

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

SECOND ENTRY ON REHEARING

Entered in the Journal on April 22, 2020

I. SUMMARY

{¶ 1} The Commission denies the Office of the Ohio Consumers' Counsel's application for rehearing.

II. DISCUSSION

A. *Procedural History*

{¶ 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} On September 26, 2019, the Commission issued an Opinion and Order, adopting the joint stipulation and recommendation (Stipulation) between Commission Staff and Suburban resolving all issues related to the Company's application to increase its natural gas distribution rates.

{¶ 4} Pursuant to R.C. 4903.10, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined

in that proceeding by filing an application within 30 days after the Commission's order is journalized.

{¶ 5} On October 28, 2019, the Office of the Ohio Consumers' Counsel (OCC) timely filed an application for rehearing of the Commission's Opinion and Order.

{¶ 6} On November 7, 2019, Suburban filed a memorandum contra OCC's application for rehearing.

{¶ 7} On November 21, 2019, the Commission granted OCC's application for rehearing for further consideration of the matters specified in the application for rehearing.

{¶ 8} The Commission has reviewed and considered all of the arguments raised in OCC's application for rehearing. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

B. Consideration of the Application for Rehearing

1. 4.9-MILE PIPELINE EXTENSION

{¶ 9} We discuss OCC's first and second assignments of error together as both these assignments concern Suburban's 4.9-mile DEL-MAR pipeline extension, which was built and put into service on February 22, 2019. Primarily, OCC asserts, in its first assignment of error, that evidence presented at the hearing only supports a two-mile pipeline extension instead of the 4.9-mile extension and, therefore, the Commission's adoption of the Stipulation violates R.C. 4903.09, 4909.15, and related statutes. As such, OCC requests that the Commission find that only two miles of the extension be deemed used and useful pursuant to R.C. 4909.51 and be included in rate base.

{¶ 10} OCC concedes there is some evidence of low-pressure concerns at the Lazelle Road point of delivery (POD). However, OCC argues that none of the facts the Commission relied on to find the 4.9-mile DEL-MAR extension used and useful on date

certain establish the necessity of the additional 2.9 miles of the extension. Opinion and Order at ¶ 121. Further, per OCC, Suburban's engineer also testified that Suburban could have safely served customers through the 2018-2019 winter with a two-mile extension. OCC also requests the Commission to consider other facts, which indicate that the 4.9-mile extension was not necessary. These include: the 4.9-mile extension serves a peak capacity of 842 thousand cubic feet per hour (mcfh), but the expected peak load of the extension is only 457 mcfh; the extension is big enough to serve the Company's peak capacity in 2028; the extension increases the pressure at the Lazelle Road POD to 230 pounds per square inch gauge (psig), which is more than the 100 psig of pressure required for safe and reliable service; and, finally, the extension can serve Suburban's current 13,500 southern system customers, plus an additional 4,000 to 20,000 future customers. According to OCC, Suburban built a 4.9-mile pipeline extension because that is the longest line it could build while still qualifying for expedited Ohio Power Siting Board (OPSB) approval.

{¶ 11} Turning to the second assignment error, OCC states that none of the justifications the Commission relied on for approving the 4.9-mile extension comply with the used and useful standard under R.C. 4909.15. Focusing on the standard, OCC explains that property is useful to customers on date certain only if it allows a utility to serve those customers safely and reliably. OCC believes the Commission's past interpretation of the used and useful standard confirms this reading of R.C. 4909.15. OCC also points to several cases where it claims the Commission ruled that, if property is larger than necessary to serve customers on date certain, then the superfluous portion of the property should be excluded from rate base. Though OCC concedes that many of the cases it relies on involve the purchase of land, according to OCC, there is no distinction between different types of property, such as land, wires, natural gas pipelines, office buildings, or other types of utility plant. As such, OCC believes that the excess portion of the DEL-MAR extension should not be included in rates and instead should be considered plant held for future use.

{¶ 12} Turning to the justifications the Commission relied on for approving the extension, OCC argues that it is irrelevant that Suburban would have to immediately engage

in the OPSB regulatory process after the 2018-2019 winter if it was only approved for an initial two-mile extension. Per OCC, this is a misuse of the used and useful standard because the standard requires the Commission to take a snapshot on the date certain and determine whether a utility's plant is used and useful on that date. Second, OCC argues that future investments, which the Commission considered a factor for approving the 4.9-mile extension, should not be considered when utilizing the used and useful standard. Opinion and Order at ¶ 125.

{¶ 13} Third, OCC questions the Commission's reliance on the National Association of Regulatory Utility Commissioners (NARUC) Rate Case and Audit Manual to determine that it would not be cost effective for Suburban to build the pipeline extension in increments. Opinion and Order at ¶ 125. Per OCC, R.C. 4909.15 explicitly directs the Commission to look at the value of used and useful plant on a single date; therefore, looking at a longer growth horizon is inappropriate. OCC also claims the manual itself warns against including excessive plant in rates. Furthermore, OCC argues the Commission should give the manual no weight in deciding whether plant is used and useful on a date certain, as required by Ohio law, because the manual does not mention valuing property on a date certain. In its last criticism regarding reliance on the manual, OCC contends that it is the concept of date certain that prevents a utility from recovering capital investment costs for plant it has overbuilt for the addition of future customers and from charging existing customers for it in the present, in order to avoid filing a future rate case.

{¶ 14} In response to OCC's first two assignments of error, Suburban states that the Commission has already specifically addressed OCC's arguments about the length and capacity of the 4.9-mile DEL-MAR pipeline extension and rejected those arguments. As such, Suburban believes OCC has raised no new arguments in its application for rehearing. Further, Suburban raises various reasons why OCC's first two assignments of error should be denied.

{¶ 15} Suburban asserts that, contrary to OCC's contention, the Commission did

indeed evaluate that, on date certain, the pipeline extension was used by customers and useful because it provided customers with safe and reliable service at that time. Suburban claims that OCC has not taken into account the configuration of Suburban's system and the geographical location of high growth in Suburban's southern system in Delaware and Marion Counties. Per Suburban, given the customer growth that has already occurred on Suburban's system since the existing 12-inch pipeline was initially constructed in 2005, the 4.9-mile DEL-MAR 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. According to Suburban, the Commission properly relied on the evidence of record to determine the necessity of the pipeline extension and the length of the extension and made its decision based on several facts, including required capacity as of date certain, capacity to sustain customer growth, regulatory factors, and financial concerns. Therefore, Suburban believes that the Commission determined the 4.9-mile DEL-MAR pipeline extension was necessary to safely and reliably serve existing customers with natural gas service pursuant to R.C. 4909.15.

{¶ 16} Contrary to OCC's assertions, Suburban contends the Commission properly relied on modeling completed by Suburban's engineers, which assumed a 4.9-mile pipeline extension, and concluded that it was necessary to maintain adequate pressure to meet existing customer demands and prevent catastrophic system outages for the winter of 2018-2019. Further, Suburban states that the Commission properly found that 100 psig is a minimum safe pressure and that a natural gas utility engaged in providing a critical and necessary commodity should also prepare for contingencies in order to ensure safe and reliable service. Suburban agrees with the Commission in that, while two miles may have initially served its customers, Suburban would have to immediately build an 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. Suburban argues that speculative future customer growth was not a factor in planning the delivery system and obtaining the desired pressure at the southern end of

Suburban's system. Suburban points to OCC's inability to offer evidence such as modeling or forecasts of its own to demonstrate that it can more accurately predict system operations than Suburban's engineers. As such, Suburban urges the Commission to reject OCC's interpretation of the evidence.

{¶ 17} Suburban asserts that 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. In short, Suburban challenges OCC's assertion that the pipeline extension is excessive, yet again noting OCC's failure to provide any contrary evidence during the hearing. Per Suburban, 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, and these capital projects are included in rate base under R.C. 4909.15. Suburban criticizes OCC's interpretation of the statute, given that pipeline construction design is based on forecasts and modeling and the construction of a pipeline is a time-consuming process. Additionally, Suburban highlights OCC's failure to cite to appropriate case law, noting that the Commission, in its Opinion and Order, found 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 under R.C. 4909.15. Suburban questions OCC's continuing reliance on cases that focus on the purchase of real property for future use. Suburban concludes that the entire 4.9-mile pipeline extension is in service, is being used to supply existing customers natural gas as of the date certain, and is used and useful. Accordingly, Suburban requests the Commission to deny OCC's first two assignments of error.

{¶ 18} Finally, Suburban points out that, while OCC alludes to R.C. 4903.09 in its first assignment of error, OCC does not explain or argue how the Commission's Opinion and Order is legally insufficient under R.C. 4903.09. Suburban states that R.C. 4903.09 requires the Commission, in its opinions, to state findings of fact and set forth the reasons prompting the decisions it arrived at based on those findings of fact, which Suburban claims

the Commission did in its detailed 50-page Order. To the extent OCC's first assignment of error raises the sufficiency of the Commission's Order under R.C. 4903.09, Suburban argues the assignment of error is without merit and should be denied.

{¶ 19} Upon review of OCC's first and second assignments of error, we initially find that we have already specifically addressed arguments related to the length and capacity of the 4.9-mile DEL-MAR pipeline extension and whether the pipeline was used and useful as of date certain under R.C. 4909.15, and rejected those arguments. Addressing OCC's first assignment of error, we find, once again, the evidence presented during the hearing supports the entire 4.9 DEL-MAR pipeline extension. OCC places much emphasis on Suburban witness Kyle Grupenhof's testimony that a shorter, two-mile pipeline would have sufficed for the 2018-2019 winter (Tr. Vol. II at 278). However, considering the totality of evidence presented, we were persuaded that 100 psig is a *minimum safe pressure*. Further, we found that a natural gas utility like Suburban, which is engaged in providing a critical and necessary commodity, should prepare for contingencies in order to ensure safe and reliable service during winter. This was confirmed by modeling completed by Suburban's contracted engineering company, Utility Technologies International Corp. (UTI), which identified the projected pressure at the Lazelle Road POD by year end 2018: December 9, 2015 (76.30 psig), February 3, 2016 (71.85 psig), February 10, 2016 (53.27 psig), April 6, 2017 (80.83 psig), and August 31, 2018 (104.27 psig). Though the most recent model on August 31, 2018, indicated that the Lazelle Road POD would be above the minimum pressure level, the pressure of 104.27 psig was barely above the minimum safe pressure of 100 psig. As we explained, Suburban's ability to provide safe, adequate, and reliable service may have been impacted during a particularly cold stretch over multiple days and involving multiple contingencies. Opinion and Order at ¶¶ 121-122.

{¶ 20} With regard to capacity, we acknowledge that Mr. Grupenhof testified that Suburban could safely add 4,000 more customers after the DEL-MAR pipeline extension was built, and even made a "high-level" guess, depending on circumstances, that this number could be as high as 20,000 (Tr. Vol. II at 273-74). However, a review of the record

establishes that Suburban did not target a specific number of additional customers when deciding on the length of the pipeline, as confirmed by UTI's modeling. For example, UTI's August 31, 2018 model assumes 13,081 existing customers and an additional 526 customers in 2019. Instead, the length of the pipeline was selected after considering various factors, including pressure concerns, cost, regulatory restrictions, project timelines, and benefit to customers. Further, the pipeline was built to specifications that enabled Suburban to serve existing customers and eliminate any risks of low pressure (Tr. Vol. II at 276, 403). Opinion and Order at ¶ 126.

{¶ 21} Furthermore, OCC did not present the testimony of an engineer refuting the testimony provided by Suburban and providing alternate evidence demonstrating that a shorter extension with lower capacity could have safely served customers during the 2018-2019 winter. As such, we relied on the evidence provided by Staff's and Suburban's witnesses who supported the phase-in of the 4.9 DEL-MAR pipeline extension into rate base because it was necessary for the provision of safe, reliable, and adequate natural gas service to existing customers through the 2018-2019 winter. Therefore, OCC's first assignment of error is denied.

{¶ 22} We also do not find OCC's second assignment of error well-taken. As explained above, pursuant to R.C. 4909.15, we reviewed the conditions modeled by UTI to determine that the 4.9-mile DEL-MAR extension was necessary at date certain to provide safe, reliable service to Suburban's existing customers and, as such, was used and useful to these customers. In addition, we took into account additional considerations that made Suburban's decision regarding the precise length of the pipeline prudent. We recognized that engaging in pipeline construction in a piecemeal fashion only serves to increase the overall cost of necessary improvements to Suburban's distribution system, thereby resulting in a greater customer rate increase. In this regard, we found NARUC's guidance instructive, in that the addition of small increments of plant and equipment may be cost ineffective. Opinion and Order at ¶ 125. Upon review of OCC's second assignment of error, we find that OCC has not raised any new issues that we have not previously addressed and,

consequently, we deny this assignment of error.

{¶ 23} Finally, to the extent OCC argues that our Opinion and Order violates R.C. 4903.09, we find this argument unpersuasive. As explained above, in our Opinion and Order, we made extensive findings of fact and set forth the reasons prompting our decision finding the length and capacity of the DEL-MAR pipeline as appropriate based on those findings of fact, pursuant to R.C. 4903.09. Consequently, because we provided ample justification, we reject OCC's arguments related to R.C. 4903.09.

2. PHASE-IN

{¶ 24} In its third and final assignment of error, OCC argues that the Commission unreasonably approved the phase-in of the charges related to the 4.9-mile DEL-MAR pipeline extension over a three-year period. According to OCC, the Commission cannot deviate from the mandatory ratemaking formula within R.C. 4909.15 and lacks the authority to allow Suburban to voluntarily phase in plant into rates. As a result, OCC believes the Commission has inaccurately interpreted Supreme Court of Ohio precedent and created a distinction between voluntary and involuntary phase-ins. *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 540, 620 N.E.2d 835 (1993). Though OCC has previously signed on to a phase-in under a settlement agreed to by various parties in a different matter, it believes that case is not binding or persuasive here. *In re The Dayton Power & Light Co.*, Case No. 91-414-EL-AIR, Opinion and Order (Jan. 22, 1992). Further, OCC believes this prior settlement was unlawful under R.C. 4909.15 and, even though OCC itself signed on to it 28 years ago, that does not bind the agency now. As such, OCC believes the Commission cannot violate the plain language of R.C. 4909.15 by approving the Stipulation here by relying on its past decision.

{¶ 25} Suburban challenges OCC's contention that the phase-in is unlawful and argues that the plain language of R.C. 4909.15 does not preclude a utility from agreeing to accept a lesser valuation of its plant in rates, especially through settlements. *Hardin-Wyandot Lighting Co. v. Pub. Util. Comm.*, 118 Ohio St. 592, 600, 162 N.E. 262 (1928). Moreover,

Suburban believes the phase-in at issue here results in just and reasonable rates for consumers, satisfying R.C. 4905.22 and offering benefits to customers. Suburban calculates that, in the first year of the new rates, customers will save \$610,403 and, in the second year, customers will save \$246,155. Suburban claims these savings from the phase-in are magnified through the Stipulation because the Company will recalculate the customer count used to determine customer charges at the time each additional portion of the book value of the pipeline extension is placed into rate base. Suburban explains this means its revenue requirement will be spread among more customers than at date certain, thereby reducing the share of that revenue requirement each individual customer is responsible for through rates. Consequently, Suburban believes OCC's third assignment of error is meritless and should be denied.

{¶ 26} Upon review of OCC's third assignment of error, we find that we have thoroughly addressed arguments related to the phase-in in the Opinion and Order and OCC raises no new arguments. Contrary to OCC's assertion, the Supreme Court of Ohio, in *Columbus S. Power*, was clear that the legislature did not grant the Commission the authority to order a phase-in of a utility's annual revenue increase. However, here, as we have previously determined, we are not ordering Suburban to phase-in its rates. Opinion and Order at ¶ 145. Rather, the scope of our determination was that the Stipulation, which includes a voluntary phase-in agreement among the parties, was reasonable. We found that the phase-in was reasonable, recognizing the various benefits to customers, including the phase-in of the costs of the DEL-MAR pipeline leading to a lower fixed charge for existing customers. Opinion and Order at ¶¶ 141, 145. Further, OCC has not pointed us to any precedent that says this type of condition is unlawful in stipulations. As we have thoroughly discussed OCC's arguments regarding the phase-in in our Opinion and Order, we deny OCC's third assignment of error.

III. ORDER

{¶ 27} It is, therefore,

{¶ 28} ORDERED, That OCC's application for rehearing be denied. It is, further,

{¶ 29} ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

AS/kck

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Summary: Entry denying OCC's application for rehearing electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio