Ohio Environmental Council
[Action Fund]

March 26, 2025
Opposition Testimony - Senate Bill 103
Ohio Senate Public Utilities Committee

Chair Wilkin, Vice-Chair Reineke, Ranking Member DeMora and members of the committee, thank you for the opportunity to offer opponent testimony on Senate Bill 103. My name is Karin Nordstrom, I serve as the Clean Energy Attorney for the Ohio Environmental Council Action Fund (OEC AF). The OEC Action Fund's mission is to protect the environment and health of all Ohio communities. While SB 103 is fundamentally about rate reform, the OEC AF is here today to oppose the portion of Section 4903.30 which codifies a three-prong test for stipulations (or settlements) at the Public Utilities Commission of Ohio (PUCO). We will be considering the remainder of the legislation more thoroughly over the next few weeks.

Any two or more parties may enter into a written stipulation around the resolution of a proceeding at the PUCO. This settlement process may sound good in theory, but in practice it results in Commission decisions regarding utility rates and programs with significantly less careful examination than we should expect for our public utilities.

The following three-prong test functionally operates to rubber stamp settlements between utilities, intervening parties, and Commission Staff:

(A) The settlement was a product of serious bargaining among capable, knowledgeable parties.

(B) The settlement, as a package, benefits ratepayers and the public interest.

(C) The settlement package does not violate any fundamental regulatory principle or practice.

As the OEC has participated in proceedings before the PUCO, we have seen the three step test for evaluating stipulations provide little substantive analysis of the actual issues before the Commission. This approach shifts the burden of proof from the utilities to the parties opposing the stipulation to prove that the stipulation is unreasonable. This is important, as a party opposing the stipulation has few tools available to actually meet this burden which has been shifted to them.

Because the PUCO views stipulation discussions as confidential, opposing parties have no functional methods of challenging whether the stipulation is the product of serious bargaining. Under this standard, stipulating parties need only state that they held several meetings and invited all parties in order to satisfy this prong. The Commission, under the current application of the test, does not consider the actual substance of the meetings, including whether and why any parties' positions were disregarded.

The Commission regularly approves the second and third prongs with little scrutiny as well. The second prong requires that the settlement, when viewed in its totality, is reasonable. The third prong requires that the settlement does not violate any fundamental regulatory principle. Both these prongs provide little meaningful review by the Commission. The utility generally settles with Commission Staff and then argues in its totality the settlement is reasonable. Frequently, the utility secures a significantly large rate hike, but the settling parties argue the settlement is reasonable because the outcome could have been worse. As far as the third prong of the test, in practice the utility often dismisses this in a sentence or two. The Commission has not provided any guidance on which of the multiple regulatory principles it finds persuasive under this prong or how it prioritizes these principles. This all leaves opposing parties at a significant disadvantage.

The OEC Action Fund believes the section of this bill codifying the three-prong test is outside the scope of this legislation. The General Assembly should not solidify a currently non-statutory and inequitable process without a more thorough review.

Thank you again for the opportunity to testify, and I'd be happy to answer any questions that you might have.

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