

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Amendment of	)	
the Rules in Ohio Adm.Code	)	Case No. 21-10-GA-ORD
Chapter 4901:1-43 Regarding	)	
Recovery of Infrastructure	)	
Development Costs.	)	

---

**COMMENTS PROPOSING AMENDMENTS TO PUCO RULES  
TO PROTECT CONSUMERS  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

**I. INTRODUCTION**

O.A.C. Chapter 4901:1-43 addresses the rules regarding the collection of natural gas infrastructure development costs, many of which impact consumers. The Public Utilities Commission of Ohio (“PUCO”) invited interested persons to file comments and reply comments concerning O.A.C. 4901:1-43.<sup>1</sup>

To protect consumers, OCC recommends that the PUCO adopt OCC’s recommendations for Chapter 4901:1-43 that impact the review process for infrastructure development projects. By adopting OCC’s recommendations, the PUCO will protect consumers through a more thorough and transparent review of these projects that customers ultimately end up paying for.

The PUCO Staff’s draft rule recommended removing O.A.C. 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. The Office of the Ohio Consumers’ Counsel (“OCC”) recognizes that this information may not be

---

<sup>1</sup> Case No. 21-10-GA-ORD, Entry (March 10, 2021).

known at the time a utility files for approval of an economic development project.

However, this does not justify elimination of the Rule altogether. Instead (as is done currently) if the information is unknown at the time of an economic development project application, the utility can seek a waiver of the Rule. And OCC recommends that the utilities provide this information in subsequent updated annual reports once the information becomes known.

**II. THE PUCO SHOULD ADOPT OCC’S PROPOSED AMENDMENTS TO O.A.C. 4901:1-43 THAT ENABLE THE PUCO TO CONDUCT A MORE THOROUGH REVIEW OF INFRASTRUCTURE DEVELOPMENT PROJECTS TO PROTECT CONSUMERS FROM PAYING UNNECESSARY OR UNREASONABLE COSTS.**

**A. To protect consumers, the PUCO should eliminate the 75-day auto-approval of annual update reports to allow for more time to investigate whether the infrastructure development charges are reasonable.**

Consumers are made to pay significant costs for utilities’ economic development project costs through the “infrastructure development rider.” This rider can be the result of one or more economic development projects that a natural gas utility files with the PUCO.<sup>2</sup> The PUCO reviews the project proposal and authorizes it. The natural gas utility is then authorized under O.A.C 4901:1-43-02(A) to file an application with the PUCO for approval of an infrastructure development rider to charge consumers for prudently incurred infrastructure development costs of one or more of the economic development projects. The utility with the infrastructure development rider is able to update the rider annually<sup>3</sup> which sets the new rate that customers must pay.

---

<sup>2</sup> R.C. 4929.163 and R.C. 4929.164.

<sup>3</sup> O.A.C. 4901:1-43-04(B).

The PUCO should take all necessary steps to safeguard that these charges are prudently incurred. The current deadlines for the filing of motions to intervene and comments are too short to enable parties to conduct the necessary discovery, which would assist the PUCO in determining whether the annual updated rider charge is just and reasonable and relates to prudently incurred costs.

To assist in this review, OCC recommends that the 75-day auto-approval for the infrastructure development rider rate found in O.A.C. 4901:1-43-04(D) be eliminated or the time period extended to allow for meaningful review. The current rule requires that each annual report to update the infrastructure development charges be made not less than seventy-five days prior to the rider rate's proposed effective date. This rule applies to annual update reports and changes to the infrastructure development rider charges once the rider has been approved. Under the rule, the proposed charges will become effective on the seventy-sixth day, unless suspended by the PUCO for good cause shown.<sup>4</sup>

The PUCO should instead provide additional time for interested parties to allow for thorough discovery to investigate whether the infrastructure development charges are reasonable. Upon the filing of the annual report updating the infrastructure development rider, a procedural schedule should be established with dates certain for motions to intervene and comments to allow for meaningful intervenor participation and discovery. Ohio law does not require an auto-approval process for the natural gas utility's annual reporting or for the utility's request to modify the infrastructure development rider charges to consumers. Ohio law does require, however, that rates be just and reasonable.<sup>5</sup>

---

<sup>4</sup> O.A.C. 4901:1-43-04 (D).

<sup>5</sup> R.C. 4905.22.

The 75-day auto-approval of the infrastructure development rider updated annual report should be eliminated. If not eliminated, this period should be extended to allow for reasonable opportunity for meaningful review. OCC recommends a 120-day time frame.

**B. To protect consumers, the PUCO should amend O.A.C. 4901:1-43-04(E)(2) to allow additional time so parties can intervene and file comprehensive comments.**

Current Rule 4901:1-43-04-(E)(2) requires that intervention and comments concerning a gas utility's annual update be submitted to the PUCO within 45 days of the date of the filing of the annual report.<sup>6</sup>

For the same reasons that OCC recommends eliminating or extending the 75-day auto-approval for the updated rider charge, explained above, OCC also recommends eliminating, or in the alternative, extending this brief time frame for intervention and comments. In order to furnish comprehensive recommendations, parties need adequate time to evaluate the proposed rider rates. This may involve the need to conduct discovery. This often cannot be accomplished under the short time frame provided under these rules.

Instead, the Attorney Examiner should set a reasonable procedural schedule allowing ample time for discovery and case preparation. In the alternative, OCC recommends 120 days from the utility's filing of the updated annual report and ninety days for the filing of motions to intervene and comments. There is nothing in Ohio law requiring a tight frame. An expanded period for discovery and case preparation will better protect consumers from unjust and unreasonable rates.

The 45-day time frame for intervention and comments should be eliminated. If not eliminated, this period should be extended to 90 days to allow for reasonable

---

<sup>6</sup> O.A.C. 4901:1-43-04(E)(2).

opportunity for intervenors to conduct meaning discovery. OCC proposes the following draft language to O.A.C. 4901:1-43-04(D) and 4901:1-43(E)(2):

4901:1-43-04(D): Each annual report to update the infrastructure development rider should be made not less than ~~seventy-five~~ one hundred twenty days prior to the proposed effective date of the updated rider rate. Proposed rates will become effective on the ~~seventy-sixth~~ one hundred twenty-first day, unless suspended by the commission for good cause shown, and shall be subject to reconciliation adjustments following any hearing, if necessary.

4901:1-43(E)(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~~ ninety days of the date of the filing of the annual report.

If, however, the 75-day auto-approval process for infrastructure development rider charges remains, contrary to OCC recommendations, then Rule 4901:1-43-04(E)(2) should be amended to take into consideration the rule's tight time frame for case preparation. Consequently, the rule should be amended to require utilities to provide substantive responses to discovery within seven (7) days of receipt of the discovery. Only by requiring expedited discovery responses can the short time frame for intervention and comments currently in the rules be productive and fair to intervening parties.

### **III. CONCLUSION**

OCC appreciates the opportunity to comment regarding the proposed rule amendments affecting consumers in the gas utility infrastructure development rules under O.A.C. Chapter 4901:1-43. The PUCO should adopt OCC's recommendations for the protection of consumers.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ Amy Botschner O'Brien  
Amy Botschner O'Brien (0074423)  
Counsel of Record  
Assistant Consumers' Counsel  
Ambrosia E. Wilson (0096598)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, 7th Floor  
Columbus, Ohio 43215-4213  
Telephone [Botschner O'Brien]: (614) 466-9575  
Telephone [Wilson]: (614) 466-1292  
[amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)  
[ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)  
(willing to accept service by e-mail)

### **CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing Comments upon the following via electric transmission, this 19th day of April 2021.

/s/ Amy Botschner O'Brien  
Amy Botschner O'Brien  
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

### **SERVICE LIST**

[john.jones@ohioattorneygeneral.gov](mailto:john.jones@ohioattorneygeneral.gov)

Attorney Examiner:

[Jacqueline.st.john@puco.ohio.gov](mailto:Jacqueline.st.john@puco.ohio.gov)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**4/19/2021 4:52:12 PM**

**in**

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

Summary: Comments Comments Proposing Amendments to PUCO Rules to Protect Consumers by Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Botschner O'Brien, Amy