

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Suburban)
Natural Gas Company for an Increase in Gas) Case No. 18-1205-GA-AIR
Distribution Rates.)

In the Matter of the Application of Suburban) Case No. 18-1206-GA-ATA
Natural Gas Company for Tariff Approval)

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

**MEMORANDUM CONTRA APPLICATION FOR REHEARING
BY
SUBURBAN NATURAL GAS COMPANY**

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I. INTRODUCTION

Based on the record before it, the Public Utilities Commission of Ohio (Commission) correctly found that the Joint Stipulation and Recommendation (Stipulation) filed on May 23, 2019 satisfied the Commission’s three-part test and adopted the Stipulation in its entirety.¹ More specifically, the Commission found that Suburban Natural Gas Company (Suburban) “adequately demonstrated that the 4.9-mile pipeline extension **was necessary** to serve **existing customers** as of February 28, 2019” and that “the extension **was both used and useful** to Suburban’s customers as of the date certain.”² The Commission concluded that “the extension was both used by

¹ Opinion and Order at ¶¶3, 89, 141, 171, 174 (September 26, 2019) (Order).

² Id. at ¶121 (emphasis added).

customers as of date certain and useful to them because it provided safe and reliable service at that time.”³

The Office of the Ohio Consumers’ Counsel (OCC) raises no new arguments in its Application for Rehearing filed on October 28, 2019. Given that OCC raises no new arguments and the fact that the Order has already addressed each of OCC’s arguments in great detail and with record support, OCC’s rehearing request should be denied.

II. ARGUMENT

A. The Stipulation Satisfies the Commission’s Three-Part Test.

After considering all of the evidence and OCC’s arguments, the Commission correctly found that the Stipulation filed by Suburban and the Staff of the Commission (Staff) on May 23, 2019 satisfied the Commission’s three-part test and adopted the Stipulation in its entirety.⁴ As the record demonstrates and the Commission found, extensive settlement discussions occurred between knowledgeable, capable parties and the Stipulation is a product of those discussions.⁵ The Commission also concluded that there is no requirement that any particular party must join a settlement for the first part of its three-part test to be met and that the three-part test does not include a mandatory diversity of interest component.⁶

After a review of the record evidence of all of the issues raised by OCC and Ohio Partners for Affordable Energy (which did not file an application for rehearing), the Commission correctly concluded that the Stipulation, as a package, benefits ratepayers and is in the public interest.⁷ In

³ Id.

⁴ Order at ¶¶3, 89, 141, 171, 174.

⁵ Id. at ¶89.

⁶ Id. at ¶90.

⁷ Id. at ¶141.

addition to the specific issues discussed further below, the Commission explained that the Stipulation contained many benefits, including updating customer counts, a lower fixed charge than what was proposed, an agreement to file a new base rate case by October 31, 2025, and numerous consumer protections.⁸ The Commission also determined that, under the Stipulation, customers would be paying rates for natural gas service that are just and reasonable.⁹

Finally, the Commission determined that the Stipulation did not violate any regulatory principle or practice, and therefore, satisfied the third prong of the three-part test.¹⁰ As explained further below, OCC's arguments that the 4.9-mile pipeline extension and phase-in of the 4.9-mile pipeline extension (as well as other provisions of the Stipulation) were unlawful, unjust, or unreasonable were not supported by the record and were rejected. OCC raises no new arguments. Therefore, the Commission's Order finding that the Stipulation meets the Commission's three-part test should be affirmed and OCC's request for rehearing should be denied.

B. The Commission's Order Is Lawful and Does Not Violate R.C. 4909.15 or Any Other Statute.

The crux of OCC's rehearing arguments seem to be that its judgement (with no record support) is better than that of a well-respected engineering firm, a regulated utility company that operates a natural gas distribution system, the Staff, and, now, the Commission itself. OCC's first two assignments of error focus around this theme, claiming that it believes (and its non-engineer expert believes) that only a 2.0 mile extension was necessary, and therefore, 2.9 miles of pipeline were not used and useful. Although OCC seems to concede in its rehearing request that at least 2.0

⁸ Id.

⁹ Id. at ¶147.

¹⁰ Id. at ¶148.

miles of pipeline were necessary,¹¹ OCC continues to ignore, or does not understand, the configuration of Suburban's system and the geographical location of high growth in Suburban's southern system in Marion and Delaware Counties. Regardless, it does not matter what OCC believes. Instead, it only matters what the record evidence supports. Here, the evidence demonstrated, and the Commission correctly found, that the 4.9 pipeline extension was necessary to provide safe and reliable service to existing customers, including adequate pressure at the southern end of Suburban's system.

Given the customer growth that already occurred on Suburban's system since the existing 12-inch pipeline was initially constructed in 2005, the 4.9-mile pipeline extension was necessary to restore the margin of safe operating pressure for the heat-sensitive residential and small commercial customers served in the southern end of Suburban's service territory. The record demonstrated that Suburban's engineers recommended, and Suburban prudently selected the length and diameter of the 4.9-mile pipeline extension to ensure that existing customers added to Suburban's system prior to the completion of the pipeline extension had adequate pressure at the date certain, and to ensure that the system would continue to provide adequate pressure to Suburban's customers for a reasonable period of time before additional construction will be required. The Commission relied on the modeling that was completed by Suburban's engineers (UTI), which assumed a 4.9-mile pipeline extension, and concluded that the pipeline was necessary by year end 2018.¹²

¹¹ See OCC Application for Rehearing at 7-11 (October 28, 2019) (stating that the facts support (at most) that 2.0 miles were used and useful, that the Commission should rule that 2.9 miles should be excluded from rate base, and that the Commission should find that only 2.0 miles was necessary) (OCC AFR).

¹² Id. at ¶121.

The Commission specifically addressed OCC's arguments about the length and capacity of the extension (including whether a shorter extension of 2.0 miles was sufficient) and rejected those arguments. OCC has raised no new arguments. Instead, OCC regurgitates the same arguments, continuing to misconstrue Suburban's engineer and the Commission's Order. The Commission explained that "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."¹³ The Commission also explained that while 2.0 miles may have served customers at one point in time, Suburban would have to immediately build additional pipeline to **ensure adequate capacity** to serve **existing** customers, as well as to prepare for contingencies such as cold temperatures, high winds, sustained weather events, and changes in load.¹⁴ As the Commission recognized,¹⁵ the engineering modeling that began in 2015 continually predicted that low pressure concerns existed at the Lazelle point of delivery and would become an issue in the winter of 2018-2019.¹⁶ This meant that there was a very real potential that the pressure could drop below the 100 psig threshold and result in catastrophic system outages. Contrary to OCC's assertions, the modeling showed that there was a very real concern with the safety and reliability of Suburban's system to meet **existing** customer demands as of the winter of 2018-2019.¹⁷

¹³ Id. at ¶122.

¹⁴ Id. at ¶125; also see Tr. Vol. II at 320-24; Tr. Vol. II at 388-89.

¹⁵ Id. at ¶¶121-122.

¹⁶ See all models included in Suburban Ex. 9 (December 9, 2015 model projects a pressure of 76.30 psig in 2018; February 3, 2016 model projects a pressure of 71.85 psig in 2018; February 10, 2016 model projects a pressure of 53.27 psig in 2018; April 6, 2017 model projects a pressure of 80.83 psig in 2018 AND a pressure of 17.16 psig in 2019; August 31, 2018 model projects a pressure of 104.27 psig in 2018 EOY AND a pressure of 78.27 psig in 2019).

¹⁷ Id.

The Commission properly considered the record, including the risk of dropping below that minimum pressure of 100 psig, the risk of an extensive outage, and the risk of a catastrophic loss of service to Suburban's customers, such as occurred last January in Newport, Rhode Island, placing thousands of customers out of service in frigid temperatures,¹⁸ and concluded: "we find the length of the DEL-MAR pipeline extension was appropriate to prevent outages and ensure safe and reliable service."¹⁹

Further, while rejecting OCC's claims that the extension was overbuilt to accommodate thousands of future customers and OCC's arguments based upon hindsight, the Commission determined "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."²⁰ The engineering models solved for a desired pressure level at the Lazelle Road point of delivery, and calculated the additional customers that could be served through the extended integrated pipeline system before an additional extension would be required to maintain the desired pressure at the south end of the system on Lazelle Road. The speculative future customers had nothing to do with the planning for the delivery system to obtain the desired pressure at the southern end of Suburban's system. OCC offers no evidence, modeling, or forecasts of its own to demonstrate that it can more accurately predict system operations than Suburban's

¹⁸ See Tr. Vol. II at 393-94 where Mr. Sonderman described how an outage caused by low pressure brought on by high demand during a cold time resulted in over 6000 customers in Newport, Rhode Island being left without natural gas service for over three weeks. The extent of this outage was so damaging, that shelters had to be opened to help people with infirmities and medical conditions. Over a thousand gas utility employees were involved in the restoration of service over a period of weeks.

¹⁹ Order at ¶125.

²⁰ Id. at ¶126.

engineers. As such, OCC's strained interpretation of the evidence and selective use of the models must be rejected.²¹

The Commission explicitly considered OCC's assertions that the extension or part thereof was not used and useful as of the date certain and concluded that the entire 4.9-mile pipeline was used and useful as of the date certain: "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 [i.e., at the date certain]."²² Thus, contrary to OCC's claims, the Commission did take a "snapshot on the date certain" and did determine that Suburban's plant was and is used and useful on that date.²³ The Commission relied upon Staff and Suburban's engineers to determine that the extension was used and useful under R.C. 4909.15.²⁴ As noted by OCC, the property is deemed useful to customers on the date certain if it allows a utility to serve those customers safely and reliably,²⁵ which is what the Commission concluded in this case.

The Commission also considered the evidence and determined that the pipeline was necessary to ensure the provision of safe and reliable service by Suburban, explaining that the extension's length was determined based on several facts such as capacity needed as of the date certain, the capacity needed to sustain customer growth, regulatory factors, and financial concerns.²⁶ As recognized by OCC, the Court in *Diamond State* stated: "property is only used and useful if it is 'reasonably necessary to the efficient and reliable provision of utility service to the

²¹ OCC AFR at 10-11.

²² Order at ¶121.

²³ OCC AFR at 11.

²⁴ Order at ¶¶119-121.

²⁵ OCC AFR at 3.

²⁶ Order at ¶¶120-122 (*cf* OCC AFR at 12, unreasonably arguing that future investments were not known to be necessary).

public.’”²⁷ In this case, the Commission determined that the 4.9-mile pipeline extension was necessary to safely and reliably serve existing customers with natural gas service.

Based on the foregoing and contrary to OCC’s claims, the Commission clearly made a finding pursuant to R.C. 4909.15 that the “property in question is used and useful on date certain.”²⁸ Just because OCC does not like the determination, does not mean the Commission failed to conclude whether the pipeline extension was used and useful on February 28, 2019. The Commission explicitly found that it was.

OCC has also failed to demonstrate that R.C. 4909.15 requires pipeline extensions to be built to supply no more than the exact capacity needs of current customers as of the date certain in order to be deemed used and useful.²⁹ All natural gas companies in Ohio plan and build their facilities to address pressure issues to maintain appropriate levels of service to their existing customers while new customers are added. As allowed by R.C. 4909.15, these capital projects are included in rate base. R.C. 4909.15 states that when determining and fixing just and reasonable rates, the Commission must consider the valuation of property of the public utility that is “used and useful” in rendering the public utility’s service. Thus, when property is used and useful to serving customers, its value is included in rate base. As the Court in *Columbus Southern Power Co.* held, Suburban is required to receive rates that produce a revenue requirement sufficient to compensate Suburban for the value associated with 100 percent of the 4.9-mile pipeline extension.³⁰ Under the Court’s decision, the Commission could not sua sponte order Suburban to collect something less than 100 percent of the pipeline’s value if the Commission finds that the

²⁷ OCC AFR at 3, n.14 (citing *Public Serv. Commission v. Diamond State*, 468 A.2d 1285, 1290 (Del. 1983)(citations omitted)).

²⁸ OCC AFR at 12.

²⁹ *Id.* at 11-15.

³⁰ *Columbus S. Power Co. v. PUCO*, 67 Ohio St.3d 535, 620 N.E.2d 835 (1993).

pipeline is used and useful. However, as explained further below, nothing prevents Suburban from agreeing to accept something less in the context of a settlement.

Given that it takes time to construct pipelines and that construction design is based on forecasts and modeling, OCC's interpretation of the statute is unreasonable, impractical, and irrational. In attempting to prove its point, OCC seems to add words into the statute that simply do not exist--implying that there is a requirement in the statute that the plant not be "excessive."³¹ OCC attempts to further its argument by making unfounded assertions that Suburban's pipeline extension is excessive, but OCC cites to no evidence in the record to support its claim. As a creature of statute, the Commission is without authority to write additional words or phrases into Ohio law as OCC suggests. It is well established law that if a statute is clear and unambiguous, the Commission "may not delete words used or insert words not used."³²

OCC has also failed to cite to any case law to substantiate its claims and interpretation of the used and useful standard in R.C. 4909.15. The Commission explained that the cases relied upon by OCC in its briefs did not support OCC's arguments that the pipeline is overbuilt or built for future use and, thus, not used and useful.³³ Despite the Commission's finding that the cases relied upon by OCC are unsupportive, OCC continues to rely on irrelevant cases regarding the purchase of property for future use.³⁴ The entire 4.9-mile pipeline extension is in service and is being used to supply existing customers natural gas as of the date certain. As the Commission determined, the 4.9-mile extension is used and useful. Accordingly, OCC's first two assignments of error are without merit and should be denied.

³¹ Id. at 14.

³² *State ex rel. Colvin v. Brunner*, 120 Ohio St.3d 110, 2008-Ohio-5041, 896 N.E.2d 979, ¶ 45 (2008); *Columbia Gas Transm. Corp. v. Levin*, 2008-Ohio-511, ¶ 19, 117 Ohio St. 3d 122, 125, 882 N.E.2d 400, 406 (citations omitted).

³³ Order at ¶123.

³⁴ OCC AFR at 3-7.

C. Phasing in the Inclusion of the Used and Useful 4.9-Mile Pipeline Extension in Rate Base Does Not Violate R.C. 4909.15, Benefits Customers, and Results in Just and Reasonable Rates.

OCC's third assignment of error claims that the phase-in of the 4.9-mile extension that Suburban agreed to in the Stipulation somehow violates R.C. 4909.15. OCC's arguments that have already been addressed by the Commission are misguided and would result in an increase in customers' rates.

First, the plain language of R.C. 4909.15 does not preclude a utility from agreeing to accept a lesser valuation of its plant into rates.³⁵ Through settlements, a utility often accepts a lower valuation of its plant than what it believes to be appropriate under R.C. 4909.15 and what it filed in its application. In this context, the Commission acknowledged that it previously approved a settlement containing a phase-in of a rate increase.³⁶

Second, as the Commission recognizes, the case cited again by OCC does not prohibit the utility from agreeing to a phase-in of its revenue requirement in the context of a settlement wherein the utility is agreeing to accept a lower valuation of its plant for two years.³⁷ Moreover, as the Commission also recognizes, the phase-in results in just and reasonable rates for consumers, satisfying R.C. 4905.22, and offering various benefits to customers.³⁸

Although Suburban already incurred costs to construct and place in operation an absolutely essential 4.9-mile pipeline extension that the Commission determined to be 100 percent used and useful to existing customers to ensure adequate pressure to customers at the very southern end of

³⁵ Order at ¶144 (citing Staff's Brief and *Hardin-Wyandot Lighting Co. v. Pub. Util. Comm.*, 118 Ohio St. 592, 600, 162 N.E. 262 (1928)).

³⁶ Id. at ¶¶145.

³⁷ Id. at ¶145.

³⁸ Id. at ¶¶145-146.

Suburban's system,³⁹ the Stipulation allows a portion of the rate increase to be withheld during the first and second years that new rates are in effect.

By agreeing not to charge customers 100 percent of the rate increase associated with the pipeline and phase-in used and useful plant over a three-year period rather than including the entire value in the first year, Suburban has agreed to provide significant benefits to customers by forgoing revenue associated with the costs for the pipeline extension that it has already incurred. In the first year of the new rates, customers would save \$610,403.00 and in the second year, customers will save \$246,155.00.⁴⁰

The savings to ratepayers from phasing in the revenue increase are magnified by the additional value of the agreement to recalculate the customer count used to determine the customer charges at the time each additional portion of the book value of the pipeline extension is placed into rate base.⁴¹ This means that Suburban's revenue requirement will be spread among more customers than existed at date certain in this case, thereby reducing the share of that revenue requirement that each individual customer is responsible for through rates. Recalculating the customer count will benefit all customers as the remaining value of the pipeline extension is added into rate base.

The Commission correctly held that the phase-in does not violate any regulatory policy or precedent, does not violate R.C. 4909.15, and results in just and reasonable rates consistent with R.C. 4905.22.⁴² Therefore, OCC's third assignment of error is without merit and should be denied.

³⁹ Order at ¶¶121-123.

⁴⁰ Joint Ex. 1 at 4 (Stipulation).

⁴¹ Id. at 6.

⁴² Id. at ¶¶145-147.

D. The Commission's Order Provides Ample Support for the Commission's Findings, Is Lawful, and Does Not Violate R.C. 4903.09.

Although R.C. 4903.09 is included in OCC's first assignment of error, OCC does not explain or argue how the Commission's Order is legally insufficient under R.C. 4903.09. R.C. 4903.09 requires that the Commission's written opinion state findings of fact and set forth the reasons prompting the decisions it arrived at based on those findings of fact. In its 50-page well-reasoned Order, the Commission stated its findings of fact and set forth the reasons prompting each of its findings. The Commission provided ample justification for its decision and any argument or implication otherwise must fail.

The Supreme Court of Ohio has stated that the purpose of R.C. 4903.09 is to enable the Court to review the Commission's decision with a complete understanding of how the Commission reached its conclusions.⁴³ In its Order in this case, the Commission explicitly stated that it had thoroughly reviewed and considered the arguments raised by the parties, including OCC, and it set forth its analysis of each issue, noting record evidence, arguments of the parties, applicable statutes, and applicable precedent in rendering its decisions. The Commission's Order was very detailed, offered numerous findings of fact, stated the rationale for its conclusions, and provided record support for its opinions. The Commission demonstrated "in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion."⁴⁴ As such, the Commission's Order satisfies R.C. 4903.09.

To the extent OCC's first assignment of error raises the sufficiency of the Commission's Order under R.C. 4903.09, the assignment of error is without merit and should be denied.

⁴³ *Migden-Ostrander v. Pub. Util. Comm.*, 102 Ohio St.3d 451, 455 (2004).

⁴⁴ *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d, 2008-Ohio-990, 885 N.E.2d 195, ¶ 30 (citing *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St.3d 306, 312, 513 N.E.2d 337 (1987)).

III. CONCLUSION

The Stipulation proposes just and reasonable rates, complies with Ohio law, and is a product of significant bargaining and reflects several concessions made by Suburban in order to provide benefits to customers beyond the continued safe and reliable provision of natural gas service at just and reasonable rates. Contrary to OCC's rehearing request, the Commission correctly decided that the pipeline extension was lawful under R.C. 4909.15, concluding that the extension was both used and useful as of the date certain. As recognized by the Commission, it is critically important that Suburban be able to provide safe, reliable, and continuous natural gas service to its residential, commercial, and industrial customers under all conditions.

For the reasons stated herein, the Order finding that the Stipulation filed in this case satisfied the Commission's three-part test and should be adopted in its entirety should be affirmed and OCC's Application for Rehearing should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail November 7, 2019.

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Summary: Memorandum Contra Application for Rehearing by Suburban Natural Gas Company electronically filed by Mrs. Kimberly W. Bojko on behalf of Suburban Natural Gas Company