

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Gas Company for Authority to Establish a) Case No. 21-943-GA-RDR
Right-of-Way Rider.)

**COMMENTS
BY
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This case involves another Ohio utility seeking to avoid traditional ratemaking, with its associated consumer protections, by relying on a statute (never used before in the natural gas industry) permitting single-issue ratemaking. Ohio Gas serves about 50,000 consumers in Williams, Fulton, Henry, Defiance, Paulding, and Lucas counties. But Ohio Gas, and the PUCO's Staff, do not get it right. The utility's application should not be approved.

Ohio Gas seeks authority from the PUCO to charge consumers for capital costs associated with municipal rights-of-way.¹ It intends to establish a Right-of-Way Rider ("ROW charge") with an initial charge to consumers of \$1.88 per month from January 1, 2022 through September 30, 2022² and then updated annually on March 31st each year.³ The PUCO Staff issued its Staff Report on November 22, 2021, and recommended the PUCO approve the application with modification.⁴ Consumer protection requires that Ohio Gas's application be denied because under Ohio law governing the application, capital costs associated with municipal rights-of-way are not collectable from consumers.

¹ Application at 1.

² *Id.* at 6.

³ *Id.* at 7.

⁴ Staff Review and Recommendation at 6 (November 22, 2021) ("Staff Report").

I. RECOMMENDATIONS

A. To protect consumers, the PUCO should reject its Staff's recommendation and Ohio Gas's application.

1. R.C. 4939.07 does not allow a utility to collect from consumers the plant-related capital costs that are the subject of Ohio Gas's application.

Ohio Gas's proposed ROW charge would collect from consumers right-of-way costs directly incurred by the utility under R.C. 4939.07(D), all booked to FERC Account 376, gas plant in service.⁵ R.C. 4939.07 addresses deferrals, regulatory assets, and costs incurred after the test year of a utility's most recent rate case. These terms apply to utility expenses—not to utility capital project costs. This is so because R.C. 4939 in general, and R.C. 4939.07 specifically, do not mention utility capital investments, capital projects, date certain for inclusion of utility plant in rate base, or any other reference to utility capital expenditures. In short, R.C. 4939.07(D) may allow for collecting expenses. It does not allow for collecting capital investment costs.

Utility capital expenditures are not deferred for future collection from customers, per accounting rules.⁶ But utility expenses that normally would be recorded on a utility's income statement can, with PUCO approval, be deferred for future collection as a regulatory asset and carried on the utility's balance sheet. R.C. 4939.07(D)(1) makes it clear that the cost eligible for collection from consumers for right of way under subsection (D)(2) do not include capital investment costs. Under (D)(1) the PUCO is given authority to classify (D)(2) costs as a regulatory asset. And since capital investment cannot be authorized as a regulatory asset, it must follow that the (D)(2) costs are limited to expenses and not capital investment costs.

⁵ Application at 1.

⁶ See, e.g., 18 C.F.R. Part 201 – Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, at “Gas Plant Instructions.”; R.C. 4905.13; O.A.C. 4901:1-13-13.

In this case, 100% of the costs that Ohio Gas is seeking to charge consumers are capital investment costs. These capital costs are related to projects where Ohio Gas was required to relocate existing mainlines, replace existing mainlines with new mainlines, add new pipelines and related appurtenances, connect, or reconnect service lines, and remove or abandon in place pipelines that will no longer be used.⁷ These are capital costs. Capital costs are not eligible for collection under R.C. 4939.07.

Schedule 1 in Ohio Gas' response to Staff DR-5 shows that it booked all \$541,808.02 that the PUCO Staff has proposed to allow Ohio Gas to charge consumers in FERC Uniform System of Accounts ("USoA") Account 101 (Gas Plant in Service) and in account 376 (Gas Mains). Table-1 below provides a summary of the projects that Ohio Gas proposes for recovery. Table-1 was developed using schedules provided by Ohio Gas in response to Staff DR-5.

Table-1

Year	Proj. #	Municipality	General Description	Cost (\$)
2018	5110-10	Edgerton	Replace 2" steel main w/ relocated 3" plastic main + approx. 17 service lines along Oak St. Abandon 2" steel main in place.	45,280.38
2018	4710-10	Edgerton	New 2" steel and 3" plastic mains at Ash St.	9,346.88
2018	5211-20	Defiance	Replace sections of existing main along East High St. Abandon old pipe segments. Tie in existing (and new?) service lines.	63,811.40
2018	5102.30	Swanton	Investigate and relocate facilities to accommodate Garfield Ave. Bridge Replacement project	22,122.06
2018	5110.30	Swanton	Investigate and relocate facilities to accommodate sewer project along Church St.	26,248.94
2018	5210-40	Napoleon	Relocate main along Industrial Dr. Relocate valve on Interchange Ave. Tie new segment into existing	68,766.99

⁷ Application, Exhibit B.

			mains. Remove or abandon in place old main segments.	
2018	5100-40	Archbold	Replace segment of 2" steel main w/ 2" plastic. Tie in to existing main and abandon replaced main in place.	8,931.76
2018			SUBTOTAL	244,508.41
2019	5235-10	Pioneer	Gas lines conflict w/ Pioneer curb, gutter, and underdrain project at on Clearfork Dr. and Pioneer Ave. (and potentially at intersections of Pioneer and Walnut w/ Tanglewood).	75,788.45
2019	5212-20	Paulding	Relocate gas lines for Paulding Phase 3 project	30,535.74
2019	5212-40	Napoleon	Raymond St. project (advertising for bids??)	7,073.36
2019			SUBTOTAL	113,397.55
2020	5110-20	Defiance	Construction in Eastside neighborhood.	11,182.41
2020	4712-30 5110-30	Swanton	Relocate facilities (?) to accommodate reconstruction of Dodge South Alley and Business East Alley.	136,559.15
2020	5135-40	Napoleon	Park St Phase III project.	36,160.50
2020			SUBTOTAL	183,906.06
TOTAL			TOTAL	541,808.02

The \$541,808.02 total and the annual subtotals shown in Table-1 match the total and subtotals in Schedule-4 provided in response to Staff DR-5. And the total matches the amount recommended for collection from consumers in the Staff Report. The project descriptions clearly show that all of the costs incurred and requested for collection are for capital project investments, not expenses.

Similarly, the schedules from Ohio Gas' response to Staff DR-5 also include descriptions of the accounts in which the projects were recorded on Ohio Gas's books. The costs for each project were booked into the following account categories (from Ohio Gas response to Staff DR-5):

No. Part A - Direct Costs

1	Demolition costs
2	PLANNING & DEVELOPMENT A&G, E&S OVERHEADS
3	Supervisory costs B
4	ACCOUNTS PAYABLE-MAJAAC ⁸
5	ACCOUNTS PAYABLE-OTHER VENDORS
6	INVENTORY-MATERIAL ISSUES
7	PAYROLL
8	Total

All of these cost categories are capital costs associated with capital investment projects.

They cannot be collected under R.C. 4939.07, which allows for collecting only expenses. The PUCO should not permit deferral or collection of these capital costs from consumers under a right of way fee. Instead, Ohio Gas can apply to collect these costs from consumers in its next base rate case or under a capital expenditure program (“CEP”) approved by the PUCO under R.C. 4929.111 (the CEP law) and R.C. 4929.05 (alternative rate plan). Only then can Ohio Gas charge consumers for these capital costs outside of a base rate case. The capital costs that Ohio Gas is seeking to charge consumers is not permitted under R.C. 4939.07.

2. The PUCO should not approve single-issue ratemaking in this case because it will cost consumers more than if the ROW charge was included in a base rate case.

Ohio Gas proposes a ROW charge of \$1.88 based on \$871,834 in direct right-of-way costs.⁹ The PUCO Staff found that several work orders were included in this application in error.¹⁰ After removing the erroneous work orders, the PUCO Staff recommended that the PUCO

⁸ Majaac is described on its website relating to gas distribution service as: “Majaac, Inc. is a full service gas distribution and mechanical contractor. We also install cable and other utilities. The natural gas business represents the majority of our business. Majaac, Inc. has a fleet of up-to-date, state of the art equipment including directional drilling and electrofusion. We also specialize in plastic and steel installation and replacement.” Majaac is located in Bryan, Ohio.

⁹ Application at 6.

¹⁰ Staff Report at 4-5.

approve Ohio Gas's ROW charge of \$1.17 based upon \$541,808.02 in direct right-of-way costs.¹¹ Although it is good that the PUCO Staff recommends that the ROW charge be lower, consumers are not sufficiently protected without a base rate case (or without an approved CEP, though CEP ratemaking lacks the protections of a rate case).

Instead of recommending approval of the ROW charge, the PUCO Staff should have recommended that Ohio Gas file a base rate case or a CEP application. A base rate case would assist consumers by subjecting Ohio Gas's rates to a full and complete review, allowing interested parties to identify an appropriate rate of return on Ohio Gas's rate base, needed adjustments to rate base, and operational savings. Further, a base rate case evaluates more than a single issue and considers if utility programs result in increased revenue or decreased spending.

Ohio Gas's last base rate case was in 2017.¹² Allowing Ohio¹³ Gas to charge consumers under the ROW charge (without an intervening base rate case review) means that its base rates would go unreviewed for an undetermined period of time. This would allow Ohio Gas to not only collect from customers the new capital costs under the ROW charge, but also continue to collect on its retired assets already included in its base rates, but replaced by the ROW charge assets. It is unjust and unreasonable, in violation of R.C. 4905.22, to deny consumers the benefits of decreased costs in Ohio Gas's base rates as the PUCO Staff proposes.

3. Ohio Gas has not carried its burden of proof for the PUCO to approve charging consumers for the ROW Charge under R.C. 4939.07.

As the PUCO Staff noted in its Staff Report, R.C. 4939.07(D)(3) provides that the PUCO shall approve cost collection if it determines that only providing deferral authority without

¹¹ *Id.*

¹² Case No. 17-1139-GA-AIR.

¹³ As explained more fully in section 4, *infra*.

providing for timely cost collection would be impractical or if a hardship exists.¹⁴ Ohio Gas does not meet either of these requirements. As described above, deferral authority has been granted by the PUCO for years (unfortunately for consumers) but at least the PUCO adhered to standards.

Additionally, Ohio Gas does not qualify for a hardship presumption under R.C. 4939.07(D)(3). Nor has it made any effort to prove actual hardship. Under R.C. 4939.07(D)(3), the PUCO 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. And after removing the invalid workorders, PUCO Staff asserts that while Ohio Gas's application is not automatically eligible for hardship consideration under R.C. 4939.07(D)(3), the \$541,808.02 direct right-of-way costs from 2018 through 2020 is approximately 3.4% of the Ohio Gas's last approved base distribution revenue requirement.¹⁵ There is no indication of how that 3.4% of Ohio Gas's base distribution revenue requirement relates to the 15% included in base rates for ROWs required by the law.

The PUCO Staff asserts that deferring costs without recovery would be impractical because it unfairly burdens future customers with today's costs of service.¹⁶ But the PUCO Staff is wrong on two counts. First, the PUCO Staff is wrong because these are capital investments, not expenses. Only the latter may be collected from consumers under R.C. 4939.07. Second, the PUCO Staff is wrong that deferring costs in the manner requested unfairly burdens future consumers with today's costs of service. As described more fully in the following section, the

¹⁴ Staff Report at 5.

¹⁵ Staff Report at 5.

¹⁶ *Id.*

deferral would cost consumers more than if the investments were included in a base rate case or a CEP.

4. To protect consumers against double collection, the PUCO should not permit Ohio Gas to improperly charge consumers for capital project expenditures under R.C. 4939.07.

Capital expenditures for Ohio Gas's relocation projects should be capitalized and recovered over the life of the assets. As proposed, Ohio Gas would collect 3 years' worth of capital investments over a 9-month period.¹⁷

Ohio Gas's proposal as recommend by the PUCO Staff will permit double collection. Many (if not all) of the projects described in Ohio Gas' response to Staff DR-5 include descriptions of pipelines being relocated – where new pipeline segments are installed and connected to existing pipelines in new locations and the old pipeline segments are either removed or abandoned in place. However, Ohio Gas's proposal to recover the installation costs in a new charge does not include a process for removing the retired plant from the rate base that was set in the Ohio Gas's most recent rate case. As a result, Ohio Gas will continue to receive return of (through depreciation expenses built into base rates) and return on (rate of return built into the base rates) the retired assets despite that the retired assets are no longer used to provide utility service to customers. Ohio Gas will continue to receive return of and on the retired plant assets until the assets are removed from rate base at Ohio Gas's next rate case. That is unjust and unreasonable, and in violation of R.C. 4905.22.

The CEPs approved for the four large gas utilities account for this in their annual CEP rider filings, where retired plant is subtracted from the annual plant additions in the annual revenue requirement calculation. Under Ohio Gas's proposal, it will get near instant recovery of

¹⁷ See Ohio Gas response to Staff DR-5, Schedule 5 at Line Nos. 6 and 7.

plant additions (rather than collecting return of the assets through depreciation expense over the life of the assets) and it will continue to collect return of and on the retired assets. This double recovery should not be permitted and is another reason that Ohio Gas should file a base rate case or a CEP case.

B. To protect consumers, the PUCO should reject its Staff's recommendation to approve Ohio Gas's costs before they are incurred.

The PUCO Staff has admitted that it has not reviewed any costs related to implementing the ROW charge and that it does not have any understanding of such costs.¹⁸ Nevertheless, the PUCO Staff recommends approval of such costs for collection from consumers and retains the right to review and comment on such costs in the 2022 ROW charge update.¹⁹ The PUCO Staff also recommends that Ohio Gas file as part of its application any letters from municipalities regarding Ohio Gas's use and occupancy of municipal rights-of-way, and other support to show costs that Ohio Gas seeks to collect from consumers.²⁰

The PUCO Staff is putting the cart before the horse by recommending that costs be approved before they are known and proven. The documentation sought by the PUCO Staff should be provided to the PUCO *before* costs are collected from consumers in the ROW charge.

II. CONCLUSION

Ohio Gas is relying on a statute to engage in single-issue ratemaking that we have never seen used before. New and novel methods relied on by utilities to charge consumers require scrutiny. Ohio Gas's effort to charge consumers in this case does not stand up to that scrutiny. To

¹⁸ *Id.* at 5.

¹⁹ *Id.*

²⁰ Staff Report at 6.

protect consumers, the PUCO should reject Ohio Gas's application. At a minimum, the PUCO should set this case for hearing in light of the issues we have raised.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 13th day of December 2021.

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

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