

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Suburban Natural Gas Company for an)	Case No. 18-1205-GA-AIR
Increase in Gas Distribution Rates.)	

In the Matter of the Application of)	
Suburban Natural Gas Company for)	Case No. 18-1206-GA-ATA
Tariff Approval.)	

In the Matter of the Application of)	
Suburban Natural Gas Company for)	Case No. 18-1207-GA-AAM
Approval of Certain Accounting Authority.)	

**REPLY BRIEF
OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

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I. Introduction

The evidence of record demonstrates that the Stipulation and Recommendation filed May 23, 2019 in these cases (“Stipulation”, Joint Exhibit 1) fails to meet the requirements of the three-part test used by the Public Utilities Commission of Ohio (“Commission”) to evaluate the reasonableness of stipulations. The Signatory Parties to the Stipulation are Suburban Natural Gas Company (“Suburban”) and the Staff of the Commission (“Staff”). Suburban contends that the Stipulation benefits ratepayers and serves the public interest. The Commission should reject this argument.

II. The Stipulation Provides No Benefit to Ratepayers and the Public Interest.

Suburban argues that the Stipulation benefits ratepayers and the public interest. Suburban believes that the Stipulation allows Suburban to provide safe, reliable, and continuous natural gas service. Suburban Brief at 12. Suburban argues that the stipulated rate of return and return on common equity are just and reasonable. *Id.* at 13. Suburban opines that the Stipulation ensures that customers will receive all tax relief to which they are entitled as a result of the Tax Cuts and Jobs Act (TCJA), including carrying charges. *Id.* at 16. Suburban argues that the Stipulation eases the burden on customers by phasing in the rate increase. *Id.* at 17. Suburban cites the provision that customers will receive free meter testing. *Id.* at 19. Suburban emphasizes that the Stipulation includes the Del-Mar pipeline in rate base, providing significant savings to customers as opposed to Suburban making lease payments and passing the lease cost through its Gas Cost Recovery (GCR) rate. *Id.* at 20.

None of the Stipulation provisions cited by Suburban mean that the Stipulation benefits consumers and the public interest sufficiently to pass the Commission's three-part test. The provision of safe, reliable, and continuous service is an obligation of a public utility under any circumstances. Whether a rate increase occurs via a stipulated settlement or through a litigated proceeding, the impact of the increase is the same. The stipulated rate of return and return on common equity were foreshadowed by the Staff Report. Staff Ex. 1. Likewise, the three-year phase-in to rate base of the Del-Mar pipeline is no benefit if the pipeline was not used and useful at date certain, in which case there should be no phase-in at all. Whether the Del-Mar pipeline is properly included in its rate base as of date certain is an issue in dispute in these cases, and that issue is ignored in the Stipulation. The fact that lease payments for the pipeline no longer flow through Suburban's GCR rate is merely the result of Suburban no longer making the lease payments.

The refund to ratepayers for over-payments associated with the TCJA has not been settled by the Stipulation. The refund will be dealt with in a separate proceeding, so the Stipulation provides no benefit to customers in this matter since Ohio law and Commission precedent already require the excess taxes be returned to customers. And the issue, when it is resolved, is a *refund* of ratepayers' money that was *overpaid* by ratepayers to Suburban. To suggest that a return of ratepayers' own funds is a benefit of a stipulation is inaccurate. Suburban has essentially been holding these funds in escrow for the customer since January 2017. There is no bargain or advantage to the ratepayer when the funds are finally returned.

The free meter tests are a small benefit that do not outweigh the harm of the Stipulation. Likewise, the stipulated provision that customers must have at least nine days of service before having to pay the whole fixed monthly customer service charge does not outweigh the harm of the high fixed monthly charge. If the customer charge were set at a reasonable level it would not need to be waived based on an arbitrary trigger.

III. The Stipulation Violates Important Regulatory Principles and Policy.

Suburban argues that the Straight Fixed Variable (“SFV”) rate design has already been determined to be just and reasonable by the Commission. Suburban Brief at 37. No one disputes this. But past Commission precedent in adopting the SFV rate design is not a basis to claim that the Stipulation conforms to the important regulatory principle of “regulatory continuity”. If “regulatory principles” are simply another way of enforcing the status quo, the principles are suspect. It is important for the Commission to recognize when conditions have changed so drastically that a reversal of past precedent is necessary to confront new realities.

When the Commission first adopted the SFV rate design over ten years ago, the gas commodity portion of a customer’s natural gas bill was far and away the largest portion of the bill. This is no longer necessarily true. In adopting the SFV rate design, the Commission’s assumption that gas commodity prices and commodity usage would have the biggest influence on the price signal received by customers has turned out to be false. Case No. 07-829-GA-AIR, Opinion and Order at 24 (October 15, 2008). The price of gas commodity is currently both lower and more stable than when the Commission originally adopted the SFV rate design in

2008. Thus, the premise on which the Commission based its ruling is now incorrect. Instead of gas commodity prices increasing, it is the distribution charge that has skyrocketed and sent a strong price signal to consumers that the price of merely being a customer is too high.

Under the Stipulation, all Small General Service (“SGS”) customers will pay the fixed monthly charge for distribution service of \$33.84 per month regardless of usage. The Commission’s assumption in 2008 was that the charge for distribution service was so trivial in relation to the charges for the commodity that the customer would barely notice the fixed distribution charge. *Id.* But now times have changed. In the summer months, the fixed monthly distribution charge may be the only price on the bill. A low-use customer may be so burdened by the high fixed monthly charge that she may be forced to consider leaving the system rather than pay the high fixed monthly charge for a service the customer barely uses.

In addition to the problem that past precedent is no longer valid and the distribution charge is no longer some trivial sum hardly noticed by customers in relation to commodity charges, the Stipulation ignores the regulatory principles of cost causation and gradualism by adopting a rate design that assigns nearly all the rate increase to low-use customers. The SFV rate design is based on the idea that “fixed” costs should be recovered through fixed charges and all the distribution costs are “fixed”. In the Stipulation, the entirety of Suburban’s distribution charge is the fixed monthly customer charge with no variable component. Funds are recovered irrespective of customer usage.

The SFV concept classifies all costs as “fixed”. But this is a fictive classification. The only costs that are truly fixed are interest and depreciation. All other costs – shareholder return, income taxes, labor, and revenue-sensitive costs -- actually vary from month to month with customer usage. The incorrect classification of costs behind the SFV rate design is used to produce the result of no variable charges. This is a circular justification used simply to eliminate variable charges.

All distribution systems have a Design Day, which is used to plan for system capacity. The Design Day is a function of customer usage. If customers use less, a smaller system could be designed. This is true of the Suburban system, where reductions in heating load for residential and small commercial customers will reduce the capacity needed to serve customers. However, those who use more than the average force the system to be larger than it would be otherwise, so, the reality is that higher usage translates into higher distribution costs for all.

The SFV rate design does not recognize the variations in demand customers impose on the distribution system. This distorts the price signal sent to customers because high-demand and low-demand customers are paying the same amount of “fixed” costs though the demand they impose on the system is different.

SFV sends a price signal that promotes additional consumption. The SFV also serves as a disincentive to conservation because investments to reduce usage generate a lower return on the efficiency investment: probably the most harmful impact of the Stipulation. It is the policy of the State of Ohio to “[e]ncourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods”. Ohio Revised Code 4929.02(A)(4). Establishing high

fixed charges sends a price signal that violates the State policy by subverting investments in efficiency and reducing the potential bill savings and thus the cost-effectiveness of Demand-Side Management (DSM) programs. That is harmful to ratepayers.

It is also counter to State policy as articulated in Ohio Revised Code §4929.02(A)(12): to [p]romote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation. The high fixed charge is the opposite of aligning interests because it establishes a huge barrier to energy efficiency given the diminution of the payback from energy efficiency investments. It also makes conservation almost meaningless; customers are faced with large bills in the summer, when they are using the minimum amount of gas.

There can be no doubt that the SFV rate design harms low-use customers, including most poor households who strive to use less gas but will see no benefit in doing so. This exacerbates the heat or eat dilemma faced by the most vulnerable families. Low-income customers will be driven to turn off gas service and rely on electric space heaters instead. OPAE Ex. 1 at 15.

A fixed customer charge of \$33.84 per month for each residential customer regardless of usage is also difficult for customers to understand. Public understanding and acceptance of ratemaking are also fundamental regulatory principles. Customers expect utility bills to reflect their usage. When customers cannot reduce their utility bill by using less and becoming more efficient, customers will be confused. Moreover, customers are likely to react negatively to receiving high bills in the summer when they are using little to no natural gas.

The Stipulation effectively punishes low-use customers with higher bill increases, while high-use customers experience much lower bill increases. It is inequitable when the responsibility for revenue increases is assigned without regard to whether benefits are received by the customer. High-use customers receive more benefits from the system than low-use customers, but it is the low-use customers who bear the burden of the increase in the customer charge. High-use customers barely notice the increase at all. This inequity violates regulatory principles where those who benefit most from the system should pay in relation to their benefits.

For over a century, utilities have prospered charging volumetric rates. They have recovered a reasonable return on their investment and, as is the situation here, when the recovery is inadequate to cover costs and the return on investment, the utility files a rate case. This is Suburban's first base rate case in over 10 years, so Suburban was clearly recovering adequately without the SFV rate design for a fair number of years.

Contrary to Suburban's argument, the Settlement would have benefited ratepayers and the public interest if it had reversed the Commission's precedent of approving a rate design that allows a very high fixed monthly service charge for distribution service. This failure to recognize that times have changed is harmful to ratepayers and the public interest.

IV. Conclusion and Recommendations

The Commission should recognize the changes in gas markets since the adoption of the SFV rate design and reverse its precedent that the SFV rate design sends the correct price signal to consumers, which it does not. The Commission should also recognize the negative impact the SFV rate design has on energy efficiency programs and consumers' efforts to control their bills. It is popular modern concept to claim that customers are interested in controlling their energy usage. With this rate design, families will get no encouragement since controlling usage will not have a significant bill impact and renders technology investments uneconomic. Therefore, the Commission should adopt a rate design that consists of a reasonably low-fixed charge, with the remaining revenue requirement recovered through volumetric charges. At the least, in the alternative, the Commission should find that any revenue increase approved in these cases should be recovered through a volumetric charge. Instead of the stipulated fixed monthly customer charge of \$33.84 in the first year, the current fixed charge of \$29.42 should be maintained, and the revenue increase should be recovered through a volumetric charge. The Commission should find that there must be some volumetric component to the distribution charge.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Reply Brief will be served electronically by the Commission's Docketing Division upon the persons identified below who are electronically subscribed to these cases on this 16th day of August 2019.

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Summary: Reply Brief electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy