

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

FINDING AND ORDER

Entered in the Journal on January 24, 2018

I. SUMMARY

{¶ 1} The Commission adopts proposed amendments to the infrastructure development rider rules in Ohio Adm.Code Chapter 4901:1-43.

II. DISCUSSION

A. *Procedural Background*

{¶ 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 Among other statutory changes, the legislation repealed R.C. 4929.164 and eliminated the separate charge for certified sites projects, as well as increased the potential IDR cost recovery for economic development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 proposed amendments throughout the chapter to ensure consistency with the recent statutory changes enacted through Substitute House Bill 26. On November 21, 2017, the Commission issued an Entry seeking comments on Staff's proposed amendments to Ohio Adm.Code Chapter 4901:1-43 and the BIA. Initial and reply comments were due on December 18, 2017, and January 2, 2018, respectively.

{¶ 7} Consistent with the November 21, 2017 Entry, written comments were filed in this proceeding on December 18, 2017, by the Ohio Consumers' Counsel (OCC) and jointly by 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. (collectively, Companies). Reply comments were filed on January 2, 2018, by the Companies.

B. *Consideration of the Comments*

{¶ 8} In their joint comments, the Companies state that they support Staff's proposed changes and, therefore, request that the Commission adopt the changes as proposed in the November 21, 2017 Entry.

{¶ 9} OCC, in its comments, offers two recommendations for the Commission's consideration. First, OCC asserts that, in order to ensure that consumers are charged only for prudently incurred expenses, applications for Commission approval of infrastructure development projects should include a cost/benefit analysis. OCC, therefore, proposes that Ohio Adm.Code 4901:1-43-03(A) be amended to require "an analysis demonstrating that the benefits of the proposed economic development project exceed the costs." OCC also suggests that "notice" should be changed to "application" in Ohio Adm.Code 4901:1-43-03(A) and (C) and that Ohio Adm.Code 4901:1-43-01(H), which defines "notice," should be deleted. OCC notes that "application" is consistent with R.C. 4929.163.

{¶ 10} Additionally, OCC recommends that the Commission verify that consumers actually benefit from the infrastructure development expenses that they pay. Specifically, OCC proposes that Ohio Adm.Code 4901:1-43-04(B) be amended to require that annual reports to update the IDR include the following information for each project for which expenses are being collected through the rider: the actual

increase in state and local taxable base, actual number of new jobs created and jobs retained by the project, benefits to the community, and any additional information requested by the Commission.

{¶ 11} In their reply comments, the Companies assert that OCC improperly attempts to expand the scope of this proceeding, which is limited to the incorporation of the statutory changes enacted by Substitute House Bill 26 into the Commission's rules. The Companies argue that, in any event, OCC's recommendations lack merit, because the existing rules already facilitate an examination of the costs and benefits of economic development projects and provide for the option to review such projects during the annual report proceeding. The Companies add that OCC has failed to support or explain several of its recommendations.

{¶ 12} The Commission finds that OCC's recommendations should not be adopted, as they are outside the scope of this proceeding. The November 21, 2017 Entry stated that this proceeding has been initiated for the specific purpose of reviewing 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. Entry at ¶ 2. The Entry further noted that Staff's proposed amendments were made to ensure consistency with the recent statutory changes enacted through Substitute House Bill 26. Entry at ¶ 6. Consistent with this limited purpose, the Commission sought comments from interest persons to assist in the amendment of Ohio Adm.Code Chapter 4901:1-43 that is required in response to the statutory changes. Entry at ¶ 8. OCC's recommendations are not related in any way to the recent statutory amendments and, therefore, they will not be considered at this time. OCC may offer its recommendations in the next five-year review of Ohio Adm.Code Chapter 4901:1-43.

C. *Conclusion*

{¶ 13} Upon consideration of Staff's recommendations and the written comments, the Commission finds that Ohio Adm.Code 4901:1-43-01, -02, -03, and -04 should be amended, as proposed in the November 21, 2017 Entry. 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 17-1905 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

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That amended Ohio Adm.Code 4901:1-43-01, -02, -03, and -04 be adopted. It is, further,

{¶ 16} 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 R.C. 111.15. It is, further,

{¶ 17} ORDERED, That the final rules be effective on the earliest date permitted by law. It is, further,

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

{¶ 19} 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 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



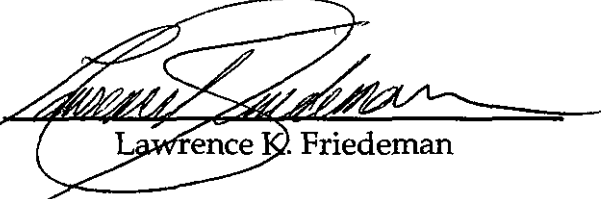
Asim Z. Haque, Chairman



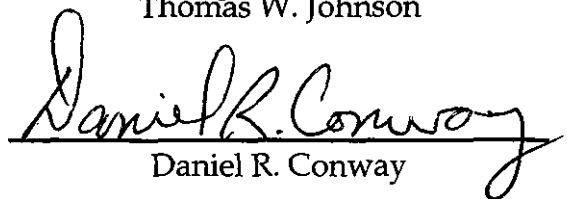
M. Beth Trombold



Thomas W. Johnson




Lawrence K. Friedeman



Daniel R. Conway

SJP/sc

Entered in the Journal

JAN 24 2018Barcy F. McNeal
Secretary

*****DRAFT - NOT FOR FILING*****

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.

*****DRAFT - NOT FOR FILING*****

AMENDED

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.

*****DRAFT - NOT FOR FILING*****

AMENDED

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.

*****DRAFT - NOT FOR FILING*****

(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) 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.~~

*****DRAFT - NOT FOR FILING*****

- ~~(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) 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.~~

*****DRAFT - NOT FOR FILING*****

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.~~
 - (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.