



# State v. Federal Jurisdiction of the Gas Industry

Presented By: Gretchen Petrucci



## State v. Federal Jurisdiction of the Gas Industry

- Today, all American states have regulatory commissions, but their authority varies significantly. The federal government primarily regulates the gas industry via the Federal Energy Regulatory Commission (FERC), which regulates the transportation and sale of natural gas in interstate commerce.



## Federal Jurisdiction – Brief History

- In 1824, the Supreme Court of the United States ruled that the federal government can intervene in private business matters that involve interstate commerce.
- In 1936, the Public Utility Holding Company Act authorizes the Securities and Exchange Commission to monitor the natural gas industry's financial dealings.



## Federal Jurisdiction – Brief History, contd.

- In 1938, the Natural Gas Act authorized regulation by what eventually became the FERC of interstate pipeline construction, interstate gas sales, and interstate gas transport.
- 1978, the Natural Gas Policy Act partially removed regulation of wellhead gas prices (only vintage wells remained subject to pricing controls).



## Federal Jurisdiction – Brief History, contd.

- 1984, FERC invalidated “take or pay” provisions for minimum volumes of gas in interstate transmission contracts.



## Federal Jurisdiction – Brief History, contd.

- When the constitutional challenge of those special marketing programs was successful in 1985, FERC was required to develop regulations to allow all interstate pipeline customers the ability to transport their gas.
- 1989, all wellhead price controls are removed, effective 1993. This effectively removes FERC authority over wholesale pricing.



## Federal Jurisdiction – Brief History, contd.

- 1992, FERC required the separation of sales from transport, removed pipelines from the merchant function and precluded pipelines from retaining upstream capacity.
- 2000, FERC requires greater flexibility to pipeline customers by enhancing terms and conditions for transportation services.





# State Jurisdiction – General Supervisory Regulation

- 1911, what had regulated railroads and telegraph companies was renamed to the Public Service Commission and given expanded duties to regulate telephone, electric, gas, and water companies.





## State Jurisdiction – General Supervisory Regulation, contd.

- 1913, the Public Service Commission's name was changed to Public Utilities Commission of Ohio (PUCO).
- This grant of authority to regulate the gas industry has remained quite constant since 1911, as shown by a comparison between the first and current versions of the General Code 614-3 (July 1, 1911).



# Entities Subject to the PUCO's General Supervisory Regulation

- PUCO does not regulate every entity involved in the natural gas industry in Ohio. It has general regulatory supervision over only those entities that fall within the definitions of a natural gas company, gas company, pipeline company, and public utility.



# A natural gas company in Ohio is:

- A company engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within Ohio, except:
- (a) A producer or gatherer with a PUCO exemption
- (b) Sales by a producer or gatherer of Ohio-produced natural gas to a lessor under an oil and gas lease on which the producer's drilling unit is located or to a grantor of a right-of-way or easement to the producer or gatherer.



## A gas company in Ohio is:

- A company engaged in the business of supplying artificial gas for lighting, power or heating purposes to consumers within Ohio or engaged in supplying artificial gas to gas companies or natural gas companies within Ohio, except a producer that supplies artificial gas that is manufactured as a by-product of some other process in which the producer is primarily engaged.



# A pipeline company in Ohio is:

- A company engaged in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, wholly or partly within this state.



# A public utility in Ohio is:

- Every corporation, company, copartnership, person or association, their lessees, trustees, or receivers, except:
- (1) Public utilities that are owned and operated exclusively by and solely for the utilities' customers (cooperatives), including consumer groups purchasing, delivering, storing or transporting natural gas exclusively by and solely for the consumer's or consumers' own intended use and not for profit.
- (2) Public utilities that are owned or operated by any municipal corporation.





## The PUCO has general regulatory authority over:

- Distribution companies – furnish gas service within own service area in Ohio, principally to end user customers. Ohio has more than 54,000 miles of distribution pipelines regulated by the PUCO.
- Transmission companies – transport natural gas from wells/production area in Ohio through pipelines to distribution areas in Ohio. Ohio has more than 6,000 miles of transmission pipelines regulated by the PUCO.





# The PUCO regulates:

- 26 natural gas distribution companies serving more than 3 million customers
- The Ohio distribution companies vary in size
- 4 large companies each serving between 316,000 and 1.42 million customers
- 1 medium company serving roughly 46,000 customers
- 21 small companies serving between 28 and 25,000 customers
- 5 natural gas pipeline companies



# Types of cases/issues:

Gas service- related complaint <u>filings</u>	Gas base rate increase <u>dockets</u>	Admin. gas rule review <u>dockets</u>	Gas cost recovery <u>audits</u>	Gas supply & demand forecasting <u>dockets</u>	Gas tariff and contract <u>dockets</u>	Misc.* gas <u>dockets</u>
2003:27	2003:2	2003:2	2003:11	2003:5	2003: 8	2003: 23
2004: 22	2004:3	2004:1	2004:10	2003:5	2004: 10	2004: 39
2005: 29	2005:2	2005:3	2005:11	2003:5	2005: 14	2005: 33

\*Miscellaneous dockets include: gas cost recovery rate modifications, waiver requests, relief from jurisdiction requests, abandonments, transfers, and commission-ordered investigations.



# PUCO Jurisdiction – Gas Pipeline Safety

## Brief History

- 1966, the PUCO adopts its first gas pipelines safety rules.
- 1968, the federal Natural Gas Pipeline Safety Act establishes minimum standards and federal supervision of state gas pipeline safety programs. Federal regulations are later established. For a period of time, the PUCO's gas pipeline safety program had no express state statutory charter. PUCO had weak enforcement capabilities and, thus, the program was not tremendously effective.



# Gas Pipeline Safety – History, contd.

- Late 1980s, the federal government took a different approach to the concept of gas pipeline safety, requiring increased standards for state safety inspectors and implementing greater penalties, and stronger rules and regulations. This carried over to the state.
- 1991, the PUCO institutes new gas pipeline safety administrative rules, including enforcement and forfeiture provisions.



# Gas Pipeline Safety – History, contd.

- April 16, 1993, the PUCO was given explicit authority to protect the public safety of all intrastate pipeline transportation by pipeline operators, as well as authority to assess forfeitures for violations. The program is funded by the operators themselves, based upon the total unites of gas supplied/delivered in Ohio during the preceding calendar year.
- The monies assessed are for the exclusive use of the PUCO for the state gas pipeline safety program. Federal monies are also received, contingent upon PUCO compliance with federal requirements.



# Scope of Gas Pipeline Safety Jurisdiction

- All persons that own, operate, manage, control or lease intrastate pipeline transportation facilities, gathering lines, and master-meter systems within Ohio are subject to Ohio's gas pipeline safety requirements. Thus, the PUCO has pipeline safety jurisdiction over more than just public utilities. Currently, the PUCO regulates, for gas pipeline safety purposes, the following numbers of operators:
  - 120 distribution line operators
  - 35 transmission line operators
  - 159 gathering lines operators
  - 68 master-meter systems
  - 5 municipal systems





## Scope of Gas Pipeline Safety Jurisdiction, contd.

- The staff has audited and investigated countless numbers of records and facilities of various operators. Part of the process involves notifying the operator of alleged violations/concerns and providing the operator the opportunity to correct the alleged violations/concerns. With voluntary correction, no further PUCO action is needed.
- In cases where the investigating staff believes that operator response has been inadequate, the PUCO may open a formal investigation.





## Formal Investigations in the last 18 years

<u>Year</u>	<u>Number of Formal Investigations</u>
1987	3
1988	2
1989	3
1990	2
1991	2
1992	0
1993	2
1994	5
1995	1
1996	1
1997	0
1998	2
1999	5
2000	1
2001	1
2002	0
2003	1
2004	2
2005	0



## Scope of Gas Pipeline Safety Jurisdiction, contd.

- Currently, the PUCO is investigating the use of and performance of natural gas service risers by a variety of entities in Ohio. A natural gas service riser is the equipment connecting the service line with the gas meter.
- The PUCO is evaluating the types of risers being utilized, the conditions of installation, and their overall performance in order to gain an understanding as to the cause of the riser failures. This is not a gas pipeline safety investigation *per se*, but resulted because of the gas pipeline safety reporting requirements and investigations.



# PUCO Jurisdiction – Competitive Retail Natural Gas Market

- June 26, 2001, the Ohio legislature requires competitive retail natural gas suppliers (also called marketers) to be certified in order to lawfully provide the gas commodity to end use customers. At that same time, the legislature requires the PUCO to certify those entities, establish minimum service requirements for marketers, and handle complaints related to the provision of service by a competitive retail natural gas supplier.
- The PUCO does not regulate the rate that competitive retail natural gas suppliers charge for the gas commodity.



Since that time, the PUCO has handled the following marketer certification applications:

<u>Year</u>	<u>Number of Certification Applications</u>
2002	48 applications
2003	26 applications (92 percent of which were governmental aggregator applications)
2004	24 applications (83 percent of which were governmental aggregator applications)
2005	19 applications (58 percent of which were governmental aggregator applications)



## PUCO Jurisdiction – Competitive Retail Natural Gas Market, contd.

- Certification is for a two-year period only. Entities interested in continuing to provide competitive retail natural gas service must apply to renew their certification. The PUCO has, to date, reviewed 64 certificate renewal applications by competitive retail natural gas suppliers.



# State Jurisdiction of Siting Major Gas Facilities

## Brief History

- 1972, the Ohio Power Siting Board's (OPSB) predecessor was created. It was composed of four state agencies and one public member. The head of the Ohio Environmental Protection Agency chaired the OPSB.
- 1977, membership on the OPSB expanded to include two other state agencies and four state legislators.
- 1979, solid waste facilities exempted from OPSB authority.
- 1981, OPSB housed within the PUCO, PUCO chairs the board, and funding for the board is changed so that funding is through application fees only.
- 1985, membership on the OPSB is again expanded and remains today at six state agencies, one public member and four nonvoting legislative members.





# Scope of siting jurisdiction related to gas facilities

- The OPSB has authority for the siting, construction and maintenance of intrastate gas or natural gas transmission lines and associated facilities designed for, or capable of, transporting gas or natural gas at pressures in excess of 120 pounds per square inch.
- This does not include gas or natural gas distribution lines or gathering lines and their associated facilities. This does not include gas or natural gas transmission lines over which the federal government has exclusive jurisdiction (i.e., interstate transmission lines). This also does not include replacement of an existing facility with a like facility.





## Scope of siting jurisdiction related to gas facilities, contd.

- Siting, construction, and maintenance of such facilities requires OPSB advance approval. No one can commence such a project without first having OPSB authorization.
- Upon completion of construction, the OPSB has continuing jurisdiction for a period of two years, after which the facility is under the Ohio Environmental Protection Agency's jurisdiction.



## Scope of siting jurisdiction related to gas facilities, contd.

- Aside from the construction and initial two-year operation period, other state entities, besides the OPSB, may impose requirements for the major gas or natural gas transmission lines and associated facilities. However, no other state entity can impose conditions or require review for the construction and initial two-year operation period.



In the past five years, the OPSB has handled the following larger scale major utility facility applications:

<u>Year</u>	<u>Number of Larger Certification Applications</u>
2000	19 (approximately)
2001	11 applications
2002	7 applications
2003	2 applications
2004	6 applications + 1 amendment, 1 transfer and 1 rule revision docket
2005	3 applications + one duplicate docket opened in error



# From Monopoly to Competition – Evolution of Wholesale and Retail Markets

Presented By: Gretchen Petrucci



## The Way It Used to Be

- Use of natural gas was confined to markets close to the producing fields because long distance pipelines were not perfected. Often those producing fields were depleted quickly because they were shallow fields.
- Then, development of reliable, long distance pipelines allowed gas supplies to be transported to far away locations.



## The Way It Used to Be, contd.

- Traditionally, users of gas have paid a distribution company to purchase the gas commodity. The distribution company would purchase the commodity and arrange to have it transported to the distribution company, where it would deliver the gas directly to the users.
- The most economical operations involved a single distribution company in a given area. Thus, the distribution companies had monopolies over the gas service (although there were choices between different forms of energy in a given area).





# The Transition in the Wholesale Market in Ohio

- In the 1970s, gas curtailment occurred because of insufficient gas supplies. Ohio was severely affected by the shortage of natural gas. Some Ohio end-use customers still desired gas supplies and explored ways of obtaining those supplies other than through the local distribution companies.
- 1978, the PUCO established guidelines to indicate what would constitute a reasonable contractual arrangement under Ohio law for the transportation of gas supplies purchased by a customer and to be transported by the distribution company to the customer's location.



# The Transition in the Wholesale Market in Ohio, contd.

- The PUCO's goal in approving contractual terms was to facilitate the processing of such applications for contract approval so that such customers could avoid curtailment. Those guidelines were amended in 1983.
- Also in 1978, National Gas Policy Act caused increases in wellhead prices. Purchasers of natural gas (end use customers and distribution companies) began looking for cheaper gas and have it transported, rather than purchasing the gas from the transmission and distribution companies (who were locked into high-priced gas).



# The Transition in the Wholesale Market in Ohio, contd.

- 1984, Federal Energy Regulatory Commission (FERC) invalidated “take or pay” provisions for minimum volumes of gas in interstate transmission contracts. This allowed distribution companies to select pipeline suppliers without incurring charges for gas that the distribution companies did not actually take. Meanwhile, special marketing programs had developed to alleviate the requirements under take-or-pay obligations. Those programs permitted distribution companies and large industrial customers to purchase gas directly from a gas producer or supplier.



## The Transition in the Wholesale Market in Ohio, contd.

- When the constitutional challenge of those special marketing programs was successful in 1985 (on the basis that they were not available on a nondiscriminatory basis), FERC was required to develop regulations to allow all interstate pipeline customers the ability to transport their gas.
- August 1985, the PUCO initiated an investigation into the availability of gas transportation services provided by Ohio's distribution companies to end-use customers.



## The Transition in the Wholesale Market in Ohio, contd.

- April 1986, the PUCO issued guidelines for the Ohio distribution companies that provided transportation for end-use customers who purchased gas from a third party or a utility outside the regulated market. The PUCO required transportation service tariffs by all Ohio distribution companies.
- The PUCO amended those guidelines eight times thereafter. The latest version is dated November 2, 1995.





# The Transition in the Retail Market in Ohio

- October 1996, Columbia Gas of Ohio Inc. (Columbia) first proposes a limited residential and small commercial gas choice program in Ohio. Columbia amended the proposal after discussions with interested stakeholders. The PUCO approved the proposal, as amended in early 1997.
- April 1997, choice was offered to certain residential and small commercial customers (roughly 167,000) in just the greater Toledo, Ohio area served by Columbia.





## The Transition in the Retail Market in Ohio, contd.

- July 1997, the PUCO approved a plan to offer choice to all residential and small commercial customers (360,000) in the service area of The Cincinnati Gas & Electric Company (Cincinnati) and a plan to offer choice to certain residential and small commercial customers (173,000) in a portion of The East Ohio Gas Company d.b.a. Dominion East Ohio (Dominion) service area.
- Cincinnati's and Dominion's programs were instituted in November 1997.



# The Transition in the Retail Market in Ohio, contd.

- Initially, nearly 700,000 residential and small commercial customers were eligible to select their natural gas supplier during the initial phases of these three programs.
- June 1998, the PUCO requires the Columbia program to expand to its entire service area, requires the Cincinnati program to continue throughout that territory, and requires the Dominion program to continue on a limited basis because of significant computer system problems.
- August 1998, the Columbia program is offered throughout its entire service area.



## The Transition in the Retail Market in Ohio, contd.

- November 2000, Dominion expands its program throughout its service territory.
- June 2002, Vectren Energy Delivery of Ohio Inc. proposes a gas choice program. A group of stakeholders joined in the request, following several months of meetings. The PUCO approved the proposal in August 2002 and that program began a few months later.



# Tweaks and Adjustments

- Over the years, many issues were of concern to the distribution companies, suppliers and customers. Extensive discussions and many pleadings were filed. Some of those topics included:
  1. Capacity assignment – whether it must be mandatory for a supplier to take assignment of the distribution company's reserved pipeline capacity and balancing services for suppliers that do not elect capacity assignment



## Tweaks and Adjustments, contd.

2. Purchase of supplier receivables – whether the distribution company must purchase, and at what rate, the suppliers' receivables when issuing a consolidated bill to the customer.
3. Enrollment – providing proof of a customer's intent to switch supplier, determining customer eligibility, switching fees, and confirmation letters.
4. Lag between customer signing up with a supplier and the enrollment being activated.



## Tweaks and Adjustments, contd.

5. Telephonic enrollment – whether to allow and documenting a customer's intent to switch supplier when done over the telephone
6. Internet enrollment – whether to allow, what safeguards are needed, and who to evaluate effectiveness.
7. Billing – who bills for the commodity service, transferring information amount parties, and minimum bill requirements.





## Tweaks and Adjustments, contd.

8. Supplier defaults – what to do when a supplier defaults and what security should be mandated to mitigate the impact of a default.
9. Door-to-door solicitation requirements – what parameters should be established to ensure fair and reasonable behavior with customers.
10. Customer education and moratoriums – who must educate the public, any enrollments allowed during education periods, what types of comparison charts should be provided and how is the information gathered and reviewed.



## Tweaks and Adjustments, contd.

- The 2000-2001 winter: Ohio had colder than normal temperatures in November and December 2000. Gas prices rose quickly through the October – December period.
- January 2001 temperatures were warmer than normal and gas prices dropped. Some suppliers failed to deliver gas or could not continue to serve at the contracted rates. This resulted in suppliers dropping customers and suppliers being terminated from the programs. Of those affected customers, many defaulted to the distribution company at higher rates. This situation tested the choice programs.



## Tweaks and Adjustments, contd.

- The Ohio legislature was unhappy with supplier behavior in the first part of the winter of 2000-2001 and enacted legislation to safeguard consumers and to ensure that the retail competitive market could still work. Effective June 26, 2001, the Ohio legislature requires competitive retail natural gas suppliers to be certified in order to lawfully provide the gas commodity to end use customers.
- At that same time, the legislature required the PUCO to certify those entities, establish minimum service requirements for marketers, and handle complaints related to the provision of service by a competitive retail natural gas supplier. The PUCO does not regulate the rate that competitive retail natural gas suppliers charge for the gas commodity.



## Tweaks and Adjustments, contd.

- April 2002, the PUCO finalizes minimum service requirements and other administrative rules for all programs, thereby standardizing many aspects of choice. Those requirements became effective in July 2002.



# Review

- Customer and supplier participation levels have varied in each of the programs. Several factors have influenced customer participation, including distribution company commodity gas prices, availability of easy-to-understand comparable information, and supplier aggressiveness. Supplier participation levels has varied greatly, depending upon the maturity of the program, the distribution company commodity gas prices and various terms and conditions unique to the different programs.





## Review, contd.

- Each program has included a supplier that is affiliated with the distribution company. However, Cincinnati's affiliate was sold in February 2000 and no new affiliate has entered in that area.
- Consideration of the many issues associated with Ohio's gas choice programs have assisted in the development of Ohio's competitive electric market. The PUCO's decisions have also been a model for other states and entities in the nation. For example, internet enrollment protocols developed because of the Columbia program were a template for the utility industry nationwide in developing uniform business practices.





# Today

- Today over 105 competitive retail natural gas suppliers are certified to offer a choice to nearly 3.25 million eligible customers in Ohio, while the distribution company guarantees delivery.
- Millions of Ohioans have participated in a choice program since 1997.
- All customers enrolled in retail gas choice today are billed their supplier charges in the bill they receive from the distribution company.
- Today, 90 percent of gas consumed in Ohio comes from outside of Ohio; roughly 10 percent comes from private wells within the state.