

**BEFORE
THE OHIO POWER SITING BOARD**

Columbia Gas of Ohio, Inc.'s Letter of)	
Notification for the Marysville)	Case No. 19-2148-GA-BLN
Connector Pipeline Project)	

**COLUMBIA GAS OF OHIO, INC.'S
MEMORANDUM CONTRA MOTION FOR LEAVE TO INTERVENE AND FOR
LEAVE TO FILE MEMORANDUM IN OPPOSITION INSTANTER**

On February 6, 2023, Patrick E. Bailey, Whitney Bailey, Don Bailey, Jr., Successor Trustee of the Arno Renner Trust dated April 24, 1997, and Charles Peter Renner (hereinafter "Requesting Intervenors") filed a Motion for Leave to Intervene and for Leave to File Memorandum in Opposition Instanter. For the reasons explained below, the Ohio Power Siting Board ("Board") should deny the Requesting Intervenor Motion and should grant Columbia's Motion for Waiver.

A. The Board should grant Columbia's Motion for Waiver

Columbia filed its Motion for Waiver in this docket on January 24, 2023. In that Motion, Columbia explained the good cause reasons to grant the Motion, demonstrating that Columbia needs additional time to prevail in condemnation cases before it can start a continuous course of construction on the Marysville Connector. Requesting Intervenors assert that Columbia's own "bad faith" actions are the real cause for the delay and therefore good cause has not been shown for the Motion for Waiver.

Requesting Intervenors provide no reason to deny Columbia's Motion. The claims of "bad faith" are disputed by Columbia and are currently on appeal to the Third Appellate District.¹ Differing opinions about how to label or consider the use of 25 feet of temporary easement for construction purposes is not bad faith. While Columbia respects the trial court, it disagrees with the decision of the trial

¹ Columbia's appeal of the Union County Common Pleas Court's decision in *Columbia Gas of Ohio, Inc. v. Patrick Bailey, et al.*, 21-CV-0112, 21-CV-0113, is still pending with the Third Appellate District. See *Columbia Gas of Ohio, Inc. v. Patrick Bailey, et al.*, 3d Dist. Union No. 14-22-0013 and *Columbia Gas of Ohio, Inc. v. Don Bailey, Jr., et al.*, 3d Dist. Union No. 14-22-0014.

court, and also vehemently disagrees that Columbia acted in bad faith during the Board proceeding or at the trial court level. Instead, Columbia presented a clear case before the Board about the need for the project and presented construction plans that showed the permanent and temporary easement areas. Requesting Intervenor's unsupported claim does not diminish Columbia's good cause reasons to grant its requested waiver and extension of its Certificate.

The Board therefore should grant Columbia's narrowly tailored Motion for Waiver due to the easement acquisition challenges it has been facing with the Marysville Connector.

B. The Board should deny the intervention of the Requesting Intervenor.

1. The Requesting Intervenor's Motion is untimely

The rules of the Board concerning intervention in accelerated certificate application cases that use the Letter of Notification ("LON") format are clear. Any person wishing to intervene in a matter that has been filed with the Board under the LON accelerated application rules must do so within ten days of the date of the public notice required by Ohio Adm.Code 4906-6-08(A). Columbia gave its public notice on December 23, 2019. The due date to intervene in this proceeding was January 2, 2020.² The Requesting Intervenor failed to meet this deadline.

When a person fails to meet the deadline, the Board's rules provide a specific set of criteria for granting requests for intervention. Principal among these criteria, Ohio Adm.Code 4906-2-12(C) allows the Board or an Administrative Law Judge to grant an untimely petition to intervene only if extraordinary circumstances justify it. The Requesting Intervenor's Motion for Leave to Intervene does not meet this standard and should be denied as untimely. The Board should deny the pending untimely Motion to Intervene just as it already did in this proceeding when two interventions were denied due to their motion being untimely.³

Columbia filed its pre-application letter on December 13, 2019, noting publicly that it was filing the Marysville Connector Pipeline Project application on or around December 20, 2019. On December 20, Columbia filed its letter of notifica-

² *In the Matter of Columbia Gas of Ohio, Inc.'s Letter of Notification for the Marysville Connector Project*, Case No. 19-2148-GA-BLN, Entry at 13 (April 21, 2020).

³ *Id.* at 14.

tion in this case docket. These filings were included on the Public Utilities Commission of Ohio's Docketing Division Daily Activity Report which is publicly available. Columbia likewise published notice of the Marysville Connector Pipeline Project in the Marysville Journal-Tribune on Monday, December 23, 2019.⁴ In that notification, the timeline for intervention is clearly stated as "Interested persons may file motions to intervene and/or comments in this matter with the Board up to ten (10) days following the publication of this notice, in accordance with Rule 4906-2-12 of the Ohio Administrative Code."⁵ Finally, the Requesting Intervenors were sent a letter pursuant to Ohio Adm.Code 4906-6-08(B) making them aware of the Letter of Notification filing.⁶ Yet the Requesting Intervenors did not intervene in this docket by the January 2, 2020 deadline.

The Board should deny Requesting Intervenors' motion to intervene more than three years after the deadline for intervention to challenge an already approved route as untimely.

2. Requesting Intervenors have not shown "extraordinary circumstances" exist to grant an untimely intervention

The "extraordinary circumstances" that Requesting Intervenors allege are the decisions of the Union County Common Pleas Court and the Third District Court of Appeals, finding that there is no necessity for the appropriations of their property and other properties along the Marysville Connector. Yet by citing these decisions, Requesting Intervenors bolster Columbia's reasons for requesting the extension. As Requesting Intervenors note, Columbia has not been able to successfully secure any easements through the condemnation process.⁷ Prior to Columbia constructing the Marysville Connector, it must secure these easements. Whether or not the Requesting Intervenors believe Columbia will be successful through the legal process is irrelevant⁸ – Columbia needs additional time for the *courts* to decide Columbia's requests for land rights to support the pipeline.

⁴ See *In the Matter of Columbia Gas of Ohio, Inc.'s Letter of Notification for the Marysville Connector Project*, Case No. 19-2148-GA-BLN, Proof of Publication (Jan. 6, 2020).

⁵ *Id.*

⁶ See Appendix A for the letters sent to the Requesting Intervenors pursuant to Ohio Adm.Code 4906-6-08(B).

⁷ Motion to Intervene at 3.

⁸ *Id.* at 3 (Requesting Intervenors argue that "the claim Columbia will be able to secure land rights by condemnation if provided more time is speculative" and that "[t]here is nothing in the record of any of these cases to suggest that Columbia will secure necessary land rights even if it is provided more time.").

The Requesting Intervenors also argue that they did not intervene in this docket earlier because they expected the Ohio Department of Agriculture, a voting member of the Board, to oppose the taking of their land in this docket. This argument conflates intervention as a party to advocate for a position with the statutory obligation of the Director of the Ohio Department of Agriculture. R.C. 4906.02(A)(1) establishes the Board and lists the composition of the Board to include, amongst other state agency directors, “the director of agriculture.” R.C. 4906.03 lists the power and duties of the Board, which include requiring information “from persons subject to its jurisdiction as it considers necessary to assist in the conduct of hearings and any investigations or studies it may undertake,” conducting “any studies or investigations that it considers necessary or appropriate to carry out its responsibilities under this chapter,” and approving, disapproving, or modifying and approving “applications for certificates.”

As a member of the Board, the Ohio Department of Agriculture also has a right to recuse itself from proceedings. In this proceeding, the Director of the Ohio Department of Agriculture recused herself from this case, and did not vote on the Opinion, Order, and Certificate issued by the Board on August 27, 2020.⁹ Because of this decision, where the Ohio Department of Agriculture chose not to participate or opine on *its* rights under a conservation easement, the Requesting Intervenors allege that *their* rights were not protected. Such arguments fall short of the “extraordinary circumstances” standard provided in the Board’s rules.

3. Requesting Intervenors’ intervention would unduly delay these proceedings.

Finally, allowing the Requesting Intervenors to join this case will impede the just and *expeditious* resolution of the only issue in this proceeding – simply whether to grant Columbia’s request for an additional three years on the Certificate. The Requesting Intervenors assert, without explanation, that granting their intervention will not unduly delay the proceeding or unjustly prejudice an existing party without any indication of how their presence in the case will not do so. Their lack of explanation deprives Columbia of any opportunity to respond to how the Requesting Intervenors’ presence will not unduly delay this case or unjustly prejudice Columbia or any other timely Party to this case.

⁹ See *In the Matter of Columbia Gas of Ohio, Inc.’s Letter of Notification for the Marysville Connector Project*, Case No. 19-2148-GA-BLN, Opinion, Order and Certificate (Aug. 27, 2020) at 15.

Regardless, Requesting Intervenor's description of their interest in this case reasonably leads to the conclusion that they are intervening to collaterally to attack the Board's previous order approving the Letter of Notification rather than the narrow waiver requested by Columbia. Requesting Intervenor's argue that they "alone can protect their interests" being "an interest in this matter because Columbia is seeking to appropriate property owned by the Intervenor's for Columbia's gas pipeline."¹⁰ By its very interest, Requesting Intervenor's are challenging the Board's decision to approve the Marysville Connector's route, which impacts Requesting Intervenor's properties. To defend these interests through a challenge to the route will lead to delay in this proceeding.

C. Conclusion

The Board should deny the Motion for Leave to Intervene as there are no extraordinary circumstances that justify granting the requested intervention. The Requesting Intervenor's had the proper notice of the proceeding and failed to intervene within the required time. They are over two years late to the case. Moreover, the subsequent civil and appellate court decisions do not somehow bestow upon the Requesting Intervenor's a sufficient interest related to Columbia's Motion for Waiver. Columbia does not seek anything different from what is already approved that would warrant intervention by the Requesting Intervenor's. Columbia merely seeks a rule waiver to extend the Certificate granted on August 27, 2020. And finally, Requesting Intervenor's' apparently relying on a Board member to defend Request Intervenor's' land interest is no excuse for Request Intervenor's own failure to timely intervene.

For these reasons, the Motion for Leave to Intervene and Leave to File Memorandum in Opposition Instantly should be denied and the Board should grant Columbia's Motion for Waiver.

¹⁰ Motion to Intervene at 4, 5.

Respectfully submitted,

COLUMBIA GAS OF OHIO, INC.

/s/ Joseph M. Clark

Joseph Clark, Assistant General Counsel
(0080711)

Columbia Gas of Ohio, Inc.

290 W. Nationwide Blvd.

P.O. Box 117

Columbus, OH 43216-0117

Telephone: (614) 460-6988

E-mail: josephclark@nisource.com

(Willing to accept service by email)

Attorney for

COLUMBIA GAS OF OHIO, INC.

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 13th day of February, 2023, upon the parties listed below.

/s/ Joseph M. Clark

Attorney for

COLUMBIA GAS OF OHIO, INC.

Suburban Natural Gas Company:

bojko@carpenterlipps.com

paul@carpenterlipps.com

Delaware County Board of Commissioners:

AHochstettler@co.delaware.oh.us

Logan County Board of Commissioners:

eric@co.logan.oh.us

Ohio Gas Access Partnership, Inc.:

mjsettineri@vorys.com

mwtaylor@vorys.com

Board of Trustees, Jerome and Millcreek Townships and Union County Board of Commissioners:

tgray@co.union.oh.us

Madison County Commissioners:

spronai@co.madison.oh.us

Attorneys for Patrick E. Bailey, Whitney Bailey, Don Bailey, Jr., Successor Trustee of the Arno Renner Trust Dated April 24, 1997, and Charles Peter Renner:
dw@planklaw.com

A NiSource Company

IMPORTANT NOTICE

Columbia Gas of Ohio (“Columbia”) is proposing a pipeline betterment project known as the Marysville Connector Pipeline Project (the “Project”). This project will install approximately 25,083 feet of 12-inch coated steel main and a district regulator station. The general location of the proposed project is shown in the accompanying map at the bottom of this notice. Columbia Gas plans to start field construction in February 2022. The project is expected to be complete by the end of November 2022.

The proposal (called a Letter of Notification) to construct, operate, and maintain the new pipeline is now pending before the Ohio Power Siting Board in docket number 19-2148-GA-BLN. Interested persons may file comments or motions to intervene in this matter with the Board up to ten (10) days following the publication of notice in the Marysville Journal-Tribune. Comments or motions to intervene should be addressed to the Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215-3793 and reference Case No. 19-2148-GA-BLN.

For more information about the proposed pipeline, you can find a copy of the Letter of Notification at the Marysville Public Library, 231 S. Plum Street, Marysville, Ohio 43040, and the Plain City Public Library, 305 West Main Street, Plain City, Ohio 43064. In addition, copies of all filings in the proceeding can be located on the Ohio Power Siting Board website at <http://www.opsb.ohio.gov>. Once at this site select “Letters of Notification”; then select “Gas letters of notification (GA-BLN)”; then select “OPEN-OPEN”; and finally select the case by the company’s name or the docket number. A copy of the Letter of Notification can also viewed at the Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215. The Ohio Power Siting Board can be reached at (866) 270-6772 or contactOPSB@puc.state.oh.us. You can also see a copy of the request by visiting us online at www.ColumbiaGasOhio.com, selecting “About Us” in the bottom left hand corner, and then selecting “Regulatory Information” from the Section Menu on the right hand side.



Parcel(s): 25-0008013.0000

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Case No(s). 19-2148-GA-BLN

Summary: Memorandum Contra Motion for Leave to Intervene and for Leave to File
Memorandum in Opposition Instantly electronically filed by Ms. Melissa L.
Thompson on behalf of Columbia Gas of Ohio, Inc.