

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. 21-10-GA-ORD

ENTRY

Entered in the Journal on March 10, 2021

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, its rules regarding the recovery of infrastructure development costs, do so no later than April 19, 2021, and May 3, 2021, respectively.

II. DISCUSSION

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require 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. The Commission opened this docket to review the infrastructure development cost rules in Ohio Adm.Code Chapter 4901:1-43.

{¶ 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- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;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 citation accompanying the incorporation by reference would reasonably enable the Joint Committee on Agency Rule Review or a reasonable person to whom the rules apply to find and inspect the incorporated text or material readily and without charge and, if the rule has been exempted in whole or in part from R.C. 121.71 to 121.74 because the incorporated text or material has one or more characteristics described in R.C. 121.75(B), whether the incorporated text or material actually has any of those characteristics;
- (e) Duplicate, overlap with, or conflict with other rules;
- (f) Have an adverse impact on businesses, as determined under R.C. 107.52;
- (g) Contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and
- (h) Require liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

{¶ 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. 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 February 1, 2021, the Commission held a workshop in this proceeding to enable interested stakeholders to propose revisions to Ohio Adm.Code Chapter 4901:1-43. Representatives of interested stakeholders attended the workshop. Two stakeholders offered verbal statements on Ohio Adm.Code Chapter 4901:1-43.

{¶ 6} The Commission and Staff evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-43 and considered feedback received at the workshop. As a result of that review, Staff recommends removing Ohio Adm.Code 4901:1-43-03(A)(3)(a), which requires a natural gas company applicant to provide the estimated state and local taxable base increase for its economic development project.

{¶ 7} Attached to this Entry are the proposed changes to Ohio Adm.Code Chapter 4901:1-43 (Attachment A), the Annual Report Schedule (Attachment B), and the BIA (Attachment C), 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 21-10-GA-ORD into the Case Lookup box to view this Entry, as well as the proposed changes, or to contact the Commission's Docketing Division to request a paper copy.

{¶ 8} The Commission requests comments on the proposed modifications from interested persons to assist in the review required by R.C. 111.15 and R.C. 106.03. Comments should be filed, via electronic filing or in hard copy, by April 19, 2021. Reply comments should be filed by May 3, 2021.

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 April 19, 2021, and May 3, 2021, 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 gas and natural gas companies, all certified retail natural gas suppliers, the Ohio Consumers' Counsel, the Ohio Gas Association, the Ohio Petroleum Council, the Ohio Oil and Gas Association, and all other interested persons of record.

COMMISSIONERS:

Approving:

M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JWS/kck

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

NO CHANGE

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.
- (F) "Infrastructure development costs" shall have the meaning set forth in division (B) of section 4929.16 of the Revised Code.
- (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.
- (H) "Notice" means a notice filing for a natural gas infrastructure development project pursuant to this chapter.
- (I) "Staff" means the staff of the commission or its authorized representative.

NO CHANGE

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 of the Revised Code.
- (B) The commission may, upon an application or a motion filed by a party, waive any requirement

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

of this chapter, other than a requirement mandated by statute, for good cause shown.

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)~~(a) Anticipated number of new jobs created and jobs retained by the project.
 - ~~(c)~~(b) 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 one dollar and fifty cents recovery cap on a 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

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

information consistent with section 4929.163 of the Revised Code, the commission may approve a project if 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.

- (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.

NO CHANGE

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:

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

- (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 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.

NO CHANGE

Pursuant to Rule 4901:1-43-04 of the Ohio Administrative Code, natural gas infrastructure development rider (IDR) annual reports “shall include all information set forth upon forms as may be prescribed by the commission.” The template for the IDR annual report is posted as prescribed in Case No. 15-871-GA-ORD.

TEMPLATE Annual Report

Schedule I.D.	Schedule Name and Required Data for Infrastructure Development Rider Annual Report
	The following should be filed, if applicable to any given project, in an application with the Commission’s Docketing Division.
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. Include all infrastructure development rider 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 for the twelve months following the annual report, 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 infrastructure development rider 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.



Mike DeWine, Governor
Jon Husted, Lt. Governor

**Common Sense
Initiative**

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Public Utilities Commission of Ohio (PUCO)

Rule Contact Name and Contact Information:

Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122, Fax: 614-728-8378, Email: Angela.Hawkins@puco.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

Case No. 21-10-GA-ORD

Recovery of Infrastructure Development Costs

Rule Number(s): Ohio Adm.Code Chapter 4901:1-43 and Annual Report Schedule

Date of Submission for CSI Review: March 10, 2021

Public Comment Period End Date: May 3, 2021

Rule Type/Number of Rules:

New/___ rules

Amended/1 rules (FYR? Yes)

No Change/3 rules (FYR? Yes)

Rescinded/___ rules (FYR? ___)

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. 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.

The proposed revision to Ohio Adm.Code Chapter 4901:1-43 is in accordance with the state of Ohio's five-year rule review procedures. R.C. 111.15(B) and 106.03(A) require all state agencies to conduct a review, every five years, of their rules and to determine whether to continue those rules without change, amend the rules, or rescind them.

The proposed amendment affects the filing requirements for a natural gas company seeking approval of an economic development project by removing an unnecessary filing requirement.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

The amendments to Ohio Adm.Code 4901:1-43-03 are made in response to R.C. 111.15(B) and 106.03(A), which require all state agencies to conduct a review, every five years, of their rules and to determine whether to continue those rules without change, amend the rules, or rescind them.

The statutory authority for the Commission to adopt the rules in Ohio Adm.Code Chapter 4901:1-43 is found in R.C. 4929.163 and R.C. 4929.10.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

- 4. 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.

This regulation implements state requirements only. No federal law or program is being implemented.

- 5. 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.

- 6. 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 to determine if those costs are in conformance with the Commission's orders.

- 7. 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.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No, not applicable.

Development of the Regulation

9. 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 via Webex on February 1, 2021, 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 21-10-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 numerous stakeholders attended the workshop, 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, and Suburban Natural Gas Company.

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

Comments were provided from Columbia Gas of Ohio (Columbia) and Ohio Consumers' Counsel (OCC). The Staff of the Commission considered the stakeholder recommendations in drafting Staff's proposed revisions. Staff has taken these recommendations into account, and the proposed revision reflects one of the recommendations.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

11. 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 feedback from stakeholders and the general public.

12. 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. In 2017, the Commission finalized necessary changes to the filing requirements pursuant to Substitute House Bill 26, which repealed R.C. 4929.164 and eliminated the separate charge for certified sites projects and increased the potential infrastructure development rider cost recovery for economic development projects to \$1.50 per month per customer. The Commission updated Ohio Adm.Code Chapter 4901:1-43 to include the changes in the Ohio Revised Code. Additionally, the Commission has reviewed the initial promulgation of Ohio Adm.Code Chapter 4901:1-43 in Case No. 15-871-GA-ORD.

13. 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. The proposed revisions dictate a particular process and not a required outcome.

14. 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.

15. 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 remote workshop on February 1, 2021, 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 then can file written comments and reply comments. Finally, following the comment period specified in the Entry, the Commission will issue a Finding and Order adopting the 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

16. 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; and

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 all adverse impact (e.g., fees, fines, employer time for compliance,); and

The proposed revisions were drafted 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. The proposed revision reduces the employer time and cost by eliminating a filing requirement.

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

“representative business.” Please include the source for your information/estimated impact.

Other than the 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. was 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 regulations is significant, the Commission would consider revisions to address such concerns. No significant adverse impacts were identified by stakeholders during the workshop on February 1, 2021.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Commission has not identified an adverse impact on business as a result of the proposed revisions. In fact, any regulatory impact of these regulations is offset by helping to fund economic development projects within the state of Ohio.

Regulatory Flexibility

18. 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.

19. 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, as there are no fines and penalties for paperwork violations.

20. 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.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/10/2021 2:29:47 PM

in

Case No(s). 21-0010-GA-ORD

Summary: Entry directing 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, its rules regarding the recovery of infrastructure development costs, do so no later than April 19, 2021, and May 3, 2021, respectively. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio