

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Commission's :  
Investigation of Cobra Pipeline : Case No.20-1613-PL-COI  
Company, LTD's Tariff No. 2 :

**COBRA PIPELINE COMPANY, LTD'S MOTION FOR PROTECTIVE ORDER**

Cobra Pipeline Company, Ltd. ("Cobra") by and through its attorneys, and pursuant to Section 4901-1-24 of the Ohio Administrative Code ("O.A.C.") hereby moves this Commission for the entry of an Order protecting the confidential business information and trade secrets of Cobra and its transportation customers, which are contained in Cobra's Response to the Public Utilities Commission of Ohio's ("PUCO's" or "Commission's") Opinion and Order, dated October 21, 2020 in Case No. 20-1613-PL-COI ("Investigation Case"). The reasons underlying this motion are detailed in the attached Memorandum in Support.

Respectfully submitted,

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## MEMORANDUM IN SUPPORT

### I. THE APPLICABLE LAW

Ohio Administrative Code (“O.A.C.”) §4901-1-24(D) provides that the Public Utilities Commission of Ohio (“PUCO” or “Commission”) and/or certain designated employees? You mean attorney examiners? may issue an order necessary to protect the confidentiality of information contained in documents filed with the Commission’s Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Ohio Revised Code (“R.C.”). While the Commission has expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the "public records" statute must also be read in *pari materia* with Section 1333.31, Revised Code ("trade secrets" statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

*In re: General Telephone Co.*, Entry, PUCO Case No, 81-383-TP-AIR (Feb. 6, 1982). Likewise, the Commission has facilitated the protection of trade secrets in its rules. *See, e.g.*, O.A.C. §4901-1-24(A)(7).

O.R.C. §1133.61(D) defines “trade secret” as:

[I]nformation including the whole or any portion of phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

- (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

O.R.C. §1333.61(D). This definition clearly reflects the state policy favoring the protection of confidential financial and proprietary information which is the subject of this motion.

## II. **THE FACTS SUPPORTING COBRA'S MOTION**

On September 18, 2020, Cobra filed its Tariff No. 2 ("Tariff No. 2") with the Commission in Case No. 89-8041-PL-TRF. The Commission then issued an Opinion and Order ("Order"), dated October 21, 2020, that suspended Cobra's Tariff No. 2 and ordered an investigation into Cobra's Tariff No. 2. The Commission Ordered investigation was docketed as Case No. 20-1613-PL-COI. To comply with the Commission's Order, Cobra has filed its Response to the Order ("Response"). Cobra's Response contains information that are trade secrets belonging to it and to its customers and should therefore remain confidential.

Information regarding Cobra's own volumes should not be made available to the public because: (1) Cobra is not a publicly traded company; (2) the information is the subject of reasonable efforts to maintain its secrecy by Cobra; and (3) the information has independent economic value from not being generally known or readily accessible. For the same reasons, information regarding Cobra's employees' salaries, benefits, etc. should not be made available to the public.

In the ordinary course of the Cobra's business, this information is deemed confidential, is treated as proprietary and confidential by Cobra's employees, and is not disclosed to anyone other than Cobra's advisors or when compelled as part of a legal proceeding and, even then, only pursuant to a protective order. For these reasons, the information falls directly within the definition of "trade secret" or is otherwise entitled to confidential treatment.

Cobra also believes that its customers generally would regard the information concerning their own transportation volumes to be competitively sensitive information, and that virtually all

such customers find economic value in such information and expend reasonable efforts to avoid the disclosure of such information.

The Commission and its Staff will have full access to the information through un-redacted copies of the information provided by Cobra, and no purpose of Title 49 would be served by the public disclosure of the Information. Furthermore, Cobra will provide each customer with redacted versions of the Accounting upon request (“Redacted Copies”). Each Redacted Copy will provide that customer with its own, but only its own, specific information. This treatment will allow each customer to verify Cobra’s calculations and to be aware of its current status while at the same time protecting the Information of other customers against disclosure.

Finally, the failure to protect the Information would negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, through the Uniform Trade Secrets Act. For the foregoing reasons, Cobra respectfully requests that the information be protected from public disclosure.

Respectfully submitted,

/s/ Michael D. Dortch

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## **CERTIFICATE OF SERVICE**

The PUCO's e-filing system will serve notice of this filing upon counsel for the parties and the Staff of the Public Utilities Commission of Ohio. Further, I hereby certify that a true and accurate copy of the foregoing was served upon counsel for the parties this December 8, 2020, by electronic mail:

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**12/10/2020 11:20:37 AM**

**in**

**Case No(s). 20-1613-PL-COI**

Summary: Motion COBRA PIPELINE COMPANY, LTD'S MOTION FOR PROTECTIVE ORDER electronically filed by Mr. Michael D. Dortch on behalf of Cobra Pipeline Company LTD