

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

ENTRY

Entered in the Journal on October 20, 2021

I. SUMMARY

{¶ 1} The Commission approves, with modifications, the compliance tariffs filed by Suburban Natural Gas Company on October 13, 2021, and denies the motion to stay the October 6, 2021 Entry.

II. DISCUSSION

{¶ 2} Suburban Natural Gas Company (Suburban or the 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} The fixation of rates for public utilities in the state of Ohio is governed by R.C. Chapter 4909. R.C. 4909.15 sets forth the formula prescribed by the General Assembly for the fixation of reasonable rates for a public utility. Among other things, in fixing just and reasonable rates, the Commission is required, pursuant to R.C. 4909.15(A)(1), to determine the “valuation as of the date certain of the property of the public utility used and useful or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be used and useful as of the date certain, in rendering the public utility service for which rates are to be fixed and determined.”

{¶ 4} On August 31, 2018, Suburban filed, pursuant to R.C. 4909.18, an application to increase its rates for natural gas distribution service.

{¶ 5} Pursuant to R.C. 4909.19, Staff conducted an investigation of the facts, exhibits, and matters relating to the application. On February 6, 2019, Staff filed a written report of its investigation (Staff Report). Objections to the Staff Report were filed by Suburban, Ohio Consumers' Counsel (OCC), and Ohio Partners for Affordable Energy (OPAE) on March 8, 2019.

{¶ 6} On May 23, 2019, a joint stipulation and recommendation (Stipulation) was filed by Suburban and Staff. OCC and OPAE opposed the Stipulation.

{¶ 7} On September 26, 2019, the Commission issued an Opinion and Order, adopting the Stipulation and resolving all of the issues related to Suburban's application to increase its natural gas distribution rates. Among other matters, the Stipulation provides for a phase-in of the total revenue increase and revenue requirement over three years, as well as a phase-in of Suburban's 4.9-mile DEL-MAR pipeline extension into rate base over a three-year period. More specifically, the Stipulation states that 50 percent of the current book value of the pipeline extension will be included in rate base in the first year of the phase-in, followed by 80 percent in the second year, and the full 100 percent in the third year and thereafter. September 26, 2019 Opinion and Order at ¶¶ 25-26, 31.

{¶ 8} On October 28, 2019, OCC filed an application for rehearing, which was denied by the Commission on April 22, 2020.

{¶ 9} On June 22, 2020, OCC filed a notice of appeal to the Supreme Court of Ohio with respect to the Commission's orders in these proceedings.

{¶ 10} On September 4, 2020, Suburban filed a request to implement the second phase of its distribution rate increase, which was approved to the extent set forth in an Entry issued by the Commission on September 23, 2020. Suburban was authorized to implement a fixed customer service charge of \$34.41 for the small general service (SGS) class, a fixed

customer service charge of \$178.95 with a volumetric charge of \$2.1251 per thousand cubic feet (Mcf) for the large general service (LGS) class, and a fixed customer service charge of \$168.61 with a volumetric charge of \$2.3817 per Mcf for the large general transportation service (LGTS) class. In accordance with the Commission's Entry, Suburban filed tariffs reflecting the approved charges on September 25, 2020.

{¶ 11} On August 23, 2021, Suburban filed a notice requesting approval of revised tariffs to implement the third and final phase of its distribution rate increase, with an effective date of September 30, 2021. In the notice, Suburban proposed a fixed customer service charge of \$34.60 for the SGS class, a fixed customer service charge of \$195.87 with a volumetric charge of \$2.1811 per Mcf for the LGS class, and a fixed customer service charge of \$186.90 with a volumetric charge of \$2.4444 per Mcf for the LGTS class.

{¶ 12} On September 14, 2021, Staff filed its review and recommendation in response to Suburban's notice.

{¶ 13} On September 21, 2021, the Supreme Court of Ohio determined that the Commission failed to properly apply the used-and-useful standard set forth in R.C. 4909.15(A)(1) with respect to the DEL-MAR pipeline extension, specifically "by looking beyond the date certain and in considering whether the investment was prudent rather than 'useful.'" 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." *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, at ¶ 35.

{¶ 14} On September 22, 2021, OCC filed a motion and request for expedited ruling. In its motion, OCC requested that, in light of the Court's decision, the Commission deny Suburban's request to implement the third year of the phase-in. In addition, OCC proposed that the Commission direct Suburban to file tariffs reflecting the value of 2.0 miles of the 4.9-mile DEL-MAR pipeline extension, while these proceedings are pending on remand. According to OCC, this would decrease the customer service charge for the SGS class from

\$34.41 to \$33.09 per month. In the alternative, OCC requested that the Commission immediately order that the customer service charge be subject to refund as of the date of the Court's decision.

{¶ 15} On September 29, 2021, Suburban filed a memorandum contra OCC's motion. Among other things, Suburban argued that OCC misstated the Court's holding and other aspects of the Court's decision; ignored key precedent and R.C. 4909.15, pursuant to which Commission rate orders remain in effect until the Commission issues a subsequent order; acted untimely in opposing the Company's notice to implement the third year of the phase-in; attempted to relitigate issues that have already been resolved by the Court or the Commission; and sought to interject additional record evidence. Suburban also emphasized that OCC's request to include only 2.0 miles of the 4.9-mile DEL-MAR pipeline extension in rate base, which would result in a \$5 million reduction, would prevent the Company from meeting its existing financial obligations and cause severe financial injury.

{¶ 16} By Entry dated October 6, 2021, the Commission found, in light of the Court's decision, that Suburban's distribution charges should remain at the amounts currently in effect. The Commission also directed Suburban to file revised tariffs that provide that the customer service charge and usage charge are being collected subject to refund, as of September 21, 2021, and until otherwise ordered by the Commission. Finally, the Commission established a briefing schedule for the parties to address the issue of whether the 4.9-mile DEL-MAR pipeline extension was used and useful as of the date certain, pursuant to the legal standard set forth in R.C. 4909.15(A)(1), and in accordance with the Court's decision.

{¶ 17} On October 8, 2021, Suburban filed a motion seeking a partial stay of execution of the October 6, 2021 Entry, along with a request for an expedited ruling. In the motion, Suburban asserts that, despite the fact that OCC did not request such relief, the Commission, in advance of conducting the remand, unreasonably rejected the Company's notice to implement the third phase of the rate increase and directed the Company to make

its entire customer service charge and entire usage charge subject to refund. Suburban, therefore, requests that the Commission stay these directives, while allowing the remand process set forth by the Commission in the Entry to move forward as scheduled.

{¶ 18} In support of its motion, Suburban argues that it has satisfied the four-factor test used by the Commission in determining whether to grant a stay. *In re Complaint of the Northeast Ohio Public Energy Council v. Ohio Edison Co. and The Cleveland Electric Illuminating Co.*, Case No. 09-423-EL-CSS, Entry (July 8, 2009) at 2; *see also MCI Telecommunications Corp. v. Pub. Util. Comm.*, 31 Ohio St.3d 604, 606, 510 N.E.2d 806 (1987). First, Suburban contends that it is likely to prevail on the merits on remand, because the Commission already determined, based on the evidence of record, that the entire 4.9-mile DEL-MAR pipeline extension was used and useful as of the date certain. Suburban adds that, given the existing record evidence upon which the Commission previously relied, the Commission is likely to again reach the same conclusion in applying the legal standard prescribed by the Court. In making this argument, Suburban emphasizes that the Court did not deem any portion of the Company's rates unlawful or direct the Commission to reach a specific conclusion on remand. Addressing the second factor of the four-factor test, Suburban asserts that, absent a stay, both the Company and its customers will suffer irreparable harm. Suburban claims that, by prohibiting the Company from implementing the third phase of the authorized rate increase and directing that the entire customer service charge and entire usage charge be collected subject to refund, the Commission has deprived the Company of virtually all of its operating revenue, which will substantially impair the Company's ongoing financial stability to the point of bankruptcy, which, in turn, may jeopardize its ability to provide safe and reliable service to its customers. With respect to the third factor, Suburban argues that a partial stay will not substantially harm any party. Suburban states that the interests of OCC and the Company's residential customers, which should be regarded as aligned in these proceedings, will be served by a partial stay that ensures that customers continue to receive safe and reliable natural gas service. Finally, Suburban contends that public policy favors a partial stay. In particular, Suburban points to R.C. 4929.02(A)(1), which provides

that it is the policy of the state to promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods, and contends that this provision would be furthered through a partial stay that permits the Company to continue to provide customers with safe and reliable service. Suburban adds that public policy in Ohio favors compensating public utilities for services rendered with just and reasonable rates authorized by the Commission, and with the certainty and stability of collecting such rates without refund, even when the rates are later determined to be unreasonable.

{¶ 19} On October 13, 2021, Suburban filed correspondence, along with compliance tariffs in response to the October 6, 2021 Entry. The compliance tariffs provide, with respect to both the customer service charge and the usage charge, that “[a] portion of this Charge is being collected subject to refund as of September 21, 2021, pending the outcome of the issue on remand with the [Commission].” In its correspondence, Suburban states that it believes that this tariff language satisfies the spirit and intent of the October 6, 2021 Entry. Suburban further states that, although the Company has sought to stay the execution of the Commission’s Entry, the Company will implement the tariff schedules immediately.

{¶ 20} On October 15, 2021, OCC filed a memorandum contra Suburban’s motion for a stay. Initially, OCC argues that Suburban’s claim of irreparable harm does not justify modification of the October 6, 2021 Entry through a motion requesting an expedited ruling, which, according to OCC, circumvents the statutory rehearing process. In OCC’s view, Suburban seeks preferential treatment as a utility company, while consumers have been irreparably harmed in a number of cases where, at the end of a lengthy rehearing and appellate process, charges have been deemed unlawful and yet have not been refunded. Thus, OCC asserts that the Commission should not entertain Suburban’s request for an immediate stay. Aside from this argument, OCC also maintains that Suburban does not meet the four-factor test for a stay. Addressing the first factor, OCC avers that Suburban is not likely to prevail on the merits, given that the testimony of the Company’s expert witness and other evidence in the record shows that only 2.0 miles of the DEL-MAR pipeline extension was useful as of the date certain. As to the second factor, OCC claims that

Suburban has not demonstrated irreparable harm in the absence of a stay, because the Company's own analysis indicates that a default on its debt would not occur until September 2022. OCC adds that the contingent language used throughout Suburban's motion reveals that an actual default is highly speculative at this point. With respect to the third factor, OCC declares that a stay would cause irreparable harm to residential consumers by making additional charges nonrefundable. Finally, OCC contends that the public interest would not be supported by a stay, as it would establish precedent that public utilities are able to obtain expedited relief through a motion claiming irreparable harm, while customers are subject to a lengthy rehearing and appellate process that requires them to continue to pay rates that might not be refunded even if the Commission's order is overturned. In addition to addressing the four-factor test, OCC asserts that, if the Commission grants Suburban's motion, the Commission should still require that any charges to consumers that include more than 2.0 miles of the 4.9-mile DEL-MAR pipeline extension are subject to refund. As a final matter, OCC argues that Suburban's motion should also be denied because the Company failed to set forth, in the memorandum supporting the motion, the grounds for the request for an expedited ruling, as required under Ohio Adm.Code 4901-1-12(C).

{¶ 21} OCC also filed on October 15, 2021, an objection requesting that the Commission reject Suburban's compliance tariffs. Initially, OCC asserts that, as Suburban has admitted in its motion for a stay, the plain language of the October 6, 2021 Entry did not specify that only a portion of the customer service charge and the usage charge is subject to refund. In addition, OCC contends that the compliance tariffs are vague and appear to give Suburban the unilateral right to determine the amount that is subject to refund. OCC concludes that, if the Commission does not reject the compliance tariff filing, the tariffs should be modified to clearly indicate which portion is subject to refund.

{¶ 22} In the October 6, 2021 Entry, the Commission directed that Suburban's customer service charge and usage charge should, during the pending remand, remain at the amounts currently in effect and should be subject to refund as of September 21, 2021. In

light of the Court's decision, which requires the Commission to determine on remand whether the entire DEL-MAR pipeline extension was used and useful as of the date certain, we disagree with Suburban's contentions that it was unreasonable to issue both of these directives. In accordance with the precedent cited by Suburban, the Company's current rate schedules filed with the Commission will remain in effect until a new order is issued based on the mandate from the Court. *See Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 46 Ohio St.2d 105, 117, 346 N.E.2d 778 (1976). As part of its argument, Suburban claims that the Commission granted relief beyond what OCC sought in its motion. Suburban oversimplifies the relief requested by OCC, which had proposed that the Commission both reject the implementation of the third phase of the rate increase and immediately reduce the distribution charges to reflect only 2.0 miles of the pipeline extension or, in the alternative, direct that the Company's charges be subject to refund. More importantly, we note that the directives in the October 6, 2021 Entry were issued in response to the Court's decision rather than OCC's motion.

{¶ 23} With this being said, upon review of Suburban's motion for a partial stay of the October 6, 2021 Entry, the Company's compliance tariff filing, and OCC's pleadings in response, we note that it was not the intention of the Commission to require that the full amount of the customer service charge and the usage charge be collected subject to refund. Rather, it is only a portion of the charges that will be subject to further review by the Commission on remand. The Commission finds that Suburban's compliance tariff filing should be approved with modifications, as we agree with OCC that the tariffs should be clarified to provide that the customer service charge and the usage charge are subject to refund to the extent that they include costs associated with more than 2.0 miles of the 4.9-mile DEL-MAR pipeline extension. In their briefs, the parties should provide a proposed calculation of the charges based on the inclusion of 2.0 miles of the pipeline extension, to be used in the event that a refund is ultimately ordered by the Commission. We further find that Suburban's motion for a partial stay should be denied as moot, given that the October

6, 2021 Entry was not intended to require that the undisputed portion of the customer service charge and the usage charge be collected subject to refund.

III. ORDER

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That Suburban's motion for a partial stay of the October 6, 2021 Entry be denied. It is, further,

{¶ 26} ORDERED, That the compliance tariffs filed by Suburban on October 13, 2021, be modified and approved, consistent with this Entry. It is, further,

{¶ 27} ORDERED, That a copy of this Entry be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

SJP/mef

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Case No(s). 18-1205-GA-AIR, 18-1206-GA-ATA, 18-1207-GA-AAM

Summary: Entry approving, with modifications, the compliance tariffs filed by Suburban Natural Gas Company on October 13, 2021, and denying the motion to stay the October 6, 2021 Entry. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio