



Before

The Ohio Senate

Finance Committee

Testimony Regarding Amended Substitute House Bill 59

By:

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Good afternoon Chairman Oelslager, Vice Chairman Coley, Ranking Minority Member Sawyer, and members of the Senate Finance Committee. I am Bruce Weston, the Ohio Consumers' Counsel. Thank you Senator Peterson and your colleagues for hearing my testimony last month, in the General Government Finance Subcommittee, in support of the budget for the Office of the Ohio Consumers' Counsel. The Consumers' Counsel is the state advocate for residential utility consumers. I will refer to the budget bill as "HB 59" or "the Bill" or the "budget bill."

I am appearing before you today to discuss a utility consumer issue related to charges for cleanup of former manufactured gas plant sites. My understanding is that this issue may appear in the Committee's substitute bill. And my understanding is that the result will be a weakening of a statutory standard that currently protects customers when rates are set for natural gas utility service. In this event, I recommend that the Committee not adopt the amendment and, if needed, the issue should be considered in a separate bill before the applicable Senate Committee(s). There are up to 3.3 million natural gas customers in Ohio whose utility bills could potentially be impacted by an amendment.

My testimony is based on information prior to the actual substitute bill. (This testimony has been prepared on the timeline for submitting testimony in advance to the Committee.) Also, I

am not aware of any proponent testimony by natural gas utilities or others to review on this issue. If amendments are different than expected or other utility consumer issues are in the substitute bill, I may respectfully seek to supplement this testimony.

Manufactured Gas Plants began appearing in the United States in the early 1800s and continued to be used into the 1960s. As the name implies, these plants manufactured gas that could be used for illumination (gas lamps) and later for other customer uses for natural gas. The plants used various raw materials as the feedstock, including coal and oil. The earlier plants that utilized coal also produced by-products such as coke that was used by the cement and steel industry, tar used by the chemical industry and for road building, and ammonia used for refrigeration and fertilizer.

The manufactured gas plants produced pollutants, some of which are in the ground on the plant sites and have been in the ground as far back as the 1800s. According to a 1985 Report prepared by the Radian Corporation for the U.S. Environmental Protection Agency, there are at least 90 sites in Ohio where natural gas and by-products were manufactured.¹ There is a map of the cities in Ohio where these sites are located, based on The Radian Report.² The map is attached to this testimony.

The natural gas utilities apparently are seeking an amendment to the budget bill that would weaken for customers the protection of ratemaking standards that have been in effect, at least in part, since 1953 and otherwise since 1976. The standards are in O.R.C. 4909.15(A), which

¹ Survey of Town Gas and By-Product Production and Locations in the U.S. (1880 – 1950), by Robert Eng, Radian Corporation for the U.S. Environmental Protection Agency, EPA Report No. EPA/600/7-85/004.

² [Http://hatheway.net/state_site_pages/oh_epa.htm](http://hatheway.net/state_site_pages/oh_epa.htm)

balances the interest of customers and public utilities in the PUCO ratemaking process. The statute is attached to this testimony.

The statute currently requires utility plant to be “used and useful” for customers if they are to pay for it. And that statute requires utility expenses to be the cost of “rendering the public utility service...” to current customers if they are to pay for it. Those standards that protect customers apparently would not be applicable to charging customers for cleanup costs of manufactured gas plants under the amendments that the natural gas companies are seeking. The result would allow the utilities to charge customers for costs related to cleanup of old property that is or once was used for the provision of public utility service (or what might not have even been PUCO-regulated utility service before 1911). Interestingly, this proposal to change the ratemaking standard to allow charging for costs of past service is made some years after the natural gas utilities supported a change in the law that now allows the used and useful standard to be applied on a prospective basis for charging customers.

As a possible consumer protection, the amendment may contain a provision to share with customers a part of a utility’s gain on the sale of cleaned-up MGP sites. Any customer protection is appreciated. But that provision offers only limited and uncertain protection (if any) for customers. And that provision does not balance the potential high costs to customers for paying for cleanup. Thus, the provision for sharing with customers limited proceeds from property sales does not justify a change in the current law to weaken the ratemaking standard that protects customers from paying for cleanup costs.

Duke Energy's current rate case (PUCO Case 12-1685) is an example of how the above law change could impact customers. Duke's natural gas rate case (PUCO Case 12-1685) is awaiting a decision by the PUCO. Duke, the PUCO Staff, the Consumers' Counsel and other parties settled the case, with one exception. The parties agreed to litigate Duke's proposal to collect \$63 million from its 420,000 natural gas customers for cleanup of manufactured gas plants. Based on the PUCO Staff's analysis of the used and useful standard in O.R.C. 4909.15(A), the PUCO Staff testified that Duke should only be allowed to collect \$6.4 million (one-tenth of Duke's request) from customers. The potential amendment would eliminate the standard used by the PUCO Staff in the Duke rate case. The Consumers' Counsel's position and testimony are that Duke should only be allowed to collect between zero and \$8 million, based in part on the standards in the law (used and useful plant and expenses for providing current service to customers). The Consumers' Counsel also recommended that the PUCO deny collection from customers for much of Duke's costs, based on the cleanup costs not being reasonable or prudent for ratemaking.

Duke's website contains Frequently Asked Questions about the manufactured gas plant issue. Notably, regarding the West End site, Duke states that "Investigative studies by environmental specialists and the Ohio Environmental Protection Agency (OEPA) show that the West End site does not pose a health risk to neighboring properties, businesses or residents. And the OEPA is not requiring Duke Energy to perform any action at this site. Regardless, Duke Energy will complete the project in compliance with OEPA regulations."³

³ <http://www.duke-energy.com/westend/westend-faqs.asp#>

With regard to the possible law change to allow collection of costs from current and future customers related to service to past customers, much of that past service occurred more than a century ago. A Duke witness in Duke's current rate case acknowledged that the vast majority of the gas resulting in the ground contamination was manufactured prior to 1909.⁴ As stated, the PUCO's regulation of natural gas companies in Ohio did not begin until 1911.⁵

Recommendations

Primarily, I recommend that the General Assembly maintain current law and not adopt an amendment that weakens the balance and protection of O.R.C. 4909.15(A) for customers, regarding manufactured gas plant clean-up costs.

Secondarily, I recommend that, if there is legislative interest, the issue should be taken up in a stand-alone bill (not the budget bill). A separate bill would allow time for research, analysis and recommendations for a thorough vetting of the issue. This approach would allow for a review before the applicable legislative Committee(s). I would look forward to participating in that process.

If the Finance Committee does proceed with such an amendment, then additional recommendations would be for the Committee to modify the amendment to:

(1) require the PUCO, in its decisions, to have an objective of minimizing the amount of money that customers could pay utilities regarding manufactured gas plants, with sharing of costs by stockholders and others with third-party liability such as insurers;

(2) require that utility proposals to collect costs must be made in general rate cases where all revenues and expenses are under review. The amendment may allow utilities to seek collection

⁴ *Duke Energy Ohio*, PUCO Case 12-1685-GA-AIR, et al., Tr. Vol. II at 413 (Bednarcik) (April 30, 2013).

⁵ <http://www.puco.ohio.gov/puco/index.cfm/consumer-information/consumer-topics/puco-history/>

of costs from customers in cases other than rate cases. The law for rate cases is well developed and has other legal protections for customers including a hearing process. Rate cases should be the forum for utility proposals to collect cleanup costs;

(3) limit applicability of a statutory change to PUCO cases that are filed after the effective date of the Bill, to ensure that the current Duke Energy rate case is decided by the PUCO according to the law under which the case was settled and litigated. That case was settled and litigated based on the current standard and, in fairness to customers, should be decided based on the law applicable at the time of the settlement and litigation;

(4) ensure that any exemption from the current ratemaking standard is very limited to apply only to the intended manufactured gas plant costs. There is a concern that the amendment may be claimed by some to not be limited to manufactured gas plant cleanup;

(5) ensure that any use of a prudence standard will not allow weakening of the prudence standard that already applies to utility costs; and

(6) require that customers will be provided with a sharing of the proceeds from sale of cleaned-up property at the difference between the sale price and the lesser of the book value of the site or the fair market value prior to remediation. Also, the sharing of sales proceeds with customers should occur whether the cleaned-up property is sold in the future or was already sold. And customers should similarly share in proceeds if the utility leases the cleaned-up property to a lessee.

These recommendations for changes to an amendment are not an adequate replacement for O.R.C. 4909.15(A) in its current form, but would be better than simply removing the standards in the law. With more time for research and analysis, I likely would have additional recommendations for consideration.

Thank you for the opportunity to testify with regard to this utility consumer issue in HB 59.

4909.15 Fixation of reasonable rate.

(A) The public utilities commission, when fixing and determining just and reasonable rates, fares, tolls, rentals, and charges, shall determine:

(1) The valuation as of the date certain of the property of the public utility used and useful or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be used and useful as of the date certain, in rendering the public utility service for which rates are to be fixed and determined. The valuation so determined shall be the total value as set forth in division (C)(8) of section [4909.05](#) of the Revised Code, and a reasonable allowance for materials and supplies and cash working capital as determined by the commission.

* * *

(2) A fair and reasonable rate of return to the utility on the valuation as determined in division (A)(1) of this section;

(3) The dollar annual return to which the utility is entitled by applying the fair and reasonable rate of return as determined under division (A)(2) of this section to the valuation of the utility determined under division (A)(1) of this section;

(4) The cost to the utility of rendering the public utility service for the test period used for the determination under division (C)(1) of this section, less the total of any interest on cash or credit refunds paid, pursuant to section [4909.42](#) of the Revised Code, by the utility during the test period.