

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of )  
Vectren Energy Delivery of Ohio, Inc. )  
for a Certificate of Environmental ) Case No. 13-1651-GA-BTX  
Compatibility and Public Need for the )  
Dayton Airport Z-167 Pipeline Rerouting )  
Project. )

OPINION, ORDER, AND CERTIFICATE

The Ohio Power Siting Board (Board), coming now to consider the above-entitled matter, having appointed an administrative law judge (ALJ) to conduct a public hearing, having reviewed all of the evidence presented, including the joint stipulation and recommendation (Stipulation), and being otherwise fully advised, hereby issues its Opinion, Order, and Certificate in this case, as required by R.C. 4906.10.

APPEARANCES:

Bricker & Eckler LLP, by Sally W. Bloomfield, Dane Stinson, and Dylan Borchers, 100 South Third Street, Columbus, Ohio 43215-4291, on behalf of Vectren Energy Delivery of Ohio, Inc.

Mike DeWine, Ohio Attorney General, by John H. Jones, Assistant Section Chief, Public Utilities Section, 180 East Broad Street, 6th Floor, Columbus, Ohio 43215-3793, and Sarah Anderson, Assistant Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, on behalf of Staff.

Ice Miller, LLP, by Christopher L. Miller, Gregory J. Dunn, and Christopher W. Michael, 250 West Street, Columbus, Ohio 43215-7509, on behalf of the city of Dayton, Ohio.

OPINION:

I. Summary of the Proceeding

All proceedings before the Board are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906.

On July 19, 2013, Vectren Energy Delivery of Ohio, Inc. (Vectren or Applicant) filed a preapplication notification letter regarding its intent to file an application for a certificate of environmental compatibility and public need for the purpose of rerouting a three-mile segment of its Z-167 gas pipeline at the Dayton International Airport in portions of the city of Vandalia and Butler Township, Ohio (pipeline project or facility). On that same date, Vectren filed a motion for waiver of Ohio Adm.Code 4906-5-04(A), which requires that all certificate applications for gas and electric power transmission facilities include fully-developed information on two sites/routes. The rule provides that each proposed site/route must be designated as a preferred or an alternate site/route and each must be a viable alternative on which the applicant could construct the proposed facility. The rule further provides that the two routes will be deemed alternatives if not more than 20 percent of the routes are in common. On August 9, 2013, the ALJ granted Vectren's motion for waiver of Ohio Adm.Code 4906-5-04(A). On August 28, 2013, Vectren filed proof of publication of notice of a public informational meeting held on August 29, 2013, at the Vandalia Recreation Center, in Dayton, Ohio.

On September 20, 2013, Vectren filed its application in this case. On October 2, 2013, a petition for leave to intervene in this proceeding was filed by the city of Dayton, Ohio (Dayton). On October 29, 2013, Vectren filed a motion for waiver of Ohio Adm.Code 4906-5-05(A), pertaining to the period within which the chairman of the Board is required to issue a letter indicating whether the application is complete. Specifically, Vectren requested that issuance of the letter be extended, in light of its intention to file an amended application. By Entry issued on November 14, 2013, the ALJ granted Vectren's waiver request, as well as Dayton's petition for leave to intervene in this proceeding. On November 15, 2013, Vectren filed its amended application, which was supplemented on various dates (App. Ex. 1). By letter dated November 25, 2013, the chairman of the Board notified Vectren that its application for the pipeline project was found to comply with the filing requirements contained in Ohio Adm.Code 4906-5-05. On that same date, Vectren filed proof of service of the application upon local public officials and public agencies, as required under Ohio Adm.Code 4906-5-06 and 4906-5-07 (App. Ex. 2).

By Entry issued on December 20, 2013, the ALJ scheduled a local public hearing for February 10, 2014, at 6:00 p.m., at the Vandalia Recreation Center, in Dayton, Ohio, and an evidentiary hearing for February 24, 2014, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio (Commission), in Columbus, Ohio. Further, the Entry directed Vectren to publish notice of the application and hearings, as required by Ohio Adm.Code 4906-5-08. On January 8, 2014, Vectren filed its proof of publication in local newspapers as required by Ohio Adm.Code 4906-5-08(C)(1) and 4906-5-09(A) (App. Ex. 3). On January 16, 2014, Staff filed its report of investigation (Staff Report) of

the application (Staff Ex. 1). Vectren filed its proof of publication of the second newspaper notice required by Ohio Adm.Code 4906-5-08(C)(2) and 4906-5-09(B) on January 27, 2014 (App. Ex. 4).

The local public hearing was held, as scheduled, on February 10, 2014. At the local public hearing, four individuals offered testimony regarding the pipeline project. Prefiled testimony was filed on behalf of Thomas F. Jones (App. Ex. 5), on February 13, 2014, and Edward M. Steele (Staff Ex. 2) and Terrence G. Slaybaugh (Dayton Ex. 1), on February 19, 2014. On February 14, 2014, Vectren, Staff, and Dayton filed a Stipulation resolving all of the issues in this case (Jt. Ex. 1). The evidentiary hearing commenced, as scheduled, on February 24, 2014.

## II. Proposed Facility and Siting

According to the application, the pipeline project involves the relocation of a portion of Vectren's Z-167 natural gas transmission line, which originates on the north side of Dayton, Ohio and supplies natural gas to Sidney, Ohio and the surrounding area, stretching across nearly 32 miles. Vectren states that it proposes to relocate approximately three miles of the pipeline that currently traverses under the Dayton International Airport in Montgomery County, Ohio. Vectren further states that the three-mile section crosses under the main runway and six taxiways, contains nine cased crossings, and is in close proximity to the Federal Aviation Administration (FAA) tower and the main terminal building. (App. Ex. 1 at 1-1.)

Vectren notes that the proposed relocation will reroute the existing Z-167 pipeline around the Dayton International Airport by connecting into the existing Z-167 pipeline on the east side of Corporate Center Drive, south of the airport, routing around the west side of the airport, and reconnecting to the existing pipeline at the northwest corner of the airport, in an area predominantly used for agricultural purposes, with small portions that are zoned for commercial and residential use. Vectren proposes to install approximately 6.5 miles of 12-inch diameter steel pipe around the west side of the Dayton International Airport, primarily utilizing property owned by Dayton, with the pipeline project completed by the fall of 2014. According to Vectren, installation of the new pipeline along much of the proposed route will involve the excavation of an approximately three-foot wide by five-foot deep trench. (App. Ex. 1 at 1-2, 1-3, 1-8.)

Vectren explains that the purpose of the relocation is to increase public safety by moving the pipeline to a lower density location, increase the safety of the employees currently responsible for performing integrity management assessments within the airport fence, reduce pipeline maintenance costs, and eliminate cased crossings.

Vectren adds that the new pipeline will enable easier access to conduct the necessary integrity management assessments on the pipeline, as well as reduce some of the safety risks associated with performing such assessments. Vectren also notes that existing and proposed communities and facilities to the west could be more easily served with natural gas in the future with the relocation of the pipeline. (App. Ex. 1 at 1-1, 1-2.)

Vectren conducted a route selection study to identify and evaluate potential routes for the pipeline project. According to the application, the objective of the study was to identify suitable routes that minimize impacts on the ecology, sensitive land uses, and cultural features to the greatest extent practical and to increase public safety while maintaining economic and technical feasibility. Vectren notes that nine potential routes were evaluated and ranked in the study, resulting in the selection of a preferred and alternate route. (App. Ex. 1 at 1-3, 1-4.)

The preferred route for the relocation of the pipeline is approximately 7 miles in length and begins at Corporate Center Drive on the south side of the Dayton International Airport, routes around the airport on the west, and ties back into the existing Z-167 line near the northwest corner of the airport at the end of Macy Lane. The alternate route is approximately 7.75 miles in length and also begins at Corporate Center Drive, routes around the airport on the west, and ties back into the existing line in the upper northwest corner of the airport off Lightner Road. Vectren notes that the preferred and alternate routes follow the same path for approximately 5.5 miles or 71 percent of the total length. Vectren points out that, due to the complexity of land uses in the project area, it was granted a waiver of Ohio Adm.Code 4906-5-04(A), which provides that two proposed routes will not be considered alternatives if more than 20 percent of the routes are in common. (App. Ex. 1 at 1-4.)

### III. Certification Criteria

Pursuant to R.C. 4906.10(A), the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines all of the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline.
- (2) The nature of the probable environmental impact.
- (3) The facility 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.

- (4) In the case of an electric transmission line or generating facility, such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and such facility will serve the interests of electric system economy and reliability.
- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111 and all rules and standards adopted under those chapters and under R.C. 1501.33, 1501.34, and 4561.32.
- (6) The facility will serve the public interest, convenience, and necessity.
- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternative site of the proposed major utility facility.
- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of the various alternatives.

#### IV. Summary of the Evidence

The Board has reviewed the evidence presented with regard to each of the eight criteria by which it is required to evaluate the application. Any evidence not specifically addressed herein has nevertheless been considered and weighed by the Board in reaching its final determination.

##### A. Local Public Hearing

At the local public hearing, four individuals offered testimony regarding the pipeline project. The city manager for the city of Union, Ohio; the executive director of the Montgomery County Transportation Improvement District; and a local resident offered testimony in support of Vectren's preferred route. Additionally, a representative of the International Union of Operating Engineers, Local 18, testified that

the union's members, some of which are seeking to perform work on the pipeline project, are qualified and skilled to work around the natural gas pipelines in the area. (February 10, 2014 Local Hearing Tr.)

B. Basis of Need - R.C. 4906.10(A)(1)

According to the application, the pipeline project is necessary in order to better facilitate pipeline operations and maintenance and integrity management requirements under 49 C.F.R. Part 192, as well as to increase safety. Vectren explains that the relocated portion of the Z-167 pipeline will traverse a significantly less populated area and will increase public safety due to its new location away from the Dayton International Airport. Vectren further explains that the safety of its pipeline maintenance personnel will also be increased by no longer having to perform pipeline maintenance duties over and around the active airport runways and taxiways. Vectren also notes that the existing section of pipeline is not capable of being inspected by smart pigging due to existing fittings in the system, and requires difficult and expensive maintenance because of its location within the airport boundaries. Vectren points out that any inspection or testing work requires extremely close coordination with the airport for work conducted within the fence. Vectren emphasizes that the new relocated segment will be capable of evaluation through smart pigging techniques and will eliminate all nine cased crossings, which have the potential to shield the cathodic protection current from the carrier pipe and can potentially cause corrosion issues on the pipeline. (App. Ex. 1 at 2-1, 2-2.)

According to the Staff Report, Vectren has demonstrated the need for relocating the existing segment of the Z-167 pipeline. Staff indicates that the relocation would be in the interest of public safety, as well as the safety of the individuals responsible for maintaining and inspecting the integrity of the pipeline. For these reasons, Staff recommends that the Board find that the basis of need for the pipeline project has been demonstrated as required by R.C. 4906.10(A)(1), provided that any certificate issued by the Board includes the conditions specified in the Staff Report (Staff Ex. 1 at 16.)

C. Nature of Probable Environmental Impact and Minimum Adverse Environmental Impact - R.C. 4906.10(A)(2) and (A)(3)

Staff reviewed the environmental information contained in the record and determined the nature of the probable impact to the environment. The following is a summary of Staff's findings.

- (1) The project area is sparsely populated, with a population density of 1,159.5 people per square mile in Montgomery County, Ohio, and is not projected to change dramatically. The pipeline project would not limit future population growth or have an impact on the regional demographics. (Staff Ex. 1 at 17.)
- (2) There are 74 residences within 1,000 feet of the preferred route, none of which are located within 100 feet. There are 106 residences within 1,000 feet of the alternate route, one of which is located within 100 feet. The minimum residential distances from the preferred route and alternate route are 170 feet and 75 feet, respectively. No residences would be removed for the pipeline project, nor would the project permanently change any residential land in the area. The majority of residential impacts would be associated with construction and would be temporary. (Staff Ex. 1 at 17.)
- (3) Several commercial and industrial structures are in close proximity to the pipeline project. The common route passes through the entrance drive and potentially a portion of the parking lot of the Vandalia Range and Armory. No commercial or industrial facilities would be removed as part of the pipeline project, and the majority of impacts would be associated with construction and would be temporary. No permanent impacts to commercial or industrial land uses are expected from construction, operation, or maintenance of the pipeline project. (Staff Ex. 1 at 18.)
- (4) The common route crosses within 100 feet of the back edge of the National Road Driving Range. No other recreational areas are within 1,000 feet of the pipeline project. No impacts to institutional or recreational land uses are expected from construction, operation, or maintenance of the pipeline project. (Staff Ex. 1 at 18.)
- (5) Adverse impacts to cultural resources in the pipeline project area are not expected. No previously recorded National Register of Historic Places (NRHP) sites are located within 1,000 feet of the pipeline project. One Ohio Archaeological

Inventory site was recorded within 1,000 feet of the common route, but is not within 100 feet. Four Ohio Historic Inventory (OHI) structures were identified within 1,000 feet of the preferred route, and four were identified within 1,000 feet of the alternate route. No OHI structures were identified within 100 feet of the project. If any archeological remains are discovered during construction, impacts would be minimized and mitigated, in coordination with the Ohio Historic Preservation Office (OHPO). (Staff Ex. 1 at 18.)

- (6) The common route would cross seven roads, including crossing Dog Leg Road twice. The preferred and alternate routes would both cross two roads. Vectren plans to cross roads by conventional boring or directional drilling methods. As a result, no road closures, lane closures, road access restrictions, or traffic controls are anticipated for the construction of the pipeline project. (Staff Ex. 1 at 18.)
- (7) Five streams were identified within the preferred and alternate route corridors, which consist of two perennial streams, two ephemeral streams, and one intermittent stream. Vectren proposes to cross the streams using horizontal directional drilling (HDD), as well as low impact open trench methods. Vectren would implement best management practices (BMPs) at the crossings to avoid soil erosion, sedimentation, and vegetation removal that could occur as a result of construction activities. Vectren would also have an environmental inspector present during the stream crossing activities to ensure requirements near sensitive ecological resources are met. (Staff Ex. 1 at 19-20.)
- (8) Vectren identified 11 potential jurisdictional wetlands within 100 feet of the preferred and alternate routes. Four wetlands would be temporarily impacted during construction of the pipeline project, and would be crossed using open trench methods. The other wetlands delineated from the field investigations would be avoided during construction of the pipeline project and protected with BMPs as outlined in a Storm Water Pollution Prevention Plan (SWPPP). The anticipated total temporary impact to the wetlands in the

pipeline project area is less than 0.75 acres. (Staff Ex. 1 at 20-21.)

- (9) No ponds or lakes would be impacted by the pipeline project during construction or operation (Staff Ex. 1 at 21).
- (10) Vectren will provide training on threatened and endangered species to construction personnel, and stop construction activities if such species are identified within the project limits. Protected, threatened, or endangered species within the project area include the following:
  - (a) The pipeline project is within the known range of the federally-protected bald eagle. However, due to the project type, location, and on-site habitat, this species would not be expected within the project area, and no impact to this species is expected. Additionally, the pipeline project is within the known range of the state-endangered upland sandpiper. If suitable habitat would be impacted, construction must be avoided during the species nesting period of April 15 to July 31.
  - (b) The pipeline project lies within the known range of the federal-candidate and state-endangered Eastern massasauga rattlesnake. Although the pipeline project also lies within the known range of the Eastern hellbender, the project is not likely to impact this state-endangered and federal species of concern, due to the location and characteristics of the streams being crossed.
  - (c) The pipeline project lies within the known range of the federal and state-endangered Indiana bat. If suitable habitat trees occur within the project area and trees must be cut, cutting must occur between October 1 and March 31. If suitable trees must be cut during

the summer months, a mist net survey must be conducted between June 15 and July 31, prior to cutting.

- (d) The pipeline project lies within the known range of two endangered mussel species, specifically the federal and state-endangered snuffbox and rayed bean. If there is no in-water work in perennial streams, this project is not likely to impact either species.

(Staff Ex. 1 at 21-24.)

- (11) Potential construction impacts to herbaceous vegetation along the preferred and alternate routes are expected to be temporary in nature, as these areas would likely seed from adjacent vegetation and would be expected to recover within one year of project completion. Potential construction impacts to woody and herbaceous vegetation would be limited to those areas adjacent to agricultural fields. During the operation of the pipeline along either the preferred or alternate route, impacts to vegetated land would be negligible. Agricultural land use along the pipeline route would not be adversely affected. (Staff Ex. 1 at 24.)
- (12) Approximately 9 percent and 10 percent of the preferred and alternate routes, respectively, are located within wooded areas, while 20 percent and 5 percent of the preferred and alternate routes, respectively, are within herbaceous areas, with the balance being agricultural lands. The land identified along the routes is primarily used for row crop agricultural purposes, although there are woodlots within the project area, as well as wooded fence rows, between the agricultural fields, which are comparatively small in size. Eight woodlots surveyed by Vectren were within 100 feet of the preferred and alternate routes. The preferred and alternate routes would require an estimated 9.4 acres and 12.4 acres, respectively, of trees cleared for the construction of the pipeline project. (Staff Ex. 1 at 24.)

- (13) Bedrock depths in the general area of the pipeline project are well below depths associated with the construction of the pipeline. Vectren does not anticipate the need for blasting and no other geologic features are present that would adversely affect the construction and operation of the pipeline. (Staff Ex. 1 at 25.)
- (14) Approximately 300 feet of the common shared section of the preferred and alternate routes exhibit the Hennepin and Miamian soils, which are known for moderate slopes that may exceed 12 percent. During construction of the pipeline project, Vectren would implement BMPs, where the Hennepin and Miamian silt loam is within 100 feet of the route. (Staff Ex. 1 at 26.)
- (15) Construction noise would be limited to excavation and pipeline installation equipment. Construction at any location along the pipeline project would occur for a duration of much less than one month. Construction activities would be limited primarily to daytime hours, although some after-hours work may occur to accommodate customer access to the Vandalia Range and Amory. Operation of the proposed pipeline would not produce any audible noise. (Staff Ex. 1 at 26.)

Staff reports that Vectren conducted a route selection study to identify preferred and alternate routes, which involved definition of the study area, mapping of pipeline routing constraints, identification of candidate routes, and scoring each route based on its avoidance of potential adverse impacts. According to Staff, Vectren mapped potential ecological, cultural, land use, and engineering constraints to pipeline routing in the study area, including woodlots, wetlands, streams, endangered species, historic and archeological sites, buildings, sensitive land uses, and road crossings. Nine candidate pipeline routes were identified and scored using the constraint maps. The lowest scoring route was selected as the preferred route, while the second lowest scoring route was selected as the alternate route. Staff concludes that the route selection study resulted in the selection of appropriate preferred and alternate routes, as well as routes with a reduced potential for adverse ecological, cultural, and land use impacts. (Staff Ex. 1 at 27-28.)

Staff states that the preferred route poses fewer anticipated and potential impacts than the alternate route, although the anticipated impacts of either route are temporary and limited to the construction period. Additionally, Staff states that the potential impacts, primarily from the risk of frac-out during the HDD process, could be equally mitigated on either route through the implementation of an Inadvertent Return Contingency Plan. However, Staff notes that the preferred route would require fewer acres of tree clearing, reduce impacts to sensitive and institutional land uses and prime farm land soils, and present the lowest percentage of probable high consequence areas. Staff adds that the preferred route would allow Vectren to comply with the federal and state pipeline integrity management requirements found in 49 C.F.R. Part 192, Subpart O, thereby promoting safety to a greater extent without impacting gas supply. For these reasons, Staff recommends that the preferred route be approved, as it represents the minimum adverse impact. (Staff Ex. 1 at 28.)

Therefore, Staff recommends that the Board find that the nature of the probable environmental impact has been determined for the pipeline project, as required by R.C. 4906.10(A)(2), and that the project represents the minimum adverse environmental impact and complies with the requirements of R.C. 4906.10(A)(3), provided that any certificate issued by the Board includes the conditions specified in the Staff Report. (Staff Ex. 1 at 26, 28.)

D. Electric Power Grid - R.C. 4906.10(A)(4)

Staff states that the pipeline project is not an electric transmission line and, therefore, recommends that the Board find that R.C. 4906.10(A)(4) is not applicable to the certification of the proposed facility (Staff Ex. 1 at 29).

E. Air, Water, Solid Waste, and Aviation - R.C. 4906.10(A)(5)

Staff states that the operation of the pipeline project would not produce air pollution and, therefore, there are no applicable air quality limitations. According to Staff, Vectren intends to minimize fugitive dust generated during construction by using BMPs, such as applying water or other dust suppressants to open soil surfaces. Staff states that construction and operation of the pipeline project, as described in the application and data request responses, and in accordance with the conditions included in the Staff Report, would be in compliance with the air emission regulations in R.C. Chapter 3704, and the rules and laws adopted under that chapter. (Staff Ex. 1 at 30.)

Staff reports that neither construction nor operation of the pipeline project would require the use of significant amounts of water and that, consequently, requirements under R.C. 1501.33 and 1501.34 are not applicable to the project. Staff states that there are a number of environmental permits anticipated for construction. Staff further states that the pipeline project would not significantly alter flow patterns or erosion, and, given the small increase in impervious surface within the project area, no significant modifications in the direction, quality, or flow patterns of storm water run-off are anticipated. Staff notes that Vectren would undertake measures to mitigate effects from changes in the quality and quantity of aquatic discharges. With these measures, Staff states that construction and operation of the pipeline project would comply with the requirements of R.C. Chapter 6111, and the rules and laws adopted under that chapter. Additionally, Staff indicates that Vectren's solid waste disposal plans will comply with the solid waste disposal requirements in R.C. Chapter 3734, and the rules and laws adopted under that chapter. (Staff Ex. 1 at 30-31.)

Staff states that the pipeline project is within the western perimeter of the Dayton International Airport, with Wright Patterson Air Force Base located approximately 9.5 miles to the southeast. Staff notes that approval is required from the FAA for the pipeline to cross the airport's communication lines, and that Vectren is continuing its on-going coordination with the FAA. Staff reports that the maximum height of construction equipment that would be used during the installation of the pipeline is anticipated to be approximately 21 feet, while the only above-ground structures that would remain after completion of construction are the identity markers for the pipeline, which are approximately 4 inches wide and 36 inches high. (Staff Ex. 1 at 32.)

Staff recommends that the Board find that the pipeline project complies with the requirements specified in R.C. 4906.10(A)(5), provided that any certificate issued by the Board includes the conditions specified in the Staff Report (Staff Ex. 1 at 32).

F. Public Interest, Convenience, and Necessity - R.C. 4906.10(A)(6)

According to Staff, Vectren has submitted detailed information on relevant items of public interest, convenience, and necessity, including noise, aesthetics, environmental concerns, social and economic impacts, long-term natural gas supply, and health and safety considerations. Staff reports that it has reviewed the information and believes that the information is sufficient to support the fulfillment of the statutory criteria. Staff also points out that Vectren's adherence to the applicable safety standards would promote safe and reliable operation of the natural gas pipeline, thus, minimizing the possibility of failure in the gas distribution system. Additionally, Staff states that Vectren has established relationships with each of the landowners that would be

directly impacted by the construction of the pipeline project, and intends to coordinate with these landowners again prior to the start of construction activities. Staff, therefore, recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity, and complies with R.C. 4906.10(A)(6), provided that any certificate issued by the Board includes the conditions set forth in the Staff Report. (Staff Ex. 1 at 33-34.)

G. Agricultural Districts and Agricultural Lands - R.C. 4906.10(A)(7)

Staff reports that the common route crosses two agricultural districts. Staff adds that the preferred route would not cross any agricultural districts, although the alternate route would cross two agricultural districts. Accordingly, the preferred route in combination with the common route would cross two agricultural districts, while the alternate route in combination with the common route would cross four agricultural districts. Staff notes that, during construction, there would be some temporary loss of crop production, although no permanent changes to the agricultural district lands are anticipated during the operation of the pipeline. Staff recommends that the Board find that the impact of the proposed facility on the viability of existing agricultural land in an agricultural district has been determined and, therefore, complies with the requirements specified in R.C. 4906.10(A)(7), provided that any certificate issued by the Board includes the conditions set forth in the Staff Report. (Staff Ex. 1 at 35.)

H. Water Conservation Practice - R.C. 4906.10(A)(8)

Staff states that the pipeline project would not require the use of water for operation and that, consequently, water conservation practice, as specified in R.C. 4906.10(A)(8), is not applicable to the project. Staff recommends that the Board find that the requirements specified in R.C. 4906.10(A)(8) are not applicable to the project. (Staff Ex. 1 at 36.)

V. Stipulation

In the Stipulation, the parties stipulate and recommend to the Board that adequate evidence has been provided to demonstrate that the pipeline project meets the statutory criteria of R.C. 4906.10(A)(1) through (A)(8) (Jt. Ex. 1 at 8-9). As part of the Stipulation, the parties recommend that the Board issue a certificate of environmental compatibility and public need for the pipeline project, on the preferred route, as described in the application, as amended and supplemented, subject to the 27 conditions set forth in the Stipulation (Jt. Ex. 1 at 2). The following is a summary of

the conditions agreed to by the parties and is not intended to replace or supersede the Stipulation. The parties agree to the following:

- (1) The facility shall be installed along Vectren's preferred route, as presented in the application, and as modified and/or clarified by the Applicant's supplemental filings and further clarified by recommendations in the Staff Report.
- (2) Vectren shall utilize the equipment and construction practices as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report.
- (3) Vectren shall implement the mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report.
- (4) Vectren shall conduct a preconstruction conference prior to the start of any construction activities. Staff, Vectren, and representatives of the prime contractor and all subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by Vectren and the contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, Vectren shall provide a proposed conference agenda for Staff review. Vectren may conduct separate preconstruction meetings for each stage of construction.
- (5) At least 30 days before the preconstruction conference, Vectren shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project design, temporary and permanent access roads, construction staging areas, and any other associated facilities and access points, so that Staff can determine that the final project design is in compliance with the terms of the certificate. The final project layout shall be provided in hard copy and as geographically-referenced electronic data. The final design

shall include all conditions of the certificate and references at the locations where Vectren and/or its contractors must adhere to a specific condition in order to comply with the certificate.

- (6) Within 60 days after the commencement of commercial operation, Vectren shall submit to Staff a copy of the as-built specifications for the entire facility. If Vectren demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. Vectren shall provide as-built drawings in both hard copy and as geographically-referenced electronic data.
- (7) The certificate shall become invalid if Vectren has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate.
- (8) As the information becomes known, Vectren shall provide to Staff the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.
- (9) If any survey or construction work for this project discloses a find of cultural, architectural, or archaeological significance, or a site that could be eligible for inclusion on the NRHP, Vectren shall submit an amendment, modification, or mitigation plan. Any such mitigation effort shall be developed in coordination with the OHPO, and submitted to Staff for review.
- (10) Prior to commencement of construction activities that require transportation permits, Vectren shall obtain all such permits. Vectren shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. Coordination shall include, but not be

limited to, the county engineer, Ohio Department of Transportation, local law enforcement, and health and safety officials. This coordination shall be detailed as part of a final traffic plan submitted to Staff prior to the preconstruction conference for review and confirmation that it complies with this condition.<sup>1</sup>

- (11) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving and hoe ram operations, rock drilling, and blasting operations, if required, shall be limited in areas within 1,000 feet of a commercial, residential, or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other places of public assembly) to the hours between 10:00 a.m. to 5:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. Vectren will notify property owners or affected tenants, within the meaning of Ohio Adm.Code 4906-5-08(C)(3), of upcoming construction activities, including potential for nighttime construction activities.
- (12) At least 30 days prior to the preconstruction conference and subject to Staff review and approval, Vectren shall have in place a complaint resolution procedure to address potential public grievances resulting from pipeline construction. Vectren shall work to mitigate or resolve any issue with those who file a complaint. All complaints submitted must be immediately forwarded to Staff.
- (13) Vectren will avoid, where possible, and minimize to the maximum extent practicable, any damage to field tile drainage systems and soils resulting from construction, operation, and/or maintenance of the facility in agricultural areas. Damaged field tile systems will be promptly repaired to at least original conditions at Vectren's expense. If applicable, excavated topsoil will be segregated and restored

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<sup>1</sup> This condition was inadvertently listed twice in the Stipulation (Jt. Ex. 1 at 4, 5).

in accordance with Vectren's lease agreement with the landowner. Severely compacted soils will be plowed or otherwise decompacted, if necessary, to restore them to original conditions, unless otherwise agreed to by the landowner.

- (14) Vectren shall contact Staff, the Ohio Department of Natural Resources (ODNR), and the United States Fish and Wildlife Service (USFWS) within 24 hours if state or federal threatened or endangered species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by Vectren, Staff, and ODNR, in coordination with USFWS. Nothing in this condition shall preclude agencies having jurisdiction over the facility with respect to threatened or endangered species from exercising their legal authority over the facility consistent with law.
- (15) Vectren shall have a construction access plan based on final plans for the access roads, and types of equipment to be used, that addresses the concerns outlined in the Staff Report. Prior to commencement of construction, Vectren shall submit the plan to Staff, for review and confirmation that it complies with this condition.
- (16) Vectren shall implement a vegetation management plan consistent with Appendix 4-1, Parts II.C, II.I, III.A.2.b, III.A.2.f, and VI of the Applicant's amended application for a certificate of environmental compatibility and public need as submitted on November 15, 2013.
- (17) Vectren shall have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas, as mutually agreed upon between the Applicant and Staff, and as shown on the Applicant's final approved construction plan. Sensitive areas include, but are not limited to, areas of vegetation clearing, designated wetlands and streams, and locations of threatened or endangered species or their identified habitat. The

environmental specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction.

- (18) Construction in upland sandpiper preferred habitat types shall be avoided during the nesting period of April 15 to July 31.
- (19) Vectren shall adhere to seasonal cutting dates (October 1 through March 31) for the clearing of trees that exhibit suitable bat summer habitat, such as roosting and maternity trees. If suitable habitat trees must be cut during the summer months, a mist net survey must be conducted between June 15 and July 31, prior to cutting.
- (20) Vectren shall contact the Commission's gas pipeline safety section to arrange for safety inspections to ensure compliance with 49 C.F.R. Parts 191 and 192, federal minimum pipeline safety standards, and Parts 199 and 40, drug and alcohol regulations, as required in Ohio Adm.Code Chapter 4901:1-16.
- (21) Prior to the commencement of construction activities that require permits, licenses, or authorizations by federal or state laws and regulations, Vectren shall obtain and comply with such permits, licenses, or authorizations. Vectren shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant. Vectren shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (22) At least seven days before the preconstruction conference, Vectren shall submit to Staff, for review and acceptance, a copy of all National Pollutant Discharge Elimination System (NPDES) permits, including its approved SWPPP. Any soil issues must be addressed through proper design and adherence to the BMPs of the Ohio Environmental

Protection Agency (Ohio EPA) related to erosion and sedimentation control.

- (23) Vectren shall remove all temporary gravel and other construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner. Impacted areas shall be restored to preconstruction conditions in compliance with the NPDES permit(s) obtained for the project and the approved SWPPP created for this project.
- (24) Vectren 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 and all contaminated soil shall be promptly removed and properly disposed of in accordance with Ohio EPA regulations.
- (25) Vectren shall comply with fugitive dust rules by the use of water spray or other appropriate dust suppressant measures whenever necessary.
- (26) Vectren shall comply with any drinking water source protection plan for any part of the facility that is located within drinking water source protection areas of the local villages and cities.
- (27) Vectren shall continue coordination with the FAA for approval, and provide Staff with the results of the coordination.

(Jt. Ex. 1 at 2-6.)

## VI. Conclusion

In the Stipulation, the parties recommend that, based upon the record and the information and data contained therein, the Board issue a certificate of environmental compatibility and public need for the construction, operation, and maintenance of the pipeline project, on the preferred route, as described in the application, as amended and supplemented (Jt. Ex. 1 at 2). Although not binding on the Board, stipulations are given

careful scrutiny and consideration, particularly where no party objects to the stipulation.

Vectren witness Jones explains that the Stipulation represents the product of serious bargaining among knowledgeable parties that were committed to resolving the issues. Mr. Jones also emphasizes that the conditions within the Stipulation clarify Vectren's responsibilities, as well as benefit the public. Additionally, Mr. Jones submits that the pipeline project is in the public interest, because it will result in a safer environment in the vicinity of the Dayton International Airport for both the public and Vectren's employees. Mr. Jones adds that the pipeline project has been warmly received by both airport and local government officials. (App. Ex. 5 at 3-4.) Dayton witness Slaybaugh confirms that Vectren made concerted efforts throughout the application process to address and resolve Dayton's initial concerns about the proposed pipeline project. Mr. Slaybaugh states that the Stipulation is a result of good faith negotiations among knowledgeable parties in order to arrive at a reasonable outcome. Mr. Slaybaugh further states that the Stipulation and its conditions address Dayton's concerns and provide for a result that will protect and preserve the safety of Dayton's aviation property, airport guests, and Vectren's and Dayton's employees. (Dayton Ex. 1 at 6-7.)

The Ohio Supreme Court has recognized that the statutes governing this type of case vest the Board with the authority to issue certificates upon such conditions as the Board considers appropriate; thus, acknowledging that the construction of these projects necessitates a dynamic process that does not end with the issuance of a certificate. The Court concluded that the Board has the authority to allow Staff to monitor compliance with the conditions the Board has set. *In re Buckeye Wind, L.L.C.*, 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869 (*Buckeye*). Such monitoring includes the convening of preconstruction conferences and the submission of follow-up studies and plans by an applicant. As recognized in *Buckeye*, if an applicant proposes a change to any of the conditions approved in the certificate, the applicant is required to file an amendment. In accordance with R.C. 4906.07, the Board would be required to hold a hearing, in the same manner as on an application, where an amendment application involves any material increase in any environmental impact or substantial change in the location of all or a portion of the facility.

Accordingly, based upon all of the above, the Board finds that the Stipulation is the product of serious bargaining among knowledgeable parties, will promote the public interest, convenience and necessity, and does not violate any important regulatory principle or practice. Further, based upon the record in this proceeding, the Board finds that all of the criteria in R.C. 4906.10(A) are satisfied for the construction,

operation, and maintenance of the pipeline project, on the preferred route, subject to the conditions set forth in the Stipulation. Therefore, the Board approves and adopts the Stipulation and hereby issues a certificate to Vectren for the construction, operation, and maintenance of the proposed pipeline project, on the preferred route, as described in the application, as amended and supplemented, and subject to the conditions set forth in the Stipulation and this Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) The pipeline project is a major utility facility as defined in R.C. 4906.01(B)(1).
- (2) Vectren is a person under R.C. 4906.01(A).
- (3) On August 29, 2013, Vectren held a public informational meeting.
- (4) On September 20, 2013, Vectren filed its application for a certificate for the pipeline project.
- (5) On October 2, 2013, a petition for leave to intervene in this proceeding was filed by Dayton, which was granted by the ALJ on November 14, 2013.
- (6) On November 15, 2014, Vectren filed an amended application, which was supplemented on various dates.
- (7) On November 25, 2013, the chairman of the Board notified Vectren that the application was found to comply with the filing requirements.
- (8) On November 25, 2013, Vectren filed its proof of service of the application upon local public officials and public agencies pursuant to Ohio Adm.Code 4906-5-06.
- (9) By Entry issued on December 20, 2013, the ALJ scheduled a local public hearing for February 10, 2014, at the Vandalia Recreation Center, in Dayton, Ohio, and an evidentiary hearing for February 24, 2014, at 10:00 a.m., at the offices of the Commission, in Columbus, Ohio.

- (10) On January 8, 2014, Vectren filed its proof of publication in local newspapers as required by Ohio Adm.Code 4906-5-08(C)(1) and 4906-5-09(A).
- (11) On January 16, 2014, Staff filed its report of investigation of the application.
- (12) On January 27, 2014, Vectren filed its proof of publication of the second newspaper notice required by Ohio Adm.Code 4906-5-08(C)(2) and 4906-5-09(B).
- (13) A local public hearing was held, as scheduled, on February 10, 2014. At the local public hearing, four individuals offered testimony on the pipeline project.
- (14) On February 14, 2014, the parties filed a Stipulation resolving all of the issues raised in this proceeding.
- (15) The evidentiary hearing commenced, as scheduled, on February 24, 2014.
- (16) The record establishes the need for the pipeline project as required by R.C. 4906.10(A)(1).
- (17) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the pipeline project as required by R.C. 4906.10(A)(2).
- (18) The record establishes that the pipeline project, subject to the conditions set forth in this Order, 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 R.C. 4906.10(A)(3).
- (19) The record establishes that the pipeline project is not an electric transmission line, and that R.C. 4906.10(A)(4), regarding the electric power grid, is inapplicable.

- (20) The record establishes that the pipeline project, subject to the conditions set forth in this Order, will comply with R.C. Chapters 3704, 3734, and 6111; R.C. 1501.33, 1501.34, and 4561.32; and all rules and regulations thereunder, to the extent applicable, as required by R.C. 4906.10(A)(5).
- (21) The record establishes that the pipeline project, subject to the conditions set forth in this Order, will serve the public interest, convenience, and necessity, as required by R.C. 4906.10(A)(6).
- (22) The record establishes that the pipeline project, subject to the conditions set forth in this Order, has been assessed as to viability of agricultural land in an existing agricultural district as required by R.C. 4906.10(A)(7).
- (23) Inasmuch as water conservation practices are not involved with the pipeline project, R.C. 4906.10(A)(8) does not apply in this circumstance.
- (24) The record evidence of this proceeding provides sufficient factual data to enable the Board to make an informed decision.
- (25) Based on the record, the Board should issue a certificate of environmental compatibility and public need, pursuant to R.C. Chapter 4906, for construction, operation, and maintenance of the pipeline project, on the preferred route, subject to the conditions set forth in the Stipulation and this Order.

ORDER:


It is, therefore,

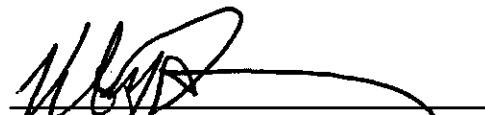
ORDERED, That the Stipulation filed by the parties be approved and adopted. It is, further,


ORDERED, That a certificate be issued to Vectren for the construction, operation, and maintenance of the pipeline project, as proposed along the preferred route, subject to the conditions set forth in the Stipulation and this Order. It is, further,


ORDERED, That a copy of this Opinion, Order, and Certificate be served upon all parties and interested persons of record.

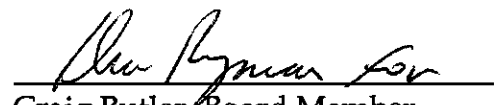
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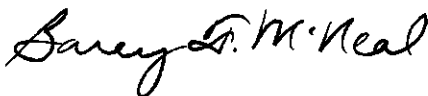
  
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SJP/sc

Entered in the Journal

MAR 17 2014



Barcy F. McNeal  
Secretary