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State Corporation Commission
of Kansas

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)

Docket No. 12-SUBW-359-RTS

STAFF TESTIMONY IN SUPPORT OF
STIPULATION AND AGREEMENT

PREPARED BY

JUSTIN T. GRADY

UTILITIES DIVISION

KANSAS CORPORATION COMMISSION

1 **Q. Please state your name and business address.**

2 **A.** My name is Justin T. Grady and my business address is 1500 Southwest
3 Arrowhead Road, Topeka, Kansas, 66604.

4 **Q. Who is your employer and what is your business title?**

5 **A.** I am employed by the Kansas Corporation Commission (KCC or Commission) as
6 a Managing Auditor

7 **Q. Are you the same Justin T. Grady that filed Direct Testimony and**
8 **Supporting Exhibits on March 15, 2012?**

9 **A.** Yes.

10 **Q. Please provide an overview of your testimony in support of the Stipulation**
11 **and Agreement.**

12 **A.** In this testimony I will support the Joint Stipulation and Agreement (Agreement)
13 filed by the Staff of the State Corporation Commission of the State of Kansas
14 (Staff), Suburban Water Company (SWC or Suburban), and the Citizens Utility
15 Ratepayer Board (CURB), (collectively, “the parties”). The rest of my testimony
16 is organized as follows:

- 17 • Brief discussion of SWC’s application to increase the rates it charges for
18 water service.
- 19 • Brief discussion of Staff’s direct testimony in this matter.
- 20 • Discussion of the terms of the Agreement.
- 21 • Support of the Agreement using the Commission’s previously stated
22 standard of review for ruling on Stipulation and Agreements.

23 **Q. Please provide a brief overview of the rate case request filed by Suburban.**

1 A. On November 16, 2011, Suburban requested a \$296,280 increase in
2 retail water revenue, approximately 28.1% over test year levels. Suburban's
3 revenue requirement request was based on a test year ending December 31, 2010
4 with pro-forma adjustments to normalize and annualize retail water revenue,
5 wholesale water revenues, payroll expense, rate case expense, and outside
6 services expenses. Suburban also requested an increase in its customer charge
7 from \$20 (which includes the first 1,000 gallons of water) to \$21, without any
8 water usage included. Suburban also renewed its request to implement a
9 Purchased Water Adjustment (PWA), and sought the Commission's approval of a
10 water contract amendment between Suburban and the Kansas City Kansas Board
11 of Public Utilities (BPU).

12 **Q. Please provide a summary of direct testimony filed by Staff in this case.**

13 A. Staff filed testimony on March 15, 2012 recommending that the Commission
14 decrease SWC's water revenues by \$71,555. Staff made 19 pro forma
15 adjustments to Suburban's revenues and expenses. These adjustments reduced
16 Suburban's rent expense, payroll expense, interest expense, depreciation expense,
17 outside services expense and other expenses. Staff also removed expenses it
18 considered inappropriate for ratepayer recovery such as dues and donations,
19 lobbying expenses, advertising expenses, expenses related to personal vehicles for
20 the management and ownership of Suburban, excessive payroll and benefit
21 expenses, and payroll expenses related to non-regulated operations.

22 In addition Staff recommended the Commission:

- 23 • Deny Suburban's request to implement a Purchased Water Adjustment

- 1 • Require Suburban to demonstrate that it has ceased the practice of
- 2 allowing its employees to purchase personal expenses through corporate
- 3 credit cards
- 4 • Require Suburban to implement a competitive bidding practice for its
- 5 repair/maintenance activities and its capital expenditures
- 6 • Approve the water contract amendment between Suburban and BPU.

7 Staff also recommended a reduction to wholesale water costs of \$7,467 in
8 order to accomplish a refund of the revenue collected from Suburban's
9 customers related to the BPU Payment in Lieu of Taxes (PILOT) amount
10 included in Suburban's purchased water cost during its last rate case, Docket
11 No. 11-SUBW-448-RTS (11-448 Docket). Last, Staff recommended that
12 Suburban pay the Commission \$6,165 related to excessive regulatory costs
13 incurred by the Commission Staff due to Suburban's misinformation and lack
14 of cooperation during the 11-448 Docket.

15 **Q. What would you have anticipated Staff's revenue requirement position to be**
16 **had this case not settled?**

17 If this case had not settled, Staff would have submitted a corrected set of
18 revenue requirement schedules and errata testimony to correct an error in Staff's
19 payroll expense adjustment. Staff's capitalization rate used in its payroll
20 adjustment was unintentionally overstated by the inclusion of capital projects that
21 were considered Contribution in Aid of Construction. Because these projects are
22 not included in Suburban's revenue requirement calculations, it is inappropriate to
23 include capitalized payroll from those projects in Staff's capitalization rate

1 calculation. Staff's correction of this adjustment would have added
2 approximately \$6,500 to Staff's revenue requirement calculation. Also, Suburban
3 provided a rate case expense update in its rebuttal testimony that would have
4 increased Staff's revenue requirement recommendation approximately \$11,000.
5 Staff's revised revenue requirement would have been approximately -\$52,000 for
6 Suburban's retail water operations.

7 **Q. Please provide an overview of the Agreement.**

8 A. The terms of the Agreement are as follows:

- 9 • The Parties agree that Suburban's retail revenue requirement will decrease
10 by \$13,500,000. ¶ 10
- 11 • Suburban will be allowed to amortize its actual rate case expense over
12 three years, and the expired rebate contract income (as discussed in my
13 direct testimony, Staff adjustment 17) over five years. ¶ 11
- 14 • Suburban admits to allowing employees to purchase personal items
15 through Suburban's credit cards.¹ Suburban agrees that it has ceased this
16 activity and that it will be prohibited from continuing this activity in the
17 future. Suburban also agrees to formalize all employee loans and file
18 those loans in the upcoming abbreviated rate case. If Suburban fails any
19 of these provisions, Suburban agrees to pay a penalty to be determined by
20 the Commission. ¶12
- 21 • Suburban admits that it did not implement a competitive bidding process
22 to ensure that its Property, Plant, and Equipment was being installed at

¹ Suburban was Ordered to cease this activity in its 05-SUBW-104-RTS rate case. See ¶8, Interim Order, March 28, 2005.

1 competitive prices.² Suburban agrees that it will implement a bidding
2 process to competitively bid its routine and time-sensitive maintenance
3 activities on a 2-year rotating basis, and that it will bid out any equipment
4 or material purchases in excess of \$2,500 in all other capital projects. By
5 agreement, Suburban is required to maintain documentation of these bids,
6 and submit an annual compliance filing with the Commission regarding
7 the status of these efforts, the first filing to take place in Suburban's
8 upcoming abbreviated rate case, as discussed below. If Suburban fails any
9 of these provisions, Suburban agrees to pay a penalty to be determined by
10 the Commission. ¶13

- 11 • Suburban agrees to discontinue paying for cable TV and satellite radio
12 services for its employees, and cell phone expenses for non-employees. If
13 Suburban fails any of these provisions, Suburban agrees to pay a penalty
14 to the Commission. ¶¶14, 15

- 15 • Suburban has agreed to pay the Commission \$6,165 in fiscal year 2014, to
16 reimburse the Commission for excessive regulatory expenses incurred as a
17 result of Suburban's conduct during the 11-448 Docket. This is the
18 amount recommended in my Direct Testimony. ¶16

- 19 • Suburban agrees that Ray Breuer, the founder and President of Suburban,
20 will apply \$30,000 annually from the rent payments he receives from
21 Suburban to reduce the outstanding shareholder loan until the balance is
22 paid off in its entirety. ¶17

² Suburban was Ordered to complete this task in its 05-SUBW-104-RTS rate case. See ¶8, Interim Order, March 28, 2005.

- 1 • Suburban agrees to withdraw its request for a Purchased Water
2 Adjustment, and the Parties agree that the BPU Contract Amendment
3 should be approved by the Commission. ¶¶18, 19
- 4 • Suburban agrees to complete the ground water study referred to in Greg
5 Wilson's direct testimony to determine the viability of finding additional
6 groundwater supplies located in proximity to Suburban's distribution
7 system. Suburban will then file the results of the Study with the
8 Commission along with its recommendation as to how to proceed. ¶20
- 9 • The parties agree to continue using the abbreviated rate case procedure
10 anticipated in Staff's November 23, 2010 letter to Suburban, describing
11 the anticipated rate case plan. Suburban will use a test year ending
12 September 30, 2012 and will hold a public meeting to discuss the case
13 with its customers. Also, the PILOT fee refund amount of \$7,467 (as
14 discussed in my direct testimony) will be removed from the cost of
15 purchased water in the abbreviated case. Last, Suburban will include
16 documentation with its abbreviated filing that demonstrates its compliance
17 with the provisions discussed above regarding loans to
18 employees/shareholders, and the competitive bidding process. ¶21
- 19 • For its next full rate case, Suburban has agreed to develop cost allocation
20 ratios to separate out the cost of any non-regulated activities from its
21 regulated operations. ¶22
- 22 • The parties agreed that Suburban's customer charge will remain
23 unchanged but the volumetric rate for the consumption of water will be

1 reduced from \$7.86 to \$7.74. Suburban agrees to implement Section XV
2 of its tariff to ensure that customer payments are processed in accordance
3 with the Commission's billing standards. ¶¶23, 24

4 **The Commission's Standard of Review for Deciding Stipulation and Agreements**

5
6 **Q. Has the Commission previously addressed the standards its uses to review**
7 **Stipulation and Agreements?**

8 A. Yes. The Commission's Order in Docket No. 08-ATMG-280-RTS discusses these
9 five factors, or standards, and multiple agreements have been reviewed by the
10 Commission using the five factors since that Order.³ These five factors are as
11 follows:

- 12 1. Whether there was an opportunity for the opposing party to be heard on
13 their reasons for opposition to the stipulation and agreement.
- 14 2. Whether the stipulation and agreement is supported by substantial
15 competent evidence in the record as a whole.
- 16 3. Whether the stipulation and agreement conforms to applicable law.
- 17 4. Whether the stipulation and agreement results in just and reasonable rates.
- 18 5. Whether the results of the stipulation and agreement are in the public
19 interest, including the interests of customers represented by the parties not
20 consenting to the agreement.

21 Each of these five factors is discussed individually below.

³ Order Approving Contested Settlement Agreement, p. 5, Docket No. 08-ATMG-280-RTS (May 12, 2008)

1 **Q. Please discuss the first factor, whether there was an opportunity for any**
2 **opposing parties to be heard on their reasons for opposition to the stipulation**
3 **and agreement.**

4 A. The Agreement presented to the Commission is unanimous; therefore this factor is
5 not applicable. On April 13, 2012, all parties to the Docket met for a settlement
6 conference, as directed in the Commission's January 11, 2012 Order Setting
7 Procedural Schedule. Negotiations were tough, thorough, and included
8 substantive discussions of the issues. In the end, the parties were able to come to
9 a unanimous agreement that Suburban needed to reduce its current rates in order
10 to collect \$13,500 less in annual revenue. Additionally, several concerns
11 addressed by Staff and CURB in their Direct Testimonies were accepted by
12 Suburban, and remedies to those concerns were agreed to.

13 **Q. Please address whether the Agreement is supported by substantial competent**
14 **evidence in the record as a whole.**

15 A. The Agreement is supported by substantial competent evidence in the record as a
16 whole. The Agreement is supported by Suburban's application and rebuttal
17 testimony, Staff's direct testimony, the direct testimony of CURB, and the
18 testimony in support of the Stipulation and Agreement. Each of the parties
19 undertook a vigorous review of the application in accordance with, and in
20 consideration of, their interests. The parties then filed testimony in support of
21 those positions. These filed positions would constitute the body of evidence that
22 the Commission would rely on to make a determination of the issues presented by
23 this case if the case were to go to a full hearing. The parties also relied on this

1 evidence in negotiations and eventually arrived at an agreed upon resolution of
2 the issues. It is Staff's position that the terms of this stipulation and agreement
3 are commensurate with what we would expect if the case were to be fully
4 litigated.

5 **Q. How was the revenue decrease of \$13,500 determined?**

6 A. There is not an exact determination identified in the agreement, therefore each
7 party may have a different understanding of the concessions agreed to in order to
8 produce this result. However, from Staff's perspective, there are several plausible
9 scenarios that can produce a \$13,500 revenue reduction, that are not outside the
10 realm of reasonable debate. For instance, starting at Staff's revised revenue
11 requirement recommendation of -\$52,000, if one considers the 5-year
12 amortization of the expired rebate contract income as presented in the Agreement,
13 versus the 3-year amortization included in Staff's direct testimony, that would
14 increase Staff's recommendation by \$12,949 to -\$39,051. Therefore, only
15 \$25,551 of Staff's concessions during negotiations are not specifically delineated
16 in the Agreement. For that \$25,551 movement in Staff's position, Suburban
17 conceded \$309,948 in revenue (Suburban's originally filed position of \$296,448
18 less the agreed upon \$13,500 revenue reduction).

19 **Q. Please address whether the Agreement conforms to applicable law.**

20 A. Although I am not an attorney, I have been advised by my counsel that the
21 Agreement conforms with applicable law in that it follows the precedent
22 established for similar settlements approved by the Commission in the past. Staff
23 counsel will be available at the hearing to discuss any specific issues or questions

1 from the Commissioners regarding the Agreement's conformity to applicable
2 laws.

3 **Q. Does Staff believe that the Agreement will result in just and reasonable**
4 **rates?**

5 A. Yes. Staff believes that this Agreement results in rates that fall within the "zone
6 of reasonableness" described by Kansas courts in which the result is balanced
7 between the interests of investors versus ratepayers, present versus future
8 ratepayers, and is in the public interest generally. This opinion is supported by
9 the fact that the Agreement falls much closer to Staff's filed position than
10 Suburban's. Staff's direct testimony was filed with the intention of balancing
11 these interests. Staff did not concede issues in negotiations that shifted
12 Suburban's non-regulated costs to Suburban's ratepayers, or that resulted in
13 intergenerational inequities between current and future ratepayers. Where there
14 were areas in Staff's direct testimony that were determined to be incorrect or too
15 aggressive compared to the other positions taken by other parties, concessions
16 were made.

17 **Q. Does Staff believe the results of the Agreement are in the Public Interest?**

18 A. Yes. There were multiple interests represented by the parties involved in the
19 negotiations, with CURB representing the interests of ratepayers, Suburban
20 representing the interests of its management and shareholders, and Staff
21 attempting to balance each of those interests while representing the interests of the
22 public generally. The fact that these varied interests were able to collaborate and

1 present a unanimous resolution of the issues in this case, is a strong indication that
2 the public interest standard has been met.

3 As I indicated in my Direct Testimony, the U.S. Supreme Court has
4 identified three elements of a public interest test that can be used to examine
5 whether the results of an Agreement are in the public interest. These three
6 elements are (1) whether there is an impact on the financial ability of the utility to
7 continue to provide service; (2) whether there is an excessive burden on
8 customers; and (3) whether the resulting rates are unduly discriminatory. Each of
9 these factors is discussed below.

10 1. Staff's conclusion is that Suburban will be financially able to provide
11 utility services after this rate reduction. Suburban's management and ownership
12 were present during the negotiations, and they were represented by competent
13 council. Presumably, they would not have agreed to a reduction in rates if it
14 would jeopardize the utility's ability to continue to provide service.

15 2. Staff does not believe that these rates will cause an excessive burden on
16 Suburban's customers. In fact, this rate reduction should come as a welcome
17 relief to Suburban's customers.

18 3. The rates listed in the Agreement are applicable to all of Suburban's
19 customers; therefore, they are not unduly discriminatory.

20 Lastly, this Agreement, if approved, would avoid some of the cost of a
21 fully-litigated hearing, the expense of post-hearing briefs, etc. It is in the public
22 interest to avoid those costs if possible, and the Agreement accomplishes that.

23 **Q. Should the Commission accept the Agreement as a reasonable resolution of**

1 **the issues in this Docket?**

2 A. Yes. This Agreement constitutes a reasonable resolution of the issues in this
3 Docket, results in just and reasonable rates, and is in the public interest. The
4 Agreement is supported by substantial competent evidence in the record, and falls
5 soundly within the realm of reasonable debate and the zone of reasonableness.

6 **Q. Does that conclude your testimony?**

7 A. Yes it does.

CERTIFICATE OF SERVICE

12-SUBW-359-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff Testimony in Support of Stipulated and Agreement was placed in the United States mail, postage prepaid, or hand-delivered this 23rd day of April, 2012, to the following:

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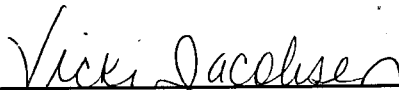
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