

# Natural Gas

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## Overview

Major concerns for the Office of the Ohio Consumers' Counsel (OCC) in 2014 included protecting approximately 420,000 natural gas customers of Duke Energy (Duke) and preserving a century-old law that balances consumer and utility interests.

In March 2014, OCC and others appealed, to the Ohio Supreme Court, the decision of the Public Utilities Commission of Ohio (PUCO) to approve a rate increase requested by Duke. The request was to charge customers for the costs to clean up pollution at two long-closed manufactured gas plant sites.

Ohio law limits utilities to charging for the costs of providing utility service to current customers. In the appeals, residential and business customer groups are asking the Supreme Court to protect utility customers from paying Duke's charges. The charges relate to clean up of pollution that dates back more than 100 years (to the 19th century) at plants that have been long closed.

In the Ohio House of Representatives, utilities sought legislation to weaken the longstanding Ohio law that should prevent charging customers for this clean-up. In response, OCC recommended protections for Ohioans' utility bills.

Separately, OCC participated in House interested-party meetings on legislation supported by natural gas utilities to charge consumers to fund economic development. OCC appreciated the opportunity to participate in the process. A compromise was reached to reduce the amount of funding to be collected from customers while providing for economic development.

Additionally, Ohio customers of natural gas utilities continued to benefit in 2014 from lower gas prices resulting from market-based auctions. OCC was a participant in earlier cases where decisions were made to use the auctions for establishing these prices that have been favorable to consumers.

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## Appeals to the Ohio Supreme Court, regarding Duke's charges to customers to clean up 19th-century gas plant sites

In March 2014, OCC (and others) appealed a 3-2 decision of the PUCO. The decision permitted Duke to charge its 420,000 natural gas customers \$55 million for the costs (spent to date) to clean up two of its long-defunct manufactured gas plant sites in Cincinnati.

At the heart of the issue is whether these charges violate an Ohio law that has protected consumers in utility rate cases for a century. Ohio law limits utilities to charging for the costs of providing utility service to current customers. The position of residential and business customer groups is that utilities cannot legally charge customers for the costs of cleaning up long-defunct

manufactured gas plant sites (where pollution dates back to the mid-1800s).

The two PUCO Commissioners who dissented from the majority's decision would have disallowed Duke's charges to customers. Both of those Commissioners cited the ratemaking law as the reason why they could not support granting Duke's request.

On March 3, 2014, Duke began collecting \$1.62 a month from its residential customers who will each pay, on average, about \$100 for the clean-up costs over the course of five years.

As part of the appeal, OCC and others asked the Ohio Supreme Court to stay (stop) Duke from charging cus-

tomers while the Court considers the appeal. The Court granted this request on May 14, 2014, without requiring OCC and others to post a bond.

However, after natural gas utilities filed to oppose the Court's action to stop the charges during the appeal, the Court reversed its ruling. On November 5, 2014, the Court ruled that Duke would be allowed to resume its collections from customers unless OCC and others posted a \$2.5 million bond. As a state agency, OCC cannot afford to post such a bond with the Supreme Court. On January 14, 2015, Duke resumed its charges to customers. Duke's charges for the clean-up of manufactured gas plants remained on appeal in 2014. Duke's consumers are continuing to pay for those charges during the appeal process.

In another appeal where there was not a stay, consumers lost money in an otherwise successful appeal of AEP's electric security plan (Case Nos. 08-0917-EL-SSO, 08-0918-EL-SSO, Sup. Ct. 2012-187). The Court found that \$368 million in unjustified charges by the utility could not be returned to customers because the utility had already collected the money. The Court suggested that the resolution of this problem could be a matter for the Ohio General Assembly.

It should be noted that FirstEnergy, in its latest proposal for an electric security plan (Case No. 14-1297-EL-SSO), is seeking authorization that could lead to charging customers for the clean up of manufactured gas plants.

*Duke, Case No. 12-1685-GA-AIR, Sup. Ct. 2014-0328*

### **Preserving consumer protections when natural gas utilities sought a law to allow charges for clean up of pollution**

Natural gas utilities sought an amendment that was added to House Bill 483, part of the mid-biennium budget review in 2014. The amendment would have weakened the current law that should prevent charging consumers for the clean-up of 19th-century manufactured gas plants. In this regard, OCC presented recommendations for consumer protection to the Ohio House Finance and Appropriations Committee, in April 2014.

Ohio law restricts utilities to charging for the costs of providing utility service to current customers and for only those costs that are used and useful to customers. Ultimately, the amendment was removed from HB 483, to the benefit of consumers.

This issue may sound familiar. Natural gas utilities sought a similar amendment in Amended Substitute House Bill 59 (the biennium budget bill) in 2013. That amendment was eventually vetoed by the Governor. (See OCC 2013 Annual Report, p. 16.)

### **Protecting consumers in legislation that allows natural gas utilities to charge customers for economic development**

OCC appreciated the opportunity to participate in interested-party meetings, in the Ohio House of Representatives, related to funding of economic development. House Bill 319 was proposed to allow the collection of funds from consumers to support natural gas utilities' economic development projects. Through the interested-party process, the funding to be collected from customers was reduced.

Substitute House Bill 319 was enacted at year-end. It limits the costs that could be charged to any single customer to no more than \$3 per calendar year, or about \$10 million annually for all customers.

Natural gas utilities initially sought legislation to charge customers \$33 million annually for infrastructure development projects.

As of June 2014, there were 3 million residential natural gas customers in Ohio and over 253,000 commercial and industrial natural gas customers, according to statistics from the PUCO.