



**Before
The Ohio House of Representatives
Finance and Appropriations Committee**

**Testimony on House Bill 483
(Opposition to Allowing Natural Gas Utilities to Charge Consumers for
Cleaning-Up Pollution at Former Manufactured Gas Plant Sites)**

**By
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April 2, 2014

Good Morning Chairman Amstutz, Vice Chairman Boose, Ranking Member Sykes, and members of the House Finance and Appropriations Committee. I am Bruce Weston, the Ohio Consumers' Counsel. Our agency is the advocate for Ohioans regarding their residential electric, natural gas, telephone, and water services. I appreciate the opportunity today to recommend protections for the utility bills of Ohio consumers. Specifically, I recommend that the Committee protect Ohioans by not weakening the current law that should prevent charging consumers for the clean-up of 19th-century manufactured gas plants. And I thus recommend removing from the Bill

the proposed O.R.C. section 4909.157 (lines 12815 to 12868). The substance of these protections dates back 100 years or so, for balancing the ratemaking process between utility consumers and investors. There are 3.3 million natural gas consumers who could be affected by this provision in the Bill.

At least some (and maybe most) manufactured gas plants pre-dated utility regulation by the Public Utilities Commission of Ohio (PUCO). The two Duke Energy plants that have been in the news were built in the 1800's. These plants manufactured gas from coal and oil, and the resulting gas was used for illumination and later for other customer uses for natural gas. The lights here in the Statehouse were once fueled by this process. Manufactured gas plants have been long defunct.

Companies that operated manufactured gas plants were not only making natural gas but were also polluting the ground at the plants. It was known by the late 1800's that the contaminants from the plants were harmful to human health and the environment.¹ The manufacturing of natural gas ended many decades ago but the pollution remains. Ohio utilities now want customers to pay for the cleanup of their (and others) pollution. Proposed section 4909.157 in House Bill 483 will make it much more likely that these charges will show up on Ohioans' natural gas bills. Such an eventuality

¹ *Remediation of Former Manufactured Gas Plants and Other Coal-Tar Sites*, at pg. 618 (by Allen W. Hatheway, CRC Press, 2012).

would tilt the ratemaking process in favor of the utilities and against consumers, and should be avoided by deleting this language from the Bill.

According to the most recent list from the Ohio Environmental Protection Agency, there are approximately 108 sites in Ohio where natural gas was manufactured. But my agency is not in a position to verify the number of sites that natural gas utilities could ultimately be responsible for cleaning up under this Bill. Nor can we verify what that clean-up will cost Ohioans, considering that much of the clean-up will occur in the future.

This issue may sound familiar. Natural gas utilities sought a similar amendment in Amended Substitute House Bill 59 (the Biennium Budget Bill). That amendment was ultimately line-item vetoed. The stated reason for the veto was: “[t]he Administration agrees that cost recovery is appropriate for natural gas utilities' manufactured gas plants and is committed to working with interested parties to create legal authority for the PUCO to provide it, but as this item does not achieve that goal without potential unintended consequences, this veto is in the public interest.”

In May 2013, I testified in opposition to what was then an expected amendment before the Ohio Senate Finance Committee. The current proposal in the Bill includes some

modifications to improve the version in Amended Substitute House Bill 59. But the language contained in HB 483, as with the legislation last year, would undo ratemaking standards that have long balanced the interest of customers and public utilities in the PUCO ratemaking process. That should be prevented by amending lines 12815 to 12868 out of the Bill.

There presently are appeals pending in the Supreme Court of Ohio, for the Court to determine if Ohio law allows utilities to charge Ohioans for the cleanup of manufactured gas plant pollution. The appellants include the Kroger Company, the Ohio Manufacturers' Association, the Consumers' Counsel, and the Ohio Providers of Affordable Energy. The Court will consider whether it was unlawful for the PUCO to decide last year that Duke Energy could charge the clean-up costs to consumers. Two PUCO Commissioners dissented from the opinion of the other three Commissioners. I agree with the several reasons that the dissenting Commissioners stated in voting against charging clean-up costs to consumers:

We find that the remediation is not a "cost to the utility of rendering the public utility service" as being incurred during the test year, and is not a "normal, recurring" expense. Further, the public utility service at issue is distribution service, and Duke has failed to demonstrate the nexus between the remediation expense and its distribution service.²

² *In re Duke Energy Ohio*, PUCO Case No. 12-1685-GA-AIR, et al., Order at Dissenting Opinion of Commissioners Steven D. Lesser and Asim Z. Haque (November 13, 2013).

In the Duke rate case last year, the PUCO Staff explained the law that protects consumers from paying the clean-up costs:

The Commission has been deciding what utility expenses can be recovered from customers for a very long time. * *
* The point of this statutory formula is, in essence, to match the cost incurred by the utility while providing service to customers with the amount customers pay in rates. * * *

Duke Energy Ohio, Inc. ("Duke") wants to upset this process. Duke wants the Commission to treat the expenses Duke incurred in this case differently because these expenses relate to Duke's remediation of long-retired manufactured gas plants ("MGP Sites"). Although Ohio law requires a matching of expenses with used and useful facilities, Duke asks the Commission to ignore this fundamental legal principle. Duke believes its remediation costs are "special" and, therefore, wants gas customers to pay all of these costs, even if these costs have nothing to do with the provision of gas service for current gas customers."³

The PUCO Staff got it right when it referenced current law to protect current utility customers from paying to clean up pollution dating back to the 1800's.

The PUCO allowed Duke to charge customers for about \$55 million in clean-up costs. That decision will cost each consumer in the Cincinnati area about \$100 on average. And this figure does not include the millions of dollars to complete work on these two

³ *In re Duke Energy Ohio, Inc.*, Case No. 12-1685-GA-AIR, et al., PUCO Staff Initial Brief at 1-2 (June 6, 2013).

sites. It was estimated by Duke's witness that at least an additional \$16 million could be expected to complete the remediation of two former plant sites.⁴

Some other utilities have asserted that their clean-up costs will be much less than those of Duke. We do not know a way to verify these claims for future costs.

The two Commissioners who dissented in the Duke case concluded that the clean-up costs are not the costs of distribution service. That is true. The cleanup relates to the competitive business of natural gas production, including natural gas production that began as long ago as the nineteenth century. These are not the costs of monopoly distribution service. Monopoly distribution utilities should not be permitted to charge customers for these non-distribution costs.

The interpretation that Ohio law allows for charging clean-up costs to consumers already has had other consequences that could increase Ohioans' utility bills. Dayton Power & Light recently asked the PUCO to allow it to charge Dayton-area customers for other types of pollution clean-up. DP&L wants to charge customers for clean-up costs for facilities that "had" been "used and useful" compared to O.R.C. 4909.15 which limits charging customers for property that currently is used and useful.

⁴ *In re Duke Energy Ohio, Inc. Natural Gas Rate Case*, Case No. 12-1685-GA-AIR, et al., Tr. Vol. I at 246-247 (Bednarcik) April 29, 2013).

Recommendations

Primarily, I recommend that the General Assembly preserve current law to avoid weakening the consumer protection of O.R.C. 4909.15(A). The PUCO's ruling on this issue in the current Duke rate case is on appeal. The appeal process should be permitted to proceed to resolution, before legislative changes are considered.

Given the PUCO's 3-to-2 decision that Ohio law allows charging consumers for Duke's clean-up costs, I recommend an amendment to current law. The amendment should make it even more clear that these clean-up costs for pollution at nineteenth-century gas production plants should not be paid by twenty-first century monopoly consumers.

Another recommendation is that, if there is legislation, there should be a low cap, per each polluted manufactured gas site, on what utilities can collect from customers for cleaning up pollution. This low cap would be fitting, since some utilities are asserting that clean-up costs for other defunct plants will be much less than what Duke has spent.

I also recommend that the legislation include a percentage of prudent clean-up costs that the utilities, not consumers, should pay. This sharing of the costs is fair to customers and would give the utilities an incentive to be conservative in their clean-up expenditures.

On line 12848 of the Bill, the language is that the PUCO “may” consider various consumer protections. This language should be changed to the PUCO “shall” consider the various consumer protections.

Finally, I recommend that this subject should be taken up in a stand-alone bill (not in the mid-biennial review budget bill), if it is to be considered. A separate bill would allow for a more thorough vetting of the issue before the applicable legislative Committee. I would look forward to participating in that process.

Thank you for the opportunity to testify with regard to this utility consumer issue in HB 483.