

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)
Duke Energy Ohio, Inc., for a)
Certificate of Environmental) Case No. 20-1411-GA-BTX
Compatibility and Public Need for)
the Construction of the Bethel-)
Batavia Pipeline.)

STIPULATION AND RECOMMENDATION

Under Ohio Adm. Code 4906-2-24(A), any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in a proceeding. The purpose of this document is to set forth the understanding and agreement of Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) and the Staff of the Ohio Power Siting Board (Staff) (which, for the purpose of entering into this Stipulation and Recommendation, will be considered a party by virtue of Ohio Adm. Code 4906-2-11(C)) (each a Signatory Party and collectively, the Signatory Parties) and to recommend that the Ohio Power Siting Board (Board) approve and adopt this Stipulation and Recommendation (Stipulation), which resolves all the issues identified by Staff in its Staff Report (Report), filed on May 19, 2021, in this case.

The Stipulation is supported by adequate data and information, represents a just and reasonable resolution of all issues raised in this proceeding; is in the public interest; violates no regulatory principle or precedent; and is the product of lengthy, cooperative, voluntary, and serious bargaining among knowledgeable and capable parties that represent various interests and are represented by experienced counsel and technical experts. Although this Stipulation is not binding on the Board, it is entitled to careful consideration by the Board. For purposes of resolving all

issues raised by this proceeding, the Signatory Parties stipulate, agree, and recommend as set forth below.

WHEREAS, all the related issues and concerns raised by the Signatory Parties have been addressed in the substantive provisions of this Stipulation, and reflect, as a result of such discussions and compromises by the Signatory Parties, an overall reasonable resolution of all such issues;

WHEREAS, this Stipulation is the product of the discussions and negotiations of the Signatory Parties and is not intended to reflect the views or proposals that any individual Party may have advanced acting unilaterally;

WHEREAS, this Stipulation represents an accommodation of the diverse interests represented by the Signatory Parties and is entitled to careful consideration by the Commission;

WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and

WHEREAS, the Signatory Parties believe that the agreements herein represent a fair and reasonable solution to the issues raised in this matter;

NOW, THEREFORE, the Signatory Parties stipulate, agree and recommend that the Board make the following findings and issue its Opinion, Order and Certificate in this proceeding approving this Stipulation in accordance with the following:

1. Staff filed its Staff Report, detailing its recommended conditions for the Board's granting of a Certificate in this proceeding.
2. The Signatory Parties agree with the recommended conditions in the Staff Report, including that the Preferred Route is the route recommended for the Board's approval, except as modified to read as follows:

- (7) ~~That should~~ Should it appear that site-specific conditions may warrant blasting, the Applicant shall submit a formal blasting plan encompassing possible blasting needs for the corridor, at least sixty (60) days prior to blasting, to OPSB Staff for review and acceptance. The Applicant shall submit the following information as part of its blasting plan:
- (a) The name, address, email, and telephone number of the drilling and blasting company.
 - (b) A detailed blasting plan for dry and/or wet holes for a typical shot. The blasting plan shall address blasting times, blasting signs, warnings, access control, control of adverse effects, and blast records.
 - (c) A plan for liability protection and complaint resolution.
 - (d) A provision that prior to the use of explosives, the applicant or explosive contractor shall obtain all required licenses and permits. The applicant shall submit a copy of the license or permit to the board within seven days of obtaining it from the local authority.
 - (e) A provision that the blasting contractor shall utilize two blasting seismographs that measure ground vibration and air blast for each blast. One seismograph shall be placed beside the nearest dwelling, or at least at the nearest accessible property line to the dwelling, and the other placed at the discretion of the blasting contractor.
 - (f) A provision that the applicant or explosive contractor shall use protective matting during blasting operations.
 - (g) A provision that at least thirty days prior to the initiation of blasting operations, the applicant must notify, in writing, all residents or owners of dwellings or other structures within one thousand five hundred feet of the blasting site. The applicant or explosive contractor shall offer and conduct a pre-blast survey of each dwelling or structure within ~~one thousand~~ one thousand five hundred feet of each blasting site, unless waived by the resident or property owner. The survey must be completed and submitted to the board at least ten days before blasting begins.
 - (gh) A provision for weekly status reports to OPSB staff summarizing blasting activities performed to date along the route.
- (13) At least 30 days prior to the preconstruction conference, the Applicant shall file a copy of the public information program and the complaint resolution procedure on the public docket. At least seven days prior to the start of construction and at least seven days prior to the start of facility operations, the Applicant shall notify via mail affected property owners and tenants including those individuals who were provided notice of the public informational meeting, parties to this case, county commissioners, township trustees, emergency responders, airports, schools, and libraries, ~~as well as anyone who has requested updates~~ regarding the project. These notices shall provide information about the project, including contact information and a copy of the complaint resolution plan. The start of construction notice shall include written confirmation that the Applicant has complied with all preconstruction-related conditions of the certificate, as well as a timeline for

construction and restoration activities. The start of facility operations notice shall include written confirmation that the Applicant has complied with all construction related conditions of the certificate, as well as a timeline for the start of operations. The Applicant shall file a copy of these notices on the public docket. During the construction ~~and operation~~ of the facility, the Applicant shall submit to Staff a complaint summary report ~~by the fifteenth day of April, July, October, and January of each year through the first five years of operation~~. The report shall include a list of all complaints received through the Applicant's complaint resolution process, a description of the actions taken toward the resolution of each complaint, and a status update if the complaint has yet to be resolved. At least seven days prior to the start of facility operations, the Applicant shall notify all affected property owners and tenants on the approved route with a pipeline safety notification.

- (20) Thirty days prior to the first preconstruction conference, the Applicant shall file on the case docket an ecologically sensitive resource impact avoidance/minimization plan. The plan shall ensure clear communication of impact minimization measures for all project personnel. Ecologically sensitive resources include but are not limited to streams, wetlands, and suitable habitats of state and federal listed animal and plant species. Those working on-site shall be trained on the plan and provided with a copy of the plan. The plan shall contain the following:
- (a) mapping of ecologically sensitive resources, as well as facility components including access roads, laydown areas, and limits of disturbance
 - (b) demarcation of ecologically sensitive resources in the field with highly visible flagging, staking, or fencing prior to construction in those areas
 - (c) listed steps explaining how impacts to all ecologically sensitive resources will be avoided or minimized during construction, including compliance with applicable conditions of this certificate and any applicable project permits
 - (d) the presence of an environmental specialist, who is familiar with water quality protection issues and state and federal listed species, on site during construction activities that may affect ecologically sensitive areas.
 - (i) The environmental specialist shall be authorized to report any issues simultaneously to Staff and the Applicant.
 - (ii) To allow time for the Applicant and Staff to respond to any reported issues, the environmental specialist shall have authority to stop construction activities for up to 48 hours if the construction activities are creating unforeseen environmental impacts.
 - (e) ~~a frac-out contingency plan detailing monitoring of drilling pressures, containment, clean-up procedures including timely vacuum truck availability, restoration, and the presence of an environmental specialist~~ If the Applicant encounters listed plant or animal species or suitable habitat for these species, the Applicant shall include the location in the

ecologically sensitive resource impact avoidance/minimization plan. This condition shall be applicable to any time prior to or during construction.

- (21) ~~If the Applicant encounters listed plant or animal species or suitable habitat for these species, the Applicant shall include the location in the ecologically sensitive resource impact avoidance/minimization plan. This condition shall be applicable to any time prior to or during construction. At least thirty days prior to the first preconstruction conference, the Applicant shall file on the case docket a frac-out contingency plan detailing monitoring of drilling pressures, containment, clean-up procedures including timely vacuum truck availability, restoration, and the presence of an environmental specialist.~~
- (27) Prior to any in-water work, the Applicant shall provide information to ODNR indicating that no mussel impacts would occur at stream crossings. If this is not possible, then the appropriate mussel survey(s) shall be performed by a professional malacologist in coordination with ODNR. If mussels found in the project area cannot be avoided, as a last resort, a professional malacologist shall collect and relocate the mussels to suitable and similar habitat upstream of the project site. All surveys, assessments, and relocation plans shall be completed in accordance with the Ohio Mussel Survey Protocol and provided to ODNR for review to ensure compliance with this recommendation. ~~Proof~~ The Applicant shall file proof of compliance with this condition ~~shall be filed prior to construction on the docket, prior to construction.~~
- (30) The Applicant shall conduct surveys for the running buffalo clover by a trained botanist in May or June when the plant is in flower. The survey plans and results shall be coordinated with the USFWS Ohio Field Office. If found to be present, the Applicant shall avoid impacts to the running buffalo clover through implementation of any applicable USFWS recommendations. ~~Proof~~ and shall file proof of compliance with this condition ~~shall be filed~~ prior to construction.
- (31) Prior to construction, the Applicant shall obtain an ODNR-approved herpetologist to conduct Kirtland's snake habitat suitability surveys to determine if suitable habitat exists within the project area. If suitable habitat is determined to be present, the Applicant shall minimize impacts to this species:
- a) Avoid the area(s) determined to be suitable habitat along with an appropriate buffer determined by the ODNR.
 - b) Obtain an ODNR-approved herpetologist to conduct a presence/absence survey. If this species is determined to be present, the Applicant shall minimize impacts through implementation of any ODNR recommended avoidance measures such as obtaining an ODNR-approved herpetologist to develop and implement an avoidance/minimization plan and shall file proof of compliance with this condition prior to construction.

~~Proof of compliance with this condition shall be filed prior to construction.~~

3. This Stipulation is entered into as an overall compromise and resolution of the issues presented in this proceeding, and does not necessarily represent the position that any Signatory Party would have taken absent its execution. The Signatory Parties believe that this Stipulation represents a reasonable compromise of the varying interests that have been asserted in this proceeding.
4. This Stipulation is expressly conditioned upon adoption in its entirety by the Board without material modification by the Board; provided, however, that each Signatory Party has the right, in its sole discretion, to determine whether the Board's approval of this Stipulation contains a material modification thereof.
5. If the Board rejects or materially modifies all or part of this Stipulation, any Signatory Party shall have the right, within 30 days of issuance of the Board's Order, to apply for rehearing. If, upon rehearing, the Board does not adopt the Stipulation without material modification, or if the Board makes a material modification to any Order adopting the Stipulation pursuant to any reversal, vacation, and/or remand by the Supreme Court of Ohio, then, within 30 days of the Board's Entry on Rehearing or Order on Remand, any Signatory Party may withdraw from the Stipulation by filing a notice with the Board in this proceeding (Notice of Withdrawal), and serving said Notice of Withdrawal upon all Signatory Parties.
6. No Signatory Party shall file a Notice of Withdrawal without first negotiating in good faith with the other Signatory Party(ies) to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement achieves such an outcome, the Signatory Parties will file the new agreement for Board review and

approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful, and a Signatory Party files a Notice of Withdrawal, then the Board will convene an evidentiary hearing to afford that Signatory Party the opportunity to contest the Stipulation by presenting evidence through witnesses, to cross-examine witnesses, to present rebuttal testimony, and to brief all issues that the Board shall decide based upon the record and briefs. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, then some or all of the Signatory Parties shall submit the amended Stipulation to the Board for approval after a hearing if necessary.

7. Unless a Signatory Party exercises its right to terminate its Signatory Party status or withdraw as described above, each Signatory Party agrees to and will support the reasonableness of this Stipulation before the Board and in any appeal that it participates in from the Board's adoption and/or enforcement of this Stipulation.
8. This Stipulation is submitted for purposes of this proceeding only. Except for purposes of enforcement of the terms of this Stipulation, neither this Stipulation, nor the information and data contained therein or attached, shall be cited as precedent in any future proceeding for or against any Signatory Party or the Board itself. This Stipulation is a reasonable compromise involving a balancing of competing positions and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken if these issues had been fully litigated.
9. The Signatory Parties stipulate, agree, and recommend that the Board issue a final Opinion, Order and Certificate in this proceeding, ordering the adoption of this Stipulation, including the terms and conditions agreed to in this Stipulation by all

Signatory Parties. The Signatory Parties fully support this Stipulation in its entirety and urge the Board to accept and approve the terms herein. The Signatory Parties agree that the Stipulation represents a comprehensive compromise of issues raised by Signatory Parties with diverse interests. The Signatory Parties have signed the Stipulation and adopted it as a reasonable resolution of all issues. The Signatory Parties believe that the Stipulation that they are recommending for Board adoption presents a fair and reasonable result. The Signatory Parties agree that the settlement, as a package, benefits ratepayers and is in the public interest. The Signatory Parties agree that the settlement does not violate any regulatory principle or practice.

The undersigned Signatory Parties hereby stipulate and agree and each represents that he or she is authorized to enter into this Stipulation and Recommendation this 15th day of June, 2021.

DUKE ENERGY OHIO, INC.

By: /s/ Jeanne W. Kingery
Rocco O. D'Ascenzo (0077651)
Deputy General Counsel
Jeanne W. Kingery (0012172)
Associate General Counsel
Duke Energy Business Services, Inc.

STAFF OF THE OHIO POWER SITING
BOARD

By: /s/ Robert Eubanks
(JWK – by email authorization 6/15/21)
Robert Eubanks
Chelsea Fletcher
Assistant Attorneys General –
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