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I. INTRODUCTION

The straight-fixed variable rate design, Pipeline Extension, and phase-in provisions of the Stipulation are lawful, and, thus, not against any important regulatory principles or practices. Staff expands upon these topics in this Reply-Post Hearing Brief and reasserts that the Stipulation satisfies the three-prong test. Therefore, the Commission should approve the Stipulation.

II. DISCUSSION

A. **The straight-fixed variable rate design provision in the Stipulation does not violate any important regulatory principles or practices.**

The straight-fixed variable rate design does not violate any important regulatory principles or practices.¹ OCC and OP&E (“Intervenors”) admit that the straight-fixed variable rate design is consistent with Commission precedent², which would include Case No. 17-594-GA-ALT that authorized the rate design for Suburban.³ Further, in Case No. 17-594-GA-ALT, the Commission found, as recently at 2017, that the straight-fixed variable rate design promotes important regulatory principles and practices and benefits the consumer.⁴

¹ *Ohio Consumers' Counsel v. PUC of Ohio*, 127 Ohio St.3d 524, 2010-Ohio-6239, 941 N.E.2d 757.

² See OCC Ex. 12 at 6 (Fortney Supplemental Direct) and OP&E Ex. 1 at 10-11 (Rinebolt Direct).

³ 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).

⁴ *Id.* at ¶ 38.

Intervenors merely invite the Commission to overturn its own recent precedent, which is something Staff would not agree with in order to obtain OCC's and OPAE's signatures onto the Stipulation. The Intervenors' failure to sign is not a reflection of a lack of serious bargaining from Staff and Suburban ("Signatory Parties").

B. The Pipeline is used and useful, in accordance with R.C. 4909.15.

It is Staff's position that the phrase "used and useful" and the individual words that make up the phrase have no distinction in meaning.⁵ This is especially true with regards to the Pipeline Extension, which was built to supply capacity to current customer and to continue supplying reliable gas as the customer population grows.⁶ Only when one is presented with extreme hypothetical situations that involve pipeline constructions that would never be approved by the Ohio Power Siting Board ("OPSB or Board") could any distinction be discerned in the parsing of the words "used" and "useful".⁷ Accordingly, the Pipeline Extension, approved by the OPSB (length, diameter, and all) as appropriate to serve the public interest, convenience, and necessity⁸, is "used and useful" from Staff's perspective.⁹

⁵ Transcript at 726 (Cross of Roger Sarver).

⁶ *Id.* at 726 and 730-731.

⁷ *Id.* at 731-732.

⁸ *See* R.C. 4906.10(A)(6)

⁹ Staff's Ex. 8 at 3 (Roger Sarver's Prefiled Testimony)

Furthermore, the Pipeline Extension is “used and useful” even when applying OCC’s interpretation of the phrase. OCC admits that the Pipeline Extension is “used”, but in contradiction to the facts, argues that it is not “useful” (i.e. needed to serve customers safely and reliably at date certain). Nonetheless, the facts show that immediately before the Pipeline Extension was placed into service the pressure at the southern end of the ARCO six-inch Pipeline was approaching¹⁰ 100 psig¹¹ on cold weather days, thus threatening safe and reliable service. After the Pipeline Extension was placed into service, the pressure in the Pipeline was no longer approaching 100 psig on cold weather days, thus assuring safe and reliable service.¹² While the Pipeline Extension was placed into service six days before the date certain, both the in-service date and the date certain were in February, during the winter season of 2019, when cold weather days potentially hazardous to the ARCO six-inch Pipeline gas pressure were still theoretically possible.¹³ Therefore, the Pipeline Extension was “useful” within the test year and at date certain even when applying OCC’s interpretation of the term “useful”.

¹⁰ The readings were manually taken, not automated, so the pressures could have dropped below 100 psig without Suburban discovering them. Suburban Exhibit 14, Transcript at 271-272 (Cross of Kyle Grupenhof). Further, there are contracted backup systems that come on the moment the supply drops below 100 psig, so manually readings would have to be perfectly timed to catch a reading below 100 psig. Transcript at 271-272 (Cross of Kyle Grupenhof). Finally, the backup systems are not fail proof, so pressure coming so close to 100 psig could have signal a real catastrophe on cold weather days when the backup systems fail. *Id.* at 271-272, and 322

¹¹ The OCC does not challenge the fact that 100 psig is the minimum pressure that the ARCO 6-inch Pipeline system must maintain to assure Suburban customers with safe and reliably service.

¹² Suburban Exhibit 14

¹³ Transcript at 715 (Cross of Roger Sarver).

Additionally, the Pipeline Extension is appropriately sized – not gold-plated¹⁴. The issue OCC raises is whether the Pipeline Extension adds too much capacity to the ARCO six-inch Pipeline system (i.e. is the Pipeline Extension too long). However, when it comes to pipelines, the Ohio Power Siting Board determines whether the length, circumference and capacity of a pipeline are appropriate to serve the “public interest, convenience and necessity”.¹⁵ And, thus, the Ohio Power Siting Board has approved the subject Pipeline Extension as “useful” for such purposes.¹⁶ OCC is essentially asking the Commission to second guess the OPSB based on the record established in these proceedings.

Even though the Commission’s review overlaps the OPSB’s review on the issue of whether or not the Pipeline Extension is “useful” (i.e. appropriately sized), the Commission should come to the same conclusion as the OPSB. The length of the Pipeline Extension was determined by taking several reasonable factors into consideration, including, but not limited to: 1) capacity needed as of date certain¹⁷; 2) capacity needed to sustain customer

¹⁴ The general regulatory understanding of an overbuilt (i.e. gold-plated) pipeline is one that is built “much more costly than it would need to be to serve the needs of either the utility or its customers.” Transcript at 718 (Cross of Roger Sarver). This is very different than OCC’s position that any pipeline built beyond the exact capacity needs of the customer base at date certain is thereby overbuilt.

¹⁵ R.C. Chapter 4906.10(A)(6)

¹⁶ When the OPSB made the determination that Pipeline Extension served the public interest, convenience and necessity, it essentially found the Pipeline Extension to be “useful” within the context of its proceedings.

¹⁷ The OCC asserts that the Suburban did not consider the capacity of its current customer base at date certain when designing and timing the in service date for the Pipeline Extension. However, Suburban’s modeling projections were designed to predict when the ARCO 6-inch Pipeline would become obsolete (the winter of 2018-2019) and, thus, when the Pipeline Extension would need to be installed in order to assure continued safe and reliable service to its customer’s base. Suburban Exhibit 9 and *See* Transcript at 326 (Redirect of Kyle Grupenhof)

growth¹⁸; and 3) regulatory factors¹⁹; and 4) financial concerns²⁰. Suburban reasonably took into consideration all of these factor when determining the appropriate length for the Pipeline Extension.²¹ And the end result is an improved pipeline system that will provide safe and reliable service for its existing and future customers for the next ten years.²² This is not an unreasonable thing on its face given the cost, regulatory timing, and construction timelines associated with constructing pipelines.²³ OCC placed no evidence into the record to suggest that a pipeline extension is overbuilt merely because it will allow for adequate capacity to the utility’s customers for ten year. Therefore, the Commission should find the Pipeline Extension “useful” in its proceedings just as the OPSB found that the Extension serves the public interest, convenience and necessity (i.e. is useful) in its proceedings.

OCC argues that the consideration of any other factors other than current customer capacity needs as of date certain (especially future customer needs) automatically disqualifies the Pipeline Extension from being “useful” in accordance with R.C. 4909.15.²⁴

¹⁸ Transcript at 724 (Cross of Roger Sarver).

¹⁹ Transcript at 274 (Cross of Kyle Grupenhof)

²⁰ *Id.*

²¹ Transcript at 724 (Cross of Roger Sarver).

²² Transcript at 283 (Cross of Kyle Grupenhof)

²³ Indeed, it is common industry knowledge that a gas utility would need to size its pipeline to anticipate future growth, and that such sizing would not automatically exclude the pipeline from rates. Transcript at 725 (Cross of Roger Sarver). Further, when looking at the subject pipeline extension, it took four years to go from the initial stages of planning to the in service date. Transcript at 283 (Cross of Kyle Grupenhof). Therefore, the 10-years really only gives Suburban six years before the process starts all over again. *Id.*

²⁴ OCC Exhibit 13 at 9-13 (Supplemental Direct Testimony of Wm. Ross Willis)

However, there is no requirement found in R.C. 4909.15, nor any case law, that limits “useful” pipelines to those pipelines that are built to supply only the exact capacity needs of the current customers as of date certain. To read the statute in such a way would necessarily mean that Suburban’s Pipeline Extension could only be found “useful” if it were impossibly sized to let pressure drop to exactly 100 psig on a hypothetical coldest day event as of date certain.²⁵ It would also necessitate for Suburban to act imprudently and size its system such that it could not handle future growth after the date certain.²⁶ OCC asserts an absurd interpretation of R.C. 4909.15, which, thus, lacks merit.²⁷ A utility can and must 1) size its pipeline to take into account reasonably anticipated future growth while 2) timing the in-service date to fall within a test year when the pipeline would otherwise become obsolete in terms of capacity. These two things are not mutually exclusive – instead they are closely tied together – when determining whether a pipeline is “useful” under R.C. 4909.15.

The Pipeline Extension is “used and useful”. Therefore, the Stipulation necessarily benefits consumers through its phase-in provisions as explained in the Staff’s Post-Hearing Brief. The phase-in provision also show that the Stipulation takes into account the concern

²⁵ It is impossible to determine what the coldest hypothetical day event, especially when you take into account wind chill factor and customer usage, which changes based on days of the week and times of the day. Transcript at 314 and 324-326 (Redirect of Kyle Grupenhof)

²⁶ Suburban, nor any competent utility, would size its system to only meet current demand knowing that in the immediate future its system would become obsolete. Suburban Exhibit 4 at 8-9 (Kyle Grupenhof’s Direct Testimony).

²⁷ The General Assembly intended for statutes to be read to provide a “just and reasonable result***” and “not to accomplish foolish results.” *State ex rel. Barley v. Ohio Dept. of Job & Family Serv.*, 132 Ohio St.3d 505, 2012-Ohio-3329, 974 N.E.2d 1183, ¶ 25, citing *State ex rel. Carna v. Teays Valley Local School Dist. Bd. of Edn.*, 131 Ohio St3d 478, 2012-Ohio-1484, 967 N.E.2d 193, ¶ 19, quoting *State ex rel. Saltsman v. Burton*, 154 Ohio St. 262, 268, 95 N.E.2d 377 (1950).

of the non-signatory parties despite their unwillingness to stipulate. Last, the inclusion of the Pipeline Extension in rates violates no regulatory principles or practices.

C. The phase-in provisions of the Stipulation should be approved by the Commission.

The phase-in of the Pipeline Extension should be approved by the Commission. A utility can lawfully stipulate to a lesser valuation of its plant into rates.²⁸ After all, stipulations allow parties to seriously bargain positions that they believe they could otherwise win on in a hearing in exchange for concession by other parties.²⁹ While it is true that the Supreme has stated that phase-in plans cannot be forced upon a utility through Commission Order, the Court has not forbidden voluntary phase-in plans agreed upon through stipulations in which the utility is a signatory party.³⁰ Indeed, the phase-in plan in the case at hand is not a matter of first impression. Although not completely analogous, the Commission approved an agreed-upon phase-in of a straight-fixed variable (SFV) rate

²⁸ *Hardin-Wyandot Lighting Co. v. Public Utilities Com.*, 118 Ohio St. 592, 600; 162 N.E. 262, 265 (1928).

²⁹ See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Ohio Edison Co.*, Case No. 92-1463-GA-AIR, et al. (August 26, 1993); *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (August 19, 1993); *The Cleveland Electric Illumination Co.*, Case No. 88-170-EL-AIR (January 31, 1989); and *Restatement of Accounts and Records (Zimmer Plant)*; Case No. 84-1187-EL-UNC (November 26, 1985).

³⁰ *Columbus S. Power v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 541, 620 N.E.2d 835 (1993).

design in Columbia Gas of Ohio's 2008 base rate case.³¹ The Court approved similar phase-ins agreed to by Duke Energy Ohio, Inc. and Dominion East Ohio.³²

The Pipeline Extension phase-in provisions in the Stipulation are lawful and should be approved by the Commission.

III. CONCLUSION

For the reasons outlined in this Staff's Reply Post-Hearing Brief and in Staff's Post-Hearing Brief, the Commission should adopt the Stipulation and find that it satisfies the three-prong test for reasonableness.

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³¹ *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service*, Case No. 08-72-GA-AIR (Opinion and Order) (Dec. 3, 2008) at 21.

³² *Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261, ¶¶ 18, 26.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Reply Post-Hearing Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio has been served upon the below-named counsel via electronic mail, this 16th day of August, 2019.

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