

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of Columbia Gas of Ohio,)
Inc. for a Certificate of Environmental) Case No. 20-1236-GA-BTX
Compatibility and Public Need for the)
Construction of the Northern Colum-)
bus Loop – Phase VII.)

**JOINT INITIAL POST-HEARING MERIT BRIEF OF
COLUMBIA GAS OF OHIO, INC.;
STAFF OF THE OHIO POWER SITING BOARD;
UNION COUNTY, JEROME TOWNSHIP AND
MILLCREEK TOWNSHIP**

Table of Contents

I.	Introduction	3
II.	Relevant Project Background and Procedural History of Proceeding	4
	A. Proposed Facility	4
	B. Summary of Proceeding.....	5
III.	Standard of Review	7
IV.	Law and Argument	7
	A. The Project Meets All Legal Requirements For the Board’s Grant of a Certificate .7	
	1. Basis of Need – R.C. 4906.10(A)(1)	8
	2. R.C. 4906.10(A)(2)-(3) – Determination of the Probable Environmental Impacts and Demonstration that the Environmental Impacts Represent the Minimum Adverse Environmental Impacts	9
	(a) Route Selection Study	10
	(b) Impact of the Project on Non-Agricultural Land Use.....	11
	(c) Impact of the Project on Waterways and Wetlands	12
	(d) Impact of the Project on Plants and Wildlife.....	14
	(e) Impact of the Project Regarding Noise Emissions, Electric and Magnetic Fields, and Aesthetics.....	15
	(f) Recommended Conditions for Certificate	15
	3. R.C. 4906.10(A)(4) – Determination that the Project is Consistent with Plans for Expansion of Regional Electric Grid	17
	4. R.C. 4906.10(A)(5) – Determination that the Project Will Comply with Relevant Pollution Control and Air Transportation Safety Regulations	17
	5. R.C. 4906.10(A)(6) The Project will Serve the Public Interest, Convenience, and Necessity	18
	6. R.C. 4906.10(A)(7) – The Project will Impose Minimal Impacts on Cropland and the Viability of Agricultural Land Within Agricultural Districts.	19
	7. R.C. 4906.10(A)(8) – The Facility Incorporates Maximum Feasible Water Conservation Practices as Determined by the Board, Considering Available Technology and the Nature and Economics of Various Alternatives.....	20
	B. The Board Should Adopt the Joint Stipulation and Grant Columbia a Certificate Subject to the Twenty-One Conditions Enumerated Therein.....	21

1.	Joint Stipulation Passes Muster Under Operative Three-Prong Test.....	21
	(a) The Joint Stipulation is the Result of Serious Bargaining Among Capable, Knowledgeable Parties.....	22
	(b) The Settlement Benefits Ratepayers and the Public Interest.	23
	(c) The Settlement Does Not Violate Any Important Regulatory Principles or Practices.	23
V.	Conclusion	24

I. Introduction

This natural gas transmission pipeline Application, now before the Ohio Power Siting Board (“Board”) for review and approval, is the final phase of a decades-long strategic effort by Columbia Gas of Ohio, Inc. (“Columbia” or “Applicant”) to complete infrastructure comprising the Northern Columbus Loop (“NCL”) system. Columbia requests that the Board issue a Certificate of Environmental Compatibility and Public Need (“Certificate”) for the proposed project—Phase VII of its NCL system (“Project”)—subject to the conditions agreed-upon in the Amended Joint Stipulation (“Joint Stipulation”), as admitted into the record of this proceeding as Joint Exhibit 2.¹

Staff of the Ohio Power Siting Board (“Staff”), the Board of County Commissioners of Union County, Ohio (“Union County”), the Board of Township Trustees of Millcreek Township, Union County, Ohio (“Millcreek Township”), and the Board of Township Trustees of Jerome Township, Union County, Ohio (“Jerome Township”)² joined in the Joint Stipulation, support Columbia’s request to the Board for approval of the Project, and now join in this Initial Post-Hearing Brief.

The Project—to be constructed in Delaware and Union Counties—is needed for numerous reasons, including to enhance reliability of gas supplies to Columbia’s current and future customers served by existing segments of the NCL system in Delaware, Union, and Franklin Counties, to keep pace with gas demand growth in the Greater Columbus Region, and to augment gas volumes transported through other pipeline arteries of Columbia’s North Columbus High Pressure (“NCHP”) system. The Project will quite literally create a loop in Columbia’s gas system, thus affording additional flexibility in system balancing and managing daily gas flows, by bridging the NCL system in Delaware County to the NCHP system in Union County.

Consistent with R.C. 4906.07 and rules of the Board, Staff completed its investigation of the Application and recommended that the Board grant the Certificate, subject to

¹ An index of exhibits admitted into the record during the adjudicatory hearing on June 17, 2021 is attached hereto as Appendix 1. Columbia will refer to exhibits herein by reference to those numbers; for citations to the adjudicatory hearing transcript, Columbia will refer to page and line numbers.

² Union County, Millcreek Township, and Jerome Township intervened in this proceeding and ultimately, along with Columbia and Staff, became signatory parties to the Joint Stipulation.

twenty-five conditions. (Staff Exhibit 1, Staff Report).³ Certain of those conditions were fairly and reasonably modified through negotiation of the parties pursuant to Ohio Adm.Code 4906-2-24(A). Ultimately, Columbia, Staff, Union County, Millcreek Township, and Jerome Township signed a Joint Stipulation incorporating the bargained-for conditions,⁴ all of which are supported by adequate data and information.

This Project meets all eight required statutory criteria that govern the Board’s review pursuant to R.C. 4906.10(A). As demonstrated in the Application and through the testimony, evidence, and exhibits offered and admitted at the adjudicatory hearing on June 17, 2021, the Board has overwhelming record evidence to support an affirmative finding on each of the applicable statutory criteria. Additionally, the Joint Stipulation passes muster under the Board’s three-part test for approving and adopting stipulations. The Board should therefore grant a Certificate for this Project subject to the conditions set forth in the Joint Stipulation.

II. Relevant Project Background and Procedural History of Proceeding

A. Proposed Facility

Columbia proposes to construct approximately 12 miles of new 24-inch steel high pressure gas main at an MAOP of 720 psig and approximately 4 miles of 16-inch diameter steel high pressure gas main at an MAOP of 190 psig. (Columbia Exhibit 1, Application, at 3.)

The Project starts east of the junction of Sawmill Parkway and Hyatts Road in Liberty Township (Delaware County), at the tie-in site of the existing North Columbus Loop system, and the Project ends at a tie-in site to the existing North Columbus High Pressure System located east of the junction of McKitrick Road and Hyland Croy Road in Jerome Township, Union County. (*Id.*) Additionally, the route options also connect to a district regulator station on Watkins California Road, approximately one mile northwest of the junction with U.S. Highway 42, in Jerome Township. (*Id.*)

³ The signatory parties to the Joint Stipulation agree that Columbia has already met Conditions (8), (22), (23), and (24) that were included in the Staff Report. (Joint Exhibit 2, Joint Stipulation, at 7, ¶3.)

⁴ The conditions from the Staff Report (Staff Exhibit 1) were re-ordered in the Joint Stipulation.

B. Summary of Proceeding

On July 2, 2020, Columbia filed an Application Memorandum to Open Case, concurrently with a Motion for Waiver of the requirement set forth in Ohio Adm.Code 4906-3-03(B) that a public informational meeting be conducted in the area of the Project. Due to the prior, ongoing state of emergency in Ohio from the COVID-19 pandemic, holding an in-person public informational meeting was not feasible. In letter correspondence docketed on July 17, 2020, Staff noted that it did not oppose the requested waiver. The Board subsequently granted Columbia's request for waiver of the public informational meetings and permitted Columbia to instead implement a multi-pronged public engagement approach.

Columbia commenced this proceeding on July 23, 2020, pursuant to Ohio Adm.Code 4906-3-03, with the filing of a pre-application notification letter. Ohio Adm.Code 4906-3-03(A). Columbia hosted a virtual public informational meeting for the Project on August 17, 2020, from 6:00 pm to 8:00 pm, as a partial substitute for the public information meeting. On August 28, 2020, Columbia filed proof of publication and affidavit that public notice of this informational meeting was published in accordance with Ohio Adm.Code 4906-3-03(B)(1).

Following the virtual public informational meeting, Columbia continued to meet with interested parties to gather more comments on the Preferred and Alternate Routes, as well as to make changes, to the extent possible, to the routes to accommodate comments from property owners. Columbia filed the formal application ("Application") for the Project on November 12, 2020, with a subsequent amendment ("Amended Application") filed on April 2, 2021. (Columbia Exhibits 1 and 2.) The Amended Application reflected seven adjustments to the Preferred Route, either as requested by landowners or as determined necessary by Columbia. Columbia conducted additional cultural and wetland/waterbody delineation survey work for adjustments located outside the original survey corridor. These changes did not materially increase or decrease the social or ecological impacts of the Project.

Pursuant to the procedural requirements of Ohio Adm.Code 4906-3-06(A), the chairman of the Board conducted a completeness review of the Application. By letter dated January 11, 2021, Ms. Theresa White, Executive Director of the Board, informed Columbia that its Application met the requirements of Ohio Adm.Code 4906-01 *et seq.* and that Staff was commencing its review of the Application. By Entry dated February 4, 2021, the Administrative Law Judge set the effective date for the filing of the complete Application as February 3, 2021. After filing the application, Columbia worked with Staff to provide supplemental information regarding the Project.

Since the filing of the Application, numerous parties have intervened in these proceedings. On April 15, 2021, the Board granted motions to intervene by Suburban Natural Gas Company (“Suburban”), the Delaware County Board of Commissioners (“Delaware County”), Union County, Millcreek Township and Jerome Township.

All of the intervening parties have participated in this proceeding and have had the opportunity to conduct discovery. All of the intervening parties have been afforded the opportunity to present witnesses and to cross-examine Columbia’s and Staff’s witnesses.

In accordance with R.C. 4906.07(C), Staff filed its Report of Investigation on April 13, 2021. In its Report, Staff agreed that Columbia has demonstrated the requisite statutory requirements specified in R.C. 4906.07(C) and 4906.10(A)(1)-(8). Accordingly, Staff recommended that the Board grant the Certificate subject to twenty-five conditions and, as required by R.C. 4906.08(C), a local public hearing was conducted, via WebEx, on April 28, 2021 at 6:00pm.

Thereafter, on April 30, 2021, Columbia, Staff, and Union County signed a Joint Stipulation, incorporating conditions that largely tracked those in the Staff Report, with certain bargained-for changes, all of which are supported by adequate data and information. The Joint Stipulation represents a fair and reasonable solution to the conditions and recommendations in the Staff Report. Also on April 30, 2021, Columbia filed prepared direct testimony sponsoring the Application and in support of the Joint Stipulation. Columbia, Staff, Union County, Millcreek Township, and Jerome Township subsequently signed an Amended Joint Stipulation on June 11, 2021; the only difference between the Amended Joint Stipulation and the Joint Stipulation was the addition of Millcreek Township and Jerome Township as signatory parties.

The adjudicatory hearing was originally scheduled for May 11, 2021, but was continued until June 17, 2021, at the joint request of Intervenor Suburban and Delaware County in order to afford them time to review the Joint Stipulation and supporting prepared direct testimony from Columbia witness, Ms. Melissa Thompson. Additional prepared direct testimony was filed by other parties in May and early June.

On June 3, 2021, Columbia filed combined motions to strike and motions *in limine* in response to Suburban’s direct testimony of David L. Pemberton and Delaware County’s direct testimony of Robert Lamb. In its motions, Columbia argued that the testimony of both Suburban’s and Delaware County’s witnesses, David L. Pemberton, Sr. and Robert Lamb, were irrelevant to any of the eight criteria listed in R.C. 4906.10(A).

Specifically, Columbia argued that Mr. Pemberton’s testimony regarding a non-jurisdictional stipulation executed back in 1995 had no bearing on the Board’s review of this Project and requested the Board to strike certain inadmissible hearsay found throughout Mr. Pemberton’s testimony. Columbia’s objection to portions of Mr. Lamb’s testimony was founded upon the argument that it improperly called upon the Board to condition project approval on Columbia providing competing gas utilities open access to the Project.

On June 9, 2021, Suburban and Delaware County filed memoranda contra to Columbia’s combined motions to strike and motions *in limine*.

An evidentiary hearing took place, via WebEx, on June 17, 2021. During the hearing, the Administrative Law Judge denied Columbia’s motions to strike. (June 17, 2021 Evidentiary Hearing Transcript, at 12, ¶¶4-20) The Administrative Law Judge further admitted all the testimony, evidence, and exhibits offered during the hearing and ordered the parties to submit initial briefs by July 29, 2021, and reply briefs by August 19, 2021. Pursuant to that order, Columbia, Staff, Union County, Millcreek Township, and Jerome Township jointly submit this initial brief asking the Board to grant Columbia’s Application, subject to the conditions enumerated in the Joint Stipulation.

III. Standard of Review

Applicant in this case has the burden of proving all of the elements necessary for Board approval. The Board has a narrow charge: determining whether the Project meets the criteria in R.C. 4906.10. Those criteria will be discussed below.

IV. Law and Argument

A. The Project Meets All Legal Requirements For the Board’s Grant of a Certificate

The record in this proceeding supports the Applicant’s satisfaction of all criteria under R.C. 4906.10(A). This Section describes the evidence establishing each.

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, the 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 the facility will serve the interests of electric system economy and reliability;
- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111, as well as all rules and standards adopted under those chapters and under R.C. 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 or 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; and
- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

1. Basis of Need – R.C. 4906.10(A)(1)

Ohio Adm.Code 4906-5-03 specifies the information to be provided by an Applicant to facilitate the Board's review of the need for a proposed facility. The record in this case is replete with evidence demonstrating Columbia's need for the Project. Generally, the Project is needed to balance gas supply with demand by interconnecting Columbia's existing NCL and NCHP gas pipeline systems (i.e. infrastructure serving Columbia's customers in the Greater Columbus Region). (Applicant's Exhibit 1, Application, at 6.) Not only will the Project alleviate supply constraints, such as the Rome-Hilliard delivery point bottleneck (the supply point in southwest Franklin County that currently delivers

gas to Madison, Franklin, Delaware, and Union Counties), it will enable Columbia to meet projected load growth among current and future customers in the Greater Columbus Region.⁵ (*Id.* at 9.) The Project will also create reliability enhancements in the west Columbus market, provide operational flexibility through additional supply feeds, and improve system balance of supply by tying the Marysville Connector segment of the NCHP system (certificated in OPSB Case No. 19-2148-GA-BLN) to a new source for gas delivery. (*Id.* at 6-7.)

Columbia appropriately evaluated the condition and needs of its gas supply system by modelling load flow rates and demonstrated these studies confidentially to Staff. (Staff Exhibit 1, Staff Report, at 20.) Staff witness Andrew Conway analyzed the load flow model and verified the capacity constraints on Columbia’s gas system that will be mitigated by this Project. (Staff Exhibit 6, Conway Prefiled Testimony, at 9:8-11:18.). Staff thus agrees that Columbia has demonstrated the basis of need for the Project. (*See id.*)

2. R.C. 4906.10(A)(2)-(3) – Determination of the Probable Environmental Impacts and Demonstration that the Environmental Impacts Represent the Minimum Adverse Environmental Impacts

The second requirement for a Board certification is for the Board to determine the “nature of the probable environmental impact.” R.C. 4906.10(A)(2). The closely-related third criterion is a finding that 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.” R.C. 4906.10(A)(3).

Columbia undertook extensive efforts to propose a Project that represents the minimum adverse environmental impact by carefully evaluating and adjusting possible routes to avoid environmental damage, while still accommodating necessary tie-ins with the NCL and NCHP systems. In addition to minimizing ecological impacts, Columbia considered cultural, land use, and engineering attributes in order to account for relevant impacts that the proposed route would create. (Applicant’s Exhibit 1, Application, at 17-19.) Geotechnical investigation (borings, ERT surveys) were conducted along the Preferred Route to assess geologic compatibility. (*See* Application Appendix G, Geotechnical Exploration and Findings.)

⁵ During the adjudicatory hearing, counsel for Delaware County questioned whether the Project will address load growth in Delaware County. (Hearing Transcript, 82:18-20.) Setting aside local distribution that may interconnect in the future with NCL—Phase VII, the Project increases gas flow to Delaware County by alleviating capacity constraints at existing points of supply to Delaware County.

(a) Route Selection Study

In order to achieve all of the reasons cited by Columbia for which the proposed Project is needed, there are three necessary gas structures along the Project route: the existing NCL system tie-in point, the proposed district regulator station at Watkins California Road,⁶ and the existing NCHP system tie-in point. Columbia's route selection process thus entailed a Study Area defined to accommodate a centerline based on those structures. (Applicant's Exhibit 1, Application, at 16.)

Columbia, assisted by Stantec Consulting Services, Inc. and Enersurv, conducted a route selection analysis for the proposed Project in late 2019 and early 2020. (*Id.* at 19.) Candidate routes were identified through qualitative comparison of various relevant construction, environmental, cultural, and social factors within the Study Area. (*Id.* at 17.)

The Study Area is approximately 37,800 acres in size and is relatively underdeveloped. (*Id.* a 16.) The primary land use within the Study Area is agriculture, specifically row cropping of soybean and corn. (*Id.*) However, there are some residential and commercial developments planned and under construction in the Study Area. (*Id.*) The area included in the Study Area was refined due to consideration of various constraints, including construction that will take place within a 50-foot permanent easement and 75 feet of temporary construction workspace in upland habitat. (*Id.*) Columbia also plans to neck down the workspace to 50 feet of permanent easement to minimize ecological impacts when the centerline crosses wetlands and streams. (*Id.*)

As is standard industry practice, the route selection study began with a desktop analysis of publicly-available information to assess the constructability and environmental factors within the Study Area. (*Id.* at 20.) That information was then compiled in order to develop and consider various routing options that took into account all relevant factors, including minimizing crossing other utilities and maximizing the use of routing options abutting other utility ROWs. (*Id.* at 21.) Ultimately, after further refining the desktop information using field assessments and verification activities, Columbia identified the Preferred Route and Alternative Route options. (*Id.* at 21-22.) The amount of overlap between the two routes is approximately 13.5%. (*Id.* at 30.)

In evaluating utility route selection, preference is generally given to existing utility corridors, particularly if they are compatible with the proposed new use. Additionally, routes that include certain other factors are typically given preference, including those

⁶ The Watkins—California Road district regulator station is where the gas pipeline will transition from 24-inch diameter to 16-inch diameter pipe. (Applicant's Exhibit 1, Application, at 20.)

with little to no change in land use, with a natural gas transmission line right of way originally developed with additional capacity for future upgrades, with as few landowners as possible, and with as few new aesthetic, cultural resource, wetland, and vegetation impacts as reasonably possible. (*Id.* at 29.) Other limiting factors in route selection include: schools, roadway projects, future mining/quarry operations, future residential and commercial development, current residential properties, existing electrical transmission lines and utility easements, and known cultural and ecological features. Columbia worked to create the shortest route options possible taking into account all the considerations listed above. Columbia sought to avoid these areas of sensitivity whenever possible. (*Id.* at 18-19.)

Columbia further analyzed the applicable routing criteria as required by Ohio Adm.Code 4906-05-04(A)(4), and concluded that the Preferred Route was a superior routing option compared to the Alternate Route. (*Id.* at 25-28.) As part of this decision, Columbia determined the Preferred Route is superior inasmuch as it avoids crossing the impounded area of the Scioto River, increases the distance between the Project and Del-Co water intake, minimizes the impacts to forested area and the number of stream and wetland crossings, has a shorter length of centerline, greater amount of length abutting easements, fewer landowners, parcels, residences, and residential structures within a certain distance of the centerline, and contains smaller amounts of erodible soils. (*Id.* at 28.)

Although the Alternate Route does score higher on a few factors, the Preferred Route far surpasses the Alternate Route in limiting various environmental, cultural, and social impacts. Because the Applicants carefully evaluated and adjusted possible routes to avoid environmental damage, the Preferred and Alternate routes represent minimum adverse environmental impact. Both Columbia and Staff agree that the Preferred Route should be approved by the Board. (Condition (4) of Joint Exhibit 2, Joint Stipulation, at 7.)

(b) Impact of the Project on Non-Agricultural Land Use

The Preferred and Alternate routes span and border properties devoted to various uses. The Preferred Route crosses a total of 18 roads and the Alternate Route crosses a total of 21 roads. (Applicant's Exhibit 1, Application, at 45.) The Preferred Route runs along a portion of U.S. Route 42 through Concord Township (within which there is a zoned general business district of importance to Delaware County). (Applicant's Exhibit 1, Application, at 31; *see* Hearing Transcript, 97:17-23.) The centerline for that part of the Preferred Route, however, parallels an overhead electric power line right-of-way for 1.14 miles, crossing Concord Road. (Applicant's Exhibit 1, Application, at 31.)

The Alternative Route crosses U.S. Route 33 in two locations, whereas the Preferred Route does not cross U.S. Route 33 at all. (*Id.*) Both routes cross U.S. Route 42 twice. (Applicant’s Exhibit 1, Figure 1 of Application, at 38.) Columbia is coordinating with ODOT for all crossings within ODOT jurisdiction within the Preferred Route. (Applicant’s Exhibit 1, Application, at 31.) All other crossings within the Study Area are smaller township and county roads. (*Id.*) Columbia will either maintain one lane for traffic or establish a detour around Columbia’s construction in these cases. (*Id.*) Both routes avoid crossing any railroads. (*Id.* at 46.)

Columbia’s routes also ensure the centerline is at least 1,000 feet from Dublin City Schools’ new elementary and middle school buildings on the north end of Hyland-Croy Road. (*Id.* at 29.). Additionally, Columbia’s routes have taken potential mining activity into account—completely avoiding such parcels in the Preferred Route and paralleling the U.S. Route 42 right-of-way to bypass such parcels in the Alternate Route. (*Id.* at 30.)

Another route selection consideration for the Project is related to Glacier Ridge Metro Park, which is part of the Columbus and Franklin County Metro Park system and is located near the existing NCHP system tie-in point. (*Id.* at 46.) Given its close proximity to the Project’s critical terminus, Glacier Ridge Metro Park is within both route option centerlines. For both the Preferred and Alternate Routes, impacts to the Glacier Ridge Metro Park will be minimal because the routes avoid particularly sensitive areas where endangered and threatened species are located. (*Id.* at 151.) During construction, Columbia will maintain one bike path/walking trail at all times to avoid shutting down the path system within the Metro Park. (*Id.* at 93.) Columbia will also restore all bike paths after construction. (*Id.*)

The Preferred Route crosses 38 existing utilities including 7 natural gas pipeline corridors and 5 electric transmission line corridors, while the Alternate Route cross 38 existing utilities, including 14 natural gas corridors and 7 electric transmission line corridors. (*Id.* at 46.)

(c) Impact of the Project on Waterways and Wetlands

The Preferred Route crosses 14 streams over approximately 8,539 linear feet. It also includes 21 wetlands, totaling approximately 5.32 acres within the right-of-way. (Staff Exhibit 1, Staff Report, at 27.) Streams and wetlands will be restored to original conditions using methods to minimize soil erosion and degradation. (Applicant’s Exhibit 1, Application, at 52.) Modification or removal of habitat in these crossings will be temporary as Columbia will return the streams back to original contours and replace native substrates. (*Id.*)

The Project Storm Water Pollution Prevention Plan (“SWPPP”) will include best management practices outlined in an erosion and sediment control plan to avoid impacts to wetlands and waterbodies outside the construction area. (*Id.* at 141) Moreover, trench plus and trench breakers will be used to protect stream, waterbody, and wetlands at centerline crossings, regardless of the slope. (*Id.*) Columbia will also approach streams as close to a right angle as possible. (*Id.*) Stream crossings will be performed during agency recommended timeframes, if available, or during low flow periods. (*Id.*) Columbia will also use by-pass methods to divert stream flow along with using sediment filter devices. (*Id.* at 142.)

A 200-foot survey corridor was field delineated by wetland professionals on both Project centerline options to identify potential jurisdictional waters of the United States. (*Id.* at 132.) Surface waters, such as wetlands and streams, were located using equipment with sub-meter accuracy. (*Id.*) These studies were done as part of the route selection process to minimize the ecological impacts from the Project.

The Scioto River crossing was another constraint factored into the route selection study. Columbia determined that it was preferable to cross the Scioto River either upstream of the impounded area or downstream of the O’Shaughnessy Dam, where the Scioto River is narrower. (*Id.* at 23.) The planned method for crossing the Scioto River on the Preferred Route includes a horizontal directional drill (“HDD”), which was chosen because open cut trench installation cannot be used due to the depth of the O’Shaughnessy Reservoir. (*Id.* at 22-23.) Columbia included a Horizontal Directional Drill Inadvertent Release Avoidance Plan with its Application. (Appendix B of Applicant’s Exhibit 1, Application).

The Source Water Assessment and Protection (“SWAP”) management zone, which includes the drinking water source protection area, is located along the Scioto river and ends on the northernmost part of the reservoir. (Applicant’s Exhibit 1, Application, at 22.) Both the Preferred and Alternate Routes enter this zone and include a crossing within the source water protection area. (*Id.*) However, in both cases, the construction within the drinking water source protection area is acceptable in light of the best management practices that Columbia will adhere to during construction. (*Id.*)

Columbia will also obtain a Floodplain Permit from the Delaware County Floodplain Administrator prior to the start of construction in a FEMA 100-year floodplain area. (Condition (25) of Joint Exhibit 2, Joint Stipulation, at 2.)

(d) Impact of the Project on Plants and Wildlife

Both Routes cross through mostly agricultural fields, pastures, forestland and parkland. The impact to vegetation along both routes would be limited to the initial clearing for the Project's right-of-way and along access roads. (Staff Exhibit 1, Staff Report, at 31.) The Preferred Route requires approximately 16.92 acres of tree removal while the Alternate Route would require approximately 32.59 acres of tree removal. (Applicant's Exhibit 1, Application, at 24.) There will be permanent impacts associated with clearing of Upland Woods Lots along the Project centerline and yearly maintenance will be required to keep the area clear. (*Id.* at 140) However, large or otherwise valuable trees will be avoided whenever reasonably possible. (*Id.* at 145.) Columbia does not anticipate the use of herbicides during pipeline construction or operation. (*Id.* at 145.)

Table 16, 17, and 18 of Columbia's Application include all the state-listed and federally-listed threatened and endangered species in the Project counties found on the USFWS and ODNR websites. (Applicant's Exhibit 1, Application, at 145-147; 152-166.) The Study Area is within the range of the Indiana bat and northern long-eared bat. If suitable habitat for these protected species occurs within the Project area, trees will be conserved to the extent possible. If such suitable habitat must be cut, tree removal will occur during recommended seasonal cutting dates. Notably, the Project will result in only a small amount of tree clearing relative to the available habitat in the immediate area; therefore, removal is unlikely to result in significant impacts to bat species. (*Id.* at 147-148.)

The Ohio Department of Natural Resources (ODNR) concluded that the Project is within the range of the Scioto madtom, a state endangered fish species, and the Tippecanoe darter, a state threatened fish species. (*Id.* at 148.) Accordingly, ODNR recommends no in-water work in perennial streams from April 15th through June 30th. (*Id.*) The Project, therefore, is not likely to impact these species because no in-water work is proposed during that timeframe. (*Id.*)

The Project is also within the range of several endangered birds, including the American bittern, least bittern, king rail, northern harrier, and loggerhead shrike. (*Id.* at 149-150.) However, the vegetation habitats common for these birds are minimal within the Project Area. (*Id.*) Therefore, impact to these state endangered birds is not anticipated for the Proposed Project. (*Id.*)

Lastly, no impacts to state-listed mussel species during construction are expected due to the HDD method of pipeline installation across the Scioto River. (*Id.* at 151.) Columbia is coordinating with ODNR to determine if a mussel survey is required to cross

the Scioto River using HDD for both the Preferred and Alternate Routes. (*Id.* at 24.) Columbia will provide the Board ODNR's response letter once it is received. (*Id.*)

In a further effort to ensure that none of these species are impacted, Joint Stipulation Conditions (20) and (21) specifically require Columbia to take additional mitigating measures to ensure there are no impacts to ODNR and USFWS listed endangered or threatened species. (Joint Exhibit 2, Joint Stipulation, at 4-5.)

(e) Impact of the Project Regarding Noise Emissions, Electric and Magnetic Fields, and Aesthetics

The Project will create some noise during construction, including during excavation, pipeline installation, backfilling, HDD, jack and bore operations, and rock hammering or breaking. (Applicant's Exhibit 1, Application, at 82.) However, construction at any one location along the Project will typically occur for less than one month, construction activities will largely be limited to daytime hours, and equipment will be outfitted with standard mufflers where appropriate. (*Id.*) Operation of the proposed natural gas pipeline may produce audible noise during maintenance activities; nevertheless, except for occasional "blow down" operations, maintenance activities are expected to be relatively quiet. (*Id.* at 83-84) Additionally, Columbia will use a silencer for all blow down operations. (*Id.*)

Columbia anticipates minimal impacts to views within the Project area. (*Id.* at 101.) The Project will be minimally visible. Besides permanent ROW markers located along the centerline, the permanent Project ROW will only be visible in some areas of cleared forest. (*Id.*)

(f) Recommended Conditions for Certificate

Staff reviewed various types of land use impacts, including residential, recreational, institutional, ecological, cultural resources, agricultural, and overall geological suitability. (Staff Exhibit 7, Zeto Prefiled Testimony, at 3:2-6.) As an initial matter, Staff agrees that the Project would not have a profound effect upon surrounding land uses. (Staff Exhibit 1, Staff Report at 23.) Staff also agrees that the Project will support increased regional growth and foster increased availability of natural gas to surrounding municipalities. (*Id.*) Additionally, Staff has determined that the Preferred Route represents a minimal adverse impact to cultural resources; however, additional archaeological, architectural, and geotechnical field studies would be needed if the Board selects the Alternate Route. (*Id.* at 24; Condition (9) and (16) of Joint Exhibit 2, Joint Stipulation, at 6-7.) Staff further states that based on its assessment, and subject to certain conditions, no particular

geological features along the Preferred Route are incompatible with construction and operation of the proposed gas pipeline. (*Id.* at 27) Staff agrees that the Preferred Route will result in less land use and environmental impacts. (Staff Exhibit 1, Staff Report, at 33.)

To confirm that its final design is in conformance with the certificate, Columbia will submit to Staff one set of detailed engineering drawings of the final project design and mapping, including all final geotechnical study results, at least 30 days prior to the preconstruction conference. (Condition (4) of Joint Exhibit 2, Joint Stipulation, at 3.) Columbia will also make welding qualifications, welding procedures, and nondestructive testing procedures available to Staff for review prior to construction. (Condition (7) of Joint Exhibit 2, Joint Stipulation, at 4.)

Columbia has agreed to obtain and provide to Staff all relevant transportation permits, including a final traffic plan, prior to the preconstruction conference for review and confirmation by Staff. (Condition (12) of Joint Exhibit 2, Joint Stipulation, at 2.) Columbia has further agreed that, prior to commencement of construction activities in areas that require permits, Columbia will obtain and comply with such permits or authorizations and include supporting documentation on the case docket. (Condition (18) of Joint Exhibit 2, Joint Stipulation, at 2.)

Columbia will comply with all applicable Pipeline Safety Regulations during construction of the transmission line portion of the Project. (Condition (6) to Joint Exhibit 2, Joint Stipulation, at 5.) The federal regulations specifically cited in Condition (6) have been adopted by the State of Ohio for intrastate pipelines. (Staff Exhibit 4, Chace Prefiled Testimony, at 3:14-4:2.) Although Columbia's Application was consistent with requirements found in the Pipeline Safety Regulations, Condition (6) was added to verify these requirements would be followed. (*Id.* at 4:4-7.)

Additionally, Columbia has agreed to have an environmental specialist on site during construction activities that may affect sensitive areas, including HDD locations, areas of vegetation clearing, designated wetlands and streams, and locations of threatened or endangered species. (Condition (19) of Joint Exhibit 2, Joint Stipulation, at 6.)

Accordingly, Staff recommends that the Board find that Columbia has determined the nature of the probable environmental impact for the proposed facility, and therefore complies with the requirements in R.C. 4906.10(A)(2)-(3). (Staff Exhibit 1, Staff Report, at 32-33.)

Conclusion Regarding Environmental Impact

As recognized by the Staff Report, either of the proposed routes will have some identifiable impacts on waterways, wetlands, vegetation, and animals, as well as other effects. (Staff Exhibit 1, Staff Report, at 24-30.) Limited effects of this type are a tolerable result in light of the demonstrated need for additional gas supply and reliability. Columbia has proposed and will follow substantial measures to avoid sensitive areas and, where these areas cannot be completely avoided, minimize and reduce the effects of the Project on waterways, wetlands, plants, and animals, and other environmental resources near the transmission line. In addition, Columbia and Staff have agreed to twenty-one conditions for a Certificate, which will further minimize environmental impacts from the proposed Project. (Joint Exhibit 2, Joint Stipulation, at 2, ¶2.) As such, the record in this case establishes that Columbia's proposal – particularly the Preferred Route – represents the minimum adverse effect on the environment. (Staff Exhibit 1, Staff Report, at 33.)

3. R.C. 4906.10(A)(4) – Determination that the Project is Consistent with Plans for Expansion of Regional Electric Grid

The fourth requirement for the Board's consideration relates only to electric facilities and therefore is not applicable to this Project.

4. R.C. 4906.10(A)(5) – Determination that the Project Will Comply with Relevant Pollution Control and Air Transportation Safety Regulations

The Board must further find that a proposed utility facility will be consistent with specified environmental protection regulations. R.C. 4906.10(A)(5). These provisions include air pollution, water pollution, and solid waste rules. *Id.* A facility must also comply with certain air transportation safety provisions. *Id.* The Project has been designed to comply with all of the relevant regulatory provisions and Columbia will seek appropriate permits from state and federal agencies as needed. (Condition (18) of Joint Exhibit 2, Joint Stipulation, at 2.)

The Project does not implicate substantial air pollution issues and therefore will not require air quality permits under Chapter 3704 of the Ohio Revised Code. (Staff Exhibit 1, Staff Report at 35.) Minimal grading and excavation will be involved with the construction of the Project. (Applicant's Exhibit 1, Application, at 49.)

Columbia anticipates obtaining environmental permits, where necessary. Per Condition (18) of the Joint Stipulation, Columbia will obtain, docket, and comply with permits. (Condition (18) of Joint Exhibit 2, Joint Stipulation, at 2.) Columbia will obtain

coverage under the OEPA General Permit Authorization for Storm Water Discharges Associated with Construction Activities under the National Pollution Discharge Elimination System, and develop a storm water prevention plan (“SWPPP”) for the Project. (Applicant’s Exhibit 1, Application, at 141.) Additionally, the Project SWPPP will include best management practices (“BMPs”) outlined in an erosion and sediment control plan, in accordance with OEPA standards. (*Id.*) Staff agrees that with these measures, construction and operation of the proposed facility will comply with requirements of R.C. Chapter 6111, and the rules and laws adopted under that chapter. (Staff Exhibit 1, Staff Report, at 35.)

Columbia acknowledges that some debris from construction activities is anticipated. Columbia will keep the construction work area clean of all rubbish and debris resulting from the work. (Applicant’s Exhibit 1, Application, at 173.) All trash and construction debris will be stored in covered containers and non-hazardous materials shall be disposed of in an approved landfill or recycled at an appropriate facility. (*Id.*) Staff agrees that Columbia’s solid waste disposal plans will comply with solid waste disposal requirements set forth in R.C. Chapter 3734. (Staff Exhibit 1, Staff Report at 36.)

Lastly, a major utility facility must also comply with certain rules relating to air transportation facilities. R.C. 4906.10(A)(5). Columbia will be installing permanent pipeline markers that are no more than four feet high. (Applicant’s Exhibit 1, Application at 174.) This height is well under the height requirements issued by the Federal Aviation Administration (FAA). (Staff Exhibit 1, Staff Report at 36.) The proposed pipeline routes also do not cross nor are within 1,000 feet of any airport property. Thus, Staff agrees that the Project will comply with relevant air navigation regulations. (*Id.*)

Notably, in Condition (13) of the Joint Stipulation, Columbia agrees that the certificate authority shall not exempt the facility from any other applicable and lawful local, state, or federal rules or regulations. (Condition (13) of Joint Exhibit 2, Joint Stipulation, at 2.) As such, Staff recommends that the Board find the proposed facility complies with the requirements specified in R.C. 4906.10(A)(5). (Staff Exhibit 1, Staff Report at 36.)

5. R.C. 4906.10(A)(6) The Project will Serve the Public Interest, Convenience, and Necessity

The Board also must determine that a proposed facility “will serve the public interest, convenience, and necessity.” R.C. 4906.10(A)(6). At the most basic level, the Project meets this requirement by fulfilling the established need for additional gas supply and enhancing the reliability of that supply. The “public interest, convenience and ne-

cessity" for a proposed facility or service can be established only where there is "...a public need for the proposed service and existing service is inadequate." *Canton Storage and Transfer Company, Inc. v. Public Utilities Commission*, 72 Ohio St. 3d 1; 647 N.E.2d 136 (1995). The determination of "public interest, convenience and necessity requires this Board to determine "...how much it [the proposed facility] will benefit the public." *Ohio Edison Company v. Power Siting Commission*, 56 Ohio St.2d 212, 383 N.E.2d 588 (1978). Local judgments do not control the Board's decision as to the design of proposed facilities. *Chester Twp v. Power Siting Commission*, 49 Ohio St. 2d 231, 361 N.E.2d 436 (1977). The Project is needed, so it meets the public interest, convenience and necessity.

Columbia has further sought to serve the public interest, convenience, and necessity through selection of two proposed routes that minimize impacts on the properties and communities involved. Public comments and suggestions were incorporated in an effort to further minimize any adverse impacts from the Project. Once approved and constructed, the Project will also serve the public interest by increasing tax revenues and encouraging business development. (Staff Exhibit 1, Staff Report at 23.)

General construction activities will be limited to the hours of 7:00 am to 7:00 pm, whenever possible. Columbia will file a copy of the public information program and complaint resolution plan on the public docket at least 30 days prior to the preconstruction conference and will notify affected property owners and tenants at least seven days prior to construction. (Condition (14) of Joint Exhibit 2, Joint Stipulation, at 3.) Columbia will provide Staff a complaint summary report during construction of the facility. (*Id.*) Staff found that Columbia's construction, operation, and maintenance methods appear to be consistent with the requirements of the requisite Pipeline Safety Regulations. (Staff Exhibit 1, Staff Report, at 38.) Subject to the agreed-upon conditions in the Joint Stipulation, Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity, and therefore complies with the requirements specified in R.C. 4906.10(A)(6). (*See id.* at 39.)

6. R.C. 4906.10(A)(7) – The Project will Impose Minimal Impacts on Cropland and the Viability of Agricultural Land Within Agricultural Districts.

The Board must further determine the impact of any proposed facility on agricultural land located within an existing agricultural district established under state law. R.C. 4906.10(A)(7). Chapter 929 of the Ohio Revised Code provides that a property owner may place his or her land in an "agricultural district" for five years if it meets certain conditions. The land must be at least ten acres and must have been exclusively devoted

to agricultural production for the three previous calendar years. R.C. 929.02(A). Certain lands along the Preferred and Alternate routes are located in agricultural districts.

The Preferred Route will disturb 192 acres of agricultural land including approximately 26 acres of agricultural district land while the Alternative Route will disturb approximately 168 acres of agricultural land including approximately 29 acres of agricultural district land. (Applicant's Exhibit 1, Figure 7 of Application, at 107-115; Staff Exhibit 1, Staff Report, at 40.) Most of the impacts are temporary and occur only during the pipeline installation process. Additionally, certain agricultural practices, such as row crops, can be continued in permanent Project ROW. (Applicant's Exhibit 1, Application, at 94.)

Columbia will work with farmers to limit the Project construction impacts and will provide market compensation for lost crops if construction occurs during field operations. (Applicant's Exhibit 1, Application, at 95; Condition (17) of Joint Exhibit 2, Joint Stipulation, at 6.) Further, any broken or damaged tile or pipe will be replaced with the same size and the same or better quality pipe or tile. (Applicant's Exhibit 1, Application, at 95.) Columbia will also replace agricultural structures, such as pasture fences, if and when necessary. (*Id.*) And of further note, the Preferred and Alternative Routes have been routed along fencerows and around the edges of row crop fields to the greatest extent possible to avoid damaging field tile drainage systems. (Staff Exhibit 1, Staff Report, at 40.)

While agricultural district lands are present on both the Preferred and Alternate Routes, the land will be only temporarily impacted by the construction of the pipeline. Columbia will restore agricultural land back to its original conditions and reimburse landowners for any applicable crop damages, including the preservation of farming soil within the Project workspace. However, no permanent impacts are expected for any agricultural district property nor to its visibility.

Accordingly, Staff agrees with Columbia that the impact of the proposed facility on the viability of existing agricultural land in an agricultural district has been determined within Columbia's Application, and therefore complies with the requirements specified in R.C. 4906.10(A)(7). (Staff Exhibit 1, Staff Report, at 40.)

7. R.C. 4906.10(A)(8) – The Facility Incorporates Maximum Feasible Water Conservation Practices as Determined by the Board, Considering Available Technology and the Nature and Economics of Various Alternatives.

Pursuant to R.C. 4906.10(A)(8), the proposed facility must incorporate maximum feasible water conservation practices, considering available technology and the nature and economics of the various alternatives. Construction of the Project would not require significant water use, other than for dust suppression and control on right-of-way, construction access roads, or unpaved transportation routes as needed during construction. (Staff Exhibit 1, Staff Report, at 41) Water may also be needed for hydrostatic testing of the pipeline. (*Id.*) Water use for such testing would be drawn from local water sources, minimizing impacts to the environment or other existing users. (*Id.*)

Accordingly, Staff agrees that Columbia’s proposed pipeline would incorporate maximum feasible water conservation practices, and therefore would comply with R.C. 4906.10(A)(8). (*Id.*)

Based on all of the evidence, Applicants have established that the Application meets all of the criteria for issuance of a Certificate under Revised Code §4906.10(A).

B. The Board Should Adopt the Joint Stipulation and Grant Columbia a Certificate Subject to the Twenty-One Conditions Enumerated Therein

1. Joint Stipulation Passes Muster Under Operative Three-Prong Test

The Joint Stipulation reached between Columbia, Staff, Union County, Millcreek Township, and Jerome Township (“Signatory Parties”) encompasses issues supported by both Columbia’s Application and the Staff Report. (*See generally*, Joint Exhibit 2, Joint Stipulation.) At the adjudicatory hearing on June 17, 2021, Ms. Melissa L. Thompson testified on behalf of Columbia in sponsorship of the Joint Stipulation. (*See generally*, Applicant’s Exhibit 3, Prepared Direct Testimony of Melissa L. Thompson; *see also* Transcript of Proceedings, June 17, 2021, 14:1-17-22 (direct by Attorney Flahive)). The Joint Stipulation was accepted into evidence. (Tr. at 105.) All twenty-one conditions in the Joint Stipulation track those proposed in the Staff Report, with a few minor revisions, and are consistent with ensuring that the Certificate issued will meet applicable statutory requirements. The Signatory Parties therefore recommend the Board’s approval of Columbia’s Northern Columbus Loop – Phase VII Pipeline Project, agreeing specifically that Columbia’s Preferred Route is the superior option. (Joint Exhibit 2, Joint Stipulation, at 2, ¶4.)

Pursuant to Ohio Adm.Code 4906-2-24, parties before the Board are permitted to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding. Under Ohio Adm.Code 4906-2-24(D), no stipulation is binding on the Board. However, the Board affords the terms of such an agreement substantial weight. *In re Application of American Transmission*

Systems, Inc. for a Certificate of Environmental Compatibility and Public Need for the Construction of the Wood County 138-KV Reinforcement Project, Case No. 18-1335-EL-BTX, Opinion and Order, 2020 OHIO PUC LEXIS 992, at *40-41 (Jan. 16, 2020). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. *Id.* In considering the reasonableness of a stipulation, the Board uses the following criteria:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principles or practice?

Id. at 41.

Between the evidence presented in the Application, Staff Report, Ms. Thompson's direct testimony, and support from the majority of parties to this proceeding (i.e. all except Suburban and Delaware County) prove that the Joint Stipulation is reasonable and should be adopted without modification.

(a) The Joint Stipulation is the Result of Serious Bargaining Among Capable, Knowledgeable Parties.

As attested to by Columbia witness Thompson, the Joint Stipulation is the result of a lengthy process of negotiation involving experienced representatives of every affected Party. (Columbia Exhibit 3, Thompson Direct Testimony, at 3:27-32.) The Parties met numerous times at settlement conferences [through WebEx] to debate the specific details of the Settlement. (*Id.*) All Signatory Parties have previously participated in Board proceedings and each Party was represented by experienced and competent counsel. (*Id.* at 3:34-39.)

The Joint Stipulation is a comprehensive compromise resolving various issues in this case. Each Signatory Party represents a broad range of interests, including the interests of citizens within Union County, and in particular those located within Jerome and Millcreek Townships, as well as customers represented by Staff and Columbia. (*Id.* at 4:1-5.)

As supported by substantial and cumulative evidence of record, the Signatory Parties are capable, knowledgeable parties. Accordingly, the Joint Stipulation is clearly the product of serious bargaining among those parties and presents a reasonable resolution to all issues with respect to whether the Board should grant a Certificate for this Project. Together, the Signatory Parties agree that it should.

(b) The Settlement Benefits Ratepayers and the Public Interest.

Columbia's Application, itself, has demonstrated that the Project will serve the public interest, convenience, and necessity. The Project fulfills the established need for additional gas supply, particularly the critical need for another natural gas feed to the NCHP system (Joint Exhibit 2, Joint Stipulation, at 1.) and enhances the reliability of that supply. Specifically, the Project improves operational flexibility, will meet the expected load growth in central Ohio, and will connect to the Maryville Connector, as was previously approved by the Board (Case No. 19-2148-GA-BLN). (Columbia Exhibit 3, Thompson Direct Testimony, at 4:13-18.) Those benefits will also better enable Columbia to comply with new federal pipeline safety requirements. (Columbia Exhibit 3, Thompson Direct Testimony, at 4:20-34; Staff Exhibit 1, Staff Report, at 19.) The Staff Report—largely adopted through the Joint Stipulation—details the great value and importance of the Project in terms of maintaining operational reliability while Columbia inspects, tests, or replaces segments of the NCHP system. (Staff Exhibit 1, Staff Report at 19.)

Additionally, because population growth in Central Ohio is anticipated to increase significantly over the next three years, the proposed Project is critical for Columbia to support expected load growth and demand. (Applicant's Exhibit 1, Application, at 8.) Accordingly, the Joint Stipulation concludes, based on compelling need, that the Board should approve this Project.

(c) The Settlement Does Not Violate Any Important Regulatory Principles or Practices.

Finally, the Joint Stipulation does not violate any important regulatory principles or practices. (Columbia Exhibit 3, Thompson Direct Testimony, at 5:25-28.) The Joint Stipulation, along with the twenty-one conditions listed therein, ensure that the Project will meet the requisite criteria found in R.C. 4906.10(A) as well as all other applicable state and federal laws and regulations.

V. Conclusion

For the foregoing reasons, Columbia, Staff, Union County, Millcreek Township, and Jerome Township jointly request that the Board approve Columbia's Application, issue a Certificate for this NCL—Phase VII Project, and adopt all conditions enumerated in the Joint Stipulation, without modification.

Respectfully submitted,

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Case No(s). 20-1236-GA-BTX

Summary: Brief Joint Initial Post-Hearing Merit Brief of Columbia Gas of Ohio, Inc., Staff of the Ohio Power Siting Board, Union County, Jerome Township and Millcreek Township electronically filed by Ms. Devan K Flahive on behalf of Columbia Gas of Ohio, Inc.