

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE AMENDMENT OF
THE RULES IN OHIO ADM.CODE CHAPTER
4901:1-43 REGARDING RECOVERY OF
INFRASTRUCTURE DEVELOPMENT COSTS.**

CASE NO. 17-1905-GA-ORD

ENTRY

Entered in the Journal on November 21, 2017

I. SUMMARY

{¶ 1} The Commission directs that all interested persons or entities wishing to file comments or reply comments with the Commission regarding the proposed amendments to Ohio Adm.Code Chapter 4901:1-43 do so no later than December 18, 2017, and January 2, 2018, respectively.

II. DISCUSSION

{¶ 2} On March 31, 2017, Substitute House Bill 26 was signed into law, amending, effective June 30, 2017, the statutory provisions permitting a natural gas company to file an application with the Commission for approval of an infrastructure development rider (IDR) to recover costs associated with certain economic development projects. Among other statutory changes, the legislation repealed R.C. 4929.164 and eliminated the separate charge for certified sites projects, as well as increased the potential IDR cost recovery for economic development projects to \$1.50 per month per customer. This proceeding has been opened specifically to review Ohio Adm.Code Chapter 4901:1-43, in light of the amendment of R.C. 4929.161, 4929.162, 4929.163, and 4929.166 and the repeal of R.C. 4929.164.

{¶ 3} 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.

{¶ 4} 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. Further, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative office the draft rules and the BIA.

{¶ 5} On September 21, 2017, the Commission held a workshop in this proceeding to enable interested stakeholders to propose amendments to the rules in Ohio Adm.Code Chapter 4901:1-43 for the Commission's consideration. Representatives of seven interested stakeholders attended the workshop, with comments offered by two of the stakeholders.

{¶ 6} Following an evaluation of the rules set forth in Ohio Adm.Code Chapter 4901:1-43, Staff has proposed amendments throughout the chapter to ensure consistency with the recent statutory changes enacted through Substitute House Bill 26.

{¶ 7} Attached to this Entry are Staff's proposed amendments to Ohio Adm.Code Chapter 4901:1-43 (Attachment A) and the BIA (Attachment B), which are also 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 Entry only. All interested persons are directed to input case number 17-1905 into the Case Lookup box to view this Entry, as well as Staff's proposed changes, or to contact the Commission's Docketing Division to request a paper copy.

{¶ 8} The Commission requests comments from interested persons to assist in the amendment of Ohio Adm.Code Chapter 4901:1-43 that is required in response to Substitute House Bill 26. Comments should be filed, via electronic filing or in hard copy, by December 18, 2017. Reply comments should be filed by January 2, 2018.

III. ORDER

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That all interested persons or entities wishing to file comments or reply comments with the Commission regarding the proposed rules do so no later than December 18, 2017, and January 2, 2018, respectively. It is, further,

{¶ 11} ORDERED, That a copy of this Entry, with the rules and the BIA, be submitted to CSI, in accordance with R.C. 121.82. It is, further,


{¶ 12} ORDERED, That a copy of this Entry be sent to the gas-pipeline list-serve. It is, further,

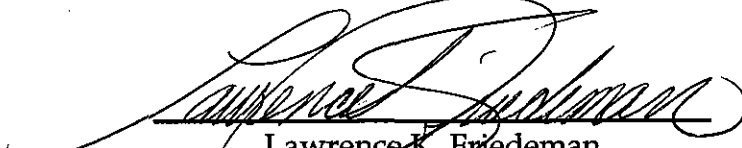
[¶ 13] ORDERED, That a copy of this Entry be served upon all regulated natural gas companies, the Ohio Gas Association, the Ohio Oil and Gas Association, the Ohio Petroleum Council, Ohio Energy Group, Ohio Manufacturers' Association, Ohio Consumers' Counsel, Ohio Development Services Agency, Columbus 2020, Mid-Ohio Regional Planning Commission, Industrial Energy Users-Ohio, Columbus Chamber of Commerce, 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.

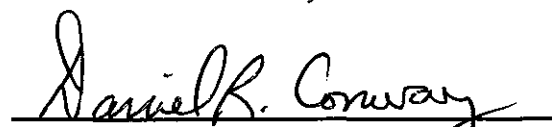
THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman


M. Beth Trombold


Thomas W. Johnson

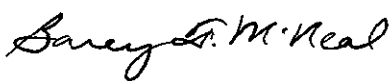

Lawrence K. Friedeman


Daniel R. Conway

SJP/sc

Entered in the Journal

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Barcy F. McNeal
Secretary

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AMENDED

4901:1-43-01 Definitions.

- (A) "Annual report" means a report filed annually by any natural gas company with a commission-approved infrastructure development rider pursuant to this chapter.
- (B) "Application" means an application for a natural gas infrastructure development rider pursuant to this chapter.
- (C) "Commission" means the public utilities commission of Ohio.
- (D) "Economic development entity" shall have the meaning set forth in division (C) of section 4929.163 of the Revised Code.
- (E) "Infrastructure development" shall have the meaning set forth in division (A) of section 4929.16 of the Revised Code.
- (E)(F) "Infrastructure development costs" shall have the meaning set forth in division (B) of section 4929.16 of the Revised Code.
- (F)(G) "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)(H) "Notice" means a notice filing for a natural gas infrastructure development project pursuant to this chapter.
- (H)(I) "Staff" means the staff of the commission or its authorized representative.

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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.

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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 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) 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) To the maximum extent practicable, a description of other potential locations that may compete with the proposed 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 one dollar and fifty cents recovery cap on an annual monthly basis from any single customer in this state.
 - (6) The support for the project by an economic development entity or chamber of commerce.
- (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:~~

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- (1) ~~The~~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) A notice filed pursuant to division (A) of section 4929.163 of the Revised Code shall be deemed automatically approved on the thirtieth day after the date of the notice filing unless the notice filing is suspended by the commission for good cause shown. If the notice filing is suspended, the commission shall approve, deny, modify, or hold a hearing on the 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 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.~~
 - ~~(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.~~

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- (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) ~~A notice filed pursuant to division (A) of section 4929.164 of the Revised Code shall be deemed automatically approved on the ninetieth day after the date of the notice filing unless the notice filing is suspended by the commission for good cause shown. If the notice filing is suspended, the commission shall approve, deny, modify, or hold a hearing on the notice filing not later than forty five days after the date that the suspension begins.~~

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AMENDED

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 as set forth by commission order. Each 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 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.
- (E) Affected parties may file a motion to intervene and submit comments on any issues 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.~~
 - (3)(2) 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.

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: November 21, 2017

Rule Type: Amended

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.

Ohio Adm.Code Chapter 4901:1-43 pertains to 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 recover prudently incurred infrastructure development costs of one or more economic development projects approved under R.C. 4929.163.
- Establishes the information that a natural gas company must provide in its economic development project notice filed with the Commission prior to construction.
- Establishes due process in the form of an administrative hearing when ordered by the Commission.

On March 31, 2017, Governor John Kasich signed into law Substitute House Bill 26 that, inter alia, amended, effective June 30, 2017, the statutory provisions permitting a natural gas company to file an application with the Commission for approval of an infrastructure development rider to recover costs associated with certain economic development projects. Among other statutory changes, Substitute House Bill 26 repealed R.C. 4929.164 and eliminated the separate charge for certified sites projects, as well as increased the potential infrastructure development rider cost recovery for economic development projects to \$1.50 per month per customer. The Commission opened Case No. 17-1905-GA-ORD specifically to review Ohio Adm.Code Chapter 4901:1-43, in light of the amendment of R.C. 4929.161, 4929.162, 4929.163, and 4929.166 and the repeal of R.C. 4929.164.

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

Rule	Statutory Authority – Ohio Revised Code
4901:1-43-01	R.C. 4929.163, 4929.10
4901:1-43-02	R.C. 4929.163, 4929.10
4901:1-43-03	R.C. 4929.163, 4929.10
4901:1-43-04	R.C. 4929.163, 4929.10

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 interests of state economic development, the protection of public health and safety, the preservation of environmental quality, and 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, 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 that file an economic development project notice as set forth in Ohio Adm.Code 4901:1-43-03, as well as those companies that 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 project notices and 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 September 21, 2017, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the Commission's review of Ohio Adm.Code Chapter 4901:1-43 is 17-1905-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. Representatives of seven stakeholders signed the provided sign-in sheet, including representatives of the four large natural gas companies operating in the state (Columbia Gas of Ohio, Inc., The East Ohio Gas Company d/b/a Dominion Energy Ohio, Duke Energy Ohio, Inc., and Vectren Energy Delivery of Ohio, Inc.), Ohio Consumers' Counsel, Interstate Gas Supply, Inc., and the Ohio Gas Association.

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

The four large natural gas companies collaborated in advance of the workshop and, following those efforts, offered their collective proposed amendments to Ohio Adm.Code Chapter 4901:1-43 at the workshop. No other feedback was offered at the workshop. The Staff of the Commission considered all of the recommendations offered by the four large natural gas companies in drafting Staff's proposed revisions. Staff has taken these recommendations into account and the proposed revisions reflect many of the 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 the required amendments for this 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 amend these rules pursuant to Substitute House Bill 26.

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 the amendments are necessary in response to Substitute House Bill 26.

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 has a duplicate regulation 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 September 21, 2017, at the offices of the Commission to receive feedback from interested stakeholders and the general public. Next, the Commission has issued an entry that sets forth Staff's proposed amendments to the rules and stakeholders will then have the opportunity to file written comments and reply comments. Finally, following the comment period specified in the entry, the Commission will issue a Finding & Order adopting the amended 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 all 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, 4929.165, 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 R.C. 4928.16 et seq. is 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 in amending Ohio Adm.Code Chapter 4901:1-43 is to implement Substitute House Bill 26 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 in Ohio are under the exclusive jurisdiction of the Public Utilities Commission of Ohio and may not be exempted from the requirements in Ohio Adm.Code Chapter 4901:1-43. However, the Commission Staff will work with the natural gas 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 affected by Ohio Adm.Code Chapter 4901:1-43. However, the Commission Staff regularly works with regulated entities, including smaller companies, to ensure compliance with the rules in all respects. In this rulemaking proceeding, stakeholders and 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.