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2012.04.24 10:28:15
Kansas Corporation Commission
/s/ Patrice Petersen-Klein

ROBERT A. ANDERSON
(1920-1994)
RICHARD C. BYRD
(1920-2008)

April 23, 2012

Sent by Facsimile
Original Mailed 4/23/12

Ms. Patrice Petersen-Klein
Executive Director
Kansas Corporation Commission
1500 S. W. Arrowhead Road
Topeka, Kansas 66604-4027

Received
on

APR 23 2012

by
State Corporation Commission
of Kansas

Re: Suburban Water Company
Docket No. 12-SUBW-359-RTS

Dear Ms. Petersen-Klein:

Please file the enclosed Certificate of Service, Testimony of Ray Breuer in Support of Stipulation and Agreement and the Testimony of Gregory L. Wilson in Support of Stipulation and Agreement on behalf of Suburban Water, Inc., d/b/a Suburban Water Company in the above captioned matter. I would appreciate receiving a file stamped copy of this cover letter as well as a file stamped copy of each document for my files. An envelope is included for your convenience.

Thank you for your assistance. If you have any questions, please call.

Sincerely,

James G. Flaherty

James G. Flaherty
jflaherty@andersonbyrd.com

JGF:tr
Enclosure

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Received
on

APR 23 2012

In the Matter of the Application of Suburban Water, Inc.,)
d/b/a Suburban Water Company, for Approval of the)
Commission to Make Certain Changes in its Rates for)
Water Service, for Approval of an Amendment to a)
Contract for Sale of Water with Board of Public Utilities,)
an administrative agency of the Unified Government of)
Wyandotte County/Kansas City, Kansas("BPU"), and for)
Approval of a Purchase Water Adjustment ("PWA") Tariff)

by
State Corporation Commission
of Kansas
Docket No. 12-SUBW-359-RTS

**TESTIMONY OF RAY BREUER IN
SUPPORT OF STIPULATION AND AGREEMENT**

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND EMPLOYER.**

3 A. My name is Ray Breuer. I am President for Suburban Water, Inc., d/b/a Suburban Water
4 Company ("SWC"). My business address is 1216 N. 155th Street, Basehor, Kansas 66007.

5 **Q. WHAT ARE YOUR CURRENT JOB RESPONSIBILITIES AT SWC?**

6 A. I currently assist in the day to day operations of the water utility.

7 **Q. DID YOU FILE REBUTTAL TESTIMONY ON BEHALF OF SWC IN THIS**
8 **DOCKET?**

9 A. Yes.

10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

11 A. The purpose of my testimony is to support the terms of the Stipulation and Agreement
12 ("Stipulation") relating to SWC's agreement to comply with the recommendations made by the
13 Kansas Corporation Commission Staff ("Staff") and the Citizens' Utility Ratepayer Board

1 ("CURB") in this docket regarding several of the utility's business practices.

2 **Q. WERE YOU INVOLVED IN THE SETTLEMENT DISCUSSIONS WITH STAFF AND**
3 **CURB WHICH LED TO THE EXECUTION OF THE STIPULATION IN THIS**
4 **DOCKET?**

5 A. Yes. I attended the settlement conference and was involved in the discussions which led to
6 the execution of the Stipulation in this docket.

7 **Q. HAVE YOU REVIEWED THE TERMS AND CONDITIONS CONTAINED IN THE**
8 **STIPULATION?**

9 A. Yes.

10 **Q. WITH RESPECT TO THOSE TERMS AND CONDITIONS CONTAINED IN THE**
11 **STIPULATION THAT RELATE TO SWC'S AGREEMENT TO COMPLY WITH**
12 **AND FOLLOW THE RECOMMENDATIONS MADE BY STAFF AND CURB**
13 **REGARDING CERTAIN BUSINESS PRACTICES OF SWC, CAN YOU COMMENT**
14 **ON THOSE TERMS AND CONDITIONS?**

15 A. Yes. I understand each of the terms and conditions and agree that SWC will comply and
16 follow those terms and conditions.

17 **Q. WHAT IS YOUR UNDERSTANDING OF SUBURBAN'S AGREEMENT RELATING**
18 **TO CEASING THE PRACTICE OF ALLOWING EMPLOYEES TO PURCHASE**
19 **PERSONAL ITEMS THROUGH SUBURBAN?**

20 A. Suburban has ceased this practice and has agreed it shall be prohibited from allowing
21 employees to purchase personal items using Suburban's credit cards in the future. In addition,
22 Suburban has agreed to memorialize all employee loans in written loan agreements. Suburban

1 has agreed to file these written loan agreements with payment schedules in the scheduled
2 upcoming abbreviated rate case. Finally, Suburban has agreed that if it fails to comply with
3 this provision, it shall be required to pay a penalty to be determined by the Commission.

4 **Q. WHAT IS YOUR UNDERSTANDING OF SUBURBAN'S AGREEMENT TO**
5 **IMPLEMENT A BIDDING PROCESS TO ENSURE SUBURBAN'S PROPERTY,**
6 **PLANT AND EQUIPMENT ARE BEING PURCHASED AND INSTALLED AT**
7 **COMPETITIVE PRICES?**

8 A. Suburban has agreed it will bid out its routine and time sensitive maintenance and repair
9 projects on a two (2) year cycle and separately bid out all other projects on a project by project
10 basis. Suburban has also agreed it will bid out any purchase of equipment and other materials
11 costing more than \$2,500.00 that are available from competitive vendors. Suburban has
12 agreed to maintain a file for each bid and a written explanation as to why a bid was selected
13 by Suburban and made those files available to Staff and CURB to review. Suburban has
14 agreed to file a compliance report with the Commission once a year detailing its recent efforts
15 in this regard. The initial filing shall be included in the 2012 abbreviated rate case. Finally,
16 Suburban has agreed if it fails to comply with this provision, it shall be required to pay a
17 penalty as determined by the Commission.

18 **Q. WHAT IS YOUR UNDERSTANDING OF SUBURBAN'S AGREEMENT TO**
19 **DISCONTINUE PAYING FOR PERSONAL EXPENSES OF EMPLOYEES AND**
20 **NON-EMPLOYEES?**

21 A. Staff and CURB recommended in their prefiled testimony that Suburban should discontinue
22 paying for cable television services at the home of its employee, XM Satellite radio services,

1 and cell phone expenses of non-employees. Under the Stipulation, Suburban has agreed to
2 those recommendations and to pay a penalty if it fails to follow those recommendations.

3 **Q. WHAT IS YOUR UNDERSTANDING OF SUBURBAN'S AGREEMENT THAT**
4 **RENTAL PAYMENTS OWED TO YOU BY SUBURBAN SHALL BE APPLIED TO**
5 **YOUR NOTE RECEIVABLE UNTIL THE DEBT TO SUBURBAN HAS BEEN PAID?**

6 A. Staff and CURB recommended in their prefiled testimony that Suburban should be required
7 to have me apply all of the rental payments I receive from Suburban for renting the office and
8 maintenance building and land to Suburban to the note I owe to Suburban. I have to use some
9 of the rental payments to pay the approximately \$15,000 per year in property taxes assessed
10 on the property. Under the Stipulation, I have agreed that I will apply at least \$30,000.00 per
11 year of the rental payments I receive from renting an office and maintenance building and land
12 to Suburban to the note I owe to Suburban until my debt to Suburban has been paid in its
13 entirety.

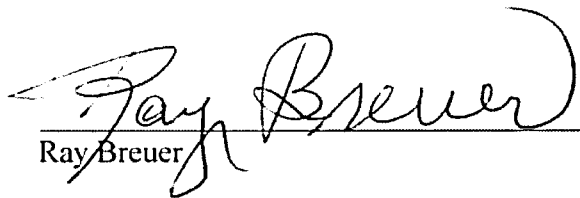
14 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

15 A. Yes.

VERIFICATION OF RAY BREUER

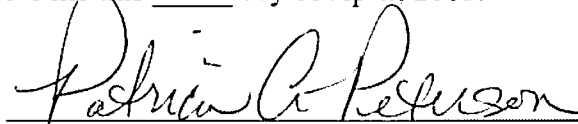
STATE OF Kansas)
) ss:
COUNTY OF Leavenworth)

On the 20th day of April, 2012, before me appeared Ray Breuer, to me personally known, who, being by me first duly sworn, states that he is President of Suburban Water, Inc., d/b/a Suburban Water Company, and acknowledges that he has read the above and foregoing document and believes that the statements therein are true and correct.



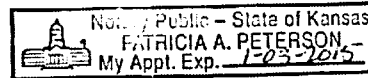
Ray Breuer

SUBSCRIBED AND SWORN to before me this 20th day of April, 2012.



Notary Public

Appointment/Commission Expires: 1-3-2015



BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Received
on

APR 23 2012

In the Matter of the Application of Suburban Water, Inc.,)
d/b/a Suburban Water Company, for Approval of the)
Commission to Make Certain Changes in its Rates for)
Water Service, for Approval of an Amendment to a)
Contract for Sale of Water with Board of Public Utilities,)
an administrative agency of the Unified Government of)
Wyandotte County/Kansas City, Kansas ("BPU"), and for)
Approval of a Purchase Water Adjustment ("PWA") Tariff)

by
State Corporation Commission
of Kansas

Docket No. 12-SUBW-359-RTS

**TESTIMONY OF GREGORY L. WILSON IN
SUPPORT OF STIPULATION AND AGREEMENT**

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME.**

3 A. My name is Gregory L. Wilson.

4 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR BUSINESS ADDRESS?**

5 A. I am a self-employed consultant. I am the owner of Twenty First Century Management
6 Consultants. My business address is 13104 S. Homestead Lane, Olathe, Kansas 66061.

7 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

8 A. I am testifying on behalf of Suburban Water Company ("Suburban").

9 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

10 A. I am testifying on behalf of Suburban in support of the Stipulation and Agreement between the
11 Staff of the Kansas Corporation Commission ("Staff"), the Citizens' Utility Ratepayer Board
12 ("CURB") and Suburban (collectively, "the Parties"). I will provide an overview of the terms
13 of the Stipulation and Agreement ("Stipulation"), with a focus on the accounting, water supply,
14 and rate design issues that were settled by the parties. I will address the Commission standards

1 for review of settlements and how they should be applied in this case. Mr. Ray Breuer,
2 President of Suburban, will address the terms of the Stipulation that relate to the utility's
3 business practices.

4 **II. TERMS OF THE STIPULATION AND AGREEMENT**

5 **Q. MR. WILSON, ARE YOU FAMILIAR WITH THE TERMS OF THE STIPULATION?**

6 A. Yes, I am. The terms of the Stipulation address thirteen primary areas.

7 **Q. SPECIFICALLY, WHAT ARE THE PRIMARY AREAS ADDRESSED IN THE**
8 **STIPULATION?**

9 A. Those areas are as follows:

- 10 1) Stipulated annual revenue requirement;
- 11 2) Amortization period used for expired rebate expense and rate case expense;
- 12 3) Suburban shall cease the practice of allowing employees to purchase personal items
13 through Suburban;
- 14 4) Suburban shall implement a bidding process to ensure Suburban's Property, Plant and
15 Equipment are being purchased and installed at competitive prices;
- 16 5) Suburban shall discontinue paying for personal expenses of employees and
17 non-employees;
- 18 6) Rental payments owed to Ray Breuer by Suburban shall be applied to his note
19 receivable to Suburban until the debt to Suburban has been paid;
- 20 7) Withdrawal of the request to implement a Purchase Water Adjustment ("PWA") tariff;
- 21 8) Approval of the BPU Contract Amendment;
- 22 9) New ground water supplies;

- 1 10) Abbreviated rate case procedure;
- 2 11) Payment of regulatory expense relating to Docket No. 11-SUBW-448-RTS;
- 3 12) Regulated/non-regulated operations; and
- 4 13) Rate design.

5 **Q. WOULD YOU ELABORATE ON EACH ONE OF THE ISSUES?**

6 A. Certainly.

7 **1. STIPULATED ANNUAL REVENUE REQUIREMENT**

8 The Parties agreed that Suburban's overall annual revenue decrease will be \$13,500.00.

9 This decrease in Suburban's annual revenue requirement represents a compromise of all of the

10 issues raised by the Parties in this case.

11 **2. AMORTIZATION OF DEFERRED COSTS**

12 The Parties agree that Suburban's actual rate case expense, and the amount included

13 in Staff's Adjustment IS-17 relating to expired rebates, shall be amortized over a period of

14 three and five years, respectively, beginning on the date rates become effective in this rate

15 case.

16 **3. SUBURBAN SHALL CEASE THE PRACTICE OF ALLOWING EMPLOYEES TO PURCHASE**
17 **PERSONAL ITEMS THROUGH SUBURBAN**

18 As indicated in the Stipulation, Suburban admits allowing employees to purchase

19 personal items using Suburban's credit cards. As explained in Mr. Breuer's rebuttal testimony

20 and his testimony in support of the Stipulation, Suburban has ceased this practice and has

21 agree it shall be prohibited from allowing employees to purchase personal items using

22 Suburban's credit cards in the future. In addition, Suburban has agreed to memorialize all

23 employee loans in written loan agreements. Suburban has agreed to file these written loan

1 agreements with payment schedules in the scheduled upcoming abbreviated rate case. Finally,
2 Suburban has agreed that if it fails to comply with this provision, it shall be required to pay a
3 penalty to be determined by the Commission.

4 **4. IMPLEMENTATION OF A BIDDING PROCESS TO ENSURE SUBURBAN'S PROPERTY,**
5 **PLANT AND EQUIPMENT ARE BEING PURCHASED AND INSTALLED AT COMPETITIVE**
6 **PRICES**

7 As indicated in the Stipulation, Suburban admits it did not implement a bidding
8 process to ensure Suburban's Property, Plant and Equipment ("PPE") was being installed at
9 competitive prices. As explained by Mr. Breuer, Suburban has agreed it will bid out its routine
10 and time sensitive maintenance and repair projects on a two (2) year cycle and separately bid
11 out all other projects on a project by project basis. Suburban has also agreed it will bid out any
12 purchase of equipment and other materials costing more than \$2,500.00 that are available from
13 competitive vendors. Suburban has agreed to maintain a file for each bid and a written
14 explanation as to why a bid was selected by Suburban and made those files available to Staff
15 and CURB to review. Suburban has agreed to file a compliance report with the Commission
16 once a year detailing its recent efforts in this regard. The initial filing shall be included in the
17 2012 abbreviated rate case. Finally, Suburban has agreed if it fails to comply with this
18 provision, it shall be required to pay a penalty as determined by the Commission.

19 **5. SUBURBAN SHALL DISCONTINUE PAYING FOR PERSONAL EXPENSES OF EMPLOYEES**
20 **AND NON-EMPLOYEES**

21 Staff and CURB recommended in their prefiled testimony that Suburban should
22 discontinue paying for cable television services at the home of its employee, and XM Satellite
23 radio services, and cell phone expenses of non-employees. Under the Stipulation, Suburban
24 has agreed to those recommendations, and to pay a penalty if it fails to follow these

1 recommendations.

2 **6. RENTAL PAYMENTS OWED TO RAY BREUER BY SUBURBAN SHALL BE APPLIED TO**
3 **HIS NOTE RECEIVABLE UNTIL DEBT TO SUBURBAN HAS BEEN PAID**

4 Staff and CURB recommended in their prefiled testimony that Suburban should be
5 required to have Ray Breuer apply all of the rental payments he received from Suburban for
6 renting the office and maintenance building and land to Suburban to the note he owes to
7 Suburban under the Stipulation. In the Stipulation, the Parties agreed that Mr. Breuer will
8 apply at least \$30,000.00 per year of the rental payments he receives from renting an office and
9 maintenance building and land to Suburban to the note owed by Ray Breuer to Suburban until
10 his debt to Suburban has been paid in its entirety.

11 **7. WITHDRAWAL OF PWA**

12 Suburban has agreed to withdraw its request for a PWA tariff in this case.

13 **8. APPROVAL OF THE BPU CONTRACT AMENDMENT**

14 The Parties have agreed the BPU Contract Amendment filed in this case should be
15 approved by the Commission.

16 **9. NEW GROUND WATER SUPPLIES**

17 Suburban has agreed to incur the costs necessary to conduct the preliminary work
18 required to determine if new ground water supplies are located in proximity to Suburban's
19 distribution system on which Suburban could seek to obtain water rights to drill wells,
20 produce, and if necessary, treat ground water for sale to its customers. The Parties have agreed
21 Suburban shall be allowed to establish a deferred account relating to costs associated with the
22 preliminary work so it can seek recovery of such costs in its next rate case following the
23 abbreviated rate case. At the conclusion of the ground water study Suburban shall file a report

1 on the result of its study with the Commission and to include in the filing its recommendation
2 on how to proceed.

3 **10. ABBREVIATED RATE CASE**

4 The Parties agreed Suburban shall use the abbreviated rate case procedure to seek
5 recovery of the January 1, 2013, BPU rate increase in its wholesale rate charged to Suburban,
6 as contemplated and summarized in Staff's letter dated November 23, 2010, to Suburban. The
7 Parties agreed Suburban shall use the twelve (12) month period ending September 30, 2012,
8 as the test year in its abbreviated rate case. The Parties agreed Suburban shall hold a public
9 meeting with its customers regarding its abbreviated rate case filing. The Parties have agreed
10 that the \$7,467.00 PILOT fee refund included in the stipulated revenue requirement in this
11 case shall be addressed in the abbreviated rate case so that amount is not included in base rates
12 arising from the twelve month period ending September 20, 2012. Suburban agreed to include
13 copies of its outstanding loan agreements and payment schedules between the company and
14 its employees in its abbreviated rate case filing so Staff and CURB can confirm Suburban is
15 in compliance with Section IV.C. of the Stipulation. As part of the abbreviated rate case
16 process, Suburban also agreed to provide Staff and CURB access to Suburban's files and other
17 records so Staff and CURB can confirm Suburban is in compliance with Section IV.D.
18 (Implementation of Bidding Process) of the Stipulation.

19 **11. PAYMENT OF REGULATORY EXPENSES FROM DOCKET NO. 11-SUBW-448-RTS**

20 The Parties have agreed that the \$6,165.00 in rate case expense relating to Staff's work
21 in Docket No. 11-SUBW-448-RTS shall be assessed and paid by Suburban during the 2014
22 fiscal year.

23 **12. REGULATORY/NON-REGULATORY ALLOCATIONS**

1 As part of Suburban's next rate case after the abbreviated rate case, Suburban agrees
2 to cooperate fully with Staff's investigation into whether other family-owned businesses have
3 been co-mingled into the operations of Suburban and if so, what appropriate allocations should
4 be made between regulated and non-regulated operations.

5 **13. RATE DESIGN**

6 The Parties reached agreement on rate design in the Stipulation. The Parties agreed
7 there will be no change to the monthly customer charge, which shall continue to include the
8 customer's first 1,000 gallons of water usage. The monthly charge will remain at \$20.00 per
9 month per customer, which includes the first 1,000 gallons of usage. The commodity charge
10 shall be reduced from the current rate of \$7.86 per 1,000 gallons for all sales over 1,000
11 gallons to \$7.74 per 1,000 gallons for all sales over 1,000 gallons. Attached to my testimony
12 as Support Exhibit GLW-1 is the proposed Settlement Rate Design calculation.

13 **III. COMMISSION STANDARDS FOR REVIEW OF SETTLEMENT AGREEMENTS**

14 **Q. MR. WILSON, ARE YOU FAMILIAR WITH THE FACTORS THE COMMISSION**
15 **CONSIDERS WHEN REVIEWING A PROPOSED SETTLEMENT AGREEMENT?**

16 A. Yes, I am. I understand that there are five factors the Commission considers when reviewing
17 a proposed settlement agreement. The factors were enumerated by the Commission in its
18 order in Docket No. 08-ATMG-280-RTS dated May 12, 2008, and have been used by the
19 Commission in reviewing and approving settlements in several rate cases.

20 **Q. SPECIFICALLY, WHAT ARE THOSE FIVE FACTORS?**

21 A. The five factors the Commission considers when reviewing proposed settlement agreements
22 are as follows:

1 (1) whether there was an opportunity for the opposing party to be heard on their
2 reasons for opposition to the stipulation and agreement;

3 (2) whether the stipulation and agreement is supported by substantial competent
4 evidence;

5 (3) whether the stipulation and agreement conforms with applicable law;

6 (4) whether the stipulation and agreement results in just and reasonable rates; and

7 (5) whether the results of the stipulation and agreement are in the public interest.

8 A. THERE WAS AN OPPORTUNITY FOR THE OPPOSING PARTIES TO BE
9 HEARD ON THEIR REASONS FOR OPPOSITION TO THE STIPULATION
10 AND AGREEMENT

11 **Q. WHO ARE THE PARTIES TO THIS DOCKET?**

12 A. In addition to Suburban, the parties to this docket are the staff of the Kansas Corporation
13 Commission ("Staff") and the Citizens Utility Ratepayer Board ("CURB").

14 **Q. ARE THERE ANY ISSUES NOT ADDRESSED IN THE STIPULATION THAT ANY**
15 **OF THE PARTIES WISH TO LITIGATE?**

16 A. No. Because there are no outstanding disputed issues and all parties are signatories to the
17 Stipulation, the Stipulation represents a unanimous agreement.

18 **Q. WHO PARTICIPATED IN THE SETTLEMENT NEGOTIATIONS IN THIS**
19 **DOCKET?**

20 A. Representatives from Suburban, Staff and CURB participated in the settlement negotiations
21 in this docket. The Parties met at the Commission on April 13, 2012, pursuant to the
22 Commission's procedural order dated January 11, 2012, to collectively discuss the issues in
23 this docket and the possibility for settlement of some or all of the issues. A settlement of all

1 issues was reached resulting in the Stipulation filed with the Commission.

2 **Q. DID ALL PARTIES HAVE AN OPPORTUNITY TO BE HEARD WITH RESPECT TO**
3 **THE TERMS OF THE STIPULATION?**

4 A. Yes.

5 **B. THE STIPULATION IS SUPPORTED BY SUBSTANTIAL COMPETENT**
6 **EVIDENCE**

7 **Q. IS THERE SUBSTANTIAL COMPETENT EVIDENCE IN THE RECORD TO**
8 **SUPPORT THE STIPULATION REACHED BY THE PARTIES?**

9 A. Yes. Four (4) witnesses on behalf of Suburban filed direct and/or rebuttal testimony, in
10 addition to the testimony filed in support of the Stipulation. In addition to Staff and CURB
11 testimony in support of the Stipulation, three (3) Staff witnesses and one (1) CURB witness
12 have filed direct testimony in this docket.

13 **Q. ARE THE TERMS OF THE STIPULATION CONSISTENT WITH THE TESTIMONY**
14 **AND EXHIBITS FILED IN THIS DOCKET?**

15 A. The Stipulation is consistent with the testimony and exhibits filed in this docket. The
16 Stipulation reflects a compromise of the positions taken by the various parties as set forth in
17 their prefiled testimony and exhibits.

18 **C. THE STIPULATION CONFORMS WITH APPLICABLE KANSAS LAW**

19 **Q. DOES THE STIPULATION CONFORM WITH APPLICABLE KANSAS LAW?**

20 A. Yes. The Stipulation was fully and fairly negotiated, represents a reasonable compromise
21 based on all parties' prefiled positions, and will result in just and reasonable rates for
22 Suburban's customers. Kansas law recognizes a strong policy favoring and encouraging

1 settlements.¹ It appears this Commission has acknowledged the settlement standards set forth
2 in the *Farmland Industries*² and *CURB*³ cases regarding non-unanimous settlements apply
3 equally to every other settlement agreement placed before it for consideration. The
4 Commission has recently stated, "no settlement proposal, unanimous or contested; black box
5 or transparent, relieves the three member Commission of its responsibility to make an
6 independent judgment as to whether the settlement constitutes a reasonable remedy or
7 resolution of the issues."⁴ As such, it appears the applicable legal standard for reviewing the
8 reasonableness of the settlement agreements requires the Commission to make a finding,
9 supported by substantial competent evidence for a review of the record as a whole, that the
10 settlement will establish just and reasonable rates. I believe the standard is met in this case.

11 **D. THE STIPULATION WILL RESULT IN JUST AND REASONABLE RATES**

12 **Q. DOES THE STIPULATION RESULT IN JUST AND REASONABLE RATES FOR**
13 **SUBURBAN'S CUSTOMERS?**

14 A. Yes. In accordance with K.S.A. 66-1,230, *et seq.*, every water public utility is required to
15 furnish reasonably efficient and sufficient service at just and reasonable rates. Case law
16 indicates the "just and reasonable" standard coincides with the "zone of reasonableness" test
17 adopted by Kansas courts. The "just and reasonable" standard was first outlined by the United

¹*Bright v. LSI Corp.*, 254 Kan. 853, 858, 869 P.2d 686 (1994).

²*Farmland Industries v. Kansas Corporation Commission*, 24 Kan.App.2d 172, 186-88, 943 P.2d 470 (1997).

³*Citizens' Utility Ratepayer Board v. State Corp. Comm'n of the State of Kansas*, 28 Kan.App.2d 313, 316-317, 16 P.3d 319 (Kan.App.2000); *Farmland Industries*, 24 Kan.App.2d at 186-87.

⁴Order issued May 12, 2008, at para. 11, Docket No. 08-ATMG-280-RTS.

1 States Supreme Court.⁵ The Court emphasized that when evaluating whether rates are just
2 and reasonable, the focus of inquiry is properly on the end result or "total effect" of the rate
3 order, rather than on the specific rate-setting method employed. In addition, the *Hope* case
4 was followed by another Supreme Court case⁶, which found the Natural Gas Act's articulated
5 "just and reasonable" standard coincides with the applicable constitutional standards and any
6 rate selected by a regulatory commission within the "broad zone of reasonableness" cannot
7 properly be attacked as confiscatory.

8 Applying these standards to the Stipulation, the agreed-upon revenue decrease of
9 \$13,500.00 falls within the range of the revenue requirement proposed by Staff, CURB and
10 Suburban. Although this by itself is not conclusive evidence of the reasonableness of the
11 stipulated revenue increase, Kansas law does indicate the Commission's goal in a ratemaking
12 case should be to determine a rate that falls within a "zone of reasonableness" after applying
13 a balancing test in which the interests of all concerned parties are accounted for.⁷ In addition,
14 the Kansas Supreme Court has discussed the "zone of reasonableness" as it applies to the
15 Commission's ratemaking function as follows:

16 There is an elusive range of reasonableness in calculating a fair rate of return.
17 A court can only concern itself with the question as to whether a rate is so
18 unreasonably low or so unreasonably high as to be unlawful. The in-between
19 point, where the rate is most fair to the utility and its customers, is a matter for
20 the State Corporation Commission's determination.⁸

21 The schedules filed with Suburban's application indicated a gross revenue deficiency

⁵*Power Comm'n v. Hope Gas Co.*, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1994).

⁶*Permian Basin Area Rate Cases*, 390 U.S. 747, 770, 88 S.Ct. 1344, 20 L.Ed.2d 312, *reh denied* 392 U.S. 917, 88 S.Ct. 2050 (1968).

⁷*Kansas Gas and Elec. Co. v. State Corp. Com'n.*, 239 Kan. 483, 488-92, 720 P.2d 1063 (Kan. 1986).

⁸*Southwestern Bell Tel. Co. v. State Corporation Commission*, 192 Kan. 39, 41, 386 P.2d 515 (1963).

1 of \$296,280.00 for Suburban. Staff recommended a decrease of \$71,555.00. CURB
2 recommended no increase. Accordingly, the stipulated revenue decrease amount of
3 \$13,500.00 clearly falls within the zone of reasonableness when one considers the stipulated
4 revenue decrease is well within the position of the Parties. As noted in the Commission's
5 Order in Docket No. 09-KCPE-246-RTS, just because the stipulated revenue requirement falls
6 within the high-end and low-end of the filed revenue/cash flow recommendations, it does not
7 per se establish the outer bounds of the zone of reasonableness.⁹ However, when combined
8 with the evidence presented by the Parties through filed testimony, I believe the stipulated
9 revenue requirement is supported by substantial competent evidence and results in just and
10 reasonable rates. The stipulated amount also satisfies the balancing test aspect of the zone of
11 reasonableness evaluation because the stipulated amount necessarily represents the Parties'
12 recognition of the risk of litigation and that a party will likely not prevail on every element of
13 its prefiled case.

14 **Q. IN RECENT COMMISSION ORDERS, IT HAS INDICATED IT WILL EXAMINE**
15 **THE TERMS OF A STIPULATION TO DETERMINE WHETHER IT RESULTS IN**
16 **JUST AND REASONABLE RATES ACCORDING TO THREE ELEMENTS: (1)**
17 **WHETHER THERE IS AN IMPACT ON THE FINANCIAL ABILITY OF THE**
18 **PUBLIC UTILITY TO CONTINUE TO PROVIDE SERVICES; (2) WHETHER**
19 **THERE IS AN EXCESSIVE BURDEN ON CUSTOMERS AND (3) WHETHER THE**
20 **RATE IS UNDULY DISCRIMINATORY.¹⁰ CAN YOU COMMENT ON WHETHER**
21 **THE STIPULATION RESULTS IN JUST AND REASONABLE RATES BASED ON**

⁹Order issued July 24, 2009, at para. 14, Docket No. 09-KCPE-246-RTS.

¹⁰Order dated April 18, 2012, page 29, para. 64, Docket No. 12-WSEE-112-RTS.

1 **THOSE THREE ELEMENTS?**

2 A. Yes. Suburban has reviewed its operating expenses in light of the adjustments made by Staff
3 and CURB and has determined it will have the financial ability to continue to provide services
4 to customers at the stipulated revenue requirement level. If the Stipulation is approved, the
5 commodity rate paid by customers will be reduced by \$0.12 per 1,000 gallons, so there are no
6 serious or harmful changes or excessive burdens being placed on the customers. The design
7 of the rates is unchanged under the Stipulation, so the rates are not unduly discriminatory.

8 **Q. APART FROM THE STIPULATED REVENUE DECREASE, DO THE EFFECTS OF**
9 **THE OTHER ASPECTS OF THE STIPULATION RESULT IN JUST AND**
10 **REASONABLE RATES?**

11 A. Yes. As with the dollar amount of the stipulated overall revenue decrease, the other specific
12 provisions of the Stipulation were fully and fairly negotiated by the Parties in conjunction with
13 the acknowledgment that it is unlikely the Commission would accept all of any of the Parties'
14 prefiled positions. Suburban carefully considered the issues before the Commission and used
15 its best judgment and knowledge of Commission precedent to determine where it might be
16 successful and where compromise was warranted and appropriate. For example, Suburban
17 worked closely with Staff and CURB to jointly negotiate and develop the Stipulation using
18 elements of each of the Parties' original positions. Suburban submits there is ample evidence
19 in the record in this docket clearly demonstrating the provisions of the Stipulation will
20 establish just and reasonable rates.

21 E. THE STIPULATION IS IN THE PUBLIC INTEREST

22 **Q. IS THE STIPULATION IN THE PUBLIC INTEREST?**

1 A. Yes. Each party to this docket has a duty to protect the interest of the party it represents.
2 Suburban has a duty to its customers, employees and shareholders. CURB represents the
3 interests of residential and small commercial customers. The Staff and the Commission are
4 in the unique position of being required to weigh and balance the interests of the company, the
5 customers, and any other party to a proceeding. It can be argued, consistent with the Court's
6 statements in *Kansas Gas & Electric*, as previously discussed, that "the focus of the inquiry
7 (in setting "just and reasonable" rates) is properly on the end result or "total effect" of the rate
8 order, rather than upon the rate setting employed.¹¹ It is Suburban's position the "total effect"
9 of the terms of the Stipulation will result in just and reasonable rates and represents an
10 equitable balancing of the interest of all of the Parties. Thus, the Stipulation is in the public
11 interest and should be adopted by the Commission in its entirety.

12 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

13 A. Yes.

¹¹*Kansas Gas and Elec. Co.*, 239 Kan. at 489.

VERIFICATION OF GREGORY L. WILSON

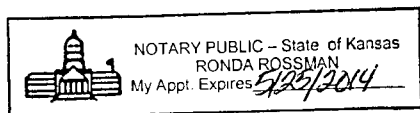
STATE OF KANSAS)
) ss:
COUNTY OF FRANKLIN)


On the 23 day of April, 2012, before me appeared Gregory L. Wilson, to me personally known, who, being by me first duly sworn, states that he is a Certified Public Accountant and owner of Twenty First Century Management Consultants and acknowledges that he has read the above and foregoing document and believes that the statements therein are true and correct.



Gregory L. Wilson

SUBSCRIBED AND SWORN to before me this 23 day of April, 2012.





Notary Public

Appointment/Commission Expires:

Suburban Water Company
Proposed Settlement Rate Design
Docket No. 12-SUBW-358-RTS

Support Exhibit GLW-1

Customer Charge per Month \$ 20.00 Includes the first 1,000 gallons
Volumetric Charge \$ 7.74 per 1,000 gallons above the first 1,000 gallons

Month	Customers	Gallons in		Revenues
		Customer Charge	Volumes (1000s)	
Jan-10	1,525	1,525	6,404	\$80,066
Feb-10	1,524	1,524	5,493	\$72,998
Mar-10	1,525	1,525	5,302	\$71,534
Apr-10	1,529	1,529	6,240	\$78,879
May-10	1,527	1,527	6,884	\$83,819
Jun-10	1,528	1,528	8,796	\$98,639
Jul-10	1,524	1,524	8,847	\$98,956
Aug-10	1,527	1,527	11,110	\$116,534
Sep-10	1,531	1,531	6,264	\$79,106
Oct-10	1,532	1,532	8,026	\$92,759
Nov-10	1,530	1,530	5,825	\$75,686
Dec-10	1,532	1,532	5,954	\$76,726
Sum		18,334	85,145	\$1,025,702
Total Gallons Sold			103,479	
Revenue From Residential Sales	\$1,025,702			
Unmetered Revenue	\$10,598			
Misc. Revenues	\$35,212 (48,160-32,369+19,421)			
Wholesale Sales	\$119,761			
Total Revenue	\$1,191,273			
Staffs Revenue Requirement	\$1,190,893 (1,145,787+71,555-13,500-12,949=1,190,893)			
Difference	\$380			

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Received
on

APR 23 2012

In the Matter of the Application of Suburban Water, Inc.,)
d/b/a Suburban Water Company, for Approval of the)
Commission to Make Certain Changes in its Rates for)
Water Service, for Approval of an Amendment to a)
Contract for Sale of Water with Board of Public Utilities,)
an administrative agency of the Unified Government of)
Wyandotte County/Kansas City, Kansas("BPU"), and for)
Approval of a Purchase Water Adjustment ("PWA") Tariff)

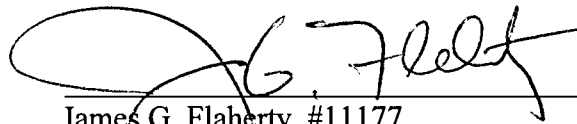
by
State Corporation Commission
of Kansas

Docket No. 12-SUBW-359-RTS

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Testimony of Ray Breuer in Support of Stipulation and Agreement and the Testimony of Gregory L. Wilson in Support of Stipulation and Agreement was served by electronic service on this 23rd day of April, 2012, to the following parties who have waived receipt of follow-up hard copies.

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