

**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)	
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)	Case No. 18-1207-GA-AAM
Certain Accounting Authority.)	

**MOTION TO STAY THE PUBLIC UTILITIES COMMISSION OF OHIO'S
OCTOBER 6, 2021 ENTRY
BY
SUBURBAN NATURAL GAS COMPANY**

Pursuant to Ohio Adm.Code 4901-1-12, Suburban Natural Gas Company (Suburban), respectfully moves the Public Utilities Commission of Ohio (Commission) for a partial stay of execution of the Commission's Entry issued on October 6, 2021 in the above-captioned cases pending a decision on remand. A partial stay is needed to avoid irreparable harm to Suburban and its customers as the Entry as written will result in unjust and unreasonable rates and virtually no operating revenue for the public utility, which may prevent Suburban from providing safe and reliable natural gas service to its customers. The reasons for granting Suburban's Motion to Stay for good cause shown are set forth more thoroughly in the Memorandum in Support attached hereto.

Additionally, pursuant to Ohio Adm.Code 4901-1-12(C) Suburban requests an expedited ruling of this motion. Suburban cannot certify whether any other party objects to the request for an expedited ruling.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Commission’s Entry, issued on October 6, 2021 in the above-captioned case, contravenes Ohio law, the Supreme Court of Ohio’s September 21, 2021 decision (Court Decision),¹ and the factual record in this case. This Entry, if allowed to go into effect as written, will irreparably harm Suburban and its customers by effectively forcing Suburban into bankruptcy, preventing Suburban from supplying safe and reliable natural gas service to its customers. The Court Decision did not vacate the Commission’s September 26, 2019 Opinion and Order, nor did it make any finding that Suburban’s rate increases authorized therein were unlawful. Instead, the Court simply remanded the case to the Commission to “apply the used-and-useful standard.”² Until such time as the Commission issues a new order on remand, the previous Commission Opinion and Order that is the subject of the appeal and remand remains in effect (hereinafter, Rate

¹ See *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224 (Sept. 21, 2021) (Court Decision).

² *Id.* at ¶ 45.

Order).³ Pursuant to the Commission’s Rate Order, the Commission found that the then existing rates of Suburban were no longer sufficient to yield reasonable compensation for the services rendered and were, therefore, unjust and unreasonable.⁴ The Commission then approved a new revenue requirement for its base rates that included and was based upon, but not limited to, many components, such as operating income, test year revenue, payroll expenses, employee benefits expense, labor expenses, professional expenses, miscellaneous expenses, rate of return, plant-in service, etc.⁵ Suburban agreed to phase-in its authorized rate increase over three years.⁶ Importantly, the only two issues that the Office of the Ohio Consumers’ Counsel (OCC) appealed to the Supreme Court of Ohio was the inclusion in rate base 2.9 miles of the entire 4.9-mile pipeline extension as used and useful and the phase-in of rates.⁷ The Court denied OCC’s challenge to the phase-in,⁸ but remanded to the Commission the issue of whether the entire pipeline was used and useful as of the date certain (beyond the two miles that OCC conceded were used and useful).⁹

Based upon this decision and in light of Suburban’s pending notice to implement Phase III of the rate increase, OCC unreasonably requested that the Commission reject the Phase III increase and order Suburban to file new tariffs “that only include rates based on the value of 2.0 miles of the pipeline extension,” *or, in the alternative*, make the rates subject to refund on or after September 21, 2021 pending the resolution of the remand proceeding.¹⁰ Despite the Court Decision

³ See, e.g., *Cleveland Elec. Illum. Co. v. Pub. Util. Comm’n*, 46 Ohio St.2d 105, 105-06 (1976).

⁴ Opinion and Order at ¶¶ 149, 164-165 (Sept. 26, 2019).

⁵ *Id.* at ¶¶ 163-168.

⁶ *Id.* at ¶¶ 145-147, 163, 171 (approving stipulated phase-in of rates described at ¶ 25).

⁷ See OCC’s Notice of Appeal at 1 (June 22, 2020); Court Decision at ¶¶ 1-2, 4.

⁸ Court Decision at ¶ 43.

⁹ *Id.* at ¶¶ 2, 45.

¹⁰ 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

directing the Commission to remand the case to apply the used-and useful test to the evidence in the record and the existing Rate Order that is still valid until the Commission issues a new order on remand, the Commission's Entry unreasonably rejected Suburban's notice to implement Phase III of the rate increase *and* directed Suburban to make its entire customer service charge and usage charge (i.e., practically its entire revenue stream) subject to refund.¹¹ And the Commission did this all in advance of deciding the Court's isolated issue on remand: "The Court, therefore, remanded these proceedings to the Commission to 'evaluate the evidence and determine whether the 4.9-mile pipeline extension was used and useful as of the date certain.'"¹²

Given the unreasonable nature of implementing both of the remedies prior to conducting the remand and the fact that OCC's Motion did not even request both of these remedies, a partial stay of execution of the Commission's Entry is warranted (Suburban is not seeking a stay of the remand process set forth by the Commission in its Entry) to protect the integrity of the Commission's decisions and provide financial stability to public utilities. Although the Commission has previously recognized that there is no controlling precedent in Ohio setting the conditions under which it will stay one of its orders,¹³ it subsequently adopted a four-factor test governing a stay that was initially delineated in a dissenting opinion by Justice Douglas.¹⁴ The Commission will grant a stay when:

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); *see also* Entry at ¶ 14 (Oct. 6, 2021).

¹¹ See Entry at ¶¶ 16, 20 (Oct. 6, 2021).

¹² *Id.* at ¶¶ 13, 17 (citing *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224 at ¶ 35).

¹³ See *In the Matter of the Commission's Investigation Into the Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI, Entry on Rehearing at 5 (February 20, 2003).

¹⁴ *In the Matter of the Complaint of the Northeast Ohio Public Energy Council*, Case No. 09-423-EL-CSS, Entry at ¶ 6 (July 8, 2009); *see also*, *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 31 Ohio St.3d 604, 606 (1987).

1. There has been a strong showing that the party seeking the stay is likely to prevail on the merits;
2. The party seeking the stay has shown that it will suffer irreparable harm absent the stay;
3. The stay would not cause substantial harm to other parties; and
4. The public interest lies with the stay.¹⁵

Considering these factors, the Commission should grant Suburban's Motion to Stay execution of the Entry.

II. ARGUMENT

A. A Partial Stay is Warranted Under the Circumstances.

A partial stay of the execution of the October 6, 2021 Commission Entry is necessary to avoid irreparable harm to Suburban and its customers as the Entry as written will result in unjust and unreasonable rates and Suburban will be essentially without operating revenue, which will cause Suburban to default on its loan covenants, effectively forcing Suburban into bankruptcy or a sale. This will also likely prevent Suburban from providing safe and reliable natural gas service to its customers.

The Commission's Entry ordered that all customer service charges and usage charges across all customer classes be subject to refund.¹⁶ This would require that virtually *all* of Suburban's rates, even those that are plainly authorized by law, be subject to refund. If the Entry

¹⁵ *Id.* See also *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Adjust its Automated Meter Reading Cost Recovery Charge to Recover Costs Incurred in 2011*, Case No. 11-5843-GA-RDR, Entry on Rehearing at ¶¶ 22, 25 (Dec. 12, 2012); *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Section 4928.144, Ohio Revised Code*, Case Nos. 11-4920-EL-RDR, et al., Entry at ¶ 8 (Aug. 22, 2012).

¹⁶ See Entry at ¶ 16 (Oct. 6, 2021).

is implemented as written, Suburban's entire revenue requirement that it collects would be subject to refund. As the Commission is aware, this would include many components of rate base and test year expenses associated with Suburban's revenue requirement that are not subject to the appeal and existed well before the Order at issue in this case was issued and the appeal filed. Requiring virtually all rates to be subject to refund would, therefore, go way beyond the value of the 2.9 miles of the 4.9-mile pipeline extension that was challenged by OCC and is currently on remand. Certainly the Commission did not intend to make almost all of Suburban's operating revenue subject to refund, leaving it with basically no revenue stream and threatening the financial integrity and stability of the public utility.

Furthermore, OCC concedes that at least two miles of the pipeline were used and useful as of the date certain.¹⁷ OCC recognized that these amounts should be included in Suburban's base rates.¹⁸ The only issue on remand is the application of the used and useful standard to the remaining 2.9 miles of the pipeline extension. Therefore, to the extent that Suburban's base rates include costs associated with those two miles of the pipeline extension—or costs associated with other base rate items—those rates and components of the rates are entirely, indisputably authorized, and should not be subject to any refund. By subjecting Suburban's entire customer service charges and usage charges to refund, the Commission has caused virtually all of Suburban's revenue to be placed into a regulatory liability account, and deprived Suburban of any operating revenue, which will inevitably cause the Company to immediately default on its loan covenants. As described more fully below, this will cause irreparable harm to Suburban and its customers.

¹⁷ See Court Decision at ¶ 21 (“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.”).

¹⁸ See OCC Motion at 2 (“OCC requests that consumers’ base rates be immediately reduced to include only the value of 2.0 miles of the pipeline extension.”).

The Commission's Entry also contravened Ohio precedent when it reversed its Rate Order prior to deciding the case on remand. A Commission order that is reversed and remanded by the Supreme Court of Ohio remains in full effect until the Commission issues a subsequent order on remand.¹⁹ In *Cleveland Elec. Illum. Co. v. Pub. Util. Comm'n*, 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."²⁰ This ruling relies on R.C. 4909.15(E), which states that after the Commission "[fixes] and [determines] the just and reasonable rate...and [orders] such just and reasonable rate...to be substituted for the existing one...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."²¹ As the Court has previously stated, "a remand order of this court does not automatically render the existing rates unlawful."²² In its Entry, however, the Commission directed Suburban to file rates that contradict the Rate Order, which remains in effect until a new order on remand is issued.

Moreover, the Commission's Entry improperly directed Suburban to make virtually all of its rates subject to refund and rejected implementation of the Phase III rates that were authorized by the Rate Order. First, the Entry went beyond what OCC requested and provided two remedies to the same concern, both negatively impacting Suburban in distinct ways. OCC requested one or

¹⁹ *Cleveland Elec. Illum. Co. v. Pub. Util. Comm'n*, 46 Ohio St.2d 105, 105-06 (1976).

²⁰ *Id.* (emphasis added).

²¹ R.C. 4909.15(E)(2)(b).

²² *In re Columbus Southern Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, ¶ 51.

the other—not both remedies. In its Motion, OCC asked for an alternative to its request to not implement Phase III rates and put rates in effect that only include the value associated with 2.0 miles of the pipeline. The alternative was to make the rates affected by the appeal subject to refund. So put rates into effect that recognized only 2.0 miles of the pipeline extension costs *or* make that amount subject to refund. It appears that what OCC requested was that the difference in rates from including the value associated with 2.0 miles v. 4.9 miles (i.e., 2.9 miles of the pipeline) be subject to refund, which is the crux of the appeal.

To support its alternative argument that the Commission should direct Suburban to collect its lawful and reasonable rates subject to refund, OCC cited to Case No. 14-1297-EL-SSO.²³ In that case, the Supreme Court of Ohio invalidated a utility's rider as unlawful.²⁴ In that case, the Applicant had requested that the rider be collected subject to refund, while OCC argued that the rider should be set to zero, or in the alternate, subject to refund.²⁵ The Commission issued an Entry, directing the applicant to collect the full amount of the rider, as authorized in the previous order, but subject to refund.²⁶ Therefore, while the applicant collected its rates subject to refund, it did so at the full amount that was previously authorized by a lawful Commission order, until the Commission issued a new order on remand, as is required by Ohio law.²⁷

²³ See OCC Motion at 5-6, citing *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 (July 2, 2019).

²⁴ See *In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401.

²⁵ citing *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 at ¶¶ 11-12 (July 2, 2019).

²⁶ *Id.* at ¶ 13.

²⁷ See *In re Columbus Southern Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, ¶ 51 (“a remand order of this court does not automatically render the existing rates unlawful.”).

The Commission clearly deviated from this precedent in the case at hand. Not only did the Supreme Court of Ohio not deem Suburban's rates unlawful as it did in the cases cited to by OCC,²⁸ but in both of those cited cases, the Commission only issued one directive—either stop the charge previously authorized, or collect the full amount of the charge, subject to refund. Here, the Commission unreasonably did both. By directing Suburban to not implement the last phase of the three-phase rate increase, the Commission contravened its previous and lawful Rate Order. And, the Commission *also* directed Suburban to collect *all* customer service charges and usage charges subject to refund. Granting both requests by OCC goes far beyond previous conditions, and indeed, even beyond OCC's requested remedy. OCC did not request both a lower rate than what was authorized *and* collection of those lower rates subject to refund; instead, it argued these points in the alternative.²⁹ Implementing two remedies before the substantive issue on remand is decided compounds the irreparable harm that is caused to Suburban by the Commission's Entry.

1. Suburban is likely to prevail on remand.

In its Court Decision, the Supreme Court of Ohio remanded the above-captioned case for further deliberation concerning the proper application of the used-and-useful standard.³⁰ It did not deem the rates or any portion of them unlawful. Instead, it directed the Commission to apply the applicable legal standard to the record of the case. To that end, the Commission's Entry established a remand process, directing the parties to file additional briefs on the issue.³¹ Ohio law,

²⁸ Nor did either case deal with base rates. Instead, both dealt with riders which were deemed unlawful. *See, e.g., In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401; *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶ 29.

²⁹ OCC Motion at 5 ("In the alternative, the PUCO should order that residential consumers' rates be collected subject to refund, pending resolution of this case on remand.").

³⁰ *See* Court Decision at ¶ 45.

³¹ *See* Entry at ¶ 17 ("Initial and reply briefs should be filed by the parties no later than October 29, 2021, and November 12, 2021, respectively.").

Commission precedent, the Court Decision, and the evidence in the record all point to a strong showing that Suburban will prevail on the merits on remand.

Suburban is likely to prevail on remand because even under the Supreme Court of Ohio's remand directive, the entire 4.9-mile pipeline was used and useful as of the date certain. As Suburban previously noted,³² the Court did not find Suburban's rates unlawful, or direct the Commission to reach a specific conclusion. The Court held that the ultimate determination for whether or not the rates are 'lawful' is best left to the Commission, stating that "[the] application of the relevant legal standard to the facts is something that is best left to the [Commission] in the first instance."³³

A review of the Commission's initial Opinion and Order in this case, demonstrates that, based on the facts and record before it, the Commission did find that the entire 4.9-mile pipeline was in fact used and useful as of the date certain. The Commission found:³⁴

{¶ 121} We find, upon review of the evidence provided by the parties, that **Suburban has adequately demonstrated that the 4.9-mile DEL-MAR pipeline extension was necessary to serve existing customers as of February 28, 2019.** While we agree with OCC that there is a distinction between the terms "used" and "useful," in contrast to Staff's contention that the terms carry the same meaning, as explained below, **here the extension was both used and useful to Suburban's customers as of date certain.** Due to modeling conducted by UTI as a result of the February 24, 2015 low-pressure event, Suburban projected that, by the 2018-2019 winter, assuming a negative five degree temperature, additional capacity was required to serve existing customers and to ensure adequate pressure at Lazelle Road (Tr. Vol. II at 273; Co. Ex. 4 at 8; Co. Ex. 5 at 21-22). We find that models run by UTI on December 9, 2015 (76.30 psig), February 3, 2016 (71.85 psig), February 10, 2016 (53.27 psig), and April 6, 2017 (80.83 psig) all projected that the pressure at Lazelle Road would be below 100 psig, thereby necessitating the DEL-MAR pipeline extension by year end 2018. Furthermore, even though the August 31, 2018 model projects that the pressure at Lazelle Road during year end

³² See Memorandum Contra at 3-4 (Sept. 29, 2021).

³³ 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.

³⁴ Rate Order at ¶¶ 121-124, 147, 163 (emphasis added).

2018 would be 104.27 psig, this is barely above the minimum acceptable level of 100 psig. (Co. Ex. 4, Attach. KDG-1 at 1- 5.) During a particularly cold stretch with multiple contingencies, as explained below, Suburban may not have been able to provide safe, adequate, and reliable service to its customers. Moreover, the evidence demonstrates that Suburban projected completion of the extension by year end 2018, specifically October 31, 2018, but due to weather delays, including record rainfall during the 2018 autumn and winter, and issues with obtaining easements from landowners, this was not attainable. (Tr. Vol. II at 267-269; 374; Co. Ex. 4 at 7.) Despite delays, Suburban was able to place the DEL-MAR pipeline extension into service by February 22, 2019, before the February 28, 2019 date certain. **As such, the extension was both used by customers as of date certain and useful to them because it provided them with safe and reliable service at that time.**

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

{¶ 123} While, in its reply brief, OCC maintains that, even if the extension is deemed prudent from a business operations perspective, it was not used and useful as of date certain, we find that the cases OCC relies on do not support its contention. In one case, the Commission denied the inclusion of a turbine unit and three generating units in Ohio Edison Company's (Ohio Edison) plant-in-service because they were not in use as of date certain, September 30, 18-1205-GA-AIR, et al. -34-1983. *In re Ohio Edison Co.*, Case No. 83-1130-EL-AIR, Opinion and Order (July 27, 1984). The Commission noted that the turbine had not been in service on date certain for Ohio Edison's previous rate case or the rate case at issue, and was, in fact, held out of service for over four years. With regard to the generating units, Ohio Edison had not operated them since January 1983 and it had no plans for these units through June 1988, past the date certain of September 30, 1983. Because of the length of time the generating units had been out of service coupled with the absence of any definite plans for their use in the near term future, the Commission concluded that these units should also be excluded from rate base. **Here, even though Suburban placed the DEL-MAR pipeline extension into service only six days before date certain, it was serving the Company's current customers as of date certain and will be in service in the foreseeable future.**

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

* * *

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

* * *

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

On rehearing the Commission similarly found that the entire 4.9-mile pipeline was in fact used and useful as of the date certain:³⁵

{¶ 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

³⁵ Second Entry on Rehearing at ¶¶ 19, 21 (April 22, 2020) (emphasis added).

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.

* * *

{¶ 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.

* * *

{¶ 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.

Given the record evidence that the Commission previously relied on, the Commission is likely to reach the same conclusion on remand when considering the record evidence under the legal standard prescribed by the Supreme Court of Ohio. Indeed, the Court has affirmed the Commission's ability to rely on and arrive at the same conclusions on remand that it did previously.³⁶ Based on the overwhelming record evidence in this case, the entire 4.9-mile pipeline

³⁶ See, e.g., *In re Columbus Southern Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, ¶¶ 1-3, 11 (The Court initially ruled that the Commission "committed reversible error [by] approving the recovery of carrying costs associated with

was used and useful as of the date certain to provide safe and reliable service to Suburban's customers.

Furthermore, depriving Suburban of a revenue increase and the total revenue requirement authorized by the Rate Order will result in unjust and unreasonable rates. As the Commission explained in the Rate Order, without the Rate Order increase, Suburban's net annual compensation at the time represented a rate of return of 2.90 percent, which was insufficient to provide Suburban reasonable compensation for the services rendered to its customers.³⁷ Similarly, authorizing a gross annual revenue that results in a similar rate of return prior to remand will result in unjust and unreasonable compensation to Suburban and will endanger customers by preventing Suburban from supplying safe and reliable service.

Based on the evidence of the record before the Commission, Suburban is likely to prevail on remand because the entire 4.9-mile pipeline was used and useful as of the date certain and the authorized rates were just and reasonable.

2. Suburban and its customers will suffer irreparable harm absent the stay.

"Harm is irreparable when there is no plain, adequate and complete remedy at law for its occurrence and when any attempt at monetary restitution would be impossible, difficult or incomplete."³⁸ In this case, by unreasonably not implementing the third phase of the authorized rate increase, and effectively depriving Suburban of virtually all revenue, the Commission will

environmental investments without proper statutory authority." "On remand, the commission determined that the environmental-investment carrying costs were lawful," and the Court affirmed the Commission order.).

³⁷ Rate Order at ¶¶ 164-165.

³⁸ *In the Matter of the Complaint of the Northeast Ohio Public Energy Council*, Case No. 09-423-EL-CSS, Entry at ¶ 10 (July 8, 2009), citing *FOP v. City of Cleveland*, 141 Ohio App.3d 63, 81 (8th Dist. 2001).

irreparably harm Suburban by effectively bankrupting the company. This, in turn, will irreparably harm Suburban's customers by depriving them of safe and reliable service.

As Suburban has previously stated,³⁹ OCC's proposal to artificially reduce rates to only include the value of 2.0 miles of the pipeline extension pending the outcome on remand, would lower Suburban's rate base, and operating revenue, to the point it would 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.⁴⁰ Suburban performed this analysis based on OCC's proposal to only allow two miles of the pipeline into rate base.

The Commission's Entry runs the risk of putting a public utility out of business by requiring Suburban to collect *all* customer service charges and usage charges for *all* customer classes subject to refund—even those amounts far beyond the scope of the 2.9 miles at issue on remand. Essentially, Suburban will no longer have *any* operating revenue, only regulatory liabilities. Again, this will substantially impair Suburban's ongoing financial stability. Should the company go bankrupt, even when Suburban ultimately prevails on remand, the financial harm will have occurred, triggering irreversible defaults—the very definition of an irreparable injury.

This will also cause irreparable harm to Suburban's customers. Without operating income, Suburban will not be able to ensure safe and reliable natural gas service. Should Suburban go bankrupt or not be able to pay its employees, Suburban's customers could be at risk for a loss of safe and reliable service until an alternative utility could provide service or Suburban is purchased.

³⁹ See Memorandum Contra at 13-15 (Sept. 29, 2021).

⁴⁰ *Id.*; see also Attachment A, Debt Service Ratio Calculation.

3. The partial stay will not substantially harm any party.

Compared to the catastrophic and irreversible harm this Entry could cause Suburban and its customers, the partial stay will not harm any party. OCC itself will not be harmed, as it represents residential customers, and its interests in this case should align with theirs. Suburban's residential customers will be best served by having a public utility that is reasonably compensated for the provision of service or, at the very least, has operating revenue to run its business so that it does not default on loan covenants and is able to provide safe and reliable natural gas service. Therefore, a partial stay that ensures customers have access to that service, by preventing their natural gas utility from facing financial peril pending the remand, will not harm them.

4. Public policy favors the partial stay.

Public policy clearly favors the grant of a partial stay in this case. First, the Entry itself would violate state policy as promulgated in R.C. 4929.02 by placing Suburban in financial peril. Second, Ohio policy favors public utilities that are reasonably compensated for the services rendered with just and reasonable rates authorized by the Commission with the certainty and stability of collecting such rates.

R.C. 4929.02 sets for the policy of the state of Ohio as to the natural gas service. It is the policy of the state to "promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods."⁴¹ As discussed above, the Entry places Suburban in financial peril by reducing its authorized operating revenue and making almost the entire amount subject to refund, depriving Suburban of virtually any revenue. This in turn will prevent Suburban from being reasonably compensated for services rendered, potentially subjecting Suburban's

⁴¹ R.C. 4929.02(A)(1).

customers to a loss of safe and reliable service from Suburban. A partial stay that prevents this outcome, therefore, favors public policy by promoting the availability to consumers of adequate, reliable, and reasonably priced natural gas service.

Public policy in Ohio also favors reasonably compensating public utilities for the services rendered with just and reasonable rates authorized by the Commission with the certainty of collecting such rates. The filed-rate doctrine⁴² further ensures stability for utilities and their customers by allowing utilities to collect rates without refund, even when the rates are later determined to be unreasonable. By enabling utilities to implement rate increases or new charges as authorized by the Commission, the utilities are able to mitigate some financial risk, ensuring rate stability and predictability for consumers and financial integrity for the utility. If the Commission places almost all of Suburban's operating revenue subject to refund, including components in rate base that have been authorized and are not subject to the appeal, the Commission is creating instability for Suburban and its customers and threatening the financial integrity of the public utility.

⁴² See *Keco Indus., Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 259, 141 N.E.2d 465, 469 (1957).

III. CONCLUSION

Accordingly, pursuant to Ohio Adm.Code 4901-1-12, Suburban respectfully requests that the Commission grant its Motion to Stay the execution of the Commission's October 6, 2021 Entry for good cause shown. The Commission's October 6, 2021 Entry risks irreparable harm to Suburban and its customers by placing Suburban in financial jeopardy and threatening the stability of the public utility. Given that Suburban is likely to prevail on remand in the above-captioned case, and that the stay will not harm any third parties and favors public policy, staying the execution of the Commission's Entry pending a decision on remand is necessary to avoid irreparable harm to Suburban and its customers.

Respectfully submitted,

/s/ Kimberly W. Bojko

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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 October 8, 2021 upon the parties of record.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

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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)
<u>Plus</u>						
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	-	-	-	-	-	-
<u>Minus</u>						
Extraordinary Gain/Income	-	-	-	-	-	-
EBITDA	\$ 506,030	\$ 873,869	\$ 595,372	\$ 384,489	\$ 2,359,760	\$ 1,639,048
<u>Divided by</u>						
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.

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Summary: Motion to Stay The Public Utilities of Ohio's October 6, 2021 Entry electronically filed by Mrs. Kimberly W. Bojko on behalf of Suburban Natural Gas Company