BEFORE THE HOUSE ENERGY COMMITTEE
REPRESENTATIVE ADAM HOLMES, CHAIRMAN

SENATE BILL 103 OPPONENT TESTIMONY

TESTIMONY
OF
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Chairman Holmes, Vice Chair Mathews, Ranking Member Rader, and Members of the House Energy Committee, my name is Kim Bojko and I am a partner with Carpenter Lipps LLP. I specialize in energy, public utilities, and regulatory law, as well as energy policy, and have been practicing in this area for over 26 years. I am here today on behalf of the Ohio Manufacturers' Association (OMA) to testify on Senate Bill 103 (SB 103), as passed by the Ohio Senate.

The OMA is a mission-driven organization comprised of Ohio's manufacturing leaders, many of which are Ohio's largest energy consumers. The OMA adopts public policy positions as a community of manufacturers, which is based on guiding principles, data-driven research and analysis, and member input. OMA has approximately 1,300 members of all sizes, many with multiple facilities and meters in the state. It is impossible to competitively operate a modern manufacturing facility without affordable energy. Simply stated, energy is very important to Ohio's manufacturing competitiveness.

Ohio has operated under competitive markets for both electric and natural gas services for decades, which has led to lower wholesale energy prices and advancements in technology. Ohio should stay the course with competitive markets while instituting common-sense policy reforms to expand competition and free markets.

OMA thanks this Committee's leadership on important energy issues included in HB 15 and thanks the Committee for working to protect customers.

While SB 103 is a vast improvement over prior versions, OMA remains opposed to SB 103 as it contains several proposed changes to the ratemaking process and utility policy that would undermine consumer protections and harm the affordability and fairness of utility rates for businesses and Ohioans. It is not a mirror of HB 15 and it does not simply authorize natural gas companies to do forecasted rate cases as HB 15 did for electric utilities. It does more. It eliminates important customer protections in favor of both electric and gas utilities.

While HB 15 helped to protect customers by addressing unfair, anti-consumer provisions embedded in the old law that cost customers billions of dollars, SB 103 does not. HB 15 eliminated all above-market charges, anti-competitive subsidies, and electric security plans. But, while SB 103 expands the favorable provisions of HB 15 to natural gas, water, and sewer utilities, it does not eliminate all above-market charges and subsidies that were eliminated for the electric utilities (lns 495-98 and 1183-88). For example, natural gas utilities are able to take advantage of forecasted test years while continuing to enjoy the revenue from the infrastructure development rider, a capital investment rider.

Additionally, SB 103 allows a natural gas company to enter into negotiated contracts to serve large load customers (lns 1163-1257). The language only "protects" other customers from paying costs "associated with the large load customer's share of infrastructure investments" (lns 1183-88). It still requires all customers to pay for a portion of the additional infrastructure required to make these large infrastructure investments (i.e., the utility's share, which is 60% of the total costs of the extension, plus additional maintenance and capital costs through the utility's rate case proceedings per OAC 4901:1-9-07(D)(3) and (E), only offsetting a small portion if the utility has an infrastructure development rider in place (lns 1189-98). While language later in the bill seems to protect customers from increases (lns 1244-57), the prior language does not. These inconsistent provisions in the bill need to be reconciled to eliminate any concerns or attempts to pass costs on to other customers.

Notably, the utilities will also be able to exclude any revenue that they receive from the negotiated contracts from a rate case proceeding, thereby skewing its revenues versus expenses in the rate case (lns 1208-13).

In essence, the natural gas companies will get to "double dip" under the new Sub. SB 103, receiving revenue through both expedited rate cases that are forecasted and capital investment riders that are also forecasted that are established by alternative rate plans.

The utilities already have other mechanisms in place to collect the costs associated with expanding their natural gas service to new customers or for economic development purposes, they do not need another mechanism.

But, even if you decide to retain the large load customer provision, at a minimum, OMA encourages you to eliminate lines 1208-13. All revenues received by a utility must be accounted for in a rate case to offset expenses. Utilities should not be allowed to include expenses associated with these large load customers and collect those from other customers and not offset the revenues that they receive from these same customers incurring the costs. Utilities must be required to account for all revenues in a rate case, not just their expenses. This provision is also directly contradictory and inconsistent with the language intending to protect other customers and should be reconciled by eliminating it.

OMA also asks that the Committee eliminate the alternative rate plan mechanism for gas utilities under R.C. Chapter 4929 and all riders for any gas and water utilities that choose to file a forecasted rate case. R.C. Chapter 4929 and the definition of "alternative rate plan" in R.C. 4929.01 goes way beyond capital expenditure programs authorized in R.C. 4929.111. As written, SB 103 would allow gas utilities to continue

other alternative rate plan riders that do not relate to the recovery of capital investments. The language only prohibits riders or recovery mechanisms "to recover capital investment" (lns 488 and 493). Similar to the elimination of riders in the electric security plans for the electric utilities, above-market charges are no longer necessary if the gas and water utilities are now allowed to forecast their test years, which will include forecasted capital investments. Therefore, like HB 15, we urge this Committee to prohibit all riders and recovery mechanisms for any gas or water utility that chooses to file a forecasted rate case.

SB 103 also adds provisions that weaken customer protections across the industry. For example, on lines 188-92, SB 103 eliminates the requirement for all utilities (including electric utilities) to file schedules and data required to determine the valuation of utility property, depreciation, and used and useful requirements. This will fundamentally change the valuation of utility assets, eliminate a baseline, and have the effect of increasing utility revenue from forecasted test years.

As I have explained to this committee previously, authorizing utilities to forecast their test years in rate cases will incentivize utilities to forecast higher projected costs and lower projected revenues, leading to increases in customers' bills. The language that allows annual increases to the utilities' forecasted rates to provide them with an additional return on projected projects that were already included in the forecasted test year, and therefore, base rates, provides a further incentive to utilities to inflate their forecasts.

OMA has significant concerns with the forecasts produced by utilities. Since the last time that I testified before you regarding HB 15 and our concerns on forecasted rate proceedings, we finally have some real data from one utility, and the results are sobering. In the first part of the year, one utility forecasted a 27% increase in the Secondary Rate Class—these are churches, schools, and small businesses—this is at a time when many of these small businesses are decreasing their brick-and-mortar footprint and moving online. This caused us to ask questions. Then, we learned from filings at the PUCO that this same utility's actual demand for this customer class was 25% less than what they forecasted, resulting in an actual increase of 2% instead of 27%. Given this new information, OMA called on the PUCO to investigate this utility's forecasting methodologies and the difference between actual and forecasted data provided to the PUCO. Staff of the PUCO even mentioned the difference between the forecasted and actual data, which directly impacted customers' transmission rates. But the PUCO in its order minimized Staff's concern and the difference in actual versus forecasted numbers, ignored OMA's request, and approved the rates over our objections.

The same utility forecasted new demand in Central Ohio from data centers to be 30,000+ MW in a case before the PUCO this past summer. OMA challenged the speculative forecast and double counting of data center load in the case, but the PUCO ignored our concerns and adopted the utility's speculative number anyway. It has recently come to our attention that the amount of actual load requesting connection in Central Ohio is 9,807.7 MW.

On September 18, 2025, the Chairman of the Federal Energy Regulatory Commission (FERC) sent a letter to the nations' electric system operators, including PJM, requesting additional information on how they accept forecasts of data center loads. The Chairman aptly noted that small changes in load forecast amounts "can impact billions of dollars in investments and customer bills."

To date, the PUCO has refused to open an investigation into how utilities in Ohio forecast, which will impact distribution rates, transmission rates, and even commodity pricing in the competitive market. It is imperative that if we authorize forecasted rate cases, we hold utilities accountable for how they forecast so that customers do not pay higher rates based on over inflated forecasts.

At a time of rising energy prices, the OMA encourages the Committee to hold the utilities accountable and protect markets by not adopting or adding any of these additional provisions to SB 103 that were not in HB 15.

Mr. Chairman and members of the committee, that concludes my testimony. I would be happy to answer any questions that you may have.