

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE AMENDMENT OF
THE RULES IN OHIO ADM. CODE
CHAPTERS 4901:1-43 REGARDING
RECOVERY OF INFRASTRUCTURE
DEVELOPMENT COSTS.

CASE No. 22-813-GA-ORD

FINDING AND ORDER

Entered in the Journal on December 14, 2022

I. SUMMARY

{¶ 1} The Commission adopts the proposed amendments to Ohio Adm.Code Chapter 4901:1-43, as determined in and attached to this Finding and Order.

II. DISCUSSION

A. *Applicable Law*

{¶ 2} R.C. 121.951(A)(1) requires state agencies to reduce their total number of regulatory restrictions, and this docket was opened to review the transportation rules in accordance with the requirements of this statute.

{¶ 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- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;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 (JCARR) 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 office the draft rules and the BIA.

{¶ 5} Pursuant to R.C. 121.95(F), a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions. In accordance with R.C. 121.95, and prior to January 1, 2020, the Commission identified rules having one or more regulatory restrictions that require or prohibit an action, prepared a base inventory of these restrictions in the existing rules, and submitted this base inventory to JCARR, as well as posted this inventory on the Commission's website at <https://puco.ohio.gov/wps/portal/gov/puco/documents-and-rules/resources/restrictions>. With regard to the amendments discussed in this Finding and Order with respect to Ohio Adm.Code Chapter 4901:1-43, the Commission has both considered and satisfied the requirements in R.C. 121.95(F).

B. Procedural History

{¶ 6} The Commission and Staff evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-43. No significant substantive changes were proposed. Rather, Staff recommended amending rules throughout the chapters to conform with the purpose of R.C. 121.951(A)(1), by eliminating regulatory restrictions.

{¶ 7} By Entry issued on October 5, 2022, the Commission requested comments and reply comments on Staff's proposed revisions to Ohio Adm.Code Chapter 4901:1-43 and ordered that comments and reply comments should be filed by October 19, 2022, and October 26, 2022, respectively.

{¶ 8} Initial comments were filed by Columbia Gas of Ohio (Columbia) on October 19, 2022. No reply comments were filed.

III. CONCLUSION

{¶ 9} In making its rules, an agency is required by R.C. 106.03(A) to consider the continued need for the rules, the nature of any complaints or comments received concerning the rules, and any relevant factors that have changed in the subject matter area affected by the rules. Further, R.C. 121.951(A)(1) requires state agencies to reduce their total number of

regulatory restrictions. The Commission has evaluated Ohio Adm.Code Chapter 4901:1-43 and recommends amending the rules as demonstrated in the attachment to this Finding and Order.

{¶ 10} In its comments, Columbia proposes eliminating the bulk of Ohio Adm.Code 4901:1-43-03(A), which it states is unnecessary because it restates the statutory text in R.C. 4929.163. Columbia adds that its proposal would eliminate all regulatory restrictions from this section. (Columbia Comments at 1-3.)

{¶ 11} At this time, the Commission declines to adopt Columbia's proposal in full but does find it appropriate to adopt the suggestion in part. The Commission appreciates Columbia's suggested revisions to these rules to increase the number of reductions in regulatory restrictions. The modifications as adopted today accomplish the same number of reductions as found in Columbia's proposal and also maintains consistency with the governing statute. Specifically, R.C. 4929.163(C) sets forth specific items that must be in an application, but R.C. 4929.163(D) also requires "[t]he Commission [to] adopt rules setting forth the criteria for project approval." The Commission finds that Columbia's proposal, which would give a company full discretion in determining which information to include in an application, would not be consistent with the law. The language adopted today gives the Commission the discretion to determine which information should be included in the application, in addition to what is required by statute. The Commission also believes that maintaining a list of the items enumerated in paragraphs (A)(1) to (5) is important to support a robust review of project applications.

{¶ 12} An agency must also demonstrate that it has evaluated the impact of the rule on businesses, pursuant to R.C. 106.03(A)(6) and 121.82(A). Moreover, pursuant to R.C. 121.95(F), the agency must remove two or more existing regulatory restrictions for every new regulatory restriction added. The Commission has included stakeholders in the development of these rules, has considered the impact of the rules on businesses, and has adhered to the requirement regarding the removal of regulatory restrictions.

{¶ 13} Accordingly, at this time, the Commission finds that the amendments to Ohio Adm.Code 4901:1-43-01, 4901:1-43-03, and 4901:1-43-04, as described in the attachment to this Finding and Order, should be adopted and filed with JCARR, the Secretary of State, and the Legislative Service Commission (LSC). The Commission also finds that no changes should be made to Ohio Adm.Code 4901:1-43-02, as described in the attachment to this Finding and Order.

{¶ 14} The rules are 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 Finding and Order only. All interested persons are directed to input case number 22-813 into the Case Lookup box to view this Finding and Order, as well as the rules, or to contact the Commission's Docketing Division to request a paper copy.

IV. ORDER

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That amended Ohio Adm.Code 4901:1-43-01; -03; and -04 be adopted. It is, further,

{¶ 17} ORDERED, That Ohio Adm.Code 4901:1-43-02, which is designated "No Change," be adopted with no changes. It is, further,

{¶ 18} ORDERED, That the adopted rules be filed with JCARR, the Secretary of State, and LSC, in accordance with divisions (D) and (E) of R.C. 111.15. It is, further,

{¶ 19} ORDERED, That the final rules be effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm. Code Chapter 4901:1-43 shall be in compliance with R.C. 106.03. It is, further,

{¶ 20} ORDERED, That a copy of this Finding and Order, with the rules, be served upon the Common Sense Initiative at CSIPublicComments@governor.ohio.gov. It is, further,

{¶ 21} ORDERED, That a copy of this Entry be sent to the gas-pipeline list-serve. It is, further,

{¶ 22} 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:

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

JWS/mef/dmh

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

AMENDED

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~~ has the meaning set forth in division (C) of section 4929.163 of the Revised Code.
- (E) "Infrastructure development" ~~shall have~~ has the meaning set forth in division (A) of section 4929.16 of the Revised Code.
- (F) "Infrastructure development costs" ~~shall have~~ has 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 of this chapter, other than a requirement mandated by statute, for good cause shown.

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

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~~may contain ~~the following~~any information the commission deems relevant, for example, any or all of the following:

- (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) Anticipated number of new jobs created and jobs retained by the project.
 - (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) (5) 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 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.

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

- (C) A notice filed pursuant to division (A) of section 4929.163 of the Revised Code ~~shall be~~ is 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~~ will approve, deny, modify, or hold a hearing on the notice filing not later than forty-five days after the date that the suspension begins.

AMENDED

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~~ company's initial application 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)~~ (B) 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)~~ (C) 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~~ are subject to reconciliation adjustments following any hearing, if necessary.
- ~~(E)~~ (D) Affected parties may file a motion to intervene and submit comments on any issues within the following timelines:
- (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.

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

- (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.

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

12/14/2022 4:28:39 PM

in

Case No(s). 22-0813-GA-ORD

Summary: Finding & Order that the Commission adopts the proposed amendments to Ohio Adm.Code Chapter 4901:1-43, as determined in and attached to this Finding and Order electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio