

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Suburban)	Case No. 18-1205-GA-AIR
Natural Gas Company for an Increase in Gas)	
Distribution Rates.)	
)	
In the Matter of the Application of Suburban)	Case No. 18-1206-GA-ATA
Natural Gas Company for Tariff Approval.)	
)	
In the Matter of the Application of Suburban)	Case No. 18-1207-GA-AAM
Natural Gas Company for Approval of)	
Certain Accounting Authority.)	

**REPLY BRIEF ON REMAND
OF
SUBURBAN NATURAL GAS COMPANY**

I. INTRODUCTION

The record evidence in this case clearly demonstrates that the entire 4.9-mile pipeline extension was used and useful as of the February 28, 2019 date certain. Suburban Natural Gas Company (Suburban) constructed the extension and placed it into service to benefit customers by ensuring safe and reliable service and providing adequate reserve capacity. The Public Utilities Commission of Ohio (Commission or PUCO), after considering this indisputable record evidence, determined that “the extension was both used by customers as of date certain and useful to them because it provided safe and reliable service at that time.”¹ As such, the entire 4.9-mile extension should be included in rate base.

The Office of the Ohio Consumers’ Counsel (OCC) sought reconsideration of this case and appealed the Commission’s decision to the Supreme Court of Ohio (Court). The Court ultimately

¹ Opinion and Order at ¶¶ 121 (Sept. 26, 2019).

rejected the bulk of OCC’s arguments on appeal, but determined that the Commission had relied on an incorrect application of the used-and-useful standard found in R.C. 4909.15(A)(1).²

The Court remanded the case to the Commission “to apply the appropriate standard.”³ In doing so, the Court explained that the “application of the relevant legal standard to the facts is something that is best left to the PUCO in the first instance.”⁴ The Court further noted that OCC concedes that 2.0 miles of the extension were useful as of the date certain, but disputes the usefulness of the remaining 2.9 miles.⁵ As such, one issue remains on remand: whether the remaining 2.9 miles of the pipeline extension were beneficial to customers as of the date certain so that the entire 4.9-mile pipeline extension is included in rate base. The record evidence clearly demonstrates that the entire 4.9-mile pipeline extension was used and useful as of the date certain, benefitting customers and ensuring the safety and reliability of Suburban’s natural gas system.

In an Entry issued October 6, 2021, the Commission directed the parties to file initial briefs on remand by October 29, 2021, and reply briefs on remand by November 12, 2021.⁶ Accordingly, Suburban,⁷ Commission Staff,⁸ and OCC,⁹ filed initial briefs on remand on October 28, 2021 and October 29, 2021. Additionally, Columbia Gas of Ohio (Columbia) sought leave to file and filed an amicus curiae brief on October 29, 2021, supporting Suburban and the recovery of costs related

² *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224 (Sept. 21, 2021), ¶ 27 (Court Decision).

³ Court Decision at ¶ 35.

⁴ *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.

⁵ Court Decision at ¶ 21.

⁶ *See* Entry at ¶ 17 (Oct. 6, 2021).

⁷ Brief on Remand of Suburban Natural Gas Company (Oct. 29, 2021) (Suburban Remand Brief).

⁸ Initial Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (Oct. 28, 2021) (Staff Remand Brief).

⁹ Initial Brief on Remand by Office of The Ohio Consumers' Counsel (Oct. 29, 2021) (OCC Remand Brief).

to the entire 4.9-mile pipeline extension.¹⁰ JobsOhio¹¹ and the Ohio Gas Association¹² also filed public comments in support of the inclusion of the entire 4.9-mile pipeline extension in Suburban's rate base.

The briefs on remand filed by Suburban, Commission Staff, and Columbia, as well as the public comments submitted by JobsOhio and the Ohio Gas Association, all point to the same inexorable conclusion: that the record evidence demonstrates that the entire 4.9-mile pipeline extension was used and useful as of the date certain. OCC's brief on remand, on the other hand, relies on factual and legal misstatements in a vain effort to contravene this overwhelming record evidence. In accordance with the Commission's October 6, 2021 Entry, Suburban hereby submits the following reply brief on remand to address the initial briefs, comments, and misstatements that were filed.

II. ARGUMENT

A. Suburban modeled and considered alternative pipeline lengths.

OCC first incorrectly argues that "Suburban's failure to consider options and offer evidence regarding shorter pipelines is fatal" to the fact that the entire 4.9-mile pipeline was used and useful as of the date certain.¹³ This argument is both factually and legally incorrect as Suburban *did* submit record evidence that it modeled and considered alternative lengths of pipeline extensions in its analysis.

¹⁰ Motion for Leave to File Amicus Curiae Brief and Memorandum in Support of Columbia Gas of Ohio, Inc. (Oct. 29, 2021) (Columbia Amicus Brief).

¹¹ Public Comment of Dana Saucier, Vice President, Head of Economic Development at JobsOhio (Nov. 8, 2021) (attached hereto as Attachment A).

¹² Public Comment of the Ohio Gas Association (Oct. 29, 2021) (attached hereto as Attachment B).

¹³ OCC Remand Brief at 5.

Suburban retained an engineering firm, Utility Technologies International Corporation (UTI), to model various possible solutions to its low-pressure concerns.¹⁴ Suburban Witness Grupenhoff, an expert engineer employed by UTI, testified that UTI, in its review and analysis of Suburban's system concerns, did in fact model several different pipeline lengths, and other alternatives, for Suburban's consideration. In addition to the 4.9-mile modeling that Suburban submitted as record evidence, UTI testified that it also modeled other lengths,¹⁵ such as 1-mile, 2-mile, and 3-mile options,¹⁶ and also considered interconnections at different points on the pipeline.¹⁷ Suburban and UTI ultimately found other pipeline lengths to be either cost prohibitive or inadequate to provide safe and reliable service with adequate reserve capacity for Suburban's customers.¹⁸

When determining the proper length based on modeling of different alternatives, Suburban's professional engineers did not "consider [the 100 psig minimum] safe."¹⁹ Instead, Suburban's ultimate decision was based on the fact that 100 psig is an absolute minimum level.²⁰ Therefore, when considering the merits of alternative options, Suburban and its expert engineers determined that the construction of a 4.9-mile pipeline extension was necessary to protect the customers on its system in the winter of 2018-2019. To ensure safe and reliable service, Suburban needed to have adequate reserve capacity to protect against unforeseen contingencies, especially during cold weather events.

¹⁴ Co. Ex. 5, Supplemental Direct Testimony of Andrew J. Sonderman at 21-22 (June 7, 2019) (Sonderman Supplemental Testimony).

¹⁵ Co. Ex. 4, Direct Testimony of Kyle Grupenhof at 7 (June 7, 2019) (Grupenhof Testimony).

¹⁶ Tr. Vol. II at 299 (Cross Examination of Grupenhoff).

¹⁷ Co. Ex. 4, Grupenhoff Testimony at 7.

¹⁸ *Id.*

¹⁹ Tr. Vol II at 389 (Cross Examination of Grupenhof).

²⁰ *Id.*

OCC cannot point to any evidence in the record to refute the fact that UTI did model other lengths and considered other alternatives before Suburban and UTI determined that the 4.9-mile pipeline was necessary. OCC's misplaced argument seems to be that Suburban failed to submit *the models themselves* for OCC's review and approval. OCC claims that the models themselves "do not show projected pressure at Lazelle Road with a 4.5-mile pipeline, a 4.0-mile pipeline, 3.0-mile pipeline..."²¹ While it is not a requirement in Ohio law or the Commission rules for a natural gas utility to conduct and produce various alternative scenarios and modeling to OCC, let alone for OCC's approval, it is factually incorrect for OCC to assert that no such analysis occurred by the engineers when attempting to solve a concern on the system and that Suburban neither modeled nor considered alternative lengths.²² It is also factually incorrect for OCC to misrepresent the record and assert that Suburban did not submit record evidence from an expert engineer witness stating that alternatives were in fact considered, but that these alternatives were inadequate to provide safe and reliable service to Suburban's customers.²³ As stated previously, UTI testified that it modeled other lengths and considered different options to resolve the safety and reliability concerns on Suburban's system.²⁴ Just because OCC does not like the evidence in the record, it does not mean that OCC can ignore and misrepresent the evidence that exists.

OCC also seems to suggest that Suburban simply cannot satisfy its burden of proof lest it submits all models to OCC for every hypothetical length of pipeline it ever considered throughout its entire analysis, regardless of the ultimate decision made by the utility in conjunction with its

²¹ OCC Remand Brief at 5.

²² See OCC Remand Brief at 7 ("Suburban did not make any attempt to evaluate pipeline lengths other than 2.0 miles and 4.9 miles.").

²³ See *id.* ("But there is no evidence showing why 4.9 miles was needed instead of 2.0 miles. Without that evidence, Suburban cannot meet its burden....").

²⁴ Co. Ex. 4, Direct Testimony of Kyle Grupenhof at 7 (June 7, 2019) (Grupenhof Testimony); Tr. Vol. II at 299 (Cross Examination of Grupenhoff).

engineers, and regardless of whether the model was ultimately used for construction or in any approval process before the Ohio Power Siting Board.²⁵ But that is not the law. Suburban has no obligation under Ohio law to create paper replicas of such modeling and submit the models themselves to OCC. Contrary to OCC's claims, Suburban has met its burden to demonstrate that the entire 4.9-mile pipeline was just and reasonable and necessary to provide safe and reliable service to customers during extreme cold weather events. Suburban did model alternative lengths and determined that 4.9 miles was necessary to resolve low pressure concerns and provide an adequate reserve capacity to protect customers against unforeseen contingencies.

Furthermore, OCC is skewing the application of Ohio law and the used and useful standard. As the Court explained, to be included in rate base, "the property must be beneficial in rendering service for the convenience of the public as of the date certain."²⁶ Suburban demonstrated that the entire 4.9-mile pipeline extension is and was beneficial in rendering safe and reliable service to customers as of the date certain. OCC's requirement that Suburban must provide models affirmatively disproving the sufficiency of every possible alternative length runs afoul against Court and Commission precedent.

Whether a property is used and useful as of the date certain is a question which must be resolved on a case-by-case basis by the trier of fact in light of all circumstances.²⁷ Instead, however, OCC seems to argue that any pipeline designed to be built beyond the exact capacity needs at the time construction is approved and/or commenced is overbuilt.²⁸ This simply does not

²⁵ See OCC Remand Brief at 5.

²⁶ Court Decision at ¶ 25 (*citing Columbus v. Pub. Util. Comm. of Ohio*, 62 Ohio St.3d 430, 436, 584 N.E.2d 646 (1992)).

²⁷ See *Office of Consumers' Counsel v. Pub. Util. Comm'n*, 58 Ohio St.2d 449, 453, 391 N.E.2d 311 (1979).

²⁸ See Columbia Amicus Brief at 6, *citing* Staff Post Hearing Reply Brief at 4 (Aug. 16, 2019) (rejecting OCC's assertion that a pipeline must be right-sized).

reflect the reality that Suburban had been experiencing robust load growth²⁹ prior to and throughout the design and construction process. Thus, Suburban had to design its pipeline to account for the load on the system that would exist as of the date certain to adequately and safely serve its then-existing customers under all weather conditions, including during cold weather events, plus adequate reserve capacity. Suburban has submitted record evidence, including expert engineer testimony, that it considered alternative lengths, and that the 4.9-mile extension was necessary to solve the low pressure concerns that threatened the viability and safety of the system, which benefited Suburban's existing customers as of the date certain.

B. OCC continues to improperly conflate pipeline engineering and siting issues with ratemaking issues.

Despite OCC's unfounded claims, whether or not Suburban designed the pipeline extension to account for continued robust load growth *at the time it was designed* does not determine whether the pipeline extension was used and useful for existing customers *as of the date certain*. The pipeline was designed, approved by the Ohio Power Siting Board, constructed, and put into service all in advance of the date certain. The pipeline was used and useful, benefiting existing customers as of the date certain. Given that Suburban had been experiencing robust growth throughout that entire timeframe, which was placing strain on the system during cold weather events, any pipeline extension that would be adequate to serve *existing customers as of the date certain*, must, by design, account for demand growth on its system between the beginning stages of designing the project and the completion of the construction and the date certain. The considerations for the basis of need for approval of a project by the Ohio Power Siting Board do

²⁹ See Public Comment of Dana Saucier, Vice President, Head of Economic Development at JobsOhio at 2 (Nov. 8, 2021); Public Comment of the Ohio Gas Association (Oct. 29, 2021) (The extension "provides Delaware County with the immediate opportunity for extension or expansion of service to commercial customers, which is a prerequisite for economic development.").

not control whether or not that pipeline was used and useful to existing customers as of the date certain, and, therefore, recoverable from a ratemaking perspective.

Nonetheless, OCC conflates the two issues. For example, OCC argues that in its Ohio Power Siting Board application, Suburban stated that the basis of need for the 4.9-mile pipeline extension was partially based on “growing demand for natural gas in homes and businesses in southern Delaware County.”³⁰ However, Suburban designed and sought approval of the pipeline well in advance of the February 28, 2019 date certain.³¹ Designing any pipeline to the bare minimum based on the exact demand at that time of the design, more than a year in advance of the construction and placing the extension in service, will likely ensure that the pipeline would be immediately inadequate to serve the *existing* customers as of the date certain. As JobsOhio noted in their public comments, Delaware County is one of the fastest growing areas in the state.³² Designing the pipeline to account for the projected load growth during the construction phase ensures that the pipeline will be adequate to serve the then-existing customers at the time it is placed into service.³³ Suburban determined that it needed to put the pipeline extension into service by winter of 2018-2019 in order to provide its existing customers with safe and reliable service,³⁴ and to prevent Suburban’s customers from being subjected to an unacceptable risk of potential

³⁰ OCC Remand Brief at 8, citing *In the Matter of the Expedited Letter of Notification Application of Suburban Natural Gas Company for the Del-Mar Pipeline Extension Project*, Case No. 18-54-GA-BLN

³¹ For example, Suburban filed its application on March 2, 2018, nearly a year before the date certain. See *In the Matter of the Expedited Letter of Notification Application of Suburban Natural Gas Company for the Del-Mar Pipeline Extension Project*, Case No. 18-54-GA-BGN, Staff Report and Recommendation (Mar. 26, 2018) (recommending automatic approval of the pipeline extension by April 2, 2018).

³² Public Comment of Dana Saucier, Vice President, Head of Economic Development at JobsOhio at 2 (Nov. 8, 2021).

³³ See Public Comment of the Ohio Gas Association (Oct. 29, 2021) (The extension “provides Delaware County with the immediate opportunity for extension or expansion of service to commercial customers, which is a prerequisite for economic development.”).

³⁴ Tr. Vol. II at 273 (Cross Examination of Grupenhof).

catastrophic system failure.³⁵ As such, Suburban, with the expertise of the engineers, designed the 4.9-mile pipeline extension to have “adequate reserves” that are “beneficial to consumers in providing protection against unforeseen contingencies,”³⁶ and therefore useful to customers.

OCC’s arguments—which would in essence require a utility to design a pipeline extension, seek Ohio Power Siting Board approval for the extension, construct the extension, and place the extension into service all on the same day of the date certain—are nonsensical and not based on reality. There is no way for a utility to design and construct a pipeline adequate to serve existing customers *as of the date certain* without considering load growth between the design period and the date certain. And Ohio law does not require such. Building a pipeline with adequate reserve capacity does not mean building a pipeline to serve future customers. Instead, it means building a pipeline with sufficient reserves to ensure the provision of safe and reliable service to customers despite unforeseen circumstances and contingencies, such as extreme cold weather events and fluctuations in demand. As the Court noted, its application of “[the] used-and-useful test doesn’t prohibit utilities from making capital investments based on whatever scale and time frame the utility finds the most prudent.”³⁷ OCC’s attempts to conflate issues of pipeline design with issues of ratemaking do not have any bearing on the fact that the entire pipeline was used and useful as of the date certain. As such, OCC’s claims should be rejected.

C. Record evidence demonstrates that the entire 4.9-mile pipeline extension was used and useful in serving existing customers.

When one considers the factual, legal, and practical shortcomings of OCC’s arguments, alongside the overwhelming record evidence in this case, it is apparent that the entire 4.9-mile

³⁵ Tr. Vol. II at 394 (Redirect Examination of Sonderman) (“The impact is so unacceptable that we have to take extraordinary measures to avoid it.”).

³⁶ Court Decision at ¶¶ 13, 33.

³⁷ Court Decision at ¶ 33.

pipeline extension was used and useful as of the date certain, as it benefited existing customers by providing them with safe and reliable service and adequate reserve capacity to protect against unforeseen contingencies. Suburban has an obligation to provide safe and reliable service to its customers,³⁸ which even OCC Witness Ross Willis cannot deny.³⁹ The costs associated with the entire 4.9-mile pipeline extension should be included in rate base as the “property of the public utility [was] used and useful or, with respect to a natural gas *** company, [was] 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.”⁴⁰

According to the Court, a facility is useful when it has “been taken by the public for its benefit.”⁴¹ The Court further recognized that some extra capacity may be considered useful: “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.”⁴² The Court explained that there is a “distinction between, on one side, a pipeline with adequate reserves and, on the other, a pipeline overbuilt with excess capacity.”⁴³ To determine whether or not the extension was used and useful, the Court stated that the Commission must determine “which side the 4.9-mile extension lies on.”⁴⁴ The entire 4.9-mile pipeline extension benefits customers by providing them with safe and reliable natural gas service, as well as by providing adequate reserve capacity to ensure that safe and reliable service to

³⁸ See, e.g., R.C. 4929.02(A)(1), R.C. 4905.06, and Ohio Adm.Code 4901:1-13-02(A).

³⁹ Tr. Vol. III at 552, 581 (Cross Examination of Willis).

⁴⁰ R.C. 4909.15(A).

⁴¹ Court Decision at ¶ 32 (citations omitted).

⁴² *Id.* at ¶ 33.

⁴³ *Id.* at ¶ 13.

⁴⁴ *Id.*

customers is not interrupted during low pressure or cold weather events. The 4.9-mile extension has been placed in service and is currently being used by customers for their benefit. Given that customers have taken the entire utility property for their benefit,⁴⁵ the entire 4.9-mile pipeline extension is useful and should be incorporated into Suburban's rate base.

The record shows that Suburban's expert modeling determined that without the extension, the entire system was subject to risk of extremely low pressures, which could bring about system-wide catastrophic failure outlined with disastrous consequences for customers.⁴⁶ Additionally, Suburban recorded several, actual, low-pressure events, as well as extreme fluctuations in pressure on the Central Ohio system. "Suburban observed that the pressure dropped below 100 psig at the Lazelle Road point of delivery in February 2015,"⁴⁷ and recorded a second low pressure event in January 2019, only a few weeks before the 4.9-mile extension was brought into service.⁴⁸ At one point, the pressure "dropped 27 [psig] in a half hour;"⁴⁹ at another, the pressure at the measurement point dropped 40 psig in the span of thirty minutes,⁵⁰ on a day when the system was "working at its full level on a day when requirements were far less than...on a typical Monday in January."⁵¹ UTI determined that typical demand increases in the morning hours likely caused these fluctuations.⁵²

⁴⁵ *Id.*

⁴⁶ See Co. Ex. 4, Grupenhof Testimony at 4.

⁴⁷ Co. Ex. 4, Grupenhof Testimony at 3.

⁴⁸ See Co. Ex. 5, Sonderman Supplemental Testimony at 23.

⁴⁹ Tr. Vol. II at 388 (Redirect Examination of Grupenhof).

⁵⁰ Tr. Vol. II at 320 (Redirect Examination of Grupenhof) ("Q. And does the change from 6:30 -- is there a change from 6:30 to 7:00 a.m.? A. There, yes. It goes from 150 PSI to 110.").

⁵¹ Tr. Vol. II at 387 (Redirect Examination of Grupenhof).

⁵² Tr. Vol. II at 320 (Redirect Examination of Grupenhof) ("[A] lot of furnaces and hot water tanks and things like that kicked on at 7 o'clock or right around there.").

Given the risk of potential failure by low pressure events, the consequences of system-wide outages, the degree of fluctuations associated with demand variances, and the actual low-pressure events Suburban experienced, Suburban and its expert engineers determined that a 4.9-mile pipeline extension was necessary to provide safe and reliable service and adequate reserve margins to existing customers in the winter of 2018-2019. As discussed above, this required designing a pipeline that would account for load growth⁵³ during the design, approval, and construction periods preceding the date certain so that Suburban could ensure that the system was adequate to provide safe and reliable service with adequate reserves to its existing customers on the date certain.

Every interested party, with the exception of OCC, reaches the same conclusion. Columbia, a competing natural gas distribution utility, noted that the pipeline extension benefited customers by providing “adequately pressurized facilities for Suburban to deliver gas to customers on a day-to-day basis and [protecting] Suburban’s customers from the potential for a catastrophic failure.”⁵⁴ Staff also stated that the record evidence in this case demonstrates “that the entire 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.”⁵⁵ Accordingly, all parties and commenters (except OCC) agree that the entire pipeline was as of the date certain, advantageous and beneficial in rendering service for the convenience of the public.⁵⁶

⁵³ Public Comment of Dana Saucier, Vice President, Head of Economic Development at JobsOhio (Nov. 8, 2021) (“The pipeline was beneficial the moment that it provided economic development entities with the ability to say ‘there is natural gas already available at this location’ when attempting to attract job creators to Delaware County.”).

⁵⁴ Columbia Amicus Brief at 8.

⁵⁵ Staff Remand Brief at 3.

⁵⁶ See Suburban Remand Brief at 4-14, Staff Remand Brief at 3, Columbia Amicus Brief at 8, Public Comment of the Ohio Gas Association at 1-2 (Oct. 29, 2021), and Public Comment of Dana Saucier, Vice President, Head of Economic Development at JobsOhio at 2 (Nov. 8, 2021) (“The Supreme Court’s decision remanding this case to you boils down to a very simple question: was the entirety of the Del-Mar Pipeline extension beneficial as of February 28, 2019. The answer to this question is yes.”).

D. OCC's argument relies on other misstatements of the factual record in this case.

Throughout its brief, in an attempt to refute this overwhelming record evidence, OCC resorts to simply misstating the facts of this case. For example, OCC argues that in an April 2019 memorandum Suburban Witness Grupenhoff does not make “mention of pressure concerns at Lazelle Road.”⁵⁷ However, throughout that same two-page memorandum, Suburban Witness Grupenhoff repeatedly mentions capacity concerns, discussing the need for gas “during periods of increased gas use (winter months) and emergency feeds in the event one or more supply nodes [were] to inadvertently shut down,”⁵⁸ the dangers of loss of supply “especially during winter months when usage is high,”⁵⁹ “necessary capacity” to “lighten the strain on the system,”⁶⁰ and “increased redundancy and safety margin for the system as a whole.”⁶¹ Even a cursory reading of this memorandum makes it clear that Suburban Witness Grupenhoff is discussing the need for adequate reserve capacity and safe operating margins to provide safe and reliable service to customers—low system pressure is a result of the very capacity constraints and needs and strain on the system that Witness Grupenhoff is discussing and a way to quantify the system’s shortcomings. OCC’s focus on the word “pressure” is a red herring—an attempt to obfuscate the clear meaning of the record evidence.

OCC makes a similar argument regarding Suburban’s application to the Ohio Power Siting Board for approval of the pipeline extension.⁶² OCC claims that since the application does not use

⁵⁷ OCC Remand Brief at 9, *citing* OCC Ex. 7.

⁵⁸ OCC Ex. 7 at 1

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *See* OCC Remand Brief at 8.

the word “pressure” the pipeline could not have been used and useful.⁶³ As discussed above, this argument, of course, ignores the obvious fact that ratemaking and siting are two separate issues with separate legal standards, and that designing a pipeline to be adequate as of the date certain must account for load growth between the point of design and the date certain.⁶⁴ And again, the absence of the word ‘pressure’ does not refute the fact that the application clearly contemplated a need for increased capacity to alleviate the strain on the system and to ensure the provision of adequate and reliable natural gas service to customers.⁶⁵

OCC also points to testimony by OCC Witness Ross Willis, in turn citing to testimony from Suburban Witness Sonderman, claiming this demonstrates that the pipeline was designed to serve new customers.⁶⁶ In arguing this assertion, OCC and its witness point to one line of testimony from Witness Sonderman.⁶⁷ They conveniently ignore, of course, that Witness Sonderman was testifying as to how the pipeline extension *was designed* and the concerns that Suburban had over the safety and reliability of the system during low system pressure events, not regarding the specifics of Suburban’s rate base and cost recovery as of the date certain. OCC also failed to mention that Witness Sonderman explicitly mentioned that Suburban’s investments were necessary to meet Suburban’s “service obligations and provide the quality service” to which Suburban’s customers are entitled.⁶⁸ And that the risk of an outage intensifies when multiple days

⁶³ *Id.*

⁶⁴ *See supra* Part II.B.

⁶⁵ OCC admits that the application dealt with the need for increased capacity. *See* OCC Remand Brief at 8 (“It references only the need for increased capacity.”).

⁶⁶ *See* OCC Remand Brief at 9, *citing* OCC Ex. 1, Direct Testimony of Ross Willis at 7 (Mar. 8, 2019).

⁶⁷ *Id.*

⁶⁸ *See* Direct Testimony of Sonderman at 1, 3 (Sept. 14, 2018) (“My testimony generally supports Suburban’s request for an increase in Suburban’s rates and charges. Our test year data demonstrate that our revenues are not sufficient to provide a reasonable return for the investment that has been, is being, and must continue to be made to meet our public service obligations and provide the quality service our customers are entitled.”).

of cold weather and severe wind chill occur and are combined with increases in customer demand during the cold weather.⁶⁹ By protecting against severe weather events and increases in demand during those severe weather events, the entire pipeline extension provided benefits to customers as of the date certain.

III. CONCLUSION

Suburban has provided sufficient record evidence, including expert engineering witness testimony and modeling, to meet its significant burden to demonstrate that the entire 4.9-mile pipeline extension was used and useful as of the date certain. The risks of operating a natural gas distribution system below or near the minimum safe operating pressure, as well as the potential consequences of a resulting catastrophic failure, demonstrate that an adequate reserve is necessary and beneficial to provide customers with safe and reliable service. OCC, in its brief on remand, relies on factual and legal misrepresentations in a failed effort to refute this undeniable conclusion.

As such, upon remand, and pursuant to the Court Decision, the record evidence demonstrates that the entire 4.9-mile pipeline extension was used and useful as of the date certain pursuant to R.C. 4909.15(A), and should be included in rate base. As the Commission correctly held in its Order in this case: “the extension *was both used and useful* to Suburban’s customers as of the date certain;”⁷⁰ and “the extension was both used by customers as of date certain and useful to them because it provided safe and reliable service at that time.”⁷¹ Upon rehearing, the Commission properly affirmed its findings, reiterating that the 4.9-mile pipeline extension was

⁶⁹ Tr. Vol. II at 372, 375 (Cross Examination of Sonderman).

⁷⁰ Tr. Vol. II at 372, 375 (Cross Examination of Sonderman).

⁷¹ Opinion and Order at ¶ 121 (Sept. 26, 2019).

used and useful as of the date certain under R.C. 4909.15, and that “the evidence presented during the hearing supports the entire 4.9 [] pipeline extension.”⁷²

On remand when applying the applicable used-and-useful standard to the facts of the case, the Commission should affirm these conclusions and find, based on the record evidence, that the entire 4.9-mile pipeline extension was used and useful as of the date certain under R.C. 4909.15.

Respectfully submitted,

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402)

Jonathan Wygonski (0100060)

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614)-365-4100

bojko@carpenterlipps.com

wygonski@carpenterlipps.com

(willing to accept service by email)

Counsel for Suburban Natural Gas Company

⁷² Second Entry on Rehearing at ¶ 19 (Apr. 22, 2020).

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 12, 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
josephclark@nisource.com
egallon@porterwright.com
bhughes@porterwright.com

From: [Matt Cybulski](#)
To: [Puco Docketing](#)
Subject: Case Number 18-1205-GA-AIR
Date: Monday, November 8, 2021 2:50:56 PM
Attachments: [Suburban Natural Gas.pdf](#)

Good afternoon,

Please see attached JobsOhio's public comment regarding Case Number 18-1205-GA-AIR pertaining to the Suburban Natural Gas case and application of the Used and Useful provision.

Please do not hesitate to contact me with any questions.

Thank you,

Matt Cybulski

Managing Director, Shale Energy & Petrochemicals

cybulski@jobsohio.com

o. +1-614-300-1370

m. +1-614-800-0267

JobsOhio.com

This email is not a public record per Ohio Revised Code 187.04(C).

CAUTION: This is an external email and may not be safe. If the email looks suspicious, please do not click links or open attachments and forward the email to csc@ohio.gov or click the Phish Alert Button if available.



November 8, 2021

Public Utilities Commission of Ohio
180 East Broad St.
Columbus, OH 43215

RE: Case No. 18-1205-GA-AIR
Public Comment of JobsOhio

Madam Chair and Commissioners,

JobsOhio respectfully provides these public comments for consideration by the Public Utilities Commission of Ohio ("Commission"). Our understanding is that the Commission is considering the question of recoverability of a 2.9-mile portion of the Del-Mar Pipeline Extension installed by Suburban Natural Gas.

Beginning in late 2019, the Commission hosted a series of forums to discuss the critical issue of the lack of access to natural gas in various areas of the state, the ability for consumers to further leverage cheaper natural gas supplies from new interstate natural gas pipelines crossing Ohio carrying lower cost natural gas supplies from the Utica and Marcellus shale production regions. In the first two of these forums, the Commission heard from communities and economic development organizations about the detrimental impact that a lack of natural gas access has on job creation along with the cost advantages that consumers with access to local shale supply could have enjoyed making Ohio businesses even more competitive. In its presentation, JobsOhio highlighted that, when businesses look for sites to locate or expand operations, the three issues that companies focus on the most are speed, risk, and money.¹ Stated first, because it is often the most important when screening out potential sites, is speed. Speed refers to how quickly a business can hit the ground running at any given location. One of the most important considerations when determining this "speed" is how quickly a potential job creator can connect to utility service. Simply put, whether utility service is *already available* at a site is a critical factor in attracting a potential job creator.

¹ JobsOhio's presentation at the first natural gas access forum, as well as the presentations of other interested parties remain available on the PUCO's website, accessible here:
<https://puco.ohio.gov/wps/portal/gov/puco/events/first-natural-gas-access-forum-one>

The Supreme Court's decision remanding this case to you boils down to a very simple question: was the entirety of the Del-Mar Pipeline extension beneficial as of February 28, 2019. The answer to this question is yes. The pipeline was beneficial the moment that it provided economic development entities with the ability to say "there is natural gas already available at this location" when attempting to attract job creators to Delaware County.

Delaware County is one of the fastest growing areas in the State of Ohio. However, without the benefit of access to natural gas to fuel this growth, it will stagnate. This is a very real, recognizable benefit of the entire Del-Mar pipeline extension installed by Suburban. JobsOhio acknowledges the Commission only has the authority given to it by the General Assembly. However, to the extent it is allowed by law, we respectfully request that the Commission take these factors under advisement as it exercises its discretion in this case, which will impact the future installation of natural gas infrastructure, and therefore economic development in Ohio.

Respectfully,

DocuSigned by:

Dana Saucier

Vice President, Head of Economic Development
JobsOhio

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

11/8/2021 3:13:30 PM

in

Case No(s). 18-1205-GA-AIR

Summary: Public Comment of Matt Cybulski Managing Director, Shale Energy & Petrochemicals and Dana Saucier Vice President, Head of Economic Development JobsOhio, via website, electronically filed by Docketing Staff on behalf of Docketing

From: [Josephine Feik](#)
To: [Puco Docketing](#)
Subject: Case No. 18-1205-GA-AIR
Date: Friday, October 29, 2021 4:10:58 PM
Attachments: [18-1205-GA-AIR Comments of the Ohio Gas Association.pdf](#)

Good Afternoon,

Attached are the comments being submitted by Jimmy Stewart on behalf of the Ohio Gas Association. Please let me know if you have any questions.

Have a great weekend!

--

Josephine Feik

Director of Member Relations

Ohio Gas Association

(P) [\(330\) 401- 8407](tel:3304018407) www.ohiogasassoc.org

CAUTION: This is an external email and may not be safe. If the email looks suspicious, please do not click links or open attachments and forward the email to csc@ohio.gov or click the Phish Alert Button if available.



Case No. 18-1205-GA-AIR, et al.
Comment of the Ohio Gas Association on Remand

On September 21, 2021, the Supreme Court of Ohio remanded the Public Utilities Commission of Ohio's (the "Commission") Opinion and Order approving the joint stipulation in this case, which allowed for the eventual recovery of the entire length of the extension of the Del-Mar pipeline (the "Extension").¹ This 4.9-mile pipeline represents a used and useful investment as of the date certain in the application for an increase in rates of Suburban Natural Gas ("Suburban").² Please accept these comments, which are meant to share the perspective of Ohio's natural gas industry on this critically important issue on remand.

The Supreme Court, in interpreting the phrase "used and useful" from R.C. 4909.15(A)(1), rejected the Commission's history of utilizing a forward-looking lens to view the prudence of an investment in the application of this phrase. Instead, the Court divided the phrase and found that a utility's investment is "useful" if it is "beneficial in rendering service for the convenience of the public as of the date certain."³ The date certain for Suburban's rate case was February 28, 2019. As of that date, the entirety of the Extension was "useful" under the Supreme Court's framework.

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. As noted by the President and Chief Operating Officer of Suburban, the Extension "is essential due to the robust growth we have experienced in Delaware County since the completion of the original" length of the Del-Mar pipeline.⁴ As the Commission well knows, when a potential job creator assesses sites for economic development, it screens out sites based on certain criteria. One of the most prominent screening criteria is the availability of public utility service to the site. The Extension is useful to the economic development efforts of Delaware County because the additional capacity provided prevents the disqualification of the area served by the Extension based on immediate availability of natural gas service.

There is also evidence in the record that the site is useful for the purpose of service reliability. It is also well known to the Commission that adding customers to natural gas infrastructure sometimes requires a utility to take measures to add additional pressure to serve existing customers. The Extension was useful as of February 28, 2019 because it provided additional reliability necessary "to maintain adequate pressure to serve Suburban's customers."⁵ In fact, Suburban's testimony in the case indicated that it explored the Extension to "resolve a concern

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

² *In the Matter of the Application of Suburban Natural Gas Company for an Increase in Gas Distribution Rates*, Case No. 18-1205-GA-AIR, et al. ("Rate Case").

³ *Supreme Court Decision* ¶25.

⁴ *Rate Case*, Direct Testimony of Andrew J. Sonderman in Support of the Stipulation (June 7, 2019) at 3.

⁵ *Rate Case*, Direct Testimony of Kyle Grupenhof (June 7, 2019) at 9.



that Suburban had about low pressures experienced on Suburban’s southern system during an extreme weather event ... in February 2015.”⁶ It was further stated that in the event of a system crash during a cold weather event, it could be “several weeks at a minimum” before service would be restored.⁷ The community served by Suburban does not deserve to face a situation similar to that of the Texas Power Crisis from early 2021, which would be prevented by the benefit of the full Extension. Limiting the definition of what is beneficial about the Extension to what is just enough, ignores issues presented by recent climate volatility.

Finally, the Commission should understand the real-life consequences associated with its interpretation of the “useful” standard. *Natural gas infrastructure investments are inherently long-term investments.* In order to make these investments, a utility needs to attract capital. Investment capital follows certainty of return. In order to attract this capital, a public utility will only make the investments necessary to extend service to job creators when the return on that investment is *timely* and *certain*.

In the case before you, intervenors and commenters may make the short-sighted argument that until customers are connected on the fringes of the length of the Extension, it is not useful. However, if the Commission interprets the Supreme Court’s decision in that manner, it will send the signal that the recovery for investments in the infrastructure necessary to create new jobs in the State of Ohio, and enhance reliability for existing customers, will be clouded with uncertainty. The practical impact of this outcome will be that these investments will not be made, the potential for economic growth in communities will be impeded, and Ohio will be viewed less favorably by future potential job creators. This outcome would be especially unfortunate when considering the abundant, low-priced supply of natural gas located right here in the eastern and southeastern parts of our home state.

In summary, the OGA encourages the Commission to consider the portions of the existing evidence that show the entirety of the Extension is “useful” under Ohio law. Further, I and my membership urge the Commissioners to consider the larger, policy implications in their consideration of this case on remand. The Supreme Court’s new framework for the interpretation of what is useful as of a date certain must include a consideration for the economic development and reliability-related benefits provided by utility investments.

Jimmy Stewart
President
Ohio Gas Association

⁶ *Id.* at 3.

⁷ *Id.* at 4.

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

10/29/2021 4:23:22 PM

in

Case No(s). 18-1205-GA-AIR

Summary: Public Comment of Jimmy Stewart, via website, electronically filed by
Docketing Staff on behalf of Docketing

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

11/12/2021 5:12:45 PM

in

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

Summary: Reply Brief on Remand electronically filed by Mrs. Kimberly W. Bojko on
behalf of Suburban Natural Gas Company