

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**COBRA PIPELINE COMPANY, LTD’S  
APPLICATION FOR REHEARING  
OF THIS COMMISSION’S OPINTION & ORDER DATED SEPTEMBER 11, 2018**

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Pursuant to Ohio Revised Code §4903.10 and Ohio Administrative Code §4901-1-35(A), Cobra Pipeline Company, Ltd., (“Cobra”), respectfully applies for rehearing of the Entry and Orders issued by the Public Utilities Commission of Ohio (the “Commission”) on September 11, 2019 in the above captioned case (the “Entry”). Cobra submits that the Commission’s Entry is unreasonable and unlawful in the following particulars:

- 1) ASSIGNMENT OF ERROR NO.1: This Commission Erred in its September Order by permitting biases against Cobra’s principal owner, Mr. Osborne, to infect the proceedings designed to determine a just and reasonable.
- 2) ASSIGNMENT OF ERROR NO.2: This Commission Erred at Paragraph 39 in its September Order by striking statements evidencing Mr. Osborne’s capital contributions to Cobra during 2018.
- 3) ASSIGNMENT OF ERROR NO.3: This Commission Erred in its September Orders by failing to recognize that Cobra does not need PUCO permission to schedule its rates.
- 4) ASSIGNMENT OF ERROR NO.4: Even if this Commission is correct, and R.C. §§4909.17, 4909.18, and 4909.19 should be applied in rate cases involving pipeline companies, such as Cobra, this Commission erred when it failed to

provide all of the due process protections provided to public utilities by the Ohio General Assembly.

- 5) ASSIGNMENT OF ERROR NO.5: Even if this Commission appropriately employed processes akin to those normally applied through R.C. §§4909.17, 4909.18, and 4909.19, this Commission erred when it refused to consider information outside of the Test Year.
- 6) ASSIGNMENT OF ERROR NO.6: This Commission erred when it denied Cobra's Application for a temporary surcharge in the Emergency Rate Case.
- 7) ASSIGNMENT OF ERROR NO.7: This Commission erred when it refused to allow Cobra to collect its previously assessed personal property taxes as a regulatory asset in the 2016 Rate Case.

The reasons for granting this Application for Rehearing are set forth in the attached Memorandum in Support, which is incorporated by reference herein.

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 October 11, 2019, by electronic mail:

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**COBRA PIPELINE COMPANY, LTD’S  
MEMORANDUM IN SUPPORT OF ITS  
APPLICATION FOR REHEARING  
OF THIS COMMISSION’S ENTRY DATED SEPTEMBER 11, 2019**

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**I. INTRODUCTION**

The Public Utilities Commission of Ohio (“PUCO” or “Commission”) denied Cobra Pipeline Company, LTD (“Cobra”) the ability to increase its revenue by denying proposed rate increases in Case NO. 16-1725-PL-AIR (“2016 Rate Case”) and Case No. 18-1549-PL-AEM (“Emergency Rate Case”) when it issued its September 11, 2019, Opinion and Order (the “September Order”). This Commission erred as a matter of law, however, when it then it issued its September Order. As a result, this Commission should vacate the September Order and issue an Order that complies with Ohio law.

**II. THE APPLICABLE LAW**

**ASSIGNMENT OF ERROR NO.1: This Commission Erred in its September Order by permitting biases against Cobra’s principal owner, Mr. Osborne, to infect the proceedings designed to determine a just and reasonable.**

This Commission erred, in paragraph 35, when it failed to strike portions of Staff’s Post-Hearing Brief, filed on February 22, 2019 (“Staff’s Brief”), that discussed the “history” of other

companies owned by Richard M. Osborne. This Commission is correct in its statement that it has previously refused to strike portions of initial briefs that were offered to provide a historical perspective **about the company in question**. *In re Ohio Power Co. and Columbus Southern Power Co.*, Case No. 10-2376-EL-UNC, et al., Opinion and Order (December 14, 2011) at P. 16. In *Ohio Power Co.*, this Commission permitted the inclusion of a party's electric service history by stating that it is "not necessary that a party request administrative notice of a Commission order to use the order in its brief." *Id.* However, the situation in *Ohio Power Co.* is very different than what occurred in this case. In this case, the "background information" does not provide any information about Cobra itself. Instead, Staff's Brief discusses other companies owned by Mr. Richard M. Osborne ("Mr. Osborne") and those company's alleged malfeasance. Many of the statements and facts made in Staff's Brief are: (1) irrelevant; (2) intentionally inflammatory; (3) prejudicial; and (4) made for absolutely no purpose related to ratemaking. This "history" lesson shows that this Rate Case is not about finding a just and reasonable rate for Cobra but is, instead, merely a vehicle to allow this Commission to punish the company for being owned by Mr. Osborne.

First, the "BACKGROUND" section should be stricken from the record because it refers to actions and/or incidents involving Mr. Osborne, individually, or as owner of other companies. This information could not properly be introduced into evidence because **NONE** of that information concerns Cobra, or the rate Cobra should charge its customers. This improper focus on Mr. Osborne distracts from the relevant issues in this Rate Case.

The entire section entitled "The Distribution Utilities" should also be stricken. In this section, Staff's Brief expends nine (9) pages to discuss Mr. Osborne, Orwell Natural Gas

Company, Northeast Ohio Natural Gas Corp., and Brainard Gas Corp.<sup>1</sup> The section exists, apparently, for the purpose of repeatedly berating Cobra's owner for his freewheeling business practices and his failure to observe corporate separation policies that larger, more sophisticated utility operators typically observe when they operate both regulated and unregulated entities. However, as Staff and this Commission acknowledge, Mr. Osborne has suffered repeated business reverses in the past five years, and as a result no longer owns any of the entities that are the focus of this section of Staff's Brief. Distaste for Mr. Osborne may be understandable. Still, nothing in this portion of Staff's Brief contributes to a determination of the just and reasonable rate Cobra should be charging its customers. Similarly, portions of the section entitled "The Pipelines" should be stricken for the same reason because it focuses heavily on a former cobra affiliate known as Orwell-Trumbull Pipeline, LLC ("OTPC").

Portion of Staff's Brief captioned "Ohio Rural Natural Gas" should also be stricken because they do not even concern a company owned by Mr. Osborne. ORNG was organized as a cooperative and thus was never under common ownership with Cobra.<sup>2</sup> Moreover, Cobra did not even ship natural gas for ORNG.<sup>3</sup> Its management, or even its mismanagement, is not Cobra's cross to bear. It is flatly unfair and obviously prejudicial to hold Cobra responsible for the actions of an unaffiliated entity to which it provided no service and over which it had no control. Further, ORNG's sins are irrelevant to any determination of the just and reasonable rate - the only legitimate purpose of this proceeding.

Second, on January 10, 2019, this Commission erred when it failed to allow Cobra to question Staff about its biases during the hearing that was conducted in this consolidated matter

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<sup>1</sup> These companies were identified as Hearthstone earlier in this Brief. Hearthstone is no longer owned by RMO. Hearthstone is an intervener in this Rate Case.

<sup>2</sup> Mr. Osborne did finance the formation of ORNG.

<sup>3</sup> See Cobra's Response to DR #32.

(“January Hearing”). Staff called Mr. Matthew Snider as a witness at the January Hearing. Mr. Snider is a Utility Specialist III in the Research & Policy Division within the Rates and Analysis Department at the Commission.<sup>4</sup> Mr. Snider was the Staff’s sole witness and the purpose of his testimony was to support Staff’s Recommendation Letter (“Staff’s Letter”) filed in Cobra’s Emergency Rate Case.<sup>5</sup> During the cross examination of Mr. Snider at the January Hearing, Cobra’s counsel asked Mr. Snider about potential bias against Cobra and its principal owner, Mr. Osborne.<sup>6</sup> Staff’s counsel objected to permitting questioning regarding potential bias involved: (1) Staff generally; (2) specific Staff members that were identified to have worked on the Emergency Rate Case; and (3) Mr. Snider himself. This was reversible error. Ohio’s rules of Evidence apply, generally, in Commission Hearings. Rule 616(A) of the Ohio Rules of Evidence states:

In addition to other methods, a witness may be impeached by any of the following methods:

(A) **Bias.** Bias, prejudice, interest, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by extrinsic evidence.

**ASSIGNMENT OF ERROR NO.2:            This Commission Erred at Paragraph 39 in its September Order by striking statements evidencing Mr. Osborne’s capital contributions to Cobra during 2018.**

Cobra agrees with NEO and this Commission that information contained in a post-hearing brief that is not part of the record should be stricken from the record.<sup>7</sup> However, this Commission’s decision to strike portions of Cobra’s Reply Brief because the Commission

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<sup>4</sup> Direct Testimony of Mr. Snider at P.2, Lines 9-13.

<sup>5</sup> *Id.* at P.3, Lines 6-11.

<sup>6</sup> Transcript of January Hearing, Vol. I, P.197-202.

<sup>7</sup> See, *In re Ohio American Water Co.*, Case No. 09391-WS-AIR.

erroneously believes that these items include information that is not part of the record in this matter is incorrect.

First, Cobra's General Ledger up until December 2018 was included of as part of Exhibits JC-1 and JC-2.<sup>8</sup> These exhibits alone show that Mr. Osborne contributed \$65,215.78 to the company during 2018 prior to December 2018. This Commission's decision to strike denies Cobra the opportunity to rely upon this information that is undisputedly in the record.

The contributions that are disputed by Hearthstone include those made during December 2018. Hearthstone argues that because there is no reference to these contributions in Exhibits JC-1 and/or JC-2 that no evidence was submitted. This is error. This Commission's decision to strike portions of Cobra's Reply Brief ignores the evidence that was introduced by Ms. Coatoam during the January Hearing, of the capital contributions made by Mr. Osborne during December 2018. Specifically, 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

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<sup>8</sup> See September Opinion at ¶38.



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.<sup>9</sup>

Ms. Coatoam's testimony is valid evidence that capital contributions were made in December, 2018 by Mr. Osborne.<sup>10</sup> Ms. Coatoam's testimony was: (1) relevant to this issue; (2) contains her personal knowledge of the contributions; (3) not hearsay; (4) a statement under oath; (5) subject to cross examination. As such, evidence exists in the record of Mr. Osborne's contributions made during December 2018 and therefore, it was improper to strike these items from Cobra's Reply Brief.

**ASSIGNMENT OF ERROR NO.3: This Commission Erred in its September Orders by failing to recognize that Cobra does not need PUCO permission to schedule its rates.**

**A. The Traditional Rate Making Process.**

Cobra agrees that this Commission has the authority to determine if a rate is "just and reasonable" under Chapter 4909 of the Ohio Revised Code. In typical rate making cases, a

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<sup>9</sup> See *Transcript at Vol. I, Page 129, Line 16 to P. 130, Line 12.*

<sup>10</sup> Cobra conceded, in its Reply Brief, that the second contribution's actual amount was \$197,447.93 but was referenced as a \$150,000 contribution.

utility seeking to establish or change its rate will fill an application under R.C. §4909.18. R.C. §4909.18 permits this Commission to set a hearing if it believes an application under this statute require greater examination. This Commission has established Chapter 4901-7 of the Ohio Administrative Code (“O.A.C.”) to govern what information it deems necessary to determine if an Application under R.C. §4909.18 is just and reasonable. R.C. §4909.17 requires that this Commission approve an application under R.C. §4909.18 before that rate can go into effect.

This case **DID NOT** proceed under R.C. 4909.17, however. In case No. 15-637-GA-CSS, this Commission Ordered Cobra to file a rate case pursuant to Chapter 4909 of the Revised Code. Cobra complied. Cobra’s Application in the 2016 Rate case was filed on August 15, 2016 and deemed accepted on September 26, 2016. This Commission then did nothing with Cobra’s 2016 Rate Case for eight (8) months. Cobra’s financial situation began to decline during this period of Commission inactivity. Cobra therefore notified this Commission it was implementing its proposed rates by invoking the statutory protections the General Assembly provided utilities when this Commission fails to issue a timely order, which are contained in R.C. §4909.42.<sup>11</sup> After Cobra sought these protections, the Commission then remained silent for nearly another eight (8) months.

- B. The Commission Correctly Identified that the Traditional Rate Making Process does not apply to Pipeline Companies, such as Cobra, and then erred by applying that process anyway.

On April 11, 2018, this Commission submitted an entry (“April Entry”)in which it informed all parties to this case that R.C. §4909.18, R.C. §4909.19, and R.C. §4909.42 are not

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<sup>11</sup> Cobra sought these protections by issuing a Bond and a letter that it (still) believes complies with the requirements of the statute. Staff and NEO disagreed that Cobra’s Bond met the statutory requirements. This matter will likely be raised before the Ohio Supreme Court when Cobra appeals this Commission’s Second Entry on Rehearing issued on September 11, 2019 (“Rehearing Entry”). However, none of the parties questioned the application of R.C. §§4909.18, 4909.19, and/or 4909.42 to rate cases involving pipeline companies.

applicable to Cobra's 2016 Rate Case. The Commission erred, however, in failing to recognize that R.C. 4909.17 also does not apply to pipeline companies. In the absence of R.C. 4909.17, Cobra's rates are those Cobra files with this Commission. Commission pre-approval is not required, those rates are effective when Cobra says they are effective and remain in effect unless and until this Commission sets Cobra's filed rate aside.

In this case, Cobra filed proposed rates on August 15, 2016. This Commission later accepted Cobra's filing effective as of September 26, 2016. Still later – attempting to conform to a statutory scheme to which it now recognizes it is exempt – Cobra expressly informed this Commission and its customers that its proposed rate would become effective for all transportation beginning July 1, 2017.<sup>12</sup> At this point, Cobra's new rate was legally in effect. Those rates remained in effect until April 11, 2018, when this Commission exercised its authority and suspended that rate.

**ASSIGNMENT OF ERROR NO.4: Even if this Commission is correct, and R.C. §§4909.17, 4909.18, and 4909.19 should be applied in rate cases involving pipeline companies, such as Cobra, this Commission erred when it failed to provide all of the due process protections provided to public utilities by the Ohio General Assembly.**

Assuming that R.C. §§4909.17, 4909.18, 4909.19, and (as a result) 4909.42 are inapplicable to Cobra and other pipeline companies,<sup>13</sup> the first consequence therein is that Cobra need not obtain this Commission's approval before it changes its rates. The second consequence therein is that this Commission is not bound by the ratemaking process created to implement the authority contained in these statutes. The Commission's insistence that it is proceeding under

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<sup>12</sup> It is irrelevant that Cobra relied upon a misunderstanding of Ohio law when it placed its rates into effect. The fact remains it unequivocally notified the Commission, and its customers, it was making its new rates effective as of July 1, 2018.

<sup>13</sup> As a result, O.A.C. Chapter 4901-7 is also inapplicable.

these statutes in order to respect and protect Cobra's due process rights rings entirely hollow.<sup>14</sup> Cobra's rights do not depend upon the Commission's prior approval. But, even if the Commission wishes to employ the process under those statutes, then this Commission can start by also recognizing that it must employ those processes in a manner that provides pipeline companies **AT LEAST** the same level of due process protections as the General Assembly provided entities that are subject to those provisions. It cannot selectively employ those process to provide less protection to a pipeline company than to other public utilities. The Ohio General Assembly unequivocally intended to protect public utilities from under delays in the rate making process.

This Commission's decisions subjected Cobra to regulatory limbo for over three years, as the financial position of the company seriously deteriorated. This is the exact antithesis of due process, and the antithesis of what the Ohio General Assembly intended when it: (1) exempted pipeline companies, railroads, street and electric railways, for-hire motor carriers from needing approval to change their rates under R.C. §4909.17; and (2) created R.C. §4909.42 to protect all other utilities.

**ASSIGNMENT OF ERROR NO.5: Even if this Commission appropriately employed processes akin to those normally applied through R.C. §§4909.17, 4909.18, and 4909.19, this Commission erred when it refused to consider information outside of the Test Year.**

This rate case should be concerned with establishing an appropriate rate for Cobra's services in the future, recognizing the current financial needs of the company. This Commission's refusal to focus on that goal due to an insistence that the Test year is "sacrosanct"

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<sup>14</sup> See September Order at ¶¶51, 57, and 58. See also, April Entry at ¶77.

is simply inaccurate. First, R.C. Chapter 4909 expressly grants this Commission at least two instances in which it can look outside the prescribed test year. Specifically, R.C. 4909.15 states:

(C)

**(1) Except as provided in division (D) of this section, the revenues and expenses of the utility shall be determined during a test period. The utility may propose a test period for this determination that is any twelve-month period beginning not more than six months prior to the date the application is filed and ending not more than nine months subsequent to that date. The test period for determining revenues and expenses of the utility shall be the test period proposed by the utility, unless otherwise ordered by the commission.**

(2) The date certain shall be not later than the date of filing, except that it shall be, for a natural gas, water-works, or sewage disposal system company, not later than the end of the test period.

(D) A natural gas, water-works, or sewage disposal system **company may propose adjustments to the revenues and expenses to be determined under division (C)(1) of this section for any changes that are, during the test period or the twelve-month period immediately following the test period,** reasonably expected to occur. The natural gas, water-works, or sewage disposal system company shall identify and quantify, individually, any proposed adjustments. The commission shall incorporate the proposed adjustments into the determination if the adjustments are just and reasonable.

(Emphasis Added.) The exception to the test period contained in R.C. 4909.15(D) also demonstrates that the Ohio General Assembly recognized that these there would be times when it is appropriate to abandon a strict adherence to the rule of a “test year.” Cobra repeatedly asked the Commission to recognize its deteriorating financial condition and the passage of years following the filing of the 2016 Rate Case as compelling reasons to consider less stale information regarding the company. The desire to punish Mr. Osborne is **NOT** a sufficient reason to ignore the company’s needs.

This Commission has stated many times during this proceeding that it has broad discretion in rate cases.<sup>15</sup> The exception to the test period contained in R.C. 4909.15(C) sets a regimented time period **UNLESS** this Commission orders otherwise. Due to the enormous delay in this case, it would be more than appropriate for this Commission to issue an Order that would change the test period to reflect Cobra's current financial situation. In fact, it is unjust and unreasonable for this Commission to ignore that delay and to ignore the evidence that Cobra introduced regarding its increasingly dire situation.

Next, given the inapplicability of R.C. 4909.17, 4909.18, and 4909.19, this Commission can cite no statute or court case for its position. Furthermore, the facts are that: (a) this Commission's Staff requested information outside of the Test Year during discovery; (b) Cobra provided Staff with virtually every financial record in the company's possession; and (c) this Commission has frequently considered information outside of a proposed test year in this and other rate cases. For example, Staff sought and received all of Cobra's monthly invoices to certain customers for the calendar year of 2016 in DR #41.<sup>16</sup> Cobra's response to DR #41 was provided to Staff on September 28, 2017 – over seven (7) months before the Staff Report was filed and the rationale that “non-test year revenues are inapplicable” was espoused by Staff. This evidence of Cobra's loss of volumes were introduced into evidence. Further, Staff acknowledges that it “did adjust wages and salaries to the latest known figures” – which were outside of the Test Year.<sup>17</sup> Likewise, Staff agreed with Mr. Hess's testimony recommending the use of an average of years outside of the Test Year to calculate expenses associated with Professional Legal Services, given that those expenses were deemed to be non-representative.<sup>18</sup> Staff even

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<sup>15</sup> See *September Order* at ¶53.

<sup>16</sup> Cobra's Response to DR #41 is Exhibit F to Jessica Carother's Direct Testimony.

<sup>17</sup> See John Berringer's Direct Testimony at P.3, Lines – 5-6.

<sup>18</sup> See John Berringer's Direct Testimony at P. 7, Lines 1- 18 discussing Cobra's Objection entitled Objection V.E.

recognized that the test year's volumes no longer represented the volumes transported by the Company, and even acknowledged that the diminished volumes alone, revealed that the company needed a surcharge equal to at least \$0.40 per MCF to meet its operating needs in the Emergency Rate Case.<sup>19</sup>

Second, this Commission regularly accepts information outside of the Test Year in rate cases. In this case, alone, this Commission approved: (a) Cobra's Rate Case expenses even though they occurred during 2016 through 2019 – well outside the test year of 2015;<sup>20</sup> (b) Cobra's adjustment of "Professional Services – Legal" line item even though it was also outside of the test year;<sup>21</sup> and (c) Staff's adjustment of Cobra employee's salary figures to their most current amounts. This Commission has also used and accepted information outside of the test year in numerous other rate cases as well. In an Entry, dated January 3, 1988, this Commission approved the Cleveland Electric Company and the Toledo Edison Company ("First Energy") the authority to collect three years' worth of operating expenses associated with the operation of the Perry nuclear power plant ("Perry Plant") as a regulatory asset even though those operating costs fell outside of the rate case used in First Energy's rate case.<sup>22</sup> Likewise, this Commission granted the Dayton Power & Light Company ("DP&L") the ability to recover deferred costs associated with the Ohio Valley Electric Corporation ("OVEC") in Case No 16.395-EL-SSO.

Similarly, the Commission erred when it refused to adjust Cobra's expenses to reflect the fact that Cobra could no longer allocate operating expenses between it and OTPC. Those expenses could not be shared with OTPC, however once a receiver was appointed for that entity.

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<sup>19</sup> See Staff's Letter at P.4.

<sup>20</sup> See *September Opinion* at ¶88.

<sup>21</sup> See *September Opinion* at ¶92.

<sup>22</sup> See *In the matter of the Application of The Cleveland Electric Illuminating Company for Authority to Modify Current Accounting Procedures to Defer and Amortize Operating Expenses Not Covered by Revenue for the Perry Nuclear Power Plant*, Case No. 97-109-EL-AAM.

Ms. Coatoam's testimony makes it clear that this arrangement ended once Mr. Burkons assumed control of OTPC.<sup>23</sup>

**ASSIGNMENT OF ERROR NO.6: This Commission erred when it denied Cobra's Application for a temporary surcharge in the Emergency Rate Case.**

This Commission erred when it denied Cobra the authority to charge a temporary surcharge of at least \$0.40 until a permanent rate could be set. R.C. 4909.16 is yet another example of this Commission being granted vast discretion by the General Assembly,<sup>24</sup> and this Commission refusing to use that discretion due to its bias towards Mr. Osborne. 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.

Cobra's emergency is a result of a reduction of the volumes it ships. This reduction in volumes meant that Cobra projected to only earn \$1,596,837.40 in revenue during 2018, with projected expenses in the amount of \$2,164,979.35<sup>25</sup> during 2018.<sup>26</sup> This Commission's Staff

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<sup>23</sup> See *Direct Testimony of Carolyn Coatoam* at P.9, Line 1 – 14.

<sup>24</sup> The Ohio Supreme Court has construed R.C. 4909.16 as vesting this Commission with broad discretionary powers to determine whether an emergency exists and to tailor a remedy that will enable the public utility concerned to meet an emergency. *Manufactures Light & Heat Co. v. Pub. Util. Com.*, 163 Ohio St. 78, 125 N.E.2d 183 (1955).

<sup>25</sup> This Commission found that Cobra was entitled to recover \$2,496,505 in operating expenses. See *September Order* at ¶119.

<sup>26</sup> See *Direct Testimony of Jessica Carothers* at P. 45, 9.



has had three (3) years to review every piece of Cobra's financial information.<sup>27</sup> As a result of that review, Staff has recognized that: (a) Cobra had seen a decrease in volumes shipped on its systems; and (b) Cobra needs at least a \$0.40 per MCF surcharge **JUST TO MEET** its financial obligations.<sup>28</sup> However, despite acknowledging Cobra's financial need, Staff recommended, and this Commission accepted, that Cobra not be granted rate relief because "Cobra may use the additional revenue for owner withdrawals and support of unregulated affiliates rather than the operation and maintenance of its system[.]" – or more accurately stated, "we don't trust Richard M. Osborne."<sup>29</sup> This result brings about an impossible situation for Cobra. Everyone acknowledges that Cobra needs additional revenue, but it is unable to obtain it because this Commission will not grant it rate relief as long as it is owned by Mr. Osborne.

**ASSIGNMENT OF ERROR NO.7: This Commission erred when it refused to allow Cobra to collect its previously assessed personal property taxes as a regulatory asset in the 2016 Rate Case.**

As part of this Rate Case, Cobra has asked this Commission to create a rider authorizing recover of a "Regulatory Asset" permitting Cobra to collect and pay its previously assessed personal property taxes ("PAPPT").<sup>30</sup> A "Regulatory Asset", of course, is created when a utility is allowed to recover an expense that it has incurred, amortized over a certain period of time. The Commission has the authority to authorize Regulatory Assets. R.C. §4905.13 authorizes this Commission to establish a system of accounts kept by public utilities. The Commission has done so for natural gas companies,<sup>31</sup> electric utilities,<sup>32</sup> waterworks and sewage disposal companies,<sup>33</sup>

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<sup>27</sup> Attached as Exhibit A is a list of the documents in the record of these proceedings that demonstrates Cobra's willingness to provide a complete record of its entire financial history. This list does not include all of the information that was provided by Cobra to Staff per Staff's request.

<sup>28</sup> See Staff Letter at P.4.

<sup>29</sup> See *September Order* at ¶145.

<sup>30</sup> See Direct Testimony of Ed Hess at P. 7-9.

<sup>31</sup> See O.A.C. §4901:1-13-13.

and arguably telephone local exchange carriers.<sup>34</sup> The Commission adopted Federal Energy Regulatory Commission's Uniform System of Accounts ("Uniform System of Accounts") for each of these utility types. The Uniform System of Accounts does not typically allow for Regulatory Assets.<sup>35</sup> However, this Commission has consistently ruled that it has the power to modify the Uniform System of Accounts if it chooses to, as it applies to utilities operating within the State of Ohio.<sup>36</sup>

Staff's only argument against the creation of a rider to allow Cobra to collect the money necessary to pay its PAPPT obligation is a misguided belief "ratepayers have already paid for these taxes through rates the Company has historically charged."<sup>37</sup> However, Staff provided no evidence of how Cobra's customers have already paid for these taxes.<sup>38</sup> The truth is that Cobra's customers were not paying personal property taxes as part of Cobra's rates, because Cobra wasn't seeking recovery of personal property taxes when this Commission approved Cobra's tariff in the 2005 Rate Case. Cobra instead understood it was to pay the CAT tax. Cobra provided unrefuted evidence that it paid CAT taxes under a group filing in the name of Osair, at the time its tariff was approved. The CAT taxes paid did not offset the amount of personal

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<sup>32</sup> See O.A.C. §4901:1-9-05.

<sup>33</sup> See O.A.C. §4901:1-15-32.

<sup>34</sup> See O.A.C. §4901:1-7-21(D)(3)(a)(i).

<sup>35</sup> The Commission has elected not to adopt the Uniform System of Accounts for pipeline companies such as Cobra Pipeline. This is yet another example that demonstrates that the procedural method in which the Commission is attempting to conduct this Rate Case is improper. However, Cobra must continue to defend itself. Therefore, Cobra will, for arguments sake, presume that the Uniform System of Accounts applies to pipeline companies.

<sup>36</sup> See Entry dated January 3, 1988 in *In the Matter of the Application of the Cleveland Electric Illumination Company for Authority to Modify Current Accounting Procedures to Defer and Amortize Operating Expenses Not Covered by Revenue for the Perry Nuclear Power Plant*, Case No. 87-109-EL-AAM at ¶3 ("Perry Nuclear Case"); Entry dated September 21, 1987 in *In the Matter of the Application of the Cleveland Electric Illuminating Company for Authority to Modify Current Accounting Procedures to Defer and Amortize Operating Expenses Not Covered by Revenue for the Beaver Valley Nuclear Power Plant, Unit No. 2*, Case No. 87-1273-EL-AAM at ¶3 ("Beaver Valley Case"). See also, *In the Matter of the Application of the East Ohio Gas Company for Approval of Accounting Method for the Continued Voluntary Weatherization Program*, Case No. 89-284-GA-AAM.

<sup>37</sup> Direct Testimony of Matthew Snider at P.7, Lines 5-6. (Please note: all of Mr. Snider's Direct Testimony pages are identified as P.1 at the bottom of each page.)

<sup>38</sup> It is important to note that Cobra's customers are not ratepayers as Staff claims.

property taxes owed, and ODT seeks recovery of the balance from Cobra. Cobra is now merely seeking that same recovery from its customers, who benefited from paying lower rates to Cobra than they would have been charged had the proper tax been paid.

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 October 11, 2019, by electronic mail:

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<u>Rate Case</u>	<u>Document</u>	<u>Description</u>	<u>Filed as Exhibit</u>
2016 Rate Case	Cobra's Response to DR #12	TCO Schedule Y	Exhibit C to Coatoam's Testimony
2016 Rate Case	Cobra's Response to DR #12	COBRA CWIP Account Ledger 2009 - 2011	Exhibit C to Coatoam's Testimony
2016 Rate Case	Salary Updates As of 1/1/2017	Update of Staff Workpaper WPC-3.7	Exhibit D to Coatoam's Testimony
2016 Rate Case	2017 Income Statement	2017 Income Statement	Exhibit E to Coatoam's Testimony
2016 Rate Case	Cobra's Monthly Volumes	Cobra's Monthly Volumes from 2010 to May 2018	Carothers Exhibit A
2016 Rate Case	2015 Income Statement	2015 Income Statement	Carothers Exhibit B
2016 Rate Case	Response to DR #32	Details from 2014-2016 requested by Staff re: (1) Imbalances; (2) Monthly Volumes; and (3) Striping Station Revenue	Carothers Exhibit C
2016 Rate Case	Response to DR #40	2015 Cobra Transport Revenues	Carothers Exhibit D
2016 Rate Case	Response to DR #39	Invoices to Customers submitted in 2015	Carothers Exhibit E
2016 Rate Case	Response to DR #41	Invoices to specific customers for 2016 as requested by Staff	Carothers Exhibit F
2016 Rate Case	Response to DR #1	(1) Income Statements for 2012-2015; (2) W-2's for All Employees; and (3) Cobra's General Ledger's for 2014 and 2015.	Carothers Exhibit H
2016 Rate Case	Rate Case Expenses	Invoices from Cobra's Legal Fees as of June 7, 2018	Carothers Exhibit K
2016 Rate Case	Rate Case Expenses	Invoices from Edward Hess as of June 11, 2018.	Carothers Exhibit L
2016 Rate Case	Schumaker Report	Reports from a company selected by the PUCO regarding Cobra's: (1) Financial Statements in 2014-2016; (2) Profit & Loss Statements in 2014-2016; Loans between Pipeline and Other Affiliates from 2014-2016; (3) owner's draws from 2014-2016; (4) Payroll Payments from 2014-2106; (5) Personal Property Tax Expenses from 2014-2016	Exhibit M

2016 Rate Case	Plant Used & Useful Spreadsheet	Exhibit 9 to Cobra's Application	NEO Exhibit 1
Emergency Rate Case	2018 Income Statement	2018 Income Statement	Emergency Rate Case Application Exhibit A
Emergency Rate Case	Projected Revenues from September 2018 through December 2018	Projected Revenues from September 2018 through December 2018	Emergency Rate Case Application Exhibit B
Emergency Rate Case	2018 Revenue - Pro Rata	Breakdown (per Customer) of actual and projected revenue for 2108	Exhibit JC-1
Emergency Rate Case	Response to DR #4	Cobra's General from January 1, 2018 to November 30, 2018	Exhibit JC-1
Emergency Rate Case	Response to DR #4	Invoices sent to customers in September, October, and November 2018	Exhibit JC-1
Emergency Rate Case	Cobra's General Ledgers from 2010 - 2018	Cobra's General Ledgers from 2010 - 2018	Exhibit JC-2
Emergency Rate Case	Related Company AR History	Breakdown of transactions between Mr. Osborne (and Osborne owned entities) and Cobra	Exhibit CC-2
Emergency Rate Case	2018 Projected Balance Sheet	2018 Projected Balance Sheet	Emergency Rate Case Application Exhibit D
Emergency Rate Case	2016 & 2017 Income Statements	2016 & 2017 Income Statements	Emergency Rate Case Application Exhibit H
Emergency Rate Case	Invoices	All invoices sent to customers from January 2018 until September 2018	Emergency Rate Case Application Exhibit C
Emergency Rate Case	Cobra Monthly Volumes	Cobra's Monthly Volumes from 2010 to August 2018	Emergency Rate Case Application Exhibit G

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Summary: Application Cobra Pipeline company, LTD's Application for Rehearing of this Commission's Entry Dated September 11, 2019. electronically filed by Mr. Justin M Dortch on behalf of Cobra Pipeline Company, LTD