BEFORE THE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTLITIES COMMISSION OF OHIO

August 2, 2019

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I. INTRODUCTION

The Public Utilities Commission of Ohio (Commission) is presented with a Stipulation and Recommendation (Stipulation) that meets the Commission's three-part test for determining a stipulation's reasonableness. It should, therefore, be adopted by this Commission.

II. PROCEDURAL HISTORY

On August 31, 2018, Suburban Natural Gas Company (Suburban) filed its application for an increase in gas distribution rates. On February 6, 2019, Staff filed its Staff Report of Investigation which, in part, deferred its recommendation on whether the Del-Mar Pipeline Extension would be included into base rates.[1] On March 8, 2019, both Ohio Partners for Affordable Energy (OPAE) and Ohio Consumers' Counsel (OCC) (Intervenors) filed objections to the Staff Report. Multiple settlement discussion took place between all of the parties. After settlement discussions, Staff and Suburban entered into a stipulation. On April 23, 2019, the Stipulation was filed with the Commission. This Stipulation resolved many of Intervenors' objections. The hearing took place on May 9, 2019 and July 10-12 and 15, 2019, addressing the remaining objections of the Intervenors.

[1] Staff deferred its recommendation until after the pipeline was placed into service and Staff's investigation of the extension was completed.

III. DISCUSSION

A. The Stipulation meets the Three-Part Test for Reasonableness.

Rule 4901-1-30, O.A.C, authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such agreements are to be accorded substantial weight.[2] The ultimate issue for the Commission's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings.[3] In considering the reasonableness of a stipulation, the Commission has used the following criteria:

> (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
>
> (2) Does the settlement, as a package, benefit ratepayers and the public interest?
>
> (3) Does the settlement package violate any important regulatory principle or practice?

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2 *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St, 3d 123, 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St, 2d 155, (1978).

3 See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Ohio Edison Co.*, Case No. 92-1463-GA-AIR, et al. (August 26, 1993); *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (August 19, 1993); *The Cleveland Electric Illumination Co.*, Case No. 88-170-EL-AIR (January 31, 1989); and *Restatement of Accounts and Records* (Zimmer Plant); Case No, 84-1187-EL-UNC (November 26, 1985).

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve cases.[4] When the Commission reviews a contested stipulation, as is the case here, the Court has also been clear that the requirement of evidentiary support remains operative. While the Commission "may place substantial weight on the terms of a stipulation," it "must determine, from the evidence, what is just and reasonable."[5] The agreement of some parties is no substitute for the procedural protections reinforced by the evidentiary support requirement.[6]

Staff and Suburban respectfully submit that the Stipulation here satisfies the reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

1. Serious Bargaining

The Stipulation is the product of an open process in which all intervenors were given an opportunity to participate.[7] All parties were represented by experienced and competent counsel that have participated in numerous regulatory proceedings before the Commission.[8] There were extensive negotiations among the parties and the Stipulation

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4 Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm., 68 Ohio St. 3d 559 (1994), citing, Consumers' Counsel, supra, at 126.

5 *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992).

6 *In re Application of Columbus S. Power Co*., 129 Ohio St.3d 46.

7 Prefiled testimony of David Lipthratt at 9.

8 *Id*.

represents a comprehensive compromise of the issues raised by parties with diverse interests.[9] Accordingly, the Stipulation is a product of serious bargaining among capable, knowledgeable parties.[10]

2. Public Interest

The Stipulation results in a just and reasonable resolution of the matters pending in these Commission dockets. Included in this reasonable resolution is a multi-year phased in revenue requirement that benefits ratepayers, through a balanced approach by recognizing some of the objections to the Staff Report raised by intervening parties, rejecting some of the objections, and considering alternative approaches.[11] Additionally, the following are some of the key benefits of the Stipulation:

- The phase in of the Del-Mar Extension results in the recognition of consistent customer growth while ensuring existing customers continue to be reliably served;[12]
- As part of the Stipulation customer counts will be updated based on actual bill counts at the time the Del-Mar Extension is phased-in. Consequently the customer charge will be lower than it would have been without the phase-in;[13]

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9 *Id*.

10 *Id*.

11 *Id*.

12 *Id*.

13 *Id*. at 9-10

- The Stipulation requires the Company to file an application to establish new base distribution rates by October 31, 2025 which addresses a longer period of customer growth;[14]
- The phase-in revenue requirement increase for Year 1 is approximately 65 percent less than the Company's request, Year 2 is 54 percent less than the Company's request, and Year 3 and every year thereafter is 47 percent less than the Company's requested revenue requirement;[15]
- The Stipulation results in a fixed charge of $33.84; whereas, the Company's proposed customer charge was $41.86;[16] and
- There are various customer protections, such as the following:
    - One free meter test every three years to each residential customer;[17] and
    - No customer service charge when the days of usage in a billing period for the customer are less than eight day.[18]

[14] *Id*. at 10

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*.

3. Regulatory Principle or Practice

Contrary to intervenor's objections, no provision of the Stipulation violates any regulatory principles or practices. Many of the intervenors' objection have been resolved by the Stipulation. Those objections that remain are without merit.

a. Responses to OCC's Objections 1-3, and 5

The OCC asserts that the rate of return is too high (OCC's Objections 1, 2, and 3) and that any rate increase adopted should be collected through volumetric rates (OCC's Objection 5).

- **(Response to OCC's Objections 1, 2, and 3)**: Staff's rate of return range of 6.97% to 7.47%, calculated taking into account the size of Suburban and some economic uncertainty, is reasonable.[19] Therefore, the rate of return of 7.26% adopted in the Stipulation is reasonable.[20]
- **(Response to OCC's Objection 5 and OPAE's Objection 1)**: The Stipulation's approach of placing the entire increase of all the fixed distribution costs into the fixed charge is consistent with the rate design as approved in Case No. 17-594-GA-ALT.[21]

b. Response to OCC's Objections 8

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19 Joseph Buckley's Prefiled Testimony at 5.

20 Stipulation and Recommendation at 12.

21 Matthew Snider's Prefiled Testimony at 5.

The OCC also asserts that all tax savings from January 1, 2018 until new rates are approved in this case should be returned to customers over a period of one year (Objection 8).

- (**Response to OCC Objection 8**): The timeframe to return the Stub Period balance should be addressed in the TCR case.[22]

c. Responses to OCC's Objections 11-15

OCC has several Objections related to the pipeline and pipeline extension. OCC asserts that the Del-Mar Pipeline Extension is not used and useful (OCC's Objection 13). Therefore the depreciation (OCC's Objection 14) and property tax (OCC's Objection 15) associated with the pipeline extension should not be included in rates. Further, OCC asserts that the Del-Mar Pipeline is leased and not owned (OCC's Objection 11). Therefore, the depreciation (OCC's Objection 14) and property taxes (OCC's Objection 15) associated with the pipeline should not be included in rates. And, if the pipeline is included in rates, the pipeline should not be double recovered through the GCR (OCC's Objection 12).

- **(Response to OCC's Objections 11 and 15)**: Del-Mar Pipeline was acquired by Suburban prior to the date certain, thereby making it eligible to be included in plant-in-service and for its associated property tax expense to be included.[23] Since

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[22] Jonathan Borer's Prefiled Testimony at 3.

[23] Stephanie Gonya's Prefiled Testimony at 2 and Tornain Matthew's Prefiled Testimony at 3-4.

the Del-Mar is now considered to be plant-in-service and no longer leased, the cost of the lease has been removed from the GCR, effective March 1, 2019,[24]

- **(Response to OCC's Objection 13, 15, and 18)**: The Del-Mar Pipeline Extension and its associated property tax expense is appropriately included into base rates because the extension was used and useful to Suburban's current customers at date certain.[25]
- **(Response to OCC's Objection 14)**: The inclusion of the Del-Mar Pipeline Extension into the depreciation calculation is appropriate because the extension is used and useful.[26] Further, based on the Del-Mar pipeline extension phase-in proposal found in the Stipulation, Staff made an adjustment to the depreciation expense, as it is a flow-through calculation from plant-in-service, that will follow the stipulated percentages of 50%, 80% and 100% of plant for the respective three-year phase-in.[27] Staff's adjusted depreciation expense will continue to include the Del-Mar pipeline as annual depreciation expense.[28]

d. Response to OCC's Objections 16

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24 Stephanie Gonya's Prefiled Testimony at 2.

25 *Id*. and Roger Sarver's Prefiled Testimony at 3.

26 Roger Sarver's Prefiled Testimony at 3

27 Carla Swami's Prefiled Testimony at 3-4.

28 *Id*. at 4.

OCC asserts that the executive car expenses in account 875 and the director fees in account 930-03 should not be included in rates (Objection 16).

- **(Response to OCC's Objection 16, regarding car expenses)**: It is proper for the Stipulation to include the executive car expenses in account 875 and the director fees in account 930-03 because these expenses are part of the Company's overall compensation package for its management.[29]

e. Response to OCC's Objections 18

OCC's Objections 11-16 naturally leads to OCC's assertion that the revenue requirement is too high (OCC's Objection 18).

- **(Response to OCC's Objection 18)**: For all the reasons stated in Staff's above responses to OCC's Objections 11-16, the revenue requirement is reasonable. Furthermore, given the components of the Stipulation filed in this case, the revenue requirement is reasonable.[30]

f. Responses to OPAE Objections 1-3

OPAE's Objection 3 is the same as OCC Objection 5 and is responded to above. As for OPAE Objection 1 and 2, Staff responds as follows:

- **(Response to OPAE Objection 1)**: Additional assistance for low-income residential customers should not be addressed in the current distribution rate case.

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29 Matthew Snider's Prefiled Testimony at 6

30 David Lipthratt's Prefiled Testimony at 4.

Rather, Staff believes OPAE should pursue this issue within Suburban's Energy Efficiency Program (EEP) and Rider EEP.[31]

- **(Response to OPAE's Objection 2)**: The $10 field collection charge is not an additional charge to avoid disconnection, but is a processing charge for cash and checks handled in person by a Company field representative and, thus, does not conflict with disconnection rules.[32]

g. Resolved OCC Objections 4, 6, 7, 9, 10, 16 (in part), 17 and OPAE Objection 4

The following concessions and/or clarification reflected in the Stipulation resolved many of OCC's Objections and OPAE's Objection 3 as follows:

- **(Resolved OCC Objection 4)**: Stipulation states that the recommended revenue class allocation for distribution cost shall be based upon actual data as of the date certain.[33]
- **(Resolved OCC Objection 6)**: The Stipulation does not recommend that the field collection charge prevent debit or credit payments to avoid disconnection, nor for the charge to apply to debit or credit payments;[34]

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[31] Matthew Snider's Prefiled Testimony at 7.

[32] Craig Smith's Prefiled Testimony at 4.

[33] Matthew Snider's Prefiled Testimony at 4.

[34] Craig Smith's Prefiled Testimony at 6.

- **(Resolved OCC Objection 7)**: As part of the Stipulation, the Company will file an ATA case as an application not for an increase in rates in order to establish a Tax Credit Rider;[35]
- **(Resolved OCC Objection 9)**: The Stipulation requires the Company to amortize the Non-Normalized EDIT over a period of 10 years;[36]
- **(Resolved OCC Objection 10)**: The Stipulation requires the Company to propose that the TCR be allocated to each rate class based upon the percentage of base distribution revenues, and the credit shall be reflected as a percentage of the customer's base distribution charges.[37]
- **(Resolved OCC Objection 16 in part)**: The Stipulation states that account 912-02 shall be adjusted by $17,710 (business meal adjustments), which shall be excluded from test year expenses;[38]
- **(Resolved OCC Objection 17)**: The Stipulation addresses business meals and the associated flow-through adjustments to the revenue requirement;[39]

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35 Jonathan Borer's Prefiled Testimony at 3.

36 *Id*. at 4.

37 Jonathan Borer's Prefiled Testimony at 4.

38 Matthew Snider's Prefiled Testimony at 6.

39 *Id*. at 16-17.

- **(Resolved OPAE's Objection 4):** The tampering and investigation charge will only be charged when tampering is established;[40]

IV. CONCLUSION

The Stipulation meets all prongs of the three-part test. The Commission should adopt the Stipulation as its order in this case.

Respectfully submitted,

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40 Craig Smith's Prefiled Testimony at 5-6.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Post-Hearing Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio has been served upon the below-named counsel via electronic mail, this 2nd day of August, 2019.

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