

February 5, 2014

The Honorable John Kasich, Governor  
The Honorable William Batchelder, Speaker of the House  
The Honorable Tracy Maxwell Heard, House Minority Leader  
The Honorable Keith Faber, Senate President  
The Honorable Joe Schiavoni, Senate Minority Leader  
The Honorable Members of the Ohio General Assembly

Dear Governor Kasich, Speaker Batchelder, Minority Leader Heard, President Faber, Minority Leader Schiavoni, and Members of the Ohio General Assembly,

We respectfully write with concern about potential legislation to allow natural gas and electric utilities to charge several million Ohio customers of all classes - residential, commercial and industrial - for the clean-up of property that once hosted long-defunct and long-obsolete manufactured gas plants (MGP's). Consistent with long-standing legal principles and fundamental fairness, we recommend that utilities should not be allowed to charge their distribution service customers for the clean-up of property which has nothing to do with the provision of utility service.

We request thorough and careful consideration be applied to any proposals that would require customers to assume responsibility for the cost of cleaning up non-utility property for the benefit of the property owners and at the election of the property owners. We are all strong supporters of environmental remediation. But it is important to note that when members of our organizations perform environmental remediation, we do so at our own expense with assistance from existing government programs created for such purposes. The potential legislation that prompts this letter would transfer the remediation expense of some property owners to captive utility customers who have no responsibility for or ability to manage the environmental risks related to a technology that long ago became uncompetitive and obsolete.

As you may recall, this proposal surfaced in last year's budget but was ultimately line-item vetoed from the budget by Governor Kasich. It is our understanding that the intended beneficiaries of the proposal are renewing their push for legislation requiring consumers to pick up the environmental remediation tab of some Ohio property owners. We also expect that the renewed push for this type of legislation will seek to codify the recent narrowly adopted ruling by the Public Utilities Commission of Ohio (PUCO) that authorized Duke Energy Ohio to further increase winter natural gas bills by making consumers responsible for environmental remediation of two of its MGP sites located in Cincinnati. According to the legal arguments advanced by the PUCO's Staff and consumer advocates, this ruling deviates from Ohio law and important legal principles and will, in all likelihood, be appealed to the Ohio Supreme Court.

Remediation of MGP sites in Ohio could cost hundreds of millions of dollars, perhaps more. If it is the desire of the state to consider the adoption of policies relative to the recovery of MGP environmental remediation costs from Ohio's gas and electric utility customers, we strongly recommend that the process include the following elements. The proposal should be fully considered as independent legislation rather than an amendment to an existing bill. The proposal should be accompanied by a process that provides an opportunity for full stakeholder participation so that lawmakers can consider the positions and perspectives of all stakeholders.

We also recommend that the process provided should be structured to require the proponents to demonstrate that captive utility consumers should underwrite the environmental remediation risks associated with property that has nothing to do with the provision of regulated utility service. The process should provide answers to questions including:

- What is the cost for environmental remediation of MGP sites?
- What will the cost impact be upon residential, commercial and industrial customers of natural gas and electric utilities?
- Would cost recovery be sought for MGP sites even if not owned by the utilities or only in the case of property owned by utilities?
- To what environmental level would the sites be remediated – industrial, commercial or residential? There are widely varying costs for each.
- Will utility customers be informed of the newly created charges associated with such cost recovery through line items on their bill and "if so" how and when?  
How will the "stranded cost" payments already made by consumers be reflected for purposes of determining what additional charges can be imposed on consumers?  
Will utility shareholders assume some of the cost or will it be entirely the customers' responsibility to pay?
- What long-term effect will changing major and longstanding regulatory principles (such as used and useful and current utility customers paying solely for the cost of the utility's distribution service to them) have upon other ratemaking matters before the PUCO as a result of this precedent-setting policy change?
- Why should distribution utilities be granted cost recovery for the expenses of a facility that has nothing to do with the distribution function?
- Why should current customers be held responsible for the cleanup costs of facilities that have never provided a service to them?
- Did the property owners prudently manage the environmental remediation risks by purchasing insurance and, if so, how much of the expense could have or should have been covered by the insurance provider?
- Have any other owners of the MGP site property contributed to environmental contamination and will they be sharing in paying the cost of the clean-up?
- Were any of the MGP sites that are candidates for cleanup used to fuel power plants that served non-Ohio wholesale or retail customers (through Pooling Agreements, off system sales, or any other arrangement)?

Should the amount of any remediation costs transferred to consumers be offset by the fair market value of the remediated property?

In addition to our process recommendations, we have enclosed, for your consideration, public materials prepared and provided to policy makers during the previous deliberation of this issue to explain why Ohio utility consumers should not be made responsible for environmental remediation costs that have nothing to do with utility service. We would also welcome the opportunity to visit with you and/or your staff to further discuss this matter.

Lastly please feel free to reach out to any of our organizations for additional information or discussion on the proposal discussed above. We look forward to working with you to ensure the consumers' utility bills are not used to unjustly enrich some property owners by making consumers responsible for environmental remediation costs.

Sincerely,

**OHIOsteel**  
COUNCIL

**OEG**  
OHIO ENERGY GROUP

**IEU OHIO**  
Industrial Energy Users

*Brenda Schulz*

*David J. Ciarlone*

*Samuel C. Randazzo*

Brenda Schulz  
Nucor Steel Marion, Inc.  
Chair, Ohio Steel Council

David F. Ciarlone, President  
Ohio Energy Group

Samuel C. Randazzo  
General Counsel  
Industrial Energy Users-Ohio