

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Cobra)
Pipeline Company, Ltd. for an Increase in Its) Case No. 16-1725-PL-AIR
Rates and Charges)
)
)

**REPLY IN SUPPORT OF MOTION TO COMPEL COBRA PIPELINE COMPANY,
LTD. TO CEASE CHARGING UNLAWFUL RATES**

I. INTRODUCTION

Cobra Pipeline Company, Ltd. (“Cobra”) does not (and cannot) rebut any of the arguments set forth in the Motion to Compel Cobra Pipeline Company Ltd. To Cease Charging Unlawful Rates (“Motion to Compel”). Specifically, Cobra does not dispute that the Commission already rejected its principal legal theory that a utility’s written promise alone is sufficient to satisfy R.C. 4909.42. Neither does Cobra dispute its bleak financial situation. Nor does Cobra dispute the Commission’s exclusive jurisdiction over the instant dispute (despite its strategic efforts to divest the Commission of jurisdiction in the Lake County Court of Common Pleas). Without any substantive response from Cobra to consider, the Commission should grant the Motion to Compel, order Cobra to cease charging unlawful rates, and declare null and void all unlawful charges Cobra has assessed since July of 2017.

II. ARGUMENT

As explained in the Motion to Compel, the Commission already determined that the “bond” Cobra filed fails to satisfy R.C. 4909.42. In Case No. 89-616-GA-AIR, *et al.* (“Columbia Gas Rate Case”), the Commission held that a utility’s written promise to pay the state of Ohio if a refund was subsequently ordered did not comply with the financial security requirements of

R.C. 4909.42.¹ The utility in that case, Columbia Gas of Ohio, Inc. (“Columbia”), was then forced to purchase and file a third-party surety bond to comply with R.C. 4909.42.² Accordingly, the Columbia Gas Rate Case illustrates that the Commission demands more than a mere promise by the utility to refund customer money: R.C. 4909.42 requires *both* a promise by the utility to pay *and* a financial instrument from a surety, bank, or other third-party to support that promise. Without the latter, the instrument filed by Cobra is deficient, thereby rendering Cobra’s imposition of new, unapproved interim rates unlawful.

Cobra has no response to the Columbia Gas Rate Case. Instead, Cobra ignores it, generically arguing that “the footing for [Movants’] legal arguments is so obviously uncertain . . .”³ Cobra’s silence is understandable because it cannot dispute that the Commission has already ruled, as a matter of law, that the instrument (or “bond”) Cobra filed does not satisfy the requirements of R.C. 4909.42.

Cobra also does not contest the genuine concerns raised about its financial situation and Cobra’s ability to refund customer money if subsequently ordered to do so by the Commission. As explained in the Motion, Cobra’s most recent public financials call into question whether Cobra could actually pay refunds or whether Cobra could even continue operations if refunds are issued by reducing future rates charged to customers.⁴ Related company receivables accounted for more than 99% of current assets, and the cash on hand was extremely low. Cobra also had

¹ See *In the Matter of the Applications of Columbia Gas of Ohio, Inc. to Establish a Uniform Rate for Natural Gas Service within the Company’s Lake Erie Region, Northwestern Region, Central Region, Eastern Region, Southeastern Region, etc.* (“Columbia Gas Rate Case”), Case No. 89-616-GA-AIR, *et al.*, 1990 Ohio PUC LEXIS 178, Entry (February 20, 1990).

² See Motion to Compel, Ex. 7.

³ Memo Contra, at 3.

⁴ See Motion to Compel, pp. 8-10.

significant liabilities, including delinquent tax obligations and significant related party obligations.⁵ These issues were also discussed at length by the Commission's auditor, including continued unusual affiliate transactions between Osborne entities.⁶

Cobra's Memo Contra failed to address any of these issues. Instead, Cobra argues that Movants have failed to establish that Cobra's operating expenses were unreasonable.⁷ This argument misses the point. This Motion is not the forum to litigate the propriety of the proposed rate increase. The point of this argument is to examine whether Cobra has the financial wherewithal to provide a refund either by issuing refunds directly to customers or by reducing future rates to customers. Either way, those facts call into question whether Cobra could actually provide any refund, regardless of how appropriate its operating expenses (which have nothing to do with these related party receivables) may or may not be, as well as whether Cobra could continue operations if refunds are issued through a reduction in future rates.

Cobra fails to provide any assurances that Cobra can, in fact, issue refunds to customers if necessary. Instead, Cobra offers a single sentence suggesting that the refund could be offered through a reduction in future rates. First, as the Columbia Gas Rate Case showed, utilities may not increase rates without a bond simply by promising to issue refunds at a future point. Second, Cobra's financial situation calls into question whether Cobra could sustain issuing these refunds through reductions in future rates. Cobra has failed to address this issue in any meaningful way.

Finally, Cobra is noticeably silent about its calculated effort to circumvent the exclusive jurisdiction of the Commission over this dispute by filing a complaint against Orwell Natural

⁵ *Id.*

⁶ *See* Motion to Compel, p. 10.

⁷ Memo Contra, p. 3.

Gas Company, Northeast Ohio Natural Gas Corp., and Brainard Gas Corp. (the “Movants”) in the Lake County Court of Common Pleas (the “Civil Action”).⁸

In sum, Cobra has no substantive responses to the Motion to Compel because there are none. The Commission has already squarely addressed the central legal issue at hand, i.e., is a mere written promise from a utility to refund customer money sufficient to satisfy the financial dictates of R.C. 4909.42? The Commission unequivocally held that it is not. This is especially true where, as here, there are grave, urgent concerns about whether the utility has the financial capability to honor its promise. Consequently, the Commission should strictly enforce R.C. 4909.42, consistent with Commission precedent, and order Cobra to cease the collection of unlawful charges (i.e., until it can provide the bond or letter of credit required by R.C. 4909.42) and declare null and void all unlawful charges Cobra has assessed since July of 2017.

III. CONCLUSION

WHEREFORE, the Movants respectfully request that the Commission grant the Motion to Compel Cobra to Cease Charging Unlawful Rates for all the reasons stated above.

⁸ See Motion to Compel, Ex. 4.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 11th day of October, 2017. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Mark T. Keaney

One of Attorneys for Orwell Natural Gas Company, Northeast Ohio Natural Gas Corp., and Brainard Gas Corp.

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Summary: Reply Reply in Support of Motion to Compel Cobra Pipeline Company, Ltd. To Cease Charging Unlawful Rates electronically filed by Mr. Mark T Keaney on behalf of Orwell Natural Gas Company and Northeast Ohio Natural Gas Corp. and Brainard Gas Corp.