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**SENATE ENERGY & PUBLIC UTILITIES
COMMITTEE**

Sub. H.B. 95

Submitted by:

**Janine L. Migden-Ostrander
Consumers' Counsel**

May 18, 2011

**OPPONENT TESTIMONY
BEFORE THE
SENATE ENERGY & PUBLIC UTILITIES COMMITTEE**

SUBSTITUTE HOUSE BILL 95

**Janine L. Migden-Ostrander
Consumers' Counsel**

Good afternoon, Chairman Daniels, Vice Chair Stewart, Ranking Member Schiavoni 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 all of the residential customers of investor-owned natural gas utilities from unfair or unreasonable rate increases. Moreover, in many instances, the savings we achieve also provide benefits to small business and industrial customers.

Over the past 35 years, the OCC has had a tremendous track record of saving utility customers more than \$10 billion dollars through our agency's advocacy. In this fiscal biennium alone, the OCC's work has saved residential customers about \$55 million, in addition to \$1.9 billion in savings where we have taken a lead role working with other groups to advocate a unified position. Despite our track record, we fear that Sub. HB 95, coupled with the looming budget cuts proposed for our agency, will lead to increased utility bills for customers.

We acknowledge that the current version of Sub. HB 95 is much improved from the bill as originally drafted. While we are thankful that the House Public Utilities Committee improved this bill, we still have some concerns and cannot support the bill at this time.

Sub. HB 95 exposes Ohio's residential customers to the possibility of unlimited rate increases through the newly created "capital expenditure program" rider provision (R.C. 4929.111). This provision allows natural gas distribution companies to increase costs to customers in the form of riders, or added charges to a customer's monthly bill. The capital expenditure program riders allow gas distribution companies to raise rates without the opportunity to balance those increases with potential rate decreases, and for the requested increases to be avoid full scrutiny, as key elements of the regulatory process (specifically, evidentiary hearings) are made optional in this legislation. Additionally, we continue to remain concerned about the audit provision for the supply of natural gas (R.C. 4905.302). This provision in the legislation is overly restrictive and limits the scope of audits of distribution companies' practices.

My testimony outlines the OCC's specific concerns with Sub. HB 95, and identifies some modifications that could make this legislation better for customers. **Our top priority is to**

encourage this committee to include an amendment that limits the potential rate increases that could result from this legislation. In addition, we will propose a few recommendations that will add customer benefits to this legislation.

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.

I. BACKGROUND

As background, Sub. HB 95 does not impact a customers' ability to choose their natural gas supplier. Nor does the legislation impact the price of the natural gas commodity. Customers will still have the ability to purchase their actual natural gas supply from their local utility or may choose to enter into a contract with a participating independent retail natural gas marketer. 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 service of transporting and distributing the natural gas to the customers' home or business. This legislation reduces crucial oversights which take the place of competition due to the fact that gas distribution services are natural monopolies.

II. 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.

Natural gas companies have filed very few traditional rate cases in recent history. Since 1986 -- a period of 25 years -- the four largest gas companies in Ohio have filed a total of 16 rate cases, approximately three to five cases 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 10 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 services, which have a captive customer base due to the fact that they are natural monopolies. Sub. HB 95 will make it easier for the gas companies to raise rates with less review to determine if the rates are justified.

III. 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 (i.e. added charge to customers' rates). These limited riders have enabled the gas companies to extend the time between rate cases while covering the costs of upgrading their distribution pipeline systems. When riders are filed as part of a traditional rate case, stakeholders, like the OCC, are able to advocate for just and reasonable rates that reflect the increases requested by the company, as well as other rate decreases that may result from other aspects of the company's business. In addition, rider cases that are coupled with traditional rate cases are subject to the traditional regulatory process which includes evidentiary hearings, which are a key element to our work protecting customers from unreasonable increases to their bills.

In the 16 rate cases the gas companies have filed since 1986, the companies have requested or applied for a total of \$769.4 million in rate increases. However, as a result of the advocacy of the OCC and other parties, including the PUCO Staff, only \$452.2 million in rate case increases were actually granted. This means that the gas companies requested \$317.2 million in rates that they were not allowed to collect. **To reiterate, more than 40 percent of the money that gas companies requested to receive through higher rates was NOT approved.** Only 59 percent of the money 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 \$7.15 million in total rate case expenses. **Thus for the rate case costs of \$7.15 million, customers saved approximately \$317.2 million in proposed rate increases.** This data demonstrates that the current regulatory process is not broken and is not overly expensive. Could it be improved? Of course, but we should not be changing statutes to allow for unlimited riders with limited scrutiny.

IV. SUB. HB 95 PERMITS UNLIMITED RIDERS AND UNLIMITED RATE INCREASES

Today, riders can be requested 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 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 to 25 years. Additionally, this process allows for the OCC and other parties to net the increase in costs requested from the company with other decreases in costs that may be a part of their base rates. This is an important factor because customers will be denied the benefit of these off-setting cost decreases under the proposed legislation.

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. This change is significant because parties are no longer able to argue for cost decreases to net against the requested increases. Additionally, an evidentiary hearing would no longer be required as part of these cases, which will make it more difficult for the OCC and other parties to access information to advocate for the most affordable rates possible. Such detachment could lead to an unlimited number of riders that in turn would have no limit on how large the monthly charge for each of those riders could be.

In addition, the capital expenditure program 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 capital expenditure programs 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, business and industrial customers will be similarly impacted by this change. Here is the reason: riders are associated with a single issue and only include the increases in costs and expenses for that particular issue. A capital expenditure program rider case will not allow for review of other utility operations that may have experienced cost reductions, 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. However, for example, through the capital expenditure program riders process, there would be no opportunity to seek a reduction to the natural gas utility's authorized rate of return to address the reduction in business risk. That would typically be done through a traditional rate case proceeding.

V. SUGGESTIONS TO PROTECT CUSTOMERS FROM RATE INCREASES BY LIMITING THE CAPITAL EXPENDITURE PROGRAM RIDERS [RC 4929.111]

We recommend limitations for capital expenditure programs riders in order to protect customers' exposure to rate increases. There are various approaches the legislature could consider:

- Limit the amount of money that could be charged to customers through capital expenditure program riders each year, or place a cap on the percent of annual base rate increase allowed. This amendment would help protect customers' wallets by

limiting their exposure to potential rate increases. Both the water and electric industries have 3 percent cost caps on various elements of their industries to protect customers and gas customers should have this same protection;

- Limit the number of capital expenditure program riders that can be filed within a year. This will ensure that the PUCO, OCC and other interested parties are not inundated with multiple rider applications at the same time;
- Limit the definition of what qualifies as a capital expenditure program to be only “safety related” or “job creation” with verifiable jobs expenditures;

If none of the above limitations are included, we recommend amending the legislation to include a mechanism to identify and address unreasonably excessive earnings, similar to the 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 electric customers have.

Without limitations on the capital expenditure program riders, we are concerned that this mechanism could have unintended consequences. For instance, 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.

VI. SUB. HB 95 WILL IMPACT THE ABILITY OF THE OCC AND OTHER PARTIES (BUSINESS AND INDUSTRIAL CUSTOMERS) TO PARTICIPATE IN THE REGULATORY PROCESS

Sub. HB 95 includes a limited evidentiary hearing process, allowing such hearings to occur at the PUCO’s discretion. This provision will impact the OCC’s ability to advocate for lower rates for customers. The modification to the hearing requirement also may limit 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 regulatory process loses much of its transparency without a requirement for a hearing.

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 880,000 natural gas and electric 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 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.

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

VII. PURCHASED GAS ADJUSTMENT CLAUSE [RC4905.302(D)(2)]

The supply of natural gas on average currently comprises 60 percent or more of a customers' bill. 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 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. In a recent case, the OCC had requested the PUCO conduct such a Management/Performance Audit, but the utility had argued against the OCC's position stating the PUCO no longer had such authority to order such an audit -- in that the Company no longer sold gas through the GCR mechanism. The PUCO, in its Order, stated:

Regarding Dominion's assertion that the Commission does not have authority to order a [Management/Performance] audit, the Commission further emphasizes that, in our May 26, 2006, order in 05-474, at 8, **the Commission stated that it has the authority to order a [Management/Performance]audit at any time for any issues it deems necessary.**⁶

The PUCO currently has such discretion. This legislation must continue to allow the 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.

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 in the first place.

VIII. 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. 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

⁶ *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a General Exemption of Certain Gas Commodity Sales Service*, Case No. 07-1224-GA-EXM, Entry at 7 (April 13, 2011).

not need to post bond in order to obtain a stay when appealing a PUCO decision. In the recent AEP case, where the Supreme Court of Ohio ruled with the OCC on three of the four issues appealed, the Court noted that there should have been a refund with respect to one of those issues, but the OCC's inability to post a bond prevented the Court from ordering a stay. Had the OCC been able to post a bond, AEP customers would have been the recipients of a \$63 million refund.

2. **Ensure that a Customer's Utility Bills Cannot Impact their Credit Score:** Currently utility companies in Ohio do not report customer payment information to credit agencies. Recently, special interest groups have been promoting this practice both in Washington D.C. and in states across the country. In October 2010 the last date for which the utilities were required to file this information one in five gas or electric customers was at 60 days in arrears. Therefore, adopting this policy would reduce the credit profile of a huge portion of our state. Sub. HB 95 could be improved by adding a provision that clarifies that utilities cannot provide full file reporting of customer payment and credit information.

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

IX. CONCLUSION

In summary, we strongly encourage this committee to amend Sub. HB 95 to protect customers' pocket books by limiting their exposure to frequent and unnecessary rate increases. We have provided various ideas on how to limit the potential rate increases through a 3 percent cost cap, limiting the cases to one rider per year, or limiting the riders to only job creation or safety related projects. In lieu of these limitations, we propose an excessive earnings test to ensure that the natural gas distribution companies' captive customer base is not being gauged while providing excessive profits for the companies' shareholders.

We also encourage the committee to further amend the legislation to include our proposed customer benefits. Please consider this testimony in drafting amendments to Sub. HB 95 in order to strike a balance that is beneficial to both the gas companies and their customers. On behalf of residential gas customers, the OCC 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.