

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**BRIEF ON REMAND
OF
SUBURBAN NATURAL GAS COMPANY**

I. INTRODUCTION

The record evidence in this case is unambiguous. The evidence overwhelmingly demonstrates that the entire 4.9-mile pipeline extension that Suburban Natural Gas Company (Suburban) constructed and placed in service was used and useful as of the date certain and benefits existing customers. After hearing the evidence in the case, the Public Utilities Commission of Ohio (Commission or PUCO) found that Suburban adequately demonstrated that the 4.9-mile pipeline extension was necessary to serve existing customers as of February 28, 2019.¹ The Commission specifically concluded that “the extension *was both used and useful* to Suburban’s customers as of the date certain.”² The Commission further explained that “the extension was both

¹ Opinion and Order at ¶ 121 (Sept. 26, 2019).

² *Id.*

used by customers as of date certain and useful to them because it provided safe and reliable service at that time.”³

Upon rehearing, the Commission affirmed its findings, reiterating that the 4.9-mile pipeline extension was used and useful as of the date certain under R.C. 4909.15, and that “the evidence presented during the hearing supports the entire 4.9 [] pipeline extension.”⁴ The Commission’s findings based on the record evidence in the case are clear and should be affirmed on remand.

II. BACKGROUND

As the record demonstrates, Suburban constructed and placed in service a necessary 4.9-mile pipeline extension to its existing Central Ohio natural gas system in response to a series of dangerous cold weather events, increased demand, and low pressure concerns. Based on modeling and input from utility engineering experts, Suburban determined that a 4.9-mile extension was necessary to protect its customers and its system by ensuring that pressure in its natural gas system remained above the minimal levels necessary to deliver safe and reliable service to its customers.

Suburban filed an application for an increase in rates on August 31, 2018, in part, to place the plant in question in rate base and recover the costs associated with the pipeline extension. After parties submitted objections to the Staff Report and participated in several settlement meetings, Suburban and the Commission Staff filed a Joint Stipulation and Recommendation on May 23, 2019 (Stipulation). After the entire pipeline extension had been constructed and placed in service, the signatory parties agreed that the 4.9-mile extension had been used and useful as of the date

³ Opinion and Order at ¶ 121 (Sept. 26, 2019).

⁴ Second Entry on Rehearing at ¶ 19 (Apr. 22, 2020).

certain, and determined that the book value of the extension was to be phased into Suburban's rate base over a three-year period in order to mitigate the associated rate increase.⁵

Ultimately, after a full hearing on the Stipulation and the issues contained therein, the Commission adopted the Stipulation in an Opinion and Order issued September 26, 2019. As explained previously, the Commission considered the Stipulation and issues surrounding the pipeline extension and concluded that Suburban had "adequately demonstrated that the 4.9-mile pipeline extension *was necessary* to serve *existing customers* as of February 28, 2019."⁶

Despite these findings, the Office of the Ohio Consumers' Counsel (OCC) appealed the Commission's decision to the Supreme Court of Ohio (Court). While OCC challenged many aspects of the Commission's Opinion and Order approving the Stipulation, the Court rejected all of OCC's arguments, save one. The Court held that OCC failed to demonstrate that the phase-in of rates harmed consumers,⁷ and refused to find that the Commission's decision was against the weight of the evidence.⁸ But, the Court did conclude that the Commission's decision relied on an incorrect application of the used-and-useful standard found in R.C. 4909.15(A)(1).⁹ As such, the Court remanded the case back to the Commission for the limited purpose proper application of the used-and-useful standard to the facts of the case. Importantly, the Court did not deem the rates or any portion of them unlawful. Instead, it directed the Commission to apply the applicable legal standard to the record of the case.

⁵ Joint Ex. 1, Joint Stipulation and Recommendation at 5-6 (May 23, 2019).

⁶ Opinion and Order at ¶ 121 (Sept. 26, 2019).

⁷ *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224 (Sept. 21, 2021), ¶ 42 (Court Decision).

⁸ *Id.* at ¶ 44

⁹ *Id.* at ¶ 27.

The Court gave one instruction: “We remand to the PUCO to apply the appropriate standard.”¹⁰ In doing so, the Court noted that the actual “application of the relevant legal standard to the facts is something that is best left to the PUCO in the first instance.”¹¹ As such, when applying the appropriate standard, the Commission is free to reach the same decision as it did previously. Indeed, given the overwhelming record in this case, finding that the entire 4.9-mile pipeline extension was used and useful as of the date certain is the only possible outcome on remand.

III. ARGUMENT

A. The record evidence overwhelmingly demonstrates that the entire 4.9-mile pipeline extension was used and useful as of the date certain.

The Court remanded these proceedings to the Commission to “evaluate the evidence and determine whether the 4.9-mile pipeline extension was used and useful as of the date certain.”¹² The Court further explained that “there is no question that the entire 4.9-mile pipeline extension was used on the date certain—gas unquestionably flowed through the pipeline extension.”¹³ Instead, the question on remand is whether the 4.9-mile extension was useful as of the date certain. The Court further noted that OCC concedes that two miles of the extension were useful as of the date certain, but disputes the usefulness of the remaining 2.9 miles.¹⁴

¹⁰ Court Decision at ¶ 35.

¹¹ *Id.*, citing *In re Complaint of Wingo v. Nationwide Energy Partners, L.L.C.*, 163 Ohio St.3d 208, 2020-Ohio-5583, 169 N.E.3d 617, ¶ 26.

¹² Entry at ¶ 13 (October 6, 2021), citing Court Decision at ¶ 35.

¹³ Court Decision at ¶ 21.

¹⁴ *Id.*

In pertinent part, R.C. 4909.15(A) states:

(A) The public utilities commission, when fixing and determining just and reasonable rates, fares, tolls, rentals, and charges, shall determine:

(1) The valuation as of the date certain of the property of the public utility used and useful or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be used and useful as of the date certain, in rendering the public utility service for which rates are to be fixed and determined. The valuation so determined shall be the total value as set forth in division (C)(8) of section 4909.05 of the Revised Code, and a reasonable allowance for materials and supplies and cash working capital as determined by the commission.

In the Court Decision, the Court admits that the word useful is not defined by the statute, but states that “‘useful’ in [R.C. 4909.15(A)] means ‘advantageous’ or ‘beneficial,’” and so, to be included in rate base, “the property must be beneficial in rendering service for the convenience of the public as of the date certain.”¹⁵ The record evidence in this case clearly demonstrates that the entire 4.9-mile extension was beneficial in rendering safe and reliable service for the convenience of the public as of the date certain.

Suburban has an obligation to provide safe and reliable service to its customers. The provision of safe and reliable service is a reoccurring theme throughout Ohio laws and regulations governing natural gas distribution service. For example, regarding the provision of “both residential and nonresidential gas or natural gas service,” Ohio regulations “[are] intended to promote reliable service to consumers and the public, and to provide minimum standards for uniform and reasonable practices.”¹⁶ It is the policy of the state of Ohio, to “[promote] the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods.”¹⁷ The Commission’s general supervisory authority over public utilities, including gas

¹⁵ Court Decision at ¶ 25 (citing *Columbus v. Pub. Util. Comm. of Ohio*, 62 Ohio St.3d 430, 436, 584 N.E.2d 646 (1992)).

¹⁶ Ohio Adm.Code 4901:1-13-02(A).

¹⁷ R.C. 4929.02(A)(1).

companies such as Suburban, includes review of how “their properties are...operated, managed, and conducted with respect to the adequacy or accommodation afforded by their service, [and] the safety and security of the public.”¹⁸

Even OCC’s own witness agreed that Suburban has an obligation to maintain safe and reliable service, and that the extension will allow Suburban to provide safe and reliable service to customers.¹⁹ Therefore, the entire 4.9-mile pipeline extension was used and useful in meeting this obligation. As Suburban Witness Sonderman testified, “[it] is critically important that Suburban has the resources to provide safe, reliable, and continuous natural gas service to residential, commercial, and industrial customers under all economic and meteorological conditions.”²⁰

Additionally, when applying R.C. 4909.15 to the facts of this case, it is clear that the value of the entire 4.9-mile pipeline extension should be included in rates as the “property of the public utility [was] used and useful or, with respect to a natural gas *** company, [was] projected to be used and useful as of the date certain, in rendering the public utility service for which rates are to be fixed and determined.” R.C. 4909.15(A). OCC has failed to provide any evidence to the contrary.

1. Record evidence demonstrates that the entire 4.9-mile pipeline extension was useful as of the date certain, as it benefits customers by providing safe and reliable service and adequate reserve capacity.

First, the entire 4.9-mile pipeline was constructed, completed, and placed in service February 22, 2019, which was prior to the date certain.²¹ The pipeline was providing gas service to customers as of the date certain and was beneficial to customers as of the date certain. As noted

¹⁸ R.C. 4905.06

¹⁹ Tr. Vol. III at 552, 581 (Cross Examination of Willis).

²⁰ Co. Ex. 5, Supplemental Direct Testimony of Andrew J. Sonderman at 17 (June 7, 2019) (Sonderman Supplemental Testimony).

²¹ Tr. Vol. II at 267 (Cross Examination of Grupenhof).

by the Court: “[There] is no question that the entire 4.9-mile pipeline extension was used on the date certain—gas unquestionably flowed through the pipeline extension.”²²

The entire pipeline extension was also useful as of the date certain. As required by the used-and-useful test,²³ the entire 4.9 pipeline had “been taken by the public for its benefit.” The entire 4.9-mile pipeline extension benefits customers by providing them with safe and reliable natural gas service, as well as by providing adequate reserve capacity to ensure that safe and reliable service to customers is not interrupted during low pressure or cold weather events. Unlike other cases cited by the Court and OCC, the 4.9-mile extension is not an unfinished project that was never placed in service. It has been placed in service and is currently being used by customers for their benefit. Given that customers have taken the entire utility property for their benefit,²⁴ the entire 4.9 pipeline extension should be incorporated into Suburban’s base rates.

Suburban has provided extensive record evidence, based on expert modeling, which demonstrates that the entire 4.9-mile pipeline extension was beneficial in providing customers with adequate reserve capacity to maintain safe and reliable natural gas service during extreme cold weather events on the date certain. As Suburban Witness Sonderman testified, the risk of an outage intensifies when multiple days of cold weather, and severe wind chill occur, combined with customer demand.²⁵ By protecting against severe weather events and increased demand, the entire pipeline extension provided benefits to customers as of the date certain.

²² Court Decision at ¶ 21.

²³ *Id.* at ¶ 32 (citations omitted).

²⁴ *Id.*

²⁵ Tr. Vol. II at 372, 375 (Cross Examination of Sonderman).

Additionally, in order to provide safe and reliable natural gas service to its customers, Suburban needs to ensure that its system remains above a minimum safe operating pressure. When Suburban's check gauge at the Lazelle Road point of delivery fell to a pressure below 100 psig, Suburban retained an engineering firm, Utility Technologies International Corporation (UTI), to explore possible solutions to prevent outages.²⁶ Engineers employed by UTI "determined that the pressure needs to be maintained *above* a minimum of 100 psig."²⁷ If pressure falls below that minimum safe operating pressure, "then Suburban is at the risk of experiencing a catastrophic system crash."²⁸

Such a catastrophic system failure would cause unacceptable levels of harm to Suburban and its customers. Suburban Witness Kyle Grupenhof outlined the consequences of such an outage:

The process for restoring service after an outage contains several steps. First, Suburban would have to individually purge every single service line on its system, which includes over 13,000 service lines. Then, depending on the nature of the specific outage, Suburban would need to immediately design and execute a service restoration plan for the affected area(s). Suburban would certainly need to call upon other gas utilities for assistance. Following that process, Suburban would need to go to every home and business it serves and conduct a leakage inspection before finally being able to restore service. Each customer would have no gas service available up and until this time. Given that a vast majority of Suburban's customers utilize natural gas for heating, I would also expect these customers to be without heat during the service restoration period. This is why it is imperative that Suburban anticipate extreme surges in demand that would likely be experienced on the extreme cold days.²⁹

²⁶ Co. Ex. 5, Sonderman Supplemental Testimony at 21-22.

²⁷ Co. Ex. 4, Direct Testimony of Kyle Grupenhof at 5 (June 7, 2019) (Grupenhof Testimony) (emphasis added).

²⁸ *Id.* at 3.

²⁹ Co. Ex. 4, Grupenhof Testimony at 4; *see also* Tr. Vol. II at 393-394 (Redirect Examination of Sonderman) (describing the consequences of a "massive outage" experienced by another gas utility which left thousands of customers without service and took nearly three weeks to remedy).

In light of Suburban's obligation to provide safe and reliable service to its customers,³⁰ such a risk is plainly unacceptable. Given that the pressure had previously dropped below this safe minimum operating pressure, Suburban was concerned about being able to maintain a safe minimum operating pressure and to continue providing safe and reliable service to its customers. According to Suburban's expert engineer who testified at the hearing, "Suburban observed that the pressure dropped below 100 psig at the Lazelle Road point of delivery in February 2015,"³¹ a full four years prior to the date certain of February 28, 2019.³² Suburban experienced a second low pressure event in January 2019, only a few weeks before the 4.9-mile extension was brought into service.³³ Additionally, this low pressure event occurred on a holiday, when usage was significantly lower than it would have otherwise been on a work day with the same temperatures.³⁴ Thankfully, these events did not cause system failures, but Suburban was at risk and had one variable been different (i.e., colder temperatures, stronger winds, more demand on the system, etc.) a catastrophic event could have occurred.

Because of these risks, the engineers and Suburban needed to plan for such contingencies when developing the pipeline extension and when choosing the proper size of the extension. Suburban's models demonstrated an unacceptable level of risk for future cold weather events that could result in system failure.³⁵ In support of its initial application with the Ohio Power Siting Board, Suburban contracted with UTI to perform expert modeling of its Central Ohio System.³⁶

³⁰ See *supra* fn.24-28 and accompanying text.

³¹ Co. Ex. 4, Grupenhof Testimony at 3.

³² See Court Decision at ¶ 29.

³³ See Co. Ex. 5, Sonderman Supplemental Testimony at 23.

³⁴ Tr. Vol. II at 320-321 (Redirect Examination of Grupenhof); Tr. Vol. II at 386-87 (Redirect Examination of Sonderman).

³⁵ Co. Ex. 9 (May 29, 2019); Co. Ex. 4, Grupenhof Testimony at 6.

³⁶ Co. Ex. 4, Grupenhof Testimony at 3.

Models performed by UTI in December 2015 and February 2016 showed that Suburban could encounter issues with unacceptably low pressure events, which would jeopardize Suburban's entire system and risk a catastrophic system failure, by the winter of 2018-2019 if a cold weather event like the one already experienced in February 2015 occurred again.³⁷ For example, the December 9, 2015 model projected a pressure of 76.30 psig in 2018; the February 3, 2016 model projects a pressure of 71.85 psig in 2018; the February 10, 2016 model projects a pressure of 53.27 psig in 2018; the April 6, 2017 model projects a pressure of 80.83 psig in 2018 and a pressure of 17.16 psig in 2019; and the August 31, 2018 model projects a pressure of 104.27 psig in 2018 and a pressure of 78.27 psig in 2019.³⁸

Based on modeling performed by UTI, Suburban recognized that in order to provide its existing customers with safe and reliable service, it had to build the 4.9-mile pipeline extension by the winter of 2018-2019.³⁹ Completing the pipeline extension by the winter of 2018-2019 required significant lead time, as such, Suburban had to make construction decisions, such as the length of the pipeline, "well in advance" of the actual construction date, based on modeling.⁴⁰ Commission Staff recognized that the 4.9-mile extension was useful in "ensuring existing customers continue to be reliably served."⁴¹

The record does in fact reflect that the UTI engineering firm did model different pipeline lengths when designing the system with the extension.⁴² And while Suburban did consider other factors when determining the length of the pipeline extension, "the first and foremost was customer

³⁷ Co. Ex. 4, Grunehof Testimony at 6.

³⁸ See Co. Ex. 9 (May 29, 2019)

³⁹ Tr. Vol. II at 273 (Cross Examination of Grunehof).

⁴⁰ Tr. Vol. II at 302-04 (Redirect Examination of Grunehof).

⁴¹ Staff Ex. 9, Prefiled Testimony of David M. Lipthatt at 9 (June 7, 2019).

⁴² Tr. Vol. II at 298-99 (Cross Examination of Grunehof); Tr. Vol. II at 289 (Redirect Examination of Grunehof).

safety and the critical need for adequate pipeline pressure.”⁴³ As such, Suburban, with the expertise of the engineers, designed the 4.9-mile pipeline extension to have “adequate reserves” that are “beneficial to consumers in providing protection against unforeseen contingencies,”⁴⁴ and therefore useful to customers. Suburban’s professional engineers “don’t consider [the 100 psig minimum] safe.”⁴⁵ Instead, that number represents an absolute minimum level.⁴⁶ Therefore, while the entire 4.9-mile pipeline extension was used and useful as of the date certain in providing natural gas service to customers, it was also used and useful in providing an adequate reserve capacity to ensure safe and reliable service.

The Court recognized the role that adequate reserve capacity plays in utility ratemaking. In explaining the used-and-useful test, the Court recognized that some extra capacity may be considered useful.⁴⁷ As the Court noted in its Court Decision:

In an appropriate circumstance, a limited degree of reserve capacity could be useful (or beneficial) to consumers in providing protection against unforeseen contingencies in the same way that property insurance is useful to a homeowner. In evaluating such circumstances, however, the question always must be whether the property is used and useful, not whether it was a prudent investment.⁴⁸

The Court further recognized “the distinction between, on one side, a pipeline with adequate reserves and, on the other, a pipeline overbuilt with excess capacity”⁴⁹ In order to determine whether or not the entire 4.9-mile extension was used and useful as of the date certain,

⁴³ Co. Ex. 5, Sonderman Supplemental Testimony at 23.

⁴⁴ Court Decision at ¶¶ 13, 33.

⁴⁵ Tr. Vol II at 389 (Cross Examination of Grupenhof).

⁴⁶ *Id.*

⁴⁷ Court Decision at ¶ 33.

⁴⁸ *Id.*

⁴⁹ *Id.* at ¶ 13.

therefore, the Commission must determine “which side the 4.9-mile extension lies on.”⁵⁰ The record evidence demonstrates that the entire extension lies on the side of benefitting ratepayers by providing adequate reserve capacity, not excess capacity. This case represents that “appropriate circumstance” of needing and having adequate reserve capacity as low pressure concerns existed, particularly during cold weather events. The entire 4.9-mile extension benefits ratepayers in “providing protection against unforeseen contingencies.” As such, the entire extension was used and useful as of the date certain, and was appropriately included in rate base.

Building a pipeline with adequate reserve capacity does not mean building a pipeline to serve future customers. Instead, it means building a pipeline with sufficient reserves to ensure the provision of safe and reliable service to customers despite unforeseen circumstances and contingencies, such as extreme cold weather events and fluctuations in demand.

In addition to the risk of extremely low pressures demonstrated by modeling (which could bring about the type of system-wide catastrophic failure outlined by Suburban Witness Grupenhoff⁵¹) and the low pressure events actually recorded, Suburban also measured extreme fluctuations in pressure on the Central Ohio system. For example, during one of the measurement periods, the pressure “dropped 27 [psig] in a half hour.”⁵² Another time, the pressure at the measurement point dropped 40 psig in the span of thirty minutes.⁵³ This drop occurred on a day when the system was “working at its full level on a day when requirements were far less than...on

⁵⁰ Court Decision at ¶ 13.

⁵¹ See Co. Ex. 4, Grupenhof Testimony at 4.

⁵² Tr. Vol. II at 388 (Redirect Examination of Grupenhof).

⁵³ Tr. Vol. II at 320 (Redirect Examination of Grupenhof) (“Q. And does the change from 6:30 -- is there a change from 6:30 to 7:00 a.m.? A. There, yes. It goes from 150 PSI to 110.”).

a typical Monday in January.”⁵⁴ Suburban’s expert engineering witness testified that this fluctuation in pressure was likely caused by normal changes in demand.⁵⁵

Given the degree of fluctuation possible on Suburban’s system, the potential consequences of catastrophic failure, and the risk of such failure occurring when Suburban operates the pipeline near the minimum safe operating pressure, an adequate reserve capacity is necessary. To provide safe service, Suburban must mitigate the risk of harm—such as those caused by catastrophic outages—to its customers. The risk of an outage intensifies when multiple days of cold weather, and wind chill occur, combined customer load and wind chill.⁵⁶

While the risk of an outage increases during an extreme cold weather event, so too does the degree of harm caused by a catastrophic outage. Given that a vast majority of Suburban’s customers utilize natural gas for heating, an outage would cause customers to be without heat during the service restoration period.⁵⁷ The harm from losing heat is greatest on the coldest days—when heat is most needed. For example, such a “nightmare scenario” occurred in Newport, Rhode Island in January 2019, leaving thousands of customers without service for nearly three weeks, and in need of emergency shelters.⁵⁸ As such, it is imperative that Suburban anticipates extreme surges in demand that would likely be experienced on the extreme cold days.⁵⁹ This requires a system built with the types of adequate reserve capacity that benefits customers.⁶⁰

⁵⁴ Tr. Vol. II at 387 (Redirect Examination of Grupenhof).

⁵⁵ Tr. Vol. II at 320 (Redirect Examination of Grupenhof) (“[A] lot of furnaces and hot water tanks and things like that kicked on at 7 o'clock or right around there.”).

⁵⁶ Tr. Vol. II at 372, 375 (Cross Examination of Sonderman).

⁵⁷ Co. Ex. 4, Grupenhof Testimony at 4.

⁵⁸ Tr. Vol. II at 393-94 (Redirect Examination of Sonderman).

⁵⁹ Direct Testimony of Kyle Grupenhof at 4 (June 7, 2019) (Grupenhof Testimony).

⁶⁰ See Court Decision at ¶ 33 (“In an appropriate circumstance, a limited degree of reserve capacity could be useful (or beneficial) to consumers in providing protection against unforeseen contingencies in the same way that property insurance is useful to a homeowner.”).

To provide reliable service, Suburban must take steps to ensure that even in the event of unforeseen contingencies, the system remains robust enough to avoid these system interruptions. Therefore, Suburban must prepare for contingencies, such as cold temperatures, wind chills, sustained weather events, and changes in load.⁶¹

Overall, the record evidence provided by Suburban clearly demonstrates that the entirety of the 4.9-mile pipeline extension benefits customers by ensuring an adequate reserve sufficient to ensure safe and reliable service. As Suburban Witness Sonderman put it, “[there] is simply no question...that the 4.9-mile extension of the 12-inch high pressure DEL-MAR pipeline is essential *today* to protect our existing heating customers based on the data and experience we had before us in late 2015 and now.”⁶² Given that the entire extension is beneficial to protecting customers, the entire 4.9-mile pipeline extension satisfies the used-and-useful test as outlined in the Court Decision pursuant to R.C. 4909.15(A).

2. While Suburban has met its burden of proof to demonstrate that the 4.9-mile pipeline extension is used and useful, the record lacks evidence proving that a shorter pipeline would have been sufficient to provide safe and reliable service to customers.

Suburban has provided an overwhelming quantity of record evidence demonstrating the benefits of the 4.9-mile extension to customers. The Court noted that “Suburban has ‘the burden of proof to show that the proposals in the application are just and reasonable.’”⁶³ While Suburban has clearly met this burden, OCC has failed to provide any convincing evidence to the contrary. And the fact that OCC “concedes that two miles of the extension were useful as of the date

⁶¹ See Court Decision at ¶ 56 (DONNELLY, J., dissenting).

⁶² Co. Ex. 5, Sonderman Supplemental Testimony at 23.

⁶³ Court Decision at ¶ 40, *citing* R.C. 4909.18; R.C. 4909.19(C); and *Ohio Edison Co. v. Pub. Util. Comm.*, 63 Ohio St.3d 555, 559, 589 N.E.2d 1292 (1992).

certain”⁶⁴ has absolutely no bearing on whether or not the remaining 2.9 miles were used and useful as of the date certain.

OCC’s witness, a non-engineer regulatory analyst, argued 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 too big to supply current customer demand.”⁶⁵ OCC’s witness did not make any attempt to explain why 230 psig is too high for an adequate reserve, other than that in his own non-engineering opinion, the number is large. On the other hand, Suburban’s expert natural gas utility witness testified that such a pressure is well within the federal regulations for maximum allowable pressure (300 psig) of such a system.⁶⁶

The argument by OCC that ‘the number is large’ lacks any record support, ignores system realities, and is non-sensical. When asked for “the minimum safe operating pressure on Suburban’s system,” Suburban witness Grupenhof noted that the answer “would depend on the location within the system.”⁶⁷ That is why Suburban used modeling to determine the optimal design of the system to ensure *minimum* safe operating pressures on the system.⁶⁸ Thus, the effect of the pipeline extension at one place in the system at a particular point in time does not, in any way, demonstrate that the entire system is overbuilt. To state otherwise is a conclusory and arbitrary claim. The system needs to be looked at as a whole and designed appropriately by the engineering and natural gas experts. OCC second-guessing the engineers’ design of the system and addition of the 4.9-mile pipeline extension without support and evidence should be rejected.

⁶⁴ Court Decision at ¶ 21.

⁶⁵ OCC Ex. 13, Supplemental Direct Testimony of Wm. Ross Willis at 12 (June 21, 2019).

⁶⁶ Tr. Vol. II at 400 (Redirect of Sonderman).

⁶⁷ Co. Ex. 4, Grupenhof Testimony at 5.

⁶⁸ *Id.*

OCC also attempts to argue that a 2.0-mile pipeline may have kept the system at the bare minimum safe operating pressure at one point in time, and therefore no adequate reserve was necessary. This conclusion is also without record support and puts the very customers OCC claims to represent at risk for outages during cold weather events. OCC's willingness to gamble with the safety and reliability of the system that could result in customers without service during cold weather events is contrary to state policy.

Any pipeline extension that would have put Suburban's system barely at the minimum operating pressure or below is unacceptable and that extension would not benefit customers as it does not constitute safe and reliable service. Additionally, designing a pipeline with no adequate reserve would be irrational. Neither Suburban nor its professional engineers considered it safe to operate Suburban's system at this pressure.⁶⁹

Furthermore, the consideration by a public utility of regulatory requirements and the timing associated therewith is practical and makes good business sense for the utility's customers when a utility is designing its system and investing money in that system to enhance service to customers. But, those considerations and ultimate design decisions made have no bearing on whether or not the length of the extension that was actually built benefits customers. Instead, the utility must take into consideration many factors, including regulatory requirements, timing, and costs, and then make the best decision for its customers and the system to ensure the benefits actually flow to the customers. OCC's argument that "Suburban built a pipeline extension 4.9 miles long...not because 4.9 miles was the length it needed, but because 4.9 miles was the longest it could be built while still qualifying for expedited review under Ohio Power Siting Board rules and regulations,"⁷⁰

⁶⁹ See Tr. Vol. II at 388-89 (Redirect Examination of Sonderman) ("We don't consider that safe. That's a minimum level.").

⁷⁰ See, e.g., Memorandum Contra Suburban's Motion to Stay, 9 (Oct. 15, 2021).

is simply inaccurate and irrational as it ignores the recommendations of the expert engineers and their modeling, the expertise of the natural gas company which operates its natural gas system for the benefit of customers, and other evidence in the record about need and the timing of the need. The record demonstrates that Suburban’s engineers performed extensive modeling in order to design the system at the appropriate length. While the accelerated review process was part of the rationale for not building a *longer* pipeline at the time, it was not the reason that Suburban did not build a *shorter* pipeline. The modeling demonstrated that there was an immediate need for the pipeline extension. Of course this fact affected the design and timing of the pipeline extension. Suburban and its engineers had to design a pipeline extension that provided timely benefits to customers to ensure that customers had safe and reliable service.

Suburban chose the accelerated review process because it knew that it had to put the pipeline extension into service by winter of 2018-2019 in order to provide its existing customers with safe and reliable service.⁷¹ The record demonstrated that the delays that would have resulted from the review period for a longer pipeline would have subjected Suburban’s customers to an unacceptable risk of potential catastrophic failure.⁷²

As the Court noted, its application of “[the] used-and-useful test doesn’t prohibit utilities from making capital investments based on whatever scale and time frame the utility finds the most prudent.”⁷³ The fact that the 4.9-mile pipeline was the maximum length Suburban could build without facing further regulatory hurdles does not mean that it was also the maximum length that would benefit customers. Deciding to construct the extension below five miles allowed Suburban

⁷¹ Tr. Vol. II at 273 (Cross Examination of Grunehof).

⁷² Tr. Vol. II at 394 (Redirect Examination of Sonderman) (“The impact is so unacceptable that we have to take extraordinary measures to avoid it.”).

⁷³ Court Decision at ¶ 33.

to avail itself of the expedited approval process before the Ohio Power Siting Board to address the system's immediate needs,⁷⁴ but this has no bearing as to the maximum length of the pipeline that was used and useful as of the date certain for the purposes of ratemaking. Had Suburban not determined that it needed to put the pipeline in service by winter 2018-2019, it may have decided that a longer pipeline was in the best interest of customers. To insinuate that Suburban selected a longer pipeline that was not needed merely because it was the maximum under the regulatory scheme is an inaccurate representation of the facts of this case and such argument should be rejected.

Furthermore, OCC itself provided no testimony or evidence at all, let alone any based on the facts of the case and engineering design, that set forth a reasonable and justified alternative as to what length of a pipeline extension could have sufficed to protect customers and the system from low pressures and system failure during cold weather events. As discussed above, during the measurement period, Suburban's expert engineering firm measured drops of up to 40 psig in periods as short as thirty minutes.⁷⁵ Given such, a system that is designed to not exceed the bare minimum safe operating pressure that experiences similar fluctuations could easily fall to *barely half* that minimum operating pressure within an hour, subjecting customers to service outages and catastrophic system failures. Such a system would be neither safe nor reliable. While OCC's witness does not provide a rationale for why 230 psig is too high of a margin,⁷⁶ Suburban provided expert testimony and evidence of the degree of fluctuation inherent in the system, the risk of system

⁷⁴ See R.C. 4906.03(F)(3); Ohio Adm.Code 4906-6-10.

⁷⁵ Tr. Vol. II at 320 (Redirect Examination of Grunenhof) ("Q. And does the change from 6:30 -- is there a change from 6:30 to 7:00 a.m.? A. There, yes. It goes from 150 PSI to 110.")

⁷⁶ See OCC Ex. 13, Supplemental Direct Testimony of Wm. Ross Willis at 12 (June 21, 2019).

failure, the consequences of such a failure, and the rationale behind constructing a 4.9 mile pipeline extension to protect against these risks.

Accordingly, the manifest weight of the record evidence overwhelmingly demonstrates that the entire 4.9-mile pipeline extension benefits customers by providing them with an adequate reserve to ensure safe and reliable service even in the event of unforeseen contingencies.⁷⁷ As such, the entire 4.9-mile extension was used and useful as of the date certain, and is properly included in rate base, even with the proper application of the used-and-useful test delineated by the Court's recent Court Decision.

B. The Commission is free to reach the same conclusion on remand.

In its decision, the Court simply remanded the case “to apply the appropriate standard” to the facts of the case.⁷⁸ While the Court held that the Commission must apply the facts of the case to a different legal standard,⁷⁹ the Commission is free to reach the same decision under that new standard.

As the Court noted in its decision, the application of the correct legal standard to the facts of the case “is something that is best left to the PUCO in the first instance.”⁸⁰ Court precedent demonstrates that the Commission retains the authority to reach the same determination on remand following a reversal and remand of one of its decisions, so long as it applies the legal standard prescribed by the Court. For example, in *In re Columbus Southern Power Co.*, the Court upheld a Commission remand decision, wherein the Commission reached the same conclusion it originally

⁷⁷ See Court Decision at ¶ 33.

⁷⁸ *Id.* at ¶ 27.

⁷⁹ *Id.* at ¶ 32 (“In effect, the Commission applied what is known as the ‘prudent investment’ test, the most prominent alternative to the used-and-useful test.”).

⁸⁰ Court Decision at ¶ 32, citing *In re Complaint of Wingo v. Nationwide Energy Partners, L.L.C.*, 163 Ohio St.3d 208, 2020-Ohio-5583, 169 N.E.3d 617, ¶ 26.

had before the Court reversed and remanded the decision for further consideration under a new legal standard.⁸¹

In that case, the Commission had approved the recovery of carrying costs associated with environmental investments as part of the Commission’s review of Columbus Southern Power Co.’s first electric security plan.⁸² Upon review, the Court reversed the Commission decision, determining that the Commission erred by approving the recovery without proper statutory authority, and remanded the matter, directing the Commission to apply R.C. 4928.143(B)(2)(a) to the case, and determine whether the statute authorized recovery of the costs.⁸³ On remand in that case, the Commission applied the Court’s prescribed legal standard to the facts of the case, and determined that the statute *did* authorize the costs.⁸⁴ The Court subsequently affirmed the remand decision on appeal. Therefore, when the Court reverses a Commission decision and directs the Commission to reconsider part of its decision under a different legal standard, as long as the Commission applies the prescribed standard to the facts of the case, it is free to reach the same conclusion.

Similarly, in the present case, the Commission is free to—and should—determine in light of the used-and-useful standard outlined in the Court Decision, the entire 4.9-mile extension was used and useful as of the date certain, and should be included in rate base. The Court noted as much when it stated that “application of the relevant legal standard to the facts is something that is best left to the Commission in the first instance,”⁸⁵ declined to consider OCC’s argument “that

⁸¹ See generally *In re Columbus Southern Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462.

⁸² *In re Columbus Southern Power Co.*, 2014-Ohio-462 at ¶ 1.

⁸³ *Id.* at ¶¶ 2, 12.

⁸⁴ *Id.* at ¶ 11.

⁸⁵ Court Decision at ¶ 35.

the Commission’s decision was manifestly against the weight of the evidence.”⁸⁶ Like the Court in *In re Columbus Southern Power Co.*, the Court in the present case made no determination as to the weight of the evidence in this case, and made no determination as to what the final outcome of the remand should be.

Despite this clear precedent and limited determination, OCC has attempted to argue that the Court found Suburban’s rates, based on the used and useful 4.9-mile extension, to be “unlawful.”⁸⁷ This is patently untrue. The Court made no determination as to the reasonableness of Suburban’s rates. The word ‘unlawful’ does not even appear at any point in the Court’s twenty-two-page Court Decision, including the dissenting opinion. The Court did not make a determination as to the manifest weight of the record evidence, but rather, with the evidence relied upon in the Commission’s Opinion and Order.

C. OCC miscalculated the rate base and the resulting customer charges in their proposed calculation of the charges based on the inclusion of 2.0 miles of the pipeline extension.

In its Entry issued October 20, 2021, the Commission stated that “the parties should provide a proposed calculation of the charges based on the inclusion of 2.0 miles of the pipeline extension.”⁸⁸ OCC previously provided calculations in its Motion filed September 22, 2021.⁸⁹ While Suburban is confident that the record evidence clearly demonstrates that the entire 4.9-mile

⁸⁶ Court Decision at ¶ 44.

⁸⁷ See, e.g., Consumer Protection Motion to Reject Suburban’s Proposed Rate Increase Tariffs and to Limit Its Tariff Charges for Its 4.9-Mile Del-Mar Pipeline to No More Than Amounts for Two Miles of Pipe in Consideration of Yesterday’s Supreme Court Overturning of the Commission’s Decision, Or, In the Alternative, Motion for Making Suburban’s Charges Subject to Refund Effective Yesterday, Request for Expedited Ruling and Memorandum in Support by Office of The Ohio Consumer’s Counsel, 1-2 (Sept. 22, 2021) (OCC Motion) (“The Court agreed with OCC that the Commission’s ruling requiring consumers to pay for the entire 4.9-mile pipeline extension was unlawful.”); OCC Motion at 2 (“In the meantime, the Commission must swiftly take steps to protect consumers from paying unlawful charges based on the entire cost of the pipeline”); OCC Motion at 3 (“But the Supreme Court has ruled that the Commission’s approval of charges based on the entire 4.9-mile length of the pipeline was unlawful.”).

⁸⁸ Entry at ¶ 23 (Oct. 20, 2021).

⁸⁹ See OCC Motion, Attachments.

pipeline extension should be included in rate base, and while Suburban believes that these calculations are beyond the scope of the remand,⁹⁰ to the degree these calculations are necessary, OCC does not utilize the correct rate base based on the inclusion of 2.0 miles of the pipeline extension and does not use the correct revenue requirement, which misrepresents the resulting customer charges for all customer classes. Additionally, in its calculations, OCC incorrectly utilizes the customer count from the Phase III Application (July 2021), but the rates associated with the Phase III Application have not been implemented. If Suburban is not phasing in its rates to the Phase III level and if Suburban no longer is allowed to collect costs associated with the full rate increase (which includes the entire 4.9-mile pipeline extension) that was approved by the Commission, then the proper calculation should be based upon the date certain customer count that existed at the time when OCC believes that the 2.0 miles was used and useful as of the date certain.

The entire premise of the phasing in of the rates was to mitigate the rate increases to customers because of the addition to rate base of the 4.9-mile pipeline extension. To that end, as the costs associated with the pipeline were being phased into rates, the parties to the Stipulation agreed to also update the customer count at the time of each phase in to coincide with the additional rate base.

The Stipulation specified that customer counts were to be updated at the time that the Commission implements the Phase II and Phase III Rate increases:

At the time additional book value of the 4.9-mile DEL-MAR pipeline extension is added to rate base at the beginning of the second and third years following the Commission Order in this proceeding (Year 2 and Year 3), Suburban's established revenue requirement for each applicable year shall be allocated to the customers based upon the total number of customers, as evaluated by Staff and as approved

⁹⁰ Court Decision at ¶ 35 ("We remand for the PUCO to apply the appropriate standard.").

by the Commission, at the time the additional book value is added at the same revenue distribution percentage, excluding gas costs, as established in Year 1.⁹¹

Accordingly, when Suburban filed notice of its Phase II rate increase, Suburban calculated the rate increase based on updated customer counts.⁹² When recommending that the Commission authorize the Phase-In, Staff noted that the plain language of the stipulation calls for an update to the customer count as a part of the phase-in.⁹³ The Commission authorized Suburban to update its customer count as part of the phase-in.⁹⁴

Additionally, Suburban notes that it is would be very difficult, if not impossible, to speculate as to what the exact cost of building a hypothetical 2.0-mile pipeline extension would have been three or four years ago, in 2018 and 2019. Although the parties can reduce the rate base proportional to the length of the pipeline, this will likely underestimate the actual costs related to building a hypothetical 2.0-mile pipeline. For example, many of the overhead costs associated with the planning, approval, and construction of a shorter pipeline are not proportional to the length of the pipeline, and would not be reduced or scaled down to the shorter pipeline. Additionally, purchasing lower amounts of materials may have resulted in higher per unit costs, further reducing any perceived “savings” from the hypothetical pipeline. As such, any rates simply based on a proportional cost of the 4.9-mile pipeline likely underestimate the true costs of a 2.0-mile pipeline. Nevertheless, in the spirit of responding to the Commission’s question, Suburban has used the proportional cost methodology to calculate its rate base and the resulting customer costs

⁹¹ Joint Ex. 1, Joint Stipulation and Recommendation at ¶ III.A.5.e (May 23, 2019).

⁹² See Notice of Suburban Natural Gas Company to Implement Phase II of its Rate Increase at ¶¶ 6, 8, 10 (Sept. 4, 2020).

⁹³ Staff Review and Recommendation at 3 (Sept. 16, 2020).

⁹⁴ See Entry at ¶ 9 (Sept. 23, 2020).

of a hypothetical 2.0-mile pipeline extension, as it is the most simplistic method available to estimate such cost.

By updating customer counts without implementing the associated phase-in, OCC's calculation violates both the plain text and the intent of the Stipulation. The plain text only contemplates updates of customer counts when the rate increase is actually being phased in. The updated customer counts also represent a tradeoff, in which Suburban's increased rate base is offset by lower per-customer rates and charges. Updating customer counts without the associated phase-in deprives Suburban of that benefit in violation of the plain text of the Stipulation. Accordingly, per the Commission's Entry, Suburban submits Attachments A and B, demonstrating the correct calculations for Suburban's rate base and the resulting customer charges.

IV. CONCLUSION

Suburban has met its significant burden in this case to demonstrate that the entire 4.9-mile pipeline extension was used and useful as of the date certain. Pursuant to the Court's Decision, the pipeline extension is useful by being beneficial in providing service to existing customers and an adequate reserve margin to ensure the provision of safe and reliable service to Suburban's customers during cold weather events and unforeseen contingencies.

Suburban has provided extensive record and expert testimony and evidence demonstrating the risks of operating a natural gas distribution system below or near the minimum safe operating pressure, as well as the potential consequences of a resulting catastrophic failure. Suburban has also demonstrated the level of fluctuation inherent on such a system, which justifies inclusion of an adequate reserve. OCC, on the other hand, has failed to provide any evidence to the contrary. As such, upon remand, and pursuant to the Court Decision, the record evidence demonstrates that

the entire 4.9-mile pipeline extension was used and useful as of the date certain pursuant to R.C. 4909.15(A), and should be included in rate base.

Respectfully submitted,

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402)

Jonathan Wygonski (0100060)

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614)-365-4100

bojko@carpenterlipps.com

wygonski@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 October 29, 2021.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

Counsel for
The Suburban Natural Gas Company

robert.eubanks@ohioattorneygeneral.gov
werner.margard@ohioattorneygeneral.gov
christopher.healey@occ.ohio.gov
angela.obrien@occ.ohio.gov
rdove@keglerbrown.com

Attachment A

SUBURBAN NATURAL GAS COMPANY CASE NO. 18-1205-GA-AIR OVERALL FINANCIAL SUMMARY FOR THE TWELVE MONTHS ENDED FEBRUARY 28, 2019

**SCHEDULE A-1
PAGE 1 OF 1**

Line No.	Description	Supporting Schedule Reference	Applicant	Phase III Stipulated with Final Rate Case Exp	Including Only 2.0 Miles of Line Extension
1	Rate Base as of Date Certain	B-1	\$ 25,877,578	\$ 25,649,641	\$ 20,338,793
2	Current Operating Income	C-1	(649,180)	424,217	608,012
3	Earned Rate of Return: Line (2) / Line (1)	(n/a)	-2.51%	1.65%	2.99%
4	Recommended Rate of Return	D-1	7.26%	7.26%	7.26%
5	Required Operating Income: Line (1) x (4)	(n/a)	1,879,161	1,862,164	1,476,596
6	Operating Income Deficiency: Line (5) - Line (2)	(n/a)	2,528,341	1,437,947	868,584
7	Gross Revenue Conversion Factor	A-2	1.331086	1.265823	1.265823
8	Revenue Deficiency: Line (6) x Line (7)	(n/a)	3,365,439	1,820,186	1,099,474
9	Revenue Increase Recommended	E-4	3,365,439	1,820,186	1,099,474
10	Test Year Adjusted Operating Revenues	C-1	17,949,119	18,632,771	18,632,771
11	Revenue Requirements: Line (9) + Line (10)	(n/a)	\$ 21,314,558	\$ 20,452,957	\$ 19,732,245
12	Increase Over Current Revenue: Line (9) / Line (10)	(n/a)	18.75%	9.77%	5.90%

Attachment B

SUBURBAN NATURAL GAS COMPANY
CASE NO. 18-1205-GA-AIR
PROPOSED
CLASS AND SCHEDULE REVENUE SUMMARY
INCLUDING ONLY 2.0 MILES OF 4.9-MILE PIPELINE EXTENSION

SCHEDULE E-4

Proposed Annualized									
Line No.	Rate Code (A)	Class / Description (B)	Customer Bills (C)	Sales CCF (D)	Proposed Rate (E)	Proposed Revenue Less Gas Cost Revenue (F)=(C)*(E)	% of Revenue To Total Exclusive of Gas Costs (G)	Annualized Gas Cost Revenue (H)	Proposed Revenue Total (I)=(F)+(H)
1		Small General Service							
2		Customer Charge	208,764		\$33.59	\$7,012,383			
3		Commodity Charge		14,725,402	\$0.0000	0			
4		Total Small General Service				\$7,012,383	77.34%	\$8,389,209	\$15,401,592
5									
6		Large General Service							
7		Customer Charge	3,408		\$175.00	\$596,400			
8		Commodity Charge		4,366,683	\$0.20003	\$873,468			
9		Total Large General Service				\$1,469,868	16.21%	\$2,276,615	\$3,746,483
10									
11		Large General Service Transport							
12		Customer Charge	300		\$175.00	\$52,500			
13		Commodity Charge		1,462,054	\$0.22562	\$329,869			
14		Total Large General Service Transport				\$382,369	4.22%		\$382,369
15									
16		Miscellaneous Revenue				\$202,608	2.23%		\$202,608
17									
18		Total	212,472	20,554,139		\$9,067,227	100.00%	\$10,665,824	\$19,732,245

(1) Excludes Gross Receipt Tax, MCF Tax, PIPP, IRP and Uncollectible Riders

(2) Assumes Gas Cost as Filed in the Staff Report

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on
10/29/2021 4:53:10 PM**

in

Case No(s). 18-1205-GA-AIR, 18-1206-GA-ATA, 18-1207-GA-AAM

Summary: Brief on Remand electronically filed by Mrs. Kimberly W. Bojko on behalf
of Suburban Natural Gas Company