and Approval Process

4901:1-43-04 ~~Application for Recovery~~ Cost Recovery Rider Process

4901:1-43-05 ~~Hearings~~

4901:1-43-01 Definitions

~~(A)~~ "Annual Report" means a report filed annually by any natural gas company with a ~~Commission approved~~ commission-approved infrastructure development rider pursuant to this chapter.

~~(A)~~~~(B)~~ "Application" means an application for a natural gas infrastructure development rider pursuant to this chapter.

~~(B)~~~~(C)~~ "Commission" means the public utilities commission of Ohio.

~~(C)~~~~(D)~~ "Infrastructure Development" shall have the meaning set forth in division (A) of section 4929.16 of the Revised Code.

~~(D)~~~~(E)~~ "Infrastructure Development Costs" shall have the meaning set forth in division (B) of section 4929.16 of the Revised Code.

~~(E)~~~~(F)~~ "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.

~~(G)~~ "Notice" means a notice filing for a natural gas infrastructure development project pursuant to this chapter.

~~(F)~~~~(H)~~ "Staff" means the staff of the commission or its authorized representative. ~~(PS1)~~

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~~ Estimated 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~~ To the maximum extent practicable, a description of other projects potential locations that may compete with the proposed project location, including the type, location, and time frame of potentially 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~~ A 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~~ deemed automatically approved on the thirtieth day after the date of the ~~application notice~~ filing unless the ~~application notice~~ filing is suspended by the commission for good cause shown. If the ~~application notice~~ filing is suspended, the commission shall approve, deny, modify, or hold a hearing on the ~~application notice~~ filing 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.

(e) ~~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~~ 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~~ A notice filed pursuant to division (A) of section 4929.164 of the Revised Code shall be ~~subject to automatic approval not later than ninety days~~ deemed automatically approved on the ninetieth day after the date of the ~~application-notice filing~~ unless the ~~application-notice filing~~ is suspended by the commission for good cause shown. If the ~~application-notice filing~~ is suspended, the commission shall approve, deny, modify, or hold a hearing on the ~~application-notice filing~~ 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 pursuant to section 4929.161 of the Revised Code. 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 rate on an annual basis ~~pursuant to a schedule~~ as set forth by commission order. Each ~~application-annual report~~ 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-report~~ 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 rate. Proposed rates will become effective on the seventy-sixth day, unless suspended by the commission for good cause shown, and shall be subject to reconciliation adjustments following any hearing, if necessary.

(D)

~~(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.~~

(E) 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 within the following timelines:

- (1) A motion to intervene and submit comments concerning any notice filed under paragraph (A) of rule 4901:1-43-03 of the Administrative Code must be submitted to the commission within fifteen days of the date of the filing of the notice.
- (2) A motion to intervene and submit comments concerning any notice filed under paragraph (D) of rule 4901:1-43-03 of the Administrative Code must be submitted to the commission within forty days of the date of the filing of the notice.
- (F)(3) A motion to intervene and submit comments concerning an annual report to update the infrastructure development rider filed under this rule must be submitted to the commission within forty-five days of the date of the filing of the annual report.

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 proposed legal notice. 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 rationale 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 rationale 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 Report~~

Schedule I.D.	Schedule Name and Required Data for Infrastructure Development Rider Annual Report
	The following should be filed, <u>if applicable to any given project</u> , in an application with the Commission's Docketing Division under Case Code " <u>EDP</u> ", for economic development plans, or " <u>CSP</u> ", 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 <u>infrastructure development rider</u> 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 <u>for the twelve months following the annual report</u> , 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 <u>infrastructure development rider</u> 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.