BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of BP-Husky Refining LLC for a Certificate of Environmental Compatibility and Public Need for a 138/69 kV Substation in Oregon, Lucas County, Ohio.	)))))	Case No. 09-750-EL-BSB

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 the exhibits introduced into evidence, including the Joint Stipulation and Recommendation; and being otherwise fully advised, hereby waives the necessity for an ALJ report and issues its opinion, order, and certificate in this case, as required by Section 4906.10, Revised Code.

APPEARANCES:

Boehm, Kurtz & Lowry, by Kurt J. Boehm, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of BP-Husky Refining LLC.

Porter, Wright, Morris & Arthur LLP, by Robert J. Schmidt, Jr., 41 S. High Street, Columbus, Ohio 43215, and FirstEnergy Service Company, by Morgan E. Parke, 76 South Main Street, Akron, Ohio 44308, on behalf of American Transmission Systems, Inc.

Richard Cordray, Ohio Attorney General, by Duane W. Luckey, Section Chief, and Anne L. Hammerstein, Assistant Section Chief, Public Utilities Section, 180 East Broad Street, 6th Floor, Columbus, Ohio 43215; and Margaret A. Malone, Assistant Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, on behalf of the staff of the Board.

OPINION:

I. SUMMARY OF THE PROCEEDINGS

All proceedings before the Board are conducted according to the provisions of Chapter 4906, Revised Code, and Chapter 4906, Ohio Administrative Code (O.A.C.).

On September 10, 2009, BP-Husky Refining LLC (BP-Husky or applicant) held a public informational meeting at the City Council Chambers in Oregon, Ohio, regarding an application that it intended to file for a certificate of environmental compatibility and

public need (certificate) to construct a 138/69 kilovolt (kV) electric substation (substation) on a nine-acre site in Oregon, Lucas County, Ohio.

On September 23, 2009, the applicant filed an application (BP-Husky Ex. 1) for a certificate to construct the substation. Also on September 23, 2009, as amended on October 23, 2009, the applicant filed a motion for waiver of Section 4906.06(A), Revised Code, pertaining to the requirement that an applicant file its application at least one year prior to the planned date of commencement of construction, as well as Rules 4906-15-06(F) and 4906-15-07(D), O.A.C., which relate to reviews of vegetation and cultural resources for the alternate site. On October 19, 2009, as supplemented on October 29, 2009, the Board's staff (staff) filed a letter stating that it had no objections to the waiver requests filed by the applicant.

On October 22, 2009, American Transmission Systems, Inc. (ATSI), a wholly-owned subsidiary of FirstEnergy, filed a motion to intervene, as well as a motion for admission *pro hac vice* of Morgan E. Parke. By entry dated November 2, 2009, the ALJ granted ATSI's motion to intervene and *pro hac vice* motion, and granted BP-Husky's motion for waiver of Section 4906.06(A), Revised Code, and Rules 4906-15-06(F) and 4906-15-07(D), O.A.C.

On November 3, 2009, the Board notified BP-Husky that its application for the proposed substation complied with Chapters 4906-01, *et seq.*, O.A.C. Pursuant to Rule 4906-5-06, O.A.C., on November 10, 2009, BP-Husky filed its proof of service of the application on the appropriate government officials and public agencies.

On November 5, 2009, ATSI filed a motion for protective order for certain information produced to staff. By entry dated November 18, 2009, the ALJ granted ATSI's motion for protective order. The entry also scheduled a local public hearing on the matter for January 21, 2010, at 6:00 p.m., at the Oregon City Council Chambers, 5330 Seaman Road, Oregon, Ohio, as well as an evidentiary hearing on January 27, 2010, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio. The entry additionally directed BP-Husky to publish notice of the application and hearings, as required by Rule 4906-5-08, O.A.C. On December 14, 2009, and January 14, 2010, the applicant filed its proof that the required publication of the hearing notice occurred.

On January 5, 2010, staff filed its report of investigation (Staff Ex. 1 or Staff Report.) The local public hearing was held, as scheduled, on January 21, 2010. No members of the public testified about the construction of the proposed substation.

On January 26, 2010, BP-Husky and staff filed a Joint Stipulation and Recommendation (Stipulation) (Joint Ex. 1), resolving all issues in this case. Relevant

provisions of the Stipulation will be discussed below. Also on January 26, 2010, ATSI filed a letter stating that it had no objections to the Stipulation or its conditions.

The evidentiary hearing commenced on January 27, 2010. At the evidentiary hearing, staff witness O'Dell offered testimony in support of the Stipulation. (Tr. at 7-8.)

II. PROPOSED FACILITY

According to the application, the proposed project will consist of construction of a new 138/69 kV substation to provide additional electrical power and improve the reliability of the power feed to the BP-Husky refinery. The proposed substation would also facilitate the installation of a new chemical reformer, to be known as Reformer 3. The Reformer 3 unit is expected to reduce air emissions by approximately five percent, reduce overall energy consumption, and decrease water usage. The additional power from the substation will enable the refinery to provide electrical power to Reformer 3, which is scheduled to be commissioned in fall 2011. BP-Husky has already received its air permit for Reformer 3. The application details that the proposed substation will consist of a fenced area containing the substation electrical switchyard equipment, and a protective relay control room. (BP-Husky Ex. 1 at 1-2, 2-3.)

The applicant asserts that potential sites were selected based on their proximity to the BP-Husky refinery property, the 69 kV ring bus, and FirstEnergy's 138 kV transmission lines. The applicant notes that the site selection process for the substation included an evaluation based upon several factors, including, but not limited to, land use, residents and neighborhoods, parks and public recreation areas, zoning, regional development, transportation corridors, utility corridors, ease of interconnection, noise-sensitive areas, archaeological or historical sites, agricultural land, public interest, changes to tax revenues, visual impacts, cultural resources, floodplains, wetlands, vegetation communities, protected species, wildlife, and soils. Based upon field reconnaissance and desktop survey, two potential sites were chosen. (*Id.* at 3-3.)

The preferred site is located directly south of the existing BP-Husky refinery, in an industrial area. The location of the preferred site was chosen for its proximity in relation to the refinery and the close proximity to the 138 kV transmission lines. The applicant asserts that the existing 69 kV sub-transmission lines in the area of the preferred site would also simplify all of the tie-ins and reduce 138 kV and 69 kV line tap distances. The applicant owns the site, which has been leased for agricultural purposes in the past. No significant vegetative clearing would be required, as the site has been recently used for row crop production. A small ditch and low-quality wetland to the northwest would be avoided during construction and operation of the facility. (*Id.* at 3-4; Staff Ex. 1 at 2.)

The alternate site is located approximately 1,000 feet east of the preferred site. The applicant also owns the location of the alternate site. No significant vegetative clearing would be required, as the area is flat and vacant. The surrounding area is also industrial in character, with the existing BP-Husky refinery occupying the land to the immediate north. (*Id.*)

The preferred site was chosen after evaluating many factors, including principal environmental, safety, and construction considerations, proximity to existing infrastructure, and proximity to existing power lines for each site. The applicant indicates that construction on the substation is tentatively scheduled to begin in March 2010, and that the substation is scheduled to be energized by May 2011. (BP-Husky Ex. 1 at 1-2.)

III. CERTIFICATION CRITERIA

Pursuant to Section 4906.10(A), Revised Code, 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 natural gas transmission line.

(2) The nature of the probable environmental impact.

(3) 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.

(4) In the case of an electric transmission line or generating facility, that 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 that such facilities will serve the interests of electric system economy and reliability.

(5) That the facility will comply with Chapters 3704, 3734, and 6111, Revised Code, and all rules and standards adopted under those chapters and under Sections 1501.33, 1501.34, and 4561.32, Revised Code.

(6) That 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 Chapter 929, Revised Code, that is located within the site and alternate site of the proposed major facility.

(8) That the facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

IV. SUMMARY OF THE EVIDENCE

A. Basis of Need - Section 4906.10(A)(1), Revised Code

The proposed substation is intended to increase energy availability and improve reliability and stability of the refinery, which will assist the refinery in maintaining safe operations, and allow BP-Husky to expand its facilities. The substation project would interconnect to the transmission grid via 138 kV lines owned by FirstEnergy, creating four new delivery points. The application asserts that BP-Husky has outgrown the existing 69 kV transmission system that is currently supplying power to the refinery. The existing 69 kV system will be unable to supply adequate, reliable, and stable power for the proposed expansion plan, including the installation of a new reformer. Without adequate, reliable, and stable power, the refinery may become unsafe and cause risk to the operators and equipment. Transmission disruptions and distribution power flows may also occur in the area. (BP-Husky Ex. 1 at 2-3; Staff Ex. 1 at 7.)

BP-Husky also expects the 2007 peak load of 65 megavolt-amperes (MVA) to grow to 82 MVA in 2011, a 26 percent increase. The applicant contends that the addition of the proposed substation would ensure that reliability and stability is maintained, while the energy demands of the refinery are met. The refinery is currently being served by a 69 kV sub-transmission system, which would be entirely disconnected with the addition of the 138 kV interconnection. The proposed substation would interconnect BP-Husky to the 138 kV transmission system by looping FirstEnergy's Bayshore-Jackman and Bayshore-Lemoyne-Maclean 138 kV transmission lines, which would provide four new delivery points to the refinery. (BP-Husky Ex. 1 at 2-4; Staff Ex. 1 at 7.)

The disconnection of the refinery from the 69 kV sub-transmission system will free up available capacity which currently supports residential and commercial loads, predominantly in downtown Toledo. Power would no longer flow through the refinery before being supplied to downtown Toledo, as it currently does. (Staff Ex. 1 at 8.)

The application contains a detailed load study report prepared by FirstEnergy, which provides a cost estimate, as well as engineering and construction schedules for

FirstEnergy transmission system facility modifications needed to accommodate four proposed 138 kV delivery points. Staff reviewed this study and found no concerns. BP-Husky additionally provided several transcription diagrams and base and contingency cases as part of its application. Several thermal overloads were found with the existing 69 kV sub-transmission system during certain contingencies. Absent the proposed substation project, load-flow analysis demonstrated that contingencies on the current system, with and without the reformer, will cause thermal violations jeopardizing reliability, stability, and safety. (*Id.*)

For these reasons, Staff recommends that the Board find that the basis of need for the project has been demonstrated, as required by Section 4906.10(A)(1), Revised Code. (*Id.*)

B. Nature of Probable Environmental Impact and Minimum Adverse Environmental Impact - Sections 4906.10(A)(2) and (3), Revised Code

Staff reviewed the environmental information contained in the record and has supplemented its review with site visits to the project area and discussions with employees and representatives of BP-Husky. Staff determined the following with regard to the nature of the probable impact to the environment:

(1) No streams or wetlands are expected to be crossed in the construction of the preferred or alternate sites. Based on the applicant's wetland delineation, a 0.22-acre category-one wetland swale is adjacent to the preferred site.

(2) Approximately 3.4 acres of scrub-shrub vegetation would be cleared for the preferred or alternate site to construct the gravel pad for the substation equipment. Where practical, the applicant has proposed selective clearing by hand to remove incompatible species where the preferred site abuts the unnamed ditch (Stream 1).

(3) Narrow riparian woodlands dominated by maple and willow species are present along the stream. The applicant has proposed leaving the roots of hand-cleared vegetation along the unnamed ditch. These remaining root systems will help maintain the bank stability by holding soils in place and by also reducing the volume and energy of rainfall moving into the stream from adjacent areas, thus curbing erosion.

(4) There are no nature preserves within the vicinity of either site. Further, there are no state parks, wildlife areas, scenic rivers,

federal wilderness areas, wildlife refuges, or designated critical habitat for threatened or endangered species within the vicinity of the proposed sites.

(5) Threatened or endangered species historically in or near the proposed sites include:

(a) Plants: A records survey at the Ohio Department of Natural Resources (ODNR) indicated that one protected plant species, the eastern prairie orchid (*Platanthera leucophaea*), is likely to occur within the vicinity of the preferred and alternate sites. No eastern prairie orchids, or their potential habitat, were observed in the applicant's field surveys conducted on November 19, 2008.

(b) Birds: The bald eagle (*Haliaeetus leucocephalus*) is no longer a federally protected species, but is still protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. According to the ODNR, this species is known to occur in Bay View Park, which is located approximately 1.75 miles northwest of the sites. No bald eagles or potential roosting/nesting trees were observed during field investigation.

The common tern (*Sterna hirundo*) is an endangered species within Ohio. According to the ODNR, common terns are known to occur on a man-made island in Maumee Bay, approximately two miles northeast of the sites. No common terns, or their potential habitat, were observed during field investigation.

The piping plover (*Charadrius melodus*) is a federally endangered species known to nest on the beaches of the Great Lakes. No piping plovers or their potential habitat was observed during field investigation.

(c) Reptiles and Amphibians: Blanding's turtle (*Emydoidea blandingi*) is a species of special concern. According to the ODNR, this species is known to occur in Otter Creek, which is located

approximately 0.75 miles west of the preferred site and one mile west of the alternate site. No Blanding's turtles or their potential habitat were observed during field investigation.

The channel darter (*Percina copelandi*) is a threatened species within Ohio. According to the ODNR, populations of channel darters are known to occur in Maumee Bay, approximately 1.6 miles north of the sites. No channel darters, or their potential habitat, were observed during field investigation.

The eastern massasauga (*Sistrurus catenatus*) is an endangered species within Ohio and a known inhabitant of Lucas County. No eastern massasaugas, or their potential habitat, were observed during field investigation.

(d) Mammals: The Indiana bat (*Myotis sodalis*), a state and federally endangered species, is a tree-roosting species during non-winter months and has a summer range that historically includes the project area. No Indiana bats or their potential habitat were observed during field investigation.

(e) Aquatic Species: The rayed bean mussel (*Villosa fabalis*) is a state endangered and federal candidate species that may be found in or near glacial lakes such as Lake Erie. No rayed bean mussels or their potential habitat were observed during field investigation.

(f) Invertebrates: The Karner blue butterfly (*Lycaeides Melissa samuelis*) is a state and federally endangered species and has a range that includes the project area. No Karner blue butterflies, or their habitat, were observed during field investigation.

(6) There are no residences in immediate proximity to the proposed substation. The closest residential areas are approximately three quarters of a mile south of the facility. No

structures or inhabited dwellings would be removed as a result of the construction of the substation.

(7) No noise-sensitive areas such as residential neighborhoods, recreational parks, and institutions are located in the vicinity of the project area. Operational sound levels are not expected to exceed 65 decibels (dBA) at the fence line, which is the established night-time limit for the city of Oregon in an industrially-zoned area.

(8) Access to the site would be from Cedar Point Road and would not impact rail corridors in the vicinity. No road or lane closures are expected as a result of this project.

(9) Aesthetic impacts of the facility are expected to be minimal due to the adjacent BP-Husky Toledo refinery, a nearby railroad corridor, and the industrial character of the surrounding area.

(10) The applicant has evaluated previous archeological surveys conducted in the area and found that no archaeological or culturally significant sites were identified at the project area. One potential archaeological site was identified within one mile of the project area; however, the structure was demolished in the year 2000 and was determined "too recent" to be considered an archaeological resource.

(11) No recreational uses would be impacted by the project. The closest recreational use is the Collins Park Golf Course, located approximately 1.5 miles southwest of the facility. The nearest institutional land uses include a school and church located approximately two miles from the proposed site.

(12) The total estimated cost of the substation equipment is expected to be $10.5 million. An additional $1 million in costs is expected for site preparation activities, plus additional labor costs.

(13) The applicant anticipates the new tax revenues as a result of the facility would be approximately $300,000 annually.

(Staff Ex. 1 at 10-12.)

With regard to the minimum adverse environmental impact, staff reviewed the description and analysis of the ecological, social, and economic impacts that would result

from the construction and operation of the substation, as set forth in the application. Staff also conducted field visits and requested and received additional information from BP-Husky. (*Id.* at 13.)

With regard to site selection, BP-Husky evaluated each site and determined that constraints were minimal for each site; however, the alternate site interferes with future development plans of an office campus for this location and is located closer to the nearest residences and businesses. The preferred site was chosen because it offered no significant constraints. (*Id.*)

Despite BP-Husky's efforts to minimize impacts, construction of either site is expected to introduce some minor direct and indirect impacts to plants and wildlife. The impacts could include the loss of habitat, increased habitat fragmentation, temporary and permanent displacement, and direct mortality due to construction activities. Records indicate the historical existence of a number of threatened or endangered species in the project vicinity. None of these species are expected to be negatively impacted by the proposed project and were not sighted during field investigation. (*Id.*)

The Staff Report indicates that the preferred site is expected to impact less than 0.1 acres of the adjacent 0.22-acre wetland. As such, a Section 404 permit from the Army Corps of Engineers will not be required for the minimal impacts to the wetland adjacent to the preferred site. The alternate site would impact no wetlands. Additionally, the preferred and alternate sites can be accessed from both sides, eliminating the need for crossing the stream and wetland areas. (*Id.* at 14.)

With regard to socioeconomic impacts, the proposed site is located on property zoned for industrial use. Land use on the site would change from commercial farming to electric utility. No land uses outside the boundary of the site would change as a direct result of the facility. No structures would need to be removed for the facility. The substation is not expected to have a significant impact on residential, institutional, agricultural, or recreational land uses. No historic cultural or archaeological resources have been identified on the site or within the direct area of potential effects. (*Id.*)

There would be temporary, intermittent noise impacts during construction of the substation. Construction equipment would have standard noise-suppressing features such as mufflers. Construction noise levels are not expected to impact the nearest residence. Operation of the facility is not expected to increase overall sound levels at the nearest residence. The facility would also have no significant aesthetic impact, due to its location adjacent to the BP-Husky refinery, the rail corridor, and the industrial character of the surrounding area. (*Id.*)

Staff found that the construction of the proposed facility would have a positive economic benefit on the local economy and the region. Employment due to construction of the substation would be modest; however, the proposed substation facility would benefit the city of Oregon and Lucas County by providing a new tax revenue stream. (*Id.*)

Staff concluded that both the preferred and alternate sites are viable and each represents minimal adverse environmental impact. Staff notes that the surrounding industrial land use, flat terrain, and the lack of any significant vegetation ensure that either site would be ideal for substation construction. Additionally, all required electrical interconnections and access points are nearby. However, staff found that the selection of the alternate site would require an adjustment to the applicant's future development plans. Additionally, the alternate site is also slightly closer to residential land uses. Therefore, staff concluded that the selection of the preferred site is superior. (*Id.* at 14-15.)

As part of the Stipulation, the parties recommend that the Board find that the record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the project as required by Section 4906.10(A)(2), Revised Code. Further, the parties agree and recommend that the construction of the substation represents the minimum adverse environmental impact pursuant to Section 4906.10(A)(3), Revised Code. (Joint Ex. 1 at 6.)

C. Electric Power Grid - Section 4906.10(A)(4), Revised Code

Staff and the applicant assert that the existing 69 kV system that supplies energy to the refinery would be unable to meet reliability and stability needs to ensure a safe operating facility. However, the planned substation would provide four new 138 kV delivery points to the refinery, which will meet the needs of the refinery to complete a plant expansion while maintaining the reliability and stability during increased loading. (Staff Ex. 1 at 16.)

BP-Husky is a retail customer of FirstEnergy, which is a member of the regional bulk electric transmission system operated by the Midwest Independent Transmission System Operator (MISO). The proposed transmission reconfigurations that would be required to interconnect the BP-Husky refinery 138/69 kV substation project to the local and regional grid appear in the MISO 2009 Transmission Expansion Plan (MTEP). The MTEP is a long-term plan that makes recommendations for electric grid transmission infrastructure additions across the Midwest. The MISO Board approved the 2009 MTEP on December 4, 2009. (*Id.*)

Staff concludes that the proposed substation will have no significant negative regional impact, and that the proposed project is consistent with regional plans for expansion of the electric power grid serving Ohio and the interconnected utility systems.

Thus, staff recommends that the Board find that the proposed substation project would serve the interests of electric system economy and reliability, in accordance with Section 4906.10(A)(4), Revised Code. (*Id.*)

D. Air, Water, Solid Waste, and Aviation - Section 4906.10(A)(5), Revised Code

In its report, staff notes that air quality permits are not required for construction of the proposed transmission line. However, fugitive dust rules adopted pursuant to Chapter 3704, Revised Code, may be applicable to the proposed facility. Further, staff states that fugitive dust would be controlled, where necessary, through watering or application of palliatives. Staff contends that these methods of dust control should be sufficient to comply with fugitive dust rules. (Staff Ex. 1 at 17.)

Staff asserts that neither the construction nor the operation of the proposed project will require the use of significant amounts of water, so requirements under Sections 1501.33 and 1501.34, Revised Code, are not applicable to this project. *(Id.)*

Staff points out that, according to BP-Husky, a Storm Water Pollution Prevention Plan (SWPPP) will be developed for the project, pursuant to Ohio Environmental Protection Agency (Ohio EPA) regulations. Staff believes that following the SWPPP, as well as using best management practices for construction activities, will help minimize any erosion-related impacts to streams and wetlands. Additionally, no construction or access will be permitted in the areas of wetlands, streams, and other environmentally sensitive areas, unless it is clearly specified in the construction plans and specifications. Staff asserts that the construction of the substation will comply with the requirements of Chapter 6111, Revised Code, and all regulations adopted thereunder. (*Id.*)

In its report, staff notes that BP-Husky has indicated that debris associated with construction of the substation would be disposed of in Ohio EPA-approved landfills or other appropriately licensed and operated facilities. Staff believes that BP-Husky's solid waste disposal plans will comply with solid waste disposal requirements in Chapter 3734, Revised Code, and all regulations adopted thereunder. (*Id.*)

According to staff, the application provides that one air transportation facility is located in the project area, a private airport located approximately two miles to the east. Pursuant to Sections 4906.10(A) and 4561.341, Revised Code, staff consulted with the Ohio Department of Transportation, Office of Aviation, to review the application for potential impacts that the facility might have on local air transportation facilities. No concerns have been identified. Staff, therefore, contends that the facility will comply with Section 4561.32, Revised Code, as well as the requirements set forth in Section 4906.10(A)(5), Revised Code, and all regulations adopted thereunder. (*Id.*)

In the Stipulation, the parties agree and recommend that the Board find that the record establishes that the substation project complies with Chapters 3704, 3734, and 6111, Revised Code, Sections 1501.33, 1501.34, and 4561.32, Revised Code, and all regulations adopted thereunder, as required by Section 4906.10(A)(5), Revised Code (Joint Ex. 1 at 6).

E. Public Interest, Convenience, and Necessity - Section 4906.10(A)(6), Revised Code

BP-Husky discussed radio and television interference, aesthetics, and health and safety considerations in its application. Staff notes in its report that radio and television interference should be insignificant under normal weather conditions. During inclement weather, some interference might be encountered in close proximity to the substation. If degradation occurs, the Staff Report reflects that BP-Husky would correct the anomaly by replacing the faulty equipment. (Staff Ex. 1 at 19.)

Electric and magnetic fields were estimated at the fence line to be less than 10 milligauss, and the electric field would be less than 0.5 volt/meter. Staff asserts that the electric fields at issue are easily shielded by physical structures such as the walls of a house, foliage, etc., and that the magnetic fields generated by the substation are attenuated very rapidly as the distance from the substation increases. Staff also states that past experience has shown that within 100 feet of the fence line, the magnetic field is not of sufficient strength to be measured because the background effects overwhelm any potential measurements. Staff further notes that the nearest occupied structure is 400 feet from the substation. (*Id.*)

Staff acknowledges that the project's purpose is to improve electrical system reliability and provide energy needs to a planned technology upgrade for the BP-Husky refinery's new reformer. Staff believes, and the application contends, that the technology upgrade to the refinery proposed in this application will reduce air emissions and water usage. (*Id.*)

As part of the Stipulation, the parties agree that sufficient data on the project has been provided to the Board to determine that the project will serve the public interest, convenience, and necessity, as required under Section 4906.10(A)(6), Revised Code (Joint Ex. 1 at 6).

F. Agricultural Districts - Section 4906.10(A)(7), Revised Code

Classification as agricultural district land is achieved through an application and approval process that is administered through local county auditor offices. Staff indicates that, based upon parcel information obtained from county auditor records, no agricultural district parcels are located on either site. There would, therefore, be no impact on

agricultural districts. The preferred site was previously used for agricultural production of soybeans. Staff further notes that construction of the proposed substation would remove approximately 12 acres of farmland from potential use. Therefore, based on its review, 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 will be minimal. (Staff Ex. 1 at 20.)

Additionally, the stipulating parties agree that the project's impact on the viability as agricultural land of any land in an existing agricultural district under Chapter 929, Revised Code, has been determined, as required under Section 4906.10(A)(7), Revised Code. (Joint Ex. 1 at 6.)

G. Water Conservation Practice - Section 4906.10(A)(8), Revised Code

Staff recommends that the Board conclude that water conservation practices, as specified in Section 4906.10(A)(8), Revised Code, are not applicable to the project (Staff Ex. 1 at 21). The parties also recommend in the Stipulation that the Board find that the record establishes that water conservation practices, as required by Section 4906.10(A)(8), Revised Code, are not applicable to the proposed project (Joint Ex. 1 at 6).

V. STIPULATION'S RECOMMENDED CONDITIONS

In the Stipulation, the parties stipulate and recommend to the Board that adequate evidence has been provided to demonstrate that construction of the proposed substation, at the preferred site, meets the statutory criteria of Sections 4906.10(A)(1) through (8), Revised Code (Joint Ex. 1). As a part of the Stipulation, the parties recommend that the Board issue a certificate for the preferred route, as described in the application, subject to the 18 conditions set forth below. The following is a summary of the conditions agreed to by the stipulating parties and is not intended to replace or supersede the Stipulation:

(1) BP-Husky shall install the facility following the applicant's preferred site as presented in the application filed on September 23, 2009.

(2) BP-Husky shall utilize the equipment and construction practices as described in the application, and as modified in replies to data requests and recommendations included in this Stipulation.

(3) BP-Husky shall implement the mitigative measures described in the application and recommendations included in this Stipulation.

(4) BP-Husky shall properly install and maintain erosion and sedimentation control measures at the project site in accordance with the following requirements:

(a) During construction, seed all disturbed soil, except within cultivated agricultural fields, within seven days of final grading with a seed mixture acceptable to the appropriate County Cooperative Extension Service. Denuded areas, including spoils piles, shall be seeded and stabilized within seven days, if they will be undisturbed for more than 21 days. Reseeding shall be done within seven days of emergence of seedlings as necessary until sufficient vegetation in all areas has been established.

(b) Inspect and repair all erosion control measures after each rainfall event of one-half of an inch or greater over a 24-hour period, and maintain controls until permanent vegetative cover has been established on disturbed areas.

(c) Obtain National Pollutant Discharge Elimination System permits for storm water discharges during construction. A copy of each storm water permit or authorization, including terms and conditions, shall be provided to the staff within seven days of receipt. At least 30 days prior to construction, the SWPPP shall be submitted to staff for review and acceptance.

(d) BP-Husky shall utilize best management practices when working in the vicinity of environmentally sensitive areas. This includes, but is not limited to, the installation of silt fencing (or similarly effective tool) prior to initiating construction near streams and wetlands. The installation shall be done in accordance with generally accepted construction methods and shall be inspected regularly.

(5) BP-Husky shall employ the following construction methods in proximity to any watercourses:

(a) All watercourses and/or wetlands shall be delineated by fencing, flagging, or other prominent means.

(b) All construction equipment shall avoid watercourses and/or wetlands, except at specific locations where staff has approved access.

(c) Storage, stockpiling, and/or disposal of equipment and materials in these sensitive areas shall be prohibited.

(d) Structures shall be located outside of watercourses and/or wetlands, except at locations where staff has approved placement.

(e) All storm water runoff is to be diverted away from fill slopes and other exposed surfaces to the greatest extent possible, and directed instead to appropriate catchment structures, sediment ponds, etc., using diversion berms, temporary ditches, check dams, or similar measures.

(6) BP-Husky shall not dispose of gravel or any other construction material during or following construction by spreading such material on agricultural land. All construction debris shall be promptly removed and properly disposed of.

(7) That staff, ODNR, and/or the United States Fish and Wildlife Service be immediately contacted if threatened or endangered species are discovered on site during construction.

(8) BP-Husky shall remove all temporary gravel and other construction laydown area materials within 10 days of completing construction activities.

(9) BP-Husky shall dispose of all contaminated soil and all construction debris in approved landfills in accordance with Ohio EPA regulations.

(10) Prior to construction, BP-Husky shall obtain and comply with all applicable permits and authorizations as required by federal and state entities for any activities where such permit or authorization is required. Copies of permits and

authorizations, including all supporting documentation, shall be provided to staff within 15 days of issuance.

(11) BP-Husky shall conduct a preconstruction conference prior to the start of any project work, which staff shall attend, to discuss how environmental concerns will be satisfactorily addressed.

(12) At the time of the preconstruction conference, BP-Husky shall have marked structure locations, as well as the route's centerline and right-of-way clearing limits in environmentally sensitive areas.

(13) At least 30 days before the preconstruction conference, BP-Husky shall submit to staff, for review and approval, one set of detailed drawings for the certificated electric transmission line, including all potential laydown areas and access points so that staff can determine that the final project design is in compliance with the terms of the certificate.

(14) BP-Husky shall assure compliance with fugitive dust rules by the use of water spray or other appropriate dust suppressant whenever necessary.

(15) BP-Husky will coordinate with the appropriate authority any vehicular lane closures due to construction of the substation.

(16) Should previously unidentified significant archaeological deposits or artifacts be discovered during construction, such person or persons encountering the archaeological deposits shall make a reasonable effort to refrain from disturbing or removing them. The individual(s) shall immediately notify BP-Husky and BP-Husky shall immediately notify staff. BP-Husky may also notify the Ohio Historic Preservation Office in order to expedite the process of determining the appropriate course of action. BP-Husky shall suspend construction activities until staff determines the appropriate course of action.

(17) The certificate shall become invalid if BP-Husky has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate.

(18) BP-Husky shall provide to staff the following information as it becomes known: the date on which construction will begin; the

date on which construction was completed; and the date on which the facility began commercial operation.

(Joint Ex. 1 at 7-12.)

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 for construction, operation, and maintenance of the project at the preferred site as described in the application filed with the Board on September 23, 2009 (Joint Ex. 1 at 14). Although not binding upon the Board, stipulations are given careful scrutiny and consideration, particularly where no party is objecting to the stipulation. Based upon the record in this proceeding, the Board finds that all of the criteria in Section 4906.10(A), Revised Code, are satisfied for the construction, operation, and maintenance of the project using the preferred route and subject to the conditions set forth in the Stipulation.

Under Board rules, BP-Husky was required to provide copies of the application to the appropriate officials and facilities, hold an informational meeting with the public about the project, and provide notice of that meeting. In addition, the Board is required to hold a public hearing and an evidentiary hearing on the project and publish newspaper notices of both hearings. The record shows that a local public hearing and an evidentiary hearing were held. BP-Husky provided copies of the application to the appropriate officials and facilities, held an informational meeting in the local area, and provided all requisite newspaper notices.

Accordingly, based upon all of the above, the Board approves and adopts the Stipulation and hereby issues a certificate to BP-Husky for the construction, operation, and maintenance of the proposed substation, at the preferred site and subject to the conditions set forth in Section V of this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) BP-Husky is a corporation and a person under Section 4906.01(A), Revised Code.

(2) The proposed substation is a major utility facility as defined in Section 4906.01(B)(2), Revised Code.

(3) On September 10, 2009, BP-Husky held a public informational meeting at the City Council Chambers in Oregon, Lucas County, Ohio.

(4) On September 23, 2009, BP-Husky filed its application for a certificate to construct the substation.

(5) On September 23, 2009, BP-Husky also filed a motion for waiver of Section 4906.06(A), Revised Code, as well as Rules 4906-15-06(F) and 4906-15-07(D), O.A.C.

(6) On October 22, 2009, ATSI filed a motion to intervene, as well as a motion for admission *pro hac vice* of Morgan E. Parke.

(7) On November 2, 2009, ATSI's motion to intervene and *pro hac vice* motion were granted.

(8) On November 2, 2009, BP-Husky's motion for waiver of Section 4906.06(A), Revised Code, and Rules 4906-15-06(F) and 4906-15-07(D), O.A.C., were also granted.

(9) By letter dated November 3, 2009, the Board notified BP-Husky that its application complied with Chapters 4906-01, *et seq.*, O.A.C.

(10) On November 10, 2009, BP-Husky filed proof of service of its certified application on local officials and facilities in accordance with Rule 4906-5-06, O.A.C.

(11) On November 18, 2009, ATSI's motion for protective order for certain information produced to staff was granted.

(12) By entry issued November 18, 2009, a local public hearing was scheduled for January 21, 2010, at 6:00 p.m., at the Oregon City Council Chambers, 5330 Seaman Road, Oregon, Ohio, and an evidentiary hearing was scheduled for January 27, 2010, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio. The entry also directed BP-Husky to publish notice of the application and hearings.

(13) On December 14, 2009, and January 14, 2010, the applicant filed its proof that the required publication of the hearing notice occurred.

(14) On January 5, 2010, the Staff Report was filed. Therein, Staff recommended that BP-Husky be issued a certificate for the project subject to the conditions listed in the Staff Report.

(15) The local public hearing was held, as scheduled, on January 21, 2010.

(16) On January 26, 2009, BP-Husky and staff filed a Stipulation resolving all issues raised in this proceeding.

(17) On January 26, 2010, ATSI filed a letter stating that it had no objections to the Stipulation or its conditions.

(18) The adjudicatory hearing commenced on January 27, 2010.

(19) The record establishes the need for the project as required by Section 4906.10(A)(1), Revised Code.

(20) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the project, as required by Section 4906.10(A)(2), Revised Code.

(21) The record establishes that the preferred site for the project, subject to the conditions set forth in the Stipulation, represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations, as required by Section 4906.10(A)(3), Revised Code.

(22) The record establishes that the preferred site for the project, subject to the conditions set forth in the Stipulation, is consistent with regional plans for expansion of the electric grid for the electric systems serving this state and interconnected utility systems and that it will serve the interests of electric system economy and reliability, as required by Section 4906.10(A)(4), Revised Code.

(23) The record establishes that the preferred site for the project, subject to the conditions set forth in the Stipulation, will comply with Chapters 3704, 3734, and 6111, Revised Code, and Sections 1501.33, 1501.34, and 4561.32, Revised Code, and all rules and regulations thereunder, to the extent applicable, as required by Section 4906.10(A)(5), Revised Code.

(24) The record establishes that the project, subject to the conditions set forth in the Stipulation, will serve the public interest,

convenience, and necessity, as required by Section 4906.10(A)(6), Revised Code.

(25) The record contains adequate data on the project for the Board to determine the project's impact on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929, Revised Code, within the preferred and alternate sites, as required by Section 4906.10(A)(7), Revised Code.

(26) Inasmuch as water conservation practices are not involved with the project, Section 4906.10(A)(8), Revised Code, does not apply in this circumstance.

(27) The record evidence provides sufficient factual data to enable the Board to make an informed decision.

(28) Based on the record, the Board shall issue a Certificate of Environmental Compatibility and Public Need for construction, operation, and maintenance of the proposed facility, subject to the conditions set forth in the Stipulation.

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 BP-Husky for the construction, operation, and maintenance of the project, as proposed, at the preferred site. It is, further,

ORDERED, That the certificate contain the 18 conditions set forth in Section V of this opinion, order, and certificate. It is, further,

ORDERED, That a copy of this opinion, order, and certificate be served upon each party of record and any other interested person.

THE OHIO POWER SITING BOARD

Alan R. Schriber, Chairman of the
Public Utilities Commission of Ohio

Lisa Patt-McDaniel, Board Member
and Director of the Ohio Department of
Development

Sean Logan, Board Member
and Director of the Ohio Department
of Natural Resources

Alvin Jackson M.D., Board Member
and Director of the Ohio Department
of Health

Christopher Korleski, Board Member and
Director of the Ohio
Environmental Protection Agency

Robert Boggs, Board Member and
Director of the Ohio Department
of Agriculture

Board
Member and Public Member

RLH/vrm

Entered in the Journal

MAR 2 2 2010

Reneé J. Jenkins
Secretary