

**FILE**

**BEFORE  
THE OHIO POWER SITING BOARD**

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In the Matter of the Application of BP-Husky :  
Refining, LLC for a Certificate of :  
Environmental Compatibility and Public Need :  
for a 138/69kV Substation in Oregon, Lucas :  
County, Ohio. :

Case No. 09-750-EL-**PUCO**

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**JOINT STIPULATION  
AND  
RECOMMENDED FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW**

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January 26, 2010

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**BEFORE  
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AND  
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BP-Husky Refinery, LLC ("BP-Husky" or "Applicant"), the Staff of the Ohio Power Siting Board (OPSB Staff), and intervener American Transmission Systems, Inc. (ATSI) (collectively referred to as "the Parties") submit this Joint Stipulation and Recommended Findings of Fact and Conclusions of Law ("Joint Stipulation") for adoption by the Ohio Power Siting Board (the "Board"). This Joint Stipulation is intended by the Parties to resolve all matters pertinent to BP-Husky's proposed 138/69kV substation project in Oregon, Lucas County, Ohio.

**I. INTRODUCTION**

BP-Husky proposes to construct a 138/69 kV substation to provide additional electrical power and improved reliability to the BP-Husky Refinery (the "Project"). The Project is more fully described in BP-Husky's Application, which was filed with the Board on September 23, 2009. This Joint Stipulation results from discussions between

the Parties, who agree that this Joint Stipulation and Recommendation is supported by the record and is, therefore, entitled to careful consideration by the Board. Accordingly, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the Project, subject to the conditions contained herein.

## **II. STIPULATIONS**

### **A. Recommended Findings of Fact**

The Parties agree that the record in this case contains sufficient probative evidence for the Board to find and determine, as findings of fact, that:

- 1) BP-Husky Refinery, LLC is an Ohio corporation and is considered a “person” as defined in 4906.01(A) of the Revised Code.
- 2) The proposed Project is a “major utility facility” as defined in Section 4906.01(B)(2) of the Ohio Revised Code.
- 3) On September 23, 2009, Applicant filed its Application for a Certificate of Environmental Compatibility and Public Need for the Project with the Board under this docket number.
- 4) On November 3, 2009, the Board informed Applicant that sufficient information was submitted for review and that the application was certified as being complete.
- 5) On November 10, 2009 Applicant filed proof of service of the Certified Application on local officials and libraries in accordance with Rule 4906-5-08, Ohio Administrative Code.

- 6) On November 18, 2009, the Board issued an Entry that scheduled the public hearing regarding the Certified Application. The public hearing was scheduled for January 21, 2010 at 6:00 p.m. at the Oregon City Council Chambers, 5330 Seaman Road, Oregon, Ohio, 43616. The adjudicatory hearing was scheduled to commence on January 27, 2010 at 10:00 a.m. at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio.
- 7) On December 14, 2009, Applicant filed proof of publication of the newspaper notice of the proposed Project, as required by Rule 4906-5-08, Ohio Administrative Code. The notice was published on December 5, 2009 in *The Toledo Blade*.
- 8) On January 5, 2010, Staff issued and filed its "Staff Report of Investigation" for the proposed Project, recommending that a Certificate of Environmental Compatibility and Public Need be issued as described in the Application, subject to certain specified conditions.
- 9) A public hearing was held on January 21, 2010 at 6:00 p.m. at the Oregon City Council Chambers, 5330 Seaman Road, Oregon, Ohio, 43616. [The adjudicatory hearing was convened on January 27, 2010 at the offices of the Public Utilities Commission of Ohio in Columbus, Ohio.]
- 10) Adequate data on the proposed Project has been provided to the Board and its Staff to determine the basis of the nature of the probable environmental

impact of the proposed facility, as required by Section 4906.10 (A)(2), Ohio Revised Code.

- 11) Adequate data on the proposed Project has been provided to the Board and its Staff to determine that, with the required conditions, the facility represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations, as required by Section 4906.10 (A)(3), Ohio Revised Code.
- 12) Adequate data on the proposed Project has been provided to the Board and its Staff to determine that the proposed facility will comply with Chapters 3704, 3734, and 6111 of the Ohio Revised Code, Sections 1501.33, 1501.34 and 4561.32 of the Ohio Revised Code and all regulations adopted thereunder, as required by Section 4906.10 (A)(5), Ohio Revised Code.
- 13) Adequate data on the proposed Project has been provided to the Board and its Staff to determine that the proposed facility will serve the public interest, convenience and necessity, as required by Section 4906.10 (A)(6), Ohio Revised Code.
- 14) Adequate data on the proposed Project has been provided to the Board and its Staff to determine the proposed facility's impact on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code that is located within the site, as required by Section 4906.10 (A)(7), Ohio Revised Code.

- 15) Adequate data on the proposed Project has been provided to the Board and its Staff to determine that the proposed facility incorporates maximum feasible water conservation practices considering available technology and the nature and economics of various alternatives, as required by Section 4906.10 (A)(8), Ohio Revised Code.
- 16) The information, data and evidence in the record of this proceeding provides substantial and adequate evidence and information to enable the Board to make an informed decision on the Application for the proposed Project.

**B. Recommended Conclusions of Law**

The Parties further agree that the record in this case contains sufficient probative evidence, if conditions in the certificate are adopted as recommended by the Parties, for the Board to find and determine, as conclusions of law, that:

- 1) Applicant, BP Husky Refining LLC”, is considered a “person” under Section 4906.01(A), Ohio Revised Code.
- 2) The proposed Project is a “major utility facility” as defined by Section 4906.01(B)(2), Ohio Revised Code.
- 3) Applicant’s Application complies with the requirements of Section 4906-13-01, *et seq.* of the Ohio Administrative Code.
- 4) The record establishes the nature of the probable environmental impact from construction, operation and maintenance of the proposed Project, as required by Section 4906.10(A)(2), Ohio Revised Code.

- 5) The record establishes that the proposed Project represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations, as required by Section 4906.10(A)(3), Ohio Revised Code.
- 6) The record establishes that the proposed Project will comply with Chapters 3704, 3734, and 6111, Ohio Revised Code, and all rules and regulations adopted under those chapters, and under Sections 1501.33, 1501.34 and 4561.32, Ohio Revised Code, all as required by Section 4906.10(A)(5), Ohio Revised Code.
- 7) The record establishes that the proposed Project will serve the public interest, convenience and necessity, as required by Section 4906.10(A)(6), Ohio Revised Code.
- 8) The record establishes that the impact of the proposed Project on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code that is located within the site has been determined, as required by Section 4906.10(A)(7), Ohio Revised Code.
- 9) The record establishes that water conservation practices as required by Section 4906.10(A)(8), Ohio Revised Code are not applicable to the Project.



**C. Recommended Conditions of the Certificate of Environmental Compatibility and Public Need**

The Parties stipulate and recommend to the Board that it issue a Certificate of Environmental Compatibility and Public Need, as requested by Applicant, for the Project, as described in the Application, and subject to the following conditions:

- (1) That the facility be installed using the Applicant's Preferred Site as presented in the application filed on September 23, 2009.
- (2) That the Applicant shall utilize the equipment and construction practices as described in the application, and as modified in replies to data requests, and recommendations included in this Joint Stipulation.
- (3) That the Applicant shall implement the mitigative measures described in the application and recommendations included in this Joint Stipulation.
- (4) That the Applicant shall properly install and maintain erosion and sedimentation control measures at the project site in accordance with the following requirements:
  - (a) During construction of the facility, seed all disturbed soil, except within cultivated agricultural fields, within seven (7) days of final grading with a seed mixture acceptable to the appropriate County Cooperative Extension Service. Denuded areas, including spoils piles, shall be seeded and stabilized within seven (7) days, if they will be undisturbed for more than twenty-one (21) days. Reseeding

shall be done within seven (7) days of emergence of seedlings as necessary until sufficient vegetation in all areas has been established.

- (b) Inspect and repair all erosion control measures after each rainfall event of one-half of an inch or greater over a twenty-four (24) hour period, and maintain controls until permanent vegetative cover has been established on disturbed areas.
  - (c) Obtain NPDES permits for storm water discharges during construction of the facility. A copy of each permit or authorization, including terms and conditions, shall be provided to the Staff within seven (7) days of receipt. At least thirty (30) days prior to construction, the construction, the Storm Water Pollution Prevention Plan shall be submitted to the Staff for review and acceptance.
  - (d) That the Applicant shall utilize best management practices when working in the vicinity of environmentally sensitive areas. This includes, but is not limited to, the installation of silt fencing (or similarly effective tool) prior to initiating construction near streams and wetlands. The installation shall be done in accordance with generally accepted construction methods and shall be inspected regularly.
- (5) That the Applicant shall employ the following construction methods in proximity to any watercourses on or adjacent to the project site:

- (a) All watercourses, including wetlands, shall be delineated by fencing, flagging, or other prominent means;
  - (b) All construction equipment shall avoid watercourses, including wetlands, except at specific locations where OPSB Staff has approved access;
  - (c) Storage, stockpiling and/or disposal of equipment and materials in these sensitive areas shall be prohibited;
  - (d) Structures shall be located outside of watercourses and/or wetlands, except at locations where OPSB Staff has approved placement;
  - (e) All storm water runoff is to be diverted away from fill slopes and other exposed surfaces to the greatest extent possible, and directed instead to appropriate catchment structures, sediment ponds, etc., using diversion berms, temporary ditches, check dams, or similar measures.
- (6) That the Applicant shall not dispose of gravel or any other construction material during or following construction of the facility by spreading such material on agricultural land. All construction debris shall be promptly removed and properly disposed of.
- (7) That Staff, the ODNr, and/or the USFWS are to be immediately contacted if threatened or endangered species are discovered on site during construc-

tion. An environmental specialist shall be immediately brought on site if a threatened or endangered species is encountered.

- (8) That the Applicant shall remove all temporary gravel and other construction lay-down area materials within ten (10) days of completing construction activities.
- (9) That the Applicant shall dispose of all contaminated soil and all construction debris in approved landfills in accordance with Ohio EPA regulations.
- (10) That prior to construction, the Applicant shall obtain and comply with all applicable permits and authorizations as required by federal and state laws and regulations for any activities where such permit or authorization is required. Copies of permits and authorizations, including all supporting documentation, shall be provided to OPSB Staff within fifteen (15) days of issuance.
- (11) That the Applicant shall conduct a pre-construction conference prior to the start of any project work, which the OPSB Staff shall attend, to discuss how environmental concerns will be satisfactorily addressed.
- (12) That at the time of the pre-construction conference, the Applicant shall have marked the substation's boundaries and r-o-w clearing limits on site and near environmentally sensitive areas.

- (13) That at least thirty (30) days before the pre-construction conference, the Applicant shall submit to the OPSB Staff, for review and approval, one set of detailed engineering drawings for the certificated facility, including all lay-down areas and access points; so that the OPSB Staff can determine that the final project design is in compliance with the terms of the certificate.
- (14) That the Applicant shall ensure compliance with fugitive dust rules by the use of water spray or other appropriate dust suppressant whenever necessary.
- (15) That the Applicant will coordinate with the appropriate authority any vehicular lane closures due to construction of the substation.
- (16) That, should previously unidentified significant archaeological deposits or artifacts be discovered during construction of the project, such person or persons encountering the archaeological deposits shall make a reasonable effort to refrain from disturbing or removing them. The individual(s) shall immediately notify the Applicant and the Applicant shall immediately notify OPSB Staff. The Applicant may also notify the Ohio Historic Preservation Office in order to expedite the process of determining the appropriate course of action. The Applicant shall suspend construction activities until OPSB Staff determines the appropriate course of action.

- (17) That the certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five (5) years of the date of journalization of the certificate.
- (18) That the Applicant shall provide to the OPSB Staff the following information as it becomes known:
  - (a) The date on which construction will begin;
  - (b) The date on which construction was completed;
  - (c) The date on which the facility began commercial operation.

Where OPSB Staff acceptance or approval is required under a condition, the following terms apply. The purpose of the required acceptance or approval is to ensure compliance with the statutory criteria found in R.C. 4906.10. When information is submitted for OPSB Staff acceptance or approval under a condition, it is deemed accepted or approved if OPSB Staff does not respond in writing within thirty (30) days of the submittal. If the parties disagree concerning acceptance or approval under one of the conditions, the subject may be brought before the Board for decision after a reasonable effort is made to informally resolve any disagreement.

#### **D. Exhibits**

The Parties agree, stipulate and recommend that the following exhibits in the docket be marked and admitted into the record of this proceeding, and that cross-examination is waived thereon:

- **Applicant Exhibit No. 1:** The Application filed on September 23, 2009 and certified as complete by the Board on November 3, 2009.
- **Applicant Exhibit No. 2:** Proofs of publication required by Rule 4906-5-08, Ohio Administrative Code, as filed with the Board on November 10, 2009.
- **Staff Exhibit No. 1:** Staff Report of Investigation filed on January 5, 2010.
- **Joint Exhibit No. 1:** This Joint Stipulation and Recommendation, signed by counsel for Applicant, Staff, and ATSI.

**E. Other Stipulations**

(1) This Joint Stipulation is expressly conditioned upon its acceptance by the Board without material modification. In the event the Board rejects or materially modifies all or part of this Joint Stipulation, or imposes additional conditions or requirements upon the Parties, each Party shall have the right, within thirty (30) days of the Board's Order, to file an application for rehearing with the Board. Upon rehearing by the Board, each Party shall have the right, within ten (10) days of the Board's Order on Rehearing, to file a notice of termination and withdrawal of the Joint Stipulation. Upon notice of termination and withdrawal of the Joint Stipulation by any Party, pursuant to the above provisions, the Joint Stipulation shall immediately become null and void. In such an event, a hearing shall go forward, and the Parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues.

(2) The Parties agree and recognize that this Joint Stipulation has been entered into only for the purpose of resolving this proceeding. Each Party agrees not to assert against the other Party in any proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Joint Stipulation, that Party's participation in this Joint Stipulation as support for any particular position on any issue. Each Party further agrees that it will not use this Joint Stipulation as factual or legal precedent on any issue. The Parties require that the Board recognize that its use of this Joint Stipulation in any proceeding other than this proceeding is contrary to the intentions of the Parties in entering into this Joint Stipulation.

WHEREFORE, based upon the record, and the information and data contained therein, the Parties recommend that the Board issue a Certification of Environmental Compatibility and Public Need for construction, operation and maintenance of the Project, as described in the Application made with the Board on September 23, 2009.

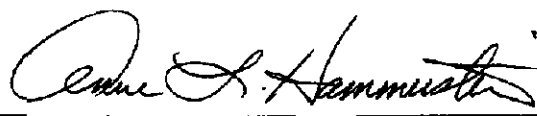
The undersigned stipulate and represent that they are authorized to enter into this Joint Stipulation and Recommendation on the 23rd day of January, 2010.




Respectfully submitted on behalf of:

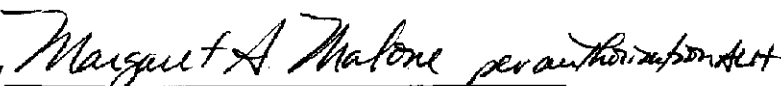
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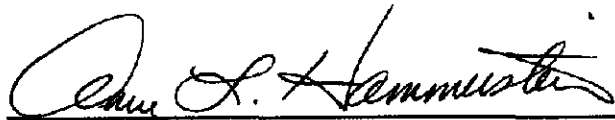
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### **III. PROOF OF SERVICE**

I hereby certify that a true copy of the foregoing Joint Stipulation and Recommended Findings of Fact and Conclusions of Law was served via regular U.S. Mail and/or electronic mail upon counsel for applicant, Kurt J. Boehm, Boehm, Kurtz & Lowry, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio, 45202, and counsel for ATSI, Robert J. Schmidt, Jr., 41 South High Street, Columbus, Ohio, 43215 this 26<sup>th</sup> day of January, 2010.

A handwritten signature in cursive script, reading "Anne L. Hammerstein", written over a horizontal line.

**Anne L. Hammerstein**  
Assistant Attorney General