

In the Matter of the Application of )  
Suburban Natural Gas Company to ) Case No. 20-0043-GA-ATA  
Establish the Tax Credit Rider. )

In the Matter of the Application of )  
Suburban Natural Gas Company's ) Case No. 20-0044-GA-UNC  
Implementation of Certain Matters Relating )  
to the Tax Code and Jobs Act of 2017. )

Pursuant to the Entry issued on April 9, 2020, the Suburban Natural Gas Company (“Suburban”) hereby files its Reply Comments in the above-captioned proceeding before the Public Utilities Commission of Ohio (“Commission”). The comments filed by the Office of the Ohio Consumers’ Counsel (“OCC”) on May 15, 2020 seek to raise two issues: (1) the alleged failure of Suburban to timely file its Application; and (2) Suburban’s proposal, and the Staff’s agreement with that proposal as modified,<sup>1</sup> that the tax credit be extended beyond twelve months. In support of these issues, the OCC disregards the specific language of the Commission’s Order permitting Suburban to comply with the Order by addressing the tax credit “in an already-pending proceeding,” which it did, and arguing that “the longer payback period would result in current customers subsidizing future customers,” but that is always the case in processing refunds, whether a 12-month period or, as the OCC alleges, a 31-month period is designated for the refund. That issue was decided many years ago when the courts ruled that a company did not have to match the

<sup>1</sup> See Staff Review and Recommendation at 3 (April 6, 2020) (“Staff Report”) (“Staff supports the Company’s proposal to refund the Stub period over the same timeframe as the phase-in of the base rate revenue requirement, but only if carrying charges accrue for the duration of the refund.”) (The Staff Report does not have page numbers. Suburban has, however, manually added page numbers for reference purposes, excluding the cover page.).

refund with a specific customer. Here, again, however, the OCC disregards the specific language of the Commission's Order stating that its purpose was "to allow the Commission the appropriate opportunity to consider the impact of the Tax Cuts and Jobs Act of 2017 on each specific company,"<sup>2</sup> which is what the OCC acknowledges the Staff did by recommending a longer payback period in this case "to 'minimize the financial impact on a relatively small natural gas company.'"<sup>3</sup> Staff's recommendation is clearly within both the Staff's and the Commission's discretion to do.

The foregoing is sufficient to answer the relevant provisions of OCC's Comments. However, the personal overtones of the Comments are deserving of comment as well as are OCC's misstatements of the impact of Suburban's most recently completed rate case on Suburban's financial condition.

At the outset of its Comments, OCC characterizes Suburban's proposal to extend the refund over a period of three years as "unreasonable" and "especially unfair as customers suffer through a once-in-a-lifetime...financial crisis resulting from the coronavirus."<sup>4</sup> And OCC even goes so far as to characterize the taxes collected under Suburban's authorized PUCO tariff as "overcharges" implying, as a minimum, bad faith and, more specifically, criminality, for collecting its lawfully authorized rates. Suburban would respond with the following questions: Was it "unfair" to delay the full recovery of the return and expenses associated with the \$8.5 million investment which prompted the rate case in the first place over a three-year period, as Suburban and the Staff agreed to do, or not to allow any recovery at all, as the OCC argued; and was it "unfair" to defer recovery

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<sup>2</sup> *In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI, Finding and Order at ¶1 (October 24, 2018) (emphasis added).

<sup>3</sup> OCC Comments at 3 (citations omitted).

<sup>4</sup> *Id.* at 1.

of Suburban's substantial rate case expenses, increased significantly by the OCC's intervention and stubborn insistence on litigation of the case, for five years? Apparently, the OCC's sense of fairness is one-sided. It is fair to soften the financial impact on Suburban's customers of the investment and expenses required to provide safe and secure service to OCC's clients, but it is unfair to do the same for Suburban with respect to the tax refund as the Staff recommends in this case.

The OCC concludes the Recommendations' portion of its Comments with the following observations: "Suburban just recently emerged from its most recent base rate case. Suburban cannot claim to be suffering from financial difficulties just months after it settled its rate case."<sup>5</sup> While Suburban fails to grasp the relevance of these observations, they are deserving of a reply because, while Suburban did not 'claim to be suffering from financial difficulties' in its Application, it is, in fact, in serious financial difficulties despite the rates agreed to in that case.

To put Suburban's base rate case in context, it is only the third time that Suburban has sought a base rate increase from the Commission in thirty years. The first case was filed in 1990 and resulted in a general investigation by the Commission which found that Suburban's then existing base rates were unreasonably low. In fact, Suburban was financially bankrupt and the Commission authorized rates sufficient to restore it to solvency. The second base rate application was filed with the Commission in 2007 and, as with its most recent case, was prompted by the construction of a new supply line to serve customers in Delaware and Marion Counties. That line extended approximately twenty miles and cost nearly \$9 million. By comparison, the approximately five mile extension of that line, which prompted the most recent rate case, cost \$8.5 million. During the twelve years intervening between its second and third rate cases, Suburban

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<sup>5</sup> OCC Comments at 4.

added 4,276 customers to its Delaware County system, an increase of more than 50%, more than \$14 million to its plant in service, and doubled the size of its operating personnel without any increase in its base rates. Suburban's customer base is more than 95% residential and less than 1% industrial. Both supply lines were required to serve OCC's clients (i.e., residential customers).

Suburban's most recent rate case originated when the then Chairman and CEO of Suburban was advised by Suburban's Vice President – System Development that Suburban was experiencing pressure problems during peak periods at the southern end of its Delaware County system and its independent engineering consulting firm was recommending that the capacity of its existing main supply line be increased to avoid a potentially severe system outage in the winter of 2018. This occurred in late Spring, early Summer, of 2017 and was precipitated by Suburban's continuing growth in Delaware County and its inability to obtain additional system supply or capacity from independent suppliers. After much study and discussion, Suburban's consulting engineering firm recommended the main line extension as the most economical solution to the existing pressure problem for existing customers while, at the same time, providing for Suburban's continuing growth based on its projections. Based on these discussions and recommendations, construction of the extension was authorized; drawings and inspections were prepared and completed; rights of way were secured; financing was arranged; and approvals were sought and obtained from the Ohio Power Siting Board and Commission. Construction and completion of the extension was to be accomplished by December 31, 2018.

Without going into too much detail, Suburban's best-laid plans were derailed. Due to a proposed 25% tariff increase in steel prices, Suburban was advised to begin drawing down the construction loan prematurely. Right of way issues and record rainfall delayed the commencement and completion of the pipeline extension by two months, delaying the rate case filing and

processing by the same period. Given the lapse of twelve years between rate cases, the Staff's investigation was prolonged resulting in a regulatory lag of thirteen months from date of filing to date of approval of the new rates. Intervention by the OCC prolonged and extended the process, increasing legal and accounting fees as well as interest expense to the detriment of both Suburban and OCC's clients.

In 2017, before beginning the process of expanding its capacity to serve its residential customers, Suburban enjoyed net income of \$1,145,008. In 2018, it lost (\$789,576), including \$272,476 in interest expense associated with financing the pipeline extension; and in 2019, it lost an additional (\$1,329,187), including \$876,988 in pipeline interest expense. In December of 2019, Suburban defaulted on its construction loan prompting its lender of seventeen years to demand that its \$8.5 million loan be restructured, including the infusion of \$4 million of additional capital despite the implementation of the partial rate increase afforded by the rate case settlement entered into with the Commission's Staff at the end of September last year. Suburban and its lender are still in the process of completing this recapitalization plan which will be presented to the Commission when completed. Again, this project was required solely to provide safe and secure service to OCC's clients.

During the coronavirus crisis, again, despite the partial increase authorized in the rate case, Suburban found itself unable to pay its bills as they became due and is still delaying payment of an \$880,000 gas bill pending consummation of the loan restructuring. Its counsel prepared an application for emergency rate relief under R.C. 4909.16 which was withheld only because its lender was able to qualify Suburban for an SBA small business loan which has temporarily relieved its cash flow problems but which still might be necessary if its loan restructure is not sufficient.

Given the foregoing, it is, perhaps understandable why Suburban finds the OCC's personal snipes and mischaracterizations offensive to which Suburban's Chairman would like to add a personal note. Long before the OCC was created by the Ohio General Assembly, Suburban's Chairman was representing residential utility consumers. As Secretary to the Commission, Suburban's Chairman instituted the first Consumer Complaint Department. The Commission had none. Upon leaving the Commission, Suburban's Chairman represented residential utility consumers against the state's three major telephone companies, winning cases in three separate appeals to the Supreme Court of Ohio, one of which made its way to the United States Supreme Court. Before the OCC was created, Suburban's Chairman also represented residential utility consumers as special counsel for municipalities negotiating municipal rate ordinances with regulated natural gas companies; and after the OCC was created, Suburban's Chairman served pro bono educating the first Ohio Consumers Counsel and its staff on PUCO practice and procedure. The point is-- Suburban's Chairman is fully aware of the needs of residential utility consumers for safe, reliable, and economical utility services which are not enhanced by frivolous, costly, and time-consuming legal proceedings.

Suburban is a small natural gas company, both literally and as defined by the Commission, owned one hundred percent by Suburban's Chairman and his family. It should not have to incur more than \$450,000 in rate case expense to process a rate case. Suburban has always enjoyed professionally cordial relationships with the OCC. What has changed? Certainly, the OCC has bigger "fish to fry" than a family-owned, small natural gas company serving 18,000 meters primarily in rural areas of this state. Suburban does not know. What Suburban does know is that OCC has shown such an interest in Suburban's cases that Suburban's Chairman has had to reinstate his law license and return to the practice of law to deflect the unusual and unnecessary expenses

incurred from OCC's involvement in most of Suburban's regulatory proceedings, including the routine filings that historically have been uncontested. Query: Would OCC's clients have been better off beginning to receive the tax credit now or waiting until after this case is decided on the contested docket? Whose interest is really being served by OCC prolonging the tax relief proposed by Suburban and agreed to by Staff (as modified)?

Respectfully submitted,

Suburban Natural Gas Company

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## **CERTIFICATE OF SERVICE**

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Summary: Reply Suburban Natural Gas Company's Reply Comments electronically filed by Mrs. Kimberly W. Bojko on behalf of Suburban Natural Gas Co.