

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**INITIAL POST-HEARING BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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August 2, 2019

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Suburban Natural Gas built a 4.9-mile pipeline extension at a cost of \$8.9 million. This case revolves around a fundamental, traditional ratemaking issue: was the pipeline used and useful to serve current customers at date certain, February 28, 2019?

Suburban built the pipeline to address the needs of future customers that might be added to Suburban's system years from now, not current customers. Therefore, it is not used and useful.

The evidence is overwhelming.

Suburban testified that the 4.9-mile extension is big enough to serve not only Suburban's 13,500 current southern system customers, but also an additional 4,000 customers beyond that—and possibly even 20,000 additional customers. Not 20,000 customers total. The current 13,500 customers, plus 20,000 new customers.

Suburban testified that the projected peak load at date certain was 457 mcfh, but the extension is big enough to handle peak capacity of 842 mcfh, nearly double what is

currently needed. In fact, the extension will still be big enough to handle Suburban's projected peak load nine years from now in 2028.

Suburban testified that the minimum pressure for safe and reliable service at the Lazelle Road point of delivery is 100 psig and that every time Suburban tested the pressure during the test year, it was above that 100 psig safe level.

Suburban testified that the extension is big enough to increase pressure at Lazelle Road to over 230 psig—more than double the 100 psig pressure required for safe and reliable service.

Suburban admitted that it could safely and reliably serve its current customers with a much shorter 2-mile pipeline, and possibly even shorter than that.

These facts—undisputed, as they come from Suburban itself—lead to a single conclusion: The 4.9-mile pipeline extension was not built for the needs of current customers. It was built for Suburban's future customers, a decade from now.

Unfortunately for Suburban, the law does not allow the PUCO to look forward a decade and let a utility charge customers *now* for property that *might* be used and useful in the future. It doesn't even allow the PUCO to look forward a week. No—the law (R.C. 4909.15) requires the PUCO to determine whether property is used and useful on a single date and a single date only: the date certain, which in this case was February 28, 2019.

Suburban could safely and reliably serve all of its current customers on date certain without any pipeline extension at all, let alone an \$8.9 million extension nearly 5 miles long. The 4.9-mile pipeline extension was not used and useful on date certain. Suburban cannot lawfully charge customers for that pipeline.

I. Statement of Facts

A. The 4.9-mile Pipeline Extension

Suburban serves customers in two distinct areas, a northern system near Toledo and a southern system near Columbus (the “Southern System”).¹ The Southern System is served by three points of delivery, one of which is located at Lazelle Road on the southern end of Delaware county (“Lazelle Road”).² Pressure at Lazelle Road “needs to be maintained above a minimum of 100 psig.”³ There is a “check valve” at Lazelle Road that allows natural gas to flow from Columbia Gas of Ohio’s system into Suburban’s.⁴ This check valve automatically opens when pressure on Suburban’s system drops to 100 psig or below.⁵

On February 24, 2015, the check valve at Lazelle Road opened when pressure dropped to 100 psig.⁶ Natural gas began to flow from Columbia Gas into Suburban’s system, increasing pressure above the 100 psig safe level; no customers lost service.⁷ Suburban then asked its engineers, Utility Technologies International Corp. (“UTI”), to model the future pressure expected in the Southern System.

UTI ran engineering models to project the future pressure at Lazelle Road.⁸ The goal of UTI’s modeling was to determine whether, under the worst case scenario (the coldest day in the winter with maximum usage) and based on future customer growth, it

¹ Suburban Ex. 5 (Sonderman Testimony) at 2.

² Suburban Ex. 5 (Sonderman Testimony) at 19.

³ Suburban Ex. 4 (Grupenhof Testimony) at 5.

⁴ Suburban Ex. 4 (Grupenhof Testimony) at 5.

⁵ Suburban Ex. 4 (Grupenhof Testimony) at 5.

⁶ Suburban Ex. 5 (Sonderman Testimony) at 22.

⁷ Tr. Vol. II at 270:9-17 (Grupenhof) (check valve opens automatically to allow natural gas to flow into Suburban’s system); OCC Ex. 10 (Suburban not aware of any outages on that date).

⁸ Suburban Ex. 4 (Grupenhof Testimony) at 3.

was likely that the pressure at Lazelle Road would again drop to 100 psig.⁹ Using its model, UTI projected what the expected pressure would be at Lazelle Road during subsequent winter seasons.¹⁰

UTI's most current model, performed on August 31, 2018, included two projections for Lazelle Road. One projection assumed that Suburban would add a 4.9-mile pipeline extension to its current 20-mile Del-Mar pipeline.¹¹ The other projection assumed no pipeline extension.¹²

According to UTI's model, pressure at Lazelle Road was projected to remain above 104 psig, without any pipeline extension, through the entire winter of 2018-2019, that is, through and including the date certain.¹³ This projection proved to be reasonable. Suburban tested the pressure at Lazelle Road throughout January 2019, and Suburban never recorded pressure below 105 psig.¹⁴ Suburban witness Sonderman also confirmed that there were no known outages resulting from low pressure at Lazelle Road during the entire test year.¹⁵

UTI's most recent model did not project pressure dropping below 100 psig at Lazelle Road until winter of 2019-2020, nearly a year after the February 28, 2019 date certain.¹⁶ UTI's model also showed that with a 4.9-mile pipeline extension, the projected

⁹ Suburban Ex. 4 (Grupenhof Testimony) at 3; Suburban Ex. 9 (modeling results, Dec. 2015 – Aug. 2018).

¹⁰ Suburban Ex. 9.

¹¹ Suburban Ex. 9 (columns marked "w/DM").

¹² Suburban Ex. 9 (columns marked "wo/DM").

¹³ Suburban Ex. 9, August 31, 2018 model (pressure of 104.27 psig at Lazelle Road for "2018 EOY"). On cross examination, Suburban witness Grupenhof testified that 2018 EOY means the entire winter of 2018-2019, including the February 28, 2019 date certain. Tr. Vol. II at 302:1-10, 332:25 – 333:18 (Grupenhof).

¹⁴ Suburban Ex. 14.

¹⁵ Tr. Vol. II at 370:7-10 (Sonderman).

¹⁶ Suburban Ex. 9, August 31, 2018 model.

pressure at date certain would be at least 236 psig—more than double the 100 psig of pressure required for safe and reliable service.¹⁷ In addition, UTI calculated the maximum capacity of such a 4.9-mile pipeline extension to be 842 mcfh, which is nearly double the peak hourly capacity of 457 mcfh at date certain, and greater than the projected peak capacity nine years from now in 2028.¹⁸

Suburban witness Grupenhof testified that UTI also modeled a 2.0 mile pipeline extension, though he did not record the results of this model.¹⁹ Mr. Grupenhof confirmed that with a 2.0 mile pipeline extension, the pressure at Lazelle Road was projected to remain above 100 psig throughout the entire winter of 2018-2019.²⁰ This makes sense, given that UTI projected pressure above 100 psig for the entire 2018-2019 period with *no* pipeline extension.²¹

Based on UTI’s modeling and other factors, Suburban decided to build a 4.9-mile extension of its current 12-inch Del-Mar pipeline (the “4.9-mile Pipeline Extension”). On March 2, 2018, Suburban filed a Letter of Notification with the Ohio Power Siting Board (“OPSB”) for approval of the 4.9-mile Pipeline Extension.²² Under the Ohio Revised Code and OPSB rules, Suburban was allowed to gain automatic approval of the extension

¹⁷ Suburban Ex. 9, August 31, 2018 model (again, taking note of Mr. Grupenhof’s testimony that the 2018 EOY column applies to the date certain).

¹⁸ OCC Ex. 5 at 4.

¹⁹ Tr. Vol. II at 287:5-10 (Grupenhof) (stating they UTI ran some modeling with a 2.0 mile pipeline); Suburban Ex. 9 (Suburban producing written modeling results only for the 4.9 mile Pipeline Extension).

²⁰ Tr. Vol. II at 278:21-24 (Grupenhof) (“From our calculations the 2 mile option would have satisfied Suburban’s system at the end of 2018, so they would have been good this winter.”); Tr. Vol. II at 289:5-20 (Grupenhof) (there would be adequate pressure at Lazelle Road in winter 2018-19 with a 2 mile extension).

²¹ Suburban Ex. 9.

²² Suburban Ex. 7.

because the proposed pipeline was less than 5 miles long.²³ If Suburban had proposed a pipeline of 5 miles long or longer, then the OPSB would have been required to make an affirmative ruling approving the application,²⁴ and Suburban would have been subjected to a more onerous and time-consuming review process.²⁵ The 5-mile limit under the OPSB rules and Ohio Revised Code was one of the key factors in Suburban deciding to build a pipeline just short of that limit, one that is 4.9 miles long.²⁶

Following automatic approval by the OPSB, Suburban began building the 4.9-mile Pipeline Extension.²⁷ Suburban did not complete the project in advance of the 2018-2019 winter. Instead, the pipeline went into service February 22, 2019, six days before the February 28, 2019 date certain.²⁸ The PUCO Staff did not independently verify that the pipeline extension was placed into service prior to date certain, instead performing a field inspection several weeks later in March 2019.²⁹

B. The Rate Case Application

Suburban filed its Application³⁰ in this case on August 31, 2018. In that application, Suburban sought to increase customers' rates by \$3.4 million per year.³¹ That \$3.4 million increase included charging customers for the \$8.9 million value of the 4.9-

²³ See R.C. 4906.03(F)(3) (the OPSB "shall adopt rules for an accelerated review of an application for a construction certificate for any of the following: ... (3) A gas pipeline that is not more than five miles in length..."); Ohio Adm. Code 4906-6-10(A) (automatic approval shall occur no later than 90 days after the filing of the letter of notification unless the OPSB Staff recommends suspension of automatic approval).

²⁴ R.C. 4906.10.

²⁵ Tr. Vol. II at 274:20-24 (Gruppenhof).

²⁶ Tr. Vol. II at 274:13-19 (Gruppenhof) (the decision to build at 4.9 miles in length was "primarily based on some of the OPSB rules and the approval and permitting process in order to get the pipeline built").

²⁷ Suburban Ex. 4 (Gruppenhof Testimony) at 7.

²⁸ Suburban Ex. 4 (Gruppenhof Testimony) at 7.

²⁹ Tr. Vol. V at 716:12-15 (Sarver).

³⁰ Suburban Ex. 1.

³¹ Application, Schedule A-1.

mile Pipeline Extension.³² Suburban valued its entire rate base at \$25.9 million in its Application,³³ so the \$8.9 million extension is a substantial (52%) increase to rate base.

C. The Staff Report

The Staff Report³⁴ was issued in this case on February 6, 2019. The Staff Report proposed a more modest annual increase in rates of \$764,000 on the low end and \$1.1 million on the high end.³⁵ The Staff Report included the entire 4.9-mile Pipeline Extension in rate base, consistent with the Application. But because the report was issued before the extension was put into service, the PUCO Staff continued its investigation.³⁶

D. The “Phase In” under the Settlement

The PUCO Staff and Suburban entered into a stipulation and recommendation³⁷ (the “Settlement”) in this case. OCC and Ohio Partners for Affordable Energy (“OPAE”), the only other parties to this case, oppose the Settlement. The Settlement provides, among other things, for a “phase in” of the 4.9-mile Pipeline Extension.³⁸

Under the phase in, 50% of the book value of the 4.9-mile Pipeline Extension, including depreciation and property taxes, will be included in rate base upon PUCO approval of the Settlement.³⁹ An additional 30% will be added one year later, and another 20% on top of that will be added two years after PUCO approval.⁴⁰ In other words, two

³² OCC Ex. 1 (Willis Direct) at 7 (\$8,901,400 value of the extension included in the Application).

³³ Joint Ex. 1, Schedule A-1.

³⁴ Staff Ex. 1.

³⁵ Staff Ex. 1, Schedule A-1.

³⁶ Tr. Vol. V at 716:4-8 (Sarver).

³⁷ Joint Ex. 1.

³⁸ Joint Ex. 1 at 5-6.

³⁹ Joint Ex. 1 at 5.

⁴⁰ Joint Ex. 1 at 6.

years after approval of the Settlement, customers will be paying for the entire 4.9-mile Pipeline Extension, even though it is projected to be big enough to serve customers for at least nine more years.

As a result of the phase in (and the other Settlement provisions), customers' rates would increase three separate times. Upon approval of the Settlement, rates would increase by \$1,168,030 as compared to current rates.⁴¹ Rates would increase by another \$364,248 starting in year 2,⁴² and then another \$246,155 starting in year 3.⁴³

Notably, the Staff Report recommended an increase in the range of \$764,476 to \$1,087,908.⁴⁴ Under the Settlement's phase in, therefore, the increase in the first year (\$1,168,030) is already higher than the high end of the Staff Report. The increases in the second year (\$1,532,278) and third year (\$1,778,433) are substantially higher than the high end of the Staff Report.

If the Settlement is approved without modification, the residential customer charge will be \$33.84 upon approval.⁴⁵ In the second and third phases of the phase in, the customer charge will be recalculated based on the new, higher revenue requirements.⁴⁶ The customer charge will also be based on the number of customers at that time.⁴⁷ Suburban and Staff did not provide any calculations of the expected customer charge in

⁴¹ Joint Ex. 1 at 4.

⁴² Joint Ex. 1 at 4 (\$1,532,278 – \$1,168,030).

⁴³ Joint Ex. 1 at 4 (\$1,778,433 – \$1,168,030).

⁴⁴ Staff Ex. 1, Schedule A-1.

⁴⁵ Staff Ex. 9 (Liphratt Testimony) at 11. Any customer using under 300 Mcf per year is a Small General Service, or SGS customer. *See* Application, Original Sheet No. 6. When referencing the residential customer charge, OCC is referring to the charge that residential SGS customers pay.

⁴⁶ Joint Ex. 1 at 6.

⁴⁷ Joint Ex. 1 at 6 ("Suburban's established revenue requirement for each applicable year shall be allocated to the customers based upon the total number of customers, as evaluated by Staff and as approved by the Commission, at the time the additional book value is added...").

years two and three. Staff witness Lipthratt, however, acknowledged that the charge could be higher than the initial \$33.84 charge.⁴⁸

The following chart summarizes the effects of the phase in:⁴⁹

Timing	4.9-mile Pipeline Extension	Revenue Requirement	Revenue Increase	SGS Customer Charge
Upon Approval of Settlement	50% of value included in rate base	\$19,800,801	\$1,168,030	\$33.84
One Year After Approval	80% of value included in rate base	\$20,165,049	\$1,532,278	Unknown
Two Years After Approval	100% of value included in rate base	\$20,411,204	\$1,778,433	Unknown

E. Opposition to the Settlement

OCC and OPAE filed testimony opposing the Settlement. OCC witness Willis testified that the 4.9-mile Pipeline Extension was not used and useful at date certain because it was built to accommodate thousands of new, future customers, not the 13,500 customers in Suburban's Southern System on date certain.⁵⁰ OCC witness Fortney and OPAE witness Rinebolt testified that the PUCO should not adopt the Settlement's proposed increase to the residential fixed customer charge.⁵¹ And OCC witness Duann recommended adjustments to the Settlement's proposed rate of return.⁵² Based on OCC's testimony, OCC recommended a revenue increase of no more than \$559,668.⁵³

⁴⁸ Tr. Vol. V at 743:5 – 744:5 (Lipthratt).

⁴⁹ Joint Ex. 1 at 4-6.

⁵⁰ OCC Ex. 13 (Willis Supplemental Testimony).

⁵¹ OCC Ex. 12 (Fortney Supplemental Testimony); OPAE Ex. 1 (Rinebolt Testimony).

⁵² OCC Ex. 14 (Duann Supplemental Testimony).

⁵³ OCC Ex. 13 (Willis Supplemental Testimony), WRW Attachment 1, Page 1.

II. Burden of Proof and Standard of Review

The applicant bears the burden of proof in PUCO proceedings.⁵⁴ When there is a stipulation, the signatory parties “bear the burden to support the stipulation” and must “demonstrate that the stipulation is reasonable and satisfies the Commission’s three-part test.”⁵⁵ In base rate cases, “the burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility.”⁵⁶ Because this burden of proof is required by law, Suburban must satisfy it whether or not there is a settlement.

In PUCO proceedings, a settlement is a recommendation that is not legally binding on the PUCO,⁵⁷ and the PUCO has the discretion to give each settlement the weight that the PUCO believes it deserves. The PUCO “may take the stipulation into consideration, but must determine what is just and reasonable from the evidence presented at the hearing.”⁵⁸

In evaluating settlements, the ultimate issue for the PUCO’s consideration is whether the agreement is “reasonable and should be adopted.”⁵⁹ In answering this question, the PUCO has adopted the following three-part test:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit customers and the public interest?

⁵⁴ *In re Application of [FirstEnergy]*, Case No. 18-1604-EL-UNC, Opinion & Order ¶ 106 (July 17, 2019) (“utilities continue to bear the burden of proof for any application submitted for our consideration”).

⁵⁵ *In re Application Seeking Approval of Ohio Power Co.’s Proposal to Enter into an Affiliate Power Purchase Agmt.*, Case No. 14-1693-EL-SSO, Opinion & Order at 18 (Mar. 31, 2016).

⁵⁶ R.C. 4909.18.

⁵⁷ *Duff v. PUCO*, 56 Ohio St.2d 367, 379 (1978); *see also* Ohio Adm. Code 4901-1-30(E).

⁵⁸ *Duff*, 56 Ohio St.2d at 379.

⁵⁹ *See, e.g., In re Application of Columbia Gas of Ohio, Inc. for an Adjustment to Rider IRP & Rider DSM Rates*, Case No. 18-1701-GA-RDR, Opinion & Order ¶ 31 (Apr. 24, 2019).

3. Does the settlement violate any important regulatory principles or practices?⁶⁰

The proposed Settlement in this case does not meet this standard. It does not benefit customers or the public interest, and it violates regulatory principles and practices.

III. The PUCO should reject the Settlement because it does not benefit customers or the public interest.

A. Suburban built the 4.9-mile Pipeline Extension to serve future customers, so it was not used and useful at date certain as required by R.C. 4909.15.

1. **R.C. 4909.15 requires property to be both used and useful. The PUCO must interpret the statute to give meaning to both words.**

R.C. 4909.15 requires the PUCO to determine the value of a utility's property "used and useful as of the date certain" and to set rates based on that value.⁶¹

In construing a statute, the Supreme Court of Ohio has established rules of statutory construction. Prominent among them is the rule that a court or regulatory body may not add or delete words from a statute.⁶² To the contrary, the PUCO "must give effect to all of the statute's words."⁶³ The PUCO has adopted this principle.⁶⁴

Based on this fundamental principle, the PUCO must determine whether Suburban's property is "used," as that term is found in R.C. 4909.15. The PUCO must further determine whether Suburban's property is "useful," as that term is also found in

⁶⁰ *Consumers' Counsel v. PUCO*, 64 Ohio St. 3d 123, 126 (1992).

⁶¹ R.C. 4909.15(A)(1), (B), (E).

⁶² *Indus. Energy Users-Ohio v. Ohio Power Co.*, 140 Ohio St. 3d 509, 515 (2014).

⁶³ *Onderko v. Sierra Lobo, Inc.*, 148 Ohio St. 3d 156, 162 (2016) ("When applying a statute, the court must give effect to all of the statute's words."); *Cleveland Elec. Illum. Co. v. City of Cleveland*, 37 Ohio St. 3d 50, 53 (1988) (there is a "duty ... to give effect to the words used, not to delete words used or to insert words not used").

⁶⁴ *In re Complaint of City of Huron*, Case No. 03-1238-EL-CSS, Entry on Rehearing at 6 (June 28, 2006) ("the rules for statutory interpretation require us to give meaning to all of the words of the statute").

R.C. 4909.15. It is not enough to simply determine that property is used because that would effectively delete the word “useful” from R.C. 4909.15, in violation of Ohio Supreme Court precedent. It is possible for utility property to be used but not useful, and it is possible for utility property to be useful but not used.⁶⁵ Otherwise, the statute would not include both words.⁶⁶

2. Natural gas flowing through a pipeline might make it used, but Suburban must show more to prove that a pipeline is useful.

Suburban’s theory seems to be that because natural gas was flowing through the 4.9-mile Pipeline Extension on the date certain, it was both used *and* useful. Despite being an attorney with more than 40 years of experience in utilities regulation, Suburban President and COO Andrew Sonderman testified that “used” and “useful” have identical meanings, even in everyday English.⁶⁷ In other words, Suburban wants the PUCO to ignore the word “useful” in R.C. 4909.15. Again, however, the statute uses both words. So they cannot mean the same thing. The PUCO must give effect to both words.

To show that the 4.9-mile Pipeline Extension was used, it might be sufficient to show that natural gas was flowing through the pipeline to customers as of the date certain. But to show that it was useful, more is required.

⁶⁵ OCC Ex. 13 (Willis Supplemental Testimony) at 9-10; Tr. Vol. III at 576:21 – 577:2 (Willis).

⁶⁶ See *supra* footnotes 62-64.

⁶⁷ Tr. Vol. II at 354:19 – 355:4 (Sonderman).

Fundamentally, a pipeline is useful to customers at date certain if it allows a utility to serve those customers safely and reliably.⁶⁸ If Suburban could serve its current customers safely and reliably without the 4.9-mile Pipeline Extension, then logic compels the conclusion that the extension was not “useful” to those customers. To the contrary, it would then be superfluous, which is the opposite of useful.

Multiple witnesses testified about the importance of other factors pertaining to the pipeline extension. OCC witness Willis, for example, testified that a pipeline would not be useful if it were built longer than it needed to be.⁶⁹ If a pipeline is longer than necessary, it should be considered plant held for future use, which is not includable in rates.⁷⁰ PUCO witnesses Liphtratt and Sarver testified similarly. On cross examination, Mr. Liphtratt was asked, “in determining whether or not Staff believed that the pipeline was used and useful, you considered whether it was too long or not, correct?”⁷¹ His response: “Exactly.”⁷² Mr. Sarver concurred, testifying that part of the PUCO Staff’s investigation in a natural gas rate case is to determine whether a pipeline is the

⁶⁸ See, e.g., *Public Serv. Commission v. Diamond State*, 468 A.2d 1285, 1290 (Del. 1983) (“General principles of utility law recognize that the “used and useful” standard requires that the plant included in rate base be reasonably necessary to the efficient and reliable provision of utility service to the public.”) (quoting *L.S. Ayres & Co. v. IPALCO*, 169 Ind. App. 652, 681 (Ind. Ct. App. 1976). *Accord Cleveland v. PUCO*, 63 Ohio St. 2d 62, 74 (1980) (in the context of operating expenses, finding that the PUCO must be “cognizant of areas of expense that are not reasonably necessary to provide safe, reliable service to utility customers” so that the PUCO can “ensur[e] that rates increase no more than necessary to maintain a utility’s financial integrity”).

⁶⁹ OCC Ex. 13 (Willis Supplemental Testimony) at 7-12.

⁷⁰ OCC Ex. 13 (Willis Supplemental Testimony) at 7-8 (explaining why the 4.9-mile Pipeline Extension is plant held for future use); *In re Application of Columbus & S. Ohio Elec. Co.*, Case No. 81-1058-EL-AIR, Opinion & Order (“Ohio law does not permit the inclusion of property held for future use in rate base...”).

⁷¹ Tr. Vol. V at 740:3-7 (Liphtratt).

⁷² Tr. Vol. V at 740:3-7 (Liphtratt).

correct length.⁷³ Thus, one factor in determining whether a pipeline is “useful” is whether the pipeline is needed to serve current customers.⁷⁴

Along the same lines, Suburban witness Grupenhof testified that it is important to minimize costs when building a pipeline.⁷⁵ PUCO Staff witness Sarver described the concept of “gold plating,” which is where a utility goes “over the top” or builds a pipeline “much more costly than it would need to be to serve the needs of either the utility or its customers.”⁷⁶ The PUCO Staff also agreed that cost should be minimized in its report in the OPSB case: “The primary negative consequence of installing a pipeline of greater capacity than necessary would be that additional cost would be associated with the additional size increment.”⁷⁷ Thus, another factor when determining the usefulness of plant is whether the utility took steps to minimize the cost of building it.

The PUCO should conclude, as a matter of law, that natural gas flowing through a pipeline to customers is *necessary*, but not *sufficient*, to prove that a pipeline is useful at date certain. To prove that the 4.9-mile Pipeline Extension is useful, Suburban must also show that (i) it is not longer than necessary to serve current customers, and (ii) Suburban minimized the cost to customers. As explained below, Suburban can show neither. The

⁷³ Tr. Vol. V at 725:3-7 (Sarver).

⁷⁴ See, e.g., *In re Application of Ohio Edison Co.*, Case No. 89-1001-EL-AIR, Opinion & Order (Aug. 16, 1990) (stating that PUCO has held “on numerous occasions” that property is not used and useful if it is larger than necessary to serve current customers, even if the utility had no choice but to purchase the entire property as opposed to just the portion that is used and useful); *In re Application of Columbus S. & Columbus Elec. Co.*, Case No. 77-545-EL-AIR, Opinion & Order (Mar. 31, 1978) (property was not used and useful because it was larger than what was required to serve current customers).

⁷⁵ Tr. Vol. II at 263:10-13 (Grupenhof) (“Q. And all else equal, the utility should try to minimize the cost; is that right? A. Yeah. I mean, that’s in everybody’s best interest, I think.”).

⁷⁶ Tr. Vol. V at 718:2-10 (Sarver).

⁷⁷ Suburban Ex. 6, Page 2.

evidence overwhelmingly shows that the pipeline is overbuilt, thus maximizing instead of minimizing the cost to consumers.

3. **The 4.9-mile Pipeline Extension was not useful to current customers on date certain because Suburban built the pipeline to address growth in Suburban’s area that will not occur until years after the date certain.**
 - a. **Suburban’s own projections show that there is no low-pressure concern at the Lazelle Road point of delivery until at least late 2019 or early 2020—after the February 28, 2019 date certain.**

No party disputes that the minimum pressure at Lazelle Road for safe and reliable service is 100 psig. Suburban claims that the primary justification for installing the 4.9-mile Pipeline Extension was to alleviate concerns regarding low pressure at Lazelle Road.⁷⁸ But the evidence shows that no such concerns existed until late 2019 or early 2020—well after the date certain.

Even without *any* pipeline extension, Suburban’s engineer projected pressure at Lazelle Road above 104 psig through the entire winter of 2018-2019, including the February 28, 2019 date certain.⁷⁹ And it bears repeating that Suburban’s engineers were not projecting normal, everyday conditions; they were projecting maximum usage on the coldest day.⁸⁰ Even under these extreme conditions, the engineers expected pressure to remain at safe levels for the entire 2018-2019 winter. Suburban’s engineers did not

⁷⁸ Suburban Ex. 4 (Gruppenhof Direct) at 2-9; Suburban Ex. 5 (Sonderman Direct) at 18, 21-24.

⁷⁹ Suburban Ex. 9 (August 31, 2018 analysis showing pressure of 104.27 for “2018 EOY”); Tr. Vol. II at 302:1-10, 332:25 – 333:7 (Gruppenhof) (Suburban witness Gruppenhof testifying that the “2018 EOY” column includes the entire winter of 2018-2019, which extends past the date certain).

⁸⁰ OCC Ex. 5 at 3 (Suburban describing the model as modeling the “worst case” peak flow expected in its Southern System); Tr. Vol. II at 328:4-7 (Gruppenhof) (stating that the model was “supposed to be designed to figure out what happens in a worst case scenario” with the “highest possible usage”).

project pressure below 100 psig until the winter of 2019-2020, at least 10 months after the date certain.⁸¹

Suburban bears the burden of proving that the 4.9-mile Pipeline Extension was useful as of the date certain, February 28, 2019.⁸² Suburban's own engineering analysis confirms that there were no low pressure concerns at date certain. Thus, the PUCO should reject Suburban's claim that the 4.9-mile Pipeline Extension was needed to address low pressure concerns prior to date certain. On that basis, it should rule that the pipeline extension was not useful at date certain and that customers cannot be required to pay for it.

b. Suburban safely served its customers during winter 2018-2019 without the 4.9-mile Pipeline Extension, even at temperatures below the temperature that UTI used in its modeling.

The prior section discusses Suburban's engineering projections for the winter of 2018-2019. But there is even stronger evidence that the 4.9-mile Pipeline Extension was not needed to address low pressure concerns: Suburban measured the *actual* pressure at Lazelle Road throughout January 2019 and never recorded pressure below 100 psig.⁸³

Suburban's engineering model assumed a temperature of negative 5 degrees to test whether pressure at the Lazelle Road point of delivery would drop below 100 psig.⁸⁴ On January 21, 2019, the recorded temperature at Lazelle Road was even colder—negative 7 degrees—and the pressure never dropped below 110 psig.⁸⁵ Thus, even at a

⁸¹ Suburban Ex. 9 (not showing pressure below 100 psig until winter of 2019-2020). *See also* OCC Ex. 13 (Willis Supplemental Testimony) at 9 (no low pressure concerns as of the date certain).

⁸² *See* section II above.

⁸³ Suburban Ex. 14.

⁸⁴ OCC Ex. 5, page 1.

⁸⁵ Suburban Ex. 14, page 1.

temperature *lower* than the temperature that Suburban's engineers used for their model, Suburban maintained pressure at Lazelle Road 10% *higher* than the safe minimum pressure, *without* the 4.9-mile Pipeline Extension.

Indeed, Suburban made pressure checks at Lazelle Road at various times in January 2019, before the 4.9-mile Pipeline Extension was placed in service.⁸⁶ At no point during any of these pressure checks did Suburban find pressure below 100 psig at Lazelle Road.⁸⁷ These pressure checks confirm that Suburban was able to safely and reliably serve customers during winter 2018-2019 without any pipeline extension.

c. The 4.9-mile Pipeline Extension was designed to serve 4,000 to 20,000 new customers, not the 13,500 customers at date certain.

As of the date certain, Suburban served around 13,500 customers in its Southern System.⁸⁸ Suburban witness Grupenhof, however, testified that the 4.9-mile Pipeline Extension can serve all of those customers, plus thousands more. In his pre-filed testimony, he stated that Suburban could add 4,000 more customers to its Southern System—a 30% increase—and there would still be no low pressure concerns as a result of installing the 4.9-mile Pipeline Extension:

[W]e believed that the Del-Mar Extension would alleviate the potential for low pressures at the Lazelle point of delivery for several more years and could sustain the addition of 4,000 customers. Meaning, Suburban would not experience any potential low-pressure scenarios until 4,000 additional customers were added to the system beyond the winter of 2018-2019.⁸⁹

⁸⁶ See Suburban Ex. 14.

⁸⁷ Suburban Ex. 14.

⁸⁸ Suburban Ex. 5 (Sonderman Testimony) at 2, 20 (13,314 customers as of Sept. 2018, 13,681 as of May 2019).

⁸⁹ Suburban Ex. 4 (Grupenhof Testimony) at 8.

Based on recent growth rates in Suburban's territory, it will take up to 12 years to add that many customers.⁹⁰ As OCC witness Willis explained, this represents an admission by Suburban that the 4.9-mile Pipeline Extension is too big and was built for future customer growth, not current customers.⁹¹

To make matters worse, on cross examination, Mr. Grupenhof stated that the 4,000 number could be considered conservative. If customers are added in the north end of Suburban's Southern System, Mr. Grupenhof testified that the 4.9-mile Pipeline Extension might be big enough for Suburban to add *20,000 new customers*.⁹² In other words, Suburban could more than double its current customer count and still have enough capacity with the 4.9-mile Pipeline Extension.

And indeed, that appears to be precisely where Suburban expects its new customers to be located. Suburban witness Sonderman testified with respect to the southern end of the Southern System that "[m]ost of it is already developed."⁹³ Thus, Mr. Sonderman expects the growth to "continue north."⁹⁴ Mr. Sonderman similarly testified that Suburban is targeting growth near Lewis Center Road, Cheshire Road, and Route 36/37, all of which are at the north end of Suburban's customer base in its Southern System.⁹⁵

⁹⁰ OCC Ex. 1 (Willis Direct Testimony) at 8.

⁹¹ OCC Ex. 13 (Willis Supplemental Testimony) at 11.

⁹² Tr. Vol. II at 274:2-3 (Grupenhof) ("If they are placed at the north end, it could be 20,000.").

⁹³ Tr. Vol. II at 407:2-10 (Sonderman).

⁹⁴ Tr. Vol. II at 407:2-10 (Sonderman). *See also* Tr. Vol. II at 418:16 – 419:3 (Sonderman).

⁹⁵ Tr. Vol. II at 408:21 – 410:11, 418:16 – 419:3 (Sonderman); Suburban Ex. 5, Attachment ALS-1, Page 2 (showing the vast majority of Suburban's service lines in the Southern System south of Lewis Center road, Cheshire Road, and Route 36/37); Tr. Vol. II at 418:16 – 419:3 (Sonderman) (testifying that Suburban's customer base in the Southern System begins around Route 36/37 on the north side of Delaware).

The location of this expected customer growth also undermines Suburban's claim that the 4.9-mile Pipeline Extension is designed to serve current customers. As shown on the map of Suburban's Southern System attached to Mr. Sonderman's testimony, the 4.9-mile Pipeline Extension is located precisely where Suburban expects its customer growth to occur.⁹⁶

A pipeline extension that is so vastly oversized that it enables a utility to substantially increase, and possibly double, its customer base is not useful to the *current* customers. And current customers do not benefit from paying for such an extension.

d. The 4.9-mile Pipeline Extension was designed to accommodate peak capacity in 2028—nearly a decade after the February 28, 2019 date certain in this case.

The 4.9-mile Pipeline Extension was placed into service February 22, 2019.⁹⁷ According to Suburban's engineers, the 4.9-mile Pipeline Extension can handle a maximum capacity of 842 mcfh.⁹⁸ Suburban also calculated that the expected peak load for the pipeline extension would be 457 mcfh when the extension went into service.⁹⁹ In other words, the 4.9-mile Pipeline Extension could handle a peak load of nearly double the maximum capacity at date certain.¹⁰⁰

In fact, Suburban projected peak capacity of 737 mcfh nine years from now, in 2028.¹⁰¹ That means that in nine years, if Suburban continues to add thousands of

⁹⁶ Suburban Ex. 5, Attachment ALS-1, Page 2; Tr. Vol. II at 408:21 – 410:11, 418:16 – 419:3 (Sonderman) (Suburban witness Sonderman testifying that the growth is expected near Lewis Center Road and Cheshire Road, both of which are immediately adjacent to the 4.9-mile Pipeline Extension).

⁹⁷ Suburban Ex. 4 (Gruppenhof Testimony) at 8.

⁹⁸ OCC Ex. 5, page 4 (“[Suburban] calculated the total possible throughput of the new Del-Mar Extension to be ±842 mcfh”).

⁹⁹ OCC Ex. 5, page 4.

¹⁰⁰ Tr. Vol. II at 282:19 – 283 2 (Gruppenhof).

¹⁰¹ OCC Ex. 5, page 4.

customers to its Southern System, the 4.9-mile Pipeline Extension will still be big enough to serve all of those new customers—with a 14% cushion to spare.¹⁰² Suburban witness Grupenhof aptly summarized these numbers: “we’re good for another nine years.”¹⁰³

There is only one way to interpret this evidence: Suburban overbuilt the 4.9-mile Pipeline Extension to handle future customer usage, not current customer usage.¹⁰⁴

e. The 4.9-mile Pipeline Extension was designed to produce over 230 psig of pressure at Lazelle Road—more than double the safe pressure of 100 psig.

Suburban became concerned when the pressure at Lazelle Road dropped to around 100 psig in February 2015 on a cold day (negative 5 degrees).¹⁰⁵ In response to this concern, Suburban built the 4.9-mile Pipeline Extension. As a result of building the pipeline extension, however, Suburban’s model shows pressure of over 230 psig at Lazelle Road during the winter of 2018-2019—more than double the required safe pressure.¹⁰⁶ Shortly after the pipeline was installed, Suburban measured actual pressure at Lazelle Road at more than 250 psig.¹⁰⁷

As explained above, Suburban’s customers were safely served during winter of 2018-2019 without *any* pipeline extension. But even if Suburban was right to be concerned with potential low pressure, it did not need to build a pipeline anywhere near 4.9 miles long. Suburban could have built a much shorter pipeline to achieve pressure at

¹⁰² 842 mcfh – 737 mcfh = 105 mcfh cushion. $105 / 737 = 14.2\%$ cushion.

¹⁰³ Tr. Vol. II at 283:19-20 (Grupenhof).

¹⁰⁴ See OCC Ex. 13 (Willis Supplemental Testimony) at 12 (“Suburban substantially overbuilt the 4.9-mile Del-Mar pipeline extension to provide capacity for customers at least nine more years into the future—not to serve its current customers at date certain.”).

¹⁰⁵ Suburban Ex. 4 (Grupenhof Testimony) at 3; OCC Ex. 5, page 1.

¹⁰⁶ Suburban Ex. 9 at 5 (August 31, 2018 analysis showing pressure of 236.12 as of winter 2018-2019).

¹⁰⁷ Suburban Ex. 4, page 4.

the Lazelle Road point of delivery well in excess of 100 psig.¹⁰⁸ Instead, Suburban unnecessarily built its pipeline to achieve over 230 psig. As OCC expert witness Willis testified, “If safe pressure is 100 psig, then building a system to increase pressure to 230 psig proves that you built a system that is too big to supply current customer demand.”¹⁰⁹ One need not be an engineer to understand that Suburban overbuilt the pipeline well beyond the needs of its current customers.

f. Suburban’s claim that the 4.9-mile Pipeline Extension was needed to address pressure concerns is an after-the-fact attempt to make the pipeline extension seem useful to current customers, even though it isn’t.

As explained above, Suburban has overstated the concerns about low pressure before the date certain. Additional evidence suggests that Suburban built the 4.9-mile Pipeline Extension to increase capacity for future customers, not to address current pressure concerns.

In its application to the Ohio Power Siting Board regarding the 4.9-mile Pipeline Extension, Suburban provided the following explanation of the need for the extension:

4906-6-05(B)(2): Statement of Need for the Proposed Facility

Due to the growing demand for natural gas in homes and businesses in southern Delaware County, SNG is in need of increasing the amount of gas that it can supply to its customers. The current six-inch gas line will not provide enough volume for the amount of growth that is planned. As such, the new 12-inch line is needed to provide additional capacity.¹¹⁰

This statement of need says nothing about a need to increase pressure at the Lazelle Road point of delivery on very cold days. It references only a need for additional capacity. In

¹⁰⁸ See section III.B.2 below.

¹⁰⁹ OCC Ex. 13 (Willis Supplemental Testimony) at 12.

¹¹⁰ Suburban Ex. 7.

its entire 240-page application to the OPSB, Suburban doesn't use the word "pressure" once.¹¹¹

Prior to the Settlement being filed in this case, Suburban consistently declared that the 4.9-mile Pipeline Extension was needed to address future capacity needs, not to address current concerns with low pressure at Lazelle Road:

- The Application says nothing about concerns with low pressure at Lazelle Road.¹¹²
- In his testimony in support of the Application, Mr. Sonderman testified that the extension was necessary to address "robust growth" in Delaware County, not to address concerns with pressure at Lazelle Road.¹¹³
- In its financing application to the PUCO, Suburban stated that the pipeline extension was needed to "maintain the capacity to serve existing customers and add new customers" but never mentions concerns with low pressure.¹¹⁴
- The Staff Report, which contains the results of the PUCO Staff's months-long investigation, says nothing about Suburban identifying concerns with low pressure at Lazelle Road.
- The PUCO Staff found in the OPSB case that the 4.9-mile Pipeline Extension was needed because there was a "need for additional natural gas supply in the area," and the extension "would serve to address this needed capacity."¹¹⁵
- On April 18, 2019, before Mr. Grupenhof filed his testimony in this case, Mr. Sonderman asked Mr. Grupenhof to prepare a memo regarding the need for the 4.9-mile Pipeline Extension.¹¹⁶ In that memo, Mr. Grupenhof provided a few reasons that he believed the extension was needed.¹¹⁷ But

¹¹¹ Suburban Ex. 7.

¹¹² Suburban Ex. 1.

¹¹³ OCC Ex. 1 (Willis Direct) at 7 (citing Mr. Sonderman's initial testimony regarding robust growth).

¹¹⁴ OCC Ex. 8 at 1.

¹¹⁵ Suburban Ex. 6, Page 1-2.

¹¹⁶ Tr. Vol. II at 292:6-10 (Grupenhof).

¹¹⁷ OCC Ex. 7.

again, he never once mentioned a concern about low pressure at Lazelle Road or anywhere else.¹¹⁸

The only time that Suburban mentioned pressure was in response to discovery from Staff in the OPSB case. There, Suburban merely said, “More recent future growth projections added to this model indicated the need for an extension of the existing 12" Del-Mar pipeline to provide sufficient capacity and pressure at the southern end of their system (Lazelle Road).”¹¹⁹ Suburban said nothing about potential catastrophic outages or safety concerns. And it certainly did not take the position that concerns about low pressure were the primary justification for building the 4.9-mile Pipeline Extension.

Suddenly, however, when Mr. Grupenhof and Mr. Sonderman filed their testimony in support of the Settlement on June 7, 2019, the alleged “pressure” concerns took center stage as the predominant if not exclusive justification for the extension, with tales of massive weekslong outages that were never before mentioned.¹²⁰ One would expect that if the 4.9-mile Pipeline Extension were so vital to the health and safety of Suburban’s customers, Suburban would have at least mentioned this in the many times it discussed the pipeline earlier (in its application, in its financing case, in the OPSB case, in Mr. Sonderman’s initial testimony in this case, etc.). Instead, Suburban repeatedly stated only that the extension was needed for additional growth and capacity.

The inference to be drawn is clear. Suburban repeatedly affirmed that the 4.9-mile Pipeline Extension was built to account for the capacity needs of future customers. But then OCC, through its objections and the testimony of Ross Willis, pointed out that

¹¹⁸ OCC Ex. 7.

¹¹⁹ OCC Ex. 5 at 3-4.

¹²⁰ Suburban Ex. 4 (Grupenhof Direct) at 3, 8 (claiming the potential for “catastrophic” consequences multiple times); Suburban Ex. 5 (Sonderman Direct) at 21-23 (repeatedly referring to the potential for “catastrophic” outages resulting from low pressure).

property is not useful at date certain if it is built for future customers as opposed to current customers. So Suburban needed a new plan. That's when the "pressure" concern took over, and the real reason for the 4.9-mile Pipeline Extension (the need for new capacity based on future customer growth) was brushed off as an aside.

The PUCO should not be fooled. Suburban built the 4.9-mile Pipeline Extension primarily to ensure adequate capacity for future customers, not to alleviate concerns regarding pressure for current customers. The 4.9-mile Pipeline Extension might be useful someday if Suburban in fact adds thousands more customers to its Southern System. But it wasn't useful to current customers as of the date certain, and that is the question that the PUCO must answer in this case.

g. The 4.9-mile Pipeline Extension conveniently went into service just six days before date certain.

Suburban claims that it needed the 4.9-mile Pipeline Extension to ensure that customers could be safely served during the winter of 2018-2019.¹²¹ But by the time Suburban actually put the extension into service (February 22, 2019), the 2018-2019 winter was nearly over.

Suburban witness Grupenhof claims that without the pipeline extension, customers would be at risk for a "catastrophic system failure and associated outages."¹²² If this were true, Suburban would have completed the pipeline project before the winter of 2018-2019 to make sure that its customers were safe during the entire 2018-2019 winter season. Suburban did not do this. Instead, the pipeline extension went into service on February 22, 2019—six days before date certain, nearing the *end* of winter 2018-2019.

¹²¹ Suburban Ex. 4 (Grupenhof Testimony) at 2.

¹²² Suburban Ex. 4 (Grupenhof Testimony) at 8.

The timing of the pipeline going into service makes Suburban’s intentions clear. The pipeline extension was not installed for customer safety because customers were safe without it. If Suburban thought it needed a pipeline extension for customer safety, it could have considered building a shorter pipeline to ensure that it would be ready for the beginning of the 2018-2019 winter season. Suburban witness Grupenhof testified that a shorter pipeline could be built faster and could have received even faster approval by the OPSB.¹²³ But Suburban did not consider this, instead opting for a maximum-length 4.9-mile Pipeline Extension.

Suburban’s priorities were (i) increasing the cost of the pipeline, an example of a utility’s capital bias in rate of return ratemaking,¹²⁴ and (ii) making sure that the pipeline extension was in service by date certain so that it could try to charge customers for it. The timing of the 4.9-mile Pipeline Extension going into service had nothing to do with customer safety and everything to do with Suburban trying to maximize revenue from charges to customers.

- h. Suburban decided to build a pipeline that was 4.9 miles long because the Ohio Power Siting Board’s rules allow accelerated treatment only for pipelines under 5 miles—not because Suburban determined that 4.9 miles was the length needed to serve current customers.**

Suburban’s decision to build a 4.9-mile pipeline extension, as opposed to some other length, was dictated by procedural requirements under the Ohio Revised Code and OPSB rules—not by the needs of Suburban’s current customers.

¹²³ Tr. Vol. II at 269:12-16 (Grupenhof) (testifying that a shorter pipeline likely could have been built more quickly); Tr. Vol. II at 276:3-6 (Grupenhof) (testifying that OPSB approval could have been received more quickly for a pipeline shorter than 4.9 miles).

¹²⁴ *Office of Attorney General v. Wash. Utils. & Transp. Commission*, 423 P.3d 861, 871 n. 9 (Wash. Ct. App. 2018) (“It has been widely documented that utilities subject to rate of return regulation have an incentive to over-invest in capital in order to increase earnings.”) (quotation omitted).

Ohio Revised Code 4906.03(F)(3) and OPSB rule 4906-1-01 allow a utility to file an application for accelerated review of a pipeline project only if the pipeline is less than 5 miles long.¹²⁵ If a proposed pipeline is 5 miles long or longer, the utility must file a standard notification application, which requires significantly more information and analysis under the OPSB rules.¹²⁶ Suburban witness Grupenhof testified that the rules for a pipeline 5 miles long or longer were more onerous than a pipeline 4.9 miles or shorter.¹²⁷

In his testimony, Suburban witness Grupenhof stated that Suburban decided that the 4.9-mile Pipeline Extension “would be the best option given costs, regulatory approvals, timeline, and benefit to customers.”¹²⁸ Upon cross examination, it became clear that the decision to build the pipeline at 4.9 miles long, instead of a shorter length, had little to do with Suburban determining that 4.9 miles was the optimal length. Indeed, Suburban witness Grupenhof admitted that there was no *engineering* reason to build a 4.9-mile pipeline extension as opposed to a shorter one, for example 3 or 4 miles.¹²⁹

Suburban knew that any pipeline longer than 5 miles would take longer for regulatory approval, so Suburban built a pipeline just a tiny bit shorter than that—4.9

¹²⁵ R.C. 4906.03(F)(3) (the Ohio Power Siting Board “shall adopt rules to provide for an accelerated review of an application for a construction certificate for any of the following: ... (3) A gas pipeline that is not more than five miles in length...”); Ohio Adm. Code 4906-1-01, Appendix B (allowing expedited review under a letter of notification application instead of a standard notification application for any pipeline greater than 1 mile in length but less than 5 miles in length).

¹²⁶ Compare Ohio Adm. Code Chapter 4906-5 (rules requiring detailed information on the need and schedule, route alternatives, economic impact and public interaction, health and safety, ecological information and permitting requirements, and other information) with Ohio Adm. Code Chapter 4906-6 (allowing substantially less analysis and detail for a pipeline less than 5 miles long).

¹²⁷ Tr. Vol. II at 274:20-24 (Grupenhof).

¹²⁸ Suburban Ex. 4 (Grupenhof Testimony) at 7.

¹²⁹ Tr. Vol. II at 276:24 – 277:8 (Grupenhof).

miles.¹³⁰ In fact, although Suburban and other parties have often referred to the pipeline extension in this case as the “4.9-mile” pipeline, Suburban’s OPSB application describes it as a 4.95-mile pipeline—even closer to the 5-mile limit.¹³¹

Suburban did not seek to minimize the length, and therefore the cost,¹³² of the pipeline extension. It did the opposite. It built the pipeline extension about as long and expensive as it possibly could (4.9 miles and \$8.9 million) while still qualifying for the Ohio Power Siting Board’s accelerated review process.

B. Suburban did not consider potential alternatives to the 4.9-mile Pipeline Extension, which could have been implemented at a lower cost to consumers than the \$8.9 million, 4.9-mile Pipeline Extension.

As explained above, Suburban did not need to take *any* action to safely and reliably serve its current customers at date certain. Pressure was projected to remain above 100 psig during the winter of 2018, and Suburban’s field checks confirmed that pressure in fact remained above 100 psig at Lazelle Road, even during extreme cold spells. The check valve at Lazelle Road automatically allows natural gas to flow into Suburban’s system from Columbia Gas if pressure drops to 100 psig, thus increasing pressure back up above 100 psig.¹³³ Suburban did not need to put the 4.9-mile Pipeline Extension—or any length pipeline extension—into service before the date certain, to be able to safely and reliably serve its customers.

But even if Suburban needed to do *something*, it has fallen well short of proving that the something it needed to do was build a pipeline extension 4.9 miles long. For the

¹³⁰ Tr. Vol. II at 274:13 – 275:16 (Gruppenhof).

¹³¹ Suburban Ex. 7 at 2 (“This is a linear pipeline project approximately 4.95 miles long.”).

¹³² Tr. Vol. II at 263:14-19 (Gruppenhof) (all else equal, a longer pipeline costs more to build).

¹³³ Suburban Ex. 4 (Gruppenhof Testimony) at 5 (“In order to ensure safe and uninterrupted service to heat-sensitive customers, UTI and Suburban installed a check valve to open when the pressure at the Lazelle Road point of delivery falls to approximately 100 psig.”).

PUCO to rule that the 4.9-mile Pipeline Extension is useful, it should be required to find that Suburban considered more appropriate—and less costly—alternatives, so that customers do not pay for Suburban’s gold plating.¹³⁴ Unfortunately for its customers, Suburban did not adequately consider any alternatives.

1. Suburban gave only a cursory glance at pipeline lengths other than 4.9 miles and made no attempt to minimize the length—and therefore the cost—of the pipeline extension.

As an alternative to the 4.9-mile Pipeline Extension, Suburban witness Grupenhof claims that Suburban “looked at pipeline extensions of different lengths.”¹³⁵ Although Mr. Grupenhof uses the word “lengths” in the plural, he in fact meaningfully analyzed only one other length: 2.0 miles.

As Suburban witness Grupenhof explained, “2 miles is the only one we really vetted and ran specific scenarios on and in turn discussed them with Suburban.”¹³⁶ Based on UTI’s analysis of the 2 mile option, Mr. Grupenhof testified, “From our calculations the 2 mile option would have satisfied Suburban’s system at the end of 2018, so they would have been good this winter.”¹³⁷

Mr. Grupenhof testified that UTI may have “very generally” analyzed other lengths, like 1 mile or 3 miles, to “kind of just get a feel” for them.¹³⁸ But those analyses were so superficial that Mr. Grupenhof wasn’t sure if UTI even shared them with

¹³⁴ See section III.A.2 above (witnesses Grupenhof and Sarver testifying about minimizing costs).

¹³⁵ Suburban Ex. 4 (Grupenhof Testimony) at 7.

¹³⁶ Tr. Vol. II at 299:4-6.

¹³⁷ Tr. Vol. II at 278:13-24 (Grupenhof).

¹³⁸ Tr. Vol. II at 299:6-10 (Grupenhof).

Suburban.¹³⁹ As revealed by discovery, the only documentation of any of UTI's analysis related exclusively to the 4.9-mile Pipeline Extension, not any other lengths.¹⁴⁰

More importantly, UTI did not analyze other pipeline lengths to try to minimize costs. As Suburban witness Grupenhof testified, it is "in everybody's best interest" to minimize the costs of building a pipeline.¹⁴¹ Yet UTI made no attempt whatsoever to analyze the minimum length pipeline extension necessary to serve current customers at date certain. In discovery, OCC asked Suburban, "what is the minimum length pipeline extension that would maintain pressure of at least 100 psig at the Lazelle Road point of delivery during the winter of 2018-2019."¹⁴² Suburban responded, simply, "UTI did not calculate a minimum length."¹⁴³

The PUCO Staff also declined to do this analysis. PUCO Staff witness Sarver was asked, "Did you do anything to determine whether a pipeline shorter than 4.9 miles would have been sufficient to maintain pressure at Lazelle Road on date certain."¹⁴⁴ Mr. Sarver succinctly replied, "No."¹⁴⁵ Nor did the PUCO Staff ask UTI to run its model with any additional lengths to try to minimize costs to customers, even though UTI could have run the model with additional lengths.¹⁴⁶

¹³⁹ Tr. Vol. II at 299:6-10 (Grupenhof) ("I believe we very generally ran 1 mile, 3 miles, you know, something like that, probably early on, to kind of just get a feel for what each situation would give us; but, you know, we didn't formally maybe even give that to Suburban.").

¹⁴⁰ Suburban Ex. 9. Tr. Vol. II at 309:4-8 (Grupenhof) (4.9-miles used "for all of the modeling results").

¹⁴¹ Tr. Vol. II at 263:10-13 (Grupenhof).

¹⁴² OCC Ex. 6.

¹⁴³ OCC Ex. 6.

¹⁴⁴ Tr. Vol. V at 732:6-10 (Sarver).

¹⁴⁵ *Id.*

¹⁴⁶ Tr. Vol V at 733:9-13 (Sarver) ("Q. And as part of Staff's investigation, did you ask UTI, since you were relying on them to run different scenarios on different lengths, to determine what the appropriate length would be? A. No."); Tr. Vol. II at 285:16-21 (Grupenhof).

A critical question in this case is whether Suburban needed to build a pipeline extension, and if so, how long that pipeline extension needed to be. Yet the parties to the Settlement (Suburban and the PUCO Staff) made no attempt to determine the proper length of the pipeline extension. Suburban decided on 4.9 miles because that was the most expensive pipeline it could build under the OPSB's accelerated approval rules, and the PUCO Staff relied entirely on Suburban.

2. Suburban safely served its customers in the winter of 2018-2019 with *no* pipeline extension, so it certainly could have served them safely with an extension much shorter than 4.9 miles.

As explained in detail above, Suburban served its customers without any pipeline extension at all for almost the entire winter of 2018-2019—all of December, all of January, and the first three weeks of February. At no point during that period did pressure at Lazelle Road drop below 100 psig, and at no point during that period did any customers experience an outage as a result of low pressure at Lazelle Road.¹⁴⁷ Thus, the PUCO should find that no pipeline extension was necessary on February 28, 2019, the date certain.

But even if the PUCO agrees that *some* length of pipeline was necessary on February 28, 2019, Suburban has not come close to proving that 4.9 miles was necessary. To the contrary, Suburban's engineer admitted that Suburban could have safely served its customers during the winter of 2018-2019 with a much shorter 2-mile pipeline:

Q [Mr. Healey]. So the 2 mile pipeline you felt would have been sufficient at the year end 2018 based on your analysis of customers at that time?

¹⁴⁷ Tr. Vol. II at 370:7-10 (Sonderman) (Suburban not aware of any outages during the test year).

A. [Mr. Grupenhof]. Yes. From our calculations the 2 mile option would have satisfied Suburban's system at the end of 2018, so they would have been good this winter.¹⁴⁸

...

Q [Mr. Healey]. You are not testifying that there was a need for the full 4.9 miles to address the pressure concerns of the dead end pressure checks, correct?

A [Mr. Grupenhof]. Yeah. Again, like I said before, we could have built 2 miles in 2018, and the pressure could have been high enough in the winter of 2018-2019....¹⁴⁹

This does not mean that Suburban has proven that there was a need for a 2-mile pipeline. It means only that Suburban admits that anything in excess of 2 miles was excessive and therefore not useful at date certain.¹⁵⁰

Suburban's engineer confirmed that he could have easily tested any length pipeline to determine whether the pressure would remain adequate at Lazelle Road.¹⁵¹ He chose not to, instead opting to analyze the 4.9-mile Pipeline Extension, with a passing look at a 2 mile pipeline.¹⁵²

Suburban should have analyzed different length pipelines to determine how short the pipeline could be while still serving customers as of date certain. Failing to do that analysis, Suburban therefore made no effort to minimize the cost to customers of the pipeline extension project. And without that analysis, the PUCO has no choice but to find that Suburban has failed to meet its burden of proving that any portion of the 4.9-mile

¹⁴⁸ Tr. Vol. II at 278:13-24 (Grupenhof). *See also* Tr. Vol. II at 287:16-17 (Grupenhof) ("the 2 miles seemed to work for 2018").

¹⁴⁹ Tr. Vol. II at 331:2-10 (Grupenhof).

¹⁵⁰ Just as the 4.9-mile Pipeline Extension is too long, so would be a 2.0-mile pipeline extension, given that customers were safely and reliably served with zero pipeline extension.

¹⁵¹ Tr. Vol. II at 285:16-21 (Grupenhof).

¹⁵² *See* section III.B.1 above.

Pipeline Extension was useful to serve Suburban's customers on date certain. Any other finding lacks record support.

C. Including the 4.9-mile Pipeline Extension in rate base will result in unjust and unreasonable rates under R.C. 4905.22 because the extension was not useful as of date certain.

R.C. 4905.22 requires all utility rates to be just and reasonable. The Settlement includes 50% of the value of the 4.9-mile Pipeline Extension in rate base in year one of the Settlement's phase-in. As OCC witness Willis testified, including this 50% increases rates by at least \$543,000 per year.¹⁵³ Suburban witness Sonderman similarly admitted that the phase in would increase rates compared to OCC's recommendation to exclude the 4.9-mile Pipeline Extension from rate base.¹⁵⁴

For all the reasons described above, the 4.9-mile Pipeline Extension was not useful at date certain. Thus, including it in rate base would unjustly and unreasonably increase rates by at least \$543,000 in the first year. Rates will increase further in years two and three under the Settlement, which makes those rates even more unjust and more unreasonable.¹⁵⁵

This violates R.C. 4905.22. The Settlement thus harms customers and is therefore unlawful and cannot be approved.

¹⁵³ OCC Ex. 13 (Willis Supplemental Testimony) at 6.

¹⁵⁴ Tr. Vol. II at 414:19-22 (Sonderman).

¹⁵⁵ Joint Ex. 1 at 6.

D. To benefit customers and the public interest, the PUCO should modify its prior position on straight fixed variable rate design and order that any rate increase in this case be effected through a variable charge.

The Settlement allows Suburban to continue using the full straight fixed variable (“SFV”) rate design for residential customers.¹⁵⁶ Suburban’s entire rate increase will be placed in a monthly fixed charge initially set at \$33.84, which residential customers will pay even when they use no gas at all.¹⁵⁷ While the PUCO has approved the SFV rate design for natural gas distribution utilities, it should now modify its policy and place any rate increase for Suburban in a volumetric rate.¹⁵⁸

As OCC witness Fortney testified, the conditions that the PUCO relied on concerning the natural gas industry have changed dramatically since the PUCO first adopted the SFV rate design policy over ten years ago.¹⁵⁹ Significantly, the price of natural gas has dropped by almost 50%, and the industry is no longer characterized by the volatile and sustained price increases that once incentivized customers to conserve gas.¹⁶⁰ As a result, Mr. Fortney explained that placing Suburban’s entire rate increase in the monthly residential fixed charge sends improper price signals to customers and discourages energy efficiency.¹⁶¹ A high monthly fixed charge also disproportionately affects low-usage residential customers because the monthly fixed charge will represent a

¹⁵⁶ OCC Ex. 12 (Fortney Supplemental Testimony) at 4.

¹⁵⁷ OCC Ex. 12 (Fortney Supplemental Testimony) at 5.

¹⁵⁸ OCC Ex. 12 (Fortney Supplemental Testimony) at 12.

¹⁵⁹ OCC Ex. 12 (Fortney Supplemental Testimony) at 7.

¹⁶⁰ OCC Ex. 12 (Fortney Supplemental Testimony) at 7.

¹⁶¹ OCC Ex. 12 (Fortney Supplemental Testimony) at 9-10.

higher percentage of their bills.¹⁶² For these reasons, the PUCO should reject the full SFV rate design proposed in the Settlement.

Instead, Suburban should maintain its current monthly fixed charge, and any rate increase (not the entire revenue requirement) should be charged on a volumetric basis. This will keep the incentive for Suburban to promote energy conservation and at the same time moderate the rate increase to those low usage customers.

E. To benefit customers and the public interest, the PUCO should adopt a reasonable rate of return of 6.95%.

The PUCO should reject the Settlement's proposed rate of return of 7.26% because it is based on PUCO Staff's flawed analysis and will force customers to pay unreasonable rates. The PUCO should instead adopt a rate of return no higher than 6.95%.

As OCC witness Dr. Daniel Duann testified, the Settlement's proposed 7.26% rate of return is the result of PUCO Staff's unreasonable use of a 20-year average of the returns on equity granted for United States gas distribution utilities with rate bases under \$100 million.¹⁶³ But this methodology, which PUCO Staff has never before used, is not a valid indicator of the current cost of common equity for Suburban.¹⁶⁴ Dr. Duann also explained that there is no basis for \$100 million rate base "size premium" used in the Staff Report and adopted by the Settlement.¹⁶⁵ The Settlement's methodology also violates the established regulatory principle of setting rates based on current market

¹⁶² OCC Ex. 12 (Fortney Supplemental Testimony) at 10.

¹⁶³ OCC Ex. 14 (Duann Supplemental Testimony), Attachment DJD-1 at 7.

¹⁶⁴ OCC Ex. 14 (Duann Supplemental Testimony), Attachment DJD-1 at 7-10.

¹⁶⁵ OCC Ex. 14 (Duann Supplemental Testimony), Attachment DJD-1 at 10.

conditions and business and financial risks facing regulated utilities.¹⁶⁶ By contrast, OCC's proposed rate of return of 6.95% is based on the average of returns on equity granted to gas distribution utilities nationwide in 2018.¹⁶⁷

Adopting the Settlement's proposed ROR of 7.26% would result in customers paying more for gas service than what is just and reasonable. Dr. Duann testified that under the Settlement, customers would be forced to pay approximately \$277,220 more over the initial three-year period, and approximately \$679,704 more over a seven-year period.¹⁶⁸ The PUCO should protect customers from these unreasonable rates by modifying the Settlement and adopting OCC's proposed 6.95% rate of return.

IV. The PUCO should reject the Settlement because it violates regulatory principles and practices.

A. The PUCO lacks legal authority to “phase in” plant after the date certain.

As the Supreme Court of Ohio has repeatedly emphasized, the PUCO is a “creature of statute” that “may exercise only that jurisdiction conferred upon it by the General Assembly.”¹⁶⁹ As such, it must follow the “mandatory ratemaking formula under R.C. 4909.15.”¹⁷⁰ Under this mandatory formula, the PUCO must determine the value of the utility's property that is “used and useful ... as of the date certain, in rendering the

¹⁶⁶ OCC Ex. 14 (Duann Supplemental Testimony) at 7-8, Attachment DJD-1 at 8-9.

¹⁶⁷ OCC Ex. 14 (Duann Supplemental Testimony), Attachment DJD-1 at 13.

¹⁶⁸ OCC Ex. 14 (Duann Supplemental Testimony) at 5-6, Attachment DJD-2.

¹⁶⁹ See, e.g., *Columbus S. Power Co. v. PUCO*, 67 Ohio St. 3d 535, 537 (1993).

¹⁷⁰ *Id.*

public utility service for which rates are to be fixed and determined”¹⁷¹ and set rates based on that value.¹⁷²

The Supreme Court of Ohio has ruled that R.C. 4909.15 prohibits the PUCO from phasing in a revenue increase. In *Columbus Southern Power Co. v. PUCO*,¹⁷³ the court analyzed the plain language of R.C. 4909.15 and ruled that any authority to phase in rates would need to be explicitly stated in the statute:

[C]onsidering the detail with which the General Assembly has legislated in this area, we find if it had intended to grant the PUCO authority to phase in a utility’s annual revenue increase, it would have specifically provided such a mechanism.¹⁷⁴

This ruling is consistent with basic principles of statutory interpretation. As the United States Supreme Court has found, when the legislature “includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that [the legislature] acts intentionally and purposely in the disparate inclusion or exclusion.”¹⁷⁵

The Ohio General Assembly has demonstrated that when it wants the PUCO to be able to phase in rates, it knows how to say so. R.C. 4928.144, for example, explicitly allows the PUCO to approve a phase in under an electric security plan.¹⁷⁶ If the General

¹⁷¹ R.C. 4909.15(A)(1).

¹⁷² R.C. 4909.15(B), (E).

¹⁷³ 67 Ohio St. 3d 535 (1993).

¹⁷⁴ *Columbus Southern*, 67 Ohio St. 3d at 540.

¹⁷⁵ *Russello v. United States*, 464 U.S. 16, 23 (1983). See also *Okubo v. Shimizu*, 2002-Ohio-2624 (Ohio Ct. App. 2002) (quoting *Russello*); *Indus. Energy Users-Ohio v. Ohio Power Co.*, 140 Ohio St. 3d 509, 515 (2014) (“In construing a statute, a court may not add or delete words.”).

¹⁷⁶ R.C. 4928.144 (the PUCO “by order may authorize any just and reasonable phase-in of any electric distribution utility rate or price established under sections 4928.141 to 4928.143 of the Revised Code ... as the commission considers necessary to ensure rate or price stability for consumers”).

Assembly wanted the PUCO to be able to phase in base rates under R.C. 4909.15, it would have included language similar to that found in R.C. 4928.144.¹⁷⁷ It chose not to.

As OCC witness Willis explained, by “phasing in” rates over a period of three years, the Settlement effectively creates three different dates certain: the actual date certain of February 28, 2019, and two artificial future dates certain, one a year after approval of the Settlement, and one 2 years after approval of the Settlement.¹⁷⁸ On the actual date certain (February 28, 2019), the utility’s property is valued at \$21,155,890 under the Settlement, which includes 50% of the value of the 4.9-mile Pipeline Extension.¹⁷⁹ On the second and artificial date certain, the utility’s property is increased in value by adding an additional 30% of the value of the 4.9-mile Pipeline Extension.¹⁸⁰ This increases Suburban’s rates by \$364,248.¹⁸¹ And on the third and also artificial date certain, the utility’s property is increased in value by adding an additional 20% of the value of the 4.9-mile Pipeline Extension.¹⁸² This increases Suburban’s rates by another \$246,155.¹⁸³

Under the plain language of R.C. 4909.15 and binding precedent of the Ohio Supreme Court under *Columbus Southern*, the phase in is unlawful. Thus, the phase in violates the third prong of the PUCO’s test for settlements, and the Settlement cannot be approved.

¹⁷⁷ See *Russello*, 464 U.S. at 23.

¹⁷⁸ Joint Ex. 1 at 4; OCC Ex. 13 (Willis Supplemental Testimony) at 15 (explaining how the Settlement’s phase in proposal would result in a future, artificial date certain).

¹⁷⁹ Joint Ex. 1 at 6 (50% of current book value of 4.9-mile Pipeline Extension included in rate base on the first date certain); Schedule A (plant in service amount on first date certain).

¹⁸⁰ Joint Ex. 1 at 6.

¹⁸¹ Joint Ex. 1 at 4 (\$1,532,278 revenue requirement for year 2 minus \$1,168,030 for year 1).

¹⁸² Joint Ex. 1 at 6.

¹⁸³ Joint Ex. 1 at 4 (\$1,778,433 revenue requirement for year 3 minus \$1,532,278 for year 2).

B. The Settlement will result in unjust and unreasonable rates for consumers, which violates R.C. 4905.22.

R.C. 4905.22 requires all rates to be just and reasonable. As a result of including the 4.9-mile Pipeline Extension in rates, as well as the unreasonably high rate of return, the Settlement proposes a rate increase of \$1,168,030 in year 1, \$1,532,278 in year 2, and \$1,778,433 in year 3. The Staff Report recommended an increase in the range of \$764,476 to \$1,087,908.¹⁸⁴ Under the Settlement's phase in, therefore, the increase in the first year is already higher than the high end of the Staff Report. As OCC has demonstrated, the maximum rate increase should be \$559,668.¹⁸⁵ Additionally, the adoption of the rate of return of 7.26% proposed in the Settlement will unreasonably inflate (by approximately \$277,220) the rate increase, and consequently, the rates of gas distribution service to be paid by Suburban's customers.¹⁸⁶

Thus, the Settlement's proposed rates for consumers are unjust and unreasonable, which violates R.C. 4905.22 and an important regulatory principle. The Settlement fails the PUCO's three-part test because it neither benefits customers nor the public interest and violates regulatory principles and practices. Therefore, the PUCO should reject the Settlement in this case.

V. Conclusion

Suburban expects to add thousands of customers to its system over the next decade, and it built a 4.9-mile Pipeline Extension to serve those customers. But Suburban doesn't want to wait before charging customers for the \$8.9 million pipeline cost. Instead,

¹⁸⁴ Staff Ex. 1, Schedule A-1.

¹⁸⁵ OCC Ex. 13 (Willis Supplemental Testimony), Attachment WRW 1.

¹⁸⁶ OCC Ex. 14 (Duann Supplemental Testimony) at 5.

Suburban wants to charge its current customers for the pipeline, even though the current customers don't need it.

The law does not allow this.

R.C. 4909.15 allows Suburban to charge customers only for property that is used and useful on the date certain, February 28, 2019. Not March 1, 2019, not December 31, 2019, not a decade from now, and not any other date other than February 28, 2019.

Everything about the pipeline demonstrates that it was built for the future, not for the date certain. It can handle the addition of thousands of new customers. It can handle projected peak loads nine years from now. It provides pressure at Lazelle Road more than double what is needed for safe and reliable service to current customers. It is 4.9 miles long, even though Suburban's engineer admitted that a much shorter pipeline is adequate for current needs.

The PUCO should find that the 4.9-mile Pipeline was not useful to customers under R.C. 4909.15 and thus, that customers cannot pay for it. Accordingly, the Settlement does not benefit customers and violates regulatory principles and practices. The PUCO should rule that the Settlement does not pass the PUCO's three-prong test for settlements.

The PUCO should rule that the entire 4.9-mile Pipeline Extension is excluded from rate base and that rates should be set in accordance with OCC's recommended rate increase of no more than \$559,668.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Initial Post-Hearing Brief was served by electronic transmission upon the parties below this 2nd day of August 2019.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/2/2019 4:19:00 PM

in

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

Summary: Brief Initial Post-Hearing Brief by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.