

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Suburban	)	
Natural Gas Company for an Increase in Gas	)	Case No. 18-1205-GA-AIR
Distribution Rates.	)	
In the Matter of the Application of Suburban	)	
Natural Gas Company for Tariff Approval	)	Case No. 18-1206-GA-ATA
In the Matter of the Application of Suburban	)	
Natural Gas Company for Approval of Certain	)	
Accounting Authority	)	Case No. 18-1207-GA-AAM
	)	

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**POST HEARING REPLY BRIEF OF  
SUBURBAN NATURAL GAS COMPANY**

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Kimberly W. Bojko (0069402)  
Carpenter Lipps & Leland LLP  
280 North High Street, Suite 1300  
Columbus, Ohio 43215  
Telephone: (614)-365-4100  
[Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com)  
(willing to accept service by email)

*Counsel for Suburban Natural Gas Company*

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## **I. INTRODUCTION**

The record is clear in this case. Suburban Natural Gas Company (Suburban) placed in service a necessary 4.9-mile pipeline extension within the test year, which is and was used and useful to existing customers as of the date certain. The Staff of the Public Utilities Commission of Ohio (Commission) reviewed the pipeline extension and confirmed that it was used and useful as of the date certain and was in fact placed in service during the test year. Staff Witness Sarver stated: “Suburban’s Extension was in use and useful to Suburban’s current customers at date certain.”<sup>1</sup> Suburban explained that “[a]nyone claiming that the pipeline extension is not fully used and useful to maintain service to our existing customers must ignore the physical reality of our system’s configuration and the laws of physics.”<sup>2</sup>

At hearing, when challenged by OCC on cross-examination, the Staff witnesses confirmed that the pipeline extension was fully used and useful: “Q [by OCC]: But it’s your intention the entire 100 percent is used and useful as of the date certain? A [by Staff Witness Lipthrott]: Absolutely.”<sup>3</sup> Staff Witness Lipthrott continued: “The Company is entitled to – based on Staff’s analysis to 100 percent of that pipeline.”<sup>4</sup> Additionally, Staff Witness Sarver testified that “in this instance I believe that used and useful are synonymous with what took place with the extension.”<sup>5</sup>

The Office of the Ohio Consumers’ Counsel (OCC) spent approximately 32 pages of its initial brief on this topic, but nothing in those 32 pages of misleading statements and selective, partial quotes changes the simple fact that the 4.9-mile pipeline extension is and was used and

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<sup>1</sup> See Staff Ex. 8 at 3 (Sarver Direct) (May 16, 2019).

<sup>2</sup> See Suburban Ex. 5 at 21 (Sonderman Supplemental Direct).

<sup>3</sup> Tr. Vol. IV at 746.

<sup>4</sup> Id. at 747-48.

<sup>5</sup> Tr. Vol. IV at 726.

useful to existing customers as of the date certain. Nothing the Ohio Partners for Affordable Energy (OPAE) references in its brief changes that simple fact either.

OCC makes a recommendation that ignores the record in this case and the reality of how and when natural gas companies add new facilities—and are appropriately allowed to recover the associated costs of those new facilities. In this case, Suburban extended an existing 12-inch high pressure steel pipeline in parallel and integrated with an existing 6-inch high pressure pipeline to increase the pipeline pressure at the southern end of the 6-inch pipeline. Customer growth that already occurred since the existing 12-inch pipeline was initially constructed in 2005 had eradicated the safety margin for the heat-sensitive residential and small commercial customers served in the southern end of Suburban's service territory. The 4.9-mile pipeline extension restores that margin of safe operating pressure for a period of years before additional construction will be required.

Suburban's public service obligation demanded this action because a system failure under extremely cold weather conditions would risk the health and safety of its existing customers. The record evidence establishes that Suburban satisfied its statutory obligation to maintain safe and reliable service to its customers through this pipeline extension.

OCC is asking this Commission to depart from ratemaking principles and practices and exclude in its entirety the invested capital for this essential facility based on the preposterous contention that to qualify for inclusion in rate base it must be operating at peak capacity such that only the bare minimum operating pressure and nothing more is maintained. However, that is not the industry standard or the practice.

OCC is also asking this Commission to depart from precedent. OCC has not identified a single case in reported Ohio regulatory decisions or Supreme Court opinions where its novel

position was accepted with respect to a natural gas company's pipeline that is flowing gas and serving customers. To the contrary, the legal precedent that does exist supports Suburban's Application to include 100 percent of the 4.9-mile pipeline extension in rate base as gas is flowing and the pipeline extension is serving customers and, thus, it is used and useful.<sup>6</sup>

Although Suburban and Staff both agree that the 4.9-mile pipeline extension is and was 100 percent used and useful as of the date certain, in the overall context of a full rate case proceeding settlement, the parties to the settlement (Signatory Parties) agreed that in order to provide additional benefits to customers and to resolve other issues in the proceeding, the recovery for the 4.9-mile pipeline extension would be phased in over three years.<sup>7</sup> Further, as an additional concession and as another benefit to customers, the Signatory Parties agreed that the phased-in revenue increase would be recalculated at each point in time that an additional phase-in is implemented in order to reduce the customer charge if new customers do come on the system as projected. Contrary to OCC's and OPAE's claims, these settlement terms offer significant benefits to customers. This proceeding presented a number of complicated issues related to the rates established for Suburban's provision of natural gas service to its customers. The Stipulation resolves all of the issues in the proceeding (not just the cost recovery of the 4.9-mile pipeline extension) fairly, reasonably, and comprehensively. It is a compromise that not only reflects

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<sup>6</sup> See *In the Matter of the Application of the E. Ohio Gas Co. for Auth. to Amend Its Filed Tariffs to Increase Its Rates & Charges for Gas Serv.*, Case No. 82-901-GA-AIR, Opinion and Order (August 19, 1983), 1983 WL 887796 ("Cleveland objected to the Staff's inclusion of the value of transmission pipelines which have been abandoned by East Ohio. However, company witness Frank testified that the property in question was used and useful at the date certain and still is used and useful, and Cleveland offered no testimony on this issue. This objection must be overruled.") (internal citation omitted). See also *Logan Gas Co. v. Pub. Utilities Commission of Ohio*, 121 Ohio St. 507, 509, 169 N.E. 575, 576 (1929) (Holding the Commission "ignore[d] the value which should be attributed to property of the company, which is 'used and useful,'" where the property in question included tracts of land that produced gas that was furnished to the public).

<sup>7</sup> The Stipulation and Recommendation between Suburban and Staff was filed with the Commission on May 23, 2019 (Stipulation).

significant concessions by Suburban and Staff, but it also incorporates positions taken by the parties contesting the Stipulation through their objections.<sup>8</sup>

The record developed at hearing supports the Commission's adoption of the Stipulation in its entirety because it is just and reasonable, benefits customers, is in the public interest, and does not violate any important regulatory principle or practice.<sup>9</sup> The Staff agrees.<sup>10</sup> OCC's and OPAE's claims to the contrary are without merit and should be rejected.

Pursuant to the briefing schedule established on the final day of hearing,<sup>11</sup> Suburban hereby submits the following reply in support of the adoption of the Stipulation and in response to OCC's and OPAE's initial briefs filed on August 2, 2019.

## **II. LEGAL ARGUMENT**

### **A. The Stipulation Satisfies the Commission's Three-Part Test.**

The Commission has established a three-part test to determine whether stipulations are just and reasonable,<sup>12</sup> and the Supreme Court of Ohio has endorsed the Commission's use of that test to evaluate stipulations entered into for purposes of resolving proceedings before the

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<sup>8</sup> For example, see Staff Ex. 10 at 4, 6-7 (Snider Direct); Staff Ex. 2 at 3-4 (Borer Direct).

<sup>9</sup> See R.C. 4909.18, R.C. 4909.19, and Ohio Adm. Code 4901-1-30(A); see also *In the Matter of the Application of the Waterville Gas and Oil Company for an Increase in Rates for Natural Gas Furnished to Customers in the Unincorporated Areas of Waterville, and Monclova Townships, Lucas County, Ohio and Middletown Township, Wood County, Ohio*, Case No. 77-1284-GA-AIR, Entry on Rehearing (November 1, 1978). See *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider, et al.*, Case Nos. 14-1693-EL-RDR, et al., Opinion and Order at 18 (March 31, 2016).

<sup>10</sup> Staff Br. at 3-6, 12 (August 2, 2019).

<sup>11</sup> See Tr. Vol. V at 771.

<sup>12</sup> See, e.g., *In the Matter of the Application of the Dayton Power and Light Company for an Increase in Its Electric Distribution Rates, et al.*, Case Nos. 15-1830-EL-AIR, et al., Opinion and Order at ¶ 57 (September 26, 2019); *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Its Natural Gas Distribution Rates, et al.*, Case Nos. 12-1685-GA-AIR, et al., Opinion and Order at 20-21 (November 13, 2013).

Commission.<sup>13</sup> The Stipulation in this case resulted from extensive negotiations between the parties, recommends the implementation of just and reasonable rates, benefits Suburban's ratepayers and the public interest, and is consistent with the Commission's regulatory principles and practices. It satisfies the Commission's three-part test and, therefore, should be adopted in its entirety.

**1. The Stipulation Is the Product of Serious Bargaining Among Capable, Knowledgeable Parties.**

Neither OCC nor OPAE dispute that there was serious bargaining among capable, knowledgeable parties. No party contested the testimony of Staff Witness Lipthratt or Suburban Witness Sonderman explaining how the Stipulation satisfies the Commission's first criterion as extensive negotiations took place, several settlement conferences were held, and significant amounts of discovery were exchanged between the parties. Furthermore, neither OCC nor OPAE contested the testimony that the Stipulation satisfies the first prong of the Commission's three-part test.

Additionally, neither OCC nor OPAE contested through testimony or at hearing Staff Witness Lipthratt's testimony concluding that "the Stipulation represents a comprehensive compromise of the issues raised by parties with diverse interests."<sup>14</sup> Nevertheless, in its brief, OPAE attempts to argue that there was a lack of diversity among the Signatory Parties so the first prong of the test has not been satisfied.<sup>15</sup> First, as the Commission has recognized previously,

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<sup>13</sup> See *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994) (citing *Consumers Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992)).

<sup>14</sup> *Id.*

<sup>15</sup> OPAE Brief at 3 (August 2, 2019).



there is no requirement in its three-part test that diversity exist.<sup>16</sup> Second, OPAE implies that commercial customers were not on the settlement; however, OPAE fails to mention that no commercial or industrial customers or organizations intervened in the case so they could not have been Signatory Parties. Lastly, OPAE's claims that the Stipulation must include an organization representing customers lacks merit.<sup>17</sup> The Commission has previously rejected arguments "that any one class of customers can effectively veto a stipulation," holding that the Commission "will not require any single party, including OCC, to agree to a stipulation in order to meet the first prong of the three-prong test."<sup>18</sup>

As the record demonstrates, extensive settlement discussions occurred between knowledgeable, capable parties and the Stipulation is a product of those discussions. Additionally, to the extent that the Commission considers diversity of interests, the only testimony on the issue confirms that diversity does in fact exist. OPAE provided no evidence to the contrary, and thus, its claims are without merit. Therefore, the first part of the Commission's three-part test is satisfied.

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<sup>16</sup> *In the Matter of the Application of Ohio Power Co. for Approval of an Advanced Meter Opt-Out Serv. Tariff*, Case No. 14-1158-EL-ATA, Second Entry on Rehearing (February 1, 2017), 335 P.U.R.4th 459, \*3 ("We agree with AEP Ohio that the 'three-prong test utilized by the Commission and recognized by the Ohio Supreme Court does not incorporate the diversity of interest component, as presented by OCC,' and we have rejected previous attempts by OCC to 'revise the test to evaluate stipulations based on the diversity of signatory parties.'" (citing *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al., Opinion and Order at 52 (Mar. 31, 2016)).

<sup>17</sup> OPAE's Br. at 3.

<sup>18</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of a Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order at 43 (citing *Dominion Retail v. Dayton Power & Light Co.*, Case No. 03-2405-EL-CSS, Opinion and Order at 18 (February 2, 2005)).

**2. The Stipulation, as a Package, Benefits Ratepayers and Serves the Public Interest.**

The Stipulation as a package benefits all parties involved, including Suburban's customers. The Stipulation includes a number of provisions that provide benefits to customers while ensuring that customers are paying rates for natural gas service that are just and reasonable. OCC's and OPAE's claims to the contrary are without merit and should be rejected.

**a. The 4.9-Mile Pipeline Extension Is and Was Used and Useful as of the Date Certain, Benefitting Customers.**

Given the customer growth that already occurred on Suburban's system since the existing 12-inch pipeline was initially constructed in 2005, the 4.9-mile pipeline extension was necessary to restore the margin of safe operating pressure for the heat-sensitive residential and small commercial customers served in the southern end of Suburban's service territory. The record demonstrates that Suburban's engineers recommended, and Suburban prudently selected the length and diameter of the 4.9-mile pipeline extension to ensure that existing customers added to Suburban's system prior to the completion of the pipeline extension have adequate pressure now, and to ensure that the system would continue to provide adequate pressure to Suburban's customers for a reasonable period of time before additional construction will be required. This avoids uneconomic piecemeal construction of extensions and pancaking of rate cases to recover costs for the piecemeal construction.

OCC makes the unsupported—and, unsupportable—claim that the pipeline extension was designed to achieve a pressure at Lazelle Road of “double the safe pressure of 100 psig.”<sup>19</sup> The sponsor of this position, a non-engineer regulatory analyst, opined that “[i]f safe pressure is 100 psig, then building a system to increase pressure to 230 psig proves that you built a system that is

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<sup>19</sup> OCC Brief at 20.

too big to supply current customer demand.”<sup>20</sup> But, OCC’s witness ignores the fact that *100 psig at the Lazelle Road point of delivery is not “safe.”* Suburban’s expert witness, UTI Senior Engineer Grupenhof, testified that “we determined that the pressure needs to be maintained *above a minimum of 100 psig*” at Lazelle Road, the southern end of the six-inch high pressure delivery system.<sup>21</sup> Second, there is not a shred of testimony in the record to support his premise that 230 pounds of pressure at the Lazelle Road point of delivery is excessive. Mr. Sonderman testified that the maximum allowable operating pressure established pursuant to federal regulations is 300 psig for the integrated system.<sup>22</sup>

Mr. Grupenhof explained further, testifying about the pressures experienced at the Lazelle Road point of delivery on January 21, 30, and 31, 2019. On January 21st, the Martin Luther King holiday, he noted that a low temperature at Lazelle Road of -7 degrees Fahrenheit was experienced and pressure dropped from 150 psig at 6:30 a.m. to 110 psig at 7:00 a.m. He noted that, because of the holiday, schools were closed along with banks and government offices and so usage was *less* than typical for a weekday in January.<sup>23</sup> He also testified about January 30th and 31st, when sustained temperatures of -2 degrees Fahrenheit were recorded at the Lazelle Road point of delivery. Both were weekdays with all schools, businesses and government buildings conducting typical operations. On January 30th, the pressure experienced was 125 psig for a sustained period. It did not recover quickly which was a matter of concern for Suburban. More concerning was that on January 31st, the second day of the sustained cold temperature, the pressure at Lazelle Road point of delivery dropped to 105 psig, and stayed there for an hour before “recovering” to 107 psig

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<sup>20</sup> OCC EX. 13 at 12 (emphasis added) (Willis Supplemental Direct).

<sup>21</sup> Suburban Ex. 4 at 5 (Grupenhof Direct).

<sup>22</sup> Tr. Vol. II at 400.

<sup>23</sup> Tr. Vol. II at 320-21.

in the next half hour, and to only 110 psig in the following half hour.<sup>24</sup> Mr. Grupenhof pointed out that if the -7 degree weather on January 21st had instead been experienced on the consecutive dates of January 30th and 31st, “[w]e would have seen this 105 [psig], probably lower, *more likely below 100 pounds.*”<sup>25</sup>

The risk of dropping below that minimum pressure of 100 psig is completely unacceptable to Suburban, risking an extensive outage and loss of service to Suburban’s customers. Mr. Sonderman testified to this fact.<sup>26</sup>

My point here instead of having been a minus 2 day and if the temperature we experienced had been minus 7 on that day, I am absolutely convinced that we would have dropped perilously below 100 pounds which we consider a minimum. We don’t consider that safe. That’s a minimum level and I believe that we would have lost the system and that’s why I say it was a blessing that we didn’t have that temperature on that day before the weather delays that caused the construction of our pipeline to be completed would have protected against.

OCC asks this Commission to ignore the evidence in the record and use its perfect hindsight today to punish Suburban for taking prudent steps to ensure that its customers continue to receive safe and reliable gas service on bitterly cold days in the winter. OCC is playing Monday morning quarterback without a playbook. But Suburban and the Commission cannot wait for a catastrophic loss of service, such as occurred last January in Newport, Rhode Island, to happen in Delaware County, Ohio, placing thousands of customers out of service in frigid temperatures.<sup>27</sup> As the Commission has stated: “Hindsight is always perfect and before the commission will consider

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<sup>24</sup> Tr. Vol. II at 323-24.

<sup>25</sup> Tr. Vol. II at 325-26.

<sup>26</sup> Tr. Vol. II at 388-89.

<sup>27</sup> See Tr. Vol. II at 393-94 where Mr. Sonderman described how an outage caused by low pressure brought on by high demand during a cold time resulted in over 6000 customers in Newport, Rhode Island being left without natural gas service for over three weeks. The extent of this outage was so damaging, that shelters had to be opened to help people with infirmities and medical conditions. Over a thousand gas utility employees were involved in the restoration of service over a period of weeks.

denying a return on property actually used in providing service something more need be shown than that the company's foresight was not."<sup>28</sup>

In its brief, OCC further misstates the record when it claims UTI Senior Engineer Grupenhof testified that the 4.9-mile pipeline extension might be big enough to add 20,000 new customers "precisely where Suburban expects its new customers to be located."<sup>29</sup> The underlying problem with OCC's assertion is that OCC continues to ignore, or does not understand the geographical location of high growth in Suburban's southern system in Marion and Delaware Counties. It is true that Mr. Sonderman testified that the south end of Suburban's system is largely developed and the most significant future development is going to occur to the north.<sup>30</sup> But OCC conveniently ignores the fact that the reference to the "north" is a reference to the northern portion of Suburban's southern system. A review of the maps that Mr. Sonderman referenced throughout his testimony (see Ex. 5, Attachment AJS-1)<sup>31</sup> graphically illustrate that the north terminus of Suburban's southern system is east of Marion at Big Island point of delivery in Marion County (Ex. 5, Attachment AJS-1 at 1, Grid line A)--*many miles to the north of the primary growth area Mr. Sonderman identified* in the middle of Delaware County which over time could continue north to Route 36/37. The Big Island northern terminus of Suburban's southern system is also well to the north of Suburban's primary point of delivery from Columbia Transmission at Somerlot-

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<sup>28</sup> See *Re Columbus & Southern Ohio Electric Co.*, Case No. 77-545-EL-AIR, 0078 WL 494884 (Ohio P.U.C.), Opinion and Order at 14 (August 10, 1978).

<sup>29</sup> OCC Brief at 18.

<sup>30</sup> Tr. Vol. II at 407 ("Again, keep in mind that the line ends right here at that pie at (*sic*: Piatt Road) and although there is some development here, it's going to continue north. Most of it is developed in the south. So, as gas stops here, if you will, it means we have to continue to make sure we've got additional pressure to the stub end of the system. And, right now, the only place to get it is from Somerlot-Hoffman.").

<sup>31</sup> See Suburban Ex. 5, Attachment AJS-1 at 1 of 2 (Sonderman Supplemental Direct).

Hoffman (Ex. 5, Attachment AJS-1 at 1, midway between Grid lines C and D and served only by the six-inch ARCO line).

Importantly, OCC's misstatements point out the dilemma Suburban faced when it recognized the low pressure at Lazelle Road in February 2015. Because the high growth area of Suburban's market lies between the primary delivery point at Somerlot-Hoffman on the north, and Suburban's heaviest concentration of existing customers to the south (as depicted by the abundance of yellow distribution laterals reflected on Exhibit 5, Attachment AJS-1 at 2, from Grid line F through grid line H near the Franklin County line), it was critically important to increase the deliverability of natural gas under the most severe weather conditions actually experienced in February 2015 to maintain safe and reliable service to that heaviest concentration of existing customers at the south end of Suburban's main delivery pipeline.

OCC's brief demonstrates its fundamental misconception of how Suburban's system works. Adding customers to the north of the Somerlot-Hoffman delivery point in Marion County *simply does not affect how natural gas flows south in Suburban's 12-inch and 6-inch integrated system from Somerlot-Hoffman, past the high growth area in mid-Delaware County, to the Lazelle Road terminus of the southern system at the Franklin County line.* The pipeline extension was built to alleviate pressures on the southernmost end of the system. OCC's flawed analysis, misstatements, and non-sequiturs cannot change the realities of the system.

As for Mr. Grupenhof's testimony concerning the addition of 20,000 customers, what he actually stated follows:

So to answer your question, yes, it [the model] was done with GASWorks, and I think you were asking about that 4000 customers so what that was is, you know, we recognize at the end of 2018 that we had to get something built. That obviously was delayed by two months but it is what it is. We recognize that we had to get this thing done by the winter of 2018-2019 to serve those existing customers

because we recognize that the pressures could get too low, and it could cause catastrophic failure on the system.

So beyond that, yes, we thought that once this thing is done and those customers are taken care of and we don't have those low pressure concerns any more, we can then be out of the woods, so to speak, for another 4,000 customers.

And that was a very high level modeling situation. We obviously don't know where 4,000 customers are going to be placed. If they are placed at the south end, it could be 2,000 customers. If they are placed at the north end, it could be 20,000. It was a very high level kind of guess. It gives Suburban some kind of comfort level that when we build this thing, we're not going to have to come back and start on the next phase.

Q. So were you—were you targeting 4,000 customers as the amount above the current customers that you wanted when deciding how long to make the pipeline?

A. No, we were not.

Q. Okay. So you decided on the 4.9 mile pipeline and then backed into about how many extra customers it would handle?

A. That is correct. That was primarily based on some of the OPSB rules and the approval and permitting process in order to get the pipeline built.<sup>32</sup>

Two things are clear from this testimony. First, Suburban's modeling did not solve for a specific targeted growth market--whether 4,000 or 20,000 customers. Instead, UTI's models solved for a desired pressure level at the Lazelle Road point of delivery, and calculated the additional customers that could be served through the extended integrated pipeline system before an additional extension would be required to maintain the desired pressure at the south end of the system on Lazelle Road.

But it is equally clear that the speculative 20,000 customers had nothing to do with the planning for the delivery system in Delaware County south of Route 36/37 and north of Lewis Center Road. Mr. Grupenhof was merely stating that if the growth occurs at the northern terminus in Marion County (which is not the current expectation), the pipeline extension might serve longer before another extension further south is needed. Similarly, if the growth occurs at the southern

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<sup>32</sup> Tr. Vol. II at 273-74.

end of the terminus, the pipeline extension will need to be extended sooner than projected, after only 2,000 additional customers are added. Of course, all this will depend on the type of customer added and the customer's load profile and peak demand. Forecasting models are just that—forecasts. OCC's non-engineer does not and cannot have a crystal ball that can more accurately predict system operations than the UTI engineers who do this for a living. In fact, OCC did not even attempt to conduct any modeling or forecasts. UTI's expert testimony and forecasts are undisputed and must be relied upon.

The UTI modeling that began in 2015 continually predicted that low pressure concerns existed at the Lazelle point of delivery and would become an issue in the winter of 2018-2019.<sup>33</sup> This meant that there was a very real potential that the pressure could drop below the 100 psig threshold and result in catastrophic system outages. Contrary to OCC's assertions, the modeling showed that there was a very real concern with the safety and reliability of the system to meet *existing* customer demands as of the winter of 2018-2019.<sup>34</sup> Mr. Sonderman testified that this modeling validated Suburban's concerns about unacceptably low pressure instances occurring at the Lazelle Road point of delivery.<sup>35</sup>

OCC's selective use of the models and reliance on only the last model in the series of the models, as well as OCC's strained interpretation of the model that it did rely on, should be rejected.<sup>36</sup> OCC seizes on the last model performed on August 31, 2018 that showed a low pressure

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<sup>33</sup> See all models included in Suburban Ex. 9 (December 9, 2015 model projects a pressure of 76.30 psig in 2018; February 3, 2016 model projects a pressure of 71.85 psig in 2018; February 10, 2016 model projects a pressure of 53.27 psig in 2018; April 6, 2017 model projects a pressure of 80.83 psig in 2018 AND a pressure of 17.16 psig in 2019; August 31, 2018 model projects a pressure of 104.27 psig in 2018 EOY AND a pressure of 78.27 psig in 2019).

<sup>34</sup> Id.

<sup>35</sup> Suburban Ex. 5 at 23 (Sonderman Supplemental Direct).

<sup>36</sup> OCC Br. at 15-21.



of 104.27 for 2018 EOY (“End Of Year”) to claim there were no pressure concerns: “But the evidence shows that no such concerns existed until late 2019 or early 2020—well after the date certain.”<sup>37</sup>

First, OCC’s statement is simply not true. There is a plethora of evidence that demonstrates that there would be low pressures in the winter of 2018-19.<sup>38</sup> OCC’s strained interpretation of what EOY means in the model is also disingenuous.<sup>39</sup> EOY means “End of Year.” A pressure of 104.27 psig at 2018 EOY does *not* mean 2019. It means a projection of 104.27 psig by December 31, 2018, which is dangerously low for the winter months. Nonetheless, the coldest months typically occur in January and February.<sup>40</sup> Thus, even with the August 2018 forecast, there were concerns that the pressure could drop below 100 psig in January and February of 2019, which is within the winter of 2018-2019. In fact, that model shows that in 2019, the pressure was projected to drop to 78.72 psig, dangerously below the minimum threshold of 100 psig.

Second, by August 31, 2018, the decision to build the pipeline, the planning for the pipeline, receipt of the requisite regulatory approvals, and financing already had been completed based on the prior models, and the actual staging and construction of the pipeline had already commenced.<sup>41</sup> All this occurred after Staff of the Ohio Power Siting Board recommended approval

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<sup>37</sup> Id. at 15.

<sup>38</sup> See all models included in Suburban Ex. 9 (December 9, 2015 model projects a pressure of 76.30 psig in 2018; February 3, 2016 model projects a pressure of 71.85 psig in 2018; February 10, 2016 model projects a pressure of 53.27 psig in 2018; April 6, 2017 model projects a pressure of 80.83 psig in 2018 AND a pressure of 17.16 psig in 2019; August 31, 2018 model projects a pressure of 104.27 psig in 2018 EOY AND a pressure of 78.27 psig in 2019); also see Suburban Ex. 4 at 6-8 (Gruppenhof Direct) (Mr. Gruppenhof stated that this extension, which now serves customers, “alleviates the risk of a potential catastrophic system failure and associated outages for existing customers.”) and Suburban Ex. 5 at 22-23 (Sonderman Supplemental Direct); Tr. Vol. II at 302-08, 311, 315-16, 326, 330.

<sup>39</sup> OCC Br. at 15, n.79.

<sup>40</sup> Tr. Vol. II at 302.

<sup>41</sup> Id. at 303.

of Suburban's application.<sup>42</sup> Although OCC wants to focus on the August 31, 2018 model, as explained previously, the modeling process to determine the possibility of a catastrophic low-pressure event began in February 2015.<sup>43</sup> Suburban asked UTI's professionals to model pressures at the Lazelle Road point of delivery for three years at multiple points in time to determine the appropriate course of action to ensure customers were protected and that Suburban could maintain safe and reliable service.<sup>44</sup>

Lastly, OCC's recapitulation of the assumptions embedded in the models are inaccurate and misleading. OCC is comparing apples to oranges. The negative 5 degrees referenced was an approximation of an average of the low temperatures experienced for Suburban's entire service area, not a specific location.<sup>45</sup> The models were based on actual temperatures and loads experienced on an extremely cold day in February 2015 at the Lazelle Road point of delivery. Those temperatures ranged from -15 to -2.<sup>46</sup> Thus, had January 30th and 31st been colder, or had the wind chill been greater, or had customers consumed more gas, the pressures would have been dangerously lower.<sup>47</sup> Therefore, had a colder weather event, like the one experienced in February of 2015, occurred in the winter of 2018-2019, the resulting pressure at Lazelle point of delivery would have been lower than what was observed.

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<sup>42</sup> Suburban Ex. 5 at 22 (Sonderman Supplemental Direct); Suburban Ex. 6 at 3 (Staff Report in Case No. 18-54-GA-BLN).

<sup>43</sup> Suburban Ex. 5 at 22 (Sonderman Supplemental Direct).

<sup>44</sup> Id.

<sup>45</sup> Tr. Vol. II at 327-28.

<sup>46</sup> Id.

<sup>47</sup> Id. at 325-26, 328-31.

**b. Suburban Did Consider Potential Alternatives to the 4.9-Mile Pipeline Extension.**

Contrary to assertions by OCC,<sup>48</sup> the record clearly supports the length of extension that Suburban decided to construct and that Suburban did in fact consider alternative design scenarios. Suburban Witness Grupenhof stated that “[b]ased on the modeling results and a variety of other factors, UTI recommended a 4.9-mile extension of the 12-inch high pressurized DEL-MAR pipeline.”<sup>49</sup>

Staff acknowledged that length is one of the factors that the utility needs to consider when making a decision. But then Staff explained that Staff relies on the Company and its engineers to determine what is the best solution to address system pressure issues and the future needs of the Company.<sup>50</sup>

Tellingly, while OCC cites Staff testimony to note that Staff looks at length and diameter to determine whether a pipeline is used and useful, instead of quoting Staff’s conclusion after they reviewed the length and diameter of the extension to determine it was used and useful, OCC makes up its own conclusion.<sup>51</sup> The fact is that Staff did consider the length and diameter of the pipeline design. But, to OCC’s dismay, after completing its analysis, Staff Witness Sarver stated: “I think that the pipeline in question was built to serve the existing customers but also to recognize the future needs of Suburban's system.”<sup>52</sup> Staff Witness Sarver also explained how he believed Mr.

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<sup>48</sup> OCC Br. at 27.

<sup>49</sup> Suburban Ex. 4 at 6 (Grupenhof Direct) (June 7, 2019).

<sup>50</sup> Id. at 725.

<sup>51</sup> OCC Br. at 14.

<sup>52</sup> Tr. Vol. IV at 724.

Grupenhof's testimony and recommendation to construct a 4.95 pipeline was based upon an appropriate analysis and was reasonable.<sup>53</sup>

But also [Mr. Grupenhof] followed that statement up with as soon as we put X pipe length of pipe in the ground, we are going to be back in here doing the process over and over again. So do you want to do it in increments of a mile? Do you want to do it in increments of 2 miles? What is the decision that the Company needs to make so that it doesn't continually spend time assessing pressures at the south end of the system? That point he did bring up.

Staff Witness Sarver also disputed OCC's assertion that Suburban failed to perform alternatives: "From the testimony that I heard from the engineer on Wednesday, they looked at more than one scenario. The 5 mile and 4.95 is what ultimately was decided upon but there was more than one consideration as to the length of pipe."<sup>54</sup>

OCC conveniently ignores the fact that Staff considered length, as OCC states they should, and arrived at the correct conclusion: the 4.9-mile pipeline extension was used and useful and should be included in rate base. OCC's non-expert conclusory statements to the contrary are unsubstantiated, hold no weight, and should be rejected.

**c. Phasing in the Inclusion of the Used and Useful 4.9-Mile Pipeline Extension in Rate Base Benefits Customers and Results in Just and Reasonable Rates.**

The Stipulation that phases in the proposed rate increase over three years is clearly a benefit to customers and is in the public interest.<sup>55</sup> This phase-in of the revenue requirement is a result of Suburban's agreement to include less than the full book value of the 4.9-mile pipeline extension in rate base for the first two years that new rates are in effect, with 50 percent of the book value included in the first year, 80 percent in the second year, and 100 percent in the third year.<sup>56</sup>

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<sup>53</sup> Id. at 732-33.

<sup>54</sup> Id. at 732.

<sup>55</sup> Staff Ex. 9 at 10 (Lipthrott Direct); Joint Ex. 1 at Attachment A (Stipulation).

<sup>56</sup> Id. at 5-6.

Although Suburban already incurred costs to construct and place in operation an absolutely essential 4.9-mile pipeline extension that Staff determined to be 100 percent used and useful to existing customers to ensure adequate pressure to customers at the very southern end of Suburban's 6-inch steel pipeline,<sup>57</sup> the Stipulation allows a portion of the rate increase to be withheld during the first and second years that new rates are in effect.

By agreeing not to charge customers 100 percent of the rate increase associated with the pipeline and phase-in used and useful plant over a three-year period rather than including the entire value in the first year, Suburban has agreed to provide significant benefits to customers by forgoing revenue associated with the costs for the pipeline extension that it has already incurred. The revenue increase with the full value of the pipeline extension included in rate base is \$1,778,433.00.<sup>58</sup> Thus, in the first year of the new rates, customers would save \$610,403.00 and in the second year, customers will save \$246,155.00.<sup>59</sup>

The Stipulation also includes a recognition of future customer growth by recalculating the customer charge based on the then current number of customers at the end of the first and second years.<sup>60</sup> The savings to ratepayers from phasing in the revenue increase are magnified by the additional value of the agreement to recalculate the customer count used to determine the customer charges at the time each additional portion of the book value of the pipeline extension is placed into rate base.<sup>61</sup> This means that Suburban's revenue requirement will be spread among more customers than existed at date certain in this case, thus reducing the share of that revenue

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<sup>57</sup> See Tr. Vol. IV at 736; 746.

<sup>58</sup> Joint Ex. 1 at 4 (Stipulation).

<sup>59</sup> See *id.*

<sup>60</sup> *Id.* at 9-10; See also Joint Ex. 1 at 4 (Stipulation).

<sup>61</sup> *Id.* at 6.

requirement that each individual customer is responsible for through rates. This unusual step of recalculating the customer count will benefit all customers as the remaining value of the pipeline extension is added into rate base.<sup>62</sup>

**d. Straight Fixed Variable Rates are Just and Reasonable.**

In their briefs, OCC and OPAE continue to object to the continuation of Suburban's recently-approved Straight Fixed Variable (SFV) rate design.<sup>63</sup> Suburban proposed no change in its rate design in this proceeding. This issue has been litigated and decided by the Commission numerous times.<sup>64</sup> In its decisions, the Commission has repeatedly and consistently approved SFV rate designs for natural gas utilities. OCC was involved in the most recent proceeding adopting the SFV rate design, but chose not to contest the SFV rate design.<sup>65</sup> OPAE also did not oppose the implementation of the SFV rate design by Suburban.<sup>66</sup> As discussed in Suburban's brief, OCC and OPAE presented only unsubstantiated opinion as the sole basis for deviating from Suburban's recently-approved rate design in their testimony.<sup>67</sup> Their briefs are similarly unpersuasive.

While OCC and OPAE witnesses both concede that the Commission has been implementing SFV rate design for over ten years and that Suburban's SFV rate design was

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<sup>62</sup> Staff Witness Lipthrott characterized this provision as a key benefit of the Stipulation: "As part of the Stipulation customer counts will be updated based on actual bill counts at the time the Del-Mar Extension is phased-in. Consequently the customer charge will be lower than it would have been without the phase-in." Staff Ex. 9 at 9-10 (Lipthrott Direct).

<sup>63</sup> OCC Br. at 33-34; OPAE Br. at 7-13.

<sup>64</sup> See the most recent instance, *In the Matter of the Application of Suburban Natural Gas Company for Approval of an Alternative Form of Regulation to Initiate a Revenue Decoupling Mechanism*, Case No. 17-594-GA-ALT, Finding and Order at ¶ 46 (November 1, 2017) (Suburban SFV Order).

<sup>65</sup> See Suburban Ex. 16 (Letter to Commission Filed by OCC in Case No. 17-594-GA-ALT).

<sup>66</sup> See Tr. Vol. III at 514-15.

<sup>67</sup> Suburban Br. at 37-39.

approved less than two years ago,<sup>68</sup> both parties continue to argue that the Commission needs to change its policy because the industry has changed “dramatically” and “drastically” since the Commission first approved the SFV rate design policy.<sup>69</sup> Neither party, however, truly explained what has changed so “dramatically” or “drastically” in the past two years to warrant a change from the precedent established for this gas utility less than two years ago. The fact remains that neither party has provided probative evidence of a change in condition that has occurred since 2017 that would lead the Commission to determine that its reasoning in Suburban’s prior case was flawed and must be changed or the issue revisited. Arguments about high customer charges or rate increases that cause fixed rates to rise,<sup>70</sup> or novel policy ideas to place any rate increase amount into a volumetric rate<sup>71</sup> are without merit and insufficient to overcome the Supreme Court of Ohio’s long-standing directive for the Commission to respect its own precedents in order to “assure predictability which is essential in all areas of law, including administrative law.”<sup>72</sup>

The basis for continuing the SFV rate design is as sound now as it was two years ago and neither OCC nor OPAE has identified any basis whatsoever for abandoning a rate design identical to that already in place.

**e. The Established Rate of Return is Just and Reasonable.**

The Stipulation provides for a just and reasonable rate of return of 7.26 percent and a return on common equity of 10.25 percent. The stipulated recommendations are supported on Schedule

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<sup>68</sup> See OCC Ex. 12 at 6 (Fortney Supplemental Direct); OPAE Ex. 1 at 10-11 (Rinebolt Direct).

<sup>69</sup> OCC Br. at 33; OPAE Br. at 8.

<sup>70</sup> OPAE Br. at 9-13.

<sup>71</sup> OCC Br. at 33-34.

<sup>72</sup> See *In re Duke Energy Ohio, Inc.*, 150 Ohio St. 3d 437, 443, 2017-Ohio-5536, 82 N.E.3d 1148, ¶ 23 (internal citations omitted).

D-1, which was attached to the filed Stipulation.<sup>73</sup> OCC states that the stipulated rate of return of 7.26 percent should be rejected “because it is based on PUCO Staff’s flawed analysis and will force customers to pay unreasonable rates.”<sup>74</sup> Again, OCC’s statement is simply inaccurate. The rate of return is that which was proposed in Suburban’s Application and which was supported by Suburban Witness Clement.<sup>75</sup> It was not the “result of PUCO Staff’s unreasonable use of a 20-year average of the returns on equity granted for United States gas distribution utilities with rate bases under \$100 million” as OCC states.<sup>76</sup> Rather, Staff Witness Buckley expressed his support for any rate of return within Staff’s range that was included in the Staff Report.<sup>77</sup> Specifically, Mr. Buckley explained how the 7.26 percent rate of return in Suburban’s Application is well within the appropriate range as determined by Staff in its Staff Report.<sup>78</sup> He further explained how the stipulated 7.26 percent is also within the range that OCC supported in its objections.<sup>79</sup> Accordingly, OCC’s critique of Staff’s methodology included in its Staff Report is moot as that was not the basis for the stipulated rate of return.

Moreover, not only is the stipulated rate of return consistent with the proper application of *Bluefield*,<sup>80</sup> it is also consistent with the rate of return approved for other public utilities in the state

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<sup>73</sup> See Joint Ex. 1 at Schedule D-1 (Stipulation).

<sup>74</sup> OCC Br. at 34.

<sup>75</sup> See Suburban Ex. 2 at 11-12 (Clement Direct); Suburban Ex. 3 at 11 (Clement Supplemental Direct).

<sup>76</sup> OCC Br. at 34.

<sup>77</sup> Staff Ex. 7 at 5 (Buckley Direct).

<sup>78</sup> Id.

<sup>79</sup> Id.

<sup>80</sup> See *Bluefield Water Works v. Public Service Comm’n*, 262 U.S. 679 (1923)). As explained in Suburban’s Br. at 14, OCC Witness Duann does not properly apply *Bluefield*, rendering his analysis flawed. Cf Suburban Ex. 2 at 11-12 (Clement Direct) with Tr. Vol. III at 634-38 and OCC Ex. 14 at 7-8 (Duann Supplemental Direct).



of Ohio. On cross-examination, OCC Witness Duann was unable to identify any cases for Ohio utilities that earned a lower rate of return than the one proposed by the Stipulation.<sup>81</sup>

It is clear that the Stipulation provides a benefit to customers in that the Stipulation is recommending a rate of return for Suburban that is lower than other public utilities within the state of Ohio. Suburban's customers will be responsible for paying a lower return on investment than the customers of other public utilities in Ohio. Accordingly, the Commission should disregard OCC's assertions and find that the stipulated rate of return is just and reasonable.

**f. The Provision of Safe, Reliable, and Continuous Natural Gas Service Benefits Customers.**

As explained in Suburban's brief, it is critically important that Suburban be able to provide safe, reliable, and continuous natural gas service to its residential, commercial, and industrial customers under all conditions.<sup>82</sup> Mr. Sonderman explained that currently, with Suburban operating under rates established more than ten years ago, that objective is threatened as Suburban is not collecting sufficient revenue to provide its employees with appropriate salaries and benefits, pay the necessary costs of providing service and maintaining and upgrading equipment, and purchase materials and supplies at increasing costs.<sup>83</sup> The Stipulation allows Suburban to continue to provide the safe, reliable, and continuous service that its customers expect while also charging those customers rates that are just and reasonable. The ability of Suburban to meet all of its obligations to its customers without charging exorbitant rates is a significant benefit afforded to customers by this Stipulation.

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<sup>81</sup> See Tr. Vol. III at 666.

<sup>82</sup> Suburban Br. at 12 (citing Suburban Ex. 5 at 17 (Sonderman Supplemental Direct)).

<sup>83</sup> Id.

**g. Tax Relief, Including Carrying Charges, Benefits Customers.**

Contrary to OP&E's assertion,<sup>84</sup> the Stipulation provides benefits to customers by ensuring that customers receive the full benefit of the Tax Cuts and Jobs Act of 2017 (TCJA), *including carrying charges* for money collected since the law went into effect. Through the Stipulation, Suburban commits to reversing the regulatory liability amortization proposed in the Application, adjusting base rates to reflect the impact of the TCJA, passing back protected Excess Deferred Income Taxes (EDIT) to customers using the Average Rate Assumption Method (ARAM), and filing an application not for an increase in rates in order to establish a Tax Credit Rider to return over-collected income taxes to customers, *including a one-time carrying charge in the initial rate based upon the long-term debt rate as applied to the monthly balance of deferrals to reflect the time lag in implementing the federal income tax savings in rates.*<sup>85</sup>

Although Suburban believes that resolving certain terms of the TCJA in this case is a benefit to customers, the agreement in the Stipulation for Suburban to provide carrying costs on the refunded amount is a direct, monetary benefit to customers. Without the Stipulation, Suburban is not required to provide customers with interest on the amount that will be refunded to customers. This concession as part of this proceeding is a clear benefit to customers.

**h. Requiring Suburban to File a Rate Case in 2025 Benefits Customers.**

The Stipulation requires Suburban to file a new distribution rate case by October 31, 2025.<sup>86</sup> By making this commitment Suburban agrees to expend significant resources to undergo an extensive review of its financial state to determine whether the rates being charged

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<sup>84</sup> OP&E Br. at 6-7.

<sup>85</sup> See Joint Ex. 1 at 12-13 (Stipulation) (emphasis added).

<sup>86</sup> See Joint Ex. 1 at 13 (Stipulation).

are just and reasonable roughly six years after the implementation of the rates established in this proceeding.

In addition to the phase-in stipulated term discussed previously, this stipulated term addresses concerns raised by the parties that increased customer growth will result in excessive revenue to Suburban once new rates are put into effect. Assuming that Suburban's recent growth continues,<sup>87</sup> adding additional customers to the system would spread Suburban's future revenue requirement among the then-existing customers, thus reducing the share of the revenue that each customer is responsible for at that time.

**i. The Stipulation Provides Additional Benefits to Customers.**

Contrary to OCC and OPAE's briefs,<sup>88</sup> the Stipulation provides additional benefits to customers concerning their meters, natural gas service, and charges for their service. While not an exhaustive list, the Stipulation provides the following additional benefits:

- Suburban will provide all customers with one free meter test every three years and a standard meter will be provided to all SGS customers who require one;<sup>89</sup>
- Bills of larger customers that are billed on a volumetric basis under Rate LGS or Rate LGTS will include a Btu adjustment to protect customers against being adversely harmed by variations in thermal content of the volumes delivered;<sup>90</sup>
- The 20-mile DEL-MAR pipeline that has been serving customers since 2005 and that Suburban had previously been leasing will be included in rate base, resulting in a net reduction in Suburban's request for a rate increase.<sup>91</sup> The lease costs, which totaled \$1,631,672 in 2018, will no longer be collected through Rider GCR;<sup>92</sup>
- Suburban agreed to accept less than full recovery of contributions to employee 401k accounts;

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<sup>87</sup> See Suburban Ex. 5 at 3, 20 (Sonderman Supplemental Direct).

<sup>88</sup> OCC Br. at 11-35; OPAE Br. at 5-7.

<sup>89</sup> Joint Ex. at 11 (Stipulation).

<sup>90</sup> See Suburban Ex. 5 at 11-12 (Sonderman Supplemental Direct).

<sup>91</sup> Id.

<sup>92</sup> Suburban Ex. 5 at 24-25 (Sonderman Supplemental Direct).

- Suburban agreed to forgo inclusion of known and measureable wage increases that took effect April 1, 2019;
- Suburban agreed to forgo inclusion of amounts associated with miscellaneous revenues for late payment fees, sales of merchandise, sales-Labor, meter setting fees, and NSF/bad check charges as base revenue;
- Suburban accepted other various adjustments to rate base;
- Suburban accepted a reduction in test year expenses in certain accounts;<sup>93</sup>
- The establishment of a fixed charge of \$33.84 instead of the charge of \$41.86 proposed in the Application;<sup>94</sup> and
- The inclusion of various customer protections, such as no customer service charge when the days of usage in a billing period for the customer are less than eight days.<sup>95</sup>

Ultimately, the ability of the Stipulation to provide all of these benefits to customers while maintaining safe, reliable, and continuous natural gas service without charging unjust or unreasonable rates satisfies this second prong of the Commission's three-part test for evaluating stipulations.

### **3. The Stipulation Does Not Violate Any Important Regulatory Principles or Practices.**

The final criterion that the Commission considers in evaluating stipulations is whether the stipulation in question violates any regulatory principles or practices. The Stipulation filed in this proceeding does not. OCC's arguments that the phase-in of the 4.9-mile pipeline extension cannot be authorized by the Commission and that the phase-in and rate of return create unjust and unreasonable rates are not supported by the record and must be rejected.<sup>96</sup> Additionally, OPAE's contention that the Stipulation's continuation of the SFV rate design created by "obsolete precedents" violates regulatory practices and harms customers is without merit and must be

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<sup>93</sup> See Suburban Ex. 5 at 5, 10, 18 (Sonderman Supplemental Direct).

<sup>94</sup> Staff Ex. 9 at 10 (Lipthrott Direct).

<sup>95</sup> Id.

<sup>96</sup> OCC Br. at 35-37.

rejected.<sup>97</sup> The Stipulation is consistent with sound regulatory practices and procedures, is supported by the record, and should be adopted.

**a. The Pipeline Extension Is Properly Included in Rate Base.**

Suburban expended millions of dollars of borrowed funds approved by the Commission in order to complete the necessary extension. It received regulatory approval of the construction plan for this project from the Ohio Power Siting Board and financing approval from the Commission. The Staff determined that the 4.9-mile pipeline extension is and was 100 percent used, and completely useful as of the date certain of February 28, 2019.

Suburban is not unique. All natural gas companies in Ohio plan and build their facilities to address pressure issues to maintain appropriate levels of service to their existing customers while new customers are added. Routinely these capital projects are included in rate base. As reflected in R.C. 4909.15 and the Standard Filing Requirements for Rate Increases for Small Utilities, the jurisdictional rate base is permitted to include construction work in progress 75 percent complete.<sup>98</sup> So even if not completed by the test year end, provision is made to include in rate base any construction that is 75 percent complete. Even ongoing capital projects are to be accorded rate base treatment to the extent completed. The same principles must be applied to Suburban.

As OCC recognizes in its brief, the Commission “must follow the ‘mandatory ratemaking formula under R.C. 4909.15’”<sup>99</sup> R.C. 4909.15 states that when determining and fixing just and

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<sup>97</sup> OPAE Brief at 7-9.

<sup>98</sup> R.C. 4909.15 (“The commission, in its discretion, may include in the valuation a reasonable allowance for construction work in progress but, in no event, may such an allowance be made by the commission until it has determined that the particular construction project is at least seventy-five per cent complete.”); Appendix A, Ohio Adm. Code Chapter 4901-7 at 142 of 164 (“Jurisdictional Rate Base Summary,” Line No. 4).

<sup>99</sup> OCC Brief at 35 (citations omitted).

reasonable rates, the Commission must consider the valuation of property of the public utility that is “used and useful” in rendering the public utility’s service. Thus, when property is used and useful to serving customers, its value must be included in rate base. Suburban agrees. As the Court in *Columbus Southern Power Co.* held, Suburban is required to receive rates that produce a revenue requirement sufficient to compensate Suburban for the value associated with 100 percent of the 4.9-mile pipeline extension.<sup>100</sup> Under the Court’s decision, the Commission could not sua sponte order Suburban to collect something less than 100 percent if the Commission finds that the pipeline is used and useful. However, nothing prevents Suburban from agreeing to accept something less in the context of a settlement.

Staff agrees that the Stipulation does not violate any regulatory policy or practice.<sup>101</sup>

“In any negotiation the Company -- or any intervening party may believe there's plant-in-service that is appropriate for recovery, and another party may disagree. Under [OCC's] scenario it sounds like that party is ineligible for negotiation purposes not to recognize that plant for -- for ratemaking purposes. The Company is entitled to -- based on Staff's analysis to 100 percent of that pipeline. You know, as a benefit to customers, [the Company is] willing to forego some of that revenue requirement for two years. Again, a benefit, a benefit to their customers and an attempt to compromise and avoid litigation costs, so I don't see any violation of regulatory principles in play here.”

**b. The SFV Rate Design Has Already Been Determined to Be Just and Reasonable by the Commission.**

As discussed above, and contrary to OCC’s and OPAE’s arguments, the inclusion of the SFV rate design in the Stipulation does not violate any regulatory policy or practice. The basis for continuing the SFV rate design is the same now as it was two years ago and neither OCC nor

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<sup>100</sup> *Columbus S. Power Co. v. PUCO*, 67 Ohio St.3d 535, 620N.E.2d 835 (1993).

<sup>101</sup> Tr. Vol. IV at 747-48.

OPAE has identified any policy basis or otherwise for the Commission to abandon its own precedent.

### **III. CONCLUSION**

The Stipulation before the Commission allows Suburban to implement a necessary base rate increase while also providing several benefits to customers, including a reduction in charges to customers through the Gas Cost Recovery Rider, a phase-in of a used and useful pipeline extension, recalculation of the customer charge upon the addition of new customers, assurances that customers will receive the benefit of tax savings including carrying charges, and other benefits. The Stipulation proposes just and reasonable rates, complies with Ohio law, and is a product of significant bargaining and reflects several concessions made by Suburban in order to provide benefits to customers beyond the continued safe and reliable provision of natural gas service at just and reasonable rates.

The Staff and Suburban agree that the Stipulation satisfies the Commission's three-part test and recommend its adoption. For the reasons specified herein, Suburban respectfully requests that the Commission adopt the Stipulation and Proposed Tariffs and authorize Suburban to implement rates as specified therein.

Respectfully submitted,  
/s/ Kimberly W. Bojko  
Kimberly W. Bojko (0069402)  
Carpenter Lipps & Leland LLP  
280 North High Street, Suite 1300  
Columbus, Ohio 43215  
Telephone: (614)-365-4100  
[Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com)  
(willing to accept service by email)

*Counsel for Suburban Natural Gas Company*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail August 16, 2019.

/s/ Kimberly W. Bojko  
Kimberly W. Bojko

*Counsel for The Suburban Natural Gas Company*

Robert Eubanks  
Werner Margard  
Office of the Ohio Attorney General  
30 East Broad Street  
Columbus, Ohio 43215  
[robert.eubanks@ohioattorneygeneral.gov](mailto:robert.eubanks@ohioattorneygeneral.gov)  
[werner.margard@ohioattorneygeneral.gov](mailto:werner.margard@ohioattorneygeneral.gov)

Christopher Healey  
Angela O'Brien  
Office of the Ohio Consumers' Counsel  
65 East State Street, 7th Floor  
Columbus, Ohio 43215-4213  
Telephone: (614) 466-9571  
[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)  
[angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)

Colleen L. Mooney  
Ohio Partners for Affordable Energy  
PO Box 12451  
Columbus, OH 43212-2451  
Telephone: (614) 488-5739  
[cmooney@opae.org](mailto:cmooney@opae.org)



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