

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Cobra)
Pipeline Company, LTD for Approval of a) Case No. 11-4276-PL-AEC
Special Arrangement with VIRCO, Inc.)
Pursuant to Section 4905.31, Revised Code.)

FINDING AND ORDER

The Commission finds:

- (1) Cobra Pipeline Company, LTD (Cobra or Company) is a public utility and an intrastate pipeline subject to the jurisdiction of this Commission by virtue of the provisions of Sections 4905.02 and 4905.03, Revised Code.
- (2) On July 12, 2011, Cobra filed an application requesting approval of a Negotiated Rate Natural Gas Transportation Service Agreement (transportation agreement) and a Processing Service Agreement (processing agreement) with VIRCO, Inc. (VIRCO or Customer). The Customer is currently a transportation customer on Cobra's Churchtown system and is completing construction to expand the deliverability of its production to its point of interconnect with Cobra. Upon completion the Customer will have the capability of delivering up to 7,000 dekatherm (Dth) per day of gas into the Cobra system. From these transported volumes, the Customer can nominate up to 4,500 Dth per day of gas to be processed through Cobra's compressor stripping facility under the terms of the processing agreement. The transportation agreement contains a discounted transportation rate for one year with an evergreen provision that allows for termination with written notice 90 days prior to the anniversary date. The processing agreement does not contain a processing fee, rather Cobra and the Customer have agreed to a sharing percentage of the revenue generated from natural gas liquids obtained through processing the gas.
- (3) Concurrent with the application, Cobra filed a motion for protective order, in accordance with Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), seeking confidential treatment of portions of the transportation and processing agreements contained in Exhibits A and B of the application, pertaining to

the transportation rate and process sharing percentage. Cobra states that public disclosure of the rate and sharing percentage would jeopardize its position in negotiations and harm its ability to compete. Cobra explains that, in the ordinary course of business, this information is treated as confidential and is not disclosed.

- (4) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399.
- (5) Similarly, Rule 4901-1-24, O.A.C., allows the Commission to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."
- (6) Ohio law defines a trade secret as "information . . . 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." Section 1333.61(D), Revised Code.
- (7) The Commission has reviewed the information included in Cobra's motion for protective order, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as

the six-factor test set forth by the Ohio Supreme Court,¹ the Commission finds that the information contained in Cobra's application contains trade secret information. Its release is, therefore, prohibited under state law. The Commission also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the Commission finds that Cobra's motion for protective order is reasonable, with regard to portions of Exhibits A and B of Cobra's application and should be granted.

- (8) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders issued pursuant to Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this order or until February 28, 2013. Until that date, the docketing division should maintain, under seal, the portions of Exhibits A and B of the application that were filed under seal on July 12, 2011.
- (9) Rule 4901-1-24(F), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If Cobra wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to Cobra.
- (10) The Commission has reviewed the application filed in this case and finds that the proposed transportation and processing agreements are reasonable and in the public interest, and should be approved.

It is, therefore,

ORDERED, That the application for approval of the transportation and processing agreements between Cobra and VIRCO be approved. It is, further,

¹ See *State ex-rel. the Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

ORDERED, That the motion for protective order filed by Cobra be granted. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the information, which was filed under seal in this docket on July 12, 2011, for a period of 18 months, ending on February 28, 2013. It is, further,

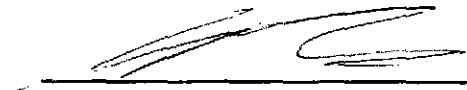
ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this Finding and Order be served upon Cobra and VIRCO, and any other interested person of record.

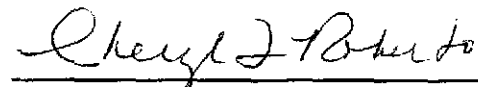
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella


Steven D. Lesser

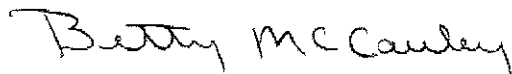
Andre T. Porter


Cheryl L. Roberto

RS:js

Entered in the Journal

AUG 31 2011


Betty McCauley
Secretary