

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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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 litigation 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. OPAE 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 OP&E
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 OPAE, 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, OP&E'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, OP&E 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&E 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&E 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 OPAE 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 OPAE
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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Thursday Afternoon Session,
July 11, 2019.

- - -

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

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

EXAMINER SANYAL: Hello again,
Mr. Willis.

MR. WILLIS: Hello.

(Witness sworn.)

EXAMINER SANYAL: Okay. You may be
seated.

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

EXAMINER SANYAL: Okay.

(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.)

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

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.