

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
INVESTIGATION OF THE PROPOSED
RATES AND CHARGES OF COBRA
PIPELINE COMPANY, LTD.

CASE NO. 20-1613-PL-COI

ENTRY

Entered in the Journal on October 21, 2020

I. SUMMARY

{¶ 1} The Commission suspends the tariff filed by Cobra Pipeline Company, Ltd. on September 18, 2020, in Case No. 89-8041-PL-TRF, finds that there are reasonable grounds for complaint, and initiates an investigation of the company's proposed rates and charges pursuant to R.C. 4905.26.

II. DISCUSSION

{¶ 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} R.C. 4905.22 provides that every public utility shall furnish necessary and adequate service and facilities and 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, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the Commission.

{¶ 4} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation, or upon the Commission's initiative, regarding any rate, service, regulation, or practice proposed to be rendered by the public utility that is or will be in any respect unjust, unreasonable, insufficient, or unjustly discriminatory. If it appears that reasonable grounds for complaint are stated, the Commission shall fix a time for hearing.

{¶ 5} R.C. 4909.15(E) provides that, when the Commission is of the opinion, after hearing and after making specified determinations under R.C. 4909.15(A) and (B), that any rate or charge proposed to be rendered is, or will be, unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, the Commission shall fix and determine the just and reasonable rate or charge to be rendered and order such just and reasonable rate or charge to be substituted for the existing one.

{¶ 6} In Case No. 14-1654-GA-CSS, et al., the Commission directed Cobra, Orwell-Trumbull Pipeline Company, LLC, and any other pipeline companies owned or controlled by Richard M. Osborne to file applications 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. In light of concerns related to corporate structure and mismanagement that emerged in the *Complaint Case* and several other prior cases, 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 M. Osborne. *Complaint Case* at ¶¶ 95-97.

{¶ 7} On August 15, 2016, in Case No. 16-1725-PL-AIR (*Rate Case*), Cobra filed an application to increase its rates and charges. Cobra filed an amended application on September 26, 2016.

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

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

{¶ 10} 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. Cobra proposed to implement the following emergency rates:

	Current Rate	Proposed Rate
Firm Transportation Service		
Demand	\$0.50 x MDQ x number of days in the month ¹	\$1.05 x MDQ x number of days in the month
Commodity	\$0.10 per Dth ²	\$0.10 per Dth
Unauthorized Daily Overrun	\$0.50 per Dth	\$1.05 per Dth
Interruptible Transportation Service		
Commodity	\$0.50 per Dth	\$1.05 per Dth

{¶ 11} On December 7, 2018, Cobra’s motion for consolidation of the *Rate Case* and the *Emergency Rate Case* was granted.

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

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

{¶ 14} On September 11, 2019, the Commission issued an Opinion and Order in the *Rate Case* and the *Emergency Rate Case*, finding that Cobra failed to demonstrate that its existing rates and charges were insufficient to provide adequate net annual compensation and return on its property used and useful in the provision of its services. After a thorough assessment of Cobra’s rate base, revenues, and expenses pursuant to the comprehensive and

¹ “MDQ” is an abbreviation for maximum daily quantity.

² “Dth” is an abbreviation for dekatherm.

mandatory ratemaking formula set forth in R.C. 4909.15, the Commission determined that the Company's revenue requirement had largely remained unchanged. Accordingly, the Commission found that Cobra's current rates were sufficient to provide the Company with reasonable compensation for the services rendered to its customers. The Commission also denied Cobra's request to create a regulatory asset and establish a rider to charge customers for personal property taxes that the Company failed to pay over many years. Noting that Cobra's own witness acknowledged that the Company's failure to pay its taxes resulted from its mismanagement, the Commission found that the outstanding previously assessed personal property taxes for years prior to the test period, along with the associated penalties and interest, were imprudently incurred expenses that were barred from recovery by R.C. 4909.154. *Rate Case*, Opinion and Order (Sept. 11, 2019) at ¶¶ 108-109, 117-122.

{¶ 15} With respect to the *Emergency Rate Case*, the Commission determined that Cobra failed to sustain its burden of proof to demonstrate the presence of a genuine emergency situation justifying the extraordinary measure of emergency rate relief. Finding that Cobra's financial records contained numerous material errors and inconsistencies that the Company's witnesses were unable to explain, the Commission concluded that Cobra failed to provide sufficient reliable evidence to support its emergency rate application. The Commission also emphasized that the record indicated that Cobra's financial situation was largely a result of its own making and that the Company's owner and managing member, Richard M. Osborne, continued to actively threaten the Company's financial well-being. *Rate Case* at ¶¶ 143-151. Finally, given the Commission's significant concerns with Cobra's extensive financial mismanagement, self-dealing, operational shortcomings, and failure to comply with tax and other legal obligations, the Commission ordered further proceedings to determine whether a receiver should be appointed to operate and manage the Company. *Rate Case* at ¶¶ 152-157.

{¶ 16} On September 25, 2019, Cobra filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code as Case No. 19-15961 in the United States Bankruptcy Court, Northern District of Ohio.

{¶ 17} On October 11, 2019, Cobra filed an application for rehearing of the Opinion and Order, which was denied by the Commission on April 8, 2020. *Rate Case*, Fourth Entry on Rehearing (Apr. 8, 2020) at ¶ 45.

{¶ 18} On June 8, 2020, Cobra filed a notice of appeal of the Commission's decision in the *Rate Case* and the *Emergency Rate Case* to the Supreme Court of Ohio. Cobra's appeal remains pending at this time.

{¶ 19} On September 18, 2020, Cobra filed, in its docket for Commission-approved final tariffs, Case No. 89-8041-PL-TRF, correspondence indicating that Cobra was filing a tariff in final form. Cobra's correspondence does not request the Commission's review or approval of the "final" tariff and fails to provide any authorization or explanation for the tariff filing. The tariff accompanying the correspondence states that it is filed pursuant to Case No. 89-8041-PL-TRF and has an effective date of November 1, 2020. The tariff lists the following rates:

Firm Transportation Service	
Demand	\$1.09 per Dth x MDQ x number of days in the month
Commodity	\$0.10 per Dth
Authorized Daily Overrun	\$1.09 per Dth
Unauthorized Daily Overrun	\$1.19 per Dth
Interruptible Transportation Service	
Commodity	\$1.09 per Dth

{¶ 20} In response to Cobra's tariff filing, Northeast Ohio Natural Gas Corp. (NEO) filed, pursuant to R.C. 4905.26, a complaint against the Company on October 15, 2020, in

Case No. 20-1597-GA-CSS. In its complaint, NEO states that it distributes natural gas to over 30,000 customers in Ohio and receives natural gas transportation service from Cobra under the terms of the Company's tariff. NEO further states that, although Cobra's rates remained unchanged as a result of the Commission's recent orders in the *Rate Case* and the *Emergency Rate Case*, the Company is now unilaterally attempting to impose new rates that are more than double the current rates in effect and higher than the rates proposed in the *Rate Case* and the *Emergency Rate Case* that the Commission rejected. NEO asserts that, while the reorganization plan filed by Cobra on September 19, 2020, in its bankruptcy proceeding acknowledges that the tariff is subject to analysis and acceptance by the Commission, the Company did not offer the Commission any justification or explanation for the tariff filing and failed to provide notice to NEO of the tariff changes. NEO notes that, in the *Rate Case*, Cobra admitted that it must notify its customers prior to a change in rates. NEO adds that Cobra also acknowledged that the Commission has jurisdiction over the tariffs filed by a pipeline company either on the Commission's own initiative or in response to a complaint filed pursuant to R.C. 4905.26. NEO claims that Cobra has no authority under R.C. Chapter 4909 to impose new rates without the Commission's approval; that the Company failed to provide notice of the tariff filing to customers; and that the Company's proposed rates are unjust and unreasonable, in violation of R.C. Chapter 4909 and 4905.26. Accordingly, NEO requests, among other things, that the Commission find, pursuant to R.C. 4905.22 and 4905.26, that Cobra's filing of the tariff is unjust, unreasonable, and unlawful; that the proposed rates are unjust, unreasonable, and unlawful; and that the Company should cease and desist from implementing the tariff unless and until it is approved by the Commission. Along with its complaint, NEO also filed a motion requesting that the Commission suspend or prohibit Cobra's implementation of the tariff filed on September 18, 2020.

{¶ 21} Upon review, the Commission finds that Cobra's tariff filing dated September 18, 2020, in Case No. 89-8041-PL-TRF, is unjust and unreasonable and, therefore, the tariff filing should be suspended until otherwise ordered by the Commission. As Cobra itself admitted in its reorganization plan in the bankruptcy proceeding, the Company's tariff and

tariffed rates are subject to analysis and acceptance by the Commission (September 19, 2020 Plan of Reorganization at 3, 9). Cobra also previously acknowledged, in the *Rate Case*, that the Commission has authority to set aside, suspend, and modify the Company's tariffed rates following a tariff filing (October 11, 2019 Application for Rehearing at 8; October 26, 2018 Post-Hearing Brief at 7-8). Although Cobra has recognized the Commission's authority over its rates and tariffs, the Company's September 18, 2020 tariff filing did not seek the Commission's acceptance of its proposed tariff and, instead, attempted to implement the tariff effective November 1, 2020, without any notice to customers or review by the Commission.

{¶ 22} The Commission also finds, upon its initiative, that an investigation into Cobra's proposed rates and charges should be undertaken pursuant to R.C. 4905.26. We find that the rates specified in the September 18, 2020 tariff filing constitute reasonable grounds for complaint under R.C. 4905.26, as they are significantly higher than the rates that were recently rejected by the Commission in the *Rate Case* and the *Emergency Rate Case*. Cobra provided no application or schedules supporting a rate increase. Neither did Cobra offer a plan to remediate, or even acknowledge, the substantial mismanagement concerns raised by the Commission in the *Rate Case* and the *Emergency Rate Case*.

{¶ 23} The review of the reasonableness of Cobra's proposed rates and charges should be conducted in general accordance with the methods and procedures followed under R.C. Chapter 4909. Accordingly, in order to facilitate the Commission's investigation of the proposed rates and charges, Cobra is directed to file, in this docket, a rate application and supporting information, including a proposed test period and date certain. Following Cobra's filing of the requisite information, the Commission will fix a time for hearing on the Company's proposed rates and charges.

{¶ 24} Finally, by October 30, 2020, Cobra is directed to send a letter of notice of the tariff suspension and rate investigation, along with an attached copy of this Entry, to each of its customers and file confirmation of the mailing in this docket. By October 27, 2020,

Cobra should provide the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, a proposed draft of the letter for review and approval prior to the Company's mailing of the letter to its customers.

III. ORDER

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That Cobra's tariff filing dated September 18, 2020, in Case No. 89-8041-PL-TRF, be suspended. It is, further,

{¶ 27} ORDERED, That, upon the Commission's initiative, an investigation of Cobra's proposed rates and charges be undertaken. It is, further,

{¶ 28} ORDERED, That the investigation proceed in accordance with this Entry. It is, further,

{¶ 29} ORDERED, That, in accordance with Paragraph 24, Cobra provide notice of the tariff suspension and rate investigation to its customers. It is, further,

{¶ 30} ORDERED, That a copy of this Entry be docketed in Case No. 89-8041-PL-TRF. It is, further,

{¶ 31} ORDERED, That a copy of this Entry be served upon Cobra and all other interested persons 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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10/21/2020 3:03:48 PM

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Case No(s). 89-8041-PL-TRF

Summary: Entry suspending the tariff filed by Cobra Pipeline Company, Ltd. on September 18, 2020, in Case No. 89-8041-PL-TRF, finding that there are reasonable grounds for complaint, and initiating an investigation of the company's proposed rates and charges pursuant to R.C. 4905.26. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio