



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### Business Impact Analysis

**Agency, Board, or Commission Name:** Public Utilities Commission of Ohio (PUCO)

**Rule Contact Name and Contact Information:**

Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122, Fax: 614-728-8378, Email: [Angela.Hawkins@puco.ohio.gov](mailto:Angela.Hawkins@puco.ohio.gov)

**Regulation/Package Title (a general description of the rules' substantive content):**

Case No. 21-10-GA-ORD

Recovery of Infrastructure Development Costs

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

**Date of Submission for CSI Review:** March 10, 2021

**Public Comment Period End Date:** May 3, 2021

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/3 rules (FYR? Yes)

Amended/1 rules (FYR? Yes)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

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The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

**Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

## **Regulatory Intent**

### **2. 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:

- 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.

The proposed revision to Ohio Adm.Code Chapter 4901:1-43 is in accordance with the state of Ohio's five-year rule review procedures. R.C. 111.15(B) and 106.03(A) require all state agencies to conduct a review, every five years, of their rules and to determine whether to continue those rules without change, amend the rules, or rescind them.

The proposed amendment affects the filing requirements for a natural gas company seeking approval of an economic development project by removing an unnecessary filing requirement.

### **3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

The amendments to Ohio Adm.Code 4901:1-43-03 are made in response to R.C. 111.15(B) and 106.03(A), which require all state agencies to conduct a review, every five years, of their rules and to determine whether to continue those rules without change, amend the rules, or rescind them.

The statutory authority for the Commission to adopt the rules in Ohio Adm.Code Chapter 4901:1-43 is found in R.C. 4929.163 and R.C. 4929.10.

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- 4. 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.*

This regulation implements state requirements only. No federal law or program is being implemented.

- 5. 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.

- 6. 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 to determine if those costs are in conformance with the Commission's orders.

- 7. 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.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No, not applicable.

### **Development of the Regulation**

9. 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 via Webex on February 1, 2021, 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 21-10-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 numerous stakeholders attended the workshop, 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, and Suburban Natural Gas Company.

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

Comments were provided from Columbia Gas of Ohio (Columbia) and Ohio Consumers' Counsel (OCC). The Staff of the Commission considered the stakeholder recommendations in drafting Staff's proposed revisions. Staff has taken these recommendations into account, and the proposed revision reflects one of the recommendations.

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**11. 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 feedback from stakeholders and the general public.

**12. 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. In 2017, the Commission finalized necessary changes to the filing requirements pursuant to Substitute House Bill 26, which repealed R.C. 4929.164 and eliminated the separate charge for certified sites projects and increased the potential infrastructure development rider cost recovery for economic development projects to \$1.50 per month per customer. The Commission updated Ohio Adm.Code Chapter 4901:1-43 to include the changes in the Ohio Revised Code. Additionally, the Commission has reviewed the initial promulgation of Ohio Adm.Code Chapter 4901:1-43 in Case No. 15-871-GA-ORD.

**13. 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. The proposed revisions dictate a particular process and not a required outcome.

**14. 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.

**15. 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 remote workshop on February 1, 2021, 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 then can file written comments and reply comments. Finally, following the comment period specified in the Entry, the Commission will issue a Finding and Order adopting the 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**

**16. 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; and**

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 all adverse impact (e.g., fees, fines, employer time for compliance,); and**

The proposed revisions were drafted 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. The proposed revision reduces the employer time and cost by eliminating a filing requirement.

**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*

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***“representative business.” Please include the source for your information/estimated impact.***

Other than the 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. was 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 regulations is significant, the Commission would consider revisions to address such concerns. No significant adverse impacts were identified by stakeholders during the workshop on February 1, 2021.

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

The Commission has not identified an adverse impact on business as a result of the proposed revisions. In fact, any regulatory impact of these regulations is offset by helping to fund economic development projects within the state of Ohio.

**Regulatory Flexibility**

**18. 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.

**19. 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, as there are no fines and penalties for paperwork violations.



**20. 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.