

# CSI – Ohio

The Common Sense Initiative

## Business Impact Analysis

**Agency Name:** Public Utilities Commission of Ohio (PUCO)  
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**Regulation/Package Title:** Natural Gas Infrastructure Development Rider

**Rule Number(s):** Ohio Adm.Code Chapter 4901:1-43

**Date:** November 21, 2017

**Rule Type:** Amended

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### Regulatory Intent

1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Adm.Code Chapter 4901:1-43 pertains to natural gas infrastructure development riders. Specifically, this chapter:

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- Authorizes a natural gas company to file an application with the Public Utilities Commission (Commission) for approval of an infrastructure development rider to recover prudently incurred infrastructure development costs of one or more economic development projects approved under R.C. 4929.163.
- Establishes the information that a natural gas company must provide in its economic development project notice filed with the Commission prior to construction.
- Establishes due process in the form of an administrative hearing when ordered by the Commission.

On March 31, 2017, Governor John Kasich signed into law Substitute House Bill 26 that, inter alia, amended, effective June 30, 2017, the statutory provisions permitting a natural gas company to file an application with the Commission for approval of an infrastructure development rider to recover costs associated with certain economic development projects. Among other statutory changes, Substitute House Bill 26 repealed R.C. 4929.164 and eliminated the separate charge for certified sites projects, as well as increased the potential infrastructure development rider cost recovery for economic development projects to \$1.50 per month per customer. The Commission opened Case No. 17-1905-GA-ORD specifically to review Ohio Adm.Code Chapter 4901:1-43, in light of the amendment of R.C. 4929.161, 4929.162, 4929.163, and 4929.166 and the repeal of R.C. 4929.164.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

<b>Rule</b>	<b>Statutory Authority – Ohio Revised Code</b>
4901:1-43-01	R.C. 4929.163, 4929.10
4901:1-43-02	R.C. 4929.163, 4929.10
4901:1-43-03	R.C. 4929.163, 4929.10
4901:1-43-04	R.C. 4929.163, 4929.10

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.**

The rules do not implement a federal requirement and are not being adopted to enable the state to obtain or maintain approval to administer and enforce a federal law or participate in a federal program.

- 4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

These rules do not exceed any federal requirement.

- 5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The Commission must balance the interests of state economic development, the protection of public health and safety, the preservation of environmental quality, and the maintenance of a sound economy, as well as the conservation of energy and material resources. The Commission is required, pursuant to R.C. 4929.163, to establish criteria for project approval. Further, the Commission is granted the authority, pursuant to R.C. 4929.167, to conduct financial audits of natural gas companies that have established infrastructure development costs in order to determine if those costs are in conformance with the Commission's orders.

- 6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The rules contained in this chapter govern natural gas companies that file an economic development project notice as set forth in Ohio Adm.Code 4901:1-43-03, as well as those companies that file an application for recovery under Ohio Adm.Code 4901:1-43-04. The success of the regulation in terms of outputs and outcomes will be measured by the Commission Staff in its review of these project notices and applications.

### **Development of the Regulation**

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.***

The Commission conducted a workshop on September 21, 2017, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the Commission's review of Ohio Adm.Code Chapter 4901:1-43 is 17-1905-GA-ORD. The entry providing notice of the workshop was served upon the gas pipeline industry list serve, as well as various state and regional economic development organizations, industry trade associations, and other interested stakeholders. Representatives of seven stakeholders signed the provided sign-in sheet, including representatives of the four large natural gas companies operating in the state (Columbia Gas of Ohio, Inc., The East Ohio Gas Company d/b/a Dominion Energy Ohio, Duke Energy Ohio, Inc., and Vectren Energy Delivery of Ohio, Inc.), Ohio Consumers' Counsel, Interstate Gas Supply, Inc., and the Ohio Gas Association.

**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The four large natural gas companies collaborated in advance of the workshop and, following those efforts, offered their collective proposed amendments to Ohio Adm.Code Chapter 4901:1-43 at the workshop. No other feedback was offered at the workshop. The Staff of the Commission considered all of the recommendations offered by the four large natural gas companies in drafting Staff's proposed revisions. Staff has taken these recommendations into account and the proposed revisions reflect many of the recommendations.

**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

No scientific data was provided or considered. In drafting the required amendments for this chapter, the Commission takes into account all feedback from stakeholders and the general public.

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

No alternative regulations were recommended. The Commission did not consider alternative regulations because the Commission is required to amend these rules pursuant to Substitute House Bill 26.

**11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

No performance-based regulations were considered. The rules contained in Ohio Adm.Code Chapter 4901:1-43 are primarily regulatory in nature and the amendments are necessary in response to Substitute House Bill 26.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The Commission has widely publicized notice of the consideration of these rules to those individuals in the natural gas industry, as well as other governmental organizations and interest groups. The Commission has reviewed other Ohio regulations and found no duplicate, nor has a duplicate regulation been identified by any stakeholder.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The Commission conducted a workshop on September 21, 2017, at the offices of the Commission to receive feedback from interested stakeholders and the general public. Next, the Commission has issued an entry that sets forth Staff's proposed amendments to the rules and stakeholders will then have the opportunity to file written comments and reply comments. Finally, following the comment period specified in the entry, the Commission will issue a Finding & Order adopting the amended rules. All potential stakeholders will be notified that this chapter is under review by Staff and they will be provided an opportunity for feedback concerning the rules in this chapter. Thus, stakeholders will have the opportunity to express whether the proposed rules will be applied consistently and predictably.

**Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. *Specifically, please do the following:***

**a. Identify the scope of the impacted business community;**

The scope of the business community impacted by Ohio Adm.Code Chapter 4901:1-43 includes all natural gas companies.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

The proposed revisions were drafted in an effort to minimize any adverse impact on business, while promoting the policies set forth in R.C. 4929.162, 4929.163, 4929.165, 4929.166, and 4929.167. The proposed rules impact the identified business community in terms of employer time and cost of regulatory compliance.

**c. Quantify the expected adverse impact from the regulation. *The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.***

Other than the impact in terms of employer time and cost of regulatory compliance, the Commission does not anticipate any adverse impact stemming from Ohio Adm.Code Chapter 4901:1-43. In fact, the legislative intent of R.C. 4928.16 et seq. is to promote economic development projects within the state of Ohio. To the extent that the Commission receives comments from the natural gas community indicating that the

adverse impact of the proposed regulations is likely to be significant, the Commission will consider revisions to address such concerns.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The Commission does not make such a determination because the purpose in amending Ohio Adm.Code Chapter 4901:1-43 is to implement Substitute House Bill 26 as adopted by the Ohio General Assembly.

**Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

No. Natural gas companies in Ohio are under the exclusive jurisdiction of the Public Utilities Commission of Ohio and may not be exempted from the requirements in Ohio Adm.Code Chapter 4901:1-43. However, the Commission Staff will work with the natural gas companies to assist them with the applicable requirements and provide guidance to achieve compliance.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

Not applicable.

**18. What resources are available to assist small businesses with compliance of the regulation?**

Small businesses are not responsible for compliance with this regulation; natural gas companies are the entities that are affected by Ohio Adm.Code Chapter 4901:1-43. However, the Commission Staff regularly works with regulated entities, including smaller companies, to ensure compliance with the rules in all respects. In this rulemaking proceeding, stakeholders and the general public, as well as small businesses, were invited to participate in the workshop in order to provide the Commission Staff with feedback so as to minimize or eliminate any adverse effects on business. Small businesses may contact the Commission Staff at any time and may submit written comments on the proposed revisions during the public comment period.