

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 April 23, 2021

{¶ 1} 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.

{¶ 2} 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.

{¶ 3} 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.

{¶ 4} 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.

{¶ 5} On September 11, 2019, the Commission issued an Opinion and Order in Case No. 16-1725-PL-AIR, et al., 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 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. *In re Cobra Pipeline Co., Ltd*, Case No. 16-1725-PL-AIR, et al. (*Rate Case*), Opinion and Order (Sept. 11, 2019) at ¶¶ 108-109, 117-122.

{¶ 6} The Commission also 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.

{¶ 7} 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.

{¶ 8} On September 18, 2020, Cobra filed, in its docket for Commission-approved final tariffs, Case No. 89-8041-PL-TRF, correspondence indicating that the Company was filing a tariff in final form, with an effective date of November 1, 2020. Cobra's correspondence did not request the Commission's review or approval of the "final" tariff and failed to provide any authorization or explanation for the tariff filing.

{¶ 9} By Entry dated October 21, 2020, in the above-captioned case, the Commission found that Cobra's tariff filing was unjust and unreasonable and, therefore, suspended the tariff filing until otherwise ordered by the Commission. The Commission also found that the rates specified in the tariff filing constitute reasonable grounds for complaint under R.C. 4905.26, as they are significantly higher than the rates that were rejected by the Commission in the *Rate Case*. The Commission, therefore, initiated an investigation into Cobra's proposed rates and charges and directed the Company to file, in this docket, a rate application and supporting information, including a proposed test period and date certain.

{¶ 10} On December 10, 2020, in response to the October 21, 2020 Entry, Cobra filed certain exhibits in support of its proposed tariff. In its response, Cobra also agreed to provide, to the best of its ability, information requested by Staff in the course of its investigation of the proposed tariff.

{¶ 11} At this time, the attorney examiner finds that a prehearing conference should be scheduled for May 7, 2021, at 10:00 a.m. Due to the COVID-19 pandemic, the prehearing conference will be held using remote access technology that facilitates participation by telephone and/or live video on the internet. Access information for the prehearing

conference will be provided to counsel for Cobra, Staff, and any intervenors at their electronic mail address of record. During the prehearing conference, the parties should be prepared to discuss the status of the investigation of Cobra's proposed tariff, as well as a potential procedural schedule. Cobra should also be prepared to provide the Commission with a report on the status of its bankruptcy proceeding.

{¶ 12} Additionally, the attorney examiner finds that motions to intervene in this proceeding should be filed by April 30, 2021.

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That a prehearing conference be held on May 7, 2021, in accordance with Paragraph 11. It is, further,

{¶ 15} ORDERED, That motions to intervene in this proceeding be filed by April 30, 2021. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Sarah J. Parrot

By: Sarah J. Parrot
Attorney Examiner

MJA/kck

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Case No(s). 20-1613-PL-COI

Summary: Attorney Examiner Entry scheduling a prehearing conference to be held on 5.7.21, in accordance with Paragraph 11 and ordering that motions to intervene in this proceeding be filed by 4.30.21.

electronically filed by Kelli C. King on behalf of Sarah J. Parrot, Attorney Examiner, Public Utilities Commission of Ohio