



# Ohio Legislative Service Commission

## Bill Analysis

Kathleen A. Luikart

### **S.B. 391**

130th General Assembly  
(As Introduced)

Sen. Balderson

---

## **BILL SUMMARY**

### **Economic development projects**

- Permits a natural gas company to apply to the Public Utilities Commission of Ohio (PUCO) for approval of one or more economic development projects (EDPs).
- Permits EDPs of two types: (1) an EDP approved according to PUCO approval criteria established in rules (referred to in this analysis as a general EDP) or (2) a certified SiteOhio EDP that, upon completion, will be primarily intended for commercial, industrial, or manufacturing use.
- Provides a process for the application and approval of EDPs.
- Permits PUCO to approve an EDP if:
  - The infrastructure development costs are projected to generate a return on the natural gas company's investment that is less than most recently authorized rate of return; and
  - The infrastructure development costs incurred are not projected to exceed (1) \$2 multiplied by the aggregate number of the company's Ohio customers, with respect to all pending and approved general EDPs, and (2) \$1 multiplied by the aggregate number of the company's Ohio customers, with respect to all pending and approved SiteOhio EDPs.
- Provides that any property installed or constructed by a natural gas company to enable the provision of natural gas service to an approved EDP must be considered used and useful in rendering public utility service for purposes of fixing utility rates.

## **Infrastructure development rider**

- Permits a natural gas company to file an application with the PUCO for approval of an infrastructure development rider to recover prudently incurred infrastructure development costs for all approved general and SiteOhio EDPs.
- Establishes an infrastructure development rider cost cap on the costs a natural gas company may recover from any single Ohio customer for all approved EDPs for which recovery was authorized.
- Sets the cost cap at not more than \$2 from any single Ohio customer each calendar year for a general EDP and not more than \$1 from any single Ohio customer each calendar year for a SiteOhio EDP.

## **Reconciliation report**

- Requires a natural gas company that has established an infrastructure development rider to file an annual report with the PUCO that details (1) the infrastructure development costs related to applicable EDPs and (2) the rider rate for the 12 months after the annual report.

## **Financial audit**

- Permits the PUCO, at its discretion, to conduct a financial audit of a natural gas company that has established an infrastructure development rider to determine if the infrastructure development costs incurred by the company and collected under the rider are in conformance with PUCO orders.

---

# **CONTENT AND OPERATION**

## **Overview**

The bill permits a natural gas company to file an application with the Public Utilities Commission of Ohio (PUCO) for approval of one or more economic development projects to be paid for by an infrastructure development rider.<sup>1</sup>

For the bill's purposes, a natural gas company is a public utility that supplies natural gas to its Ohio consumers for lighting, power, or heating purposes.<sup>2</sup> "Infrastructure development costs" under the bill means the investment in constructing

---

<sup>1</sup> R.C. 4929.161, 4929.163, and 4929.164.

<sup>2</sup> R.C. 4929.01, not in the bill.



extensions of transmission or distribution facilities that a natural gas company owns and operates. Those costs include the following:

(1) Any deposit required by the company, as defined in the line-extension provision of the company's tariff, less any contribution in aid of construction received from the owner or developer of the project.

(2) Planning, development, and construction costs and, if applicable, any allowance for funds used during construction.<sup>3</sup>

### **Economic development projects (EDPs)**

A natural gas company may file an application with the PUCO for approval of one of the following types of economic development projects (EDPs):

(1) An EDP (referred to in this analysis as a general EDP); or

(2) A certified SiteOhio EDP that, upon completion, will be primarily intended for commercial, industrial, or manufacturing use and that is certified by the Director of Development Services under the SiteOhio certification program (this does not include projects intended primarily for residential, retail, or government use).<sup>4</sup>

The bill specifies that the company must file the application for approval prior to beginning the EDP.<sup>5</sup>

### **Application requirements**

#### **General EDP**

The bill requires that a general EDP application contain descriptions of (1) the EDP, (2) the infrastructure development costs to be expended on the EDP, and (3) how the EDP meets the criteria set forth in the rules for approval that the bill specifically requires the PUCO to adopt.<sup>6</sup>

#### **SiteOhio EDP**

The bill requires a SiteOhio EDP to be a certified eligible project under the SiteOhio certification program. By rule, the Director of Development Services sets

---

<sup>3</sup> R.C. 4929.16.

<sup>4</sup> R.C. 4929.163(A) and 4929.164(A); R.C. 122.9511, not in the bill.

<sup>5</sup> R.C. 4929.163(A) and 4929.164(A).

<sup>6</sup> R.C. 4929.163(B) and (C).

criteria for certification of a SiteOhio project.<sup>7</sup> The bill specifies no other application requirements for a SiteOhio EDP.

### **Criteria for EDP approval**

PUCO may approve a general or SiteOhio EDP if both of the following apply:

- The infrastructure development costs for the EDP are projected to generate a return on the company's investment that is less than the most recently authorized rate of return (although not expressly stated, this is likely the rate of return in the company's most recent rate case);
- The amount of infrastructure development costs to be incurred by the company per calendar year for the EDP and all other previously approved EDPs is not projected to exceed the applicable cost recovery cap. For general EDPs, the cost recovery cap is equal to \$2 multiplied by the aggregate number of the company's Ohio customers. For SiteOhio EDPs, the cost cap is equal to \$1 multiplied by the aggregate number of the company's Ohio customers.<sup>8</sup>

### **Rules for accelerated application review**

The bill requires the PUCO to adopt rules to provide for an accelerated application review for approval of a general EDP or a SiteOhio EDP. The rules must provide for the automatic approval of the application after the approval period elapses unless the PUCO suspends the application for good cause shown. The approval period is not later than 30 days after the date of the application filing for a general EDP; 90 days for a SiteOhio EDP.

If the application is suspended, the PUCO must approve, deny, modify, or hold a hearing on the application not later than 45 days after the date that the suspension begins.<sup>9</sup>

### **Used and useful standard**

The bill requires that any property installed or constructed by a natural gas company to enable the provision of natural gas service to an approved EDP must be considered used and useful in rendering public utility service for purposes of fixing utility rates.<sup>10</sup>

---

<sup>7</sup> R.C. 4929.164(A); R.C. 122.9511(C) and (E), not in the bill.

<sup>8</sup> R.C. 4929.163(C) and 4929.164(B).

<sup>9</sup> R.C. 4929.163(D) and 4929.164(C).

<sup>10</sup> R.C. 4929.166; R.C. 4909.15, not in the bill.



## Infrastructure development rider

The bill permits a natural gas company to file an application with the PUCO for approval of an infrastructure development rider to recover prudently incurred infrastructure development costs for approved EDPs (see **COMMENT**). The rider, however, is capped under the bill using the same cap concept used for EDP approval (described above under "**Criteria for EDP approval**"). In each calendar year, costs that the natural gas company recovers from any single customer in Ohio may not exceed:

- \$2, for all approved general EDPs for which recovery was authorized under that rider;
- \$1, for all approved SiteOhio EDPs for which recovery was authorized under that rider.<sup>11</sup>

Under a rider, in each calendar year a natural gas company must recover the same amount from every customer.<sup>12</sup> Not only does that mean that the amount recovered from each customer within a class of customers must be the same, but also the amount recovered from customers of different classes must be the same. For example, the amount recovered from a residential customer must be the same as that recovered from an industrial customer.

### Annual report

The bill requires a natural gas company that has established an infrastructure development rider to file an annual report with the PUCO. The report must (1) detail the infrastructure development costs related to the applicable EDP or EDPs and (2) set forth the rider rate for the 12 months following the annual report.<sup>13</sup>

### Financial audit

The bill permits the PUCO, at its discretion, to conduct a financial audit of a natural gas company that has established an infrastructure development rider to determine if the infrastructure development costs incurred by the natural gas company and collected under the rider are in conformance with PUCO orders.<sup>14</sup>

---

<sup>11</sup> R.C. 4929.162(A) and (B).

<sup>12</sup> R.C. 4929.162(C).

<sup>13</sup> R.C. 4929.165.

<sup>14</sup> R.C. 4929.167.

---

## COMMENT

The meaning of "prudently incurred" with respect to "infrastructure development costs" is unclear. While the term suggests a requirement that infrastructure development costs must be "prudently incurred," the bill contains no such actual requirement. Additionally, the bill is silent on when the costs would be examined for prudence and what the consequences, if any, would be if it were determined that costs were not prudently incurred.

---

## HISTORY

ACTION	DATE
Introduced	11-25-14

S0391-I-130.docx/emr

