

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of :
Cobra Pipeline Company, Ltd. : Case No. 16-1725-PL-AIR
To Amend Its Rates and Charges :

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

**COBRA PIPELINE COMPANY, LTD'S
REPLY BRIEF**

Michael D. Dortch (0043897)
Justin M. Dortch (00900048)
KRAVITZ, BROWN, & DORTCH, LLC
65 East State Street, Suite 200
Columbus, Ohio 43215
Phone (614) 464-2000
Fax: (614) 464-2002
E-mail: mdortch@kravitzllc.com
jdortch@kravitzllc.com

Attorneys for Applicant
COBRA PIPELINE COMPANY, LTD

TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	FACTS.....	4
	a. 2016 Rate Case.....	4
	b. Emergency Rate Case	5
III.	LAW & ARGUMENTS.....	6
	a. Cobra Has Demonstrated A Financial Emergency Exists Because Its Volumes Have Decreased Dramatically.....	6
	i. Cobra Does Not Have The Revenue Necessary To Pay Its Financial Obligations Accrued In 2018.....	7
	ii. Cobra Has Provided Clear & Convincing Evidence That An Emergency Exists.....	10
	iii. This Emergency Rate Case Will Not Circumvent Or Substitute For A Permanent Rate Proceeding.....	11
	iv. Cobra Has Sought Only The Minimum Level Necessary To Pay Its 2018 Expenses.....	11
	b. Staff & NEO Use Their Briefs To Relitigate The 2016 Rate Case	12
	i. Cobra Does Not Have The Revenue Necessary To Pay Its 2018 Property Taxes.....	13
	ii. Cobra Anticipated NEO's & Staff's Arguments Involving Alleged Self-Dealing In Order To Demonstrate That This Argument Is Without Merit.....	15
IV.	CONCLUSION.....	16

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	:	
Cobra Pipeline Company, Ltd.	:	Case No. 16-1725-PL-AIR
To Amend Its Rates and Charges	:	

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

**COBRA PIPELINE COMPANY, LTD'S
REPLY BRIEF**

I. INTRODUCTION

There is one undeniable and undisputed truth in this case: Cobra Pipeline Company, LTD's ("Cobra's") current revenues do not allow it to pay its current financial obligations. This singular fact has been enough for the Public Utilities Commission of Ohio ("Commission" or "PUCO") to grant emergency rate relief to small public utilities, such as Cobra, for decades.¹ Yet, Commission's Staff ("Staff") and Orwell Natural Gas Company ("ONG"), Northeast Ohio Natural Gas Corp. ("Northeast"), and Brainard Gas Corp. ("Brainard," and along with ONG, and Northeast, known collectively as "NEO") have asked this Commission to ignore Cobra's current financial situation because they want to punish Cobra's owner, Richard M. Osborne ("Mr. Osborne"). Cobra trusts that this Commission will not fall victim to the biases that plague Staff and NEO and proceed in the only manner that is proper in this case by granting Cobra the

¹ 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.

necessary emergency relief it seeks. This Reply Brief (“Reply”) will point out the fallacies of Staff’s and NEO’s positions while also showing that Cobra needs the financial relief it seeks.

II. FACTS

A. 2016 RATE CASE

Cobra is a pipeline company as defined by Ohio Revised Code (“R.C.”) §4905.03(F). The Commission has the authority to ensure that a public utility’s rates are just and reasonable. Cobra received operating authority in an Entry dated June 27, 2007 in Case No. 05-1558-PL-ATA by the Public Utilities Commission of Ohio.

On June 15, 2016, this 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 even though: (1) no party had ever contended Cobra’s rates and tariffs were unjust or unreasonable; and (2) Cobra was not a Party to Case No. 15-637-GA-CSS. Cobra complied with the 2016 Order by filing its abbreviated pipeline company application (“2016 Application”) in Case No. 16-1725-PL-AIR (“2016 Rate Case”) on August 15, 2016.²

Nearly a year had lapsed after the Commission’s 2016 Order and the 2016 Rate Case was not advancing. As a result, Cobra invoked the only protections afforded public utilities against undue delays in rate proceedings, contained within Ohio Revised Code (“R.C.”) §4909.42, by amending its tariff to increase its rates and filing a bond (“Bond”) with the Commission on July 7, 2017.

This Commission then took no action in the 2016 Rate Case until April 11, 2018. On that date, the Commission issued an Order (“April Order”) that concluded: (1) that by operation of

² The 2016 Application was amended (“2016 Amended Application”) and this Commission accepted Cobra’s 2016 Amended Application as of September 26, 2016.

R.C. §4909.17, pipeline companies are exempt from the rate-making processes described within R.C. §§4909.18 and 4909.19 and therefore pipeline companies cannot seek the protections afforded to public utilities under R.C. §4909.42; (2) Cobra must return to its previously effective tariff rates; and (3) directed Cobra to immediately refund all revenues collected above previously effective tariff rates (“Refund”). Cobra immediately reduced its rates to those contained in its now-superseded tariff, but it did not issue an immediate Refund because: (1) it was unable to do so financially; and (2) it believed that the Commission’s April Order was unlawful for several reasons. Cobra instead filed its Application for Rehearing of the April Order on May 10, 2018 (“Application for Rehearing”). This Commission granted Cobra’s Application for Rehearing on June 6, 2018.

Two days after this Commission issued its April Order, Staff issued its Staff Report in the 2016 Rate Case (“2016 Staff Report”). Then, an evidentiary hearing was conducted on September 10, 2018 and September 11, 2018. The most significantly contested issue concerned the proper scope that the evidentiary hearing should encompass, due to: (1) this Commission’s April Order declaring that the rules Staff and NEO wished to operate under were inapplicable in cases involving pipeline companies; and (2) the company’s financial situation had diminished so dramatically since the “test year” - 2015.

B. EMERGENCY RATE CASE

Following the Evidentiary Hearing in the 2016 Rate Case, Cobra filed an application for an emergency rate increase (“Emergency Application”) with the Commission, docketed as Case No. 18-1549-PL-AEM (“Emergency Rate Case”), pursuant to R.C. §4909.16.³ Cobra filed the

³ 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.

Emergency Rate Case because: (1) Cobra's current financial situation has deteriorated so dramatically since 2015; and (2) NEO's and Staff's insistence that Cobra's current financial situation should not be considered in the 2016 Rate Case created an uncertainty that adequate financial relief would be granted to Cobra. Staff filed a "recommendation letter" that acknowledged that Cobra had demonstrated a loss of volumes to justify a \$0.40 per Dth surcharge but recommended that this Commission not grant Cobra the right to implement the surcharge it proposes ("Recommendation Letter"). An evidentiary hearing in the Emergency Rate Case was held on January 10, 2019. At this hearing, Cobra presented evidence related to its current revenues and expenses, its loss of volumes, and the need for emergency relief. Staff and NEO did not present any evidence that disputed Cobra's revenues or loss of volumes, although both did challenge the evidence of Cobra's expenses presented by Cobra. Staff made it clear, however, that the true reason for its opposition is its view that Richard M. Osborne, Cobra's majority owner, simply should not be trusted to use additional revenue to meet Cobra's needs.

III. LAW & ARGUMENT

A. Cobra Has Demonstrated That A Financial Emergency Exists Because Its Volumes Have Decreased Dramatically.

All parties agree on the standard that should be applied in determining if a small utility, such as Cobra, should receive emergency rate relief. Specifically, all parties agree that the standard is as follows:

- 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.

See Order dated March 15, 2001 in *Southeastern Natural Gas Company*, Case No. 01-140-GA-AEM. While all parties agree on the applicable standards, NEO and Staff use their briefs to ignore these standards and argue that the facts in this case do not matter because of Richard M. Osborne's alleged previous mismanagement. These arguments are irrelevant to the topic at hand.

The question this Commission has been asked in this Emergency Rate Case is “does an emergency exist?” Cobra demonstrated, in its Post-Hearing Brief (“Brief”), that it has met this Commission's standards and has therefore established that it should be granted the authority to charge a surcharge that will allow it to meet its financial obligations. Specifically, Cobra has shown that: (1) a loss of volumes before temporary relief was requested; (2) clear and convincing evidence that Cobra's volumes decreased since 2015; (3) emergency rate relief is not being granted to circumvent or substitute for permanent rate relief; and (4) Cobra is seeking only the minimum level necessary to pay its 2018 obligations.

1. At Current Rates, Cobra Does Not Have Sufficient Revenue To Permit It To Pay Its Financial Obligations As They Are Incurred.

The plain and simple fact is that Cobra did not generate enough revenue in 2018 to pay its 2018 expenses. It has no hope of doing so in 2019, or in 2020, at current rates.

In its Emergency Application, Cobra estimated that it would earn \$1,596,837.40 in revenues during 2018.⁴ Cobra earns this money by transporting customers' natural gas received at a receipt point and delivering that natural gas (minus shrink) to customers' delivery points. Cobra later supported its estimated revenue by providing an update to Staff based on eleven months of actual revenues and expenses.⁵ Cobra has demonstrated that its revenues have

⁴ See Exhibit A to Cobra's Emergency Application (“2018 Income Statement”).

⁵ See Exhibit JC-1 to Direct Testimony of Jessica Carothers.

declined dramatically since 2015 and, as a result, Cobra is not able to meet its financial obligations.⁶

Staff does not dispute that the information provided by Cobra is accurate.⁷ In fact, Staff directly acknowledges Cobra's financial situation and the cause of Cobra's financial situation in its brief. Specifically, Staff states:

Staff is aware that the Company's revenues are highly dependent on its throughput, and that its volumes have decreased. The diminution is due to a number of market conditions, including competition and customer migration, and the Company's inability to process local production gas to satisfy interstate quality standards.

Staff's Brief at P. 11.⁸ Staff has also acknowledged these facts in its Recommendation Letter.

Specifically, Staff states in its Recommendation Letter that:

Staff agrees with the Company's assertion that it has lost a substantial amount of volumes in recent years, but Staff's view is that the volume reductions reflect more than just market forces outside of the Company's control.

Recommendation Letter at P.3.

Incredibly, Staff still objects to Cobra receiving emergency rate relief even though it agrees that Cobra's lost volumes is the primary reason for Cobra's decreased revenues. The claimed rationale for Staff's continued objections to an emergency surcharge is that Staff believes there are events that were within Cobra's control which would allow it to turn a profit even without a rate increase. Staff specifically identifies only the following items to support this contention. It maintains Cobra should have: (1) better controlled its costs during 2018; and (2) made improvements to its systems to increase volume.

⁶ Cobra also stated that it had or would spend \$2,629,811.12 in 2018. See 2018 Income Statement.

⁷ Testimony of Commission Staff Member, Matthew Snider's Testimony at Tr. P.212, Lines 11-17.

⁸ See also, Testimony of Commission Staff Member, Matthew Snider's Testimony at Tr. P.192 Lines 5-10.

First, Staff argues that Cobra should have controlled its costs by: (a) preventing expenditure increases in wages & salaries; (b) preventing expenditure increases in its legal expenses; and (c) making personal property tax payments. *Id.* Staff's argument that making Cobra's personal property tax payments would decrease expenses simply doesn't make sense. Since discovering it owed personal property taxes in 2015, Cobra has accrued its personal property taxes each year, including 2018. Cobra owes this money because it owns the pipelines that it transmits natural gas through and the State of Ohio taxes them for owning these assets. Without these assets, there is no company. The amount owed is immaterial to whether Cobra has currently paid the obligation or not. And in fact, Cobra does not have the revenue to pay this expense.

Staff's arguments regarding legal fees and salaries are erroneous and ignore the actual facts regarding these charges. Staff's arguments are erroneous because it is basing its denial of emergency funds on a belief that an increase of \$221,000 on legal fees and salaries is excessive.⁹ Even if this expense is disallowed, Cobra would still need emergency rate relief because it would have only \$1, 596,837.40 to pay the new adjusted expense amount of \$2,408.811.12.

Staff's position also ignores the issue whether these expenses were reasonable and prudently incurred. Regarding payroll expense, Staff acknowledges that Cobra is operating on a shoe-string staff of five (5) employees and that Cobra saw an increase in its salary expenses only because Cobra is no longer able to split that expense with its former affiliate, Orwell-Trumbull Pipeline Company, LLC ("OTPC").¹⁰ As the Commission is aware, OTPC was placed in

⁹ The amounts in dispute are a legal expenses increase of \$112,000 and a salaries and wages increase of \$109,000. *Recommendation Letter* at P.4.

¹⁰ Testimony of Commission Staff Member, Matthew Snider's Testimony at Tr. P. 210, Line 17 – P. 211, Line 1.

receivership at the end of 2017 and its receiver no longer wished to continue the employee sharing arraignment with Cobra.¹¹

Similarly, Cobra's legal expenses during 2018 were necessary and prudently incurred. Cobra's legal expenses are almost entirely related to the 2016 Rate Case.¹² As this Commission is aware, Cobra was Ordered by this Commission to initiate that case and therefore incur the expenses associated with it. No party has ever argued that the fees charged by Cobra's counsel are unreasonable.

Finally, Staff believes that Cobra should have made improvements to its system in order to increase the volumes that it can ship. Specifically, Staff believes that improvements and/or repairs to the CT stripping equipment would allow Cobra to deliver more natural gas to TCO.¹³ In fact, Cobra has purchased a dryer that it hopes will remove excess liquid and allow for the delivery of more natural gas to the TCO system.¹⁴ However, Cobra needs revenue in order to pay for the installation of that dryer. This is revenue which Cobra does not currently have, which is ultimately the whole point as to why this Emergency Rate Case was filed. Even then, Cobra is unsure of how significant a volume increase this will generate because the current market makes it more advantageous for shippers to sell their gas onto Dominion.¹⁵

2. Cobra Has Provided Clear And Convincing Evidence That An Emergency Exists.

Cobra has unequivocally shown that it did not generate enough revenue in 2018 to pay its expenses. Specifically, Cobra estimated that it would earn \$1,596,837.40 in revenues during

¹¹ OTP was placed into receivership by the Cuyahoga County Court of Common Pleas on November 21, 2017. See *Direct Testimony of Jessica Carothers* in the 2016 Rate Case at P. 3, FN 1 and P.21, Lines 3-4.

¹² See *Testimony of Carolyn Coatoam* at Tr. P121, Line 23 – P. 122, Line 4.

¹³ *Letter of Recommendation* at P.3.

¹⁴ *Testimony of Jessica Carothers* at Tr. P.70, Lines 10-14.

¹⁵ *Id.* at Tr. P. 69, Line 1 – P. 70, Line 24.

2018 while estimating that it had or would spend \$2,629,811.12 in 2018.¹⁶ Cobra updated that information through 11 months of 2018. Cobra has literally laid its books open to intervening parties, Staff, and this Commission in order to demonstrate the severity of its need for emergency relief. There can be no question whether Cobra is operating at a significant loss.

Staff, however, purports to be skeptical of Cobra's evidence and points to alleged "irregularities" in that information. In reality, these "irregularities" are merely the result of differences between accrual basis and cash basis accounting, and the inability to forecast the future with complete accuracy. Staff's only witness conceded that he could not identify any information submitted by Cobra that was materially false at the time it was submitted.¹⁷

3. This Emergency Rate Case Will Not Circumvent Or Substitute For a Permanent Rate Proceeding.

As it stated in its Emergency Application and its Brief, Cobra is seeking a surcharge to the current rates it has been Ordered to charge by this Commission. This surcharge does not include any element of profit, recoupment of investment, nor would it permanently remain in place. Cobra's proposed surcharge is consistent with this Commission's previous cases in which an emergency rate case was filed. See *Southeastern Natural Gas Company*, Case No. 01-140-GA-AEM. Cobra believes that in the alternative a permanent rate can be set via the 2016 Rate Case based on the total information in this Commission's possession. Neither NEO nor Staff challenged the mechanism of Cobra's proposed surcharge.

4. Cobra Has Sought Only the Minimum Level Necessary To Pay Its 2018 Expenses.

For the purposes of its request for Emergency Rate relief, Cobra abandoned all of its opposition to Staff's recommendations in the 2016 Rate Case. Staff itself agrees that Cobra

¹⁶ See 2018 *Income Statement*.

¹⁷ Testimony of Commission Staff Member, Matthew Snider's Testimony at Tr. P.212, Lines 11-17.

would need at least an additional \$0.40 per Dth in order in order to meet its 2018 expenses at current volumes.

B. Staff & NEO Use Their Briefs To Relitigate the 2016 Rate Case.

This Emergency Rate Case was filed against the background of the 2016 Rate Case. First, the 2016 Rate Case continues, thirty-one (31) months after it was first filed. Second, this Commission's April Order undercut the foundation of the generally understood rules for rate proceedings.¹⁸ Third, in the April Order, the Commission expressly ordered Cobra to impose the rate of \$0.50 per DTH – implicitly through the date of later Orders by this Commission. Fourth, the Company's financial position dramatically deteriorated during the pendency of the 2016 Rate Case. Despite these issues, NEO and Staff insist upon applying the general procedures under R.C. §§4909.17, 4909.18, and 4909.19 and the Ohio Administrative Code ("O.A.C.") §4901-7 even though this Commission had expressly stated that these statutes and regulations **DO NOT** apply to pipeline companies such as Cobra. Cobra cannot speak to Staff's or NEO's rationale for wanting to cling to a process when this Commission found does not apply to the 2016 Rate Case, but their insistence threatens the survival of this company. Cobra was compelled to file this Emergency Case in order to ensure that its current financial situation is considered.

NEO and Staff's most consistent stance, during the 2016 Rate Case, was that Cobra be confined to the test year established in Cobra's 2016 Application – 2015. Logic would therefore dictate that NEO and Staff would insist that the Emergency Rate Case be confined to the test

¹⁸ In fact, Cobra is unaware that there had ever been a case in which a pipeline company sought a rate increase in Ohio and Cobra's was mandated to it by this Commission.

year - 2018. Of course, NEO and Staff do not feel so constrained when there is an opportunity to attack Mr. Osborne.¹⁹

Instead of focusing on the actual standards established for an Emergency Rate Case for a small utility such as Cobra, NEO and Staff combed through the books Cobra opened up when asking for help and began preparing for the next round of assault on Mr. Osborne. Specifically, these entities focused on the personal property taxes issue and the alleged self-dealing issues that were the basis of their attacks during the 2016 Rate Case. Cobra anticipated these attacks and presented evidence to resolve or refute them even though they do not have any bearing in this Emergency Rate Case.

1. Cobra Does Not Have The Revenue Necessary To Pay Its 2018 Personal Property Taxes.

NEO and Staff argue that Cobra is somehow committing acts of mismanagement by both failing to account for personal property taxes in the past and by booking personal property taxes incurred during 2018. First, Cobra does not dispute the fact that it owes a debt for previously assessed personal property taxes (“PAPPT”). This obligation simply was not recognized until 2015. In fact, Cobra asked this Commission to address the PAPPT issue as part of the 2016 Rate Case by allowing Cobra to recover the amount owed through a rider recognizing the PAPPT recovery as a regulatory asset.²⁰ Cobra still believes that it is reasonable to request this rider as part of a permanent rate case because as it is clear that Cobra’s customers were never paying for these taxes in rates in the first place. However, Cobra expressly excluded the roughly \$4.1 million dollars needed to pay the PAPPT from its Emergency Application because it recognizes

¹⁹ Cobra was erroneously denied the ability to explore the depths of Staff’s bias towards Mr. Osborne by the Attorney Examiners. *Testimony of Matthew Snider* at Tr. P. 196, Line 23 – Tr. 202., Line 22. Rule 616(a) of the Ohio Rules of Evidence expressly states that bias is a valid form to impeachment.

²⁰ See *Direct Testimony of Ed Hess* in 2016 Rate Case at P. 7, Line 1 – P. 9, Line 5. See also, *Direct Testimony of Carolyn Coatoam* at P.17, Line 16 – 20.

these expenses were irrelevant to its request for emergency rate relief. Specifically, Cobra's PAPPT expenses did not accrue during 2018. Nonetheless, in opposing emergency relief, this is the principal criticism Staff and NEO have of Mr. Osborne.

Staff and NEO also attack Cobra's inclusion of the 2018 accrual of Cobra's personal property taxes as an expense. Both parties argue that Cobra has not yet paid this expense. Of course it hasn't. Cobra doesn't have the revenues to do so. This is precisely the point.

Cobra uses the accrual accounting method like most, if not all, public utilities.²¹ Accrual basis accounting is a method of recording accounting transactions for revenue when earned and expenses when incurred. Staff acknowledged that it was aware that Cobra uses accrual basis accounting.²² This Commission has recognizes the legitimacy of accrual basis accounting as a valid.²³

Cobra accrued these expenses in 2018 just as it has accrued all of its other expenses such as payroll. No one disputes that fact. There is also no dispute that Cobra does not have the money to pay all of its expenses given revenue generated in 2018.²⁴ All parties further agree that Cobra earns its revenue by transporting natural gas and that Cobra has transported significantly less natural gas in 2018 than any previous year. Stated simply, Cobra has been forced to prioritize paying its bills in order to keep the company operating while it awaits some form of relief.

Staff and NEO dispute that Cobra is doing even that. Instead, Staff and NEO falsely allege that Mr. Osborne used Cobra as his "personal piggy bank" during 2018 and claim that this is why Cobra cannot pay its 2018 taxes. First, Cobra has shown that its revenues are deficient

²¹ See Transcript at P.107, Lines 12-15; P.114, Lines 18-21; and P.219, Line 22 – P.220, Line 1.

²² See Transcript at P.219, Line 22 – P.220, Line 1.

²³ See Order dated November 30, 2016 in *Ohio Gas Company*, Case NO. 16-2124-GA-AAM.

²⁴ See 2018 *Income Statement*.

roughly \$700,000 compared to its 2018 expenses. Therefore, there was never any money in there to pay the tax expenses to begin with. Second, NEO and Staff are wrong. Mr. Osborne has not emptied Cobra's coffers in 2018. Cobra's general ledgers actually show that Mr. Osborne contributed a net total of \$111,663.71 to Cobra during 2018, personally and through various business entities.²⁵

2. Cobra Anticipated NEO's and Staff's Arguments Involving Alleged Self-Dealing In Order To Demonstrate Rate That This Argument Is Without Merit.

Cobra has established that Mr. Osborne actually contributed capital to Cobra in 2018. The fact that it is necessary to have Cobra's ownership add capital to the company in order to maintain operations is further evidence of Cobra's financial emergency. Staff and NEO, however, object to the manner in which Mr. Osborne has withdrawn money from and contributed money to the company during its lifetime. They raised these objections during both the 2016 Rate Case and this Emergency Rate Case.

Again, this objection is belied by the evidence of Cobra's 2018 performance. Further, Cobra anticipated this objection by NEO and Staff and therefore proposed a solution to Staff's and NEO's objections.²⁶ Specifically, Cobra proposed beginning on the date the company was started and re-characterizing all account receivables from companies owned by Mr. Osborne and treating **EVERYONE ONE** of these items as deductions from Mr. Osborne's capital account.²⁷ This treatment eliminates concerns of co-mingled funds that Staff and NEO have complained about, and permits Cobra to demonstrate exactly how much money Mr. Osborne has received from the company throughout the years.

²⁵ This information was available through Cobra's general ledgers which were included in Exhibits JC-1 and Exhibit JC-2. Cobra has summarized the contributions and distributions made by Mr. Osborne and his business entities in 2018 ("2018 Contributions Spreadsheet"). The 2018 Contributions Spreadsheet is attached as Exhibit 1.

²⁶ Cobra was forced to anticipate the objection because the abnormal scheduling procedure in this Emergency Rate Case required to defend its Emergency Application before Staff was required to provide comment on the Application.

²⁷ See Direct Testimony of Carolyn Coatoam at P. 20, Lines 4-6.

Cobra also pointed out that when this is done, it is clear that Cobra's rates never included the payment of personal property taxes, because Cobra's revenues were never large enough to both pay the personal property taxes and afford its owners a reasonable return on investment. If that financial obligation had been recognized, Cobra would have sought a higher rate well before 2016, because there was no opportunity for Cobra's owners to earn a profit at the pre-2016 rate.

Finally, Staff's "distrust" of Mr. Osborne aside, this Commission has the authority to ensure NEO's and Staff's concern on this matter is addressed. Specifically, the Supreme Court of Ohio has consistently construed R.C. §4909.16 as vesting this Commission with **broad discretionary powers 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). Rather than oppose all relief to Cobra, Staff and NEO could have suggested, for example, that no disbursements to ownership occur without Commission approval while the emergency rate is being charged or any other restriction it believed necessary to insure that Cobra benefits from the revenue increase. The fact that it chose not to do so strongly suggests that Staff's true concern has nothing to do with Cobra's use of the increased revenues, but instead the opportunity to injure Mr. Osborne through Cobra.

IV. CONCLUSION

For the reasons stated in this Reply and Cobra's Brief, Cobra respectfully requests that the Commission issue an Order which temporarily increases Cobra's rates, by implementing a 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 per Dth, equal to the rates Staff acknowledge are justified by the reduction in Cobra's volumes. Finally, Cobra also 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,

/s/ Michael D. Dortch

Michael D. Dortch (0043897)

Justin M. Dortch (00900048)

KRAVITZ, BROWN, & DORTCH, LLC

65 East State Street, Suite 200

Columbus, Ohio 43215

Phone (614) 464-2000

Fax: (614) 464-2002

E-mail: mdortch@kravitzllc.com

jdortch@kravitzllc.com

Attorneys for Applicant

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 March 8, 2019, by electronic mail:

James F. Lang
N. Trevor Alexander
Mark T. Keaney
Calfee, Halter & Griswold, LLP
41 S. High Street
1200 Huntington Center
Columbus, Ohio 43215
jlang@calfee.com
talexander@calfee.com
mkeaney@calfee.com

Kate E. Russell-Bedinghaus
Stand Energy Corporation
1077 Celestial Street
Suite 110
Cincinnati, Ohio 45202
kbedinghaus@standenergy.com

Werner L. Margard III
Assistant Attorney General
Office of the Ohio Attorney General
30 East Broad Street
16th Floor
Columbus, Ohio 43215
werner.margard@ohioattorneygeneral.com

/s/ Michael D. Dortch

EXHIBIT 1 TO COBRA'S REPLY BRIEF FILED UNDER SEAL

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/8/2019 4:25:37 PM

in

Case No(s). 18-1549-PL-AEM, 16-1725-PL-AIR

Summary: Reply Cobra Pipeline Company, LTD's Reply Brief electronically filed by Mr. Justin M Dortch on behalf of Cobra Pipeline Company, LTD