

OPPONENT TESTIMONY BEFORE
HOUSE PUBLIC UTILITIES COMMITTEE
HOUSE BILL 95
March 23, 2011
Submitted by:
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Good afternoon, Chairman Stautberg, Ranking Member DeGeeter and members of the committee. I am Janine Migden-Ostrander, the Ohio Consumers' Counsel. The Office of the Ohio Consumers' Counsel (OCC) is the statutory representative of Ohio's 4.5 million residential utility households. I would like to thank you for the opportunity to testify before this committee with respect to Substitute House Bill 95 (Sub. HB 95). As Ohio's residential utility customer advocate, we have the unique role of being the sole entity whose statutory duty is to protect the interests of the residential customers of investor-owned natural gas utilities from unfair or unreasonable rate increases.

We would like to thank Chairman Stautberg and the members of the committee for the significant improvements included in the Sub. Bill over the Bill as originally drafted. Although those improvements have strengthened some customer protection aspects of the Bill, we still have concerns which require that we continue to oppose the Bill at this time. We oppose Sub. HB 95 because it could expose Ohio's residential customers to unlimited annual rate increases through the use of riders that are added to a customer's bill. In sum, Sub. HB 95 allows gas distribution companies to raise rates with less regulatory scrutiny by stakeholders and the Public Utilities Commission of Ohio (PUCO). In exchange for being granted an exclusive franchise with captive monopoly customers, the regulatory compact called for regulation to guarantee that these customers pay rates that are fair and reasonable. If there is no competition, customers cannot "speak with their feet" if rates are too high. If you peel away this reasonable oversight, captive customers may be left exposed to higher rates that may challenge affordability. We hope that you continue to improve this legislation to strike a better balance between the concerns of the gas companies and the customers who have to pay the rates charged by those companies.

My testimony outlines our specific concerns with Sub. HB 95, and identifies some modifications that could make this legislation a "win-win" for both customers and the utilities. We look forward to continuing to work with all interested stakeholders in order to reach a more reasonable balance of benefits for customers and for the gas companies. I thank each of you for considering these comments with regard to this proposed legislation.

The gas companies have stated that customer savings will be derived from this legislation through the scaling back or elimination of the public notice requirements, various audits, and Long Term Forecast Reports. However, these minimal cost savings will come at a very steep price. Although we are concerned with ALL costs that customers are required to pay, the cost

savings from these proposed changes pale in comparison to the potential rate increases that customers may face. Our primary concerns with this legislation can best be summed up in three main points:

1. The proposed legislation will permit gas companies to raise rates through riders added to customers' bills. These riders may completely eliminate the need for rate cases, which currently provide customers the opportunity to recognize cost reductions a gas company may have experienced that may help offset any cost increases. These, Alternative Regulation Rider cases, provide gas companies the opportunity to raise rates with regard to a single issue focusing on cost increases, while ignoring any savings that the gas company has experienced in other areas of their operations;
2. Sub. HB 95 completely eliminates all audits, investigations and hearings with regard to gas companies' purchase of their natural gas supplies, even for those who continue to sell gas under the purchased gas adjustment clause. The audits are eliminated even if only 30 percent of customers take gas under the Choice Programs. This provision would also eliminate the ability for the PUCO or another party to challenge, question, or investigate any aspect of an auction, including changes that might impact the fairness of the process for all bidders or decisions changing the nature of the service being auctioned; and
3. Sub. HB 95 allows utilities to file an application for an alternative rate plan or to continue an existing rate plan even if the rates in question are set to expire and could potentially go down.

Our other concerns include:

4. Sub. HB 95 completely eliminates all requirements for filing any data on natural gas companies' forecasting of supply and demand data that is useful to policymakers;
5. Sub. HB 95 reduces the quantity and quality of the public notice that customers may receive regarding future rate increases; and
6. Sub. HB 95 was improved by allowing the PUCO the discretion to hold a hearing on alternative regulation cases. However, this does not guarantee a hearing for cases that could result in significant rate increases for customers.

These concerns are only heightened because we know of no other states that permit gas companies such freedom to raise rates for such a vital monopoly service.

Background

As background, Sub. HB 95 does not impact a customers' ability to choose his or her natural gas supplier. Nor does the legislation impact the price of the natural gas commodity. Customers will still have the ability to have their gas distribution company provide natural gas or to obtain it from an alternative supplier. Rather, this legislation enhances the gas companies' ability to increase rates by streamlining the process they go through at the PUCO to charge customers for the monopoly service of transporting and distributing the natural gas to the customers' home or business. The gas companies have characterized this legislation as "modernization." In reality this legislation reduces crucial oversights intended to take the place of competition, which otherwise does not exist for distribution services. Thus, this bill does more than modernize the industry. In fact it makes it easier for gas companies to raise rates and to raise them more often without appropriate scrutiny by stakeholders and the PUCO to ensure that costs remain just and reasonable.

Gas Companies Do Not File Frequent Rate Cases

Natural gas companies are different from water companies (that are much smaller and have been filing back-to-back-to-back rate cases in recent years) or electric utilities.

An underlying theme from the gas companies is the perception that there have been countless rate increase cases filed with the PUCO over the past few years that have cost the companies millions of dollars of rate case expenses that have been passed on to customers. This is simply not true. Since 1986 --a period of 25 years -- the four largest gas companies in Ohio have filed 16 rate cases, totaling three to five for each company:

1. Columbia Gas of Ohio has had five rate cases in 23 years¹ (on average one case every four to five years).²
2. Dominion East Ohio has had three rate cases in 25 years (one case every eight years).³
3. Duke Energy has had five rate cases in 21 years (one case every four years).⁴
4. Vectren Energy Delivery of Ohio has had three rate cases in 20 years (one case every six to seven years).⁵

¹ Case Nos. 08-0072-GA-AIR, 94-0987-GA-AIR, 91-0195-GA-AIR, 89-616-GA-AIR, and 88-716-GA-AIR.

² Note: Prior to 1988 Columbia did not have unified company-wide rate cases, but smaller rate cases involving a limited number individual communities.

³ Case Nos. 07-829-GA-AIR, 93-2006-GA-AIR, and 86-297-GA-AIR.

⁴ Case Nos. 07-589-GA-AIR, 01-1228-GA-AIR, 95-655-GA-AIR, 92-1463-GA-AIR, and 90-390-GA-AIR.

⁵ Case Nos. 07-1080-GA-AIR, 04-571-GA-AIR, and 91-415-GA-AIR.

We agree that consecutive rate cases filed year after year would be counterproductive for both customers and the gas companies. On the other hand, having a gas company go eight to ten years, or longer, without a rate case is also not a good outcome for customers because it enables the gas company to avoid regulatory review of their rate structure, and potentially overcharge customers. Given this history in Ohio, we discourage the Legislature from taking steps that would reduce the oversight of these monopoly services and make it easier for the gas companies to raise rates with even fewer rate cases.

The Current PUCO Ratemaking Process Has Saved Customers Money

Since 2002, the gas companies have used both traditional (RC 4909.18 and 4909.19) and alternative regulation (RC 4929.05) to implement infrastructure replacement programs that enable them to charge customers for the costs of replacing aging pipeline infrastructure through a rider. These limited riders have enabled the gas companies to extend the time between rate cases. When filed as part of a regular rate case, these instances demonstrate the importance of the regulatory process and evidentiary hearings in protecting customers' bills.

In the 16 rate cases the gas companies have filed since 1986, the companies have requested or applied for a total of \$774.1 million in rate increases. However, as a result of the advocacy of the OCC and other parties, including the PUCO Staff, only \$455.8 million in rate case increases were actually granted. **Therefore about 59 percent of the amount the gas companies requested to raise rates was either agreed to in a settlement or ordered by the PUCO after a hearing.**

In those 16 cases, the Companies requested approximately \$7.3 million in total rate case expenses. **Thus for the rate case costs of \$7.3 million, customers saved approximately \$318.3 million in rate increases.** This data demonstrates that the current regulatory process is not broken and is not overly expensive. Could it be improved? Sure, but we should be talking about minor changes and not establishing regulations through unlimited riders.

The Legislation Would Permit Unlimited Riders, and Unlimited Rate Increases Under Alternative Regulation [RC 4929.11 (B) and RC 4929.111 (A)(1)].

Today, gas companies can request riders on customers' bills through the existing alternative regulation laws when the gas company applies for them as part of a traditional rate case. Because alternative regulation cases have been filed in conjunction with traditional rate cases, all riders have been limited to significant cost items such as the Pipeline Infrastructure Replacement programs that have estimated costs of more than \$4 billion to 5 billion for the four largest Ohio gas companies over the next 20 years.

The proposed legislation would fundamentally change the process by permitting the gas companies to apply to increase rates under alternative regulation without also filing a traditional rate case. The significance of this change is that the legislation would detach such applications from the requirements of public notice and a mandatory evidentiary hearing. Such detachment could lead to an unlimited number of riders that in turn would have no ceiling on how large each of those riders could be. Similar provisions in SB 221 (127th G.A.)

for the electric industry have led to significant rate increases through riders in the electric industry.

In addition, the riders could continue indefinitely without any further review once they are initially approved. To the extent that current Pipeline Infrastructure Riders will cost customers billions of dollars over a 20-25 year period, it is important to have periodic review.

By allowing the gas companies to recover any and all of their costs through riders, this legislation would have the impact of making traditional rate cases obsolete. Completely eliminating the need for traditional rate making will have significantly negative impacts on customers. In fact, commercial and industrial customers will be similarly impacted by this change. Alternative regulation, or the creation of riders for the recovery of costs associated with a single issue, only looks at increases in costs and expenses for that particular item addressed by that rider, and does not review other utility operations that may have experienced cost reductions, or additional or new revenues that would at least partially offset the rate increases being proposed. In addition, these riders incrementally reduce the business risk that gas companies face and further shift that risk to customers.

The OCC's Proposals to Protect Customers from Rate Increases by Limiting the Rider Provision in Sub. HB 95 [RC 4929.111]

We recommend limitations for Capital Expenditure Programs (Alternative Regulation Riders, or riders) in order to implement checks and balances that put customer protection and benefits on par with the protection and benefits the gas company would enjoy under Sub. HB 95. There are various approaches the legislature could consider in protecting customers:

Limit the types of expenditures that are included in the Capital Expenditure Programs;

Limit the amount of money that could be charged to customers through the Capital Expenditure Programs, or place a cap on the percent of annual rate increase allowed;

Implement an excessive earnings test, as the legislature has done with other regulated utilities, to ensure that utilities are not over-earning through their regulated rates.

One way to limit the type of expenditures that could be allowed as a part of a rider, or Capital Expenditure Program, is to limit riders to safety-related programs aimed at repair and replacement of aged pipelines. A safety-related Infrastructure Replacement Rider similar to the programs that have been implemented to date may be reasonable because of the need to maintain a safe and reliable natural gas distribution system.

Another reasonable limitation to the type of project that could be approved as a capital expenditure programs could be related to job creation efforts, contingent upon there being timely verification that Ohio jobs are actually created. There should also be some reasonable correlation between the level of the capital investment or increased expenses and the number of Ohio jobs actually created. In his testimony on HB 95 before this committee, the Dominion East Ohio representative referenced a 2006 study from that showed its current Pipeline Infrastructure program is supposed to create 3,000 jobs. However, the Company is now in its third year of that program having spent more than \$200 million (or 10 percent) of a \$2.7 billion program and there is no documentation of a single Ohio job being created. Just as the Ohio Department of Development recently clawed back several grants awarded that failed to create intended jobs in this state, Ohio's utility ratepayers should be afforded the same protection for their investments in Ohio jobs.

However, if such limitations are not retained, then we recommend amending the legislation to include a mechanism to identify and address unreasonable excess earnings, similar to the same protection that the legislature recently enacted for electric companies as part of SB 221. Ohio's natural gas customers should get the same type of excess profit protection that this state's electric customers have.

We oppose using alternative regulation riders for infrastructure expansion and improvement without limitations (RC 49.111 page 28, line 861). We are concerned that this provision could be used to fund natural gas vehicle infrastructure such as natural gas vehicle filling stations. Natural gas vehicle infrastructure is not related to the core service obligations that gas companies have to captive customers and should not be added to captive customers' bills.

We are not in favor of using alternative regulation riders to recover information technology costs because there is no standard for assuring that information technology spending is prudent (see RC 4929.111 (2)). Moreover, the gas companies' focus and most of its costs should be pipeline-related, and not information technology-related.

We are also concerned about using alternative regulation riders to recover all other utility service-related costs because there is virtually no limit as to the number of riders this could create or how large the riders' monthly charge could be (see the overly broad language RC 4929.111). Customers need some protection against monopoly spending. Such an unlimited category is too open-ended, and exposes customers to significant and unknown rate increases. Periodic reviews, monthly and annual caps on the rider rates and revenue and cost savings recognition, as well as protection against excessive utility earnings are important parameters that must be included in this legislation.

Purchased Gas Adjustment Clause [RC4905.302(D)(2)]

This provision should be removed from the legislation as it eliminates any audit, investigation or hearing into the practices of a utility in the procurement of natural gas, either through its own purchasing efforts or through an auction. The supply of natural gas on average currently comprises 60 percent or more of a customers' bill and the PUCO should not be precluded from initiating an investigation or conducting a hearing on this important gas company function.

We acknowledge that once a gas company no longer acquires gas through the Gas Cost Recovery ("GCR") mechanism, there is reduced need for the traditional Management/Performance audit of the company's gas purchasing policies and practices. Providing natural gas through a wholesale or retail auction provides customers with a market-based cost. However, that does not completely eliminate the fact that issues could arise in the auction process requiring PUCO involvement. The legislation must allow for PUCO discretion to ensure that market forces are not compromised, by reserving the right to audit, investigate and conduct a hearing if circumstances arise that necessitates PUCO action for good cause.

Furthermore, to the extent that a gas company continues to purchase gas under the GCR mechanism, customers must have the protection of the biennial Management/Performance audit to ensure that the gas costs charged to customers are just and reasonable.

We also have concerns that the legislation would exempt a gas company from these audits if as few as 30 percent of residential customers take natural gas from an alternative choice provider. In such a case, the majority of customers -- up to 70 percent would still take natural gas from the gas distribution company and thus need the protection of the audit process. To the extent that some gas companies purchase wholesale natural gas supplies from an affiliate, the audits help ensure that transactions are arms length. Finally, it must be noted that the audit proceedings have often been the basis for important changes, such as the implementation of auction proceedings.

Long-Term Forecast Reports Still Have Value [RC 4935.04]

Again, we acknowledge that some aspects of the statute should be modified. For example, the requirement to provide a hard copy of the Long-Term Forecast Report to each library could be eliminated. However, in a rush to eliminate forecast reports we should not lose sight of the importance of forecasts for the interstate pipeline transportation capacity contracts gas companies have to rely on to transport natural gas to Ohio. The capacity contracts represent an expensive cost to the gas companies that is passed on to customers. The forecast reports provide documentation supporting the need and associated costs for such capacity.

We also acknowledge that the magnitude and frequency of the long term forecasts can be adjusted. However, complete elimination of these reports would deny the OCC, PUCO and other interested stakeholders projections that provide a preview of actions that the gas companies plan to take in the future.

Customers Must Get Notice of Proposed Rate Increases [RC 4903.083; 4909.18 (E)]

We understand that there is concern with the effectiveness of the current public notice provisions. Public notice, however, is a fundamental requirement that allows customers to participate in the proposed rate increase process. Public participation is a basic component of the process and helps ensure that it is open and transparent.

Any modification to the current public notice requirement must ensure that all demographics of customers receive notice in a manner that is effective. We also recommend that any public notice must be given 30 days prior to local public hearings, in order to give interested stakeholders ample opportunity to understand the issues and be able to arrange transportation to the local public hearing.

Also keep in mind that any modifications to the public notice process should consider the fact that 18 percent (or approximately 1.8 million) of Ohioans do not own a computer and 34 percent do not have broadband.⁶ These numbers are even more alarming for seniors (age 65 and older) with 44 percent not owning a computer and 66 percent without broadband.⁷

Sub. HB 95 Will Impact the Ability of the OCC and Other Parties (Commercial and Industrial Customers) to Participate in the Regulatory Process, and Limit the PUCO's Ability to Regulate Gas Companies.

Although Sub. HB 95 has reinstated a limited evidentiary hearing process, changing hearings from being required to occurring at the PUCO's discretion impacts our ability to advocate for lower rates for customers. The modification to the hearing requirement also limits the ability of other stakeholders representing small and large businesses to participate in a meaningful manner in gas cases that could result in significant rate increases. Moreover, the process loses much of its transparency without the mandatory hearing requirement.

In past rate cases, the evidentiary hearing process has allowed the OCC and other stakeholders to help reduce the level of rate increase that gas companies sought to collect from customers by limiting increases to only just and reasonable cost components.

Gas companies are pushing for less regulation and greater ease to increase rates at a time when customers are least able to afford these rate increases. For example, in October, more than 800,000 natural gas customers were 60 days or more in arrears -- that is, late in paying their gas bill. In this economy, affordability is an issue for working families and affordability is diminished when gas companies are able to increase rates in greater amounts and more often. We need accountability, verification of costs, and transparency in the process -- aspects of Ohio's current regulatory process that have served Ohioans well and that are being eliminated from the process under the proposed legislation.

⁶ See 2010 Connect Ohio Residential Technology Assessment. www.connectohio.org

⁷ Id.

In addition to limiting our ability to participate in regulatory proceedings, the legislation would reduce the PUCO's discretionary authority with respect to the rider proceedings. The legislation would require the PUCO to authorize implementation of additional alternative regulation. Use of the word "shall," effectively limits the PUCO's authority and discretion in evaluating a gas company's application. If the intent of Sub. H.B. 95 is to reinstate the "just and reasonable" standard of review, then it needs to be added to 4929.111. The Bill should be clear with respect to the standard.

The right to a hearing is a fundamental due process right. Any and all plans to increase rates, or plans to continue an existing alternative regulation plan that could lead to unreasonable charges to customers should be subject to a hearing as a matter of law.

Adding Customer Benefits to Sub. HB 95

In order for this legislation to strike a balance between the interests of the utilities and their customers, we recommend the following concepts be included in the legislation:

1. **Require Gas Companies to Continue to Provide the Merchant Function:**
Currently, customers have an option to purchase the supply of natural gas through their distribution company or through a retail marketer. We encourage the legislature to clarify through statute that natural gas distribution companies should be required to continue to provide this service to their customers in the future. Natural gas distribution companies should not be allowed to delegate the sole responsibility for providing natural gas supply to retail marketers, and customers should not be forced to take service from marketers;
2. **Reduce Regulatory Lag in Complaint Cases:**
Currently if a utility customer has a problem with utility that cannot be solved informally, they, or the OCC on their behalf, may file a formal complaint. Other business and industrial customers may also file formal complaints at the Commission. There currently is no timeline for when complaint cases are decided, and some cases can take several years before a decision is made. We encourage the legislature to include a 275-day limit to complaint cases, to ensure that decisions are made within a timely manner, and to mirror the timelines for gas company rate cases; and
3. **Clarify Statute Regarding State Agencies Posting Bonds:**
There are currently conflicting statutes regarding a state agency's requirement to post bond in order to obtain a stay on a PUCO order. We would like the legislature to clarify these statutes to ensure that the OCC, as a state agency, does not need to post bond in order to obtain a stay when appealing a PUCO decision.

We strongly encourage the legislature to include these concepts as amendments to the legislation.

Conclusion

In summary, we have three major concerns with the proposed legislation.

First, it allows utilities to implement a ‘capital expenditure program’ adding riders to customers’ bills for almost any expense, bypassing the opportunity to net rate decreases against requested increases.

Second, Sub. HB 95 eliminates the ability of the PUCO to audit, investigate or hold a hearing regarding the procurement of natural gas supply, which accounts for at least 60 percent of the customer’s bill.

Third, the proposed legislation allows utilities to apply for an alternative rate plan or continue an existing rate plan even if the rates in question are set to expire and could potentially go down, thereby allowing utilities to deliberately violate settlements that the OCC and other parties entered into and that the PUCO approved.

Additionally, we encourage the committee to further amend the legislation to include our proposed customer benefits. Please consider this testimony in drafting amendments to the bill in order to strike a balance that is beneficial to both the gas companies and their customers. On behalf of residential gas customers, we would like to be able to support this bill. With the right amendments, we believe we can.

Thank you, Mr. Chairman and members of this committee for allowing me to testify before you today.