

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**COBRA PIPELINE, LTD'S
AMENDED OBJECTIONS TO STAFF'S REPORT OF INVESTIGATION,
AND SUMMARY OF MAJOR ISSUES**

I. INTROUDCTION

On June 15, 2016, the Public Utilities Commission of Ohio ("Commission") ORDRED an investigative audit of Cobra Pipeline Cobra Pipeline Company, Ltd. ("Cobra"), and in addition ORDERED Cobra to file a rate case with the Commission "pursuant to R.C. Chapter 4909, for the ostensible purpose of establishing just and reasonable rates including a standard transportation rate for both firm and interruptible service." The Commission's June 15, 2016 Entry (Hereafter, the "Complaint Case Order"). *In the Matter of the Complaint of Orwell Natural Gas Company v. Orwell-Trumbull Pipeline Company, LLC*. Case No. 15-637-GA-CSS, Opinion and Order dated June 15, 2016, ¶¶77, 97, 115 (the "Complaint Case").

The Complaint Case Order is quite remarkable in at least two respects. First, upon information and belief, this Commission has never, in its nearly 100 year history, conducted a pipeline rate case.¹ Second, *no one* – not the parties to the Complaint Case, not a Cobra customer, and certainly not this Commission – has ever intimated, let alone complained, that Cobra's rates were unjust or unreasonable. It is certain that no such claim was asserted against

¹ Cobra concedes that this Commission may, at some time in the past, have reviewed pipeline rates imposed by municipal entities.

Cobra in the Complaint Case for the very simple reason that Cobra was not even a party to that matter.

On August 15, 2016, Cobra complied with this Commission's Order in the Complaint Case and filed its Abbreviated Application for an Increase in its Rates and Charges ("Application"). Cobra's Application was docketed as Case No. 16-1725-PL-AIR ("Rate Case"). The Commission's Rates and Analysis Department ("RAD"), and its Service Monitoring and Enforcement Department ("SMED", and together with RAD, "Staff") conducted an in-depth investigation of the books and records Cobra. Shortly after filing its application, the Commission directed Cobra, and its affiliate Orwell Trumbull Pipeline Company, LLC ("OTP"), to enter into a contract with Schumaker & Company for an investigative audit of the two companies' structure, functions, affiliates, related party transactions and operating procedures.

With a very small and severely overburdened administrative staff responsible for simultaneously responding to Staff's data requests, and an audit of its financial and management practices conducted in Case No. 14-1709-GA-COI (and, incidentally, with the operation of four pipeline systems belonging to two separate pipeline companies in a dozen Ohio counties), Cobra personnel nonetheless responded timely to every single data request served upon its legal counsel by Staff. Staff's Rate Case investigation continued for more than twenty months.

On April 13, 2018, the Commission's Staff filed a report (the "Staff Report") of its investigation into Cobra purportedly "pursuant to Ohio Revised Code ("R.C.") §4909.19." Only two days earlier, however, on April 11, 2018, this Commission docketed an entry (the "April 11, 2018 Entry") in which the Commission expressly recognizes that in fact, Cobra is not subject to the rate case processes described within R.C. §§4909.17, 4909.18, 4909.19, 4909.191 and 4909.42 (the "Rate Case Process and Procedures"). Notwithstanding the April 11, 2018 Entry,

the Commission decreed that this matter would proceed as though the Rate Case Process and Procedures are applicable to Cobra.

Cobra responds to Staff's Report by submitting the following Objections to the Staff Report ("Objections") and, by providing a brief summary of major issues in which Cobra specifically identifies areas of controversy with respect to certain findings, conclusions, or recommendations contained in the Staff Report, and additional areas where Staff's failure to identify, address and propose recommendations regarding certain items. Cobra reserves the right to supplement or modify these Objections in the event that Staff makes additional findings, conclusions or recommendations, or modifies its position with respect to any findings, conclusions, or recommendations contained within the Staff Report. Cobra also reserves the right to contest issues raised by this Commission, its Staff, or third party intervenors.

I. GENERAL OBJECTIONS

- A. Cobra objects to being compelled to engage in this proceeding at all. As of the date these objections are submitted, this Commission has expressly informed Cobra that the Commission intends to apply Rate Case Processes and Procedures to Cobra that this Commission has expressly identified as inapplicable to Cobra, which engaged itself in these processes in the first place solely because this Commission ORDERED it to engage in this process.
- B. Cobra is filing these objections on a date that would be timely, if indeed the Rate Case Process and Procedures applied to Cobra. Cobra reserves the right to amend, supplement, or withdraw objections to the Staff Report as it deems appropriate and in its best interest.

- C. Cobra objects to the Staff's failure to inform the Commission that the lack of statutory processes and procedures applicable to Cobra means that Commission authority to regulate the rates of a pipeline company is not limited to cost-based, rate of return regulation.
- D. Cobra objects to the Staff's failure to provide the Commission with comparable rates charged by other Ohio intrastate pipeline utilities and by Ohio natural gas companies that incidentally provide transportation service to customers, which will show that Cobra's proposed rates are certainly just and reasonable in a competitive market.
- E. Cobra objects to Staff's failure to address, incorporate, and include any mechanism to fund the sixteen specific recommendations made by the Schumaker & Company auditors in Case No. 14-1709-GA-COI.
- F. Cobra objects to the Staff's failure to inform the Commission that during the prolonged period of over one and a half years during which Cobra's application has remained pending, the Company's financial health has deteriorated markedly and that as things stand, the Company should be expected to find it increasingly difficult to provide safe and reliable utility service to its customers in the absence of additional personnel and revenues.
- G. Cobra objects to the Staff's failure to inform the Commission that during the prolonged period of over one and a half years during which Cobra's application has remained pending, the Company has seen a decrease in the total volumes shipped upon its systems.

II. PLANT IN SERVICE OBJECTIONS

- A. Cobra objects to Staff's TCO acquisition adjustments - (Sch B-2.2a).
- B. Cobra objects to Staff's allocation of General Plant between OTP and Cobra – (B-2.1 page 2 of 2). As the Staff knows, all assets belonging to OTP were recently seized to satisfy a commercial judgment against the principal owner of Cobra and OTP. OTP is currently being operated by a receiver. As a result of steps taken by the receiver, Cobra personnel no longer perform any administrative work for OTP, and Cobra is no longer housed in offices accounted for in the General Plant accounts because the receiver seized those offices. Staff's allocation has no relevance going forward.

III. OBJECTIONS CONCERNING STAFF'S DEPRECIATION RESERVE

- A. Cobra objects to Staff's departure from the depreciation reserve calculation employed by Cobra which, incidentally, merely continued the depreciation reserve calculation used by Columbia Gas Transmission ("TCO"), the entity from which Cobra purchased the assets. Cobra objects that Staff's adjustment is unlawful and unreasonable after the Depreciation Reserve has been calculated by the same methodology for used for roughly 35 years.
- B. Cobra objects to Staff's recommendation that the Depreciation Reserve Deficiency and reserve imbalance amortization be 10 years.
- C. Cobra objects to Staff's theoretical reserve calculation.

IV. OBJECTIONS CONCERNING RATE OF RETURN CALCULATION

- A. Cobra objects to the mechanism Staff employed to establish a rate of return. The Staff's use of a national average together with a risk premium for smaller companies doesn't account for the risk of private ownership.

V. OBJECTIONS CONCERNING OPERATING EXPENSES

- A. Cobra objects to Staff' allocation of Personal Wages and Salaries (Schedule C-3.7) between Cobra and OTP. Again, the administrative work for OTP is no longer performed by employees of Cobra because OTP is in receivership, and there will literally be nowhere to allocate any portion of the salaries and benefits of the administrative staff in the future.
- B. Cobra objects to Staff's failure to make adjustments Cobra's employees' personal wages and salaries, including increased hourly rates and salaries of existing Cobra employees and failing to allow for overtime.
- C. Cobra objects to Staff's allocation of Administrative Benefits – Health Insurance – (SchC-3.8) between Cobra and OTP. Again, this allocation no longer accurately reflects the Company's operations, due to the fact that the Cobra personnel earning those benefits no longer have any responsibility for OTP.
- D. Cobra objects to Staff's adjustments to Administrative Supplies/Expenses Other Purchases - (SchC-3.10).
- E. Cobra objects to Staff' identification of amounts paid by Cobra for Professional Services Legal - (SchC-3.11).

- F. Cobra objects to Staff's failure to recommend that the Commission review the most updated information regarding expenses Cobra incurred in association with this Rate Case before the Commission issues its final Order. - Rate Case Expense - (SchC-3.14).
- G. Cobra objects to Staff's failure to include the costs of the management review ordered by the Commission - Rate Case Expense - (SchC-3.14). The update should include legal and consultants bills through the hearing with an estimate of the legal fees for rehearing requests.
- H. Cobra objects to Staff's exclusion of Previously Assessed Personal Property Tax expenses (SchC-3.16) from Staff's operating expense and revenue requirement calculations.
- I. Cobra objects to Staff's failure to recommend any recovery mechanism for Previously Assessed Personal Property Tax expense. Those taxes are a cost to a pipeline company of rendering the public utility service. They are verifiable, legitimate, and directly assignable to Cobra's customers. Furthermore, the Company cannot survive to provide safe, reliable service to its customers if these taxes are not addressed. At a minimum, the Staff should have recommended that the cost be accrued, deferred and either recovered through an amortization of the expense in the test year or recovered through a rider mechanism specifically created to recover these costs, consistent with past Commission practices for other Ohio utilities, over a period of time. Further, Staff should have recommended that the company report quarterly the recovery in order to verify that the recovery was used to pay for the cost and report on the unamortized deferral.

- J. The Staff should have recognized and informed the Commission that without a recovery mechanism for the Previously Assessed Personal Property Tax, Cobra's financial position will be permanently damaged, and it will negatively impact its ability to provide a safe and reliable utility service.
- K. Cobra objects to the deficiency over accrual amortization over ten years and may have more specific objections to the theoretical reserve calculation. Depreciation Expense – (SchC3.18).
- L. Cobra objects to the Staff's use of the corporate income tax rate of 21% to calculate the federal income tax expense - Federal Income Taxes - (SchC-4). The taxes should have been calculated using an individual's tax rate since this is a limited liability company and the taxes are assessed on the owners at their individual tax rates.

VI. OBJECTIONS TO THE PIPELINE SAFETY PORTION OF THE REPORT.

- A) Cobra objects to Staff's failure to recommend a pipeline safety improvement charge in order to allow Cobra to recover the costs of compliance with the recommendations in the Pipeline Safety text. Gas Pipeline Safety – (test page 13 of the Staff Report). Specifically, the Commission and this Staff have made several recommendations on how to improve Cobra's pipeline safety but have failed to include a recommendation regarding how the company would recover the cost of those recommendations.

SUMMARY OF MAJOR CONTESTED ISSUES

1. How this case is to proceed, given the inapplicability of statutes that this Commission is attempting to apply to Cobra.
2. The fair amount of revenue increase to which Cobra is entitled.

3. The appropriate value of Cobra's rate base property that is used and useful in the provision of safe and reliable transportation service to customers, including common plant and materials and supplies.
4. The appropriate level of operating expense allowable for ratemaking purposes.
5. The proper rate of return.
6. The implementation and recovery of costs associated various safety and reliability programs.
7. The appropriate design for rates.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The PUCO's e-filing system will serve notice of this filing upon counsel for any party that has entered any form of appearance in this matter, and the Staff of the Public Utilities Commission of Ohio.

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Summary: Objection Cobra Pipeline Company, LTD's Amended Objections to Staff Report.
electronically filed by Mr. Justin M Dortch on behalf of Cobra Pipeline Company, LTD