

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

ENTRY

Entered in the Journal on April 20, 2022

I. SUMMARY

{¶ 1} The Commission approves the compliance tariffs filed by Suburban Natural Gas Company on April 14, 2022.

II. DISCUSSION

{¶ 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} 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.

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

{¶ 7} 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 provided 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 stated that 50 percent of the current book value of the pipeline extension would 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.

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

{¶ 9} 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.

{¶ 10} 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.

{¶ 11} 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.

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

{¶ 13} 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.

{¶ 14} 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.

{¶ 15} 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.

{¶ 16} 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.

{¶ 17} On October 8, 2021, Suburban filed a motion seeking a partial stay of execution of the October 6, 2021 Entry.

{¶ 18} On October 13, 2021, Suburban filed correspondence, along with compliance tariffs in response to the October 6, 2021 Entry.

{¶ 19} On October 15, 2021, OCC filed a memorandum contra Suburban's motion for a stay.

{¶ 20} 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 would 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. Initial briefs on remand were filed by Suburban and OCC on October 29, 2021.

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

{¶ 25} On February 23, 2022, the Commission issued an Order on Remand. Upon review of the record, and in accordance with R.C. 4909.15(A) and the Court's decision, the Commission concluded that there is insufficient evidence to demonstrate that the entire 4.9-mile pipeline extension was useful as of the date certain and that the Stipulation should, therefore, be modified.

{¶ 26} Pursuant to the February 23, 2022 Order on Remand, Suburban filed revised tariffs on March 4, 2022. The revised tariffs were effective immediately and set the monthly SGS rate at \$33.59. The tariffs also set a fixed customer service charge of \$175.00 with a volumetric charge of \$2.0003 per Mcf for the LGS class, as well as a fixed customer service charge of \$175.00 with a volumetric charge of \$2.2562 per Mcf for the LGTS class.

{¶ 27} On March 10, 2022, OCC filed objections to the tariffs filed by Suburban on March 4, 2022. According to OCC, the tariffs do not comply with the February 23, 2022 Order on Remand, as they do not credit back to consumers amounts previously charged by the Company for costs associated with more than 2.0 miles of the pipeline extension. OCC urges the Commission to consider the assessment of a financial penalty on Suburban pursuant to R.C. 4905.54.

{¶ 28} Suburban filed a memorandum contra OCC's objections, along with a motion to strike the objections, on March 25, 2022. Suburban asserts that OCC's objections are baseless and procedurally improper, as OCC should have filed its pleading as a motion. Suburban requests that OCC's objections be stricken as sham and false and that the Commission issue sanctions against OCC pursuant to Ohio 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. In support of its position, Suburban notes that, in the February 23, 2022 Order on Remand, the Commission directed the Company to file revised tariffs to reduce certain customer charges and volumetric charges. Suburban further notes that the Commission also established a separate refund process, which required the Company to submit a proposed notice regarding the refund to Staff for its approval, as well as the final calculation of the exact amount to be refunded, within 20 days of the Order on Remand. Suburban asserts that it has adhered to the Commission's established process and filed tariffs in compliance with the Order on Remand, while OCC has misrepresented Suburban's tariff filing and misstated the basic facts and directives of the Order on Remand.

{¶ 29} On April 1, 2022, OCC filed a reply to Suburban’s memorandum contra OCC’s objections. OCC notes that, while the February 23, 2022 Order on Remand may contemplate a two-step process as Suburban claims, it was reasonable for OCC to object to the omission of any reference to the credit to consumers in the March 4, 2022 tariff filing. OCC contends that it is important for Suburban’s March 4, 2022 tariffs to be clear and, at a minimum, reference the credit to consumers. Consistent with its past practice in these proceedings, OCC asserts that its objections reasonably seek clarification or modification of Suburban’s tariffs. OCC also asserts that Suburban’s memorandum contra and motion to strike constitute an unwarranted attack on OCC.

{¶ 30} On April 11, 2022, OCC filed a memorandum contra Suburban’s motion to strike OCC’s objections. First, OCC contends that there are good grounds for its objections and that they are necessary to advocate for consumer protection. Noting that the Commission cannot award attorneys’ fees and monetary damages and that there was no bad faith on the part of OCC or its counsel in filing the objections, OCC urges the Commission to deny Suburban’s request for sanctions. Additionally, OCC argues that its objections are procedurally proper and consistent with its prior consumer protection practice in these proceedings. As a final point, OCC asserts that it would be bad public policy and harmful to consumers to grant Suburban’s motion for sanctions and motion to strike OCC’s objections.

{¶ 31} On April 18, 2022, Suburban filed a reply in support of its motion to strike OCC’s objections. Suburban asserts that it is clear that OCC has changed its initial position because it realized that the central premise of its objections was incorrect. Suburban emphasizes that, although OCC originally argued that the Company violated the February 23, 2022 Order on Remand by omitting the refund from its March 4, 2022 tariff filing, OCC now admits that the Commission outlined a multi-step refund process, which the Company has followed. Suburban also contends that OCC’s objections are moot, given that the Company filed its refund proposal with accompanying tariffs on April 14, 2022. Suburban

concludes that, although it now withdraws its request for sanctions against OCC, the Commission should proceed to strike OCC's objections, as they were clearly made in error.

{¶ 32} Upon review of OCC's objections and the related pleadings, the Commission finds that the Company's tariff filing dated March 4, 2022, was fully consistent with the February 23, 2022 Order on Remand. As Suburban emphasizes, the Order on Remand sets forth a multi-step process for the Company to set the rates at the amounts ordered by the Commission, to work with Staff to establish a mutually acceptable refund method and process, and to terminate the credit to customers once the refund has occurred. Each of these steps will require separate tariff filings by Suburban and the March 4, 2022 tariff filing was the first of these compliance tariff filings. Although OCC argues that the March 4, 2022 tariffs should have mentioned the customer refund, the Order on Remand clearly afforded Suburban a period of 20 days to 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. Although OCC attempts to reframe its position in its reply, OCC's objections are mistaken in contending that Suburban's March 4, 2022 filing was required to "reflect the credit back to consumers for amounts previously charged by Suburban for costs associated with more than 2.0 miles of pipeline." OCC's objections suggest a complete misreading of the Order on Remand, are without merit, and, to the extent that they seek relief from the Commission, should be denied. Nonetheless, given OCC's representations that it has not acted in bad faith in filings its objections and seeking to ensure that consumer interests are protected, we find that Suburban's motion to strike should be denied.

{¶ 33} On April 14, 2022, Suburban filed revised tariffs that will take effect on May 1, 2022, in order to implement the refund to customers. In its correspondence accompanying the tariff filing, Suburban states that, consistent with the February 23, 2022 Order on Remand, the Company timely submitted a refund proposal and worked with Staff to develop a refund method and amount, as well as a bill notice. Suburban further states that the mutually acceptable refund method includes the provision of an established refund amount via bill credit over three billing cycles, beginning in May. Suburban adds that the

bill notice attached to its correspondence will be included in the first bill containing the refund credit. Finally, Suburban notes that, once the refund is complete, the Company will file revised tariffs to remove the refund credit.

{¶ 34} On April 15, 2022, Staff filed its review and recommendations. Staff notes that, in the April 14, 2022 tariff filing, Suburban proposes to credit customers \$117,339.95 in total over a three-month period commencing on May 1, 2022. Staff states that it reviewed the proposed credit calculations, the associated workpapers, and supporting source documents. According to Staff, Suburban appropriately calculated the credits and the Commission should, therefore, direct the Company to refund customers in the amount and manner proposed by the Company.

{¶ 35} In accordance with Staff's recommendation, the Commission finds that Suburban's refund proposal is reasonable and consistent with the February 23, 2022 Order on Remand. Accordingly, Suburban's compliance tariffs, as filed on April 14, 2022, should be approved.

III. ORDER

{¶ 36} It is, therefore,

{¶ 37} ORDERED, That the compliance tariffs filed by Suburban on April 14, 2022, be approved. It is, further,

{¶ 38} ORDERED, That any relief requested in OCC's objections filed on March 10, 2022, be denied. It is, further,

{¶ 39} ORDERED, That Suburban's motion to strike the objections filed by OCC on March 10, 2022, be denied. It is, further,

{¶ 40} ORDERED, That a copy of this Entry be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

SJP/hac

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

Summary: Entry approving the compliance tariffs filed by Suburban Natural Gas Company on April 14, 2022. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio