BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Cobra Pipeline Company, Ltd. To Amend Its Rates and Charges	: : :	Case No. 16-1725-PL-AIR
In the Matter of the Application of Cobra Pipeline Company, LTD For an Emergency Increase in its Rates and Charges	: : : :	Case No.18-1549-PL-AEM

POST HEARING BRIEF
OF
COBRA PIPELINE COMPANY, LTD

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COBRA PIPELINE COMPANY, LTD'S
POST HEARING BRIEF

I. INTRODUCTION

Cobra Pipeline Company, LTD ("Cobra") is a pipeline company and a public utility as defined by Ohio Revised Code ("R.C.") §4905.03(F) and §4905.05. The Public Utilities Commission of Ohio ("Commission" or "PUCO") has the authority to ensure that a public utility's rates are just and reasonable. In addition to its general regulatory authority, the Ohio General Assembly has granted this Commission the authority to grant emergency rate relief to a utility when necessary. Cobra faces such an emergency at this time because its revenues have significantly decreased over the last several years due to a dramatic loss of volume on its systems. As a result, Cobra applied to this Commission, pursuant to R.C. §4909.16, seeking permission to add a surcharge to its current rates in order to permit Cobra to meet its financial obligations.

II. FACTS

A. THE 2016 RATE CASE

Cobra received operating authority from the Commission in an Entry dated June 27, 2007 in Case No. 05-1558-PL-ATA. Cobra thereafter provided service to the public at rates contained

within the tariff it filed in that case, as approved by the Commission (the "2007 Rates"). No person or entity ever contended that Cobra's 2007 Rates or its tariff terms were unjust or unreasonable. Nonetheless, on June 15, 2016, the Commission issued an Order ("2016 Order") in Case No. 15-637-GA-CSS directing Cobra to file a case to "establish just and reasonable rates for service" within sixty (60) days of the 2016 Order.[1]

On August 15, 2016, Cobra complied with the 2016 Order by opening a docket ("2016 Rate Case") and filing its abbreviated pipeline company application ("2016 Application"). In its 2016 Application, Cobra asked the Commission to approve an increase in its rates (the "2016 Rates"). Cobra filed an amended application ("2016 Amended Application") in the 2016 Rate Case, as requested by Commission Staff ("Staff"), on September 26, 2016. In an Entry and Order dated November 9, 2016, the Commission accepted Cobra's Amended Application as of

[1] Cobra was not, in fact, even a party to Case No. 15-637-GA-CSS. That case instead involved an accusation by certain end use natural gas distribution companies (the "EDUs") that another pipeline company, Orwell-Trumbull Pipeline Co. ("OTPC"), was charging unjust and unreasonable rates. At the conclusion of an evidentiary hearing in that matter, however, the Commission determined that the complaining EDUs had failed in their effort to challenge the reasonableness of OTPC's rates. Despite this determination, the Commission took the astonishing step of Ordering both OTPC and Cobra to file rate cases, thereby demanding that OTPC defend its rate a second time, and that Cobra justify its rates, as well.

The Commission's remarkable Order in Case No. 15-637-GA-CSS is understandable only when one is aware of Commission Orders in certain gas cost recovery cases involving the EDUs. In those cases, the Commission had investigated and severely criticized the operations and management of the same EDUs that complained of OTPC's rates. At the time the Commission initiated the cases in which it investigated the practices of those EDUs, the EDUs were owned by a publicly held corporation. That entity, however, employed Cobra's and OTPC's principal owner, Mr. Richard Osborne, as its Chief Executive Officer.

The Commission was aware that the publicly held company terminated Mr. Osborne as its CEO during 2014, in response to the Commission's investigations of the EDU. The investigations of the EDUs ultimately concluded with a stipulation which, in part, obligated the EDUs to challenge OTPC's rates. When the EDUs later proved unable to satisfy their burden of proof in Case No. 15-637-GA-CSS, the Commission appears to have been dissatisfied by that result, and therefore to have Ordered the pipelines to file rates cases in order to pursue investigations of the pipeline companies, presumably believing that they too were engaged in management practices similar to the EDU practices that the Commission had just ended.

Years later, it is now happily obvious that the Commission's belief was incorrect. Years later, it is also now sadly obvious that the unending years in which these pipeline have been investigated, coupled with the continued hostility of the EDUs toward these pipelines and their owner, has severely compromised the pipelines' ability to safely, securely, and *profitably* provide service to the public. OTPC, in fact, was forced into receivership at the end of 2017. Cobra's future remains in peril absent some form of peace with this Commission.

September 26, 2016, thereby setting the September 26, 2017 date as the official "starting of the clock" for purposes of the Commission's investigation of Cobra.

Staff conducted a thorough investigation of Cobra within the 2016 Rate Case, which proceeded at a pace that could accurately be termed "measured" provided that one wished to be charitable. During the first two years in which the 2016 Rate Case was pending, Staff served Cobra with numerous "Data Requests" ("DRs"). Cobra timely responded to *every one* of the forty-three (43) DRs Staff issued to it in the 2016 Rate Case. The Staff's DRs, incidently, included demands for information outside the test year proposed by Cobra. Cobra provided the requested information on each occasion.

Eventually, when the 2016 Rate Case had been pending for longer than is generally considered necessary, Cobra attempted to invoke the only protection afforded public utilities against undue delays in rate proceedings. It informed its customers and the Commission that pursuant to R. C. §4909.42, it would terminate the 2007 Rates and instead impose the 2016 Rates, effective July, 2017. At the same time, as required by R. C. §4909.42, Cobra also filed a bond ("Bond") with the Commission, through which it represented to its customers that it would, if necessary, return any excess revenue to its customers that it might recover, by employing a temporary reduction from the increased rate it anticipated the Commission would authorize.

An additional nine months passed after Cobra began charging the 2016 Rate. Then, on April 11, 2018, the Commission issued an Entry in which it declared that pipeline companies are not subject to the rate-making processes described within R.C. §§4909.18 and 4909.19. ("April, 2016 Entry"). The Commission concluded, as a result, that Cobra could not invoke the protections of R.C. §4909.42. In addition, the Commission directed Cobra to cease charging the 2016 Rates and to revert to its 2007 Rates. Finally, notwithstanding the terms upon which Cobra

offered its Bond, the Commission Ordered Cobra to immediately refund to its customers all revenues it had collected through the 2016 Rates over and above what it would have collected had the 2007 Rates remained in place.

Cobra reduced its rate immediately in response to this Entry. Unable, financially, to comply with the refund in the manner ordered, and also convinced that the Commission's Order that it do so was unlawful, Cobra filed its Application for Rehearing of the April 2016 Entry on May 10, 2016 ("Application for Rehearing"). Within its Application for Rehearing, Cobra contends that if R.C. §§4909.18 and 4909.19 are indeed inapplicable to it, then the Commission has no authority under Ohio law to demand that Cobra seek and obtain Commission approval before increasing its rates. The 2016 Rates, therefore, were the only legally effective rates Cobra could charge during the period beginning the date that Cobra chose to impose that rate, and ending the date the Commission Ordered Cobra to return to the 2007 Rates. On June 6, 2018, the Commission issued an Order granting Cobra's Application for Rehearing for the purpose of considering the arguments raised therein. Cobra's Application for Rehearing remains pending.

Staff issued its report in the 2016 Rate Case ("2016 Staff Report") two days after the Commission issued its April, 2016 Entry. Within the 2016 Staff Report, Staff recommended that the Commission Order Cobra to continue to charge the tariff rates in effect since 2007. Cobra filed its Objections to the Staff Report on May 14, 2018 ("Objections"). On June 21, 2018, Cobra filed further amended objections to the Staff Report ("Amended Objections").

On June 22, 2018, the Attorney Examiners issued a Scheduling Order directing Cobra and all intervening parties to file testimony on or before August 3, 2018, further directing Staff to file testimony by August 31, 2018, and setting a hearing on Cobra's application for September 5, 2018. The intervenors sponsored no testimony. Cobra again complied, timely filing the direct

testimonies of Ms. Carolyn Coatoam, Ms. Jessica Carothers, and Mr. Ed Hess in support of its Application. On August 31, 2018, Staff submitted the direct testimonies of seven members of the Commission Staff, Ms. Stephanie Gonya, Ms. Carla Swami, and Messrs. John Berringer, Jonathan Borer, Joseph Buckley Peter Chace, and Matthew Snider.

The evidentiary hearing was held on September 10, 2018 and September 11, 2018.[2] The most heatedly contested issue during the hearing – and the issue deemed absolutely critical by Cobra – concerned the proper scope of the hearing, itself. Staff and the intervening parties demanded that the rules employed in typical rate making cases before the Commission be applied, and argued that Cobra's future rates must be based upon the 2015 test year and upon the date certain of December 31, 2015. Cobra, however, contended that the Commission had already unequivocally ruled that the statutory basis for the rules Staff and the intervenors hoped to employ was expressly inapplicable to pipeline companies and, moreover, due to the significant period in which the Rate Case had remained pending and the dramatically different circumstances in which in the Company found itself in the autumn of 2018 when compared to the year 2015, it was no longer possible to determine a just and reasonable rate based solely upon that information. It insisted that the most recent evidence regarding its financial circumstances available be used, instead. The hearing examiners largely permitted Cobra to introduce the evidence in dispute, but deferred ruling upon whether that evidence would ultimately be considered for purposes of determining Cobra's rates.

B. <u>THE EMERGENCY RATE CASE</u>

Following the Evidentiary Hearing and before post-hearing briefs were due in the 2016 Rate Case, Cobra filed its application for an emergency rate increase ("Emergency Application")

[2] The start date of the evidentiary hearing was briefly continued to September 10, 2018 at the request of counsel for the EDUs, which had intervened in the 2016 Rate Case.

with the Commission, on October 15, 2018, docketed as Case No. 18-1549-PL-AEM ("Emergency Rate Case"), pursuant to R.C. §4909.16. On the same date, Cobra filed a motion to consolidate the 2016 Rate Case and the Emergency Rate Case, and a motion to stay briefing in the 2016 Rate Case. The Commission issued an order denying Cobra's motion to stay on October 23, 2018.[3] That same day, the Commission's Staff issued its first DR to Cobra ("DR #1") in the Emergency Rate Case. In total, Staff issued only five (5) DRs in the Emergency Rate Case. Cobra timely responded to each DR.

Cobra's unopposed motion to consolidate the 2016 Rate Case and the Emergency Rate Case was granted in an Entry dated December 7, 2018 ("December Entry"). The December Entry also set forth the procedural schedule in the Emergency Rate Case. Specifically, the December Entry scheduled: (1) Cobra's direct testimony to be filed by December 24, 2018; (2) direct testimony on behalf of the intervenors and Staff to be filed by January 7, 2019; (3) Staff's report regarding the Emergency Rate Case to be filed by January 7, 2019 ("Emergency Staff Report"); and (4) an evidentiary hearing to begin on January 10, 2019.

Cobra timely filed the direct testimonies of Ms. Carolyn Coatoam and Ms. Jessica Carothers on December 24, 2018. On January 7, 2019, Staff submitted the direct testimony of just one witness – Mr. Matthew Snider. In lieu of a Staff Report, Staff filed a "recommendation letter" addressing the Emergency Rate Case on January 7, 2019 ("Recommendation Letter").

Although Staff complains of non-specific "irregularities" in Cobra's books, Staff's Recommendation Letter did not take serious issue with the evidence Cobra submitted in support of its Emergency Rate Application. Further, Staff acknowledged that the demonstrated loss of

[3] NEO filed a memorandum contra to Cobra's motion to stay on October 22, 2018. O.A.C. §4901-1-12(B)(2) provides Cobra with the right to respond to NEO's MCMS within seven (7) days of service. However, Cobra was not afforded this opportunity because the Commission's Order was issued before the seven (7) days had run.

volumes on Cobra's system would justify a $0.40 per Dth surcharge in order to allow Cobra to pay its financial obligations. Nonetheless, Staff recommends the Commission not approve the requested surcharge because Staff feels that Cobra is somehow responsible for at least some portion of the lost volumes.

An evidentiary hearing in the Emergency Rate Case docket was conducted on January 10, 2019. At this hearing, Cobra presented additional evidence regarding its finances, together with evidence related to its loss of volumes and the need for emergency relief. Neither Staff nor any intervenor provided any evidence refuting Cobra's loss of volume or its need for additional revenue. Staff did make it clear, however, that in its view Richard M. Osborne, Cobra's majority owner, simply can not be trusted to use additional revenue to meet Cobra's needs.

III. LAW & ARGUMENT

R.C. § 4909.16 states:

> When the public utilities commission deems it necessary to prevent injury to the business or interests of the public or of any public utility of this state in case of any emergency to be judged by the commission, it may temporarily alter, amend, or, with the consent of the public utility concerned, suspend any existing rates, schedules, or order relating to or affecting any public utility or part of any public utility in this state. Rates so made by the commission shall apply to one or more of the public utilities in this state, or to any portion thereof, as is directed by the commission, and shall take effect at such time and remain in force for such length of time as the commission prescribes.

The Supreme Court of Ohio has stated that the Commission authority to grant emergency relief is extraordinary in nature. *Cincinnati v. Public Utilities Commission*, 149 Ohio St. 570 (1948). That Court, however, has consistently construed R.C. §4909.16 as vesting this Commission with broad discretionary powers in determining when an emergency exists and in tailoring a remedy which will enable the public utility involved to meet that emergency. See, *Cambridge v. Public*

Utilities Commission, 159 Ohio St. 88 (1953); *Jackson v. Public Utilities Commission*, 159 Ohio St. 123 (1953); *Manufacturer's Light and Heat Company v. Public Utilities Commission*, 163 Ohio St. 78 (1955); and *Duff v. Public Utilities Commission*, 56 Ohio St. 2d 367 (1978).

A. COBRA IS CURRENTLY SUFFERING A FINANCIAL EMERGENCY.

Historically, this Commission has used differing factors when determining whether an emergency exists. These differing factors typically recognize the size of the utility seeking an emergency rate increase. In cases involving smaller utilities, such as Cobra, the Commission has placed an emphasis on the company's cash flow needs. See, Order dated May 18, 1981 in *Madison Waterworks, Inc.*, Case No. 81-174-WW-AEM; Order dated September 22, 198 in *Country Club Utilities, Inc.*, Case No. 82-942-WW-AEM; Order dated December 26, 1930 in *Lakeland Utilities Company*, Case No. 90-1613-WS-AEM; and Order dated March 15, 2001 in *Southeastern Natural Gas Company*, Case No. 01-140-GA-AEM. In *Southeastern Natural Gas Company* the Commission outlined clear governing standards to determine whether emergency rate relief is appropriate. Those standards are:

1) The existence of an "emergency" is a condition precedent to temporary relief;
2) Applicant's evidence will be reviewed with "strictest scrutiny" and the evidence must be "clear and convincing" in demonstrating that an emergency exists;
3) Emergency rate relief will not be granted to circumvent or as a substitute for permanent rate proceedings and relief;
4) Temporary relief will be granted only at the "minimum level necessary" to avert or relieve the emergency.

1. **THE DECREASE IN COBRA'S VOLUMES BEGAN DURING THE PENDENCY OF THE 2016 RATE CASE.**

Cobra is a natural gas pipeline company and, as such, Cobra earns revenue by receiving a customer's natural gas shipment at a receipt point and then delivering that customer's natural gas to a delivery point.[4] Cobra charges a fee for its transportation of natural gas. Cobra's 2007 Rates – those which Cobra has been Ordered to maintain pending the outcome of the 2016 Rate Case, are as follows:

Firm Service

(a) a Demand Charge of $0.50 per Dth multiplied by the Minimum Daily Quantity ("MDQ") multiplied by the number of days in a month; and

(b) a commodity charge of $.10 per Dth.

Interruptible Service

(a) a Commodity Charge of $0.50per Dth

Cobra also earns revenue by charging $0.25 per Dth for processing and compression.[5]

This Commission compelled Cobra to file the 2016 Rate Case in mid-2016. Cobra naturally relied upon its 2015 financial and calendar year data – i.e, the most recent financial information available to it – at the time it filed the 2016 Application.

R.C. §4909.42 suggests that a "timely order" in a rate case is one issued within 275 days of the date an application is accepted. Cobra's rate case is, as of the date of this filing, *880 days* old. Even worse, the ratemaking process contemplates little material change in an entity's financial position during the pendency of the case. Beginning in 2016 and continuing through

[4] See the Direct Testimony of Jessica Carothers in the Emergency Rate Case at P. 3, Lines 16-17.
[5] See Cobra's Tariff. See also, Direct Testimony of Jessica Carothers in the Emergency Rate Case at P. 5, Lines 4-13.

2017 and 2018, however, Cobra saw its volumes decrease dramatically from 2015 levels[6] – in no small part because the EDUs began to avoid shipping on Cobra, when possible. Cobra strongly urged Staff to consider these decreases in its volumes prior to and during the hearing in the 2016 Rate Case. When Staff refused to do so, and when the scope of the 2016 Rate Case remained uncertain, Cobra filed its Emergency Application in order to be certain that its evidence concerning these falling volumes was addressed by this Commission. Those volumes are detailed in Cobra Exhibit G and the updates thereto (the "Cobra Monthly Spreadsheet").[7] The Cobra Monthly Spreadsheet shows that Cobra's volumes decreased more than 20% in 2016 and 2017, and another 27% from 2017 to 2018.[8] In total, Cobra has lost over 41% of its total volumes since 2015. Cobra has therefore lost $796,674.37 (annually) in transportation revenue alone since 2015 as a direct result of these lost volumes.[9]

Cobra's loss of volumes has also impacted Cobra's other revenue streams. Specifically, Cobra has seen the total loss of its sales of extracted products as a source of revenue, and the near total loss of revenues related to the compression of natural gas. Regarding revenue from extracted products, Cobra owns only one facility that is capable of extracting products from Cobra's system. That location is the Stripping Station located at the interconnection between Cobra's and TCO's systems. The decrease in Cobra volumes has made it economically

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[6] See Exhibit G to Cobra's Emergency Application. Also see, Cobra's Emergency Application at ¶14.

[7] DR #4 was admitted into evidence as Exhibit JC-1.

[8] Cobra Monthly Spreadsheet only provided data available at the time DR #4 was submitted to Staff. Therefore, this comparison is based upon volumes from January through November in both 2017 and 2018. Cobra has since completed its billing for December 2018. Even though December's volumes were not included into evidence, Cobra's decreased in volumes from 2017 to 2018 remains above 27%.

[9] Cobra's lost revenue associated with its loss of volumes compares revenue generated from Firm and Interruptible charges in 2015 compared to 2018. 2018's figure charges $.050 per Dth for the entire calendar year and therefore subtracts any additional revenues received and/or owed based upon the current dispute involving Cobra's Bond. See Exhibit 8 of Cobra's 2016 Application and Exhibit A of Cobra's Emergency Application.

inefficient to operate the Stripping Station.[10] The inability to strip and sell extracted products has reduced Cobra's sales of extracted products from $282,011.15 in 2015 to $0 dollars in 2018 (a total loss of $282,011.15 in revenue).[11]

Furthermore, the problems with the Stripping Station has also negatively impacted Cobra's ability to ship production gas onto TCO. This is because natural gas produced in Northeast Ohio and transported on the Cobra system and then onto TCO's system is considered "wet"[12] and does not meet the quality standards that TCO demands for transportation on its system. The stripping station resolves this problem as the extracted products are removed. With the stripping station unavailable, however, the gas remains "wet" and fails to meet TCO's criteria. TCO has therefore shut in Cobra's Churchtown ("CT") system.

TCO's shut in of Cobra's CT system impacts still another revenue stream. TCO's system operates at a higher pressure than Cobra's system. As a result, Cobra was able to charge $0.25 per Dth for the compression of natural gas as part of the service of delivering such gas to TCO.[13] The shut in obviously does not allow Cobra to transport natural gas onto TCO and therefore it does not allow Cobra to charge to compress gas it is currently unable to ship. Cobra's revenue for compression services fell from $243,549.81 in 2015 to $14,289.55 in 2018 (a total loss of $229,260.26 in revenue). Cobra has purchased a dryer in hopes of resolving at least a part of these issues, but it currently lacks the funds to install that dryer.

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[10] See Direct Testimony of Jessica Carothers in the 2016 Rate Case at P. 11, Line 3 – P.12, Line 7. See also, 2018 Income Statement.
[11] See Exhibit 8 of Cobra's 2016 Application and Exhibit A of Cobra's Emergency Application.
[12] The "wet" natural gas on CT's system is caused by the nature of the natural gas that commonly found in this geographic area. This natural gas is produced by the production companies on Cobra's system and is transported for sale through Cobra's CT System. See Transcript in Emergency Rate Case at P.70, Lines 3-11.
[13] See Direct Testimony of Jessica Carothers in the Emergency Rate Case at P. 4, Line 14 – P.5, Line 7. See also Transcript in Emergency Rate Case at P.70, Lines 3-11.

In total, Cobra has lost $1,307,945.78, or roughly 41.2%, of its total annual revenues as a result of the loss in volumes when compared to 2015.[14] These losses occurred during the pendency of Cobra's 2016 Rate Case, and compelled Cobra to seek emergency relief from this Commission.

2. **COBRA HAS PROVIDED THIS COMMISSION WITH CLEAR AND CONVINCING EVIDENCE THAT ITS LOSS OF VOLUMES HAS CREATED A FINANCIAL EMERGENCY FOR THE COMPANY.**

Cobra has provided this Commission's Staff with clear and convincing evidence that its volumes have decreased to the point that it is currently suffering a financial emergency because it cannot meet its current financial obligations. Specifically, Cobra has provided Staff with the following items, as part of both the 2016 Rate Case and this Emergency Rate Case: (a) forty-seven (47)responses to Staff's DRs; (b) at least 2 site visits made by Commission's Staff; (c) Income Statements from 2008 to 2018; (d) Balance Sheets from 2015 to 2018; (c) Cobra's last eighteen (18) months of bank statements; (e) the testimony of Jessica Carothers in the 2016 Rate Case; (f) the testimony of Carolyn Coatoam in the 2016 Rate Case; (g) the testimony of Ed Hess in the 2016 Rate Case; (h) the testimony of Jessica Carothers in this Emergency Rate Case; (i) the testimony of Carolyn Coatoam in this Emergency Rate Case; (j) every invoice issued to customers by Cobra from January 2018 until December 2018 to verify volumes; (k) the Cobra Monthly Spreadsheet providing Cobra's monthly volumes since 2010. The entirety of this information has been introduced as evidence at one of the two hearings.

This plethora of information far exceeds the evidence provided in any other emergency rate case approved by the PUCO. In fact, this Commission does not even need such information

[14] Cobra saw an increase in revenue of $4,000 dollars in revenue associated with its metering charges from 2015 to 2018 due to the increase of electronic meters on Cobra's systems. Cobra also lost $295,012 in revenue associated with Imbalance Gas Sales that occurred in 2015 that is unassociated with Cobra's loss in volumes. See Exhibit 8 of Cobra's 2016 Application and Exhibit A of Cobra's Emergency Application.

to act. The Supreme Court of Ohio has ruled that this Commission does not need even an application, let alone the depth of financial information provided by Cobra, before issuing an Order granting an emergency rate pursuant to R.C. §4909.16. See, *Duff*, 56 Ohio St. 2d at 377.

The simple truth is that Cobra has laid every financial record it possesses open for review by Staff, and thus by this Commission. Staff was also provided the opportunity to question Cobra's staff regarding this information through the numerous DRs, site visits, interviews, and depositions over the past two and half years.

To be certain, some of Cobra's transactions require explanation, as Staff will no doubt assert. However, this Commission should also consider the fact that Staff's concerns with certain of these transactions did not prompt it to simply reveal that concern to Cobra or inquire about the transaction when it could have investigated and intelligently responded to the inquiry. Instead, Staff's concerns with certain items were made known to Cobra only during the cross examination of Cobra's witnesses at hearing, when no opportunity existed for Cobra to investigate and respond intelligently to the concern, let alone afford Cobra an opportunity to introduce evidence addressing the issue.

Even if the Commission adopts Staff' own skepticism toward Cobra, however, Staff itself admits that the loss of volumes alone means that Cobra needs a $0.40 per Dth surcharge to meet its current financial obligations. Incredibly, Staff nonetheless recommends that Cobra not be allowed to impose such a surcharge, recommending instead that this Commission ignore this public utility's need simply because it doesn't like Cobra's owner, Richard M. Osborne. Staff's recommendation in this Emergency Rate Case is antithetical to Staff's recommendations in other

emergency rate cases in which the utility was unable to pay its ongoing operating expenses.[15] It is also an inappropriate criteria by which to judge the extent of Cobra's needs.

3. **THE COMMISSION GRANTING EMERGENCY RATE RELIEF IN THIS CASE WILL NOT CIRCUMVENT OR SUBSTITUTE FOR A PERMANENT RATE.**

The Commission will not be circumventing or substituting a permanent rate by granting emergency relief to Cobra. The surcharge that Cobra seeks as an alternative to a permanent rate does not include any element of profit, and would only remain in place until a permanent just and reasonable rate – which does include a profit – is lawfully determined.[16]

Unhappily, because the Commission has already concluded that the typical rate making statues do not apply to pipeline companies[17] it is not entirely clear how Cobra is to seek such a rate. The most obvious solution, given that Cobra is not subject to R.C. 4909.18 or 4909.19, is for Cobra to simply unilaterally file a tariff containing new rates.[18] In this case, however, it has hesitated to do so due to the Commission's April, 2018 Entry in which it was instructed to impose 2007 Rates – presumably pending the conclusion of the 2016 Rate Case. Furthermore, it anticipates that such a filing will simply invite additional litigation and further regulatory delay, neither of which, frankly, Cobra can afford. Finally, it borders on the absurd to insist that Cobra initiate still another case during the pendency of this proceeding, even though Staff and all intervening parties have received and reviewed essentially all information regarding Cobra that is within Cobra's possession.

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[15] See Staff Report filed in *Southeastern Natural Gas Company*, Case No. 01-140-GA-AEM on February 28, 2001; Staff Report in *Akron Thermal, Limited Partnership*, Case No. 00-2260-HT-AEM filed on January 1, 2001; Testimony of Ramon Ravisankar, Capital Analysis for Staff, in *Lakeland Utilities Company,* Case No. 90-1613-WS-AEM filed on November 23, 1990.
[16] See Cobra's Emergency Application at ¶25.
[17] See April Order at ¶¶21-23.
[18] In this regard Cobra has attempted to apply the basic rate formula: Rate equals operating expenses plus rate base multiplied by rate of return, to its current situation, and believes that even after adjusting for the items that it anticipates Staff will recommend be adjusted (based upon its position in the 2016 Rate Case), it calculates the need for a permanent rate of $1.22 per Dth.

4. **COBRA'S EMERGENCY RATE SEEKS ONLY THE RELIEF NECCESSARY TO PAY ITS ANTICIPATED OBLIGATIONS AS THEY ARE INCURRED.**

Cobra's initial request in this Emergency Rate Case sought a rate of $1.05 per Dth (a surcharge of $0.55 per Dth). This amount was requested in order to cover all of Cobra's actual and projected expenses found on its 2018 Income Statement. Cobra even excluded from its calculations: (1) depreciation expenses; and (2) those expenses to which Staff had objected to in the 2016 Rate Case, effectively abandoning – for purposes of emergency relief only – its own opposition to Staff's recommendations.[19] While Staff expresses dissatisfaction with Cobra's books and with Mr. Osborne, Staff itself acknowledges the need for at least an additional $0.40 per Dth based upon lost volumes alone.[20]

B. <u>THIS COMMISSION HAS THE AUTHORITY, IN AN EMERGENCY RATE CASE, TO TAILOR A REMEDY THAT CAN ESNURE THAT THE ADDITIONAL REVENUE PROVIDED BY ANY SURCHAGE TO COBRA'S RATES WILL BE USED TO PAY COBRA'S OPERATING EXPENSES.</u>

Staff's Recommendation Letter makes it clear that Staff does not wish Cobra to receive additional funds because Staff is concerned with how those funds will be spent. Staff's logic in this instance is both irrelevant and illogical. First, it is irrelevant. Cobra is a public utility that must at least meet its financial obligations in order to maintain operations. By denying Cobra the opportunity to recover the money necessary to pay its obligations, Staff is demanding that this Commission commit a governmental taking of Mr. Osborne's property.

Staff's recommendation is also illogical because it ignores the authority that the Ohio General Assembly has granted the broad scope of the authority this Commission in emergency

[19] Cobra expected challenged from Staff on the following line items: (1) Salaries and Wage; (2) Admin Benefits; (3) Other Taxes – Payroll Taxes; (4) Regulatory –Safety; (5) Professional Services – Legal; (6) Personal Property Tax Estimate & True UP; (7) Real Estate Taxes – CT; and (8) Depreciation Expense. See Direct Testimony of Jessica Carothers in the Emergency Rate Case at P.18, Line 15 – P.9, Line 4. See also, Direct Testimony of Carolyn Coatoam in the Emergency Rate Case at P.3, Line 13 – P. 14, Line 2.

[20] To be clear, Staff's recommendation of $0.40 per Dth is only recommended if this Commission determines that a surcharge is granted, which – again – Staff opposes.

rate cases. As stated earlier, the Supreme Court of Ohio has consistently construed R.C. §4909.16 as vesting this Commission with **broad discretionary powers** in determining when an emergency exists **and in tailoring a remedy which will enable the public utility involved to meet that emergency.** (Emphasis Added.) See, *Cambridge v. Public Utilities Commission*, 159 Ohio St. 88 (1953); *Jackson v. Public Utilities Commission*, 159 Ohio St. 123 (1953); *Manufacturer's Light and Heat Company v. Public Utilities Commission*, 163 Ohio St. 78 (1955); and *Duff v. Public Utilities Commission*, 56 Ohio St. 2d 367 (1978). Staff ignored that authority when it failed to make any recommendations as to how this Commission should exercise its discretion, except to suggest that this Commission force Cobra to fail. Staff's position is not an appropriate response to Cobra's need.

IV. CONCLUSION

For the reasons stated in this Brief, Cobra respectfully requests that the Commission issue an Order to temporarily increase Cobra's rates, by implementing a 0.55 cent per Dth surcharge, equal to the rates Cobra has requested in the Emergency Rate Case. Alternatively, Cobra respectfully requests that this Commission temporarily increase Cobra's rates, by implementing a surcharge equal to no less than 0.40 cents per Dth, equal to the rates Staff acknowledges are justified by the reduction in Cobra's volumes. Finally, Cobra respectfully requests that the Commission issue an Order approving $1.22 per Dth as Cobra's permanent rate for both Firm Service and Interruptible Service.

Respectfully submitted,

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COBRA PIPELINE COMPANY, LTD.

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 February 22, 2019, by electronic mail:

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Summary: Brief Post Hearing Brief electronically filed by Mr. Michael D. Dortch on behalf of Cobra Pipeline Company LTD