

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|   |   |                         |
|---|---|-------------------------|
| In the Matter of the Joint Application of | ) |                         |
| Utility Pipeline, Ltd., Cobra Pipeline    | ) |                         |
| Company, Ltd., and Knox Energy            | ) | Case No. 21-0803-GA-ATR |
| Cooperative Association to Substitute     | ) |                         |
| Natural Gas Service and Transfer Assets   | ) |                         |
| and Customers                             | ) |                         |

**MEMORANDUM IN RESPONSE TO THE MOTIONS TO INTERVENE BY  
NORTHEAST OHIO NATURAL GAS CORP. AND STAND ENERGY CORP.**

**I. INTRODUCTION**

Northeast Ohio Natural Gas Corporation (“NEO”) and Stand Energy Corporation (“Stand Energy”) have moved to intervene in this case. While Utility Pipeline, Ltd. (“UPL”), and Knox Energy Cooperative Association, Inc. (“Knox”) do not oppose intervention, UPL and Knox seek to ensure that the proposed intervenors will not attempt to inject collateral issues into this case that are not relevant to determining whether the transfer of assets belonging to Cobra Pipeline Company, Ltd. (“Cobra”), will result in adequate and uninterrupted service, which is the controlling question before the Commission in this proceeding.

More specifically, both NEO and Stand Energy cite their existing service agreements with Cobra as the basis to intervene in this proceeding. However, those agreements are not being assigned to UPL or Knox as part of the acquisition of Cobra’s natural gas systems, and the question of whether those agreements will remain in place or be enforceable as against Cobra is an issue squarely within the jurisdiction of the United States Bankruptcy Court for the Northern District of Ohio (“Bankruptcy Court”), where Cobra is a debtor in Chapter 11 bankruptcy. Such issues are not within the Commission’s jurisdiction and are not issues for determination in this proceeding. Thus, while UPL and Knox are not opposing intervention, they oppose any effort to

introduce irrelevant collateral issues that are outside of the Commission's purview in deciding the narrow issue presented by this case.

Accordingly, UPL and Knox respectfully request that if the Commission permits NEO and Stand Energy to intervene in this proceeding, the Commission should expressly limit any such intervention to the matters relevant to the issues that are determinative and relevant to the questions presented in this proceeding.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

The filing of the Joint Application was prompted by and related to proceedings in the Bankruptcy Court. Cobra is currently in Chapter 11 bankruptcy. *See In re Cobra Pipeline Co., Ltd.*, Case No. 19-15961 (Bankr. N.D. Ohio). The Bankruptcy Court has approved Cobra's sale of the systems described in the Joint Application and substantially all of its other assets used in the operation of its business to UPL, and UPL's subsequent assignment of the systems to Knox, pending any required regulatory approval by the Commission. *See* Bankr. Dkt. No. 217. Pursuant to that approval by the Bankruptcy Court, the Joint Application was filed on July 16, 2021 to seek the Commission's approval of the transfer of regulated assets and those assets' subsequent operation under the ownership of a non-regulated cooperative. The Joint Applicants have submitted that the principal issue in this case is whether the proposed transfer will result in adequate and uninterrupted service.

On July 20, 2021, NEO filed a motion to intervene in this case. NEO is a natural gas company as defined in 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. On July 28, 2021, Stand Energy filed its own motion to intervene. Stand Energy is certified as a competitive retail natural gas marketer and competitive retail electric aggregator/power broker. *See* Certificate No. 02-043G (competitive

retail natural gas marketer); Certificate No. 19-1390E (competitive retail electric aggregator/power broker services). Both parties assert that they have real and substantial interests that may be prejudiced as a result of this proceeding and that cannot be represented by existing parties. This memorandum in response aims to address both motions together, as each raises similar legal and factual issues.

### **III. LEGAL STANDARD**

Unless “[a] statute of this state or the United States confers a right to intervene,” a person must have “a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented by existing parties.” Ohio Adm.Code 4901-1-11(A).

In deciding whether to permit intervention, the Commission must consider:

- (1) The nature and extent of the prospective intervenor’s interest.
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person’s interest is represented by existing parties.

Ohio Adm.Code 4901-1-11(B).

The relevant rule further provides that:

Unless otherwise provided by law, the commission, the legal director, the deputy legal director, or the attorney examiner may:

- (1) Grant limited intervention, which permits a person to participate with respect to one or more specific issues, if the person has no real and substantial interest with respect to the remaining issues or the person’s

interest with respect to the remaining issues is adequately represented by existing parties.

(2) Require parties with substantially similar interests to consolidate their examination of witnesses or presentation of testimony.

Ohio Adm.Code 4901-1-11(D).

#### **IV. ARGUMENT**

NEO and Stand Energy's motions to intervene refer to their "existing service agreement" with Cobra and state they seek to make sure that "existing service agreements are honored" (NEO Mem. at 3; Stand Energy Mem. at 3.) But the Commission is not the forum in which to address the fate of proposed intervenors' existing service agreements with Cobra, because Cobra is in a federal bankruptcy proceeding in the Bankruptcy Court, which has the jurisdiction to address Cobra's ongoing contractual obligations. *See* 11 U.S.C. §§ 363, 365. Cobra is not assigning its agreements with NEO and Stand Energy to UPL or Knox, and the assignment or enforceability of those agreements is not at issue in this Commission proceeding. Moreover, neither UPL nor Knox is a party to any "existing service agreement" with NEO or Stand Energy.

Thus, NEO and Stand Energy's respective assertions in their motions to intervene that they wish to see that "existing service agreements are honored" rest on a mistaken premise and improper view of the Commission's jurisdiction in this proceeding. (NEO Mem. at 3; Stand Energy Mem. at 3.) The disposition of Cobra's contracts with NEO and Stand Energy is an issue for the Bankruptcy Court to address, and the Commission does not have jurisdiction to address the issue of whether Cobra should honor its contractual commitments to NEO and Stand Energy in light of the pending bankruptcy proceeding. *See, e.g., In re FirstEnergy Sols. Corp.*, 945 F.3d 431, 446 (6th Cir. 2019) ("The bankruptcy court has jurisdiction to decide whether FES, as a Chapter 11 debtor-in-possession, may reject the ICPA and PPA contracts, meaning that FES can reject the contracts subject to proper bankruptcy court approval and FERC cannot independently

prevent it.”). For the proposed intervenors to assert otherwise implicitly creates a conflict between the Commission’s authorizing statutes and rules, on the one hand, and the U.S. Bankruptcy Code, on the other.

The motions to intervene also incorrectly imply that the Commission should apply a different standard of review in this proceeding. The narrow issue in this Commission proceeding is whether the Joint Application is reasonable and in the public interest, a standard that has historically been met when applicants have shown that the proposed transfer will result in uninterrupted and adequate service. *See, e.g., In the Matter of the Joint Application of Utility Pipeline Ltd., Ludlow Natural Gas Company, LLC and Knox Energy Cooperative Association for Approval of the Transfer of Assets and Substitution of Service*, Case No. 17-1785-GA-ATR, Finding and Order (Oct. 4, 2017); *In the Matter of the Application of Northern Industrial Energy Development, Inc. and Knox Energy Cooperative Association, Inc. to Substitute Natural Gas Delivery Service and Transfer Assets and Customers*, Case No. 05-1267-GA-ATR, Finding and Order (Dec. 14, 2005); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a Transfer of Facilities and Customers, and a Transportation Agreement with Utility Pipeline Ltd.*, Case No. 04-1417-GA-ATR, Finding and Order (Feb. 2, 2005).

UPL and Knox are not asserting in this memorandum that the pendency of the bankruptcy case prevents the Commission from evaluating whether the proposed transfer will result in the provision of adequate and uninterrupted service. But the motions to intervene, in and of themselves, present issues about Cobra’s private contractual commitments to NEO and Stand Energy that are not and should not be an issue in this proceeding. Otherwise, the Commission risks entering into jurisdictional matters relating to whether Cobra will continue its agreements with NEO and Stand Energy, which will be issues squarely before the Bankruptcy Court.

Moreover, it is expected that Knox will be entering into new transportation contracts with utilities such as NEO, and there is the possibility that Knox will negotiate appropriate agreements with suppliers and brokers such as Stand Energy. However, neither NEO nor Stand Energy should be permitted to intervene in this proceeding in order to seek leverage in those contract negotiations, which would be an improper use of intervention in this proceeding.

#### **IV. CONCLUSION**

Accordingly, for the reasons set forth in this memorandum in response, UPL and Knox respectfully request that if the Commission permits NEO and Stand Energy to intervene in this proceeding, the Commission should expressly limit any such intervention to the matters relevant to the issues that are determinative and relevant to the questions presented in this proceeding.

Dated: August 4, 2021

Respectfully submitted,

/s/ David F. Proaño

David F. Proaño (0078838), Counsel of Record

dproano@bakerlaw.com

Taylor M. Thompson (0098113)

tathompson@bakerlaw.com

BAKER & HOSTETLER LLP

Key Tower

127 Public Square, Suite 2000

Cleveland, Ohio 44114

Telephone: 216-621-0200

Facsimile: 216-696-0740

*Counsel for Utility Pipeline, Ltd. and Knox Energy  
Cooperative Association, Inc.*

### **CERTIFICATE OF SERVICE**

I certify that a true copy of the foregoing document was filed electronically using the Commission's Docketing Information System on August 4, 2021. Notice of this filing will be sent automatically via email to counsel for all parties.

Dated: August 4, 2021

/s/ David F. Proaño  
David F. Proaño (0078838)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**8/4/2021 5:32:21 PM**

**in**

**Case No(s). 21-0803-GA-ATR**

Summary: Memorandum in Response to Motions to Intervene electronically filed by Mr. David F. Proano on behalf of Utility Pipeline, Ltd. and Knox Energy Cooperative Association, Inc.