

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
OHIO GAS COMPANY FOR AUTHORITY  
TO ESTABLISH A RIGHT-OF-WAY RIDER.

CASE NO. 21-943-GA-RDR

IN THE MATTER OF THE APPLICATION OF  
OHIO GAS COMPANY FOR TARIFF  
APPROVAL.

CASE NO. 21-944-GA-ATA

IN THE MATTER OF THE APPLICATION OF  
OHIO GAS COMPANY FOR APPROVAL TO  
CHANGE ACCOUNTING METHODS.

CASE NO. 21-945-GA-AAM

### FINDING AND ORDER

Entered in the Journal on December 15, 2021

#### I. SUMMARY

{¶ 1} The Commission approves Ohio Gas Company's applications for authority to establish a right-of-way rider, for tariff approval, and for approval to change accounting methods, subject to Staff's recommendations.

#### II. DISCUSSION

{¶ 2} Ohio Gas Company (Ohio Gas or the Company) is a natural gas company and a public utility as defined by R.C. 4905.03 and R.C. 4905.02, respectively. As such, Ohio Gas is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4939.07 governs a public utility's recovery of public way fees. Pursuant to R.C. 4939.07(B), a public utility subject to the rate-making jurisdiction of the Commission may file an application for timely and full recovery of a public way fee levied upon and payable by the utility both after January 1, 2002, and after the test year of the 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. R.C. 4939.07(B) further states that the Commission shall authorize by order the applied-for recovery, and the Commission order shall establish a cost recovery mechanism, such as a rider, for recovering the amount to be recovered; specify that amount; limit the amount to not more and not less than the amount

of the total public way fee incurred; and require periodic adjustment of the mechanism based on revenues recovered. Unless the public way fee levied on and payable by the public utility being recovered is determined to be unreasonable, unjust, unjustly discriminatory, or unlawful by the Commission, cost recovery under R.C. 4939.07(B) shall be from all customers of the public utility generally. R.C. 4939.07(B)(2).

{¶ 4} Pursuant to R.C. 4939.07(D)(1), a public utility subject to the rate-making jurisdiction of the Commission may file an application with the Commission for such accounting authority as may be reasonably necessary to classify certain costs as regulatory assets for the purpose of recovering those costs. Under R.C. 4939.07(D)(2), a cost is eligible for recovery only when it is both (a) 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, and (b) incurred by the public utility both after January 1, 2002, and after the test year of the 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. As with an application under R.C. 4939.07(B), the Commission is statutorily obligated to authorize the applied-for accounting authority. R.C. 4939.07(D)(1).

{¶ 5} If the Commission determines that classification of a cost described in R.C. 4939.07(D)(2) as a regulatory asset is not practical or that deferred recovery of the cost would impose a hardship on the utility or its customers, the Commission shall establish a charge and collection mechanism to permit the public utility full recovery of that cost. Hardship is presumed for any public utility with less than 15,000 bundled sales customers and for any utility for which the annualized aggregate amount of additional cost that otherwise may be eligible for such classification exceeds the greater of \$500,000 or 15 percent of the total costs that are described in R.C. 4939.07(D)(2)(a) and were considered by the Commission for the purpose of establishing rates in the public utility's most recent rate case proceeding. R.C. 4939.07(D)(3).

{¶ 6} Finally, R.C. 4939.07(E) mandates that any application submitted under R.C. 4939.07(B) or (D) be processed as an application not for an increase in rates under R.C. 4909.18. Additionally, the Commission shall conclude its consideration of the application and issue a final order not later than 120 days after the application's filing date. A final order regarding a recovery mechanism authorized under the statute shall provide for any retroactive adjustment deemed appropriate by the Commission.

{¶ 7} On September 15, 2021, pursuant to the above-cited authority, Ohio Gas filed an application for authority to establish a right-of-way rider (ROW Rider), along with corresponding applications for authority to change accounting methods and revise its tariffs (Application). Ohio Gas explains that the ROW Rider is comprised of two parts: Part A of the proposed rider would recover right-of-way costs directly incurred by the Company under R.C. 4939.07(D), while Part B would recover right-of-way costs levied against and payable by the Company to a municipality under R.C. 4939.07(B).<sup>1</sup> Ohio Gas requests the Commission approve the application in 90 days such that the Company can implement ROW Rider rates effective January 1, 2022.

{¶ 8} In the Application, Ohio Gas proposes to recover \$871,834<sup>2</sup> through rates effective January 1, 2022, through September 30, 2022. The Company states that this figure represents Part A costs incurred by the Company since the conclusion of its last test year, i.e., after December 31, 2017.<sup>3</sup> Although Ohio Gas proposes that the ROW Rider rate would be the sum of Part A and Part B, the initial rate under Part B is proposed at zero. In other words, the Application is not seeking to recover any public way fees in the initial ROW Rider rates; future public way fees, if any, under Part B would be reflected in the rate calculation for subsequent annual ROW Rider filings. To collect the applied-for revenue

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<sup>1</sup> Inherent to the request to recover costs under Part A, the Application seeks accounting authority to record Part A costs as a regulatory asset under R.C. 4939.07(D)(1) in addition to the authority to recover those costs pursuant to R.C. 4939.07(D)(3).

<sup>2</sup> This figure has been rounded up. The actual revenue requirement reflected on Schedule 1 to the Application is \$871,833.85.

<sup>3</sup> The test period of the Company's most recent rate proceeding ended on December 31, 2017. *In re Ohio Gas Co.*, Case No. 17-1139-GA-AIR, et al., Entry (May 24, 2017) at ¶ 9.

requirement, the Application proposes an initial ROW Rider rate of \$1.88 per month per customer.<sup>4</sup>

{¶ 9} After the initial recovery period, the Company proposes that it update the ROW Rider rate on an annual basis effective October 1 of each year. The Application states that Ohio Gas would file an annual application to adjust the rider by March 31 of each year. The annual applications would pick up costs for the prior calendar year. The Company also proposes that it 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 Application further proposes that the Company's costs to implement the rider be included—and subject to Commission review—as part of the first annual update in 2022. Ohio Gas requests that the Commission approve each annual application within 120 days of its filing consistent with R.C. 4939.07(E). The Company proposes that, in the absence of a Commission order, applied-for rates would be deemed automatically approved on the 121st day after an application's filing. Finally, in addition to discussion of the statutory presumption for cost recovery, Ohio Gas includes numerous schedules in support of the Application, as well as proposed tariffs.

{¶ 10} On September 22, 2021, Ohio Consumers' Counsel (OCC) filed a motion to intervene on behalf of Ohio Gas's residential customers. OCC asserts that it is entitled to intervene under R.C. 4903.221 and Ohio Adm.Code 4901-1-11. The motion is unopposed. Upon review, the Commission finds that the motion to intervene is reasonable and should be granted.

{¶ 11} On November 22, 2021, Staff filed its review and recommendation (Staff Report). Staff explains that it investigated the Company's proposal through review of the

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<sup>4</sup> Ohio Gas notes that collection of the Company's Geographical Information System Cost Recovery Rider, with a rate of \$0.79 per month per customer, is scheduled to end in December 2021, with a final one-month reconciliation in January 2022, which will mitigate bill impacts from the proposed ROW Rider.

Application and data requests issued to obtain detailed information as to the applicability of the proposed costs to the statutory provisions regarding right-of-way cost deferrals and recovery, as well as the statutory presumption for cost recovery. Based on that review, Staff sets forth several conclusions and recommendations regarding the Part A component, Part B component, and the proposed annual true-up process. Additionally, Staff provides a recommended rate.

{¶ 12} With regard to Part A of the Application, Staff reports that, in response to a data request, Ohio Gas identified \$10,801.31 in project costs associated with one work order that should be removed because the related work was a relocation project not ordered by a municipality. The Company additionally identified a \$7,073.36 project that was omitted from the Application: work order no. 5212-40 included the relocation and installation of pipe in the City of Napoleon. Staff states that, by removing the former and adding the latter projects, Part A costs total \$868,105.90. In response to a subsequent data request, Ohio Gas identified four additional work orders that were erroneously included in the Application. These work orders, which totaled \$326,297.88, were considered outside the scope of direct costs incurred as a result of local regulation of a project in the public right of way. Removing these invalid work orders reduces Part A costs sought to be recovered through the Application to \$541,808.02.

{¶ 13} Staff relates that it sampled and reviewed 84 percent of the total direct right-of-way costs from 2018 through 2020 that the Company sought to recover in the Application, as well as 84 percent of the costs associated with work order no. 5212-40. As a result of that review, Staff found that \$541,808.02 of the costs were directly incurred by Ohio Gas 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, therefore, are appropriate for deferral. Staff further found that, while the Company's Application is not automatically eligible for hardship consideration under R.C. 4939.07(D)(3), the \$541,808.02 of direct right-of-way costs is approximately 3.4 percent of the Company's last approved base distribution revenue requirement. Staff notes that the Company is proposing

a reasonable initial rate for the rider and states that deferring costs without recovery would be impractical because it unfairly burdens future customers with today's costs of service.

{¶ 14} Staff explains that the Application reflects no Part B costs, i.e., public way fees charged to the Company by a municipality; thus, Part B is set at an initial rate of zero. Staff states that it accepts the Company's proposed method to recover public way fees.

{¶ 15} With adjusted Part A costs of \$541,808.02 and Part B costs set at zero, Staff recommends that the initial rate for the proposed ROW Rider be set at \$1.17.

{¶ 16} The Staff Report next addresses the Application's proposed annual true-up process. In general, Staff supports the outlined proposal, including the March 31 filing of the annual application, the inclusion of costs to implement the ROW Rider in the first annual update in 2022, and the 120-day review process. Staff does, however, make several observations and recommendations. First, regarding implementation costs, Staff specifically notes that it has not reviewed any costs related to implementation of the rider and is unaware of the type of costs implicated; thus, Staff expressly retains the right to review and comment on such implementation costs in the 2022 update. As to the 120-day review process, Staff recommends that, should it be unable to review the application in sufficient time to allow a timely Commission order, Staff would file a letter indicating as such. The updated ROW Rider rate could then be ordered into effect subject to refund based on Staff's future findings and any subsequent Commission order. And, to expedite the review process, Staff recommends that the Company include with each application any letters or directives from a municipality regarding that municipality's regulation of the Company's use and occupancy of municipal rights of way and other supporting documentation to ensure the costs sought to be recovered are bona fide Part A and/or Part B costs.

{¶ 17} Based upon its review, Staff recommends the Commission approve the Application subject to Staff's stated recommendations.

{¶ 18} On December 13, 2021, OCC filed comments requesting that the Commission reject Staff's recommendation and not approve the Application. OCC first argues that R.C. 4939.07 does not allow a utility to collect plant-related capital costs from consumers. OCC states that R.C. 4939.07 addresses deferrals, regulatory assets, and costs incurred after the test year of a utility's most recent rate case, but that these terms apply to utility expenses and not to utility capital project costs. OCC asserts that, per accounting rules, capital expenditures are not deferred for future collection but that expenses that are normally recorded on a utility's income statement can, with approval, be deferred for future collection as a regulatory asset. OCC reasons that because R.C. 4939.07(D)(1) allows the Commission to authorize accounting authority as may be reasonably necessary to classify any cost described in (D)(2) as a regulatory asset and capital investments cannot be authorized as a regulatory asset, it follows that the statute limits (D)(2) costs to expenses and not capital investment costs. And, upon classifying 100 percent of the costs that Ohio Gas is seeking to recover through the ROW Rider as capital investment costs, OCC states that these amounts are not recoverable under R.C. 4939.07. Instead, OCC believes that Staff should have recommended that Ohio Gas apply to collect the costs in its next base rate case or under a capital expenditure program (CEP) approved by the Commission under R.C. 4929.111 and R.C. 4929.05.

{¶ 19} Continuing, OCC also argues that Ohio Gas has not carried its burden of proof under R.C. 4939.07(D)(3) to allow the Commission to establish a charge and collection mechanism for cost recovery. OCC states that, under the statute, the Commission may approve cost recovery only if it determines that providing deferral authority without timely cost collection would be impractical or if a hardship exists. As to the latter, OCC maintains that the total direct right-of-way costs recommended for approval by Staff is approximately 3.4 percent of Ohio Gas's (a utility with approximately 50,000 customers) last approved base distribution revenue requirement, which is far less than the 15 percent referenced for presumed hardship for small public utilities with less than 15,000 customers. As to the former, OCC disagrees with Staff's assertion that deferring costs without recovery would

be impractical. In fact, OCC contends that the deferral will cost customers more than if the amounts were included in a base rate case or CEP application. OCC decries that allowing Ohio Gas to charge consumers for capital project expenditures through the ROW Rider unreasonably and unjustly permits double collection because the new charge does not include a process for removing the retired plant from rate base. Finally, OCC asserts that the Commission should reject Staff's recommendation to approve the rider implementation costs before they are incurred and only to review them in the 2022 update application; OCC argues that costs should be known and supporting documentation, such as letters from municipalities regarding use and occupancy of right of ways, should be provided before costs are collected from consumers in the ROW charge.

{¶ 20} The Commission has reviewed the applicable statute, the Application, the Staff Report, and OCC's comments. The Commission observes that R.C. 4939.07 sets forth a process for the deferral and recovery of right-of-way costs imposed on a public utility that is, with little exception, mandatory. Ohio Gas's Application, subject to those changes outlined in the Staff Report, seeks to recover costs delineated by the statute as directly incurred as a result of local regulation of the Company's occupancy or use of a public way or appropriate allocation and assignment of costs related to implementation (Part A), as well as those public way fees levied upon and payable by the utility (Part B), after the test year of its most recent rate proceeding, which concluded in 2018. Under R.C. 4939.07(D), if a cost is (a) "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 the actual public way fee levied upon and payable by the public utility (i.e., the Application's Part B costs), and (b) "is incurred both after January 1, 2002, and after the test year of the public utility's most recent rate proceeding," that cost is eligible for deferral treatment and recovery "[n]otwithstanding any other provision of law." Contrary to OCC's assertions, the statute does not otherwise categorize costs that are deferrable or recoverable. Instead, the statute directs that the Commission "by order shall authorize" the requested accounting authority necessary to



classify “any cost” that meets the (D)(2) criteria as a regulatory asset for the purpose of recovery. Additionally, the Commission agrees with Staff’s conclusion that, while the statutory hardship presumption is not met, deferring costs without recovery would be impractical and would unfairly impose today’s costs on tomorrow’s customers. Furthermore, the Commission finds that the initial ROW Rider rate, adjusted by Staff’s recommendations to \$1.17 per month, is just and reasonable; and, the suggested process for annual rider updates, again subject to recommendations in the Staff Report, is practical and compliant with the statute. Thus, based on our review, the Commission finds that the Application is reasonable and should be approved, subject to Staff’s recommendations.

### III. ORDER

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That the motion to intervene filed by OCC be granted. It is, further,

{¶ 23} ORDERED, That Ohio Gas’s Application be approved subject to Staff’s recommendations. It is, further,

{¶ 24} ORDERED, That Ohio Gas be authorized to file tariffs, in final form, consistent with this Finding and Order. Ohio Gas shall file one copy in these case dockets and one copy in its TRF docket. It is, further,

{¶ 25} ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission. It is, further,

{¶ 26} ORDERED, That the Company shall notify its customers of the new tariff via bill message or bill insert within 30 days of the tariff’s effective date. A copy of this customer notice shall be submitted to the Commission’s Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least ten days prior to its distribution to customers. It is, further,

{¶ 27} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair  
M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

PAS/hac

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**Case No(s). 21-0943-GA-RDR, 21-0944-GA-ATA, 21-0945-GA-AAM**

Summary: Finding & Order approving Ohio Gas Company's applications for authority to establish a right-of-way rider, for tariff approval, and for approval to change accounting methods, subject to Staff's recommendations electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio