

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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| 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
MEMORANDUM CONTRA TO NEO'S MOTION TO STRIKE**

Northeast Ohio Natural Gas Corp. ("NEO")¹ bases its Motion to Strike ("Motion") on its erroneous belief that Cobra Pipeline Company, LTD ("Cobra") has attempted to use information in its arguments that was not introduced into evidence as part of this case. Specifically, NEO has objected to two (2) contributions made by Cobra's principal owner, Richard M. Osborne, that occurred in 2018 ("Contributions") because NEO and Staff were allegedly deprived "of the opportunity to contest, rebut, or contextualize these alleged transactions."² NEO's position is meritless because Cobra provided such evidence of the Contributions during the evidentiary hearing that took place on January 10, 2019 ("Evidentiary Hearing").

Cobra will, however, concede that Footnote 25 of its Post-Hearing Reply Brief ("Reply Brief") contains an error. Specifically, Footnote 25 states that all of the information used in Exhibit 1 of the Reply Brief ("Exhibit 1") was provided to NEO and Staff in Exhibit JC-1 and Exhibit JC-2. Footnote 25 should have stated that the information contained in Exhibit 1 was a

¹ On March 1, 2019, Brainard Gas Corp., Orwell Natural Gas Company, Northeast Ohio Natural Gas Corp., and Spellman Pipeline Holdings, LLC merged into Northeast Ohio Natural Gas Corp. The Public Utilities Commission of Ohio ("PUCO" or "Commission") approved the merger on January 3, 2019. See *In the Matter of the Joint Application of Brainard Gas Corp., Northeast Ohio Natural Gas Corp., Orwell Natural Gas Company, and Spellman Pipeline Holdings, LLC for Approval of a Merger*, Finding and Order (January 1, 2019) at ¶1.

² See *Motion* at P. 5.

summarization of the evidence found in Exhibit JC-1, Exhibit JC-2 and the testimony of Cobra's witnesses, Jessica Carothers and Carolyn Coatoam introduced at the Evidentiary Hearing.

Specifically, evidence of the Contributions was provided during NEO's cross examination of Cobra's witness, Ms. Carolyn Coatoam. Ms. Coatoam's testimony states:

16 Q. OS-AIR paid down Cobra's loan to Huntington
17 Bank in 2018 in the amounts of \$100,000 and
18 \$150,000?

19 A. Yes.

20 Q. That was two separate payments?

21 A. Yes.

22 Q. There is no accounting entry in Cobra's
23 income statement or balance sheet which would reflect
24 OS-AIR's payments to Huntington Bank on Cobra's
25 behalf, correct?

1 A. Yes, there's an offset to Richard
2 Osborne's paid-in capital account. It's not in here,
3 it's not in these projections.

4 Q. Okay. So what you're saying is there is
5 no accounting entry in Cobra's emergency application
6 showing the payments made by OS-AIR on Cobra's
7 behalf, right?

8 A. No, they weren't made at that time. We
9 didn't know about it.

10 Q. But you believe there will be an entry
11 in the future?
12 As of 12-31-18, yes.

See *Transcript* at P.129, Line 16 – P.130, Line 12.

Cobra will also concede that the December 5, 2018 contribution's actual amount was \$197,447.93³ but was referenced by NEO's counsel as a \$150,000 contribution. However, NEO's error does not change Cobra's argument regarding Mr. Osborne's contributions to the company in 2018. Specifically, Mr. Osborne would have still contributed \$65,215.78 to the company during 2018 even if this Commission were to only allow for the misstated \$150,000 as the December 5, 2018 contribution amount.

Next, NEO cannot argue that it was unaware of the Contributions and was therefore not provided an "opportunity to contest, rebut, or contextualize" these alleged transactions when NEO specifically asked Ms. Coatoam about these transactions during its cross examination of her. Cobra can only speculate on why NEO did not inquire further into these transactions but it is clear the opportunity existed.

Similarly, Staff was also provided an opportunity to ask Ms. Coatoam about these transactions. Staff's cross examination of Ms. Coatoam began after NEO's cross examination of her.⁴ Therefore, Staff had been presented with evidence pertaining to the existence of the Contributions even if Staff had been unaware of the Contributions before NEO's cross examination.

For these reasons, NEO's Motion to Strike should be DENIED.

³ See Exhibit 1 to Cobra's Reply Brief.

⁴ Staff's Cross Examination of Ms. Coatoam begins on Transcript, P. 147.

Respectfully submitted,

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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 April 1, 2019, by electronic mail:

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Summary: Memorandum Cobra's Memorandum Contra NEO's Motion to Strike. electronically filed by Mr. Justin M Dortch on behalf of Cobra Pipeline Company, LTD