

**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.)	

**APPLICATION FOR REHEARING
BY
SUBURBAN NATURAL GAS COMPANY**

Pursuant to R.C. 4903.10 and Ohio Adm.Code 4901-1-35, Suburban Natural Gas Company (Suburban), respectfully requests rehearing of the Public Utilities Commission of Ohio's (Commission or PUCO) Entry issued October 6, 2021, in the above-captioned cases. In its Entry, the Commission partially voided its September 26, 2019 Opinion and Order (Rate Order), which had lawfully directed Suburban to implement a three-phase rate increase.¹ Prior to conducting the remand and before affording the parties the opportunity to brief the sole issue on remand, the Commission directed Suburban to not implement the third phase of the stipulated rate increase and to make the entirety of Suburban's customer service charges and usage charges (i.e., practically its entire revenue stream) subject to refund.²

¹ See Entry at ¶ 7 (Oct. 6, 2021). See also Opinion and Order (Sept. 26, 2019) (Rate Order).

² See Entry at ¶¶ 16, 20 (Oct. 6, 2021)

Specifically, Suburban requests that the Commission find that its Entry was unlawful, unjust, unreasonable, and confiscatory in the following respects:

ASSIGNMENT OF ERROR NO. 1: The Commission erred by unjustly, unreasonably, and unlawfully voiding its Rate Order prior to hearing the case on remand.

ASSIGNMENT OF ERROR NO. 2: The Commission erred by unjustly, unreasonably, and unlawfully voiding its valid Rate Order by not implementing the authorized third phase of the rate increase, which results in confiscatory rates.

ASSIGNMENT OF ERROR NO. 3: The Commission erred by unjustly, unreasonably, and unlawfully ordering Suburban to collect the entirety of its existing customer service charges and usage charges subject to refund.

The reasons in support of this application for rehearing are set forth in the accompanying Memorandum in Support. The Commission should grant rehearing and abrogate or modify its October 6, 2021 Entry as requested herein by Suburban.

Respectfully submitted,

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402) (Counsel of Record)

Jonathan Wygonski (0100060)

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614) 365-4100

Email: bojko@carpenterlipps.com

wygonski@carpenterlipps.com

(willing to accept service by email)

Counsel for Suburban Natural Gas Company

**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.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Commission erred by issuing its October 6, 2021 Entry in the above-captioned case, which contravenes Ohio law, the Supreme Court of Ohio’s September 21, 2021 decision (Court Decision),³ and the factual record in this case. In August 2018, Suburban filed an application for an increase in rates. In part, Suburban sought to recover costs associated with a necessary 4.9-mile pipeline extension to its existing Central Ohio natural gas system. Suburban designed and eventually constructed the extension in response to a series of dangerous cold weather events, increased demand, and low pressure concerns. Accordingly, the extension went into service before the February 28, 2019 date certain.

After the Commission Staff filed its Report and Recommendation, interested parties submitted objections, and eventually participated in several settlement meetings. As a result, Suburban and Commission Staff reached a settlement and filed a Joint Stipulation and

³ See *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224 (Sept. 21, 2021) (Court Decision).

Recommendation on May 23, 2019 (Stipulation), recommending that the entire used and useful 4.9-mile pipeline be phased into rate base over a three-year period, and that Suburban was entitled to a rate increase.⁴

The Commission adopted the Stipulation in an Opinion and Order issued September 26, 2019 following a full hearing on the Stipulation, and the issues contained therein.⁵ As part of the Rate Order, the Commission approved a new revenue requirement for Suburban's base rates that included, among other things, operating income, test year revenue, payroll expenses, employee benefits expense, labor expenses, professional expenses, miscellaneous expenses, rate of return, plant-in service, etc.⁶ The Commission also adopted the Stipulation's recommendation to include and phase in the 4.9-mile pipeline extension in rate base over three years.⁷ According to the Rate Order, Suburban had "adequately demonstrated that the 4.9-mile pipeline extension *was necessary* to serve *existing customers* as of February 28, 2019."⁸ Therefore, the Commission concluded that "the extension was both used and useful to Suburban's customers as of date certain."⁹ After the Commission made these determinations, the Rate Order specifically approved the phase-in of the rate increase over three years and established a revenue requirement for each year of the phase in and thereafter (to be adjusted for rate case expenses¹⁰): Year 1 revenue requirement was

⁴ See Joint Stipulation and Recommendation at ¶ III.A.5.d (May 23, 2019) (Stipulation).

⁵ See Rate Order.

⁶ *Id.* at ¶¶ 163-168.

⁷ *Id.* at ¶¶ 141, 145-147, 163-168, 171 (approving stipulated phase-in of rates described at ¶ 25).

⁸ *Id.* at ¶ 121 (emphasis added).

⁹ *Id.*

¹⁰ *Id.* at ¶ 37 ("Rate case expenses shall be amortized over five years. Suburban shall file a late filed exhibit reflecting the total amount of rate case expense to be included in rate base within 30 days of the date the hearing concludes or reply briefs are filed, whichever is later.").

established at \$19,842,554.00; Year 2 revenue requirement was established at \$20,206,802.00; and Year 3 and thereafter revenue requirement was established at \$20,452,957.00.¹¹

The Office of the Ohio Consumers' Counsel (OCC) challenged several aspects of the Rate Order in an appeal to the Supreme Court of Ohio (Court). Ultimately, the Court rejected OCC's arguments that the phase-in hurt consumers,¹² and that the Commission's decision was against the weight of the evidence.¹³ However, the Court did rule in favor of *one* aspect of OCC's appeal—that the Commission had incorrectly applied the used-and-useful standard found in R.C. 4909.15(A)(1).¹⁴

As such, the Court remanded this case to the Commission for one purpose: “to apply the appropriate standard.”¹⁵ Notably, the Court did not deem Suburban's rates and charges, or any portion of them, unlawful, but simply remanded the case to the Commission to “apply the used-and-useful standard”¹⁶ as the actual “application of the relevant legal standard to the facts is something that is best left to the PUCO in the first instance.”¹⁷ Accordingly, the rates authorized pursuant to the Rate Order remain in effect until the Commission conducts the remand, applies the used-and-useful standard to the facts of the case, and issues a new order. The Commission is free to reach the same conclusion as it did in the Rate Order or a new conclusion based on the record

¹¹ Rate Order at ¶¶ 25-26, 141, 145-147, 163-168; *see also* Suburban's Late-filed Exhibit Reflecting Actual Rate Case Expense (Sept. 16, 2019), Notice of Suburban Natural Gas Company to Implement Phase II of its Rate Increase (Sept. 4, 2020), and Notice of Suburban Natural Gas Company to Implement Phase III of its Rate Increase (Aug. 23, 2021).

¹² Court Decision at ¶ 42.

¹³ *Id.* at ¶ 44

¹⁴ *Id.* at ¶ 27.

¹⁵ *Id.* at ¶ 35.

¹⁶ *Id.* at ¶ 45.

¹⁷ *Id.*, 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.

evidence in this case, but until it issues a subsequent order on remand, the Rate Order remains in full effect.

Despite this, the Commission erred by summarily directing Suburban to file tariffs that contravene the lawful Rate Order. The Commission's Entry unreasonably rejected Suburban's notice to implement Phase III of the rate increase and did not allow Suburban to implement the third phase of the authorized rate increase.¹⁸ The Commission directed Suburban to maintain the Year 2 revenue requirement of \$20,206,802.00, instead of implementing the Year 3 revenue requirement of \$20,452,957.00, depriving Suburban of revenue that was authorized under the lawful and effective Rate Order.¹⁹ The Commission also directed Suburban to make the entirety of its customer service charges and usage charges (i.e., practically its entire revenue stream) subject to refund.²⁰ Accordingly, the Commission unlawfully revised its Rate Order prior to conducting the remand and ordered Suburban to implement confiscatory rates and charges.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: The Commission erred by unjustly, unreasonably, and unlawfully voiding its Rate Order prior to hearing the case on remand.

The Court remanded this case to the Commission for application of the used and useful standard.²¹ Although the Court held that the Commission had erred by not properly applying the standard in its Rate Order, the Court did not make any findings that the Rate Order, or the rates and charges that it authorized, were unlawful. As such, the Commission set a procedural schedule

¹⁸ See Entry at ¶¶ 16, 20 (Oct. 6, 2021).

¹⁹ *Id.*

²⁰ *Id.* Although Suburban notes that the Commission partially corrected this error in a subsequent Entry by clarifying that only a portion of the customer service charges and usage charges should be subject to refund, Suburban still seeks to preserve this argument for appeal. See also Entry at ¶ 23 (Oct. 20, 2021).

²¹ See Court Decision at ¶ 45.

for conducting the remand and directed interested parties to file additional briefs on the sole issue remanded to the Commission preceding a future order on remand.²² However, until the time that the Commission issues that new order on remand in this case, the Rate Order remains in full effect. The Commission erred by directing Suburban to file tariffs that contravened the lawful Rate Order in effect.

Ohio statutory and case law makes it clear that when a Commission order is reversed and remanded by the Court, the order nonetheless remains in effect until the Commission issues a subsequent order on remand.²³ R.C. 4909.15(E) 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.”²⁴ Relying on this statutory mandate, the Court has stated that “a remand order of this court does not automatically render the existing rates unlawful.”²⁵

For example, in *In re Columbus Southern Power Co.*, the Court had considered a remand order by the Commission. The Court had previously reversed and remanded a Commission order approving an electric security plan.²⁶ When the case returned to the Court on remand, the Court noted that its previous decision had not rendered the charges unlawful, and that the utility was authorized to collect them until the Commission issued a new order.²⁷ As the Court stated in

²² 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.”) (Oct. 6, 2021).

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

²⁴ R.C. 4909.15(E)(2)(b).

²⁵ *In re Columbus Southern Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, ¶ 51.

²⁶ *Id.* at ¶ 1

²⁷ *Id.* at ¶¶ 51-52.

Cleveland Elec. Illum. Co. v. Pub. Util. Comm’n, 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.”²⁸ Here, the rate schedule that was authorized by the Rate Order to be in effect is the third phase of the rate increase. The third phase of its lawful rate increase was authorized to go into effect on September 30, 2021. Accordingly, those rates and charges should be in effect during the remand proceeding.

In its Entry, however, the Commission erred by contravening this statutory law and Court precedent. Although the Commission had “fixed and determined the just and reasonable rate” pursuant to R.C. 4909.15(E) in its Rate Order, the Entry nonetheless directed Suburban to file tariffs that violate that Rate Order. The Rate Order determined that Suburban had “adequately demonstrated that the 4.9-mile pipeline extension *was necessary* to serve *existing customers* as of February 28, 2019” and authorized Suburban to phase in the 4.9-mile pipeline extension and its authorized rate increase over three years.²⁹ The Commission’s October 6, 2021 Entry disregarded this lawful Rate Order by directing Suburban not to implement its authorized Phase III rate increase scheduled to go into effect on September 30, 2021.

As the Court has routinely held, a decision by the Court reversing and remanding a Commission order does not automatically render that order unlawful, and it remains in effect until

²⁸ *Cleveland Elec. Illum. Co. v. Pub. Util. Comm’n*, 46 Ohio St.2d 105, 105-06 (1976).

²⁹ Rate Order at ¶¶ 121, 145-147, 163, 171 (approving stipulated phase-in of rates described at ¶ 25).

the Commission issues a subsequent order,³⁰ which would include a directive in the order for a new rate to become effective or the utility to take some action in the future. The Commission has recognized that under this precedent, lawful rates remain in effect unless otherwise directed by the Court or until the Commission issues a new order. According to the Commission, “[it] is well established that, when the Supreme Court of Ohio reverses and remands an order of the Commission, the reversal is not self-executing and the Commission must modify its order or issue a new order.”³¹ Additionally, in the remand of Case No. 14-1297-EL-SSO, the Court reversed a Commission order approving a utility’s electric security plan.³² On remand, OCC requested that the Commission set the utility’s rider to zero.³³ The Commission declined to do so, noting that it had not received any such mandate from the Court.³⁴

Furthermore, at no point in the Court Decision did the Court describe Suburban’s rates and charges as unlawful. It merely directed the Commission to apply a different standard to the record before it. The Commission has established a remand procedural schedule for applying this standard. Until a subsequent order is issued following that remand, any tariffs must comply with the Commission’s lawful Rate Order and the lawful Rate Order must be given full effect.

At this point, the Commission has frozen Suburban’s rates at a level below the amounts authorized in the Rate Order. Yet, at this time, the Commission has made no finding or order

³⁰ *In re Columbus Southern Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, ¶ 51.

³¹ *In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of An Electric Security Plan*, Case Nos. 12-426-EL-SSO, et al., Finding and Order at ¶ 12 (Aug. 26, 2016), citing *Cleveland Elec. Illum. Co. v. Pub. Util. Comm’n*, 46 Ohio St.2d 105, 346 N.E.2d 778 (1976).

³² *In re Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401.

³³ *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 ¶ 12 (July 2, 2019).

³⁴ *See id.* at ¶ 13.

determining that any amount of the pipeline extension was not used and useful as of the date certain and, therefore, has not determined that there should be an associated reduction to Suburban's rate base, thereby resulting in a lower revenue requirement. As such, the Commission erred in its October 6, 2021 Entry by directing Suburban to file tariffs with rates and charges different from those authorized by the Rate Order.

ASSIGNMENT OF ERROR NO. 2: The Commission erred by unjustly, unreasonably, and unlawfully voiding its valid Rate Order by not implementing the authorized third phase of the rate increase, which results in confiscatory rates.

The Commission also erred in its October 6, 2021 Entry by not allowing Suburban to implement its lawful rates and charges.³⁵ As discussed above, utilities are statutorily required to collect only those rates lawfully authorized.³⁶ Once authorized by the Rate Order, Suburban is allowed to collect those rates, including Phase III of the rate increase as of September 30, 2021. The Commission erred by directing Suburban to not implement its rate increase established pursuant to the lawful Rate Order, which approved the phase-in of the rate increase included in the settlement. The Commission's October 6, 2021 Entry goes beyond the Court's mandate and unjustly and unreasonably rejected Suburban's notice to implement Phase III of the rate increase, despite the Court directing the Commission to apply the used-and useful test to the evidence in the record on remand.³⁷

³⁵ The Commission's October 6, 2021 Entry required Suburban to collect both its customer service charges and its usage charges (i.e., practically its entire revenue stream) subject to refund. The Commission subsequently clarified in its October 20, 2021 Entry that this was not the Commission's intent, and that only a portion of the amount was to be subject to refund. Nonetheless, although the subsequent October 20, 2021 Entry clarified the Commission's intent, Suburban must protect its interests by preserving this argument for appeal.

³⁶ See, e.g., R.C. 4909.15(E)(2)(b).

³⁷ See Entry at ¶¶ 16, 20 (Oct. 6, 2021).

Ohio precedent does not provide for the Commission to void the Rate Order prior to conducting the remand and issuing a new order on remand. As discussed above, a Commission order, even once reversed and remanded by the Court, remains in effect until a new order is issued.³⁸ As such, the Commission's lawful Rate Order remains in effect pending the outcome of the remand, which includes allowing the third phase of the rate increase to go into effect. Even if the Commission decides to order the rates and charges to be collected subject to refund during a remand proceeding, the full rates and charges remain in effect pending the remand proceeding, and those rates and charges are not deemed subject to refund to customers unless and until the rates and charges are found to be unlawful.³⁹

Moreover, even when the Commission orders that certain rates and charges be collected subject to refund, it allows the utility to collect the entire amount of the authorized rates and charges at issue, subject to refund.⁴⁰ For example, in a review of Case No. 14-1297-EL-SSO,⁴¹ the Supreme invalidated a rider.⁴² Upon remand to the Commission, the Applicant asked the Commission for authority to collect that rider subject to refund, while OCC argued that the rider

³⁸ *In re Columbus Southern Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, ¶ 51.

³⁹ *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. Additionally, both of these cases dealt with riders rather than base rates.

⁴⁰ Suburban also notes that OCC requested that rates be subject to refund *in the alternative* of reducing the lawful rates. *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 at 5 (Sept. 22, 2021) ("In the alternative, the PUCO should order that residential consumers' rates be collected subject to refund, pending resolution of this case on remand.").

⁴¹ *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).

⁴² *See In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401.

should be set to zero, or in the alternate, subject to refund.⁴³ 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.⁴⁴ Therefore, while the applicant collected its rates subject to refund, it did so *at* the full amount previously authorized by a lawful Commission order, until the Commission issued a new order on remand, as is required by Ohio law.⁴⁵

The Commission erred in clearly departing from precedent by directing Suburban not to implement Phase III of its lawful rate increase. The Court never deemed that Suburban's rates and charges were unlawful. As such, the lawful Rate Order remains in full effect and the Rate Order should be effectuated, which means the Phase III rates and charges should have been implemented pursuant to the Stipulation and authorizing Rate Order. Moreover, the Commission should not violate its Rate Order, or void it, without first making a determination on remand of what charges are authorized under the Court Decision. There is simply no precedent for reducing the lawfully approved rates and charges that the Rate Order adopted.

Furthermore, depriving Suburban of the opportunity to collect its full, authorized revenue requirement in the amount of \$20,452,957.00 as set forth in the Stipulation and approved by the Commission is unjust and unreasonable and will be confiscatory. The United States Constitution protects utilities from being limited to a charge for their property serving the public which is so 'unjust' as to be confiscatory.⁴⁶ If the rate does not afford sufficient compensation, the State has

⁴³ *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).

⁴⁴ *Id.* at ¶ 13.

⁴⁵ 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.").

⁴⁶ *Covington & Lexington Turnpike Road Co. v. Sandford*, 164 U.S. 578, 597, 17 S.Ct. 198, 205-206 (1896).

taken the use of the utility property without paying just compensation and as such violates the Fifth and Fourteenth Amendments.⁴⁷ An order that does not allow a utility to recover a reasonable rate is unconstitutional as it does not “adequately safeguard against imposition of confiscatory rates.”⁴⁸

The Commission’s Entry establishes confiscatory rates and charges that will not afford Suburban an opportunity to collect its authorized revenue requirement. The Commission explained in the Rate Order that without the Rate Order increase (referring to the full rate increase phased in over three years), 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.⁴⁹ 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. Requiring Suburban to reduce its rates and charges to a confiscatory level contravenes Ohio law, is unconstitutional, and is unjust and unreasonable.

ASSIGNMENT OF ERROR NO. 3: The Commission erred by unjustly, unreasonably, and unlawfully ordering Suburban to collect the entirety of its existing customer service charges and usage charges subject to refund.

The Commission also erred in its October 6, 2021 Entry by ordering Suburban to collect its rates and charges subject to refund.⁵⁰ As discussed above, utilities are statutorily required to

⁴⁷ *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307-08 (1989).

⁴⁸ *Michigan Bell Telephone Co. v. Engler*, 257 F.3d 587 (6th Cir. 2001).

⁴⁹ Rate Order at ¶¶ 164-165.

⁵⁰ The Commission’s October 6, 2021 Entry seemed to originally require Suburban to collect both its customer service charge and its usage charge (i.e., practically its entire revenue stream) subject to refund. The Commission clarified in its October 20, 2021 Entry that this was not the Commission’s intent, and that only a portion of the amount was to be subject to refund. However, to the extent the October 6, 2021 Entry may have been unclear, Suburban seeks to preserve this argument for argument on appeal.

collect only those rates and charges lawfully authorized.⁵¹ Typically, the filed-rate doctrine precludes utilities from refunding lawfully collected rates.⁵² As such, the Commission erred by making Suburban's rates and charges subject to refund in addition to directing Suburban not to implement its rate increase pursuant to the lawful Rate Order.

Again, the Court only directed the Commission to apply the used-and useful test to the evidence in the record on remand. The Court did not authorize the Commission to unreasonably require Suburban to make the entirety of its customer service charges and usage charges (i.e., practically its entire revenue stream) subject to refund.⁵³

Ohio precedent does not provide for the Commission to implement this remedy. As discussed above, a Commission order, even once reversed and remanded by the Court, remains in effect until a new order is issued.⁵⁴ During the remand proceeding, the Commission's lawful Rate Order remains in effect. The full authorized rates and charges remain in effect and are only subject to refund if and when they are found to be unlawful.⁵⁵

The Commission erred in clearly departing from precedent by directing Suburban to collect its rates and charges subject to refund. The Court never deemed Suburban's rates and charges unlawful or directed that they be subject to refund. Additionally, the Commission should not violate or effectively revise its Rate Order without first making a determination on remand of what charges are unauthorized and subject to refund under the Court Decision. There is simply no

⁵¹ See, e.g., R.C. 4909.15(E)(2)(b).

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

⁵³ See Entry at ¶¶ 16, 20 (Oct. 6, 2021).

⁵⁴ *In re Columbus Southern Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, ¶ 51.

⁵⁵ 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. Additionally, both of these cases dealt with riders rather than base rates.

precedent for *both* reducing lawful rates and charges *and* ordering those rates and charges to be collected subject to refund.

III. CONCLUSION

For the aforementioned reasons, Suburban respectfully requests that the Commission grant this application for rehearing and modify its order as set forth herein.

Respectfully submitted,

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402) (Counsel of Record)

Jonathan Wygonski (0100060)

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614) 365-4100

Email: bojko@carpenterlipps.com

wygonski@carpenterlipps.com

(willing to accept service by email)

Counsel for Suburban Natural Gas Company

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 November 5, 2021 upon the parties of record.

/s/ Kimberly W. Bojko

Kimberly W. Bojko

Counsel for The Suburban Natural Gas Company

Robert.Eubanks@OhioAGO.gov
werner.margard@ohioAGO.gov
christopher.healey@occ.ohio.gov
angela.obrien@occ.ohio.gov
rdove@keglerbrown.com

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

11/5/2021 2:56:14 PM

in

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

Summary: Application for Rehearing electronically filed by Mrs. Kimberly W. Bojko
on behalf of Suburban Natural Gas Company