

**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	)	
	)	
	)	

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**MOTION TO INTERVENE OF STAND ENERGY CORPORATION**

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Pursuant to Ohio Revised Code § 4903.221 and O.A.C. 4901-1-11, Stand Energy Corporation (“Stand Energy”) hereby moves to intervene in this proceeding. Stand Energy has real and substantial interests in this proceeding and its interests, which may be prejudiced by the result of this proceeding, are not represented by existing parties. Thus, as set forth more fully in the attached memorandum in support, Stand Energy respectfully requests that the Commission grant this timely request to intervene.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE MOTION  
TO INTERVENE OF STAND ENERGY CORPORATION**

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**I. INTRODUCTION**

By Entry dated June 15, 2016 in Complaint Case No. 15-0637-GA-CSS, this Commission ordered Cobra Pipeline Company Ltd. (“Cobra”) to file a case to “establish just and reasonable rates for service” within sixty (60) days of its Order. Cobra was not a party to that Complaint Case but it and all other pipeline companies owned by Mr. Richard M. Osborne were required to file a rate case with the PUCO. The instant Rate increase application is a result of that June 15, 2016 Entry.

In this proceeding, Cobra Pipeline Company, Ltd. (“Cobra”) seeks an increase in rates and charges for firm and interruptible transportation services, as well as rates for shrinkage (the “Application”). These new rates include \$0.95 per MMBtu for interruptible service and \$0.95 per MMBtu for firm service. The Commission accepted Cobra’s Application on September 26, 2016. The Application herein will significantly impact customers through, among other items, revised and increased rates and charges as indicated above. Moreover, because the requested

rate increase request was not decided by the PUCO within 275 days of the filing of the application, Cobra Pipeline was allowed, by regulation, to begin collecting the new, significantly higher, rates and charges in the summer of 2017 and every billing period since then, *so long as* the utility files a bond or letter of credit to secure customer's financial interests in potential refunds.

Stand Energy Corporation serves a large number of very small privately-owned manufacturing customers in Cobra's service territory. Stand Energy is presently collecting Cobra Pipeline's higher rates from these customers (thereby protecting Cobra's interests) but Cobra Pipeline has not yet filed a Bond in accordance with Ohio law (no protection for customers financial interests) in the event the Commission orders a refund of the rates currently being collected by Cobra Pipeline. Accordingly, Stand Energy has a real and substantial interest in this proceeding, and the Commission's disposition of this proceeding may impair or impede its ability to protect that interest. Thus, Stand Energy respectfully requests that the Commission grant its motion to intervene in this proceeding.

## **II. LEGAL STANDARD**

R.C. § 4903.221 provides that any "person who may be adversely affected by a public utilities commission proceeding" may intervene in the proceeding. The Commission's own rules reinforce the right to intervene:

"Upon timely motion, any person *shall be* permitted to intervene in a proceeding upon a showing that . . . [t]he person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties." O.A.C. 4901-1-11(A) (emphasis added).

“The regulation’s text is very similar to Civ. R. 24 – the rule governing intervention in civil cases in Ohio – which is generally liberally construed in favor of intervention.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 387 (2006) (internal quotations omitted). In considering a motion to intervene, the Commission’s rule directs that the Commission should consider: 1) the nature and extent of the intervenor’s interest; 2) the legal position advanced by the intervenor and its probable relation to the merits of the case; 3) whether intervention will unduly prolong or delay the proceedings; 4) whether the intervenor will significantly contribute to full development and equitable resolution of the factual issues; and 5) the extent to which the intervenor’s interest is represented by existing parties. *See* O.A.C. 4901- 1-11(B)(1)-(5); *see also* R.C. § 4903.221(B)(1)-(4). Stand Energy’s Motion to Intervene satisfies each of these factors.

### **III. ARGUMENT**

#### **A. The Nature and Extent of Stand Energy’s Interest**

Stand Energy’s customers are directly affected by the Application as manufacturing customers in Cobra’s service territory currently being required to pay the new higher firm and interruptible rates. As such, Stand Energy has a substantial interest in the outcome of this proceeding and in ensuring that the rates are established appropriately. That interest cannot be represented by any other party to this proceeding, as no other party to this proceeding represents Stand Energy’s customer’s interests. Moreover, Stand Energy is currently paying the higher rates to Cobra and collecting them from customers. If the Commission Orders refunds and Cobra is unable or unwilling to pay for any reason, then Stand Energy will be

damaged financially as a result of Cobra's acts, potentially without legal remedy or recourse if Cobra has no assets.

**B. The Legal Position Asserted by Stand Energy – A Proper Bond or Letter of Credit Must Be Required Of and Filed by Cobra With the PUCO.**

Stand Energy supports Cobra's stated goal of providing safe and reliable service.

However, the specific details regarding implementation of the Application may have a significant impact on Stand Energy's customers. As such, Stand Energy seeks to intervene to ensure that Cobra's Application is implemented in an orderly and logical manner consistent with all relevant legal principles and laws. Specifically, Stand Energy seeks to protect its customers and all customers of the Cobra pipeline currently paying the new rates from the risk of not receiving a refund that may be ordered by the Commission because of Cobra's potential lack of sufficient liquid assets or a true Bond or Letter of Credit from which to pay any refunds that might be Ordered by the Commission.

Cobra claims it filed a "bond" when it began collecting its new rates in the summer of 2017. Unfortunately for customers, the document filed by Cobra is not a "bond" according to PUCO Staff which sent correspondence to the Attorney Examiners on this case notifying them that "Cobra's filing does not, in fact, constitute a bond, nor does it satisfy the requirements of the 4909.42" Staff correctly described the "bond" as "little more than a promissory note." It is not a letter of credit it is an unsecured promise to pay funds that may not be available in the future when refunds may become due and owing. The PUCO bond requirement is of tantamount importance in cases, as here, where an entity's financial filings suggest it may be facing financial difficulties which will complicate its ability to pay refunds that might be ordered by the PUCO. Cobra must be ordered to immediately satisfy the financial security requirements of R.C.

4909.42 or Cobra must cease charging the higher rates and the Commission must declare all charges since July 2017 null and void.

**C. The Audit of Cobra Pipeline Company, Ltd Must Go Forward To Protect Suppliers and Customers**

The Commission ordered Staff to issue an RFP to solicit bids to audit Mr. Osborne's pipeline companies. An auditor was selected in July of 2017 and the auditor was authorized to perform the audit consistent with the RFP. Prior to the completion of the audit, the Commission and Staff learned that the Cuyahoga Court of Common Pleas had appointed a receiver to take control of the assets and to conduct the day-to-day operations of Orwell-Trumbull Pipeline Company, LLC ("OTP"). By Entry dated November 29, 2017, the Commission ordered an investigation of OTP and Cobra Pipelines to protect customer's interests. Inexplicably, the Staff believes the receiver in another case (OTP) should be permitted to carry out his duties unfettered by deadlines in this case (Cobra). Staff then requested that all deadlines in the Cobra audit be suspended indefinitely. With all due respect to the receiver in the Cuyahoga County Court of Common Pleas, the thousands of customers and millions of dollars affected by Cobra Pipeline Company Ltd's potential financial failure greatly outweighs the needs of the receiver. The audit of Cobra Pipeline should be completed with all deliberate speed.

Further facts in support of this position are set forth by the receiver in the Cuyahoga County case who filed a Motion To Intervene in four related PUCO cases on February 28, 2018: 17-2424-PL-COI; 16-1726-PL-AIR; 16-2419-GA-CSS; 14-1709-GA-COI. Considering the fact that two of the four (2 of 4) cases involved Cobra Pipeline Company, LTD -- the reasoning of the PUCO Staff that the receiver should be permitted to carry out his duties "unfettered" by

deadlines in the Cobra case is no longer relevant. The receiver has chosen to interject himself into four ongoing PUCO matters that are not exclusive to the OTP pipeline. There is absolutely no legitimate reason an audit of Cobra Pipeline Company, Ltd should not go forward with all deliberate speed.

**D. Stand Energy's Intervention Will Not Unduly Prolong or Delay The Proceeding.**

Cobra initially filed the Application on August 15, 2016, in response to the Commission's Opinion and Order ("Order") in Case No. 14-1654-GA-CSS, et al. In its Order, the Commission directed Cobra and any other pipeline companies owned or controlled by Richard Osborne to file applications to determine just and reasonable rates for firm and interruptible transportation services and rates for shrinkage. On September 26, 2016, Cobra filed an amended abbreviated application, which was further supplemented on November 4, 2016. The Commission accepted the Application for filing as of September 26, 2016.

To date, the Attorney Examiner has not yet established an intervention deadline. As a result, Stand Energy's Motion to Intervene is timely and will not prejudice any existing parties or unduly prolong or delay the proceedings.

**E. Stand Energy Will Contribute To The Full Development Of Factual Issues And Stand Energy's Interests Are Not Already Represented by Existing Parties.**

Stand Energy has over 34 years experience supplying natural gas in Ohio. Stand Energy has senior legal and regulatory employees with more than 50 years of combined experience in

Ohio. Stand Energy can and will contribute to the full development of factual issues in this case. Stand Energy has substantial experience in Commission proceedings, including experience in and involvement with complaint. Stand Energy's experience will benefit the Commission's review of the Application. In addition, Stand Energy's participation will contribute to the full development and resolution of the issues raised by the Application. Stand Energy's interests are not already represented by any existing party.

#### **IV. CONCLUSION**

WHEREFORE, Stand Energy respectfully requests that the Commission grant this Motion to Intervene and allow Stand Energy to be made a party of record to this proceeding.

Respectfully submitted,

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#### **CERTIFICATE OF SERVICE**

I certify that the foregoing was filed electronically through the Docketing Information System (DIS) of the Public Utilities Commission of Ohio on this 1<sup>st</sup> day of March, 2018. The DIS e-filing system will electronically serve notice of this document on all counsel.

/s/ Kate E. Russell-Bedinghaus  
Attorney for Stand Energy Corporation



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

**Commission of Ohio Docketing Information System on**

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**in**

**Case No(s). 16-1725-PL-AIR**

Summary: Motion To Intervene of Stand Energy Corporation electronically filed by Mr. John M. Dosker on behalf of Ms. Kate E Russell-Bedinghaus