BEFORE THE SENATE ENERGY AND PUBLIC UTILITIES COMMITTEE
SENATOR BILL REINEKE, CHAIRMAN

TESTIMONY
OF
KIM BOJKO
OMA ENERGY COUNSEL

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Chair Reineke, Vice-Chair McColley, Ranking Member Smith and members of the Senate Energy and Public Utilities Committee, my name is Kim Bojko and I am a partner with Carpenter Lipps LLP. I have been practicing energy and utilities law for over 25 years. I am here today on behalf of the Ohio Manufacturers' Association (OMA). I serve as the chief energy counsel for the OMA.

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 on legislation as a community of manufacturers. Our positions are based on guiding principles, data-driven research and analysis, and member input. We boast 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.

I am here today to testify on behalf of manufacturers, the customers that will actually have to pay for the expanded above-market charge that was adopted yesterday as an amendment to House Bill 201 (HB 201). It is another anti-competitive, utility-driven policy that will add costs to customer's bills—but, this time, it is for the benefit of natural gas utilities at customers' expense. The OMA had not previously taken a position on House Bill 201, and my comments here today are regarding the language added yesterday to the bill.

Importantly, the amendment is very similar to language included in the recent budget bill, House Bill 33, that was vetoed by the Governor.

The proposed infrastructure development and economic development provisions expand current law to include more costs that can be collected from customers for infrastructure upgrades and expansion. The language is overly broad and would allow the gas utilities to upgrade almost anything (distribution and transmission faculties) in the name of economic development without proper justification.

More specifically, the language authorizes natural gas utilities to do the following:

1. Continue its infrastructure development rider to collect more types of costs from customers;

2. Collect costs for planning, development, and construction of costs incurred for an economic development project for natural gas service to a site or project that is merely supported by JobsOhio, any JobsOhio network or regional partner, or the Department of Development;

3. Collect costs even if the costs were incurred prior to the approval of the project;

4. Collect costs associated with establishing or upgrading any connections with any source of supply to serve an economic development project, including interstate or intrastate pipelines that they do not own;

5. Collect costs even if the economic development project fails;

6. Receive an immediate return on their investment;

7. Create five-year deferrals with interest for any amounts that exceed the cost caps in any year (so not a true cost cap);

8. Collect any deferred and unrecovered infrastructure costs in subsequent years (after the six-year program period) under the cap; and

9. Receive guaranteed cost recovery of deferrals with interest for projects that *apply* for approval during the six-year period (cost recovery could expand way beyond the stated six-year program as it extends for at least five years *after* approval and maybe longer under one new provision).

As discussed yesterday, although there is a requirement in existing law for the PUCO to implement rules for the program, the PUCO already completed that mandate and promulgated rules, effective September 29, 2016 (see O.A.C. 4901:1-43). Therefore, there is no requirement for the PUCO to enact additional rules. Additionally, the brief rules that the PUCO did promulgate consist of two provisions after the definition and purpose sections, which consist of a notice filing and expedited approval process. After the utilities claimed that customer protections were embedded in the law and/or rules, I scoured the law and rules and could not locate any so-called protections. It is actually the opposite.

The proposed law erodes important customer protections and enables natural gas utilities to be fully compensated for potential "economic development" or "infrastructure" projects, regardless of whether the facilities are ever used or the projects ever come to fruition. See R.C. 4929.166 where any property installed or constructed by a natural gas company for an economic development project (established under the amended and new provisions) is deemed to be used and useful in rendering public utility service for ratemaking purposes regardless of whether the facilities are used or useful to customers. And with guaranteed cost recovery of deferrals with interest, the costs associated with the infrastructure development riders are not truly capped.

The OMA supports cost-effective economic development and a strong, competitive Ohio, which can attract businesses, projects, and investments in Ohio. But what role a utility should play and utility-administered economic development programs is a hotly debated subject. These programs are not to be confused with economic development programs administered by state and local governments. The question facing utility

economic development programs is what, if anything, is appropriate activity for a utility to redistribute customer dollars in the name of economic development? A secondary question is how much customers should be mandated to pay and how much measurable benefit should the customer be owed? The issue is compounded by decades of economic development programs harkening back to the era of integrated utilities before deregulation.

While economic development is good for Ohio, above-market customer charges on customers' natural gas bills for undefined, speculative economic development projects are not. Any utility-administered economic development program needs to be reasonable, cost-effective, non-discriminatory, and fair to all customers or potential customers. It also needs to be narrowly tailored as to not be anti-competitive or harm existing customers who have already invested in the state of Ohio.

With the creation of the Ohio Future Fund and existing laws and economic development programs already in place and available, expanding current law is not necessary. For example, many of the natural gas utilities in Ohio already have been authorized to collect through their other capital investment riders (i.e., Capital Expenditure Program riders) hundreds of millions of dollars.

Bottom line, this bill would be a bad deal for Ohio manufacturers and unwise energy policy for the state. As noted yesterday, there is already talks about expanding this type of program to the electric utilities. At a time of surging energy costs facing Ohio residents and businesses, we urge the Senate to reject this language that leaves customers significantly exposed to additional costs without sufficient protections.

Mr. Chairman and members of the committee, thank you for the opportunity to testify. I would be happy to answer any questions.