

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE REVIEW OF
THE OHIO COAL RESEARCH AND
DEVELOPMENT RATE RULES IN OHIO
ADM.CODE CHAPTER 4901:1-12.**

CASE NO. 16-1236-GA-ORD

FINDING AND ORDER

Entered in the Journal on August 31, 2016

I. SUMMARY

{¶ 1} The Commission adopts the proposed Ohio coal research and development rate rules in Ohio Adm.Code Chapter 4901:1-12.

II. DISCUSSION

{¶ 2} R.C. 111.15(B) requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. At this time, the Commission is reviewing the Ohio coal research and development rate rules in Ohio Adm.Code Chapter 4901:1-12.

{¶ 3} R.C. 106.03(A) requires that the Commission determine whether the rules:

- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
- (b) Need amendment or rescission to give more flexibility at the local level;

- (c) Need amendment or rescission to eliminate unnecessary paperwork;
- (d) Incorporate a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by R.C. 121.74, and whether the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76;
- (e) Duplicate, overlap with, or conflict with other rules;
- (f) Have an adverse impact on businesses, as determined under R.C. 107.52; and
- (g) Contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive.

{¶ 4} In addition, 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 its rules to determine the impact that a rule has on small businesses; attempt to balance the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative, unintended consequences, or unnecessarily impede business growth.

{¶ 5} Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against the business impact

analysis (BIA). If there will be an adverse impact on businesses, 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 office the draft rules and the BIA.

{¶ 6} On June 23, 2016, the Commission held a workshop in this proceeding to enable interested stakeholders to propose revisions to the rules in Ohio Adm.Code Chapter 4901:1-12 for the Commission's consideration. Representatives of two interested stakeholders attended the workshop, although no comments were offered.

{¶ 7} Staff evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-12. Among other minor, non-substantive changes throughout the chapter intended to improve clarity or update cross-references, Staff proposes to amend the definition of "Ohio coal research and development costs" in Ohio Adm.Code 4901:1-12-01 to align with the statutory definition found in R.C. 4905.01. Further, Staff proposes to add new Ohio Adm.Code 4901:1-12-04(C), which would provide that the Commission may, upon an application or a motion filed by a party, waive any requirement of the chapter, other than a requirement mandated by statute, for good cause shown.

{¶ 8} On July 6, 2016, the Commission issued an Entry seeking comments on Staff's proposed amendments to Ohio Adm.Code Chapter 4901:1-12 and the BIA. Initial and reply comments were due on August 5, 2016, and August 19, 2016, respectively.

{¶ 9} No comments were filed in this proceeding.

{¶ 10} The Commission has considered the matters set forth in Executive Order 2011-01K and R.C. 121.82. With these factors in mind, and upon consideration of Staff's recommendations, the Commission concludes that Ohio Adm.Code 4901:1-12-

01, -02, -03, -04, -05, -06, -08, and -09 should be amended, as proposed by Staff. The Commission also finds that no change should be made to Ohio Adm.Code 4901:1-12-07.

{¶ 11} 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 a paper copy of this Finding and Order only. All interested persons are directed to input case number 16-1236 into the Case Lookup box to view this Finding and Order, as well as the rules, or to contact the Commission's Docketing Division to request a paper copy.

III. ORDER

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That amended Ohio Adm.Code 4901:1-12-01, -02, -03, -04, -05, -06, -08, and -09 be adopted. It is, further,

{¶ 14} ORDERED, That Ohio Adm.Code 4901:1-12-07 be adopted with no changes. It is, further,

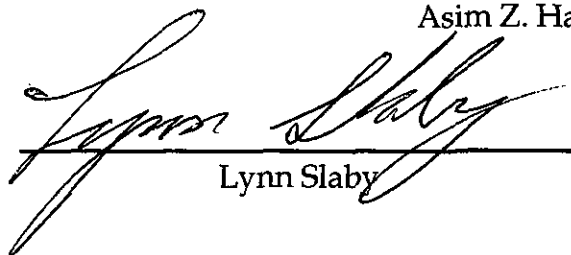
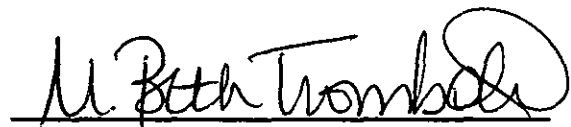
{¶ 15} ORDERED, That the adopted rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with divisions (D) and (E) of R.C. 111.15. It is, further,

{¶ 16} 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 4901:1-12 shall be in compliance with R.C. 106.03. It is, further,

{¶ 17} ORDERED, That a copy of this Finding and Order be sent to the gas-pipeline list-serve. It is, further,

{¶ 18} ORDERED, That a copy of this Finding and Order be served upon all regulated gas and natural gas companies, the Ohio Consumers' Counsel, the Ohio Gas Association, the Ohio Oil and Gas Association, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman
Lynn Slaby
M. Beth Trombold
Thomas W. Johnson
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Secretary

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4901:1-12-01 Definitions.

- (A) "Commission" means the public utilities commission.
- (B) "Gas company" and "natural gas company" have the meanings set forth in section 4905.03 of the Revised Code.
- (C) "Ohio coal research and development cost adjustment" means a provision in a schedule of a gas or natural gas company that requires or allows the company to, without adherence to section 4909.18 or 4909.19 of the Revised Code, recover on a uniform basis per unit of sales Ohio coal research and development costs, determined to be reasonable by the commission.
- (D) "Ohio coal research and development costs" means all reasonable costs associated with a facility or project undertaken by a public utility, for which a recommendation to allow the recovery of costs associated therewith has been made ~~by the director of the Ohio coal development office under division (B)(8)(B)(7) of section 1551.33 of the Revised Code and accepted by the commission,~~ including, but not limited to, capital costs, such as costs of debt and equity; construction and operation costs; termination and retirement costs; costs of feasibility and marketing studies associated with the project; and the acquisition and delivery costs of Ohio coal used in the project, less any expenditures of grant moneys received from the Ohio coal development office and any federal agency.
- (E) "Ohio coal research and development project" means any coal research and development, or any coal research and development facility with all or a part of the cost thereof being paid from a loan or grant from the Ohio coal development office or a loan guaranteed by the office under division (C) of section 1555.01 of the Revised Code.
- (F) "Ohio coal research and development rate" means the updated semiannual research and development cost adjustment determined in accordance with rule 4901:1-12-06 of the Administrative Code.
- (G) "Mcf" means a unit of gas equal to one thousand cubic feet.

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- (H) "Ccf" means a unit of gas equal to one hundred cubic feet.
- (I) "Customer" means each billing account of a gas or natural gas company.
- (J) "Total sales" means all sales of includable gas supplies to retail customers. "Total sales" does not include volumes transported to consumers under self-help arrangements.
- (K) "Jurisdictional sales" means total sales, less sales to customers under municipal ordinances rates, except sales under municipal ordinances which have adopted, by reference or otherwise, rates established by the commission.
- (L) "Reconciliation adjustment" means a positive or negative adjustment to future Ohio coal research and development recovery rates ordered by the commission pursuant to rule 4901:1-12-06 of the Administrative Code.

4901:1-12-02 Purpose.

(A) The purpose of this chapter is to:

- (1) Establish a uniform Ohio coal research and development cost recovery clause to be included in the schedules of gas and natural gas companies subject to the jurisdiction of the commission.
- (2) Establish an Ohio coal research and development cost recovery process, which is designed to separate the cost of Ohio coal research and development projects from all other costs incurred by gas or natural gas companies.
- (3) Provide for each gas or natural gas company's recovery of the cost of its includable Ohio coal research and development expenditures from its customers by means of the semiannual updated Ohio coal research and development rate and other provisions of this chapter.

(B) The provisions of this chapter also:

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- (1) Establish investigative procedures and proceedings, including periodic reports, audits, and hearings to examine the reasonableness and the arithmetic and accounting accuracies of the Ohio coal research and development costs reflected in each gas or natural gas company's cost recovery rate; and
- (2) Review each gas or natural gas company's policies to the extent that those policies affect the Ohio coal research and development projects and the recovery of costs associated therewith.

4901:1-12-03 Scope.

- (A) Once the Ohio coal development office approves a coal research and development project for the purpose of section 4905.304 of the Revised Code, the director of the coal development office is to submit to the commission a report recommending that the commission allow the recovery of costs associated with the facility or project including the reasons for the recommendation. Such a report shall include the total cost of the project and the part of the costs thereof being paid from a loan, loan guarantee, or grant.
- (B) Once the report has been received by the commission and the recommendation by the director has been accepted by the commission, the ~~utility~~gas or natural gas company may apply for the recovery of reasonable costs associated with the project and incurred since the approval by the coal development office less any expenditures of grant moneys, to be recovered under section 4905.304 of the Revised Code.
- (C) When prudent, each gas or natural gas company shall acquire patents, copyrights, and trademarks for any development, discovery, or invention for which that gas or natural gas company seeks recovery through the Ohio coal research and development component.

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4901:1-12-04 Applicability.

- (A) The provisions of this chapter shall apply to any gas or natural gas company subject to the jurisdiction of the commission, with respect to the establishment or approval by the commission of a uniform rate or provision pursuant to section 4905.304 of the Revised Code, and as provided under paragraph (A) of rule 4901:1-12-06 of the Administrative Code.
- (B) The provisions of this chapter shall not apply to municipal ordinance rates established under section 743.26 or 4909.34 of the Revised Code or Section 4 of Article XVIII, ~~section 4 of the~~ Ohio Constitution of Ohio, except in instances where a municipal ordinance adopts, by reference or otherwise, rates established by the commission.
- (C) 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.

4901:1-12-05 Monthly reports.

- (A) Each gas or natural gas company subject to the provisions of this chapter shall submit monthly Ohio coal research and development cost recovery reports to the commission for the prior calendar month. The monthly report shall be submitted on the "Ohio Coal Research and Development Cost Report" prescribed by the commission in appendix A to this rule. The monthly report shall include the data required by the Ohio coal research and development cost form to calculate the Ohio coal research and development component as specified in paragraphs (A)(1) and (A)(2) of rule 4901:1-12-06 of the Administrative Code.
- (B) Semiannual reports.

Each gas or natural gas company subject to the provisions of this chapter shall submit semiannual Ohio coal research and development reports with every sixth monthly report. The semiannual report shall include the data required by

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the Ohio coal research and development cost form to calculate the Ohio coal research and development rate as specified in paragraphs (B), (C), and (D) of rule 4901:1-12-06 of the Administrative Code.

4901:1-12-06 Ohio coal research and development rate.

- (A) The Ohio coal research and development component equals the costs to be recovered less the costs to be refunded.
- (1) Costs to be recovered: Each gas or natural gas utilitycompany for which Ohio coal research and development projects or facilities are recommended to and accepted by the commission pursuant to division (B)(8)(B)(7) of section 1551.33 of the Revised Code shall recover those reasonable incurred costs associated with projects for the reporting period, less any expenditures of grant moneys. The coal research and development costs to be included shall equal the reasonable coal research and development costs incurred. These costs include all reasonable costs incurred through the most recent month for which actual data is available at the time of filing the initial application allowed by paragraph (B) of rule 4901:1-12-03 of the Administrative Code and each subsequent semiannual report required by paragraph (B) of rule 4901:1-12-05 of the Administrative Code, which costs have not been included previously in the gas or natural gas company's Ohio coal research and development component as a cost to be recovered.
- (2) Costs to be refunded: Each gas or natural gas utilitycompany shall refund all rents, royalties, income, or other profits received by the utilitycompany as a result of the developments, discoveries, or inventions, including patents or copyrights, which result in whole or in part from coal research and development projects and/or facilities in proportion to the share of ratepayer financing to the project.
- (B) Each gas or natural gas utilitycompany shall calculate and apply to the Ohio coal research and development rate reconciliations to correct for under-or-over-recoveries of the Ohio coal research and development component due to

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differences in sales volumes expected and delivered during the billing period, as well as any adjustments ordered by the commission.

- (C) The Ohio coal research and development rate equals the Ohio coal research and development component plus or minus any adjustments or reconciliations, divided by the total sales of the gas or natural gas company for the six monthly billing periods commencing on or after the date one year prior to the effective date of the filing.
- (D) The Ohio coal research and development rate shall be calculated on a companywide basis, and shall be expressed on a dollars and cents per Mcf basis.

4901:1-12-07 Customer billing.

- (A) Unless otherwise ordered by the commission, the semiannual updated Ohio coal research and development rate filed in accordance with rule 4901:1-12-05 of the Administrative Code shall become effective and shall be applied to customer bills for service rendered on or after the thirtieth day following the filing date established by the commission, or, at the option of the gas or natural gas company, on or after the first day of the month following the thirtieth day after the filing date established by the commission. The commission may at any time order a reconciliation adjustment as a result of errors or erroneous reporting.
- (B) Each gas or natural gas company shall indicate on each customer bill:
 - (1) The Ohio coal research and development rate expressed in dollars and cents per Mcf or Ccf.
 - (2) The total charge attributable to the Ohio coal research and development rate expressed in dollars and cents.

4901:1-12-08 Audits and hearings.

- (A) The commission shall examine the Ohio coal research and development costs incurred by the utility gas or natural gas company once every six months in

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- proceedings limited to that purpose. The utilitycompany must file with the commission all of the information filed with the coal development office, including the semiannual project progress reports. All costs incurred on the project during the period to be considered are to be itemized in accordance with the uniform system of accounts. These costs shall delineate total costs, costs/expenditures of grant moneys, and costs requested to be recovered. This information shall be submitted concurrently with the semiannual report required by paragraph (B) of rule 4901:1-12-05 of the Administrative Code.
- (B) Interested persons may file comments on the information filed pursuant to paragraph (A) of this rule within thirty days after the filing of the information. Within ten days after the filing of comments, the gas or natural gas company shall file a response to the comments stating whether the issues raised in the comments have been resolved. If the issues are not resolved, the commission may hold a hearing to examine the report and recommendations submitted by the director of the Ohio coal development office, all facts, data, and other information pertinent to the coal research and development costs. Based upon examination of the report and other information, the commission shall determine the reasonableness of the total costs proposed to be recovered and the appropriateness of the recovery period.
- (C) The commission shall conduct or cause to be conducted periodic audits of each gas or natural gas utilitycompany subject to the provisions of this chapter.
- (D) The commission shall issue an appropriate order containing:
- (1) A summary of any audit findings, conclusions, and recommendations;
 - (2) Any adjustments or reconciliations to be included in the semiannual Ohio coal research and development report for the next billing period; and
 - (3) Such other information or directives as the commission considers appropriate.

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4901:1-12-09 Tariffs.

Each gas or natural gas company desiring to avail itself of the provisions of this chapter shall file tariffs with the commission, which incorporate this rule in its entirety.