

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Mark Sievers, Chairman
Thomas E. Wright

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) Docket No. 12-SUBW-359-RTS
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.)

ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT

I. Introduction and Background.....	2
A. Authority.....	2
B. Interventions.....	4
C. Prefiled Testimony and Other Documents	4
D. Public Hearing and Comments.....	5
E. Settlement Hearing and Administrative Notice.....	6
II. Stipulation and Agreement.....	7
A. Introduction	7
B. Provisions of the S&A	8
C. Evaluation of the S&A	11
1. Was there an opportunity for the opposing party to be heard on the reasons for opposition to the S&A?	11
2. Is the S&A supported by substantial evidence in the record as a whole?	12
3. Does the S&A conform with applicable law?	18
4. Will the S&A result in just and reasonable rates?	19
5. Are the results of the S&A in the public interest, including the interest of the customers represented by the parties not consenting to the S&A?	21
III. Findings and Conclusions	22

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

I. Introduction and Background

1. On November 16, 2011, Suburban Water, Inc., d/b/a Suburban Water Company (Suburban Water), filed an Application with the Commission seeking approval to make certain changes in its rates for water service, for approval of an amendment to a contract for sale of water with the Board of Public Utilities (BPU), and for approval of a Purchased Water Adjustment (PWA) Tariff.

2. Suburban Water stated it is a corporation duly organized under the laws of the State of Kansas, and has its principal place of business at 1216 North 155th Street, Basehor, Kansas 66007.¹ Suburban Water stated it is duly authorized to transact business in Kansas, holds appropriate certificates from this Commission to transact business as a water public utility, and is now and has been engaged in the purchase, transmission, sale and distribution of water in Kansas in accordance with Kansas laws and the Rules and Regulations of the Commission.² Suburban Water provides retail water service to approximately 1,500 residential and small commercial customers, as well as wholesale water service to Rural Water Districts 6 and 10, in Leavenworth County, Kansas.³

A. Authority

3. The Commission has full power, authority, and jurisdiction to supervise and control miscellaneous public utilities in Kansas, as set forth in K.S.A. 66-1,230 through 66-1,233 and K.S.A. 66-104, and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction. Every miscellaneous public utility "shall be required to furnish reasonably efficient and sufficient service, joint service and facilities for the use of any and all products or services rendered, furnished, supplied or produced by such miscellaneous

¹ Application, November 16, 2011, paragraph 1 (Application, ¶ 1).

² Application, ¶ 3.

³ Application, ¶ 3.

public utility, to establish just and reasonable rates, joint rates, fares, tolls, charges and exactions and to make just and reasonable rules, classifications and regulations.”⁴ The Commission thus has the power to require miscellaneous public utilities to establish just and reasonable rates to maintain reasonably sufficient and efficient service.

4. The authority of the Commission as applied to miscellaneous public utilities is liberally construed, and in the application of its power, authority, and jurisdiction, “all incidental powers necessary to carry into effect the provisions of [the Miscellaneous Public Utilities Act, K.S.A. 66-1,230 *et seq.*] are expressly granted to and conferred upon the commission.”⁵ The Commission’s regulations address filing requirements for rate proceedings, and require utilities in rate proceedings to provide appropriate schedules and competent testimony so the Commission has all relevant facts and data necessary to determine rates that are fair, just, and reasonable to both the utility and the public.⁶

5. This case involves setting rates for Suburban Water’s customers in Kansas. The Commission must find that the rates are just and reasonable, and must evaluate whether the proposed rates are within a “zone of reasonableness” by taking into account various interests of all parties involved.⁷ The “zone of reasonableness” is an elusive range where the rates are most fair to the utility and its customers; the Commission has broad discretion to determine this zone of reasonableness and should seek to set rates that are not so unreasonably low or unreasonably high as to be unlawful. The Kansas Supreme Court has articulated that in rate-making cases, the parties whose interests must be considered and balanced are: (1) utility investors vs. ratepayers;

⁴ K.S.A. 66-1,232.

⁵ K.S.A. 66-101g.

⁶ K.A.R. 82-1-231.

⁷ *Farmland Industries, Inc. v. State Corp. Comm’n*, 24 Kan.App.2d 172, 195, 943 P.2d 470, 489 (1997).

(2) present ratepayers vs. future ratepayers; and (3) the public interest.⁸ The focus of the Commission's inquiry is on the end result or total effect of a rate order, rather than the specific rate-setting process.⁹

B. Interventions

6. The Commission granted the Citizens' Utility Ratepayer Board (CURB) intervention in this docket as the sole intervener.¹⁰

C. Prefiled Testimony and Other Documents

7. The Commission adopted a procedural schedule for this proceeding, which included the filing of prefiled testimony according to deadlines in the procedural schedule. In support of the Application, Suburban Water filed testimony of the following witnesses: Gregory L. Wilson (Wilson) and Gary Hanson (Hanson) with their Application on November 16, 2011. Suburban Water filed amendments to the following attachments to their application: Notice of Filing to Customers on December 12, 2011, and Amendment to Contract for Water Service on December 15, 2011.

8. On March 15, 2012, Commission Staff (Staff) filed Direct Testimony of: Justin T. Grady (Grady), William E. Baldry (Baldry), and Jaime T. Stamatson (Stamatson). Amended Testimonies of Grady and Baldry were filed the following day, March 16, 2012. Also on March 15, 2012, CURB filed the Direct Testimony of Stacey Harden (Harden).

9. Suburban Water filed Rebuttal Testimony on April 9, 2012, of the following witnesses: Wilson, Travis J. Miles (Miles), and Ray Breuer (Breuer).

⁸ *Kansas Gas & Elec. Co. v. State Corp. Comm'n*, 239 Kan. 483, 488-90, 720 P.2d 1063, 1070-72 (1986).

⁹ *Kansas Gas*, 239 Kan. at 489.

¹⁰ Order Designating Prehearing Officer and Granting Intervention to the Citizens' Utility Ratepayer Board, December 14, 2011.

10. Suburban Water and Staff requested the Commission amend the procedural schedule to permit the filing of prehearing briefs to address the following legal issues:

- a. Whether legal basis exists permitting the Board of Public Utilities (BPU) to impose a PILOT fee on wholesale water provided to Applicant?
- b. Whether BPU has imposed higher-than-needed rates and if so, whether such rates may be passed through to Applicant's customers as just and reasonable rates?
- c. Whether the contract between Applicant and BPU is sufficient to protect the interests of Applicant's customers?¹¹

The parties recommended the procedural schedule be amended to include the filing of prehearing briefs to be filed simultaneously on April 13, 2012.¹² The Prehearing Officer granted the parties' motion.¹³ On April 11, 2012, Suburban Water filed its prehearing brief. Staff and CURB filed their prehearing briefs the following day, April 12, 2012.

D. Public Hearing and Comments

11. Pursuant to the procedural schedule, a public hearing was held in this docket.¹⁴ Notice of Suburban Water's proposed rate increase and the public hearing was mailed to Suburban Water's customers and published in newspapers that circulate through Suburban Water's certified territory. The public hearing was held on Tuesday, February 21, 2012, at the Community Library, 1400 North 158th Street, Basehor, Kansas 66007. A total of 10 individuals spoke on the record.

12. The period for public comment ended May 1, 2012. A total of nine public comments were received by the Commission's Office of Public Affairs and Consumer Protection (PACP Office) and reviewed by the Commission in this matter.

¹¹ Joint Motion to Amend Procedural Schedule, February 23, 2012, paragraph 5 (February Motion, ¶ 5).

¹² February Motion, ¶ 6.

¹³ Prehearing Officer Order Granting Joint Motion to Amend Procedural Schedule, March 15, 2012.

¹⁴ Order Setting Procedural Schedule, January 11, 2012, paragraph 9; Transcript of Proceedings, February 21, 2012.

E. Settlement Hearing and Administrative Notice

13. A unanimous Stipulation and Agreement (S&A) was filed prior to the hearing, as discussed below. The Commission conducted a hearing on the S&A on May 7, 2012. At the hearing the following appearances were made: James G. Flaherty (Flaherty) on behalf of Suburban Water; Judy Jenkins (Jenkins) and Holly Fisher on behalf of Staff; and Niki Christopher (Christopher) on behalf of CURB.¹⁵

14. Staff reported on notice of the hearing. Hearing no objections, the Commission found notice was proper and the Commission had jurisdiction to hear the matter at that time and place.¹⁶

15. Parties requested the Commission take administrative notice of Docket No. 11-SUBW-448-RTS, including the prefiled testimony, exhibits, and Commission Orders.¹⁷ The Commission, on its own motion, took administrative notice of: (1) Docket No. 05-SUBW-104-RTS, Final Order, June 28, 2005; (2) Docket No. 05-SUBW-104-RTS, Interim Order, March 28, 2005; and (3) Docket No. 07-SUBW-1352-RTS, Order Approving Stipulated Settlement Agreement, January 25, 2008.¹⁸ Staff also requested the Commission take administrative notice of the Order on Application in Docket No. 10-SUBW-602-TAR, November 3, 2010.¹⁹ The Commission granted the requests and took administrative notice of the Orders.

16. Parties presented brief opening statements: Flaherty for Suburban Water, Jenkins for Staff, and Christopher for CURB.²⁰ Five witnesses testified at the hearing, and their prefiled testimony was admitted into the record. Wilson, Breuer, and Miles testified on behalf of

¹⁵ Transcript of Proceedings, May 7, 2012, pages 4-5 (Tr., pp. 4-5).

¹⁶ Tr., pp. 5-6.

¹⁷ Tr., p. 6.

¹⁸ Tr., pp. 6-7.

¹⁹ Tr., p. 9.

²⁰ Tr., pp. 10-26 (Flaherty); Tr., pp. 26-30 (Jenkins); Tr., pp. 30-34 (Christopher).

Suburban Water in support of the S&A.²¹ Harden testified on behalf of CURB in support of the S&A.²² Grady testified on behalf of Staff and the public generally in support of the S&A.²³

17. Upon request of the parties, the Commission admitted into the record all of the prefiled testimony and exhibits, including the testimony of Hanson on behalf of Suburban Water and the testimony of Baldry and Stamatson on behalf of Staff.²⁴

18. In deciding whether to grant the parties' Joint Motion and approve the S&A, the Commission has reviewed and considered the entire record, including prefiled testimony of witnesses and testimony at the evidentiary hearing. The Commission's decision, as reflected in this Order, is based upon a review of all issues raised in this rate case.

II. Stipulation and Agreement

A. Introduction

19. The Commission evaluated the evidence in the record as a whole regarding the proposed S&A in light of the following standards of review. The Commission has previously recognized its authority to approve settlements containing final terms that have been agreed to by the parties, but that do not reveal how the settlement terms were reached.²⁵

20. The law generally favors compromise and settlement of disputes between parties when they enter into an agreement knowingly and in good faith that settles the dispute.²⁶ When adopting a settlement, the Commission must make an independent finding that the settlement is supported by substantial competent evidence in the record as a whole, that the settlement will

²¹ Tr., pp. 34-78 (Wilson); Tr., pp. 78-108 (Breuer); Tr., pp. 178-182 (Miles).

²² Tr., pp. 109-134.

²³ Tr., pp. 134-177.

²⁴ Tr., p. 183.

²⁵ *Kansas Industrial Consumers Group, Inc. v. State Corp. Comm'n*, 36 Kan.App.2d 83, 90, 138 P.3d 338, 346 (2006).

²⁶ *Krantz v. University of Kansas*, 271 Kan. 234, 241-42, 21 P.3d 561, 567 (2001).

establish just and reasonable rates, and that the settlement is in the public interest.²⁷ The Commission has historically reviewed stipulations and agreements under a five-factor test previously established by the Commission that parties routinely utilize when presenting a settlement for consideration. The factors considered in deciding whether a settlement should be approved are:

1. *Was there an opportunity for the opposing party to be heard on the reasons for opposition to the Stipulation and Agreement?*
2. *Is the Stipulation and Agreement supported by substantial evidence in the record as a whole?*
3. *Does the Stipulation and Agreement conform with applicable law?*
4. *Will the Stipulation and Agreement result in just and reasonable rates?*
5. *Are the results of the Stipulation and Agreement in the public interest, including the interest of the customers represented by the parties not consenting to the Stipulation and Agreement?*

21. The five-factor test does not relieve the Commission of its duty to make a determination that rates are “just and reasonable” and that the results of the stipulation and agreement are in the public interest, which requires the Commission to carefully analyze the issues. As set forth in K.A.R. 82-1-230a(b), the Commission has authority to approve, reject or modify a unanimous settlement agreement. The Commission’s rules provide explicitly that “stipulations shall be regarded as evidence at the hearing and shall not be binding upon the Commission.”²⁸

B. Provisions of the S&A

22. The S&A, which is attached to the Joint Motion, resulted from discussions among all parties in this docket. Specifically, Suburban Water, Staff and CURB supported the S&A.

²⁷ *Citizens' Utility Ratepayer Board v. State Corp. Comm'n*, 28 Kan.App.2d 313, 316, 16 P.3d 319, 323 (2000), rev. denied March 20, 2011.

²⁸ K.A.R. 82-1-228(e)(3).

23. The S&A begins with a summary of Suburban Water's Application and its attached schedules, indicating a gross revenue deficiency of \$296,280, adjusted for known and measureable changes.²⁹ The S&A also includes a summary of Staff and CURB's prefiled positions.³⁰ The S&A in its entirety is attached to this Order as Attachment 2, although the terms of the S&A are summarized as follows:

- Stipulated Annual Revenue Decrease: Suburban Water's annual revenue requirement will be decreased by \$13,500,³¹ which includes Suburban Water's rate case expense and Staff's Adjustment IS-17 (Expired Rebates).³²
- Amortization Periods: Amortization periods are as follows: (1) Suburban Water's actual rate case expense – three years; and (2) Staff's Adjustment IS-17 (Expired Rebates) – five years.³³
- Personal Items Purchase: Suburban Water admits to allowing employees to purchase personal items using Suburban Water's credit cards, but has ceased this practice and agrees it shall be prohibited in the future. Suburban Water agrees to memorialize all employee loans in written loan agreements, and shall file these agreements with payment schedules in the scheduled upcoming abbreviated rate case. If Suburban Water fails to comply with this provision, the Commission shall require Suburban Water to pay a penalty to be determined by the Commission.³⁴
- Bidding Process: Suburban Water admits it did not implement a bidding process to ensure its Property, Plant and Equipment (PPE) was being installed at competitive prices, pursuant to the Commission's Interim Order, Docket No. 05-SUBW-104-RTS, March 28, 2005, paragraph 8. Suburban Water agrees it will bid out its routine and time sensitive maintenance and repair projects on a two-year cycle, and separately bid out all other projects on a project-by-project basis. Suburban Water also agrees it will bid out purchases of equipment and other materials more than \$2,500 that are available from competitive bidders, and maintain a file for each bid and written explanation for why a bid was selected. Suburban Water will file a compliance report with the Commission once a year detailing its efforts, and the initial compliance filing shall be included in the 2012 abbreviated rate case. If Suburban Water fails to comply with this provision, the Commission shall require Suburban Water to pay a penalty to be determined by the Commission.³⁵

²⁹ Stipulation and Agreement, April 23, 2012, paragraph 2 (S&A, ¶ 2).

³⁰ S&A, ¶¶ 4-6.

³¹ S&A, ¶ 10.

³² S&A, ¶ 11.

³³ S&A, ¶ 11.

³⁴ S&A, ¶ 12.

³⁵ S&A, ¶ 13.

- Employee and Non-Employee Personal Expenses: Suburban Water shall discontinue paying for cable television and satellite radio services previously provided for its employees, and shall discontinue paying cell phone expenses for non-employees. If Suburban Water fails to comply with this provision, the Commission shall require Suburban Water to pay a penalty to be determined by the Commission.³⁶
- Regulatory Expense Recovery: Suburban Water agrees to pay the Commission \$6,165 for excessive regulatory expenses incurred in its previous rate case and as set forth in the Commission's Order on Application, Docket No. 11-SUBW-448-RTS, June 3, 2011, paragraph 58; and in the Order on Petition for Reconsideration, Docket No. 11-SUBW-448-RTS, July 18, 2011, paragraph 10. This shall be paid by Suburban Water during fiscal year 2014 into a newly created Docket No. 12-SUBW-359-FIN.³⁷
- Rental Payments: Suburban Water shall require Ray Breuer to apply at least \$30,000 per year of the rental payments he receives from Suburban Water to the note he owes to Suburban Water until his debt has been paid in its entirety.³⁸
- Withdrawal of PWA: Suburban Water agrees to withdraw its request for a PWA tariff in this case.³⁹
- Approval of BPU Contract Amendment: The parties agree the BPU contract amendment should be approved by the Commission.⁴⁰
- New Ground Water Supplies: Suburban Water will incur the costs to conduct preliminary work required to determine if new ground water supplies are located near its distribution system, and Suburban Water may establish a deferred account for costs of this work so it can seek recovery in its next rate case following the abbreviated rate case. Suburban Water will file with the Commission a report of the preliminary work and its recommendation on how to proceed.⁴¹
- Abbreviated Rate Case: Suburban Water shall use an abbreviated rate case to seek recovery of the January 1, 2013 BPU rate increase in its wholesale rate to Suburban Water. The terms of the abbreviated rate case are set out in detail in the S&A.⁴²
- Regulated/Non-Regulated Operations: In its next full rate case, Suburban Water agrees to develop cost allocation ratios for facilities and employees that serve

³⁶ S&A, ¶¶ 14-15.

³⁷ S&A, ¶ 16.

³⁸ S&A, ¶ 17.

³⁹ S&A, ¶ 18.

⁴⁰ S&A, ¶ 19.

⁴¹ S&A, ¶ 20.

⁴² S&A, ¶ 21.

regulated and non-regulated businesses, which will be applied where recovery of some costs include regulated and non-regulated operations.⁴³

- Rate Design: The monthly customer charge shall remain at \$20.00 per month per customer for Suburban Water, which shall continue to include the customer's first 1,000 gallons of water usage. The commodity charge shall be \$7.74 per 1,000 gallons for all sales over 1,000 gallons.⁴⁴
- Minimum Standards for Bill Payment Methods: Suburban Water agrees to implement Section XV of its tariff to ensure customer payments are processed in compliance with Commission billing standards.⁴⁵

C. Evaluation of the S&A

24. The Commission evaluated the S&A by reviewing the five criteria previously identified to determine whether a specific settlement reached by the parties should be approved. Each criterion will be considered separately.

1. Was there an opportunity for the opposing party to be heard on the reasons for opposition to the S&A?

25. Suburban Water, Staff and CURB all support the S&A. Suburban Water stated all parties met on April 13, 2012, to collectively discuss the issues, and that a settlement of all issues was reached.⁴⁶ CURB stated each party had a full and complete opportunity to be heard.⁴⁷ Staff stated that the negotiations were tough, thorough, and included substantive discussions of issues.⁴⁸

26. The record shows that no parties were denied an opportunity to be heard on the Application or on the S&A. The procedural schedule set forth a full opportunity for all parties to

⁴³ S&A, ¶ 22.

⁴⁴ S&A, ¶ 23.

⁴⁵ S&A, ¶ 24.

⁴⁶ Testimony of Gregory L. Wilson in Support of the Stipulation and Agreement, April 23, 2012, pages 8-9 (Wilson Support, pp. 8-9).

⁴⁷ Testimony in Support of Settlement of Stacey Harden, April 23, 2012, page 4 (Harden Support, p. 4).

⁴⁸ Staff Testimony in Support of Stipulation and Agreement Prepared by Justin T. Grady, April 23, 2012, page 8 (Grady Support, p. 8).

present evidence on the issues, and all parties were given the opportunity to participate in the settlement conference and negotiations, as well as participate in the settlement hearing.

27. The Commission finds that all parties support the S&A and there was an opportunity for all parties to be heard on the S&A.

2. Is the S&A supported by substantial evidence in the record as a whole?

28. Substantial competent evidence is that which possesses something of substance and relevant consequence, and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved.⁴⁹ Whether another trier of fact or another party could have reached a different conclusion given the same facts is irrelevant; a decision of the Commission is considered not to be supported by substantial competent evidence “only when the evidence shows the [Commission’s] determination ‘is so wide of the mark as to be outside the realm of fair debate.’”⁵⁰ The focus of the Commission’s inquiry is on the S&A and evidence in support of the agreement. The Commission will not attempt to summarize the entire record supporting the S&A in this matter.

29. This Order has listed names of witnesses who submitted prefiled direct, amended direct, and rebuttal testimony that, as a whole, supported the parties’ positions. Four witnesses offered testimony in support of the S&A filed in conjunction with the S&A and also through their live testimony at the hearing. These four witnesses, Breuer and Wilson for Suburban Water, Harden for CURB, and Grady for Staff, outlined the elements of the S&A and reviewed the five-factor test the Commission utilizes to evaluate settlement agreements, and supported the

⁴⁹ *Kansas Gas & Elec. Co. v. State Corp. Comm’n*, 14 Kan.App.2d 527, 532 (quoting *Southwestern Bell Tel. Co. v. State Corp. Comm’n*, 4 Kan.App.2d 44, 46, 602 P.2d 131 (1979), rev. denied 227 Kan. 927 (1980)).

⁵⁰ *Zinke & Trumbo, Ltd. v. State Corp. Comm’n*, 242 Kan. 470, 474 (1988).

S&A as a whole in light of respective and independent litigation risks.⁵¹ All prefiled testimony was admitted as part of the record, and the Commission has reviewed and considered all such testimony, including materials referenced and incorporated in such testimony. In addition to reviewing prefiled testimony and testimony of witnesses at the hearing, the Commission has considered statements by ratepayers and members of the public who testified at the public hearing and filed comments with the Commission's PACP Office. The Commission has also reviewed the briefs filed by Suburban Water and Staff in support of the S&A.⁵²

30. Suburban Water filed an Application with its testimony in support of its request as well as rebuttal testimony. Staff and CURB analyzed Suburban Water's Application, formulated their own respective positions, and supported their respective conclusions through prefiled testimony addressing the issues in this case. Staff stated the parties relied on this evidence in negotiations, and thus the S&A is supported by Suburban Water's Application and all prefiled testimony in this docket. Staff stated this prefiled testimony provides the body of evidence from which the Commission would make a ruling if the case were fully litigated.⁵³

31. Stipulated Annual Revenue Decrease. Suburban Water's Application indicated a gross revenue deficiency of \$296,280.⁵⁴ Staff initially recommended that the Commission decrease Suburban Water's revenue requirement by \$71,555.⁵⁵ Staff's revised revenue requirement would have been approximately a decrease of \$52,000, after accounting for corrections in payroll expense adjustment and with a rate case expense update.⁵⁶ CURB initially

⁵¹ Grady Support; Harden Support; Wilson Support; Testimony of Ray Breuer in Support of Stipulation and Agreement, April 23, 2012 (Breuer Support).

⁵² Brief of Suburban Water Company in Support of Stipulation and Agreement, May 23, 2012 (Suburban Water Brief); Staff's Post-Hearing Brief in Support of Stipulation and Agreement, June 4, 2012 (Staff Brief).

⁵³ Grady Support, p. 8.

⁵⁴ Application, ¶ 9.

⁵⁵ Amended Direct Testimony Prepared by Justin T. Grady, March 16, 2012, page 7 (Grady Amended Direct, p. 7).

⁵⁶ Grady Support, pp. 3-4.

recommended the Commission deny Suburban Water's request for a rate increase.⁵⁷ The parties to the S&A agreed to an overall annual revenue decrease of \$13,500 as part of their "black box" settlement.⁵⁸ In supporting this agreed-upon decrease, Staff witness Grady, "There is not an exact determination identified in the agreement, therefore each party may have a different understanding of the concessions agreed to in order to produce this result."⁵⁹

32. Amortization Periods. Suburban Water will be allowed to amortize its actual rate case expense over three years, and amortize Staff's Adjustment IS-17 for Expired Rebates over five years. CURB recommended Suburban Water be allowed to collect its rate case expenses over a three year period.⁶⁰ Staff discussed the IS-17 Adjustment in testimony.⁶¹

33. Personal Items Purchase. Suburban Water agreed to cease the practice of allowing employees to purchase personal items using Suburban Water's credit cards, and agreed to memorialize all employee loans in written agreements and file these with the Commission.⁶² In its Direct Testimony, Staff provided discussion about these issues and expressed its concern about this practice. Staff recommended the Commission order Suburban Water to report to the Commission periodically to conclusively demonstrate that it has indeed ceased this activity, and be required to demonstrate this before its next abbreviated rate case.⁶³

34. Bidding Process. Suburban Water agreed to bid out certain projects on a two-year cycle, and separately bid out all other projects on a project-by-project basis.⁶⁴ Suburban Water agreed to bid out purchases of equipment and other materials more than \$2,500 that are available from competitive bidders, and maintain a file for each bid with a written explanation for why a

⁵⁷ Direct Testimony of Stacey Harden, March 15, 2012, page 50 (Harden Direct, p. 50).

⁵⁸ S&A, ¶ 10.

⁵⁹ Grady Support, p. 9.

⁶⁰ Harden Direct, p. 37.

⁶¹ Grady Amended Direct, pp. 31-33.

⁶² Breuer Support, p. 2; Rebuttal Testimony of Ray Breuer, April 9, 2012, pages 13-14 (Breuer Rebuttal, pp. 13-14).

⁶³ Grady Amended Direct, pp. 12-16.

⁶⁴ Breuer Support, p. 3; Breuer Rebuttal, p. 14.

bid was selected.⁶⁵ Suburban Water agreed to file a compliance report with the Commission once a year detailing its efforts, with the initial compliance filing in the 2012 abbreviated rate case.⁶⁶ The Commission is authorized to charge a penalty to Suburban Water for failure to comply.⁶⁷ Staff questioned whether Suburban Water was in compliance with the Commission's directive on a bidding process, to conclusively demonstrate Suburban Water is paying market competitive rates to install its PPE. Staff recommended Suburban Water report to the Commission its efforts regarding this initiative.⁶⁸

35. Employee and Non-Employee Personal Expenses. Suburban Water agreed to stop paying for cable television and satellite radio services previously provided for its employees, and shall discontinue paying cell phone expenses for non-employees.⁶⁹ The Commission is authorized to charge a penalty to Suburban Water for failure to comply.⁷⁰ Staff expressed concern with the potential abuses that existed with Suburban Water providing nonmonetary fringe benefits to employees, and did not find this to be reasonable.⁷¹ CURB stated that ratepayers should not bear the cost of premium cable television services provided at the home of a Suburban Water employee, and recommended that all charges associated with cell phone expenses for non-employees not be allowed.⁷²

36. Regulatory Expense Recovery. Suburban Water agreed to pay \$6,165 to the Commission for excessive regulatory expense incurred in its previous rate case. This term of the

⁶⁵ Breuer Support, p. 3.

⁶⁶ Breuer Support, p. 3.

⁶⁷ S&A, ¶ 13.

⁶⁸ Grady Direct, pp. 17-28.

⁶⁹ Breuer Support, pp. 3-4; Breuer Rebuttal, p. 13.

⁷⁰ S&A, ¶¶ 14-15.

⁷¹ Amended Direct Testimony Prepared by William E. Baldry, March 16, 2012, pages 12-13.

⁷² Harden Direct, p. 28.

S&A is consistent with Staff's analysis on the issue, as Staff recommended these costs not be borne by the ratepayers, but instead by Suburban Water's shareholders.⁷³

37. Rental Payments. Suburban Water shall require Ray Breuer to apply at least \$30,000 per year of the rental payments he receives from Suburban Water to the note he owes to Suburban Water until his debt has been paid in its entirety.⁷⁴ Suburban Water agreed to have the rent monies owed to Mr. Breuer be applied to his note receivable until his debt has been paid.⁷⁵

38. Withdrawal of PWA. Suburban Water agreed to withdraw its request for a PWA tariff in this case.⁷⁶ Suburban Water initially requested a PWA tariff, as the company has become increasingly more dependent on purchased water.⁷⁷ Staff initially recommended that the Commission not approve Suburban Water's request to implement a PWA, as it felt the request was premature and unnecessary at this time.⁷⁸ CURB also recommended the Commission deny the request, as this request will be addressed in Suburban Water's next abbreviated rate case.⁷⁹

39. Approval of BPU Contract Amendment. The parties agreed that the BPU contract amendment should be approved by the Commission.⁸⁰ Suburban Water negotiated an amendment to its water supply contract with BPU to extend the term of the contract and memorialize current practices.⁸¹ Staff made this recommendation in its testimony and in its prehearing brief on this issue.⁸²

40. New Ground Water Supplies. Suburban Water agreed to incur the costs to determine if new ground water supplies are located near its distribution system, and file a report

⁷³ Grady Direct, pp. 44-47.

⁷⁴ S&A, ¶ 17.

⁷⁵ Breuer Support, p. 4; Breuer Rebuttal, pp. 13-14.

⁷⁶ S&A, ¶ 18.

⁷⁷ Direct Testimony of Gregory L. Wilson, November 16, 2011, pages 7-12 (Wilson Direct, pp. 7-12).

⁷⁸ Grady Amended Direct, pp. 5, 49-51.

⁷⁹ Harden Direct, pp. 50-53.

⁸⁰ S&A, ¶ 19.

⁸¹ Wilson Direct, p. 12.

⁸² Grady Amended Direct, pp. 4-5; Staff's Prehearing Brief, April 12, 2012, pages 8-11.

and its recommendation to the Commission on how to proceed. Suburban Water initially requested the Commission allow it to recover the costs for these studies.⁸³ Staff initially recommended the Commission examine whether it should approve a ground water study to assess the likelihood of finding additional ground water supplies in the vicinity of Suburban Water's service territory.⁸⁴

41. Abbreviated Rate Case. The parties agreed to continue to use the abbreviated rate case procedure set forth in Staff's September 23, 2010 letter to Suburban Water, describing the three-year rate case plan.⁸⁵ Suburban Water shall use an abbreviated rate case to seek recovery of the January 1, 2013 BPU rate increase in its wholesale rate to Suburban Water. The terms of the abbreviated rate case are set out in detail in the S&A.⁸⁶

42. Regulated/Non-Regulated Operations. In its next full rate case, Suburban Water agrees to develop cost allocation ratios for facilities and employees that serve regulated and non-regulated businesses, which will be applied where recovery of some costs include regulated and non-regulated operations.⁸⁷ Suburban Water agreed to cooperate fully with Staff's investigation into whether other family-owned businesses have been co-mingled with Suburban Water's operations, and if so, determine what appropriate allocations should be made.⁸⁸

43. Rate Design. The parties agreed to maintain the monthly customer charge at \$20.00 per month per customer for Suburban Water, which shall continue to include the customer's first 1,000 gallons of water usage, and a commodity charge of \$7.74 per 1,000 gallons for all sales over 1,000 gallons. Suburban Water initially proposed a customer charge of

⁸³ Breuer Rebuttal pp. 8-13.

⁸⁴ Grady Amended Direct, pp. 4-5, 47-51.

⁸⁵ Suburban Water Brief, ¶ 15.

⁸⁶ S&A, ¶ 21.

⁸⁷ S&A, ¶ 22.

⁸⁸ Suburban Water Brief, ¶ 16.

\$21.00 per month per customer, excluding the cost of water.⁸⁹ Staff initially proposed a rate design in its direct testimony to recover costs equal to Staff's proposed revenue requirement.⁹⁰

44. Minimum Standards for Bill Payment Methods. Suburban Water agreed to implement Section XV of its tariff to ensure customer payments are processed in compliance with Commission billing standards.⁹¹ CURB initially recommended the Commission require Suburban Water to file a tariff to establish a schedule of fees to be charged to customers paying with credit cards, in light of the Commission's established billing standards.⁹²

45. Conclusion. The Commission has weighed the testimony and pleadings of all parties, and after reviewing the record as a whole, finds that substantial competent evidence exists in the record as a whole to support the S&A.

3. Does the S&A conform with applicable law?

46. The applicable law and legal standards that the Commission examined in this docket are set forth above, and will not be reiterated here.

47. Suburban Water stated that the S&A was fully and fairly negotiated, represents a reasonable compromise based on all parties' prefiled positions, and will result in just and reasonable rates for Suburban Water's customers.⁹³ Suburban Water stated that Kansas law recognizes strong policy favoring and encouraging settlements, and that the legal standard for reviewing the reasonableness of settlements requires the Commission to make a finding, supported by substantial competent evidence, that the settlement will establish just and reasonable rates.⁹⁴ Suburban Water stated that standard is met in this case.⁹⁵ Staff witness

⁸⁹ Wilson Direct, p. 7.

⁹⁰ Direct Testimony of Jaime T. Stamatson, March 15, 2012, pages 1-2.

⁹¹ S&A, ¶ 24.

⁹² Harden Direct, pp. 39-40.

⁹³ Wilson Support, p. 9.

⁹⁴ Wilson Support, pp. 9-10.

⁹⁵ Wilson Support, p. 10.

Grady stated that although he is not an attorney, he has been advised by counsel that the S&A follows precedent established for similar settlements approved by the Commission in the past.⁹⁶

48. The Commission has carefully examined its authority and the legal standards that apply in this proceeding, through case law, statutes applicable to the Commission, and its rules and regulations. After a review of the agreement made between the parties, the Commission concludes the S&A conforms to applicable law.

4. Will the S&A result in just and reasonable rates?

49. As set forth above, miscellaneous public utilities are required to establish just and reasonable rates, and the Commission has the power to require Suburban Water to establish and maintain just and reasonable rates in order to maintain reasonably sufficient and efficient service.⁹⁷ As noted above, case law indicates the focus is on the end result or the total effect of a rate order, rather than specific rate-setting methods, and just and reasonable rates can be determined by the “zone of reasonableness” test adopted by Kansas courts.

50. Suburban Water states that the agreed-upon revenue decrease of \$13,500 falls within the range of the revenue requirement proposed by Staff, CURB, and Suburban Water.⁹⁸ Suburban Water states that this is not by itself conclusive evidence of the reasonableness of the stipulated revenue requirement, but that Kansas law indicates the Commission’s goal in ratemaking should be to set a rate that falls within a “zone of reasonableness” after applying a balancing test in which the interests of all concerned parties are accounted for, and that the stipulated revenue decrease of \$13,500 falls within the zone of reasonableness when one considers it is well within the position of the parties.⁹⁹ Suburban Water stated that the rates in

⁹⁶ Grady Support, p. 9.

⁹⁷ K.S.A. 66-1,232.

⁹⁸ Wilson Support, p. 11.

⁹⁹ Wilson Support, pp. 11-12.

the S&A will give it an opportunity to recover its costs of providing service to its customers and to earn a reasonable margin of 6%.¹⁰⁰ Suburban Water stated that the S&A will result in a \$0.12 per 1,000 gallons reduction in Suburban Water's commodity rate from \$7.86 to \$7.74,¹⁰¹ which would result in a reduction in the average monthly bill for a customer using 7,000 gallons/month from \$67.16 to \$66.44, or a \$0.72/month decrease for the average residential customer.¹⁰²

51. Staff stated that the rates in the S&A fall within the "zone of reasonableness" described by Kansas courts in which the result is balanced between the interests of investors vs. ratepayers, present vs. future ratepayers, and the public interest generally.¹⁰³ CURB stated the S&A results in just and reasonable rates, since the rate charged to Suburban Water's retail customers will decrease from the current \$7.86 to \$7.74 per 1,000 gallons.¹⁰⁴ CURB also stated that the S&A requires Suburban to cease its current employee purchasing procedures, memorialize all employee notes into written loan agreements, and implement a competitive bidding process, all of which protect Suburban Water residential customers and ensure that retail rates are just and reasonable.¹⁰⁵

52. The Commission has reviewed the S&A in light of the "zone of reasonableness" test and with the positions of the parties in their support of the annual revenue decrease, as well as the parties' prefiled positions. The Commission has balanced the competing interests it must take into account in setting rates, and finds that the agreed-upon revenue decrease falls within the "zone of reasonableness" set forth by the courts. The S&A reflects compromises by the parties based on their evaluation of litigation risk, and allows Suburban Water to meet its statutory

¹⁰⁰ Suburban Water Brief, ¶ 40.

¹⁰¹ Suburban Water Brief, ¶ 18.

¹⁰² Suburban Water Brief, ¶ 2; Tr., pp. 73-74.

¹⁰³ Grady Support, p. 10.

¹⁰⁴ Harden Support, p. 5.

¹⁰⁵ Harden Support, p. 5.

obligation to provide efficient and sufficient service at a just and reasonable price for its customers. The Commission concludes the rates resulting from approval of the S&A will result in just and reasonable rates for Suburban Water and its customers.

5. Are the results of the S&A in the public interest, including the interest of the customers represented by the parties not consenting to the S&A?

53. As set forth above, when determining whether a settlement meets the public interest standard, the Commission must balance the following: (1) utility investors vs. ratepayers, (2) present ratepayers vs. future ratepayers, and (3) the public interest. The proper focus is on the end result or total effect of the rate order, rather than the rate-setting method.¹⁰⁶

54. Suburban Water stated that each party has a duty to protect the interests of the party it represents, and that the "total effect" of the terms of the S&A will result in just and reasonable rates and represents an equitable balancing of the interest of all parties.¹⁰⁷ Suburban Water stated that the S&A is in the public interest because it provides the company with a revenue requirement sufficient to provide efficient and sufficient service, results in a slight reduction in rates, and establishes prohibitions and requirements relating to certain business practices of the utility.¹⁰⁸ The S&A also approves the BPU contract amendment that allows Suburban Water to provide its customers with a long-term, reasonably priced and reliable source of water, and separately requires Suburban Water to pay for a hydrology study to determine whether there is additional ground water supply nearby its distribution system.¹⁰⁹

55. Staff stated that there were multiple interests represented by the parties involved in the settlement negotiations, with CURB representing the interests of ratepayers, Suburban

¹⁰⁶ *Kansas Gas*, 239 Kan. at 489.

¹⁰⁷ Wilson Support, p. 14.

¹⁰⁸ Suburban Water Brief, ¶ 42.

¹⁰⁹ Suburban Water Brief, ¶ 42.

Water representing the interests of its management and shareholders, and Staff attempting to balance each of those interests while representing the interests of the public generally.¹¹⁰

56. The S&A is supported by all parties in the docket, and includes compromises by parties on several positions. The total effect of the terms of the S&A represents an equitable balancing of the interests of all parties. In reviewing the S&A presented by the parties, the Commission has considered that the stipulated revenue requirement will result in a decrease in rates to customers, and will still provide Suburban Water sufficient revenue to meet its financial obligations and provide reliable service. The Commission finds that approval of the S&A is in the public interest.

III. Findings and Conclusions

57. The Commission approves of the S&A as presented by the parties. The Commission finds that all parties have had an opportunity to be heard on the S&A and it is supported by substantial competent evidence when viewed in light of the record as a whole. The S&A conforms to applicable law and will result in just and reasonable rates that are in the public interest, and will allow Suburban Water an opportunity to recover its prudently incurred costs.

58. The parties to the S&A agreed that Suburban Water shall use the abbreviated rate case procedure to seek recovery of the January 1, 2013 BPU rate increase in its wholesale rate charged to Suburban Water, as contemplated and summarized in Staff's letter dated November 23, 2010, to Suburban Water.¹¹¹ The parties set forth the terms of the abbreviated rate case, which are summarized as follows: (1) Suburban Water shall utilize a 12-month test year ending September 30, 2012; (2) Suburban Water shall hold a public meeting with its customers regarding its abbreviated rate case filing; (3) the PILOT Fee collected in the amount of \$7,467

¹¹⁰ Grady Support, p. 10.

¹¹¹ S&A, ¶ 21.

will be refunded to customers by virtue of it being included in the revenue requirement reduction of \$13,500, and shall be addressed in the abbreviated rate case; (4) Suburban Water shall include copies of its outstanding loan agreements and payment schedules with its employees so Staff and CURB can confirm Suburban Water is in compliance with the S&A; and (5) Suburban Water shall provide Staff and CURB access to Suburban Water's files and records so the parties can confirm Suburban Water is implementing a competitive bidding process, as set forth in the S&A.¹¹² The Commission must approve use of an abbreviated rate-setting process pursuant to K.A.R. 82-1-231(b)(3).

59. The Commission specifically approves of Suburban Water filing an abbreviated rate-setting proceeding, as agreed to by the parties in the S&A, ¶ 21, and as set forth in K.A.R. 82-1-231(b)(3)(B). All regulatory procedures and principles are adopted for the abbreviated proceeding, as set forth in K.A.R. 82-1-231(b)(3)(A). Suburban Water has 12 months from the date of this Order to file for its abbreviated proceeding, pursuant to K.A.R. 82-1-231(b)(3).

60. At the hearing on the S&A, the Commission questioned Suburban Water on its succession plan.¹¹³ On that subject, in addition to the items the parties to the S&A agreed that Suburban Water shall file with its Application in its upcoming abbreviated rate case, the Commission also directs Suburban Water to develop a succession plan demonstrating the process and structure it has in place to ensure that the utility's objectives will continue to be met in the future, and file this succession plan with its Application in its upcoming abbreviated rate case.

61. The Commission expresses its dismay at Suburban Water's failure to comply with previous Commission Orders in past dockets, although the Commission acknowledges that several of those failures are addressed in the S&A in this docket. The Commission has attached

¹¹² S&A, ¶ 21.

¹¹³ Tr., pp. 79-82, 99-105.

to this Order a list of previous dockets with Commission Orders and the directives the Commission gave to Suburban Water in each order, as Attachment 1.

62. The Commission directs Suburban Water to make compliance filings in a new compliance docket to be opened, to track the progress Suburban Water is making to comply with Commission Orders. If Suburban Water has in fact complied with these orders of the Commission, Suburban Water should state such in its first compliance filing in the new docket and provide evidence of its compliance. Suburban Water shall make its first compliance filing on September 4, 2012, and shall make monthly filings thereafter on the first Monday of each month, until the Commission is satisfied that Suburban Water has complied with all Commission Orders. The compliance filing shall include a report by Suburban Water detailing the steps it has taken to comply with each Commission directive, and include any evidence in support of Suburban Water's compliance. If Suburban Water has not complied with Commission directives, Suburban Water shall state such and provide explanation for noncompliance. Suburban Water shall include a cover page on all such filings, captioned "In the Matter of Suburban Water's Compliance Filings as required by Commission Order dated July 11, 2012 in Docket No. 12-SUBW-359-RTS." To the extent any such filing or portion thereof is confidential, Suburban Water shall adhere to K.A.R. 82-1-221a. Any of the items listed in Attachment 1 that have been resolved through the S&A in this docket may be reported as such in Suburban Water's first compliance filing. The Commission will consider compliance with Commission Orders as a factor in the upcoming abbreviated rate case.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission grants the Joint Motion and approves the Stipulation and Agreement.

B. The Commission specifically approves of Suburban Water filing an abbreviated rate-setting proceeding, as agreed to by the parties in the S&A, ¶ 21, and as set forth in K.A.R. 82-1-231(b)(3)(B). All regulatory procedures and principles are adopted for the abbreviated proceeding, as set forth in K.A.R. 82-1-231(b)(3)(A). Suburban Water has 12 months from the date of this Order to file for its abbreviated proceeding, pursuant to K.A.R. 82-1-231(b)(3). Suburban Water shall file its succession plan in the abbreviated rate case, as set forth above in paragraph 60.

C. The Commission directs Suburban Water to make its required compliance filings, as set forth above in paragraphs 61 and 62, with the first compliance filing being filed on September 4, 2012, and monthly filings thereafter on the first Monday of each month, until the Commission is satisfied that Suburban Water has complied with all Commission Orders.

D. The Commission orders service of this order be made by electronic mail, with a note that no hard copy of this Order will follow. Parties have 15 days from the date of electronic service of this Order in which to petition the Commission for reconsideration. K.S.A. 66-118b; K.S.A. 2011 Supp. 77-529(a)(1).

E. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chairman; Wright, Commissioner

Dated: JUL 11 2012



ORDER MAILED JUL 11 2012

Patrice Petersen-Klein
Executive Director

mrd

Previous Commission Orders to Suburban Water Company

Docket No. 05-SUBW-104-RTS, Interim Order, March 28, 2005

1. Suburban shall implement the Uniform System of Accounts for Class "C" water utilities. Paragraph 8(b).
2. Suburban shall keep Minutes for each Board of Directors' Meeting. Paragraph 8(c).
3. Suburban shall cease the practice of allowing employees of Breuer, Inc. to purchase personal items through Suburban. Paragraph 8(d).
4. Suburban shall implement a bidding process ensuring that the company's property, plant and equipment are being purchased and installed at competitive prices. Paragraph 8(e).
5. Suburban's management agreements shall include specific dollar amounts for the services other persons or companies render to Suburban and the agreements shall be filed with the Commission. Paragraph 8(f).

Docket No. 07-SUBW-1352-RTS, Order Approving Stipulated Settlement Agreement, January 25, 2008

1. SWC agreed to record its unmetered water usage each month, which includes water used to flush lines and at fire hydrants. Paragraph 12.
2. SWC agreed to maintain a schedule of property, plant and equipment that contains enough information to enable Staff to calculate each year's depreciation expense using Commission-approved equipment lives. Paragraph 13.

Docket No. 11-SUBW-448-RTS, Order on Application, June 3, 2011

1. The Commission finds Suburban has not provided all the information agreed to in the November 23, 2010 Letter, page 2, and, for this reason, lists those items here. The Letter states Suburban agreed to submit the following information:
 - a. A comparison of what Suburban's wells were capable of producing in the year 2000 vs. customer demand at the time;
 - b. A comparison of what wells are currently capable of producing vs. current customer demand;
 - c. A list of potential water supply sources in 2000 (including the potential to drill new wells) and estimated costs of each of those sources, with supporting documentation;
 - d. A list of potential water supply sources in 2010 (including the potential to drill new wells) and estimated costs of each of those sources, with supporting documentation;

- e. Suburban's interpretation of the terms and conditions of its contract with BPU and why the contract requires Suburban to pay BPU's wholesale water rate, including the PILOT;
 - f. A list of water utilities located in Leavenworth County and their source of water supply and what they pay for their water supply; and
 - g. A summary of Suburban's involvement in BPU's recent rate case and the outcome of that rate case (with supporting documentation of the rate increase for 2011 that is sought to be recovered in the rate case filing). Paragraph 6.
2. Staff identified additional items in the November 23, 2010 Letter, page 2, that Suburban should discuss to address Commissioners' concerns identified in the November 3, 2010 Order, as follows:
- a. Suburban's ability to mix Suburban's well water supply with BPU's water;
 - b. Whether the water Suburban is buying from BPU is surplus water that BPU will not need in the future;
 - c. Whether Suburban customers will be paying for free water services for the Kansas City Unified Government;
 - d. Suburban's future needs and the costs to renovate or expand its own water resources;
 - e. Whether the PILOT fee is a payment in lieu of taxes, as a service charge, or an administrative charge paid to the Unified Government;
 - f. The basis for the PILOT fee;
 - g. Suburban's recent attempts to find other sources of water; and
 - h. Evidence of anticipated growth in Suburban's service area and future water demand. Paragraph 6.
3. Mere oral or email assurances from BPU employees is not sufficient to ensure a long-term water resource. Suburban must address this issue, such as through an Addendum to the Water Contract, before the Commission will consider a subsequent request for a permanent rate increase to recover increased charges for BPU wholesale water. Paragraph 29.
4. The Commission directs parties to determine, for purposes of Suburban's next rate case, what portion of the revenue increase granted in this Order is attributable to PILOT fee charges. Any amount recovered by Suburban between this decision and the next rate case that is attributable to PILOT fee charges shall be determined and addressed in the next rate case. Paragraph 35.
5. The Commission finds parties have not fully addressed the legal arguments regarding whether BPU has imposed higher-than-needed rates and whether such rates can be passed through to Suburban's customers as just and reasonable under K.S.A. 66-1,232. Paragraph 39.

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE 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) Docket No. 12-SUBW-359-RTS
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

STIPULATION AND AGREEMENT

I. INTRODUCTION

As a result of extensive discussions between Suburban Water, Inc., d/b/a Suburban Water Company ("Suburban"), the Staff of the State Corporation Commission of the State of Kansas ("Staff"), and the Citizens' Utility Ratepayer Board ("CURB") (referred to collectively as the "Parties"), the Parties hereby submit to the Kansas Corporation Commission ("Commission") for its consideration and approval the following Stipulation and Agreement ("Stipulation").

II. SUBURBAN'S APPLICATION

1. On November 16, 2011, Suburban filed an Application with the Commission seeking approval to make certain changes in its rates for water service, for approval of an amendment to a contract for sale of water with the Board of Public Utilities ("BPU"), and for approval of a Purchase Water Adjustment ("PWA") tariff. *See*, Docket No. 12-SUBW-359-RTS, Application, filed November 16, 2011 (Application).

2. Suburban further alleged in its Application that the schedules filed with the Application indicated a gross revenue deficiency of \$296,280.00, adjusted for known and measurable changes. *See*, Application, paragraph 9.

3. In support of its Application, Suburban submitted the testimony of two witnesses and the schedules required by K.A.R. 82-1-231, as modified by the waiver approved by the Commission in its Order dated January 4, 2012. *See*, Docket No. 12-SUBW-359-RTS, Order Granting Waiver, issued January 4, 2012.

III. STAFF AND OTHER PARTIES' PREFILED POSITIONS

4. On March 15, 2012, Staff filed its direct testimony and schedules in the above docket. Staff is recommending a rate decrease of \$71,555.00 for Suburban; approval of the BPU contract amendment; and denial of Suburban's request to implement a PWA tariff.

5. CURB also filed testimony and schedules in which it recommended the Commission deny both Suburban's request for an increase because Suburban's adjusted revenues exceed its adjusted test year expense and Suburban's request to implement a PWA tariff.

6. Both Staff and CURB also made recommendations relating to several business practices of Suburban identified in this Stipulation.

7. Suburban filed rebuttal testimony on April 9, 2012.

8. Suburban, Staff and CURB filed prehearing briefs addressing several issues relating to Suburban's BPU contract which were identified by the Commission in previous dockets.

9. Subsequently, on April 13, 2012, the Parties met collectively to discuss the possible settlement of the issues in this matter.

IV. TERMS OF THE STIPULATION

After extensive negotiations, the Parties have agreed upon the following terms:

A. STIPULATED ANNUAL REVENUE DECREASE

10. The Parties agree that Suburban's request for an increase in its revenue requirement be denied and its annual revenue requirement be decreased by \$13,500.00.

B. AMORTIZATION PERIOD

11. Amortization periods are established for the following items and the actual amortization of these items will commence when the rates for this proceeding go into effect:

a. Suburban's rate case expense is included in the stipulated revenue requirement in this case and Suburban's actual rate case expense is to be amortized over three (3) years;

b. Staff's Adjustment IS-17 (Expired Rebates) is included in the stipulated revenue requirement in this case and is to be amortized over five (5) years.

C. SUBURBAN SHALL CEASE THE PRACTICE OF ALLOWING EMPLOYEES TO PURCHASE PERSONAL ITEMS THROUGH SUBURBAN

12. Suburban admits allowing employees to purchase personal items using Suburban's credit cards. Suburban has ceased this practice and agrees it shall be prohibited from allowing employees to purchase personal items using Suburban's credit cards in the future. In addition, Suburban shall memorialize all employee loans in written loan agreements. Suburban shall file these written loan agreements with payment schedules in the scheduled upcoming abbreviated rate case. If Suburban fails to comply with this provision, the Commission shall require Suburban to pay a penalty to be determined by the Commission.

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

13. Suburban admits it did not implement a bidding process pursuant to Commission Order to ensure Suburban's Property, Plant and Equipment ("PPE") was being installed at competitive prices. *See*, Docket No. 05-SUBW-104-RTS, Interim Order, issued March 28, 2005 as adopted in the Final Order, issued June 28, 2005. Suburban agrees it will bid out its routine and time sensitive maintenance and repair projects on a two (2) year cycle and separately bid out all

other projects on a project by project basis. Suburban also agrees it will bid out any purchase of equipment and other materials costing more than \$2,500.00 that are available from competitive vendors. Suburban shall maintain a file for each bid and a written explanation as to why a bid was selected by Suburban. Suburban shall file a compliance report with the Commission once a year detailing its recent efforts in this regard. The initial filing shall be included in the 2012 abbreviated rate case. If Suburban fails to comply with this provision, the Commission shall require Suburban to pay a penalty to be determined by the Commission.

E. SUBURBAN SHALL DISCONTINUE PAYING FOR PERSONAL EXPENSES OF EMPLOYEES AND NON-EMPLOYEES

14. Suburban shall discontinue paying for cable television and XM Satellite radio services as previously provided for at the home of one of its employees. If Suburban fails to comply with this provision, the Commission shall require Suburban to pay a penalty to be determined by the Commission.

15. Suburban shall discontinue paying for cell phone expenses for non-employees. If Suburban fails to comply with this provision, the Commission shall require Suburban to pay a penalty to be determined by the Commission.

F. REGULATORY EXPENSE RECOVERY

16. Pursuant to the June 3, 2011 Commission Order on Application, Docket No. 11-SUBW-448-RTS, paragraph 58; and, the July 18, 2011 Order on Petition for Reconsideration, Docket No. 11-SUBW-448-RTS, paragraph 10, Staff has determined the estimated amount of the additionally incurred rate case expense at issue is \$6,165. The parties agree this amount shall be paid by Suburban during fiscal year 2014. The payment (which is an offset) shall be paid into a newly created Docket identified as Docket No. 12-SUBW-359-FIN.

G. RENTAL PAYMENTS SHALL BE APPLIED TO SUBURBAN'S NOTE RECEIVABLE UNTIL MR. BREUER'S DEBT TO SUBURBAN HAS BEEN PAID

17. Ray Breuer owes Suburban for personal expenses, Suburban paid on Ray Breuer's behalf. Suburban shall require Ray Breuer to apply at least \$30,000.00 per year of the rental payments he receives from renting an office, maintenance building and land to Suburban to the note Ray Breuer owes to Suburban until his debt to Suburban has been paid in its entirety.

H. WITHDRAWAL OF PWA

18. Suburban agrees to withdraw its request for a PWA tariff in this case.

I. APPROVAL OF THE BPU CONTRACT AMENDMENT

19. The Parties agree the BPU Contract Amendment filed in this case should be approved by the Commission.

J. NEW GROUND WATER SUPPLIES

20. Suburban agrees to incur the costs necessary to conduct the preliminary work required to determine if new ground water supplies are located in proximity to Suburban's distribution system. The Parties agree Suburban shall be allowed to establish a deferred account relating to costs associated with the preliminary work so it can seek recovery of such costs in its next rate case following the abbreviated rate case. At the conclusion of the ground water study, Suburban shall file a report on the result of its study with the Commission to include the Company's recommendation on how to proceed.

K. ABBREVIATED RATE CASE

21. The Parties agree Suburban shall use the abbreviated rate case procedure to seek recovery of the January 1, 2013, BPU rate increase in its wholesale rate charged to Suburban, as contemplated and summarized in Staff's letter dated November 23, 2010, to Suburban.

a. **TEST YEAR.** The Parties agree Suburban shall use the twelve (12) month

period ending September 30, 2012, as the test year in its abbreviated rate case.

b. **PUBLIC MEETING.** The Parties agree Suburban shall hold a public meeting with its customers regarding its abbreviated rate case filing.

c. **PILOT FEE REFUND.** In accordance with the Commission's June 3, 2011 Order on Application, page 18, paragraph 35 (Docket No. 11-SUBW- 448-RTS) ,the Parties agree that the PILOT Fee collected in the amount of \$7,467.00, will be refunded to customers by virtue of it being included in the revenue requirement reduction of \$13,500, contained in paragraph 10 of this agreement. The parties further agree that the PILOT fee refund shall be addressed in the abbreviated rate case so that the reduction in revenue is not included in the base rates arising from the test year (twelve (12) month period ending September 30, 2012).

d. **LOAN AGREEMENTS/PAYMENT SCHEDULES.** Suburban shall include copies of its outstanding loan agreements and payment schedules between the company and its employees in its abbreviated rate case filing so Staff and CURB can confirm Suburban is in compliance with Section IV.C. of this Stipulation.

e. **IMPLEMENTATION OF BID PROCESS.** As part of the abbreviated rate case process, Suburban shall provide Staff and CURB access to Suburban's files and other records so Staff and CURB can confirm Suburban is in compliance with Section IV.D. (Implementation of Bidding Process) of this Stipulation.

L. **REGULATED/NON-REGULATED OPERATIONS**

22. The company has agreed to develop in its next rate case cost allocation ratios for facilities and employees that serve regulated and non-regulated businesses. The cost allocation ratios will be applied where the recovery of some of the costs in the rate case include regulated and

non-regulated operations.

M. RATE DESIGN

23. The Parties have reached agreement on rate design. The Parties agree there will be no change to the monthly customer charge, which shall continue to include the customer's first 1,000 gallons of water usage. The monthly charge will remain at \$20.00 per month per customer, which includes the first 1,000 gallons of usage. The commodity charge shall be \$7.74 per 1,000 gallons for all sales over 1,000 gallons.

M. IMPLEMENTATION OF SECTION XV OF SUBURBAN'S TARIFF (MINIMUM STANDARDS FOR BILL PAYMENT METHODS)

24. Suburban agrees to implement Section XV of its tariff to ensure that customer payments are processed in compliance with the Commission's Billing Standards.

V. MISCELLANEOUS PROVISIONS

A. COMMISSION'S RIGHTS

25. Nothing in this Stipulation is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation, including the obligation to ensure that Suburban is providing efficient and sufficient service at just and reasonable rates.

B. PARTIES' RIGHTS

26. The Parties will file prefiled testimony in support of this Stipulation in this docket no later than April 23, 2012. The Parties propose that a Settlement Hearing on the Stipulation be held on May 7, 2012, the first day of the scheduled rate case proceeding.

C. WAIVER OF CROSS-EXAMINATION

27. The Parties waive cross-examination on all testimony regarding all issues addressed in this Stipulation. The Parties agree that all prefiled testimony and exhibits and all testimony filed

in support of the Stipulation may be incorporated into the record without objection. The Parties request that the Commission take administrative notice of all prefiled testimony and exhibits and the Commission's orders in Suburban's last rate case, Docket No. 11-SUBW- 448-RTS.

D. NEGOTIATED SETTLEMENT

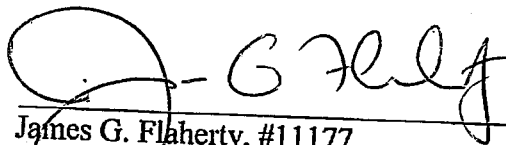
28. This Stipulation represents a negotiated settlement that fully resolves the issues addressed in this document. The Parties represent that the terms of this Stipulation constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, the Parties shall not be prejudiced, bound by, or in any way affected by the terms of this Stipulation (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Stipulation in the instant proceeding. If the Commission accepts this Stipulation in its entirety and incorporates the same into a final order without material modification, the Parties shall be bound by its terms and the Commission's order incorporating its terms to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's order on these issues. However, should the Commission recommend material modifications to this Stipulation, it is agreed that the Parties retain the right to a full Evidentiary Hearing in this docket.

E. INTERDEPENDENT PROVISIONS

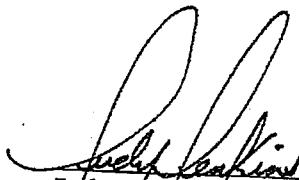
29. The provisions of this Stipulation have resulted from negotiations among the Parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Stipulation in total, it shall be voidable and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof. Further, in such event, this Stipulation shall be considered privileged and not admissible in evidence or made a part of the record in any proceeding.

IN WITNESS WHEREOF, the Parties have executed and approved this Stipulation and Agreement, effective as of the 20th day of April, 2012, by subscribing their signatures below.

Respectfully submitted,



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JUL 11 2012

CERTIFICATE OF SERVICE

12-SUBW-359-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order Approving Unanimous Stipulation and Agreement was served by electronic mail this 11th day of July, 2012, to the following parties who have waived receipt of follow-up hard copies:

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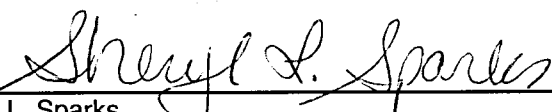
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CERTIFICATE OF SERVICE

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