

**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

**REPLY BRIEF ON REMAND
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Bruce Weston (0016973)
Ohio Consumers' Counsel

Christopher Healey (0086027)
Counsel of Record
Angela D. O'Brien (0097579)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Healey]: (614) 466-9571
Telephone [O'Brien]: (614) 466-9531
christopher.healey@occ.ohio.gov
angela.obrien@occ.ohio.gov
(willing to accept service by e-mail)

November 12, 2021

TABLE OF CONTENTS

	PAGE
I. REPLY	1
A. Suburban has not demonstrated, and cannot demonstrate, that 4.9 miles of pipe was useful to consumers instead of some shorter length.	1
B. To protect consumers, the PUCO should reject Suburban’s attempt to shift the burden of proof to OCC regarding the proper length of the pipeline extension.	3
C. Suburban has failed to prove that 4.9 miles of pipe was needed to provide a “limited degree of reserve capacity” for the benefit of consumers.....	6
D. The PUCO should reject Suburban and Columbia’s gross misstatements of OCC’s positions regarding safety and reliability for residential consumers.	9
E. Suburban falsely claims that the Supreme Court of Ohio “rejected all of OCC’s arguments, save one,” including OCC’s argument that the PUCO’s ruling was manifestly against the weight of the evidence.	11
II. CONCLUSION.....	12

**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

**REPLY BRIEF ON REMAND
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Ohio Supreme Court ruled that Suburban can only charge consumers for capital investments (plant) that were useful to consumers on the date certain, which means that those investments were “advantageous” or “beneficial in rendering service for the convenience of the public as of the date certain.”¹ Suburban cannot meet its burden of proving that the entire 4.9-mile pipeline extension was useful because it wasn’t. The PUCO should rule that Suburban can only charge consumers for the 2.0 miles of the pipeline extension.

I. REPLY

A. Suburban has not demonstrated, and cannot demonstrate, that 4.9 miles of pipe was useful to consumers instead of some shorter length.

Suburban’s initial brief rehashes many of the same arguments it made before the Supreme Court of Ohio reversed the PUCO’s ruling allowing Suburban to charge customers for the entire 4.9-mile pipeline: there were concerns with low pressure at Lazelle Road;² Suburban’s

¹ *In re Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, ¶ 25.

² Brief on Remand of Suburban Natural Gas Company at 9 (Oct. 29, 2021) (the “Suburban Initial Brief”).

engineers modeled the system and recommended a 4.9-mile pipeline extension;³ gas was flowing through the entire 4.9 mile extension;⁴ the 4.9-mile pipeline extension increased pressure above the minimum safe level.⁵ Thus, Suburban argues that the entire 4.9-mile extension was “useful” to consumers under R.C. 4909.15, meaning that it was “advantageous” or “beneficial in rendering service for the convenience of the public as of the date certain.”⁶

There is a key omission in Suburban’s brief, one that is fatal to its case. What benefits did a 4.9-mile extension provide to consumers that could not have been provided by a 2.0-mile extension...or a 3.0-mile extension...or a 4.0-mile extension? Suburban has not identified one bit of evidence showing that a 4.9-mile pipeline extension provided benefits to consumers beyond the benefits of a shorter pipeline. If consumers would receive precisely the same benefits from a 4.9-mile pipeline as they would a shorter pipeline, then the additional length, by definition, is not “advantageous” or “beneficial in rendering service for the convenience of the public as of the date certain.”⁷ There is simply no way for Suburban—which bears the burden of proof—to get around this conclusion.

The other parties⁸ fair no better. The PUCO Staff makes no arguments at all, instead offering a single conclusory statement: “Staff continues to believe that the entire 4.9-mile DEL-

³ Suburban Initial Brief at 10.

⁴ Suburban Initial Brief at 7.

⁵ Suburban Initial Brief at 2.

⁶ *In re Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, ¶ 25.

⁷ *In re Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, ¶ 25.

⁸ For ease of reference, OCC uses the term “parties” to refer to Suburban, the PUCO Staff, Columbia Gas, and the Ohio Gas Association. Columbia Gas is not a “party” to the proceeding because it did not intervene and instead filed only an amicus brief. The Ohio Gas Association is not a “party” to the proceeding because it did not intervene and instead filed public comments. OCC’s use of the term “party” should not be interpreted to mean that OCC concedes that Columbia Gas or the Ohio Gas Association has any of the rights of an intervening party. Nor it should it be interpreted to mean that the PUCO should give any weight to Columbia Gas’s amicus brief or the Ohio Gas Association’s comments.

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.”⁹ Columbia Gas rehashes all of same arguments as Suburban, again without identifying benefits to consumers from a 4.9-mile pipeline that could not be provided by a shorter pipeline.¹⁰ And same for the Ohio Gas Association.¹¹

B. To protect consumers, the PUCO should reject Suburban’s attempt to shift the burden of proof to OCC regarding the proper length of the pipeline extension.

In a tacit admission of its failure to meet its burden of proof, Suburban attempts to point the finger at OCC, arguing that “the record lacks evidence proving that a shorter pipeline would have been sufficient to provide safe and reliable service to customers.”¹² But as the PUCO knows, and as the Ohio Supreme Court emphasized, OCC bears no burden of proof—that burden belongs to Suburban.¹³

So even if it were true that the record lacks evidence “proving that a shorter pipeline would have been sufficient to provide safe and reliable service to customers,” it would not matter—neither OCC nor anyone else has a burden to prove such a thing. What *Suburban* must prove is that a shorter pipeline (shorter than 4.9 miles) would *not* have been sufficient—and Suburban has failed to do so.

⁹ Initial Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio at 3 (Oct. 28, 2021).

¹⁰ See generally Post-Hearing Brief of *Amicus Curiae* Columbia Gas of Ohio, Inc. (Oct. 29, 2021).

¹¹ See generally Comment of the Ohio Gas Association on Remand (Oct. 29, 2021).

¹² Suburban Initial Brief at 14.

¹³ *In re Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, ¶ 40 (“We are also troubled by the dissent’s suggestion that the Consumers’ Counsel needed to provide its own modeling or forecasts for its overbuilding claim. It is Suburban that seeks the benefit of a rate increase. As such, Suburban has the burden of proof to show that the proposals in the application are just and reasonable.”) (citations omitted).

Indeed, Suburban itself provided evidence that a 2.0-mile extension *was* sufficient as of the date certain—testimony from its own engineer: “From our calculations the 2 mile option would have satisfied Suburban’s system at the end of 2018, so *they would have been good this winter.*”¹⁴ Notably, Suburban’s engineer testified that his calculations for “end of 2018” applied equally to the entire 2018-2019 winter season, which includes the February 28, 2019 date certain.¹⁵

Columbia attempts to get around this testimony by referencing another statement made by Suburban’s engineer on redirect examination: “Grupenhof testified that a 2-mile extension of the DEL-MAR pipeline would have raised the modeled pressure at Lazelle Road to ‘just barely’ above 100 psig for the winter of 2018/2019.”¹⁶

Columbia’s attempt fails for four reasons. First, the “just barely” testimony is taken out of context. Suburban’s witness was asked regarding his analysis of the 2.0-mile option, “Do you know if the results of that analysis showed that the pressure at Lazelle Road would be above 100 PSIG for the winter of 2018 to 2019?”¹⁷ He did respond with the phrase, “Yes, just barely.”¹⁸ But we went on to reaffirm his prior conclusion that 2.0 mile was sufficient on the date certain: “It would have been—it would have satisfied the need for that winter; and, like I said, we would have been basically back in the same situation planning for the next one.”¹⁹ So Suburban’s witness did not merely conclude that 2.0 miles would put the pressure “just barely” above 100

¹⁴ Tr. Vol. II at 299:6-10 (emphasis added)

¹⁵ See Tr. Vol. II at 302:1-10, 332:25-333:18 (Suburban’s witness explaining that “2018 end of year” means the entire winter of 2018-2019, which would include the February 28, 2019 date certain).

¹⁶ Columbia Initial Brief at 7.

¹⁷ Tr. Vol. II at 289:13-16.

¹⁸ *Id.* at 289:17.

¹⁹ *Id.* at 289:17-20.

psig. He testified that 2.0 miles remained adequate on the date certain, and that his “just barely” comment meant that Suburban might need more than 2.0 miles at a future date *after* the date certain.

Second, Suburban’s “just barely” testimony so vague as to be meaningless. Suburban’s engineer did not clarify what he considered to be “just barely” above the safe pressure, he did not offer any quantification, and he did not present the results of any modeling he did regarding the 2.0-mile pipeline option.

Third, Suburban’s self-serving “just barely” testimony on redirect is undermined by Suburban’s own models. Suburban’s models showed that pressure was expected to remain above 104 psig for the entire 2018-2019 winter season with *no extension at all*.²⁰ It lacks credibility for Suburban’s engineer to claim that pressure would be 104 psig with no extension, 230 psig with a 4.9-mile extension, but that with a 2.0-mile extension the pressure would still be “just barely” over 100 psig.

Finally, even if 2.0 miles would result in pressure “just barely” above 100 psig on the date certain, that does not entitle the PUCO to leap ahead to the conclusion that 4.9 miles necessary. There are many different pipeline lengths between 2.0 miles and 4.9 miles. And Suburban did not consider any of them before deciding to build one that was 4.9 miles long.²¹ Suburban cannot meet its burden of proof regarding a 4.9-mile extension by showing that 2.0 miles was insufficient.

²⁰ Suburban Ex. 9, August 31, 2018 model.

²¹ See Tr. Vol. II at 299:4-6 (Suburban witness Grupenhof testifying that “2 miles is the only one we really vetted and ran specific scenarios on and in turn discussed them with Suburban”); Tr. Vol. II at 299:6-10 (Suburban witness Grupenhof testifying that he may have “very generally” looked at other lengths to “kind of just get a feel for them” but that they were so superficial that he wasn’t sure if they were even shared with Suburban).

The Court specifically rejected this type of reasoning. It found that is it not enough for the PUCO to identify a problem (low pressure at Lazelle Road), find that a 4.9-mile extension fixes the problem (by increasing pressure), and then conclude that the entire 4.9-mile extension is therefore useful:

The problem is that none of this evidence shows that a *4.9-mile extension* was necessary. It simply shows that some extension was necessary to address safety concerns and that a 4.9-mile extension would easily do the trick. But by this logic, virtually any size extension (10 miles, 15 miles, and beyond) would pass muster.²²

Yet on remand, Suburban does exactly what the Court said it cannot. Suburban simply cites the need for *some* pipeline extension and then points to the fact that it built a 4.9-mile extension to address that need. By Suburban’s logic, if it had in fact built a 10-mile extension, or 15-mile extension, those would be useful as well. The Court clearly rejected that logic in its ruling; the PUCO must reject it on remand.

C. Suburban has failed to prove that 4.9 miles of pipe was needed to provide a “limited degree of reserve capacity” for the benefit of consumers.

In another attempt to justify the length of the pipeline extension, Suburban and others cite the Supreme Court’s dicta that in “an appropriate circumstance, a limited degree of reserve capacity could be useful (or beneficial) to consumers in providing protection against unforeseen contingencies in the same way that property insurance is useful to a homeowner.”²³

These arguments fail for all the same reasons explained above: none of the parties are able to show that 4.9 miles of pipe was necessary for “a limited degree of reserve capacity” and

²² *In re Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, ¶ 38 (emphasis in original).

²³ *In re Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, ¶ 33; Suburban Initial Brief at 11; Columbia Initial Brief at 6.

that a shorter pipeline extension would have failed to provide a “limited degree of reserve capacity.”

All parties to this case agree that 100 psig was the minimum safe pressure required at Lazelle Road. Suburban provided no evidence whatsoever about what a limited degree of reserve capacity would be. Would 125 psig be limited degree of reserve capacity? What about 150 psig? What about 175 psig?

Likewise, Suburban provided no evidence whatsoever about the projected pressure using shorter pipelines. We know that the projected pressure with a 4.9-mile pipeline extension was more than 230 psig at date certain.²⁴ We know that the projected pressure with no pipeline extension at all was 104 psig at date certain.²⁵ What would the pressure have been with a 2.0-mile extension? A 3.0-mile extension? A 4.0-mile extension? Again, we don’t know, because Suburban—which bears the burden of proof—declined to offer any such evidence.

So Suburban faces the same problem as before. It is not enough to say that pressure needed to be above 100 psig and that a 4.9-mile extension easily did the trick by increasing pressure to 230 psig. Once again, by the same logic, had Suburban built a 10-mile pipeline and increased the pressure to, say, 300 psig, that would certainly be above 100 psig—but it would not be beneficial to customers because there was simply no need to increase pressure that high to ensure a “limited degree of reserve capacity.”

So at best, as the Supreme Court found in its ruling, “we are in the dark as to which side the 4.9-mile extension lies”—whether it is on the side of providing adequate reserves or on the

²⁴ Suburban Ex. 9, August 31, 2018 model.

²⁵ Suburban Ex. 9, August 31, 2018 model.

side of excess capacity.²⁶ And being in the dark means that Suburban loses because it has the burden of proof.

But to the extent we are not in the dark, Suburban also loses: all the evidence shows that Suburban built the 4.9-mile pipeline extension not to address needs at date certain but to account for future growth, beyond the date certain. OCC explained in detail in its initial brief (and will not repeat here) the many ways in which the 4.9-mile extension was obviously built for future growth, not to serve customers on date certain.²⁷ Likewise, the Ohio Gas Association—of which Suburban itself is a member²⁸—admitted that the 4.9-mile pipeline extension was built for future growth, not for consumers’ needs on the date certain: “The Extension is useful for a number of reasons. Chief among these is that it provides Delaware County with the immediate opportunity for extension or expansion of service to commercial customers, which is a prerequisite for economic development.”²⁹ The Court ruled, however, that the PUCO cannot consider the needs of Suburban’s customers beyond the date certain.³⁰

Again, even without the mountain of evidence showing that 4.9 miles was too long, Suburban cannot prevail because it has not met its burden of proving whether the 4.9-mile extension was overbuilt. But the evidence serves to bolster the conclusion that consumers should not pay for the entire extension because it demonstrates that the 4.9-mile length was intended to address Suburban’s future needs, not its needs on the date certain.

²⁶ *In re Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, ¶ 39.

²⁷ See OCC Initial Brief at 8-11.

²⁸ See <https://www.ohiogasassoc.org/our-members/corporate-members/>

²⁹ Ohio Gas Association Comments at 1.

³⁰ *In re Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, ¶¶ 28-29.

D. The PUCO should reject Suburban and Columbia’s gross misstatements of OCC’s positions regarding safety and reliability for residential consumers.

One of Suburban’s (and others’) tactics throughout this case has been to claim that OCC’s position puts consumers at risk for outages and puts them in danger. This is patently false.

In its initial brief prior to OCC’s appeal to the Supreme Court, Suburban claimed that “OCC is suggesting that a utility like Suburban should wait until something catastrophic actually occurs to act rather than proactively ensure that catastrophe never strikes.”³¹ OCC explained in its reply brief that this is not OCC’s position at all:

OCC agrees that Suburban and all other utilities should be proactive in making the investments necessary to keep customers safe. But this does not mean that utilities can invest in anything and everything they want, no matter how overbuilt and excessive, and simply by invoking “safety,” customers must pay for it. OCC’s position in this case properly balances the interests of the utility and consumers. The 4.9-mile Pipeline Extension is substantially more than is required for safe and reliable service to Suburban consumers.³²

Now, on remand, Suburban again uses the same approach. In its initial brief, Suburban states, “OCC also attempts to argue that a 2.0-mile pipeline may have kept the system at the bare minimum safe operating pressure at one point in time, and therefore no adequate reserve was necessary.”³³ Again, it is not, and has never been, OCC’s position that Suburban should operate its system “at the bare minimum safe operating pressure,” nor has it ever been OCC’s position that Suburban should decline to account for contingencies that might result in low pressure. To the contrary, OCC’s position has always been that utilities should operate their systems in a

³¹ Post Hearing Brief of Suburban Natural Gas Co. at 36 (Aug. 2, 2019).

³² Reply Brief by The Office of the Ohio Consumers’ Counsel at 14 (Aug. 16, 2019).

³³ Suburban Initial Brief at 16.

manner that delivers safe and reliable service to its consumers, but that they should not be allowed to charge consumers for over-building their systems to an extent that goes beyond the safety and reliability needs of their consumers.

On remand, Columbia joins Suburban in misrepresenting OCC's position. Columbia claims that the Supreme Court of Ohio "rejected 'OCC's position that any pipeline built beyond the exact capacity needs of the customer base at date certain is thereby overbuilt.'"³⁴ Note that in Columbia's brief, the phrase "OCC's position..." is in quotation marks, immediately following Columbia's reference to the Supreme Court, thereby suggesting that it was the Court who referred to this as "OCC's position." But that quote is actually from a PUCO Staff brief, not from the Court's opinion (which one learns upon reading Columbia's footnote, despite the misleading text in the body of the brief).³⁵ The Court could not have "rejected 'OCC's position'" because OCC never took that position—before the Court, the PUCO, or anywhere else.

Once again, OCC explained to the Court: "OCC agrees that natural gas utilities can plan for, and charge customers for, a system that can handle the bitter cold of Ohio winters when demand for natural gas is at its peak. That is precisely what a 2.0 mile pipeline extension would do for Suburban's customers."³⁶

In ruling in this case on remand, the PUCO should not be fooled by Suburban's rhetoric. Allowing Suburban to charge consumers for 2.0 miles of the pipeline extension in no way puts consumers at risk for outages. OCC's position more than adequately protects consumers and puts

³⁴ Columbia Initial Brief at 6.

³⁵ Not only is the quote from a PUCO Staff brief, but the quote is from a PUCO Staff brief in this PUCO proceeding, not a brief filed with the Court.

³⁶ *In re Application of Suburban Natural Gas*, Ohio Sup. Ct. No. 2020-0781, Reply Brief by the Ohio Consumers' Counsel at 11 (Nov. 24, 2020).

their interests first, both in terms of reliability and safety, and in terms of paying rates that are just, reasonable, and consistent with the law.

E. Suburban falsely claims that the Supreme Court of Ohio “rejected all of OCC’s arguments, save one,” including OCC’s argument that the PUCO’s ruling was manifestly against the weight of the evidence.

Suburban, seemingly in an attempt to downplay the fact that OCC’s appeal was successful, falsely argues that “the Court rejected all of OCC’s arguments, save one.”³⁷

According to Suburban, the Court “refused to find that the Commission’s decision was against the weight of the evidence.”³⁸ This is a gross misrepresentation of the Court’s ruling.

What the Court actually said was that it “need not consider the Consumers’ Counsel’s second position of law, in which it argues that the PUCO’s decision was manifestly against the weight of the evidence.”³⁹ At no point did the Court “reject” OCC’s argument that the ruling was against the manifest weight of the evidence. The reason that the Court did not address OCC’s argument regarding the manifest weight of the evidence is that it didn’t need to—*because OCC had already won the appeal on alternative grounds*, namely, that the PUCO unlawfully applied R.C. 4909.15 in assessing the usefulness of Suburban’s 4.9-mile pipeline.

The PUCO should reject Suburban’s attempt to contort the Court’s ruling into something it was not. The Court did not endorse the PUCO’s factual findings. The Court did not rule that the PUCO’s findings were consistent with the manifest weight of the evidence. The Court simply found that there was no reason to address that issue because the PUCO’s legal errors necessitated a remand for proper application of the law to the facts.

³⁷ Suburban Initial Brief at 3.

³⁸ *Id.*

³⁹ *In re Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, ¶ 44.

II. CONCLUSION

For the reasons set forth herein and in OCC's initial brief, the PUCO should approve charges to consumers that include only 2.0 miles of the pipeline extension. Suburban has failed to prove that anything more than 2.0 miles was useful to consumers on the date certain.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Christopher Healey

Christopher Healey (0086027)
Counsel of Record
Angela D. O'Brien (0097579)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Healey]: (614) 466-9571
Telephone [O'Brien]: (614) 466-9531
christopher.healey@occ.ohio.gov
angela.obrien@occ.ohio.gov
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Reply Brief on Remand was served by electronic transmission upon the parties below this 12th day of November 2021.

/s/ Christopher Healey
Counsel of Record

SERVICE LIST

robert.eubanks@ohioAGO.gov
werner.margard@ohioAGO.gov

Attorney Examiners:

Sarah.parrot@puc.state.oh.us
Anna.sanyal@puco.ohio.gov

bojko@carpenterlipps.com
paul@carpenterlipps.com
dressel@carpenterlipps.com
rdove@keglerbrown.com
josephclark@nisource.com
egallon@porterwright.com
bhughes@porterwright.com

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

11/12/2021 3:42:00 PM

in

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

Summary: Brief Reply Brief on Remand by Office of the Ohio Consumers' Counsel
electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.