

## 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

### ORDER ON REMAND

Entered in the Journal on February 23, 2022

#### I. SUMMARY

{¶ 1} The Commission finds that the record reflects that 2.0 miles of the 4.9-mile DEL-MAR pipeline extension were used and useful on the date certain established for Suburban Natural Gas Company's application to increase its natural gas distribution rates and modifies the joint stipulation and recommendation accordingly.

#### II. DISCUSSION

##### A. *Procedural History*

{¶ 2} Suburban Natural Gas Company (Suburban or the Company) is a natural gas company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} The fixation of rates for public utilities in the state of Ohio is governed by R.C. Chapter 4909. R.C. 4909.15 sets forth the formula prescribed by the General Assembly for the fixation of reasonable rates for a public utility. Among other things, in fixing just and reasonable rates, the Commission is required, pursuant to R.C. 4909.15(A)(1), to determine the "valuation as of the date certain of the property of the public utility used and

useful or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be used and useful as of the date certain, in rendering the public utility service for which rates are to be fixed and determined.”

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

{¶ 5} By Entry issued on September 5, 2018, the Commission, among other things, approved a date certain of February 28, 2019.

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

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

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

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

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

{¶ 11} On September 4, 2020, Suburban filed a request to implement the second phase of its distribution rate increase, which was approved to the extent set forth in an Entry issued by the Commission on September 23, 2020. Suburban was authorized to implement a fixed customer service charge of \$34.41 for the small general service (SGS) class, a fixed customer service charge of \$178.95 with a volumetric charge of \$2.1251 per thousand cubic feet (Mcf) for the large general service (LGS) class, and a fixed customer service charge of \$168.61 with a volumetric charge of \$2.3817 per Mcf for the large general transportation service (LGTS) class. In accordance with the Commission's Entry, Suburban filed tariffs reflecting the approved charges on September 25, 2020.

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

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

{¶ 14} On September 21, 2021, the Supreme Court of Ohio determined that the Commission failed to properly apply the used-and-useful standard set forth in R.C. 4909.15(A)(1) with respect to the DEL-MAR pipeline extension, specifically "by looking beyond the date certain and in considering whether the investment was prudent rather than 'useful.'" The Court, therefore, remanded these proceedings to the Commission to "evaluate the evidence and determine whether the 4.9-mile pipeline extension was used and useful as of the date certain." *In re Application of Suburban Natural Gas Co.*, Slip Opinion No. 2021-Ohio-3224, at ¶ 35.

{¶ 15} On September 22, 2021, OCC filed a motion and request for expedited ruling. In its motion, OCC requested that, in light of the Court's decision, the Commission deny Suburban's request to implement the third year of the phase-in. In addition, OCC proposed that the Commission direct Suburban to file tariffs reflecting the value of 2.0 miles of the 4.9-mile DEL-MAR pipeline extension, while these proceedings are pending on remand. According to OCC, this would decrease the customer service charge for the SGS class from \$34.41 to \$33.09 per month. In the alternative, OCC requested that the Commission immediately order that the customer service charge be subject to refund as of the date of the Court's decision.

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

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

{¶ 18} On October 8, 2021, Suburban filed a motion seeking a partial stay of execution of the October 6, 2021 Entry. In the motion, Suburban asserted that, despite the fact that OCC did not request such relief, the Commission, in advance of conducting the remand, unreasonably rejected the Company's notice to implement the third phase of the rate increase and directed the Company to make its entire customer service charge and entire usage charge subject to refund. Suburban, therefore, requested that the Commission stay these directives, while allowing the remand process set forth by the Commission in the Entry to move forward as scheduled.

{¶ 19} On October 13, 2021, Suburban filed correspondence, along with compliance tariffs in response to the October 6, 2021 Entry. Suburban stated that, although the Company had filed a motion to stay the execution of the Commission's Entry, the Company would implement the tariff schedules immediately.

{¶ 20} On October 15, 2021, OCC filed a memorandum contra Suburban's motion for a stay. OCC also filed on October 15, 2021, an objection requesting that the Commission reject Suburban's compliance tariffs.

{¶ 21} By Entry issued on October 20, 2021, the Commission noted that it was not the intention of the Commission to require that the full amount of the customer service charge and the usage charge be collected subject to refund; rather, it is only a portion of the charges that will be subject to further review by the Commission on remand. The Commission found that Suburban's compliance tariff filing should be approved with modifications, in order to provide that the customer service charge and the usage charge are subject to refund to the extent that they include costs associated with more than 2.0 miles of the 4.9-mile DEL-MAR pipeline extension. Finally, Suburban's motion for a partial stay was denied as moot.

{¶ 22} Pursuant to the October 20, 2021 Entry, Suburban filed revised tariffs on October 21, 2021.

{¶ 23} On October 28, 2021, Staff filed its initial brief addressing the issue identified in the Court's remand. On October 29, 2021, initial briefs on remand were filed by Suburban and OCC.

{¶ 24} On October 29, 2021, Columbia Gas of Ohio, Inc. (Columbia) filed a motion for leave to file an amicus curiae brief and its proposed brief. OCC filed a motion to strike Columbia's amicus curiae brief on November 15, 2021, as well as a memorandum contra Columbia's motion for leave to file the brief. Columbia filed a reply in support of its motion on November 19, 2021, which includes a memorandum contra OCC's motion to strike. On November 24, 2021, OCC filed correspondence stating that it would not be filing a reply in support of its motion to strike, as the bases for striking Columbia's proposed amicus curiae brief were adequately set forth in OCC's prior filings.

{¶ 25} Additionally, on October 29, 2021, and November 8, 2021, Ohio Gas Association (OGA) and JobsOhio, respectively, filed public comments in these proceedings.

{¶ 26} On November 12, 2021, reply briefs on remand were filed by Suburban and OCC.

#### ***B. Procedural Issues***

{¶ 27} As noted above, on October 29, 2021, Columbia filed a motion for leave to file an amicus curiae brief in these remand proceedings, as well as a request for leave to file a reply brief. In the memorandum supporting its motion, Columbia states that the Commission's interpretation and application of the Court's opinion on remand, though specific to the facts of these proceedings, could establish precedent that will impact the Commission's application of the used-and-useful test in other proceedings, including Columbia's pending rate case, and that Columbia, therefore, has a strong interest in these matters. Columbia further states that the Commission has granted interested persons leave to file briefs as amici curiae in several cases where full intervention is not necessary or warranted. Consistent with this precedent, Columbia asserts that its submission of an

amicus curiae brief on the narrow legal issue remanded by the Court, at the post-hearing stage of these proceedings, will not prejudice any party and will instead contribute to the full development and equitable resolution of the Court's remand. Along with its motion, Columbia provided its proposed amicus curiae brief supporting Suburban's request to recover the costs related to the entire 4.9-mile DEL-MAR pipeline extension.

{¶ 28} In its November 15, 2021 memorandum contra Columbia's motion for leave to file an amicus curiae brief, OCC argues that Columbia should be precluded from participating in these remand proceedings for two reasons. First, OCC claims that, because Columbia did not seek to participate at any point during the prior three years, Columbia should not now be permitted to offer its views on a primary issue that has been apparent from the public dockets since at least 2019. In particular, OCC emphasizes that Columbia did not seek to intervene in these proceedings and that Columbia should not be allowed to circumvent the statutory intervention process by filing an amicus curiae brief. OCC adds that none of the cases cited by Columbia in support of its motion involved such late attempts to participate in a proceeding through the filing of an amicus curiae brief and that, in any event, the Commission has, at times, denied requests for leave to file such briefs. For its second argument in opposition to Columbia's motion, OCC contends that Columbia's participation would merely duplicate Suburban's own efforts in these proceedings and, therefore, would not bring to the Commission's attention any new relevant matter. OCC also claims that Columbia's participation would waste the Commission's time and administrative resources.

{¶ 29} Also on November 15, 2021, OCC filed a motion to strike Columbia's proposed amicus curiae brief. OCC asserts that, if the Commission denies Columbia's motion for leave to file the amicus curiae brief, the Commission should also take the additional step of striking the brief so that it is not considered part of the record on remand.

{¶ 30} On November 19, 2021, Columbia filed its response to OCC by way of a reply in support of Columbia's motion, along with a memorandum contra OCC's motion to strike.

Noting that there are no timing restrictions on amicus curiae briefing in the Commission's procedural rules, Columbia asserts that OCC's focus on timing overlooks the important point that Columbia's interest in submitting an amicus curiae brief only ripened when the Ohio Supreme Court issued its decision, which announced the Court's new used-and-useful standard and directed the Commission to apply that new standard for the first time on remand. Columbia further asserts that, contrary to OCC's claims, Columbia seeks merely to assist the Commission in addressing a significant change in a fundamental regulatory principle that has a statewide impact and will in no way impair the Commission's timely consideration of the critical issue before it on remand. Emphasizing that the Ohio Supreme Court welcomes amicus curiae briefs at any stage of an appeal, Columbia urges the Commission to adopt that approach here by accepting Columbia's brief and affording it whatever weight the Commission deems appropriate in its discretion. As to OCC's motion to strike, Columbia responds that the sole authority that OCC cites in support of its motion is inapposite, because the case involved an attempt to raise an entirely irrelevant issue through the filing of an amicus curiae brief. Columbia contends that its proposed amicus curiae brief bears directly on the issue on remand to the Commission and, therefore, OCC's motion to strike the brief should be denied.

{¶ 31} The Commission has reviewed Columbia's motion for leave to file an amicus curiae brief, OCC's motion to strike the proposed brief, and the responsive pleadings. As the Commission has previously found, the determination as to whether it is appropriate to accept the filing of an amicus curiae brief depends upon the individual case before the Commission and the issues proposed to be addressed in the brief. *In re Duke Energy Ohio, Inc.*, Case No. 12-1685-GA-AIR, et al., Opinion and Order (Nov. 13, 2013) at 6. Here, we find that it is reasonable under the circumstances to permit Columbia to file an amicus curiae brief as a non-party. Our acceptance of Columbia's amicus curiae brief for filing will not prejudice OCC, given that OCC had the opportunity to offer a response to Columbia's position and did, in fact, respond to Columbia's arguments in its reply brief on remand. No other party opposed Columbia's motion for leave to file the amicus curiae brief.

{¶ 32} As to OCC's general concerns with the timeliness of Columbia's participation in these proceedings, and OCC's more specific contention that Columbia should not be permitted to circumvent the intervention process, we note that, at any stage, a motion for intervention from Columbia would, in all likelihood, have been deemed procedurally deficient, as the Commission has long held that an interest in the precedential value of a case is an insufficient reason for intervention. *In re Complaint of the City of Cleveland and WPS Energy Services, Inc. v. The Cleveland Electric Illuminating Co. and FirstEnergy Corp.*, Case No. 01-174-EL-CSS, Entry (Mar. 29, 2001) at 1-2; *In re Complaint of Ohio Schools Council, et al. v. FirstEnergy Solutions Corp.*, Case No. 14-1182-EL-CSS, Entry (Sept. 4, 2014) at 4. Further, as Columbia explains, its interest in these proceedings only developed after the Ohio Supreme Court's issuance of its decision on September 21, 2021. OCC also argues that Columbia's amicus curiae brief serves no purpose, as it is duplicative of Suburban's position and wasteful as to the Commission's time and resources. We disagree. As Columbia notes, the Commission is perfectly capable of reviewing the amicus curiae brief and determining what weight, if any, to assign to Columbia's arguments. For these reasons, we find that Columbia's motion for leave to file its proposed amicus curiae brief should be granted, while OCC's motion to strike the brief should be denied.

### C. *Summary of the Arguments on Remand*

#### 1. BACKGROUND

{¶ 33} The Court found that the 4.9-mile extension was used on the date certain, and OCC has conceded that 2.0 miles of the extension were useful on the date certain. At issue is the usefulness of the remaining 2.9 miles of the extension. *Suburban*, Slip Opinion No. 2021-Ohio-3224, at ¶ 21. Additionally, the Court found the word "useful" to mean "advantageous" or "beneficial." *Id.* at ¶ 25. The Court stated that the usefulness of the pipeline must be assessed "as of the date certain, not at some speculative unspecified point in time." *Id.* at ¶ 17. (Suburban Initial Brief at 4-5; OCC Initial Brief at 1-3; Staff Initial Brief at 1; Columbia Brief at 1; Suburban Reply Brief at 2.)

{¶ 34} Following the Court’s ruling, the Commission ordered Suburban to file tariffs making a portion of the charges that are subject to further review by the Commission subject to refund. Additionally, the Commission ordered that parties provide a proposed calculation of charges based on the inclusion of only 2.0 miles of the pipeline extension, which would be considered if a refund is ordered by the Commission. Entry (Oct. 20, 2021) at ¶ 23.

## 2. SUBURBAN

{¶ 35} Suburban emphasizes that it is obligated to maintain safe and reliable service for its customers and argues that the 4.9-mile extension was useful in meeting that obligation. It explains that the entire 4.9-mile extension was in service as of the date certain, and that gas flowed through the pipeline. Suburban argues that, on the date certain, the entire pipeline was beneficial in providing adequate reserve capacity to maintain service during extreme cold weather events. (Suburban Initial Brief at 6-7.)

{¶ 36} Suburban states the pipeline pressure must be maintained above 100 pounds per square inch gauge (psig), and anything below that pressure risks a catastrophic system crash, which would violate its obligation to provide safe and reliable service. Suburban notes that the pressure did drop below 100 psig in February 2015, and another low-pressure event occurred in January 2019, shortly before the extension was placed in service. Suburban also cites to testimony in the record demonstrating significant fluctuations in pressure in the central Ohio system and notes that a risk of outage increases during an extreme cold weather event. Suburban asserts that the 4.9-mile extension length was selected to provide adequate reserves against unforeseen contingencies. Additionally, Suburban notes that the Court recognized that some extra capacity may be considered useful as protection against unforeseen contingencies. *Suburban*, Slip Opinion No. 2021-Ohio-3224, at ¶ 33. (Suburban Initial Brief at 8-13.)

{¶ 37} Additionally, Suburban asserts that the record contains insufficient evidence that a 2.0-mile pipeline would have been sufficient to provide safe and reliable service to

customers. Suburban argues that OCC's expert could not explain why the extension is too big for the current customer demand, nor did OCC provide evidence that a 2.0-mile extension would have provided adequate reserves. (Suburban Initial Brief at 14-16.)

{¶ 38} Suburban argues that the Court remanded the case back to the Commission for the proper application of the used-and-useful standard to the facts of the case but did not find the rates to be unlawful. Suburban emphasizes that, in applying the correct standard, the Commission is free to reach the same decision that the 4.9-mile extension was used and useful on the date certain. Suburban cites to a case in which the Court upheld a Commission decision on remand where the Commission reached the same decision it had made before the Court reversed and remanded for further consideration under a new legal standard. *See In re Application of Columbus Southern Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, 8 N.E.3d 863. (Suburban Initial Brief at 3-4, 19-21.)

{¶ 39} Suburban also argues that, in the calculation of charges based on the inclusion of only 2.0 miles of the extension, OCC used an incorrect rate base and revenue requirement. As background, Suburban explains that the phasing in of rates was meant to mitigate the rate increases to customers, so the Stipulation called for the customer count to be updated at the time of each phase-in. Suburban notes that OCC used the customer count from Phase III (as of July 2021), but Phase III has not yet been implemented. Suburban asserts that the calculation based on the inclusion of only 2.0 miles of the extension should be based on the customer count as of the date certain. It also asserts that rates based on the proportional cost of the 4.9-mile extension would likely underestimate the costs of a 2.0-mile extension, but Suburban used the proportional cost methodology to calculate its rate base and customer costs. Suburban proposes a SGS charge of \$33.59 based on the costs of just the 2.0-mile extension. Additionally, Suburban proposes a fixed customer service charge of \$175 with a volumetric charge of \$2.0003 per Mcf for the LGS class, and a fixed customer service charge of \$175 with a volumetric charge of \$2.2562 per Mcf for the LGTS class. (Suburban Initial Brief at 21-24, Attachment B.)

### 3. STAFF

{¶ 40} Staff asserts that the entire 4.9-mile pipeline extension was useful on the date certain. Additionally, if the Commission rules that only 2.0 miles of the extension were useful on the date certain, Staff recommends a SGS rate of \$33.59. Staff states that there is insufficient record evidence to determine the costs to build a 2.0-mile extension, so it suggests a reduced rate base that accounts for the allocation of only 2.0 miles of the pipeline. Staff updated rate case expense to reflect actuals and used the customer count of 208,764, which was the customer count as of the date certain. Additionally, Staff proposes a fixed customer service charge of \$175 with a volumetric charge of \$2.0003 per Mcf for the LGS class, and a fixed customer service charge of \$175 with a volumetric charge of \$2.2562 per Mcf for the LGTS class. (Staff Initial Brief at 3-4.)

### 4. COLUMBIA, OGA, AND JOBSOHIO

{¶ 41} Columbia argues that the entire 4.9-mile extension was useful on the date certain because it provided an appropriate level of reserve capacity. Columbia points out that Suburban witness Grupenhof testified that the main purpose in building the pipeline extension was to prevent low pressure in the area, and Suburban witness Sonderman testified that Suburban was concerned about a catastrophic failure with the existing system. Columbia argues that a 2.0-mile extension would not have assured adequate reserve capacity because Mr. Grupenhof testified that a 2.0-mile extension would have raised the modelled pressure to “just barely” above 100 psig for the 2018-2019 winter season. Columbia also points out that Staff found that the entire pipeline extension was useful on the date certain. (Columbia Brief at 2, 6-8.)

{¶ 42} On October 29, 2021, OGA filed comments in this case. It argues that the entire 4.9-mile extension was useful as of the date certain because it provides Delaware County with the opportunity for economic development and increases reliability. OGA also makes a number of policy arguments, asserting that natural gas infrastructure is a long-term investment, and investments will only be obtained if the return on investment is timely and

certain. OGA argues that a finding that the entire 4.9-mile extension was not useful on the date certain would limit investments and impede economic growth.

{¶ 43} On November 8, 2021, JobsOhio filed comments in this case. It asserts that the entire pipeline extension was beneficial on the date certain because it provides economic development opportunities, as natural gas will be available at more locations. JobsOhio argues that, without access to natural gas to fuel growth, economic development would stagnate in the area.

## 5. OCC

{¶ 44} OCC first emphasizes that the burden of proof is upon Suburban, even though a Stipulation has been filed. Specifically, OCC notes that it is Suburban's burden to prove its case, not OCC's burden to disprove it. Further, OCC states that, on remand, the used-and-useful analysis must be completed rather than the application of the three-part settlement test. (OCC Initial Brief at 3-4.)

{¶ 45} OCC concedes that the pipeline pressure must be maintained above a minimum of 100 psig. However, OCC points out that Suburban did not present evidence regarding the cushion above 100 psig that would be considered beneficial or advantageous to customers. OCC notes that Suburban projected that the 4.9-mile extension would result in a pressure over 230 psig as of the date certain and simply did not analyze any other options for extensions under 4.9 miles. Additionally, OCC emphasizes that Suburban witness Grupenhof testified that Suburban would have been able to safely serve consumers on the date certain with a 2.0-mile extension. OCC notes that, in considering this case, the Court pointed out that Suburban demonstrated that an extension was necessary but Suburban failed to demonstrate that specifically a 4.9-mile extension was necessary. *Suburban*, Slip Opinion No. 2021-Ohio-3224, at ¶¶ 38-39. (OCC Initial Brief at 5-8.)

{¶ 46} OCC argues that Suburban built the 4.9-mile pipeline extension to meet the needs of future customers rather than to meet the needs of existing customers. As evidence

of its assertion, OCC states that recent Suburban filings, including its Ohio Power Siting Board (OPSB) application, current base rate case application, and a financing application, do not reference low-pressure concerns. OCC states that the full extension may be useful in the future if Suburban experiences growth, but the extension was not useful as of the date certain. (OCC Initial Brief at 8-11.)

{¶ 47} OCC states that it calculated the appropriate monthly rate for residential customers when including 2.0 miles of pipe to be \$33.09. OCC asserts that, because residential customers are currently paying \$34.41 per month, each customer should receive a refund of \$1.32 per month since September 21, 2021. (OCC Initial Brief at 11, Attachment A.)

## 6. OCC REPLY

{¶ 48} In its reply, OCC argues that Suburban has not presented evidence that its 4.9-mile pipeline provided benefits that would not have also been provided by a shorter extension. OCC emphasizes that Suburban bears the burden of proof, so OCC is not obligated to offer evidence that a shorter pipeline would have been sufficient. Rather, OCC argues that that burden falls to Suburban. OCC points to the Court's finding that, although an extension was necessary, Suburban did not demonstrate that a 4.9-mile extension was necessary, because any even longer extensions would pass that test. OCC also notes that Suburban presented no evidence regarding the appropriate reserve capacity. OCC asserts that the extension was built for projected future growth rather than for current customer needs. (OCC Reply Brief at 2-3, 6-8.)

{¶ 49} OCC argues that Columbia misinterpreted Suburban witness Gupenhof's testimony, and Suburban's models showed that the pressure was expected to remain above 104 psig for the winter season with no extension at all. OCC agrees that utilities must build infrastructure to provide safe and reliable service, but OCC argues that Suburban overbuilt the DEL-MAR pipeline extension with a focus on future growth rather than existing

customers. As an aside, OCC also disputes Suburban's representation that the Court rejected OCC's second argument of law. (OCC Reply Brief at 4-5, 9-11.)

## 7. SUBURBAN REPLY

{¶ 50} Suburban asserts that the engineering firm it hired modeled other lengths of pipeline, including 1.0-mile, 2.0-mile, and 3.0-mile options, which Suburban found to be either insufficient to provide safe and reliable service or cost prohibitive. Suburban also argues that it is not a legal requirement to submit alternative modeling to OCC. Suburban also notes that the 100 psig operating level was not considered a safe level but rather an absolute minimum level. (Suburban Reply Brief at 4-6.)

{¶ 51} Suburban asserts that, at the time of the design of the pipeline extension, it had to account for growth on its system between that time and the date certain. Because the modeling, OPSB application, construction completion, and date certain all occurred at different times, Suburban emphasizes that it had to plan for expected capacity as of the date certain. Suburban also explains that it did not focus its other filings on low-pressure concerns because that was not the subject of those filings, and that the record is clear that Suburban did indeed have events of low pressure. Suburban argues that the entire 4.9-mile extension was used and useful as of the date certain. Suburban also emphasizes that its focus was on meeting capacity requirements in order to provide safe and reliable service. (Suburban Reply Brief at 7-15.)

## D. Commission Conclusion

{¶ 52} In its decision, the Ohio Supreme Court concluded that the Commission "erred when it assessed the usefulness of Suburban's 4.9-mile pipeline extension by looking beyond the date certain and considering the prudence of Suburban's investment." *Suburban*, Slip Opinion No. 2021-Ohio-3224, at ¶ 45. The Court, therefore, remanded these proceedings to the Commission to apply the proper used-and-useful standard, as set forth in R.C. 4909.15(A)(1), and in accordance with the Court's decision. More specifically, the Court directed the Commission to evaluate the evidence and determine whether the 4.9-

mile pipeline extension was used and useful as of February 28, 2019, which is the date certain established for the valuation of Suburban's property in these proceedings. *Id.* at ¶ 35.

{¶ 53} As the Court acknowledged, there is no question that the entire 4.9-mile extension was used on the date certain, as gas was flowing through the extension. Further, the Court noted that OCC concedes that 2.0 miles of the pipeline extension were useful as of the date certain. *Id.* at ¶ 21. Based on the record, and with the Court's directives in mind, the narrow issue that we must now determine is whether all 4.9 miles or, as OCC contends, just 2.0 miles of the extension were useful as of the date certain. The Court offered guidance on this issue, noting that, while a pipeline extension was necessary, the evidence cited by the dissent did not show "that a 4.9-mile extension was necessary." *Id.* at ¶ 38 (emphasis in the original). The Court also commented on the "distinction between, on one side, a pipeline with adequate reserves and, on the other, a pipeline overbuilt with excess capacity," but noted that it was "in the dark" as to which side the 4.9-mile extension belongs on, as there was no analysis regarding why the "4.9-mile pipeline extension made sense over a shorter extension." *Id.* at ¶ 39.

{¶ 54} Looking to the evidence in the record, we note that Suburban's contracted engineering company, Utility Technologies International Corp. (UTI), modeled and compared pipeline pressure with no pipeline extension to the expected pressure with a 4.9-mile pipeline extension (Suburban Ex. 9). Kyle Grupenhof, Engineering Manager for UTI, testified that "[w]e also looked at pipeline extensions of different lengths and determined, in conjunction with Suburban, that the 4.9-mile extension would be the best option given costs, regulatory approvals, timeline, and the benefit to customers" (Suburban Ex. 4 at 7). Aside from Mr. Grupenhof's representation that other pipeline lengths were considered, Suburban did not provide to the Commission any analysis of a length other than 4.9 miles. On cross-examination, Mr. Grupenhof acknowledged that 2.0 miles was the only other length that UTI "really vetted" and discussed with Suburban. Suburban, however, did not offer as evidence any model or projections showing the pressure expected from a shorter pipeline extension. Indeed, Mr. Grupenhof testified that he did not discuss pipeline

extension lengths of 3.0 or 4.0 miles with Suburban. He stated that he did not run models to determine the minimum pipeline extension length that would maintain pressure above 100 psig. Mr. Grupenhof also testified that, while the 232.5 psig pressure that Suburban achieved with the extension was a “solid number for the winter,” lower numbers would also be considered solid. He added, “I don’t know where that cutoff would be.” (Transcript Vol. II at 277, 286-287, 299.) Additionally, according to Mr. Grupenhof, the engineers at UTI did not calculate a minimum length for the pipeline extension (OCC Ex. 6; Transcript Vol. II at 288).

{¶ 55} Considering the record, we find that Suburban did not provide sufficient evidence to establish that the full 4.9-mile pipeline extension was useful and beneficial in rendering service to the Company’s customers as of the date certain. The evidence in the record does not show that a pipeline extension of 4.9 miles was advantageous for customers as compared to a shorter extension. Suburban claims that the entire 4.9-mile pipeline extension was beneficial in providing adequate reserve capacity to maintain service during extreme cold weather events; however, nothing in the record addresses the issue of whether 4.9 miles is the appropriate length to ensure safe and reliable service to customers, while also reasonably accounting for adequate reserves. Although Suburban argues that it was not required to produce various alternative scenarios and modeling to OCC (Suburban Reply Brief at 5), the more important question is whether the Company provided that information to the Commission. It did not. Without this type of analysis in the record, we are, as the Court stated, “in the dark” and unable to determine whether the 4.9-mile pipeline extension is a pipeline with adequate reserves or a pipeline overbuilt with excess capacity. *Suburban*, Slip Opinion No. 2021-Ohio-3224, at ¶ 39.

{¶ 56} In fact, the record indicates that a 2.0-mile pipeline extension would have been sufficient to serve Suburban’s customers on the date certain. Mr. Grupenhof testified that, based on his calculations, a “2 mile option would have satisfied Suburban’s system at the end of 2018, so they would have been good.” He testified that UTI’s engineers did run the model to determine what the resulting pressure would be with a 2.0-mile pipeline

extension. He stated that “the 2 miles seemed to work for 2018 but, like I said, we were right back in the same situation where we would be basically building Phase 2 of the Del-Mar extension right afterwards.” Mr. Grupenhof also testified that “I don’t believe we got an exact customer count on the 2 mile pipeline. But we did look at that and see how much time it would buy Suburban. Obviously the 4.9 bought them 4,000 customers.” (Transcript Vol. II at 277-278, 287, 331.) This evidence shows that the 4.9-mile DEL-MAR pipeline extension was built, at least in part, for purposes of future growth rather than for capacity needs as of the date certain.

{¶ 57} As Mr. Grupenhof acknowledged, Suburban’s decision to construct a 4.9-mile extension was based upon factors like future steel and other construction costs and the timeline for the project (Suburban Ex. 4 at 7; Transcript Vol. II at 300, 311-313). Although we agree that these were appropriate considerations for Suburban in determining the length of its pipeline extension, such factors cannot guide the Commission’s application of the used-and-useful test for ratemaking purposes. In accordance with R.C. 4909.15(A) and the Court’s decision, the determination to be made by the Commission is whether the full length of the pipeline extension, including a portion for adequate reserves, was beneficial in rendering service for the convenience of the public as of the date certain. *Suburban*, Slip Opinion No. 2021-Ohio-3224, at ¶ 25. We find that the record evidence demonstrates that, although the entire length of the pipeline extension was used, only 2.0 miles of the 4.9-mile pipeline extension was useful as of the date certain. We, therefore, modify the Stipulation to reflect that only 2.0 miles of the pipeline extension costs are to be incorporated in rate base and recovered in rates.

{¶ 58} We emphasize that our conclusion should not be construed to mean that, in our view, Suburban’s decision to build the 4.9-mile pipeline extension was an unreasonable capital investment. The record is replete with references to the quickly growing and developing area that Suburban serves. Additionally, OGA and JobsOhio filed comments in this case arguing that the pipeline extension provides the area with opportunities for economic development. However, an analysis of the reasonableness of the investment is

different than a cost recovery analysis, and we cannot conflate the two. Our narrow issue to consider on remand is whether, upon application of the statutory ratemaking test, the entire pipeline extension was both used and useful on the date certain. For this analysis, any projection of future growth is irrelevant. The Court stated:

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. But what it does do is limit the utility's ability to recover the costs for such investments. Only at the actual point in time in which such investments are used and useful in providing services to the ratepayers may the utility charge consumers for such capital investments.

*Suburban*, Slip Opinion No. 2021-Ohio-3224, at ¶ 33.

{¶ 59} Upon review of the record, the Commission has concluded that there is insufficient evidence to demonstrate that the entire 4.9-mile pipeline extension was useful as of the date certain. At the same time, we recognize that a number of years have passed since the date certain, and additional portions or the entire length of the pipeline extension may now be useful. Our decision today does not preclude Suburban from seeking recovery of the cost of the full length of the pipeline extension now or in the future through an alternative rate plan application, a new distribution rate case application, or any other appropriate filing with the Commission.

{¶ 60} Both Suburban and Staff recommend a monthly SGS rate of \$33.59. However, OCC calculated the monthly charge to be \$33.09. Suburban and Staff correctly note that OCC's calculations include a different customer count than the customer count on the date certain. Both Suburban and Staff recommend a fixed customer service charge of \$175 with a volumetric charge of \$2.0003 per Mcf for the LGS class, as well as a fixed customer service charge of \$175 with a volumetric charge of \$2.2562 per Mcf for the LGTS class. We agree with Suburban and Staff that the customer counts used in the calculation must match the customer count as of the date certain rather than a later phase, as OCC

proposed. Accordingly, we adopt the rates proposed by Suburban and Staff. Suburban is directed to file revised tariffs, consistent with this Order on Remand.

{¶ 61} Finally, the Commission directs Suburban to issue a refund to customers for any amounts collected as of September 21, 2021, that included costs associated with more than 2.0 miles of the 4.9-mile DEL-MAR pipeline extension. The refund should be made in the form of a credit to customer bills or another reasonable method agreed upon by Staff and should be accompanied with a bill insert to explain the refund. Within 20 days of the date of this Order on Remand, Suburban should submit to Staff for its approval a proposed notice regarding the refund, as well as the final calculation of the exact amount to be refunded. Suburban should work with Staff to establish a mutually acceptable refund method in a timely fashion. Suburban is then directed to file revised tariffs, crediting back the full amount of the refund to customers over a period of no more than three billing cycles. Once the refund has been fully implemented, Suburban should again file revised tariffs to remove reference to the bill credit. Suburban's revised tariffs remain subject to final approval by the Commission.

### III. ORDER

{¶ 62} It is, therefore,

{¶ 63} ORDERED, That Columbia's motion for leave to file an amicus curiae brief be granted and that OCC's motion to strike the brief be denied. It is, further,

{¶ 64} ORDERED, That the Stipulation is hereby modified to reflect that only 2.0 miles of the pipeline extension costs are to be recovered in rates. It is, further,

{¶ 65} ORDERED, That Suburban file tariffs, in final form, consistent with this Order on Remand. Suburban shall file one copy in these case dockets and one copy in its TRF docket. It is, further,

{¶ 66} ORDERED, That Suburban issue a refund to customers and otherwise comply with the directives set forth in Paragraph 61. It is, further,

{¶ 67} ORDERED, That a copy of this Order on Remand be served upon all parties and interested persons of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

JWS/SJP/mef

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

Summary: Order of Remand finding that the record reflects that 2.0 miles of the 4.9-mile DEL-MAR pipeline extension were used and useful on the date certain established for Suburban Natural Gas Company's application to increase its natural gas distribution rates and modifies the joint stipulation and recommendation accordingly. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio