

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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|--|-------|-------------------------|
| 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 |) | |
| 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 OF
SUBURBAN NATURAL GAS COMPANY**

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I. INTRODUCTION

In this proceeding, Suburban Natural Gas Company (Suburban) and the Staff of the Public Utilities Commission of Ohio (Commission) reached a just and reasonable comprehensive settlement of the issues regarding Suburban's application for an increase in distribution base rates. The Stipulation and Recommendation (Stipulation), filed in this proceeding on May 23, 2019, allows Suburban to implement a necessary base rate increase while also providing several benefits to customers, including a reduction in charges to customers through the Gas Cost Recovery Rider, a phase-in of a used and useful pipeline extension, recalculation of the customer charge upon the addition of new customers, assurances that customers will receive the benefit of tax savings including carrying charges, and other benefits.

This proceeding presented a number of complicated issues related to the rates established for Suburban's provision of natural gas service to its customers. The Stipulation before the Commission resolves these issues fairly, reasonably, and comprehensively. It is a compromise that not only reflects significant concessions by Suburban and Staff, but also incorporates positions taken by the parties contesting the Stipulation through their objections.¹ In doing so, the Stipulation proposes rates that are just and reasonable for both Suburban and its customers.

The record developed at hearing supports the Commission's adoption of the Stipulation in its entirety because it is just and reasonable, benefits customers, and is in the public interest. Pursuant to the briefing schedule established on the final day of hearing,² Suburban submits the following brief in support of the adoption of the Stipulation.

¹ For example, see Staff Ex. 10 at 4, 6-7 (Snider Direct); Staff Ex. 2 at 3-4 (Borer Direct).

² See Tr. Vol. V at 771.

II. FACTS AND PROCEDURAL HISTORY

Suburban is a natural gas company as defined in R.C. 4905.03(E) and is, therefore, a public utility subject to the jurisdiction of the Commission. Suburban serves nearly 18,000 customers between its northern and southern systems.³ Suburban is a family-owned Ohio corporation with operations centers in Cygnet, Ohio and on Troutman Road in Delaware County and a headquarters, operations, and customer service center in Lewis Center, Ohio.⁴

Suburban operates over 484 miles of gas mains, less than 22 miles of which is bare steel (and being replaced at the rate of no less than one mile annually), 112 miles of cathodically protected steel, and 349 miles of plastic, distributing natural gas through its northern system in Lucas, Wood, and Henry Counties, and through its southern system in Delaware and Marion Counties.⁵ As of February 22, 2019, Suburban completed, tested, and placed into service an additional 4.9 miles of 12-inch high pressure pipeline from the current terminus of the pre-existing 20-mile 12-inch high pressure DEL-MAR pipeline, which Suburban has operated under a Commission-approved lease arrangement with DEL-MAR Pipeline, LLC until the merger of DEL-MAR Pipeline Company, Inc. (successor to DEL-MAR Pipeline, LLC) on February 28, 2019. This extension is essential due to the robust growth Suburban has already experienced in Delaware County since the completion of the original 20 miles of 12-inch pipeline in 2005, and the continuing robust growth that Suburban is experiencing in Delaware County.

Suburban filed its Application for an Increase in Rates and Charges, for Tariff Approval, and for Approval of Certain Accounting Authority on August 31, 2018 (Application) pursuant to

³ See Suburban Ex. 5 at 1-2 (Sonderman Supplemental Direct).

⁴ Id.

⁵ See Suburban Ex. 5 at Attachment AJS-1 (Sonderman Supplemental Direct).

R.C. 4909.18.⁶ On September 5, 2018, the Commission adopted Suburban's requested test period of March 1, 2018 through February 28, 2019 and date certain of February 28, 2019, while also granting Suburban's request for waiver of certain filing requirements.⁷ On September 19, 2018, Suburban filed a second waiver request,⁸ which was granted on October 10, 2018.⁹ On October 24, 2018, the Commission issued an Entry accepting Suburban's application for an increase in rates and its proposed publication notice.¹⁰ Suburban satisfied its obligations under R.C. 4909.19(A) to publish notice of its application for an increase in rates in newspapers in circulation in Suburban's service territory.¹¹

The Office of the Ohio Consumers' Counsel (OCC) and the Ohio Partners for Affordable Energy (OPAE) intervened on August 30, 2018 and September 7, 2018, respectively. The Commission accepted Suburban's Application as of the August 31, 2018 filing date by Entry dated October 24, 2018. Staff filed its Staff Report of Investigation (Staff Report) in the above-captioned proceeding on February 6, 2019.¹² A procedural schedule was established on February 8, 2019.¹³

⁶ See its Application for an Increase in Rates and Charges, for Tariff Approval, and for Approval of Certain Accounting Authority (August 31, 2018) (Application).

⁷ Entry at ¶¶ 9-11 (September 5, 2018).

⁸ Motion of Suburban Natural Gas Company for a Waiver of a Standard Filing Requirement (September 19, 2018).

⁹ Entry at ¶ 11 (October 10, 2018).

¹⁰ See Entry at ¶¶ 13-14 (October 24, 2018).

¹¹ See Suburban Ex. 11.

¹² Staff Report (February 6, 2019).

¹³ See Entry (February 8, 2019).

On March 8, 2019, the parties submitted their objections to the Staff Report.¹⁴ After objections were submitted, several settlement meetings took place, which all parties were invited to attend.¹⁵ As settlement discussions continued, the first day of hearing was held on May 9, 2019 to take the testimony of one OCC witness who was unavailable on the scheduled hearing dates.¹⁶ Following several additional settlement meetings, Suburban and Staff filed the Stipulation, which is a comprehensive proposal to resolve all matters, including objections to the Staff Report.¹⁷ Proposed Tariffs consistent with the Stipulation were filed on May 31, 2019.¹⁸ Suburban and Staff filed testimony in support of the Stipulation on June 7, 2019. OCC and OPAE filed testimony opposing the Stipulation on June 21, 2019. A hearing on the Stipulation was held from July 10-15, 2019.¹⁹

At the conclusion of the hearing, the Attorney Examiners set a briefing schedule, with initial briefs due on August 2, 2019 and reply briefs due on August 16, 2019.²⁰

III. LEGAL STANDARD

Under R.C. 4909.18 and 4909.19(C), the applicant bears the burden of proof in a proceeding before the Commission to demonstrate that an increase in rates is just and

¹⁴ See Objections to the Staff Report by Suburban Natural Gas Company (March 8, 2019) (Suburban Objections); Objections to the PUCO Staff's Report of Investigation by the Office of the Ohio Consumers' Counsel (March 8, 2019) (OCC Objections); Ohio Partners for Affordable Energy's Objections to the Staff Report and Summary of Major Issues (March 8, 2019) (OPAE Objections).

¹⁵ Tr. Vol. X at X

¹⁶ See Tr. Vol. I.

¹⁷ Suburban Ex. 5 at 4 (Sonderman Supplemental Direct); see also Tr. Vol. III at 450, 455 (OCC Witness Fortney testifying that the cost allocation issues and issues with availability of methods to avoid disconnection that OCC raised were resolved by the Stipulation).

¹⁸ See Joint Ex. 2.

¹⁹ See Tr. Vol. II-V.

²⁰ Tr. Vol. V at 771.

reasonable.²¹ Under Ohio Adm. Code 4901-1-30(A), any two or more parties to a proceeding before the Commission may enter into settlements proposing the resolution of some or all of the issues in a proceeding. In the event that a stipulation is filed, the signatory parties to the stipulation bear the burden of proof to demonstrate that the stipulation is “reasonable and satisfies the Commission’s three-part test.”²² Stipulations are not binding upon the Commission, but the Commission may place “substantial weight” on the terms of a stipulation.²³ Ultimately, the Commission must determine whether, based on the evidence presented at hearing, the stipulation is just and reasonable.²⁴

In making this assessment, the Commission has established a three-part test that it has used in several cases to determine whether stipulations are just and reasonable.²⁵ The three criteria that the Commission considers to evaluate settlements under this test are:

- 1) Is the stipulation 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?²⁶

²¹ R.C. 4909.19(C); see also *In the Matter of the Application of the Waterville Gas and Oil Company for an Increase in Rates for Natural Gas Furnished to Customers in the Unincorporated Areas of Waterville, and Monclova Townships, Lucas County, Ohio and Middletown Township, Wood County, Ohio*, Case No. 77-1284-GA-AIR, Entry on Rehearing (November 1, 1978).

²² See *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider, et al.*, Case Nos. 14-1693-EL-RDR, et al., Opinion and Order at 18 (March 31, 2016).

²³ See *Consumers Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992)

²⁴ *Id.*

²⁵ See, e.g., *In the Matter of the Application of the Dayton Power and Light Company for an Increase in Its Electric Distribution Rates, et al.*, Case Nos. 15-1830-EL-AIR, et al., Opinion and Order at ¶ 57 (September 26, 2019); *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Its Natural Gas Distribution Rates, et al.*, Case Nos. 12-1685-GA-AIR, et al., Opinion and Order at 20-21 (November 13, 2013).

²⁶ *Id.*

The Supreme Court of Ohio has endorsed the Commission's use of this test to evaluate stipulations entered into for purposes of resolving proceedings before the Commission.²⁷ In the instant case, this three-part test was discussed in testimony submitted by all parties to the case, including those who oppose the Stipulation.²⁸ Accordingly, the Commission should apply its standard three-part test for evaluating stipulations reached between parties to Commission proceedings.

IV. LEGAL ARGUMENT

The Stipulation in this case resulted from extensive negotiations between the parties, recommends the implementation of just and reasonable rates, benefits Suburban's ratepayers and the public interest, and is consistent with the Commission's regulatory principles and practices. It satisfies the Commission's three-part test and, therefore, should be adopted in its entirety.

A. Summary of Key Terms of the Stipulation.²⁹

- a. The Signatory Parties agree that current rates that are being collected from customers are no longer sufficient to yield a reasonable compensation for the services rendered and are therefore unjust and unreasonable (Section III.A.1).
- b. The Signatory Parties agree that the Stipulation satisfies the Commission's three-part test and recommends adoption of the Stipulation (Section III.E).
- c. A phase-in of the revenue increase and corresponding revenue requirement over three years shall occur (Section III.A.2-3).
 - i. In Year 1 after the Commission's Order approving the Stipulation, the Revenue Increase will be \$1,168,030 and the Revenue Requirement shall equal \$19,800,801.
 - ii. In Year 2, the Revenue Increase will be \$1,532,278 and the Revenue Requirement shall be \$20,165,049.

²⁷ See *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994) (citing *Consumers Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992)).

²⁸ See Suburban Ex. 5 at 15 (Sonderman Supplemental Direct); Staff Ex. 9 at 8-9 (Lipthrott Direct); OCC Ex. 13 at 3 (Willis Supplemental Direct); OPAE Ex. 1 at 4 (Rinebolt Direct)

²⁹ Joint Ex. 1 (Stipulation).

- iii. In Year 3, and every year thereafter until new rates are approved in a subsequent proceeding, the Revenue Increase will be \$1,778,433 and the Revenue Requirement shall be \$20,411,204 per year.
- d. Costs associated with the 4.9-mile DEL-MAR pipeline extension shall be phased-in or included in rate base over the same three-year period (Section III.A.5.d).
 - i. In Year 1, approximately 50 percent of the book value of the pipeline extension including depreciation and property taxes shall be included in rate base on the date of entry of the Commission's Order approving new rates in this proceeding.
 - ii. In Year 2, approximately 80 percent of the book value of the pipeline extension including depreciation and property taxes shall be recognized in rate base one year after the date of the Commission Order approving new rates in this proceeding.
 - iii. In Year 3, 100 percent of the book value of the extension shall be included in rate base, two years after the date of the Commission's Order approving rates in this proceeding and every year thereafter.
 - iv. In Years 2 and 3, the phase-in shall be allocated to customers based on the total number of customers at the time the additional book value is added based on the revenue distribution percentage (exclusive of gas costs) that was established in Year 1.
- e. Distribution plant adjustments and general plant adjustments recommended in the Staff Report shall be adopted except as specifically noted in the Stipulation (Section III.A.5.a-b).
- f. Adjustments in test year for certain Miscellaneous Revenues associated with late payment fees, sales of merchandise, sales-Labor, meter setting fees and NSF/bad check charges shall be incorporated. Because some level of these revenues recurs every year, the Signatory Parties agreed that the amount of \$202,608.00 for Miscellaneous Revenues is appropriate to include in base revenues for the test year (Section III.A.6.a).
- g. All tariff classes shall have the customer count annualized as of the date certain, subject to adjustment upon the inclusion of additional book value of the 4.9-mile DEL-MAR pipeline extension as discussed in section (A)(ii)(d)(4) of the Stipulation (Section III.A.7.a).
- h. Test year revenue shall assume that the full Phase 2 of the Straight Fixed Variable (SFV) rates had been in place for the entire test year (Section III.A.7.b).
- i. Several adjustments to test year expenses were incorporated (Section III.A.8).
 - i. Rate case expenses shall be amortized over five years.

- ii. Staff's recommended reclassification and inclusion of a rate case expense invoice in the amount of \$1,450.00 shall not be adopted.
- iii. Expenses associated with miscellaneous revenue in the amount of \$28,780 shall be included in test year expense.
- iv. Property tax expenses shall include expenses associated with the existing 20-mile DEL-MAR pipeline, which had previously been leased and has now been acquired by Suburban, at the valuation level known, plant materials and supplies as of the date certain, and new plant additions at the 2018 property tax rate.
- v. Actual payroll expenses annualized at the level experienced as of the date certain and that were known and measurable as of February 2019 shall be included, which includes 26 pay periods for salaried employees and 52 pay periods for hourly employees.
- vi. The labor expense adjustment calculation compared the annualized February 2019 payroll level (after an O&M percentage allocation of 88.20%) to the payroll expenses included in the test year of \$2,916,773.00.
- vii. The monthly lease expense in the amount of \$6,503.25 to Delaware Properties, LLC, for a new building, the Troutman Road Operations Center, shall be included.
- viii. Expenses related to employee benefits, including payments made to employees under a program contained in Suburban's 401k plan, which is called the "profit-sharing" program in the Internal Revenue Code, shall be included as an expense in the amount of \$150,000.00.
- ix. As a condition of the inclusion of the profit-sharing amount, Suburban agreed to fund the profit-sharing program to the benefit of its employees in an amount not less than \$150,000.00 annually until new distribution rates are approved in Suburban's next base distribution rate case.
- x. Corresponding expenses associated with payroll taxes relating to payroll expenses annualized at the level experienced as of the date certain shall be included as an expense.
- xi. The \$201,483.00 Adjustment to Professional Fees included in the Application shall be increased to a \$300,000.00 Adjustment to Professional Fees, resulting in \$300,000.00 being excluded from test year expenses.
- xii. Exclusion of expenses related to the employee fitness program and social club dues.
- xiii. Interest associated with customer deposits shall be reclassified as an operating expense.

- j. A new resale provision in the tariff prohibiting customers from selling or supplying gas other than as specified in the application for service, except for the sale or supply of gas for use as vehicle fuel shall be adopted (Section III.B.1.a).
- k. A baseline Btu shall be adopted until Suburban's next base distribution rate case. The baseline for the CORE system (northern system) shall be a base Btu of 1067 and the baseline for the SCOL system shall be a base Btu of 1063 (Section III.B.2.a).
- l. Upon a residential customer's request, Suburban shall offer one free meter test every three years to each residential customer (Section III.B.3.a).
- m. A standard meter shall be provided free of charge to SGS customers requiring a standard meter (Section III.B.5.a).
- n. Suburban agrees not to charge SGS customers for the customer service charge when the days of usage in a billing period for the customer are less than eight days. Suburban shall bill the SGS customer the full customer service charge when the days of usage in a billing period are eight days or greater (Section III.B.6.a).
- o. All customers shall have the option of paying Suburban personnel in the field by cash, check, or money order to avoid disconnection. Suburban personnel will also inform customers that they have the option of paying by credit or debit card over the phone in order to avoid disconnection (Section III.B.9.a).
- p. The rate of return adopted shall be 7.26%. The return on common equity shall be 10.25%, with a cost of debt of 4.53% (Section III.C).
- q. Provisions related to the Tax Cuts and Jobs Act of 2017 shall be implemented (Section III.D).
 - i. Suburban shall reverse the regulatory liability amortization proposed in its Application.
 - ii. Base rates shall be adjusted to reflect the federal tax rates enacted by the Tax Cuts and Jobs Act of 2017 (TCJA). The reduction in base rates resulting from the need to pass the excess deferred income taxes will be based upon deferred tax balances as of December 31, 2017.
 - iii. Protected Excess Deferred Taxes will be passed back to customers using the Average Rate Assumption Method (ARAM) or an acceptable alternative method.
 - iv. Unprotected Excess Deferred Taxes will be passed back or collected from customers over a ten-year period.
 - v. Suburban will file a GA-ATA case, as an application not for an increase in rates under R.C. 4909.18, in order to establish a Tax Credit Rider to return

to customers the overcollection of income taxes, resulting from the enactment of the TCJA effective January 1, 2018.

- vi. The application shall propose to allocate the Tax Credit Rider 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.
- vii. The application shall include a one-time carrying charge in the initial rate based upon the long-term debt rate as applied to the monthly balance of deferrals to reflect the time lag in implementing the federal income tax savings in rates.
- r. Suburban agrees to file an application to establish new base distribution rates pursuant to R.C. 4909.18 by October 31, 2025 (Section III.E).
- s. Consistent with the March filing made by Suburban in Case No. 19-216-GA-GCR, customers shall no longer be charged for the lease of the DEL-MAR pipeline through Suburban's Gas Cost Recovery Rider, as the lease no longer exists and the DEL-MAR pipeline has been transferred to Suburban and has been included as part of rate base (Section III.G).

B. The Stipulation Satisfies the Commission's Three-Part Test.

- a. The Stipulation Is the Product of Serious Bargaining Among Knowledgeable Capable, Parties.

No party disputes that this prong has been met. Staff Witness Liphtratt and Suburban Witness Sonderman each filed testimony explaining how the Stipulation satisfies the Commission's first criterion.³⁰ More specifically, Mr. Sonderman detailed the extensive negotiations that took place and described how, in addition to significant amounts of discovery exchanged between the parties, Suburban, Staff, OCC, and OPAE held several settlement conferences, which included subject matter experts from various parties.³¹ He further explained that based on his years of experience in the industry, all parties who participated in the settlement discussions were capable and knowledgeable.³²

³⁰ Suburban Ex. 5 at 15-17 (Sonderman Supplemental Direct); Staff Ex. 9 at 9 (Liphtratt Direct).

³¹ Suburban Ex. 5 at 16 (Sonderman Supplemental Direct).

³² Id. at 15-17.

Regarding the substance of the settlement discussions, Mr. Sonderman confirmed that all of the issues raised by the parties were “thoroughly reviewed, discussed, and, to the extent agreement could be reached, were resolved during the settlement negotiations.”³³ Finally, Mr. Sonderman explained that when Suburban and Staff reached an agreement, that agreement was provided to all parties prior to filing and an additional settlement meeting was scheduled among all parties to determine whether it was possible to reach common ground with OCC and OPAE.³⁴ He added that, at that point, OCC and OPAE halted their participation in settlement discussions and rejected any further settlement meetings.³⁵

Staff Witness Lipthratt agreed and explained how all parties were represented by experienced and competent counsel that had experience in numerous regulatory proceedings before the Commission.³⁶ He concluded that “the Stipulation represents a comprehensive compromise of the issues raised by parties with diverse interests.”³⁷

Neither OCC nor OPAE contested the assertions or the testimony that the Stipulation meets the first prong of the Commission’s three-part test. At hearing, each witness testifying on behalf of OCC confirmed that they did not dispute that the Stipulation was the product of serious bargaining among knowledgeable, capable, parties.³⁸ OPAE Witness Rinebolt similarly conceded that he was not involved in any settlement discussions, and thus could not offer an opinion as to the adequacy of their substance.³⁹

³³ Id. at 16.

³⁴ Id.

³⁵ Id.

³⁶ Staff Ex. 9 at 9 (Lipthratt Direct).

³⁷ Id.

³⁸ See Tr. Vol. III at 448, 550, 625-26.

³⁹ See id. at 501-03.

Thus, as the record demonstrates, extensive settlement discussions occurred between knowledgeable, capable parties and the Stipulation is a product of those discussions (and no party disputes this fact). Therefore, the first part of the Commission's three-part test is satisfied.

b. The Stipulation, as a Package, Benefits Ratepayers and Serves the Public Interest.

Suburban and Staff collaborated to ensure that the Stipulation as a package benefited all parties involved, including Suburban's customers. The Stipulation, which resulted from negotiations among all parties, including OCC and OPAE, ultimately included a number of provisions that provide benefits to customers and ensured that customers are paying rates for natural gas service that are just and reasonable.

i. The Stipulation Allows Suburban to Provide Safe, Reliable, and Continuous Natural Gas Service.

Suburban Witness Sonderman explained that it is critically important that Suburban be able to provide safe, reliable, and continuous natural gas service to its residential, commercial, and industrial customers under all conditions.⁴⁰ He noted that, currently with Suburban operating under rates established more than ten years ago, that objective is untenably jeopardized as Suburban is not collecting sufficient revenue to provide its employees with appropriate salaries and benefits, pay the necessary costs of providing service and maintaining and upgrading equipment, and purchase materials and supplies at increasing costs.⁴¹ The Stipulation allows Suburban to continue to provide the safe, reliable, and continuous service that its customers expect while also charging those customers rates that are just and reasonable. The ability of Suburban to meet all of its obligations to its customers without charging exorbitant rates is a significant benefited afforded to customers by this Stipulation.

⁴⁰ Suburban Ex. 5 at 17 (Sonderman Supplemental Direct).

⁴¹ Id.

ii. The Proposed Rate of Return and Return on Common Equity Is Just and Reasonable.

The Stipulation provides for a rate of return and return of 7.26% and a return on common equity of 10.25%. These recommendations are supported on Schedule D-1, which was attached to the filed Stipulation.⁴² Suburban Witness Clement and Staff Witness Buckley supported and explained these rates in their testimony.⁴³ Mr. Buckley explained how the 7.26% rate of return is well within the appropriate range as determined by Staff in its Staff Report, and the range that OCC supported in its objections.⁴⁴ The approved rate of return is also consistent with the rate of return approved for other public utilities in the state of Ohio. On cross-examination, OCC Witness Duann was unable to identify any cases for Ohio utilities that earned a lower rate of return than the one proposed by the Stipulation.⁴⁵

Nonetheless, OCC contends that the rate of return and return on common equity proposed in the Stipulation are too high. At hearing, Dr. Duann focused on the return on common equity, arguing that it was too high.⁴⁶ But Dr. Duann admitted that the return on common equity is determined on a company-by-company basis based on the characteristics of the specific company and market conditions at a given time.⁴⁷ Dr. Duann explained that he had not done an intensive analysis of Suburban's cost of borrowing money, or whether Suburban's ability to do so was impacted by the fact that Suburban is a small Ohio utility.⁴⁸ As the Commission evaluates Dr. Duann's testimony, it should weigh heavily the fact that he did not undertake a substantial

⁴² See Joint Ex. 1 at Schedule D-1 (Stipulation).

⁴³ See Suburban Ex. 3 at 11 (Clement Supplemental Direct); Staff Ex. 7 at 5 (Buckley Direct).

⁴⁴ Staff Ex. 7 at 5 (Buckley Direct).

⁴⁵ See Tr. Vol. III at 666.

⁴⁶ Id. at 650.

⁴⁷ See id. at 672-73.

⁴⁸ See id. at 668-72.

analysis of Suburban's specific circumstances to determine if the recommended return on equity is too high, especially considering that the resulting rate of return is lower than that of other Ohio utilities.

More broadly, Dr. Duann's approach to this entire case was flawed. He testified that he compared the rates proposed by the Stipulation to a study of nationwide averages for natural gas utilities that was performed by a third party.⁴⁹ Dr. Duann stated that the purpose of this analysis was to conform to the Supreme Court of the United States' decision in *Bluefield Water Works v. Public Service Comm'n*, 262 U.S. 679 (1923).⁵⁰ The analysis, however, was flawed in two important ways. First, Dr. Duann stated that he did not actually verify the third party analysis or confirm that the returns that it considered were accurate.⁵¹ Second, unlike Suburban Witness Clement,⁵² Dr. Duann did not apply the *Bluefield* standard correctly.

The Supreme Court in *Bluefield* held that:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time **and in the same general part of the country** on investments which are attended by corresponding risks and uncertainties.⁵³

Dr. Duann testified that he did not consider whether the companies that he compared to Suburban were located in the same general part of the country, admitting that his list of comparison natural gas companies included companies from, among other states, Kansas,

⁴⁹ See OCC Ex. 14 at 8 (Duann Supplemental Direct).

⁵⁰ Id. at 7-8.

⁵¹ See Tr. Vol. III at 642-43.

⁵² See Suburban Ex. 2 at 11-12 (Clement Direct).

⁵³ *Bluefield Water Works v. Public Service Comm'n*, 262 U.S. 679 (1923) (emphasis).

Florida, and Wyoming.⁵⁴ In attempting to defend this departure from the same standard that he cites in his testimony, Dr. Duann offered a contradictory description of how the Commission should compare Suburban's rate of return to other utilities. On one hand, he stated that *Bluefield* is a "fundamental ratemaking principle" that has not been overturned and that just based on that principle, the Commission can determine that the Stipulation's proposal is unreasonable.⁵⁵ On the other hand, in defending his proposal to utilize a nationwide average instead of looking at similar regional companies as the standard requires, Dr. Duann stated that the "decision was made almost 100 years ago, and I think 100 years ago the capital market in the United States could be quite different from what we have now."⁵⁶ Dr. Duann cannot unilaterally change the meaning of Supreme Court decisions or selectively decide which parts of the Court's standards to apply to a case. His failure to apply the standard as written calls into question the reliability of his analysis. Therefore, the Commission should disregard Dr. Duann's inconsistent testimony and instead rely upon that of Suburban Witness Clement and Staff Witness Buckley.⁵⁷ Specifically, Ms. Clement relied upon the *Bluefield* standard and concluded that a 7.26% rate of return would meet the standard of allowing Suburban to earn a "rate of return . . . commensurate with the returns being earned on investments in other business undertakings that have similar or corresponding risks and should be sufficient to enable the regulated utility to maintain its credit standing and financial integrity and attract capital at reasonable costs."⁵⁸

⁵⁴ Tr. Vol. III at 647-48.

⁵⁵ See id. at 650-51.

⁵⁶ Id. at 648-49.

⁵⁷ See Suburban Ex. 2 at 11-12 (Clement Direct); Suburban Ex. 3 at 11 (Clement Supplemental Direct); Staff Ex. 7 at 4-5 (Buckley Direct).

⁵⁸ See Suburban Ex. 2 at 6, 11-12 (Clement Direct).

Ultimately, the Commission should recognize that the Stipulation's proposed rate of return provides a benefit to customers in that the Stipulation is recommending a rate of return for Suburban that is lower than other public utilities within the state of Ohio. In other words, Suburban's customers will be responsible for paying a lower return on investment than the customers of other public utilities in Ohio.

iii. The Stipulation Ensures that Customers Will Receive All Tax Relief to Which They Are Entitled as a Result of the Tax Cuts and Jobs Act, Including Carrying Charges.

The Stipulation further provides benefits to customers by ensuring that customers receive the full benefit of the Tax Cuts and Jobs Act of 2017 (TCJA), including carrying charges for money collected since the law went into effect. Through the Stipulation, Suburban commits to reversing the regulatory liability amortization proposed in the Application, adjusting base rates to reflect the impact of the TCJA, passing back protected Excess Deferred Income Taxes (EDIT) to customers using the Average Rate Assumption Method (ARAM), and filing an application not for an increase in rates in order to establish a Tax Credit Rider to return overcollected income taxes to customers, including a one-time carrying charge in the initial rate based upon the long-term debt rate as applied to the monthly balance of deferrals to reflect the time lag in implementing the federal income tax savings in rates.⁵⁹

Suburban Witnesses Clement and Sonderman explained how this portion of the Stipulation will accomplish the full return of all Protected and Unprotected EDIT to customers.⁶⁰ Staff Witness Borer explained that the Stipulation's treatment of the TCJA addresses all of OCC's objections regarding the treatment of the TCJA in this proceeding (OCC Objection Nos.

⁵⁹ See Joint Ex. 1 at 12-13 (Stipulation).

⁶⁰ See Suburban Ex. 3 at 12-13 (Clement Supplemental Direct); Suburban Ex. 5 at 14 (Sonderman Supplemental Direct).

7-10 to the Application).⁶¹ Mr. Borer demonstrated that the TCJA provisions in the Stipulation allocated the benefit to customers based on the percentage of base distribution revenue, thus ensuring that all customers fairly benefit from the TCJA.⁶²

iv. The Stipulation Includes Provisions to Ease the Burden on Customers by Phasing in the Rate Increase.

The Stipulation provides benefits to customers and is in the public interest because it will phase-in over three years the proposed rate increase.⁶³ The Stipulation also includes a recognition of future customer growth by recalculating the customer charge based on the then current number of customers at the end of the first and second years.⁶⁴

Although Suburban already incurred costs to construct and place in operation an absolutely essential 4.9 mile extension of its 12-inch high pressure steel pipeline that is used and useful to existing customers to ensure adequate pressure to customers at the very southern end of Suburban's 6-inch steel pipeline at Lazelle Road on the Delaware County line, the Stipulation allows a portion of the rate increase to be withheld during the first and second years that new rates are in effect. As Mr. Sonderman testified, "[a] key compromise of the Stipulation is the agreement to phase-in the revenue increase over three years."⁶⁵ This will provide customers with hundreds of thousands of dollars in benefits.

This phase-in of the revenue requirement is a result of Suburban's agreement to include less than the full book value of the 4.9-mile DEL-MAR pipeline extension in rate base for the first two years that new rates are in effect, with 50% of the book value included in the first year,

⁶¹ See Staff Ex. 2 at 3-4 (Borer Direct).

⁶² Id. at 4.

⁶³ Staff Ex. 9 at 10 (Liprthatt Direct); Joint Ex. 1 at Attachment A (Stipulation).

⁶⁴ Id. at 9-10; See also Joint Ex. 1 at 4 (Stipulation).

⁶⁵ Suburban Ex. 5 at 4 (Sonderman Supplemental Direct).

80% in the second year, and 100% in the third year.⁶⁶ At hearing, Staff Witness Liphtratt explained that although the DEL-MAR pipeline extension was fully used and useful, the parties agreed to incorporate a phase-in in order to provide benefits to ratepayers.⁶⁷ As discussed in greater detail below, the record fully supports the determination that the DEL-MAR pipeline extension was used and useful at date certain, with Suburban Witnesses Sonderman and Grupenhof and Staff Witnesses Sarver and Liphtratt offering testimony in support of that conclusion.

By agreeing to phase-in used and useful plant over a three-year period rather than including the entire value in the first year, Suburban has agreed to provide significant benefits to customers by forgoing revenue associated with the costs for the pipeline extension that it has already incurred. The revenue increase with the full value of the DEL-MAR pipeline extension included in rate base is \$1,778,433.00.⁶⁸ Thus, in the first year of the new rates, customers would save \$610,403.00 and in the second year, customers will save \$246,155.000.⁶⁹

These savings to ratepayers are magnified by the additional value of Suburban's agreement to recalculate the customer count used to determine the customer charges at the time each additional portion of the book value of the DEL-MAR pipeline extension is placed into rate base.⁷⁰ This means that Suburban's revenue requirement will be spread among more customers than existed at date certain in this case, thus reducing the share of that revenue requirement that each individual customer is responsible for through rates. This unusual step of recalculating the

⁶⁶ Id. at 5-6.

⁶⁷ See Tr. Vol. IV at 736; 746 ("Q. But it's your intention the entire 100% is used and useful as of the date certain; A: Absolutely.")

⁶⁸ Joint Ex. 1 at 4 (Stipulation).

⁶⁹ See id.

⁷⁰ Id. at 6.

customer count will benefit all customers as the remaining value of the DEL-MAR pipeline extension is added into rate base. Staff Witness Liphtratt characterized this provision as a key benefit of the Stipulation: “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.”⁷¹

v. The Stipulation Obligates Suburban to File a New Rate Case by October 31, 2025.

Through the Stipulation, Suburban agrees to file a new distribution rate case by October 31, 2025.⁷² Along with the phase-in discussed above, this proposal addresses concerns raised by intervenors that increased customer growth once new rates are put into effect will result in excessive revenue to Suburban. By making this commitment, Suburban is agreeing to return to the Commission, roughly six years after new rates are approved, and undergo an extensive review of its financial state to determine whether the rates being charged are just and reasonable. Any rates imposed as a result of the 2025 application would, of course, include an updated customer count. Assuming that Suburban’s recent growth continues,⁷³ this updated customer count would spread Suburban’s future revenue requirement among the then-existing customers, thus reducing the share of the revenue that each customer is responsible for.

vi. The Stipulation Proposes Providing Customers with Free Standard Meters and Meter Testing.

The Stipulation provides additional benefits to customers concerning their meters. The Stipulation provides that all customers are entitled to one free meter test every three years and

⁷¹ Staff Ex. 9 at 9-10 (Liphtratt Direct).

⁷² See Joint Ex. 1 at 13 (Stipulation).

⁷³ See Suburban Ex. 5 at 3, 20 (Sonderman Supplemental Direct).

that a standard meter will be provided to all SGS customers who require one.⁷⁴ Additionally, any SGS customer that requires a non-standard meter will only be charged an uprate charge for the incremental cost of the uprated meter.⁷⁵ As Staff Witness Lipthratt testified, this provision provides protections to customers.⁷⁶ OPAE Witness Rinebolt also conceded that the free meter test provides a benefit to customers.⁷⁷

vii. The Stipulation's Proposed Btu Adjustment Addresses Fluctuations in the Heating Value of Gas.

The Stipulation also provides a benefit to larger customers that are billed on a volumetric basis under Rate LGS or Rate LGTS by including a Btu adjustment to protect customers against being adversely harmed by variations in thermal content of the volumes delivered.⁷⁸ The Stipulation establishes a baseline Btu to be adopted until Suburban's next base distribution rate case of 1067 for the CORE system (northern system) and 1063 for the SCOL system (southern system).⁷⁹ Mr. Sonderman explains that this baseline Btu was derived from weighted average heat content values during the test year.⁸⁰

viii. The Stipulation Properly Includes the DEL-MAR Pipeline in Rate Base, Providing Significant Savings to Customers.

The Stipulation also addresses the 20-mile DEL-MAR pipeline (which has been serving customers since 2005) that Suburban had previously been leasing and now owns.⁸¹ Suburban Witness Clement explained that when the pipeline was being leased, Suburban's lease payments

⁷⁴ Joint Ex. at 11 (Stipulation).

⁷⁵ Id.; Suburban Ex. 5 at 12 (Sonderman Supplemental Direct).

⁷⁶ Staff Ex. 9 at 10 (Lipthratt Direct).

⁷⁷ See OPAE Ex. 1 at 8 (Rinebolt Direct).

⁷⁸ See Suburban Ex. 5 at 11-12 (Sonderman Supplemental Direct).

⁷⁹ See Joint Ex. 1 at 10 (Stipulation).

⁸⁰ Suburban Ex. 5 at 11-12 (Sonderman Supplemental Direct).

⁸¹ See Joint Ex. 1 at 14 and Attachment A (Stipulation).

were recovered through the Gas Cost Recovery Rider (Rider GCR).⁸² Suburban Witness Sonderman explained that lease costs, which totaled \$1,631,672 in 2018, are no longer collected through Rider GCR.⁸³ Mr. Sonderman further noted that the inclusion of the pipeline in rate base resulted in a net reduction in Suburban's request for a rate increase.⁸⁴

Mr. Sonderman's Direct Testimony in Support of the Stipulation also addresses OCC Objections 11 and 12 to the Staff Report and the inaccurate testimony of OCC Witness Willis, which was submitted into the record on the first day of hearing.⁸⁵ Mr. Willis incorrectly testified that as of date certain, "Suburban does not own the DEL-MAR pipeline" and that the inclusion of the DEL-MAR pipeline in rate base meant that "customers will be paying for the DEL-MAR pipeline twice."⁸⁶ On direct examination when asked if he had any changes to this testimony, Mr. Willis did not correct this statement.⁸⁷ However, on cross-examination, Mr. Willis admitted that he in fact was aware that Suburban had proposed to purchase the pipeline in its Application, provided documents indicating that it had purchased the pipeline and that he understood that Suburban was not currently recovering lease payments under Rider GCR.⁸⁸ Ultimately, Mr. Willis conceded that his testimony, which supported OCC objections 11 and 12 to the Staff Report, was "not accurate."⁸⁹ This was confirmed by Staff Witness Gonya, who explained that

⁸² See Suburban Ex. 3 at 5 (Clement Supplemental Direct).

⁸³ Suburban Ex. 5 at 24-25 (Sonderman Supplemental Direct).

⁸⁴ Id.

⁸⁵ See OCC Ex, 1 at 6 (Willis Direct)

⁸⁶ Id.

⁸⁷ See Tr. Vol. I at 6-7.

⁸⁸ See id. at 34-36.

⁸⁹ Id. at 36-37.

lease payments for the DEL-MAR pipeline were no longer being recovered through Rider GCR.⁹⁰

At hearing on the Stipulation, Mr. Willis agreed that it was cheaper to include the pipeline in rate base than to include lease payments in Rider GCR.⁹¹ In other words, customers benefit from the Stipulation's inclusion of the DEL-MAR pipeline in rate base and it is in the public interest.

ix. The Stipulation Contains Additional Compromises Made by the Signatory Parties for the Benefit of Customers and that are in the Public Interest.

For purposes of settlement, Suburban made additional compromises in the Stipulation which provide benefits to customers and that are in the public interest. Suburban Witness Sonderman explained that Suburban agreed to accept less than full recovery of contributions to employee 401k accounts in Administrative and General expense, forgo inclusion of known and measureable wage increases that took effect April 1, 2019 in Administrative and General expense, include amounts associated with miscellaneous revenues for late payment fees, sales of merchandise, sales-Labor, meter setting fees, and NSF/bad check charges as base revenue, accept various adjustments to rate base, and accept a reduction in test year expenses in certain accounts.⁹² Over the objections of OCC, several Staff witnesses concur with these identified benefits and recommend adopting the provisions as part of the Stipulation.⁹³

⁹⁰ Staff Ex. 3 at 2-3 (Gonya Direct).

⁹¹ See Tr. Vol. III at 560 ("it's cheaper and (sic) through the revenue requirement than through the GCR.")

⁹² See Suburban Ex. 5 at 5, 10, 18 (Sonderman Supplemental Direct).

⁹³ For example, see Staff Ex. 10 at 6 (Snider Direct) ("Staff does not agree with OCC that it should have excluded the executive car expenses in account 875 and the director fees in account 930-03. Staff believes these expenses are part of the Company's overall compensation package for its management."); Staff Ex. 9 at 4 (Lipthrott Direct) ("Given the components of the Stipulation and Recommendation filed in this case (Stipulation), Staff believes the revenue requirement is reasonable."); Staff Ex. 9 at 7 (Lipthrott Direct) ("As a result of these adjustments, there were flow through impacts associated with gross-ups, taxes, and working capital.").

Staff Witness Liphtratt further highlighted additional benefits of the Stipulation, including, but not limited to, the following:⁹⁴

- the establishment of a fixed charge of \$33.84 instead of the charge of \$41.86 proposed in the Application; and
- the inclusion of various customer protections, such as no customer service charge when the days of usage in a billing period for the customer are less than eight days.

Ultimately, the ability of the Stipulation to provide all of these benefits to customers while maintaining safe, reliable, and continuous natural gas service without charging unjust or unreasonable rates satisfies this second prong of the Commission's three-part test for evaluating stipulations.

c. The Stipulation Does Not Violate Any Important Regulatory Principles or Practices.

The final criterion that the Commission considers in evaluating stipulations is whether the stipulation in question violates any regulatory principles or practices. The Stipulation filed in the case at bar does not. OCC and OPAE have collectively raised two distinct challenges to the Stipulation's compliance with sound regulatory practices and procedures, neither of which is supported by the record.

OCC contends that the 4.9-mile DEL-MAR pipeline extension was not used and useful as of date certain, and, thus should be completely excluded from rate base. Both OCC and OPAE contend that the Stipulation's continuation of the straight fixed variable (SFV) rate design violates regulatory practices and harms customers. As demonstrated below, the record does not support either contention.

⁹⁴ Staff Ex. 9 at 10 (Liphtratt Direct).

i. The DEL-MAR Pipeline Extension Is Properly Included in Rate Base

1. The Record Reflects the Used and Usefulness of the 4.9-Mile DEL-MAR Pipeline Extension.

R.C. 4909.15 states that the Commission, when determining and fixing just and reasonable rates, must consider the valuation of property of the public utility that is “used and useful” in rendering the public utility’s service. Thus, when property is used and useful to serving customers, its value may be included in rate base. The question, therefore, regarding the 4.9-mile extension of the DEL-MAR extension that was put into service prior to the date certain in this case is whether that extension is currently used and useful for Suburban in providing natural gas distribution service to customers.

The Signatory Parties adequately addressed all of the concerns raised about the 4.9-mile extension of the DEL-MAR pipeline throughout the proceeding. The resulting record that was developed unambiguously confirms that the extension was built, tested, and in service during the test year and was used and useful to existing customers as of the date certain. Therefore, standard regulatory principles and practices support 100% of the inclusion of the pipeline in rate base.

To understand the necessity of the DEL-MAR pipeline extension for current customers, it is important to fully address the circumstances that led to its construction. Suburban Witnesses Sonderman and Grupenhof described the process. Mr. Sonderman testified that on a particularly cold day in February 2015, Suburban recognized that the system, as constructed at that time, could leave customers vulnerable to a catastrophic system outage.⁹⁵ He stated that on that day, February 24, 2015, the pressure at the Lazelle Road point of delivery (POD) fell below

⁹⁵ Suburban Ex. 5 at 21-22 (Sonderman Supplemental Direct).

100 psig,⁹⁶ which Mr. Grupenhof explained to be the minimum acceptable pressure at the Lazelle Road POD.⁹⁷

Following that event, Mr. Sonderman detailed how he commissioned Utility Technologies International (UTI) to update and computerize Suburban's mapping system to begin the process of updating the system to model the possibility of a catastrophic low-pressure event.⁹⁸ Using the data made available by the new mapping system, Mr. Sonderman asked UTI's professionals to model pressures at the Lazelle Road POD for three years, in order to use those forecasts to determine the appropriate course of action to ensure customers were protected and that Suburban could maintain safe and reliable service.⁹⁹

Mr. Grupenhof, a UTI engineer, performed that modeling.¹⁰⁰ He explained that models performed in December 2015 and February 2016 showed that Suburban could encounter issues with unacceptably low pressure events (the sort that would jeopardize Suburban's entire system and cause a catastrophic event) by the winter of 2018-2019 if a cold weather event like the one already experienced in February 2015 occurred again.¹⁰¹ Mr. Sonderman noted that this modeling validated Suburban's concerns about unacceptably low pressure instances occurring at the Lazelle Road POD.¹⁰² As a professional engineer experienced in gas distribution systems, Mr. Grupenhof and UTI recommended that Suburban construct a 4.9-mile extension of the DEL-

⁹⁶ Id.

⁹⁷ Suburban Ex. 4 at 5 (Grupenhof Direct).

⁹⁸ Suburban Ex. 5 at 22 (Sonderman Supplemental Direct).

⁹⁹ Id.

¹⁰⁰ Suburban Ex. 4 at 5-6 (Grupenhof Direct).

¹⁰¹ Id. at 6. See also Suburban Ex. 9 (Reports of modeling performed by UTI).

¹⁰² Suburban Ex. 5 at 23 (Sonderman Supplemental Direct).

MAR pipeline to increase its current pressures at the Lazelle Road POD to prevent outages on the system and to ensure that Suburban could maintain safe and reliable service.¹⁰³

Mr. Sonderman described how, after the decision to build the pipeline extension was made, Suburban obtained approval of the financing for the extension from the Commission and of the construction plans from the Ohio Power Siting Board, after Staff of the Ohio Power Siting Board recommended approval of Suburban's application.¹⁰⁴ From there, Suburban commenced construction of the pipeline. Mr. Grupenhof testified that after delays caused by weather and difficulties obtaining necessary easements and permits, construction on the full 4.9-mile DEL-MAR pipeline extension was completed in February 2019.¹⁰⁵ Specifically, the extension was in service and serving existing customers on February 22, 2019—within the test year and prior to the date certain in this case.¹⁰⁶ Mr. Grupenhof stated that this extension, which now serves customers, “alleviates the risk of a potential catastrophic system failure and associated outages for existing customers.”¹⁰⁷

Mr. Sonderman testified that in January 2019, as the pipeline extension neared completion after construction delays largely attributable to the wettest fall and winter in many years, pressure at the Lazelle Road POD fell to only 105 psig—just above the minimum acceptable pressure—even with all of the available gas delivered through the Lazelle Road POD onto Suburban's six-inch line from Columbia Gas of Ohio.¹⁰⁸ As such, Mr. Sonderman

¹⁰³ Suburban Ex. 4 at 6 (Grupenhof Direct).

¹⁰⁴ Suburban Ex. 5 at 22 (Sonderman Supplemental Direct); Suburban Ex. 6 at 3 (Staff Report in Case No. 18-54-GA-BLN).

¹⁰⁵ Suburban Ex. 4 at 7-8 (Grupenhof Direct).

¹⁰⁶ Id. at 8.

¹⁰⁷ Id. at 8.

¹⁰⁸ Suburban Ex. 5 at 23 (Sonderman Supplemental Direct).

explained that this confirmed Suburban's decision to build the extension to address the unacceptable risk of low pressure failures resulting in outages as early as the winter 2018-19.¹⁰⁹

The importance of maintaining adequate pressure is heightened by the rigorous process that Mr. Sonderman described for restoring service to customers after an extensive outage caused by low pressure occurs; one which could leave customers without natural gas service for weeks at the coldest time of the year and cause Suburban to expend extensive resources.¹¹⁰ This effort would even require Suburban to call upon other gas utilities for assistance.¹¹¹ Mr. Grupenhof testified that this restoration effort would take "several weeks at a minimum."¹¹² At hearing, Mr. Sonderman described how an outage caused by low pressure brought on by high demand during a cold time resulted in customers in Rhode Island being left without natural gas service for over three weeks.¹¹³ OCC Witness Willis acknowledged that he was familiar with the catastrophic event.¹¹⁴ The extent of this outage was so damaging, that shelters had to be opened to help people with infirmities and medical conditions.¹¹⁵ The DEL-MAR pipeline extension allows Suburban to avoid having this "nightmare scenario" impact its customers.¹¹⁶ Meanwhile, OCC admitted that none of its witnesses who testified in this proceeding performed any sort of analysis of the consequences that a loss of natural gas service would have on Suburban's customers.¹¹⁷

¹⁰⁹ See Tr. Vol. II at 391-94.

¹¹⁰ See Suburban Ex. 5 at 23 (Sonderman Supplemental Direct).

¹¹¹ Id.

¹¹² Suburban Ex. 4 at 4 (Grupenhof Direct).

¹¹³ Tr. Vol. II at 393-94.

¹¹⁴ Tr. Vol. III at 588.

¹¹⁵ Tr. Vol. II at 393-94.

¹¹⁶ Id.

¹¹⁷ See Suburban Ex. 17 (OCC Response to Suburban Discovery Request).

Staff's Witnesses agreed that the DEL-MAR pipeline extension was used and useful at date certain. Staff Witness Sarver testified that Staff recommended inclusion of the extension in rate base because it "was in use and useful to Suburban's current customers at date certain."¹¹⁸ At hearing, Staff Witness Lipthratt testified that the DEL-MAR pipeline extension was "absolutely" used and useful to Suburban's current customers at date certain.¹¹⁹

Ultimately, the record reflects that Suburban made a prudent decision to extend the DEL-MAR pipeline in order to prevent their customers from being at risk of a catastrophic outage. The fact that pressures dropped to such perilous levels just weeks prior to the pipeline being placed into service further underscores the fact that this extension was necessary. Suburban's customers can now rest assured that the natural gas distribution system that serves them can maintain adequate pressure to avoid an outage. Because the pipeline extension is currently in service, provides gas to customers, and prevents the risk of a system outage, it is used and useful and the Stipulation's recommendation that its value be included in rate base (on a phased-in basis) is proper.

2. OCC's Objections to the Inclusion of the DEL-MAR Pipeline Extension in Rate Base Are Unfounded.

In spite of the compelling record in this case, OCC contends that the DEL-MAR pipeline extension in its entirety is not used and useful to Suburban's existing customers. Suburban relied upon the testimony of an experienced professional engineer who regularly analyzes gas distribution systems in order to make prudent decisions for the safe and reliable supply of gas to customers to support its position. In support of OCC's proposal to entirely exclude the pipeline

¹¹⁸ See Staff Ex. 8 at 3 (Sarver Direct).

¹¹⁹ Tr. Vol IV at 746.

extension from rate base, it presented testimony of a non-engineer, regulatory analyst who is not familiar with Suburban's pipeline system.

Suburban Witness Grupenhof, who concluded that the pipeline extension is used and useful, is a professional, licensed engineer and Engineering Manager with a master's degree in engineering who has experience "design[ing] and draft[ing] pipeline alignments, pipeline facilities, and many other engineering tasks related to the design, construction, and operation of natural gas pipelines."¹²⁰ He has also developed pipeline system models.¹²¹ OCC Witness Willis, the only witness filing testimony in support of OCC's proposal to exclude the DEL-MAR pipeline extension from rate base, is not an engineer,¹²² has never designed a natural gas distribution system,¹²³ has not worked for a natural gas utility,¹²⁴ and has not performed modeling on a natural gas distribution system.¹²⁵

Rather than any sort of expertise in the matters necessary to determine the need for a pipeline extension, Mr. Willis appears to be basing his opinion on the used and usefulness of the DEL-MAR pipeline extension on his misperception of the proceeding before the Ohio Power Siting Board for the approval of the construction plans for the extension¹²⁶ and on a patently obvious misstatement of the UTI modeling submitted into evidence by Suburban in this case.¹²⁷

¹²⁰ Suburban Ex. 4 at 1 (Grupenhof Direct).

¹²¹ Id.

¹²² See Tr. Vol. I at 69.

¹²³ Id. at 71.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ See Tr. Vol. I at 40-41 (Mr. Willis admitting that he was not involved in the case, did not speak with anyone from the Ohio Power Siting Board Staff, did not do any further analysis, and relied only upon his reading of documents filed in that docket).

¹²⁷ See OCC Ex. 13 at 7-8 (Willis Supplemental Direct).

Suburban's witness has reviewed the same documents and has concluded that the inclusion of the pipeline extension is used and useful to existing customers and should be approved.¹²⁸ The Commission, therefore, has been presented with two witnesses who have reviewed the same documents and modeling and come to contradictory and inconsistent conclusions; the professional engineer who makes a living designing gas distribution systems determined that this modeling shows that the pipeline extension was needed for current customers. The non-engineer, regulatory analyst who has never designed a natural gas distribution system determined that it was not. In addition to Suburban Witness Grupenhof, Suburban Witness Sonderman, Staff Witness Sarver, and Staff Witness Liphtratt also reviewed the documents and modeling to conclude that the inclusion of the 4.9 mile pipeline extension in rate base was proper as the pipeline extension is used and useful to existing customers.¹²⁹

OCC has not presented a qualified, subject matter expert (qualified by education or experience) to dispute the used and usefulness of the 4.9-mile DEL-MAR pipeline extension. Mr. Willis' inability to correctly analyze the modeling at issue in the Company's determination to extend the pipeline was highlighted at hearing by his insistence that the models only demonstrated a risk of a low-pressure event if it were assumed that Suburban added 4,000 additional customers.¹³⁰ Specifically, mischaracterizing the data employed in the models Suburban relied upon in making the decision to extend the existing DEL-MAR pipeline, Mr.

¹²⁸ Suburban Ex. 4 at 9 (Grupenhof Direct); Tr. Vol. II at 354.

¹²⁹ See Suburban Ex. 5 at 21 ("Anyone claiming that the pipeline extension is not fully used and useful to maintain service to our existing customers must ignore the physical reality of our system's configuration and the laws of physics") (Sonderman Supplemental Direct); Tr. Vol. IV at 746 (Staff Witness Liphtratt testifying that the pipeline extension is "absolutely" 100 percent used and useful); Tr. Vol. ICV at 726 (Staff Witness Sarver testifying that "in this instance I believe that used and useful are synonymous with what took place with the extension".)

¹³⁰ See, e.g., Tr. Vol. III at 609.

Willis stated, “[a]gain, it assumed an additional 4,000 customers, so it never came online.”¹³¹ A review of the modeling suggests that this is unambiguously not the case. Suburban Exhibit 9 demonstrates that for each model performed, UTI used a “Base Load” number of customers for the time that the model was performed, and then added additional customers to that base load to include projected growth over the span of time that the model was considering.¹³² For instance, the modeling performed on February 10, 2016 used a Base Load of 12,172 customers for the First Quarter of 2015. By 2018, the last year in the model, the number of customers assumed on the model was 13,572, an increase of a much more modest 1,400 customers.¹³³ And with only that increase of 1,400 customers, the model projected a pressure at the Lazelle Road POD of 53.2 psig, drastically below Suburban’s bare minimum acceptable pressure threshold (which OCC has not disputed¹³⁴).¹³⁵ Further review of Exhibit 9 reveals that there is no instance where UTI assumed the addition of 4,000 customers in conducting its modeling. Mr. Willis’ assertions to the contrary are simply inaccurate. Mr. Willis’ ignorance of Suburban’s pipeline system was also exposed when he suggested that the 20-mile 12-inch DEL-MAR pipeline, which has been in use by Suburban since 2005, was not serving customers and that those customers were only being served by the six-inch ARCO line.¹³⁶ The two pipelines have been interconnected since the 20-mile pipeline was placed into service and they operate as an integrated delivery system.¹³⁷

The preposterous theory that the pipeline extension cannot be used and useful until 4,000 additional customers are added to Suburban’s system is nonetheless at the heart of OCC’s

¹³¹ Id.

¹³² See Suburban Ex. 9.

¹³³ Id.

¹³⁴ See Rv. Vol. III at 581 (Mr. Willis testifying that “I have no reason to dispute the 100 psig”).

¹³⁵ Id.

¹³⁶ See Tr. Vol. I at 132; see also Suburban Ex. 5 at Attachment AJS-1 (Sonderman Supplemental Direct).

¹³⁷ See Tr. Vol. II at 401-02.

challenge to the extension's justified inclusion in rate base. Mr. Willis points to Suburban's application before the Ohio Power Siting Board, where Suburban stated that the extension would be able to safely serve a potential buildout of 4,000 additional homes.¹³⁸ According to Mr. Willis, this means that the pipeline is not used and useful until 4,000 customers are actually added.¹³⁹ But Mr. Grupenhof articulated what this number actually means: specifically, that with the extension, Suburban could "sustain the addition of 4,000 customers" without exposing its customers to the risk of a future low pressure event.¹⁴⁰ 4,000 customers is the end point of the period where Suburban's current system (with the extension placed into service during the test year) will be able to safely serve customers. It is not the start of the period where the extension becomes used and useful to customers.

The weakness of Mr. Willis' position is capsulized in his Supplemental Direct Testimony in Opposition to the Stipulation, on p. 32, Question and Answer 22:¹⁴¹

Q. 22. If THE PUCO EXCLUDES THE DEL-MAR PIPELINE EXTENSION FROM SUBURBAN'S RATE BASE, SHOULD IT BE CONCERNED THAT THERE IS INJUSTICE OR HARDSHIP CREATED FOR SUBURBAN?

A. 22. No. the date certain and the test period were chosen by Suburban. It alone has the ability to select the most advantageous time to file a rate case. Suburban can in the future (when and if future customers are added and the Del-Mar pipeline extension is used and useful for those future customers), file a rate case to seek recovery of its investment and earn a return on the Del-Mar Pipeline extension project. However, until the pipeline extension is used and useful (and right now it is not), current customers do not benefit, and it is not in the public interest to approve cost collection for the pipeline extension.

Mr. Willis ignores that Suburban cannot finance a pipeline project in arrears; the bank requires payment on the construction loan. He also ignores the fact that this pipeline project's

¹³⁸ See OCC Ex. 13 at 7 (Willis Supplemental Direct).

¹³⁹ Id.

¹⁴⁰ Suburban Ex. 4 at 8 (Grupenhof Direct).

¹⁴¹ See OCC Ex. 13 at 14 (Willis Supplemental Direct).

financing was obtained from the bank with the expectation that Suburban would receive cost recovery for the plant that is used and useful to current customers and approved by the Commission, as well the approval of the construction project by the Ohio Power Siting Board. Under his nonsensical concept of the used and useful requirement for inclusion, no pipeline could be placed into rate base until the point at which it is no longer assured of providing sufficient pressure to maintain service to current customers. The hardship for the utility from such a perversion of that requirement is patently obvious in the inability to earn a return on its prudent investment. It is also manifestly unjust to penalize the utility for performing its public service obligation to provide safe and reliable service to its customers even under extreme operating conditions presented by unusually high demand on brutally cold days.

Not only does OCC's theory ignore variables in the system, such as customer load, temperatures, wind chill, and the number of customers, the broader implication of OCC's position is that a utility's property cannot be used and useful to customers unless it is precisely sized to serve the exact number of customers that the utility serves at the time the property is placed into service. In other words, a utility would have to time the construction of expansions of its distribution system so that when the expansion is completed, the existing number of customers (and their peak load) would be the maximum number of customers (and peak load) the utility could serve under the newly expanded system. Mr. Grupenhof concisely rejected this absurd result when he stated, "[e]ven if it were possible for us to design and construct a pipeline extension that serves the precise number of existing customers as of the date of completing construction, it would not be a logical, economical, or sensible way to build out and improve a gas pipeline system."¹⁴² The National Association of Regulatory Utility Commissioners

¹⁴² Suburban Ex. 4 at 8 (Grupenhof Direct).

(NARUC) has noted that “utility investment is often lumpy in nature, such that it may be cost ineffective to add small increments of plant and equipment each year rather than building to meet a longer growth horizon.”¹⁴³ With that statement, NARUC recognizes what OCC does not, which is that it is not practical for any utility to act as OCC advocates that Suburban act in this case. Similarly, the Supreme Court of Ohio has stated that the Commission should consider whether a utility is using “efficient and economical” management.¹⁴⁴ Thus, although OCC did not even contest that it would have been uneconomical or inefficient to build the pipeline extension in a piecemeal fashion, OCC still attempts to argue that Suburban should construct only the portion of pipeline that is necessary to serve the precise number of customers at the time the portion of the extension is completed.

Contrary to OCC’s position, in addition to being necessary to protect existing customers, the 4.9-mile pipeline recommended by Suburban’s engineering firm was the appropriate length and diameter. After considering many factors, Suburban determined that the 4.9 mile extension was right-sized as it will raise the pressure on the current system and be able to serve additional customers that will be added to the system in the foreseeable future without the need to construct another pipeline and without the additional costs to existing customers. Suburban Witness Sonderman stated:¹⁴⁵

In our view, a shorter pipeline would not have been prudent and in the best interest of our customers. We balanced a number of factors in the equation, but the first and foremost was customer safety and the critical need for adequate pipeline pressure. After that, we considered material prices, construction cost trends, and the increasing difficulty, delay and expense of building a pipeline as the area becomes more residential and less agricultural. By building the pipeline at the completed 4.9 mile length now, we

¹⁴³ See Suburban Ex. 10 at 16 (NARUC Audit Manual).

¹⁴⁴ See *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 547, 620 N.E.2d 835 (1993).

¹⁴⁵ Suburban Ex. 5 at 23-24 (Sonderman Supplemental Direct).

were able to get temporary construction easements along the existing ARCO right of way on agricultural land at far more reasonable cost, including crop loss damages, than the cost that would have been incurred if the construction easements were through a residential subdivision. Moreover, steel prices have been on the rise and it appears unlikely that in three, five or ten years these price increases would be only inflationary in nature.

* * *

And, constructing shorter segments would necessitate continuous pipeline construction projects as demand incrementally increases, and do so at massive transactional costs.

Mr. Grupenhoff concurred. He testified that had Suburban taken OCC's approach in this case and constructed a shorter or smaller-diameter extension that could tolerate the addition of fewer customers, it would have been "right back in the same situation where we would be basically building Phase 2 of the DEL-MAR extension right afterwards."¹⁴⁶ Doing this would only increase the cost of necessary improvements to Suburban's distribution system and to Suburban's customers and create more periods of time where Suburban's existing customers were at unacceptable risk of a low-pressure event occurring.

The Commission has previously endorsed Suburban's approach in this case. The Commission has found that utilities cannot be expected to perfectly size their plant, holding that "[h]indsight is always perfect and before the commission will consider denying a return on property actually used in providing service something more need be shown than that the company's foresight was not."¹⁴⁷ In other words, utilities should not be penalized when their systems are able to serve more than the precise number of customers taking service at the time rates are set.

¹⁴⁶ See Tr. Vol. II at 287.

¹⁴⁷ See *Re Columbus & Southern Ohio Electric Co.*, Case No. 77-545-EL-AIR, 0078 WL 494884 (Ohio P.U.C.), Opinion and Order at 14 (August 10, 1978).

But the most troubling argument advanced by OCC regarding the pipeline extension is the idea that the pipeline extension was not necessary because a low-pressure event severe enough to cause an outage never actually occurred before the pipeline extension was placed into service. Although incorrect, Mr. Willis repeatedly invoked the argument that Suburban had not shown that the pressure dropped below 100 psig at the Lazelle Road POD before the extension was placed into service.¹⁴⁸

As an initial matter, the record does reflect that on January 21, 2019 the pressure at the Lazelle Road POD was “very close” to the 100 psig threshold, despite the fact that January 21, 2019 was Martin Luther King Jr. Day, meaning that banks, schools and businesses were closed resulting in lower usage.¹⁴⁹ The record also reflects that there were events where the pressure did fall below 100 psig at the Lazelle Road POD as the check gauge at Lazelle triggered the opening of the valve and the flow of gas supply from Columbia Gas of Ohio, which would have raised the pressures to above 100 psig.¹⁵⁰ Whether the pressure actually dropped below 100 psig or an outage occurred, however, is beside the point. OCC is suggesting that a utility like Suburban should wait until something catastrophic actually occurs to act rather than proactively ensure that catastrophe never strikes. This is nonsensical. California homeowners should buy home insurance even if the wildfires have not yet hit their neighborhoods. Buildings along the coast should be reinforced to withstand tropical storms whether or not they have already been subjected to a hurricane. And utilities should prepare for possible (if not likely)

¹⁴⁸ See, e.g., Tr. Vol. III at 583 (“You asked if it dropped below 100, and I am just saying that it did not drop below 100” and “certainly if there would have been one to bolster your case that it dropped below 100, I am sure you would have provided it, but you didn’t.”)

¹⁴⁹ See Tr. Vol. II at 319; Suburban Ex. 14 (January 21, 2019 Pressure Readings).

¹⁵⁰ Suburban Ex. 5 at 22 (Sonderman Supplemental Direct); see also Tr. Vol. II at 387 (Suburban Witness Sonderman testifying that the check valve was open on the day in question).

events that could put their customers at risk whether or not any customers have already been forced to deal with an outage.

Mr. Willis states that Suburban is the master of its own fate regarding the timing of applications for an increase in rates, and the choice of a test year. But if the OCC recommendation was adopted, Suburban could either wait to file a rate application until 4,000 new customers were added (which is highly improbable) or be placed in the quandary of filing repeated applications for an increase in rates as subsets of the 4,000 new customers are added, at great expense to customers and notwithstanding that every current customer today is benefitting from the extension. This cannot conceivably be in the interest of Suburban's customers.

Suburban prudently acted to protect its customers by building the 4.9-mile DEL-MAR extension to ameliorate the risk of a massive system outage. Because Suburban has now done so by placing the pipeline into service and serving existing customers, the pipeline extension is used and useful to Suburban's current customers who it protects.

ii. The SFV Rate Design Has Already Been Determined to Be Just and Reasonable by the Commission.

OCC and OPAE both object that the Stipulation continues the recently-approved SFV rate design. This issue has been litigated and decided by the Commission, which has repeatedly and consistently approved SFV rate designs for natural gas utilities. It did so less than two years ago for Suburban in Case No. 17-594-GA-ALT.¹⁵¹ Notably, OCC was involved in that proceeding and chose not to contest the SFV rate design.¹⁵² OPAE also did not oppose the implementation of the SFV rate design by Suburban, and instead chose to be the administrator of

¹⁵¹ See *In the Matter of the Application of Suburban Natural Gas Company for Approval of an Alternative Form of Regulation to Initiate a Revenue Decoupling Mechanism*, Case No. 17-594-GA-ALT, Finding and Order at ¶ 46 (November 1, 2017) (Suburban SFV Order).

¹⁵² See Suburban Ex. 16 (Letter to Commission Filed by OCC in Case No. 17-594-GA-ALT).

Suburban's energy efficiency pilot program establishing in the proceeding.¹⁵³ As discussed below, neither OCC nor OPAE presents a valid reason for deviating from Suburban's recently-approved rate design.

OCC Witness Fortney, who sponsors OCC's objections to the SFV rate design admits that PUCO precedent supports the rate design proposed in the Stipulation.¹⁵⁴ OPAE Witness Rinebolt similarly concedes that the Commission has been implementing SFV rate design for over ten years.¹⁵⁵ Neither witness, however, appreciates the depth of that precedent. Both Mr. Fortney and Mr. Rinebolt discuss at length how conditions have changed since the Commission first approved an SFV rate design in 2008.¹⁵⁶ Setting aside the question of the persuasiveness of these analyses of changes over the past decade, they ignore the reality that Suburban's SFV rate design was first approved less than two years ago. Neither witness identifies a change in conditions since 2017 that would lead the Commission to determine that its reasoning in Suburban's prior case was flawed and must be changed or the issue revisited.

In fact, the Commission made findings in 2017 that specifically contradict the rationale for abandoning SFV rate design offered by Mr. Fortney and Mr. Rinebolt. For instance, both witnesses contend that the SFV rate design disincentivizes conservation of gas.¹⁵⁷ But only two years ago, in approving Suburban's SFV rate design, the Commission stated that "the institution of a SFV rate design and the proposed EEP pilot promote the state policies set forth in R.C. 4929.02 (A)(1) and (12), to promote the availability of adequate, reliable and reasonably

¹⁵³ See Tr. Vol. III at 514-15.

¹⁵⁴ See OCC Ex. 12 at 6 (Fortney Supplemental Direct).

¹⁵⁵ See OPAE Ex. 1 at 10-11 (Rinebolt Direct).

¹⁵⁶ See Id. at 11; OCC Ex. 12 at 7 (Fortney Supplemental Direct).

¹⁵⁷ See OPAE Ex. 1 at 13 (Rinebolt Direct); OCC Ex. 12 at 9 (Fortney Supplemental Direct).

priced natural gas services and goods to consumers and to promote the alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation.”¹⁵⁸

The basis for continuing the SFV rate design is the same now as it was two years ago and neither OCC nor OPAE has identified any basis for abandoning a rate design that is already in place and that was not proposed to be modified in Suburban’s Application.

V. CONCLUSION

The Stipulation before the Commission proposes just and reasonable rates that complies with Ohio law and is a product of significant bargaining and reflects several concessions made by Suburban in order to provide benefits to customers beyond the continued safe and reliable provision of natural gas service at just and reasonable rates. The Staff and Suburban agree that the Stipulation satisfies the Commission three-part test and recommend its adoption. For the reasons specified herein, Suburban respectfully requests that the Commission adopt the Stipulation and Proposed Tariffs and authorize Suburban to implement rates as specified therein.

Respectfully submitted,

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¹⁵⁸ Suburban SFV Order at ¶ 32.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail August 2, 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 4:32:01 PM

in

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

Summary: Brief Post Hearing Brief electronically filed by Mrs. Kimberly W. Bojko on behalf of Suburban Natural Gas Company