FILE

IN THE SUPREME COURT OF OHIO

In The Matter of Cobra Pipeline Company, LTD,	:	20-0708 Case No.
Appellant,	:	Appeal from the Public Utilities
v.	:	Commission of Ohio
The Public Utilities Commission of Ohio,	:	PUCO Case No. 16-1725-PL-AIR
	:	PUCO Case No. 18-1549-PL-AEM
Appellee.	:	

NOTICE OF APPEAL BY
COBRA PIPELINE COMPANY, LTD

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APPELLANT
COBRA PIPELINE COMPANY, LTD'S
NOTICE OF APPEAL

Pursuant to Ohio Revised Code ("R.C.") §4903.11, §4903.13, Ohio Administrative Code ("O.A.C.) §4901-1-36, and The Supreme Court of Ohio Rules of Practice ("S. Ct. Prac. R.") 10.02, Appellant, Cobra Pipeline Company, LTD ("Cobra"), hereby gives notice to the Supreme Court of Ohio and to the Public Utilities Commission of Ohio ("Commission") of this appeal to the Supreme Court of Ohio. Cobra appeals from the fowling Commission Entries: (1) Entry dated April 11, 2018 ("April Entry"), in Case No. 16-1725-PL-AIR
("2016 Rate Case") (attached as Exhibit A hereto); (2) Commission's Second Entry on Rehearing entered September 11, 2019 in the 2016 Rate Case (attached as Exhibit B hereto); (3) Order and Opinion dated September 11, 2019 ("September Order"), issued in both Case No. 18-1549-PL-AEM ("Emergency Rate Case") and the 2016 Rate Case (attached as Exhibit C hereto); and (4) Commission's Fourth Entry on Rehearing entered April 8, 2020, in the both cases (attached as Exhibit D hereto).

I. 2016 Rate Case & The April Entry

On May 10, 2018, Cobra timely filed an Application for Rehearing ("2018 Application") of the April Entry pursuant to R.C. §4903.10 (attached as Exhibit E hereto). The Commission granted Cobra's Application on June 6, 2018, but for the sole purpose of allowing the Commission additional time to consider further the matters specified in Cobra's Application. The Commission then denied Cobra's Application with respect to each of the issues being raised in this appeal within its Second Entry on Rehearing, dated September 11, 2019 ("Second Entry on Rehearing").

On November 8, 2019, Cobra filed its first Notice of Appeal to this Court ("First Notice"), complaining and alleging that both the April Entry and the Second Entry on Rehearing were

unlawful and unreasonable, and that the Commission erred as a matter of law in the following respects. As directed by S. Ct. Prac. R. 10.02(A)(2)(b), Cobra identified the specific pages within its 2018 Application wherein each of the errors has been preserved, as follows:

Errors	Preserved at May Application Page Nos.
The Commission Erred In Its Description and Application Of The Exemptions That Result From R.C. §4909.17.	1-5
The Commission Erred When It Ordered Cobra To Provide An Immediate Refund Of 100% Of The Delta Between The Rate Cobra Placed In Effect On July 1, 2018 And The Rate Which Existed Prior To That Date.	5
The Commission Erred When It Asserted It Intends To Apply The Procedures Of R.C. §§4909.18 and 4909.19 To Cobra, After Having Just Declared Those Same Procedures Inapplicable To Cobra.	5-7
The Commission Erred When It Concluded Cobra's Bond Would Not Have Satisfied The Statute, Assuming That R.C. §4909.42 Might Be Applicable.	7-11

This case was docketed as Case No. 2019-1544 by this Court ("2019 Supreme Court Case"). On December 13, 2019, the Commission filed a Motion to Dismiss the 2019 Supreme Court Case because it believed the appeal had been prematurely filed ("Motion to Dismiss"). This Court granted the Commission's Motion to Dismiss in an Order dated February 12, 2020.

II. The Rate Cases & The September Order

On October 15, 2018, Cobra filed an application for an emergency rate increase with the Commission ("Emergency Application"). The Commission docketed Cobra's Emergency Application as Case No. 18-1549-PL-AEM ("Emergency Rate Case"). Cobra also filed two motions on October 15, 2018. The first was a Motion to Consolidate the Emergency Rate Case with the 2016 Rate Case ("Motion to Consolidate"). The second was a Motion to Stay the

proceedings in the 2016 Rate Case in order to permit the Emergency Rate Case process to proceed ("Motion to Stay"). The Commission denied Cobra's Motion to Stay on October 23, 3018. Then, the Commission granted Cobra's Motion to Consolidate on December 7, 2018. The Commission Staff filed its recommendations on January, 7 2019. An evidentiary hearing was held three days later, on January 10, 2019. The Commission then waited until September 11, 2019 to issue its September Order. In its September Order, the Commission denied Cobra's requests for a rate increase in both the 2016 Rate Case and the Emergency Rate Case.

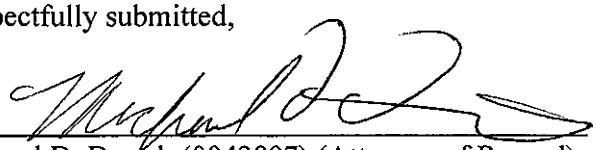
On October 11, 2019, Cobra timely filed an Application for Rehearing ("2019 Application") of the September Order pursuant to R.C. §4903.10 (attached as Exhibit F hereto). The Commission granted Cobra's 2019 Application on November 6, 2019, but for the sole purpose of allowing the Commission additional time to consider further the matters specified in Cobra's Application. The Commission then denied Cobra's 2019 Application with respect to each of the issues being raised in this appeal within its Fourth Entry on Rehearing, dated April 8, 2020.

Cobra files this Notice of Appeal ("Second Notice"), complaining and re-alleging that both the April Entry and the Second Entry on Rehearing are unlawful and unreasonable, and that the Commission erred as a matter of law in the manner listed in Section I of this Notice. Cobra also files its Second Notice, atocomplain and allege that both the September Order and the Fourth Entry on Rehearing are unlawful and unreasonable, and that the Commission erred as a matter of law in the following respects. As directed by S. Ct. Prac. R. 10.02(A)(2)(b), Cobra identifies the specific pages within its 2019 Application wherein each of the errors has been preserved, as follows:

Errors	Preserved at 2019 Application Page Nos.
The 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 rate.	1-4
The Commission Erred at Paragraph 39 in its September Order by striking statements evidencing Mr. Osborne's capital contributions to Cobra during 2018.	4-6
The Commission Erred in its September Order by failing to recognize that Cobra does not need prior PUCO permission to schedule its rates.	6-8
Even if the Commission was correct, in deciding that R.C. §§4909.17, 4909.18, and 4909.19 can be applied in rate cases involving pipeline companies, such as Cobra, the Commission Erred when it failed to provide the statutory protections provided to public utilities by the Ohio General Assembly.	8-9
Even if the Commission appropriately employed processes akin to those normally applied through R.C. §§4909.17, 4909.18, and 4909.19, the Commission erred when it refused to consider information outside of the test year.	9-13
The Commission Erred when it denied Cobra's Application for a temporary surcharge in the Emergency Rate Case.	13-14
The Commission erred when it refused to allow Cobra to collect its previously assessed personally property taxes as a regulatory asset in the 2016 Rate Case.	14-16

WHEREFORE: Cobra respectfully submits that the Commission's April Entry, Second Entry on Rehearing, September Order, and Fourth Entry on Rehearing are all unreasonable or unlawful and should be reversed. This case should be remanded to the Commission with instructions to correct the errors complained of herein.

Respectfully submitted,



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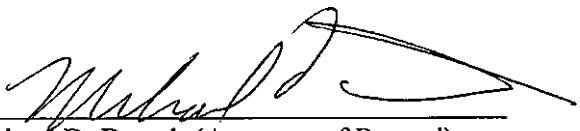
CERTIFICATE OF FILING

I hereby certify that the foregoing Notice of Appeal was filed with the Docketing Division of the Public Utilities Commission of Ohio this **June 8, 2020**, in accordance with S. Ct. Prac. R. 3.11(D)(2) and Ohio Administrative Code Section 4901-1-02(A) and 4901-1-36.



Michael D. Dortch (Attorney of Record)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the Public Utilities Commission of Ohio this **8th of June 2020**, pursuant to S. Ct. Prac. R. 3.11(b)(2) and R.C. Section 4903.13, by hand delivering a true and accurate copy thereof to the offices of the Commission and to the Chairman of the Commission, addressed as follows:

The Hon. Sam Randazzo, Chairman
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

I further state that, in addition, a courtesy copy of the foregoing was provided to the attorneys for the Public Utilities Commission, by electronic mail service, addressed as follows:

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I further state that, in addition, a courtesy copy of the foregoing was provided to the attorneys for the intervening parties, by electronic mail service, addressed as follows:

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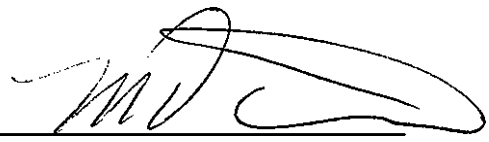

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EXHIBIT A

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF COBRA PIPELINE COMPANY, LTD FOR AN INCREASE IN ITS RATES AND CHARGES.	CASE NO. 16-1725-PL-AIR

ENTRY

Entered in the Journal on April 11, 2018

I. SUMMARY

{¶ 1} The Commission finds that the time frames set forth in R.C. 4909.42 for the fixation of rates are not applicable with respect to pipeline companies and, thus, Cobra Pipeline Company, LTD was not authorized under the statute to implement its proposed rates. Accordingly, the Commission directs Cobra Pipeline Company, LTD to reinstate its Commission-approved rates and refund to customers any amounts collected in excess of those rates.

II. DISCUSSION

{¶ 2} Cobra Pipeline Company, LTD (Cobra) is a pipeline company under R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On August 15, 2016, Cobra filed its application in the above-captioned case, in response to the Commission's Opinion and Order in Case No. 14-1654-GA-CSS, et al. In its Opinion and Order, the Commission directed Cobra and any other pipeline companies owned or controlled by Richard M. Osborne to file applications, pursuant to R.C. Chapter 4909, to determine just and reasonable rates that include charges for firm and interruptible transportation services and rates for shrinkage. *In re Complaint of Orwell Natural Gas Co. v. Orwell-Trumbull Pipeline Co., LLC*, Case No. 14-1654-GA-CSS, et al. (*Complaint Case*), Opinion and Order (June 15, 2016) at ¶ 77.

{¶ 4} On August 25, 2016, Staff sent Cobra a letter stating that its application did not comply with the Standard Filing Requirements for Rate Increases covered in Ohio Adm.Code 4901-7-01 and that Staff did not receive enough information to begin its review of the application. Staff's letter detailed the information needed to complete the application and stated that the information should be provided not later than 30 days from the date of the letter.

{¶ 5} An amended abbreviated application was filed by Cobra on September 26, 2016.

{¶ 6} By Entry dated November 9, 2016, the Commission approved Cobra's proposed test year and date certain, and accepted the amended application as of its filing date of September 26, 2016. The Commission also directed Cobra to publish legal notice of the application in a newspaper of general circulation throughout its territory.

{¶ 7} On July 7, 2017, Cobra filed correspondence indicating that, in compliance with R.C. 4909.42, it was submitting a bond, in order to institute its proposed rates. Staff filed a letter in response on August 11, 2017. Cobra filed a reply to Staff on August 18, 2017.

{¶ 8} On September 13, 2017, Orwell Natural Gas Company, Northeast Ohio Natural Gas Corp., and Brainard Gas Corp. (collectively, Gas Companies) filed a motion to intervene in this case. The Gas Companies state that, as large customers with extensive operations in Cobra's service territory, they have a real and substantial interest in this case and that the Commission's disposition of this proceeding may impair or impede their ability to protect that interest. No memoranda contra the motion to intervene were filed.

{¶ 9} On September 19, 2017, the Gas Companies filed a motion seeking to compel Cobra to cease charging unlawful rates. On October 4, 2017, Cobra filed a

memorandum contra the Gas Companies' motion. The Gas Companies filed a reply in support of their motion on October 11, 2017.

A. Summary of the Parties' Positions

{¶ 10} As noted above, Cobra filed correspondence stating that it was submitting a bond in compliance with R.C. 4909.42. Attached to its letter, Cobra provided a document purporting to be the bond, as well as an affidavit from two of Cobra's officers.

{¶ 11} In its response to Cobra's correspondence, Staff notes that R.C. 4909.42 permits a public utility requesting an increase in rates to place the proposed rates into effect if the Commission has not issued an order within 275 days from the date that the utility's application was filed. Staff further notes that, in order for the proposed rates to become effective, the statute requires that a "bond or letter of credit" be filed by the utility. Staff submits that Cobra's filing does not constitute a bond and instead is little more than a promissory note. Staff concludes that Cobra's filing is insufficient to satisfy the requirements of R.C. 4909.42.

{¶ 12} In its reply, Cobra notes that it anticipated that the Commission would issue a decision in this case on or before June 28, 2017, which was 275 days from the date on which its complete application was filed. Cobra further notes that, to date, Staff has not filed its report of investigation and no hearing has been scheduled to consider Cobra's application. Noting that R.C. 4909.42 is intended to protect utilities from under-recovery resulting from excessive delay, Cobra states that, in order to avoid losing all opportunity to collect revenue to which it is entitled, Cobra implemented the proposed rate increase after the 275-day period expired, consistent with the statute. With respect to its implementation, Cobra explains that it first informed its customers in June 2017 that their rates would increase effective July 1, 2017, with a subsequent true-up under R.C. 4909.42, including potential refunds, following the Commission's determination of the rates. Cobra notes that it then filed its bond with the Commission on July 7, 2017, and, subsequently, invoiced customers for the increased rates.

{¶ 13} Addressing Staff's letter, Cobra asserts that Staff appears to have taken the position that R.C. 4909.42 is satisfied only by means of a third-party surety's undertaking to pay any refund, if Cobra does not. Cobra disagrees with this position, arguing that a bond is any binding writing to pay a sum of money, subject to the performance of defined duties or rendered void by certain express conditions. Cobra contends that R.C. 4909.42 uses the term "bond" in a generic sense requiring the utility's promise to pay subject to the conditions described in the statute. Cobra, therefore, disputes Staff's characterization of Cobra's filing as a promissory note, which, according to Cobra, is merely an unconditional promise to pay. Finally, Cobra argues that Staff's interpretation is inconsistent with the language used in R.C. 4909.42, because the statute plainly contemplates the filing of a bond issued by the utility rather than a third-party surety. Cobra notes that the statute specifically directs the utility to file its bond, while two officers of the utility must expressly vouch under oath on behalf of the utility to refund any excess recovery. Cobra adds that, unlike R.C. 4909.42, there are numerous sections in the Revised Code that explicitly require bonds issued by a third-party surety. In any event, Cobra concludes that it is not opposed to meeting with Staff to discuss voluntary means, beyond those imposed by R.C. 4909.42, through which Cobra might secure its legal obligations.

{¶ 14} In their motion to compel, the Gas Companies seek an order from the Commission that compels Cobra to refrain from charging its proposed rates, at least until Cobra files a proper bond or letter of credit as required by R.C. 4909.42, and that declares void and invalid all charges Cobra has assessed since July 2017. The Gas Companies note that, although they have refused to pay the new rates assessed by Cobra since July 2017 due to the lack of a proper bond or letter of credit, they have tendered timely payments for all services rendered in accordance with the current Commission-approved rates.

{¶ 15} In support of their motion, the Gas Companies argue that the Commission has previously rejected an instrument similar to Cobra's. *In re Columbia Gas of Ohio, Inc.*,

Case No. 89-616-GA-AIR, et al. (*Columbia Rate Case*), Entry (Feb. 20, 1990). The Gas Companies note that, in the *Columbia Rate Case,* the Commission specified that R.C. 4909.42 requires an undertaking that not only contains a promise to refund any amounts collected by the utility over the rates determined by the Commission in its final order, but also an undertaking that is payable to the state of Ohio for the use and benefit of the affected customers. The Gas Companies argue that R.C. 4909.42, as applied by the Commission, requires both a promise by the utility to pay by way of an affidavit signed by two officers of the utility and a financial instrument from a bank or surety that supports that promise. The Gas Companies conclude that, as in the *Columbia Rate Case,* the Commission should find that Cobra's proposed rates are not in effect and that Cobra should not be charging its customers pursuant to its proposed rate schedules.

{¶ 16} The Gas Companies argue that, in addition to protecting utilities from under-recovery, R.C. 4909.42 is intended to protect the public from an overextended or financially unstable utility that is unable to refund overcharges to customers. The Gas Companies assert that, based on Cobra's financial filings and balance sheets included in its application, Cobra may not be able to issue any required refunds due to low cash on hand and affiliated receivables from entities controlled by Richard Osborne accounting for more than 99 percent of current assets, while Cobra also reported significant current liabilities, including amounts owed to affiliated companies and delinquent tax obligations. Concluding that Cobra's ongoing operations do not indicate sufficient income to provide customer refunds, the Gas Companies assert that the Commission should strictly enforce the financial security requirements of R.C. 4909.42.

{¶ 17} In its memorandum contra the motion to compel, Cobra emphasizes that its bond meets every requirement set forth in R.C. 4909.42. With respect to its financial situation, Cobra states that, in the absence of any criticism that its operating expenses are unreasonable, the Gas Companies' argument on this point appears to justify the requested rate increase. Cobra adds that the Gas Companies ignore the fact that the

General Assembly has the power to determine the forms of security that utilities are to provide when seeking a rate increase and has, in fact, specified that a utility's bond or letter of credit is sufficient assurance. According to Cobra, the Gas Companies can point to nothing within the language in R.C. 4909.42 that remains to be done. Finally, Cobra notes that, if a refund is imposed at some point, the Gas Companies would receive that refund through a temporary reduction in the new rates approved by the Commission, as the statute provides.

{¶ 18} In reply, the Gas Companies note that Cobra does not dispute that the Commission already rejected, in the *Columbia Rate Case*, the position that a utility's written promise alone is sufficient to satisfy R.C. 4909.42. The Gas Companies reiterate that, without a financial instrument from a surety or bank, Cobra's purported bond is deficient, thereby rendering its imposition of new rates unlawful. The Gas Companies further note that Cobra also does not dispute its bleak financial situation. According to the Gas Companies, Cobra's recent public financial filings call into question whether Cobra could actually pay refunds or whether Cobra could even continue operations if refunds are ordered to be issued through a reduction in future rates. The Gas Companies conclude that Cobra failed to provide any assurance that it can, in fact, issue customer refunds, if necessary.

B. Commission Conclusion

{¶ 19} R.C. 4909.42 provides, in pertinent part, that, if the proceeding on an application filed with the Commission under R.C. 4909.18 by any public utility requesting an increase on any rate or charge has not been concluded and an order entered pursuant to R.C. 4909.19 at the expiration of 275 days from the date of filing the application, an increase not to exceed the proposed increase shall go into effect upon the filing of a bond or a letter of credit by the public utility. R.C. 4909.42 further provides that the bond or letter of credit shall be filed with the Commission and shall be payable to the state for the use and benefit of the customers affected by the proposed increase. The statute also

requires that an affidavit attached to the bond or letter of credit be signed by two of the officers of the utility, under oath. The affidavit must contain a promise on behalf of the utility to refund any amounts collected by the utility over the rate or charge, as determined in the final order of the Commission. Finally, R.C. 4909.42 provides that, if the Commission has not entered a final order within 545 days from the date of the filing of an application for an increase in rates under R.C. 4909.18, a public utility shall have no obligation to refund amounts collected after that date that exceed the amounts authorized by the Commission's final order.

{¶ 20} Initially, the Commission finds that the Gas Companies' motion for intervention in this proceeding is reasonable and should be granted. Further, for the reasons set forth below, we find that the Gas Companies' motion to compel Cobra to cease charging unlawful rates should be granted, as set forth in this Entry. Specifically, we find that the statutory time frames set forth in R.C. 4909.42 are not applicable with respect to pipeline companies and, therefore, Cobra was not authorized to implement its proposed rates pursuant to the statute.

{¶ 21} We begin our statutory analysis with R.C. 4909.17, which provides in its entirety:

> No rate, joint rate, toll, classification, charge, or rental, no change in any rate, joint rate, toll, classification, charge, or rental, and no regulation or practice affecting any rate, joint rate, toll, classification, charge, or rental of a public utility shall become effective until the public utilities commission, by order, determines it to be just and reasonable, except as provided in this section and sections 4909.18, 4909.19, and 4909.191 of the Revised Code. *Such sections do not apply to any rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, of* railroads, street and electric railways, for-hire motor carriers, and *pipe line companies.*

Accordingly, the rates and charges of pipeline companies, including Cobra, are not subject to R.C. 4909.18 or 4909.19, which govern the process and procedural requirements for an application seeking to establish or change rates and charges.

{¶ 22} Turning to R.C. 4909.42, we note that the statute pertains solely to a "proceeding on an application filed with the public utilities commission *under section 4909.18 of the Revised Code* by any public utility requesting an increase on any rate, joint rate, toll, classification, charge, or rental or requesting a change in a regulation or practice affecting the same." The statute also specifies that, where the proceeding has not been concluded and an order entered *pursuant to R.C. 4909.19* at the expiration of 275 days from the date of filing the application, the public utility's proposed increase shall go into effect upon the filing of a bond or letter of credit by the public utility. Additionally, the statute provides that the public utility has no refund obligation where the Commission has not entered a final order within 545 days "from the date of the filing of an application for an increase in rates *under section 4909.18 of the Revised Code.*"

{¶ 23} In sum, R.C. 4909.17 excludes pipeline companies from the procedural requirements of R.C. 4909.18 and 4909.19. R.C. 4909.42, in turn, pertains solely to a proceeding on an application for an increase in rates that is filed under R.C. 4909.18 and only under circumstances where an order has not been timely entered pursuant to R.C. 4909.19. The Commission, therefore, concludes that the statutory timing requirements in R.C. 4909.42 do not govern an application for an increase in rates filed by a pipeline company and that Cobra, as a pipeline company, was not permitted under the statute to implement its proposed rates.

{¶ 24} Even if we were to assume for the sake of argument that Cobra was authorized under R.C. 4909.42 to implement its proposed rates, Cobra has not filed a sufficient bond or letter of credit payable to the state for the use and benefit of the customers affected by the proposed increase, as Staff and the Gas Companies assert. As the Commission determined in the *Columbia Rate Case*, R.C. 4909.42 "provides that the

undertaking must not only contain a promise to refund any amounts collected by the utility over the rates determined by the Commission in its final order, but also that the undertaking must be payable to the state of Ohio for the use and benefit of the affected customers."[1] *Columbia Rate Case*, Entry (Feb. 20, 1990). Much like Cobra's purported bond, Columbia's undertaking stated that Columbia was "held and firmly bound unto the State of Ohio, for the use and benefit of Columbia's customers affected by the Application for an Increase in Rates in the amount of" the requested increase. The Commission noted, however, that Columbia appropriately recognized the necessity of providing additional security for any potential refunds, as evidenced by Columbia's procurement of a Bond for Security of Refunds in the amount of $10 million that had not yet been filed with the Commission. The Commission concluded that, in the absence of the filing of the $10 million bond, Columbia had not provided an undertaking payable to the state for the use and benefit of the affected customers. Consistent with the Commission's decision in the *Columbia Rate Case*, we find that Cobra's purported bond fails to provide any financial security for potential customer refunds.[2]

{¶ 25} For these reasons, Cobra should reinstate its Commission-approved rates and promptly refund to customers any amounts collected in excess of those rates. Cobra is directed to file, in this docket, a complete accounting of its refunds to customers, within 30 days of this Entry. Cobra's report should include, by individual customer, a list of the amount of the refund and the date on which the refund was provided. If Cobra's

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1 Sub. H.B. 379 changed "undertaking" to "bond or letter of credit," effective March 2013. Pursuant to R.C. 1.02, as used in the Revised Code, "bond" includes an undertaking and an "undertaking" includes a bond.

2 Neither can Cobra's filing be construed as a letter of credit. R.C. Chapter 1305 governs letters of credit, which are defined in R.C. 1305.01(A)(10) to be a definite undertaking that satisfies the requirements of R.C. 1305.03 by an issuer to a beneficiary at the request or for the account of an applicant to honor a documentary presentation by payment or delivery of an item of value. The Ohio Supreme Court has stated that, with the issuance of a letter of credit, "a bank substitutes its financial integrity as a stable credit source for that of its customer, and because of the issuing bank's primary commitment, the bank's obligation to pay is independent of the underlying transaction between the beneficiary and the bank's customer." *State ex rel. Barclays Bank PLC v. Hamilton Cty. Court of Common Pleas*, 74 Ohio St.3d 536, 541, 660 N.E.2d 458 (1996).

customers experience delay or any other difficulty in obtaining a prompt refund, customers should contact Staff for assistance.

{¶ 26} As a final matter, we acknowledge Cobra's concern regarding the length of time required for the review of its application, and note that the Commission endeavors to provide applicants a timely and efficient process. This case, however, is unique. Cobra's application was filed in compliance with the Commission's Opinion and Order in the *Complaint Case*. Following an evidentiary hearing in that prior case, the Commission found that it was necessary to direct that Cobra and its affiliate, Orwell-Trumbull Pipeline Company, LLC (OTP), file applications under R.C. Chapter 4909 to establish just and reasonable rates, including a standard transportation rate for both firm and interruptible service, as well as a rate for shrinkage. *Complaint Case*, Opinion and Order (June 15, 2016) at ¶ 77. The Commission also noted that there were serious concerns with Richard M. Osborne's management and control of Cobra and OTP, including the impact that Mr. Osborne's management has on the customers of Cobra and OTP and the services that they provide, as well as the impact to the health and safety of the residential customers served by the Gas Companies.[3] *Complaint Case* at ¶ 96.

{¶ 27} Consistent with the Commission's directive in the *Complaint Case*, Cobra filed its application in this case to initiate the review of its rates on August 15, 2016. OTP filed its application on that same date in Case No. 16-1726-PL-AIR. Following its preliminary review, Staff determined that both applications failed to provide sufficient information to enable Staff to conduct an investigation. As a result, Cobra and OTP supplemented their applications on September 26, 2016, and the Commission accepted, on November 9, 2016, both applications for filing as of September 26, 2016. At that time,

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3 The Commission has also previously identified concerns with the lack of corporate separation among public utilities owned or controlled by Mr. Osborne. *In re Northeast Ohio Natural Gas Corp. and Orwell Natural Gas Co.*, Case No. 12-209-GA-GCR, et al., Opinion and Order (Nov. 13, 2013) at 48-49.

Staff began its review of Cobra's proposed rates and charges in conjunction with the review of OTP's application, as Cobra acknowledges in its letter dated August 18, 2017.

{¶ 28} Unfortunately, the Commission and Staff have faced a number of critical issues that have impeded an efficient review of the applications. On June 7, 2017, the Commission determined that it was necessary to issue a request for proposal to retain an auditor to construct OTP's historical plant records for inclusion in its plant schedules and rate base calculation or, alternatively, to determine plant valuation in the absence of reliable plant records. Schumaker & Company was selected to conduct this task on July 12, 2017. However, on December 4, 2017, Staff filed a motion requesting that the deadline for the filing of the audit report be suspended indefinitely, in light of the fact that the Cuyahoga County Court of Common Pleas had appointed a receiver to take over OTP's assets and conduct its day-to-day operations, as discussed further below.

{¶ 29} On November 21, 2017, in Case No. CV14 822810, the Cuyahoga County Court of Common Pleas granted a motion filed by Park View Federal Savings Bank n/k/a First National Bank of Pennsylvania to appoint a receiver, effective October 30, 2017, over all property, both real and personal, owned by Richard M. Osborne, the Richard M. Osborne Trust, OTP, and certain other affiliated entities (collectively, Counterclaim Defendants), as well as any legal or beneficial interest owned, possessed, or held by any of the Counterclaim Defendants in or to Cobra. Under the terms of the Court's order, the appointed receiver is authorized, among other things, to take and have complete and exclusive possession, control, and custody of the receivership property, as well as to sell the receivership property free and clear of all liens and encumbrances by private sale, private auction, public auction, or by any other method deemed appropriate by the receiver, subject to the Court's approval. By Entry dated November 29, 2017, the Commission initiated an investigation of OTP and Cobra and directed the Ohio Attorney General's office to take any appropriate steps in the receivership proceeding to protect the customers of OTP and Cobra.

{¶ 30} On December 5, 2017, OTP filed a notice to stay the proceeding before the Cuyahoga County Court of Common Pleas, in light of OTP's filing of a Chapter 11 Petition in Voluntary Bankruptcy in Case No. 17-17135 in the United States Bankruptcy Court, Northern District of Ohio.[4] In an Entry issued on December 6, 2017, the Commission directed the Ohio Attorney General's office to intervene or take any other appropriate steps in OTP's bankruptcy proceeding and to seek any appropriate legal and equitable remedies necessary to maintain operations of OTP's pipeline system and ensure that service to customers is not interrupted or terminated. Subsequently, on February 9, 2018, OTP's bankruptcy case was dismissed, thus returning control of OTP to the receiver. On March 1, 2018, OTP's receiver filed a motion before the Commission, seeking to stay the review of OTP's rates and charges, in light of the fact that the receiver is in the process of assessing OTP's financial viability with the expectation of a potential sale.

{¶ 31} This complex history makes clear that the operations and management of Cobra and OTP continue to be in a state of flux, which has certainly impacted the review of their proposed rates and charges. Again, the Commission strives to complete a timely review of applications seeking to establish rates and charges. We also find, however, that it is necessary to ensure that a thorough review of such applications is conducted, one that accounts for all of the pertinent facts and circumstances that become known to the Commission or Staff during the course of the rate investigation. We, therefore, direct Staff to continue to conduct a thorough evaluation of Cobra's proposed rates and charges and, following completion of the review, to promptly file the report of investigation in this docket. The Commission will, at that time, determine proper rates for Cobra, based on the ratemaking formula in R.C. 4909.15.

{¶ 32} With respect to the procedures to be adopted in this case, the Commission has previously recognized that no section of the Revised Code dictates the manner in

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[4] On December 17, 2017, Richard M. Osborne also filed a Chapter 11 Petition in Voluntary Bankruptcy in Case No. 17-17361 in the United States Bankruptcy Court, Northern District of Ohio.

which the proposed rates of a pipeline company must be filed. While noting that R.C. 4909.18 is not directly applicable, the Commission found that it was not improper to proceed in a manner that is consistent with the procedures in R.C. 4909.18. *In re Natural Gas Transmission Co. of Ohio*, Case No. 81-1404-PL-ATA, et al., Entry (Dec. 23, 1981). We make the same determination here. In the *Complaint Case*, Cobra was directed to file an application to initiate a review of its rates and charges under R.C. Chapter 4909, which governs the fixation of rates for public utilities. *Complaint Case*, Opinion and Order (June 15, 2016) at ¶ 77. Although the process and procedural requirements set forth in R.C. 4909.18 and 4909.19 do not apply to pipeline companies, no other provision in R.C. Chapter 4909 addresses the procedures to be used by the Commission in determining the rates and charges for a pipeline company. In order to ensure that Cobra is afforded due process, we will, therefore, proceed with our review and consideration of Cobra's application in a manner that is consistent with the process followed under those statutes, including issuance of a written report of investigation, publication of notice of the application, and adherence to the Commission's standard filing requirements, which are necessary to determine proper rates under R.C. 4909.15.

III. ORDER

{¶ 33} It is, therefore,

{¶ 34} ORDERED, That the motion for intervention filed by the Gas Companies on September 13, 2017, be granted. It is, further,

{¶ 35} ORDERED, That the motion to compel filed by the Gas Companies on September 19, 2017, be granted, consistent with this Entry. It is, further,

{¶ 36} ORDERED, That Cobra reinstate its Commission-approved rates and promptly refund to customers any amounts collected in excess of those rates. It is, further,

{¶ 37} ORDERED, That Cobra file, in this docket, a complete accounting of its refunds to customers, within 30 days of this Entry. It is, further,

{¶ 38} ORDERED, That a copy of this Entry be served upon all interested persons and parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

M. Beth Trombold

Thomas W. Johnson

Lawrence K. Friedeman

Daniel R. Conway

SJP/sc

Entered in the Journal
APR 11 2018

Barcy F. McNeal
Secretary

EXHIBIT B

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF COBRA PIPELINE COMPANY, LTD FOR AN INCREASE IN ITS RATES AND CHARGES.	CASE NO. 16-1725-PL-AIR

SECOND ENTRY ON REHEARING

Entered in the Journal on September 11, 2019

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing of the April 11, 2018 Entry filed by Cobra Pipeline Company, LTD and directs that customers receive a refund of any amounts paid in excess of Commission-approved rates.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Cobra Pipeline Company, LTD (Cobra) is a pipeline company under R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On August 15, 2016, Cobra filed its application in the above-captioned case, in response to the Commission's Opinion and Order in Case No. 14-1654-GA-CSS, et al. In its Opinion and Order, the Commission directed Cobra and any other pipeline companies owned or controlled by Richard M. Osborne to file applications, pursuant to R.C. Chapter 4909, to determine just and reasonable rates that include charges for firm and interruptible transportation services and rates for shrinkage. *In re Complaint of Orwell Natural Gas Co. v. Orwell-Trumbull Pipeline Co., LLC*, Case No. 14-1654-GA-CSS, et al., Opinion and Order (June 15, 2016) at ¶ 77.

{¶ 4} An amended abbreviated application was filed by Cobra on September 26, 2016.

{¶ 5} On July 7, 2017, Cobra filed correspondence indicating that, in compliance with R.C. 4909.42, it was submitting a bond, in order to institute its proposed rates. Staff filed a letter in response on August 11, 2017. Cobra filed a reply to Staff on August 18, 2017.

{¶ 6} By Entry dated April 11, 2018, the Commission determined that the time frames set forth in R.C. 4909.42 for the fixation of rates are not applicable with respect to pipeline companies and, thus, Cobra was not authorized under the statute to implement its proposed rates. Accordingly, the Commission directed Cobra to reinstate its Commission-approved rates and refund to customers any amounts collected in excess of those rates.

{¶ 7} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 8} On May 10, 2018, Cobra filed an application for rehearing of the April 11, 2018 Entry. Orwell Natural Gas Company, Northeast Ohio Natural Gas Corp., and Brainard Gas Corp. (collectively, NEO)[1] filed a joint memorandum contra Cobra's application for rehearing on May 21, 2018.

{¶ 9} By Entry on Rehearing dated June 6, 2018, the Commission granted rehearing for further consideration of the matters specified in Cobra's application for rehearing.

{¶ 10} The Commission has reviewed and considered all of the arguments raised in Cobra's application for rehearing. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

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1 NEO is a natural gas company and public utility as defined in R.C. 4905.03 and 4905.02, respectively. On January 3, 2019, in Case No. 18-1484-GA-UNC, et al., the Commission approved a merger of Orwell Natural Gas Company, Brainard Gas Corp., and Spelman Pipeline Holdings, LLC into Northeast Ohio Natural Gas Corp.

B. Consideration of the Application for Rehearing

{¶ 11} Cobra raises four grounds for rehearing. First, Cobra argues that the Commission erred in Paragraphs 22 through 24 of the April 11, 2018 Entry in its description and application of the exemptions that result from R.C. 4909.17. Cobra states that the Commission failed to recognize the full import of R.C. 4909.17. According to Cobra, R.C. 4909.17 exempts pipeline companies from R.C. 4909.17 itself, as well as from R.C. 4909.18, 4909.19, and 4909.191. Cobra asserts that its reading of R.C. 4909.17 is confirmed by the original statute, G.C. 614-20, as well as the only decision by any court in which R.C. 4909.17 is cited for anything other than the generally applicable proposition that public utility rates do not become effective until they are approved by the Commission. Cobra notes that, in that case, the Cuyahoga County Court of Appeals determined that R.C. 4909.17 authorized a for-hire motor carrier to establish rates and terms of service ex parte, or unilaterally, without Commission approval, merely by filing its rates and terms with the Commission. *Federal Reserve Bank of Cleveland v. Purolator Courier Corp.*, 13 Ohio App.3d 296, 299-300, 469 N.E.2d 542 (8th Dist. 1983). Cobra concludes that, because R.C. 4909.17 is inapplicable to pipeline companies, changes in the rates or service terms of a pipeline company are effective when the company informs its customers and the Commission that the new rates or service terms are being placed in effect.

{¶ 12} In its memorandum contra, NEO responds that Ohio law does not permit pipeline companies like Cobra to unilaterally establish their own rates. Initially, NEO asserts that it is not persuasive for Cobra, now that its unilateral and improper attempt to increase its rates has been rejected by the Commission, to claim that the statutes earlier relied upon by Cobra are inapplicable. Further, NEO disputes Cobra's claim that pipeline companies are regulated like motor transportation companies and railroads, which, pursuant to R.C. 4909.27, have rate schedules that take effect upon filing unless suspended by the Commission. According to NEO, pipeline companies are public utilities for purposes of R.C. Chapter 4909 and their rates are established and governed by R.C. 4909.15. NEO contends that R.C. 4909.15(E) prohibits pipeline companies from modifying their rates

absent an order of the Commission. NEO adds that its interpretation does not render the reference to pipeline companies in R.C. 4909.17 meaningless, given that the definition of pipeline company in R.C. 4905.03 includes both intrastate pipelines and interstate pipelines with rates that are regulated by the Federal Energy Regulatory Commission. NEO concludes, therefore, that R.C. 4909.17 properly exempts some pipeline companies from the identified provisions of Ohio law.

{¶ 13} Second, Cobra asserts that the Commission erred in Paragraphs 25, 35, 36, and 37 of the April 11, 2018 Entry, which ordered Cobra to provide an immediate refund of 100 percent of the difference between the rate that Cobra placed into effect on July 1, 2017, and the rate that existed prior to that date. Cobra reiterates that R.C. 4909.17 exempts pipeline companies from the general requirement that utility rates must be approved by the Commission before taking effect. Cobra, therefore, argues that any directive by the Commission to refund any portion of the lawfully effective rate that Cobra began collecting on July 1, 2017, constitutes unlawful retroactive ratemaking. *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 141 N.E.2d 465 (1957).

{¶ 14} NEO responds that the Commission was authorized to order a refund, because Cobra was not billing the Commission-approved rate and, therefore, *Keco* does not apply by its plain language. *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 141 N.E.2d 465 (1957). NEO also notes that Cobra has failed to explain how its position comports with R.C. 4905.32, which forms the basis for the Court's decision in *Keco*. Additionally, NEO contends that Cobra's argument is improper, in light of the fact that Cobra has repeatedly assured its customers and the Commission that it would refund any over-collections. NEO asserts that Cobra invited customers to pay an improper rate by promising future refunds but now refuses to pay those refunds following the Commission's rejection of the rate.

{¶ 15} The Commission finds no merit in Cobra's first and second grounds for rehearing. The April 11, 2018 Entry was issued in response to Cobra's correspondence dated

July 7, 2017, indicating that Cobra was submitting a bond, in compliance with R.C. 4909.42, in order to institute its proposed rates. In response to Cobra's correspondence, the Commission specifically concluded that the statutory timing requirements in R.C. 4909.42 do not govern an application for an increase in rates filed by a pipeline company and that Cobra, as a pipeline company, was not permitted under that statute to implement its proposed rates. Entry at ¶ 23. At no point in its July 7, 2017 correspondence or in any other filing did Cobra state that it intended to implement its proposed rates pursuant to R.C. 4909.17. Therefore, there was no basis for the Commission to address the question of whether Cobra is permitted, under R.C. 4909.17, to implement its proposed rates prior to the Commission's determination in this proceeding that the rates are just and reasonable. Cobra relied on R.C. 4909.42 as the purported statutory basis for its implementation of its proposed rates. The Commission merely determined, for the reasons set forth in the Entry, that R.C. 4909.42 was inapplicable to Cobra. The Commission fully addressed the arguments raised by the parties regarding R.C. 4909.42 and was under no obligation, sua sponte, to address any other statute that may have permitted the implementation of Cobra's proposed rates.

{¶ 16} We also find Cobra's argument regarding retroactive ratemaking misguided, as *Keco* specifically pertains to rates that have been established by the Commission. *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 254, 141 N.E.2d 465 (1957) ("Where the charges collected by a public utility are based upon rates which have been established by an order of the Public Utilities Commission of Ohio, the fact that such order is subsequently found to be unreasonable or unlawful on appeal to the Supreme Court of Ohio, in the absence of a statute providing therefor, affords no right of action for restitution of the increase in charges collected during the pendency of the appeal."). The Commission has not approved Cobra's proposed rates. For these reasons, Cobra's first and second grounds for rehearing should be denied.

{¶ 17} As its third ground for rehearing, Cobra contends that the Commission erred in Paragraph 32 of the April 11, 2018 Entry, in stating that the Commission intends to apply the procedures of R.C. 4909.18 and 4909.19 to Cobra, despite the fact that the Commission also declared that those same procedures are inapplicable to Cobra. Cobra asserts that, although the Commission has previously applied R.C. 4909.18 and 4909.19 to pipeline companies, the Commission acted without lawful authority and, in any event, those prior cases did not involve a rate increase. According to Cobra, no party can have any confidence in a determination by the Commission that employs processes and procedures that are expressly inapplicable by legislative fiat. Noting that the Commission is a creature of statute, Cobra adds that the Commission may find itself subject to a writ of prohibition, if it elects to proceed under R.C. 4909.18 and 4909.19. Cobra claims that the Commission incomprehensibly and unlawfully elected to proceed in an ad hoc fashion in which the Commission first recognized that R.C. 4909.18 and 4909.19 are inapplicable to pipeline companies, thereby depriving Cobra of the protections afforded by R.C. 4909.42, but then declared that the Commission will nevertheless employ the process set forth in R.C. 4909.18 and 4909.19, despite the legislative prohibition against doing so.

{¶ 18} NEO asserts that the Commission has wide discretion to use the statutory rate case procedures for the remainder of this case even though they are not statutorily mandated. As an initial matter, NEO notes that the issue of whether a refund is required is separate from the issue of which procedural mechanisms should be used to process this case. With respect to the first issue, NEO argues that the Commission's decision not to apply R.C. 4909.42 has no impact on Cobra's obligation to provide a refund. Addressing Cobra's claim that it was denied the protections of R.C. 4909.42, NEO emphasizes that Cobra failed to file a proper bond. Regarding the procedures to be used in this case, NEO asserts that the Commission's decision to follow the well-established rate case procedures, in order to ensure that Cobra is afforded due process, is well within the Commission's discretion to manage its docket. *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982). NEO also questions how Cobra is prejudiced by the Commission's

decision, particularly given that Cobra admits that the Commission has authority to regulate its rates and its earlier filings assumed that the Commission would utilize the rate case process set forth in R.C. 4909.18 and 4909.19.

{¶ 19} The Commission finds that Cobra's third ground for rehearing should be denied. The Supreme Court of Ohio has found that the Commission is vested with considerable discretion "to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort." *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982); *see also Sanders Transfer, Inc. v. Pub. Util. Comm.*, 58 Ohio St.2d 21, 23, 387 N.E.2d 1370 (1979) ("The public utilities commission is invested with a discretion as to its order of business, and there is such a wide latitude of that discretion that this court may not lawfully interfere with it, except in extreme cases."). Here, the Commission concluded that no provision in R.C. Chapter 4909 addresses the procedures to be used by the Commission in determining the rates and charges for a pipeline company. In light of that fact, and in order to ensure that Cobra is afforded due process in this case, we clarified that Cobra's application should be reviewed in a manner that is consistent with the process followed under R.C. 4909.18 and 4909.19, including issuance of a written report of investigation, publication of notice of the application, and adherence to the Commission's standard filing requirements, which are necessary to determine proper rates under R.C. 4909.15. Entry at ¶ 32. We find that this determination is both consistent with our discretion to manage this docket, as well as our prior precedent in cases establishing rates for pipeline companies. *In re Natural Gas Transmission Co. of Ohio*, Case No. 81-1404-PL-ATA, et al., Entry (Dec. 23, 1981); *In re TOPICO*, Case No. 81-489-PL-ATA, Entry (May 19, 1981). Contrary to Cobra's claim, the Commission did not determine that these statutes should be applied to Cobra in this case. Rather, we found that a similar type of process should be followed to facilitate a full and fair review of Cobra's application. In the absence of statutory guidance on this specific issue, we find that our decision to proceed in this manner is a reasonable course of action to

determine proper rates for Cobra under our extensive ratemaking authority in R.C. 4909.15. *See, e.g., Payphone Assn. v. Pub. Util. Comm.*, 109 Ohio St.3d 453, 2006-Ohio-2988, 849 N.E.2d 4, ¶ 25; *AT&T Communications of Ohio, Inc. v. Pub. Util. Comm.*, 51 Ohio St.3d 150, 154, 555 N.E.2d 288 (1990).

{¶ 20} In addition, R.C. 4905.26 provides the Commission with substantial authority to initiate proceedings to investigate the reasonableness of any rate or charge rendered or proposed to be rendered by a public utility. The statute permits the Commission, following notice and a hearing, to change a rate or charge, without compelling the public utility to apply for a rate increase pursuant to R.C. 4909.18. *Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 2006-Ohio-4706, 853 N.E.2d 1153, ¶¶ 29-32; *Consumers' Counsel v. Pub. Util. Comm.*, 61 Ohio St.3d 396, 402, 575 N.E.2d 157 (1991); *Allnet Communications Services, Inc. v. Pub. Util. Comm.*, 32 Ohio St.3d 115, 512 N.E.2d 350 (1987); *Ohio Utilities Co. v. Pub. Util. Comm.*, 58 Ohio St.2d 153, 156-158, 389 N.E.2d 483 (1979). Without question, Cobra has been afforded notice and a hearing in this proceeding.

{¶ 21} Finally, Cobra asserts that the Commission erred in Paragraph 24 of the April 11, 2018 Entry, in concluding that Cobra's bond would not have satisfied R.C. 4909.42. Initially, Cobra states that R.C. 4909.42 is likely inapplicable and irrelevant, based on its position that pipeline companies can impose new rates at any time. Cobra asserts that it is nevertheless possible that the Ohio Supreme Court could conclude that, notwithstanding the reference to R.C. 4909.18 within the statute, R.C. 4909.42 must also be applied in these unique circumstances, where Cobra was ordered to initiate a ratemaking process to which it may be statutorily exempt. For this reason, Cobra argues that the Commission's view of a bond is artificially narrow and fails to comport with plain English definitions of the term, legal definitions of the term, and the General Assembly's use of the term in the Revised Code. Cobra asserts that the term encompasses any binding writing to pay a sum of money, subject to the performance of defined duties or rendered void by certain express conditions. Noting that many other sections of the Revised Code expressly require a third-party surety,

Cobra contends that R.C. 4909.42 contemplates the filing of a bond issued by the public utility rather than a third-party surety. Finally, Cobra claims that the Commission misconstrued the sole authority upon which it relied. *In re Columbia Gas of Ohio, Inc.*, Case No. 89-616-GA-AIR, et al. (*Columbia Rate Case*), Entry (Feb. 20, 1990). Cobra asserts that, in the *Columbia Rate Case*, the Commission objected to the fact that the bond provided by Columbia Gas of Ohio, Inc. (Columbia) did not contain an express promise to pay any refund by means of a future rate reduction in the manner in which the Commission might later direct. Cobra claims that it is not clear from the Entry in the *Columbia Rate Case* whether the Commission was concerned by the fact that Columbia initially offered its own bond rather than the bond of a third-party surety. Cobra notes that Columbia had indicated its intention to submit a third-party bond before the Commission issued the Entry. Cobra argues that, although the third-party bond appears to have assuaged the Commission's concerns regarding the language used in Columbia's bond, the third-party bond, nonetheless, exceeded the requirements of the statute. Cobra concludes that the Commission has no legitimate basis upon which to find that Cobra's bond does not comply with R.C. 4909.42.

{¶ 22} NEO argues that Cobra's purported bond was inappropriate for several reasons. First, according to NEO, the so-called bond was illusory and insufficient to protect customers, given that Cobra has admitted that it is unable to pay its tax obligations or to issue the Commission-ordered refunds to customers. NEO asserts that the bond does not protect Cobra's customers, which are now at risk of not receiving the refunds to which they are entitled. NEO also reiterates that the bond was insufficient as a matter of law, as already thoroughly addressed by the Commission in the Entry.

{¶ 23} In the April 11, 2018 Entry, the Commission found that, even if we were to assume that R.C. 4909.42 provides a proper basis for Cobra to implement its proposed rates, Cobra has nevertheless failed to file a sufficient bond or letter of credit payable to the state for the use and benefit of the customers affected by the proposed increase. In its application

for rehearing, Cobra argues that its bond fully complies with the requirements set forth in R.C. 4909.42, as a third-party surety is not required, and that the Commission misconstrued its decision in the *Columbia Rate Case*.

{¶ 24} Cobra claims that, in the *Columbia Rate Case*, the Commission objected to Columbia's undertaking on the basis that it did not contain an express promise to pay any refund ordered by the Commission. Cobra is mistaken in its interpretation of the *Columbia Rate Case*, as Columbia's initial undertaking did include the necessary promise to refund any amounts collected in excess of the rate determined by the Commission. The Commission indicated, however, that Columbia's undertaking did not adequately comply with the requirement that it must be payable to the state for the use and benefit of the affected customers. The Commission stated:

> The statute provides that the undertaking must not only contain a promise to refund any amounts collected by the utility over the rates determined by the Commission in its final order, but also that the undertaking must be payable to the state of Ohio for the use and benefit of the affected customers. It is apparent from Columbia's letter that it recognized the existence of the two conditions precedent. However, as of the date of this Entry, it appears that Columbia has complied with the former condition precedent, but not the latter.

The latter condition precedent, as referenced by the Commission, is the requirement that the undertaking be payable to the state for the use and benefit of the affected customers. In its Entry, the Commission specifically noted that, despite its stated intention, Columbia had not filed additional security in the form of a Bond for Security of Refunds in the amount of $10 million. The Commission concluded that Columbia had not complied with R.C. 4909.42. *Columbia Rate Case*, Entry (Feb. 20, 1990). The bond was filed by Columbia and its third-party surety later that same day, with language nearly identical to the original undertaking. At that point, the Commission was satisfied that Columbia, consistent with R.C. 4909.42,

had taken the necessary steps to implement its proposed rates, although the Commission noted that, in doing so, Columbia had acted in an unprecedented manner. *Columbia Rate Case*, Entry (Mar. 6, 1990), Opinion and Order (Apr. 5, 1990).

{¶ 25} In the present case, we determined that, like Columbia's initial undertaking, Cobra's bond failed to provide any financial security for potential customer refunds. Entry at ¶ 24. Although we agree with Cobra that R.C. 4909.42 does not explicitly reference a third-party surety, the statute requires that the bond be payable to the state for the use and benefit of the customers affected by the proposed increase. As in the *Columbia Rate Case*, we have appropriately concluded that the additional security provided by a third-party surety is necessary to comply with this statutory requirement. The Commission must be certain that sufficient financial security is provided to ensure that customers will benefit from the bond, if a refund is subsequently ordered by the Commission. Absent the financial backing of a third party, a bond provides no assurance that customers will receive a refund of any amounts collected in excess of the rate ultimately approved by the Commission. As NEO emphasizes, this is particularly evident in this proceeding, given Cobra's claim that it is financially incapable of complying with the refund directive in the April 11, 2018 Entry. Accordingly, Cobra's fourth ground for rehearing should be denied.

{¶ 26} As a final matter, the Commission notes that Cobra has not fully complied with the April 11, 2018 Entry. Specifically, Cobra was directed to promptly refund to customers any amounts collected in excess of its Commission-approved rate. Entry at ¶ 25. R.C. 4903.15 provides that, unless a different time is specified in the order or by law, every Commission order shall become effective immediately upon journalization. In this case, the Entry took effect on April 11, 2018. Further, the filing of Cobra's application for rehearing did not excuse Cobra from its legal obligation to comply with the Commission's Entry. R.C. 4903.10. We, therefore, direct Cobra to provide the Commission-ordered refund to its customers. Specifically, Cobra should provide the refund in the form of a monthly bill credit that begins immediately and continues over the same number of months that the excess

rates were collected from customers. Cobra should also provide notice of the bill credit via a bill message or bill insert to all affected customers, as well as file notice in this docket upon completion of the refund. If Cobra fails to comply with these directives, the Commission may assess civil forfeitures or pursue other appropriate civil remedies pursuant to R.C. 4905.54 and 4905.60.

III. ORDER

{¶ 27} It is, therefore,

{¶ 28} ORDERED, That Cobra's application for rehearing be denied. It is, further,

{¶ 29} ORDERED, That Cobra refund to customers any amounts collected in excess of its Commission-approved rates. It is, further,

{¶ 30} ORDERED, That a copy of this Second Entry on Rehearing be served upon all interested persons and parties of record.

COMMISSIONERS:
Approving:
Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

SJP/hac

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

Summary: Entry that the Commission denies the application for rehearing of the April 11, 2018 Entry filed by Cobra Pipeline Company, LTD and directs that customers receive a refund of any amounts paid in excess of Commission-approved rates. electronically filed by Docketing Staff on behalf of Docketing

EXHIBIT C

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF COBRA PIPELINE COMPANY, LTD FOR AN INCREASE IN 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

OPINION AND ORDER

Entered in the Journal on September 11, 2019

Exhibit C

TABLE OF CONTENTS

I. SUMMARY

{¶ 1} The Commission finds that Cobra Pipeline Company, LTD failed to demonstrate that its existing rates and charges are insufficient to provide adequate net annual compensation and return on its property used and useful in the provision of its services; that it failed to sustain its burden of proof to demonstrate that emergency rate relief should be granted; and that a hearing should be scheduled for the purposes of determining whether a receiver should be appointed for Cobra Pipeline Company, LTD and reviewing the status of its compliance with gas pipeline safety requirements.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Cobra Pipeline Company, LTD (Cobra or the Company) is a pipeline company under R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} Orwell-Trumbull Pipeline Company, LLC (OTP) is also a pipeline company and public utility that is subject to the jurisdiction of the Commission.

{¶ 4} On June 27, 2007, in Case No. 05-1558-PL-ATA, the Commission authorized Cobra to operate as an intrastate pipeline company and, pursuant to a stipulation and recommendation, approved the Company's proposed tariff, as modified by the stipulation. *In re Cobra Pipeline Co., LTD*, Case No. 05-1558-PL-ATA (*Tariff Case*), Finding and Order (June 27, 2007).

{¶ 5} On August 15, 2016, Cobra and OTP filed applications in Case No. 16-1725-PL-AIR (*Rate Case*) and Case No. 16-1726-PL-AIR, respectively, in response to the Commission's Opinion and Order in Case No. 14-1654-GA-CSS, et al. In its Opinion and Order, the Commission directed Cobra, OTP, and any other pipeline companies owned or controlled by Richard M. Osborne to file applications, pursuant to R.C. Chapter 4909, to

determine just and reasonable rates that include charges for firm and interruptible transportation services and rates for shrinkage. *In re Complaint of Orwell Natural Gas Co. v. Orwell-Trumbull Pipeline Co., LLC*, Case No. 14-1654-GA-CSS, et al. (*Complaint Case*), Opinion and Order (June 15, 2016) at ¶ 77. The Commission also ordered that the subject matter of Case No. 14-1709-GA-COI be expanded to include an investigation of all pipeline companies owned or controlled by Richard Osborne. *Complaint Case* at ¶ 97. In that case, the Commission selected Schumaker & Company (Schumaker) to conduct an investigative audit of the structure, functions, affiliates, related party transactions, and operating procedures of Cobra and OTP. *In re Cobra Pipeline Co., LTD*, Case No. 14-1709-GA-COI (*Investigative Audit Case*), Entry (Sept. 14, 2016), Entry (Oct. 26, 2016).

{¶ 6} On August 25, 2016, Staff sent letters to Cobra and OTP stating that their rate case applications did not comply with the standard filing requirements (SFR) in Ohio Adm.Code 4901-7-01 and that Staff did not receive enough information to begin its review of the applications. Staff's letters enumerated the information that was required in order to complete the applications and stated that the information should be provided by Cobra and OTP not later than 30 days from the date of the letters.

{¶ 7} Cobra and OTP filed amended abbreviated applications on September 26, 2016. Both Cobra and OTP proposed a test year ending December 31, 2015, and a date certain of December 31, 2015. Cobra filed corrections to its amended application on November 4, 2016, and July 28, 2017. By Entries dated November 9, 2016, the Commission accepted for filing as of September 26, 2016, the applications of Cobra and OTP.

{¶ 8} On July 7, 2017, Cobra filed correspondence indicating that, in compliance with R.C. 4909.42, it was submitting a bond, in order to institute its proposed rates. Staff filed a letter in response on August 11, 2017. Cobra filed a reply to Staff on August 18, 2017.

{¶ 9} On September 13, 2017, Orwell Natural Gas Company, Northeast Ohio Natural Gas Corp., and Brainard Gas Corp. (collectively, NEO) filed a motion to intervene in the *Rate Case*.[1]

{¶ 10} On September 19, 2017, NEO filed a motion seeking to compel Cobra to cease charging unlawful rates. On October 4, 2017, Cobra filed a memorandum contra NEO's motion. NEO filed a reply in support of its motion on October 11, 2017.

{¶ 11} On November 21, 2017, in Case No. CV 14 822810, the Cuyahoga County Court of Common Pleas granted a motion filed by Park View Federal Savings Bank n/k/a First National Bank of Pennsylvania to appoint a receiver, effective October 30, 2017, over all property, both real and personal, owned by Richard M. Osborne, the Richard M. Osborne Trust, OTP, and certain other affiliated entities, as well as any legal or beneficial interest owned, possessed, or held by any such entities in or to Cobra. Under the terms of the court's order, the appointed receiver is authorized, among other things, to take and have complete and exclusive possession, control, and custody of the receivership property, as well as to sell the receivership property free and clear of all liens and encumbrances by private sale, private auction, public auction, or by any other method deemed appropriate by the receiver, subject to court approval, after notice and opportunity for a hearing.

{¶ 12} On November 29, 2017, in Case No. 17-2424-PL-COI, the Commission initiated an investigation of OTP and directed the Ohio Attorney General's office to take any appropriate steps to protect the customers of OTP in the receivership proceeding before the Cuyahoga County Court of Common Pleas.

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1 NEO is a natural gas company and public utility as defined in R.C. 4905.03 and 4905.02, respectively. On January 3, 2019, in Case No. 18-1484-GA-UNC, et al., the Commission approved a merger of Orwell Natural Gas Company, Brainard Gas Corp., and Spelman Pipeline Holdings, LLC into Northeast Ohio Natural Gas Corp.

{¶ 13} On December 5, 2017, OTP filed a notice to stay the proceeding before the Cuyahoga County Court of Common Pleas, in light of OTP's filing of a Chapter 11 Petition in Voluntary Bankruptcy in Case No. 17-17135 in the United States Bankruptcy Court, Northern District of Ohio.[2] In an Entry issued on December 6, 2017, the Commission directed the Ohio Attorney General's office to intervene or take any other appropriate steps in OTP's bankruptcy proceeding and to seek any appropriate legal and equitable remedies necessary to maintain operations of OTP's pipeline system and ensure that service to customers is not interrupted or terminated. Subsequently, on February 9, 2018, OTP's bankruptcy case was dismissed, thus returning control of OTP to the receiver. On March 1, 2018, Zachary Burkons of Rent Due, LLC, OTP's court-appointed receiver, filed a motion seeking to stay the review of OTP's application in Case No. 16-1726-PL-AIR, which was granted by the attorney examiner on May 10, 2018.

{¶ 14} On March 1, 2018, Stand Energy Corporation (Stand) filed a motion to intervene in the *Rate Case*.

{¶ 15} By Entry dated April 11, 2018, the Commission determined that the time frames set forth in R.C. 4909.42 for the fixation of rates are not applicable with respect to pipeline companies and, thus, Cobra was not authorized under the statute to implement its proposed rates. Accordingly, the Commission directed Cobra to reinstate its Commission-approved rates and refund to customers any amounts collected in excess of those rates. In the Entry, the Commission also granted NEO's motion to intervene in the *Rate Case*.

{¶ 16} On April 13, 2018, Staff filed a written report of its investigation (Staff Report) in the *Rate Case* (Co. Ex. 2 at Ex. B).

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2 On December 17, 2017, Richard M. Osborne also filed a Chapter 11 Petition in Voluntary Bankruptcy in Case No. 17-17361 in the United States Bankruptcy Court, Northern District of Ohio.

{¶ 17} By Entry dated May 1, 2018, the attorney examiner established a procedural schedule to assist the Commission in its review of Cobra's application, as amended. The procedural schedule specified that objections to the Staff Report should be filed by May 14, 2018. The Entry also scheduled an evidentiary hearing to commence on June 6, 2018.

{¶ 18} On May 11, 2018, at Cobra's request, the evidentiary hearing was continued, with the new hearing date to be set by future entry.

{¶ 19} Consistent with the established procedural schedule, Cobra filed objections to the Staff Report on May 14, 2018. Subsequently, on June 21, 2018, Cobra filed amended objections to the Staff Report.

{¶ 20} On June 22, 2018, the evidentiary hearing was rescheduled to commence on September 5, 2018, and Stand's motion to intervene in the *Rate Case* was granted.

{¶ 21} On July 3, 2018, NEO filed a motion to strike Cobra's amended objections to the Staff Report. On July 18, 2018, Cobra filed a memorandum contra NEO's motion to strike. On July 25, 2018, NEO filed a reply in support of its motion to strike Cobra's amended objections to the Staff Report.

{¶ 22} On August 3, 2018, Cobra filed the direct testimony of Carolyn Coatoam (Co. Ex. 2), Jessica Carothers (Co. Ex. 3), and J. Edward Hess (Co. Ex. 4).[3]

{¶ 23} On August 31, 2018, Staff filed the direct testimony of the following witnesses: Joseph P. Buckley (Staff Ex. 5), Peter A. Chace (Staff Ex. 6), Carla Swami (Staff Ex. 7), Stephanie Gonya (Staff Ex. 8), John L. Berringer (Staff Ex. 9), Jonathan J. Borer (Staff Ex. 10), and Matthew Snider (Staff Ex. 11).

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3 According to their direct testimony, Ms. Coatoam and Ms. Carothers are employed as Cobra's controller and accounting/general manager, respectively (Co. Ex. 2 at 2; Co. Ex. 3 at 2). The direct testimony of Mr. Hess indicates that it is offered on Cobra's behalf in the capacity of a self-employed consultant (Co. Ex. 4 at 2).

{¶ 24} By Entry issued on August 24, 2018, the attorney examiner denied NEO's motion to strike Cobra's amended objections. The attorney examiner also granted a motion for continuance of the evidentiary hearing filed by NEO. The hearing was rescheduled to begin on September 10, 2018.

{¶ 25} The evidentiary hearing in the *Rate Case* began on September 10, 2018, and concluded on September 11, 2018.

{¶ 26} On October 15, 2018, Cobra filed an application, in Case No. 18-1549-PL-AEM (*Emergency Rate Case*), seeking an emergency increase in its rates and charges for natural gas transportation service, pursuant to R.C. 4909.16. On that same date, Cobra also filed a motion requesting consolidation of the *Rate Case* and the *Emergency Rate Case*, as well as a motion seeking to stay the *Rate Case*. On October 22, 2018, NEO filed a memorandum contra the motion to stay.

{¶ 27} On October 23, 2018, the attorney examiner denied Cobra's motion to stay the *Rate Case* and directed the parties to adhere to the briefing schedule established at the conclusion of the evidentiary hearing.[4]

{¶ 28} Initial briefs were filed in the *Rate Case* by Cobra, Staff, and NEO on October 26, 2018. The parties filed reply briefs on November 19, 2018.

{¶ 29} By Entry dated December 7, 2018, the attorney examiner granted Cobra's unopposed motion for consolidation of the above-captioned cases. The attorney examiner also determined that NEO and Stand, as parties to the *Rate Case*, should also be granted party status in the *Emergency Rate Case*. Finally, the attorney examiner established a

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4 Cobra complains that it was not afforded an opportunity to respond to NEO's memorandum contra the motion to stay (Co. Br. at 6; Co. Reply Br. at 6). However, Cobra specifically requested expedited treatment of the motion. Ohio Adm.Code 4901-1-12(C) provides that, when a movant seeks an expedited ruling, no reply memorandum may be filed unless requested by the Commission or the attorney examiner.

procedural schedule to assist the Commission in its review of Cobra's application for an emergency rate increase.

{¶ 30} On December 24, 2018, Cobra filed the direct testimony of Jessica Carothers (Co. Ex. A) and Carolyn Coatoam (Co. Ex. B) with respect to the application for an emergency rate increase.

{¶ 31} On January 7, 2019, Staff filed its review and recommendations (Emergency Staff Report) regarding Cobra's request for an emergency rate increase (Staff Ex. G). On that same date, Staff filed the direct testimony of Matthew Snider (Staff Ex. H).

{¶ 32} The evidentiary hearing on Cobra's application for an emergency rate increase was held, as scheduled, on January 10, 2019. Initial and reply briefs were filed by Cobra, Staff, and NEO on February 22, 2019, and March 8, 2019, respectively.

1. COBRA'S MOTION TO STRIKE

{¶ 33} On November 19, 2018, as part of its reply brief, Cobra filed a motion to strike a portion of Staff's initial brief, as filed on October 26, 2018, in the *Rate Case*. Specifically, Cobra seeks to strike the section entitled "Background"; the subsection entitled "The Distribution Utilities"; the portions of the subsection entitled "The Pipelines" that pertain to OTP's formation and management, as well as lawsuits and complaints involving OTP; and the subsection entitled "Ohio Rural Natural Gas." With respect to the "Background," Cobra notes that this section refers to actions or incidents involving Mr. Osborne as an individual or as the owner of other companies, which, according to Cobra, serves to improperly focus on Mr. Osborne and distract from the relevant issues in the *Rate Case*. Cobra asserts that none of the allegations in this section are part of the evidence in the *Rate Case* or relevant to Cobra as a pipeline company. Similarly, addressing the section called "The Distribution Utilities," Cobra contends that this section of Staff's brief is irrelevant and prejudicial to the process of determining just and reasonable rates and was offered by Staff "for the purpose

of repeatedly berating Cobra's owner for his freewheeling business practices and his failure to observe corporate separation policies" (Co. Reply Br. at 8-9). Cobra maintains that references to OTP in the section entitled "The Pipelines," as well as the entire section addressing "Ohio Rural Natural Gas," should be stricken for the same reason.

{¶ 34} On November 30, 2018, Staff filed a memorandum contra Cobra's motion to strike. With respect to the "Background" section, including the subsections titled "The Distribution Utilities, "The Pipelines," and "Ohio Rural Natural Gas," Staff asserts that the statements in that portion of its brief are factual rather than argumentative in nature and were taken from public filings with the Commission, state agencies, and federal courts. Staff also notes that all of its statements are directly related either to Cobra or its owner, Mr. Osborne, and that Company witness Carothers introduced Mr. Osborne's misconduct in the *Rate Case* by providing Schumaker's investigative audit report as part of her direct testimony. Staff adds that the statements in the "Background" section are necessary for placing the *Rate Case* into context, as the case was ordered by the Commission as a result of its stated concern, in the *Complaint Case*, regarding the management of Mr. Osborne's pipeline companies. Further, Staff maintains that Cobra is not improperly prejudiced by the statements in Staff's brief, given that the Commission itself set forth much of the same information in a January 30, 2018 filing in OTP's bankruptcy proceeding. Finally, Staff contends that the statements in the "Background" section are relevant in supporting Staff's recommendations in the *Rate Case*, because Mr. Osborne's lengthy pattern of misconduct bears directly on Cobra's requested rates. Staff concludes that Cobra's motion to strike fails to demonstrate good cause and should be denied.

{¶ 35} Although Cobra argues that Staff's "Background" section pertains to actions or incidents involving Mr. Osborne in an individual capacity or as the owner of companies other than Cobra, R.C. 4905.05 provides, in part, that the Commission's jurisdiction extends to the persons or companies owning, leasing, or operating public utilities and railroads with plant or property wholly within this state. Given that Mr. Osborne is Cobra's principal

owner and managing officer, we find that the history provided in Staff's brief, which describes, among other matters, Mr. Osborne's alleged mismanagement of several of Cobra's former affiliates, is relevant and within the scope of the issues to be considered by the Commission in these consolidated proceedings. Additionally, the Commission has previously refused to strike a portion of an initial brief that was offered to provide a historical perspective. *In re Ohio Power Co. and Columbus Southern Power Co.*, Case No. 10-2376-EL-UNC, et al., Opinion and Order (Dec. 14, 2011) at 16. As the Commission noted in that case, it is not necessary that a party request administrative notice of a Commission order, in order to refer to the order in its brief, as Staff has done here. The same principle applies to court decisions and orders, which Staff has also properly cited. Accordingly, the Commission finds that Cobra's motion to strike a portion of Staff's initial brief should be denied.

2. NEO'S MOTION TO STRIKE

{¶ 36} On March 15, 2019, NEO filed a motion to strike a portion of Cobra's reply brief, as filed on March 8, 2019, in the *Emergency Rate Case*. NEO notes that, on page 15 of Cobra's reply brief, the Company included a sentence and corresponding footnote, as well as an attached exhibit (Exhibit 1), that rely on information of questionable veracity that is not part of the record in these proceedings and that is inconsistent with the evidence of record on a point of major contention. NEO notes that Exhibit 1 includes a summary of alleged contributions and distributions between Cobra and Mr. Osborne or affiliates in 2018, as well as a general ledger for the period of January 1, 2018, through December 31, 2018, and was offered by Cobra to support its claim that Mr. Osborne contributed a net total of $111,663.71 to the Company during 2018, both personally and through various business entities. According to NEO, Exhibit 1 identifies numerous alleged transactions for the month of December 2018 that do not have any evidentiary support in the record. NEO argues that the inclusion of Cobra's non-record evidence at this late stage in the proceedings would unfairly deprive NEO and Staff of the opportunity to present the Commission with

contrary arguments or evidence or to cross-examine the Company's witnesses regarding the non-record evidence. Accordingly, NEO seeks to strike Cobra's unsupported claim, as well as Exhibit 1.

{¶ 37} Cobra filed a memorandum contra on April 1, 2019. Cobra argues that NEO's position is meritless, as the Company provided evidence of Mr. Osborne's contributions during the evidentiary hearing in the *Emergency Rate Case*. Cobra does concede, however, that the contested footnote should have stated that the information contained in Exhibit 1 was a summarization of the evidence attached to the direct testimony of Company witness Carothers (Exhibits JC-1 and JC-2), as well as testimony provided by Company witness Coatoam during cross-examination. According to Cobra, NEO and Staff had the opportunity to question the Company's witnesses with respect to the transactions in question. Cobra concludes that NEO's motion to strike should be denied.

{¶ 38} On April 8, 2019, NEO filed a reply in support of its motion. NEO contends that the specific amounts associated with the contributions in question are not found anywhere within the record in these proceedings. NEO notes that Exhibits JC-1 and JC-2 are limited to information dating before December 1, 2018, and, therefore, could not have addressed the transactions in question. With respect to Ms. Coatoam's cross-examination, NEO responds that Ms. Coatoam testified as to only two transactions and did not otherwise address the non-record evidence at issue. NEO adds that Ms. Coatoam testified to different numbers than those stated in the non-record evidence provided with Cobra's reply brief. NEO asserts that Cobra was free to cite Exhibits JC-1 and JC-2 and Ms. Coatoam's responses on cross-examination but instead chose to rely on the improper non-record evidence.

{¶ 39} As NEO notes, the Commission has, on a number of prior occasions, rejected parties' attempts to include information in a post-hearing brief that is not part of the record. *See, e.g., In re Ohio American Water Co.*, Case No. 09-391-WS-AIR, Opinion and Order (May 5, 2010) at 9; *In re Columbus Southern Power Co.*, Case No. 08-917-EL-SSO, et al., Order on

Remand (Oct. 3, 2011) at 9-10; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 10-268-EL-FAC, et al., Opinion and Order (May 14, 2014) at 8. Although Cobra asserts that the information in Exhibit 1 was provided as part of Exhibits JC-1 and JC-2, those exhibits do not include transactions from December 2018. Neither did Ms. Coatoam address the transactions reflected in Exhibit 1 during her cross-examination. We agree that, because NEO and Staff were not afforded an opportunity to contest the transactions in question during the evidentiary hearing, it would be improper and unduly prejudicial to allow the Company to provide and rely on the information at this point in the proceedings. Therefore, NEO's motion to strike portions of Cobra's reply brief should be granted, such that the sentence on page 15 beginning with "Cobra's general ledgers actually show," as well as the associated footnote and Exhibit 1, should be stricken.

B. Applicable Law

{¶ 40} The Ohio Supreme Court has noted that R.C. 4909.15 "charges the [C]ommission with setting 'just and reasonable rates' and provides a mandatory ratemaking formula that requires the [C]ommission to make a series of determinations when fixing rates." *In re Application of Duke Energy Ohio, Inc.*, 150 Ohio St.3d 437, 2017-Ohio-5536, 82 N.E.3d 1148, ¶ 16. In summarizing this detailed and comprehensive ratemaking formula, the Court stated:

> R.C. 4909.15(A) requires the [Commission] to make a series of determinations—the valuation of the utility's property in service as of date certain (R.C. 4909.15[A][1]), a fair and reasonable rate of return on that investment (R.C. 4909.15[A][2]), and the expenses incurred in providing service during the test year (R.C. 4909.15[A][4]). Once those determinations are made, the [Commission] is required to "compute the gross annual revenues to which the utility is entitled" * * * under division (B) by adding the dollar return on the company's investment (R.C. 4909.15[A][3]) to the utility's test year expenses. If the charges under the utility's existing tariff are insufficient

> to generate those revenues, the [Commission] is required to fix new rates that will raise the necessary revenue.

Columbus Southern Power Co. v. Pub. Util. Comm., 67 Ohio St.3d 535, 620 N.E.2d 835, 838-839 (1993) (emphasis omitted).

{¶ 41} The Commission also has ratemaking authority pursuant to R.C. 4909.16, which provides in its entirety:

> When the [P]ublic [U]tilities [C]ommission 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 [C]ommission, 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 [C]ommission shall apply to one or more of the public utilities in this state, or to any portion thereof, as is directed by the [C]ommission, and shall take effect at such time and remain in force for such length of time as the [C]ommission prescribes.

The Court has found that R.C. 4909.16 grants the Commission "extraordinary and special powers in the event it determines that an emergency exists." *City of Amherst v. Pub. Util. Comm.*, 46 Ohio St.2d 256, 257, 348 N.E.2d 330 (1976) (quoting *City of Cincinnati v. Pub. Util. Comm.*, 149 Ohio St. 570, 575, 80 N.E.2d 150 (1948)).

C. *Summary of the Application and the Staff Report in the* Rate Case

{¶ 42} In its application, as amended and corrected, Cobra proposes a test year ending December 31, 2015, and a date certain of December 31, 2015, for the *Rate Case*. Cobra notes that it provides transportation service to 17 customers (local distribution companies, natural gas marketers, and industrial and commercial consumers) on three geographically

separate systems: the Churchtown system in Noble and Washington counties; the Holmesville system in Holmes and Wayne counties; and the North Trumbull system in Ashtabula, Columbiana, Geauga, Mahoning, and Trumbull counties. The application indicates that Cobra is largely owned by the Richard M. Osborne Trust, which is managed by Mr. Richard M. Osborne as Trustee, and has an ownership share of 85.93 percent. Mr. Osborne is also the managing member of Cobra. FCCC Co. II, LLC (FCCC) owns the remaining minority interest at 14.07 percent. In 2015, Cobra had 15 full-time employees. (NEO Ex. 1 at Ex. 1, Ex. 2, Ex. 3, Ex. 4; NEO Ex. 2 at 1.)

{¶ 43} With its application, Cobra provided proposed tariffs, which, for the most part, would remain unchanged. Consistent with the Commission's directive in the *Complaint Case*, Cobra does propose to set a shrinkage rate of 3.5 percent in the tariff, which would be adjusted on an annual basis. In its amended application dated September 26, 2016, Cobra also proposed the following modifications to its existing firm and interruptible transportation service rates:

	Current Rate	Proposed Rate	Proposed Increase
Firm Transportation Service			
Demand	$0.50 x MDQ x number of days in the month[5]	$0.95 x MDQ x number of days in the month[6]	$0.45
Commodity	$0.10 per Dth[7]	$0.10 per Dth	No change
Unauthorized Daily Overrun	$0.50 per Dth	$0.75 per Dth	$0.25

5 "MDQ" is an abbreviation for maximum daily quantity. Cobra's tariff provides that the MDQ is the maximum daily natural gas quantity that the customer is entitled to nominate during any 24-hour period. A customer's MDQ is negotiated between Cobra and the customer and incorporated in the customer's service agreement with the Company.

6 In its correspondence dated November 4, 2016, Cobra stated that its proposed demand rate should be changed from $1.01, as stated in the amended application, to $0.95.

7 "Dth" is an abbreviation for dekatherm.

Interruptible Transportation Service			
Commodity	$0.50 per Dth	$0.75 per Dth	$0.25

(NEO Ex. 2 at Ex. Supp. No. 1.)

{¶ 44} In its initial application filed on August 15, 2016, Cobra proposed a different rate structure: $0.95 per thousand cubic feet (Mcf) for firm transportation service, $0.95 per Mcf for interruptible transportation service, and $0.25 per Mcf for processing and compression (NEO Ex. 1 at Ex. 15). On July 28, 2017, Cobra filed correspondence indicating that, upon discovering the inconsistency in its proposed rates, the Company wished to clarify that it is requesting approval of the rates set forth in its initial application. Cobra also provided a proposed tariff sheet, which reflects a rate of $0.95 per Mcf for both firm and interruptible transportation service.[8]

{¶ 45} In the Staff Report, Staff recommended a revenue adjustment ranging from a decrease of $29,371 to an increase of $30,641, which would be a decrease of 0.98 percent to an increase of 1.02 percent over test year operating revenue.[9] Staff notes that its determination is based on an examination of Cobra's accounts and records for the 12 months ending December 31, 2015, as summarized in the Staff Report, including schedules that incorporate Staff's recommended rate of return, rate base, and adjusted operating income. Staff recommends a rate of return in the range of 8.59 percent to 9.59 percent, with a midpoint of 9.09 percent. (Co. Ex. 2 at Ex. B at 2, 9.)

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8 In its brief in the *Rate Case*, Cobra again revised its proposed rates, requesting that the Commission authorize the Company to increase its rates to equal those proposed in the *Emergency Rate Case* (Co. Br. at 23).

9 Subsequently, in its direct testimony, Staff revised its recommended revenue adjustment (Staff Ex. 10 at Sched. A-1).

D. *Summary of the Arguments and Objections to the Staff Report in the* Rate Case

1. ESTABLISHMENT OF RATES FOR PIPELINE COMPANIES

{¶ 46} Initially, Cobra argues that, pursuant to R.C. 4909.17, the Commission is expressly prohibited from applying R.C. 4909.17, 4909.18, and 4909.19 to pipeline companies such as Cobra. Cobra asserts that, although the Commission acknowledged this statutory restriction in its April 11, 2018 Entry, the Commission nevertheless proceeded to apply the provisions in R.C. 4909.18 and 4909.19 to the Company. Cobra adds that, because pipeline companies are exempt from R.C. 4909.17, changes in the rates or service terms for pipeline companies take effect upon notice to the Commission and customers that the new rates or service terms are being implemented. Cobra contends that, at that point, it is incumbent upon the Commission to invoke, if necessary, its authority under R.C. 4905.26 to suspend or modify the rates or service terms. Cobra notes that the Company filed its proposed rates on August 15, 2016, and subsequently informed the Commission and customers that the proposed rates would take effect on July 1, 2017. Cobra further notes that the new rates remained in place until the Company was directed, in the April 11, 2018 Entry, to reduce its rates pending the outcome of the *Rate Case*. Cobra concludes that the amount and manner of any refund to customers are controlled by the terms of the Company's bond rather than by statute. (Co. Br. at 6-8.)

{¶ 47} Staff asserts that the processes employed by the Commission to consider Cobra's current rates, and the procedures followed that may establish new rates in the *Rate Case*, were reasonable, lawful, and consistent with Commission practice and precedent. Staff notes that, although R.C. 4909.18 and 4909.19 do not apply to pipeline companies, the remaining provisions in R.C. Chapter 4909, including how Staff must conduct its investigation and on what basis the Commission must determine a rate to be reasonable, apply to public utilities, including pipeline companies. Staff contends that, to the extent that the statutory ratemaking scheme does not specifically describe the procedures to be followed in rate proceedings involving pipeline companies, the General Assembly left that

determination to the discretion of the Commission. *AT&T Communications of Ohio, Inc. v. Pub. Util. Comm.*, 51 Ohio St.3d 150, 154, 555 N.E.2d 288 (1990) (noting that, under R.C. 4909.15, the Commission "has considerable discretion in setting rate schedules and may approve such schedules based on the evidence before it in the exercise of its sound discretion"). Staff adds that the Ohio Supreme Court has consistently recognized the Commission's broad discretion to conduct and manage its hearings and the orderly flow of its business. *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379, 384 N.E.2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982). Staff also points out that the *Rate Case* was ordered in response to a complaint filed pursuant to R.C. 4905.26 and a finding by the Commission that it was necessary to determine the reasonableness of the rates of Mr. Osborne's pipeline companies through a process in line with R.C. Chapter 4909. *Complaint Case*, Opinion and Order (June 15, 2016) at ¶¶ 76-77. Staff concludes that the Commission reasonably adopted procedures consistent with the due process specified in R.C. 4909.18 and 4909.19 to evaluate Cobra's application and to determine just and reasonable rates. (Staff Br. at 24-28; Staff Reply Br. at 2-5.)

{¶ 48} In its reply brief, Cobra argues that Staff's position ignores the legislative prohibition against the Commission's exercise of authority pursuant to R.C. 4909.18 and 4909.19 and, therefore, denies the Company the legal process that the Ohio General Assembly determined should apply to pipeline companies. Cobra further argues that it would be blatant error for the Commission, as a creature of statute, to invoke R.C. 4909.18 and 4909.19, notwithstanding the Commission's acknowledgement that they are inapplicable. *In re Application of Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056, 40 N.E.3d 1060, ¶ 32. (Co. Reply Br. at 10-12.)

{¶ 49} NEO, for its part, asserts that the Commission is empowered to determine proper rates for Cobra based on the processes and procedures set forth in R.C. Chapter 4909. NEO notes that pipeline companies are public utilities for purposes of R.C. Chapter 4909 and their rate setting is governed by R.C. 4909.15. According to NEO, R.C. 4909.15(E)

prohibits Cobra and other pipeline companies from modifying their rates absent an order from the Commission. NEO adds that there is no support for Cobra's claim that a pipeline company may unilaterally set its rates without prior Commission approval. Noting that the Commission has wide discretion in the management of its dockets, NEO also contends that adhering to the procedures set forth in R.C. Chapter 4909 ensures that due process is afforded to Cobra and all other entities affected by a rate increase before it is instituted. With respect to Cobra's contention that any refund is limited by the terms of its bond, NEO replies that Cobra offers no support for its position and, in any event, the Company's promise to refund improper charges is hollow and untrustworthy, particularly in light of the fact that the Company has openly disobeyed the Commission's April 11, 2018 Entry by refusing to provide a refund to customers. (NEO Br. at 7-10; NEO Reply Br. at 2-8, 9-10.)

{¶ 50} In the April 11, 2018 Entry issued by the Commission in the *Rate Case*, the Commission determined that, pursuant to R.C. 4909.17, pipeline companies such as Cobra are not subject R.C. 4909.18 or 4909.19. R.C. 4909.17 provides in is entirety:

> No rate, joint rate, toll, classification, charge, or rental, no change in any rate, joint rate, toll, classification, charge, or rental, and no regulation or practice affecting any rate, joint rate, toll, classification, charge, or rental of a public utility shall become effective until the [P]ublic [U]tilities [C]ommission, by order, determines it to be just and reasonable, except as provided in this section and sections 4909.18, 4909.19, and 4909.191 of the Revised Code. Such sections do not apply to any rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, of railroads, street and electric railways, for-hire motor carriers, and pipe line companies.

Although we recognized that pipeline companies are exempt from R.C. 4909.18 and 4909.19, the Commission found, consistent with prior precedent, that the *Rate Case* should proceed

in a manner that is similar to the process set forth in those statutory provisions. Specifically, we stated:

> With respect to the procedures to be adopted in this case, the Commission has previously recognized that no section of the Revised Code dictates the manner in which the proposed rates of a pipeline company must be filed. While noting that R.C. 4909.18 is not directly applicable, the Commission found that it was not improper to proceed in a manner that is consistent with the procedures in R.C. 4909.18. *In re Natural Gas Transmission Co. of Ohio*, Case No. 81-1404-PL-ATA, et al., Entry (Dec. 23, 1981). We make the same determination here. In the *Complaint Case*, Cobra was directed to file an application to initiate a review of its rates and charges under R.C. Chapter 4909, which governs the fixation of rates for public utilities. *Complaint Case*, Opinion and Order (June 15, 2016) at ¶ 77. Although the process and procedural requirements set forth in R.C. 4909.18 and 4909.19 do not apply to pipeline companies, no other provision in R.C. Chapter 4909 addresses the procedures to be used by the Commission in determining the rates and charges for a pipeline company. In order to ensure that Cobra is afforded due process, we will, therefore, proceed with our review and consideration of Cobra's application in a manner that is consistent with the process followed under those statutes, including issuance of a written report of investigation, publication of notice of the application, and adherence to the Commission's standard filing requirements, which are necessary to determine proper rates under R.C. 4909.15.

April 11, 2018 Entry at ¶ 32. On May 10, 2018, Cobra filed an application for rehearing of the April 11, 2018 Entry, which the Commission granted on June 6, 2018, for the purpose of further consideration of the matters specified in the application.

{¶ 51} In its brief, Cobra reiterates arguments raised in its application for rehearing, in which the Company likewise asserts that the process adopted by the Commission in the *Rate Case* is counter to R.C. 4909.17. Upon thorough consideration of Cobra's position, we find no merit in its claim that the Commission has acted contrary to R.C. 4909.17. Although R.C. 4909.18 and 4909.19 do not apply to pipeline companies, the Commission has considerable authority to determine proper rates for Cobra under R.C. 4909.15, as the Company admits. *AT&T Communications of Ohio, Inc. v. Pub. Util. Comm.*, 51 Ohio St.3d 150, 154, 555 N.E.2d 288 (1990); *Payphone Assn. v. Pub. Util. Comm.*, 109 Ohio St.3d 453, 2006-Ohio-2988, 849 N.E.2d 4, ¶ 25. As Cobra also recognizes, R.C. 4905.26 provides the Commission with extensive authority to initiate proceedings to investigate the reasonableness of any rate or charge rendered or proposed to be rendered by a public utility, which the Ohio Supreme Court has affirmed on several occasions. The Court has found that the Commission has authority to investigate an existing rate and, following a hearing, to order a new rate. The Court has also determined that R.C. 4905.26 enables the Commission to change a rate or charge, without compelling the public utility to apply for a rate increase pursuant to R.C. 4909.18. *Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 2006-Ohio-4706, 853 N.E.2d 1153, ¶¶ 29-32; *Consumers' Counsel v. Pub. Util. Comm.*, 61 Ohio St.3d 396, 402, 575 N.E.2d 157 (1991); *Allnet Communications Services, Inc. v. Pub. Util. Comm.*, 32 Ohio St.3d 115, 512 N.E.2d 350 (1987); *Ohio Utilities Co. v. Pub. Util. Comm.*, 58 Ohio St.2d 153, 156-158, 389 N.E.2d 483 (1979). In this context, R.C. 4905.26 requires only that the Commission hold a hearing and provide notice to the applicable parties. The Commission's process in the *Rate Case* has fully complied with the requirements of the statute and afforded Cobra ample due process, while the Company has failed to explain how it has been prejudiced by the Commission's decision to proceed with a written report of investigation by Staff, publication of notice of the application, and adherence to the SFR.

{¶ 52} Consistent with the arguments raised in its application for rehearing, Cobra's brief also sets forth the position that R.C. 4909.17 exempts pipeline companies from

R.C. 4909.17 itself. Specifically, Cobra contends that R.C. 4909.17 authorizes pipeline companies to impose new rates upon notice to their customers and the Commission. We note, however, that Cobra has not, at any point in its July 7, 2017 correspondence or in any other filing, stated that it intended to implement its proposed rates pursuant to R.C. 4909.17. Thus, there is no basis here for the Commission to address the question of whether R.C. 4909.17 enables a pipeline company to implement its proposed rates prior to a determination by the Commission that the rates are just and reasonable. Further, Cobra ignores the history leading up to the *Rate Case*, which was initiated in response to the Commission's directive, in the *Complaint Case*, that Cobra, OTP, and any other pipeline companies owned or controlled by Richard M. Osborne file applications, pursuant to R.C. Chapter 4909, to determine just and reasonable rates that include charges for firm and interruptible transportation services and rates for shrinkage. *Complaint Case*, Opinion and Order (June 15, 2016) at ¶ 77. Cobra clearly acknowledged that its initial application in the *Rate Case* was filed for the purpose of complying with the Commission's directive in the *Complaint Case*, and not as a unilateral attempt to increase the Company's rates. Cobra expressly requested in the application that the Commission determine that the Company's proposed rates are reasonable or, in the alternative, set rates to be charged by Cobra that will provide a reasonable level of compensation for its utility service. (NEO Ex. 1 at 1, 3.) Finally, to the extent that Cobra's arguments are raised in support of its contention that the amount and manner of any refund to customers are controlled by the terms of the Company's so-called bond, we note that this issue has also been raised in the Company's request for rehearing of the April 11, 2018 Entry and should be addressed in that context, as it is beyond the scope of our review of the Company's application in the *Rate Case*.

{¶ 53} Accordingly, we conclude that our consideration of Cobra's current and proposed rates in the *Rate Case* is consistent with our statutory authority and considerable discretion to manage our dockets, as well as our prior precedent in cases establishing rates for pipeline companies. *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559,

560, 433 N.E.2d 212 (1982); *Sanders Transfer, Inc. v. Pub. Util. Comm.*, 58 Ohio St.2d 21, 23, 387 N.E.2d 1370 (1979); *In re Natural Gas Transmission Co. of Ohio*, Case No. 81-1404-PL-ATA, et al., Entry (Dec. 23, 1981); *In re TOPICO*, Case No. 81-489-PL-ATA, Entry (May 19, 1981).

2. RATEMAKING PROCESS AND PROCEDURES

{¶ 54} Cobra also asserts that the Commission failed to employ correctly the abbreviated ratemaking procedures in the SFR. Cobra notes that it elected to file an abbreviated application under Chapter IV of the SFR, which is intended to provide a simplified and less expensive procedure for a rate case that may minimize the necessity for a formal hearing, reduce filing requirements, and shorten the length of the rate case. According to Cobra, Chapter IV's stated purpose has not been fulfilled in the *Rate Case*, particularly given that the case has taken more than two years. Cobra contends that the delay has resulted in the evaluation of outdated data and other information for the Company, which has changed significantly since 2015. Cobra adds that nothing in the Revised Code compels pipeline companies to submit to rate-of-return regulation and, therefore, it is not clear as to how the Company's rates should be determined. Cobra notes that pipeline companies in Ohio have largely been permitted to consider the market for their service when assessing their rates. Cobra concludes that Staff should have considered the rates of Cobra's competitors as a basis for comparison. (Co. Br. at 8-10.)

{¶ 55} As an initial matter, Staff notes that, with respect to the *Rate Case*, Staff proceeded as it would with any rate case filing, meaning that Staff considered requests made by Cobra and evaluated the information provided by and obtained from the Company. Staff also notes that Cobra made no request that its rates be established on any basis other than traditional cost-based, rate-of-return regulation. Staff adds that, at no time prior to the filing of Cobra's testimony, did the Company propose any alternative regulatory treatment or mechanism for the recovery of extraordinary expenses. With respect to Cobra's contention that a rate comparison should have been conducted, Staff responds that Staff does not, as a matter of general practice, perform an evaluation of comparable rates. Additionally, Staff

notes that Cobra itself did not offer any evidence showing that its proposed rates would be just and reasonable in a competitive market or that the Company's transportation services are even provided in a competitive market. Staff concludes that it properly evaluated Cobra's application. In its reply brief, Staff asserts that any delay or resulting staleness of information is the result of Cobra's actions and inactions. (Staff. Br. at 28-30; Staff Reply Br. at 5-6.)

{¶ 56} Cobra responds that it does not disagree that many portions of R.C. Chapter 4909 apply to it. According to Cobra, the Commission has historically exercised its discretion by allowing pipeline companies to base their rates on criteria selected by the companies, which simply submit those rates for review by the Commission, and has never before employed a rate-of-return analysis to a pipeline company. Cobra contends that there is no reason to perform a rate-of-return analysis with respect to the Company and that the Commission should instead follow other property valuation procedures in R.C. Chapter 4909, which, according to Cobra, are applicable to public utilities generally and require the Commission to regularly inform itself of the condition and value of the property of all public utilities, prepare valuation reports from time to time, provide notice of any such report by registered letter to the public utility, and hold a hearing in which the utility may object to the report.[10] Cobra adds that, arguably, the Commission might have proceeded under R.C. 4909.27, 4909.28, or 4909.33. (Co. Reply Br. at 12-13.)

{¶ 57} Throughout the course of the *Rate Case* and the *Emergency Rate Case*, the Commission has been mindful of affording Cobra due process and, upon consideration of the Company's arguments, we find that proper ratemaking procedures, in accordance with the Commission's ratemaking authority, have been followed by Staff and the Commission in these proceedings. With regard to Cobra's contention that the Commission has not

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10 Although Cobra cites R.C. 4909.07, the property valuation procedures that it describes are set forth in R.C. 4909.04 et seq.

correctly implemented the abbreviated ratemaking procedures in the SFR, we note that the Company acknowledges that it elected to file an abbreviated application under Chapter IV of the SFR. Although the abbreviated process is indeed intended to minimize the necessity for hearings, reduce filing requirements, and shorten the time period between the filing of the application and a Commission order, the general instructions for the abbreviated process clearly indicate that these objectives may not be achievable in every case. As one example, the general instructions note that the abbreviated process assumes that the applicant is able to provide adequate financial records. Ohio Adm.Code 4901-7-01, App. A, Ch. IV(A)(1). Here, as we fully explained in the April 11, 2018 Entry, the Commission and Staff have faced a number of critical issues that have impeded an efficient review of Cobra's application, including a lack of sufficient financial records and other information, as well as OTP's receivership and bankruptcy proceedings. April 11, 2018 Entry at ¶¶ 26-31.

{¶ 58} As we concluded in the April 11, 2018 Entry, the Commission must ensure, in accordance with R.C. 4909.15, that a thorough review of Cobra's application is conducted, including consideration of the pertinent facts and circumstances that become known to the Commission or Staff during the course of the investigation. April 11, 2018 Entry at ¶ 31. Further, although a hearing on an abbreviated application may be unwarranted in many cases, a hearing in the *Rate Case*, aside from being consistent with the due process afforded by R.C. 4905.26, was also necessitated by the fact that Cobra filed objections to the Staff Report. Ohio Adm.Code 4901-7-01, App. A, Ch. IV(A)(2) (instructing that a hearing will not be required for an abbreviated application unless a motion for a hearing is filed by the applicant or an intervening party or objections to Staff's written report of investigation are filed).

{¶ 59} Regarding Cobra's claim that Staff should have considered the rates of the Company's competitors as a basis for comparison, we find that the Company offered no evidence or precedent in support of its position. Neither did Cobra back its claim that the Commission should limit the scope of its review to a property valuation under R.C. 4909.04

et seq. In the *Complaint Case*, the Commission directed Cobra, OTP, and any other pipeline companies owned or controlled by Richard M. Osborne to file applications, pursuant to R.C. Chapter 4909, for the purpose of determining just and reasonable rates. *Complaint Case*, Opinion and Order (June 15, 2016) at ¶ 77. R.C. 4909.15 sets forth the formula prescribed by the General Assembly for the fixation of reasonable rates for a public utility, including a valuation of the utility's property as determined under R.C. 4909.05(C)(8) and 4909.15(A)(1), as well as a fair and reasonable rate of return in accordance with R.C. 4909.15(A)(2). As the Ohio Supreme Court has often noted, the ratemaking formula is mandatory. *See, e.g., Columbus Southern Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 620 N.E.2d 835, 838 (1993) ("While the General Assembly has delegated authority to the [Commission] to set just and reasonable rates for public utilities under its jurisdiction, it has done so by providing a detailed, comprehensive and, as construed by this court, mandatory ratemaking formula under R.C. 4909.15."). As noted in the "Scope of Investigation" section of the Staff Report, Staff evaluated Cobra's abbreviated application with due regard for the statutory ratemaking formula (Co. Ex. 2 at Ex. B at 2). Finally, R.C. 4909.20 through 4909.33 pertain to railroad rates and regulation and, therefore, we find no merit in Cobra's secondary claim that the Commission should have proceeded under R.C. 4909.27, 4909.28, or 4909.33.

3. GAS PIPELINE SAFETY

{¶ 60} As its third objection, Cobra maintains that, although Staff noted its concern that the Company has not implemented a distribution integrity management program or a public awareness program, Staff did not include the expenses associated with such programs in the Company's rates, because they did not exist during the test year. Cobra contends that Staff also failed to address the costs associated with replacing and updating systems necessary to its operation following OTP's receivership, including improvements and repairs to the pipelines and control systems on a going-forward basis. Cobra adds that Schumaker recommended in the *Investigative Audit Case* that the Company implement a number of safety-related measures, such as hiring additional employees to ensure the

provision of safe and reliable service and improving the Company's system to better confirm supply in and out of the system. Noting that Cobra does not have the resources to implement these recommendations and any other improvements and repairs that may become necessary in the future, the Company asserts that it should be authorized to establish a Pipeline Safety Rider (PSR), as recommended by Cobra witness Hess. Cobra recommends that the initial rate of the PSR be set at zero, until such time as the Company receives the Commission's approval for specific improvements or repairs. (Co. Br. at 10-12.)

{¶ 61} Staff notes that it issued notices of probable noncompliance to Cobra in 2015, 2016, and 2018 for various gas pipeline safety violations, including failure to maintain or follow certain procedures, perform leak surveys, maintain an adequate corrosion control program, maintain an adequate public awareness program, and maintain an adequate integrity management program. During the hearing, Staff witness Chace testified that, although Cobra has taken steps to work with a third party to address the violations, the Company remains out of compliance with respect to implementation of adequate public awareness and integrity management programs. Staff emphasizes that the violations have remained outstanding since a field inspection in 2015 and that Cobra witness Hess was unaware of any efforts by the Company to remedy the violations. With respect to the proposed PSR, Staff asserts that the rider is neither necessary nor appropriate, given that gas pipeline safety compliance is an obligation of every operator and a cost of doing business that should be recovered through base rates. Noting that Mr. Hess did not provide an estimate of any additional compliance costs, Staff asserts that Cobra's test year operating expenses should have included costs for gas pipeline safety compliance if they were incurred by the Company. (Staff Br. at 60-63; Staff Reply Br. at 6-7.)

{¶ 62} Cobra responds that it has no issue with gas pipeline safety compliance. According to Cobra, Staff witness Chace agreed that nearly all of Staff's concerns have been addressed by the Company, any remaining concerns are in the process of being addressed through the Company's retention of an outside contractor, and any costs associated with

addressing Staff's concerns should be recovered through the Company's rates, even if they are outside of the test year. (Co. Reply Br. at 17-18.)

{¶ 63} Regarding the *Investigative Audit Case*, Staff notes that, as an initial matter, Schumaker's 16 recommendations have not been ordered by the Commission to be implemented by Cobra and are not addressed in the Staff Report. Staff adds, however, that, to the extent that Cobra has elected to implement Schumaker's recommendations, the associated costs may be recoverable in a rate proceeding. According to Staff, Cobra witness Carothers testified that the Company has incurred no cost in implementing the 13 recommendations that it has adopted to date. With respect to the other three recommendations, Staff argues that Cobra has either failed to implement recommendations that would not impose additional costs, such as the recommendation to implement formal policies and procedures for properly handling personal property tax and excise tax filings, or disagrees with, but has not yet contested, recommendations that would impose costs. (Staff Br. at 30-33.)

{¶ 64} NEO, for its part, contends that Cobra's objection should be stricken, because Schumaker's audit report was filed on May 22, 2017, which is well beyond the time period permitted by R.C. 4909.15(D) for adjustments to test-year expenses. NEO adds that, in any event, Cobra acknowledged that it already completed most of Schumaker's recommendations at no cost to customers, while the Company failed to quantify the cost of implementing the remaining recommendations. NEO also notes that customers should not bear the cost of an investigative audit precipitated by the Commission's legitimate concern over Cobra's operational mismanagement. (NEO Br. at 4, 26-27.)

{¶ 65} The Commission finds no merit in Cobra's position that Staff should have included expenses incurred beyond the test year to facilitate the Company's implementation of the necessary distribution integrity management and public awareness programs. As Staff witness Chace addressed, Cobra is unquestionably required to comply with the gas

pipeline safety regulations,[11] and the associated costs are part of the usual course of operating a pipeline company and should, therefore, be recovered through base rates rather than a rider (Staff Ex. 6 at 3, 6). To the extent that Cobra incurred expenses during the test year for gas pipeline safety compliance, such expenses have already been accounted for in Staff's determination of the Company's operating income; Staff made no adjustments related to gas pipeline safety compliance (Co. Ex. 2 at Ex. B at 7-8). With respect to Cobra's claim that Staff should consider any safety-related costs incurred following the conclusion of the test year, the test year concept is a key component of the mandatory ratemaking formula set forth in R.C. 4909.15. Specifically, R.C. 4909.15(A)(4) requires the Commission to determine the cost to the public utility of rendering its service for the test period. R.C. 4909.15(C)(1) provides that the revenues and expenses of the public utility shall be determined during a test period, which shall be the test period proposed by the utility, unless otherwise ordered by the Commission. As addressed further below, although there may be instances where it is appropriate to recognize expenses outside of the test year, such exceptions do not apply here. Further, Cobra's position regarding its safety obligations is falsely premised, in part, on Schumaker's recommendations in the *Investigative Audit Case*, which are both outside the scope of the present proceedings and beyond the test period.

{¶ 66} We note that the record reflects that Cobra's lack of full compliance with the gas pipeline safety regulations at issue, which require the Company to implement distribution integrity management and public awareness programs, dates back to 2015 (Staff Ex. 6 at 4; Co. Ex. 2 at Ex. B at 13-15; Tr. II at 312-314). As addressed below, the Commission finds that a gas pipeline safety investigation into Cobra's compliance with the gas pipeline

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[11] Cobra is required to comply with the gas pipeline safety rules contained in Ohio Adm.Code Chapter 4901:1-16. This chapter sets forth the safety standards and requirements for intrastate gas pipeline facilities subject to the Commission's jurisdiction. Pursuant to Ohio Adm.Code 4901:1-16-03(A), the Commission's gas pipeline safety rules adopt the United States Department of Transportation's gas pipeline safety regulations, as contained in 49 C.F.R. Parts 40, 191, 192, and 199.

safety regulations should be initiated pursuant to R.C. 4905.95 and Ohio Adm.Code 4901:1-16-12.

4. COBRA'S CURRENT FINANCIAL POSITION

{¶ 67} Next, Cobra claims that, if the *Rate Case* proceeds despite the Company's objections to the process utilized by the Commission, Cobra's current financial position should not be ignored. Cobra asserts that the *Rate Case* should concern the current financial status of the Company, including consideration of the fundamental and significant structural changes, decreased revenues, and increased expenses that have occurred since the test year. Cobra urges the Commission to reject Staff's adherence to the test year, given that R.C. 4909.17, 4909.18, and 4909.19 are inapplicable to the Company. Cobra adds that Staff has used certain financial information related to wages, salaries, and legal services that falls outside of the test year. (Co. Br. at 12-13.)

{¶ 68} Although Staff acknowledges that Cobra's financial condition is worsening, Staff notes that the Commission's April 11, 2018 Entry indicated that the Company's rates are to be determined under R.C. 4909.15, which requires that the Company's revenues and expenses be determined for the Company's proposed test year ending December 31, 2015. Staff points out that Cobra could have, but did not, file a new application for an increase in rates reflecting its changed position, or file a request for emergency rate relief, as the Company eventually did after the conclusion of the hearing in the *Rate Case*. Staff concludes that Cobra's financial condition is largely of its own making, resulting from mismanagement by its owner and operator. (Staff Br. at 33-34; Staff Reply Br. at 7-8.)

{¶ 69} Cobra responds that the Commission is not restricted by the test year, as Staff contends. Noting that Staff itself has recommended post-test-year adjustments, Cobra argues that nothing in R.C. 4909.15(C) prohibits the Company from proposing a different test period than the one originally selected, particularly given the duration of these proceedings. Cobra adds that R.C. 4909.15(C)(1) expressly permits the Commission to

employ a different test period, while R.C. 4909.15(E) directs the Commission to give due regard to all other matters that are proper, according to the facts in each case. Alternatively, Cobra submits that comparative ratemaking is an option available to the Commission. Cobra concludes that it would be an abuse of discretion for the Commission to proceed based on stale information, given the prolonged nature of the *Rate Case*, as well as the Company's dire need. (Co. Reply Br. at 13-14, 15-16.)

{¶ 70} According to NEO, Cobra's objection on this issue should be stricken in accordance with R.C. 4909.15(D), as the Company's revenue loss did not occur until 2017. Further, NEO contends that the underlying financial information on which Cobra witness Hess relied is full of material errors and obvious inconsistencies, particularly with respect to the Company's personal property tax liabilities. NEO emphasizes that the financial information reflected in Exhibit G to Ms. Coatoam's testimony is entirely inconsistent with the income statements admitted as Company Exhibit 5, which Mr. Hess relied upon to support the conclusions in his testimony. NEO adds that the personal property tax numbers for 2017 in both Exhibit G and Exhibit 5 are inaccurate, because they do not account for Mr. Osborne's transfer of 50 acres of Cobra's real property and stripping station to another entity owned by Mr. Osborne. NEO concludes that, because Mr. Hess's expert opinion is based on information that is demonstrably inaccurate, his conclusions concerning Cobra's financial viability, in the absence of a personal property tax funding mechanism, are likewise inaccurate. (NEO Br. at 7, 28-31.) In response, Cobra states that NEO's position is biased, given that NEO is a competitor of the Company, and seeks to deny the Company a proper rate (Co. Reply Br. at 14-15).

{¶ 71} In its reply brief, NEO asserts that, to the extent that the Commission considers Cobra's current financial situation, the Commission must also recognize the Company's gross financial mismanagement, widespread commingling of affiliate funds, and blatant self-dealing, which, according to NEO, caused the Company's financial distress. NEO emphasizes that Cobra conceded that its financial problems have been caused, at least

in part, by its own financial mismanagement. NEO argues that, despite Cobra's position that it should nevertheless be permitted to recover imprudent expenditures, R.C. 4909.154 requires the Commission to deny recovery of any operating or maintenance expenses that were incurred through a public utility's mismanagement or imprudence. NEO maintains that Cobra has the burden to affirmatively prove that its expenses were prudently incurred and that, even where the evidence of prudence is inconclusive or questionable, the Commission must disallow cost recovery. *In re Application of Duke Energy Ohio, Inc.*, 131 Ohio St.3d 487, 2012-Ohio-1509, 967 N.E.2d 201, ¶ 8. (NEO Reply Br. at 10-12.)

{¶ 72} The Commission finds that Cobra's objection is not consistent with the mandatory ratemaking formula set forth in R.C. 4909.15. Cobra essentially takes issue with Staff's approach in the *Rate Case* and argues that the Company's current financial position should not be ignored through strict adherence to the test year. As noted above, R.C. 4909.15(A)(4) requires the Commission to determine the cost to the public utility of rendering its service for the test period used to determine the utility's revenues and expenses under R.C. 4909.15(C)(1). That statute, in turn, provides that the revenues and expenses of the public utility shall be determined during a 12-month test period, which shall be the test period proposed by the utility, unless otherwise ordered by the Commission. Cobra proposed, in its amended application, a test year ending December 31, 2015, which the Commission approved in its November 9, 2016 Entry. Cobra, at no point, sought leave to modify its approved test period by filing a new application reflecting its changed position.

{¶ 73} The Ohio Supreme Court has recognized the importance of the test year concept, noting that "[r]ate increases are based on costs of rendering utility service during the test period" under the "unequivocal" language of the ratemaking statute. *Consumers' Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d 372, 374, 424 N.E.2d 300 (1981); *see also City of Columbus v. Pub. Util. Comm.*, 10 Ohio St.3d 23, 25, 460 N.E.2d 1117 (1984) ("This court has consistently recognized the strong presumption that only expenses incurred during the test period may be included in awarding a rate increase."). With respect to Cobra's argument

that R.C. 4909.15(E)(2) directs the Commission to give "due regard to all such other matters as are proper, according to the facts in each case," the Court has construed this language narrowly, finding that it permits the Commission to "make minor adjustments to rates ascertained by the statutory formula" and to "smooth out anomalies in the ratemaking equation." *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 538-539, 620 N.E.2d 835 (1993) (quoting *Consumers' Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d 153, 166, 423 N.E.2d 820 (1981)). Therefore, consistent with R.C. 4909.15 and Ohio Supreme Court precedent, we find that Staff's investigation of Cobra's amended application was properly based on the test period approved by the Commission.[12] Further, to the extent that Cobra argues that its current financial situation must be considered by Staff and the Commission, we note that the Company's application for emergency rate relief, which was filed following the hearing in the *Rate Case*, is an appropriate means of bringing the Company's present financial circumstances to the attention of the Commission. Accordingly, Cobra's arguments regarding its post-test-year financial condition will be addressed in that context below.

5. ALLOCATION OF GENERAL PLANT TO OTP

{¶ 74} Cobra next objects to Staff's allocation of any portion of Cobra's general plant in service to OTP. Cobra states that, following OTP's receivership, plant items are no longer shared between Cobra and OTP and Cobra is no longer housed in offices accounted for in the general plant accounts. Cobra, therefore, asserts that Staff's allocation has no relevance to the Company as it currently exists. According to Cobra, Staff's reliance on the state of the Company as it existed during the test year is inappropriate. (Co. Br. at 13-14.)

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[12] The Commission notes that, at various points in their briefs, NEO and Staff claim that R.C. 4909.15(D) limits post-test-year adjustments to any changes that are, during the test period or the 12-month period immediately following the test period, reasonably expected to occur. As R.C. 4909.15(D) is specifically applicable to adjustments proposed by a natural gas, water-works, or sewage disposal system company, and makes no mention of pipeline companies such as Cobra, the Commission gives no weight to the arguments of NEO or Staff on this point.

{¶ 75} Staff responds that R.C. 4909.15(C) provides that the revenues and expenses of the public utility must be determined during a test period of 12 months, as proposed by the utility. Staff notes that R.C. 4909.15(D) provides that a public utility may propose adjustments for any changes that are, during the test period or the 12-month period immediately following the test period, reasonably expected to occur. However, Staff emphasizes that the Ohio Supreme Court has determined that exceptions to the test year, while appropriate in some cases, must remain exceptions. *Dayton Power & Light Co. v. Pub. Util. Comm.*, 4 Ohio St.3d 91, 96, 447 N.E.2d 733 (1983). With respect to the allocation of expenses between Cobra and OTP, Staff notes that it accepted the Company's own methodology for allocating general plant between Mr. Osborne's two intermingled pipeline companies. Staff contends that it would be inappropriate to eliminate the allocation without completely reevaluating the Company's accounts to determine which assets remain used and useful in providing service or establishing whether the Company even continues to own the assets included in general plant, particularly in light of evidence showing that Mr. Osborne has transferred some of Cobra's assets to unregulated affiliates at no cost. (Staff Br. at 36-39; Staff Reply Br. at 9.)

{¶ 76} NEO asserts that the Commission should strike Cobra's objection on this issue pursuant to R.C. 4909.15(D). Further, NEO contends that the evidence suggests that Cobra is inflating its need for additional revenue and post-test-year adjustments, particularly in light of the fact that the Company's employees have diminished workloads and no longer spend time working on OTP-related matters. According to NEO, Cobra overlooks the cost savings arising from the fact that OTP and Cobra are no longer operating as shared service providers. (NEO Br. at 5-6, 23-26; NEO Reply Br. at 25-27.)

{¶ 77} In its reply brief, Cobra acknowledges that it originally requested that part of its general plant be allocated to OTP. Given that circumstances changed in December 2017, Cobra reiterates that its general plant should no longer be split with OTP. Cobra also argues that, pursuant to R.C. 4909.15(C)(1), the Commission should use its discretion to

modify the test period to reflect the Company's current financial status. (Co. Reply Br. at 23.)

{¶ 78} As noted above, Staff's investigation in the *Rate Case* reflects a proper adherence to the ratemaking formula's test year and date certain requirements and is consistent with R.C. 4909.15 and Ohio Supreme Court precedent. R.C. 4909.15(C); *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 538-539, 620 N.E.2d 835 (1993); *City of Columbus v. Pub. Util. Comm.*, 10 Ohio St.3d 23, 25, 460 N.E.2d 1117 (1984); *Consumers' Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d 372, 374, 424 N.E.2d 300 (1981); *Consumers' Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d 153, 166, 423 N.E.2d 820 (1981). As the record in the *Rate Case* shows, Staff accepted Cobra's proposed allocation of general plant between the Company and OTP based on the affiliate relationship that existed between the two pipeline companies as of the date certain and that continued to exist at the time of Staff's investigation in the *Rate Case* (Co. Ex. 2 at Ex. B at 3, 5; Staff Ex. 8 at 3; Co. Ex. 2 at 10; Co. Ex. 4 at 4). We agree with Staff that, in any event, it would be inappropriate to eliminate the allocation in the absence of information in the record establishing which assets remain under Cobra's ownership and used and useful in providing utility service. Additionally, Cobra's post-test-year financial condition is more properly addressed below as part of our consideration of the Company's application for emergency rate relief.

6. DEPRECIATION

{¶ 79} Cobra asserts that Staff's reduction in the depreciation reserve has no valid justification. According to Cobra, Staff believes that the Company has over-accrued depreciation by 8.22 percent and recommends that the imbalance of $1,980,014.72 be amortized over a ten-year period. With respect to the alleged over-accrual, Cobra argues that it has followed the same depreciation schedule that it was provided when it purchased its pipelines from Columbia Gas Transmission (TCO) in 2005 and that TCO had used for the prior 30 years. Noting that it has continued to depreciate the assets in the same manner as TCO, Cobra asserts that it is unreasonable and unjust for Staff to now claim that the

Company has over-accrued depreciation on its assets, given that it has been more than 40 years after that depreciation began to occur and more than a decade after the Commission implicitly authorized the depreciation by approving the Company's rates in the *Tariff Case.* Further, Cobra contends that Staff has not shown that the Company received any benefit from the alleged over-accrual, as TCO owned the assets for a much longer period and depreciated them in the same manner as Cobra. Cobra maintains that it should not have to bear the financial burden of an over-accrual that likely occurred, if at all, when TCO owned the assets. Cobra also contends that Staff's proposed ten-year amortization period would unduly burden the Company when it already faces financial difficulty. Cobra notes that Staff's recommendation would have a material impact on the Company's revenues, by reducing the annual depreciation expense by $198,001 and reducing the recommended revenue requirement by approximately the same amount. Cobra concludes that Staff's adjustment to revenues would cause additional financial strain for the Company, when it is already facing dire circumstances, and threaten its ability to provide safe and reliable service. (Co. Br. at 14-16.)

{¶ 80} With respect to Staff's calculation of the depreciation reserve and its theoretical reserve calculation, Staff asserts that Cobra failed to support its objections through its testimony, while Cobra witness Hess, in fact, accepted Staff's calculations in his analysis recommending a 45-year amortization period. According to Staff, a ten-year amortization period is reasonable and consistent with the Commission's practice. Staff notes that Staff witness Swami testified that a ten-year amortization period has been standard treatment for both over- and under-accruals. In its reply brief, Staff asserts that Cobra points to no evidence showing how its initial rates were developed or demonstrating that the Commission reviewed and approved any depreciation schedule in the *Tariff Case.* (Staff Br. at 39-42, 57; Staff Reply Br. at 9-11.)

{¶ 81} In response to Staff, Cobra reiterates that it simply continued the same depreciation rate that was used by TCO. Cobra also asserts that it cannot afford to be

deprived of approximately $200,000 per year, which is a large percentage of its operating income, and that Staff should have raised its concerns with the rate of depreciation long ago in the *Tariff Case* or in a rate case involving TCO. With respect to the ten-year amortization period recommended by Staff, Cobra argues that it is unfair to demand that the Company assume the burden of 40-plus years of alleged over-depreciation during the most financially challenging moment of its existence, particularly where any benefit accrued to a different entity. Cobra concludes that the 45-year amortization period recommended by Mr. Hess would afford the Company roughly the same period of time to pay the over-accrual back as it took for the over-accrual to build. (Co. Reply Br. at 20-22.)

{¶ 82} The Commission finds that Cobra has failed to sustain its burden of proof on this issue. Cobra offered no testimony or other evidence to support its claim that it has adopted and followed TCO's depreciation schedule for the assets in question or to show that such an approach would be reasonable and appropriate. Neither has Cobra supported its claim that the Commission implicitly approved the Company's depreciation schedule in the *Tariff Case*. In the *Tariff Case*, the Commission approved a proposed tariff for Cobra pursuant to a stipulation and recommendation between the Company and the Ohio Oil and Gas Association. Although the Commission noted in the Finding and Order that an affiliate of Cobra intended to purchase pipe and related appurtenances from TCO, which would be owned by the Company, the Commission specifically indicated that it was not approving any purchase of pipeline by the Company or any of its affiliates. *Tariff Case*, Finding and Order (June 27, 2007) at 1, 2. Nothing in Cobra's application or in the Commission's Finding and Order suggests that the Company provided a depreciation schedule or any other information about the TCO assets, other than a map depicting their location, for review by the Commission.

{¶ 83} Although Cobra witness Hess addressed Staff's treatment of the depreciation reserve imbalance, his testimony on this issue is limited to a recommendation that the depreciation reserve imbalance be amortized over a 45-year period, in order to avoid

a material impact on the Company's revenues and overall financial situation (Co. Ex. 4 at 4-5). However, as Staff witness Swami testified, a ten-year amortization period is consistent with the Staff's practice in prior cases (Staff Ex. 7 at 3). The Commission has typically approved amortization periods of ten years or less for depreciation reserve imbalances. *See, e.g., In re Columbia Gas of Ohio, Inc.*, Case No. 88-716-GA-AIR, et al., Opinion and Order (Oct. 17, 1989) (directing that depreciation reserve imbalance be amortized over ten years and rejecting 30-year amortization period proposed by Ohio Consumers' Counsel); *In re Century Telephone of Ohio, Inc.*, Case No. 92-2298-TP-AAM, Entry (Jan. 7, 1993) (approving six-year amortization period); *In re Cincinnati Bell Telephone Co.*, Case No. 91-2173-TP-AAM, Entry (Dec. 19, 1991) (approving five-year amortization period); *In re Ohio Bell Telephone Co.*, Case No. 90-1852-TP-AAM, Entry (Dec. 20, 1990) (approving three-year amortization period). With respect to Cobra's depreciation reserve imbalance, we find that Staff's recommended ten-year amortization period is reasonable and appropriate (Staff Ex. 7 at 3).

7. OPERATING EXPENSES

{¶ 84} Cobra objects to Staff's treatment of several categories of operating expenses, including rate case expenses, professional legal service expenses, wages and employee benefit expenses, and expenses associated with the *Investigative Audit Case.*

a. Rate Case Expenses

{¶ 85} With respect to rate case expenses, Cobra notes that, although Staff agrees that the Company should be permitted to recover all such expenses, Staff and the Company do not agree on the amortization period. Cobra contends that, given the lengthy duration of the *Rate Case*, which the Company was directed to file, a one-year period should be used rather than the four- or five-year period recommended in the Staff Report. (Co. Br. at 16-17.)

{¶ 86} Staff submits that the amortization period for Cobra's rate case expense is not properly before the Commission, as the Company failed to raise this issue in its initial

or amended objections, waiting instead to address the issue in the direct testimony of Company witness Carothers. Noting that Cobra witness Hess acknowledged that Staff's proposed five-year amortization period is legitimate and should remain unmodified, Staff asserts that its recommendation should be adopted by the Commission. In response to Cobra's claim that Staff's workpaper appears to apply a four-year amortization period for rate case expense, Staff asserts that the Company is clearly mistaken, as the workpaper in question reflects an amortization of rate case expense over five years. (Staff Br. at 45; Staff Reply Br. at 11-12.)

{¶ 87} Acknowledging that a five-year amortization period may be standard in a typical rate proceeding, Cobra asserts that the *Rate Case* has not been typical and that delaying its ability to recover its expenses for Commission-ordered proceedings will jeopardize its existence. Cobra adds that, given its current financial situation and the filing of the application in the *Emergency Rate Case*, any rate approved in the *Rate Case* will likely not be in place for five years. (Co. Reply Br. at 16-17.)

{¶ 88} The Commission finds that Cobra's rate case expenses should be amortized over five years, as recommended by Staff and accepted by Company witness Hess (Co. Ex. 2 at Ex. B at 8; Co. Ex. 4 at 7-8; Tr. II at 268-269). A five-year amortization period is reasonable and consistent with the Commission's general practice. *See, e.g., In re Columbia Gas of Ohio, Inc.*, Case No. 71-461-GA-AIR, et al., Opinion and Order (Dec. 28, 1973) (noting "the long-standing Commission practice of amortizing rate case expenses over a five year period" unless a different period is warranted by the applicant's actual rate case history). To determine a proper amortization period for rate case expenses, the Commission considers, based on past actual experience, the number of years for which the newly established rates are likely to remain in effect. The Commission has noted that an applicant's "recent history of rate case filings provides a reasonable basis for establishing the period over which rate case expenses should be amortized, especially in the absence of any compelling evidence that a shorter period is appropriate." *In re Ohio Suburban Water Co.*, Case No. 81-657-WS-

AIR, Opinion and Order (May 5, 1982). Cobra offers no support for its position that its rate case expenses should be amortized over a one-year period. Although Cobra argues that its financial condition is at risk, there is no evidence that Cobra's rates will remain in effect for just one year following the Commission's resolution of these proceedings. Under Cobra's proposal, the Company's customers would continue, year after year, to pay rates that reflect the full amount of the Company's rate case expenses, despite the fact that the Company would have already recovered such expenses in the first year. Such a result would be unreasonable.

{¶ 89} Staff witness Berringer testified that, before a final determination is made with respect to Cobra's rate case expenses, the Commission should review the most up-to-date information, which the Company should submit as a late-filed exhibit (Staff Ex. 9 at 8). Cobra witness Hess also recommended that the Company be permitted to file documentation of its updated rate case expenses within ten days of the close of the hearing (Co. Ex. 4 at 6). Cobra, however, has not complied with the recommendations of Staff and its own witness. Given that Cobra has not submitted a late-filed exhibit reflecting its updated rate case expenses, and in light of the fact that the Commission must base its decision on the record, we adopt Staff's position on this issue as set forth in the Staff Report (Co. Ex. 2 at Ex. B at 8).

b. Professional Legal Service Expenses

{¶ 90} Additionally, Cobra argues that the Commission should accept Company witness Hess's calculation of professional legal service expenses, which consists of an average of such expenses incurred from 2012 through 2014, to obtain a more accurate figure. Cobra notes that, although the Staff Report recommended a decrease to Cobra's professional legal service expenses, Staff witness Berringer later agreed with the Company's proposal to use an average of expenses. (Co. Br. at 17-18.)

{¶ 91} Staff responds that Mr. Hess's approach is another example of the Company preferring to rely on numbers outside of the test period, given that Mr. Hess recommended that the test-year expenses be excluded from the calculation of the average. Staff contends that it already accounted for the low test-year expense by performing a four-year averaging. Staff notes that Staff witness Berringer agreed that certain excluded expenses should have been included and, accordingly, Staff corrected the test-year expenses and adjusted its averaging to reflect that correction. Staff concludes that the Commission should adopt its recommended allowance for recovery of legal professional services and that any averaging to derive a more appropriate annual level should include the test-year expenses. (Staff Br. at 44-45; Staff Reply Br. at 12.)

{¶ 92} The Commission adopts Staff's recommendations on this issue, as set forth in the Staff Report and as subsequently revised in the direct testimony of Staff witness Berringer. In the Staff Report, Staff noted that it adjusted Cobra's Professional Services – Legal account by removing certain expenses and then further adjusting the test-year expenses to reflect a more appropriate historical average (Co. Ex. 2 at Ex. B at 7). In his direct testimony, Staff witness Berringer agreed with Cobra witness Hess that the 2015 balance in the account should be $678.22. As a result, Mr. Berringer stated that Staff's average for the 2012-2015 period would increase test-year expenses from $21,571.25 to $26,907.55. Mr. Berringer, however, did not agree with Mr. Hess's position that the average for the 2012-2014 period, which is $35,650.65, should be adopted as a more representative amount of Cobra's ongoing expenses. (Staff Ex. 9 at 7, App. 1; Co. Ex. 4 at 5-6; Tr. II at 265-266, 336-337.) Although Cobra's professional legal service expenses for 2015 may have been uncharacteristically low as Mr. Hess believes, we find that it would be inappropriate to ignore entirely the Company's actual expenses for the test year. We agree with Staff that it is reasonable to account for the low test-year expense by calculating the average for a four-year period that includes the test year (Co. Ex. 2 at Ex. B at 7; Staff Ex. 9 at 7, App. 1; Tr. II at 336-337).

c. Salaries and Benefits

{¶ 93} Cobra also notes that the Staff Report adopted the Company's allocation of salaries and benefits between Cobra and OTP, as set forth in the Company's application. Given that Cobra and OTP are no longer affiliates, Cobra asserts that the Commission should acknowledge the Company's current financial situation and adjust its expenses for salaries and employee benefits accordingly. Cobra notes that, although Staff adjusted wages and salaries to the latest known figures, Staff is unwilling to forgo the allocation of such expenses between Cobra and OTP. Cobra reiterates that Staff's over-reliance on the test year is unnecessary and unfairly deprives the Company of the opportunity to earn a reasonable rate. (Co. Br. at 18.)

{¶ 94} Staff notes that it accepted Cobra's methodology for allocating expenses between Mr. Osborne's two intermingled pipeline companies. According to Staff, the allocation reflects the costs of rendering utility service during the test period prescribed by the General Assembly. Staff reiterates that the Commission should not reallocate expenses outside of the test year. In its reply brief, Staff asserts that it would not be appropriate to eliminate the very allocation that Cobra itself proposed, simply to offset unanticipated changes in operations, particularly in light of Ohio Supreme Court precedent upholding the test year concept. *Consumers' Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d 372, 376, 424 N.E.2d 300 (1981); *Ohio Water Service Co. v. Pub. Util. Comm.*, 3 Ohio St.3d 1, 3, 444 N.E.2d 1025 (1983). Staff adds that there is no regulatory principle of "annualizing to the most current costs," as Cobra contends. (Staff Br. at 42-43; Staff Reply Br. at 12-14.) NEO asserts that, pursuant to R.C. 4909.15(D), the Commission should strike Cobra's objections related to OTP's receivership, as it did not occur until November 2017. NEO further asserts that, in any event, Cobra appears to have overstated its need for post-test-year adjustments. (NEO Br. at 6-7, 23-26.)

{¶ 95} As Staff witness Berringer testified, individuals employed by Cobra performed work for both the Company and OTP during the test year. Staff, therefore,

incorporated the Company's proposed allocation into its adjustment for wages and salaries. (Staff Ex. 9 at 2.) Consistent with our determinations above, we find that Staff's approach is proper and consistent with R.C. 4909.15 and the Ohio Supreme Court's application of the statute. R.C. 4909.15(C); *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 538-539, 620 N.E.2d 835 (1993); *City of Columbus v. Pub. Util. Comm.*, 10 Ohio St.3d 23, 25, 460 N.E.2d 1117 (1984); *Consumers' Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d 372, 374, 424 N.E.2d 300 (1981); *Consumers' Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d 153, 166, 423 N.E.2d 820 (1981). In any event, Cobra has failed to sustain its burden of proof on this issue. Although Ms. Coatoam emphasized that OTP is now operated by a receiver (Co. Ex. 2 at 10), the record indicates that the work responsibilities of Cobra's employees remain divided between the Company and its affiliates. Ms. Coatoam testified that, from 2013 to 2017, she performed work for both Cobra and John D. Oil and Gas Company, an affiliate of the Company (Tr. I at 22-26), while Ms. Carothers acknowledged that she has, since 2008, performed services for numerous affiliates of the Company (Tr. I at 116-118). Further, as noted above, post-test-year changes in Cobra's financial situation should be addressed in the context of the Company's application for emergency rate relief.

d. Investigative Audit Expenses

{¶ 96} Finally, Cobra asserts that it should be permitted to recover, as part of its rate case expenses, the costs associated with the audit conducted in the *Investigative Audit Case*. Cobra notes that the costs associated with the investigative audit were incurred by the Company at the direction of the Commission and, therefore, are properly included in the Company's rate case expenses. (Co. Br. at 18-19.)

{¶ 97} Staff responds that Schumaker's audit was not conducted as part of the *Rate Case* and that, in any event, the costs of the audit were not incurred during the test year and were to be borne by the Company. *Investigative Audit Case*, Entry (Sept. 14, 2016) at ¶ 8. Staff maintains that Cobra has offered no explanation for its position that the investigative audit costs should be recovered in the *Rate Case*. Because the cost of Schumaker's audit does not

involve legal fees or relate to Cobra's request for rate relief, Staff concludes that it should be excluded from rate case expense. *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 547, 620 N.E.2d 835 (1993). (Staff Br. at 46-48; Staff Reply Br. at 14.)

{¶ 98} NEO argues that Cobra's objection on this issue should be stricken pursuant to R.C. 4909.15(D), as the objection relates to costs incurred by the Company beyond the immediate 12-month period following the test year. Noting that the investigative audit was conducted in a separate proceeding, NEO states that the Commission explicitly required that the cost of the audit be borne by Cobra. (NEO Br. at 4, 27.)

{¶ 99} Cobra responds that the *Rate Case* and the *Investigative Audit Case*, which both stem from the Commission's orders in the *Complaint Case*, are inextricably linked in order to permit the Commission to exhaustively examine the Company's operations. Cobra also claims that it has rapidly addressed the weaknesses identified in Schumaker's audit report, where it possessed the financial means of doing so. Finally, Cobra asserts that, although the Commission directed the Company to bear the cost of the investigative audit, the Company is not precluded from seeking recovery of a legitimate cost. (Co. Reply Br. at 17.)

{¶ 100} The Commission finds that Cobra's position lacks merit. The costs associated with the audit at issue in the *Investigative Audit Case*, which is a separate proceeding from the *Rate Case*, were incurred after the test period. *Investigative Audit Case*, Entry (Sept. 14, 2016) (directing that the investigative audit be conducted from October 2016 to April 2017). Further, as Staff notes, any costs attributable to Schumaker's investigative audit are unrelated to Cobra's application for an increase in its rates and charges and, therefore, should not be included in the Company's rate case expense. *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 547, 620 N.E.2d 835 (1993) (finding that "[t]he appropriate inquiry is whether legal fees are ordinary and necessary expenses in obtaining rate relief as provided by law").

8. PERSONAL PROPERTY TAXES

{¶ 101} Cobra asserts that its previously assessed personal property taxes should be accounted for and recovered as a regulatory asset. Cobra notes that, back in 2007 when its tariff was approved in the *Tariff Case*, the Company operated in partnership with OsAir, Inc. (OsAir), an affiliate company also owned by Mr. Osborne. Cobra further notes that, at that time, the Company paid commercial activity taxes as part of a group filing in the name of OsAir. According to Cobra, the Ohio Department of Taxation notified the Company in 2014 that the Company was required to pay personal property taxes rather than commercial activity taxes. (Co. Br. at 20.)

{¶ 102} Noting that its current financial situation does not permit payment of the previously assessed personal property taxes, Cobra requests that it be authorized to create a regulatory asset and establish a rider for this purpose. In support of its request, Cobra states that it has not at any point collected from its customers the difference between the commercial activity taxes and the personal property taxes. Cobra also asserts that its customers have benefited by paying lower rates to the Company than they would have been charged if the proper tax had been paid. (Co. Br. at 20, 21-22.)

{¶ 103} Staff responds that only those taxes that were incurred during the test year are eligible for recovery in the *Rate Case* and, therefore, Staff removed personal property taxes assessed in prior years from Cobra's test-year expenses. Staff also argues that, as acknowledged by Cobra witness Coatoam, the Company's past due tax liabilities are the result of its mismanagement and not a lack of knowledge about the tax obligations of public utilities, given that Mr. Osborne owned and operated other public utilities in the state as far back as 2003. Staff notes that Cobra witness Hess agreed that customers should not subsidize the Company's mismanagement. With respect to Cobra's contention that it should also be permitted to recover unpaid personal property taxes that it owes for the period after the test year, including penalties and interest, Staff asserts that the Company made no such request until it filed its direct testimony and, in any event, the record contains

conflicting information provided by the Company as to the amount of its accrued personal property taxes. Staff adds that Cobra witness Hess agreed that the Company should not be entitled to recover penalties for its failure to pay its personal property taxes. Addressing Cobra's current financial position, Staff responds that it is largely the result of the Company's own nonfeasance and misfeasance rather than its tax liability. Staff concludes that the purpose of a rate proceeding is not to save a public utility from itself, but rather is to establish just and reasonable rates as prescribed by R.C. 4909.15. (Staff Br. at 48-54; Staff Reply Br. at 16.)

{¶ 104} Additionally, Staff notes that Cobra did not object to Staff's refusal to allow recovery of the Company's outstanding excise tax liability, which the Company has not quantified or documented for the Commission. According to Staff, Cobra has paid its excise tax assessment in only one year since its founding, instead paying, until 2014, the substantially lower commercial activity tax that is inapplicable to pipeline companies and other public utilities. Staff concludes that, as with its personal property taxes, Cobra has mismanaged its excise tax obligations. In its reply brief, Staff adds that Cobra still does not understand its tax obligations, given the Company's representation that it was informed by the Ohio Department of Taxation that it should pay personal property taxes rather than commercial activity taxes. Staff notes that Cobra was assessed excise taxes by the Ohio Department of Taxation, not personal property taxes. (Staff Br. at 54-57; Staff Reply Br. at 15.)

{¶ 105} As a general matter, NEO argues that, consistent with R.C. 4909.154 and long-established precedent of the Commission and the Ohio Supreme Court, the Commission should not permit Cobra to recover any expenses that were incurred through the Company's financial mismanagement and imprudence. NEO contends that Cobra's failure to timely pay its personal property tax liabilities over a period of several years constitutes gross financial mismanagement and imprudence for which customers should not be held financially responsible. NEO also notes that most of Cobra's accrued personal

property taxes were booked outside of the test year and that the Company seeks to recover interest and penalties as well, despite the fact that Company witnesses Hess and Coatoam agreed that such costs are not recoverable. NEO maintains that Cobra has not met its burden to demonstrate that the expenses in question were prudently incurred or offered any evidence to justify its failure to pay millions of dollars in personal property taxes. Emphasizing that Cobra's unaudited financial statements reflect approximately $4.2 million in accounts receivable from various related parties and associated companies as of December 31, 2015, as well as $1.8 million withdrawn by Mr. Osborne that remains outstanding, NEO asserts that the Commission must disallow recovery of the $4,165,371.13 million or more in personal property tax delinquencies, including penalties and interest, that the Company now owes. According to NEO, Cobra should have and could have paid its taxes had it not commingled funds and engaged in self-dealing transactions. Additionally, NEO asserts that, as with the personal property taxes, Cobra has offered no evidence to demonstrate that its outstanding excise tax liability was prudently incurred or even to document the precise amount of the delinquent excise taxes, which the record reflects is at least $208,221.58. (NEO Br. at 11-17; NEO Reply Br. at 12-17.)

{¶ 106} In its reply brief, Cobra argues that the evidence demonstrates that it is making those efforts of which it is capable to rectify its failure to pay its personal property taxes. Cobra asserts that its request to recover the previously assessed personal property taxes through a rider is merely a request to pass a legitimate and unavoidable cost through to customers that should have been paying a rate sufficient to allow the tax to be paid in the first place. Cobra also concedes that interest and penalties on that amount were not prudently incurred and must be borne by the Company's members. Cobra adds that, by authorizing recovery through a rider, the Commission will be able to monitor the recovery and ensure that the state receives the tax revenues that it is owed. (Co. Reply Br. at 19-20.)

{¶ 107} In the Staff Report, Staff noted that the expense associated with personal property taxes assessed Cobra in years prior to 2015 is not appropriate to include in test-

year expenses. Staff, therefore, decreased Cobra's expenses by $1,229,574, in accordance with the amount shown on the Company's income statement for 2015. (Co. Ex. 2 at Ex. B at 8; NEO Ex. 1 at Ex. 8 at 2.) Staff witness Snider testified that Cobra's customers have already paid for these taxes through the rates that the Company has historically charged and that it was the Company's responsibility to use the funds collected through its rates to meet its financial obligations (Staff Ex. 11 at 6). Agreeing with Staff that an adjustment is necessary, Cobra witness Hess recommended that the previously assessed personal property taxes be deferred and either recovered through an amortization of the expense in the test year or recovered through a rider mechanism created for this specific purpose. According to Mr. Hess, Cobra's previously assessed personal property taxes should be deemed verifiable and legitimate costs that are directly assignable to the Company's customers and related to the Company's rendering of its public utility service. (Co. Ex. 4 at 7.)

{¶ 108} The Commission generally agrees that, for the purpose of ratemaking, validly imposed taxes of any kind should be considered as an operating expense of the public utility. *See City of Cincinnati v. Pub. Util. Comm.*, 153 Ohio St. 56, 90 N.E.2d 681 (1950). However, as discussed above, the mandatory ratemaking formula set forth in R.C. 4909.15 requires that a public utility's expenses be determined during a test year. R.C. 4909.15(C); *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 538-539, 620 N.E.2d 835 (1993); *City of Columbus v. Pub. Util. Comm.*, 10 Ohio St.3d 23, 25, 460 N.E.2d 1117 (1984); *Consumers' Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d 372, 374, 424 N.E.2d 300 (1981); *Consumers' Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d 153, 166, 423 N.E.2d 820 (1981). Cobra's personal property tax obligations for the years prior to the test year are not a mere anomaly that renders the test year unrepresentative for ratemaking purposes. *Consumers' Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d at 166, 423 N.E.2d 820. Staff, therefore, properly excluded Cobra's out-of-period property tax expense, which accrued from 2008 through 2014 (Co. Ex. 2 at 11-13, Ex. B at 8, Ex. G; NEO Ex. 1 at Ex. 8 at 2; Staff Ex. 1 at 1).

{¶ 109} Further, as Staff and NEO note, R.C. 4909.154 provides that the Commission shall not allow such operating and maintenance expenses of a public utility as are incurred by the utility through management policies or administrative practices that the Commission considers imprudent. Here, the record reflects that Cobra has failed, over many years, to pay any of its personal property taxes, incurring substantial penalties and interest (Co. Ex. 2 at 11-13, Ex. G; NEO Ex. 1 at Ex. 8 at 2). The Commission is not persuaded by Cobra witness Coatoam's assertion that "Cobra has been unable to pay any of the previously owed personal property or excise taxes to date due to the financial situation of the [C]ompany" (Co. Ex. 2 at 12-13). Although Cobra witness Carothers argues that the Company's financial situation has changed since the test year (Co. Ex. 3 at 14-15), nothing in the record substantiates the claim that the Company was unable to pay its tax obligations during the test year or prior years. Rather, Cobra's failure to pay its taxes is a result of the Company's mismanagement, as Ms. Coatoam readily acknowledged (Tr. I at 39-40, 46). Accordingly, Cobra's outstanding previously assessed personal property taxes for years prior to the test period, along with the associated penalties and interest, are, at this point in time, imprudently incurred expenses that are barred from recovery by R.C. 4909.154.

9. FEDERAL INCOME TAXES

{¶ 110} Finally, Cobra contends that Staff's recommendation to reduce the corporate federal income tax rate to 21 percent, in light of the Tax Cuts and Jobs Act of 2017 (TCJA), is both inconsistent and improper as applied to the Company. Initially, Cobra notes that this recommendation is another example of Staff's use of information outside of the test year. Further, Cobra asserts that Staff's adjustment ignores the fact that, as a limited liability company, Cobra is not taxed at the rate applicable to corporations, but instead is taxed at the much higher individual tax rate of its owners, Mr. Osborne and FCCC. According to Cobra, Staff has taken the unreasonable position that, with regard to Mr. Osborne's ownership share, the 21 percent corporate federal income tax rate should apply regardless of the actual tax rate that may be applicable, while FCCC's tax rate should be treated as zero,

given that Staff was unable to determine the ownership makeup of FCCC. (Co. Br. at 22-23.)

{¶ 111} Staff responds that its recommendation is consistent with past practice and should be adopted. Staff notes that Staff witness Borer testified that, in accordance with Commission precedent, all regulated public utilities should be taxed at the corporate federal income tax rate, in order to ensure a uniform and consistent approach to ratemaking. Staff also notes that, during the test year, Cobra was owned by the Richard M. Osborne Trust, and not by Mr. Osborne in an individual capacity. In the event that the Commission determines that Cobra's federal income tax expense should be based on Mr. Osborne's individual rate, Staff advises that a number of adjustments would be required, including a deduction for qualified business income and an allocation of taxable income between the Company and FCCC, which would reduce the Company's federal income tax expense. Finally, regardless of which tax rate is applied, Staff submits that its correction to the computation of Cobra's federal taxable income, as addressed by Staff witness Borer, should be implemented. In its reply brief, Staff asserts that, because Mr. Osborne's ownership interest was through a trust, and because FCCC refused to disclose its owners or ownership structure, Staff was unable to determine exactly which entities are taxed, and in what fashion, for Cobra's income. For this reason, Staff recommends that the corporate federal income tax rate be applied for uniformity and consistency. (Staff Br. at 57-59; Staff Reply Br. at 16-17.)

{¶ 112} NEO asserts that Cobra witness Hess failed to incorporate changes to depreciation rules that may apply if the individual tax rate is used in place of the corporate tax rate. NEO adds that Mr. Hess was unaware that, during the test year, Cobra was owned by the Richard M. Osborne Trust rather than by Mr. Osborne personally. (NEO Br. at 32; NEO Reply Br. at 27-28.)

{¶ 113} Cobra responds that Staff has placed more importance on uniformity than actual fact when considering what federal income tax rate should apply to the Company. Cobra reiterates that, as a limited liability company, it is taxed as a pass-through entity, meaning that the taxes are passed through to its members, Mr. Osborne and FCCC. Cobra concludes that Staff's position is inconsistent and intended to provide the Company with the lowest possible amount of recovery, while disregarding the actual tax rate applied to the Company by the federal government. (Co. Reply Br. at 22-23.)

{¶ 114} The Commission has previously found that known changes in tax laws, including those that will take effect subsequent to the test year, must be recognized in determining allowable expenses. *In re Ohio Edison Co.*, Case No. 83-1130-EL-AIR, Opinion and Order (July 27, 1984) (citing *East Ohio Gas Co. v. Pub. Util. Comm.*, 133 Ohio St. 212, 226-227, 12 N.E.2d 765 (1938) (finding that "[i]t was the duty of the [C]ommission to consider not only the taxes actually assessed during the test period, but to compute what they would be after the test period in view of the change in laws")). We, therefore, find no merit in Cobra's argument that Staff erred in reducing the corporate federal income tax rate based on the TCJA. However, Cobra also contends that the corporate federal income tax is inapplicable to Cobra as a limited liability company. Cobra witness Hess testified that the Company files its federal income taxes as a limited liability company partnership based on a pro-rata share of each of its owners, which report their pro-rata income on their individual income tax returns. Because Cobra's majority owner is single, Mr. Hess recommended that the tax rate schedules for a single taxpayer be used to determine the Company's federal income taxes. (Co. Ex. 4 at 9.)

{¶ 115} Acknowledging that the Commission may disagree with its recommendation to apply the corporate rate, Staff proposes two modifications to Cobra's approach. Specifically, Staff asserts that the calculation of Cobra's federal income tax expense should include the deduction for qualified business income, which was created under the TCJA. Staff further asserts that Cobra's taxes should be determined

proportionally based on the tax liabilities of its owners, Mr. Osborne and FCCC. However, because FCCC is itself a limited liability company, and no information was provided in response to Staff's data request seeking information regarding the owners of FCCC, Staff was unable to reasonably determine the income tax liability associated with FCCC's interest in Cobra or even whether any such income tax liability exists. Staff, therefore, recommends that FCCC's share of Cobra's taxable income be excluded from the calculation. (Staff Ex. 10 at 4-6; Tr. II at 340-341.)

{¶ 116} The Commission is required to allow, as an item of expense, the amount of federal income tax that is required to be paid under federal income tax law. *City of Dayton v. Pub. Util. Comm.*, 174 Ohio St. 604, 190 N.E.2d 913 (1963); *Ohio Fuel Gas Co. v. Pub. Util. Comm.*, 174 Ohio St. 585, 191 N.E.2d 347 (1963). We, therefore, reject Staff's recommendation that the corporate tax rate be used to determine Cobra's income tax expense, as the Company's income is not taxed by the federal government at the corporate tax rate (NEO Ex. 1 at Ex. 6).[13] As Cobra witness Hess testified, the owners of a limited liability company are generally required to pay taxes on their respective share of the company's profits through the filing of their personal income tax returns (Co. Ex. 4 at 9). We adopt Staff's modifications to Mr. Hess's recommendation that an individual tax rate be used to determine Cobra's income tax expense. As noted above, the Commission, in setting rates, recognizes changes in the federal tax law. We, therefore, find that it is appropriate to account for the TCJA's qualified business income deduction, which, according to Staff, enables a domestic pass-through entity such as Cobra to deduct up to 20 percent of its qualified business income (Staff Ex. 10 at 5). We further find, based on the record, that FCCC's share should be excluded from the calculation of Cobra's taxable income. Cobra has the burden of proof in these proceedings and, in the absence of any record evidence addressing FCCC's ownership, the Commission adopts Staff's proposal to determine

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[13] The Commission notes that Cobra's Form 1065 for 2015 was filed under seal, as part of the Company's application in the *Rate Case* (NEO Ex. 1 at Ex. 6).

Cobra's taxable income based on Mr. Osborne's 85.93 percent ownership share, as reflected in Staff's revised Schedule C-4. (Staff Ex. 10 at 5-6; NEO Ex. 1 at Ex. 2.)

E. Conclusion on the Rate Case

{¶ 117} The Commission adopts the schedules in the Staff Report, as modified by the revised schedules attached to the direct testimony of Staff witness Borer, which contain the appropriate information to determine the gross revenue and the revenue increase, if any, that Cobra should have the opportunity to collect as a result of these proceedings (Co. Ex. 2 at Ex. B; Staff Ex. 10).[14]

{¶ 118} The Commission finds that the jurisdictional rate base summary as of December 31, 2015, is as follows:

Plant in Service	$23,754,352
Depreciation Reserve	$19,447,888
Net Plant in Service	$4,306,465
Construction Work in Progress	$0
Working Capital Allowance	$140,355
Other Rate Base Items	$0
Rate Base	**$4,446,820**

(Staff Ex. 10 at Sched. B-1).

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[14] The Commission notes that some of the figures in this section of the Opinion and Order may reflect the results of rounding.

{¶ 119} The Commission finds that the following information reflects Cobra's adjusted operating revenues, adjusted operating expenses, and adjusted net operating income for the 12 months ended December 31, 2015:

Operating Revenues	
Revenues	$2,974,291
Other Revenues	$19,219
Total Operating Revenues	**$2,993,510**
Operating Expenses	
Operation and Maintenance	$1,816,768
Depreciation	$332,775
Taxes Other than Income Taxes	$238,706
Income Taxes	$108,256
Total Operating Expenses	**$2,496,505**
Net Operating Income	**$497,005**

(Staff Ex. 10 at Sched. C-2).

{¶ 120} A comparison of Cobra's adjusted test-year operating revenues of $2,993,510, with allowable adjusted test-year expenses of $2,496,505, indicates that the Company, under its present rates, would have realized net operating income of $497,005. Applying this figure to the rate base, Cobra would have earned a rate of return of 11.18 percent during the test year. A rate of return of 11.18 percent is above Staff's recommended rate of return range of 8.59 percent to 9.59 percent and would provide Cobra with excess

compensation for its services. The Commission finds that the midpoint of Staff's recommended rate of return range should be adopted. Accordingly, we find that a rate of return of 9.09 percent should be authorized for Cobra for purposes of the *Rate Case*. (Staff Ex. 10 at Sched. A-1.)

{¶ 121} By applying the authorized rate of return of 9.09 percent on the rate base of $4,446,820, Cobra's required operating income is $404,216. When compared with Cobra's test-year adjusted operating income of $497,005, the Company has excess income in the amount of $92,789. After applying a gross revenue conversion factor, the result is a decrease in revenues of $128,540, or a decrease of 4.30 percent. The revenue decrease of $128,540, when subtracted from the adjusted test-year operating revenues of $2,993,510, produces a revenue requirement of $2,864,971. (Staff Ex. 10 at Sched. A-1.)

{¶ 122} In the Staff Report, Staff's analysis resulted in a revenue decrease of 0.98 percent at the lower bound or a revenue increase of 1.02 percent at the upper bound. As a result, Staff recommended that Cobra's current rates not be increased, as the Company's revenue requirement essentially had not increased. (Co. Ex. 2 at Ex. B at 11, Sched. A-1.) Following incorporation of the adjustments addressed in Staff's testimony, Staff revised the outcome of its revenue analysis to a decrease of 5.29 percent at the lower bound or a decrease of 3.30 percent at the upper bound (Staff Ex. 10 at Sched. A-1). As noted above, the midpoint of Staff's range, as revised, is a revenue decrease of 4.30 percent. Given that Cobra's revenue requirement has still largely remained unchanged, the Commission finds that Cobra's current rates are sufficient to provide the Company with reasonable compensation for the services rendered to its customers and that Cobra has failed to demonstrate otherwise, consistent with the resolution of the Company's objections as addressed above. We, therefore, find that Cobra's current rates should not be changed.

{¶ 123} The Staff Report notes that Cobra proposed no textual changes to its tariffs (Co. Ex. 2 at Ex. B at 11). However, consistent with the Commission's directive in the

Complaint Case, Cobra proposed, in its amended application, to establish a shrinkage rate of 3.5 percent to be adjusted on an annual basis. The Commission finds that Cobra's proposal is reasonable and should be adopted.

{¶ 124} Cobra is hereby ordered to file revised tariff schedules in accordance with the terms of this Opinion and Order. The revised tariffs shall take effect beginning on a date not earlier than the date of this Opinion and Order and the date upon which the final tariff pages are filed with the Commission.

F. *Summary of the Application and the Emergency Staff Report in the* Emergency Rate Case

{¶ 125} In the application filed in the *Emergency Rate Case*, Cobra states that it is in urgent need of rate relief. Cobra asserts that its financial status has deteriorated dramatically during the two years since the *Rate Case* was filed and that the Company has experienced both a decrease in revenues and an increase in expenses. Noting that its current rates do not provide sufficient revenue to cover the cost of its operations, Cobra seeks authority to establish a temporary surcharge that would be applicable to the demand charge on firm service, the unauthorized daily overrun charge on firm service, and the commodity charge on interruptible service. Cobra proposes that the surcharge be applied to all of its transportation customers' bills until the Commission either issues an order in the *Rate Case* that reflects the Company's current status and disregards the 2015 test year that was established two years ago, or the Commission directs Cobra to file a new rate case that reflects the Company's current status and the Commission issues an order in the new rate case. Cobra submits that the current status of the Company will demonstrate that a much larger increase than the requested surcharge is warranted. (NEO Ex. A at 6-7, Ex. E.)

{¶ 126} In the Emergency Staff Report, Staff concludes that Cobra's current financial condition is, in large part, a result of the Company's failure to manage its funds properly. Staff, therefore, recommends that Cobra's proposed surcharge be rejected. Staff further

recommends that, if the Commission finds that a surcharge is necessary, a $0.40 surcharge be applied to each of Cobra's volumetric rates until such time as permanent rates are established by the Commission. (Staff Ex. G at 4.)

{¶ 127} The proposed emergency rates are shown below:[15]

	Current Rate	Cobra's Proposed Rate	Staff's Proposed Rate
Firm Transportation Service			
Demand	$0.50 x MDQ x number of days in the month	$1.05 x MDQ x number of days in the month	$0.50 x MDQ x number of days in the month
Commodity	$0.10 per Dth	$0.10 per Dth	$0.50 per Dth
Unauthorized Daily Overrun	$0.50 per Dth	$1.05 per Dth	$0.90 per Dth
Interruptible Transportation Service			
Commodity	$0.50 per Dth	$1.05 per Dth	$0.90 per Dth

G. *Summary of the Parties' Positions in the* Emergency Rate Case

{¶ 128} In its brief, Cobra asserts that it is suffering a financial emergency due to a dramatic loss in shipped volumes since 2015, which has caused the Company to experience a significant decrease in transportation revenues. Cobra further asserts that, with the decrease in volumes, it has become economically inefficient to operate its stripping station, which has eliminated the Company's sales of extracted products. Cobra adds that, because the stripping station is unavailable, the gas in the Company's system remains "wet" and fails to meet TCO's quality standards, resulting in a shut in of part of the system by TCO.

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15 In their direct testimony, Cobra witnesses Carothers and Coatoam proposed an emergency rate of $0.87 per Dth (Co. Ex. A at 9; Co. Ex. B at 3). However, in its application and initial brief, Cobra advocates for a surcharge of $0.55 per Dth, with a resulting emergency rate of $1.05 per Dth (NEO Ex. A at Ex. E; Co. Br. at 18).

According to Cobra, the shut in of the Churchtown system, which operates at a different pressure than TCO's system, has resulted in the loss of most of the Company's revenues for compression services. Cobra concludes that it has lost $1,307,945.78, or 41.2 percent, of its total annual revenues as a result of the loss in volumes, when compared to 2015, which has compelled the Company to seek emergency relief. (Co. Br. at 10-14.)

{¶ 129} Additionally, Cobra contends that it has provided clear and convincing evidence, in both the *Rate Case* and the *Emergency Rate Case*, showing that the loss of volumes has created a financial emergency for the Company. Cobra emphasizes that all of its financial records have been made available for review by Staff. Further, Cobra claims that the Commission will not be circumventing or substituting a permanent rate by granting emergency relief to the Company, because the requested surcharge would only remain in place until a permanent just and reasonable rate is lawfully determined. Finally, Cobra argues that it seeks only the relief necessary to pay its anticipated obligations as they are incurred and has, therefore, proposed a surcharge that would cover all of its actual and projected expenses for 2018, excluding depreciation and any expenses to which Staff objected in the *Rate Case*. With respect to the implementation of any surcharge approved by the Commission, Cobra notes that the Commission has broad authority to ensure that the additional revenues provided by the surcharge are used to pay the Company's operating expenses. (Co. Br. at 14-18.)

{¶ 130} Staff takes the position that Cobra has not demonstrated that it is experiencing an emergency. Initially, Staff points out that Cobra's major problem is its accrued personal property tax liability. Noting that Cobra has paid no personal property taxes since its inception in 2008, Staff asserts that the Company's failure to pay its taxes constitutes a chronic problem rather than an emergency for which the Company's customers should be responsible. Further, Staff asserts that the record reflects that utility funds that might otherwise be used to pay other expenses and liabilities were instead used to subsidize Mr. Osborne's personal business interests. According to Staff, misconduct and

mismanagement on the part of Mr. Osborne should not be considered an emergency. With respect to Cobra's claimed need for emergency rate relief, Staff agrees that the Company has lost volumes, but does not agree that the precipitating market conditions are beyond the Company's control. Staff concludes that Cobra's financial situation is largely a result of its failure to manage its funds properly, as evidenced by the significant irregularities in the Company's financial records. In its reply brief, Staff reiterates that, while Cobra cannot pay some of its bills, the record does not clearly and convincingly demonstrate that the Company's obligations must be paid immediately or that the Company's financial condition jeopardizes its ability to provide adequate service. (Staff Br. at 3-12; Staff Reply Br. at 1.)

{¶ 131} NEO asserts that Cobra has failed to provide clear and convincing evidence of extraordinary circumstances necessary to grant the emergency relief requested in the application. NEO emphasizes that Cobra confirmed that it continues to provide safe and reliable service under current operating conditions and has not delayed any safety-related expenditures. Further, NEO argues that Cobra, as a result of a decade of financial mismanagement and operational incompetence, is solely responsible for its current financial situation. More specifically, NEO claims that Cobra's financial problems stem from the mismanagement of intercompany loans among affiliates and imprudent payments of substantial management fees to Mr. Osborne's affiliated companies. NEO adds that Mr. Osborne continues to transfer valuable utility assets to unregulated affiliates for no consideration, which has exacerbated the Company's financial situation. Additionally, NEO believes that Cobra's operational incompetence and failure to proactively address its financial problems have contributed to the creation of the Company's purported emergency. NEO asserts that the shut in of the Churchtown system by TCO was the result of Cobra's failure to maintain or update its stripping station equipment and that the Company has not taken steps to remedy the situation. Further, NEO claims that Cobra has failed to take any cost-saving or revenue-increasing measures to proactively address its financial problems. Finally, NEO contends that Cobra continues to ignore legitimate concerns that its requests

for substantial rate increases will precipitate a death spiral. In its reply brief, NEO argues that Cobra wrongly blames the Commission and the other parties to these proceedings for the Company's current financial woes, misrepresents the record evidence to buttress its purported emergency, and concedes that there is no true emergency warranting an immediate rate increase, as evidenced by its testimony and the fact that the Company has asserted hollow threats of imminent catastrophe for more than six months. (NEO Br. at 7-23; NEO Reply Br. at 2-9.)

{¶ 132} Alternatively, NEO argues that, if the Commission finds that a legitimate emergency exists, the Commission must disallow any expenses that are not necessary to avert the emergency, were imprudently incurred through mismanagement or incompetence, or are unsupported or inconsistent with the record. According to NEO, Cobra's calculation of its proposed emergency rate is fundamentally flawed, as the Company inflated expenses and understated revenues to calculate the most generous emergency rate possible. In addition, NEO argues that the financial data supplied by Cobra is inconsistent, inaccurate, and unreliable and that the Company is unable to explain the discrepancies. As one example, NEO notes that the financial data in the 2018 income statement provided with Cobra's emergency application (Exhibit A) is not consistent with the 2018 transport revenue summary provided with the same application (Exhibit B). NEO concludes that Cobra's financial records are supported by nothing more than arbitrary guesswork and questionable accounting methods, as acknowledged by its controller. In its reply brief, NEO argues that, while Cobra highlights the quantity of information that it has provided, the Company completely ignores the quality of its financial records. NEO notes that Cobra witness Coatoam admitted that she created the Company's records in haste based on financial information that is nothing more than a stab in the dark. Additionally, NEO points out that the income statement for 2018 provided with the emergency application does not reflect cash transactions and shows dramatic and suspicious increases in certain expenses, while the application substantially understates revenues by incorrectly

assuming that the Company's only source of revenue is from customers paying a universal volumetric rate, thereby disregarding substantial revenues from firm service customers, telemetering charges, interruptible commodity charges, firm demand charges, and firm overrun charges. (NEO Br. at 23-33; NEO Reply Br. at 9-14.)

{¶ 133} Finally, NEO maintains that Cobra's emergency application contains several procedural deficiencies. NEO notes that Cobra's direct testimony addresses topics that are wholly inappropriate for an emergency rate proceeding, such as testimony proposing a permanent rate increase and several permanent riders, as well as testimony seeking to relitigate the *Rate Case*. Additionally, NEO notes that Cobra failed to notify any of its customers or the impacted municipalities that it was seeking emergency rate relief. (NEO Br. at 33-35.)

{¶ 134} In its reply brief, Cobra responds that arguments regarding the Company's mismanagement by Mr. Osborne are irrelevant to the Company's request for emergency rate relief. Cobra adds that Staff and NEO could have recommended that no disbursements to ownership occur without Commission approval, while the emergency rate is being charged, or proposed any other restriction believed necessary to ensure that the Company benefits from the revenue increase. In addition, Cobra asserts that it has met the Commission's standards for emergency rate relief. Specifically, Cobra reiterates that its current rates do not provide sufficient revenues to permit the Company to pay its financial obligations as they are incurred. In response to Staff's claim that Cobra should repair the stripping station equipment to increase its revenues, the Company notes that it has purchased a dryer intended to remove excess liquid and allow for the delivery of gas to TCO's system, but the Company does not have the funds to pay for installation of the dryer. Cobra also argues that the alleged irregularities within its financial records are merely the result of differences between accrual basis and cash basis accounting, as well as the inability to forecast the future with complete accuracy. Cobra concludes that it has demonstrated the existence of an emergency with clear and convincing evidence, shown that its emergency

request is not a substitute for a permanent rate proceeding, and sought only the minimum amount necessary to pay its expenses for 2018. (Co. Reply Br. at 7-12, 16.)

{¶ 135} With respect to the amount of the emergency relief requested, Cobra requests that the Commission approve a temporary surcharge of $0.55 per Dth. Cobra further requests, in the alternative, that the Commission authorize a temporary surcharge of no less than $0.40 per Dth, as Staff recommended. Finally, Cobra requests that the Commission approve a permanent rate of $1.22 per Dth for both firm and interruptible service. (Co. Br. at 18; Co. Reply Br. at 16-17.)

{¶ 136} Staff notes that, although it opposes any emergency rate relief, it recommends that a surcharge of $0.40 be applied to each of Cobra's volumetric tariffs, in the event that the Commission finds that emergency rate relief is warranted. Emphasizing that Staff's recommended surcharge is based on Cobra's emergency rate filing, despite its flaws and inconsistencies, Staff further recommends that the Company be directed to file a new base rate case as expeditiously as possible, in order to permit Staff to more fully investigate the Company's current financial condition. (Staff Br. at 14-15.)

{¶ 137} NEO opposes Staff's alternative recommendation. NEO contends that Staff's surcharge of $0.40 per Dth is derived from Cobra's fundamentally flawed methodology and inaccurate financial statements. According to NEO, with proper corrections to Cobra's understated revenues and overstated expenses, the Company's 2018 revenues are $2,551,939.57 and its 2018 expenses are $1,381,583.32, which demonstrates that the Company does not need an emergency rate increase, even if its unreliable financial statements are used. In its reply brief, NEO reiterates that the emergency surcharge, as calculated by Staff, is deeply flawed and fails to accurately capture Cobra's current financial condition, because it is based on the Company's faulty methodology that understates revenues and overstates expenses. (NEO Br. at 35-42; NEO Reply Br. at 14-18.)

{¶ 138} Staff responds that it takes no position on the adjustments recommended by NEO, but notes that many of the flaws identified by NEO reflect the kinds of irregularities mentioned in the Staff Report. Staff reiterates its position that Cobra is not experiencing an emergency; however, if the Commission finds that emergency relief is justified, Staff believes that any approved surcharge should not exceed $0.40 per Dth and should be contingent upon the filing of a new base rate case to establish permanent rates. Staff also recommends that any authorized emergency relief terminate if Cobra fails to file a rate case application within a reasonable and prescribed period of time. Staff emphasizes that, in light of the unreliability of Cobra's financial records, the more appropriate avenue of relief is for the Company to file a base rate case using a more contemporaneous test year period, which would facilitate a thorough examination of the Company's current condition. (Staff Reply Br. at 9-11.)

H. Conclusion on the Emergency Rate Case

{¶ 139} The Commission's authority to approve modifications of existing rates on a temporary basis is found in R.C. 4909.16. The statute provides in pertinent part:

> When the [P]ublic [U]tilities [C]ommission 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 [C]ommission, 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.

{¶ 140} The Ohio Supreme Court has consistently construed R.C. 4909.16 as vesting the 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. *Manufacturers Light & Heat Co. v. Pub. Util. Comm.*, 163 Ohio St. 78, 125 N.E.2d 183 (1955) ("Under the provisions of [R.C. 4909.16] the determination of whether an

emergency exists, warranting a temporary alteration of rates, and the length of time such altered rates shall remain in effect are within the judgment and sound discretion of the Public Utilities Commission."); *City of Cambridge v. Pub. Util. Comm.*, 159 Ohio St. 88, 111 N.E.2d 1 (1953). The Court has also noted that the Commission's power to grant emergency relief is extraordinary in nature. *City of Cincinnati v. Pub. Util. Comm.*, 149 Ohio St. 570, 574-575, 80 N.E.2d 150 (1948).

{¶ 141} In many prior cases, the Commission has been guided by the following considerations when faced with a public utility's request for emergency rate relief:

(1) Emergency rate relief is extraordinary in nature.

(2) The existence of an emergency is a condition precedent to any grant of temporary rate relief.

(3) The applicant's evidence will be reviewed with the strictest scrutiny and that evidence must clearly and convincingly demonstrate the presence of extraordinary circumstances that constitute a genuine emergency situation.

(4) Emergency rate relief will not be granted if the emergency request was filed merely to circumvent, and as a substitute for, permanent rate relief.

(5) Temporary rate relief will be granted only at the minimum level necessary to avert or relieve the emergency.

See, e.g., In re Toledo Edison Co., Case No. 76-439-EL-AEM, Opinion and Order (Sept. 8, 1976); *In re Ohio Edison Co.*, Case No. 79-44-EL-AEM, Opinion and Order (May 2, 1979). The ultimate question for consideration by the Commission is whether, absent emergency relief, the public utility's ability to render service will be impaired or the utility will be financially impaired. If the public utility fails to sustain its burden of proof on this issue, the Commission's inquiry is at an end. *See, e.g., In re Akron Thermal, Limited Partnership*, Case

No. 09-453-HT-AEM, et al., Opinion and Order (Sept. 2, 2009) at 6-7; *In re Lake Erie Utilities Co.*, Case No. 86-799-WS-AEM (*Lake Erie*), Opinion and Order (Aug. 26, 1986) at 4; *In re Lakeside Utilities Corp.*, Case No. 82-433-WS-AEM, Opinion and Order (Dec. 1, 1982) at 3.

{¶ 142} The Commission has also previously found that the public utility concerned must bear some responsibility in attempting to alleviate the professed emergency. Specifically, the Commission stated:

> The public utility statutes and case law in Ohio clearly indicate that emergency rate relief should only be granted as a last resort measure to avoid injury to the business or interest of the public or the public utility involved. The public utility must show that it has attempted to relieve the emergency using all other measures available to it and the vehicle of emergency rate relief should not be used to circumvent the permanent rate case application standards or procedures.

In re Ohio Power Co., Case No. 74-580-EL-AEM (*Ohio Power*), Opinion and Order (Jan. 13, 1975) at 3; *see also In re Ohio Water Service Co.*, Case No. 75-405-WW-AEM, Opinion and Order (Sept. 11, 1975) at 9 (finding that a financial emergency exists and that "applicant is making every reasonable effort to alleviate that emergency"); *Lake Erie* at 4-7 (denying emergency application in circumstances involving public utility's financial mismanagement, imprudent expenditures, unpaid taxes, and failure to collect debts).

{¶ 143} Turning to Cobra's application, the Commission must consider whether the Company has shown that an emergency exists for which emergency rate relief should be granted at this time. Again, an applicant for emergency rate relief must demonstrate, with clear and convincing evidence, the presence of extraordinary circumstances that constitute a genuine emergency situation. *Lake Erie* at 3. In support of Cobra's claim that a genuine emergency exists, the Company offered as evidence the testimony of Ms. Coatoam and Ms. Carothers. Ms. Coatoam's testimony was solely focused on attempting to refute anticipated

objections from Staff and NEO regarding some of the Company's expenses for 2018, based on the positions taken by Staff and NEO in the *Rate Case* (Co. Ex. B at 3-8).[16] For her part, Ms. Carothers testified that, as reflected on Cobra's income statement, the Company projected that it would earn $1,596,837.40 in revenues during 2018, with projected expenses in the amount of $2,164,979.35. Based on Cobra's projected volumes for 2018, Ms. Carothers concluded that the Company must charge $0.87 per Dth to cover its expenses. (Co. Ex. A at 4-5, 9).[17] Like Ms. Coatoam, Ms. Carothers also attempted to refute anticipated objections from Staff and NEO regarding some of the Company's expenses (Co. Ex. A at 10-16). However, Ms. Carothers offered no other testimony addressing Cobra's projected revenue shortfall or the circumstances prompting the Company's emergency application.[18]

{¶ 144} In its briefs, Cobra claims that it is currently suffering a financial emergency due to a significant loss in volumes shipped on its system, resulting in a decrease in transportation revenues since the test year in the *Rate Case*. Cobra acknowledges that the loss in volumes is, in no small part, attributable to the fact that NEO has sought to avoid shipping on the Company's system, when possible. Cobra also claims that, due to the unavailability of its stripping station and the shut in of part of its system by TCO, the Company has lost all revenues associated with the sale of extracted products, as well as most of the revenues received through charges related to the compression of natural gas. (Co. Ex. 3 at 8-13; Co. Ex. A at 4-5, NEO Ex. A at Ex. G; Tr. at 69-70.)

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16 Ms. Coatoam also addressed Cobra's request for a permanent rate of $1.22 per Dth, including three riders that the Company proposes to establish to address its depreciation, previously assessed personal property taxes, and future improvements. The Commission notes that these issues are beyond the scope of a proper request for emergency rate relief, which, as noted above, must be temporary in nature.

17 Cobra's income statement includes actual figures for January through August 2018 and projected numbers for September through December 2018.

18 In the *Rate Case*, Ms. Carothers did address a post-test-year decline in volumes shipped by Cobra and a corresponding decrease in revenues, which Ms. Carothers attributed to several factors, including the loss of a large customer, NEO's use of alternative sources of supply, the shut in of the Churchtown system by TCO, and the idle stripping station (Co. Ex. 3 at 7-15).

{¶ 145} Staff and NEO, on the other hand, assert that Cobra is not experiencing an emergency as contemplated in R.C. 4909.16. Staff witness Snider testified that a financial emergency does not exist and that Cobra's current financial condition is largely a result of its failure to manage its funds properly. Mr. Snider also testified that Cobra's financial records indicate that the Company continues to allow large owner withdrawals and to loan funds to unregulated affiliates. As further described in the Emergency Staff Report, Staff reviewed Cobra's recent bank statements for an 18-month period and investigated many of the larger withdrawals and checks issued by the Company. Staff reported that its review of the bank statements revealed numerous irregularities in Cobra's income statement, balance sheet, and cash flow. Staff highlighted its concerns regarding Cobra's large monthly management fees, which exceeded the Company's salary and wage expense, and large loan repayments to affiliated companies. Staff further reported that Cobra has not made a substantial effort to control its costs, as evidenced by drastic increases in expenses since the *Rate Case*. Finally, Staff noted that Cobra's personal property tax obligations continue to grow, standing at an estimated $4,723,539.73 as of the end of 2018, while the Company maintains its practice of making no tax payments. Staff expressed the view that, if the Commission were to grant emergency rate relief, Cobra may use the additional revenues for owner withdrawals and support of unregulated affiliates rather than the operation and maintenance of its system. Following its review, Staff concluded that Cobra should be granted no temporary rate relief. (Staff Ex. G at 2-3; Staff Ex. H at 4.)

{¶ 146} Upon review of the record, the Commission finds that Cobra has failed to demonstrate, by clear and convincing evidence, the existence of extraordinary circumstances that constitute a genuine emergency warranting immediate rate relief under R.C. 4909.16. During the hearing on the emergency application, Cobra confirmed that it continues to provide safe and reliable service under current operating conditions, with no delay in any necessary safety-related expenditures (Tr. at 52). Further, the Emergency Staff Report indicates that some of Cobra's expenses have increased drastically since the *Rate*

Case, while the Company's outstanding taxes continue to grow (Staff Ex. G at 3). Cobra offered no testimony or other evidence to address what efforts, if any, it has taken to control its costs or to begin to comply with its tax obligations. Quite simply, Cobra has not endeavored to "show that it has attempted to relieve the emergency using all other measures available to it." *Ohio Power*, Opinion and Order (Jan. 13, 1975) at 3.

{¶ 147} Cobra's sole basis for its emergency rate application is a decrease in volumes shipped on its system and a corresponding decline in revenues experienced beginning in 2016 and continuing through 2018. In its emergency application, as well as in testimony offered during the *Rate Case*, Cobra asserted that the decrease was due mainly to its largest transportation customers' reliance upon local production rather than transporting natural gas from Chicago Citygate; the Company's largest transportation customer's construction of its own delivery system to transport natural gas; and the loss of a large wholesale customer. Cobra also asserted that it was no longer able to operate its stripping station, in light of the fact that TCO had shut in the Churchtown system because of high-liquid content in the gas flowing from Churchtown to TCO. (NEO Ex. A at 3-4; Co. Ex. 3 at 7-15.)

{¶ 148} In claiming that it has made the requisite showing for emergency relief, Cobra emphasized, in its briefs, the decrease in volumes resulting from the shut in of the Churchtown system by TCO (Co. Br. at 11-14; Co. Reply Br. at 7). On this issue, Ms. Carothers noted, in her direct testimony, that Ms. Coatoam would address TCO's shut in of the Churchtown system (Co. Ex. A at 5). Ms. Coatoam, however, did not offer any direct testimony regarding the shut in.[19] For its part, NEO offered evidence indicating that, although Cobra had purportedly made "mechanical adjustments" and sequestered more wet producers, the Company ultimately canceled TCO's required testing of the gas content (NEO Ex. B). NEO concluded that, if Cobra had properly maintained and upgraded its

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[19] In the *Rate Case*, Ms. Carothers testified that, in November 2017, TCO shut in the flow of gas from Churchtown to TCO due to high liquid content (Co. Ex. 3 at 11).

stripping station equipment, the Company may have avoided the shut in and the alleged emergency situation (NEO Br. at 20). In its Emergency Staff Report, Staff acknowledged Cobra's volume reductions, but noted its belief that, with minor improvements or repairs to the stripping station equipment, Cobra would be able to transport gas to TCO and increase its transportation volumes and revenues (Staff Ex. G at 2). Although the Commission does not disagree that Cobra has experienced decreasing transportation volumes and revenues since the test year in the *Rate Case*, we find that the Company offered insufficient evidence of its efforts to end the shut in of the stripping station and the Churchtown system or to increase its transportation volumes and revenues through any other means. During the emergency hearing, Ms. Carothers merely testified that Cobra had purchased a dryer in the summer of 2018 to remove excess liquids, but had not installed the dryer because the Company was unable to locate a qualified contractor (Tr. at 70-73).[20] To further complicate matters, the record reflects that, for consideration of $10, Mr. Osborne, on behalf of Cobra, transferred to an unregulated affiliate the real property on which the stripping station is located, as well as "appurtenances there-unto" (Staff Ex. 2; Staff Ex. 3; Staff Ex. 4).[21] Again, Cobra "must show that it has attempted to relieve the emergency using all other measures available to it." *Ohio Power*, Opinion and Order (Jan. 13, 1975) at 3. Cobra has instead taken steps to worsen its financial situation through the actions of its managing member and owner.

{¶ 149} In the face of such efforts to sabotage its current financial state, Cobra innocently claims that, as a result of the shut in of the Churchtown system, its revenues have declined to the point that the Company is unable to meet its expenses (Co. Ex. A at 4-5, 9). Although Cobra emphasizes that it has provided a large volume of financial information to

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20 At an earlier point in these proceedings, Ms. Carothers testified that the stripping station requires a certain volume of gas to operate. Ms. Carothers asserted the belief that, due to the shut in of the Churchtown system by TCO and the availability of lower priced supply from the Utica shale region, the stripping station would be unable to operate for the foreseeable future. (Co. Ex. 3 at 12.)

21 Despite the language in the quit claim deed (Staff Ex. 2), Cobra disputes that Mr. Osborne intended to transfer the stripping station itself (Co. Ex. B at 4-5, 14-15).

Staff, including bank statements, Cobra did not submit, as part of the record, a statement of cash flows or its bank statements for consideration by the Commission. As Cobra acknowledged in its brief (Co. Br. at 10), the Commission's emphasis, in an emergency rate case involving a smaller public utility like the Company, is on the utility's cash flow. *Lake Erie*, Opinion and Order (Aug. 26, 1986) at 4. The Commission examines the public utility's claimed expenses to determine which represent immediate cash requirements that must be satisfied if adequate service is to be maintained pending the resolution of the permanent rate case. *In re Lake Buckhorn Utilities, Inc.*, Case No. 86-519-WW-AEM (*Lake Buckhorn*), Opinion and Order (Feb. 10, 1987) at 3.

{¶ 150} As the Commission emphasized in *Lake Buckhorn*, the public utility's presentation of its emergency case should be limited to the question of what constitutes the minimum level of temporary rate relief. *Lake Buckhorn* at 3. Here, in the absence of a statement of cash flows, bank statements, or other evidence indicative of Cobra's cash flow, the Commission has no basis for evaluating the Company's immediate cash requirements or determining whether the Company is able to meet current expenses necessary to the provision of adequate service. As NEO notes, Cobra's income statement for 2018 does not show cash transactions or reflect the Company's actual financial position, as it is intended to document the Company's revenues and expenses on an accrual basis (Tr. at 93). Additionally, as further addressed below, the financial data that Cobra has provided with its emergency application does not afford the Commission a reliable basis on which to attempt to determine the Company's cash requirements. We agree with Staff and NEO that Cobra's financial records contain numerous material errors and inconsistencies that the Company's witnesses were unable to explain (Staff Ex. G at 2; Staff Ex. H at 4; Tr. at 47-50). Ms. Coatoam admitted that Cobra's financial records for 2018 were prepared quickly and based on uncertainty and conjecture (Tr. at 122-123).

{¶ 151} In sum, Cobra has failed to meet its burden to clearly and convincingly demonstrate the presence of a genuine emergency situation justifying the extraordinary

measure of emergency rate relief. Although the Commission does not disagree that Cobra has experienced a number of changes since the test year in the *Rate Case*, the Company has failed to provide sufficient reliable evidence to conclude that emergency relief is an appropriate response at this time. Neither has Cobra offered any evidence demonstrating what, if any, positive steps the Company is taking to alleviate its current financial circumstances, as the Commission expects from a public utility in the context of an emergency rate application. *Ohio Power Co.*, Opinion and Order (Jan. 13, 1975) at 3; *In re Ohio Water Service Co.*, Case No. 75-405-WW-AEM, Opinion and Order (Sept. 11, 1975) at 9. Rather, the record reflects that Cobra's present situation is largely a result of its own making and that Mr. Osborne continues to actively threaten the Company's financial well-being.

I. Overall Conclusion

{¶ 152} In the *Tariff Case*, the Commission concluded that Cobra had provided documentation demonstrating the requisite technical, financial, and managerial capability necessary to operate as a pipeline company. *Tariff Case*, Finding and Order (June 27, 2007) at 2. Since that time, Cobra has suffered from a longstanding history of extensive financial mismanagement and operational shortcomings, as both Staff and NEO have emphasized throughout these proceedings. For example, as succinctly described by NEO, the record reflects the following troubling practices, among others:

- Cobra has paid more than $1 million in so-called management fees to Mr. Osborne's various corporate entities, including $360,000 to OsAir from January 2017 to May 2018, without receiving any services in return;[22]

22 Co. Ex. 5; Co. Ex. B at 21; Tr. at 50-52, 101-104, 165-167.

- Cobra has paid millions of dollars in so-called loans to Mr. Osborne or his various corporate entities, most of which remain unpaid or have been written off;[23]

- Mr. Osborne, acting on behalf of Cobra and without informing Ms. Coatoam or Ms. Carothers, transferred at least three real estate properties to unregulated Osborne-affiliates for no consideration during the last several years;[24]

- Cobra continues to pay real estate taxes and insurance on the real properties now owned by Mr. Osborne's unregulated affiliates;[25]

- Cobra owes more than $5 million in outstanding personal property and excise tax obligations;[26]

- Cobra has not complied with the Commission's April 11, 2018 Entry, which directed the Company to issue refunds to customers;[27]

- Cobra operates on the basis that there is no difference between Cobra, as a corporate entity, and Mr. Osborne, as an individual;[28]

- Cobra has been unable to maintain the critical operation of its stripping station, resulting in the loss of revenue for the Company;[29]

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23 NEO Ex. A at Ex. D; NEO Ex. 1 at Ex. 7; Tr. at 108-109, 124-129.

24 Staff Ex. A; Staff Ex. B; Staff Ex. C; Staff Ex. D; Staff Ex. 2; Staff Ex. 3; Staff Ex. 4; NEO Ex. C; NEO Ex. D; Tr. at 34-45, 59-65, 131-136, 148-150, 162-163; Co. Ex. B at 4-5, 14-15.

25 Tr. at 39, 64-65, 149, 163.

26 NEO Ex. G; Tr. at 109-120, 150-157.

27 Tr. at 15-16, 145-146.

28 Tr. at 143-144.

29 NEO Ex. B; Tr. at 70-72. As noted above, Mr. Osborne, on behalf of Cobra, transferred the real property on which the stripping station is located, as well as the "appurtenances there-unto," to an unregulated affiliate for no consideration (Staff Ex. 2.)

- Cobra has failed to install the purchased dryer or make other improvements or repairs to the stripping station and has not instituted any other proactive measures to address its loss of revenue.[30]

{¶ 153} As noted above, Staff and NEO also identified significant deficiencies in Cobra's financial records. The following examples highlighted by NEO reveal that Cobra's financial records are routinely inconsistent, unreliable, and inaccurate:

- Cobra's emergency application contains inconsistent financial data that the Company is unable to explain (e.g., the 2018 income statement is inconsistent with the 2018 transport revenue summary);[31]

- Cobra's emergency application reports revenues from extracted products that are inconsistent with and materially different from those identified in confidential financial records produced in discovery;[32]

- Cobra's balance sheet provided with the emergency application does not reflect its actual revenues and expenses and is based on guesswork and uncertainty;[33] and

- Cobra's income statements in these proceedings are based on arbitrary and inconsistent information, with Ms. Coatoam admitting that some of the information reported, such as the tax accruals, is based on nothing more than a "stab in the dark."[34]

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30 Staff Ex. G at 2; Tr. at 19, 70-72.
31 NEO Ex. A at Ex. A, Ex. B; NEO Ex. F; Tr. at 95-97.
32 NEO Ex. E; NEO Ex. A at Ex. H; Tr. at 47-50.
33 NEO Ex. A at Ex. D; Tr. at 122-123.
34 Co. Ex. 5; Tr. at 110-112.

{¶ 154} The Commission agrees with Staff and NEO that the evidence in these proceedings reflects a pattern of mismanagement and self-dealing by Cobra. The record reflects that Cobra, as operated under Mr. Osborne's control, has ignored corporate formalities and legal obligations for more than a decade, to the detriment of the Company's customers. Further, Cobra's practices have clearly impacted its recordkeeping abilities, as the evidence in these proceedings is replete with financial records that are erroneous and unreliable. In summarizing Cobra's "accounting difficulties," Ms. Coatoam testified that Mr. Osborne "has (1) taken draws/distributions from Cobra; (2) loaned Cobra money; (3) had Cobra loan him money; (4) had Cobra loan affiliated companies money; (5) had affiliated companies loan Cobra money; and (6) had Cobra pay management fees to affiliated companies" (Co. Ex. B at 18-19). NEO more aptly described Cobra as a "personal piggybank" for Mr. Osborne and stressed that the Company will continue to operate in this fashion, as long as it remains in Mr. Osborne's control (NEO Br. at 13). Staff agreed with NEO's position and emphasized, in the *Rate Case*, that "Cobra has a demonstrated history of ignoring its tax obligations, bankrolling its owner and unregulated affiliates, and mismanaging its assets" (Staff Br. at 2). In the *Emergency Rate Case*, Staff amplified its concerns, asserting the belief that "Mr. Osborne is neither competent to manage this utility, nor is he to be trusted with the revenues that a surcharge would generate" (Staff Reply Br. at 7).

{¶ 155} The Commission shares the concerns of NEO and Staff, and it is clear that Cobra's own decisions over many years have been the primary cause of its financial problems. If Cobra's pattern of mismanagement continues, the Company's decreasing revenues and overall financial condition will only decline further and the Company may reach the point of insolvency. R.C. 4905.22 provides that every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. The statute also requires that all charges made or

demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the Commission. Consistent with R.C. 4905.22, the Commission has previously recognized that it has "an affirmative responsibility to ratepayers to ensure that they pay no more than is necessary and prudent for the provision of safe and adequate utility service" and a "duty to consider all aspects of a utility's operations." *In re The Toledo Edison Co.*, Case No. 95-299-EL-AIR, et al., Opinion and Order (Apr. 11, 1996) at 42.

{¶ 156} Additionally, pursuant to R.C. 4905.60, the Commission has authority to direct the Ohio Attorney General to seek appropriate civil remedies in the name of the state whenever the Commission is of the opinion that any public utility has failed or is about to fail to obey any order made with respect to it, or is permitting anything or is about to permit anything contrary to or in violation of law, or of an order of the Commission. Under R.C. 2735.01(A)(6), receivership is a special remedy available when a limited liability company is insolvent or is in imminent danger of insolvency. Therefore, where a public utility operating as a limited liability company is insolvent or is in imminent danger of insolvency, the appointment of a receiver is among the appropriate civil remedies that the Commission may direct the Ohio Attorney General to pursue, if it appears that the utility has failed or is about to fail to comply with its obligations under R.C. 4905.22. *In re Youngstown Thermal, LLC and Youngstown Thermal Cooling, LLC*, Case No. 17-1534-HC-UNC, Finding and Order (June 30, 2017) at ¶¶ 17-18; *In re Rutland Fuel Co.*, Case No. 86-2013-GA-COI, Opinion and Order (Apr. 7, 1987) at 10; *In re Lake Buckhorn Utilities, Inc.*, Case No. 83-1059-WW-COI, et al., Opinion and Order (Dec. 27, 1984).

{¶ 157} Pursuant to R.C. 4905.60, the Commission finds it necessary to determine whether the Ohio Attorney General should be directed, at this time, to seek a receiver for Cobra. Accordingly, a hearing should be held at which Cobra shall show cause as to why a receiver should not be appointed to ensure that the Company's customers continue to receive necessary and adequate service. The Commission directs the attorney examiner to

establish a procedural schedule for this purpose. At the hearing, Cobra should, among other matters, be prepared to address in detail how it intends to reduce its outstanding tax obligations, increase its transportation volumes and revenues, control its costs, eliminate management fees and other payments to affiliates, improve its financial recordkeeping, and manage itself in a manner consistent with Ohio law, including the rules and regulations of the Commission. If Cobra is unable to demonstrate that it remains capable of operating as a public utility in this state, the Commission will direct the Ohio Attorney General to seek a receiver to operate and manage the Company.

{¶ 158} Additionally, as discussed above, the record reflects that, since 2015, Cobra has remained out of compliance with certain gas pipeline safety regulations, specifically those which require the Company to implement distribution integrity management and public awareness programs (Staff Ex. 6 at 4; Co. Ex. 2 at Ex. B at 13-15; Tr. II at 312-314). The Commission, therefore, finds that a gas pipeline safety investigation should be initiated pursuant to R.C. 4905.95 and Ohio Adm.Code 4901:1-16-12. The Commission will consider the current status of Cobra's compliance with the gas pipeline safety regulations in conjunction with the hearing to consider whether a receiver should be appointed for the Company.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 159} Cobra is a pipeline company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of the Commission.

{¶ 160} On August 15, 2016, Cobra filed an application for an increase in its rates and charges. Cobra amended its application on September 26, 2016. Cobra proposed a test year of January 1, 2015, to December 31, 2015, and a date certain of December 31, 2015. By Entry issued on November 9, 2016, Cobra's proposed test year and date certain were approved by the Commission.

{¶ 161} On April 13, 2018, Staff filed its written report of investigation in the *Rate Case*.

{¶ 162} The evidentiary hearing in the *Rate Case* began on September 10, 2018, and concluded on September 11, 2018.

{¶ 163} On October 15, 2018, Cobra filed an application seeking an emergency increase in its rates and charges, as well as a motion requesting consolidation of the *Rate Case* and the *Emergency Rate Case*. The cases were consolidated at Cobra's request by Entry dated December 7, 2018.

{¶ 164} Staff filed its written report of investigation in the *Emergency Rate Case* on January 7, 2019.

{¶ 165} The evidentiary hearing in the *Emergency Rate Case* was held on January 10, 2019.

{¶ 166} The value of Cobra's property used and useful for the rendition of service to customers affected by the application in the *Rate Case*, as determined in accordance with R.C. 4909.15, is not less than $4,446,820.

{¶ 167} The current net annual compensation of $497,005 represents a rate of return of 11.18 percent on the jurisdictional rate base of $4,446,820.

{¶ 168} A rate of return of 11.18 percent provides Cobra with excess compensation for the services rendered to its customers.

{¶ 169} A rate of return of not more than 9.09 percent is fair and reasonable under the circumstances and is sufficient to provide Cobra just compensation and return on its property used and useful in the provision of services to its customers.

{¶ 170} A revenue decrease of $128,540 will result in a return of $404,216, which, when applied to the rate base of $4,446,820, yields a rate of return of approximately 9.09 percent.

{¶ 171} The allowable gross annual revenue to which Cobra is entitled for purposes of these proceedings is $2,864,971.

{¶ 172} Cobra's existing rates and charges are sufficient to provide the Company with adequate net annual compensation and return on its property used and useful in the provision of its services.

{¶ 173} Cobra is authorized to file final tariffs, consistent with this Opinion and Order.

{¶ 174} Cobra has failed to sustain its burden of proof to demonstrate that emergency rate relief should be granted to prevent injury to the business or interests of the public or the Company.

IV. ORDER

{¶ 175} It is, therefore,

{¶ 176} ORDERED, That Cobra's amended application in the *Rate Case* be granted to the extent provided in this Opinion and Order. It is, further,

{¶ 177} ORDERED, That Cobra be authorized to file tariffs, in final form, consistent with this Opinion and Order. Cobra shall file one copy in these case dockets and one copy in its TRF docket. It is, further,

{¶ 178} ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission. It is, further,

{¶ 179} ORDERED, That Cobra's application in the *Emergency Rate Case* be denied. It is, further,

{¶ 180} ORDERED, That Cobra's motion to strike a portion of Staff's initial brief in the *Rate Case* be denied. It is, further,

{¶ 181} ORDERED, That NEO's motion to strike a portion of Cobra's reply brief in the *Emergency Rate Case* be granted. It is, further,

{¶ 182} ORDERED, That a hearing be scheduled for the purposes of determining whether a receiver for Cobra should be appointed and whether the Company is in compliance with gas pipeline safety regulations. It is, further,

{¶ 183} ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 184} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

COMMISSIONERS:
Approving:
Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

SJP/mef

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in

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

Summary: Opinion & Order that the Commission finds that Cobra Pipeline Company, LTD failed to demonstrate that its existing rates and charges are insufficient to provide adequate net annual compensation and return on its property used and useful in the provision of its services; that it failed to sustain its burden of proof to demonstrate that emergency rate relief should be granted; and that a hearing should be scheduled for the purposes of determining whether a receiver should be appointed for Cobra Pipeline Company, LTD and reviewing the status of its compliance with gas pipeline safety requirements. electronically filed by Docketing Staff on behalf of Docketing

EXHIBIT D

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF COBRA PIPELINE COMPANY, LTD FOR AN INCREASE IN 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

FOURTH ENTRY ON REHEARING

Entered in the Journal on April 8, 2020

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by Cobra Pipeline Company, LTD on October 11, 2019.

II. DISCUSSION

A. *Procedural Background*

{¶ 2} Cobra Pipeline Company, LTD (Cobra or the Company) is a pipeline company under R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On August 15, 2016, Cobra filed its application in Case No. 16-1725-PL-AIR (*Rate Case*), in response to the Commission's Opinion and Order in Case No. 14-1654-GA-CSS, et al. In its Opinion and Order, the Commission directed Cobra, Orwell-Trumbull Pipeline Company, LLC (OTP), and any other pipeline companies owned or controlled by Richard M. Osborne to file applications, pursuant to R.C. Chapter 4909, to determine just and reasonable rates that include charges for firm and interruptible transportation services and rates for shrinkage. *In re Complaint of Orwell Natural Gas Co. v. Orwell-Trumbull Pipeline Co., LLC*, Case No. 14-1654-GA-CSS, et al., Opinion and Order (June 15, 2016) at ¶ 77.

{¶ 4} An amended abbreviated application was filed by Cobra on September 26, 2016.

{¶ 5} On July 7, 2017, Cobra filed correspondence indicating that, in compliance with R.C. 4909.42, it was submitting a bond, in order to institute its proposed rates. Staff filed a letter in response on August 11, 2017. Cobra filed a reply to Staff on August 18, 2017.

{¶ 6} By Entry dated April 11, 2018, the Commission determined that the time frames set forth in R.C. 4909.42 for the fixation of rates are not applicable with respect to pipeline companies and, thus, Cobra was not authorized under the statute to implement its proposed rates. Accordingly, the Commission directed Cobra to reinstate its Commission-approved rates and refund to customers any amounts collected in excess of those rates.

{¶ 7} On April 13, 2018, Staff filed a written report of its investigation (Staff Report) in the *Rate Case*.

{¶ 8} By Entry dated May 1, 2018, the attorney examiner established a procedural schedule to assist the Commission in its review of Cobra's application, as amended.

{¶ 9} On May 10, 2018, Cobra filed an application for rehearing of the April 11, 2018 Entry.

{¶ 10} By Entry on Rehearing dated June 6, 2018, the Commission granted Cobra's application for rehearing for the purpose of further consideration of the matters specified in the application for rehearing.

{¶ 11} On June 22, 2018, the evidentiary hearing in the *Rate Case* was continued at Cobra's request and rescheduled to commence on September 5, 2018.

{¶ 12} By Entry dated August 24, 2018, the attorney examiner granted a motion for continuance of the evidentiary hearing filed by Orwell Natural Gas Company, Northeast Ohio Natural Gas Corp., and Brainard Gas Corp. (collectively, NEO). The hearing was rescheduled to begin on September 10, 2018.

{¶ 13} The evidentiary hearing in the *Rate Case* began on September 10, 2018, and concluded on September 11, 2018.

{¶ 14} On October 15, 2018, Cobra filed an application, in Case No. 18-1549-PL-AEM (*Emergency Rate Case*), seeking an emergency increase in its rates and charges for natural gas transportation service, pursuant to R.C. 4909.16.

{¶ 15} By Entry dated December 7, 2018, the attorney examiner established a procedural schedule to assist the Commission in its review of Cobra's application for an emergency rate increase. The attorney examiner also granted Cobra's unopposed motion for consolidation of the above-captioned cases.

{¶ 16} On January 7, 2019, Staff filed its review and recommendations regarding Cobra's request for an emergency rate increase.

{¶ 17} The evidentiary hearing in the *Emergency Rate Case* was held on January 10, 2019.

{¶ 18} On September 11, 2019, the Commission issued an Opinion and Order, finding that Cobra failed to demonstrate that its existing rates and charges are insufficient to provide adequate net annual compensation and return on its property used and useful in the provision of its services. The Commission also determined that Cobra failed to sustain its burden of proof to demonstrate that emergency rate relief should be granted. On that same date, the Commission also issued a Second Entry on Rehearing, denying Cobra's application for rehearing of the April 11, 2018 Entry and directing that customers receive a refund of any amounts paid in excess of Commission-approved rates.

{¶ 19} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 20} On October 11, 2019, Cobra filed an application for rehearing. Cobra states that it "applies for rehearing of the Entry and Orders," as issued by the Commission on September 11, 2019. NEO filed a memorandum contra Cobra's application for rehearing on October 21, 2019.

{¶ 21} On November 6, 2019, the Commission granted rehearing for further consideration of the matters specified in Cobra's application for rehearing.

{¶ 22} The Commission has reviewed and considered all of the arguments raised in Cobra's application for rehearing. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

B. Consideration of the Application for Rehearing

{¶ 23} In its first ground for rehearing, Cobra argues that the Commission erred by allegedly permitting biases against the Company's principal owner, Richard M. Osborne, to infect the proceedings designed to determine a just and reasonable rate. Specifically, Cobra claims that the Commission erred by failing to strike portions of Staff's initial brief in the *Rate Case* that addressed the history of other companies owned by Mr. Osborne and past incidents involving Mr. Osborne and did not address Cobra itself. Asserting that many of the statements and facts in Staff's brief are irrelevant, inflammatory, prejudicial, and unrelated to ratemaking, Cobra argues that the history provided in the brief shows that the purpose of the *Rate Case* is to punish Cobra for being owned by Mr. Osborne rather than to establish a just and reasonable rate. Cobra contends that the Commission also erred by failing to permit Cobra to question Staff regarding potential bias against the Company and Mr. Osborne during the hearing in the *Emergency Rate Case*. Cobra notes that Rule 616(A) of the Ohio Rules of Evidence states that 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.

{¶ 24} In its memorandum contra Cobra's application for rehearing, NEO responds that the Commission properly denied Cobra's motion to strike portions of Staff's initial brief. NEO argues that the Commission thoroughly considered and rejected Cobra's position on this issue and that, in any event, Mr. Osborne's background was not a factor in the Commission's decision regarding the Company's requested rate adjustments. NEO adds that, given Mr. Osborne's status as Cobra's principal owner and managing officer, Mr. Osborne's history of management of several of Cobra's former affiliates is not only relevant to the Company's current operations but also well within the scope of the issues before the Commission. NEO emphasizes that there is extensive record evidence that documents the improper self-dealing and commingling of funds between Mr. Osborne's various companies, which occurred without the knowledge of Cobra's employees.

{¶ 25} In the Opinion and Order, the Commission thoroughly addressed Cobra's motion to strike the "Background" section of Staff's initial brief in the *Rate Case*. The Commission found that, consistent with its authority in R.C. 4905.05 over persons owning or operating public utilities in this state, the history provided by Staff is relevant and within the scope of the consolidated proceedings. September 11, 2019 Opinion and Order at ¶ 35. Although Cobra claims that Staff's brief improperly focuses on Mr. Osborne, does not provide any information about Cobra itself, and distracts from the relevant issues in the *Rate Case*, the Company has not denied that Mr. Osborne is its principal owner and managing officer and that, as such, Mr. Osborne is ultimately responsible for Cobra's operations and financial condition. More importantly, Cobra has not shown that any statement in the "Background" section of Staff's brief was relied upon by the Commission in resolving the *Rate Case*. The Commission's decision was based solely on the testimony, Staff Report, and other exhibits in the record. With respect to Cobra's contention that the attorney examiner did not permit the Company, during the hearing in the *Emergency Rate Case*, to question Staff regarding its purported biases, Cobra failed to raise the propriety of the ruling as a distinct issue for the Commission's consideration in its initial brief, as required by Ohio Adm.Code 4901-1-15(F). In any event, we find no merit in Cobra's argument, as the attorney examiner

allowed the Company's counsel to freely question Staff witness Snider about Staff's position as a collective body. The attorney examiner merely directed that questions regarding the personal views of individual Staff members be rephrased, which counsel agreed was "fair enough" (Tr. at 196-202). Cobra's first ground for rehearing should, therefore, be denied.

{¶ 26} In its second ground for rehearing, Cobra asserts that the Commission erred by striking statements purporting to show Mr. Osborne's capital contributions to the Company during 2018. Cobra maintains that the Commission incorrectly found that the Company's reply brief in the *Emergency Rate Case* included non-record information. Cobra notes that its general ledger up until December 2018 was included as part of Exhibits JC-1 and JC-2, while Company witness Coatoam provided testimony during the hearing in the *Emergency Rate Case* that addressed Mr. Osborne's contributions in December 2018.

{¶ 27} In response, NEO asserts that the Commission properly rejected Cobra's attempt to include information in its reply brief that is not part of the record. According to NEO, the exhibit attached to Cobra's reply brief identifies a number of alleged transactions from December 2018 that do not have any evidentiary support in the record. NEO points out that Exhibits JC-1 and JC-2 only included information through November 30, 2018, while Ms. Coatoam's testimony generally referenced alleged accounting entries to be made in the future but did not actually address the accounting entries attached to Cobra's reply brief.

{¶ 28} The Commission granted, in the Opinion and Order, NEO's motion to strike a sentence and corresponding footnote in Cobra's reply brief in the *Emergency Rate Case*, along with attached Exhibit 1, which is not an exhibit admitted into the record. The Commission thoroughly explained the basis for the ruling. September 11, 2019 Opinion and Order at ¶ 39. As Cobra acknowledges, Exhibits JC-1 and JC-2, which were attached to the direct testimony of Company witness Carothers, included information through November 30, 2018. Nothing precluded Cobra from basing its argument regarding Mr. Osborne's capital contributions on these exhibits or on Ms. Coatoam's testimony during the hearing in the

Emergency Rate Case, which generally referenced future accounting entries expected to be made for payments from OsAir, Inc. (OsAir) to Cobra at an unspecified time in 2018. However, nothing in the record supports all of the alleged capital contributions listed on Exhibit 1 or the total amount referenced on page 15 of Cobra's reply brief. Rather than rely upon the information in Exhibits JC-1 and JC-2 and the testimony of Ms. Coatoam provided during the hearing, Cobra elected, in its reply brief, to offer an amount of alleged capital contributions that is not reflected anywhere in the record and to attach a non-record exhibit. Accordingly, the Commission did not err in granting the motion to strike and Cobra's request for rehearing on this issue should be denied.

{¶ 29} In its third ground for rehearing, Cobra contends that the Commission erred by failing to recognize that the Company does not need the Commission's permission to schedule its rates. Cobra argues that, although the Commission correctly found that the traditional ratemaking process does not apply to pipeline companies, the Commission nonetheless applied that process to the Company. Cobra asserts that the Commission failed to recognize that R.C. 4909.17 does not apply to pipeline companies, which, according to Cobra, means that the Company's rates take effect upon filing, without the Commission's approval, and remain in effect unless they are set aside by the Commission. Cobra notes that its proposed rates took effect on July 1, 2017, and remained in effect until April 11, 2018, when the Commission exercised its authority and suspended the rates.

{¶ 30} NEO responds that the Commission has considerable authority to determine proper rates for Cobra under R.C. 4909.15 and that the Company ignores the larger statutory scheme under R.C. Chapter 4909. NEO notes that other industries exempt from R.C. 4909.17, such as railroads, have always maintained the ability to file rate schedules that would go into effect unless suspended by the Commission pursuant to R.C. 4909.27, whereas the ratemaking process for pipeline companies like Cobra is subject to R.C. 4909.15, which permits the Commission to set just and reasonable rates if it believes that the rates are unjust and unreasonable. NEO contends that Cobra and other pipeline companies are prohibited

from modifying their rates, absent an order from the Commission. NEO adds that the Commission has thoroughly addressed this issue and found that its consideration of Cobra's current and proposed rates was consistent with its statutory authority under R.C. Chapter 4909, its considerable discretion to manage its dockets, and its prior precedent in cases establishing rates for pipeline companies.

{¶ 31} The Commission fully considered and rejected Cobra's position on this issue in the Opinion and Order, as well as in the April 11, 2018 Entry and the related Second Entry on Rehearing. We have also fully explained our view of the Commission's considerable statutory authority with respect to ratemaking for all public utilities, including pipeline companies, under R.C. Chapter 4909 and R.C. 4905.26, as recognized by the Ohio Supreme Court. September 11, 2019 Opinion and Order at ¶¶ 50-53; Second Entry on Rehearing at ¶¶ 15, 19-20; April 11, 2018 Entry at ¶ 32. Cobra has raised no new argument for the Commission's consideration and the Company's request for rehearing should, therefore, be denied.

{¶ 32} In its fourth ground for rehearing, Cobra asserts that, even if R.C. 4909.17, 4909.18, and 4909.19 should be applied in rate cases involving pipeline companies, the Commission erred when it failed to provide all of the due process protections provided to public utilities by the General Assembly. Cobra argues that it was subjected to regulatory delay for over three years, during which time its financial position deteriorated. According to Cobra, this is the antithesis of due process, as well as contrary to the General Assembly's intentions in exempting pipeline companies from R.C. 4909.17 and in creating R.C. 4909.42 to protect all other utilities.

{¶ 33} NEO counters that Cobra failed to identify, with the specificity required for an application for rehearing under R.C. 4903.10, any alleged due process protection that it was purportedly denied.

{¶ 34} The Commission finds that Cobra's fourth ground for rehearing should be denied. R.C. 4903.10 requires an applicant for rehearing to set forth specifically the ground or grounds on which the applicant considers the Commission's order to be unreasonable or unlawful. Although Cobra contends that it has been denied due process in these proceedings, the Company has not explained, with any specificity, which due process protections have allegedly been withheld. Instead, Cobra offers the general claim that it has been subjected to regulatory delay. We have twice noted that the length of these proceedings has been dictated by several factors that have hindered the Commission and Staff throughout the process of reviewing Cobra's application in the *Rate Case*, including a lack of sufficient financial records and other information, as well as OTP's receivership and bankruptcy proceedings. September 11, 2019 Opinion and Order at ¶ 57; April 11, 2018 Entry at ¶¶ 26-31. Cobra has been afforded ample due process in both the *Rate Case* and the *Emergency Rate Case*. Among other things, Cobra has been provided the opportunity to offer the testimony of its witnesses and other evidence, to cross-examine Staff's witnesses, and to file initial and reply briefs. Cobra has failed to identify any way in which it was deprived of due process or afforded less protection than any other public utility.

{¶ 35} In its fifth ground for rehearing, Cobra argues that, even if the Commission appropriately employed processes similar to those applied under R.C. 4909.17, 4909.18, and 4909.19, the Commission erred when it refused to consider information outside of the test year. Cobra notes that R.C. 4909.15(C)(1) and (D) enable the Commission to consider revenues and expenses beyond the prescribed test year. Cobra asserts that the alleged delay in these cases is reason to change the test year to reflect the Company's current financial situation. Additionally, Cobra emphasizes that Staff requested information from the Company that is outside of the test year, while the Commission accepted Staff's non-test-year adjustments to rate case expenses, professional service fees, and salaries. Cobra adds that the Commission also erred when it declined to adjust the Company's expenses to reflect the fact that Cobra could no longer allocate operating expenses to its former affiliate, OTP.

{¶ 36} NEO replies that the Commission properly refused to consider information outside of the test year. NEO asserts that R.C. 4909.15(C) expressly prohibits the Commission from considering information outside of the test year, unless certain criteria that are inapplicable here are met. NEO adds that Cobra's arguments regarding its deteriorating financial condition were expressly considered and rejected by the Commission in the *Emergency Rate Case.*

{¶ 37} The Commission thoroughly addressed, in the Opinion and Order, the basis for its conclusions regarding the test year established in the *Rate Case.* Initially, we rejected Cobra's contention that the Commission is not bound by the test year. As we noted, the test-year concept is a key component of the mandatory ratemaking formula set forth in R.C. 4909.15. Cobra proposed, in its amended application, a test year ending December 31, 2015, which the Commission approved in its November 9, 2016 Entry. We further noted that, at no point, did Cobra attempt to modify its approved test period by filing a new application reflecting its changed financial position. September 11, 2019 Opinion and Order at ¶¶ 72-73. The Commission also rejected Cobra's arguments regarding Staff's allocation of salaries and benefits between Cobra and OTP, which was based on the Company's own proposed allocation of expenses to account for the fact that certain employees worked for both pipeline companies during the test year. We also noted that, although OTP is now operated by a receiver, the record reflects that Cobra's employees continue to divide their time between the Company and its affiliates. September 11, 2019 Opinion and Order at ¶ 95. Although Cobra argues that Staff made adjustments beyond the test period for items like rate case expenses, our adoption of Staff's adjustments is consistent with both our precedent and the Ohio Supreme Court's determination that R.C. 4909.15(E)(2) permits the Commission to "make minor adjustments to rates ascertained by the statutory formula" and that, with respect to rate case expenses, "[t]he appropriate inquiry is whether legal fees are ordinary and necessary expenses in obtaining rate relief as provided by law." *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 538-539, 547, 620 N.E.2d 835 (1993); *In re Ohio Suburban Water Co.*, Case No. 81-657-WS-AIR, Opinion and Order (May 5, 1982) (noting that "the

rationale for including such [rate case] expenses in test year operating expenses is to establish a reasonable allowance for a normal and necessary utility function"). Finally, as we emphasized, Cobra's application for emergency rate relief provided a proper means to address post-test-year changes in the Company's financial situation. September 11, 2019 Opinion and Order at ¶¶ 73, 95. For these reasons, Cobra's fifth ground for rehearing should be denied.

{¶ 38} In its sixth ground for rehearing, Cobra contends that the Commission erred when it denied the Company's application for a temporary surcharge in the *Emergency Rate Case*. Cobra argues that, despite the Commission's vast discretion under R.C. 4909.16, and evidence indicating that the Company cannot meet its financial obligations due to a reduction in shipped volumes, the Commission refused to approve a temporary surcharge due to its bias toward Mr. Osborne.

{¶ 39} NEO replies that the Commission properly denied Cobra's application for a temporary surcharge in the *Emergency Rate Case*, because the Company failed to meet its burden under R.C. 4909.16 to clearly and convincingly demonstrate the presence of a genuine emergency situation justifying the extraordinary measure of emergency rate relief. NEO emphasizes that Cobra's financial information lacks the consistency, reliability, and accuracy necessary to support an emergency rate increase, particularly given that the author and sponsor of the financial records admitted that they were created in haste and are largely based on arbitrary speculation and questionable accounting practices.

{¶ 40} In the Opinion and Order, the Commission, upon careful consideration of the appropriate legal standard and its precedent with respect to emergency rate applications, found that Cobra had failed to demonstrate, by clear and convincing evidence, the existence of extraordinary circumstances that constitute a genuine emergency warranting immediate rate relief under R.C. 4909.16. September 11, 2019 Opinion and Order at ¶¶ 139-151. The Commission thoroughly considered Cobra's assertion that emergency relief was warranted

due to a decrease in volumes shipped on its system and a corresponding decline in revenues. Upon review of the evidence, the Commission concluded that Cobra offered insufficient evidence of its efforts to bring its stripping station back into operation and to end the shut in of the Churchtown system or to increase its transportation volumes and revenues through any other means. September 11, 2019 Opinion and Order at ¶¶ 147-148. We also noted that Mr. Osborne, on Cobra's behalf, transferred to an unregulated affiliate, for consideration of $10, the real property on which the stripping station is located, as well as "appurtenances there-unto," which is evidence that the Company's financial situation has worsened due to the actions of its managing member and principal owner, Mr. Osborne. September 11, 2019 Opinion and Order at ¶ 148. Contrary to Cobra's claim that the Commission denied emergency rate relief in light of a purported bias toward Mr. Osborne, the Commission's decision to deny the Company's emergency rate application was based on the testimony and supporting exhibits of the Company's own witnesses, as well as the other evidence of record in the *Emergency Rate Case*, which, as we noted, included no reliable financial records on which to determine the Company's cash requirements. September 11, 2019 Opinion and Order at ¶¶ 146-150. Therefore, Cobra's sixth ground for rehearing should be denied.

{¶ 41} Finally, in its seventh ground for rehearing, Cobra maintains that the Commission erred when it refused to allow the Company to collect its previously assessed personal property taxes as a regulatory asset in the *Rate Case*. Cobra asserts that, contrary to Staff's position, the Company's customers have not paid personal property taxes as part of their rates, because Cobra was not seeking recovery of personal property taxes when the Commission first approved its tariff in 2005. Cobra notes that it instead paid commercial activity taxes under a group filing in the name of OsAir, which did not offset the amount of personal property taxes now owed. Cobra claims that it merely seeks to recover the outstanding tax balance from its customers, given that they benefited from paying lower rates to Cobra than they would have been charged had the proper tax been paid.

{¶ 42} NEO responds that the Commission properly refused to allow Cobra to collect its previously assessed personal property taxes as a regulatory asset. According to NEO, the record is clear that Cobra has failed, over many years, to pay any of its personal property taxes, incurring substantial penalties and interest, which its own witness admitted is a result of the Company's mismanagement. NEO emphasizes that, because Cobra's outstanding previously assessed personal property taxes were caused by imprudent management practices, they are barred from recovery by R.C. 4909.154, as the Commission properly determined.

{¶ 43} In the Opinion and Order, the Commission fully considered Cobra's arguments on this issue. We also explained the basis for our conclusion that Staff properly excluded Cobra's out-of-period property tax expense, which accrued from 2008 through 2014, and that such expense, including the associated penalties and interest, is imprudent and barred from recovery pursuant to R.C. 4909.154. As we noted, nothing in the record supports Cobra's argument that it was unable to pay its tax obligations during the test year or prior years, while Cobra's own witness acknowledged that the Company's failure to pay its taxes is a result of its mismanagement. September 11, 2019 Opinion and Order at ¶¶ 101-109. In its application for rehearing, Cobra has raised no new argument on this issue and, accordingly, the Commission finds that the Company's seventh ground for rehearing should be denied.

III. ORDER

{¶ 44} It is, therefore,

{¶ 45} ORDERED, That the application for rehearing filed by Cobra on October 11, 2019, be denied. It is, further,

{¶ 46} ORDERED, That a copy of this Fourth Entry on Rehearing be served upon all interested persons and parties of record.

COMMISSIONERS:
Approving:
Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

SJP/mef

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

Summary: Entry Cobra's application for re-hearing filed on 10.11.19 is denied. electronically filed by Mrs. Kelli C King on behalf of Sarah J. Parrot, Attorney Examiner, Public Utilities Commission of Ohio

EXHIBIT E

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	:	

COBRA PIPELINE COMPANY, LTD'S
APPLICATION FOR REHEARING
OF THIS COMMISSION'S ENTRY DATED APRIL 11, 2018

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 April 11, 2018 in the above captioned case (the "Entry"). Cobra submits that the Commission's Entry is unreasonable and unlawful in the following particulars:

(A) Assignment Of Error No. 1: This Commission Erred In Paragraphs 22 Through 24 of Its April 11, 2018 Entry In Its Description and Application Of The Exemptions That Result From R.C. §4909.17.

(B) Assignment Of Error No. 2: The Commission Erred In Paragraphs 25, and 35 Through 37 Of Its April 11, 2018 Entry When It Ordered Cobra To Provide An Immediate Refund Of 100% Of The Delta Between The Rate Cobra Placed In Effect On July 1, 2017 And The Rate Which Existed Prior To That Date.

(C) Assignment of Error No. 3: The Commission Erred In Paragraph 32 Of Its April 11, 2018 Entry When It Asserted It Intends To Apply the Procedures of §§4909.18 and 4909.19 to Cobra, After Having Just Declared Those Same Procedures Inapplicable to Cobra.

(D) Assignment of Error No. 4: This Commission Erred in Paragraph 24 When It Concluded Cobra's Bond Would Not Have Satisfied The Statute, Assuming That §4909.42 Might Be Applicable.

Exhibit E

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,

/s/ Michael D. Dortch
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COBRA PIPELINE COMPANY, LTD

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	:	

COBRA PIPELINE COMPANY, LTD'S MEMORANDUM IN SUPPORT OF ITS APPLICATION FOR REHEARING OF THIS COMMISSION'S ENTRY DATED APRIL 11, 2018

I. INTRODUCTION

The Public Utilities Commission of Ohio ("Commission") began its analysis of the legal issues that are the subject of its April 11, 2018, Entry (the "Entry") by concluding – correctly – that pursuant to Ohio Revised Code ("R.C.") Section 4909.17, pipeline companies are exempt from the rate–making processes described within R.C. §§4909.18 and 4909.19 to which virtually every other form of "public utility" in Ohio is subject. This Commission erred as a matter of law, however, when it then attempted to apply the consequences of its initial conclusion to Cobra Pipeline Company, LLC ("Cobra"), in this case.

II. THE APPLICABLE LAW

ASSIGNMENT OF ERROR NO. 1: This Commission Erred In Paragraphs 22 Through 24 of Its April 11, 2018 Entry In Its Description and Application Of The Exemptions That Result From R.C. §4909.17.

The Commission erred fundamentally by failing to recognize the full import of R.C. §4909.17. That statute does not merely exempt Cobra from R.C. §§4909.18, 4909.19, and 4909.191 (and, as the Commission has concluded, from R.C. §4909.42). The provisions of R.C.

§4909.17 contain an exemption from R.C. §4909.17 *itself* that is (or at least once was)[1] uniquely available to only three types of public utilities:[2] Street railways, for-hire motor carriers, and pipeline companies.

R.C. §4907.17 provides in relevant part as follows:

> No rate, joint rate, toll, classification, charge, or rental, no change in any rate, joint rate, toll, classification, charge, or rental, and no regulation or practice affecting any rate, joint rate, toll, classification, charge, or rental of a public utility shall become effective until the public utilities commission, by order, determines it to be just and reasonable, ***except as provided in this section and sections*** 4909.18, 4909.19, and 4909.191 of the Revised Code. ***Such sections do not apply to any rate***, joint rate, toll, classification, charge or rental or any ***regulation or practice affecting the same, of*** railroads, street and electric railways, for-hire motor carriers, and ***pipe line companies.***

R.C. 4909.17. (Emphasis supplied.)

It is somewhat tempting to read this language and immediately conclude that §4907.17 contains a rule of general application, but identifies exceptions to that rule that are to be found elsewhere, in the other identified provisions of the code. That conclusion would be incorrect, however, as it ignores the "except as provided in ***this*** section" language within the section. To correctly construe the statute, it is necessary to consider and understand its history. Together, R.C. §§4907.17, 4909.18 and 4909.19, are a recodification of a much lengthier law,[3] which was originally codified in relevant part at Ohio General Code ("G.C.") §614-20. Current R.C. §4907.17 and the first paragraph of

[1] The rates of for-hire motor carriers have since been deregulated, of course, and Cobra confesses it is unaware of any remaining street railways in Ohio subject to regulation by this Commission.
[2] Cobra notes that railroads, which also enjoy this exemption, are not public utilities by statutory definition. R.C. 4905.02(A)(4).
[3] 88th Ohio General Assembly, S.B. 66 (1929), was known generally as "The Carpenter Act" and through that portion that became G.C. §614-20, it contains the inception of this Commission's authority to approve utility rates before they go into effect. For reasons unknown to undersigned counsel, pipelines were exempt from that authority at the outset. Nor was such authority later provided to this Commission, where pipelines are concerned.

G.C. §614-20 are compared below, via blackline, to show every difference between the language of the first paragraph of G.C. §614-20[4] and §4909.17, as it exists today[5]:

> No rate, joint rate, toll, classification, charge, or rental, no change in any rate, joint rate, toll, classification, charge, or rental, ~~and no~~ or any regulation or practice affecting any rate, joint rate, toll, classification, charge, or rental of a public utility shall become effective until the ~~public utilities~~ commission, by order, determines it to be just and reasonable, except as hereinafter provided, ~~in this section and sections 4909.18, 4909.19, and 4909.191 of the Revised Code. Such~~ providing, however, that this sections ~~do~~ shall not not apply to any rate, joint rate, toll, classification, charge or rental or any regulation or practice affecting the same, of railroads, street and electric railways, for-hire motor carriers, and pipe line companies.

Unlike R.C. §4909.17, former G.C. §614-20 then continued at great length to set forth additional matters that are the obvious precursors to the procedures and the additional exceptions now found within R.C. §§4909.18 and 4909.19, as later amended and re-codified therein.

Reviewing these two versions of the General Assembly's statutory directive side-by-side eliminates any legitimate argument to the effect that R.C. §4909.17 can be applied to a pipeline company while at the same time R.C. §§4909.18 and 4909.19 are not applicable. Instead, any comparison of the two iterations of the same language makes it plain that Cobra is exempt from R.C. §4909.17 to the same extent that it is exempt from R.C. §§ 4909.18 and 4909.19 (which were once part of G.C. §640-20).

Cobra's reading of these statutes is further confirmed by the only decision by any court (and – with only two exceptions known to Cobra's counsel[6] -- by this Commission) in which R.C. §4909.17 is cited for anything other than the generally applicable proposition that public

[4] G.C. 614-20, Baldwin's General Code (1936).
[5] The blackline edits have been applied to reflect changes to R.C. §4909.17 at it exists today so that, if accepted, G.C 614-20 would result.
[6] The exceptions to which Cobra refers are discussed in Assignment of Error No. 3, below.

utility rates do not become effective until approved by this Commission. In *Federal Reserve Bank v. Purolator Courier Corp.*, 13 Ohio App. 3d 296 (8th Dist. Ct. App. 1974), the Cuyahoga County Court of Appeals stated unequivocally that because of R.C. §4909.17 the for-hire motor carrier defendant in that case possessed the power to establish rates and terms of service *"ex parte"*, meaning unilaterally, without Commission approval, by simply docketing those rates and terms with this Commission.

To be clear, Cobra does not contend that R.C. §4909.17 means that the rates of pipeline companies may not be regulated by this Commission. Nor does Cobra contend that its rates and service terms need not be just, reasonable, and non-discriminatory. Cobra merely points out that R.C. §4909.17 is the ***only*** provision of Ohio statutory law that requires public utilities to obtain this Commission's approval *prior to* implementing a change in rates or terms of service, and that this provision is inapplicable to pipelines such as Cobra. Because the section has no application to pipeline companies, changes in rates or service terms by pipeline companies are effective at the time the pipeline company informs its customers and this Commission that new rates are being placed in effect.

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. Cobra's newly effective rate then remained in place until

April 11, 2018, at which time this Commission Ordered Cobra to reduce its rates pending the outcome of this proceeding.[7]

ASSIGNMENT OF ERROR NO. 2: The Commission Erred In Paragraphs 25, and 35 Through 37 Of Its April 11, 2018 Entry When It Ordered Cobra To Provide An Immediate Refund Of 100% Of The Delta Between The Rate Cobra Placed In Effect On July 1, 2017 And The Rate Which Existed Prior To That Date.

This Commission erred a second time when it Ordered Cobra to refund the entire increase in the rate paid to it by its customers after June 30, 2017. The Commission's April 11, 2018 Entry presumes that, since R.C. §4909.42 is inapplicable, the default rule in which the Commission possesses authority to approve pipeline company rates in advance instead applies. For the reasons discussed in Assignment of Error No. 1, any such presumption is incorrect.

In the absence of the default rule within R.C. §4909.17, any Order to refund any portion of the lawfully effective rate which Cobra began to collect starting July 1, 2017, engages this Commission in retro-active rate making – a power which it also does not possess. *Keco Industries, Inc. v. Cin. Bell Tel. Co.*, 166 Ohio St. 254, 2 O.O.2d 85, 141 N.E.2d 465, paragraph two of the syllabus (R.C. Title 49 "affords no right of action for restitution of the increase in charges collected during the pendency of the appeal"). "[A]ny refund order would be contrary to our precedent declining to engage in retroactive ratemaking." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 2009 Ohio 604, 904 N.E.2d 853, ¶ 21; *See also, e.g., Green Cove Resort I Owners' Assn. v. Pub. Util. Comm.*, 103 Ohio St.3d 125, 2004 Ohio 4774, 814 N.E.2d 829, ¶ 27.

[7] It can be debated whether that portion of this Commission's April 11, 2018, which Orders Cobra to "reinstate" "Commission-approved rates" actually conforms to Ohio law. Notwithstanding, Cobra acknowledges this Commission's intention, and it immediately reduced its transportation rate accordingly.

ASSIGNMENT OF ERROR NO. 3: The Commission Erred In Paragraph 32 Of Its April 11, 2018 Entry When It Asserted It Intends To Apply the Procedures of §§4909.18 and 4909.19 to Cobra, After Having Just Declared Those Same Procedures Inapplicable to Cobra.

This Commission next erred when it denied Cobra the protections afforded by R.C. §4909.42 on the basis that R.C. §§4909.18 and 4909.19 are inapplicable to pipeline companies, and then expressed its determination to proceed under §§4909.18 and 4909.19, notwithstanding the inapplicability of those sections.

Within its Order, this Commission correctly states that it has applied §§4909.18 and 4909.19 to pipeline companies in the past. That fact alone, of course, does not mean that the Commission did so correctly, or that it possessed the lawful authority to do so. Furthermore, it is at least noteworthy that neither of the two prior occasions in which the Commission applied §§4909.18 and 4909.19 to pipeline companies involved a rate increase. Instead, the Commission applied these statutes on those two occasions to matters that were certain not to be appealed, as one of them was resolved by stipulation, and the other was not contested. *In the Matter of Natural Gas Transmission Company of Ohio,* Case No. 81-1401-PL-ATA, Entry Dec. 28, 1981, and *In the Matter of the Application of Ohio Intrastate Gas Transmission Company,*[8] Case No. 95-758-PL-ATA, Entry, May 30, 1996,1996 Ohio PUC LEXIS 32, 1996 Ohio PUC LEXIS 32. In this case, of course, Cobra has proposed a rate increase, contested issues already abound, and many more are likely to become known in the future. Neither this Commission, Cobra, nor any intervening party can have any confidence in a determination by this Commission that employs processes and procedures that are expressly inapplicable, by legislative fiat.

[8] Interestingly, in the *Ohio Intrastate Gas* case, the applicant recognized the inapplicability of former G.C. 614-20 and therefore urged this Commission's review under those statutes expressly applicable to railroads. Curiously, this Commission *sua sponte* chose nonetheless to employ procedures that it was aware were expressly inapplicable to pipeline companies. While the applicant's position may not necessarily have been correct, either, it at least had the virtue of not directly flouting the will of the legislature.

In fact, this Commission would likely find itself subject to a writ of prohibition initiated by one party or another should it insist upon such a course. The Commission is a creature of statute, and it has no authority to act beyond the statutory powers expressly granted to it by the Ohio General Assembly. *In Re Application Of Ohio Power Company,* 2015-Ohio-2056 (citing *Discount Cellular, Inc. v. Pub. Util. Comm.*), 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957, ¶ 51. If the Commission's decision to invoke R.C. §§4909.18 and 4909.19 notwithstanding the Commission's own acknowledgment that they are inapplicable is the result of a concern that the existing statutory scheme is inadequate, it should present its case for amendment to the General Assembly. On the other hand, if the Commission believes that its possesses powers sufficient to its purposes, then it should promulgate proper rules which recognize and give effect to those powers.

It is bewildering, however, that the Commission would choose to proceed in an *ad hoc* fashion in which it first recognizes that R.C. §§4909.18 and 4909.19 are inapplicable to pipeline companies in order to deprive Cobra of the protections offered by R.C. 4909.42, but then turn immediately about and declare that it will employ the process set forth in R.C. §§4909.18 and 4909.19 after all, despite the legislative prohibition against doing so. Furthermore, and much more importantly, it is patently error for this Commission to do so.

ASSIGNMENT OF ERROR NO. 4: This Commission Erred in Paragraph 24 When It Concluded Cobra's Bond Would Not Have Satisfied The Statute, Assuming That §4909.42 Might Be Applicable.

Cobra concedes that R.C. §4909.42 is probably inapplicable. In fact, given that it could have imposed its proposed rate at any time, the statute is probably irrelevant.

Still, R.C. §4909.42 was enacted to provide a specific remedy to a specific problem. That remedy was designed to protect utilities against the problem of prolonged delay in the regulatory

process, without also disadvantaging utility customers. Given that R.C. §4909.42 was not enacted until 1969[9] – some forty years after the Carpenter Act, at a time when it is simply unknown whether anyone considered, or was even aware of, the existing "pipeline exemption" to R.C. §4909.17, it is at least possible that the Ohio Supreme Court could conclude that notwithstanding the reference to R.C. §4909.18 within the statute, R.C. §4909.42 must also be applied in the unique circumstances of this case, in which a utility was subject to a prolonged proceeding that began only because the utility was Ordered to initiate a rate making process to which it is statutorily exempt in the first place.

Should such be the case, this Commission plainly erred within paragraph 24 of its April 11, 2018 Entry when it found that Cobra's bond would not satisfy the statutory requirement for a "bond" even if R.C. §4909.42 applies to Cobra. The Commission's definition is artificially narrow, and comports with neither plain English definitions of the term, legal definitions of the term, and is inconsistent with the language used by the General Assembly. Ballentine's Law Dictionary defines the word "bond" as follows:

> Noun: The obligation secured by a mortgage or deed of trust; a corporate obligation. 19 Am J2d Corp § 1059; at common law, a sealed instrument or specialty. 34 Am J1st Lim Ac § 82; **an obligation in writing which binds a signatory to pay a sum certain upon the happening of an event and carries a seal, except where controlled by a statute which dispenses with the necessity of a seal.** 12 Am J2d Bonds § 1. So defined, the term is generic, embracing investment bonds, penal bonds, indemnity, fidelity, and surety bonds. 12 Am J2d Bonds § 1. Less frequently, the term is used for a bail or a surety. Verb: To give a bond as security.

Ballentine's Law Dictionary © 2010, Lexis Nexis, a division of Reed Elsevier, plc. (Emphasis supplied).

Similarly, Black's Law Dictionary defines the term "bond", in part, using the following terms:

[9] 108th General Assembly, Sub. S.B. 94 (1969).

> . . . **The word "bond" shall embrace every written undertaking for the payment of money or acknowledgment of being bound for money, conditioned to be void on the performance of any duty, or the occurrence of anything therein expressed, and subscribed and delivered by the party making it, to take effect as his obligation,** whether it be sealed or unsealed; and, when a bond is required by law, an undertaking in writing without seal shall be sufficient.

Black's Law Dictionary, Free Online Legal Dictionary, 2nd Ed. (Emphasis supplied.)

The Ohio Revised Code plainly incorporates these common law definitions of the term "bond." Section 1.02 of the Revised Code defines the term in the most basic language, stating only that: "As used in the Revised Code, unless the context otherwise requires. . . (D) 'Bond' includes an undertaking." (In a bit of circular reasoning, section 1.02 also goes on to further provide that: "(E) 'Undertaking' includes a bond.")

The term "bond," used as it is in isolation within the statute, therefore encompasses ***any*** binding writing to pay a sum of money, subject to the performance of defined duties or rendered void by certain express conditions. Moreover, the statute plainly contemplates the filing of a bond issued by the *utility*, rather than the bond of a third party surety. Indeed, it is the utility that is directed to file its bond, and it is two officers of the utility who must expressly vouch "under oath" on behalf of "the utility" to refund any excess recovery through a temporary decrease in rates, as determined by the Commission.

Moreover, R.C. §4909.42 contains remarkably different language than other sections of the Ohio Revised Code. When those sections are reviewed, it is plain that when the General Assembly intended to require the bond of a third party surety, it certainly understood how to say so. R.C. §§122.90 (Minority Business Enterprises); 1315.07 (Check Cashing Services); 1322.022 (Mortgage Brokers); 1503.05 (Timber Sales); 1509.01 (Oil and Gas Developers); 1513.01 (Mining Permits); 2933.75 (Medicaid Fraud liens); 3332.08 (Private Career Colleges); 3706.02 (Air Quality Development Authority Board Members); 3714.02 (Construction and

Demolition Debris Landfill Operators); 4719.04 (Telephone Solicitors) are each an example of the General Assembly prescribing a third party surety. Innumerable additional examples exist within the Ohio Revised Code. When such statutes are compared to R.C. §4909.42, the difference in meaning is inescapable.

Finally, this Commission has misconstrued its brief entry of February 20, 1990 from the *Columbia Rate Case* (the sole authority upon which it relies) in the first place. The Commission may (or may not) have been concerned in 1990 when Columbia tendered its own bond rather than that of a third party surety. Whatever the Commission's true concerns, the only criticism actually expressed by the Commission regarding the form of Columbia's 1990 bond involves only the language of that bond, not the fact that it was Columbia's bond, rather than the bond of a third party surety. Specifically, the Commission took issue with Columbia's failure to satisfy the second of two "conditions precedent" that it stated were necessary to its acceptance of Columbia's bond. The Commission recognized that Columbia had indeed "bound" itself to the State and its customers. It objected to the fact that Columbia's bond did not contain the second condition precedent – an express promise to pay that refund by means of a future rate reduction in the manner in which the Commission might later direct.

It is true, of course, that Columbia submitted a third party bond as additional security almost immediately after the Commission issued its entry. Still, it is clear that the third party bond Columbia cause to be filed was not a response to this Commission's entry. Indeed, Columbia had indicated its intention to submit a third party bond even before the Commission issued the entry upon which it now relies (Suggesting, incidentally, at least one reason why the Commission's 1990 Order does not address the third party issue.) While it appears that the third party bond assuaged the Commission's concerns regarding the language of the bond of

Columbia itself, the submission of third party bond was, nonetheless, something over and above that which is required by the statute itself. Cobra takes small comfort in noting that its own bond, unlike Columbia's, does at least fully satisfy the language of the statute. This Commission has no legitimate basis upon which to assert that it does not -- assuming of course that 4909.42 can have any application in this case.

III. CONCLUSION

For the foregoing reasons, this Commission should GRANT Cobra's Application for Rehearing, and it should vacate paragraphs 22-25, 32, and 35 - 37 of that Entry.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The PUCO's e-filing system will serve notice of this filing upon counsel for any party that has entered any form of appearance in this matter, and the Staff of the Public Utilities Commission of Ohio.

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Summary: Application for Rehearing of the Commission's Entry Dated April 11, 2018. electronically filed by Mr. Michael D. Dortch on behalf of Cobra Pipeline Company LTD

EXHIBIT F

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Cobra Pipeline Company, Ltd. For an Increase in 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

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

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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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Cobra Pipeline Company, Ltd. For an Increase in 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

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

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.[1] 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.[2] Moreover, Cobra did not even ship natural gas for ORNG.[3] 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

[1] 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.
[2] Mr. Osborne did finance the formation of ORNG.
[3] 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.[4] 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.[5] 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.[6] 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 reversable 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.[7] However, this Commission's decision to strike portions of Cobra's Reply Brief because the Commission

[4] Direct Testimony of Mr. Snider at P.2, Lines 9-13.
[5] *Id.* at P.3, Lines 6-11.
[6] Transcript of January Hearing, Vol. I, P.197-202.
[7] 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.[8] 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 ExhibitsJC-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

[8] See September Opinion at ¶38.

Osborne's paid-in capital account. It's not in here, it's not in these projections.

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

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

Q. But you believe there will be an entry in the future?

As of 12-31-18, yes.[9]

Ms. Coatoam's testimony is valid evidence that capital contributions were made in December, 2018 by Mr. Osborne.[10] 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

[9] See *Transcript at Vol. I, Page 129, Line 16 to P. 130, Line 12.*

[10] 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.[11] After Cobra sought these protections, the Commission then remained silent for nearly another eight (8) months.

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

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

[11] 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.[12] 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,[13] 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

[12] 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, tit was making its new rates effective as of July 1, 2018.

[13] 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.[14] 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"

[14] 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.[15] 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 recieved all of Cobra's monthly invoices to certain customers for the calendar year of 2016 in DR #41.[16] 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.[17] 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.[18] Staff even

[15] See *September Order at ¶53.*
[16] Cobra's Response to DR #41 is Exhibit F to Jessica Carother's Direct Testimony.
[17] See John Berringer's Direct Testimony at P.3, Lines – 5-6.
[18] 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.[19]

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;[20] (b) Cobra's adjustment of "Professional Services – Legal" line item even though it was also outside of the test year;[21] 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.[22] 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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[19] See Staff's Letter at P.4.
[20] See *September Opinion at* ¶88.
[21] See *September Opinion at* ¶92.
[22] 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.[23]

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,[24] 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[25] during 2018.[26] This Commission's Staff

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[23] See *Direct Testimony of Carolyn Coatoam* at P.9, Line 1 – 14.
[24] 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 tail 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).
[25] This Commission found that Cobra was entitled to recover $2,496,505 in operating expenses. See *September Order* at ¶119.
[26] See Direct Testimony of Jessica Carothers *at P. 45, 9.*

has had three (3) years to review every piece of Cobra's financial information.[27] 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.[28] 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."[29] 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").[30] 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,[31] electric utilities,[32] waterworks and sewage disposal companies,[33]

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[27] 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.
[28] See Staff Letter at P.4.
[29] See *September Order* at ¶145.
[30] See Direct Testimony of Ed Hess at P. 7-9.
[31] See O.A.C. §4901:1-13-13.

and arguably telephone local exchange carriers.[34] 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.[35] 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.[36]

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."[37] However, Staff provided no evidence of how Cobra's customers have already paid for these taxes.[38] 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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[32] See O.A.C. §4901:1-9-05.
[33] See O.A.C. §4901:1-15-32.
[34] See O.A.C. §4901:1-7-21(D)(3)(a)(i).
[35] 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.
[36] 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.
[37] 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.)
[38] 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,

/s/ Michael D. Dortch

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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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Rate Case	Document	Description	Filed as Exhibit
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

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