

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**JOINT REPLY COMMENTS OF
COLUMBIA GAS OF OHIO, INC.,
THE EAST OHIO GAS COMPANY D/B/A
DOMINION ENERGY OHIO,
DUKE ENERGY OHIO, AND
VECTREN ENERGY DELIVERY OF OHIO, INC.**

On December 18, 2017, Columbia Gas of Ohio, Inc.; The East Ohio Gas Company d/b/a Dominion Energy Ohio; Duke Energy Ohio; and Vectren Energy Delivery of Ohio, Inc. (collectively, the “Gas LDCs”) filed joint comments in this docket in support of the changes to Ohio Adm.Code 4901:1-43 proposed by the Public Utilities Commission of Ohio Staff (“Staff”). The Office of the Ohio Consumers’ Counsel (“OCC”) also filed comments in the docket proposing four changes to the rules. OCC’s comments improperly attempt to expand the scope of this limited rulemaking, which is to incorporate into the Commission’s rules the statutory changes enacted by Substitute House Bill 26 (“H.B. 26”). And even if OCC comments were within the scope of this proceeding, the recommendations lack merit. Therefore, all of OCC’s proposed changes should be rejected.

A. The Commission limited the scope of this proceeding to rule changes necessitated by Substitute House Bill 26.

When opening this docket, the Commission held that 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, 2929.162, 4929.163, and 4929.166 and the repeal of R.C. 4929.164.”¹ As the Commission explained, H.B. 26 accomplished a limited

¹ See *In the Matter of the Amendment of the Rules in Ohio Adm.Code Chapter 4939 Regarding Recovery of Infrastructure Development Costs*, Case No. 17-1905-GA-ORD, Entry (Nov. 21, 2017) at ¶2.

number of changes.² These changes include repealing R.C. 4929.164, which had previously established a separate procedure for certified sites projects; eliminating a separate charge for certified sites projects; and increasing the recovery limitation to \$1.50 per month, per customer.³

Rather than addressing the statutory revisions, OCC proposes four new changes that bear no connection to H.B. 26 and its amendments to the Ohio Revised Code. OCC proposes to require utilities to provide “an analysis demonstrating that the benefits of the proposed economic development project exceed the costs,” an analysis neither found in Title 49, nor in the statutory amendments of H.B. 26. OCC also requests language changes for Ohio Adm.Code 4901:1-43-03(C) and 4901:1-43-01(H), which remained unchanged in the Ohio Revised Code pre- and post-H.B. 26. OCC requests additional requirements during the Annual Report filing process with Ohio Adm.Code 4901:1-43-04(B), which remained unchanged in Section 4929 pre- and post-H.B. 26. Finally, OCC limits Commission Staff’s discretion as to the forms for which the annual report will be provided, which likewise was untouched by H.B. 26.

None of OCC’s recommendations address any of the changes made to R.C. 4929.16, et seq. Therefore, the Commission should summarily reject each of these changes as being outside the scope of this proceeding.

B. The Commission’s rules incorporate an examination of costs and benefits of economic development projects.

When incorporating the H.B. 26 changes, Commission Staff incorporated a new requirement in applications of public utilities to attach a letter of support by an economic development entity or chamber of commerce. This proposed change to Ohio Adm.Code 4901:1-43-03(A)(6) mirrors a similar requirement added into R.C. 4929.163(C)(4), which now requires an application to include “the support for the project by an economic development entity or chamber of commerce.”

Rather than focusing on this change, OCC claims that the application must also require a new provision not found in Title 49. OCC believes utilities should include a cost/benefit analysis, which OCC maintains is “necessary to determine the prudence of customer money spent on economic development project(s).” This conclusory statement lacks any specificity as to the study, its mechanics, or its inputs. Instead, OCC summarily claims it must be added to warrant collection of

² *Id.*

³ *Id.*

costs from customers. It must also be noted that, contrary to OCC's apparent belief, it is not necessary for a utility to provide a formal cost/benefit analysis in order for the Commission to examine the prudence of expenditures. Indeed, as the Commission is well aware, such analyses are generally not provided as part of Commission proceedings.

OCC's proposal overlooks the weighing of costs and benefits already found within the Commission's existing rules. All of the information contained within Ohio Adm.Code 4901:1-43-03 provides the Commission the opportunity to weigh the costs and benefits associated with each economic development project. When reviewing an economic development project, the Commission considers the proposed infrastructure costs against the anticipated jobs created and retained (Ohio Adm.Code 4901:1-43-03(A)(3)(b)), the benefits of the community receiving the economic development project (Ohio Adm.Code 4901:1-43-03(A)(3)(c)), and the estimated state and local taxable base increase (Ohio Adm.Code 4901:1-43-03(A)(3)(a)). In other words, the existing rules *already* enable the Commission to conduct whatever cost-benefit study it deems appropriate.

Because OCC's proposed rule change is already captured within the existing rules, OCC's changes should be rejected.

C. The Commission should reject OCC's unsupported and unexplained language changes in Ohio Adm.Code 4901:1-43-01 and Ohio Adm.Code 4901:1-43-03.

Next, OCC postscripts the end of its first section of comments with a proposed change to substitute the word "application" for the word "notice" in three rules: Ohio Adm.Code 4901:1-43-01(H), 4901:1-43-03(A), and 4901:1-43-03(C). Once again, OCC's conclusory statements provide no support for these changes or, just as importantly, why these changes must be made now. Such lack of rationale is especially apparent when, in light of H.B. 26, none of the language of R.C. 4929.163 about the individual projects was altered. This recommendation, therefore, is unnecessary and untimely.

D. The Commission's existing rules provide for the option to review utility economic development projects during the annual report proceeding.

Commission Staff's only revision to Ohio Adm.Code 4901:1-43-04 was to remove the rule reference to certified sites projects, incorporating the changes of

H.B. 26. This change is reasonable and, as explained in its initial comments, the Gas LDCs support it.

Notwithstanding the minimal legislative change, OCC claims that an additional requirement is missing from this section. OCC proposes to add another cost benefit analysis to “verify that the promised investment and job creation that customers are paying for is actually occurring.” OCC again simply disregards the existing language in the rule that already provides the Commission the ability to verify utility investments.

Ohio Adm.Code 4901:1-43-04(C) states that with the Annual Report, the Commission has the option to hire consultants “to conduct a prudence and/or financial reviews of the costs incurred and recovered through the infrastructure development rider.” This option provides the Commission with ample ability to review approved economic development projects, should it deem such review to be necessary. And, unlike OCC’s proposed language, the existing rule language gives the Commission the discretion as to the form or type of investigation into the projects.

E. The Commission should reject OCC’s attempts to eliminate the template by which utilities must file their annual report.

The final proposal by OCC is to strike the Commission’s template by which utilities must file the annual report.⁴ OCC provides no rationale or explanation, but instead simply included the deletion in its redline.

In Case No. 15-871-GA-ORD, the Commission adopted proposed rules that incorporated then-newly passed H.B. 319, the legislation that initially enacted the Infrastructure Development Rider into the Ohio Revised Code. The proposed rules included in Ohio Adm.Code 4901:1-43-04(B), which required all utilities in their annual report to file the “information set forth upon forms as may be prescribed by the commission.” This form was attached to the last page of the Commission’s June 1, 2016 Finding and Order in that proceeding. This Template outlines the schedules and components of the annual report.

By striking this phrase, OCC effectively seeks to strike this template, substituting OCC’s proposed four-benefit test in its place. Yet not one word in OCC’s

⁴ See OCC Comments at 5.

comments explain why the template should be deleted. This change should be rejected because of its lack of explanation, lack of relevance, and lack of detail.

CONCLUSION

The Gas LDCs request that Commission adopt Staff's proposed changes outlined in the Commission's Entry dated November 21, 2017 and reject OCC's proposed changes for the reasons explained in these Joint Reply Comments.

Respectfully submitted,

/s/ Stephen B. Seiple

Stephen B. Seiple, Asst. General Counsel
(0003809)

Joseph M. Clark, Sr. Counsel (0080711)

Columbia Gas of Ohio, Inc.

290 W. Nationwide Blvd.

P.O. Box 117

Columbus, OH 43216-0117

Telephone: (614) 460-4648

(614) 460-6988

Email: sseiple@nisource.com

josephclark@nisource.com

Attorneys for

COLUMBIA GAS OF OHIO, INC.

/s/ Jeanne W. Kingery (per e-mail authority)

Amy B. Spiller (0047277)

Deputy General Counsel

Jeanne W. Kingery (0012172)

(Counsel of Record)

Associate General Counsel

Duke Energy Business Services LLC

139 E. Fourth Street, 1303-Main

P.O. Box 961

Cincinnati, Ohio 45201-0960

Telephone (513) 287-4359

Facsimile (513) 287-4385

Amy.Spiller@duke-energy.com

Jeanne.Kingery@duke-energy.com

Attorneys for
DUKE ENERGY OHIO

(Willing to accept service by e-mail)

/s/ Andrew J. Campbell (per e-mail authority)

Mark A. Whitt (0067996)

Andrew J. Campbell (0081485)

Rebekah J. Glover (0088798)

WHITT STURTEVANT LLP

The KeyBank Building, Suite 1590

88 East Broad Street

Columbus, Ohio 43215

Telephone: (614) 224-3946

Facsimile: (614) 224-3960

whitt@whitt-sturtevant.com

campbell@whitt-sturtevant.com

glover@whitt-sturtevant.com

Attorneys for
**THE EAST OHIO GAS COMPANY
D/B/A DOMINION ENERGY OHIO
AND VECTREN ENERGY DELIVERY
OF OHIO, INC.**

(Willing to accept service by e-mail)

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Terry.Etter@occ.ohio.gov

/s/Stephen B. Seiple

Stephen B. Seiple

**Attorney for
COLUMBIA GAS OF OHIO, INC.**

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Summary: Comments /Joint Reply Comments electronically filed by Cheryl A MacDonald on behalf of Columbia Gas of Ohio, Inc. and Duke Energy Ohio, Inc. and Vectren Energy Delivery of Ohio, Inc. and Dominion Energy Ohio