

Proponent Testimony
H.B. 143
House Public Utilities Committee
February 13, 2018

Chair Cupp, Vice Chair Carfagna, Ranking Member Ashford, and committee members: I am Kevin Murray and I am the Executive Director of the Industrial Energy Users-Ohio. Since 1992, IEU-Ohio and its commercial and industrial energy consuming members have worked at the local, state, regional and federal levels on issues that affect the price and availability of energy in Ohio. A list of IEU-Ohio's members is attached to my testimony.

The purpose of my testimony today is to express IEU-Ohio's support for H.B. 143. I will also briefly explain why IEU-Ohio supports H.B. 143 and its efforts to clarify the scope of the kilowatt hour tax ("kWh Tax"), which came into existence through Amended Substitute Senate Bill 3 ("S.B. 3") enacted in by the 123rd General Assembly in 1999. As you may know, S.B. 3 restructured Ohio's electricity-related laws so that most¹ of Ohio's retail electric consumers have the right, acting individually or through aggregation programs, to competitively source "competitive retail electric services" from their preferred supplier. Ohio's electric restructuring followed similar restructurings of the natural gas and communications sectors. In each case, Ohio's restructuring efforts were aligned with similar efforts at the federal level where new laws and regulations focused on remedying anti-competitive industry structures.

S.B. 3 established a multi-year transition from a legal structure that favored incumbent "monopolies" to one that relies upon effective competition to provide reliable service at a reasonable price. The scope of S.B. 3 included restructuring of the monopoly-oriented taxes that needed to be changed in recognition of the overarching pro-competitive objectives of S.B. 3.

Prior to the passage of S.B. 3, vertically integrated electric utilities² were subject to a rate of taxation on tangible personal property that was more aggressive than the rate applicable to businesses in general. For example, the assessed valuation

¹ S.B. 3 established "customer choice" rights for retail customers of investor owned electric utilities and gave rural electric utilities the option to enable customer choice for their distribution service customers. As discussed herein, while rural electric utilities received some tax advantages as a result of S.B. 3's procompetitive reforms, S.B. 3 did not require rural electric distribution utilities to provide their customers with the same customer choice rights.

² Vertically integrated electric utilities provide and typically bundle electricity generation, transmission and distribution services. Among other things, S.B. 3 unbundled distribution, transmission and generation services, declared generation service to be a "competitive retail electric service" effective January 1, 2001 and required providers of non-competitive services (distribution and transmission) to make their services available on a comparable and non-discriminatory basis. Through this required unbundling, S.B. 3 divided retail electric services into "competitive" and "non-competitive" services.

percentage that applied to electric production (generation) property was 100%³ while businesses in general were subject to an assessed valuation percentage of 25%. Electric utilities were also subject to a gross receipts tax at a nominal rate of 4.75%. The cost of these taxes was passed on to customers of the electric utilities. Together, these two taxes collected several hundred million dollars each year.

As S.B. 3 was under consideration, the General Assembly recognized that the larger restructuring effort needed to include a consideration of the taxes paid by Ohio's electric utilities and potential reforms needed to align the tax structure with the pro-competitive objectives of S.B. 3. And, to this end, S.B. 3 reduced the assessed valuation percentage applicable to electric utility production property (including the property of rural electric utilities) to 25% and eliminated the electric gross receipts tax. On the replacement revenue side of the ledger, S.B. 3 added the kWh Tax and subjected investor-owned electric utilities to the corporate franchise tax.

Prior to S.B. 3, a retail customer that obtained electricity from "behind the meter" distributed generation was **not** subject to the higher assessed valuation percentage that applied to electric utility production property or the electric utility gross receipts tax. These taxes were uniquely applicable to vertically integrated electric utilities with "captive customers." Among other things, S.B. 3 established a state electricity policy encouraging the use of distributed generation. Specifically, Section 4928.02(C) states that it is Ohio's policy to "encourage diversity of electricity supplies and suppliers, by giving customers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities." There was nothing in S.B. 3 that indicated that the newly established kWh Tax would be applied to increase the cost of behind the meter or distributed generation dedicated to meeting the energy needs of a particular customer. In our view, S.B. 3 makes it clear that the kWh Tax is to be levied on the kilowatt hours that an electric distribution utility distributes to a distribution service customer.

With this S.B. 3 history in mind, IEU-Ohio and its members were surprised when the Ohio Department of Taxation began, relatively recently, to assert that behind the meter generation of electricity (that is not delivered by an electric distribution utility) triggers an obligation to pay the kWh Tax. These claims have created uncertainty about the cost of behind the meter generation projects and prompted litigation that also chills interest in behind the meter projects that are otherwise useful to individual customers. S.B. 143 proposes to clarify the kWh Tax in ways that will, in our opinion, more clearly confine the scope of the kWh Tax to scope established by S.B. 3.

For these reasons, IEU-Ohio urges the General Assembly to act favorably on H.B. 143.

Thank you for the opportunity to testify and I will be happy to answer any questions.

³ For rural electric utilities, the assessed valuation percentage applicable to production property was 50%. S.B. 3 also lowered this percentage to 25%.

IEU-OHIO'S MEMBER COMPANIES

Airgas, Inc.

Anheuser-Busch Companies, Inc.

Appvion, Inc.

ASHTA Chemicals Inc.

The Brakey Energy Client Group

- AMAC Enterprises, Inc.
- American Greetings Corporation
- American Manufacturing Inc.
- Area Aggregates, LLC
- Ashtabula Rubber Co.
- Aurora Plastics, Inc.
- Automation Plastics Corporation
- Avalon Precision Casting Company, LLC
- Avon Lake Regional Water
- Barberton Steel Industries
- Bescast, Inc.
- Buckeye Relief, LLC
- Burton Rubber Processing
- Casting Solutions, LLC
- ClarkDietrich Building Systems
- Cleveland Cavaliers
- Cleveland Indians
- Cleveland Museum of Natural History
- Cobra Plastics, Inc.
- Component Repair Technologies, Inc.
- DRS Industries, Inc.
- Duramax Marine, LLC
- Elyria Foundry LLC
- Falcon Foundry Company
- Federal Metal Company, The
- Ferriot, Inc.
- Flambeau, Inc.
- GoldKey Processing, Inc.
- Independent Franchises DBA McDonald's
- Iten Industries
- Jack Thistledown Racino
- J.H. Routh Packing Company
- Jacobson Manufacturing, LLC
- Jet Rubber Company
- John Carroll University
- Kent Elastomer Products, Inc.
- Landmark Plastic Corporation
- Mar-Bal Incorporated

The Brakey Energy Client Group (Cont'd)

- McGean-Rohco, Inc.
- Mercury Plastics, Inc.
- MetalTek International
- MIBA Bearings US, LLC
- Miceli Dairy Products, Inc.
- Milliron Iron & Metal, Inc.
- Neff-Perkins Company
- Norman Noble, Inc.
- Ohio Star Forge Co.
- Presrite Corporation
- Pressure Technology, Inc.
- Quintus Landlord LLC
- Quaker City Castings
- Rothenbuhler Cheesemakers, Inc.
- RTS Companies, Inc.
- Sajar Plastics, LLC
- Salem-Republic Rubber Company
- Sauder Woodworking Co.
- Tri-Cast Ltd.
- Trilogy Plastics, Inc.
- U.S. Casting Company, Inc.
- Viking Forge Corporation
- Welded Tubes, Inc.

BWX Technologies, Inc.

Cristal USA Inc.

Energizer Manufacturing, Inc.

Eramet Marietta Inc.

Globe Metallurgical, Inc.

Haviland Plastic Products

Kent State University

Kraton Polymers U.S. LLC

Lincoln Electric Company

Marathon Petroleum Company

Mondeléz International

P.H. Glatfelter Co.

Paulo Products Company

Plastipak Packaging Inc.

Tate & Lyle Americas, Inc.

TimkenSteel Corporation

Toledo Refining Company, LLC

U. S. Steel Seamless Tubular Operations, LLC

University of Akron

USG Corporation

Vallourec Star