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November 22, 2021

Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

RE: *In the Matter of the Application of Ohio Gas Company for Authority to Establish a Right-of-Way Rider, Case No. 21-0943-GA-RDR, et al.*

Dear Docketing:

Enclosed please find the Staff's Review and Recommendation in regard to Ohio Gas Company for Authority to Establish a Right-of-Way Rider, Case No. 21-0943-GA-RDR, *et al.*

David Lipthrott
Chief, Accounting and Finance Division
Public Utilities Commission of Ohio

Adam Burns
Accounting and Finance Division
Public Utilities Commission of Ohio

Ohio Gas Company
Case No. 21-0943-GA-RDR

APPLICATION SUMMARY

On September 15, 2021, Ohio Gas Company (Ohio Gas or Company) filed an application with supporting exhibits (Application) for authority from the Public Utilities Commission of Ohio (Commission) to establish a Right-of-Way Rider (ROW Rider) and authority to revise its tariffs and modify its accounting procedures accordingly. In accordance with R.C. 4939.07 and 4905.13, Ohio Gas seeks accounting authority to record certain right-of-way costs as a regulatory asset and seeks approval from the Commission to implement the ROW Rider to recover certain right-of-way costs.

ROW Rider is proposed to recover two types of cost. Pursuant to R.C. 4939.07(D), Part A of the proposed ROW Rider will recover right-of-way costs directly incurred by the Company. Pursuant to R.C. 4939.07(B), Part B of the proposed ROW Rider will recover right-of-way costs charged to the Company by a municipality.

Both R.C. 4939.07(D) and R.C. 4939.07(B) specify that cost recovery is limited to costs “incurred by the public utility both after January 1, 2002, and after the test year of the public utility's most recent rate proceeding or the initial effective date of rates in effect but not established through a proceeding for an increase in rates.”

Part A Component

In accordance with R.C. 4939.07(D)(2)(a), Part A of the ROW Rider identifies costs that are directly incurred by the public utility as a result of local regulation of its occupancy or use of a public way or an appropriate allocation and assignment of costs related to implementation of this section, excluding any cost arising from a public way fee levied upon and payable by the public utility.

The Company seeks accounting authority to record Part A costs as a regulatory asset under R.C. 4939.07(D)(1), which authorizes the Commission to grant the deferral of the types of costs associated with Part A of the proposed ROW Rider.

The Company also seeks authority to recover Part A costs under R.C. 4939.07(D)(3), which provides the Commission authority to approve cost recovery under Part A of the proposed ROW Rider and identifies when cost recovery shall be authorized. In its Application, the Company proposes to recover \$871,834 associated with Part A.

Part B Component

In accordance with R.C. 4939.07(B)(1), Part B of the proposed ROW Rider will recover right-of-way costs charged to the Company by a municipality. The Company seeks recovery of Part B costs under R.C. 4939.07(B)(2), which addresses the recovery of right-of-way fees and provides further details on the mechanics of the rider.

Statutory Presumption for Cost Recovery

R.C. 4939.07(D)(3) provides that the Commission shall approve cost recovery if it determines that only providing deferral authority would be impractical or if a hardship exists. Ohio Gas states that creating a

deferral without providing for timely cost recovery would be both impractical and cause a hardship to Ohio Gas.

Creating a deferral would add carrying charges to the principal amounts that the Company proposes to collect through the ROW Rider, thus requiring future customers to pay even greater amounts.¹ While the Company's proposal does not include any request for carrying charges, deferring the right-of-way costs for future recovery would require future customers to pay for the Company's cost of serving customers now.

Under R.C. 4939.07(D)(3), the Commission is to presume a hardship for small public utilities with less than 15,000 customers, and when the annualized aggregate amount sought to be recovered exceeds the greater of \$500,000 or 15% of the amount included in base rates. Ohio Gas has approximately 50,000 customers. The Company's direct right-of-way costs in 2021 are projected at approximately \$825,000. Per the Application, the Company's direct right-of-way costs from 2018 through 2020 total \$871,834.

Proposed Initial Rate

The Company proposes to recover \$871,834 through rates effective January 1, 2022 through September 30, 2022. Schedules 1 and 4 attached to this Application provide detail on these costs that were incurred by the Company since the conclusion of its last test year (i.e., costs incurred after December 31, 2017).² To collect this amount, the Company proposes an initial ROW Rider rate of \$1.88 that would be applied on all customers' bills each month.³ The calculation of this rate is reflected on Schedule 5. The Commission has authority to approve recovery of these costs under R.C. 4939.07(D) and (E).

The \$871,834 and all future costs to be recovered under Part A of the ROW Rider were directly incurred by the Company as a result of local regulation of the Company's occupancy of a public way.

While the Company proposes the ROW Rider rate be the sum of Part A (directly incurred costs) and Part B (public way fees) of the rider, the initial rate under Part B is proposed at zero. More specifically, in this Application the Company is not seeking cost recovery of any public way fees in ROW Rider rates. Future public way fees, if any, under Part B would be reflected in additional schedules to subsequent annual ROW Rider filings and would then be reflected in the rate calculation process contained in Schedule 5.

Proposed Annual True-up Process

Subsequent to the initial rate the Company proposes to be in place for the first nine months of 2022, the Company proposes updating its ROW Rider rates annually effective October 1st of each year. The annual applications would pick up costs for the prior calendar year.

¹ See, e.g., In the Matter of the Application of Ohio Gas Company for Approval of An Alternative Rate Plan, Case Nos. 19-1354-GA-ALT, et al., Finding and Order (Dec. 18, 2019) (recognizing that the Commission had previously authorized the Company to defer costs with interest, and then authorizing the Company to recover in rates the interest component). The direct right-of-way costs would also qualify for recovery under alternative, and broader, statutory mechanisms that mandate post-in-service carrying costs. See R.C. 4929.111(A)(1), (3) & (D).

² The test year in the Company's last rate case was calendar year 2017. See *In the Matter of the Application of Ohio Gas Company for an Increase in Gas Distribution Rates*, Case No. 17-1139-GA-AIR, et al., Opinion and Order at 2 (Feb. 21, 2018).

³ The charge would be separately grossed up on bills for the gross receipts tax pursuant to Sheet 11 of the Company's tariff.

With respect to the annual ROW Rider filings, the Company proposes to true-up revenue collected for the prior period with authorized cost recovery and add the over- or under-recovery (without carrying charges) to the subsequent calendar year of costs proposed to be recovered through the ROW Rider. Schedules 6 and 7 demonstrate how the annual over- or under- collection would be calculated.

Pursuant to R.C. 4939.07(D)(2)(a), the Company proposes that its costs to implement the ROW Rider be included as part of the first annual ROW Rider update in 2022. The implementation costs would be subject to Commission review in the 2022 annual filing.

The Company proposes to file its annual application to adjust the ROW Rider by March 31st of each year. The Company requests that the Commission approve an annual review process that would have the Commission issue an order on the annual filing within 120 days subsequent to the filing, and in the absence of a Commission order within 120 days of the filing the filing be deemed automatically approved on the 121st day, which would be consistent with the statutory timeframe in R.C. 4939.07(E). Ohio Gas would then implement the updated annual ROW Rider rate effective October 1st each year.

120-Day Process Period

R.C. 4939.07(E) provides, among other items, a 120-day process for the Commission to review and approve an application seeking approval of a rider under R.C. 4939 such as the Company's proposed ROW Rider.

The Company requests that the Commission fully approve this Application by mid-December 2021 to allow the Company to implement the initial rate effective January 1, 2022. To facilitate approval of this Application on this timeframe, the Company would not object to the Commission deferring its review of the \$871,834 of costs sought to be recovered through the initial rate until the first annual rider process which would be initiated next March. The proposed ROW Rider tariff sheet includes the Company's standard rider tariff language for reconciliations, adjustments, or refunds. If this timeframe does not allow full approval of the Application, the Company requests that the Commission bifurcate its review and grant the Company the requested accounting authority to record right-of-way costs that would be recovered under the ROW Rider as a regulatory asset. If the Commission bifurcates its review, the Company requests that the Commission nonetheless expeditiously rule on the remaining issues in the Application

STAFF REVIEW & RECOMMENDATIONS

Staff investigated Ohio Gas's proposal to establish the ROW Rider by reviewing the Application and issued data requests to obtain detailed information as to the applicability of the costs included in the Application to the statutory provisions regarding right-of-way costs deferrals and recovery and the statutory presumption for cost recovery. Based on this investigation, Staff makes the conclusions and recommendations as set forth below.

Part A Component

In response to Staff data request number three, Ohio Gas identified \$10,801.31 in project costs associated with work order number 5100-10 that should be removed from the Application as this relocation project was not ordered by the municipality. Additionally, the Company identified a project that was omitted from the Application. This project, work order number 5212-40, included relocating pipe and installing 30 feet of 4" steep and 80 feet of 3" plastic pipe in the City of Napoleon. Removing work order number

5100-10 (\$10,801.31) and adding in \$7,073.36 for work order number 5212-40 results in a total of \$868,105.90 for Part A costs.

In response to Staff data request number five, Ohio Gas further identified work orders that were included as part of the Application in error. The Company identified that work orders 4710-30, 5211-30, 5212-30 and 5235-30 were considered outside the scope of direct costs incurred as a result of local regulation of a project in the public right of way. These invalid work orders result in \$326,297.88 being removed from the Application resulting in a request to recover \$541,808.02.

Of the initial \$871,834 direct right-of-way costs from 2018 through 2020 the Company sought to recover, Staff sampled and reviewed \$734,702.55, or 84% of the total costs. Upon receipt of Staff data request number three, Staff sampled \$5,961.60, or 84%, of the project costs associated with work order number 5212-40. Staff found \$541,808.02 of the costs to be directly incurred by the Company as a result of local regulation of its occupancy or use of a public way or an appropriate allocation and assignment of costs related to implementation of R.C. 4939.07(D)(2)(a) and is therefore appropriate for deferral.

While Ohio Gas's Application is not automatically eligible for hardship consideration under R.C. 4939.07(D)(3), Staff notes that the \$541,808.02 direct right-of-way costs from 2018 through 2020 is approximately 3.4% of the Company's last approved base distribution revenue requirement. Ohio Gas is proposing a reasonable initial rate for the ROW Rider. Deferring costs without recovery would be impractical because it unfairly burdens future customers with today's costs of service

Part B Component

The Application reflects no Part B (public way fees) and initial rate of zero under Part B. Staff accepts the Company's proposed method to recover the public way fees.

Staff Recommended Rate

Staff recommends a rate of \$1.17 based upon \$541,808.02 in direct right-of-way costs.

Proposed Annual True-up Process

Staff supports the Company's proposal that after the initial rate be in place for the first nine months of 2022, the Company would update its ROW Rider rates annually effective October 1st of each year and annual applications would include costs for the prior calendar year.

Staff further supports the Company's proposal that for the annual ROW Rider filings, the Company true-up revenue collected for the prior period with authorized cost recovery and add the over- or under-recovery (without carrying charges) to the subsequent calendar year of costs proposed to be recovered through the ROW Rider.

The Company proposes that its costs to implement the ROW Rider be included as part of the first annual ROW Rider update in 2022 and the implementation costs would be subject to Commission review in the 2022 annual filing. Staff has reviewed and accepts the Company's true-up process and notes it has not reviewed any costs related to implement the ROW Rider nor has any understanding of the type of costs the Company would seek to recover. Therefore, as proposed by the Company, Staff retains the right to review and comment on such costs in the 2022 update.

With regards to the 120-day approval process, should Staff be unable to meet the 120-day deadline, Staff would file a letter with the Commission indicating such and the rate would go into effect subject to refund based on future Staff's findings and Commission order.

To expedite the review process, Staff recommends the Company file as part of its annual application any letters from the municipality as a result of directives from municipality regarding their regulation of the Company's use and occupancy of municipal rights-of-way, and other support to ensure costs the Company seeks to recover are bona fide Part A and/or Part B costs.

CONCLUSION

Based on Staff's review of Ohio Gas's Application, Staff recommends the Commission approve the Application subject to Staff's recommendations stated above.

**This foregoing document was electronically filed with the Public Utilities
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Case No(s). 21-0943-GA-RDR, 21-0944-GA-ATA, 21-0945-GA-AAM

Summary: Staff Review and Recommendation regarding Ohio Gas Company's
Application for Authority to Establish a Right-of-Way Rider electronically filed by
Zee Molter on behalf of PUCO Staff