

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MEMORANDUM CONTRA SUBURBAN NATURAL GAS COMPANY'S
APPLICATION FOR REHEARING OF THE PUCO'S ORDER ON REMAND
FROM THE OHIO SUPREME COURT
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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April 4, 2022

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I. INTRODUCTION

On an appeal by OCC, the Supreme Court of Ohio reversed and remanded a ruling by the Public Utilities Commission of Ohio (“PUCO”) that made Suburban’s consumers pay for a pipeline that was not proven to be used and useful.¹ The PUCO subsequently issued an Order on Remand that protects consumers from paying unjust, unreasonable, and unlawful rates for Suburban’s pipeline. But through its March 25, 2022 application for rehearing, Suburban still insists that consumers pay more than they should under Ohio law (R.C. 4909.15). The PUCO made the correct decision in its Order on Remand, the only decision it could make in light of the high Court’s reversal, and Suburban’s requests for rehearing should be denied.

¹ *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224.

In response to the Court’s reversal, the PUCO correctly applied the “used and useful” ratemaking standard. The PUCO issued its Order on Remand finding that the record reflects that only “2.0 miles of the 4.9-mile DEL-MAR pipeline extension were used and useful on the date certain established for Suburban Natural Gas Company’s application to increase its natural gas distribution rates . . .”² Consistent with this finding, the PUCO modified the previous settlement between Suburban and the PUCO Staff and authorized Suburban to charge consumers for only 2.0 miles of pipeline extension costs.³ The PUCO also directed Suburban to issue refunds to consumers for amounts it charged for more than 2.0 miles of the pipeline extension.⁴ This is the right and lawful decision for consumer protection under the Supreme Court’s decision.

But Suburban claims that it is entitled to charge consumers for costs to construct the entire 4.9-mile pipeline. That is mistaken. Suburban’s arguments are largely based on its untenable position that the PUCO’s September 26, 2019 Opinion and Order (the “September 2019 Order”) that allowed Suburban to charge for 4.9 miles of pipeline costs is still a “lawful” order. It is not. Indeed, the Supreme Court of Ohio *reversed* the September 2019 Order⁵, finding that the “PUCO did err: in evaluating the rate increase, the PUCO looked beyond whether the entire extension was used and useful on the applicable date and considered whether it was a prudent investment because it might prove useful in the future.”⁶ For this reason, and those discussed below, the PUCO should

² Order on Remand, (Feb. 23, 2022).

³ Order on Remand, at ¶ 57.

⁴ Order on Remand, at ¶ 61.

⁵ *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, at ¶ 2.

⁶ *Id.*

deny Suburban's application for rehearing. Suburban's approach, if adopted, would land this case back in the Supreme Court for violation of the Court's order.

II. ARGUMENT

A. The PUCO's Order on Remand is firmly supported by the record evidence, and consistent with the Supreme Court's reversal. Thus, the PUCO should deny Suburban's Assignment of Error 1.

Suburban argues that the PUCO's determination in the Order on Remand disregards the purported manifest weight of the evidence that 4.9 miles of pipeline was used and useful on the date certain.⁷ Suburban further claims that the PUCO failed to provide any rationale for reversing its previous decision in September 2019 Order, in violation of R.C. 4903.09.⁸ Suburban is wrong on both counts. Flouting a decision of the Ohio Supreme Court would not be a good choice for the PUCO.

Following the Court's remand of the PUCO's September 2019 Order, the PUCO properly applied the "used and useful" ratemaking standard to the record evidence and concluded that only 2.0 miles of pipeline was used and useful on the date certain. The PUCO arrived at a conclusion that Suburban does not like. But that is upon a proper application of the Court's decision.

Suburban's application for rehearing rehashes the evidence that the PUCO has already considered (and rejected) in issuing the Order on Remand, with no new arguments.⁹ Although the PUCO determined in the original September 2019 Order that 4.9 miles of pipeline was used and useful on the date certain, the high Court held that the

⁷ Suburban AFR, at 5-17.

⁸ Suburban AFR, at 17.

⁹ Suburban AFR, at 5-17.

PUCO's determination was based on a *misapplication of the law*.¹⁰ The Court reversed the PUCO's decision and remanded the case for a proper application of the used and useful test. In the Order on Remand, the PUCO properly applied the used and useful standard to the evidence¹¹ and reached the different (and correct) result that only 2.0 miles of pipeline was used and useful on the date certain.

Contrary to Suburban's claims, the PUCO thoroughly explained how it arrived at its new decision based on the record and the correct application of the used and useful standard.¹² Among other things, the PUCO explained:

{¶ 55} Considering the record, we find that ***Suburban did not provide sufficient evidence*** to establish that the full 4.9-mile pipeline extension was useful and beneficial in rendering service to the Company's customers as of the date certain. ***The evidence in the record does not show that a pipeline extension of 4.9 miles was advantageous for customers as compared to a shorter extension.*** Suburban claims that the entire 4.9-mile pipeline extension was beneficial in providing adequate reserve capacity to maintain service during extreme cold weather events; however, nothing in the record addresses the issue of whether 4.9 miles is the appropriate length to ensure safe and reliable service to customers, while also reasonably accounting for adequate reserves. ***Although Suburban argues that it was not required to produce various alternative scenarios and modeling to OCC (Suburban Reply Brief at 5), the more important question is whether the Company provided that information to the Commission. It did not. Without this type of analysis in the record, we are, as the Court stated, "in the dark" and unable to determine whether the 4.9-mile pipeline extension is a pipeline with adequate reserves or a pipeline overbuilt with excess capacity.*** Suburban, Slip Opinion No. 2021-Ohio-3224, at ¶ 39.

{¶ 56} ***In fact, the record indicates that a 2.0-mile pipeline extension would have been sufficient to serve Suburban's customers on the date certain. Mr. Grupenhof testified that, based on his calculations, a "2 mile option would have satisfied Suburban's system at the end of 2018, so they would have been good."*** He testified that UTI's engineers did run the model to determine what the resulting pressure would be with a 2.0-

¹⁰ *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224.

¹¹ Order on Remand, at ¶ 52.

¹² See Order on Remand, at ¶¶ 52-59.

mile pipeline extension. He stated that “the 2 miles seemed to work for 2018 but, like I said, we were right back in the same situation where we would be basically building Phase 2 of the Del-Mar extension right afterwards.” Mr. Grupenhof also testified that “I don’t believe we got an exact customer count on the 2 mile pipeline. But we did look at that and see how much time it would buy Suburban. Obviously the 4.9 bought them 4,000 customers.” (Transcript Vol. II at 277-278, 287, 331.) ***This evidence shows that the 4.9-mile DEL-MAR pipeline extension was built, at least in part, for purposes of future growth rather than for capacity needs as of the date certain.***

{¶ 57} As Mr. Grupenhof acknowledged, Suburban’s decision to construct a 4.9- mile extension was based upon factors like future steel and other construction costs and the timeline for the project (Suburban Ex. 4 at 7; Transcript Vol. II at 300, 311-313). Although we agree that these were appropriate considerations for Suburban in determining the length of its pipeline extension, such factors cannot guide the Commission’s application of the used-and-useful test for ratemaking purposes. ***In accordance with R.C. 4909.15(A) and the Court’s decision, the determination to be made by the Commission is whether the full length of the pipeline extension, including a portion for adequate reserves, was beneficial in rendering service for the convenience of the public as of the date certain. Suburban, Slip Opinion No. 2021-Ohio-3224, at ¶ 25. We find that the record evidence demonstrates that, although the entire length of the pipeline extension was used, only 2.0 miles of the 4.9-mile pipeline extension was useful as of the date certain.*** We, therefore, modify the Stipulation to reflect that only 2.0 miles of the pipeline extension costs are to be incorporated in rate base and recovered in rates.¹³

As the Order on Remand makes clear, the PUCO’s decision was firmly grounded in the record (including testimony of ***Suburban’s own witnesses.***) There is no basis for Suburban’s claim that the Order on Remand is not supported by record evidence. Moreover, as the Court held, Suburban has the burden of proof in this rate case of demonstrating that its proposals are reasonable.¹⁴ And the PUCO found that Suburban

¹³ Order on Remand, at ¶¶ 55-57 (emphasis added).

¹⁴ *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, ¶ 40 (“We are also troubled by the dissent’s suggestion that the Consumers’ Counsel needed to provide its own modeling or forecasts for its overbuilding claim. It is Suburban that seeks the benefit of a rate increase. As such, Suburban has ‘the burden of proof to show that the proposals in the application are just and reasonable.’”).

failed to provide the PUCO with evidence regarding alternative scenarios and modeling to demonstrate that 4.9 miles of pipeline was useful (beneficial) as of the date certain.¹⁵ Suburban did not satisfy its burden. Suburban cannot now be heard to complain about the PUCO's decision in the Order on Remand or the Court's reversal.

Suburban also claims that “[e]very interested party”¹⁶ – besides OCC – agreed with Suburban's position that the 4.9 miles of pipeline was used and useful.¹⁷ But plainly, the relevant standard is the used and useful standard enunciated by the Court. It's not about how many others, including *non-party others* like the gas utilities' association or another gas utility, “side” with Suburban.

As a matter of law, the PUCO must base its decision on the application of the used and useful standard as interpreted by the Court to the evidence of record. The PUCO did exactly that in the Order on Remand and found that only 2.0 miles of pipeline was used and useful as of the date certain. Suburban's application for rehearing should be denied.

¹⁵ Order on Remand, at ¶ 55.

¹⁶ Columbia Gas, JobsOhio, and Ohio Gas Association, referred to by Suburban as interested parties and commenters (Suburban AFR at 13), *are not parties*. They did not file motions to intervene in this proceeding nor did they submit evidence. Columbia Gas filed an amicus curiae brief and JobsOhio and Ohio Gas Association filed public comments.

¹⁷ Suburban AFR, at 13.

B. The PUCO should deny Suburban’s Assignment of Error 2, claiming that the Order on Remand results in unlawful confiscatory rates. The Ohio Supreme Court found that the used and useful standard is part of the balance between the rights of utilities and consumers. Under this constitutional Ohio statute, Suburban has no right, constitutional or otherwise, to charge consumers for more than the used and useful component of the pipeline. There cannot be an unconstitutional “taking” of what Suburban is not entitled to in the first place.

Suburban claims that the PUCO’s Order on Remand, limiting Suburban to charging consumers for only the 2.0 miles of the pipeline extension that are used and useful for consumers, will result in confiscatory rates in violation of the Fifth and Fourteenth Amendments of the United States Constitution.¹⁸ This claim has no merit.

As the Court noted, the used and useful test has been a feature of Ohio ratemaking since 1911 and has its genesis in the U.S. Supreme Court decision in *Smyth v. Ames*, that articulated a “constitutional standard for public utility ratemaking.”¹⁹ The ratemaking standard of *Smyth* presented a balancing approach where customers had to pay for property used for their benefit and the public utility could not receive compensation for property that did not benefit its consumers.²⁰ While the United States Supreme Court no longer uses the used and useful test as a constitutional mandate, the test continues to be the standard that the Ohio General Assembly has chosen to determine whether a public utility may properly charge ratepayers for its capital investment.²¹

¹⁸ Suburban AFR at 17-19.

¹⁹ *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224. ¶ 18.

²⁰ *Id.* at ¶ 19.

²¹ *Id.* at ¶ 20; *See also Dayton Power & Light Co. v. Public Utilities Com.*, 4 Ohio St.3d 91; 447 N.E.2d 733 (1983) (Discussing the history of utility takings claims under the federal constitution and rejecting claims by DP&L that a PUCO rate order resulted in a confiscatory rates.)

Moreover, Suburban does not have the legal right to charge consumers for more than 2.0 miles of pipeline extension. And therefore, the PUCO cannot unconstitutionally take what Suburban does not have.

Suburban's constitutional "takings" claim is based on Suburban's misguided view that it has a right to charge consumers for 4.9 miles of pipeline extension. It simply doesn't. The Court *reversed* and remanded the PUCO's September 2019 Order approving charges for the entire 4.9-mile pipeline extension because the PUCO improperly applied the used and useful legal standard for ratemaking. That means Suburban was not entitled to charge for 4.9 miles of pipeline extension unless the PUCO subsequently determined on remand that 4.9 miles was used and useful as of the date certain. But the PUCO reached the correct conclusion in the Order on Remand. As the Ohio Supreme Court has held, "any uncertainty which the utility harbors as to the used and useful status of its property, and therefore its includability in the rate base, can be minimized by the careful selection of the date at which the utility chooses to file its application for the rate increase."²² Suburban, thus, could have controlled the result here, but failed to do so. It should not now be heard to complain about its own failure to plan accordingly.

Suburban cites United States Supreme Court "precedent" that, in Suburban's view, supports its position that the PUCO's Order on Remand unconstitutionally deprives Suburban of cost recovery the 4.9-mile pipeline extension.²³ But the Supreme Court of Ohio specifically addressed this "precedent" when it reversed and remanded the September 2019 Order. The Supreme Court of Ohio stated that the used and useful test

²² Office of the Ohio Consumers Counsel v. Pub. Util. Comm., 58 Ohio St.2d 449, 391 N.E.2d 311, 457.

²³ Suburban AFR at 18.

“continues to be the standard that the Ohio legislature has chosen to determine whether a public utility may properly charge ratepayers for its capital investment,” even if the United States Supreme Court used a standard of “just and reasonable.”²⁴ Thus, the Supreme Court of Ohio, in reversing the September 2019 Order, has already reconciled Ohio law (the used and useful test under R.C. 4909.15) with the United States Supreme Court precedent that Suburban cites.²⁵

In short, the PUCO’s Order on Remand properly applied Ohio’s used and useful standard, as interpreted by the Supreme Court of Ohio, to the record evidence. Thus, the PUCO’s determination is lawful that only 2.0 miles of pipeline extension was used and useful on the date certain and recoverable from consumers in Suburban’s rates. The Order on Remand does not result in unconstitutional confiscatory rates. Suburban’s application for rehearing should be rejected.

C. The PUCO should reject Suburban’s Assignment of Error 3 claiming that the Order on Remand violates the filed-rate doctrine. The filed rate doctrine does not allow public utilities to charge unlawful rates.

Suburban claims that the PUCO’s Order on Remand unlawfully and unreasonably orders Suburban to refund rates to consumers in violation of the filed-rate doctrine.²⁶

Suburban’s claim should be rejected because, again, it relies on the fundamentally flawed premise that the PUCO’s approval of charges for the entire 4.9-mile pipeline was lawful. It was not.

²⁴ *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, ¶ 20 (citing *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 310 (1989)).

²⁵ *See also Dayton Power & Light Co. v. Public Utilities Com.*, 4 Ohio St.3d 91, 103; 447 N.E.2d 733, 743 (1983) (Rejecting claims by DP&L that a PUCO rate order violated the Fifth and Fourteenth Amendments to the United States Constitution, holding that the Ohio General Assembly “has adopted a consistent position in balancing investor and consumer interests in utility ratemaking” and “[w]e see no constitutional infirmity in the balance thus struck by the General Assembly.”).

²⁶ Suburban AFR, at 19.

The Court held that the PUCO’s September 2019 Order did not comply with the law (R.C. 4909.15).²⁷ Black’s Law Dictionary plainly defines “unlawful” as “[n]ot authorized by law.” The Court described the ways in which the PUCO’s conclusions regarding usefulness of the 4.9-mile pipeline extension were “not authorized by law”—the PUCO applied a prudent investment rule that is not authorized by law, and the PUCO looked beyond the date certain in evaluating usefulness, which is not authorized by law.²⁸

The PUCO’s “lawful authorization” of rates reflecting Suburban’s 4.9 miles of pipeline in the September 2019 Order ended when the Court reversed the PUCO’s September 2019 Order and the PUCO issued an entry halting Suburban’s implementation of additional rate increases.²⁹ In the same entry, the PUCO directed Suburban to file tariffs providing that Suburban’s customer and usage charges be collected subject to refund as of September 21, 2021 (the date of the Court’s decision) pending the PUCO’s decision on remand.³⁰

Thus, the Order on Remand directing Suburban to refund consumers for charges collected pending the PUCO’s remand does not violate the filed-rate doctrine. Suburban’s continued insistence that it is entitled to charges for the entire 4.9-mile pipeline extension and that it does not owe refunds to consumers as directed by the PUCO flies in the face of the Supreme Court’s reversal. The PUCO should deny Suburban’s application for rehearing.

²⁷ *In re Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, ¶¶ 27-34.

²⁸ *In re Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, ¶¶ 27-34.

²⁹ Oct. 6 Entry.

³⁰ *Id.*

D. The PUCO should deny Suburban's Assignment of Error 4 claiming that the Order on Remand is unlawful because it does not address Suburban's prior applications for rehearing.

Suburban's Assignment of Error 4 claims that the Order and Remand is unlawful because it does not address Suburban's prior applications for rehearing of the PUCO's October 6, 2021 and October 20, 2021 entries, which stopped Suburban from implementing further rate increases that would charge consumers for the entire 4.9 miles of pipeline and made Suburban's rates subject to refund.³¹ Suburban's request for rehearing should be denied.

As an initial matter, Suburban's Assignment of Error 4 should be denied to the extent it challenges the PUCO's Third Entry on Rehearing issued on December 1, 2021. The PUCO's Third Entry on Rehearing granted Suburban's previous November 5, 2021 and November 19, 2021 applications for rehearing "for the purpose of further consideration of the matters specified" in those applications for rehearing. Suburban now complains in *this* application for rehearing (filed on March 25, 2022) regarding the Order on Remand that the PUCO's "failure to address the pending rehearing requests constitutes error."³² However, if Suburban was concerned about the PUCO not addressing the issues in its November 5, 2021 and November 19, 2021 applications for rehearing within a timely manner, then it should have filed an application for rehearing of the PUCO's December 1, 2021 Third Entry on Rehearing within the 30 days required by R.C. 4903.10. Suburban failed to apply for rehearings on these issues within the time allowed. Suburban is precluded by law from seeking rehearing of these issues now.

³¹ Suburban AFR, at 22.

³² Suburban AFR, at 22.

Aside from that, Suburban’s Assignment of Error 4 should be denied on substantive grounds. Again, it relies on the false premise that Suburban should be allowed to charge consumers for the entire 4.9-mile pipeline extension even though the Court reversed the PUCO’s September 2019 Order. Under R.C. 4909.15, a utility may only charge consumers for property that is “used and useful ... in rendering [] public utility service.” R.C. 4905.22 likewise provides that “[a]ll charges made or demanded for any service rendered ... shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission.” In the September 2019 Order, the PUCO ruled that the entirety of a 4.9-mile pipeline extension was used and useful to consumers under R.C. 4909.15.³³ Thus, the PUCO approved a settlement that allowed Suburban to charge customers (after a phase-in) for the entire 4.9-mile extension.³⁴ Immediately after that ruling, consumers began paying rates that included 2.45 miles (50%) of the pipeline extension.³⁵ In September 2020, consumers began paying rates that include 3.92 miles (80%) of the pipeline extension.³⁶

The Court subsequently ruled on appeal that the PUCO erred in approving charges to consumers for the entire 4.9-mile pipeline extension.³⁷ As the Court explained, the PUCO violated R.C. 4909.15 in ruling that the entire 4.9-mile pipeline extension was useful: “The PUCO misapplied the used-and-useful test when it looked beyond the date certain and considered whether Suburban’s investment was prudent.”³⁸ Because the

³³ September 2019 Order, at ¶ 121.

³⁴ *Id.* ¶ 148.

³⁵ *Id.* ¶ 31.

³⁶ *Id.*

³⁷ *In re Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224.

³⁸ *Id.* ¶¶ 27-34.

PUCO failed to follow the law, the Court remanded the case to the PUCO to properly apply the law to the fact.³⁹

The PUCO subsequently issued entries ruling that: (i) Suburban could not increase its rates to include the entire 4.9-mile pipeline extension, and (ii) Suburban's rates to be collected subject to refund to the extent they include charges for more than 2.0 miles of the pipeline extension.⁴⁰ Thus, Suburban has no legitimate claim that it was lawfully authorized to charge consumers for the entire 4.9-mile pipeline extension pending the PUCO's Order on Remand.

Suburban cites cases that stand for the proposition that a PUCO ruling is not automatically void when the Supreme Court of Ohio reverses it.⁴¹ For example, Suburban cites *In re Columbus Southern Power Co.*, where the Court said that "a remand order of this court does not automatically render the existing rates unlawful."⁴² Likewise, Suburban cites *Cleveland Electric Illuminating Co. v. PUCO*. There, the Court similarly noted that when the Court reverses a PUCO ruling, the reversal "does not reinstate the rates in effect before the commission's order or replace that rate schedule as a matter of law, but is a mandate to the commission to issue a new order, and the rate schedule filed with the commission remains in effect until the commission executes this court's mandate by an appropriate order."⁴³

³⁹ *Id.* ¶ 35.

⁴⁰ Oct. 6 Entry; Oct. 20 Entry.

⁴¹ Suburban AFR at 23-26.

⁴² 2014-Ohio-462, ¶ 51 (cited Suburban AFR at 23).

⁴³ 46 Ohio St.2d 105, 105-06 (1976) (cited on Suburban AFR at 24).

That is precisely why, immediately after the Court reversed the PUCO's ruling, OCC filed a motion to protect consumers, asking that the PUCO (i) not allow Suburban to increase rates to charge consumers for the entire 4.9-mile pipeline extension or, in the alternative, (ii) make rates subject to refund.⁴⁴

The PUCO's subsequent entry prohibited Suburban from increasing its then current rates, which included charges for 3.92 miles of the extension, to higher rates that would include the entire 4.9-mile pipeline extension. And the PUCO required Suburban's rates to be collected subject to refund to the extent they include charges for more than 2.0 miles of the pipeline extension.⁴⁵ These things did not happen automatically. Rather, on remand the PUCO took affirmative steps to protect consumers, consistent with the Court's ruling.

Nothing in the authority cited by Suburban prohibits the PUCO from staying or modifying its order on remand when doing so is necessary to protect consumers from paying unjust and unreasonable rates and necessary to preserve the intent of the Court's ruling. Suburban's authority stands merely for the proposition that nothing happens automatically, and the PUCO must take affirmative steps. That is what happened here.

Suburban also argues that the PUCO improperly departed from past precedent where the PUCO permitted the FirstEnergy electric distribution utilities to continue collecting the full amount of a rider subject to refund pending a decision on remand.⁴⁶

⁴⁴ 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 PUCO's Decision, or, in the Alternative, Motion for Making Suburban's Charges Subject to Refund Effective Yesterday (Sept. 22, 2021).

⁴⁵ Oct. 6 Entry.

⁴⁶ Suburban AFR at 26-27 (citing *In the Matter of the Application of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and Toledo Edison Company for Authority to Provide for a*

However, the entry cited by Suburban does not preclude the PUCO from taking the action it did in this case by allowing Suburban to continue collecting the rates it was currently charging but denying the implementation of a *further* increase in light of the Court's reversal of the September 2019 Order.

Indeed, while the settlement between Suburban and the PUCO Staff allowed the third phase increase, Suburban sought approval from the PUCO of its revised tariffs implementing the third phase of the rate increase to charge consumers for 4.9 miles of pipeline extension on August 23, 2021.⁴⁷ Following Suburban's August 23, 2021 filing, the Court reversed the PUCO's previous decision to allow that increase and OCC immediately filed its motion to reject Suburban's further increase in rates. It was entirely appropriate for the PUCO to then "freeze" Suburban's current rates and make them subject to refund pending the Order on Remand. To do otherwise would exacerbate the harm to consumers.

Finally, Suburban again argues under Assignment of Error 4 that the PUCO's decision to deny implementation of the third phase rate increases is confiscatory and unconstitutional. As explained above, this argument relies on Suburban's erroneous view that it was legally entitled to charge consumers for 4.9 miles of pipeline extension. It was not. Thus, the PUCO should deny rehearing.

Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Case No. 14-1297-EL-SSO, Entry (Jul. 2, 1019).

⁴⁷ See Notice of Suburban Natural Gas Company to Implement Phase III of its Rate Increase (Aug. 23, 2021).

III. CONCLUSION

The PUCO got it right in the Order on Remand, under the Supreme Court's reversal, by determining that only 2.0 miles of Suburban's pipeline extension was used and useful and directing Suburban to issue refunds to consumers. Suburban's application for rehearing is based on its woefully flawed premise that the PUCO's prior September 2019 Order lawfully entitles Suburban to continue charging consumers for 4.9 miles of pipeline extension. But the Court held that order was based on a misapplication of Ohio's ratemaking laws. The PUCO's Order on Remand is lawful, grounded in the record evidence, and protects consumers. Suburban's application for rehearing should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Memorandum Contra was served by electronic transmission upon the parties below this 4th day of April 2022.

/s/ Angela D. O'Brien

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Summary: Memorandum Memorandum Contra Suburban Natural Gas Company's Application for Rehearing of the PUCO's Order on Remand from the Ohio Supreme Court by Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of O'Brien, Angela D.