BEFORE
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

MEMORANDA CONTRA MOTION TO REJECT SUBURBAN'S PROPOSED TARIFFS TO IMPLEMENT AUTHORIZED PHASE III RATES AND MOTION TO UNLAWFULLY REDUCE RATES
BY
SUBURBAN NATURAL GAS COMPANY

I. INTRODUCTION

Pursuant to a September 26, 2019 Opinion and Order (Rate Order) and a May 23, 2019 Stipulation and Recommendation in the above-captioned case,[1] and in accordance with Ohio statutory law, Supreme Court of Ohio precedent, and Public Utilities Commission of Ohio (Commission or PUCO) rules and regulations, Suburban Natural Gas Company (Suburban) filed a notice to complete phase three of its lawfully phased-in an agreed-to and approved rate increase. Suburban's phased-in rate increase was agreed upon to assist customers by mitigating any impacts that the rate increase may have otherwise had. The Court upheld the phase-in of rates over the Office of the Ohio Consumers' Counsel's (OCC) objections, stating that OCC had failed to show that it was aggrieved by the phase-in, and that if anything, customers stood to benefit from the

[1] Opinion and Order (Sept. 26, 2019) (Rate Order); Stipulation and Recommendation (May 23, 2019) (Stipulation).

phase-in.[2] Yet, OCC's strained reading of the Court's recent decision asks the Commission to turn the decision on its head and reverse itself completely. Importantly, the Court did NOT vacate the Commission's Rate Order and the Court did NOT make any findings that the Commission's Rate Order or Suburban's rate increase was unlawful. In fact, the Court did not even use the word unlawful in its 22-page decision. The Court simply remanded the case to the Commission to correct one error: "We remand for the PUCO to apply the used-and-useful standard." So no matter what words OCC uses to describe the Court's decision in an attempt to incite the public, OCC cannot make the decision say something it does not and OCC cannot fabricate evidence that did not exist in the case below. All OCC is doing is hurting Suburban and Suburban's customers. OCC's creative reading of the Court decision and its purported "consumer protection motion" will do nothing to protect customers, but instead will harm customers and throw their utility into bankruptcy.

In its factually baseless, legally meritless, and procedurally improper Motion,[3] OCC attempts to circumvent longstanding Ohio ratemaking law, due process, and Commission precedent to attack a lawful Commission order. In doing so, OCC misstates the basic holding of the Supreme Court of Ohio decision, ignores Court and Commission precedent and Ohio law, and skirts procedural requirements and due process. As such, Suburban hereby files its memorandum contra pursuant to Ohio Adm.Code 4901-1-12(B)(1), and respectfully requests that the Commission reject OCC's Motion in its entirety.

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[2] Rate Order at ¶¶ 42-43.

[3] *See* Consumer Protection Motion to Reject Suburban's Proposed Rate Increase Tariffs and to Limit Its Tariff Charges for Its 4.9-Mile Del-Mar Pipeline to No More Than Amounts for Two Miles of Pipe in Consideration of Yesterday's Supreme Court Overturning of the PUCO's Decision, Or, In the Alternative, Motion for Making Suburban's Charges Subject to Refund Effective Yesterday, Request for Expedited Ruling and Memorandum in Support by Office of The Ohio Consumer's Counsel (Sept. 22, 2021) (OCC Motion).

II. MEMORANDUM CONTRA

A. OCC misstates the Supreme Court of Ohio's holding.

OCC's entire argument rests on an incorrect and misleading portrayal of the Supreme Court of Ohio's September 21, 2021 decision (Court Decision).[4] Contrary to OCC's claims, the Court did not determine that Suburban's phased-in rate increase was unlawful, or order the Commission to vacate the increase in rates or vacate the Commission's Rate Order. Instead, it remanded the case to the Commission for further consideration based upon the used-and-useful standard outlined by the Court. OCC's Motion however, ignores the plain facts and holding of the Court Decision.

First, OCC falsely claims that the Rate Order, and the rates it authorized, are "unlawful."[5] The Supreme Court of Ohio made no such finding. Again, at no point in the Court's twenty-two-page opinion (including the dissenting opinion) does the word "unlawful" ever appear. Instead, the Court merely determined that the Commission had erred in relying on an incorrect legal standard in applying the used-and-useful test as required by R.C. 4909.15(A).[6] The Court did not determine that these rates were unlawful as OCC claims; it determined that the Commission must reevaluate the rates under the appropriate standard, stating that "[on] remand, the [Commission] must evaluate the evidence and determine whether the 4.9-mile pipeline extension was used and useful as of the date certain."[7]

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[4] *See In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224 (Sept. 21, 2021) (Supreme Court Decision).

[5] *See, e.g.*, OCC Motion at 1-2 ("The Court agreed with OCC that the PUCO's ruling requiring consumers to pay for the entire 4.9-mile pipeline extension was unlawful."); OCC Motion at 2 ("In the meantime, the PUCO must swiftly take steps to protect consumers from paying unlawful charges based on the entire cost of the pipeline"); OCC Motion at 3 ("But the Supreme Court has ruled that the PUCO's approval of charges based on the entire 4.9-mile length of the pipeline was unlawful.").

[6] *See* Court Decision at ¶¶ 35, 40.

[7] Court Decision at ¶ 35.

Further, the Supreme Court of Ohio held that the ultimate determination for whether or not the rates are 'lawful' is best left to the Commission itself. As the Court stated, "[the] application of the relevant legal standard to the facts is something that is best left to the [Commission] in the first instance."[8] And while the Court directed the Commission to apply a slightly different legal standard (used-and-useful instead of prudence), it specifically did not direct the Commission to reach a different conclusion.

In fact, based on Court precedent, even when it is directed to reconsider a matter under a different legal standard, the Commission is free to reach the same conclusion. For example, in *In re Columbus Southern Power Co.*, the Supreme Court of Ohio reviewed the Commission's approval of Columbus Southern Power Co.'s first electric security plan, and found that the Commission erred by approving the recovery of carrying costs associated with environmental investments without proper statutory authority.[9] The Court then remanded the matter to allow the Commission to determine whether any of the nine categories of cost recovery under R.C. 4928.143(B)(2)(a) authorized environmental investment carrying costs.[10] On remand, the Commission ultimately determined that the costs *did* qualify under the statutory framework, and issued another Order authorizing their collection, which the Court affirmed.[11] Thus, according to precedent, a Court order directing the Commission to reconsider part of its decision does not preclude the Commission from arriving at the same outcome, nor does it mean that charges are

[8] Court Decision at ¶ 35, *citing In re Complaint of Wingo v. Nationwide Energy Partners, L.L.C.*, 163 Ohio St.3d 208, 2020-Ohio-5583, 169 N.E.3d 617, ¶ 26.

[9] *In re Columbus Southern Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, ¶ 1.

[10] *Id.* at ¶ 2.

[11] *Id.* at ¶ 11.

'unlawful.' The Court in *In re Columbus Southern Power Co.* did not state as such and neither did the Court in this matter.

Second, OCC falsely claims that "[under] the Court's ruling…charges for anything above those 2.0 miles of pipeline should be barred."[12] Once again, the Supreme Court of Ohio said no such thing—OCC is purposely misrepresenting the Court Decision, pulling arguments out of thin air. While the Court *did* acknowledge that *OCC* argued that only two miles of the pipeline were used and useful as of the date certain,[13] it made no actual finding as to how much of the pipeline was used and useful as of the date certain, instead leaving this determination to the Commission.[14] The fact that OCC conceded that *at least* two miles of the pipeline were used and useful[15] does not equate to a finding that *only* two miles were used and useful. The reality is that the Court could not have made such finding as the record below does not support such a finding.

Third, the Supreme Court of Ohio did not vacate the Rate Order and direct the Commission to issue a new order authorizing different rates. OCC's statement that the Court vacated the Commission's Rate Order and ordered lower rates is simply false, and "ordering Suburban to lower its rates" will not comply with the Court's ruling and it would not be "consistent with PUCO precedent"[16] The Court has the authority to direct the Commission to remove an unlawful charge

[12] OCC Motion at 4.

[13] *See, e.g.,* Supreme Court Decision at ¶ 2 ("In [OCC's] view, only two miles of the extension were used and useful and thus the [Commission] erred by approving a rate increase based upon the entire 4.9-mile extension.").

[14] *Id.* at ¶ 35, *citing In re Complaint of Wingo v. Nationwide Energy Partners, L.L.C.*, 163 Ohio St.3d 208, 2020-Ohio-5583, 169 N.E.3d 617, ¶ 26 ("The application of the relevant legal standard to the facts is something that is best left to the [Commission] in the first instance.").

[15] *Id.* at ¶ 22 ("Though the Consumers' Counsel concedes that two miles of the extension were useful as of the date certain, it disputes the usefulness of the pipeline extension's remaining 2.9 miles.").

[16] OCC Motion at 4.

or to vacate the Rate Order, but it did not do so in this case. The fact that the Court *could* have done something, but chose not to, actually disproves OCC's argument.

As discussed above, the Commission is free to reach the same conclusion when directed to reconsider a case under a different legal standard.[17] For example, in the case cited to by OCC, *In re Columbus S. Power Co*., the Supreme Court of Ohio ordered that a specific charge was not authorized.[18] The Court made no such finding here. Another example can be found in an appeal of a utility's electric security plan application.[19] The Court determined that a utility's distribution modernization rider (DMR) was not an authorized charge.[20] The Commission did not immediately remove the charge, until the Supreme Court denied a motion for reconsideration and issued a mandate and specifically directed the Commission to remove the charge.[21]

Had the Supreme Court of Ohio wanted the Commission to immediately issue a new order requiring Suburban to file tariffs with new or different rates, rates lower than those agreed-upon in the May 23, 2019 Stipulation and Recommendation and as approved in the September 26, 2019 Rate Order, the Court could have easily vacated the Rate Order. But it did not. As OCC pointed out, the Court has done so in the past. But OCC ignores the fact that here, the Court plainly did not do so, but, instead, "remand[ed] the case for a proper application of the used-and-useful test."[22]

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[17] *See In re Columbus Southern Power Co.*, 2014-Ohio-462.

[18] 128 Ohio St.3d 512, 2011-Ohio-1788, ¶ 29.

[19] *In the Matter of the Application of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of An Electric Security Plan*, Case No. 14-1297-EL-SSO.

[20] *In re Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401.

[21] Case No. 14-1297-EL-SSO, Order on Remand, ¶¶ 13-14 (Aug. 22, 2019).

[22] Court Decision at ¶ 2.

In this case, the Supreme Court of Ohio did not rule that the Phase III Rate Increase was unlawful, it did not rule that only two miles of the pipeline were used and useful as of the date certain, and it did not direct the Commission to issue a new order with different rates. The Court simply directed the Commission to reconsider its September 26, 2019 Rate Order under a different legal standard. However, until the time that the Commission does so, the September 26, 2019 Rate Order remains in effect.

B. Commission orders remain in effect until the Commission issues a subsequent order.

A Commission order that is reversed and remanded by the Supreme Court of Ohio remains in effect until the Commission issues a subsequent order reversing the previous order. In *Cleveland Elec. Illum. Co. v. Pub. Util. Comm'n*, the Supreme Court partially reversed a Commission order granting a rate increase, in effect agreeing with the utility that it was entitled to higher rates than the Commission had approved.[23] The Commission then issued an entry, *sua sponte*, that its prior order was invalidated, and by operation of law the utility then returned to the rates charged before the order was issued.[24] The utility appealed. The Court found that when it "reverses and remands an order of the [Commission] establishing a revised rate schedule for a public utility, the reversal does not reinstate the rates in effect before the commission's order or replace that rate schedule as a matter of law, but is a mandate to the commission to issue a new order, and the rate schedule filed with the commission remains in effect until the commission executes this court's mandate by an appropriate order."[25] Relying on R.C. 4909.15, the Court found that "public utilities are required

[23] *Cleveland Elec. Illum. Co. v. Pub. Util. Comm'n*, 46 Ohio St.2d 105, 105-06 (1976).

[24] *Id.* (the effect of this *sua sponte* entry was that the utility returned to rates which were even lower than the rates the Commission had originally authorized).

[25] *Id.*

to charge the rates and fees stated in the schedules filed with the commission pursuant to the commission's orders; that the schedule remains in effect until replaced by a further order of the commission."[26] As the Court stated in another case, "a remand order of this court does not automatically render the existing rates unlawful."[27]

This ruling is based on the statutory authority of the Commission, which states that the only lawful rates are those set by Commission order. According to R.C. 4909.15(E), "when the commission is of the opinion, after hearing and after making the determinations" that a rate is fair and reasonable, the Commission shall "fix and determine the just and reasonable rate...and order such just and reasonable rate...to be substituted for the existing one." After the Commission issues that order, "no change in the rate shall be made...by such public utility without the order of the commission, and any other rate, fare, toll, charge, rental, classification, or service is prohibited."[28]

Therefore, until the Commission issues a new order, the entirety of the September 26, 2019 Rate Order remains in effect, and Suburban is legally obligated to charge rates pursuant that Rate Order, including the third phase of the rate increase approved and authorized. The Rate Order directed Suburban to file tariffs in compliance with the Stipulation and Recommendation.[29] The Stipulation and Recommendation, in turn, directed Suburban to file annual tariffs that would phase in the total authorized rate increase.[30] Until such time as the Commission issues a new order, therefore, Ohio law, Court precedent, and Commission practice requires that Suburban file tariffs

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[26] *Cleveland Elec. Illum. Co. v. Pub. Util. Comm'n*, 46 Ohio St.2d at 117.

[27] *In re Columbus Southern Power Co*., 138 Ohio St.3d 448, 2014-Ohio-462, ¶ 51.

[28] R.C. 4909.15(E)(2)(b).

[29] Opinion and Order, ¶¶ 151, 172 (Sept. 26, 2019) ("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.").

[30] Stipulation and Recommendation at ¶ III.A.2 (May 23, 2019).

and charge rates pursuant to the Commission's previous Rate Order. Even though the Court directed the Commission to reconsider a portion of that Rate Order, the Rate Order itself remains in effect until the Commission does so.

Regardless, Suburban is confident that even upon reconsideration of the case under the proper legal standard articulated by the Supreme Court of Ohio, the record demonstrates that the entire 4.9-mile pipeline was used and useful as of the date certain pursuant to R.C. 4909.15. As noted by the Court's Dissent, the "the evidence supports the commission's finding that the entire pipeline extension was used and useful as of the date certain, which was a separate and sufficient basis for determining that Suburban was entitled to full recovery of its costs."[31] Although the Court Majority found that the Commission Rate Order did not adequately support this finding,[32] the Court did not foreclose the possibility of this outcome, and the evidence on remand will lead to the same conclusion. OCC, seems to recognize this eventuality, and appears to be using its Motion to attempt to thwart the remand process. OCC's Motion, therefore, represents a procedurally improper attempt to alter the Commission's Rate Order without proper consideration of the evidence in the record and the standard articulated by the Court.

C. OCC's Motion is procedurally improper.

In attempting to circumvent Ohio law, Supreme Court of Ohio precedent, and Commission practice, OCC's Motion is procedurally improper in several ways. First, OCC seeks to oppose, out-of-time, Suburban's Notice to Implement Phase III of Its Rate Increase. OCC also attempts to relitigate several issues that have already been resolved by the Court or the Commission,

[31] Supreme Court Decision at ¶ 46 (Donnelly, J., dissenting).

[32] *Id.* at ¶ 39.

amounting to improper applications for rehearing filed out of time. Lastly, in an attempt to thwart the remand process on the limited issue remanded for reconsideration, OCC improperly interjects additional record evidence into this proceeding.[33]

Suburban filed its Notice to Implement Phase III of Its Rate Increase (Notice) on August 23, pursuant to the Stipulation filed May 23, 2019 and the Rate Order issued September 26, 2019, in the above-captioned case. OCC's self-styled "Motion to Reject" this Notice to Implement Phase III represents a procedurally improper attempt to file a memorandum contra out-of-time. According to Ohio Adm.Code 4901-1-12, a party may only file a memorandum contra "within fifteen days" of a filing, unless it seeks to file out of time for good cause shown.[34] But, OCC waited thirty days, more than twice the time limit, to file its "Motion to Reject"[35] and OCC failed to seek permission from the Commission to file out of time. Although OCC styled its filing as a "motion," in reality, the majority of the "motion" is a memorandum asking the Commission to reject Suburban's Notice filing—in effect, a memorandum contra. OCC cannot be allowed to circumvent procedural time limits by styling its memorandum contra as a distinct motion.

OCC also attempts to improperly relitigate issues that the Supreme Court of Ohio and the Commission have already rejected, in violation of Ohio law. R.C. 4903.10 requires a party to file an application for rehearing within thirty days of a final Commission order. Here, OCC seeks rehearing on issues years out of time. In essence, OCC's Motion is a procedurally improper attempt to relitigate the phase-in issue, which the Court explicitly rejected. Pursuant to the Stipulation in this case that was approved by the Commission in its Rate Order, the Commission

[33] *See* OCC Motion, unnumbered exhibits.

[34] Ohio Adm.Code 4901-1-12(A), (B)(1).

[35] *See generally* OCC Motion.

directed Suburban to phase in its rate increase over three years.[36] OCC already filed an application for rehearing on this issue,[37] and the Commission affirmed its determination.[38] OCC then appealed on this issue and lost. The Court noted that "the Consumers' Counsel has failed to show that it is aggrieved by the phase-in," and therefore rejected OCC's appeal on that issue.[39]

Nevertheless, in its Motion, OCC attempts to raise the phase-in issue again. OCC conflates Suburban's 80% phase-in with approval of 3.9 miles of pipeline.[40] OCC then argues that the phase-in should be reduced so that customers only pay for two miles of the pipeline.[41] Again, at no point did the Supreme Court of Ohio state that only two miles of the pipeline were used and useful as of the date certain.[42] The Court also expressly rejected the appeal over the phase-in issue. OCC's attempts to raise these issues are procedurally improper, given that both the Commission and the Court have rejected them. The Commission approved the phase-in in September of 2019, a full two years ago. Any applications for rehearing on this issue are far beyond the thirty-day deadline required by R.C. 4903.10, and should be rejected.

OCC's Motion is also an improper attempt to apply for rehearing on the issue of refunds. As discussed above, by law, Suburban is only permitted to charge rates pursuant to the Commission's Rate Order.[43] Additionally, unless that Rate Order contains a refund mechanism,

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[36] Opinion and Order at ¶ 25 (Sept. 26, 2019).

[37] *See* Application for Rehearing at 15-17 (Oct. 28, 2019).

[38] Second Entry on Rehearing at ¶ 26 (Apr. 22, 2020).

[39] Supreme Court Decision at ¶ 43.

[40] *See* OCC Motion at 4.

[41] *Id.*

[42] *Supra* Part II.A.

[43] *See* R.C. 4909.15.

Ohio law does not authorize refunds for lawful rates.[44] OCC cites to the example of the DMR.[45] However, in that case, the Supreme Court of Ohio specifically ruled that the charge was unlawful, and it was the *applicant* that requested to collect the charges subject to refund during the pendency of its motion for reconsideration.[46] Here, the Court has made no such ruling, and Suburban has made no such request, as it remains confident that the entire pipeline was used and useful as of the date certain.

Refunds remain unavailable unless and until a new order is issued. The original Rate Order made no reference to refunds. OCC did not raise this issue in either of its briefs in this case.[47] Nor did OCC raise this issue in its application for rehearing.[48] As such, it is far out of time to challenge the original Rate Order. Ohio law prohibits applications for rehearing beyond thirty days of the Commission order.[49] As the case OCC cites to notes, "any apparent unfairness…remains a policy decision mandated by the larger legislative scheme."[50] OCC attempts to prevent the Commission from completing its remand process.

Lastly, OCC's Motion is an attempt to avoid the remand process, improperly and unilaterally raising its own arguments before the Commission. Despite the Commission previously rejecting OCC's arguments that only two miles of the pipeline are used and useful and that the

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[44] *See In re Application of Columbus Southern Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶ 16, *citing Keco Indus. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 141 N.E.2d 465 (1957).

[45] *See* OCC Motion at 5-6.

[46] *See In the Matter of the Application of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of An Electric Security Plan*, Case No. 14-1297-EL-SSO, Entry, ¶ 13 (July 2, 2019).

[47] *See* Initial Post-Hearing Brief by the Office of the Ohio Consumers' Counsel (Aug. 2, 2019); Reply Brief by The Office of the Ohio Consumers' Counsel (Aug. 16, 2019).

[48] *See generally* Application for Rehearing (Oct. 28, 2019).

[49] R.C. 4903.10.

[50] *See In re Application of Columbus Southern Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶ 17.

phase-in was unlawful and the Court declining to explicitly find otherwise, OCC attempts to elicit a Commission order adopting those arguments by filing a Motion one day before the Commission was set to accept the tariff filing for the scheduled rate increase. However, before the Commission could make further legal determinations on the correct legal standard as directed by the Court,[51] OCC attempted to relitigate issues already decided and not reversed. Suburban is confident that the evidence below demonstrates that the entire 4.9-mile pipeline was used and useful as of the date certain pursuant to R.C. 4909.15. OCC's Motion represents an attempt to prevent the Commission from reviewing the record below and making this finding. OCC's improper attempts and its Motion should be rejected by the Commission in its entirety.

D. OCC's Motion to Reduce Current Rates will Harm Suburban and Suburban's Customers and Should be Rejected.

Not only is OCC's request to reduce Suburban's rates outside the record inconsistent with the Supreme Court of Ohio Decision and an improper attempt to thwart *Keco* and the filed-rate doctrine,[52] it will harm Suburban and Suburban's customers. Such a request should be rejected.

Generally, the application of the filed-rate doctrine allows utilities to retain previously collected rates, even when the rates are later determined to be unreasonable. Consequently, utilities can implement rate increases or new charges authorized by a governmental entity (here, the Commission), which can only be invalidated by the Supreme Court of Ohio. This practice ensures rate stability and predictability for consumers and assures the financial integrity of the utilities.

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[51] Supreme Court Decision at ¶ 35, *citing In re Complaint of Wingo v. Nationwide Energy Partners, L.L.C.*, 163 Ohio St.3d 208, 2020-Ohio-5583, 169 N.E.3d 617, ¶ 26 ("The application of the relevant legal standard to the facts is something that is best left to the [Commission] in the first instance.").

[52] *Keco Indus., Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 259, 141 N.E.2d 465, 469 (1957).

Not only are OCC's attempts to inject additional record evidence into this proceeding improper, the exhibit presented by OCC does not tell the entire story. While OCC's unnumbered exhibit[53] purports to show what OCC believes Suburban's rate base should be,[54] OCC fails to explain what happens to a public utility that needs the money to operate its system in a safe and reliable manner. Suburban will suffer severe economic harm if OCC's proposal, which is not based in fact or in the record of the case, is adopted. Reducing rates and disallowing $5 million in rate base associated with a pipeline that is currently being used by customers, is advantageous and useful to customers, has been paid for by the utility, and is necessary for the safe and reliable operations of the system, will have a potential catastrophic impact on Suburban.

In order to construct the pipeline extension, Suburban had to borrow the $8.5 million required to finance construction.[55] On January 10, 2018, the Commission approved and authorized the execution and issuance of those securities.[56] The financing documents required Suburban to file an application to increase its rates to recover the cost of the pipeline extension. During the thirteen-month pendency of Suburban's rate case, Suburban's earnings continued to deteriorate. Despite the implementation of the first phase of the new rates on September 30, 2019, Suburban suffered losses for the twelve months ending December 31, 2019. And, in 2019 and/or 2020,

[53] *See* OCC Motion 12-13.

[54] *Id.* at 4.

[55] On November 8, 2017, as amended on December 11, 2017, Suburban filed an application pursuant to R.C. 4905.40 and 4905.41 for authority to issue its note and security agreements to Suburban's financial institution in the amount of the $8.5 million required to finance the construction of a 4.95-mile extension of its primary supply pipeline that Applicant's consulting engineers had advised was necessary for its Delaware County system before the commencement of the 2018-2019 winter season to avert a potential catastrophic failure of service to customers located at the southern end of that system. *In the Matter of the Application of Suburban Natural Gas Company for Consent and Authority to Establish Long-Term Financial Arrangements*, Case No. 17-2321-GA-AIS, Application (Nov. 8, 2017), as amended (Dec. 11, 2017).

[56] *Id.*, Order (Jan. 10, 2018).

Applicant experienced an increase in its cost of debt, a significant increase in its health insurance premiums, and increased property tax invoices. The cumulative effect of all of these increases in expenses that could not have been known or foreseen has significantly affected Suburban's finances.

Under OCC's proposal, including only 2.0 miles of the pipeline in Suburban's rate base would result in an authorized rate base of $20,338,793, more than $5 million below the stipulated rate base of $25,649,641.[57] Removing an additional $5 million in rate base, which would result in an annual revenue requirement decrease of over $720,000, will exacerbate the financial situation of the Company.[58] In turn, this will prevent Suburban from meeting its existing financial obligations, causing Suburban to default on its loan covenants and suffer severe financial injury, jeopardizing its very existence and potentially placing the company in bankruptcy.[59] Given the financial position of the Company and prior experience of the Company during its prior financing negotiations with lenders, as indicated in the attached analysis:

> [if] only 2.0 miles of the pipeline extension are recoverable through rates as OCC proposes, Suburban would be in default of the debt service compliance requirement. Inevitably, the expected outcome would be that the bank would either be forced to call the loan or require an additional capital infusion by the shareholders of the Company based upon the prior experience of the Company during its previous negotiations with the lender….This would result in either a forced sale of the Company or bankruptcy of the Company as it is impractical for the shareholders to infuse over $5M into the Company to return it to solvency.

[57] *See* Attachment A, Suburban's Rate Impact Analysis of OCC's proposal to disallow $5 million and only allow Suburban to recover 2.0 miles of the 4.9-mile pipeline.

[58] *See id.*

[59] *See* Attachment B, Suburban's Debt Service Ratio Calculation..

III. CONCLUSION

Accordingly, pursuant to Ohio Adm.Code 4901-1-12(B), Suburban respectfully requests that the Commission deny the Motion in its entirety. OCC misstates the basic holding of the Supreme Court of Ohio decision, ignores Court and Commission precedent and Ohio law, and skirts procedural requirements. OCC's Motion is meritless and procedurally improper, and should be rejected in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Public Utility Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on September 29, 2021 upon the parties of record.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

Attorney Examiners:

SUBURBAN NATURAL GAS COMPANY
CASE NO. 18-1205-GA-AIR
OVERALL FINANCIAL SUMMARY
FOR THE TWELVE MONTHS ENDED FEBRUARY 28, 2019

SCHEDULE A-1
PAGE 1 OF 1

Line No.	Description	Supporting Schedule Reference	Applicant	Phase III Stipulated with Final Rate Case Exp	Including Only 2.0 Miles of Line Extension
1	Rate Base as of Date Certain	B-1	$ 25,877,578	$ 25,649,641	$ 20,338,793
2	Current Operating Income	C-1	(649,180)	424,217	608,012
3	Earned Rate of Return: Line (2) / Line (1)	(n/a)	-2.51%	1.65%	2.99%
4	Recommended Rate of Return	D-1	7.26%	7.26%	7.26%
5	Required Operating Income: Line (1) x (4)	(n/a)	1,879,161	1,862,164	1,476,596
6	Operating Income Deficiency: Line (5) - Line (2)	(n/a)	2,528,341	1,437,947	868,584
7	Gross Revenue Conversion Factor	A-2	1.331086	1.265823	1.265823
8	Revenue Deficiency: Line (6) x Line (7)	(n/a)	3,365,439	1,820,186	1,099,474
9	Revenue Increase Recommended	E-4	3,365,439	1,820,186	1,099,474
10	Test Year Adjusted Operating Revenues	C-1	17,949,119	18,632,771	18,632,771
11	Revenue Requirements: Line (9) + Line (10)	(n/a)	$ 21,314,558	$ 20,452,957	$ 19,732,245
12	Increase Over Current Revenue: Line (9) / Line (10)	(n/a)	18.75%	9.77%	5.90%

Suburban Natural Gas Company
Debt Service Ratio Calculation
Projected September 30, 2022

Debt Service Ratio

	Projected Oct-Dec 2021	Projected Jan-Mar 2022	Projected Apr-June 2022	Projected July-Sept 2022	Projected Oct 2021-Sept 2022	Projected Oct 2021-Sept 2022 including only 2.0-miles of line ext
Net Income	$ (78,536)	$ 208,964	$ (18,217)	$ (184,583)	$ (72,372)	$ (641,734)
Plus						
Depreciation	302,645	309,739	309,739	309,739	1,231,862	1,231,862
Amortization	81,928	81,928	81,928	81,928	327,712	327,712
Interest Expense	211,830	210,111	208,323	208,030	838,294	838,294
Federal Taxes	(11,837)	63,127	13,599	(30,625)	34,264	(117,086)
Extraordinary Loss/Expense	-	-	-	-	-	-
Minus						
Extraordinary Gain/Income	-	-	-	-	-	-
EBITDA	**$ 506,030**	**$ 873,869**	**$ 595,372**	**$ 384,489**	**$ 2,359,760**	**$ 1,639,048**
Divided by						
Current Maturities LT Debt					524,513	524,513
Interest Expense					838,294	838,294
Income Taxes					34,264	(117,086)
Distributions						
Maint CapEx (Est. at 25% of Depr)					307,966	307,966
Debt Service					$ 1,705,037	$ 1,553,687
Debt Service Ratio					**1.38**	**1.05**
Debt Service Ratio -Compliance Requirement					**1.20**	**1.20**
Pass/Default Compliance					**PASS**	**DEFAULT**

Expected Outcome: In the event only 2.0 miles of the pipeline extension are recoverable through rates as OCC proposes, Suburban would be in default of the debt service compliance requirement. Inevitably, the expected outcome would be that the bank would either be forced to call the loan or require an additional capital infusion by the shareholders of the Company based upon the prior experience of the Company during its previous negotiations with the lender. The bank would likely want to reduce the financed debt by the amount of the disallowed pipeline extension which would be approximately $5M ($8.5M pipeline extension X 2.9/4.9miles = $5M). This would result in either a forced sale of the Company or bankruptcy of the Company as it is impractical for the shareholders to infuse over $5M into the Company to return it to solvency.

Summary: Memorandum Contra Motion to Reject Suburban's Proposed Tariffs to Implement Authorized Phase III Rates and Motion to Unlawfully Reduce Rate by Suburban Natural Gas Company electronically filed by Mrs. Kimberly W. Bojko on behalf of Suburban Natural Gas Company