THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF SUBURBAN NATURAL GAS COMPANY FOR AN INCREASE IN GAS DISTRIBUTION RATES.	**CASE NO. 18-1205-GA-AIR**
IN THE MATTER OF THE APPLICATION OF SUBURBAN NATURAL GAS COMPANY FOR TARIFF APPROVAL.	**CASE NO. 18-1206-GA-ATA**
IN THE MATTER OF THE APPLICATION OF SUBURBAN NATURAL GAS COMPANY FOR APPROVAL OF CERTAIN ACCOUNTING AUTHORITY.	**CASE NO. 18-1207-GA-AAM**

OPINION AND ORDER

Entered in the Journal on September 26, 2019

TABLE OF CONTENTS

I. Summary

{¶ 1} The Commission adopts the joint stipulation and recommendation resolving all issues related to Suburban Natural Gas Company's application to increase its natural gas distribution rates.

II. Procedural Background

{¶ 2} Suburban Natural Gas Company (Suburban or Company) is a natural gas company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} The fixation of rates for public utilities in the state of Ohio is governed by R.C. Chapter 4909. R.C. 4909.17, 4909.18, 4909.19, and 4909.43 enumerate the statutory requirements for an application to increase a public utility's rates. The Commission adopted Ohio Adm.Code 4901-7-01 and its appendix (Standard Filing Requirements), pursuant to R.C. 4901.13, 4909.04(C), and 4909.18. The Standard Filing Requirements specify the format for filing all information required in an application for an increase in rates and define the information that the Commission requires, pursuant to R.C. 4909.18(E).

{¶ 4} Pursuant to R.C. 4909.43(B), and in compliance with Ohio Adm.Code 4901-7-01, Appendix A, Chapter I of the Commission's Standard Filing Requirements, Suburban filed, on July 31, 2018, a notice of intent to file an application for an increase in rates. Concurrently, Suburban also filed a motion to set a test period and date certain and for a waiver of a filing requirement. Suburban filed an amended motion for waiver on August 23, 2018.

{¶ 5} On August 31, 2018, Suburban filed, pursuant to R.C. 4909.18, an application to increase its rates for natural gas distribution service.

{¶ 6} By Entry issued on September 5, 2018, the Commission granted the amended motion for waiver, approved the date certain of February 28, 2019, and established a test year of March 1, 2018, through February 28, 2019.

{¶ 7} On September 19, 2018, Suburban filed a second motion for waiver of a filing requirement, which was granted by the Commission on October 10, 2018.

{¶ 8} By Entry dated October 24, 2018, the Commission accepted the application for filing as of August 31, 2018, and directed Suburban to publish notice of the application pursuant to R.C. 4909.19.

{¶ 9} Pursuant to R.C. 4909.19, Staff conducted an investigation of the facts, exhibits, and matters relating to the application. On February 6, 2019, Staff filed a written report of its investigation (Staff Report).

{¶ 10} By Entry dated February 8, 2019, the attorney examiner issued a procedural schedule establishing deadlines for filing objections to the Staff Report, motions to strike any such objections, direct expert testimony, and motions to intervene. The Entry also scheduled a prehearing conference for March 25, 2019, and an evidentiary hearing for April 25, 2019. Finally, the Entry scheduled a local public hearing to occur in Delaware, Ohio, on April 18, 2019.

{¶ 11} Motions to intervene in these proceedings were filed by the Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE). No memoranda contra were filed. The Commission finds that OCC's and OPAE's motions are reasonable and should be granted.

{¶ 12} Objections to the Staff Report were filed by Suburban, OCC, and OPAE on March 8, 2019.

{¶ 13} On March 14, 2019, Suburban filed a motion to modify the procedural schedule. On March 21, 2019, the attorney examiner modified the procedural schedule such that the prehearing conference was rescheduled to occur on April 8, 2019. Additionally, the attorney examiner noted that the evidentiary hearing would be called on April 25, 2019, as scheduled, and continued to a date to be established by future entry.

{¶ 14} By Entry dated March 25, 2019, the attorney examiner noted that, following the conclusion of any public testimony on April 25, 2019, the evidentiary hearing would be continued to May 9, 2019. The attorney examiner further noted that, following the testimony on May 9, 2019, the hearing would be continued to May 20, 2019.

{¶ 15} The evidentiary hearing convened on April 25, 2019. During the hearing, a deadline of May 16, 2019, was established for the filing of Staff's testimony. Further, as planned, the evidentiary hearing was continued to May 9, 2019. Following the testimony heard on May 9, 2019, the hearing was again continued to May 20, 2019.

{¶ 16} On May 16, 2019, Staff filed a motion for an extension and continuance, along with a request for an expedited ruling. In the motion, Staff stated that it had reached a settlement agreement in principle with Suburban and requested additional time to formalize the agreement. The attorney examiner granted Staff's motion on May 16, 2019, and indicated that the evidentiary hearing would reconvene on May 20, 2019, for the purpose of discussing a revised procedural schedule. On May 20, 2019, the parties agreed to a revised procedural schedule, such that any stipulation would be filed by May 23, 2019, testimony in support of the stipulation would be due by June 7, 2019, testimony in opposition to the stipulation would be due by June 21, 2019, and the evidentiary hearing would reconvene on July 10, 2019.

{¶ 17} The local public hearing was held, as scheduled, on April 18, 2019. At the local public hearing, no public testimony was offered. Notice of the local public hearing was published in accordance with R.C. 4903.083, and proof of such publication was offered by Suburban during the evidentiary hearing (Co. Ex. 12).

{¶ 18} On May 23, 2019, a joint stipulation and recommendation (Stipulation) was filed by Suburban and Staff (Joint Ex. 1). If adopted, the Stipulation would resolve all of the issues in these proceedings.

{¶ 19} On June 7, 2019, testimony in support of the Stipulation was filed by Nichole M. Clement (Co. Ex. 3), Kyle Grupenhof (Co. Ex. 4), and Andrew J. Sonderman (Co. Ex. 5) on behalf of Suburban, while Staff filed the testimony of Jonathan J. Borer (Staff Ex. 2), Stephanie Gonya (Staff Ex. 3), Craig Smith (Staff Ex. 4), Tornain Matthews (Staff Ex. 5), Carla Swami (Staff Ex. 6), Joseph P. Buckley (Staff Ex. 7), Roger L. Sarver (Staff Ex. 8), David M. Lipthratt (Staff Ex. 9), and Matthew Snider (Staff Ex. 10).

{¶ 20} On June 21, 2019, testimony in opposition to the Stipulation was filed by Robert B. Fortney (OCC Ex. 12), Wm. Ross Willis (OCC Ex. 13), and Daniel J. Duann (OCC Ex. 14) on behalf of OCC. OPAE filed the testimony of David C. Rinebolt (OPAE Ex. 1).

{¶ 21} The evidentiary hearing reconvened on July 10, 2019, and concluded on July 15, 2019.

{¶ 22} Initial and reply briefs were filed by the parties on August 2, 2019, and August 16, 2019, respectively.

III. DISCUSSION

A. Summary of the Stipulation

{¶ 23} As previously stated, a Stipulation signed by Suburban and Staff (Signatory Parties) was filed on May 23, 2019. The Stipulation was intended by the Signatory Parties to resolve all outstanding issues in these proceedings. Below is a summary of the provisions agreed to by the Signatory Parties. This summary is not intended to replace or supersede the Stipulation.

1. OPERATING INCOME AND RATE BASE

{¶ 24} The Signatory Parties agree that Suburban's 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 (Joint Ex. 1 at 3).

{¶ 25} Revenue Increase: Consistent with the schedules attached to the Stipulation, Suburban's total revenue increase shall be phased in over three years (phase-in):

a. The recommended revenue increase for the first year upon approval of the new distribution rates by the Commission in these proceedings (Year 1) shall be $1,168,030.00.

b. The recommended revenue increase for the second year after the Commission's order in these proceedings (Year 2) shall be $1,532,278.00 from current rates at the time of filing of the Stipulation.

c. The recommended revenue increase beginning with the third year after the Commission's order in these proceedings (Year 3) and every year thereafter until new distribution rates are approved in a subsequent proceeding shall be $1,778,433.00 per year from current rates at the time of filing of the Stipulation.

(Joint Ex. 1 at 4.)

{¶ 26} Revenue Requirement: Consistent with the schedules attached to the Stipulation and as a result of the phase-in, Suburban's revenue requirement shall also increase for each of the first three years after the Commission's order approving the Stipulation in these proceedings:

a. The revenue requirement from the date that rates are approved by the Commission and for one year following such approval (Year 1) shall equal $19,800,801.00.

b. The revenue requirement for the second year after the date of the Commission's order approving rates in these matters and for one year (Year 2) shall equal $20,165,049.00.

c. The revenue requirement for the third year after the date of the Commission's order approving rates in these matters (Year 3) and for every year thereafter until new distribution rates are approved in a subsequent proceeding shall equal $20,411,204.00 per year.

(Joint Ex. 1 at 4-5.)

{¶ 27} The Commission and OCC assessment fees shall be removed from the gross revenue conversion factor (Joint Ex. 1 at 5).

{¶ 28} <u>Rate Base</u>: Except as specifically noted in the Stipulation, the distribution plant adjustments recommended in the Staff Report shall be adopted (Joint Ex. 1 at 5).

{¶ 29} Except as specifically noted in the Stipulation, the general plant adjustments recommended in the Staff Report shall be adopted (Joint Ex. 1 at 5).

{¶ 30} Consistent with the application and Staff Report, a one-eighth operating expenses and one-fourth operating taxes methodology for the working capital calculation shall be adopted (Joint Ex. 1 at 5).

{¶ 31} The 4.9-mile extension of the DEL-MAR pipeline shall be phased into rate base over a three-year period as follows:

a. Fifty percent of the current book value of the 4.9-mile DEL-MAR pipeline extension, including depreciation and property taxes, shall be included in rate base on the date of the Commission's order approving new distribution rates in these proceedings (Year 1).

b. Eighty percent of the current book value of the 4.9-mile DEL-MAR pipeline extension, including depreciation and property tax, shall be included in rate base effective one year from the date of the Commission's order approving new distribution rates in these proceedings (Year 2).

c. One hundred percent of the current book value of the 4.9-mile DEL-MAR pipeline extension, including depreciation and property tax, shall be included in rate base, effective two years from the date of the Commission's order in these proceedings (Year 3), and every year thereafter.

(Joint Ex. 1 at 5-6.)

{¶ 32} At the time additional book value of the 4.9-mile DEL-MAR pipeline extension is added to rate base at the beginning of the second and third years following the Commission's order in these proceedings (Year 2 and Year 3), Suburban's established revenue requirement for each applicable year shall be allocated to the customers based upon the total number of customers, as evaluated by Staff and as approved by the Commission, at the time the additional book value is added at the same revenue distribution percentage, excluding gas costs, as established in Year 1 (Joint Ex. 1 at 6).

{¶ 33} Operating Income Miscellaneous: Miscellaneous Revenues related to late fees, sales-merchandise, sales-labor, meter setting fees, and insufficient funds/bad check charges,[1] shall be included as part of operating income in the amount of $202,608.00, increasing Suburban's total base distribution revenue (Joint Ex. 1 at 6).

{¶ 34} Test year operating income shall be adjusted to remove rider revenues and expenses resulting in a reduction of $1,346,597.00 to both revenues and expenses (Joint Ex. 1 at 6).

{¶ 35} Test Year Revenue: All tariff classes will 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 the Stipulation (Joint Ex. 1 at 7).

{¶ 36} Test year revenue will assume that the full Phase 2 of the Straight Fixed Variable (SFV) rates had been in place for the entire test year (Joint Ex. 1 at 7).

{¶ 37} Adjustment to Test Year Expense: Rate case expenses shall be amortized over five years. Suburban shall file a late filed exhibit reflecting the total amount of rate case expense

---

1 Other specific miscellaneous charges are addressed in the Rates and Tariffs section of the Stipulation.

to be included in rate base within 30 days of the date the hearing concludes or reply briefs are filed, whichever is later.[2] (Joint Ex. 1 at 7.)

{¶ 38} Staff's recommended reclassification and inclusion of a rate case expense invoice in the amount of $1,450.00 shall not be adopted (Joint Ex. 1 at 7).

{¶ 39} Expenses associated with miscellaneous revenue in the amount of $28,780 shall be included in test year expense (Joint Ex. 1 at 7).

{¶ 40} Property tax expenses shall include expenses associated with:

a. The existing 20-mile DEL-MAR pipeline, which had previously been leased and has now been acquired by Suburban, at the valuation level known.

b. Plant materials and supplies as of the date certain.

c. New plant additions at the 2018 property tax rate.

(Joint Ex. 1 at 7.)

{¶ 41} <u>Payroll Expenses</u>: Actual payroll expenses annualized at the level experienced as of the date certain shall be included, which includes 26 pay periods for salaried employees and 52 pay periods for hourly employees (Joint Ex. 1 at 8).

{¶ 42} Payroll expenses that are known and measureable as of February 2019 shall be included (Joint Ex. 1 at 8).

{¶ 43} Payroll expenses shall be adjusted to remove capitalized labor (Joint Ex. 1 at 8).

---

[2] Although the Stipulation indicates that these rate case expenses should be included in rate base, the Commission clarifies that rate case expenses, as an item of expense, are included as part of the determination of operating income.

{¶ 44} The labor expense adjustment calculation shall compare the annualized February 2019 payroll level (after an operations and maintenance percentage allocation of 88.20 percent) to the payroll expenses included in the test year of $2,916,773.00 (Joint Ex. 1 at 8).

{¶ 45} 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 (Joint Ex. 1 at 8).

{¶ 46} <u>Employee Benefits Expense</u>: Expenses related to employee benefits, including payments made to employees under a program contained in Suburban's 401k retirement plan, shall be included as an expense in the amount of $150,000.00. As a condition of the inclusion of this amount, Suburban agrees to fund the 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. (Joint Ex. 1 at 8.)

{¶ 47} Expenses related to Suburban's current and future employee benefit obligation regarding partial reimbursement of fitness center dues shall not be included as an expense (Joint Ex. 1 at 9).

{¶ 48} 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 (Joint Ex. 1 at 9).

{¶ 49} Educational expenses shall be adjusted to reflect a three-year historical average (Joint Ex. 1 at 9).

{¶ 50} <u>Professional Expenses</u>: 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 (Joint Ex. 1 at 9).

{¶ 51} Professional expenses shall be calculated based upon a three-year average as filed in the application (Joint Ex. 1 at 9).

{¶ 52} Staff's recommendation to exclude certain Professional Fees related to Professional Contract Labor shall not be adopted (Joint Ex. 1 at 9).

{¶ 53} Miscellaneous Expense: Account 91202 shall be adjusted by $17,710.00, which shall be excluded from test year expenses (Joint Ex. 1 at 9).

{¶ 54} Account 91200 shall be adjusted by $866.00, which shall be excluded from test year expenses (Joint Ex. 1 at 9).

{¶ 55} Account 93506 shall be adjusted by $33.00, which shall be excluded from test year expenses (Joint Ex. 1 at 9).

{¶ 56} Interest Associated with Customer Deposits: As proposed in the application, interest associated with customer deposits shall be reclassified to operating expenses (Joint Ex. 1 at 10).

{¶ 57} Charitable Contributions: As proposed in the application, charitable contributions shall be excluded from test year expenses, resulting in a reduction to test year expenses in the amount of $23,163.00 (Joint Ex. 1 at 10).

{¶ 58} Social and Service Club Dues: As proposed in the application, social and service club dues shall be excluded from test year expenses, resulting in a reduction to test year expenses in the amount of $18,710.00 (Joint Ex. 1 at 10).

2. RATES AND TARIFFS

{¶ 59} Resale Language: Suburban shall adopt the following tariff language regarding resale: "No customer shall supply or sell gas for use in any location other than that specified in the application for service, with the sole exception that the supply or sale of gas for use as a vehicle fuel is permitted" (Joint Ex. 1 at 10).

{¶ 60} Baseline Btu: A baseline Btu[3] 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. (Joint Ex. 1 at 10.)

{¶ 61} Meter Testing: Upon a residential customer's request, Suburban shall offer one free meter test every three years to each residential customer (Joint Ex. 1 at 11).

{¶ 62} Free Service Lines: Tariff language regarding offering free service lines that was proposed in Suburban's application shall not be adopted (Joint Ex. 1 at 11).

{¶ 63} Standard Meters: A standard meter shall be provided free of charge to those Small General Service (SGS) customers requiring a standard meter. All SGS customers that require a non-standard meter shall be charged a fee for the non-standard meter at the Uprate Charge proposed in the application. (Joint Ex. 1 at 11.)

{¶ 64} Partial Month Customer Service Charge: 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. (Joint Ex. 1 at 11.)

{¶ 65} Meter Relocation Charge: The meter relocation charge shall be limited to those customers that create or are in the process of creating an unsafe condition and fail to remedy the condition within three days (Joint Ex. 1 at 11).

{¶ 66} Suburban agrees to provide a cost estimate of the meter relocation charge (Joint Ex. 1 at 11).

---

3 "Btu" is an abbreviation for British thermal unit.

{¶ 67} Cost Allocation: The base revenue distribution excluding gas costs and recommended revenue class allocation shall be based upon actual data as of the date certain (Joint Ex. 1 at 12).

{¶ 68} Payments to Avoid Disconnection: 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. (Joint Ex. 1 at 12.)

3. RATE OF RETURN

{¶ 69} The rate of return adopted shall be 7.26 percent (Joint Ex. 1 at 12).

{¶ 70} The return on common equity shall be 10.25 percent, with a cost of debt of 4.53 percent (Joint Ex. 1 at 12).

4. TAX CUTS AND JOBS ACT

{¶ 71} Regulatory Liability Amortization: Suburban shall reverse the regulatory liability amortization proposed in its application (Joint Ex. 1 at 12).

{¶ 72} Base Rate Adjustment: 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 (EDIT) will be based upon deferred tax balances as of December 31, 2017. (Joint Ex. 1 at 12.)

{¶ 73} Protected EDIT will be passed back to customers using the Average Rate Assumption Method (ARAM) or an acceptable alternative method (Joint Ex. 1 at 12).

{¶ 74} Unprotected EDIT will be passed back or collected from customers over a ten-year period (Joint Ex. 1 at 13).

{¶ 75} Tax Credit Rider: 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 over-collection of income taxes, resulting from the enactment of the TCJA effective January 1, 2018 (Joint Ex. 1 at 13).

{¶ 76} 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 (Joint Ex. 1 at 13).

{¶ 77} 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 (Joint Ex. 1 at 13).

5. Agreement to File New Rate Case

{¶ 78} Suburban agrees to file an application to establish new base distribution rates pursuant to R.C. 4909.18 by October 31, 2025 (Joint Ex. 1 at 13).

6. Three-Part Test

{¶ 79} The Signatory Parties agree that the Stipulation satisfies the three-part test used by the Commission to consider settlements. Specifically, the Signatory Parties agree that the Stipulation is a product of serious bargaining among capable, knowledgeable parties; the Stipulation, as a whole, benefits customers and the public interest; and the Stipulation does not violate any important regulatory principle or practice. (Joint Ex. 1 at 13.)

7. Miscellaneous

{¶ 80} 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. Unless otherwise provided in the Stipulation, all rates, terms, conditions, and any other items shall be treated in accordance with the Staff Report. If any proposed rates, charges, terms, conditions, or other items set forth in Suburban's application in these proceedings are not addressed in the

Stipulation or the Staff Report, the proposed rate, charge, term, condition, or other item shall be treated in accordance with the application. (Joint Ex. 1 at 14.)

{¶ 81} Attachment A to the Stipulation contains schedules reflecting the terms agreed upon by Staff and Suburban.[4] Attachment B to the Stipulation will be a late-filed exhibit consisting of tariff schedules reflecting the agreed-upon terms and conditions of service. The Signatory Parties agree that the tariff schedules that will be filed as Attachment B are expected to permit Suburban to collect from its customers no more than the agreed-upon revenue increases, are just and reasonable, and should be adopted. (Joint Ex. 1 at 14.)

B. Consideration of the Stipulation

{¶ 82} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 83} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g.*, *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records,* Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

---

4 Attachment A contains the Staff Report schedules for Year 1 of the phase-in.

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?

{¶ 84} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities. *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* at 126. The Supreme Court of Ohio stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 85} Suburban and Staff urge the Commission to approve the Stipulation in its entirety. In their briefs, OCC and OPAE have focused on certain objections to the Staff Report by raising arguments regarding the Commission's three-part test for evaluating the reasonableness of the Stipulation. Pursuant to Ohio Adm.Code 4901-1-28(D), an objection to a staff report in a rate case proceeding is deemed withdrawn if a party fails to address the objection in its initial brief. Accordingly, we will address only OCC's and OPAE's briefed objections. Further, as noted below, OCC's main objections to the Stipulation fall under prongs two and three of the three-part test adopted by the Commission to evaluate settlements. OPAE's objections fall under all three prongs of the test. The Commission addresses the parties' specific arguments in the context of the three criteria for evaluating the reasonableness of the Stipulation.

1. IS THE STIPULATION THE PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES?

{¶ 86} Suburban notes that Company witness Sonderman and Staff witness Lipthratt each offered testimony explaining how the Stipulation satisfies the Commission's first criterion. Suburban adds that OCC's witnesses did not dispute that the Stipulation is the product of serious bargaining among knowledgeable and capable parties, while OPAE witness Rinebolt conceded that he was not involved in any settlement discussions and, thus, could not offer an opinion as to the adequacy of their substance. (Co. Ex. 5 at 15-17; Staff Ex. 9 at 9; Tr. Vol. III at 448, 550, 625-626.)

{¶ 87} Arguing that the first part of the Commission's three-part test has been met, Staff asserts that the Stipulation is the product of an open process in which all intervenors were provided an opportunity to participate. Staff further asserts that all parties were represented by experienced and competent counsel that have participated in numerous regulatory proceedings before the Commission. According to Staff, extensive negotiations occurred among the parties and the Stipulation reflects a comprehensive compromise of the issues raised by parties with diverse interests. (Staff Ex. 9 at 9.)

{¶ 88} OPAE argues that there is a lack of diversity amongst the Signatory Parties to the Stipulation, as it represents a compromise only between Staff and Suburban. OPAE elaborates that no other party has agreed to the Stipulation and that no party representing customers joined the Stipulation. Suburban counters that, during hearing, OPAE did not contest the assertions or the testimony that the Stipulation meets the first prong of the reasonableness test. Further, Suburban points out that the Commission's three-part test does not include a diversity requirement and that, in any event, the only evidence on this issue confirms that the Stipulation reflects diverse interests. *In re Ohio Power Co.*, Case No. 14-1158-EL-ATA, Second Entry on Rehearing (Feb. 1, 2017). In its reply brief, Staff notes that the fact that OCC and OPAE elected not to sign the Stipulation does not indicate a lack of serious bargaining.

{¶ 89} The Commission finds that the first part of the three-part test is satisfied here. OPAE offered no evidence to refute the testimony of Mr. Lipthratt and Mr. Sonderman, which conclusively demonstrates that the Stipulation is the product of serious bargaining among capable and knowledgeable parties. Staff witness Lipthratt testified that the Stipulation is the result of an open process and extensive negotiations in which all intervenors were permitted to participate. Mr. Lipthratt added that all parties were represented by experienced and competent counsel that have participated in numerous regulatory proceedings before the Commission. Similarly, Mr. Sonderman testified that a number of settlement conferences were held involving subject matter experts from Staff, Suburban, OCC, and OPAE, all of which have experience in appearing before the Commission, and that all parties were able to express their positions during the negotiating process. According to Mr. Sonderman, the parties were also provided the opportunity to question the engineer in charge of the analysis of Suburban's need for the DEL-MAR pipeline extension. Mr. Sonderman emphasized that all of the issues raised by the parties in these proceedings were thoroughly reviewed, discussed, and, to the extent agreement could be reached, were resolved during the settlement negotiations. Both Mr. Lipthratt and Mr. Sonderman concluded that the Stipulation represents a balance of the interests presented in these proceedings and is a reasonable compromise of those interests and the issues raised. (Staff Ex. 9 at 9; Co. Ex. 5 at 15-17.)

{¶ 90} Further, as the Commission has previously noted, the three-part test does not include a mandatory diversity of interest component. *In re Ohio Power Co.*, Case No. 14-1158-EL-ATA, Second Entry on Rehearing (Feb. 1, 2017) at ¶ 14; *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al., Opinion and Order (Mar. 31, 2016) at 52. The Commission has also found that there is no requirement that any particular party must join a stipulation in order for the first part of the test to be met. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 04-571-GA-AIR, et al., Opinion and Order (Apr. 13, 2005) at 9. Finally, as Staff is a party to the Stipulation, we reject OPAE's claim that no party mindful of customer interests elected to join the Stipulation.

2. DOES THE STIPULATION, AS A PACKAGE, BENEFIT RATEPAYERS AND THE PUBLIC INTEREST?

{¶ 91} Suburban identifies several reasons why it believes the Stipulation, as a package, benefits ratepayers and serves the public interest. First, Suburban asserts that the

Stipulation allows the Company to continue providing safe, reliable, and uninterrupted service to its customers without charging exorbitant rates, which is a benefit to those customers.

{¶ 92} Second, Suburban believes that the Stipulation will ensure that customers receive the full benefit of the TCJA. Suburban states that, through the Stipulation, it has committed to reversing the regulatory liability amortization proposed in the application, adjusting base rates to reflect the impact of the TCJA, passing back protected EDIT to customers using the ARAM, and establishing a tax credit to return over-collected 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.

{¶ 93} Third, Suburban contends that phasing in its revenue over a three-year period under the Stipulation provides significant benefits to customers. Suburban explains that it has already incurred costs to construct and place in operation the 4.9-mile DEL-MAR pipeline extension of its 12-inch high pressure steel pipeline to ensure adequate pressure to customers at the very southern end of Suburban's six-inch steel pipeline at Lazelle Road on the Delaware County line. However, as a "key compromise," Suburban has agreed to phase in the revenue increase attributable to the pipeline extension over a period of three years. Specifically, 50 percent of the book value will be included in the first year, 80 percent in the second year, and 100 percent in the third year. According to Suburban, this will save customers $610,403 and $246,155 in the first and second years, respectively (Joint Ex. 1 at 4). Suburban states that savings to existing ratepayers are further magnified by its agreement to recalculate the customer count used to determine the customer charges each year of the phase-in, thereby spreading its revenue requirement among more customers than existed at date certain. Suburban posits that this will reduce the share of the revenue requirement that each individual customer is responsible for through rates.

{¶ 94} Fourth, under the Stipulation, Suburban has to file a new distribution rate case by October 31, 2025, which addresses concerns raised by intervenors regarding increased customer growth once new rates are put into effect. Suburban states that, by making a commitment to file a new rate case roughly six years after new rates are approved, assuming Suburban's recent growth continues, this updated customer count would spread Suburban's future revenue requirement among the then-existing customers and reduce rates for each customer.

{¶ 95} Fifth, Suburban states that the Stipulation provides all customers a free meter test once every three years. Sixth, Suburban states that the Stipulation benefits larger customers billed on a volumetric basis under Rate LGS or Rate LGTS, because the Stipulation includes a Btu adjustment to protect customers against being adversely harmed by variations in thermal content of the volumes delivered. Specifically, the Stipulation establishes a baseline Btu of 1067 for the CORE system (northern system) and 1063 for the SCOL system (southern system) until Suburban's next base distribution rate case.

{¶ 96} Seventh, Suburban claims that the Stipulation properly includes the 20-mile DEL-MAR pipeline in rate base, thereby providing its customers yet another benefit. Suburban clarifies that this pipeline was previously leased and, during the lease period, the Company recovered lease payments through the Gas Cost Recovery Rider (Rider GCR). Suburban states that the lease costs, which totaled $1,631,672 in 2018, will no longer be collected through Rider GCR. Based on Mr. Sonderman's testimony, Suburban notes that the inclusion of the pipeline in rate base resulted in a net reduction in Suburban's request for a rate increase (Co. Ex. 5 at 24-25). Suburban further points to OCC witness Willis's agreement that it was less costly to include the pipeline in rate base than to include lease payments in Rider GCR (Tr. Vol. III at 560).

{¶ 97} Finally, Suburban contends it made additional compromises to provide benefits to customers. Per Suburban, Mr. Sonderman explained that the Company agreed to accept less than full recovery of contributions to employee 401k accounts; forgo inclusion of known and measureable wage increases that took effect April 1, 2019; include amounts associated with certain miscellaneous revenues as base revenue; accept various adjustments to rate base; and accept a reduction in test year expenses in certain accounts (Co. Ex. 5 at 5, 10, 18).

{¶ 98} With respect to the second part of the Commission's three-part test, Staff argues that the Stipulation benefits ratepayers and the public interest, as it results in a just and reasonable resolution that reflects a balanced approach of recognizing some of the objections to the Staff Report, rejecting other objections, and considering alternatives. Staff highlights a number of key benefits of the Stipulation. First, Staff asserts that the phase-in of the DEL-MAR pipeline extension will result in the recognition of consistent customer growth, while ensuring that existing customers continue to be reliably served. Further, Staff notes that, because customer counts will be updated based on actual bill counts at the time the DEL-MAR pipeline extension is phased in, the customer charge will be lower than it would have been without the phase-in. Staff also notes that the Stipulation will result in a phased-in revenue requirement increase that is less than Suburban's requested revenue requirement by approximately 65 percent, 54 percent, and 47 percent in Year 1, Year 2, and Year 3 (and beyond), respectively. Next, Staff points out that Suburban is required under the Stipulation to file an application to establish new base distribution rates by October 31, 2025, which addresses a longer period of customer growth. As another benefit of the Stipulation, Staff cites the fact that customers will see a fixed charge of $33.84 rather than Suburban's proposed customer charge of $41.86. Finally, Staff contends that the Stipulation provides a number of consumer protections, including one free meter test every three years for residential customers and no customer service charge when there are fewer than eight days of usage in a billing period. (Staff Ex. 9 at 9-10.)

{¶ 99} Although Suburban and Staff believe that the Stipulation benefits customers and the public interest, OCC and OPAE contend that the Stipulation fails the second part of the Commission's test for several reasons. Their arguments are addressed below.

a. The 4.9-Mile DEL-MAR Pipeline Extension

{¶ 100} OCC states that R.C. 4909.15 requires property to be both used and useful as of date certain and, as such, the Commission must interpret the statute to give meaning to both words. OCC argues that natural gas flowing through a pipeline might make it used, but Suburban must show more to prove that a pipeline is useful. According to OCC, a pipeline is useful to customers at date certain if it allows a utility to serve those customers safely and reliably. If Suburban could serve its current customers safely and reliably without the pipeline, OCC argues that the extension is not useful to those customers. OCC points to Mr. Willis's testimony to note that a pipeline would not be useful if it was built longer than it needed to be. In such a scenario, Mr. Willis believes that it should be considered plant held for future use, which cannot be included in rates. (OCC Ex. 13 at 7-12.)

{¶ 101} OCC asserts that the DEL-MAR pipeline extension was not useful to Suburban's current 13,500 customers on date certain, February 28, 2019, because Suburban built the pipeline to address growth in its service area that will occur years after the date certain. In fact, OCC states that Suburban's own projections demonstrate that there is no low-pressure concern at the Lazelle Road point of delivery until at least late 2019 or early 2020, which is after the February 28, 2019 date certain. OCC points out that Suburban's engineers were not projecting normal, everyday conditions and were, instead, projecting maximum usage on the coldest day. Even under these extreme, forecasted conditions, OCC states that Suburban's engineers expected pressure to remain at safe levels for the entire 2018-2019 winter. Additionally, OCC points to actual data from the past winter; Suburban safely served its customers during the 2018-2019 winter without the pipeline extension, even at temperatures below what Suburban's contracted engineering company, Utility Technologies International Corp. (UTI), used in it modeling. OCC elaborates that UTI's model assumed a temperature of negative five degrees to test whether pressure at Lazelle Road would drop below 100 pounds per square inch gauge (psig). On January 21, 2019, the recorded temperature was, in fact, lower than the modeled temperature at negative seven degrees. However, OCC states that the pressure on that day never fell below 110 psig, which is ten percent higher than the safe minimum pressure. In its reply brief, OCC further explains that, while Suburban relies on projections from December 2015 and February 2016, UTI's August 31, 2018 projection is the only one that is relevant and demonstrates that pressure was expected to remain at safe levels through and including date certain. As such, OCC urges the Commission to reject Suburban's claim that the DEL-MAR pipeline extension was needed to address low-pressure concerns prior to date certain.

{¶ 102} OCC further posits that Suburban designed the DEL-MAR pipeline extension to serve 4,000 to 20,000 new customers, not Suburban's 13,500 customers at date certain. OCC points to Suburban witness Grupenhof's testimony, where he stated that Suburban would not experience any potential low-pressure scenarios until 4,000 additional customers were added to the system beyond the winter of 2018-2019. (Co. Ex. 4 at 8.) Further, OCC states that, if customers are added in the north end of Suburban's southern system, Mr. Grupenhof testified that the extension could allow Suburban to add 20,000 new customers or more than double its current customer count and still have enough capacity. OCC notes that the northern end of the southern system is precisely where Suburban expects its new customers to be located (Tr. Vol. II at 407). OCC concludes that a pipeline extension that is so vastly oversized that it enables Suburban to substantially increase and possibly double its customer base is not useful to current customers.

{¶ 103} Continuing that Suburban overbuilt its system, OCC states that the DEL-MAR pipeline extension was designed to accommodate peak capacity in 2028, which is nearly a decade after the February 28, 2019 date certain. OCC states that the extension can handle a maximum capacity of 842 thousand cubic feet per hour (mcfh), but the expected peak load of the extension when it went into service was only 457 mcfh. In fact, OCC states that Suburban projected peak capacity of 737 mcfh nine years from now in 2028. OCC additionally states that the extension was designed to produce over 230 psig of pressure at Lazelle Road, which is more than double the safe pressure of 100 psig. Shortly after the pipeline was installed, Suburban measured the actual pressure at Lazelle Road at more than 250 psig. OCC argues that Suburban's claim that the extension was needed to address pressure concerns is an after-the-fact attempt to make the pipeline extension seem useful to current customers. OCC points to Suburban's filing with the Ohio Power Siting Board (OPSB) and the current application, neither of which references a need to increase pressure at Lazelle Road on very cold days. OCC states that the filings only reference a need for additional capacity. (Co. Ex. 1; Co. Ex. 7; OCC Ex. 8 at 1; Co. Ex. 6 at 1-2; Tr. Vol. II at 292; OCC Ex. 7.) OCC further points out that the extension conveniently went into service just six days before date certain. According to OCC, this demonstrates that the extension was not necessary to protect current customers from a system failure and associated outages.

{¶ 104} With regard to the length of the extension, 4.9 miles, OCC states that Suburban's decision regarding that particular length was dictated by procedural requirements under the Ohio Revised Code and OPSB rules instead of current customers' needs. OCC explains that the OPSB's rules allow accelerated treatment only for pipelines under five miles. OCC further notes that Mr. Grupenhof admitted that there was no engineering reason to build a 4.9 extension as opposed to a shorter one (Tr. Vol. II at 276-277). OCC argues that Suburban knew that it would take longer to receive approval for a five-mile extension, so it just built a slightly shorter pipeline of 4.95 miles. OCC further argues that Suburban built the extension as long and expensive as it possibly could (4.9 miles and $8.9 million), while still qualifying for expedited OPSB approval. In its reply brief, OCC argues that Suburban admitted that a two-mile extension could have adequately served customers on date certain (Tr. Vol. II at 278, 287).

{¶ 105} OCC notes that Suburban also failed to consider potential alternatives to the DEL-MAR pipeline extension which could have been implemented at a lower cost to consumers than $8.9 million. OCC claims that Suburban did not analyze any other pipeline lengths to minimize costs through its engineering firm, UTI (OCC Ex. 6). OCC argues that Staff also declined to do such analysis or direct Suburban to do such analysis (Tr. Vol. V at 732-733). OCC reiterates that a critical question in these cases is whether Suburban needed to build an extension to serve current customers and, if so, how long that extension needed to be. Yet, OCC notes that the parties to the Stipulation, Suburban and Staff, made no attempt to determine the proper length of the extension. Furthermore, OCC reiterates that, if Suburban safely served its customers in the winter of 2018-2019 with no extension, it certainly could have served them safely with an extension much shorter than 4.9 miles. In fact, OCC states that Mr. Grupenhof testified that even a shorter, two-mile extension would have allowed Suburban to safely serve its customers during the 2018-2019 winter (Tr. Vol. II at 278). Overall, OCC claims that the Commission has no choice but to find that Suburban has failed to meet its burden of proving that any portion of the 4.9-mile extension was useful to serve Suburban's customers on date certain. OCC concludes that including the extension in rate base will result in unjust and unreasonable rates under R.C. 4905.22, because the extension was not useful as of date certain.

{¶ 106} In its reply brief, OCC adds that, under R.C. 4909.15 and 4909.154, operations and maintenance expenses are judged based on the prudence standard, while capital investments, such as the extension in question here, are judged based on the used and usefulness standard. As such, even if the extension were deemed prudent, OCC posits that, if the extension is not used and useful in providing utility service to Suburban's customers, customers cannot be expected to pay for it. *In re Ohio Edison Co.*, Case No. 83-1130-EL-AIR, Opinion and Order (July 27, 1984); *In re Ohio Edison Co.*, Case No. 89-1001-EL-AIR, Opinion and Order (Aug. 16, 1990).

{¶ 107} Also in its reply brief, OCC urges the Commission to consider the effect of these proceedings on not only Suburban's customers but the precedential effect for future rate cases before the Commission. According to OCC, the $8.9 million cost of the 4.9-mile pipeline extension would increase Suburban's rate base by 52 percent. If a larger utility company such as Columbia Gas of Ohio, Inc. (Columbia) increased its rate base by 52 percent, six days before date certain, OCC posits that Columbia's customers would pay more than $500 million in new investments. OCC argues that no utility should be allowed to charge customers for an oversized distribution system, but if the Commission allows the DEL-MAR pipeline extension in rate base, it would be giving license to other utilities to follow suit.

{¶ 108} Suburban disagrees with OCC's contentions and argues that the DEL-MAR pipeline extension was used and useful as of date certain and, consequently, properly included in rate base under the Stipulation. To persuade the Commission regarding the necessity of the extension for current customers, Suburban emphasizes the testimony presented by Mr. Sonderman and Mr. Grupenhof. Mr. Sonderman testified that, on February 24, 2015, the pressure at Lazelle Road fell below 100 psig, which is the minimum acceptable pressure at Lazelle Road. As a result of this event, Mr. Sonderman testified that he commissioned 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. Using the data made available by the new mapping system, UTI engineers forecasted pressures at Lazelle Road for three years to determine the appropriate course of action to ensure safe and reliable service to customers. (Co. Ex. 5 at 21-22.)

{¶ 109} Suburban next points to Mr. Grupenhof's testimony. Mr. Grupenhof, who is an engineer with UTI, testified that he performed the modeling, as requested. The models performed in December 2015 and February 2016 showed that Suburban could encounter issues with unacceptably low-pressure events, which could jeopardize Suburban's entire system by the winter of 2018-2019, if a cold weather event like the one in February 2015 occurred again. As a professional engineer experienced in gas distribution systems, Mr. Grupenhof testified that UTI recommended that Suburban construct a 4.9-mile extension of the DEL-MAR pipeline to increase its current pressures at Lazelle Road to prevent outages and ensure safe and reliable service.

{¶ 110} Due to UTI's modeling, Suburban states that it made the decision to build the extension and sought to obtain approval from the OPSB. After Suburban received the OPSB's approval, Suburban commenced construction of the extension. However, Mr. Sonderman testified that construction was delayed due to weather (the wettest fall and winter in many years) and difficulties obtaining necessary easements and permits. Suburban is adamant, however, that the extension was placed into service by February 22, 2019, and was serving existing customers within the test year and prior to the date certain in these proceedings, February 28, 2019.

{¶ 111} As further proof that this extension was necessary during the winter 2018-2019 season, Mr. Sonderman testified that, on January 31, 2019, as the extension neared completion, the pressure at Lazelle Road fell to only 105 psig. Mr. Sonderman concludes that this event confirmed Suburban's decision to build the extension to address the unacceptable risk of low-pressure failures that could lead to outages. Suburban further describes the consequences of an extensive outage caused by low pressure: customers could be without natural gas service for weeks during the coldest time of the year; Suburban would be required to expend extensive resources; Suburban would have to call upon other gas utilities for assistance; and the restoration effort would take a minimum of several weeks. (Co. Ex. 5 at 23; Co. Ex. 4 at 4.) Further, Suburban points to OCC's admission that none of its witnesses performed an analysis of the consequences that a loss of service would have on Suburban's customers (Co. Ex. 17). Moreover, Suburban points to the fact that Staff's witnesses, including Mr. Sarver and Mr. Lipthratt, testified that the extension was used and useful to Suburban's existing customers as of date certain (Tr. Vol IV at 746).

{¶ 112} Suburban also points to OCC witness Willis's lack of engineering experience to discount OCC's contention that the extension was not used and useful as of date certain. Suburban expounds that Mr. Willis, the only witness filing testimony in support of OCC's proposal to exclude the extension from rate base, is not a qualified subject matter expert, is not an engineer, has never designed a natural gas distribution system, has not worked for a natural gas utility, and has not performed modeling on a natural gas system. OCC counters, however, that the critical issue in these cases is not whether there was an engineering need for the extension but whether it was used and useful as of date certain. Because the latter question is a regulatory ratemaking question, OCC asserts that Mr. Willis's ratemaking expertise is sufficient.

{¶ 113} Suburban argues that Mr. Willis based his opinion regarding the used and usefulness of the extension on his misperception of the modeling submitted by UTI and the proceeding before the OPSB for the approval of the construction plans for the extension. With regard to the former, Suburban believes that Mr. Willis's contention that the modeling only demonstrated the risk of a low-pressure event if Suburban added 4,000 additional customers mischaracterizes the UTI modeling data. Suburban points to its Exhibit 9, which compiles all of the UTI models. For each model performed, UTI used a base 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. Suburban explains that, for the modeling performed on February 10, 2016, UTI 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 by the model was 13,572, an increase of a much more modest 1,400 customers. Suburban emphasizes that, with an increase of only 1,400 customers, the model projected a pressure at Lazelle Road of 53.2 psig, drastically below Suburban's bare minimum acceptable pressure threshold of 100 psig. Suburban reiterates that UTI did not assume an addition of 4,000 customers in any of the models.

{¶ 114} Suburban also elaborates on its contention that Mr. Willis's characterization of the Company's OPSB application is inaccurate. According to Suburban, the application stated the extension would be able to safely serve a potential buildout of 4,000 additional homes. Suburban argues that Mr. Willis has mistakenly taken this to mean that the extension is not used and useful until 4,000 customers are actually added. Suburban points to Mr. Grupenhof's testimony to demonstrate the inaccuracy of Mr. Willis's position; specifically, 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 (Co. Ex. 4 at 8).

{¶ 115} Suburban believes 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. Mr. Grupenhof, on behalf of Suburban, rejects this result, because it is not a logical, economical, or sensible way to build out and improve a gas pipeline system (Co. Ex. 4 at 8). According to Suburban, the National Association of Regulatory Utility Commissioners (NARUC) has noted that it may be impractical for a utility to make incremental additions to plant and equipment instead of considering a longer growth horizon (Co. Ex. 10 at 16). Suburban argues that the Supreme Court of Ohio has advocated a similar position and directed the Commission to consider whether a utility is using "efficient and economical" management. *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 547, 620 N.E.2d 835 (1993).

{¶ 116} OCC responds to Suburban's position regarding a distribution system's size as it pertains to the used and useful standard and clarifies its position; according to OCC, a pipeline designed to serve an extra 4,000 to 20,000 future customers is so clearly overbuilt as to not be useful to current customers. While Suburban's projected date certain peak load at Lazelle Road was 457 mcfh, OCC notes the extension handles a peak load of 842 mcfh, which is an 84 percent excess. OCC claims that Suburban has exceeded any reasonable peak load cushion, thereby demonstrating that the extension was not useful at date certain. (OCC Ex. 5.)

{¶ 117} In turn, Suburban argues that, after considering various factors, such as customer load, temperatures, wind chill, and the number of customers, Suburban determined that the 4.9-mile extension was right-sized, as it will raise the pressure on the current system and serve customers that may be added in the foreseeable future without the need to construct another pipeline and without the additional costs to existing customers. In contrast, had Suburban taken OCC's piecemeal approach to pipeline construction, Suburban states that it would have had to build a second phase of the extension soon, thereby increasing the cost of necessary improvements to Suburban's distribution system and creating a longer period of time where Suburban's existing customers could be exposed to a risk of a low-pressure event. Suburban also points out that the Commission has previously endorsed the Company's approach, noting that "[h]indsight is always perfect and before the [C]ommission 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." *In re Columbus & Southern Ohio Electric Co.*, Case No. 77-545-EL-AIR, Opinion and Order (Mar. 31, 1978) at 14.

{¶ 118} Finally, Suburban refutes OCC's argument that the extension was not necessary because a low-pressure event severe enough to cause an outage never actually occurred before the extension was placed into service. Suburban reiterates that the pressure at Lazelle Road was close to the 100 psig threshold (105 psig) on January 21, 2019, despite that day being Martin Luther King Jr. Day, meaning that banks, schools, and businesses were closed, resulting in lower usage (Tr. Vol. II at 319). Suburban argues that the record also reflects that there were events where the pressure did fall below 100 psig at Lazelle Road, which triggered the check gauge and allowed gas to flow from Columbia's system to raise the pressure to above 100 psig. Suburban criticizes OCC's apparent suggestion that a utility should wait until something catastrophic actually occurs to act rather than proactively ensure reliable service. Suburban concludes that it prudently acted to protect its customers by building the extension to ameliorate the risk of a massive system outage. OCC responds to Suburban's allusion to catastrophic events by reminding the Commission that there is no evidence in the record that customers were ever at risk of anything close to a weeks-long outage in Suburban's service area.

{¶ 119} In its reply brief, Staff contends that the DEL-MAR pipeline extension should be included in Suburban's base rates, as it was used and useful as of the date certain (Staff Ex. 8 at 3). Staff takes the position that there is no distinction in meaning between the terms "used" and "useful." Staff also believes that, because the DEL-MAR pipeline extension was approved by the OPSB as appropriate to serve the public interest, convenience, and necessity under R.C. 4906.10(A(6), the pipeline extension is also used and useful. (Staff Ex. 8 at 3; Tr. at 726.) Staff continues that, even accepting OCC's interpretation of the phrase "used and useful," the record reflects that, immediately before the DEL-MAR pipeline extension was placed into service, the pressure at the southern end of the ARCO pipeline was approaching levels below 100 psig on cold weather days, thus threatening safe and reliable service. Staff adds that, after the DEL-MAR pipeline extension was placed into service, which occurred before the date certain, the pressure improved on cold weather days. (Co. Ex. 14.) Staff concludes that this evidence indicates that the DEL-MAR pipeline extension was useful as of the date certain.

{¶ 120} With respect to OCC's arguments regarding the length and capacity of the DEL-MAR pipeline extension, Staff, in its reply brief, notes that the OPSB determines whether the length, circumference, and capacity of a proposed pipeline are appropriate to serve the public interest, convenience, and necessity. Given that the DEL-MAR pipeline extension was approved by the OPSB, Staff contends that OCC is essentially requesting that the Commission second-guess the OPSB's determination. In any event, Staff asserts that the length of the DEL-MAR pipeline extension was determined based on several reasonable factors, including the capacity needed as of the date certain, the capacity needed to sustain customer growth, regulatory factors, and financial concerns (Co. Ex. 9; Tr. at 274, 326, 724). According to Staff, the end result is an improved pipeline system that will provide safe and reliable service for Suburban's existing and future customers for the next ten years (Tr. at 283). Staff also argues that there is no support in R.C. 4909.15 or case law for OCC's contention that "useful" pipelines are those that are built to supply no more than the capacity needs of current customers as of the date certain. Staff claims that OCC's position would absurdly require Suburban to size its system in such a way that it would be unable to accommodate future customer growth that occurs after the date certain.

{¶ 121} We find, upon review of the evidence provided by the parties, that Suburban has adequately demonstrated that the 4.9-mile DEL-MAR pipeline extension was necessary to serve existing customers as of February 28, 2019. While we agree with OCC that there is a distinction between the terms "used" and "useful," in contrast to Staff's contention that the terms carry the same meaning, as explained below, here the extension was both used and useful to Suburban's customers as of date certain. Due to modeling conducted by UTI as a result of the February 24, 2015 low-pressure event, Suburban projected that, by the 2018-2019 winter, assuming a negative five degree temperature, additional capacity was required to serve existing customers and to ensure adequate pressure at Lazelle Road (Tr. Vol. II at 273; Co. Ex. 4 at 8; Co. Ex. 5 at 21-22). We find that models run by UTI on December 9, 2015 (76.30 psig), February 3, 2016 (71.85 psig), February 10, 2016 (53.27 psig), and April 6, 2017 (80.83 psig) all projected that the pressure at Lazelle Road would be below 100 psig, thereby necessitating the DEL-MAR pipeline extension by year end 2018. Furthermore, even though the August 31, 2018 model projects that the pressure at Lazelle Road during year end 2018 would be 104.27 psig, this is barely above the minimum acceptable level of 100 psig. (Co. Ex. 4, Attach. KDG-1 at 1-5.) During a particularly cold stretch with multiple contingencies, as explained below, Suburban may not have been able to provide safe, adequate, and reliable service to its customers. Moreover, the evidence demonstrates that Suburban projected completion of the extension by year end 2018, specifically October 31, 2018, but due to weather delays, including record rainfall during the 2018 autumn and winter, and issues with obtaining easements from landowners, this was not attainable. (Tr. Vol. II at 267-269; 374; Co. Ex. 4 at 7.) Despite delays, Suburban was able to place the DEL-MAR pipeline extension into service by February 22, 2019, before the February 28, 2019 date certain. As such, the extension was both used by customers as of date certain and useful to them because it provided them with safe and reliable service at that time.

{¶ 122} In finding that the pipeline extension was necessary for Suburban's system, we further note that, on January 21, 2019, Martin Luther King Jr. Day, the pressure at Lazelle Road fell to only 105 psig. Considering that businesses and schools were closed that day, resulting in lower usage, Suburban expected the pressure to be higher. Additionally, the record demonstrates that the pressure at Lazelle Road did, in fact, fall below 100 psig on February 24, 2015. As witness Sonderman stated, the risk of an outage intensifies when multiple days of cold weather occur, combined with other factors such as customer load and wind chill (Tr. Vol. II at 372, 375). Furthermore, 100 psig is a *minimum* safe pressure and we find that a natural gas utility like Suburban, which is engaged in providing a critical and necessary commodity, especially during the winter must prepare for contingencies in order to ensure safe and reliable service.

{¶ 123} While, in its reply brief, OCC maintains that, even if the extension is deemed prudent from a business operations perspective, it was not used and useful as of date certain, we find that the cases OCC relies on do not support its contention. In one case, the Commission denied the inclusion of a turbine unit and three generating units in Ohio Edison Company's (Ohio Edison) plant-in-service because they were not in use as of date certain, September 30,

1983. *In re Ohio Edison Co.*, Case No. 83-1130-EL-AIR, Opinion and Order (July 27, 1984). The Commission noted that the turbine had not been in service on date certain for Ohio Edison's previous rate case or the rate case at issue, and was, in fact, held out of service for over four years. With regard to the generating units, Ohio Edison had not operated them since January 1983 and it had no plans for these units through June 1988, past the date certain of September 30, 1983. Because of the length of time the generating units had been out of service coupled with the absence of any definite plans for their use in the near term future, the Commission concluded that these units should also be excluded from rate base. Here, even though Suburban placed the DEL-MAR pipeline extension into service only six days before date certain, it was serving the Company's current customers as of date certain and will be in service in the foreseeable future.

{¶ 124} The second case OCC cites to convince us that the pipeline extension is not used and useful as of date certain involves unmarketability of land and is not applicable here. *In re Ohio Edison Co.*, Case No. 89-1001-EL-AIR, Opinion and Order (Aug. 16, 1990). In that case, Ohio Edison objected to Staff's exclusion of costs for excess acreage associated with five substations. Ohio Edison argued that, when the parcels were purchased for the substation, a portion of land was unusable. Because the marketable portions of the parcels were being used for utility service, Ohio Edison argued that the full market value of all the land, which could not be inflated by the unmarketable portions, should have been included in rate base. Though the Commission recognized that Ohio Edison raised a valid argument, the Commission held that the company did not provide additional evidence to demonstrate the unmarketability of the land in question. Consequently, the Commission found that Staff's exclusion was proper. This case is not instructive in determining whether the DEL-MAR pipeline extension was used and useful as there are no allegations of land marketability.

{¶ 125} With regard to OCC's arguments about the precise length of the extension, we find that, while a two-mile extension may have served customers through the 2018-2019 winter, Suburban would need to immediately initiate the OPSB regulatory process again to build additional pipeline to ensure adequate capacity to serve existing customers soon after

(Tr. Vol. II at 278, 287). This approach would also increase overall cost of necessary improvements to Suburban's distribution system, thereby increasing the rates customers pay (Co. Ex. 4 at 8-9; Co. Ex. 5 at 23-24). Importantly, NARUC's guidance on this matter notes 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" (Co. Ex. 10 at 16). Consequently, we find the length of the DEL-MAR pipeline extension was appropriate to prevent outages and ensure safe and reliable service.

{¶ 126} Finally, we find it important to refute OCC's contention that the DEL-MAR pipeline extension was overbuilt to accommodate 4,000 to 20,000 future customers and thereby possibly double its customer base. The August 31, 2018 model created by UTI assumes 13,081 existing customers and an additional 526 customers in 2019 (Co. Ex. 4, Attach. KDG-1 at 5). It is even more relevant to note that this model indicates that the pressure without the extension drops to 78.72 psig in 2019, while the pressure with the extension is 232.50 psig. Though, with the benefit of hindsight, OCC now proclaims that Suburban safely provided adequate service until February 22, 2019, prior to the extension being placed into service, we are persuaded that it was reasonable for the Company to build an extension of an appropriate size to continue providing safe, reliable, and adequate natural gas service to existing customers through the 2018-2019 winter.

b. SFV Rate Design

{¶ 127} Both OCC and OPAE urge the Commission to modify its prior position on SFV rate design.[5] The parties explain that the natural gas industry conditions that the Commission relied on when adopting the SFV rate design over ten years ago in Case No. 07-829-GA-AIR have dramatically changed. Specifically, OCC argues that the price of natural gas has dropped by almost 50 percent and that the industry is no longer characterized by the volatile and sustained price increases that once incentivized customers to conserve gas. The parties note

5 The Commission recognizes that OPAE made its argument regarding the SFV rate design under the third prong of our reasonableness test. However, in the interest of addressing related arguments together, we consider OPAE's arguments here.

that Suburban's entire rate increase will be placed in a monthly fixed charge initially set at $33.84, which residential customers will pay even when they use little to no gas, especially during the summer months. OCC points to OCC witness Fortney's testimony to argue that, in placing Suburban's entire rate increase in the monthly residential fixed charge, the SFV rate design sends improper price signals to customers, discourages energy efficiency, and disproportionately affects low-usage residential customers. OPAE agrees with OCC and elaborates that the SFV rate design does not recognize the variations in demand that customers impose on the distribution system and instead encourages consumers to consume more natural gas. While the Commission has approved the SFV rate design for natural gas distribution utilities, OCC and OPAE now urge the Commission to modify its policy, place any rate increase for Suburban in a volumetric rate, and reject the full SFV rate design proposed in the Stipulation.

{¶ 128} In response to OCC's and OPAE's arguments regarding the SFV rate design, Suburban emphasizes the Commission's decision in Case No. 17-594-GA-ALT, which approved the SFV rate design for the Company less than two years ago. *In re Suburban Natural Gas Co.*, Case No. 17-594-GA-ALT (*SFV Case*), Finding and Order (Nov. 1, 2017). Suburban notes that OCC chose not to contest the SFV rate design in that proceeding. Furthermore, Suburban points out that OPAE, which also did not oppose the SFV rate design implementation by Suburban, chose to be the administrator of Suburban's energy efficiency pilot program established in that proceeding. Notably, Suburban states that both Mr. Fortney and Mr. Rinebolt discussed at length how conditions have changed since the Commission first approved an SFV rate design in 2008, but both failed to acknowledge the fact that Suburban's SFV rate design was first approved less than two years ago. Suburban argues that neither OPAE nor OCC identified any market changes which would make it reasonable for the Commission to revisit the Company's SFV rate design in these proceedings.

{¶ 129} Staff notes that the Ohio Supreme Court has previously affirmed the Commission's adoption of the SFV rate design. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 127 Ohio St.3d 524, 2010-Ohio-6239, 941 N.E.2d 757. Staff further notes that the SFV rate design is consistent with Commission precedent, including the Commission's recent decision in the *SFV Case*, where the Commission, in authorizing the SFV rate design for Suburban, determined that the SFV rate design promotes important regulatory principles and practices and benefits consumers. *SFV Case*, Finding and Order (Nov. 1, 2017). Staff also agrees with Suburban that the Stipulation's approach of placing the entire increase of the fixed distribution costs into the fixed charge is consistent with the rate design approved by the Commission in the *SFV Case* (Staff Ex. 10 at 5).

{¶ 130} As Suburban and Staff emphasize, the Company's rate design was recently the subject of review by the Commission in the *SFV Case*. In its application in that case, Suburban proposed to initiate a revenue decoupling mechanism, which would provide for the new SFV rate design to be phased in over a two-year period. By Finding and Order dated November 1, 2017, the Commission approved Suburban's application. With respect to the SFV rate design, we stated:

> In approving Suburban's transition to a SFV rate design, the Commission notes that, historically, natural gas rate design incorporated a modest customer charge that only covered a portion of a company's fixed costs, while other fixed charges were collected through a volumetric rate that added to the cost of the natural gas itself. That rate structure, while not truly cost-reflective, provided the company an opportunity to recover its revenue requirement as long as gas consumption was at or above the level upon which the rates were based. However, as a result of increased conservation efforts by customers, decreased sales have impacted the financial stability of Suburban and other natural gas companies.
>
> Consistent with our prior decisions, we again find it appropriate to adopt a rate design that decouples the Company's recovery of its fixed distribution costs from the amount of gas that customers actually consume. As we have previously recognized, a SFV rate design provides significant customer benefits, such as more stable customer bills throughout the entire year, better price signals to

> consumers, and more equitable cost allocations among customers, as well as greater conservation by diminishing the utility's incentive to increase its gas sales. *In re Duke Energy Ohio, Inc.*, Case No. 07-589-GA-AIR, et al., Opinion and Order (May 28, 2008); *In re The East Ohio Gas Co. d/b/a Dominion East Ohio*, Case No. 07-829-GA-AIR, et al., Opinion and Order (Oct. 15, 2008); *In re Columbia Gas of Ohio, Inc.*, Case No. 08-72-GA-AIR, et al., Opinion and Order (Dec. 3, 2008); *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 07-1080-GA-AIR, et al., Opinion and Order (Jan. 7, 2009); *In re Eastern Natural Gas Co. and Pike Natural Gas Co.*, Case No. 08-940-GA-ALT, et al., Opinion and Order (June 16, 2010).

SFV Case, Finding and Order (Nov. 1, 2017) at ¶¶ 34-35.

{¶ 131} OCC and OPAE have not offered any argument that convinces us that our recent decision in the *SFV Case* was unreasonable. Neither has OCC or OPAE demonstrated that our longstanding precedent on this issue should be overturned. As noted in the *SFV Case*, the Commission has adopted the SFV rate design with respect to the distribution rates of a number of natural gas companies. Further, the Ohio Supreme Court has affirmed the Commission's adoption of the SFV rate design. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261; *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 127 Ohio St.3d 524, 2010-Ohio-6239, 941 N.E.2d 757. Here, we again find that the SFV rate design is reasonable for Suburban, is consistent with our recent decision in the *SFV Case*, and is supported by the record (Staff Ex. 1 at 27; Staff Ex. 10 at 5; Co. Ex. 2 at 13; Co. Ex. 3 at 4-5, 12; Co. Ex. 5 at 6-7).

{¶ 132} Although OCC and OPAE contend that market changes warrant a fresh look at the SFV rate design, neither party explains how circumstances have changed since the recent adoption of the SFV rate design for Suburban in late 2017. Instead, OCC and OPAE focus on the fact that commodity prices have changed since the Commission's initial adoption of the SFV rate design in 2008. However, as the Commission recently stated, we are not convinced that the shift in the division of distribution and commodity costs in customers' bills necessitates a change in rate design. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 18-298-GA-AIR, et al. (*VEDO Rate Case*), Opinion and Order (Aug. 28, 2019) at ¶ 116. Although we recognized in the *VEDO Rate Case* that the Commission considered the apportionment of distribution and commodity costs when first approving the SFV rate design in 2008, we also noted that the Commission's adoption of the SFV rate design was primarily based on cost-causation principles and the importance of sending proper price signals to customers for the purposes of energy efficiency and conservation. *VEDO Rate Case* at ¶ 116. Acknowledging that distribution and commodity costs may shift again in the future, we reiterate that it is not a prudent course of action to make significant changes in rate design solely based upon short-term market conditions, particularly pricing, which has historically been volatile in the natural gas industry. For these reasons, we are not persuaded by OCC's or OPAE's arguments regarding the SFV rate design in relation to either the second or third parts of our three-part test.

c. Rate of Return

{¶ 133} OCC requests that the Commission reject the Stipulation's proposed rate of return of 7.26 percent, because it is based on flawed analysis. OCC, through its witness Dr. Duann's testimony, argues that the rate of return is the result of Staff's unreasonable use of a 20-year average of returns on equity granted for gas distribution utilities in the United States with rate bases under $100 million. OCC argues that Staff's methodology is not a valid indicator of the current cost of common equity for Suburban. Dr. Duann further testified that the rate of return and return on equity recommended in the Stipulation are not consistent with the sound regulatory principle of setting rates based on current market conditions and the business and financial risks facing regulated utilities. By contrast, OCC states that its proposed rate of return of 6.95 percent is based on the average of returns on equity granted to gas distribution utilities nationwide in 2018. As such, OCC believes that adopting the Stipulation's proposed rate of return of 7.26 percent would force customers to pay approximately $277,220 more over the initial three-year period and approximately $679,704 more over a seven-year period. (OCC Ex. 14 at 5-6, 7-10, Attach. DJD-1 and DJD-2.)

{¶ 134} Responding to OCC's position regarding the rate of return, Staff notes that its proposed rate of return range of 6.97 percent to 7.47 percent was calculated by taking into account the size of Suburban and some economic uncertainty, which Staff contends is a reasonable approach (Staff Ex. 7 at 5). Given its recommended range, Staff concludes that the Stipulation's recommended rate of return of 7.26 percent is reasonable.

{¶ 135} Suburban also argues that the 7.26 percent rate of return is well within the appropriate range as determined by Staff in its Staff Report and the range that OCC originally supported in its objections. Suburban elaborates that the rate of return is consistent with the rates of return approved for other public utilities in the state of Ohio and that OCC witness Dr. Duann was unable to identify any cases for Ohio utilities that earned a lower rate of return than the one proposed by the Stipulation. Moreover, Suburban posits that Dr. Duann's approach in these proceedings is flawed, because he compared the rates proposed in the Stipulation to a study of nationwide averages for natural gas utilities performed by a third party. While Dr. Duann stated the purpose of this analysis was to conform to the decision of the Supreme Court of the United States in *Bluefield Water Works v. Public Service Comm.*, 262 U.S. 679 (1923), Suburban avers that the analysis is flawed in two important ways. First, Suburban believes that Dr. Duann should have verified the accuracy of the third-party analysis. Second, Suburban believes that Dr. Duann applied the *Bluefield* standard incorrectly. According to Suburban, under *Bluefield*, Dr. Duann should have compared Suburban with other companies located in the same general part of the country. Suburban contends that Dr. Duann admitted that his comparison list included companies located in Kansas, Florida, and Wyoming, among other states. Suburban argues that Dr. Duann's analysis is internally contradictory; on the one hand, he characterizes *Bluefield* as a "fundamental ratemaking principle" that has not been overturned, but on the other hand, Dr. Duann stated that capital markets have changed since the decision. (Tr. Vol III. at 647-652.) Suburban requests the Commission to disregard Dr. Duann's inconsistent testimony, because of his failure to apply the *Bluefield* standard as written. Instead, Suburban urges the Commission to adopt Suburban witness Clement's testimony, which relied on the *Bluefield* standard and concluded that a 7.26 percent rate of return is reasonable. Suburban concludes that the Stipulation's proposed rate of return provides a benefit to customers, because it is lower than other public utilities within the state of Ohio and Suburban's customers will be responsible for paying a lower return on investment than the customers of other Ohio public utilities.

{¶ 136} OCC responds to Suburban by noting that the study of nationwide averages that Dr. Duann relied on also included decisions from Midwestern states such as Indiana, Michigan, and Wisconsin, and, consequently, within the same geographic area as Ohio. OCC adds that many of those decisions for Midwestern utilities awarded lower rates of return than the rate of return proposed under the Stipulation (Tr. Vol. III at 679-680). OCC reiterates that, in the current global economy, capital costs should not vastly differ based on local geography.

{¶ 137} We find that the evidence in the record supports the recommended rate of return of 7.26 percent and return on equity of 10.25 percent, which were proposed in Suburban's application, supported by the testimony of Company witnesses Sonderman and Clement, and accepted in the Stipulation with Staff (Co. Ex. 1 at Sched. D-1; Co. Ex. 2 at 11-12; Co. Ex. 5 at 14, 18; Joint Ex. 1 at 12). In the Staff Report, Staff recommended a rate of return ranging from 6.72 percent to 7.72 percent, which was developed using a cost-of-capital approach reflecting a market-derived cost of equity and Suburban's actual cost of debt. To determine the cost of equity, Staff noted in the Staff Report that it used a 20-year average of the return on equity approved for gas distribution companies in the United States for companies with a rate base under $100 million. Staff expressed its belief that a 20-year time period captures multiple business cycles without overweighing any one situation, while the $100 million threshold is intended to capture any size premium that regulators employed in granting the return on equity. (Staff Ex. 1 at 16-17.)

{¶ 138} For its part, OCC recommends that the Commission adopt a rate of return no higher than 6.95 percent and a return on equity of 9.59 percent for Suburban. OCC witness Duann testified that, based on a review of recent rate case decisions published by S&P Global Market Intelligence, the nationwide average return on equity authorized in 2018 for approximately 40 gas utilities by state regulatory commissions was 9.59 percent, with a nationwide average rate of return of 7.00 percent. Dr. Duann further testified that the rate of return and return on equity recommended in the Stipulation are not consistent with the sound regulatory principle of setting rates based on current market conditions and the business and financial risks facing regulated utilities. (OCC Ex. 14 at 7-8, Attach. DJD-1.)

{¶ 139} In response to OCC's objections to Staff's recommendations, Staff witness Buckley explained that Staff used a 20-year timeline in an attempt to capture different market conditions, which was necessary due to uncertain financial policies, particularly with respect to interest rates, at the time of the issuance of the Staff Report. Mr. Buckley also explained that the $100 million threshold was used to factor in any size premium that may exist and that, if a size premium is not granted by other jurisdictions in which Suburban is competing for capital, the threshold does not affect the final outcome. Regarding the return on equity, Mr. Buckley explained that Staff has attempted for a number of years to create a standardized method to calculate competitive equity returns for smaller companies using the primary criteria of transparency, simplicity, and competitive results. Mr. Buckley concluded that the method employed by Staff for Suburban satisfied those criteria. Finally, Mr. Buckley testified that Staff's recommended rate of return range should be revised to 6.97 percent to 7.47 percent, in light of more short-term economic certainty as of the time of his testimony. (Staff Ex. 7 at 4-5; Tr. IV at 706-707.)

{¶ 140} Upon thorough review of the evidence, the Commission finds that the Stipulation's recommended rate of return of 7.26 percent and return on equity of 10.25 percent are just and reasonable. We note that the Signatory Parties have proposed a rate of return that is consistent with Suburban's testimony, but that is also within Staff's revised range and just above Staff's midpoint of 7.22 percent (Co. Ex. 2 at 11-12; Co. Ex. 5 at 14, 18; Staff Ex. 7 at 5). Further, OCC has failed to demonstrate that the Stipulation's recommended rate of return and return on equity are contrary to any important regulatory principle or practice. Accordingly, we find that the rate of return and return on equity recommended by the Signatory Parties should be adopted as part of the overall settlement package.

d. Commission Conclusion

{¶ 141} Having addressed OCC's and OPAE's arguments regarding the second part of the three-part test, the Commission finds that the Stipulation benefits ratepayers and is in the public interest. Staff witness Lipthratt and Suburban witness Sonderman pointed to a number of benefits, particularly the three-year phase-in of the DEL-MAR pipeline extension into rate base. Mr. Lipthratt testified that the phase-in will result in the recognition of consistent customer growth for Suburban, as well as ensure that the Company's existing customers continue to receive safe and reliable service. Mr. Lipthratt added that, because customer counts will be updated over the three years of the phase-in, the customer charge is expected to be lower. As other benefits of the Stipulation, Mr. Lipthratt cited the phase-in of the revenue increase over a three-year period and the lower fixed charge of $33.84 as compared to the initially proposed charge of $41.86. In addition, Mr. Lipthratt emphasized that the Stipulation requires Suburban to file an application to establish new base distribution rates by October 31, 2025, in order to address the expected customer growth on the Company's southern system. Finally, Mr. Lipthratt noted that the Stipulation provides several consumer protections, including the requirement of one free meter test every three years for residential customers and the waiver of the customer service charge when there are fewer than eight days of usage in a billing period. Citing many of these same benefits, Mr. Sonderman also highlighted that Suburban has agreed on a plan to provide customers with all of the relief to which they are entitled under the TCJA. (Staff Ex. 9 at 9-10; Co. Ex. 5 at 17-24.) We agree with Mr. Lipthratt and Mr. Sonderman that the Stipulation will provide benefits to customers and the public interest and, therefore, the Stipulation, as a package, complies with the second part of our test. However, in order to ensure proper calibration with market conditions and other factors, we direct Suburban, as provided in the Stipulation, to file an application to establish new base distribution rates by October 31, 2025, subject to the Commission ordering otherwise.

3. DOES THE STIPULATION VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE?

{¶ 142} Regarding the third part of the Commission's three-part test, Suburban asserts that the Stipulation is consistent with sound regulatory practices and procedures. Staff also contends that no provision of the Stipulation violates any regulatory principle or practice.

{¶ 143} OCC notes that the Supreme Court of Ohio has repeatedly emphasized that the Commission is a "creature of statute" that "may exercise only that jurisdiction conferred upon it by the General Assembly." *Columbus S. Power Co.*, 67 Ohio St.3d at 537, 620 N.E.2d 835. OCC explains that the Commission must follow R.C. 4909.15 when setting rates and, under that statute, the Commission must determine the value of the utility's property which is used and useful as of date certain and, accordingly, set rates based on that value. OCC claims that the Commission lacks authority to phase in a revenue increase under R.C. 4909.15. *Columbus S. Power* at 540. OCC witness Willis states that the phase-in over a period of three years creates three different dates certain: the actual date of February 28, 2019, and two artificial future dates certain, one a year after approval of the Stipulation, and one two years after approval of the Stipulation. OCC elaborates that, on the actual date certain, February 28, 2019, the utility's property is valued at $21,155,890, which includes 50 percent of the value of the DEL-MAR pipeline extension. On the second date certain, the utility's property is increased in value by adding an additional 30 percent of the value of the extension, increasing Suburban's rates by $364,248. Finally, on the third date certain, the utility's property is increased in value by adding an additional 20 percent of the value of the extension, increasing Suburban's rates by another $246,155. According to OCC, under R.C. 4909.15, this phase-in is unlawful and violates the third prong of the Commission's test for settlements.

{¶ 144} In response to OCC's opposition to the phase-in of the DEL-MAR pipeline extension, Staff notes that a public utility can lawfully stipulate to a lesser valuation of its plant into rates. *Hardin-Wyandot Lighting Co. v. Pub. Util. Comm.*, 118 Ohio St. 592, 600, 162 N.E. 262 (1928). While acknowledging that the Supreme Court of Ohio has stated that phase-in plans cannot be forced upon a public utility by order of the Commission, Staff claims that the Court has not forbidden voluntary phase-in plans agreed upon through stipulations in which the utility is a signatory party.

{¶ 145} As we noted above under our discussion of the second prong of the reasonableness test, the phase-in of the DEL-MAR pipeline extension offers various benefits to customers including the phase-in of the costs of the DEL-MAR pipeline and a lower fixed charge. Moreover, we agree with Staff that, while the Supreme Court of Ohio, in *Columbus S. Power*, found that the Commission had no statutory authority to order a phase in, the Court made no such finding regarding a utility's voluntary acceptance, through a stipulation, of a phase-in of a revenue increase. The Commission has previously approved a phase-in of a rate increase over a three-year period, where the phase-in was proposed in a stipulation between the utility and other parties, including OCC. *In re The Dayton Power & Light Co.*, Case No. 91-414-EL-AIR, Opinion and Order (Jan. 22, 1992). Accordingly, OCC's argument lacks merit.

{¶ 146} Finally, OCC states that the Stipulation will result in unjust and unreasonable rates for consumers, which violates R.C. 4905.22. As a result of including the DEL-MAR pipeline extension in rates, as well as the 7.26 percent rate of return, OCC states that the Stipulation proposes a rate increase of $1,168,030 in year one, $1,532,278 in year two, and $1,778,433 in year three. In contrast, OCC states that the Staff Report recommended an increase in the range of $764,476 to $1,087,908. OCC surmises that, under the Stipulation's phase-in, therefore, the increase in the first year is already higher than the high end of the Staff Report. OCC argues that it has demonstrated that the maximum rate increase should be $559,668. Consequently, OCC requests the Commission to reject the Stipulation filed in these cases.

{¶ 147} For the reasons stated above, we find that the inclusion of the DEL-MAR pipeline extension in rate base, as well as the rate of return recommended by the Signatory Parties, are reasonable and supported in the record (Co. Ex. 2 at 11-12; Co. Ex. 5 at 14, 18, 25-26; Staff Ex. 7 at 5). We, therefore, do not agree with OCC's position that the Stipulation will result in unjust or unreasonable rates.

{¶ 148} Consistent with our previous findings, we conclude that the third part of our test is satisfied, as the Stipulation does not violate any important regulatory principle or practice. Accordingly, we find that the Stipulation is reasonable and should be adopted in its entirety.

C. Rate of Return and Authorized Increase

{¶ 149} Attachment A to the Stipulation contains schedules reflecting the terms agreed upon by Staff and Suburban. The Commission finds that the stipulated schedules are reasonable and proper, and we adopt them for the purposes of these proceedings. Given Suburban's current rates, the Company has a current operating income of $613,174 and a stipulated rate base of $21,155,890 for Year 1 of the phase-in, which yields a 2.90 percent earned rate of return. This rate of return is insufficient to provide Suburban with reasonable compensation for distribution of natural gas service provided to its customers. (Joint Ex. 1 at Attach. A.)

{¶ 150} The negotiated rate of return recommended by the Stipulation is 7.26 percent. In order to realize this rate of return on the stipulated rate base of $21,155,890, Suburban requires net operating income of $1,535,918 for Year 1 of the phase-in. Thus, the stipulated revenue increase, or base rate increase, amounts to $1,168,030, reflecting a total stipulated revenue requirement of $19,800,801 for Year 1 of the phase-in. (Joint Ex. 1 at Attach. A.)

D. Effective Date and Tariffs

{¶ 151} As part of its investigation in these matters, Staff reviewed the various rates, charges, and provisions governing the terms and conditions of service contained in Suburban's proposed tariffs. Proposed tariffs in compliance with the Stipulation were submitted by the Signatory Parties for the Commission's consideration. Upon review, the Commission finds the proposed tariffs to be reasonable. Consequently, Suburban shall file final tariffs, consistent with this Opinion and Order. The new tariffs shall become effective on a date not earlier than the date upon which the final tariff pages are filed with the Commission.

IV. Findings of Fact and Conclusions of Law

{¶ 152} Suburban is a natural gas company and a public utility as defined by R.C. 4905.03 and R.C. 4905.02, respectively. As such, Suburban is subject to the Commission's jurisdiction pursuant to R.C. 4905.04, 4905.05, and 4905.06.

{¶ 153} On July 31, 2018, Suburban filed a notice of intent to file an application for an increase in rates. Suburban proposed a test year of March 1, 2018, to February 28, 2019, and a date certain of February 28, 2019.

{¶ 154} Suburban's application was filed on August 31, 2018.

{¶ 155} By Entry issued on September 5, 2018, the test year and date certain were approved.

{¶ 156} On October 24, 2018, the Commission issued an Entry that accepted the application for filing as of August 31, 2018.

{¶ 157} On February 6, 2019, Staff filed its written report of investigation with the Commission.

{¶ 158} Objections to the Staff Report were filed by Suburban, OCC, and OPAE on March 8, 2019.

{¶ 159} Following public notice, the Commission conducted a local public hearing in Delaware, Ohio, on April 18, 2019. Notice of the local public hearing was published in accordance with R.C. 4903.083, and proof of such publication was offered by Suburban during the evidentiary hearing.

{¶ 160} The evidentiary hearing was called on April 25, 2019, and continued to May 9, 2019. Following the testimony heard on May 9, 2019, the hearing was again continued to May 20, 2019.

{¶ 161} On May 23, 2019, the Stipulation was filed by Suburban and Staff.

{¶ 162} The evidentiary hearing resumed on July 10, 2019, and concluded on July 15, 2019.

{¶ 163} The value of Suburban's property used and useful for the rendition of service to customers affected by this application, determined in accordance with R.C. 4909.15, is not less than $21,155,890 for Year 1 of the phase-in.

{¶ 164} The current net annual compensation of $613,174 represents a rate of return of 2.90 percent on the jurisdictional rate base of $21,155,890 for Year 1 of the phase-in.

{¶ 165} A rate of return of 2.90 percent is insufficient to provide Suburban with reasonable compensation for the services rendered to its customers.

{¶ 166} A rate of return of not more than 7.26 percent is fair and reasonable under the circumstances of these cases and is sufficient to provide Suburban just compensation and return on its property used and useful in the provision of services to its customers.

{¶ 167} For Year 1 of the phase-in, an authorized revenue increase of $1,168,030 will result in an operating income of $1,535,918, which, when applied to the rate base of $21,155,890, yields a rate of return of approximately 7.26 percent.

{¶ 168} The allowable gross annual revenue to which Suburban is entitled for purposes of these proceedings is $19,800,801 for Year 1 of the phase-in.

{¶ 169} Suburban's application was filed pursuant to, and this Commission has jurisdiction over the application under, the provisions of R.C. 4909.17, 4909.18, and 4909.19, and the application complies with the requirements of these statutes.

{¶ 170} Staff conducted an investigation with a report duly filed and mailed, and public hearings were held, the written notice of which complied with the requirements of R.C. 4909.19 and 4903.083.

{¶ 171} The Stipulation is the product of serious bargaining among capable, knowledgeable parties, advances the public interest, and does not violate any important regulatory principle or practice. The Stipulation submitted by Suburban and Staff is reasonable and should be adopted in its entirety.

{¶ 172} Suburban is authorized to file final tariffs, consistent with this Opinion and Order.

V. ORDER

{¶ 173} It is, therefore,

{¶ 174} ORDERED, That the Stipulation filed on May 23, 2019, be approved in accordance with this Opinion and Order and with the clarification identified in Paragraph 141. It is, further,

{¶ 175} ORDERED, That the application of Suburban for authority to increase its rates and charges for natural gas service be granted to the extent provided in this Opinion and Order. It is, further,

{¶ 176} ORDERED, That Suburban be authorized to file tariffs, in final form, consistent with this Opinion and Order. Suburban shall file one copy in these case dockets and one copy in its TRF docket. It is, further,

{¶ 177} ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission. It is, further,

{¶ 178} ORDERED, That Suburban shall notify all affected customers of the tariffs via bill message or bill insert within 30 days of the effective date of the revised tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least ten days prior to its distribution to customers. It is, further,

{¶ 179} ORDERED, That OCC's and OPAE's motions for intervention be granted. It is, further,

{¶ 180} ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 181} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

COMMISSIONERS:

Approving:
Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

SJP/AS/mef