

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

In the Matter of the Application of)	
Suburban Natural Gas Company for)	Case No. 18-1206-GA-ATA
Tariff Approval.)	

In the Matter of the Application of)	
Suburban Natural Gas Company for)	Case No. 18-1207-GA-AAM
Approval of Certain Accounting Authority.)	

**INITIAL POST-HEARING BRIEF
OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

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August 2, 2019

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I. Introduction

The evidence of record demonstrates that the Stipulation and Recommendation filed May 23, 2019 in these cases (“Stipulation”, Joint Exhibit 1) fails to meet the requirements of the three-part test used by the Public Utilities Commission of Ohio (“Commission”) to evaluate the reasonableness of stipulations. The Signatory Parties to the Stipulation are Suburban Natural Gas Company (“Suburban”) and the Staff of the Commission (“Staff”). Suburban and the Staff contend that: 1) the Stipulation is a product of serious bargaining among capable, knowledgeable parties, 2) the Stipulation, as a whole, benefits customers and the public interest; and 3) the Stipulation does not violate any important regulatory principle or practice. Jt. Ex. 1 at 13. Thus, the Staff and Suburban contend that the Stipulation satisfies the Commission’s criteria for stipulations.

II. The Stipulation is Not Supported by Parties with Diverse Interests.

Addressing the first part of the test, the Staff’s witness testifying in support of the Stipulation states that “the Stipulation represents a comprehensive compromise of the issues raised by the parties with diverse interests.” Staff Ex. 9, Testimony in Support of the Stipulation of David M. Lipthratt at 8. In fact, the Stipulation merely represents a “comprehensive” compromise between the Staff and Suburban. No other party agreed to the Stipulation. There is clearly a lack of diversity among the Signatory Parties, when no organization representing customers, be they rich or poor, residential or small commercial, is a party to the settlement.

Suburban's witness in support of the Stipulation states that the Stipulation was provided to all parties before it was filed and another settlement meeting was scheduled to determine if common ground could be reached with the other parties, the Office of the Ohio Consumers' Counsel (OCC) and OPAE. Suburban Exhibit 5; Testimony of Andrew J. Sonderman in Support of Stipulation at 16. He states: "Unfortunately, OCC and OPAE called a halt to their participation in the settlement discussions and rejected any further settlement meetings." Id. He further states that all of the issues raised by the parties "were resolved during the settlement negotiations." Id. He continues: "Therefore, the Stipulation represents a balance of the diverse interests presented in this proceeding and is a reasonable compromise of those interests and the issues raised." Id.

Contrary to the statement of Suburban's witness, after the Staff and Suburban had reached their settlement, there was no point in further participation in a settlement process, because the process had substantially concluded. Unfortunately, the Staff's agreement with the utility has the effect of ending the settlement process. The "halt" in the settlement process occurred when Suburban and the Staff came to an agreement. OPAE then recognized that further settlement negotiations would be futile, as the deal was done. OPAE's issues were not 'resolved' in the settlement process; they were ignored and continued to be ignored by the stipulating parties.

III. The Stipulation Provides No Benefit To Ratepayers and the Public Interest.

The second part of the Commission's test is whether the stipulation benefits ratepayers and the public interest. Staff witness Lipthratt cites "key benefits" of the Stipulation. These are the phase-ins to Suburban's rate base of the Del-Mar Pipeline Extension, the updating of customer counts at the time of the phase-ins, Suburban's commitment to file a new base rate application by October 31, 2025, a fixed monthly customer service charge of \$33.84 in the first year, one free meter test every three years for each residential customer, and no fixed monthly customer service charge when a customer uses service for less than eight days during a billing period. Staff Ex. 9; Lipthratt at 9-10.

Suburban witness Sonderman also states that the Stipulation benefits ratepayers and the public interest. He states that the Stipulation results in a reduction of Suburban's request for a rate increase from Suburban's original application. He cites the three phase-ins of the Del-Mar Pipeline Extension and the updates of the customer counts with the phase-ins. He states that the transfer of the pipeline to Suburban's ownership and its inclusion in Suburban's rate base avoid the pipeline's lease payments flowing through the Gas Cost Recovery Rider ("GCR"). He cites the free meter tests for residential customers. He states that Suburban has "agreed to the steps necessary to provide customers with all relief to which they are entitled under the Tax Cuts and Jobs Act of 2017" "TCJA". Suburban Ex. 5; Sonderman at 18, 25.

None of the Stipulation provisions cited by the Staff and Suburban mean that the Stipulation benefits consumers and the public interest so as to pass the second

part of the three-part test. Whether a rate increase occurs via a stipulated settlement or through a litigated proceeding, the impact of the increase is the same. The fact that the Stipulation reduces the revenue requirement and rate increase requested in the original application is no surprise, given the conclusions of the Staff Report of Investigation. The stipulated rate of return was also foreshadowed by the Staff Report. Staff Ex. 1. Likewise, the three-year phase-in to rate base of the Del-Mar pipeline is no benefit if the pipeline was not used and useful at date certain, in which case there should be no phase-in at all.

The issue concerning the pipeline's used-and-useful status, the central factual issue concerning the revenue requirement in these cases, should be resolved by the Commission in its Finding of Facts based on the evidence of record. To the extent the Stipulation avoids the Commission's responsibility to develop factual and legal findings in making this key determination, the Stipulation does not benefit ratepayers and the public interest. Side-stepping the Commission's responsibility to make a determination after a fully-litigated hearing is not beneficial to anyone, nor does it advance the public interest.

The refund to ratepayers for over-payments associated with the TCJA has not been settled by the Stipulation. The refund will be dealt with in a separate proceeding, so the Stipulation provides no benefit to customers in this matter. And the issue, when it is resolved, is a *refund* of ratepayers' money that was *overpaid* by ratepayers to Suburban. To suggest that a return of ratepayers' own funds is a benefit of a stipulation is improper. Suburban has essentially been holding these

funds in escrow for the customer since January 2017. There is no bargain or advantage to the ratepayer when the funds are finally returned.

It is also not a benefit of the Stipulation that Suburban is no longer making lease payments for a pipeline that Suburban now owns and includes in its rate base. Once Suburban owned the pipeline, it obviously no longer made lease payments and no longer passed non-existent lease payments through its GCR.

The free meter tests are a small benefit that do not outweigh the harm of the Stipulation. Likewise, the stipulated provision that customers must have at least nine days of service before having to pay the whole fixed monthly customer service charge does not outweigh the harm of the high fixed monthly charge. If the customer charge was set at a reasonable level it would not need to be waived based on an arbitrary trigger.

IV. The Stipulation Violates Important Regulatory Principles and Policy.

A. Regulatory principles require that obsolete precedents be reversed.

The third part of the test is that the stipulation violates no important regulatory principle or policy. Suburban's witness Sonderman states that the Stipulation fosters regulatory continuity through the continued use of the Straight Fixed Variable ("SFV") rate design. He states that OPAE's arguments against the SFV rate design "are not new and have been repeatedly rejected in cases involving natural gas companies over many years". Suburban Ex. 5 at 25. He also claims that the Stipulation promotes the energy policy of the State of Ohio as set out in Revised Code 4929.02(A)(1) that it is the policy of the State to promote the availability to

consumers of adequate, reliable, and reasonably priced natural gas services and goods. Id. at 26.

Mr. Sonderman refers to past Commission precedent in adopting the SFV rate design as a basis to claim that the Stipulation conforms to the important regulatory principle of “regulatory continuity”. He also believes that regulatory principles are satisfied when a utility provides adequate service. However, if “regulatory principles” are simply another way of enforcing the status quo, the principles are suspect. It is important for the Commission to recognize when conditions have changed so drastically that a reversal of past precedent is necessary to confront new realities.

When the Commission first adopted the SFV rate design over ten years ago, the gas commodity portion of a customer’s natural gas bill was the largest amount of the bill. This is no longer necessarily true. In adopting the SFV rate design, the Commission’s assumption that gas commodity prices and usage would have the biggest influence on the price signal received by customers has turned out to be false. Case No. 07-829-GA-AIR, Opinion and Order at 24 (October 15, 2008). The price of gas commodity is currently both lower and more stable than when the Commission originally adopted the SFV rate design in 2008 rendering the premise on which the Commission based its ruling now incorrect. Instead of gas commodity prices increasing, it is the distribution charge that has skyrocketed and sent a strong price signal to consumers.

Under the Stipulation, all Small General Service (“SGS”) customers will pay the fixed monthly charge for distribution service of \$33.84 per month regardless of

usage. The Commission's assumption in 2008 was that the charge for distribution service was so trivial in relation to the charges for the commodity that the customer would barely notice the high fixed distribution charge. *Id.* But now times have changed. In the summer months, the fixed monthly distribution charge may be the only price a consumer receives. A low-use customer may be so burdened by the high fixed monthly charge that she may be forced to consider leaving the system rather than pay the high fixed charge for a service the customer barely uses.

B. High fixed distribution charges do not reflect actual fixed costs.

In addition to the problem that past precedent is no longer valid and the distribution charge is no longer some trivial sum hardly noticed by customers in relation to commodity charges, the Stipulation ignores the regulatory principles of cost causation and gradualism by adopting a rate design that assigns nearly all the rate increase to low-use customers. The SFV rate design is based on the idea that "fixed" costs should be recovered through fixed charges and all the costs are fixed. In the Stipulation, the entirety of Suburban's distribution charge is the fixed monthly customer charge with no variable component. Funds are recovered irrespective of customer usage.

The SFV concept classifies all costs as "fixed". But this is a fictive classification. The only costs that are truly fixed are interest and depreciation. All other costs – shareholder return, income taxes, labor, and revenue-sensitive costs -- actually vary from month to month with customer usage. The incorrect classification

of costs behind the SFV rate design is used to produce the result of no variable charges. This is a circular justification to eliminate variable charges.

All distribution systems have a Design Day, which is used to plan for system capacity. The Design Day is a function of customer usage. If customers use less, a smaller system could be designed. This is true of the Suburban system, where reductions in heating load for residential and small commercial customers will reduce the capacity needed to safely serve customers. However, those who use more than the average force the system to be larger than it would be otherwise, so, the reality is that higher usage translates into higher costs for all.

C. Regulatory principles of fairness, efficiency, customer understanding, and acceptance cannot be ignored.

In addition, a fixed customer charge of \$33.84 per month for each residential regardless of usage is difficult for customers to understand. Public understanding and acceptance of ratemaking are also fundamental regulatory principles. Customers expect bills to reflect their usage. When customers cannot reduce their bill by using less and becoming more efficient, customers will be confused. Moreover, customers are likely to react negatively to receiving high bills in the summer when they are using little to no natural gas.

The SFV rate design does not recognize the variations in demand customers impose on the distribution system. This distorts the price signal sent to customers because high-demand and low-demand customers are paying the same amount of “fixed” costs though the demand they impose on the system is different.

SFV sends a price signal that promotes additional consumption. The SFV also serves as a disincentive to conservation because investments to reduce usage generate a lower return on investment. Probably the most harmful impact of the Stipulation is the reduction in the cost savings from energy efficiency investments. It is the policy of the State of Ohio to “[e]ncourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods”. Ohio Revised Code 4929.02(A)(4). Establishing high fixed charges sends a price signal that undermines the State policy by undermining investments in efficiency and reducing the potential bill savings and thus the cost-effectiveness of Demand-Side Management (DSM) programs. That is harmful to ratepayers.

It is also counter to State policy as articulated in Ohio Revised Code §4929.02(A)(12): to [p]romote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation. The high fixed charge is the opposite of aligning interests because it establishes a huge barrier to energy efficiency given the diminution of the payback from energy efficiency investments. It also makes conservation almost meaningless; customers are faced with large bills in the summer, when they are using the minimum amount of gas.

There are also significant inequities inherent in the SFV rate design. A SFV rate design significantly assigns the rate increase to the lowest-use customers, as evidenced by the SGS Typical Bill Comparison attached to the Stipulation. (See Schedule E-6 Page 1 of 3 Attached to the Stipulation). Jt. Ex. 1. The SFV rate design proposed by the Stipulation assigns the nearly all of the revenue increase to low-use customers. SGS customers using between 0 and 30 Mcf per month will see

rate increases of 14.97% to 11.53% per month. On the other hand, large-use SGS customers using from 70 to 500 Mcf per month experience rate increases of only 8.57% to 2.51%. (See Schedule E-6 Page 1 of 3 Attached to the Stipulation). Jt. Ex. 1.

There can be no doubt that the SFV rate design harms low-use customers, including most poor households who strive to use less gas but will see no benefit in doing so. This exacerbates the heat or eat dilemma faced by the most vulnerable families. Low-income customers will be driven to turn off gas service and rely instead on electric space heaters instead. OPAE Ex. 1 at 15.

The Stipulation effectively punishes low-use customers with higher bill increases, while high-use customers experience much lower bill increases. It is inequitable when the responsibility for revenue increases is assigned without regard to whether benefits are received by the customer. High-use customers receive more benefits from the system than low-use customers, but it is the low-use customers who bear the burden of the increase, while high-use customers barely notice the increase at all. This inequity violates regulatory principles where those who benefit most from the system should pay in relation to their benefits.

For over a century, utilities have prospered charging volumetric rates. They have recovered a reasonable return on their investment and, as is the situation here, when the recovery is inadequate to cover costs and the return on investment, the utility files a rate case. This is Suburban's first base rate case in over 10 years, so Suburban was clearly recovering adequately without the SFV rate design for a fair number of years.

The Stipulation punishes low-use and low-income households and potentially pushes more customers off the system. It also increases the disincentive to invest in conservation. Finally, it exacerbates the overall inequity of the rate structure and places the interest of the utility in guaranteeing recovery of the revenue requirement over the interest of customers and especially low-use customers who will no longer have control over their distribution bill. Charging all customers the same is inequitable when there are in fact wide variations in usage patterns. Ohio has promoted competition to give customers more control over their energy usage. The SFV rate design counteracts these innovations and gives customers far less control over their usage.

The Settlement would have benefited ratepayers and the public interest if it had reversed the Commission's precedent of approving a rate design that allows a very high fixed monthly service charge for distribution service. This failure to recognize that times have changed is harmful to ratepayers and the public interest.

V. Conclusion and Recommendations

The Commission should recognize the changes in gas markets since the adoption of the SFV rate design and reverse its precedent that the SFV rate design sends the correct price signal to consumers, which it does not. The Commission should also recognize the negative impact the SFV rate design has on energy efficiency programs and consumers' efforts to control their bills. Therefore, the Commission should adopt a rate design that consists of a reasonably low-fixed

charge, with the remaining revenue requirement recovered through volumetric charges.

At the least, in the alternative, the Commission should find that any revenue increase approved in these cases should be recovered through a volumetric charge. Instead of the stipulated fixed monthly customer charge of \$33.84 in the first year, the current fixed charge of \$29.42 should be maintained, and the revenue increase should be recovered through a volumetric charge. The Commission should find that there must be some volumetric component to the distribution charge.

Finally, the Commission should require that Suburban determine the median gas usage amount of its SGS and SG customers. If a customer using 0 to 7 Mcf per month is paying the exact fixed monthly customer charge as a customer using 100 to 500 Mcf per month, average usage figures will only mask the effect of the rate design on most customers. It is necessary to know the median usage of customers so that the Commission is aware of how many low-use customers are experiencing the negative impact of the SFV rate design, and how many high-use customers are benefiting from it.

Respectfully submitted,

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A copy of the foregoing Initial Brief will be served electronically by the Commission's Docketing Division upon the persons identified below who are electronically subscribed to these cases on this 2nd day of August 2019.

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

Summary: Brief electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy