

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE JOINT
APPLICATION OF UTILITY PIPELINE, LTD.,
COBRA PIPELINE COMPANY, LTD., AND
KNOX ENERGY COOPERATIVE
ASSOCIATION, INC. TO SUBSTITUTE
NATURAL GAS SERVICE AND TRANSFER
ASSETS AND CUSTOMERS.

CASE NO. 21-803-GA-ATR

ENTRY

Entered in the Journal on August 10, 2021

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

{¶ 2} 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.

{¶ 3} On July 16, 2021, Cobra, Utility Pipeline, Ltd. (UPL), and Knox Energy Cooperative Association, Inc. (Knox) (jointly, Joint Applicants) filed a joint application to substitute natural gas service and transfer assets and customers. Contemporaneously, the Joint Applicants filed the direct testimonies of three individuals, each of whom is an official with one of the above respective entities, to support the application. According to the application, Cobra is currently in Chapter 11 bankruptcy, and the United States Bankruptcy Court for the Northern District of Ohio has approved Cobra's sale of the Holmesville, North Trumbull, and Churchtown natural gas pipeline systems and natural gas taps for certain rural farms and a nursery (collectively, Systems), along with substantially all of its other assets used in operation of its business, to UPL and has approved UPL's subsequent assignment of these Systems to Knox, pending any required regulatory approval by the Commission. Consequently, the joint application requests that the Commission authorize the transfer of assets and customers from Cobra to UPL, to approve UPL's subsequent assignment of the assets and customers to Knox, and to approve the substitution of natural

gas service by UPL and Knox for Cobra. Joint Applicants explain that UPL is a limited liability corporation engaged in the business of providing natural gas distribution management and operations services to natural gas utilities and natural gas cooperatives providing services in several states, including Ohio. Knox is a member-owned, not-for-profit corporation that is operated exclusively for its members and is engaged in the business of supplying natural gas to its members within Ohio. Therefore, Joint Applicants assert that, in accordance with R.C. 4905.02 and 4905.04, the Commission does not have jurisdiction over UPL or Knox except for gas pipeline safety purposes. Generally, the Joint Applicants describe that Knox will own the Systems, while UPL will manage and operate the Systems on Knox's behalf, pursuant to a management agreement between the two entities. According to Joint Applicants, this situation is not an abandonment of service by Cobra under R.C. 4905.20 and 4905.21, because cessation of service by Cobra is synchronously accompanied with uninterrupted and adequate service by UPL and Knox, nonregulated entities.

{¶ 4} R.C. 4905.20 provides that no public utility furnishing services within this state shall abandon any gas line or any portion thereof, or the service rendered thereby that has once been used for public business, except as provided in R.C. 4905.21. R.C. 4905.21 provides that any public utility wishing to abandon all or any part of its lines must file an application with the Commission and obtain authorization to abandon service prior to such abandonment.

{¶ 5} The Commission has previously found that transactions where customers move from service by a regulated utility to service by a nonregulated entity are not tantamount to an abandonment of service or facilities and are not subject to Commission review under R.C. 4905.20 and 4905.21. *In re Northern Industrial Energy Development, Inc. and Knox Energy Cooperative Association, Inc.*, Case No. 05-1267-GA-ATR, Finding and Order (Dec. 14, 2005); *In re Columbia Gas of Ohio, Inc.*, Case No. 04-1417-GA-ATR, Finding and Order (Feb. 2, 2005). In such cases, the Commission has found it appropriate to exercise its authority pursuant to R.C. 4905.05 and 4905.06 to ensure that the proposed transfer results

in uninterrupted and adequate service to the utility's existing customers. *In re Ohio Edison Co.*, Case No. 99-955-EL-ATR, Finding and Order (Nov. 18, 1999).

{¶ 6} On July 20, 2021, Northeast Ohio Natural Gas Corp. (NEO) filed a motion to intervene in this proceeding.

{¶ 7} By Entry dated July 26, 2021, the attorney examiner directed Cobra to send a letter of notice with an attached copy of the July 26, 2021 Entry, by August 6, 2021, to all of its customers of the proposed transfer to UPL and Knox and to file confirmation of the mailing of the letter of notice and attached Entry to customers, along with a list of the customers to which the notice was provided. In addition, the attorney examiner also solicited comments from interested persons or entities regarding the joint application and instructed interested parties to file their comments by August 20, 2021.

{¶ 8} On July 28, 2021, Stand Energy Corporation (Stand) filed a motion to intervene in this proceeding.

{¶ 9} On July 30, 2021, Joint Applicants filed a joint motion for a supplemental procedural schedule and also requested expedited treatment. In the joint motion, Joint Applicants request that the procedural schedule be expanded to allow for reply comments or supplemental testimony to be filed by August 27, 2021, and request that any hearing be set no later than September 3, 2021. In support of their request, Joint Applicants argue that such a procedural schedule will assist parties in presenting the issues in an efficient fashion, which will help avoid financial and operational concerns associated with extending the case beyond August 2021. Joint Applicants note that the Asset Purchase Agreement includes a provision that allows UPL to terminate the transaction if Commission approval has not been received by January 31, 2022. Further, Cobra entered into an amended Cash Collateral Order with Huntington National Bank (Huntington), which extended the budget for Cobra's operations through August 2021, and Cobra notes that it is unclear whether Huntington will further extend such budget. For the above reasons, Joint Applicants assert that the above timelines underscore the urgency of a prompt Commission review, and they

believe the proposed schedule will enable such a review. Joint Applicants request expedited treatment of the motion for substantially the same reasons. Joint Applicants note that Stand does not object to expedited consideration, that NEO does object to such consideration, and that Staff had not responded to Joint Applicants as of the time of filing.

{¶ 10} On August 6, 2021, NEO filed a memorandum in opposition to the joint motion for a supplemental procedural schedule. NEO notes that its customers are dependent on gas currently delivered by the assets owned and operated by Cobra. First, NEO argues that there is a significant lack of information within the joint application regarding how customers like NEO will be served under the Joint Applicants' proposal. Further, NEO asserts that, due to the uniqueness of this application, Commission review should follow a deliberative process with meaningful development of the facts for the Commission's consideration, a process the Joint Applicants' proposed schedule would fail to achieve. NEO believes that it would be inappropriate to allow Joint Applicants to supplement or revise their testimony after intervenor comments have been filed since these comments would no longer be addressing the proposal before the Commission. Therefore, NEO requests that the Commission adopt a procedural schedule to allow intervenors to file their comments after Joint Applicants' proposal is complete. NEO also argues that it would be prejudicial to intervenors to adopt a procedural schedule that allows supplemental testimony to be filed without providing intervenors the opportunity to pursue appropriate discovery in response to such testimony; therefore, NEO requests that intervenors be allowed to conduct expedited discovery before intervenor comments are filed and hearing if the Commission allows Joint Applicants to file supplemental testimony. Further, NEO asserts that the Commission should not honor the Joint Applicants' hearing date request. According to NEO, Joint Applicants' request to proceed urgently in this matter is belied by the nearly two-year process Joint Applicants took in maximizing value to creditors at sale. NEO further notes that the Joint Applicants made a strategic choice to combine the purchase of Cobra's assets and the transfer of those assets from UPL to Knox into one case. According

to NEO, review of such a transfer, which would take the above assets beyond the jurisdiction of the Commission, should not be placed on an accelerated timeline.

{¶ 11} Pursuant to Ohio Adm.Code 4901-1-12, the attorney examiner grants the Joint Applicants' motion for a supplemental procedural schedule, in part, and denies the motion, in part. To help further develop the facts and issues surrounding this matter, the attorney examiner will allow reply comments regarding the joint application to be filed in the docket. Reply comments must be filed by August 27, 2021. Although the attorney examiner acknowledges Joint Applicants' request for urgency, the attorney examiner believes review and consideration of the filed comments is appropriate before possibly setting this matter for hearing; therefore, the attorney examiner denies Joint Applicants' request to set a deadline to file supplemental testimony and to set a date for hearing. If a hearing is deemed necessary, the attorney examiner will schedule it via subsequent entry, which would likely include deadlines for the filing of testimony by Commission Staff and any intervenors, as well as supplemental testimony by Joint Applicants. Any further procedural scheduling, such as establishing specific discovery timelines, will also occur via subsequent entry.

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That the joint motion for a supplemental procedural schedule be granted, in part, and denied, in part. It is, further,

{¶ 14} ORDERED, That any reply comments regarding the joint application be filed by August 27, 2021. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Matthew J. Sandor

By: Matthew J. Sandor
Attorney Examiner

GAP/kck

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

Summary: Attorney Examiner Entry ordering tat the joint motion for a supplemental procedural schedule be granted, in part, and denied, in part and ordering that any reply comments regarding the joint application be filed by August 27, 2021.
electronically filed by Kelli C. King on behalf of Matthew Sandor, Attorney Examiner, Public Utilities Commission of Ohio