

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MEMORANDUM CONTRA AND MOTION TO STRIKE
THE OBJECTIONS FILED BY THE
OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND MOTION FOR SANCTIONS**

Pursuant to Ohio Adm.Code 4901-1-12 and 4901-1-27, and Civ.R. 11 Suburban Natural Gas Company (Suburban), respectfully requests that the Public Utilities Commission of Ohio (Commission) reject the baseless and procedurally improper “Objections” filed by the Office of the Ohio Consumers’ Counsel (OCC), and for good cause shown, moves the Commission to strike the pleading as false and a sham filing.¹

As explained more fully in the attached memorandum in support, good cause exists to reject and strike OCC’s “Objections”, which only serve to cost Suburban and its customers more for having to respond to such a frivolous pleading. Given the plain language of the Commission’s Order on Remand that Suburban followed and the apparent bad-faith basis in which OCC files its pleading, Suburban respectfully requests that the Commission issue sanctions pursuant to Ohio

¹ See Objections to Suburban’s Tariffs by the Office of the Ohio Consumers’ Counsel (Mar. 10, 2022) (OCC Objections).

Adm.Code 4901-1-27, and Civ.R. 11 as no good ground to support the pleading exists and it is interposed to cause unnecessary expense and delay.

Respectfully submitted,

/s/ Kimberly W. Bojko

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MEMORANDUM IN SUPPORT

On February 23, 2022, the Commission issued its Order on Remand in the above-captioned cases.² In the Order on Remand, the Commission specifically and explicitly directed Suburban to file revised tariffs to reduce certain customer charges and volumetric charges. Separately, the Commission also specifically and explicitly set forth a refund process for Suburban to follow.³ Suburban followed the process directed by the Commission and subsequently filed tariffs in compliance with the Order on Remand.⁴ Despite the two-step process outlined by the Commission, OCC submitted a baseless and procedurally improper pleading, titled “Objections,” which misrepresent the tariffs filed by Suburban and misstate the basic facts and directives of the Commission’s Order on Remand.

Pursuant to the Commission’s regulations, the attorney examiner may, without limitation, rule on procedural motions and “take such actions as are necessary to” “avoid unnecessary delay,”

² See Order on Remand (Feb. 23, 2022) (Order on Remand).

³ *Id.* at ¶¶ 60-61.

⁴ See Revised Tariff Pages, PUCO No. 4 (Cancelling PUCO No. 3), Fourth Sheet No. 1, page 2 of 4, Ninth Revised Sheet No.1, page 3 of 4, Fourth Revised Sheet No. 6 page 1 of 2, Fourth Revised Sheet No. 7, Page 1 of 2, Fourth Revised Sheet No. 8, page 4 of 8 (Mar. 4, 2022).

and assure the proceedings move in an orderly and expeditious manner.⁵ Furthermore, the Ohio Rules of Civil Procedure require that a signed pleading indicates “that to the best of the attorney’s or party’s knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.”⁶ According to the Rules, if a document “is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false.”⁷ For a willful violation, the Court may subject the signing attorney “to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule.”⁸

The Commission, in its Order on Remand, specifically stated that it “[adopted] the rates proposed by Suburban and Staff” with regard to the inclusion of 2.0 miles of the pipeline extension.⁹ The Commission’s Order on Remand then articulated specific customer charges and volumetric charges for each of the specific rate classes.¹⁰ According to the Order on Remand, in the same paragraph as the conclusion that the Commission adopts these rates, the Commission stated: “Suburban is directed to file revised tariffs, consistent with this Order on Remand.”¹¹

In the next paragraph, the Commission *further* “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.”¹² The Commission ordered

⁵ Ohio Adm.Code 4901-1-27(A), (B).

⁶ Civ.R. 11.

⁷ *Id.*

⁸ *Id.*

⁹ Order on Remand at ¶ 60.

¹⁰ *Id.* (“Both Suburban and Staff recommend a monthly SGS rate of \$33.59... 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.”).

¹¹ Order on Remand at ¶ 60.

¹² *Id.* at ¶ 61.

Suburban to make the refunds “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.”¹³ Accordingly, the Commission required Suburban to submit a proposed notice regarding the refund to Staff for Staff’s approval, as well as the final calculation of the exact amount to be refunded, within twenty days of the Order on Remand. The Commission directed Suburban to “work with Staff to establish a mutually acceptable refund method in a timely fashion.”¹⁴ Once a refund method is established, the Commission then directed Suburban “to file revised tariffs, crediting back the full amount of the refund to customers.”¹⁵ Lastly, “once the refund has been fully implemented, Suburban should again file revised tariffs to remove reference to the bill credit.”¹⁶

From a simple, and plain, reading of the Order on Remand, it is clear what process the Commission directed Suburban to follow. First, Suburban was directed to file revised tariffs to reduce the existing customer rates based on the specific revised rates articulated and adopted by the Commission in the Order on Remand. Second, the Commission directed Suburban to work with Commission Staff to develop a reasonable refund method and notice, submit that proposal to Staff within twenty days of the Order on Remand, and then file another set of revised tariffs implementing those refunds. Third, when the refunds are complete after three months, the Commission directed Suburban to file a final set of revised tariffs removing reference to the refund. Each of these directives by the Commission were distinct and were sequential. Two of the directives to file revised tariffs were to happen sometime in the future at an undefined time, after other events occurred.

¹³ Order on Remand at ¶ 61.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

OCC either negligently misinterprets or intentionally misrepresents the Order on Remand. According to OCC, Suburban's tariffs are noncompliant because "the tariffs do not reflect the credit back to consumers."¹⁷ OCC argues that because of this, the Commission "should take swift and appropriate actions under law" against Suburban, including financial penalties.¹⁸

The fatal flaw with OCC's argument is that Suburban's tariffs do comply with the Order on Remand because they specifically set the customer charges and volumetric charges to reflect the amounts adopted by the Commission,¹⁹ which OCC acknowledges.²⁰ The Commission did not direct Suburban to immediately, unilaterally implement any refund or credit any amount back to customers.²¹ The Commission *did*, however, specifically direct Suburban to file revised tariffs to implement the revised rates adopted by the Commission.²² The Commission also specifically directed Suburban to work with Commission Staff "to establish a mutually acceptable refund method" *before* implementing the refund, and to provide a proposed notice and refund methodology to Staff within twenty days of the Order on Remand, which Suburban also did.²³

Suburban, therefore, has complied with the specific directives contained in the Order on Remand. If Suburban unilaterally implemented refunds without Staff approval, Suburban would have violated the Order on Remand. On the other hand, if Suburban waited until a refund framework was approved by Staff to implement the lower customer charges and volumetric charges, Suburban would violate the Order on Remand, *and* customers would have paid more. For

¹⁷ OCC Objections at 2.

¹⁸ *Id.*

¹⁹ Order on Remand at ¶ 60.

²⁰ OCC Objections at 2 ("Suburban's tariffs reflect the \$33.59 per month residential customer service charge.").

²¹ Order on Remand at ¶ 61.

²² *Id.* at ¶ 60.

²³ *Id.* ¶ 61.

some unexplained reason, OCC asks the Commission to direct Suburban to file tariffs that directly conflict with the Order on Remand and to penalize Suburban for following the explicit instructions of the Commission.

Additionally, OCC's pleading is procedurally improper. The so-called "Objections" are not stylized as a motion, and are not "accompanied by a memorandum in support," yet the pleading makes a specific request of the Commission to take some action in violation of Ohio Adm.Code 4901-1-12. OCC's pleading does not cite to any statutory law, regulation, or court or Commission precedent which allows it to file "objections" in place of a motion. Furthermore, OCC so grossly misrepresents the explicit directives of the Commission by filing this baseless and procedurally improper pleading that OCC cannot reasonably hold any "belief there is good ground to support it."²⁴

As such, OCC has continued to harm customers by wasting Suburban's and the Commission's resources. OCC's only justification for such behavior appears to be that it wants to further harm Suburban by seeking financial penalties from Suburban for Suburban doing exactly what the Commission directed Suburban to do. Such unwarranted and unjustified financial penalties will only harm customers by further eroding Suburban's financial condition. One has to question on whose behalf is OCC acting on, as OCC is certainly not acting on behalf of the best interests of customers.

Therefore, given the fact that OCC's "Objections" are frivolous, unsubstantiated, wasteful, potentially harmful to consumers, and directly contradictory to the Commission's Order on Remand, Suburban respectfully requests that the Commission reject OCC's "Objections" in their

²⁴ See Civ.R. 11

entirety. Furthermore, given that the “Objections” do not comply with Ohio Adm.Code 4901-1-12, Civ.R. 11, or any other procedural requirements, Suburban requests that the “Objections” be stricken as sham and false.

Lastly, given that no good grounds exist to support the frivolous, bad faith “Objections,” pursuant to Civ.R. 11, Suburban requests that the Commission sanction OCC by issuing an award to Suburban of expenses and reasonable attorney fees incurred in bringing this motion under this rule.

Respectfully submitted,

/s/ Kimberly W. Bojko

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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 March 25, 2022 upon the parties of record.

/s/ Kimberly W. Bojko
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**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

3/25/2022 10:21:42 AM

in

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

Summary: Memorandum Contra and Motion to Strike the Objections by the Office of the Ohio Consumers' Counsel and Motions for Sanctions electronically filed by Mrs. Kimberly W. Bojko on behalf of Suburban Natural Gas Company