FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Cobra Pipeline Co., LTD. for Approval of Tariffs and to Become a Pipeline Company/Public Utility	))))	Case No. 05-1558-PL-ATA

REPLY MEMORANDUM OF THE OHIO OIL AND GAS ASSOCIATION

I. INTRODUCTION

On December 17, 2005, Cobra Pipeline Co., LTD ("Cobra"), filed an application asking the Commission to approve a pipeline tariff that omitted any rate information. On March 17, 2006, the Ohio Oil and Gas Association ("the Association") moved to intervene and requested a hearing due to a concern over rate secrecy and the opportunity for abuse that would allow. In response, Cobra filed Substituted Exhibit D, Proposed Tariff PUCO No. 1, which introduced wholly new gas processing requirements and rates.

On December 8, 2006, the Association filed a Protest and Notice of Discovery objecting to (a) Cobra's failure to establish rates based on fundamental ratemaking principles and (b) Cobra's introduction of new, mandatory gas processing requirements designed solely to enhance Cobra's revenues at the expense of its customers. Cobra now asks this Commission to ignore the Association's concerns because of the curious position that the *original cost of the facilities when first dedicated to public service* is - according to Cobra - *not* measured by the cost of the facilities when first dedicated to public interstate transmission service by Columbia Gas Transmission Corporation. Rather, again - according to Cobra, it is measured by when the facilities are first dedicated to intrastate transportation service and regulated by this Commission.

That argument finds no support in law. Moreover, if adopted, it would undermine the very rationale the principle was designed to protect against - shielding customers from

ratemaking abuse. It would allow public utilities to artificially raise rates by transferring facilities already serving the public from one regulatory governing body to another, regardless of whether the same ultimate customer base continues to be served by the same, identical facilities (as the case here).

Accordingly, Cobra's view of the regulatory ratemaking world must be rejected.

II. ARGUMENT

Cobra advances the following argument: Cobra wishes to acquire the pipeline system at issue from an interstate pipeline, Columbia Gas Transmission Corporation ("TCo"), which is regulated by the Federal Energy Regulatory Commission. Pursuant to the provisions of the Natural Gas Act, TCo is not an Ohio public utility and therefore - according to Cobra - the pipeline system has not yet been dedicated to public service under Ohio law. Therefore, the original cost of the system to TCo is not relevant in establishing rates for Cobra; rather, it is the cost to Cobra when purchasing the facilities from TCo.

That argument is simplistic and unpersuasive. Fundamentally, Cobra confuses the concept of being an "*Ohio* public utility" with the concept of "the original costs of property to the person that first dedicated the property to public use," believing that one is dependent on the other. That is incorrect. Rather, property can be dedicated to public use and nonetheless not be owned by an Ohio public utility regulated by this Commission - as here, when the property is first owned by a FERC-regulated entity and included in that entity's rate base. Ohio citizens have already been paying to recover the capital costs of those facilities and should not be required to do so again.

Cobra's individual arguments are addressed below. For the reasons that follow, the Commission should reject Cobra's arguments and continue to investigate the rates that Cobra wishes to impose on its customers.

A. Cobra misinterprets Section 4909.05(E), Revised Code.

Cobra alleges that the test for determining the original cost for purposes of ratemaking is the "cost to the Applicant, which is for the first time dedicating these facilities to public utility service in Ohio." See Cobra's Reply in Opposition at 2. Relying on R.C. 4909.05(E), it further states that "the only pertinent question [is] when and by whom the facilities being acquired here are dedicated to the public use for the first time under Ohio law." That, according to Cobra, is when the facilities are first owned by an Ohio public utility. See id. at 2-3.

That, however, is not the statutory test. Section 4909.05(E), Revised Code, does not limit ownership to an Ohio public utility. Rather, it discusses the original cost to the "*person*" who first dedicated the property to public use:

> (E) The original cost of all other kinds and classes of property used and useful in the rendition of service to the public. Such original costs of property, other than land owned in fee, shall be the cost, as determined to be reasonable by the Commission, to the person that first dedicated the property to the public use and shall be set forth in property accounts and sub-accounts as prescribed by the Commission.

By statute, the term "person" includes any "individual, corporation, business trust, estate, trust, partnership, and association." R.C. 1.59(C). Nothing requires that the person be a public utility, that the dedication of property be made by a public utility, or even whether the dedication to public use must be regulated under Ohio law.

Cobra would have the Commission modify the statutory language to read as follows: "Such original costs of property * * * shall be the cost, as determined to be reasonably by the

Commission, to the **Ohio public utility** ~~person~~ that first dedicated the property to the public use **regulated under Ohio law** and shall set forth in property accounts and sub-accounts as prescribed by the Commission." Not only would that be inconsistent with Ohio law; it would also be inconsistent with good public policy. Regardless of the whether or not the entity that first dedicated the property to public service is an Ohio public utility, the purpose for using the original cost of the property is to prevent utilities from artificially raising their rate bases by acquiring properties at unrealistically high prices. With the excess typically treated as an acquisition adjustment:

> The necessity of this separate accounting treatment is largely a consequence of certain abuses in the utility industry during the acquisition and merger period of the 1920s. * * * Through the process of acquiring utility assets or entire utility companies at prices in excess of depreciated cost, purchasing utilities were able to write up their basis in plant assets. If these purchase prices were in excess of the 'value' of the property, the utility was able to inflate its rate base artificially. * * *
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> The outgrowth of this situation was a general consensus among regulators that utility customers should not pay a return on an amount in excess of the cost when property was originally devoted to public service, since any excess represented only a change in ownership without any increase in the service function to utility ratepayers. To do otherwise would require the customer to pay for the same property twice. [Accounting for Public Utilities § 4.04[2] (Matthew Bender 1988).]

Accepting the modifications to the statutory language now implicitly urged by Cobra would allow just that – it would allow Cobra to set artificially high prices on assets ***already paid for by Ohio customers*** through the TCo rate base, making Ohio citizens pay twice for the same pipeline system. That cannot be good policy.

Cobra's attempts to add language to the statute must therefore be rejected. These facilities were first dedicated to public use by TCo and included in TCo's rate base years ago; the

original cost to TCo is therefore the proper and appropriate basis now for establishing rates on the facilities.

B. Cobra Miscites Bowman for the proposition that interstate pipeline facilities are not dedicated to public use.

Cobra mistakenly relies on a passage from Bowman, et al v. Columbia Gas of Ohio, Inc., et al, Case No. 83-1328-GA-CSS, 1988 Ohio PUC LEXIS 211, Opinion and Order, February 17, 1988, to argue that "the Commission [has] explicitly recognized * * * that interstate pipeline facilities are *not* dedicated to public use for purposes of the exercise of its jurisdiction to value property used and useful in providing public utility service under the Ohio Revised Code." See Reply in Opposition at 5.

The Commission did no such thing. The Bowman case did not involve establishing rates for service nor ascribe a value to property for rate-making purposes. Rather, at issue was whether the natural gas service provided by Columbia Gas of Ohio was a public utility service requiring abandonment before termination even though the pipeline through which the service was provided was owned by Columbia's interstate affiliate (TCo) and had been properly abandoned at the FERC for safety reasons. The Commission rightly found that it was unnecessary to address the whether the pipeline *property* itself had been dedicated to public use - i.e., the issue here - for purposes of determining whether *Columbia's gas service* was a public utility service requiring abandonment at the Commission. Anything to the contrary suggested by Cobra should be rejected.

Moreover, unlike the Bowman case, the transmission system that Cobra wishes to purchase is still in service and is still in operable condition. Therefore, in order to determine whether the proposed rates of Cobra are reasonable or not, the Commission must examine the

original cost of the pipeline to the person who first dedicated the pipeline to public service. That entity is TCo.

III. CONCLUSION

To avoid an examination of its rates, Cobra asks this Commission to inject language into a statute that does not exist and to rely on a previous Commission decision for a point of law that cannot be found within the document's four corners. Fundamentally, it asks this Commission to conflate the concept of "public utility" with that of "the person who first dedicated the property to public service," making the latter depend on the former. Because that is neither required by law or permitted by good public policy, the Commission should reject the request.

The Commission has granted the Association's Motion to Intervene and has scheduled a pre-hearing conference. That pre-hearing conference should be held and Cobra's rates should scrutinized under fundamental ratemaking principles designed to protect Ohio's citizens from being forced to pay unnecessary and artificially high prices for service.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served by regular U.S. mail, postage prepaid, this 2nd day of January, 2007, upon the following persons:

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