

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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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 : Case No. 18-1206-GA-ATA  
 Natural Gas Company for :  
 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. :

- - -

PROCEEDINGS

before Ms. Anna Sanyal and Ms. Sarah Parrot, Attorney  
 Examiners, at the Public Utilities Commission of  
 Ohio, 180 East Broad Street, Room 11-C, Columbus,  
 Ohio, called at 9:00 a.m. on Thursday, July 11, 2019.

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VOLUME III

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On behalf of the Staff of the PUCO.

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COMPANY EXHIBIT IDENTIFIED ADMITTED

23 Commission Opinion and Order  
Case No. 12-1685-GA-AIR 658 --

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OCC EXHIBIT IDENTIFIED ADMITTED

11 Direct Testimony of Robert B.  
Fortney 431 491

12 Supplemental Direct Testimony  
of Robert B. Fortney in  
Opposition to the Stipulation 431 491

13 Supplemental Direct Testimony  
of William Ross Willis in  
Opposition to the Stipulation 542 622

14 Supplemental Direct Testimony  
of Daniel J. Duann, Ph.D. 624 683

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OPAE EXHIBIT IDENTIFIED ADMITTED

1 Direct Testimony of David C.  
Rinebolt 493 540

- - -

1 Thursday Morning Session,  
2 July 11, 2019.

3 - - -

4 EXAMINER SANYAL: Let's get on the  
5 record.

6 Good morning, everyone. Without further  
7 ado, OCC, if you are ready to call your -- actually  
8 before we do that, Ms. Bojko, would you like to admit  
9 some exhibits from yesterday?

10 MS. BOJKO: Yes, your Honor. Thank you.  
11 We have today complete copies of the direct testimony  
12 of Kyle Grupenhof in support of the Stipulation. It  
13 was marked yesterday as Suburban Natural Gas Exhibit  
14 No. 4. I apologize for the attachments that were not  
15 attached, so we do have a complete copy of the  
16 testimony with the attachments, and we would like to  
17 move that into the record at this time.

18 EXAMINER SANYAL: Any objections?

19 MR. HEALEY: I would like to see a copy.

20 EXAMINER SANYAL: As an administrative  
21 matter, it looks like it's already been admitted but  
22 let's give --

23 EXAMINER PARROT: Subject to the --

24 EXAMINER SANYAL: -- Mr. Healey an  
25 opportunity to review it real quick. And let's

1 actually go off the record.

2 (Discussion off the record.)

3 EXAMINER SANYAL: Well, let's go back on  
4 the record.

5 Ms. Bojko has provided updated copies of  
6 Exhibit No. 4, and it looks like there's no  
7 objections to the new --

8 MR. HEALEY: Can I just make a statement  
9 on the record?

10 EXAMINER SANYAL: Yes, you may,  
11 Mr. Healey.

12 MR. HEALEY: Thank you, your Honor. I  
13 notice that Ms. Bojko has attached to Exhibit 4 a new  
14 Attachment KDG-1, does appear to be identical to  
15 Exhibit 9; and, therefore, I have no objection. I  
16 would note, however, that I would expect that this  
17 does not serve as precedent for future cases in which  
18 exhibits are added after cross-examination is  
19 completed, but given that it was already an exhibit,  
20 I have no problem in this particular case. Thank  
21 you.

22 EXAMINER SANYAL: Thank you, Mr. Healey.

23 MS. BOJKO: Your Honor, if you prefer, we  
24 can do it as a late-filed exhibit as well in the  
25 docket because it was referenced and mentioned in his

1 testimony that was previously filed.

2 EXAMINER SANYAL: I think this will be  
3 fine since there are no objections at this time.

4 MS. BOJKO: Thank you.

5 EXAMINER SANYAL: And, Mr. Healey, you  
6 may proceed.

7 MR. HEALEY: Yes, your Honor. At this  
8 time the Ohio Consumers' Counsel would call Robert  
9 Fortney.

10 (Witness sworn.)

11 EXAMINER SANYAL: Okay. You may be  
12 seated. And, Mr. Healey, you may proceed.

13 MR. HEALEY: Thank you, your Honor. I  
14 would like to mark two exhibits. First would be OCC  
15 Exhibit 11, the direct testimony of Robert B. Fortney  
16 filed in this case on March 8, 2019, and the second  
17 one would be OCC Exhibit 12, the supplemental direct  
18 testimony of Robert Fortney in opposition to the  
19 Stipulation filed in June 21, 2019. And with your  
20 permission will approach the witness with copies.

21 EXAMINER SANYAL: Sure. Thank you.

22 (EXHIBITS MARKED FOR IDENTIFICATION.)

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ROBERT B. FORTNEY

being first duly sworn, as prescribed by law, was  
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Healey:

Q. Mr. Fortney, I've marked now OCC Exhibits  
11 and 12. You have copies of each of these exhibits  
in front of you, correct?

A. Yes.

Q. And can you tell me what OCC Exhibit 11  
is?

A. I forget which one is which. The one is  
the supplemental direct testimony.

Q. 11 is your March 8 testimony.

A. Okay. 11 is my direct testimony filed on  
March 8.

Q. And did you draft this testimony  
yourself?

A. Yes.

Q. And if I were to ask you the same  
questions in this testimony, would your answers be  
the same today?

A. Yes.

Q. And do you have any corrections to this  
testimony?



1 A. No.

2 Q. And, Mr. Fortney, do you have in front of  
3 you a copy of OCC Exhibit 12, your supplemental  
4 direct testimony from June 21, 2019, correct?

5 A. Yes.

6 Q. And you drafted this testimony yourself?

7 A. Yes.

8 Q. Do you have any changes to that  
9 testimony?

10 A. One small change I just noticed this  
11 morning. On page 8, line 11, it references "in Case  
12 No. 07" and it says "689" and then the footnote it is  
13 "07-589." 589 is the correct case number.

14 Q. Okay. So in line 11, you would change  
15 "689" to "589"?

16 A. Yes.

17 Q. Thank you.

18 A. That's the only change I have.

19 Q. Okay. If I were to ask you the same  
20 questions found in OCC Exhibit 12 today, would your  
21 answers be the same?

22 A. Yes.

23 MR. HEALEY: Your Honor, at this time OCC  
24 would move for the admission of Exhibits 11 and 12,  
25 subject to cross-examination, and Mr. Fortney is

1 available.

2 EXAMINER SANYAL: Okay. Ms. Bojko, you  
3 may proceed.

4 MS. BOJKO: Thank you, your Honor. Would  
5 you entertain motions to strike at this time?

6 EXAMINER SANYAL: Sure.

7 MS. BOJKO: The first motion to strike  
8 would be on the supplemental direct testimony, OCC  
9 Exhibit No. 12. It would be page 3, line 6, through  
10 page 4, line 10.

11 EXAMINER SANYAL: Okay. One moment until  
12 I get there. So page 3, line 6, starting with the  
13 question? I don't know if I am on the same one.

14 MS. BOJKO: Yes. It would be the Q6 and  
15 A6. I guess technically you can leave the question,  
16 but it wouldn't make sense if the answer is  
17 completely deleted. Through page 4, line 10, and  
18 then page 5 --

19 EXAMINER SANYAL: Well, let's start --  
20 let's --

21 MS. BOJKO: Oh, it's all the same  
22 rationale.

23 EXAMINER SANYAL: Okay. And then page 5.

24 MS. BOJKO: Page 5, line 5, so Q8,  
25 through page 13, line 9.

1 EXAMINER SANYAL: Okay.

2 MS. BOJKO: And also under the same  
3 argument we would move to strike the direct  
4 testimony, so OCC Exhibit 11, page 7, line 4, so Q8,  
5 through page 12, line 12.

6 EXAMINER SANYAL: So through Q14.

7 MS. BOJKO: Yes. Your Honor, the  
8 Commission should strike this testimony, both pieces  
9 of testimony, under the res judicata and collateral  
10 estoppel doctrines and for relevance under the Ohio  
11 Rules of Evidence 401 and 402.

12 The testimony discusses OCC's opposition  
13 to straight fixed variable rate design which was  
14 approved by the Commission in Case No. 17-594-GA-ALT.  
15 Under the Commission's decision in the Matter of the  
16 Complaint of Union Rural Electric Cooperative versus  
17 The Dayton Power and Light Company, Case No.  
18 88-947-EL-CSS issued on September 27, 1988, the  
19 doctrine of res judicata applies to PUCO, bars the  
20 repeat litigation of already decided issues.

21 OCC was a party to the proceeding where  
22 straight fixed rate design was approved as a full  
23 party of record. OCC had the opportunity to raise  
24 any arguments it desired to raise in opposition to  
25 Suburban's request to establish a straight fixed

1 variable rate design. The time to litigate that  
2 issue was then, not now, and the purpose of that  
3 proceeding was to determine the actual appropriate  
4 rate design.

5 It is inappropriate for OCC to come back  
6 now two years later and contest the rate design in a  
7 new proceeding after the Commission has already  
8 decided the issue when Suburban is not proposing any  
9 changes to the approved rate design in the current  
10 proceeding. Suburban's rate design is not an issue  
11 in the instant case.

12 Suburban or any other gas company should  
13 not be required to litigate this issue ad nauseam  
14 every time a party decides to insert it into a new  
15 proceeding. The Commission has made its  
16 determination on this issue just two years ago, and  
17 OCC should be estopped from relitigating the issue,  
18 and the parties should not be exposed to the  
19 expenditures of time and resources reexamining the  
20 straight fixed variable rate design.

21 If the Commission does not strike the  
22 whole discussion on the straight fixed variable  
23 design, we have an alternative argument that I'll  
24 save for if you decide not to remove the straight  
25 fixed variable discussion. Thank you.

1 EXAMINER SANYAL: Mr. Healey.

2 MR. HEALEY: Thank you, your Honor.

3 Counsel's motion to strike appears to mirror the  
4 motion to strike OCC's objections in this case which  
5 OCC responded to. I would direct the Bench to OCC's  
6 response there in addition to my response right now.

7 First, the doctrine of res judicata does  
8 not apply in this case. The previous case was a  
9 different case, and the issue was different. In that  
10 case the question was should Suburban's rate design  
11 be changed in a revenue neutral fashion to go from a  
12 rate that had a fixed charge and a variable charge to  
13 a physically fixed charge. Changing rate design but  
14 you were not at least facially having a rate  
15 increase.

16 The question in this case is what should  
17 the rate design be if there is a rate increase. Now,  
18 that's a different question. The fact that the  
19 Commission approved a fully fixed charge in a  
20 previous case does not bind the Commission for the  
21 rest of eternity to approving fixed charges.  
22 According to counsel's theory, the Commission could  
23 never revisit that issue. OCC could never reraise  
24 the issue.

25 Mr. Fortney's testimony focuses

1 specifically on why circumstances have changed in the  
2 past however many years since the Commission first  
3 approved straight fixed variable rate design, and he  
4 explains specifically why the Commission should  
5 revisit that issue now and come to a different  
6 conclusion. There's simply no res judicata issue.

7 For a second reason, Ms. Bojko points out  
8 that in the 2017 case OCC participated but that issue  
9 was specifically not litigated. OCC filed a notice  
10 on the docket that explicitly said we are not taking  
11 any position on this. We reserve our rights to  
12 address it in a future case; and so, therefore,  
13 because it was not, in fact, litigated, the fact it  
14 could have been litigated does not make res judicata  
15 applicable in this case. Thank you.

16 EXAMINER SANYAL: Ms. Bojko, I will allow  
17 you a very brief response.

18 MS. BOJKO: Your Honor, I mean, the point  
19 of raising this is because the Bench has not ruled or  
20 the Commission has not ruled on the filed motion to  
21 strike the objections. It doesn't -- counsel  
22 actually pointed out why this is completely  
23 irrelevant to the current case. Mr. Fortney's  
24 testimony talks about 2008. This issue was approved  
25 for Suburban in 2017.

1           Just because OCC decided not to litigate  
2 the issue does not mean that res judicata does not  
3 apply. Res judicata applies if a party was a party  
4 to the proceeding and could have and should have  
5 raised the issue at that time.

6           That's exactly what happened in this  
7 case. OCC chose not to because of Commission  
8 precedent, and now they are saying that that  
9 Commission precedent should somehow change after a  
10 mere two years. That's not -- less than two years.  
11 That's not appropriate.

12           Res judicata does apply and counsel's  
13 incorrect. We are not saying that the Commission can  
14 never rule on this issue begin. We are saying that  
15 this rate design is not an issue in this case. It  
16 was never applied to be an issue in this case, and  
17 OCC can't make any issue relevant to any case just  
18 because it wants to change the existing status quo.  
19 There has to be an issue in the case.

20           EXAMINER SANYAL: Ms. Bojko, I am going  
21 to deny your motion but please go ahead with your  
22 alternate motion.

23           MS. BOJKO: Thank you. Your Honor, given  
24 that you did not strike the whole discussion on  
25 straight fixed variable, as counsel for OCC just

1 pointed out and I alluded to, Suburban also moves to  
2 strike Mr. Fortney's discussion of changes in the  
3 past 10 years since 2008 with regard to straight  
4 fixed variable rate design or the natural gas  
5 industry to be irrelevant. This discussion occurs  
6 from page 6, line 8, through page 9 --

7 EXAMINER SANYAL: Which is in the  
8 supplemental.

9 MS. BOJKO: Yes, thank you, your Honor,  
10 of the supplemental OCC Exhibit No. 12, the  
11 discussion occurs from page 6, line 8, through page  
12 9, line 3, and here Mr. Fortney discusses changes in  
13 the price of natural gas since Suburban's last rates  
14 were approved in 2008.

15 The discussion is further irrelevant  
16 because Suburban's straight fixed variable design was  
17 approved in 2017, not 2008. So all of this is a  
18 discussion about 2008 to 2017 is completely  
19 irrelevant to the case. Therefore, discussion of  
20 whether straight fixed variable is more or less  
21 appropriate than it was in 2008 is not relevant to  
22 Suburban's instant proceeding.

23 To the extent that OCC's permitted to  
24 reopen the Commission's consideration of the rate  
25 design, the relevant time to consider is between 2017



1 and the present, not the 10 years prior to that. It  
2 is based on the conditions of 2017, not 2008, that  
3 the Commission approved the rate design in 2017.

4 Thus under Ohio Rules of Evidence 401 and  
5 2 it makes no fact at issue in determining the  
6 reasonableness of the Stipulation more or less  
7 probable and should be excluded as irrelevant  
8 testimony.

9 Your Honor, and to your point there is  
10 also corresponding sections of the direct testimony  
11 because I believe the testimonies are repetitive or  
12 duplicative, and so the direct testimony, OCC Exhibit  
13 11, we would propose to strike page 8, line 6,  
14 through page 9, line 15. And Exhibit 11 -- oh,  
15 that's Exhibit 11. Sorry.

16 EXAMINER SANYAL: And then could you  
17 refresh my memory as to with the supplemental  
18 testimony?

19 MS. BOJKO: Yes, my apologies, your  
20 Honor. It was page 6, line 8.

21 EXAMINER SANYAL: And then I think it was  
22 page 9.

23 MS. BOJKO: Line 3.

24 EXAMINER SANYAL: Mr. Healey.

25 MR. HEALEY: Yes, your Honor. I would

1 note that essentially the same arguments I made  
 2 before all apply to counsel's new alternative motion  
 3 to strike. The -- couple independent responses.  
 4 First, the Commission's 2017 ruling was, as all  
 5 Commission decisions are, based on whatever came  
 6 before that. So we have incremental changes in 2008,  
 7 and there is some rulings in 2010, '11, '12, all the  
 8 way through '17. You cannot take the 2017 ruling in  
 9 isolation and say once the Commission makes a ruling  
 10 in 2017 anything before that is immediately erased  
 11 from memory, and we can only look from 2017 forward.

12 The Commission's decision in 2017 was in  
 13 part informed by the exact things that Mr. Fortney  
 14 identifies in his testimony, the things that happened  
 15 from 2008 to 2017. Independently, Mr. Fortney is  
 16 testifying here as an expert witness, so under Rule  
 17 703 he is entitled to render an expert opinion based  
 18 on essentially whatever facts he considers to be  
 19 relevant to his expert opinion.

20 His expert opinion in this case is that  
 21 the Commission should reconsider this fixed rate --  
 22 variable rate design based on a whole host of  
 23 factors, some of which are the changes in the natural  
 24 gas markets since 2008 and continuing now through  
 25 2019, he is entitled to rely on those facts to render

1 his expert opinion based on his many decades of  
2 regulatory experience. Thank you.

3 MS. BOJKO: May I respond, your Honor?

4 EXAMINER SANYAL: Yes.

5 MS. BOJKO: Counsel made my point exactly  
6 for me. First, in the prior arguments he said we  
7 shouldn't look at past Commission precedent because  
8 the Commission should be able to change its mind  
9 moving forward.

10 Now, he's arguing we should look at past  
11 Commission precedent, and we have to look at the  
12 history in order to get before 2017. That might be  
13 even slightly true, inconsistent albeit but slightly  
14 true, is Suburban's straight fixed variable rate had  
15 been approved in 2008, '9, '10, '11, '12, what he  
16 said. It wasn't. It wasn't approved until 2017. So  
17 the Commission looked at the industry at the time in  
18 2017 when it rendered its decision.

19 So he can't have it both ways. We can't  
20 ignore Commission past precedent when he doesn't like  
21 it and say that the Commission has a right to change  
22 its orders going forward, and then now all of a  
23 sudden, we have to look at past precedent and the  
24 history when we're talking about a different motion  
25 to strike. He can't have it both ways.

1           It's 2017. The Commission made its  
2 decision and based on its decision on the facts and  
3 circumstances and the industry that existed at that  
4 time.

5           My second point is I agree Mr. Fortney is  
6 an expert. He's -- I won't even tell you how many  
7 years he's been here, way beyond my 22 years I  
8 mentioned yesterday. He is very much an expert but  
9 just because you are an expert you do not have the  
10 right in unfettered discretion to go beyond the scope  
11 of the proceeding. The testimonies would be long,  
12 and the hearings would take forever if we allowed  
13 every expert to opine on any issue that it thought  
14 that the Commission needed to address or change in  
15 any -- any case going forward.

16           That's not how it works. The expert  
17 testimony has to be confined to the scope of the  
18 proceeding.

19           MR. HEALEY: If I may, your Honor.

20           EXAMINER SANYAL: Actually, Ms. Bojko,  
21 I'm going to deny your motion. I slightly disagree  
22 with your characterization of Mr. Healey's arguments,  
23 but I am going to deny the motion, and I am going to  
24 give you some leeway with cross.

25           So let's get on with it.

1 MS. BOJKO: Thank you.

2 EXAMINER SANYAL: Yep.

3 MS. BOJKO: Your Honor, we have one more  
4 motion to strike. This is regarding first we'll look  
5 at the supplemental testimony. It's page 7, lines 16  
6 through 19, and page 10, lines 16 to 18, ending with  
7 the percentage. And then the direct testimony, so  
8 OCC Exhibit 11, it's page 8, line 18, going over to  
9 page 9 through line 5. And page 10, line 22, going  
10 over to page 11, line 5.

11 Your Honors, Suburban moves to strike  
12 this testimony as irrelevant under Ohio Rule of  
13 Evidence 401 and 402 as it's not relevant to the  
14 hearing. It's beyond the scope of the proceeding.  
15 Mr. Fortney's providing testimony on Suburban's  
16 Application and not the Stipulation. This is not the  
17 rates -- these are not the rates that are being  
18 proposed to go into effect and this is not a hearing  
19 now on the Application. It's a hearing on the rates  
20 that are being recommended by the Stipulation and the  
21 Stipulation three-prong test.

22 So Suburban is not asking the Commission  
23 to adopt the rates as proposed in the Application and  
24 that is what Mr. Fortney is speaking to and he's --  
25 his testimony speaks about the effect the Application

1 would have on customers if the Application was  
2 approved which we are not asking that those rates be  
3 approved.

4 So the testimony is irrelevant, and it  
5 only serves to confuse the record.

6 MR. HEALEY: Thank you, your Honor. Two  
7 points on this issue. One, under the Commission's  
8 three-prong test the Commission has to consider the  
9 reasonableness of the settlement. The reasonableness  
10 of the settlement is affected by what was in the  
11 Application, so the Commission has the duty, I would  
12 say, to compare what's in the Application to the  
13 Stipulation in balancing whether the Stipulation has  
14 come to a reasonable resolution. And, therefore,  
15 Mr. Fortney's testimony is relevant in that regard.

16 Second, I would note -- actually I have  
17 three points. Second, I would note that it's  
18 provided primarily for context so that Mr. Fortney  
19 can compare the application to the Stipulation which  
20 bolsters the first point.

21 And the third point would be that the  
22 Commission may reject the Stipulation and look back  
23 to the application. In fact, Suburban's witness  
24 Sonderman states in his testimony, and I apologize I  
25 don't have the reference exactly, that should the

1 Commission reject the Stipulation, it should consider  
2 the Application and Suburban's objections to the  
3 Staff Report and all those other things that happened  
4 before the Stipulation.

5 So in that regard Mr. Fortney's testimony  
6 would remain relevant in the context the Stipulation  
7 being rejected and the Commission perhaps looking  
8 back to the Application itself.

9 EXAMINER SANYAL: Ms. Bojko, I am going  
10 to deny your motion because in cross you can make it  
11 clear what these rates -- what these examples are  
12 meant to represent.

13 MS. BOJKO: Okay. Thank you, your Honor.

14 EXAMINER SANYAL: Okay. And you may  
15 proceed.

16 MS. BOJKO: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Bojko:

20 Q. Good morning, Mr. Fortney.

21 A. Good morning.

22 Q. Mr. Fortney, you are well aware given  
23 your experience and your years in the industry, you  
24 are well aware of the three-part test that the  
25 Commission considers and uses to evaluate

1 stipulations, correct?

2 A. Yes.

3 Q. And you list the three-part test or  
4 three-prong test on page 4 of your supplemental  
5 testimony; is that accurate? I'm sorry. You list  
6 the three-prong test on page 4 of your testimony?

7 A. Yes.

8 Q. And in your testimony on the Stipulation,  
9 I am going to focus on the Stipulation in the  
10 testimony first, in your testimony on the  
11 Stipulation, so it's OCC Exhibit 12, you do not  
12 address the issue of whether there was serious  
13 bargaining among knowledgeable, capable parties; is  
14 that correct?

15 A. That's correct.

16 Q. You also do not discuss the third prong  
17 which is whether the Stipulation violates any  
18 regulatory practices or principles, correct?

19 A. Sometimes in my opinion prong two and  
20 prong three overlap, so I just chose to put this  
21 issue into prong two rather than prong two and three.  
22 So, no, I do not address prong three, only prong two.

23 Q. So as you stated, the prong you focus on  
24 in your testimony -- your testimony -- supplemental  
25 testimony is prong two and that's whether the



1 Stipulation benefits customers in the public  
2 interest, correct?

3 A. That's correct.

4 Q. And your testimony concludes that the  
5 Stipulation does not benefit customers because the  
6 Stipulation uses a straight fixed variable rate  
7 design, correct?

8 A. That's correct. In my mind it does not  
9 benefit residential customers.

10 Q. You do not address any other reasons in  
11 your supplemental testimony for this conclusion; is  
12 that correct?

13 A. That it does not pass the second prong?

14 Q. Yes.

15 A. No. I only address the straight fixed  
16 variable issue. Other OCC witnesses address other  
17 prongs.

18 Q. In your direct testimony that you filed,  
19 OCC Exhibit 11, you also recommend that the revenue  
20 class allocation be the same as it is in Suburban's  
21 Schedule E-4 current revenue responsibility that was  
22 filed with Suburban's Application, correct?

23 A. That's correct. That was my  
24 recommendation.

25 Q. And in your direct testimony, you believe

1 that that allocation should be 79.11 percent of the  
2 revenues should be allocated to the SGS class,  
3 correct?

4 A. I believe that's correct.

5 Q. And the Stipulation resolves the cost  
6 allocation issue in Section 8A; is that correct?

7 A. That's correct. In response to an OCC  
8 data request to Suburban requesting an E-4 type  
9 schedule that reflects that provision of the  
10 Stipulation, I was very satisfied by what actually --  
11 Ms. Clement, I believe, did the study, and I was very  
12 satisfied that E-4 schedule that she provided  
13 reflected the allocation of the revenue that OCC  
14 recommended ,and it matched the A-1, so I was very  
15 satisfied with that result, yes.

16 Q. So in the E-4, and I believe we discussed  
17 it yesterday through Ms. Clement's testimony as well  
18 as it's in Staff's testimony, the allocation to the  
19 SGS customers under the Stipulation is approximately  
20 77 percent which is less than the 79 percent  
21 originally proposed by Suburban.

22 A. Well, and I don't have it in front of me.  
23 I think once she took the miscellaneous revenues out  
24 that the percent was the 79 percent, 79.10 instead of  
25 79.11; so, yes, I believe that the rates and revenue

1 allocation indicated in the E-4 schedule will comply.

2 Q. Just so we make sure the record is clear,  
3 I want to provide you with the E-4 so we can get the  
4 allocation percent right.

5 A. I probably have it somewhere in my stack.  
6 Yes, I do have it.

7 Q. So the E-4 that you have in front of you  
8 would reflect that the SGS allocation under the  
9 Stipulation is 77 -- approximately 77 percent?

10 EXAMINER SANYAL: May I have a copy of  
11 that whatever?

12 MS. BOJKO: Yes.

13 EXAMINER SANYAL: Thank you.

14 MS. BOJKO: We made copies, your Honor.

15 THE WITNESS: I actually have two copies  
16 if you want me to give her my extra copy. I hope  
17 yours are better than mine. The printing is somewhat  
18 small.

19 EXAMINER SANYAL: Is this the document I  
20 should be looking at?

21 THE WITNESS: This was a document in  
22 response to OCC's Second Set of Discovery on the  
23 Stipulation.

24 MS. BOJKO: It was -- it was OCC Exhibit  
25 3 yesterday.

1 Q. Is that the one you said, sir? Oh,  
2 that's -- oh, E-4.

3 A. Oh, I'm sorry. I thought that was what  
4 you were referring to.

5 EXAMINER SANYAL: I have OCC Exhibit 3.

6 Q. How about I give you OCC Exhibit 3?

7 MS. BOJKO: May I approach, your Honor?

8 EXAMINER SANYAL: Yes.

9 MS. BOJKO: Do you have OCC Exhibit 3?

10 Q. OCC Exhibit 3, I believe, is the data  
11 response from Ms. Clement that you referred to a  
12 moment ago; is that accurate, Mr. Fortney?

13 A. I was actually just referring to the E-4  
14 schedules.

15 Q. Okay. I can give you the E-4s.

16 A. I have the E-4 schedules.

17 Q. We haven't marked them yet.

18 MS. BOJKO: Your Honor, at this time may  
19 we mark as Suburban Exhibit 15 a data response to  
20 Stip Interrogatory 2-1. May I approach?

21 EXAMINER SANYAL: Yes, you may.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Mr. Fortney, do you have in front of you  
24 what it is been marked as Suburban Exhibit 15?

25 A. Yes.

1           Q.    Is this the data response and attached  
2   E-4 that you mentioned a moment ago?

3           A.    Yes.

4           Q.    And from the attached E-4 do you see that  
5   the allocation is approximately 17 percent to the SGS  
6   class?

7           A.    Approximately what percent?

8           Q.    77 percent.

9           A.    Yes.

10          Q.    And 77 percent is less than the 79  
11   percent originally proposed by Suburban.

12          A.    Well, except as I indicated earlier, this  
13   77 percent is based upon the total revenue including  
14   miscellaneous revenue. If you took the miscellaneous  
15   revenue out, that 77 percent is really -- is about  
16   79.10 percent, I believe, so it almost matches  
17   exactly.

18          Q.    Okay. You keep saying take the  
19   miscellaneous revenue out and that was done per the  
20   Stipulation, correct? Are you talking about  
21   adjustments to miscellaneous revenue?

22          A.    No. I am just talking about this E-4  
23   schedule.

24          Q.    I see.

25          A.    You keep saying that the revenue

1 distribution to the SGS class is 77.34 percent. What  
2 I am saying is if you took the miscellaneous revenue  
3 out, which is 2.2 percent, that 77 percent becomes 79  
4 percent.

5 Q. Thank you. I understand what you are  
6 doing now. I apologize. And just for the record you  
7 are looking at line 16 which is the miscellaneous  
8 revenue line at 2.22 percent, and if you remove that  
9 from the discussion, then it would raise the  
10 allocation?

11 A. It matches almost exactly what I think  
12 that the revenue allocation should be.

13 Q. Okay. Thank you. So you believe that  
14 that revenue allocation issue that you originally  
15 raised in your direct testimony has been resolved by  
16 the Stipulation to your satisfaction.

17 A. I believe that the Stipulation resolves  
18 that OCC objection, yes.

19 Q. And in your direct testimony, OCC Exhibit  
20 11, you also recommended that the customer should  
21 have all payment options available to avoid  
22 disconnection; is that correct?

23 A. That's correct.

24 Q. And this issue was explicitly addressed  
25 and resolved by Section 9A of the Stipulation; is

1 that correct?

2 A. That is correct and I probably misread  
3 the Staff Report when I made that objection because  
4 it appears what I recommended is the practice, but  
5 the Stipulation specifies that cash payments would be  
6 accepted. So, yes, of the three issues that I raised  
7 in my direct testimony, I believe two of them were  
8 resolved by the Stipulation.

9 Q. So other than the straight fixed variable  
10 rate design issues, you do not address any other  
11 concerns or issues with the Stipulation in your  
12 supplemental testimony.

13 A. I do not, no.

14 Q. And those that you had raised earlier in  
15 your direct testimony have now been addressed to your  
16 satisfaction; is that correct?

17 A. I believe that's correct, yes.

18 Q. Now, let's turn to the subject straight  
19 fixed variable rate design. You believe that there  
20 has been significant changes in the circumstances  
21 that the Commission originally relied on in  
22 implementing the straight fixed variable policy that  
23 should lead the Commission to revisit the  
24 appropriateness of this straight fixed variable rate  
25 design, correct?

1           A.    I believe that most of those decisions in  
2   the gas industry were made in the 2008 time frame.  
3   All the major gas companies went to either a full  
4   straight fixed or some semi-straight fixed rate  
5   design, and at that time in all of those cases the  
6   Commission opined as to why they thought that was  
7   appropriate.

8           Q.    And many of those cases also had a  
9   phase-in of -- a phase-in of the straight fixed  
10   variable rate design if they went to full  
11   implementation of it?

12          A.    I'm sorry. I didn't understand the  
13   question.

14          Q.    In many of those cases that you just  
15   referenced the -- there was a phase-in of the  
16   straight fixed variable if the Company had gone to a  
17   full straight fixed variable rate design with no  
18   volumetric charge, correct?

19          A.    I believe that's correct at least in one  
20   or two of them there was a two- or three-step  
21   phase-in to a full straight fixed variable.

22          Q.    So just to be clear in your supplemental  
23   testimony on page 6, line 11, when you used the term  
24   originally relied on in implementing the straight  
25   fixed variable policy, you're not referencing



1 Suburban. You are referencing the 2008 cases where  
2 the straight fixed variable was originally introduced  
3 and implemented.

4 A. My original list of items in that context  
5 was in the 2008 time period.

6 Q. And you weren't referencing any  
7 particular case or utility. You were just speaking  
8 generally about all of them around that time frame.

9 A. That's correct. I mean, I guess I could  
10 have gone to all the opinion and orders and  
11 referenced all of them individually, but in general  
12 the Commission was going to a straight fixed variable  
13 rate design in the gas industry.

14 Q. And you would agree that the straight  
15 fixed variable rate design was first approved for  
16 Suburban in 2017.

17 A. I think it was a 2007 case. I don't know  
18 when the Opinion and Order came out but, yes.

19 Q. 2017 case?

20 A. No. I think the Suburban -- the original  
21 Suburban case was in an '06 case. Let me check.  
22 06-689-GA-AIR was the Suburban rate case, and then  
23 the 17-594-GA-ALT case was where the Commission  
24 phased in the full straight fixed variable rate  
25 design for Suburban.

1           Q.    But in the 2007 rate case, the order was  
2           issued in 2008.  The 2007 rate case the Commission  
3           did not approve or adopt the straight fixed variable  
4           rate design for Suburban; isn't that correct?

5           A.    I believe that's correct.  And I don't  
6           have the figures in front of me, but it was a  
7           relatively low customer charge at that time.

8           Q.    So it wasn't adopted in the 2007 rate  
9           case that was approved in 2008.  The straight fixed  
10          variable for Suburban was actually adopted in  
11          17-594-GA-ALT in 2017, November 1, 2017.

12          A.    That's correct.

13          Q.    Okay.  And that was fewer than two years  
14          ago; is that correct?

15          A.    Yes.

16          Q.    And you agree that OCC was a party to  
17          that 2017 case, correct?

18          A.    That's correct.  And in that case is  
19          where they submitted the letter to the Commission  
20          saying that while they opposed the straight fixed  
21          variable rate design and reserved the right to  
22          litigate it in the future, they were not going to  
23          contest the results of the 17-594 case.

24          Q.    And the letter that you reference on page  
25          6 of your testimony that was filed on October 18,

1 2017, the Commission -- or the Consumers' Counsel  
2 specifically chose not to oppose Suburban's  
3 application to implement straight fixed variable; is  
4 that correct?

5 A. I better find the letter because I don't  
6 like to rely on my memory any more.

7 Q. Sure.

8 MS. BOJKO: Your Honor, for  
9 identification purposes may we mark as Suburban  
10 Exhibit 16 the Consumers' Counsel's October 18, 2017,  
11 letter filed in 17-594-GA-ALT?

12 EXAMINER SANYAL: It is so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MS. BOJKO: May we approach?

15 EXAMINER SANYAL: Yes.

16 Q. (By Ms. Bojko) Sir, do you have in front  
17 of you what's been marked as Suburban Exhibit 16?

18 A. Yes, I do. To answer your question, the  
19 letter states "Through this letter," which was  
20 from Kevin Moore, an Assistant Consumers' Counsel, to  
21 Greta See and Patricia Schabo who were the Examiners  
22 in that case, "Through this letter, the Consumers'  
23 Counsel notifies the PUCO that while we have been  
24 opposed to the straight fixed variable rate design in  
25 the past, and remain so to this day, given the

1 experience gained from rulings in past appeals, we  
2 will not contest the implementation of SS -- SFV rate  
3 design for Suburban Natural Gas.

4 "Please note that this letter or the  
5 Consumers' Counsel's position in this proceeding  
6 should not be considered as precedent for any future  
7 case and shall not be construed to limit any future  
8 consumer advocacy on these issues by the Consumers'  
9 Counsel."

10 Q. So my question was it's your  
11 understanding that on October 18, 2017, that OCC was  
12 a party to the proceeding and chose not to contest  
13 the implementation of straight fixed variable.

14 A. Yes.

15 Q. And you -- you were an employee of OCC at  
16 the time; is that correct?

17 A. That's correct.

18 Q. And it's your understanding that the  
19 straight fixed variable rate design was implemented  
20 in two phases, one November 2017 and one in 2018?

21 A. I believe that's correct, yes.

22 Q. Putting the rate increase aside for a  
23 moment, you would agree with me that the application  
24 in this case does not change or revise the actual  
25 straight fixed variable rate design approved and

1 implemented in 2017, correct?

2 THE WITNESS: Could I have that question  
3 reread.

4 EXAMINER SANYAL: Of course.

5 (Record read.)

6 MR. HEALEY: Objection. Your Honor, the  
7 counsel's hypothetical, I assume, is irrelevant  
8 because it asks the witness to put aside the rate  
9 increase. The rate increase is a core component of  
10 rate design and Mr. Fortney's testimony so there's no  
11 relevance in asking him a question that puts aside  
12 the major issue in the case.

13 MS. BOJKO: Your Honor, I am talking  
14 about the rate design, and the point is that it  
15 doesn't change regardless of whether you raise the  
16 revenue requirement. And I believe that -- we  
17 believe the whole straight fixed variable is  
18 irrelevant, and you were going to give me some  
19 leeway.

20 EXAMINER SANYAL: Can I have the question  
21 read back again because I kind of lost my train of  
22 thought.

23 (Record read.)

24 EXAMINER SANYAL: Overruled. Move on.

25 A. I believe that the Application in this

1 case does not change the rate design. However, I  
 2 don't think you can put the rate increase aside  
 3 because that's OCC's recommendation that that rate  
 4 increase is what should be recovered through  
 5 volumetric rates rather than a straight fixed  
 6 variable. So the principle in the Application was to  
 7 continue the full straight fixed variable rate  
 8 design, but you can't put aside the Application which  
 9 has -- there again, the Application asks for an  
 10 increase from \$29 to whatever the number was, \$43.  
 11 It was a very significant increase request in the  
 12 Application.

13 Q. Right. But your -- in your experience  
 14 the -- the rate design issue remains the same whether  
 15 the revenue requirement is \$5 or \$10, correct? It's  
 16 only OCC that's proposing that the rate design change  
 17 by adding back in a volumetric component, correct?

18 MS. MOONEY: Objection. OPAE also  
 19 proposed that.

20 EXAMINER SANYAL: I'm sorry?

21 MS. MOONEY: OPAE also proposed that in  
 22 our testimony.

23 EXAMINER SANYAL: Okay. Thank you for  
 24 the clarification.

25 You may answer the question.

1           A.    I don't know if this answers the  
2 question, but I think that's the whole point of my  
3 testimony, does Commission precedent last forever  
4 even if there are changes in circumstances.

5           Q.    Well, Mr. Fortney, let's go prior to the  
6 Application in this case for our rate increase.  If  
7 the revenue requirement is \$5 or the revenue  
8 requirement is \$10, the concept of the straight fixed  
9 variable rate is no volumetric charge, just a fixed  
10 customer charge, correct?

11          A.    That's the concept of a full straight  
12 fixed variable rate design.

13          Q.    And that concept is what the Stipulation  
14 carries forward, that there would be a fixed charge  
15 only for SGS customers and that there would be no  
16 volumetric charge for SGS customers.

17          A.    The Stipulation proposes to raise the  
18 customer charge, fixed charge to \$33.84 and there  
19 would be no volumetric component.

20          Q.    And that proposal to increase the charge  
21 isn't based on revising the concept of straight fixed  
22 variable or changing the rate design.  It's based on  
23 changing the underlying revenue requirement, correct?

24          A.    Yes.  The increase in the fixed charge is  
25 caused by the requested revenue increase.

1 Q. Let's turn to page 7, line 3, of your  
2 supplemental testimony.

3 EXAMINER SANYAL: May I have the page  
4 number again?

5 MS. BOJKO: Page 7, line 3.

6 Q. You state on line 3 that "the price of  
7 natural gas has decreased significantly since 2008";  
8 is that correct?

9 A. I'm sorry. Could I have the question  
10 reread.

11 Q. Are you having trouble hearing me,  
12 Mr. Fortney?

13 A. Yes.

14 Q. Okay. I'll speak up. I apologize.

15 EXAMINER SANYAL: Do you need a  
16 microphone?

17 MS. BOJKO: No. I'll just speak up.

18 A. My hearing sucks.

19 Q. I was going state that I am having  
20 difficulty because my ear is blocked from the  
21 airplane ride still so I think I am talking really  
22 loudly so I apologize. I will speak up.

23 Turning to page 7, line 3, you reference  
24 at the end of the first sentence 2008. Do you see  
25 that? Page 7, line 3., supplemental.



1           A.    The price of natural gas has decreased  
2 significantly since 2008.

3           Q.    Right.  And, again, you would agree that  
4 the straight fixed variable rate design wasn't  
5 approved for Suburban in 2008.

6           A.    That's correct.  It was not approved --  
7 the Suburban did not move to the full fixed variable  
8 rate design until the second phase that was approved  
9 in Case No. 17-594.

10          Q.    So I want to talk about the Commission's  
11 decision, the approval of the straight fixed variable  
12 rate design which occurred in November 2017.  So when  
13 the Commission made its decision in November of 2017,  
14 it would have been aware of the natural gas prices in  
15 the industry in 2017, correct?

16               MR. HEALEY:  Objection.  Your Honor,  
17 counsel is asking our witness to testify as to what  
18 the Commission may have been aware of.  The  
19 Commission Order speaks for itself, but he is asking  
20 him to speculate what the Commission was thinking.  
21 The Commission's orders are set forth in writing, and  
22 if she wants to ask him questions about that, I have  
23 got no problem with that, but to ask him to speculate  
24 what the Commission may or may not have been aware of  
25 is inadmissible.

1 EXAMINER SANYAL: Are you able to  
2 rephrase?

3 MS. BOJKO: Your Honor, but, I mean, this  
4 is the problem and why we raised the objection on  
5 relevancy. I mean, with all due respect,  
6 Mr. Fortney's trying to tell us what the Commission  
7 thought from 2008, you know, to 2017. So we're  
8 trying to get at that there was a 2017 issue, not a  
9 2008 issue. So I'll rephrase but that's the whole  
10 problem with the testimony that we raised the  
11 objection to.

12 Q. (By Ms. Bojko) Mr. Fortney, in your vast  
13 experience -- you were also an employee at the  
14 Commission; is that correct?

15 A. That's correct, from 1985 to 2012.

16 Q. Do the math but that's at least 25 years?

17 A. 27 years.

18 Q. Close. And you would believe that in  
19 your position now as an expert and in your position  
20 then as an employee of the Commission, you would  
21 expect that the Staff of the Commission and the  
22 Commission would be familiar with the state of the  
23 industry -- the natural gas industry when rendering  
24 its decision, correct?

25 A. Well, there again, I can't -- at one time

1 I believe the Commission was co-mission, but I can't  
2 speak to what the Commission knew in 2017 or thought.  
3 I don't know an answer.

4 Q. Right, but from your experience you  
5 believe that the Staff of the Commission would be up  
6 to date on what was going on in the industry that  
7 they regulated?

8 A. I would suspect they were very aware of  
9 what was going on in the industry. As a matter of  
10 fact, they had -- there are orders in other cases  
11 where they have recognized prior to 2017 that gas  
12 prices were no longer high and volatile, that they  
13 were relatively lower and stable, but that did not  
14 change their approval of the straight fixed variable  
15 rate design.

16 Q. Right. So when the PUCO -- when the  
17 Commission approved the straight fixed variable rate  
18 design for Suburban without OCC contesting it, the  
19 Commission was doing so based on the conditions that  
20 existed at the time.

21 A. I assume that's true.

22 Q. In your testimony you also object that  
23 straight fixed variable adversely impacts energy  
24 efficiency efforts; is that correct?

25 A. That's correct.

1 Q. And you say that straight fixed variable  
2 promotes additional consumption.

3 A. That's correct.

4 MS. BOJKO: Your Honor, may we approach?

5 EXAMINER SANYAL: Yes.

6 Q. Mr. Fortney, we are going to hand you  
7 what's been marked previously as Suburban Exhibit 13  
8 which is the Finding and Order issued on November 1,  
9 2017, by the Commission. This is the option to  
10 disconnect that the Commission -- Suburban Exhibit 13  
11 that you have in front of you, that's the Order the  
12 Commission issued approving straight fixed variable  
13 rate design; is that correct?

14 A. I believe so, yes.

15 Q. Okay. And if you could turn to page 32  
16 of the order which is on -- or paragraph 32 which is  
17 on page 9 and 10 of the Order.

18 A. I'm on page 9 of the Order.

19 Q. Isn't it true that the Commission found  
20 that the straight fixed variable rate design promotes  
21 the state policy of the alignment of natural gas  
22 company interests with consumer interests in energy  
23 efficiency and energy conservation?

24 A. Could you tell me where you are quoting  
25 from?

1 Q. It's page 9, 10, paragraph 32.

2 A. Well, it's just easier for me to read the  
3 whole thing into the record than to try to piecemeal  
4 it.

5 Q. Okay.

6 A. "The Commission notes that the  
7 institution of an SFV rate design and the proposed  
8 EEP pilot promote the state policies set forth in  
9 Revised Code 4929.02(A)(1) and (A)(12), to promote  
10 the availability of adequate, reliable, and  
11 reasonably priced natural gas services and goods to  
12 consumers and to promote the alignment of natural gas  
13 company interests with consumer interest in energy  
14 efficiency and energy conservation."

15 Q. So less than two years ago, the  
16 Commission disagreed with the contention you make in  
17 your testimony that straight fixed variable adversely  
18 affects energy efficiency efforts, correct?

19 MR. HEALEY: Objection. Your Honor, the  
20 Commission order speaks for itself and, therefore,  
21 there is no relevance to asking Mr. Fortney to  
22 interpret the order.

23 EXAMINER SANYAL: Denied. Move on.

24 A. I believe that one of the Commission's  
25 main rationale for approving the straight fixed

1 variable rate design is that it eliminates the  
2 disincentive for companies to promote conservation.  
3 And I believe this is what that's referring to. And  
4 I don't think that the -- that because the straight  
5 fixed variable eliminates the Company's disincentive  
6 to promote conservation has anything to do with  
7 customers.

8 Q. But that's -- the words disincent the  
9 Company from promoting conservation are not in the  
10 order paragraph that you just read, are they?

11 A. No. But as a rate analyst and with 27  
12 years' experience, I believe that in my mind that's  
13 what that sentence is referring to, to the Company's  
14 eliminating the Company's disincentive to promote  
15 conservation.

16 MS. BOJKO: Well, your Honor, at this  
17 time I move to strike his response because he just  
18 explained to me that I couldn't ask about the  
19 Commission's state of mind or what they were thinking  
20 about this order and now that is exactly what  
21 Mr. Fortney is trying to do is interpret the  
22 Commission's state of mind and what it meant by the  
23 sentences, and his counsel pointed out the Order  
24 speaks for itself.

25 EXAMINER SANYAL: I am going to deny the

1 motion. I believe he was relying on his experience  
2 to answer that question.

3 Q. On pages 7 and 8 of your supplemental  
4 testimony when discussing how the industry which has  
5 changed since 2008, you quote from the 2008 rate case  
6 Order where the straight fixed variable was not  
7 implemented; is that correct?

8 A. You're going to have to give me the line  
9 reference again. I missed it.

10 Q. Sure. It -- well, it begins on line 1 on  
11 page 7, and the specific case reference is on line 6  
12 and 7, which is Case No. 07-829 GA-AIR, which is the  
13 Suburban's 2007 rate case, correct?

14 A. In those two proceedings, there would  
15 have been things -- that I'm familiar with would be  
16 the E-4 schedule and the E-41 schedule which would  
17 have revenues including and excluding fuel and there  
18 would be a column that has gas costs that you would  
19 add to the revenues excluding fuels to get the  
20 revenues including fuel. And what this reference is  
21 in those cases, the E-4 schedules reference the  
22 \$11.42 applies per Mcf and in the -- in this  
23 proceeding it was the \$5.70.

24 Q. I'm sorry. I was asking you about the  
25 quote on lines 8 through 12. And my question was

1 when discussing how the industry has changed since  
2 2008, you are quoting from the 2008 rate case where  
3 the straight fixed variable was not implemented,  
4 correct?

5 A. No. That's correct, I'm sorry.

6 Q. And isn't it true that the Order that you  
7 have in your hand that has been marked as Suburban  
8 Exhibit 13, the Order issued in 2017 approving the  
9 straight fixed variable for Suburban, the Commission  
10 disagreed with OCC's claim that the industry had  
11 changed and specifically stated in that decision that  
12 the -- that its prior discussion on the issue was  
13 still valid?

14 MR. HEALEY: Objection. Your Honor, can  
15 we get a reference to what part of the Order she is  
16 referring to so -- otherwise Mr. Fortney is being  
17 asked to recall from memory something that may or may  
18 not be in the Order and the Order is a document and  
19 the best evidence rule applies to that document.

20 EXAMINER SANYAL: Sure.

21 MS. BOJKO: Sure. Paragraph 35, your  
22 Honor. Paragraph 35.

23 Q. (By Ms. Bojko) I can rephrase my question  
24 after you get done reading.

25 A. Yes, please.



1           Q.     So in paragraph 35 the Order approving  
2     straight fixed variable for Suburban in 2017, the  
3     Commission disagrees with OCC's claim that the  
4     industry has changed, and it specifically stated that  
5     its prior decisions are still valid, correct?

6           MR. HEALEY:   Objection, your Honor.

7           EXAMINER SANYAL:   Go ahead.

8           MR. HEALEY:   The question  
9     mischaracterizes OCC's position in that case.  
10    Counsel stated that the Commission was disagreeing  
11    with OCC's position, but as we established earlier in  
12    this case, OCC took no position.

13          EXAMINER SANYAL:   I am going to sustain  
14    that objection.

15          MS. BOJKO:   That's not what I intended,  
16    your Honor.   I will rephrase the question.

17          Q.     (By Ms. Bojko) I am saying that the  
18    Commission in 2017 clearly disagrees with OCC's claim  
19    in this proceeding that the industry had changed from  
20    2018 to 20 -- 2008 to 2017, and it specifically  
21    stated in its orders that its prior decisions were  
22    still valid.

23          MR. HEALEY:   I object to the logical  
24    impossibility of the Commission disagreeing in 2017  
25    with the position that OCC is taking in 2019.

1 EXAMINER SANYAL: I am going to have to  
2 sustain that objection as well.

3 MS. BOJKO: I'll rephrase. Thank you.

4 Q. (By Ms. Bojko) Mr. Fortney, the  
5 Commission Order in 2017 approving the straight fixed  
6 variable rate design specifically states that its  
7 prior decisions are still valid in -- when it made  
8 its ruling in 2017, correct?

9 A. Well, there again, let me read the  
10 provision because I think lawyers sometimes just take  
11 part of what they want you to read, and it's better  
12 to read the whole thing. "Consistent with our prior  
13 decisions, we again find it appropriate to adopt a  
14 rate design that decouples the Company's recovery of  
15 its fixed distribution costs from the amount of gas  
16 that customers actually consume. As we have  
17 previously recognized, a straight fixed variable rate  
18 design provides significant customer benefits, such  
19 as more stable customer bills throughout the entire  
20 year, better price signals to consumers, and more  
21 equitable cost allocations among customers, as well  
22 as greater conservation by diminishing the utility's  
23 incentive to increase its gas sales." I guess that's  
24 the end.

25 Q. So the Commission specifically stated

1 based on its prior decisions, correct?

2 A. And I guess that's where I'm disagreeing  
3 with you. OCC is not recommending that the  
4 Commission go back to \$6 customer charges. The  
5 Commission in this particular case is recommending  
6 that Suburban maintain its \$29 -- it's current \$29.41  
7 customer charge which at that time in 20 -- 2018,  
8 2017, was a full straight fixed variable.

9 And the OCC is simply asking the  
10 Commission to reconsider that the -- that they,  
11 Suburban, maintain that \$29.41 customer charge which  
12 at that time was a full straight fixed variable and  
13 put the increase from -- from the 29.41 to the 34.80,  
14 take that revenue and put it in a volumetric basis.  
15 We are not asking that the Commission reject the  
16 straight fixed variable rate design principles. We  
17 are simply asking that it take a look at current  
18 circumstances and perhaps reconsider that a portion  
19 of the continuing fixed cus -- the continuing  
20 customer charge be on a volumetric basis.

21 Q. Thank you for that clarification that you  
22 are -- but just so the record is clear, and I hadn't  
23 asked you about the current case, so I'll start  
24 there. Just so the record is clear, you are asking  
25 the Commission though to depart from a full straight

1 fixed variable rate design for the entire revenue  
2 requirement in this case because you're now  
3 advocating that a volumetric charge be put back in  
4 place that was not approved, that was actually  
5 eliminated in the 2017 Order, correct?

6 A. We are advocating that the rationale for  
7 a full straight fixed variable rate design is -- has  
8 changed and that now there should be a -- we are not  
9 asking that the straight fixed variable rate design  
10 concept be rejected, that we are simply asking for  
11 a -- that the Commission consider that a portion of  
12 the charges be recovered through a volumetric basis.

13 Q. And the change that you are discussing,  
14 which is what I was asking you about in your  
15 testimony, is that the change that's occurred from  
16 2008, correct?

17 A. I have not seen the Commission's  
18 rationale that gas prices are volatile, gas prices  
19 are high, that gas prices represent the largest share  
20 of a customer's bill. I have not seen that rationale  
21 changed in any orders. So, yes, that rationale was  
22 established then in the 2008 time frame, but I had  
23 not seen the Commission admit that that rationale has  
24 changed and is no longer an appropriate rationale for  
25 approving -- for approving a full straight fixed

1 variable rate design.

2 MS. BOJKO: Your Honor, may we go off the  
3 record for just 2 minutes?

4 (Recess taken.)

5 EXAMINER SANYAL: Let's get back on the  
6 record.

7 And, Ms. Bojko, you may continue.

8 MS. BOJKO: Thank you, your Honor.

9 Q. (By Ms. Bojko) Mr. Fortney, let's turn to  
10 page 8 of your supplemental testimony, line 6. On  
11 line 6, you talk about significant other revenue that  
12 may be collected volumetrically through generation  
13 rates, transmission rates, trackers, and riders. Do  
14 you see that?

15 A. Yes.

16 Q. What significant other revenue does  
17 Suburban collect that you are referring to on line 6?

18 A. Generation costs, what used to be gas  
19 cost recovery, it is whatever it is now.

20 Q. So your reference to generation rates is  
21 commodity natural gas costs?

22 A. Generation rates are collected  
23 volumetrically.

24 Q. Okay.

25 A. That's what I am referring to. The fact

1 that other revenue may be collected volumetrically  
2 through generation rates, that's what I am referring  
3 to.

4 Q. Okay. So you are referring to the GCR in  
5 this context.

6 A. I think this is more of a general  
7 statement. Other, you know, companies may have  
8 transmission. Electric companies may have  
9 transmission rates that are collected volumetrically,  
10 riders that are collected volumetrically. So that's  
11 what I am referring to. It's more of a general  
12 statement rather than a Suburban-specific statement.

13 Q. Okay. Because that was the confusion.  
14 Suburban doesn't have a transmission rate, correct?

15 A. I don't believe so, no.

16 Q. And Suburban doesn't have a -- at least  
17 not an electric generation rate, correct?

18 A. That's correct. This sentence was just  
19 meant to indicate that this is a distribution case  
20 and we are talking about distribution revenues and  
21 even though other revenues may be volumetrically  
22 recovered, that it's important in this case we are  
23 just talking about the distribution component.

24 Q. Okay. So when you are talking about --  
25 and just the distribution component, as far as the

1 base rate distribution component for Suburban  
2 currently, there is no volumetric charge for gas  
3 costs, correct?

4 A. That's correct.

5 Q. Okay. So for Suburban there are no other  
6 significant revenue that Suburban would receive,  
7 correct?

8 A. I get in trouble when I try to rely on my  
9 memory. I forget now, does Suburban have like an IRP  
10 rider that is collected volumetrically? I don't  
11 remember.

12 Q. Sure. We'll get the tariff. It might be  
13 easier if we all look at the tariff page. We're  
14 referring to Joint Exhibit 2.

15 MS. BOJKO: Your Honor, may we approach?

16 EXAMINER SANYAL: Yes, you may.

17 A. It doesn't matter what you bring up on  
18 the stand; you can never find it when you are looking  
19 for it.

20 Q. That's true. Do you have the -- do you  
21 have in front of you what's been marked as Joint  
22 Exhibit 2? And these are the tariffs that were filed  
23 on May 31, 2019.

24 A. Yes, I do.

25 Q. And if you look at the S -- let's just

1 focus on the SGS class; is that fair?

2 A. I'm sorry, look at what?

3 Q. It's Original Sheet 4. Okay. It's  
4 Original Sheet No. 6. It's page 29 of Attachment B,  
5 so in the upper right-hand corner there is a page  
6 number. Do you see the page numbers under Attachment  
7 B in the upper right-hand corner?

8 A. B Original Sheet No. 6.

9 Q. Okay.

10 A. Page 1 of 2.

11 Q. Look at page 29 of 53. Oh, 1 of 2 if you  
12 are referring to the original sheet No. 6.

13 MS. BOJKO: Are you with us?

14 MR. HEALEY: Uh-huh.

15 Q. So if we look at Attachment B, page 29 of  
16 53, which is Original Sheet No. 6, page 1 of 2, this  
17 is the tariff schedule for the small general service  
18 rate, correct?

19 A. Give me that reference again.

20 Q. Attachment B, page 29 of 53, which is  
21 Original Sheet No. 6, page 1 of 2.

22 A. That's correct.

23 Q. And here it lists the service charge  
24 which is the fixed base distribution rate that we've  
25 been discussing, correct?



1 A. Correct.

2 Q. And then it lists riders that are  
3 applicable. Do you see that?

4 A. Yes.

5 Q. Okay. And so the one that you just  
6 referenced was Infrastructure Replacement Program  
7 Rider; is that correct?

8 A. I need the question reread. I am trying  
9 to read while you are asking questions so.

10 Q. The last rider listed is the  
11 Infrastructure Replacement Program Rider that you  
12 referenced a few minutes ago in your testimony; is  
13 that correct?

14 A. That's correct.

15 Q. And that's Sheet No. 9, page 2 of 7,  
16 Attachment B, page 42 of 53.

17 A. That's correct.

18 Q. Okay. And you could see there that the  
19 rate is .18 cents per month, not volumetric, correct?

20 A. Reference that sheet again.

21 Q. Attachment B, Original Sheet No. 9, page  
22 2 of 7.

23 A. 18 cents per month so that is not  
24 volumetric, no.

25 Q. And that you would not consider a

1 significant revenue maker?

2 A. No, I would not.

3 Q. The -- I assume you weren't referring to  
4 tax riders, so the other riders that would be  
5 applicable to SGS is the PIPP Rider, the Percentage  
6 of Income Payment Plan Rider, and that's on Sheet 9,  
7 page 5. And this rider is volumetric; is that  
8 correct?

9 A. Give me the reference again.

10 Q. Page 45 of 53, Original Sheet 9, page 5.

11 A. Yes. The PIPP Rider is volumetric.

12 Q. And it's your understanding though all  
13 customers of the major -- most utilities have a PIPP  
14 Rider?

15 A. Something similar, yes.

16 Q. And that revenue does not go to the  
17 Company; is that correct?

18 A. PIPP -- yeah. I forget exactly how it  
19 works; but, yeah, they have to submit that revenue to  
20 someplace.

21 Q. Right. So it's not significant revenue  
22 that the Company would receive from customers,  
23 correct?

24 A. That's correct.

25 Q. And the next rider in the list is the UEX

1 Rider, the Uncollectible Expense Rider, and that's on  
2 Sheet No. 9, page 1. And currently -- are you there?  
3 Sorry.

4 A. Yes.

5 Q. And in the proposed tariff this is  
6 currently a credit, so it also would not result in  
7 significant revenue to the Company, correct?

8 A. That's correct.

9 Q. And then the last rider listed would be  
10 the energy efficiency program rider which is Sheet 9,  
11 page 3, and that rider -- that rider -- that rider is  
12 34 cents, .3431 per month; is that correct?

13 A. That's a monthly charge, yes.

14 Q. And so that is not volumetric; is that  
15 correct?

16 A. That's correct.

17 Q. And that is not a significant revenue  
18 going to the Company either; is that correct?

19 A. All those things are correct, but page 8,  
20 line 6 through 9, as you've said, was addressing the  
21 Commission's suggestion that the distribution  
22 component of the bill was insignificant. It's not  
23 insignificant. As I said, I'm not -- this sentence  
24 that you have asked me about does not refer  
25 specifically to Suburban's rate case. It's a general

1 statement.

2 Q. But based on our discussion that we --  
3 just occurred, the general statement really of a  
4 utility receiving significant other revenue does not  
5 really apply to Suburban either, correct? Because  
6 Suburban does not have --

7 A. Gas costs, yes. Significant revenue.

8 Q. So only with respect to the GCR.

9 A. Or however they collect their gas costs,  
10 yes.

11 Q. Okay. So focusing just on the base  
12 distribution costs, you would agree with me that the  
13 Company's fixed base distribution costs do not change  
14 based on the Company's usage, correct, or the  
15 customer's usage?

16 A. The small general service customer there  
17 are base -- fixed base charges but not changed based  
18 upon their usage, that's correct.

19 Q. Okay. So let's look at page 8 of your  
20 supplemental testimony at -- it's the chart that  
21 you've included as -- I guess let's look at page 8 of  
22 your testimony first. Page 8 -- oh, okay. Strike  
23 that.

24 Page 8 of your testimony, your point here  
25 that we've been talking about is that the -- that if

1 the customer charge remains the same, a customer  
2 would see the base distribution costs, the fixed  
3 costs portion of its bill greater than the commodity  
4 portion regardless of the amount of the gas the  
5 customer uses; is that your point here?

6 A. No, that's not my point. Not my point at  
7 all.

8 Q. Okay. Well, the customer charge would be  
9 the same for all customers. It's the \$33.84 listed  
10 in your testimony, correct?

11 A. Yes.

12 Q. Okay. So now let's look at Attachment  
13 RBF-2. So in this Attachment RBF-2, I am a little  
14 confused about the second column. You say "Exclude  
15 Fuel Proposed Bill." Is this just the fixed customer  
16 charge excluding the commodity of fuel?

17 A. No. That would be the customer's -- the  
18 distribution component of the customer's bill.

19 Q. So this --

20 A. It would include all of those things you  
21 just had me look at.

22 Q. Perfect.

23 A. Including the base -- including the fixed  
24 charge.

25 Q. Okay. Thank you for that clarification.

1 On page 12 of your testimony, you believe that  
2 customers do not understand the straight fixed  
3 variable rate design; is that accurate?

4 A. They either -- they either don't  
5 understand it, or they don't get why it applies to  
6 them.

7 Q. Before making this statement in your  
8 testimony, you didn't conduct any studies about  
9 customers understanding the straight fixed variable  
10 rate design, did you?

11 A. No, but through my however many years, 27  
12 years, I mean, I've talked to lots of consumers. I  
13 have gone to lots of hearings. I've read transcripts  
14 from public hearings, and whenever there's a straight  
15 fixed variable component, the majority of the  
16 customers testifying at public hearings are against  
17 the straight fixed variable. They don't understand  
18 why even if they conserve and why they try so hard to  
19 keep their usage down, why do they pay the same as  
20 why -- as a person who doesn't care and uses gas  
21 however they want to use it.

22 Q. Did you attend the public hearing in  
23 Suburban's rate case?

24 A. I did not attend the public hearing in  
25 Suburban's. Here again, I am talking in general

1 about public hearing transcripts that I have read for  
2 other companies.

3 Q. And I appreciate that. I'm trying to  
4 talk about your testimony in this Suburban case  
5 regarding Suburban. And isn't it true that no  
6 customers appeared at Suburban's public hearing to  
7 talk about straight fixed variable rate design or  
8 their concerns or their misunderstanding of the rate  
9 design?

10 MR. HEALEY: Objection.

11 A. Actually that's not what my testimony --

12 EXAMINER SANYAL: Actually there's an  
13 objection.

14 MR. HEALEY: Sorry, your Honor. This  
15 question, first of all, it's compound. Second of  
16 all, it calls for speculation as Mr. Fortney just  
17 indicated that he did not attend the hearing.

18 MS. BOJKO: I will rephrase on both  
19 accounts, your Honor.

20 Q. (By Ms. Bojko) Your office, the Office of  
21 Consumers' Counsel attended the hearing; is that  
22 correct?

23 A. I don't know the answer. They usually  
24 do. I assume there was an attorney at that Suburban  
25 public hearing.

1           Q.    And no one came back from the public  
2   hearing and told you that the customers showed up to  
3   complain about the straight fixed variable rate,  
4   correct?

5                   MR. HEALEY:  Object, your Honor.  Any  
6   such conversation between counsel and Mr. Fortney  
7   would be privileged.

8                   MS. BOJKO:  I didn't ask him about  
9   counsel.  There were many representatives there from  
10  OCC.

11                  MR. HEALEY:  That's not in the record,  
12  your Honor.

13                  EXAMINER SANYAL:  I'll let you respond,  
14  Mr. Fortney.  You may answer the question if you know  
15  the answer.

16           A.    I think you're misconstruing my  
17  testimony.  That portion where it says customers  
18  don't understand is contesting the Commission's  
19  repeated rationale that it is simple to understand,  
20  and I am just simply saying in general customers,  
21  residential customers, do not really understand the  
22  straight fixed variable.  I am not speaking about  
23  Suburban specifically.

24           Q.    And I'm not misunderstanding your  
25  testimony, sir.  You filed the testimony in



1 Suburban's rate case with implication that you are  
2 referring to Suburban's customers. So are you  
3 clarifying here today that you are not referencing  
4 Suburban's customers when you are speaking to the  
5 customer confusion of a straight fixed variable rate  
6 design?

7 A. My testimony is to ask the Commission to  
8 reconsider their rationale as to why this full  
9 straight fixed variable rate design is still  
10 appropriate.

11 Q. Okay. So specifically have you spoken to  
12 Suburban customers about the straight fixed variable  
13 rate design and their concerns of it?

14 A. No, I have not.

15 Q. And you similarly haven't spoken to  
16 Suburban's customers about their lack of  
17 understanding of the straight fixed variable rate  
18 design?

19 A. That's correct.

20 Q. And you have not conducted any studies  
21 with Suburban's customers regarding their  
22 understanding of the concept of straight fixed  
23 variable rate design?

24 A. That's correct.

25 Q. And you have not spoken to customers or

1 surveyed customers in Suburban's territory to ask  
2 whether they prefer a straight fixed variable rate  
3 design where they have fixed customer costs, correct?

4 A. That's correct.

5 Q. And any understanding that a customer may  
6 or may not have would remain regardless of whether  
7 OCC's alternative approach of the rate increasing  
8 tacked on as a volumetric charge, correct?

9 A. I didn't hear the question.

10 Q. I will rephrase. That was poorly worded.  
11 If customers, in fact, have a concern as you've  
12 stated or misunderstanding of the straight fixed  
13 variable concept, that misunderstanding would still  
14 exist even if the Commission adopted OCC's proposed  
15 alternative in this case to have any increase put  
16 onto customer's bills in the volumetric charge?

17 A. That's probably true.

18 Q. And as you note on page 11 of your  
19 testimony, the settlement provides for a lower  
20 residential customer charge than what was proposed in  
21 the application; is that correct?

22 A. Yes, that's correct.

23 MS. BOJKO: I have no further questions.  
24 Thank you, your Honor. Thank you, Mr. Fortney.

25 EXAMINER SANYAL: Okay. Any other?

1 MR. EUBANKS: Staff has no questions.

2 EXAMINER SANYAL: Okay. Redirect?

3 MR. HEALEY: No, thank you, your Honor.

4 EXAMINER SANYAL: Well, you may step  
5 down, Mr. Fortney.

6 THE WITNESS: Thank you.

7 EXAMINER SANYAL: Okay. Exhibits.

8 MR. HEALEY: Yes, your Honor. OCC moves  
9 for the admission of OCC Exhibits 11 and 12.

10 EXAMINER SANYAL: Any objections?

11 MS. BOJKO: Your Honor, I would only  
12 object to the extent that there are portions of OCC  
13 Exhibit 11 that are no longer valid or applicable to  
14 the Stipulation. So with that caveat, you know, I  
15 don't have an objection with the admission, but I  
16 would like to note that on the record.

17 EXAMINER SANYAL: Okay. Thank you for  
18 noting that for the record. I think the Commission  
19 can determine which parts of Mr. Fortney's testimony  
20 are no longer applicable. Noting that objection are  
21 there any other issues?

22 Then I will admit 11 and 12 into the  
23 record.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 EXAMINER SANYAL: And then we have two

1 Suburban.

2 MS. BOJKO: Yes, your Honor. Thank you.  
3 At this time we would ask that Suburban Exhibit 15  
4 and 16 be admitted into the record.

5 EXAMINER SANYAL: Any objections to those  
6 being admitted?

7 MR. HEALEY: No, your Honor.

8 EXAMINER SANYAL: Okay. Well, those are  
9 also admitted.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 EXAMINER SANYAL: And then I believe,  
12 Ms. Mooney, you would like to go ahead.

13 MS. MOONEY: Yes, thank you. OP&E would  
14 call its witness David C. Rinebolt.

15 MS. BOJKO: Your Honor, may I just have 2  
16 minutes to get reorganized? I'm sorry. Just need to  
17 get reorganized for the next witness.

18 EXAMINER SANYAL: Let's go off the record  
19 for like 2 minutes.

20 (Discussion off the record.)

21 EXAMINER PARROT: Okay. Let's go back on  
22 the record.

23 (Witness sworn.)

24 EXAMINER PARROT: Please have a seat.

25 Ms. Bojko.

1 MS. BOJKO: Thank you. I thought you  
2 already did that.

3 MS. MOONEY: Your Honor, I would mark the  
4 direct testimony.

5 EXAMINER PARROT: Hang on.

6 Ms. Bojko, did you have an issue to raise  
7 or not?

8 MS. BOJKO: No. I was being overly  
9 zealous.

10 EXAMINER PARROT: Getting ahead of  
11 yourself.

12 Ms. Mooney, go ahead.

13 MS. MOONEY: Your Honor, we would mark  
14 the direct testimony of David C. Rinebolt as OPAE  
15 Exhibit 1.

16 EXAMINER PARROT: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 - - -

19 DAVID C. RINEBOLT

20 being first duly sworn, as prescribed by law, was  
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 By Ms. Mooney:

24 Q. Mr. Rinebolt, did you prepare this  
25 testimony?

1           A.     I did.

2           Q.     And if I were to ask you the same  
3 questions, would your answers be the same today?

4           A.     They would.

5           MS. MOONEY: Your Honor, Mr. Rinebolt is  
6 available for cross-examination.

7           EXAMINER PARROT: Thank you, Ms. Mooney.  
8 Ms. Bojko.

9           MS. BOJKO: Now I was going to ask if you  
10 would entertain motions to strike.

11          EXAMINER PARROT: Go ahead.

12          MS. BOJKO: Your Honor, Suburban moves to  
13 strike page 5, lines 17 through 18; page 8, line 12,  
14 through page 18, line 19. And, your Honor, I am not  
15 going to repeat the arguments that I just made for  
16 Mr. Fortney regarding the overall concept of straight  
17 fixed variable and how we believe that this issue has  
18 already been decided by the Commission recently. And  
19 that the doctrines of res judicata and collateral  
20 estoppel apply.

21                 But I would also like to add that this  
22 issue is not in the case. The issues that  
23 Mr. Rinebolt raises in his testimony is not in the  
24 case and that the Stipulation uses the same rate  
25 design that is already in place, and OP&E chose not

1 to participate in the alt reg proceeding as an  
 2 intervenor and it chose specifically not to oppose  
 3 the rate design requested and it cannot use this  
 4 proceeding as a second chance to oppose that rate  
 5 design which it let go uncontested in that prior  
 6 case. Therefore, we believe that the testimony  
 7 should be stricken and that Mr. Rinebolt's testimony  
 8 is irrelevant and barred by the doctrines of res  
 9 judicata and collateral estoppel.

10 EXAMINER PARROT: What was the second?

11 MS. BOJKO: Page 8, line 12, through page  
 12 18, line 19. Your Honor, just as a housekeeping,  
 13 Ms. Mooney was not here, I guess, when I went through  
 14 my litany of arguments for the straight fixed  
 15 variable. So would you like me to do that?

16 EXAMINER PARROT: I think suffice it to  
 17 say at this point consistent with my co-Examiner's  
 18 earlier ruling with respect to Mr. Fortney's  
 19 testimony, the motion to strike is denied.

20 MS. BOJKO: Thank you, your Honor.

21 MS. MOONEY: Thank you, your Honor.

22 MS. BOJKO: Similarly, your Honor,  
 23 Suburban moves to strike on a different ground page  
 24 11, lines 5 through 18. And, your Honor, this is  
 25 similar to our prior motion with regard to

1 Mr. Fortney regarding that this testimony is  
2 irrelevant because the discussion of changes since  
3 2008 which Mr. Rinebolt states justify the reversal  
4 of the Commission's overwhelming precedent in favor  
5 of the straight fixed variable rate design should be  
6 stricken as irrelevant because, as we've discussed,  
7 the rate design for Suburban was approved on November  
8 1, 2017, not back in 2008.

9 Therefore, even if the Commission were  
10 inclined to revisit the already decided issue of  
11 whether straight fixed variable rate design was  
12 appropriate for Suburban, a discussion of changes  
13 since 2008 makes no fact at issue more or less  
14 probable which is the standard for relevance under  
15 Ohio Rule of Evidence 401 as most of those changes  
16 occurred before the Commission ever considered and  
17 approved Suburban's straight fixed variable rate  
18 design.

19 EXAMINER PARROT: And Suburban's --  
20 excuse me, Suburban's objection to the testimony is  
21 noted; but, again, consistent with the earlier  
22 ruling, the motion is denied.

23 MS. BOJKO: Thank you, your Honor. We  
24 have another motion on page 9, line 20, through page  
25 10, line 8. This is a new motion, your Honor. And



1 this motion is we move to strike the portion of the  
2 testimony that discusses Duke Energy Ohio's tariffs  
3 as irrelevant to the Suburban proceeding. This  
4 testimony occurs on page 9, as I stated, and  
5 Mr. Rinebolt is testifying to the possibility of  
6 customers disconnecting service during low usage  
7 months.

8 To make this point, he cites to Duke's  
9 tariffs which have a specific provision in them  
10 requiring customers to pay fixed costs avoided when  
11 disconnected for fewer than eight months. Suburban  
12 has not included such a provision in its Application.  
13 It hasn't included such a provision in its proposed  
14 tariffs. It hasn't included such a provision in the  
15 Stipulation.

16 So the testimony about Duke's specific  
17 tariff provision is completely irrelevant to the case  
18 at hand, and it should be stricken under Rules 401  
19 and 402 of the Rules of Evidence.

20 EXAMINER PARROT: Ms. Mooney.

21 MS. MOONEY: Well, first off, he is  
22 discussing an application that Duke made that was not  
23 approved, so their tariffs do not have that provision  
24 in it. But other than that this is for just  
25 illustrative purposes only, the -- that this

1 application was filed by Duke. It was -- the  
2 Commission did not agree with it. But it just goes  
3 to the situation that when you have a very, very high  
4 fixed charge in months where people -- where people  
5 aren't really using their gas, that they will try to  
6 disconnect service during those months and that can  
7 be a revenue problem for a gas utility.

8 So it's discussing the situation that may  
9 arise when you have extremely high fixed customer  
10 charges in months where customers aren't really using  
11 gas. And the -- there's no actual need to -- there's  
12 no reference to Duke's tariffs because Duke does not  
13 have a tariff like this. But it's just for purposes  
14 of showing what can happen when you have high fixed  
15 charges for utility service when people aren't even  
16 using the service.

17 MS. BOJKO: Your Honor, if I may respond?

18 EXAMINER PARROT: You may.

19 MS. BOJKO: She made this point for me.  
20 This is very speculative. It might not be in Duke's  
21 tariffs, but it was a Duke -- a specific application  
22 for it to be placed in Duke's tariffs. If and when  
23 that issue ever occurs for Suburban and Suburban  
24 files such application, then this testimony would be  
25 appropriate, but it's not appropriate in this

1 proceeding because that tariff request or provision  
2 is not made anywhere in this case. It's beyond the  
3 scope of the proceeding.

4 EXAMINER PARROT: I'm going to allow the  
5 testimony to stand on this one as well, Ms. Bojko.  
6 Motion is denied.

7 MS. BOJKO: Thank you.

8 MS. MOONEY: Thank you, your Honor.

9 MS. BOJKO: One last motion, your Honor.  
10 Page 11 -- your Honor, I withdraw that motion.  
11 That's all I have.

12 EXAMINER PARROT: All right. If you are  
13 ready to proceed with your examination, go ahead,  
14 Ms. Bojko.

15 MS. BOJKO: Thank you.

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Bojko:

19 Q. Good morning still, Mr. Rinebolt.

20 A. I noticed you were checking.

21 Q. Mr. Rinebolt, who are you presenting  
22 testimony on behalf of today?

23 A. Ohio Partners for Affordable Energy.

24 Q. And Ohio Partners for Affordable Energy,  
25 or OPAGE, represents low and moderate income Ohioans;

1 is that correct?

2 A. That's our corporate purpose.

3 Q. And that would be residential customers,  
4 correct?

5 A. We also pay attention to small  
6 commercials because our member agencies are small  
7 commercial customers.

8 Q. So when you advocate for affordable  
9 energy policy for low and moderate income Ohioans,  
10 you're talking about corporate customers too as  
11 Ohioans, not just low to moderate low income Ohioans?

12 A. Low to moderate Ohio customers are -- are  
13 what you read when you read our charter when you look  
14 at our corporate papers. But we also represent the  
15 interests of the 60 nonprofit agencies that are  
16 members, and they are also customers.

17 Q. When you intervened in this case, isn't  
18 it true that your intervention stated that you  
19 advocate for affordable energy policy for low and  
20 moderate income Ohioans?

21 A. I'm sure it did. I didn't draft it,  
22 Ms. Bojko, but I'll concede that point.

23 Q. So you intervened and your participation  
24 in this case, at least in your legal intervention,  
25 was to represent residential customers, correct?

1           A.    Yes, but the point I make about straight  
2 fixed variable rate design is equally applicable to  
3 commercial customers.

4           Q.    Mr. Rinebolt, you discussed the  
5 Commission's three-part test in your testimony; is  
6 that correct?

7           A.    I do.

8           Q.    And one of those prongs is about the  
9 bargaining of the parties; is that correct?

10          A.    That's correct.

11          Q.    How many settlement discussions were held  
12 in this case?

13          A.    I do not know.

14          Q.    Were you personally involved in the  
15 settlement discussions?

16          A.    I was not.

17          Q.    So you did not attend any of the  
18 settlement discussions, correct?

19          A.    No, I did not.

20          Q.    Did you -- and you did not participate by  
21 phone for any of the settlement discussions, correct?

22          A.    That is correct.

23          Q.    And isn't it true that since you did not  
24 participate and were not present for any of those  
25 settlement negotiation discussions that you cannot be

1 sure what was discussed at those settlement  
2 discussions?

3 A. Not having been present in the  
4 discussions would have made that very difficult.

5 Q. And isn't it true that while you  
6 personally were not present at the settlement  
7 meetings, OPAE's counsel was present at those  
8 settlement meetings.

9 A. That's correct.

10 Q. Or your counsel was present by phone  
11 during those settlement meetings, correct?

12 A. I'll concede.

13 Q. Do you know whether your counsel did, in  
14 fact, raise the straight fixed variable issue at the  
15 settlement meetings?

16 MR. HEALEY: Objection, your Honor. We  
17 are getting into the substance of settlement  
18 negotiations of which I understand everyone here  
19 prefers would remain confidential consistent with  
20 Commission practice.

21 MS. BOJKO: Your Honor, I actually was  
22 not asking that. I asked him if he knew whether his  
23 counsel raised a particular issue or not.

24 MS. MOONEY: Well, I would object too  
25 because it is a question about what was going on in

1 settlement negotiations.

2 MS. BOJKO: The question is is he aware  
3 of what his counsel did or did not do, not the  
4 content of that discussion.

5 MS. MOONEY: Aware of what his counsel  
6 did during the settlement negotiations, I think  
7 that's confidential.

8 EXAMINER PARROT: On this specific  
9 question that's pending, Mr. Rinebolt, I am going to  
10 direct you to answer with the caveat that I am not  
11 asking you to divulge any specific information about  
12 statements that your counsel may have made during  
13 those settlement negotiations.

14 THE WITNESS: Thank you, your Honor.

15 A. Could you repeat the question?

16 Q. Do you know whether your counsel did, in  
17 fact, raise the straight fixed variable issue at the  
18 settlement meeting?

19 A. I can't comment. I wasn't there.

20 Q. Isn't it true that the Stipulation  
21 continues employing the straight fixed variable rate  
22 design?

23 A. I'm sorry?

24 Q. Isn't it true that the Stipulation  
25 continues to implement or employ the straight fixed

1 variable rate design?

2 A. Yes, based on my reading of it.

3 Q. And although you don't like how the  
4 Stipulation resolved it, the Stipulation does, in  
5 fact, address straight fixed variable rate design,  
6 correct?

7 A. The Stipulation continues current  
8 practice. It doesn't modify it as we are arguing is  
9 the appropriate thing to do.

10 Q. On page 5 of your testimony, you state  
11 that no organization representing customers is a  
12 party to the settlement; is that correct?

13 A. That's correct.

14 Q. And in your opinion the Staff of the  
15 Public Utilities Commission does not represent the  
16 interests of any customer, small, large, all of them?

17 A. I can't testify as to what the Staff's  
18 purpose is in this proceeding. I do know OCC from a  
19 statutory standpoint represents residential  
20 customers. I know who OP&E represents. We are the  
21 people who work for folks who are paying those bills.  
22 So that's the basis for my statement.

23 Q. And isn't it true, sir, that there are no  
24 intervening parties that have stated in their  
25 intervention that they represent commercial or



1 industrial customers in the proceeding?

2 A. I have not read all of the interventions,  
3 so I can't -- I can't say yes or no.

4 Q. Well, looking around the table today with  
5 the parties in the proceeding, are you aware  
6 except -- well, are you aware of any parties that  
7 represent commercial or industrial customers?

8 A. Well, I will let the pleadings speak for  
9 themselves.

10 Q. Let's focus on straight fixed variable.  
11 Isn't it true that the straight fixed variable rate  
12 design was approved by the Commission or has been  
13 approved by the Commission?

14 A. To my understanding, yes.

15 Q. Do you know when the straight fixed  
16 variable rate design concept was first approved?

17 A. Approved by whom?

18 Q. Approved by the Commission.

19 A. Oh, lord. No, I don't recall exactly  
20 when. It's in the -- you can find out.

21 Q. Do you know when the straight fixed  
22 variable rate design was approved for Suburban?

23 A. Not off the top of my head. Oh, if I can  
24 back up, I think I do when I mention the chart -- let  
25 me see, I talked to -- right. It was Case

1 07-829-GA-AIR. That was the first approved and that  
2 was decided in October 15, 2008.

3 Q. Are you rereading the Suburban rate case?

4 A. No, no, no. I am talking about the  
5 Vectren case where SFV was first approved.

6 Q. So in 2008, you believe that the straight  
7 fixed variable rate design was first approved.

8 A. That's what I say in my testimony, yeah.

9 Q. And going back to Suburban's straight  
10 fixed variable rate design approval, is it your  
11 understanding that that was more recent than 2008  
12 and, in fact, was approved on November 1, 2017?

13 A. I will defer to your knowledge.

14 Q. Well, on page 11 of your testimony, line  
15 8, you imply that straight -- that Suburban's  
16 straight fixed variable rate design was implemented  
17 10 years ago and that's clearly not the case. It was  
18 implemented less than two years ago, correct?

19 A. Well, I'm sorry if I inferred that.

20 Q. That was not your intention?

21 A. No, it wasn't.

22 Q. You are not talking about Suburban's  
23 straight fixed variable rate design in your history  
24 listed on --

25 A. I couldn't talk about it if it wasn't

1 approved until 2017.

2 Q. And in 2017, the Commission approved  
3 Suburban's straight fixed variable rate design as  
4 just and reasonable; is that correct?

5 A. I haven't read that opinion, but I will  
6 take your word for it since that's the standard  
7 criteria.

8 Q. So you don't know that the straight fixed  
9 variable rate design that was approved for Suburban  
10 in 2017 was approved as a phase-in.

11 A. I don't know that that's relevant.

12 Q. Well, do you know whether Ohio Partners  
13 for Affordable Energy was a party to the case that  
14 approved the straight fixed variable rate design for  
15 Suburban?

16 A. I was not employed by Ohio Partners at  
17 that time.

18 Q. What I asked you was do you know whether  
19 Ohio Partners for Affordable Energy was a party to  
20 the case?

21 A. No, I don't.

22 Q. So you've never read the straight fixed  
23 variable order of the Suburban -- approving  
24 Suburban's straight fixed variable rate design?

25 A. No, I don't believe I have.

1           Q.    On page 11 of your testimony, you cite to  
2   Suburban's 2008 rate case Order.  Do you see that?

3           A.    On page 11?  I don't even see Suburban on  
4   it.

5           Q.    Yeah, line 15 I moved to strike.  Let me  
6   rephrase.  I'm sorry.  Is the rate case you are  
7   referring to on line 15, I assumed it was Suburban's.  
8   That's the Vectren case?

9           A.    That's the Vectren case.

10          Q.    Oh, thank you for that clarification.

11          A.    Yeah.  I mean, my testimony is -- is  
12   about the three-part test and how the straight fixed  
13   variable is unfair to customers.  That's really the  
14   focus of my testimony.

15          Q.    Your testimony is about how the general  
16   policy or concept of straight fixed variable is  
17   unfair -- you believe unfair to customers generally.  
18   You are not speaking specifically about Suburban's  
19   straight fixed variable or Suburban's customers,  
20   correct?

21          A.    Well, it's sort of like Ralph Nader when  
22   he wrote unsafe at any speed.  The straight fixed  
23   variable rate design is unsafe regardless of which  
24   utility is using it.

25          Q.    So you just fundamentally disagree with

1 the Commission's straight fixed variable rate policy,  
2 correct?

3 A. It's a poor rate design that has many,  
4 many flaws which I elucidate in my testimony. I  
5 don't have anything against Suburban, you know. It's  
6 just it's bad rate design. It's bad public policy.  
7 And that's what I am here to testify on.

8 Q. Well, isn't it true that as recent as  
9 2017 when approving a straight fixed variable rate  
10 design, the Commission stated that the Company's  
11 request to initiate a revenue decoupling mechanism  
12 straight fixed variable rate design should stabilize  
13 revenue and eliminate the Company's disincentive to  
14 promote energy efficiency?

15 A. The Commission's decisions speak for  
16 themselves.

17 Q. And also the Commission stated that the  
18 rate design promotes state policy set forth in  
19 4929.02; is that correct?

20 MR. HEALEY: Objection. Your Honor, this  
21 witness specifically stated that he has not read the  
22 Order, and counsel is simply reading a Commission  
23 Order into the record. There is no foundation for  
24 any questions about that Order for this witness.

25 MS. MOONEY: It's also unnecessary to

1 read Commission orders.

2 MS. BOJKO: I am actually not reading  
3 Commission orders, your Honor, paraphrasing based on  
4 statements he has made in his testimony regarding the  
5 straight fixed variable public policy and -- and what  
6 the Commission has determined with regard to  
7 Suburban.

8 MS. MOONEY: Could she refer then to his  
9 testimony?

10 EXAMINER PARROT: The objections are  
11 overruled.

12 To the extent you know, Mr. Rinebolt,  
13 answer the question.

14 THE WITNESS: Could you repeat the  
15 question, please.

16 (Record read.)

17 A. As I said, we'll let the Commission speak  
18 for itself. I'm sure you are quoting the decision  
19 accurately.

20 Q. And I didn't intend to quote the  
21 decision, Mr. Rinebolt, and I was not. My point is  
22 hasn't the Commission considered your arguments and  
23 as recent as 2017 rejected those arguments and  
24 specifically stated that the straight fixed variable  
25 rate design does meet state policy, does promote the

1 variability of adequate, reliable, reasonably priced  
2 natural gas services to consumers and does promote  
3 the alignment of natural gas companies' interests  
4 with consumers' interests with regard to energy  
5 efficiency and energy conservation?

6 MR. HEALEY: Objection, your Honor.

7 MS. MOONEY: Your Honor, I object.

8 MR. HEALEY: This is incredibly  
9 argumentative and compound. She is just making a  
10 soliloquy to the Bench about the Commission's past  
11 orders without actually asking any questions.

12 MS. MOONEY: We've also gone through many  
13 times the fact that OPAE did not even intervene in  
14 the '17 case, and for her to then claim that the  
15 Commission rejected OPAE's argument in the Suburban  
16 2017 case when we didn't even intervene in it is also  
17 not fair.

18 EXAMINER PARROT: I am not sure her  
19 question was that pointed, but it was rather long.  
20 Let's try to break it down.

21 MS. BOJKO: Your Honor, just so the  
22 record is clear, so the witness is clear, I am not  
23 referring to a specific order. Mr. Rinebolt -- and I  
24 moved to strike all his testimony as going through a  
25 history lesson of 2008 to today, and I'm asking the

1 witness if he's aware that as recent as 2017, the  
2 Commission has stated publicly that the straight  
3 fixed variable rate design promotes state policies.

4 Q. Isn't that correct?

5 A. Yes. And we are continuing -- Ohio  
6 Partners is continuing to try to get the Commission  
7 to reconsider that decision.

8 Q. And to date, the Commission has rejected  
9 your challenges to its past decisions implementing  
10 straight fixed variable rate design, correct?

11 A. Correct, and we have challenged in the  
12 most recent Vectren case, and we didn't want you guys  
13 to feel left out.

14 Q. Thank you for that. We appreciate that.  
15 And just because I'm breaking my compound question  
16 out, I need to ask isn't it true as recent as 2017,  
17 the Commission has stated that it believes it  
18 promotes the availability that straight fixed  
19 variable rate design promotes the availability of  
20 adequate, reliable, and reasonably priced natural gas  
21 services and goods to consumers?

22 A. I am not going to interpret the  
23 Commission decisions. You can characterize the  
24 decisions any way you want to. They are part of the  
25 record. They are part of precedent, and I am sure we



1 are going to read all about it in your brief.

2 Q. I appreciate that, Mr. Rinebolt, but I  
3 do -- I'm afforded this great process we have, this  
4 due process that I think you advocate for as well  
5 that we are afforded the opportunity to question the  
6 witness about its knowledge and what it considered  
7 when drafting its testimony. And I'm asking you if  
8 you are aware that the Commission has made  
9 determinations regarding the straight fixed variable  
10 rate design that it promotes the availability of  
11 adequate, reliable, and reasonably priced natural gas  
12 service to customers.

13 A. I know that the Commission has approved a  
14 straight fixed variable rate design. Whether it  
15 approved it because it supported those legislative  
16 goals specifically, I cannot intuit.

17 Q. Let's -- I know energy efficiency is near  
18 and dear to your heart so let's focus on that one.  
19 As recent as 2017, the Commission has provided a  
20 rationale that the straight fixed variable rate  
21 design promotes the alignment of natural gas  
22 companies' interests with consumer interests in  
23 energy efficiency and energy conservation. Were you  
24 aware of that when you drafted your testimony?

25 A. I'm not -- I have no knowledge of whether

1     that is the reason why the Commission approved it.  
 2     The Commission -- Commission explains its own  
 3     decisions. I'm not arguing with the Commission  
 4     Opinion and Order here. I am simply making some  
 5     arguments about why we think it's bad public policy,  
 6     and we think the Commission should reconsider that.  
 7     There is a lot of precedent on your side, okay? And  
 8     I'm aware of that, and I think you can put all that  
 9     in your brief, but I don't think we really need to  
 10    discuss it here right now.

11           Q.    Well, let's talk about page 8 because I'm  
 12    a little confused about your testimony here that  
 13    starts on the bottom of page 8. Page 8 it seems as  
 14    if you are challenging Suburban's energy efficiency  
 15    program; is that the point of your testimony here?

16           A.    No, it is not. To my knowledge Suburban  
 17    didn't have an energy efficiency program until very  
 18    recently.

19           Q.    Until 2017 in the straight fixed variable  
 20    case; is that correct?

21           A.    Well, I think the contract was signed a  
 22    little later than that but that's -- that's when it  
 23    was authorized.

24           Q.    And the contract you are talking about is  
 25    that Suburban has partnered with Ohio Partners for

1 Affordable Energy to run Suburban's energy efficiency  
2 program; is that correct?

3 A. That is absolutely correct.

4 Q. And you are currently running that  
5 program, correct?

6 A. We have just finished negotiation of the  
7 contract. It's been signed, and we've done  
8 subcontracts to the agency who are now going into the  
9 field with the program.

10 Q. And under those contracts, OPAE gets a 3  
11 percent administration fee for running the program;  
12 is that correct?

13 A. Actually it's slightly different than  
14 that. There's a one-time payment, I believe, and  
15 then there is an annual payment after that based on  
16 how much we expend of the available funds, how many  
17 customers we serve. We don't serve we don't get  
18 paid.

19 Q. And going back to some of that straight  
20 fixed variable precedent that you mentioned a minute  
21 ago to me, you mentioned that you are aware that  
22 Vectren Energy Delivery of Ohio has an approved  
23 straight fixed variable rate design, and I think you  
24 said 2008, or I think it was in 2009; is that  
25 correct?

1           A.    Right.  Well, by the time all the appeals  
2   were done.

3           Q.    And you -- are you also aware that the  
4   Commission's approached straight fixed variable rate  
5   design for Eastern and Pike Natural Gas in 2008?

6           A.    Yes.

7           Q.    And that straight fixed variable rate  
8   design has been approved by Columbia -- or for  
9   Columbia Gas in 2008?

10          A.    It's pretty much universal at this point  
11   which means that we really do need to change it  
12   because it's affecting everyone.

13          Q.    So given that it's universal, you are not  
14   aware of any instances where the Commission has  
15   rejected an application to establish straight fixed  
16   variable rate?

17          A.    No, but we keep trying.

18          Q.    Well, you didn't try in Suburban's  
19   straight fixed rate design case, did you?

20          A.    We only -- I wasn't with OP&AE in '17, but  
21   I'll tell you as now the Executive Director of a  
22   small nonprofit, I don't have the resources to be in  
23   every case.  I got to pick them, and it's based on  
24   the flow of litigation and where I have to allocate  
25   my resources so.

1           Q.   And we got the pleasure of your resources  
2   in this case, correct?

3           A.   Well, yes, you did.  Yes, you did.

4           Q.   But when you were -- when OPAE was  
5   selecting where to put its resources in the 2017  
6   straight fixed variable rate design, just so we're  
7   clear, you didn't participate as an intervenor in the  
8   Suburban straight fixed variable rate design, but you  
9   were the benefactor of the energy efficiency program  
10   established in conjunction with that straight fixed  
11   variable rate design in that case, correct?

12          A.   I'm afraid that's not correct.  I was  
13   employed by the U.S. Department of Energy in 2017.

14          Q.   And I'm sorry.  I am saying you meaning  
15   your agency that you represent.  OPAE, OPAE didn't  
16   challenge the straight fixed variable rate design in  
17   Suburban's prior case, but OPAE was the benefactor of  
18   the energy efficiency program established in  
19   conjunction with that statement -- straight fixed  
20   variable rate design; is that correct?

21          A.   Well, those are two independent  
22   questions.  And the answer is, yes, we did.  To my  
23   knowledge, we did not intervene in the April '17  
24   case.  We do run an energy efficiency program for  
25   Suburban.  If it was authorized in the '17 case, so

1 be it. I know that under Ohio law in order to have  
2 an alt reg program, you have to have a DSM program.

3 Q. Well, thank you.

4 A. We are usually the one that winds up with  
5 them.

6 Q. Well, thank you. That was my point. So  
7 the approval of the straight fixed variable rate  
8 design in the alt rate case was conditioned upon  
9 having an energy efficiency program, correct?

10 A. Correct.

11 Q. Right. So in this case you want to  
12 overturn the straight fixed variable rate design, so  
13 are we also then going to ask the Commission to  
14 eliminate the energy efficiency program that's tied  
15 to the straight fixed variable rate design that you  
16 run?

17 A. No, no. I think you misunderstand. The  
18 straight fixed variable is not the only type of  
19 alternative regulation. So that if the SFV is  
20 overturned in this case, that doesn't mean that  
21 Suburban is not being regulated under an -- under the  
22 alt reg statute. What I am telling you is that  
23 because of the high straight fixed variable rate, we  
24 will -- when we serve a Suburban customer, we will  
25 not be able to save them as much on their bill as we

1 would if it had a more traditional customer charge in  
2 volumetric rate structure because we can't save any  
3 of the straight fixed variable, okay? It takes a  
4 whole bunch of bill out of our control.

5 Q. So just so I'm clear, your proposal on  
6 this case is that the Commission overturn the  
7 straight fixed variable rate design that was  
8 established in the alt reg case, but the Commission  
9 continues the energy efficiency program that was also  
10 established in that case?

11 A. I'm not sure what the implications of  
12 overturning straight fixed variable has on the future  
13 existence of the program. We want to work with  
14 Suburban and serve their customers. I don't know if  
15 one is a condition precedent for the other.

16 Q. But your proposal is to continue the  
17 energy efficiency program.

18 A. Well, I just signed a contract. I don't  
19 have any choice. If the contract is for some reason  
20 abrogated per its terms or because the Commission  
21 declines to allow Suburban to recover the dollars,  
22 then I won't be running it.

23 Q. You're not -- you're not merely running  
24 the energy -- you just signed the contract you  
25 stated. You are not merely running the energy

1 efficiency programs because you don't have a choice.  
 2 OP&AE wants to run energy efficiency program, right?

3 A. That's what we do. That's one part of  
 4 our business.

5 Q. Thank you.

6 A. Our business lines. And we are happy to  
 7 do it, and we are proud to work with these smaller  
 8 gas companies because running low income programs is  
 9 the most effective DSM program in that context.  
 10 Suburban or Northeast or Pike can't go out and hire a  
 11 large ICF or some other type of firm because the  
 12 contracts are too small.

13 Q. Let's turn to page 6 of your testimony,  
 14 line 22. Here you state that none of the provisions  
 15 cited by Staff in Suburban are beneficial to  
 16 customers; is that correct?

17 A. Yes, we -- I am referring to the  
 18 testimony which I have reviewed that is cited as  
 19 benefit to customers to satisfy the three-part test.

20 Q. So your testimony here is that you don't  
 21 believe providing carrying charges dated back to  
 22 January 1, 2018, with regard to the tax refund is a  
 23 benefit to customers?

24 A. The money in the Tax Reform bill is the  
 25 customers' money which they overpaid to Suburban



1 because they were required to at that point, and it  
2 needs to be returned. This case doesn't return the  
3 money.

4 Q. But this settlement establishes that the  
5 Company will provide a carrying charge, so they will  
6 return the money with interest beginning January 1,  
7 2018, correct?

8 A. Yes.

9 Q. And that is a benefit that is provided in  
10 the Stipulation, correct?

11 A. No. I'm not willing to agree with that.

12 Q. Well, the law, the TCJA Act didn't  
13 require the utility to return the money with  
14 interest, did it?

15 A. But utilities have often been required to  
16 return sums that they hold on behalf of customers to  
17 them with interest. And that would ultimately be  
18 decided in the case that determines how much money  
19 goes back as a result of that tax act to customers.  
20 That's not being determined in this case.

21 Q. Has the Commission issued a decision  
22 requiring carrying charges to be assessed to the  
23 utilities that have not provided back on a general  
24 basis?

25 A. I am afraid I don't know the answer to

1 that question.

2 Q. And you also don't believe phasing in the  
3 distribution plant and not fully recovering costs  
4 associated with the plant until year three is a  
5 benefit to customers?

6 A. Are we talking about the pipeline  
7 extension?

8 Q. Yes.

9 A. As I indicated in my testimony, okay.

10 MS. MOONEY: That's at page 7.

11 THE WITNESS: Yeah. I just found it.

12 A. Okay. Okay. As I say in my testimony,  
13 the three-year phase-in to rate base of the Del-Mar  
14 Pipeline is also no benefit to ratepayers if the  
15 pipeline was not used and useful at date certain in  
16 which case there should be no phase-in at all.

17 Q. So if it's used and useful, then you  
18 still believe that phasing in is no benefit to  
19 customers as opposed to just full recovery the first  
20 year immediately?

21 A. Well, it hasn't been litigated so that's  
22 not -- the used and useful issue hasn't been  
23 litigated. So the implications of that litigation  
24 are -- those are speculative.

25 Q. But we have a Stipulation before us that

1 allows for a phase-in of the plant instead of 100  
2 percent recovery of the plant the first year and that  
3 difference is a benefit to customers, wouldn't you  
4 agree?

5 A. No, I am not willing to concede that.

6 Q. And you also, sir, don't believe that the  
7 purchasing the Del-Mar Pipeline and recovering it  
8 through rate base instead of through the GCR is a  
9 benefit to customers?

10 A. No, I don't. That's what my testimony  
11 says.

12 Q. Isn't it true at that time lease payments  
13 in 2018 equaled \$1.6 million?

14 A. I'll take your word for it.

15 Q. So removing recovery for those lease  
16 payments from the GCR is not a benefit to customers?

17 A. I would have to do a comparative  
18 financial analysis, and I have not done so.

19 Q. So you don't know that in rate base the  
20 pipeline is only costing customers \$425,000 per year  
21 instead of the \$1.6 million?

22 A. No, I didn't know that.

23 Q. So you weren't aware that the Stipulation  
24 is providing a \$1.2 million benefit or savings to  
25 customers based on that GCR issue alone?

1           A.    I am not sure what the implications of  
2           this change are over the lifetime of the -- of the  
3           amortization of that pipeline through base rates.

4           Q.    And you also would agree with me that  
5           providing a free meter test to customers is a benefit  
6           though, wouldn't you?

7           A.    Well, I think customers ought to get a  
8           free meter test.  It's pretty common among the  
9           utilities.  It's nice that they are going to do it,  
10          but I don't consider that a reason to authorize a bad  
11          rate design.

12          Q.    So I guess on page 8 I thought you were  
13          actually agreeing that the free meter test was a  
14          benefit.  Are you now saying it's not a benefit?

15          A.    It's -- it's always a good thing if  
16          customers don't have to pay for something.  I'm just  
17          saying in context.  That's a good thing.  Is that, a  
18          free meter test, going to balance out the scales  
19          against the other issues in this stipulation?  I  
20          think not.  That's the point of my testimony.

21          Q.    Okay.  So you're not necessarily saying  
22          that there are no benefits.  You're saying that the  
23          benefits provided by the settlement don't outweigh  
24          the detriment, I guess, provided by the straight  
25          fixed variable rate design?

1           A.    Well, I think that's the way we make  
2 judgments on speculation.

3           Q.    You said no benefits, and I guess I just  
4 wanted to clarify you are saying there may be  
5 benefits, but those benefits don't outweigh what you  
6 disagree with.

7           A.    That's an accurate characterization.

8           Q.    Let's turn to your discussion on page 9,  
9 it's at the bottom, line 20 --

10          A.    Uh-huh.

11          Q.    -- going over to page 10.

12          A.    Right.

13          Q.    This discussion is about Duke Energy. Do  
14 you see that?

15          A.    It's really not about Duke. The filing  
16 by Duke is symptomatic of a problem that's with the  
17 straight fixed variable rate design.

18          Q.    Okay. Let's talk about that problem and  
19 how systematic it is. How many customers left Duke's  
20 system and returned since Duke's implementation of  
21 its straight fixed variable?

22          A.    I don't know. We were never able to get  
23 discovery answered.

24          Q.    Do you know how many customers have left  
25 Suburban's system because of the straight fixed

1 variable implemented in 2017?

2 A. I do not.

3 Q. Do you know how many customers left and  
4 came back to Suburban's system in 2017?

5 A. I do not.

6 Q. I'm assuming you don't know how many  
7 customers left and came back in 2018 or '19?

8 A. The only -- I do look at the annual  
9 disconnection reports. And I just looked at the most  
10 recent one filed by -- by Suburban. But that deals  
11 with really disconnections for nonpayment, not for  
12 rate design so.

13 Q. So you don't know how many customers left  
14 and came back in '18 or '19?

15 A. I don't know if anyone on Suburban's  
16 system left because of the straight fixed variable.  
17 I don't know that.

18 Q. And I know you just stated that your  
19 reference to Duke's application is systematic of a  
20 bigger problem.

21 A. Symptomatic.

22 Q. Symptomatic.

23 A. We are on the same page here, Ms. Bojko.

24 Q. Symptomatic of a big problem.

25 A. Revenue erosion for a utility can be a

1 problem during summer months when bills are so  
2 incredibly high for natural gas. People are used to  
3 getting a break on their natural gas bills in the  
4 summer and, of course, that's when their air  
5 conditioning bill goes up, so it sort of counters  
6 each other off. Whether someone in Suburban has left  
7 because they were continuing to be charged a high  
8 price in the summer, I didn't do a survey so.

9 MS. BOJKO: Your Honor, I actually have  
10 not asked a question. I was struggling with my  
11 question. So I would move to strike everything after  
12 I finally figured out how to state the word but  
13 because I didn't ask him about a survey.

14 MS. MOONEY: Well, was there a question  
15 anywhere she was asking him about?

16 MS. BOJKO: I haven't finished. That's  
17 what I was trying to say.

18 EXAMINER PARROT: Karen, can you please  
19 read what we had out there? I think Mr. Rinebolt  
20 clearly thought there was a question in that so.

21 (Record read.)

22 EXAMINER PARROT: I am going to allow his  
23 response to that to stand, Ms. Bojko.

24 Q. (By Ms. Bojko) So my question was even  
25 though you think that this is related to a bigger

1 problem, Suburban has not yet proposed in a tariff or  
2 in an application form to include a provision such  
3 that you discuss on page 9 and 10.

4 A. No, no. I don't know that that has been  
5 a problem. I don't know that you have filed a tariff  
6 on behalf of Suburban to recover that kind of thing.  
7 But I'm simply telling you that -- that what I do  
8 want to say is that I've looked at high fixed  
9 charges. And, frankly, it's cost effective for me to  
10 put in an air source, hot water heater, or a heat  
11 pump, water heater, and an electric stove, and I'll  
12 get those paid for in two years by turning off during  
13 the summer.

14 MS. BOJKO: Your Honor, I move to strike  
15 again. I asked him if it was included in Suburban's  
16 application, simple question.

17 A. I was just going the next step. I  
18 apologize.

19 EXAMINER PARROT: Let's answer that  
20 question, Mr. Rinebolt.

21 A. Yes, to my knowledge, they have not filed  
22 anything.

23 Q. And to your knowledge this proposal that  
24 you are discussing was not included as a term of the  
25 settlement in this case.



1           A.    I did not see it there at all.

2           Q.    And I think you said you didn't know, but  
3   you're not aware that only eight residential  
4   customers left Suburban's system in 2017?

5           MR. HEALEY:  Objection.  Your Honor, that  
6   assumes facts not in evidence.  There is nothing  
7   about how many customers may or may not have left  
8   Suburban's system in any given year.

9           MS. BOJKO:  Your Honor --

10          MR. HEALEY:  If they want to put that on,  
11   they can put it on in rebuttal instead of trying to  
12   get it in now when that information is not in the  
13   record.

14          MS. BOJKO:  I move to strike this whole  
15   line of questioning because it has nothing to do with  
16   Suburban, and he is speaking generally about why this  
17   is needed because it happens with straight fixed  
18   variable, so I have a right to challenge whether  
19   these facts with -- related to Duke.  I mean, if it's  
20   going to be left in here, I have a right to challenge  
21   whether the specific facts of Duke's are also related  
22   to Suburban.

23          EXAMINER PARROT:  Overruled.

24          Q.    The question was are you aware that in  
25   2017 there were only eight residential customers that

1 left the system?

2 A. No.

3 Q. And in 2018, so after the straight fixed  
4 variable rate design was implemented, there were only  
5 17 residential customers that left the system.

6 MS. MOONEY: Object. The point that  
7 we're making -- that we are making in the testimony  
8 they left the system because of straight fixed  
9 variable rate design being too high in the summer.  
10 She's throwing out these numbers, 7 to 8 people  
11 leaving. We don't know why they left the system.  
12 Did -- there again, I find that the cross is  
13 confusing or irrelevant unless she can -- what she's  
14 testifying about the number of customers left the  
15 system in 2017 and '18, did they leave -- we are --  
16 our testimony is that straight fixed variable rate  
17 design would potentially cause customers to do that.  
18 Just talking about customers leaving the system  
19 without context of the straight fixed variable rate  
20 design is inappropriate in this case.

21 EXAMINER PARROT: Overruled.

22 Go ahead, Mr. Rinebolt.

23 A. The 18 number, I didn't know that either.

24 Q. And, Mr. Rinebolt, you understood my  
25 question I was asking since the straight fixed

1 variable has been implemented on Suburban's system,  
2 are you aware of the number of customers that have  
3 left the system and come back out of Suburban's  
4 17,000 customers?

5 A. No, I do not know that number.

6 Q. And you cannot say that it was a large  
7 number of customers; is that correct?

8 A. I cannot say that.

9 Q. So you cannot say that this problem that  
10 you identify on pages 9 and 10 would, in fact, occur  
11 on Suburban's system?

12 A. I cannot.

13 Q. Offer -- turning to page 11 of your  
14 testimony -- sorry, I am trying not to duplicate  
15 questions. Sorry. Page 11 of your testimony, you  
16 discuss the past Commission precedent regarding the  
17 straight fixed variable approval; is that correct?

18 A. Yes.

19 Q. And you would agree with me that the  
20 Commission has indicated that it believes that  
21 approving the straight fixed variable, that layering  
22 fixed cost recovery into a volumetric charge obscures  
23 the price signal of high-use customers?

24 A. I'll let the Commission decision speak  
25 for itself.

1           Q.    But on page 15 of your testimony, line 4  
2           and line 19, here you state that low income  
3           households are also low-use households; is that  
4           correct?

5           A.    That's correct.

6           Q.    But isn't it true that many low-income  
7           customers living in poorly-insulated dwellings with  
8           older and less efficient gas burning equipment are  
9           actually higher-use customers?

10          A.    The data is actually quite clear that  
11          customers who choose to be served through the PIPP  
12          program have higher than average consumption rates.  
13          That is generally because they either have larger  
14          families, older appliances, or worse they live in a  
15          more poorly insulated or poor structure. But the  
16          bulk of low-income customers including the 80 percent  
17          of low-income customers who do not take advantage of  
18          bill payment assistance are in that situation because  
19          they tend to be very small users. They live in  
20          smaller homes and there's frankly little we can do in  
21          those homes to make them more energy efficient other  
22          than upgrade some appliances. So my point is that,  
23          yes, it harms low-income customers because  
24          predominantly low-income customers are low-use  
25          customers.

1           Q.    Okay.  So you referenced PIPP in response  
2   to my question and just so that the record is clear,  
3   PIPP is a list of low-income customer, correct?

4           A.    It's a low-income customer payment  
5   program.

6           Q.    Okay.  And under the volumetric approach,  
7   so prior to straight fixed variable, under a straight  
8   volumetric approach, you would agree that high-use  
9   customers have subsidized generally low-use customers  
10  over the years?

11          A.    No, I would not agree to that.

12          Q.    Okay.  If low income customers living in  
13  poorly-insulated dwelling with older and less  
14  efficient gas burning equipment are high-use  
15  customers, your PIPP, for example, those customers  
16  have subsidized the low-use customers over the years,  
17  have they not?

18          A.    The question -- your question, correct me  
19  if I am wrong, is premised on the concept of the SFV  
20  is the correct economic approach to determining cost  
21  to service.  My argument is that it's not, that  
22  customer demand should have a larger impact on  
23  distribution rates than -- rather than just  
24  mathematically dividing the costs among customers.

25          Q.    Well, but fixed costs do not change with

1 regard to the amount of customer uses; is that  
2 correct? For the most part fixed costs do not  
3 change?

4 A. Right. And we've -- and in my testimony  
5 I tell you what really are the fixed costs, interest  
6 and depreciation. Everything else is variable.

7 Q. You're not suggesting that -- that's --  
8 well, so you're suggesting that the labor numbers,  
9 the equipment numbers, all of those numbers are not  
10 fixed costs?

11 A. No. I know in my own business the number  
12 of personnel that I am paying every month changes.  
13 The costs of different components of our operation  
14 changes every month. So none of my -- my costs of  
15 operation are fixed. Now, we set rates, and those  
16 rates are assumed on a -- built on a test year, but I  
17 don't think that that's accurate when you are dealing  
18 with variable costs.

19 Q. Well, a utility's provision of  
20 distribution service does not change whether a  
21 customer uses 1 Mcf or 300 Mcf, does it?

22 A. Could you repeat that, please?

23 Q. The company -- a utility company is not  
24 going to hire or fire an employee if one customer  
25 changes its usage pattern from 1 Mcf to 100 Mcf, is

1 it?

2 A. I really don't know the answer to that  
3 question.

4 Q. Your proposal in this case is to place  
5 all fixed costs in a volumetric charge and completely  
6 eliminate the straight fixed variable rate design  
7 that was approved less than two years ago, correct?

8 A. No. That mischaracterizes the position  
9 that I'm taking. What we are calling for is a modest  
10 customer charge that covers billing and back office  
11 and then the rest of the charge should be volumetric  
12 which is the way we made rates in this -- in this  
13 state for many, many years and the way we still  
14 continue to make rates in the electric side.

15 Q. And the physical plant required to serve  
16 a residential customer does not change whether that  
17 customer uses 5 Mcf or 10 Mcf; is that correct?

18 A. We believe that the physical plant of the  
19 system could be different if everyone was a load user  
20 and that would reduce costs. This removes the price  
21 signal to customers to use less.

22 Q. So if a customer begins using less and  
23 there is a pattern of that, the Company would remove  
24 pipes and use a different type of pipe to serve that  
25 customer because they use less gas?

1           A.    Well, I think you've got -- as I indicate  
2           in the testimony, you have got a system design day.  
3           If you didn't have as much demand on the system,  
4           could you size the system smaller. Certainly  
5           Suburban's system is sized differently than Eastern  
6           or Pike's or any number and there are a number of  
7           factors that influenced that but that makes their  
8           cost structure different.

9           Q.    But there are certain costs that cannot  
10          change. A distribution lateral, a service line to a  
11          customer would not change, correct?

12          A.    I'm not sure that that granular level of  
13          detail has anything to do with what we're talking  
14          about.

15          Q.    Would you agree that placing all fixed  
16          costs or the majority of the fixed costs in a  
17          volumetric charge Suburban is at risk for weather  
18          variances?

19          A.    Let me understand. If you put all of  
20          this stuff in a fixed charge?

21          Q.    No. I'm sorry. If you place all of your  
22          fixed costs in a volumetric charge, Suburban is then  
23          at risk for weather variance.

24          A.    Yes, they are.

25          Q.    So if it's a warm winter, Suburban would



1 receive less revenue.

2 A. Yes, likely.

3 Q. So would you also agree that if  
4 Suburban -- Suburban's revenue stream is based purely  
5 on volumetric charges including the recovery of its  
6 fixed charges, that Suburban should receive a much  
7 higher rate of return since Suburban's revenue stream  
8 is hostage to the weather factor that it cannot  
9 accrual through prudent management?

10 A. Well, I believe there are a couple  
11 options that you could take in order to ensure that  
12 Suburban recovers adequate funds to operate its  
13 system. Obviously there could be a -- you could file  
14 a rate case. And that would allow you to provide  
15 adequate funding. You could use a more appropriate  
16 type of decoupling that would ensure the true-up of  
17 the revenue requirement on a lag basis from one year  
18 to the next.

19 And, you know, I mean, I see -- there are  
20 a number of gas utility companies in this state that  
21 have gone decades without coming in for a rate case  
22 and they were exposed to weather risk so there are  
23 clearly a number of other factors at play here. You  
24 could have customer growth and that could minimize  
25 the revenue erosion from bad weather. There are a

1 whole lot of factors that are working together but  
2 the regulatory system is always providing a mechanism  
3 for utility companies who are not covering their  
4 costs or earning their authorized rate of return to  
5 come in and ask for customer rate increases.

6 Q. And the two options that you mentioned  
7 would cause an increase to cost of customers.

8 A. Well, if it was a warm year, then they  
9 paid less. So if you're -- are you measuring by year  
10 or are you measuring over some longer period with a  
11 direct coupling? If I may give an example here. Say  
12 there was an under recovery of the revenue  
13 requirement by 10 percent one year and so you put a  
14 decoupling rider on to recover that additional 10  
15 percent. Will my rates go up 10 percent that second  
16 year? Yep. But my rates were down 10 percent the  
17 year before, so am I at the end of two years netted  
18 out the same? Yeah.

19 Q. Well, and in the scenario you talked  
20 about a utility not coming in for rate cases, and  
21 historically when a utility has more risk, the  
22 Commission allows it to receive a higher return to  
23 compensate it for its risk, correct?

24 A. My understanding is that rate of return  
25 is tied to some -- in some ways to risk profile.

1 I've also seen it tied or justified by a number of  
2 other factors.

3 Q. Turn to page 11, please, of your  
4 testimony and looking at the data chart that you  
5 provide. You got this data from EIA; is that  
6 correct?

7 A. That's correct.

8 Q. And this spot price data specifically  
9 refers to Henry Hub; is that correct?

10 A. I'm sorry. What?

11 Q. Refers to Henry Hub.

12 A. I believe it is, yes.

13 Q. And isn't it true that Suburban does not  
14 receive service from Henry Hub?

15 A. It may not. This is just illustrative of  
16 the overall marketplace. You can pull out a NYMEX  
17 curve, and it would look the same.

18 Q. So you are not implying that this --  
19 these are the spot prices in Suburban's service  
20 territory, are you?

21 A. No, I am certainly not. I am certainly  
22 not.

23 MS. BOJKO: If I could have one moment,  
24 your Honor?

25 I have no further questions. Thank you,

1 your Honor.

2 EXAMINER PARROT: Mr. Healey?

3 MR. HEALEY: No questions, your Honor.

4 EXAMINER PARROT: Mr. Eubanks?

5 MR. EUBANKS: Staff has no questions.

6 EXAMINER PARROT: Redirect?

7 MS. MOONEY: I don't know.

8 EXAMINER PARROT: Would you like a  
9 moment?

10 MS. MOONEY: Let me have a minute then.

11 EXAMINER PARROT: Sure.

12 (Discussion of the record.)

13 MS. MOONEY: We have no redirect.

14 EXAMINER PARROT: All right. Thank you.

15 THE WITNESS: Thank you.

16 MS. MOONEY: Your Honor, I would move for  
17 the admission of OPAC Exhibit 1.

18 EXAMINER PARROT: Are there any  
19 objections?

20 MS. BOJKO: Yeah. I mean, subject to my  
21 motions to strike, your Honor.

22 EXAMINER PARROT: And, again, those are  
23 noted, but consistent with our earlier rulings OPAC  
24 Exhibit 1 is admitted in its entirety.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1                   EXAMINER PARROT: All right. Let's go  
2 ahead and take a lunch recess. We'll reconvene at  
3 1:00 p.m. Thank you, everyone.

4                   (Thereupon, at 12:00 noon, a lunch recess  
5 was taken.)

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1 Thursday Afternoon Session,  
2 July 11, 2019.

3 - - -

4 EXAMINER SANYAL: Let's go on the record.  
5 And, Mr. Healey, if you are ready to call  
6 your second witness.

7 MR. HEALEY: Yes, your Honor. The  
8 Consumers' Counsel calls Ross Willis.

9 EXAMINER SANYAL: Hello again,  
10 Mr. Willis.

11 MR. WILLIS: Hello.

12 (Witness sworn.)

13 EXAMINER SANYAL: Okay. You may be  
14 seated.

15 MR. HEALEY: Your Honor, I would like to  
16 mark as OCC Exhibit 13 the supplemental direct  
17 testimony of Ross Willis in opposition to the  
18 Stipulation filed in this case on June 21, 2019, and  
19 I will approach the witness.

20 EXAMINER SANYAL: Okay.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

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WILLIAM ROSS WILLIS

being first duly sworn, as prescribed by law, was  
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Healey:

Q. Mr. Willis, do you have in front of you  
what's now been marked OCC Exhibit 13?

A. I do.

Q. And what is OCC Exhibit 13?

A. It is my supplemental direct testimony in  
opposition to the Stipulation dated June 21 of 2019.

Q. And this testimony was prepared by you or  
at your direction, correct?

A. It was prepared by me, yes.

Q. And do you have any corrections to your  
testimony?

A. I do not.

Q. And if I were to ask you the same  
questions found in this testimony, would your answers  
be the same today?

A. They would.

MR. HEALEY: Thank you, your Honor. OCC  
moves for the admission of OCC Exhibit 13, and  
Mr. Willis is available for cross-examination.

EXAMINER SANYAL: Ms. Bojko, you may

1 proceed whenever you are ready.

2 MS. BOJKO: Your Honor, just for -- well,  
3 I do have a motion to strike. Would you entertain  
4 that?

5 EXAMINER SANYAL: Sure. Go ahead.

6 MS. BOJKO: Your Honor, at this time  
7 Suburban moves to strike page 7, line 7, page 14 --  
8 through page 14, line 16, of Mr. Willis's  
9 supplemental direct testimony, OCC Exhibit 13. And,  
10 your Honor, I will not put the Bench through another  
11 voir dire, but I do --

12 EXAMINER SANYAL: Thank you for that.

13 MS. BOJKO: But I do feel like I need to  
14 put the objection on the record to this testimony.  
15 So I'll briefly state what that objection is as it  
16 relates to the supplemental direct testimony. We  
17 already discussed this with regard to the direct  
18 testimony.

19 Mr. Willis is not a qualified expert;  
20 and, therefore, he is offering an improper expert  
21 opinion under Rule 702. Under Rule 702 of the Ohio  
22 Rules of Evidence, a witness offering expert  
23 testimony must be qualified as an expert by  
24 specialized knowledge, skill, experience, training,  
25 or education. As was determined at the first day of



1 hearing, Mr. Willis admitted that he was not an  
2 engineer. He has never designed a gas distribution  
3 system and is not familiar with issues such as how  
4 low pressure affects a gas distribution system.  
5 Therefore, he cannot offer an expert opinion on the  
6 reasons that this pipeline would need to be built or  
7 the necessity of the pipeline. This is reflected by  
8 the substance of his prior testimony.

9 Mr. Willis's analysis in the current  
10 testimony as well of the usefulness of the Del-Mar  
11 extension consists entirely of his assessment of  
12 testimony offered by witnesses who do not have  
13 expertise.

14 The Ohio Power Siting Board which has  
15 expertise on these matters and exhibits admitted into  
16 the record in this proceeding, all of these basis --  
17 bases for Mr. Willis's testimony speak for themselves  
18 and his opinions on the usefulness of the pipeline  
19 extension lack the requisite foundation for expert  
20 opinions under Ohio law and that's why we move to  
21 exclude or strike his testimony with regard to his  
22 engineering opinions.

23 EXAMINER SANYAL: Thank you, Ms. Bojko.

24 Mr. Healey, I will let you respond very  
25 briefly.

1                   MR. HEALEY: Thank you, your Honor. I  
2 believe your Honor already ruled on a similar motion  
3 to strike Mr. Willis's original testimony at the  
4 previous hearing. Mr. Willis does not need to be an  
5 engineer to render an opinion whether this property  
6 is used and useful. That is a regulatory question.  
7 It's a regulatory assessment. He is not even  
8 attempting to say whether there is or is not an  
9 engineering need for a pipeline. He is testifying as  
10 to how the Commission should rule on whether  
11 customers should be charged for it under the used and  
12 useful standard 4909 and, therefore, is more than  
13 well qualified to render this testimony. Thank you.

14                   EXAMINER SANYAL: Thank you, Mr. Healey.

15                   Ms. Bojko, I am going to deny your motion  
16 to maintain continuity with my earlier ruling on this  
17 matter. I think the record is clear that the witness  
18 is not an engineer, and you are afforded further  
19 opportunity to make that clear in your cross.

20                   MS. BOJKO: Thank you, your Honor. One  
21 more motion to strike. It's page 15, lines 15 -- on  
22 the supplemental direct testimony, page 15, lines 5  
23 through 17. Here the testimony is an improper legal  
24 opinion under Rule 702. Mr. Willis is offering a  
25 legal opinion on the PUCO's authority to order a

1 phase-in. By his own admission in this testimony, he  
 2 is not a lawyer, and his testimony lays no foundation  
 3 that would otherwise qualify him as an expert by his  
 4 education, knowledge, training, experience, or skill  
 5 to offer a legal opinion. His testimony here goes  
 6 far beyond regulatory expertise and regulatory  
 7 opinions; and he is, in fact, giving a legal opinion.  
 8 Mr. Willis has no basis for making this opinion on  
 9 the legality of a Stipulation provision in this  
 10 context, and the testimony should be struck  
 11 accordingly.

12 EXAMINER SANYAL: Mr. Healey?

13 MR. HEALEY: Yes, your Honor.  
 14 Mr. Willis's testimony on page 15, line 5 to 7, is  
 15 well within the bounds of his expertise. In  
 16 particular, lines 5 through 7 reference factual  
 17 information based on his expertise and his  
 18 experience, and lines 11 through 17, he explains why  
 19 the Stipulation including the phase-in violates the  
 20 three-prong test. That's based on his regulatory  
 21 expertise. Certainly counsel can cross-examine him  
 22 on the basis for his expert opinions which he lays  
 23 out here, and she will have the opportunity to do so,  
 24 so I don't think there is any basis to strike his  
 25 expert testimony, and it's fully admissible.

1 EXAMINER SANYAL: Thank you, Mr. Healey.  
 2 I am denying this motion. I would like to indicate  
 3 that Mr. Willis does indicate on line 7 and 8 that  
 4 he's not a lawyer, so I think it is clear.

5 Any other motions?

6 MS. BOJKO: No, your Honor.

7 EXAMINER SANYAL: Okay. You may proceed.

8 MS. BOJKO: Your Honor, at this time I  
 9 would just like to make a note on the record I did  
 10 not do this last time and I intended to, even though  
 11 Ms. Mooney seemed to have left the hearing room, I  
 12 would ask that she be called to question a witness  
 13 that's supporting her positions first prior to  
 14 Suburban continuing with its cross-examination. And  
 15 since she's not here obviously her not be allowed to  
 16 enter the hearing later after I finish and being able  
 17 to cross after my cross.

18 EXAMINER SANYAL: Thank you for that.  
 19 Any other comments?

20 MR. HEALEY: Yeah, I would just note that  
 21 while there is some leniency in the way we allow  
 22 Staff's position to be taken in this case, Staff was  
 23 allowed to go last with respect to Suburban's  
 24 witnesses which are on its side and effectively, you  
 25 know, follow my cross of their witnesses so the -- in

1 fairness, Ms. Mooney, she should have a similar  
2 opportunity and should not be required to go first.

3 MS. BOJKO: Your Honor, I would add Staff  
4 is completely different as you pointed out.

5 EXAMINER SANYAL: How about we cross that  
6 bridge if Ms. Mooney does arrive and would like to  
7 cross Mr. Willis. We will cross that bridge when she  
8 arrives.

9 MS. BOJKO: Fair enough. Thank you.

10 EXAMINER SANYAL: Thank you.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Bojko:

14 Q. Good afternoon, Mr. Willis.

15 A. Good afternoon.

16 Q. You are aware of the three-part test that  
17 the Commission uses to evaluate stipulations, and you  
18 quote that in your testimony; is that correct?

19 A. Yes.

20 Q. And, sir, today I am mostly going to be  
21 referring to -- when I say testimony, I will be  
22 referring to your supplemental direct testimony, OCC  
23 Exhibit 13, unless I indicate otherwise.

24 Is that a fair understanding of my use of  
25 the word testimony?

1           A.     Yes.

2           Q.     In your testimony on the Stipulation, you  
3     do not address the issue of whether there was serious  
4     bargaining among knowledgeable, capable parties,  
5     correct?

6           A.     I do not.

7           Q.     And so you do not dispute that a number  
8     of settlement meetings occurred between Suburban  
9     staff and intervening parties in this case including  
10    OCC?

11          A.     That's correct.

12          Q.     And you would agree that the Stipulation  
13    reflects adjustments and/or concessions to Suburban's  
14    litigation positions or positions taken in its  
15    application based on issues that OCC raised through  
16    its objections.

17          A.     I would agree with that, although OCC  
18    opposes the adjustments that were made.

19          Q.     OCC though does support some of the  
20    Stipulation provisions that were made that would  
21    revise the application; is that fair?

22          A.     A few, yes.

23          Q.     For instance, the Stipulation provides  
24    customers with a free meter test every three years,  
25    and OCC supports that position?

1 A. That's not the purpose of my testimony.

2 Q. But you agree that the Stipulation does  
3 provide customers with a free meter test and OCC's  
4 supporting that position?

5 A. Yes.

6 Q. And you would agree that the Stipulation  
7 allows customers to make payments in the field to  
8 avoid disconnection by cash, check, or money order as  
9 recommended by OCC?

10 A. That's not the purpose of my -- I think  
11 Mr. Fortney addressed those issues.

12 Q. And you then did not make any  
13 recommendations with regard to the Tax Cuts and Jobs  
14 Act; is that correct?

15 A. No.

16 Q. And I think you met -- you referred to  
17 some adjustments. It's true that the Stipulation  
18 reduces the miscellaneous general expense further  
19 than what was recommended in the Staff Report and  
20 that was supported by OCC, correct?

21 A. Yes.

22 Q. So the prongs of the settlement test that  
23 you are contesting in this proceeding through your  
24 supplemental testimony are the second two, whether  
25 the Stipulation benefits customers and the public

1 interest and whether the Stipulation violates any  
2 important regulatory principle or practice.

3 A. That's correct.

4 Q. Let's first discuss the benefit -- the  
5 first -- the second prong, I guess it is, whether the  
6 Stipulation benefits customers in the public  
7 interest. Mr. Willis, in your testimony about  
8 whether the Stipulation benefits customers and serves  
9 the public interest, you really are focused on one  
10 issue; is that correct?

11 A. It's the Del-Mar Pipeline extension.

12 Q. And the phase-in of the inclusion of that  
13 extension in rate base?

14 A. Yes.

15 Q. And your testimony does not dispute that  
16 the Stipulation will allow Suburban to provide safe  
17 and reliable service to customers, does it?

18 A. No.

19 Q. We talked about a couple -- a couple  
20 benefits included in the settlement. The  
21 settlement -- a benefit in the settlement that is  
22 proposed -- excuse me. Strike that.

23 One of the Stipulation -- one of the  
24 provisions provided in the Stipulation proposes to  
25 recalculate the customer count after each of the



1 first two years of the Stipulation; is that correct?

2 A. That's my understanding.

3 Q. And you would agree that recalculating  
4 the customer charge based upon the customer count  
5 after base rates have been established and approved  
6 through a base rate case is not typical.

7 A. It is not.

8 Q. And if additional customers come onto the  
9 system in those two years, the set established rate  
10 increase in the Stipulation for the second and third  
11 years will be spread among more customers and will  
12 reduce the customer charge for all customers,  
13 correct?

14 A. Well, again, what we're talking about is  
15 the 4.95 mile pipeline extension that was built to  
16 serve an additional 4,000 homes, and given that  
17 your -- your customer growth is in the neighborhood  
18 of 3 to 4 hundred customers a year, that hardly  
19 negates the fact that the existing customers are  
20 harmed by this extension that wasn't built to serve  
21 them.

22 MS. BOJKO: Your Honor, I move to strike  
23 all of his answer as nonresponsive. I asked that if  
24 additional customers come onto the system in the two  
25 years during the phase-in and the set rate increased

1 for the second and third years is implemented, that  
2 increase will be spread among more customers.

3 EXAMINER SANYAL: Mr. Willis, can you  
4 answer that specific question, please.

5 THE WITNESS: Could I have the question  
6 reread the way she asked it, please, originally.

7 (Record read.)

8 A. Yes.

9 Q. And that will result in lower rates for  
10 customers than if the customer count were not  
11 recalculated in the second and third years; is that  
12 correct?

13 A. Well, again, you're putting plant in  
14 that's not used and useful to serve existing  
15 customers, so rates are already -- will be  
16 artificially high and then you are going to add  
17 another 30 percent and then you are going to add --  
18 then it will be 100 percent. It wasn't built to  
19 serve existing customers. Will -- will the rates be  
20 spread across a larger number of customers? Yeah,  
21 maybe, maybe a few more. But, again, initially set  
22 the customers' rates are already -- are going to be  
23 artificially high to begin with.

24 Q. You agreed with me that it's not typical  
25 to once a base rate case is -- is approved and rates

1 are established, it's not typical to go back into the  
2 Company's books and recalculate the revenue  
3 requirement based on the actual number of customers  
4 during the implementation or continuation of that  
5 base rate; is that -- do you recall that discussion?

6 A. I do. Not only do I think it's not  
7 typical but the phase-in that's proposed is quite  
8 frankly unlawful.

9 Q. And we'll get to your -- your legal  
10 opinion about whether it's lawful or not later, but  
11 my question for you isn't it a benefit to do the  
12 atypical recalculation of an established rate or  
13 requirement based on a current count of customers  
14 that will have the effect of lowering their overall  
15 fixed customer charge?

16 A. It's a smoke screen in my opinion. They  
17 shouldn't have been charged for the -- for the  
18 existing customers shouldn't be charged for the  
19 pipeline extension to begin with.

20 Q. So you don't see a benefit of  
21 recalculating the customer count as opposed to not  
22 recalculating the customer count once new rates are  
23 put into effect by the Commission Order.

24 A. If you want to charge someone for  
25 something that they shouldn't be charged to begin

1 with and then -- and then in the second year add more  
2 charges that they shouldn't be charged to begin with  
3 and then in the third charge -- add more charges  
4 that -- and then add in a few more customers to say,  
5 oh, gee, that's a benefit, no, I don't believe that's  
6 correct.

7 Q. Okay. So your recommendation to this  
8 Commission would be that if they approve the phase-in  
9 for the addition or inclusion of the Del-Mar  
10 extension, that the Commission should not accept the  
11 Stipulation provision that would require Suburban to  
12 recalculate the number of customers on the system  
13 when it implements the new phased in customer  
14 charges?

15 A. No, that's not what I am saying at all.  
16 First of all, again, in my opinion the phase-in is --  
17 is unlawful. But to go beyond that, it's -- it's --  
18 the plant is either used and useful at date certain  
19 or it's not. And the fact of the matter is it was  
20 not used and useful as of date certain. Therefore,  
21 it should not be in rates to begin with.

22 Q. Okay. Mr. Willis, I understand your  
23 legal position about whether you should include plant  
24 or not. I am talking about subsequent Stipulation  
25 provisions. I am not talking about that Stipulation

1 provision.

2 So I was trying to understand OCC's  
3 position with regard to other settlement provisions  
4 and to understand whether you would support or not  
5 support the other settlement provisions assuming, of  
6 course, that the Commission found that the phase-in  
7 was proper, and it was put in place whether the  
8 recalculation of the customer count was a positive  
9 per the settlement or whether you would recommend  
10 that it be removed from the settlement.

11 A. Well, I think my testimony speaks for  
12 itself.

13 Q. In the settlement Suburban has agreed to  
14 file a new rate case by 2025; is that correct?

15 A. Yes.

16 Q. And 2025 Suburban is committed to filing  
17 a rate case that will then incorporate the number of  
18 customers, correct, currently on the system at that  
19 time; is that correct?

20 A. Well, it should, yes.

21 Q. And it would consider all the expenses  
22 and revenues at the time in 2025.

23 A. As well as what plant is used and useful  
24 in supplying service to then, the existing customers  
25 at that time.

1           Q.    And you believe that a requirement to  
2   have Suburban come in for that next rate case in  
3   order to recalculate the customer count as well as  
4   other issues, that that would be a benefit to  
5   customers, correct?

6           A.    I don't know if it would be a benefit to  
7   customers or not.

8           Q.    The Stipulation also includes the 20 mile  
9   Del-Mar Pipeline that was constructed in 2005 and  
10   leased to Suburban. It includes that now in rate  
11   base and eliminates the lease payments from the GCR;  
12   is that correct?

13          A.    I think you cross-examined me on that  
14   direct six hours that you cross-examined me before,  
15   if I am not mistaken.

16          Q.    Actually I couldn't have because the  
17   Stipulation wasn't in existence the first day of  
18   hearing so that's why it's necessary for me to  
19   address these items in the context of the  
20   Stipulation. Would you like me to reread the  
21   question?

22          A.    Sure.

23          Q.    The Stipulation includes the 20 mile  
24   Del-Mar Pipeline in rate base, thereby eliminating  
25   the lease payments from the GCR and reducing the

1 amount collected from the customers through the GCR.

2 A. Correct.

3 Q. And that Stipulation provision is saving  
4 customers money, correct?

5 A. Well, it's -- the revenue requirement in  
6 effect through rate base is less than what would  
7 be -- what was being recovered through the GCR.  
8 However, I think OCC's opinion is that you didn't --  
9 you didn't request Commission approval -- for  
10 approval for that to be -- for the merger to take  
11 place.

12 And our position remains that, you know,  
13 if the Commission decides that approval is not  
14 necessary, then, yes, it should -- it should be in  
15 plant-in-service that -- I'm not sure that you've met  
16 the requirements.

17 Q. I'm sorry. Did you raise that concern in  
18 your testimony filed in this case?

19 A. Well, you are asking me about -- you  
20 opened it up. You asked me about the -- the portion  
21 that was leased.

22 Q. No, I didn't actually; but, right now, I  
23 am asking you --

24 A. Sure, you did.

25 Q. -- whether you included in your testimony

1 the point that you believe merger approval was  
2 somehow required.

3 A. I raised that in my direct testimony.

4 Q. Right. In your supplemental testimony  
5 with regard to the Stipulation, did you raise it?

6 A. You just raised it with me. And I'm  
7 saying that, yes, the benefit in plant-in-service  
8 it's cheaper and through the revenue requirement than  
9 through the GCR. However, our position remains that  
10 you did not request Commission approval for the  
11 merger.

12 Q. Okay. And what statutory provision or  
13 Commission rule are you now articulating was required  
14 for Suburban to seek merger approval?

15 A. It's typically done through -- through an  
16 AIS case. I don't know the specific rule, but it's  
17 typically done through financing and mergers. They  
18 all go through the Commission for consideration.

19 Q. So it's your regulatory opinion -- you  
20 are not a lawyer; is that correct?

21 A. I'm not a lawyer.

22 Q. So sitting here today, it's your  
23 regulatory opinion that a nonregulated entity needs  
24 to come before the Public Utilities Commission for  
25 approval of a merger?



1           A.    I don't know how you could say it wasn't  
2 regulated when all the costs went through the GCR.  
3 But -- and the owner -- or it's typically the same  
4 owner that it is now. I think there would be an  
5 arm's length investigation but that's for the  
6 Commission to decide.

7           Q.    I'm sorry. Are you claiming today that  
8 the owner of the Del-Mar Pipeline, LLC, is the same  
9 owner as Suburban; is that your testimony?

10          A.    Essentially, essentially they are. It  
11 may be -- the names may be separated for legal -- for  
12 legal reasons, but essentially the same people own it  
13 today that did, yes.

14          Q.    So you're basically sitting here in your  
15 nonlawyer opinion stating that the legal entities  
16 filed with the Secretary of State have no meaning  
17 because in your mind they essentially are the same  
18 people without any basis?

19          A.    For you to say they weren't regulated,  
20 certainly they were regulated.

21          Q.    Del-Mar Pipeline, LLC, is not a  
22 regulated --

23          A.    The costs were. The costs were audited.  
24 They came through the GCR.

25          Q.    Was the Del-Mar Pipeline, LLC, a

1 regulated utility by the Public Utilities Commission  
2 of Ohio?

3 A. No.

4 Q. And were the lease payments paid -- the  
5 lease payments regulated by the Public Utilities  
6 Commission of Ohio?

7 A. Yes.

8 Q. The lease payments --

9 A. The lease payments came through the GCR,  
10 and they were audited by the PUCO.

11 Q. That's not what I asked. Were the lease  
12 payments made to Del-Mar Pipeline Company regulated  
13 by the PUCO?

14 A. The costs for the lease payment came --  
15 was paid through the GCR. Now, Suburban made  
16 payments to Del-Mar that was not regulated but the --  
17 but they were recovered through the GCR.

18 Q. And you did agree with me earlier that  
19 there was a savings and that savings is in the --  
20 from putting -- taking the lease payments -- recovery  
21 of the lease payments from the GCR and placing the  
22 pipeline in rate base, that that savings is  
23 approximately \$1.2 million?

24 A. Approximately.

25 Q. And that's a benefit provided by the

1 settlement; is that correct?

2 A. Assume that -- yes, yes, that savings  
3 would be, yes, although that really isn't -- if I may  
4 interrupt, I mean, that really wasn't part of the --  
5 the settlement. I mean, I think that was part of --  
6 you intended to do that through your Application. It  
7 wasn't a specific settlement compromise on anybody's  
8 part.

9 Q. Well, the settlement adopted that  
10 provision --

11 A. Well --

12 Q. -- has that provision in it.

13 A. It was part of your application.

14 Q. But it's part of the settlement package  
15 as well, sir, isn't it?

16 A. Well, it wasn't a compromise. It was  
17 just Staff accepted what you did.

18 Q. The parties --

19 A. As part of the original Staff Report. It  
20 wasn't -- it wasn't a change from the Staff Report is  
21 what I am trying to say.

22 Q. Okay. But the parties, signatory parties  
23 of a settlement, agreed to that provision, correct?

24 A. Yes.

25 Q. And that provision in the settlement

1 addresses OCC's objection that you had in your direct  
2 testimony regarding double recovery of the pipeline,  
3 correct?

4 A. Well, my -- the point I raised about the  
5 double recovery was, again, you were able to project  
6 your -- your plant to date certain to the end of the  
7 test period. That portion of it was a projection.  
8 At the same time when you originally filed your --  
9 when you originally filed, you were recovering that  
10 through the GCR, and the only part was -- the point I  
11 was trying to make it should be one or the other. It  
12 should be either GCR, or it should be in plant.

13 Q. Right. And so the Stipulation makes it a  
14 part of rate base so there is no double recovery  
15 issue, correct?

16 A. Yes, that's correct.

17 Q. And so the focus of your testimony is  
18 that even with these benefits, you believe that the  
19 Stipulation does not benefit customers because of the  
20 phased in provision for inclusion of the Del-Mar  
21 extension?

22 A. Well, there's two pieces. One, that the  
23 extension is not used and useful at date certain, and  
24 the phase-in is improper and not in the best interest  
25 of the consumers.

1           Q.    So you opine on the used and useful  
2 standard contained in the statute; is that correct?

3           A.    Yes.

4           Q.    And as we've stated, you are not an  
5 attorney, correct?

6           A.    No.

7           Q.    And you also opine on whether the  
8 extension is necessary; is that correct?

9           A.    Yes.

10          Q.    But you are not an engineer, correct?

11          A.    No, but your own engineering witness sat  
12 here yesterday and said that even if it really was to  
13 serve -- even if really was to build in redundancy at  
14 the Lazelle point of delivery at the furthest  
15 southern end of the system, you didn't need a 5 mile  
16 or 4.95 mile pipeline extension. He said clearly if  
17 it was for redundancy, 2 miles would have done it and  
18 possibly something less, but they didn't run -- they  
19 didn't run any studies.

20               MS. BOJKO: Your Honor, I move to strike  
21 his response as nonresponsive. My question was you  
22 are not an engineer, correct? And I strongly  
23 disagree with his characterization of the testimony  
24 yesterday.

25               EXAMINER SANYAL: Your motion is denied.

1 Move on.

2 MS. BOJKO: But I need to have --

3 Q. (By Ms. Bojko) Mr. Willis, are you an  
4 engineer?

5 MR. HEALEY: Objection.

6 Q. You have to answer that question.

7 MR. HEALEY: Asked and answer.

8 EXAMINER SANYAL: He did respond, but I  
9 will let you answer again, once again for the record,  
10 that you are not an engineer.

11 A. I am not an engineer. I'm just stating  
12 what your engineer said yesterday on the stand.

13 Q. Mr. Willis, we'll have to agree to  
14 disagree. Isn't it true that Mr. Grupenhof at no  
15 time yesterday used the word redundancy?

16 A. He did not use the word redundancy.

17 Q. Thank you.

18 A. However -- that's fine. Go ahead.

19 Q. You have not worked for a public utility,  
20 have you?

21 A. No. I have 35 years' worth of regulatory  
22 experience with the Public Utilities Commission and  
23 the Ohio Consumers' Counsel.

24 Q. And in your opinion you also opine about  
25 the length of the pipeline, correct?

1           A.    Yes.

2           Q.    And you've never designed a natural gas  
3 distribution system, have you?

4           A.    No.

5           Q.    And you opine about the meaning and the  
6 requirements of the Ohio Power Siting Board case in  
7 your testimony too; is that correct?

8           A.    I do.  It's on page 7 where I quote in  
9 Suburban's Letter of Notification to the Ohio Power  
10 Siting Board beginning on line 14 "The current 6-inch  
11 line will not provide enough volume of the amount of  
12 plant growth that is planned.  As such, the new  
13 12-inch line is needed to provide additional  
14 capacity."

15          Q.    And on page 7 that you just read from,  
16 sir, you're -- you're summarizing your direct  
17 testimony that was filed on March 8, 2019; is that  
18 correct?

19          A.    No.  What I'm doing is I'm -- I think I  
20 had some of this in my direct testimony.  What I'm  
21 doing is I'm answering why the Del-Mar Pipeline  
22 extension is not used and useful as of date certain  
23 in this case.

24          Q.    And in your direct testimony, you cited  
25 this exact same provision regarding the Ohio Power

1 Siting Board case; is that correct?

2 A. Yes.

3 Q. And in your direct -- the Stipulation did  
4 not change your recommendation with regard to this  
5 issue; is that correct?

6 A. No, because the -- again, the Ohio Power  
7 Siting Board -- what you're -- what you're attempting  
8 to do at this point is say, oh, yeah, this is used  
9 and useful because we need to build some type of  
10 redundancy in at Lazelle Road. You're concerned  
11 about this point of delivery, and then on a real,  
12 real cold day, it may fall below 100 PSIG which it  
13 never did.

14 But that's not what you said in the Ohio  
15 Power Siting Board case. You cited the fact that it  
16 wasn't -- had nothing to do with Lazelle Road point  
17 of delivery. Forget about the word redundancy. It  
18 was never about the point of delivery, making sure  
19 that that could really support something at 20  
20 degrees below 0, that you wouldn't fall below 100  
21 PSIG, which you never did. It was all about planned  
22 growth in the end.

23 MS. BOJKO: Your Honor, I move to make --  
24 again, I merely asked him if his Stipulation  
25 changed -- I am actually trying to shortcut this, so



1 I don't have to go through all the questions I  
2 answered the last hearing --

3 EXAMINER SANYAL: I understand,  
4 Ms. Bojko, but you did ask if his mind changed, and  
5 he was just...

6 MS. BOJKO: I asked him if the  
7 Stipulation changed your recommendation.

8 EXAMINER SANYAL: I am denying the  
9 motion. Move on.

10 MS. BOJKO: Thank you, your Honor.

11 Q. (By Ms. Bojko) Did the Stipulation change  
12 your recommendation with regard to this issue and the  
13 cites that you made to the Power Siting Board?

14 A. No. In fact, I think it re-enforces our  
15 position. The fact that, again, plant is either used  
16 and useful at date certain or it's not. And -- and  
17 to the fact that Staff is now willing to say, oh,  
18 gee, we're going -- we are only going to give you 50  
19 percent of that. I can't really do that. It's used  
20 and useful or it's not.

21 Q. Mr. Willis, we can get back into all the  
22 Ohio Power Siting Board. I was trying to ask you if  
23 our discussion at the first day of hearing would have  
24 changed from the Stipulation, and I am hearing you  
25 say, yes, it did change; is that fair?

1           A.    If it did anything, it reinforced my  
2   position that it's not used and useful at date  
3   certain. And, again, the smoke and mirror of trying  
4   to do some phase-in over three years when the thing  
5   was built to serve 4,000 customers after the 2018-19  
6   winter, I mean, you are only talking about another 6  
7   or 7 hundred customers. It's a smoke and mirrors as  
8   far as I'm concerned.

9           Q.    You have never worked at the Ohio Power  
10   Siting Board, have you?

11          A.    No.

12          Q.    And you were not involved in the Ohio  
13   Power Siting Board's approval of the Del-Mar  
14   extension; is that correct?

15          A.    I was not.

16          Q.    And you were not involved in the Ohio  
17   Power Siting Board case at all in your capacity  
18   either with the Commission or at OCC, correct?

19          A.    I was not.

20          Q.    And throughout your testimony, you  
21   referred to the used and useful standard; is that  
22   correct?

23          A.    Yes.

24          Q.    And what standard are you referencing?  
25   Can you provide me with a statutory provision or a

1 Commission rule that you are referencing?

2 A. Well, it would be 4909. It's the Ohio  
3 Revised Code.

4 Q. I'm sorry. The whole Chapter 4909?

5 A. Well, I believe it's 4909.15.

6 Q. Okay. And so throughout your testimony,  
7 for instance, on page 4.

8 A. Valuation of plant. I don't know exactly  
9 the specific chapter, but it's the valuation of  
10 plant.

11 Q. So throughout your testimony, you state  
12 that it would not be lawful to include the extension  
13 in rate base. You say it on page 4, on page 5, on  
14 page 6, and other places and what statute there are  
15 you referencing?

16 A. The one I just referenced?

17 Q. So 4909.15?

18 A. Well, it's again the valuation of plant.  
19 I think it's 15.

20 Q. Okay. Let's look.

21 A. Plant.

22 Q. I'm sorry. I thought you were done.

23 A. No. If I could have the whole 4909, if  
24 you could just give it to me, I will find it.

25 Q. I was going to say let's look at 49 --

1           A.    I would rather have the whole chapter so  
2   I could point you to --

3           MS. BOJKO:   Your Honor, I am going to ask  
4   him about 4909.15.

5           EXAMINER SANYAL:   You may proceed.

6           MS. BOJKO:   Thank you.   I think everybody  
7   has this from yesterday but give -- may we approach?

8           EXAMINER SANYAL:   Yes.

9           MS. BOJKO:   We have extra.   Does anybody  
10   need one?

11          EXAMINER SANYAL:   I'll take one.

12          MS. BOJKO:   Do you need one, Ms. Parrot?

13          A.    This is fixation of rates.   There's --  
14   there's one other one that's -- and I will be happy  
15   to discuss any part of this with you but there is  
16   another one that's valuation of plant that's relevant  
17   as well.

18          Q.    And what statute is that?

19          A.    I don't know.   Again, if you could hand  
20   me the whole chap -- the whole 4909, I will find it.

21          Q.    I don't have the whole chapter.   I don't  
22   carry 4909 with me everywhere I go but.

23          A.    Okay.

24          Q.    I believe at one point you mentioned  
25   4909.15 so that's why I wanted to talk about 4909.15

1 with you. Isn't it true that 4909.15(A)(1) states  
2 that "The commission when fixing and determining just  
3 and reasonable rates shall determine the valuation as  
4 of the date certain of the property of the public  
5 utility used and useful, or with respect to a natural  
6 gas company or other utilities projected to be used  
7 and useful as of the date certain in rendering the  
8 public utilities service for which rates are to be  
9 fixed and determined"?

10 A. Yes. But, again, it's -- it's as of date  
11 certain. And all this is essentially saying is that  
12 for natural gas and waterworks or sewer utilities,  
13 you can project your date certain to the end of the  
14 test period which in this case is -- would be the  
15 date certain. That's all I am saying.

16 Q. Right. It specifically says shall  
17 determine the valuation as of the date certain of the  
18 property the public utility used and useful, or with  
19 respect to a natural gas company projected to be used  
20 and useful as of the date certain.

21 A. That's right. And your date certain in  
22 this case was the last day of the test period, and it  
23 was -- there was a period of time that was projected  
24 and in the Staff Report the -- the Staff -- because  
25 the Staff -- that needed additional time to

1 investigate whether it was used and useful. It just  
2 included your projection and said -- with the  
3 qualifier that Staff will continue to conduct its  
4 investigation and render its opinion at a later date  
5 or something like that.

6 Q. And the pipeline extension in Suburban's  
7 Application was projected to be used and useful in  
8 the test year; is that correct?

9 A. As was the -- the lease, the lease -- the  
10 merger, that was a projected portion as well.

11 Q. So as you understand it, for natural gas  
12 companies, which is different than electric  
13 companies, for natural gas companies, the Commission  
14 shall include in rates the value of the gas company's  
15 property used and useful as of the date certain or as  
16 projected to be used and useful in the date certain?

17 A. I don't know why you keep saying that.  
18 Your date certain was the end of the test period. It  
19 was projected. It was a projected piece. When you  
20 filed, you didn't know exactly what that projected  
21 piece was. It was projected. And so your date  
22 certain was the last day of the test period. That's  
23 all. Still the date certain. It's just projected.  
24 It's moving from, you know, if -- you know, instead  
25 of filing a 3 and 9 with the three months actual and

1 your date certain at the end of the three months, you  
2 filed -- you projected plant out to the end of the --  
3 end of the test period.

4 Q. And so that projected to be used and  
5 useful as of the date certain shall be included in  
6 rates, correct?

7 MR. HEALEY: Objection, your Honor.  
8 Asked and answered at this point many times.

9 EXAMINER SANYAL: Sustained. I think we  
10 can move on.

11 Q. So you believe that there is another  
12 provision that -- just throughout all your testimony  
13 you just say used and useful standard, and you say  
14 Ohio law. And so you're sitting here today telling  
15 me that there is another statutory provision beyond  
16 4909.15 that you may be referencing when you used  
17 those words; is that correct?

18 A. 4909.15 is very clear, and at your date  
19 certain, your date certain in this case, it's very  
20 well documented your date certain in this case was  
21 the last day of the test period. That's all.

22 Q. Mr. Willis, is --

23 A. All companies have a date certain. It  
24 doesn't mean you throw out the date certain. It just  
25 means you are allowed to project your date certain.

1 EXAMINER SANYAL: Mr. Willis, as we did  
2 in our previous encounter, let's try and answer  
3 counsel's question first.

4 THE WITNESS: Okay.

5 Q. (By Ms. Bojko) I am trying to understand  
6 your testimony because very vaguely throughout your  
7 testimony you use the terms Ohio law, used and useful  
8 standard, the useful -- used and useful law. And  
9 when you are saying those words, you are referring to  
10 4909.15 and what I thought I heard you say today that  
11 there's possibly another statutory provision that you  
12 are referencing when you use those terms?

13 A. No.

14 Q. Okay. So it's just 4909.15?

15 A. Yes.

16 Q. Okay. Thank you.

17 A. There's also --

18 Q. There's no question pending.

19 EXAMINER SANYAL: Mr. Willis, there is no  
20 question at the moment.

21 Q. In your supplemental testimony on the  
22 Stipulation, do you contest that the pipeline  
23 extension was used at the date certain for this case?

24 A. Well, as I state on page 9, I would say  
25 it's arguably being used. There was gas in it. But



1 that doesn't mean that it's useful to the existing  
2 customers.

3 Q. Okay. So your focus in your testimony is  
4 the contention as to whether the pipeline was useful.

5 A. That's correct.

6 Q. Okay. And --

7 A. To existing customers.

8 Q. Would you agree that the pipeline  
9 extension reduces concerns raised about an inadequate  
10 pressure on Suburban's system?

11 A. No. And let me -- if I may. Through  
12 testimony yesterday Mr. Sonderman stated that the  
13 contractual arrangement at the Lazelle Road with  
14 Columbia Gas point of delivery, they needed to  
15 maintain a pressure of -- a pressure of 125 PSIG.  
16 Now -- now, looking at WRW Attachment 2, page 1 of 4,  
17 on January 21 of 2019, it was 7 below 0. And at 6  
18 o'clock you had a pressure of 150 PSIG. It dropped  
19 down to 110 at 7:00, but it dropped -- came back up  
20 to 125.

21 Throughout all of these you've maintained  
22 adequate pressure. In Mr. Grupenhof's testimony at  
23 page 5, you know, he stated that UTI determined that  
24 the pressure needs to be maintained above a minimum  
25 of 100 PSIG. And to take it a step further in

1 Mr. Sonderman's dissertation yesterday looking at the  
2 maps, growth has already happened at the very south  
3 end. That's all happened. And what he explained was  
4 the future growth is going to happen in that 3 mile  
5 stretch from the end of the extension upwards.  
6 That's where the growth is going to happen. If --  
7 you -- you have adequate pressure at the south end.  
8 Your concern is that growth -- that 3 mile growth, 3  
9 or 4 mile growth that's yet to occur.

10 MS. BOJKO: Your Honor, I am going to  
11 move to strike, and I -- I am not trying to be  
12 difficult here, but we are going to be here all day  
13 if the witness is not answering any of my questions,  
14 and he's mischaracterizing every piece of testimony.  
15 We can't let it stand.

16 Mr. Sonderman, first of all, never said  
17 that the Columbia Gas contracted requirement was 125  
18 Mcf -- pounds or 125 pounds. That's just not a  
19 factual statement. So if we are going to  
20 mischaracterize everybody's testimony from the day  
21 before, then we are going to have to object to every  
22 mischaracterization. So my request is that we ask  
23 the witness to answer the questions before him about  
24 his own testimony and not talk about his  
25 interpretation of every other witness's testimony

1 that's gone yesterday.

2 MR. HEALEY: Your Honor, if I may.

3 EXAMINER SANYAL: Yes.

4 MR. HEALEY: The question that was  
5 pending asked Mr. Willis whether the pipeline  
6 extension alleviated potential concerns about low  
7 pressure. His entire answer was explaining why there  
8 are no such concerns, so it was directly responsive,  
9 and if she believes, counsel believes that Mr. Willis  
10 is mischaracterizing their witness's testimony, she's  
11 welcome to bring that up on briefs. That's the point  
12 of briefs.

13 EXAMINER SANYAL: I am going to deny that  
14 motion.

15 MS. BOJKO: Okay.

16 EXAMINER SANYAL: But I will advise  
17 Mr. Willis to answer Ms. Bojko's question first as --

18 THE WITNESS: I was trying to.

19 EXAMINER SANYAL: Yes, yes, I understand.

20 A. The transcript will speak for itself.

21 Q. Well, isn't it true, sir, Mr. Sonderman  
22 never said the contracted requirement from Columbia  
23 was 125 pounds? Because that's just not true.

24 A. I think the transcript will speak for  
25 itself.

1           Q.    Isn't it also true that Mr. Sonderman  
2   never stated yesterday that the growth at the  
3   southern end of their system was completely finished?

4           A.    I think the transcript will speak for  
5   itself, but if I may, using Mr. Sonderman's map here,  
6   what he said -- if I could turn it around here. I  
7   don't have the easel like you guys.

8                   EXAMINER SANYAL: Oh, no, I think your  
9   water...

10                  THE WITNESS: I know I did.

11           A.    That the growth has already occurred in  
12   this area, that this is where the extension ends, and  
13   the growth is up here.

14                  MS. BOJKO: Your Honor, objection.  
15   Mischaracterizes Mr. Sonderman's testimony. He  
16   never, because it's not even true, and he actually  
17   specifically talked about the Polaris area which is  
18   at the southern end of the system, that there are new  
19   customers coming online there all the time. He  
20   specifically addressed that, so I am going to move to  
21   strike as mischaracterizing Mr. Sonderman's  
22   testimony.

23                  MR. HEALEY: Again, your Honor, she is  
24   asking him questions. He's responding based on his  
25   understanding of what Mr. Sonderman said. If she

1 thinks that's wrong, then she can attack his  
2 credibility on brief.

3 EXAMINER SANYAL: Ms. Bojko, I am denying  
4 your objection again. If you believe that the  
5 witness has mischaracterized the testimony, you can  
6 clarify that on brief.

7 MS. BOJKO: I am not allowed to test his  
8 credibility or clarify on cross-examination?

9 EXAMINER SANYAL: You may, and I am  
10 denying the objection.

11 Q. (By Ms. Bojko) Sir, I believe in your  
12 testimony on page 11 that you stated you're not  
13 disputing Mr. Grupenhof's testimony that Suburban  
14 must maintain a pressure of at least 100 PSIG at the  
15 Lazelle Road, I think is the proper term; is that  
16 correct?

17 A. No, I have no reason to dispute the 100  
18 PSIG.

19 Q. And you agree that Suburban should  
20 maintain safe and reliable service to customers  
21 including maintaining proper pressure at the Lazelle  
22 Road point of delivery?

23 A. Yes.

24 Q. And you do agree that the Lazelle Road  
25 point of delivery is at the southern most point of

1 Suburban's system, and on the maps that you just  
2 pointed to, that would be at the end of the red line;  
3 is that correct?

4 A. That's correct.

5 Q. And at the end of the red line is in the  
6 area of Polaris Fashion Mall for a better  
7 description; is that correct?

8 A. That's correct. But that's not where the  
9 growth is projected to occur. I think we referenced  
10 the grid lines, if I am not mistaken, yesterday. It  
11 should be in the transcript.

12 Q. And, sir, you have not analyzed -- you,  
13 sir, have not done any growth analysis, and you do  
14 not know for sure where commercial customers or the  
15 housing developments are coming online, do you?

16 A. No.

17 Q. And you did not analyze the impact that a  
18 drop below 100 PSIG at the Lazelle Road would have on  
19 service to customers, correct?

20 A. No, but, again, it didn't occur during  
21 the test period.

22 Q. Well, isn't it true, sir, that if the  
23 point of delivery on the Lazelle Road drops to at or  
24 below 100 PSIG, that the valve at the Lazelle Road  
25 point of delivery would open and that the Columbia

1 system would have to be available to supply load to  
2 the system at that point?

3 A. Yes. But that didn't happen during  
4 the -- as of date certain, that did not happen.

5 Q. I don't -- do you know at which dates the  
6 Columbia check valve opened?

7 A. No. I said --

8 Q. Do you have that information?

9 A. I'm sorry. Are you done? You asked if  
10 it dropped below 100, and I am just saying it did not  
11 drop below 100 PSIG.

12 Q. And what do you base that statement on,  
13 sir?

14 A. Based on your -- you took all of -- at  
15 the coldest days at the very end of the test period,  
16 I mean, if -- certainly if there would have been one  
17 to bolster your case that it dropped below 100, I am  
18 sure you would have provided it, but you didn't.

19 Q. Well, isn't it true, sir, that the tests,  
20 the pressure listings, that's dead end pressure  
21 checks, Suburban Exhibit 14, isn't it true that that  
22 records pressure after the Columbia Gas check valve  
23 opens and Columbia supplies the 125 Mcf an hour?

24 A. Yeah. Again, that -- I thought your  
25 question was dropping below 100. I can't tell you

1 when Columbia opened but that's their responsibility.  
2 They should.

3 Q. Right.

4 A. They have a contractual arrangement to  
5 provide that 125.

6 Q. So you don't know sitting here today  
7 whether on the days that you referenced the check  
8 valve actually opened because the pressure on  
9 Suburban's system dropped at or below 100 PSIG?

10 A. No.

11 Q. And you have not done an analysis of what  
12 would happen to Suburban's system if the pressure  
13 would drop below 100 PSIG, have you?

14 A. I don't know that it ever did drop below  
15 100. I don't think there is any testimony that it  
16 did drop below 100.

17 Q. I asked if you did an analysis of  
18 whether --

19 MS. BOJKO: I'm sorry, your Honor. May I  
20 have that question reread?

21 EXAMINER SANYAL: Yes, you may.

22 (Record read.)

23 A. No.

24 Q. And you did not analyze what the  
25 consequences on Suburban's system would be with



1 regard to loss of service to customers if the  
2 pressure dropped below 100 PSIG, correct?

3 A. No, but, again, it didn't as of date  
4 certain.

5 Q. Did you answer a discovery -- were you  
6 the responsible person for discovery responses in  
7 this case, Mr. Willis?

8 A. Yes.

9 MS. BOJKO: Your Honor, at this time I  
10 would like to mark as Suburban Exhibit 17 OCC  
11 response to Suburban Interrogatory 01-005.

12 EXAMINER SANYAL: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MS. BOJKO: May we approach?

15 EXAMINER SANYAL: Yes, you may.

16 Q. (By Ms. Bojko) Mr. Willis, are you listed  
17 as one of the responsible parties for this discovery  
18 response?

19 A. Yes.

20 Q. And in this discovery response OCC was  
21 asked whether "OCC or any employees, agents,  
22 independent contractors, or other individuals  
23 conducted any analyses, studies, reviews, or other  
24 assessments to determine the effects or consequences  
25 of a loss of service on Suburban's natural gas

1 customers."

2 A. Yeah. And I think it's consistent with  
3 what I just said earlier that we did not.

4 Q. Right. In your response you stated that  
5 OCC or you yourself or any of the employees have not  
6 conducted such an analysis.

7 A. That's what I said, yeah.

8 Q. I think you've shared with us today that  
9 you were, in fact, president -- present for  
10 Mr. Sonderman's testimony yesterday.

11 A. I was.

12 Q. And you were here when he discussed an  
13 outage that took place in Newport, Rhode Island, at  
14 the beginning of this year, January 21, 2019?

15 MR. HEALEY: Objection.

16 A. Yes.

17 MR. HEALEY: He answered. He already  
18 answered. I'll withdraw.

19 MS. BOJKO: Your Honor, at this time I  
20 would like to mark as Suburban Exhibit 18.

21 EXAMINER SANYAL: So marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MS. BOJKO: May we approach, your Honor?

24 EXAMINER SANYAL: Yes, you can.

25 Q. (By Ms. Bojko) Mr. Willis, do you have in

1 front of you what's been marked as Suburban Exhibit  
2 15?

3 A. Yes.

4 Q. Oh, I'm sorry, 18.

5 A. 18. Yes, I have that.

6 Q. Are you familiar with the low-pressure  
7 event that happened in Rhode Island that  
8 Mr. Sonderman discussed yesterday that's the subject  
9 of this article?

10 MR. HEALEY: Objection. Sorry. I  
11 object, one, to the relevance of this line of  
12 questioning given that this is outside the scope of  
13 Mr. Willis's testimony. He says nothing about any  
14 purported outages that happened in Newport, Rhode  
15 Island. Also object to this -- should have gotten to  
16 asking questions about this particular exhibit, so I  
17 guess I'll hold off until she does that on my hearsay  
18 objection.

19 EXAMINER SANYAL: Ms. Bojko?

20 MS. BOJKO: Actually the question that I  
21 did ask was the perfect foundation that Mr. Healey is  
22 seeking which is I asked if he was familiar with  
23 this -- the low-pressure event that happened in Rhode  
24 Island that Mr. Sonderman discussed yesterday and  
25 that's the subject of this article.

1 MR. HEALEY: Right.

2 EXAMINER SANYAL: Your objection is  
3 overruled and let's see the questions --

4 MR. HEALEY: Relevance objection.

5 EXAMINER SANYAL: I'm sorry?

6 MR. HEALEY: My objection was as to  
7 relevance. Is that the objection that's overruled?

8 EXAMINER SANYAL: Yes, the first one and  
9 let's see the question she asks about this article.

10 And you may answer Ms. Bojko's question  
11 as to whether, you know -- I'm sorry. You'll have to  
12 repeat the question.

13 MS. BOJKO: Yeah. I just asked if he was  
14 familiar with the low-pressure event that happened in  
15 Rhode Island that Mr. Sonderman discussed and that's  
16 the subject of this article.

17 A. Only, you know, as of -- as Mr. Sonderman  
18 brought it up. I did Google it. I looked at a  
19 couple of articles, and as this article states, it  
20 was attributed to the valve malfunction but, yes.

21 Q. If you turn to page 3, you just stated  
22 that it was attributed to a valve malfunction. If  
23 you turn to -- isn't it true that the owner stated  
24 that the malfunction was one of a number of potential  
25 contributing factors?

1 MR. HEALEY: Objection.

2 EXAMINER SANYAL: Go ahead, Mr. Healey.

3 MR. HEALEY: Sorry. Were you done?

4 MS. BOJKO: I wasn't but.

5 MR. HEALEY: I apologize.

6 Q. (By Ms. Bojko) And suggested that the  
7 intense cold early in the week created unusually high  
8 demand that exceeded the system's supply capability?

9 MR. HEALEY: Objection, your Honor.

10 EXAMINER SANYAL: And your basis?

11 MR. HEALEY: This is obviously hearsay  
12 under Rules 801 and into 02. This is statements  
13 being made by a party that's not present, not here to  
14 be cross-examined, and they're being put forth for  
15 the truth of the matter asserted regarding what may  
16 or may not have been the cause of outages in Newport,  
17 Rhode Island, which I would remind the Bench is not  
18 within Suburban's service area.

19 EXAMINER SANYAL: Ms. Bojko.

20 MS. BOJKO: Sure. Actually, your Honor,  
21 the witness himself, I did not even ask him the  
22 question, opened the door by stating his opinion  
23 about what the cause of the outage was. So he opened  
24 the door opining on the outage and, thus, that opens  
25 the door for me to ask about other opinions of what

1 caused the outage.

2 MR. HEALEY: Your Honor, if I might, the  
3 remedy for his commentary is for her to move to  
4 strike. It's not a he did something that was  
5 impermissible and, therefore, now I get to. So if  
6 she had concerns with his relying on hearsay in his  
7 testimony, she should have moved to strike. She  
8 doesn't get to rely on her own hearsay to try to  
9 rebut his statement.

10 EXAMINER SANYAL: I think, Ms. Bojko, I  
11 am generally uncomfortable with this article, you  
12 consulting this article. If you have any general  
13 questions about his knowledge about this weather  
14 event, feel free to ask him those questions but.

15 MS. BOJKO: Your Honor, that's honestly  
16 what I was doing.

17 EXAMINER SANYAL: Don't want to consult  
18 this article.

19 MS. BOJKO: That's what I was doing  
20 unless he referenced the article and made a statement  
21 opining about the article. I was trying to ask him  
22 if he was familiar with the article, and then my next  
23 question was whether he was familiar with the number  
24 of residents and businesses that -- that lost gas  
25 resulting from the low-pressure event.

1 EXAMINER SANYAL: I'm sorry. Is that a  
2 question?

3 THE WITNESS: Is that a question?

4 MR. HEALEY: Or was she stating what her  
5 previous question was?

6 EXAMINER SANYAL: Correct.

7 MS. BOJKO: Oh, no, I'm sorry. I reasked  
8 the question.

9 EXAMINER SANYAL: I sustained  
10 Mr. Healey's objection so let's keep your questions  
11 general to the weather event and whether Mr. Willis  
12 has any knowledge about those and not based on this  
13 article.

14 MS. BOJKO: I apologize.

15 EXAMINER SANYAL: With that clarification  
16 let's move on.

17 MS. BOJKO: I thought that's what that  
18 question was. I asked him if he -- he explained that  
19 he was aware that the event occurred, and I asked him  
20 if he was aware of whether customers lost service  
21 during that low-pressure event.

22 MR. HEALEY: Are you asking him?

23 EXAMINER SANYAL: Yeah. Mr. Willis, you  
24 may answer that question, if you know.

25 A. I really don't know anything about it

1 other than what this article says.

2 EXAMINER SANYAL: We are not considering  
3 this article, so we are just talking about your  
4 general knowledge about this weather event.

5 A. I don't know anything about that weather  
6 event in Rhode Island.

7 Q. Okay. So if a weather event similar  
8 to -- if the weather event occurred and customers  
9 lost service, are you familiar with the restoration  
10 efforts that would have to take place with regard to  
11 a system such as Suburban's with the distribution  
12 lines and how customers get back online, et cetera?

13 A. I thought we covered all of this in my  
14 direct testimony when you cross-examined me before.

15 MS. BOJKO: Your Honor, is he objecting?  
16 I don't think the witness --

17 THE WITNESS: Do I have to be  
18 recross-examined on the same thing again?

19 EXAMINER SANYAL: Provide an answer.

20 A. Generally, yes, it's extensive.

21 Q. And when you say extensive, you would  
22 agree with me it would take several weeks to go  
23 through and check all of the residents individually  
24 and restart pilot lights and get everybody turned  
25 back on; is the correct?



1           A.    I mean, you are talking about a  
2   hypothetical situation. I don't know how many people  
3   are affected. No, I don't know how long it would  
4   take. I guess it would depend on how many people  
5   were affected. It's an extensive process but, I  
6   mean, you are talking about a hypothetical situation.

7           Q.    Well, you are aware of massive outages  
8   that occurred on natural gas systems in other  
9   circumstances too, aren't you?

10          A.    Very generally.

11          Q.    And in those situations you are aware  
12   that restoration can take weeks.

13          A.    I don't know how long the restorations  
14   took.

15          Q.    Is it your testimony today that the  
16   pipeline pressure -- strike that.

17                   Sir, you're familiar with the modeling  
18   that UTI performed on behalf of Suburban; is that  
19   correct?

20          A.    Yeah, generally.

21          Q.    And you're familiar with Suburban Exhibit  
22   9, which is the summary of the modeling results?

23          A.    Yeah. I don't think I have that, but  
24   yes.

25                   MS. BOJKO: May we approach, your Honor?

1 EXAMINER SANYAL: Yes.

2 Q. (By Ms. Bojko) And Suburban Exhibit 9  
3 that's been handed to you, that reflects the modeling  
4 performed by UTI regarding projected pipeline  
5 pressures of various points in Suburban's system at  
6 various times?

7 A. Yes.

8 Q. And one of the points is the Lazelle Road  
9 power -- or point of delivery, correct?

10 A. Yes.

11 Q. And turning to page 10 of your testimony,  
12 you state that the modeling shows that the pressure  
13 at the Lazelle point of delivery would not drop below  
14 100 PSIG until 12-31-19; is that correct?

15 THE WITNESS: Could you repeat that  
16 question?

17 (Record read.)

18 A. My testimony says that?

19 MS. BOJKO: Your Honor, if I might have a  
20 minute? We might have a wrong reference.

21 EXAMINER SANYAL: Sure.

22 EXAMINER PARROT: 9.

23 EXAMINER SANYAL: It's page 9.

24 Q. Page 9, line 7. I think it was lines 10  
25 through 11. Page 9, lines 10 through 11, you state

1 that the modeling shows that the pressure at the  
2 Lazelle Road would not drop below 100 until 12-31,  
3 until year end, 2018; is that correct?

4 A. '19.

5 Q. And '19, I'm sorry.

6 A. Yes, which is after date certain.

7 Q. And this is based on your review of the  
8 August 2018 modeling included in Exhibit 9, correct?

9 A. Yes.

10 Q. And can you flip to that page of the  
11 exhibit. Are you there?

12 A. I'm there. I'm there.

13 Q. The modeling showed a projected year-end  
14 pressure for 2018 of 104.27; is that correct?

15 A. Yes.

16 Q. And you are aware that the model is  
17 performed based on a set of assumptions, correct?

18 A. It was -- yes.

19 Q. And these assumptions include  
20 conservative customer usage data; is that correct?

21 A. Conservative customer usage data?

22 Q. Yes.

23 A. It was based on actual customers and  
24 projected an additional 4,000.

25 Q. Right. And the number of customers also

1 had to be assigned or assumed a load; is that  
2 correct?

3 A. Yes.

4 Q. And the load was based on the design day  
5 average load of those customers. It wasn't an  
6 industry standard. It was a conservative estimate of  
7 the actual design day load; is that correct?

8 A. Oh, I don't know. I don't know. I am  
9 just going by your engineering, your testimony, and  
10 what was -- what was referenced in the long-term --  
11 or the Power Siting case.

12 Q. So but Mr. Grupenhof did testify  
13 yesterday to a design day that included --

14 A. Yeah.

15 Q. -- data revolving around a cold day in  
16 February 2015 and the averaging of customer data  
17 during that cold day.

18 A. Yeah. The coldest day in February of  
19 2015.

20 Q. And he also explained that there was a  
21 temperature assumption on that design day, correct?

22 A. Yeah. I think it ranged somewhere  
23 between 12 and 20 below 0.

24 Q. And he also explained the model assumes  
25 the number of customers that you -- that are

1 projected to be on the system at that time -- that  
2 are on the system and projected to be on the system  
3 at a point in time.

4 A. That's correct.

5 Q. And you would agree that it is possible  
6 that Suburban's system could experience temperatures  
7 colder than those that were modeled in Exhibit 9,  
8 correct?

9 A. I suppose.

10 Q. And although Mr. Grupenhof said there was  
11 a range of temperatures the day on February 2015 at  
12 different various points in the system, isn't it true  
13 that Mr. Grupenhof also said that he -- that averaged  
14 the temperatures so that the design day model was  
15 based on a negative 5 degree temperature?

16 A. I don't recall him saying that, but he  
17 may have.

18 Q. Let me ask this a different way, you are  
19 not contending that a day with weather colder than  
20 the date which was modeled to determine the projected  
21 pressure could not occur, correct?

22 A. No. It's irrelevant.

23 MS. BOJKO: Your Honor, there is no  
24 question pending. Can I move to strike his comment?  
25 I am trying not to duplicate questions, so I am

1 pausing between so that I don't hurry up and repeat  
2 questions.

3 EXAMINER SANYAL: His comments he said  
4 were irrelevant?

5 MS. BOJKO: It was irrelevant.

6 EXAMINER SANYAL: Sure. We can strike  
7 that word from the record.

8 MS. BOJKO: Thank you.

9 Q. (By Ms. Bojko) You do not contend or OCC  
10 does not contend that the pipeline pressure could not  
11 be lower than what was modeled if customer usage  
12 increased from the amount assumed in the model,  
13 correct?

14 MR. HEALEY: Objection.

15 EXAMINER SANYAL: Basis?

16 MR. HEALEY: The way the question was  
17 framed it's asked of OCC. Mr. Willis can speak for  
18 himself as OCC's representative but that would be his  
19 personal expert opinion on behalf of OCC admittedly  
20 but. It's more appropriate for her to ask him his  
21 own opinion. He is the witness. OCC is an entity.  
22 It does not have an opinion as an entity.

23 MS. BOJKO: Your Honor, similarly OCC  
24 speaks through its pleadings, not individual  
25 witnesses so.

1 MR. HEALEY: Just for clarification the  
2 reason I am being slightly hypertechnical is because  
3 she's reading off an interrogatory that was served on  
4 OCC, and we made the same objection there. She is  
5 asking the witness again.

6 EXAMINER SANYAL: Thank you. Are you  
7 just able to rephrase that question?

8 MS. BOJKO: Sure. We can just put it in  
9 the record. I was trying to be more expedient. I  
10 will mark it as Suburban Exhibit 19. May we  
11 approach?

12 EXAMINER SANYAL: Yes, you may.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Sir, do you have in front -- oh. Do you  
15 have in front of you what's been marked as Suburban  
16 Exhibit 19?

17 A. I do.

18 Q. And in -- it's an OCC response to  
19 Suburban Interrogatory 01-008; is that correct?

20 A. Yes.

21 Q. And the request is -- well, first of all,  
22 you are the responsible party for this except for  
23 objections; is that correct?

24 A. Yes.

25 Q. And the question asked "Is it OCC's

1 contention that pipeline pressure could not be lower  
2 than what was modeled if customer usage increased  
3 from the amount assumed in the modeling"; is that  
4 correct?

5 A. Yes.

6 Q. And your response after objections was  
7 that Mr. Willis does not contend that pipeline  
8 pressure could not be lower than what was modeled if  
9 customers' usages increased from the amount assumed  
10 in the modeling; is that correct?

11 MR. HEALEY: Objection, your Honor. I am  
12 going to stand by my speculation objection in this  
13 interrogatory that she's asking Mr. Willis to render  
14 an opinion on what the pressure might be at some  
15 future point at some point on their system and that  
16 is speculative.

17 EXAMINER SANYAL: Ms. Bojko, do you have  
18 a response?

19 MS. BOJKO: I said over -- you know,  
20 subject to the objections that were in here but I  
21 think it's very relevant. It's challenging on page  
22 9, line 7 through 12, of his supplemental direct  
23 testimony, he discusses the projected pipeline  
24 pressure, and although we've challenged his ability  
25 to do that as not being an engineer, his testimony



1 stands, so we have a right to challenge his  
2 discussion on page 9, line 7 and 12, and the question  
3 was certainly he or on behalf of his employer is not  
4 contending that that pressure could not be lower. I  
5 think it's a fair question.

6 EXAMINER SANYAL: I am overruling the  
7 objection.

8 Mr. Willis, answer.

9 A. Again, it's irrelevant. The fact of the  
10 matter is it didn't. It didn't drop below -- the  
11 temperature didn't drop below what was modeled and  
12 your -- the PSIG didn't drop below 100 as of date  
13 certain. So it's -- it doesn't matter.

14 Q. You looked at every day in the test year  
15 to determine whether the temperature dropped below  
16 negative 5? I thought actually we already talked  
17 about one of the pressure tests on January 21, 2019,  
18 when it was negative 7 degrees.

19 A. I'm sorry. What I am saying is it's  
20 irrelevant. The fact -- whether -- whether it  
21 dropped below -- 20 degrees below 0, the fact of the  
22 matter is the pressure in the system was not below  
23 100 PSIG at date -- by date certain at any time, so  
24 it's irrelevant what the temperatures were.

25 Q. Sir, you said -- how do you know that?

1 How can you say for certainty? Did you go out and do  
2 the pressure tests every day, every minute of every  
3 hour to determine that it never dropped below 100?

4 A. No. But if it did, you would have  
5 provided that within your responses, your --

6 Q. Can you --

7 A. You took the coldest days, and you  
8 measured it because you were concerned. If it was  
9 below 100, I am sure we would have seen it.

10 Q. Isn't it true that both Mr. Sonderman and  
11 Mr. Grupenhof did, in fact, say that it dropped at or  
12 below 100 because the Columbia Gas check valve did,  
13 in fact, kick in during the test year?

14 A. I don't recall that. But the Columbia  
15 Gas valve kicked in right as it should.

16 Q. And you agree, sir, that 104 PSIG is  
17 relatively close to 100 PSIG, correct?

18 MR. HEALEY: Objection as to vague,  
19 relatively close.

20 EXAMINER SANYAL: Overruled. You may  
21 answer.

22 A. It's 4 higher than 100.

23 Q. Thank you for that mathematical answer.  
24 And, sir, I mean, it's fair to say it's -- well, some  
25 of the assumptions that we just discussed a minute

1     ago, if any of those assumptions that were used to  
2     predict pressure at year end 2018 in the August 13,  
3     20 -- August 30, 2018, modeling that you keep  
4     referencing, if any of those assumptions were to be  
5     changed, it's possible that the pressure at the  
6     Lazelle Road even with the Columbia check valve  
7     kicking in that it could fall below 100 PSIG,  
8     correct?

9             MR. HEALEY:  Objection.  We are asking  
10    this witness to now speculate how Suburban's engineer  
11    model might change if variables of unknown nature  
12    were changed in unknown ways in a model he does not  
13    have access to.  It's extremely speculative.

14            MS. BOJKO:  May I respond, your Honor?

15            EXAMINER SANYAL:  Yes.

16            MS. BOJKO:  He has been speculating all  
17    afternoon telling me his opinion about the pressure  
18    and when they would drop and how he's interpreting  
19    the models, so we are testing his speculative  
20    comments that it's never dropped and would never drop  
21    by asking these questions.

22            MR. HEALEY:  If I may, your Honor,  
23    there's been no speculation by this witness.  He is  
24    relying on the facts and the data provided by  
25    Suburban.  He has their analysis.  He has their dead

1 end pressure drop measurements, and he's looking at  
2 cold hard data that confirms what he is saying his  
3 expert opinion about the use and usefulness of this  
4 pipeline. She is asking him to change these  
5 variables and speculate as to what new result might  
6 be spit out by a complicated engineering model.  
7 That's entirely different than him looking at a  
8 number and saying this number says this. This number  
9 says this. Those are very different questions.

10 EXAMINER SANYAL: I am going to need the  
11 question read back at this point.

12 (Record read.)

13 EXAMINER SANYAL: Your objection is  
14 sustained.

15 MS. BOJKO: I'll rephrase, your Honor.

16 Q. (By Ms. Bojko) First of all, I think that  
17 maybe we need to get on the same page what's included  
18 in the model. Is it -- isn't it true that this model  
19 assumes that the Columbia check valve and the  
20 Columbia supply is fully operational and open for the  
21 modeling purposes?

22 A. That would be available if need be, yes.

23 Q. No, not available. The modeling assumes  
24 that the check valve is operating fully and that the  
25 125 Mcfh is actually flowing and with that then

1 assuming these assumptions the pressure resulting on  
2 this chart is the pressure.

3 A. Sure.

4 Q. Okay. Even with the Columbia valve  
5 kicking in, if it falls below 100 and all of these  
6 assumptions are correct, the modeling of the August  
7 31, 2018, which is what you are focusing on, states  
8 that in 2019, the Lazelle POD pressure will drop  
9 below 100 to 78.72, correct?

10 A. Counselor, it doesn't matter. It's past  
11 date certain. What we are talking about, what this  
12 is all about is you put in a 4.95 mile extension and  
13 you use that model to justify it and it wasn't used  
14 and useful at date certain. That's what we are  
15 talking about.

16 Q. Well, first of all, isn't the date  
17 certain in 2019? Let's clarify that.

18 A. It's February.

19 Q. And isn't February the coldest -- second  
20 coldest month of the year?

21 A. Yes, and your data shows that you -- it  
22 was fine at the Lazelle Road. You're trying -- your  
23 question was at the end of 2019 -- December 31 of  
24 2019, it could go -- it could drop to 78. Well, so  
25 what? It's -- we are talking about date certain in

1 this case --

2 Q. Isn't it true --

3 A. -- as February.

4 Q. Isn't it true -- I think that you are  
5 misreading the model. Isn't it true it says 2018,  
6 which is December 31, 2018, the pressure would be  
7 104.27; is that correct?

8 A. Yes.

9 Q. And then isn't it true that the next  
10 column talks about 2019?

11 A. Yes. And that's where you asked me isn't  
12 it -- isn't it true that at the end -- at December 31  
13 of 2019, it drops below 100. That's what the model  
14 says but it doesn't matter.

15 Q. So you're referring -- you keep saying  
16 that's what the model says and it doesn't matter.  
17 The model that you are referring to is August 31,  
18 2018; is that correct?

19 A. That's part of it but I also, if I may,  
20 on page 11.

21 Q. Page 11 of what? I'm sorry.

22 A. Of my testimony I quote Mr. Grupenhof's  
23 testimony at 8 where "We," UTI, "believed that the  
24 Del-Mar Extension would alleviate the potential for  
25 low pressures at the Lazelle point of delivery for

1 several more years and could sustain the additional  
2 4,000 customers. Meaning, Suburban would not  
3 experience any potential low-pressure scenarios until  
4 4,000 additional customers were added to the system  
5 beyond the winter of 2018-2019." That's your date  
6 certain.

7 Q. So let's clarify two things. In  
8 Mr. Grupenhof's testimony that you cite to, he says  
9 the winter of 2018-19, correct? He doesn't say  
10 December 31. He doesn't say January 31, 2019, or  
11 December 31, 2019. He says the winter of '18 and  
12 '19, correct?

13 A. Which encompasses your date certain of  
14 February of 2019.

15 Q. Correct. And doesn't he say by that  
16 time, so by February of 2019, that UTI believed that  
17 the Del-Mar extension would alleviate the potential  
18 for low pressures at the Lazelle Road point of  
19 delivery for several more years? And there's two  
20 points that he's making of what the Del-Mar extension  
21 would do? He says "and could sustain an additional  
22 4,000 customers," correct, before they have to come  
23 in again?

24 A. That's right. And he also -- he also  
25 said yesterday that you could have run the 2 miles of

1 the extension, and it would have satisfied any  
2 concerns about redundancy in that -- in that system  
3 making sure that there was -- that point of delivery  
4 was sustained. So OCC's position is that -- and the  
5 Exhibit 9, again, it didn't project a -- it didn't  
6 project a drop below 100 until the end of 2019 which  
7 is beyond the test -- beyond the date certain.

8 MS. BOJKO: Okay. First of all, I am  
9 going to object, your Honor, to the  
10 mischaracterization of Mr. Grupenhof's testimony.  
11 Mr. Willis already admitted that he never used the  
12 word redundancy and he never said the system was  
13 redundant and that there were two points to the  
14 necessity of the system, the existing customers and  
15 the future growth of new customers.

16 EXAMINER SANYAL: Your objection is  
17 overruled.

18 MS. BOJKO: Okay. Thank you, your Honor.

19 Q. And now I want -- you just said something  
20 that the modeling shows that it would never drop  
21 below until December 31, 2019. And if you look, sir,  
22 aren't there other models included in Suburban 9?  
23 You keep focusing on the model that was done in  
24 August 2018.

25 A. The most recent.



1           Q.    Isn't it true that when the decision to  
2   make the pipeline was made, there were several  
3   models, one, two, three, four models that  
4   demonstrated that the pressure would, in fact, drop  
5   below 100 in the winter of 2018 and 2019, more  
6   specifically by the end of 2018, correct?

7           A.    Again, it assumed an additional 4,000  
8   customers, so it never came online. That's the  
9   reason why if you look at each year, it got amended,  
10   and it looked better. It looked better for Suburban  
11   each year you came forward.

12          Q.    Isn't it true --

13               MS. BOJKO: Well, your Honor, can I have  
14   him answer my last question? I don't think he  
15   answered it.

16               EXAMINER SANYAL: Do you need the  
17   question read back?

18               THE WITNESS: I thought I answered it  
19   but, yeah, if it would help, sure.

20               (Record read.)

21               EXAMINER SANYAL: Ms. Bojko, I think he  
22   answered the question if that was an objection.

23               MS. BOJKO: I'm sorry. Can I have that  
24   answer reread then? I didn't think he agreed.

25               EXAMINER SANYAL: Sure.

1 (Record read.)

2 Q. And, again, means that, yes, you agree  
3 with me that the model showed that the pressure would  
4 drop below 100 in the winter of 2018-19? You used  
5 the word and again, so I didn't take that as a yes.

6 A. The modeling used the coldest day in  
7 February of 2015 and it added 4,000 additional  
8 customers. And it showed what the pressure would be  
9 at the Lazelle Road. Well, those 4,000 customers  
10 didn't all come online. So that's the reason why as,  
11 you know, as you come forward in time, it didn't drop  
12 below 100 because not all of those customers came  
13 online.

14 Q. Well, show me in the model where you  
15 think 4,000 customers is added to the system. I  
16 see -- if you want to look with me, I see -- let's  
17 start with December 9, 2015. There's a base customer  
18 of 11,885. And with that base customer base 11,885,  
19 the pressure at Lazelle Road is the 154, and then if  
20 you go to 2016, there's an addition of 7 --

21 EXAMINER SANYAL: 717.

22 MS. BOJKO: Yeah. 717 -- no, that's  
23 load, your Honor. There's an addition of 5 -- it  
24 says load, but I think -- this says -- hold on. One  
25 minute, your Honor. I'm sorry. Your Honor, that is

1 correct.

2 Q. You add 717 to 11,885 to get 12 hundred 3  
 3 hundred -- 12,335 customers. So on this system in  
 4 the model, the only thing that changed is they added  
 5 717 customers, not 4,000, and isn't it true that when  
 6 they added the 717, they get to a pressure of 138.85  
 7 in 2016?

8 MR. HEALEY: Objection, your Honor. I am  
 9 trying to be patient here. This is an exhibit that  
 10 was already admitted in the first round of  
 11 cross-examination of Mr. Willis. None of these  
 12 questions have anything to do with his stip -- with  
 13 the Stipulation or any changes that happened as a  
 14 result of the Stipulation. These are -- I'm almost  
 15 positive most of these questions were already asked a  
 16 month and a half ago or two months ago, and we are  
 17 just rehashing the very detailed examination of this  
 18 exhibit which counsel has already done.

19 EXAMINER SANYAL: I am inclined to agree  
 20 with counsel, but I will let you provide a brief  
 21 response.

22 MS. BOJKO: You know, I would never want  
 23 to disagree with the Bench; but, your Honor, he is  
 24 saying things today that he never said a month ago  
 25 when we did the first round of cross-examination on

1 these documents. He is now trying to pull in  
2 testimony that he heard yesterday from Mr. Sonderman  
3 and Mr. Grupenhof, and he is making new conclusions.  
4 So I disagree that this is the same testimony that  
5 Mr. Willis gave previously.

6 I thought that his testimony was  
7 redundant, and we tried to strike portions of it and  
8 but your Honors let the testimony in. So the  
9 supplemental testimony does, in fact, state that he  
10 does not believe that the pressure was modeled to  
11 drop below 100 because of this additional 4,000  
12 customers. And the model does not show 4,000  
13 customers being added when the pressure does, in  
14 fact, drop.

15 So his new testimony on pages 10, 11, 12,  
16 13, talking about the pressures and Mr. Grupenhof's  
17 testimony, in trying to rebut Mr. Grupenhof's  
18 testimony goes directly to this fact. He's  
19 misstating and misinterpreting Mr. Grupenhof's  
20 testimony on page 11 of his new supplemental  
21 testimony that I've never had the ability to  
22 cross-examine him on.

23 MR. HEALEY: I have nothing further, your  
24 Honor. I stand by my objection.

25 EXAMINER SANYAL: Mr. Healey, I am

1 sustaining your objection. I think I will allow you  
2 one brief question to clarify the 4,000 number, and  
3 then you may move on.

4 THE WITNESS: I appreciate that. Is  
5 there a question pending?

6 EXAMINER SANYAL: I don't think so.  
7 We'll just wait for Ms. Bojko.

8 MS. BOJKO: If I may have a minute, your  
9 Honor, to formulate my one good question.

10 EXAMINER SANYAL: Yes. In fact, can we  
11 take a 5-minute break?

12 MS. BOJKO: Could me make it 10 minutes  
13 so I could formulate my question and take a break?

14 EXAMINER SANYAL: Sure. We will take a  
15 10-minute break. We will go off the record.

16 (Recess taken.)

17 EXAMINER SANYAL: Okay.

18 Q. (By Ms. Bojko) Mr. Willis, do you recall  
19 when the decision was made by Suburban and UTI to  
20 construct a pipeline extension?

21 A. Well, it's filed a case -- I do not, but  
22 I can tell you that they filed the case with the Ohio  
23 Power Siting Board in March of 2018.

24 Q. And it would be fair to say there would  
25 have had to have been a decision made prior to that

1 in order to plan the pipeline construction, to get  
2 price quotes, to hire engineering firms, to design  
3 the system, and to do preparation work for regulatory  
4 approvals?

5 A. Yes.

6 Q. And so prior to 2018, let's look at the  
7 model that was performed by UTI in February 3, 2016.  
8 It's the second page. Do you have that?

9 A. Yes.

10 Q. Do you see the line titled "System Total"  
11 on the chart?

12 A. Yes.

13 Q. Looking at the "System Total" line, if  
14 you look at the base customers, which is the actual  
15 customer base in Q2015, the system total, the number  
16 of customers is 11,885. And if you look at the  
17 three-year projection to the last year in 2018, the  
18 system total is 13,285 so -- customers. So the  
19 modeling reflects an addition of 1,400 customers and  
20 in that reflection of 1,400 customers, isn't it true  
21 that the Lazelle Road POD pressure at end of 2018 was  
22 projected to be 71.85 pounds?

23 A. I mean, yeah, this was -- this one page  
24 was performed by UTI in February 3 of 2016, yes.

25 Q. Sir, you would agree with me that all

1 customers on Suburban's system would be impacted by  
2 an outage on the system. Strike that. Let me  
3 rephrase.

4 EXAMINER SANYAL: Yeah. Thank you.

5 Q. You would agree that all -- all customers  
6 on Suburban's southern system would be impacted by an  
7 outage at the Lazelle point of delivery, correct?

8 A. Are you speaking hypothetically? Yes.

9 Q. No.

10 MS. BOJKO: I'm sorry, your Honor. May  
11 we have a minute? I am trying to shortcut this.

12 EXAMINER SANYAL: Sure.

13 MS. BOJKO: Your Honor, we have no  
14 further questions.

15 EXAMINER SANYAL: Any other  
16 cross-examination questions?

17 MR. EUBANKS: I have one clarifying  
18 question.

19 EXAMINER SANYAL: Okay.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Eubanks:

23 Q. You made a statement that the pressure  
24 never dropped below 100. Were you basing that off of  
25 Suburban Exhibit 14?

1           A.    I don't have Suburban Exhibit 14 in front  
2 of me.

3                   MS. BOJKO:  I think it was attached to  
4 your testimony.

5                   EXAMINER SANYAL:  I believe it is  
6 attached to your testimony.

7                   MR. SONDERMAN:  It was the dead end  
8 pressure.

9           A.    Oh, yes.

10           Q.   Is that the sole basis of this statement,  
11 of your belief that the pressure never dropped below  
12 100?

13           A.   Yes.  That's the evidence that we have,  
14 yes.

15           Q.   And just by a cursory look at the  
16 document, it appears as if on three select dates not  
17 including the March date, which would have been when  
18 the extension went into effect, pressure readings  
19 were taken between 6 and 8 o'clock at the Lazelle  
20 Road -- at the Lazelle Road POD; is that correct?

21           A.   That's what it says.

22           Q.   And they were taken on half an hour  
23 increments?

24           A.   The -- the one on page 2 of 4, that was  
25 done in January 30 looked like it started at



1 6 o'clock and they -- it went up to 9 o'clock, and  
2 then they took one at 10 o'clock, one at 11 o'clock,  
3 and one at 12 o'clock.

4 Q. I'm sorry. Where are you at?

5 A. Page 2 of 4. Attachment G -- I'm sorry,  
6 Attachment 2 to my testimony.

7 Q. Based off the sheet I am looking at, it  
8 looks like the readings took place between 6:00 and  
9 9:00; is that correct?

10 A. And then there was one -- and there is a  
11 thing there on the side and then at 10 o'clock it was  
12 125, 11 o'clock it was 140, and 12 o'clock it was  
13 160.

14 Q. Thanks for that. Thanks for that  
15 clarification. Outside of the times that we  
16 discussed, is there any other evidence in -- in -- is  
17 there any other evidence that you are aware of that  
18 shows dead end pressure checks at any other times?

19 A. Well, again, the burden of proof is on  
20 the Company. And they haven't demonstrated that at  
21 any of these times that they provided dead end  
22 pressure checks that it dropped below 100. And so,  
23 you know, we base our information on the information  
24 we got from the company.

25 Q. Okay. So that's a different statement

1 than saying that it never dropped below 100. Your  
2 statement now is that there's no evidence in the  
3 record that shows that it dropped below -- it dropped  
4 below -- let me restate that question.

5 Is it fair to say that your statement now  
6 is that if you are looking at the dead end pressure  
7 checks, there's no reading on Suburban Exhibit 14  
8 that shows that the pressure dropped below 100.

9 A. Again, the burden of proof is on the  
10 Company. They are making the claim that they added  
11 this 4.95 mile --

12 Q. That's a legal argument.

13 MR. HEALEY: Your Honor, if he can finish  
14 his answer.

15 EXAMINER SANYAL: I agree.

16 A. They are --

17 Q. Responsive but --

18 A. They are making the argument that they  
19 didn't add this to provide pressure for future  
20 growth. They are now making the argument that all we  
21 need to make sure that this point of delivery at the  
22 very south end of the system, Lazelle Road, that it's  
23 secure and that if for some reason Columbia Gas can't  
24 supply gas there, we -- you know, we have a very  
25 concern that it's -- gets so cold that it may fail,

1 and we need to make sure that that's secure.

2 Well, that's a completely different  
3 argument than what they made in -- in the -- the Ohio  
4 Power Siting case. They never mentioned any of that  
5 in that case. That was the reason why they built the  
6 4.95 mile was to support the additional 4,000  
7 customers that's expected to come online.

8 Now, if they are making proof -- if they  
9 are saying that -- you know, their pressure dropped  
10 so low that now we needed that, well, the burden of  
11 proof is on them. And they haven't supplied it.  
12 Everything that they supplied us shows that there was  
13 adequate pressure at the Lazelle Road.

14 MS. BOJKO: Objection, your Honor.

15 MR. EUBANKS: Objection. It's a simple  
16 question. Do you see 100 on the sheet? Do you see  
17 100?

18 MR. HEALEY: With all due respect, that  
19 was not the question.

20 Q. The question that I am asking you, it's  
21 really a simple question, are you really saying  
22 rather than saying that it never dropped below 100,  
23 what you are really saying is Suburban Exhibit 14  
24 doesn't have a reading that is below 100 that was  
25 recorded.

1 MR. HEALEY: I am going to object as  
2 asked and answered.

3 MR. EUBANKS: It wasn't answered.

4 EXAMINER SANYAL: Okay. Hang on.

5 MR. HEALEY: If I may finish my  
6 objection.

7 EXAMINER SANYAL: We are all going to  
8 stop right now. Your objection is overruled. I am  
9 going to let the witness answer your question.

10 So if you understood his question, can  
11 you just answer it as concisely as you can.

12 THE WITNESS: I tried, your Honor.

13 EXAMINER SANYAL: Okay. We are going to  
14 ask it again. Do you see a number that is 100 or  
15 below on Exhibit 14?

16 THE WITNESS: No.

17 EXAMINER SANYAL: Are there any other  
18 questions?

19 MR. EUBANKS: That really wasn't my  
20 question.

21 EXAMINER SANYAL: Okay.

22 MS. BOJKO: Your Honor, before he starts  
23 his question, I have a pending objection, I think. I  
24 was -- I objected to move to strike his --

25 EXAMINER SANYAL: That objection is

1 overruled.

2 MS. BOJKO: -- prior answer on the basis  
3 of mischaracterization.

4 EXAMINER SANYAL: And I am overruling  
5 that objection.

6 Okay. Do you have any other questions?

7 Q. (By Mr. Eubanks) Okay. Once again, my  
8 question is -- well, let me ask one more question.  
9 These readings that were taken, do you know if they  
10 were taken by humans taking readings at specific  
11 times or if it was an automatic reading from a device  
12 of some type?

13 A. I don't know. And I don't know what the  
14 relevance of that is.

15 Q. Do you know if on 1-31-2019, that would  
16 be page 3 of 4, at 6:30 the reading was 105, at  
17 7 o'clock the reading was 105? Do you know if in the  
18 intervening time between 6:30 and 7:00 whether or not  
19 the pressure went down below 100? I am talking about  
20 your personal knowledge.

21 A. Based on what has been provided to me,  
22 that didn't happen. If it would have happened, they  
23 would have -- it would have been noted, but it  
24 didn't.

25 MR. EUBANKS: I have no further

1 questions.

2 MS. BOJKO: I am going to object to the  
3 mischaracterization of testimony, your Honor.

4 EXAMINER SANYAL: I am going to overrule  
5 that.

6 Okay. Any other questions?

7 MR. EUBANKS: I have no other.

8 EXAMINER SANYAL: Okay. Redirect?

9 MR. HEALEY: No, your Honor. Thank you.

10 EXAMINER SANYAL: You're done. You may  
11 step down. Thank you very much.

12 And exhibits.

13 MR. HEALEY: Yes. At this time OCC moves  
14 for the admission of OCC Exhibit 13, please.

15 MS. BOJKO: Yes, your Honor. I object to  
16 the admission of OCC Exhibit 13 based on the motions  
17 that I made earlier today including the motion within  
18 the testimony that Mr. Willis's supplemental  
19 testimony is duplicative and cumulative in part and  
20 is confusing to the record.

21 EXAMINER SANYAL: Thank you, Ms. Bojko.  
22 I believe I denied those motions and noting your  
23 objections this is admitted.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 EXAMINER SANYAL: And then I believe we

1 have a few Suburban exhibits.

2 MS. BOJKO: Yes, your Honor. We move the  
3 admission of Suburban Exhibit 17 and 19.

4 EXAMINER SANYAL: Okay. Any objection to  
5 those exhibits?

6 MR. HEALEY: 17 and 19?

7 EXAMINER SANYAL: Yeah. 18 was not  
8 mentioned.

9 MR. HEALEY: No objection to 17 and 19.

10 EXAMINER SANYAL: Those are admitted.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 EXAMINER SANYAL: And just for the record  
13 18 will not be admitted.

14 MS. BOJKO: We didn't move for the  
15 admission.

16 EXAMINER SANYAL: I know, just for the  
17 record.

18 Okay. Is OCC prepared to call its next  
19 witness?

20 MS. O'BRIEN: Yes. OCC would like to  
21 mark OCC Exhibit -- oh, okay. I would like to call  
22 Daniel J. Duann, Ph.D., to the stand, and I would  
23 like to mark OCC --

24 EXAMINER PARROT: Hold on a minute.

25 (Witness sworn.)

1 EXAMINER PARROT: Please have a seat.  
2 Go ahead.

3 MS. O'BRIEN: At this time I would like  
4 to mark OCC Exhibit 14 which is the supplemental  
5 direct testimony of Daniel J. Duann, Ph.D.

6 EXAMINER PARROT: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MS. BOJKO: I'm sorry. Which number did  
9 you say?

10 EXAMINER SANYAL: 14.

11 - - -

12 DANIEL J. DUANN, Ph.D.  
13 being first duly sworn, as prescribed by law, was  
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Ms. O'Brien:

17 Q. Now, Dr. Duann, you have before you  
18 what's been marked as OCC Exhibit 14. Can you tell  
19 me what that exhibit is?

20 A. Yes. It's the supplemental direct  
21 testimony of Daniel J. Duann in opposition to the  
22 Stipulation filed on June 21, 2019.

23 Q. Okay. Great. And did you prepare this  
24 testimony, or was it prepared at your direction?

25 A. Yes.



1           Q.    And do you have any changes to your  
2 testimony today?

3           A.    No.

4           Q.    And if I were to ask you the same answers  
5 therein, would your answers be the same -- the same  
6 questions rather?

7           A.    Yes.

8           MS. O'BRIEN:   With that I tender  
9 Dr. Duann for cross.

10          EXAMINER PARROT:   Thank you.

11          Mr. Dressel.

12          MR. DRESSEL:   Your Honor, we would first  
13 just make the same note we made before Mr. Willis's  
14 cross-examination about OP&E having the opportunity  
15 to go first.

16          EXAMINER PARROT:   Noted.   Go ahead.

17                               - - -

18                               CROSS-EXAMINATION

19   By Mr. Dressel:

20           Q.    Dr. Duann, you're aware of the three-part  
21 test that the Commission uses to evaluate  
22 stipulations, right?

23           A.    Yes.

24           Q.    And in your testimony on this  
25 Stipulation, you do not address the first prong of

1 that test regarding whether there was serious  
2 bargaining among knowledgeable, capable parties.

3 A. I did not address that.

4 Q. So you don't dispute that a number of  
5 settlement meetings occurred between Suburban's staff  
6 and the intervening parties in this case including  
7 OCC.

8 A. I have -- you know, as I said -- as I  
9 indicated in my testimony, I did not address that,  
10 and I did not attend any of these settlement  
11 meetings.

12 Q. So because you didn't attend the  
13 meetings, you can't offer an opinion as to the  
14 substance of the discussion in those meetings.

15 A. I have no opinion on substance of the  
16 discussion.

17 Q. So in your testimony you are only  
18 contesting the last two prongs of the Commission's  
19 standard, right?

20 A. Yes.

21 Q. These prongs are first whether the  
22 settlement benefits customers and is in the public  
23 interest?

24 A. That's the second prong.

25 Q. And then the third prong is whether the

1 settlement violates regulatory practices and  
2 principles, right?

3 A. Yes. Yes.

4 Q. Referring to that second prong, you would  
5 agree that the Stipulation reflects adjustments to  
6 the positions taken in Suburban's Application based  
7 on issues that OCC raised in its objections, right?

8 A. Regarding the rate of return  
9 recommendation that's in the settlement is the same  
10 as what was proposed in the Application.

11 Q. But regarding -- the question is not  
12 about the rate of return recommendation quite yet at  
13 this point. There are other provisions in the  
14 settlement that are adjustments from Suburban's  
15 positions in their -- in its Application, right?

16 A. I did not make a comparison of the  
17 Application and the settlement, but I -- I suppose it  
18 could be seen as an adjustment, yes.

19 Q. So your testimony doesn't address the  
20 provision of providing customers with a free meter  
21 test every three years.

22 A. Can you repeat the question, please?

23 Q. Sure. So you're not taking a position  
24 and you don't address the fact that the Stipulation  
25 allows for customers to receive a free meter test

1 every three years, right?

2 A. I'm not familiar with that provision. I  
3 don't have any opinion on that.

4 Q. And you don't have an opinion on the  
5 provision that expands the means by which customers  
6 can avoid -- make payment to avoid disconnection?

7 A. I'm not familiar with that, and I don't  
8 have an opinion on that.

9 Q. So it would be fair to say that aside  
10 from the rate of return issue that you offer  
11 testimony on, that you are not addressing any other  
12 provisions that might provide benefits to customers.

13 A. I -- I look at the Stipulation as a  
14 package.

15 Q. So your testimony is you are looking at  
16 the Stipulation as a package, so you are able to talk  
17 about whether other provisions provide benefits to  
18 customers?

19 A. I look at the -- the provision especially  
20 on the rate of return and the using my recommended  
21 rate of return and what's included in the -- the  
22 Stipulation, and I have calculated that it increased  
23 the cost to the customer significantly. You know, I  
24 think for three years is about a quarter million  
25 dollars, for seven years is closer to \$700,000. And

1 I also reviewed briefly what -- Mr. Willis's  
2 calculation regarding the -- regarding the inclusion  
3 of those 4.9 pipeline, and he calculated the cost is  
4 about -- I think about -- about over \$500,000 per  
5 year annually, that's the additional cost. And I  
6 look at this, you know, I just don't see what other  
7 quote-unquote benefits that you talk about -- will  
8 make at least as a benefit to the customer or in the  
9 public interest.

10 Q. Well, Dr. Duann, we will get to the issue  
11 of the rate of return in a moment, and I certainly  
12 don't want to go back to the issue of the pipeline.

13 A. No, I don't want to go back to the issue  
14 of pipeline, and as I say, you know, I'm not -- in my  
15 testimony I say I'm not talking about the overall  
16 revenue requirement. However, I'm aware of that the  
17 other -- that adjustment OCC proposed, and I'm  
18 certainly -- should have looked at those adjustments  
19 in reaching my conclusion.

20 Q. So I'm asking you now about other  
21 provisions that are also contained in the settlement.  
22 For instance, you don't have an opinion on whether or  
23 not Suburban's commitment to file an application  
24 regarding the Tax Cuts and Jobs Act provides a  
25 benefit to customers.

1 MS. O'BRIEN: Objection, your Honor.  
 2 This is beyond the scope of his direct testimony.  
 3 It's clear from his direct testimony that it's  
 4 limited to the rate of return issues, so this line of  
 5 questioning is clearly beyond that.

6 MR. DRESSEL: Your Honor, may I respond?

7 EXAMINER PARROT: Go ahead.

8 MR. DRESSEL: Dr. Duann just testified he  
 9 looked at the Stipulation as a whole to determine  
 10 whether or not it provides benefits. We're  
 11 certainly -- we certainly should be entitled to go  
 12 into the provisions of that Stipulation to test his  
 13 assertion it doesn't provide benefits to customers.

14 EXAMINER PARROT: The objection is  
 15 overruled.

16 Go ahead, Dr. Duann.

17 A. I'm not familiar with that commitment,  
 18 and I don't know. You know, I cannot predict what  
 19 kind of filing that Suburban is going to make, and I  
 20 don't consider that a benefit at all. I think that's  
 21 the same that they should do it anyway.

22 Q. So it's your testimony that returning  
 23 money collected under the old tax act to customers  
 24 with carrying charges does not provide a benefit to  
 25 customers.

1           A.    As I say, I don't know what kind of  
2   benefit would be provided. I don't know what amount  
3   would be provided, what kind of mechanism will be  
4   used; so, you know, I cannot say that's a benefit.

5           Q.    Did you review the provisions in the  
6   Stipulation regarding the Tax Cuts and Jobs Act?

7           A.    I think I glanced through it. I don't  
8   remember the detail of that.

9           Q.    So you didn't attempt to quantify what  
10   amount of benefit there might be from those  
11   provisions?

12          A.    No.

13               MS. O'BRIEN: Your Honor, objection. He  
14   just said that he didn't particularly review those  
15   provisions or didn't particularly --

16               EXAMINER PARROT: He answered the  
17   question so go ahead, Mr. Dressel.

18          Q.    (By Mr. Dressel) Now, Dr. Duann, you  
19   would also agree that the Stipulation reduces the  
20   miscellaneous general expense further than what was  
21   recommended even in the Staff Report, right?

22          A.    I'm not familiar with that, so I cannot  
23   agree with that.

24          Q.    So you didn't attempt to quantify any  
25   benefit that might happen from that provision, I

1       assume, based on your testimony you didn't review it.

2                   MS. O'BRIEN:  Objection, asked and  
3       answered.

4                   EXAMINER PARROT:  Overruled.

5           A.     I did not quantify it.

6           Q.     And, Dr. Duann, as you, I believe, said  
7       earlier, you are not contesting through your  
8       testimony the actual revenue requirement proposed in  
9       the Stipulation, right?

10          A.     My testimony -- I'm not providing  
11       testimony regarding the overall revenue requirement.

12          Q.     What you are providing testimony on is  
13       the rate of return and return on common equity,  
14       right?

15          A.     Yes.

16          Q.     Regarding the rate of return, you  
17       recommend a rate of return of 6.95 percent, right?

18          A.     Yes.

19          Q.     And a return on common equity of 9.59  
20       percent.

21          A.     Yes.

22          Q.     Now, you would agree that -- or I want to  
23       go over how you arrived at those numbers.  To reach  
24       this you used a nationwide average of rates set for  
25       public utilities, right?



1           A.    The return on equity 9.59 percent is the  
2   rate I find to be reasonable for Suburban in this  
3   proceeding.

4           Q.    And you arrived at that number by looking  
5   at rates that have been approved for other utilities  
6   aside from Suburban across the country, right?

7           A.    Across the country and in the state of  
8   Ohio and also looking at the -- looking at Suburban's  
9   filing, you know, what kind of debt structure  
10   Suburban proposed, what kind of cost of gas and all  
11   those.

12          Q.    So the return on equity of 9.59 percent,  
13   that was actually the exact average that you found  
14   among utility companies with rates approved across  
15   the country in 2018, right?

16          A.    That's the same as the return on equity  
17   approved by the state public commission for gas  
18   utilities in 2019 nationwide, yes.

19          Q.    Nationwide in 2019 or 2018?

20          A.    2018, I'm sorry.

21          Q.    And in that same average, the average  
22   rate of return was 7.00 percent, right?

23          A.    Yes.

24          Q.    And you are actually recommending in this  
25   case a rate of return lower than the average that you

1 looked at to come to your conclusions.

2 A. Yes. Slightly lower, yes.

3 Q. Now --

4 A. And lots of result of probably the -- the  
5 return on equity and applied directly debt structure  
6 of the Suburban as well as Suburban's own proposed  
7 cost of gas.

8 Q. And you say that using the nationwide  
9 average in order to comply, you used, I'm sorry, a  
10 nationwide average in order to comply with the  
11 standard established by the Supreme Court of the  
12 United States in Bluefield Waterworks V Public  
13 Service Commission in 1923.

14 A. Can you give me a reference where I say  
15 that?

16 Q. In your -- sure. In your testimony if  
17 you go to page 7, do you have that in front of you?

18 A. Yes.

19 Q. And you -- I guess we'll start at line  
20 12. You can read along with me. You say "As  
21 discussed in my direct testimony (Attachment DJD-1),  
22 this fundamental regulatory principle has  
23 established -- has been established and affirmed  
24 through several U.S. Supreme Court decisions starting  
25 almost one hundred years ago. Specifically, in the

1 case of Bluefield Waterworks v. Public Service  
2 Commission, 262 U.S. 679 (1923), the U.S. Supreme  
3 Court ruled that:" and then you state -- you quote  
4 the United States Supreme Court in that decision.

5 A. Yes, that's in my testimony.

6 MR. DRESSEL: Your Honor, may we  
7 approach?

8 EXAMINER PARROT: You may.

9 MR. DRESSEL: We are marking as Suburban  
10 Exhibit 20 the Supreme Court decision in Bluefield  
11 Waterworks V Public Service Commission for  
12 identification purposes.

13 EXAMINER PARROT: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. DRESSEL: May we approach?

16 EXAMINER PARROT: You may.

17 Q. (By Mr. Dressel) Dr. Duann, do you have  
18 in front of you what has been marked as Suburban  
19 Exhibit 20?

20 A. Yes.

21 Q. And do you see that this is the -- a copy  
22 of the United States Supreme Court decision in  
23 Bluefield Waterworks & Improvement Company V Public  
24 Service Commission of West Virginia?

25 A. I don't think this is the actual opinion

1     itself. You know, from what I see it is started with  
2     a syllabus and then the actual opinion and I don't  
3     know -- it doesn't -- somewhat a little bit different  
4     from what I see, but I suppose, you know, we can go.

5             Q. I want to make sure we are on the same  
6     page. So if you start at the bottom of that first  
7     page, do you see where it says on the right-hand side  
8     "Mr. Justice Butler delivered the opinion of the  
9     Court"?

10            A. On the bottom after the No. 683?

11            Q. Yes.

12            A. Okay. Yes. "Mr. Justice Butler  
13     delivered the opinion of the Court."

14            Q. And if you flip through the following  
15     pages, you would agree that this is -- those pages  
16     reflect the opinion of the court that you included in  
17     your testimony.

18            A. I did not include the whole opinion in my  
19     testimony.

20            Q. Fair. Well, if you look at the second to  
21     last page.

22            A. Page 679.

23            Q. Yes. And if you go to the second full  
24     paragraph on the left-hand side, it has a 6 in front  
25     of it.

1           A.    Yes.

2           Q.    And a little bit more -- around halfway  
3   through that paragraph you see where it says "A  
4   public utility is entitled to such rates as will  
5   permit it to earn a return on the value of the  
6   property which it employs for the convenience of the  
7   public equal to that generally being made at the same  
8   time and in the same general part of the country on  
9   investments in other business undertakings."

10          A.    Yes.

11          Q.    And you cited that part of the opinion in  
12   your testimony.

13          A.    Yes.

14          Q.    And is it your testimony that a proper  
15   application of that standard would result in the rate  
16   of return that you proposed in this case?

17          A.    Yes.

18          Q.    And, Dr. Duann, you're not an attorney,  
19   correct?

20          A.    I am not an attorney.

21          Q.    And as we just said, you would agree that  
22   the standard that you're applying specifically says a  
23   public utility may -- or is entitled to raise the  
24   permitted earn on return on the value of property  
25   which it employed for the convenience of the public

1 equal to that generally being made at the same time  
2 and in the same general part of the country.

3 A. Yes, that's what it say, yes.

4 MR. DRESSEL: Your Honor, we would like  
5 to mark as Suburban Exhibit 21 a discovery response  
6 received by Suburban from OCC to SUBURBAN-RFP-01-004.  
7 May we approach?

8 EXAMINER PARROT: So marked. You may.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. (By Mr. Dressel) Dr. Duann, do you have  
11 in front of you what's been marked as Suburban  
12 Exhibit 21?

13 A. Yes.

14 Q. You recognize this to be a discovery  
15 request submitted by Suburban to OCC?

16 A. This is one of the response attachment we  
17 sent to Suburban, yes.

18 Q. And this specific request asked for all  
19 documents, exhibits, workpapers, worksheets,  
20 spreadsheets, exhibits, and other information relied  
21 upon by you in drafting your supplemental testimony,  
22 right?

23 A. I don't recall the exact wording, but we  
24 got a response, and I have provided a reference in my  
25 supplemental testimony page 8, footnote 6, and I

1 think that's the same document. I already referenced  
2 to that. And I think this document is generally  
3 available, and so we still provide it, yes.

4 Q. Dr. Duann, if you go to the first page of  
5 that exhibit, it actually has the exact language of  
6 the request you said you couldn't recall.

7 A. What -- what -- is the SUBURBAN RFP  
8 01-004?

9 Q. Yes.

10 A. Yeah. It says "Produce and attach all  
11 documents, exhibits, workpapers, worksheets,  
12 spreadsheets, exhibits, and other information relied  
13 upon by Daniel J. Duann, Ph.D., in drafting his  
14 Supplemental Direct Testimony in this matter. Where  
15 possible, please produce workpapers, worksheets,  
16 spreadsheets, and other documents in a live format."  
17 Yes, and we responded to that.

18 Q. Yes. And in your response you produced  
19 two documents, right?

20 A. Two attachments.

21 Q. Or, I'm sorry, two attachments.

22 A. Yes.

23 Q. One of these attachments was a workpaper  
24 where you calculated the rate of return, right? Or  
25 your recommended rate of return.

1           A.    No, I did not provide. I think we  
2 provide this -- this attachment as well as Excel  
3 spreadsheet which calculate the -- the harm to the  
4 customer if a higher rate of return as recommended in  
5 the Stipulation were adopted compared to mine.

6           Q.    Okay. So the other document was an Excel  
7 document reflecting calculations that you performed.

8           A.    Yes. Calculations I performed regarding  
9 how much additional cost the customer have to pay if  
10 this higher and unreasonable rate of return were  
11 adopted.

12          Q.    And aside from that calculation, the  
13 other document you responded is what is attached to  
14 Suburban Exhibit 21, right?

15          A.    Yes.

16          Q.    That other document -- that's the only  
17 other document you produced in response to this  
18 request.

19          A.    We produced and sent two documents, yes.

20          Q.    And this document in Exhibit 21 is a  
21 survey entitled "RRA Regulatory Focus Major Rate Case  
22 Decisions-January to December 2018," right?

23          A.    It is not a survey. It is a summary  
24 produced by Regulatory Research Associates and  
25 published by S&P Global Market Intelligence, so it's



1 not a survey sent out, survey to each committee. It  
2 is this regular research they are regularly tracking  
3 and monitoring all the rate cases and all the  
4 regulatory activity over the country and for I  
5 believe each quarter they published an update and  
6 this is an annual update for the 2018 rate case.

7 Q. So this document reflects rates approved  
8 for electric and gas utilities across the country in  
9 2018.

10 A. Major rate cases and -- and in certain  
11 cases it's not a traditional rate case but a more  
12 special purpose riders and.

13 Q. But the document shows the rate of return  
14 and return on equity for each of those cases whether  
15 they are traditional rate cases or those different  
16 cases you just referenced.

17 A. Yes. And I think it's -- it's -- the  
18 summary was published in page 13 and 14 for the gas  
19 utilities.

20 Q. So, Dr. Duann, to be clear you did not  
21 have a role in producing this summary, right?

22 A. No.

23 Q. You obtained this summary after it was  
24 produced by S&P Global Market Intelligence.

25 A. This is information, a summary -- a

1 summary that I regularly review and I rely upon in  
2 doing my work as a rate of return analyst and this is  
3 reputable information provided and it's just like --  
4 it's just like when you check the stock price of AEP,  
5 you know. It's a -- it's \$88.50. How do we know  
6 it's \$88.50? Because that's what's published and so,  
7 yes, I did not involve in producing this summary, and  
8 but I do rely on it and I -- I believe it is a  
9 reliable and credible information.

10 Q. So, Dr. Duann, to answer the question I  
11 asked you, you were not involved in preparing  
12 anything that's contained in this summary.

13 A. No.

14 Q. And when you reviewed this summary in  
15 your preparation of your testimony in this case, did  
16 you go to -- go back and review the Commission --  
17 specific Commission decisions referenced in the  
18 tables on pages 11 through 14?

19 A. In preparing this particular case, I did  
20 not.

21 Q. So you in preparing your analysis assumed  
22 that the information provided in this summary is  
23 accurate.

24 A. Yes.

25 Q. Now, as we were -- as I just alluded to

1 on pages 11 to 14, this summary that you relied upon  
2 contains a list of first the electric utility  
3 decisions and then gas utility decision, right?

4 A. Yes.

5 Q. So these are the decisions you used to  
6 determine the averages for your application of the  
7 standard in the Bluefield case.

8 MS. O'BRIEN: Objection, asked and  
9 answered.

10 EXAMINER PARROT: Overruled.

11 A. Well, as I indicated, you know, when I --  
12 when I am looking at what's the reasonable rate of  
13 return, and this attachment is one source that I rely  
14 upon. I indicated in my testimony I look at other  
15 Ohio cases. And I look at the -- the every -- in  
16 2017, you know, so and I look -- also just look at  
17 all other relevant information just like, you know, I  
18 look at what's the treasury yield right now or what's  
19 the -- the yield on corporate bonds, so I am always  
20 looking at this.

21 But for this particular case I first look  
22 at what's the Company propose, and I look at because  
23 the Company does not do any discount cash flow  
24 analysis, does not discount other analysis. The  
25 Company simply say, oh, we look at the -- we look at

1 market condition. We look at what happen in I say  
 2 mostly like in Indiana, and even they did not even  
 3 look at the actual Commission decision. They look at  
 4 Staff Report and -- they look at the Staff Report,  
 5 and they look at the -- what's the Stipulation, and  
 6 also they say, oh, we also base our recommended based  
 7 on our discussion with the Company; and, you know,  
 8 and they did not provide any information on that.  
 9 So -- so in summary, yes, this is one piece of the  
 10 information I look at, and I look like -- look at in  
 11 making my recommendation on return on equity.

12 MR. DRESSEL: Your Honor, we would move  
 13 to strike just the portion of the answer where  
 14 Dr. Duann spoke about what the Company considered in  
 15 coming to its conclusions as both nonresponsive and  
 16 speculative. Dr. Duann already testified that he  
 17 wasn't involved in any of the settlement discussions  
 18 that led to the Stipulation, so for him to testify  
 19 that the Company did consider some things or didn't  
 20 consider other things would be speculative and that  
 21 testimony should be stricken.

22 MS. O'BRIEN: Your Honor, actually could  
 23 I have the answer read back to me.

24 (Record read.)

25 MS. O'BRIEN: I mean, your Honor, I would

1 just respond that, you know, he -- he's clarifying  
2 what he's relying upon in making his recommendations.  
3 To the extent it is not sufficient information that  
4 Suburban has provided us in discovery, you know, he's  
5 allowed to -- or entitled to rely on outside  
6 information such as this report. So I guess I'm not  
7 really sure the basis of the objection.

8 MR. DRESSEL: Your Honor, may I briefly  
9 respond?

10 EXAMINER PARROT: Go ahead.

11 MR. DRESSEL: First, I object to the  
12 characterization that Suburban wasn't providing  
13 information in discovery, but to the heart of the  
14 objection, he's not clarifying what he relied on.  
15 He's specifically talking about what someone else  
16 relied on and that is speculative.

17 EXAMINER PARROT: And I am going to grant  
18 the motion to strike from the point at which he first  
19 referred to the Company in that answer and then  
20 through towards the end, but he did sort of cap it  
21 off with the final sentence summarizing -- I think he  
22 said sort of in summary or something to that affect.  
23 We'll allow that to stand at the end of the final  
24 sentence or two.

25 Q. (By Mr. Dressel) So, Dr. Duann, you said

1 this is one of several things you relied on. But in  
2 that discovery request when Suburban requested OCC --  
3 that OCC produce the information you relied on, this  
4 was the only outside source that was produced.

5 A. Yes.

6 Q. And you used the average rates of return  
7 and return on equities in this source in your  
8 testimony, right?

9 A. You mean this S&P Global Market  
10 Intelligence?

11 Q. Yes.

12 A. As I answered you several times, this is  
13 one piece of the information that I use.

14 Q. You used in applying that Bluefield  
15 standard, right?

16 A. I used that in reach -- in making my  
17 recommendation of 9.59 percent return on equity.

18 Q. Dr. Duann, you would agree that this  
19 document reflects a February 6, 2018, case from  
20 Mississippi, right?

21 A. Can you repeat the question again?

22 Q. Yes.

23 A. And give me a reference, please.

24 Q. Certainly. On page 11, there is a case  
25 listed with a date of February 6, 2018.

1           A.    I think page 11 is for electric  
2 activities.

3           Q.    So you didn't rely on that part.

4           A.    No, I did not.

5           Q.    I thought that's what I had asked you  
6 earlier, so looking at the gas section, this -- the  
7 gas section, there is the case from February 27,  
8 2018, from Kansas, right?

9           A.    February 21, 2018?

10          Q.    27th for Atmos Energy Corporation.

11          A.    Yes.

12          Q.    And that's in Kansas.

13          A.    Right. State indicated KS, yes.

14          Q.    The following day there was a case from  
15 Maine with Northern Utilities, Incorporated, right?

16          A.    Yes.

17          Q.    In March there was a case from Florida,  
18 March 26.

19          A.    Yes.

20          Q.    April 26 there was a case from  
21 Washington.

22          A.    Yes.

23          Q.    May 29 there was a case from Montana.

24                MS. O'BRIEN: Your Honor, I would object  
25 to this line of questioning. We can read what's in

1 the report. It's in evidence now.

2 EXAMINER PARROT: Not yet. Are you  
3 stipulating to that?

4 MS. O'BRIEN: No. But my point is we can  
5 read from the report. We don't need to go through  
6 each and every case that's listed here.

7 EXAMINER PARROT: Overruled. But I agree  
8 we don't need -- you're not -- in Mr. Dressel's  
9 defense he is not going through each and every one.

10 But get to your point, Mr. Dressel.

11 Q. (By Mr. Dressel) I'll highlight just one  
12 more. On July 20 -- I'm sorry, July 16, 2018, this  
13 is a case from Wyoming.

14 A. The Utility Company, LLC?

15 Q. Yes.

16 A. Yes.

17 Q. Now, Dr. Duann, you would agree that the  
18 Bluefield standard we talked about earlier says that  
19 the comparison should be made between the utility and  
20 other businesses that are -- in the return generally  
21 being made at the same time and in the same general  
22 part of the country as that utility, right?

23 A. Yes. I think that's what the Bluefield  
24 decision says, but I think that decision was made  
25 about almost 100 years ago, and I think 100 years ago



1 the capital market in United States could be quite  
2 different from what we have right now. So I -- you  
3 know, I think it would be ridiculous to suggest that  
4 a utility in Ohio, it's capital costs would be  
5 different from a utility in California if they  
6 exhibit the same business and financial risk.

7 You know, right now, it's a global  
8 financial market so. You know, I expect that you  
9 will ask these questions; but I say, you know,  
10 what -- what the Supreme Court is true at that time.  
11 But, right now, there's simply no difference between  
12 the -- you know, for example, like AEP Ohio, their  
13 top one banker is a Japanese bank; and so, you know,  
14 I think you are trying to say, oh, you can only limit  
15 it to look at the decision in the middle west. I  
16 think that's ridiculous and I don't buy that and I  
17 don't think anybody will agree with that.

18 Q. Well, Dr. Duann, you filed your testimony  
19 in this case on June 21, 2019, right?

20 A. Yes.

21 Q. And in that testimony here in 2019, you  
22 stated that Suburban's proposed return on equity and  
23 rate of return is -- violates basic regulatory  
24 principles because it doesn't comply with the  
25 standard in this Bluefield case, right?

1           A.    Yes.  The 10.25 percent does not comply  
2   because when you look at the -- the page 13 and 14,  
3   you look at there is 40 utilities nationwide with an  
4   average of 9.58 percent.  There is only two utilities  
5   has a higher return than 10 percent.  Higher -- a  
6   higher return on equity of -- a return on rate higher  
7   than 10 percent.  There is only 2 out of this 40 and  
8   there is 19 utilities that rate case which has the  
9   return on equity lower than what I propose 9. -- 9.59  
10  percent national average.

11                So by any standard you can look at, it's  
12  just way above what the other -- what the -- what the  
13  utility authorize in other states.  You look at the  
14  rate of return is the same.  You know, I calculate  
15  it.  I say there's 44 cases where you have rate of --  
16  you have rate of return decided, and I think certain  
17  of them has -- has a lower rate of return lower than  
18  6.95 I recommend, and I think this may be just a few  
19  which has higher return than 6.29.

20                So when you look at what happened  
21  nationwide, you simply know that the 10.25 is  
22  unreasonable just based on what the Supreme Court  
23  decided almost 100 years ago.  I have to look at what  
24  others -- what others can earn, what -- you know,  
25  what the other authorize and, you know, that's very

1 simple.

2 Q. Dr. Duann, you said that there were a  
3 number of standards you can apply. I am asking you  
4 about one standard right now, and it's the one you  
5 put in your testimony. Did you or did you not apply  
6 the Bluefield standard in this case?

7 A. Of course I applied it.

8 Q. And are you aware of the Supreme Court  
9 overturning its decision in the Bluefield case?

10 A. I am not aware of that. I think -- I  
11 don't think -- I am not aware that this Supreme  
12 Court, this rate is fundamental ratemaking principle  
13 regarding rate of return has been overturned. I will  
14 be happy to look at it.

15 Q. So you would say this is a fundamental  
16 ratemaking principle.

17 A. This is a fundamental ratemaking  
18 principle in determining a reasonable rate of return  
19 for a regulated utility.

20 Q. And this fundamental ratemaking principle  
21 states that that rate of return should be -- should  
22 be determined by looking at rates of return earned by  
23 similar businesses and similar utilities in the same  
24 general part of the country. That's what this  
25 principle says, right?

1           A.    And I already explained that this general  
2   area is no longer applicable because this is a global  
3   financial market and you raise your funds all over  
4   the world.  You are not raising your funds in the  
5   state of Ohio.  You are not raising funds in the  
6   midwest.

7                       So the Supreme Court principle is the  
8   same that -- you know, you compare with the geo --  
9   geological close area, but it's geological area is  
10  the whole United States.

11           Q.    Dr. Duann, so it's your testimony that  
12  you support applying the Bluefield standard insofar  
13  as it allows you to take an average of the entire  
14  country but not as it requires a comparison to only  
15  the same general part of the country?  That's a fair  
16  assessment of how you approach this standard.

17           A.    Because -- because when you -- because  
18  there's no -- there is no evidence whatsoever, say  
19  the cost of capital in midwest is different from any  
20  other state -- any other region of the nation.

21           Q.    Dr. Duann, that wasn't my question.  My  
22  question was is it fair to say that you do not  
23  support applying this fundamental ratemaking  
24  principle as it is written.

25           A.    I support the fundamental as it is

1 written, and it should be applied here, and the  
2 reason -- the reason to apply it you have to look at  
3 what's happened right now. And what happened right  
4 now is there's no geological difference in terms of  
5 the cost of capital. That's pure and simple.

6 So you still apply the same principle,  
7 but the result is you -- that does not prevent you  
8 from -- from applying the nationwide average.

9 Q. Dr. Duann --

10 A. That's my point and that's the purpose --  
11 that's how I apply this Bluefield decision.

12 Q. Dr. Duann, are you aware of any -- you  
13 don't cite in your testimony any decisions by any  
14 regulatory commissions where they apply the Bluefield  
15 standard as you just explained or as you just  
16 suggested it should be applied.

17 A. I think the way I suggest should be  
18 applied no different from any other person. I think  
19 it's no different from -- from, you know, the  
20 Company's witness or the Staff's report in several  
21 previous cases which they cite the Bluefield  
22 decision.

23 Q. You would agree that the Company's  
24 witness and Staff arrived at a different conclusion  
25 than you did in this case.

1           A.    Yeah, they propose a higher rate of  
2    return, yes.

3           Q.    And you do not cite any decision by a  
4    state regulatory commission here in Ohio or  
5    elsewhere, that applies the Bluefield standard as you  
6    just described it, specifically that says you should  
7    look at a nationwide average rather than a  
8    consideration of the same general part of the  
9    country.  You don't have that in your testimony, do  
10   you?

11          A.    It's not in my testimony, and as far as I  
12   review Ohio's decision, I -- I have never -- I have  
13   not seen where the Commission says, hey, you can only  
14   look at the -- the cost -- the cost of capital for  
15   the utility in the midwest region.  I have never seen  
16   that.

17          Q.    But you would agree that Ohio is in the  
18   midwest part of the country as that term is used.

19          A.    Well, I think, yeah, Ohio is generally  
20   considered part of midwest as in my understanding of  
21   the midwest and everybody's understanding of the  
22   midwest could be different.

23          Q.    Okay.  So let's talk about some Ohio  
24   cases.  You testified that you reviewed decisions for  
25   other utility companies in Ohio, right?

1           A.    Can you give me a reference?

2           Q.    You told us that earlier in your  
3 testimony today.

4           A.    Yes.

5           Q.    So you think that in determining an  
6 appropriate rate of return and return on common  
7 equity for Suburban it's important to consider the --  
8 what has been approved for other gas companies in  
9 Ohio.

10          A.    It is a useful way to look at, you know,  
11 to come to a reasonable estimate.

12          Q.    And you would also agree that in the gas  
13 portion of that document we were just looking at, the  
14 S&P summary, that there were not any Ohio gas  
15 utilities included in that summary.

16          A.    There's no Ohio, yes, included in the  
17 summary.

18          Q.    And your testimony was that survey -- I'm  
19 sorry, that summary was a complete record of gas rate  
20 cases that have been approved in 2018.

21          A.    I did not use the word complete. I did  
22 not describe the -- the, you know, what's -- I think  
23 it says -- clearly say it's RRA Regulatory Focus:  
24 Major Rate Case Decisions-January through December  
25 2018.

1 Q. So you would agree then that there might  
2 be some cases that weren't included in that average.

3 A. Could be, yes.

4 Q. For instance, any Ohio case that was  
5 approved in 2018 wasn't included in that average.

6 A. Right, like Ohio Gas.

7 Q. So let's talk about that Ohio Gas case.  
8 In your analysis did you consider that in 2018 the  
9 PUCO approved a rate of return for Ohio Gas of 9.00  
10 percent?

11 A. Right. In that case I think the  
12 Commission also -- I think that 9.00 percent was --  
13 was based on return on equity of 9.00 percent.

14 Q. So that's a yes, the rate of return in  
15 that case approved by the Commission barely more than  
16 a year ago was 9 percent.

17 A. The Commission approved a Stipulation,  
18 and my recollection is in the Stipulation it was 9  
19 percent and 9 percent because the Ohio Gas does not  
20 have any that it has 100 percent equity, and the  
21 Company's proposed return on equity is also 9  
22 percent.

23 MR. DRESSEL: Your Honor, may we mark as  
24 Suburban Exhibit 22 for identification purposes the  
25 Commission's decision in Case No. 17-1139-GA-AIR, et



1 al.

2 EXAMINER PARROT: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. DRESSEL: May we approach?

5 EXAMINER PARROT: You may.

6 Q. (By Mr. Dressel) Dr. Duann, do you have  
7 in front of you what has been marked Suburban Exhibit  
8 22?

9 A. Yes.

10 Q. This is the Ohio -- the Commission's  
11 opinion in the Ohio Gas rate case that you just  
12 testified you reviewed?

13 A. I reviewed it. I don't know whether I  
14 mentioned it in my testimony or not.

15 Q. But you reviewed it in coming to your  
16 analysis.

17 A. I'm -- I participated in this case and  
18 this -- yeah, I -- I reviewed it, yes.

19 Q. And can you turn to paragraph 58. I  
20 believe it is on page 13. Are you at paragraph 58?

21 A. Yes, I saw that.

22 Q. There the Commission said that "A rate of  
23 return of not more than 9 percent is fair and  
24 reasonable," right?

25 A. I would just read the whole paragraph. I

1 think to be fair "The rate of return of not more than  
2 9.00 percent is fair and reasonable under the  
3 circumstances of these cases and is sufficient to  
4 provide Ohio Gas just compensation and return on its  
5 property used and useful in the provision of services  
6 to its customer." So I think -- yeah, I think the  
7 Commission says it's reasonable under the  
8 circumstances of these cases.

9 Q. Dr. Duann, are you also familiar with  
10 Duke Energy Ohio's latest gas distribution rate case?

11 A. I think that -- are you talking about  
12 2012 case?

13 Q. Yes.

14 A. Yes.

15 MR. DRESSEL: Your Honor, may we mark as  
16 Exhibit 23, Suburban Exhibit 23, the Commission's  
17 Opinion and Order in Case No. 12-1685-GA-AIR, et al.?

18 EXAMINER PARROT: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. DRESSEL: May we approach?

21 EXAMINER PARROT: Yes.

22 Q. Dr. Duann, this is the Opinion and Order  
23 in the latest Duke Energy Ohio gas distribution rate  
24 case, right?

25 A. Yeah, this case was -- was filed in

1 2018 -- 2012 and decided on November 13, 2013, yes.

2 Q. And you're not aware that Duke Energy  
3 Ohio has applied for new gas distribution rates since  
4 this case was decided.

5 A. I am not aware of that.

6 Q. So the provisions in this opinion and  
7 order would still be in effect as far as you know for  
8 Duke Energy Ohio.

9 A. Well, Duke Energy Ohio's gas rate.

10 Q. Can you turn to page 76.

11 A. Yes.

12 Q. And if you look at the provision 15, it  
13 says "A rate of return of 7.73 percent is fair and  
14 reasonable under the circumstances presented by these  
15 cases and is sufficient to provide Duke just  
16 compensation and return on the value of Duke's  
17 property used and useful in furnishing electric  
18 distribution services to its customers." I think  
19 that might have been a typo on the last part. Again,  
20 that it was a gas case. Did I read that correctly?

21 A. Yes. I think you read that correctly,  
22 but I would like to provide a context, a little bit  
23 of context. This case was decided in 2012, 2013, and  
24 at that time the financial market circumstances may  
25 not be the same what it is right now.

1           And also I want to point out that in that  
2 case the Commission decided on the return on equity  
3 approved Stipulation, that deriving this 7.73 percent  
4 is the return on equity in that case is 9.84 percent  
5 and which is considerably lower than what the  
6 Suburban proposed here, 10.25, and the Staff, 10.22,  
7 so that's, you know, seven -- six or seven years ago  
8 and so -- and that rate was -- that ROE is much lower  
9 than what's being proposed.

10           Q.    So, Dr. Duann, this -- in this order the  
11 Commission approved a rate of return of 7.73 percent,  
12 right?

13           A.    In this particular case which is based on  
14 return on equity of 9.84 percent.

15           Q.    And the rates approved in this case are  
16 still in effect.

17           A.    The base distribution rate, yes.

18           Q.    And the company would still be presumably  
19 receiving a rate of return of 7.73 percent.

20           A.    And a return on equity of 9.84 percent,  
21 yes.

22           Q.    Now, Dr. Duann, did you consider that  
23 the -- in 2010 the Commission approved Ohio  
24 Cumberland Gas Company for a 10 percent rate of  
25 return?

1 A. I'm not familiar with that case.

2 Q. I apologize. It was actually approved in  
3 2011. Are you familiar with that?

4 A. No.

5 Q. Did you consider that in 2010 the  
6 Commission approved a rate of return of 10 percent  
7 for Piedmont Gas Company?

8 A. No.

9 Q. Did you consider that in 2008 the PUCO  
10 approved Columbia Gas of Ohio for a rate of return of  
11 8.12 percent?

12 A. No. I think those case, you know, six,  
13 seven, or eight years ago and -- and I did not review  
14 it when I prepared my testimony, and I did look at  
15 other more recent cases including some electric  
16 cases.

17 Q. Dr. Duann, you're not aware that any of  
18 those companies I just named, Cumberland, Piedmont,  
19 or Columbia has filed a gas distribution rate case  
20 since the dates that I mentioned, right?

21 A. I do not know whether they filed or they  
22 have not filed.

23 Q. And you also mentioned that you looked at  
24 some recent decisions on the electric side, right --

25 A. Yes.

1 Q. -- here in Ohio?

2 A. Yes.

3 Q. Would that be -- include the Duke Energy  
4 Ohio decision that the Commission approved last year?

5 A. You mean the electric case?

6 Q. Electric case, I'm sorry.

7 A. Yes.

8 Q. And that case the approved rate of return  
9 for Duke was 7.54 percent.

10 A. And in that case I think the return on  
11 equity approved is 9.84 percent.

12 Q. Did you also look at the case from the  
13 Dayton Power and Light Company that was also approved  
14 last year on -- for electric distribution rates?

15 A. You mean the AIR case, right?

16 Q. Yes, 15-1830.

17 A. Yes. There was a Stipulation and the  
18 Commission approved that, yes.

19 Q. And the approved rate of return in that  
20 Stipulation was 7.27 percent.

21 A. Yes. And I think in that case the return  
22 on equity that was used in deriving that rate of  
23 return is 9.99 percent.

24 Q. Dr. Duann, you would agree that the rate  
25 of return recommended by the Stipulation in this case

1 is 7.26 percent, right?

2 A. I think that's what's in the Stipulation,  
3 yes, and that's also in the Application.

4 Q. And you recommended 6.95 percent, right?

5 A. Yes.

6 Q. In all of the cases approved by the  
7 Public Utilities Commission of Ohio that you  
8 reviewed, were you able to find any that approved a  
9 rate of return at 6.95 percent or lower?

10 MS. O'BRIEN: Your Honor, objection.  
11 This is irrelevant. The facts and circumstances in  
12 other cases are not relevant to this proceeding. You  
13 know, we can talk all day about what was done in  
14 other cases and facts and circumstances that led to  
15 those rates of return but what's relevant here is the  
16 evidence in this case and that's what Dr. Duann is  
17 testifying to.

18 MR. DRESSEL: Your Honor, may I respond?

19 EXAMINER PARROT: Go ahead.

20 MR. DRESSEL: Dr. Duann testified earlier  
21 today that the Bluefield standard of fundamental  
22 regulatory principle that he applied, that standard  
23 specifically demands that a comparison be made with  
24 other utilities in other cases, Dr. Duann further  
25 testified that his analysis here in this case was

1 based in part on his review of the decisions in Ohio.  
2 This testimony is certainly relevant to evaluating  
3 the credibility of Dr. Duann's determination.

4 EXAMINER PARROT: Overruled.

5 THE WITNESS: Can I have the question  
6 read back, please.

7 (Record read.)

8 A. For the -- those cases we discussed  
9 the -- the Ohio Gas, the Duke gas, the Duke electric,  
10 and the -- the Dayton Power and Light, and actually  
11 in all these cases I believe the rate of return that  
12 was approved by the Commission is higher than 6.95  
13 percent but not -- and but I also want it noted that  
14 underlying that return on equity that approved in  
15 this case -- in those cases, you know, like in the  
16 Ohio Gas is 9 percent, the Duke gas and electric is  
17 9.84 percent, and the Dayton Power and Light is 9.99  
18 percent. They are all well below what the company  
19 proposed and what did the Stipulation propose and  
20 what did the Staff Report propose.

21 And the correct way is not just look at  
22 the rate of return because the rate of return  
23 involved also the cost of that and also involved  
24 capital structure, so in this case I think the proper  
25 way or the proper way of any rate of return analyst



1 is to determine the -- the return on -- what's the  
 2 reasonable return on equity first, then determine  
 3 what's the reasonable cost of equity, then apply that  
 4 to a reasonable capital structure. So in this -- so  
 5 that's what I did in reaching the 6.95 percent and  
 6 which, you know, if Company's equity on return a 9.59  
 7 percent which is above a half of the rate cases which  
 8 is higher than how we also arrived in half of the  
 9 rate cases that decide. So I think we need to put  
 10 all this in context rather than just look at, you  
 11 know, I think -- and I think that's what the -- the  
 12 Company witness did is the calculate a proposed  
 13 return on equity of 10.25, then -- then propose is  
 14 cost of debt and use capital structure.

15 So you cannot just compare, you know,  
 16 what's the rate of return because each company's cost  
 17 of debt is different and also this involved different  
 18 time period. And in the case of Ohio Gas which is --  
 19 is very special case because it has no debt. It --  
 20 it has all equity, and their return on equity that  
 21 also is only 9 percent.

22 MR. DRESSEL: May I have the question  
 23 reread, please.

24 (Record read.)

25 Q. Dr. Duann, the answer to that question is

1 "no," right?

2 A. I don't -- I already answered it.

3 Q. Were you able to find any cases that had  
4 a rate of return of 7.26 percent or lower in Ohio?

5 A. Out of the four or five cases that we  
6 discussed, you know, certainly I did not go review  
7 all the cases. Out of the -- out of all the four or  
8 five cases I reviewed, I think Dayton's rate of  
9 return, 7.27, is closer. It's close to what -- what  
10 the Company proposed, 7.26.

11 Q. So, no, you are not aware of any cases in  
12 Ohio that have a rate of return of 7.26 or less?

13 A. As I said, four or five cases we  
14 discussed, their rate of return is higher than 7.26,  
15 and Dayton Power is almost the same as 7.26.

16 Q. But not just the cases we discussed, any  
17 case in Ohio, you are not aware of any case in Ohio  
18 that has -- that approved a rate of return of less  
19 than 7.26.

20 A. Well, as indicated, you know, I have not  
21 reviewed all the cases, so I cannot give you say -- I  
22 am just saying that based on my review, the cases  
23 that I am aware of, you know, I have not found any.

24 Q. Dr. Duann, turning to the issue of return  
25 on equity, are you familiar with the prime interest

1 rate?

2 A. Yes.

3 Q. So you would agree that as the prime  
4 interest rate increases, the cost of borrowing  
5 becomes greater, right?

6 A. No, not necessarily.

7 Q. You wouldn't agree that as the prime  
8 interest rate increases, it doesn't become more  
9 costly for companies to borrow money?

10 A. No, not necessarily.

11 Q. So you're saying it's possible with a  
12 lower interest rate, it's actually more expensive to  
13 borrow?

14 A. No. I didn't say that. I say -- what I  
15 tried to say is when you have like an increase in  
16 interest rate, for example, I say the Company we just  
17 talk about in discovery response, when you increase  
18 the interest rate from 5 percent to 5 -- the prime  
19 rate from 5 percent to 5.25 percent and it stays at  
20 the 5.25 percent at that time up to now, so but the  
21 cost of borrowing for the Company for the treasury, I  
22 think it fluctuate, and I think for the last several  
23 months the cost of borrowing by the treasury just  
24 decline significantly because the market expecting,  
25 you know, the Federal Reserve might cut interest

1 rate. Also the market also worry about the trade  
2 wars and could be a recession coming so I think -- so  
3 I cannot just say when the interest go up -- when a  
4 prime rate go up, your cost also necessarily go up,  
5 no, especially for the corporations.

6 You know, if you -- if you are  
7 individual, you know, you want to borrow that for  
8 short term or you might have, you know, as the prime  
9 rate increases, you might but not necessarily for  
10 corporation.

11 Q. Dr. Duann, you would agree that typically  
12 when you're borrowing funds, an interest rate would  
13 be based on the percentage of the prime interest  
14 rate, right?

15 A. No.

16 Q. You wouldn't agree with that?

17 A. No, I do not agree with that, especially  
18 for corporation. They can issue -- they can issue  
19 bonds. They can negotiate with banks and so, you  
20 know, so it's -- it's not straightforward one  
21 direction, you know, say prime rate increases and,  
22 you know, cost go up, no.

23 Q. Dr. Duann, you would agree that -- or  
24 isn't it true that Suburban is not in a global  
25 market?

1           A.    I don't understand the question.  
2    Suburban is gas distribution utility in central Ohio,  
3    so it is serving the southern Delaware/Lewis Center  
4    area.

5           Q.    And as you said, Suburban only serves in  
6    Ohio, right?

7           A.    As far as I know, yeah.

8           Q.    And are you aware that Suburban's funding  
9    comes from a regionally located bank?

10          A.    I look at says come from Huntington Bank  
11   and but that doesn't mean anything. I mean, you  
12   know, I don't know the detail or the internal  
13   operation, you know. I don't know whether the  
14   Suburban can't go to other outside state bank or not.  
15   I don't know. I cannot answer that, but from the  
16   filing I know that they have equity line with  
17   Huntington Bank, yeah.

18          Q.    And do you agree that Huntington relies  
19   on the prime interest rate in setting its interest  
20   rates for Suburban and others who borrow from it?

21          A.    I don't know. I cannot answer that.

22          Q.    And are you aware that the current prime  
23   interest rate -- that the prime interest rate at the  
24   time the Application in this case was filed was 5  
25   percent? I'm sorry, in August of 2018.

1           A.    I don't recall exactly. I read it in  
2   discovery response, but I don't remember, and I -- I  
3   usually do not look at the prime rate. I look at the  
4   corporate bond yield and U.S. Treasury yield. I  
5   think that's more relevant to the cost of borrowing  
6   for a corporation.

7           Q.    Would you agree that an increase in the  
8   prime interest rate is indicative of a market change?

9           A.    I don't understand your question. What  
10   market change are you talking about?

11          Q.    That when -- the prime interest rate  
12   increases, it could be indicative of interest rates  
13   from other sources also increasing.

14          A.    I already answered that question, and my  
15   answer is no, not necessarily.

16          Q.    Dr. Duann, are you agreed that -- would  
17   you agree that the current prime interest rate is 5.5  
18   percent?

19          A.    I think I just checked this morning. I  
20   think it's 5.25.

21          Q.    5.25 or 5.5?

22          A.    I think it's 5.25.

23          Q.    So whether it's 5.25 or 5.5, it's higher  
24   than it was at the time of the Application, right?

25          A.    As I say, I don't recall exactly what's

1 the prime rate when they applied, yeah. But, you  
 2 know, as I -- as I answered several times, that --  
 3 the prime rate is not a good indicator of the cost  
 4 borrowing, especially for corporations and/or,  
 5 furthermore, I think even, you know, even if -- even  
 6 if Suburban make unwise decision on its financing, I  
 7 mean, that does not necessarily mean that the -- that  
 8 the PUCO need to, you know, approve -- approve  
 9 that -- the cost associated with that decision. So I  
 10 think, you know, as I say, prime -- prime interest  
 11 rate, I don't think it's really a good indicator of  
 12 the costs of borrowing.

13 Q. But, Dr. Duann, if Suburban did obtain  
 14 its borrowing from a bank that relied on the prime  
 15 interest rate, then an increase in the prime interest  
 16 rate would increase the costs of borrowing for  
 17 Suburban, right?

18 A. Well, I think it depends on the specific  
 19 arrangement. You know, say it's, you know -- yeah, I  
 20 think it's specific, yeah, depends on specific, you  
 21 know, it's equity line, then how far do you adjust  
 22 it, and what's the -- what's the index making your  
 23 adjustment. And I think a lot of this adjustment  
 24 does not depend on the prime rate. Rather it depends  
 25 on some -- the other like the LIBOR where in the bank

1 overnight rate. So, you know, I think it's possible  
2 but that doesn't mean anything.

3 Q. Dr. Duann, you are not familiar with  
4 Suburban's current borrowing arrangements, right?

5 A. All I know is from their filing.

6 Q. So you do not know what Suburban's  
7 borrowing power as a small gas distribution utility  
8 is, right?

9 A. I don't quite understand what you mean by  
10 the borrowing power here. I mean, it's Suburban's  
11 management's responsibility to obtain financing. And  
12 how they obtain financing depends on how they perform  
13 and the market condition.

14 Q. Dr. Duann, you think it would be fair to  
15 say though that Suburban would typically have less  
16 borrowing power than a utility like Columbia or the  
17 Ohio Power Company.

18 A. When you compare Suburban with these two  
19 companies in particular, I would agree with that,  
20 yes.

21 Q. And you would agree that the return on  
22 equity -- the appropriate return on equity is  
23 determined on a company-by-company basis.

24 A. It -- yes, on the Company, you know, and  
25 also the -- the market condition and the cost of the



1 capital at that time, yes.

2 Q. Would you agree that LIBOR increases are  
3 indicative of market changes regarding borrowing  
4 rates?

5 A. It is indicating a change in the short  
6 term, very short-term costs of borrowing.

7 Q. Would you agree since the filing of the  
8 Application in this case, the LIBOR rate has  
9 increased by 1. -- would you agree since the filing  
10 of this case the LIBOR rate has increased by half of  
11 a percent?

12 A. I don't know. I think -- I haven't  
13 checked the LIBOR rate recently, and I don't -- I  
14 don't recall what the LIBOR rate was when the Company  
15 made the filing.

16 Q. If that were true, if that were the case,  
17 that increase would affect the cost of a short-term  
18 line of credit, right?

19 A. Well, yes, it -- well, I think it -- when  
20 you say affect the short-term cost is you cannot  
21 really compare the LIBOR rate six months ago to  
22 today. Basically you are just comparing the LIBOR  
23 rate day-to-day, you know, and so you're saying if  
24 you borrow yesterday versus you borrow today and if  
25 the LIBOR rate increases, yes, your rate will

1     increase, yeah. But I think this increase is short  
2     on cost was -- was not considered cost of debt,  
3     should not be considered in the cost of debt because  
4     it is short-term financing, and the cost of debt only  
5     looks at long-term finance -- long-term debt.

6             Q.     Is it -- would you agree that a line of  
7     credit can be based on a LIBOR plus rate?

8             A.     It could, yeah.

9             Q.     Dr. Duann, you would agree that if a  
10    company found itself in a situation where it cost  
11    more to borrow money, that -- than it does for a  
12    different company, that that company would need to  
13    earn a higher return on equity in order to make the  
14    same margins as the other company that was able to  
15    borrow money on less costly terms?

16            MS. O'BRIEN: Objection, speculation.  
17    Asks for him to speculate as to what another company  
18    would do. Also it's irrelevant. It goes beyond the  
19    scope -- excuse me. It goes beyond the scope of his  
20    supplemental direct testimony.

21            MR. DRESSEL: Your Honor, on the  
22    relevance issue, Dr. Duann's testimony is as he said  
23    entirely focused on the issue of return on equity and  
24    rate of return, so it's certainly relevant how --  
25    what sort of rate of return -- return on equity, I'm

1     sorry, a company would be able to earn. As for the  
2     speculation objection, Dr. Duann is an expert in this  
3     area. He can certainly testify as to the impact that  
4     the cost of borrowing would have on determining an  
5     appropriate return on equity.

6             EXAMINER PARROT: Overruled.

7             A. Well, I think, you know, when you use the  
8     word company, you know, I think if it's in a  
9     competitive industry, the cost of borrowing doesn't  
10    really -- I mean, the market will take care of it,  
11    you know. You have very high cost of borrowing, then  
12    you just go out of business. So for regulated  
13    industry, I think the costs of borrowing or  
14    something, it's same thing that the -- that the  
15    Commission can consider, but I think the Commission  
16    is under no obligation to -- to let at least cost of  
17    borrowing flow through.

18            And I think -- once again, I think the  
19    fundamental ratemaking principle of rate of return is  
20    to provide an opportunity for the Company, for the  
21    regulator to make a return that is comparable to  
22    other investment with similar risk, so I think my --  
23    my question -- my answer to you is, no, not  
24    necessarily. You know, your cost of borrowing goes  
25    through the roof. That is Suburban's cost. That's a

1 Suburban's business. That simply means either you  
2 mismanagement or whatever. You know, you don't do  
3 your job, maybe you should not operate a gas  
4 distribution company in Ohio.

5 Q. Dr. Duann, isn't it true that the  
6 Commission approves financing arrangements made by  
7 the utility it regulates?

8 A. The regulated company when they -- I  
9 think every year they need to make filing regarding  
10 their short term and long-term financing. They file  
11 that and whether the Commission approves it or not or  
12 imposes conditions on it, you know, the Commission  
13 can do that. I mean, the Commission does not rubber  
14 stamp those applications.

15 Q. The question is about financing  
16 arrangements made by utilities. And isn't it true  
17 that the Commission has to approve those financing  
18 arrangements? Yes or no.

19 MS. O'BRIEN: I would have to object. I  
20 mean, this is beyond the scope of his expertise. I  
21 mean, he is -- I would say it's even asking for a  
22 legal opinion as to whether or not a Commission --  
23 the Commission has to approve a particular financing.

24 MR. DRESSEL: Your Honor, it's regulatory  
25 opinion that's part of this case. I agree it's not a

1 legal opinion, but Dr. Duann just suggested, if not  
2 outright stated, that Suburban mismanaging its own  
3 funds is its own business. And if the Commission has  
4 a process to prevent the mismanagement of funds,  
5 that's certainly relevant to his testimony.

6 MS. O'BRIEN: And if I could just add  
7 quickly, I think that mischaracterizes Dr. Duann's  
8 testimony.

9 THE WITNESS: Right.

10 EXAMINER PARROT: All right.

11 MS. O'BRIEN: Dr. Duann, don't testify.

12 EXAMINER PARROT: The objection is  
13 overruled.

14 To the extent you are able to answer the  
15 question, Dr. Duann.

16 A. Yeah. I think, first of all, I never  
17 accused Suburban mismanaging. What I am saying if  
18 Suburban mismanaged its, you know, and has its costs  
19 of finding -- financing 10 percent, 15 percent, and  
20 the Commission does not need to let this cost flow  
21 through to customer. That's my point.

22 And regarding your question on whether  
23 the Commission has to approve every -- every  
24 financing arrangement, I'm not really familiar on  
25 that. I think my understanding is I think when you

1 file AIS, the -- the Company will propose some  
2 parameters, you know, amount of short-term borrowing  
3 and long-term borrowing, possible interest rate or  
4 that.

5 And then that was reviewed and -- and  
6 approved. But whether that any individuals, you  
7 know, if the Company want to borrow 100,000 or need  
8 that, I cannot say, but it really don't matter. I  
9 say it is still -- in the end I think the Commission  
10 can approve, can monitor, can impose. In the end it  
11 is the Company's decision, and the Company made the  
12 decision, I don't think the Commission should --  
13 should bail them out, and the Commission should  
14 protect the customer.

15 Q. Dr. Duann, I think everyone in this room  
16 has been clear about their opinions on what the  
17 Commission should or shouldn't do. My question to  
18 you was if Utility A is not able to borrow capital on  
19 terms as favorable as Utility B, Utility A would be  
20 required to have a higher rate of return in order  
21 to -- return on equity, I'm sorry, in order to make  
22 the same margins as Utility B.

23 A. No.

24 Q. Your answer is "no"?

25 A. Yeah. My answer is no.

1 MR. DRESSEL: Thank you for your time,  
2 Dr. Duann. I have no further questions.

3 EXAMINER PARROT: Mr. Eubanks?

4 MR. EUBANKS: I have no questions.

5 EXAMINER PARROT: Any redirect?

6 MS. O'BRIEN: Just briefly a few redirect  
7 questions.

8 - - -

9 REDIRECT EXAMINATION

10 By Ms. O'Brien:

11 Q. Dr. Duann, I would like to refer you back  
12 to what's been marked as Suburban Exhibit 21.

13 A. Yes.

14 Q. And this is the S&P Global Market  
15 Intelligence report.

16 A. Yes.

17 Q. And I would like for you to turn to page  
18 13 and 14.

19 A. Yes.

20 Q. Now, do you see on here a number of gas  
21 utility decisions from Indiana and Illinois and  
22 Michigan and Wisconsin?

23 A. Yes.

24 Q. Are all those states within the midwest?

25 A. Yes.

1 Q. And are all those states in the same  
2 general part of the country as Suburban?

3 A. In the middle west, yeah, you know, yes.

4 Q. Are they all states within the same  
5 general part of the country as Suburban?

6 A. Yeah. They are in the Big 10.

7 Q. Yes. Okay. And just another question,  
8 do you recall what Staff's recommended rate of return  
9 range is for this proceeding?

10 A. I believe the Staff in the Staff Report  
11 recommended ROE of 10.22 percent.

12 Q. Okay. And the rate of return range?

13 A. Oh, the range, sorry.

14 Q. I think I can reference you to your  
15 testimony.

16 A. Yes. I believe it's on page 6 of my  
17 direct testimony which is also the Attachment DJD-1  
18 of my supplemental testimony. The Staff recommended  
19 a range of 6.72 percent to 7.72 percent.

20 Q. Okay.

21 A. That's what the Staff recommended in the  
22 Staff Report. As for the return on equity, I think  
23 staff also recommended range --

24 Q. Well, let me just ask you this, is OCC's  
25 proposed rate of return within Staff's recommended



1 range?

2 A. Yes. The OCC recommended rate of return  
3 is 9.65 percent so that's within the range.

4 MS. O'BRIEN: Okay. Thank you. No  
5 further questions.

6 EXAMINER PARROT: Mr. Dressel?

7 MR. DRESSEL: Briefly, your Honor.

8 - - -

9 RECROSS-EXAMINATION

10 By Mr. Dressel:

11 Q. Dr. Duann, counsel for OCC just asked you  
12 to identify various gas companies contained in the  
13 S&P Global Market Intelligence summary. You never  
14 took an average of just those states that counsel for  
15 OCC identified, right?

16 A. I used the nationwide average.

17 Q. So that's, no, I didn't take an average  
18 of just those states you were just asked about from  
19 this same general part of the country.

20 A. Like Indiana, Illinois, those kind of?

21 Q. Yeah.

22 A. No, because I think it's -- it's not  
23 needed.

24 Q. You were also asked about the Staff  
25 Report's recommended range for rate of return. As

1 you said, that rate of return -- that range of  
2 possible rates of return for proposed in the Staff  
3 Report 6.72 to 7.72, right?

4 A. That's what they recommended in the Staff  
5 Report, yes.

6 Q. And you would agree that the midpoint of  
7 that range is 7.22?

8 A. Yes, yes.

9 Q. And you would agree that the stipulated  
10 rate of return or the proposed rate of return in the  
11 Stipulation is 7.26.

12 A. Yes.

13 Q. That is also within the Staff Report's  
14 range, right?

15 A. Yes.

16 Q. And that is closer to the midpoint of the  
17 Staff Report range than OCC's proposal, right?

18 A. Mathematically, yes.

19 MR. DRESSEL: Thank you. I have no  
20 further questions.

21 EXAMINER PARROT: Mr. Eubanks?

22 MR. EUBANKS: I have no questions.

23 EXAMINER PARROT: All right. Thank you  
24 very much, Mr. Duann.

25 MS. O'BRIEN: Okay. I would like to at

1 this time move for the admission of OCC Exhibit 14.

2 EXAMINER PARROT: Okay. Thank you,  
3 Ms. O'Brien.

4 Any objections?

5 MR. DRESSEL: No objections, your Honor.

6 EXAMINER PARROT: Hearing none, OCC  
7 Exhibit 14 is admitted into the record.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 EXAMINER PARROT: Mr. Dressel.

10 MR. DRESSEL: One moment, your Honor.  
11 Your Honor, we don't wish to move anything into the  
12 record.

13 EXAMINER PARROT: Okay. All right.  
14 Let's go off the record.

15 (Discussion off the record.)

16 EXAMINER PARROT: Let's go back on the  
17 record. We are going to break for the evening. We  
18 will reconvene tomorrow the 9:00 a.m. Thank you.

19 (Thereupon, at 5:06 p.m., the hearing was  
20 adjourned.)

21 - - -

22

23

24

25

CERTIFICATE

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter on Thursday, July 11,  
2019, and carefully compared with my original  
stenographic notes.

\_\_\_\_\_  
Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-6776)

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Summary: Transcript in the matter of the Suburban Natural Gas Company hearing held on 07/11/19 - Volume III electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.