

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Columbia Gas of Ohio, Inc., for a Certificate)
of Environmental Compatibility and Public) Case No. 11-3534-GA-BTX
Need for the Construction of the Ackerman)
Road Natural Gas Pipeline Project.)

OPINION, ORDER, AND CERTIFICATE

The Ohio Power Siting Board (Board), coming now to consider the above-entitled matter; having appointed an administrative law judge (ALJ) to conduct a public hearing; having reviewed 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:

Porter, Wright, Morris & Arthur LLP, by Christopher R. Schraff and Christen M. Moore, 41 South High Street, Columbus, Ohio 43215-6194, and Brooke E. Leslie, Counsel, Nisource Corporate Services Company, Columbia Gas of Ohio, Inc., 200 Civic Center Drive, Columbus, Ohio 43215, on behalf of Columbia Gas of Ohio, Inc.

Mike DeWine, Ohio Attorney General, by John H. Jones, Assistant Section Chief, and Stephen A. Reilly and Devin D. Parram, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, 6th Floor, Columbus, Ohio 43215-3793, and Christina E. Grasseschi and Clint R. White, Assistant Attorneys General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, on behalf of the Board Staff.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Lija Kaleps-Clark, Special Assistant Attorneys General, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of The Ohio State University.

Ron O'Brien, Franklin County Prosecuting Attorney, by Harold J. Anderson III, Assistant Prosecuting Attorney, 373 S. High St., 13th Floor, Columbus, Ohio 43215, on behalf of Franklin County Soil and Water Conservation District.

Ice Miller LLP, by Stephen J. Smith, Chris W. Michael, and Christopher L. Miller, 250 West Street, Columbus, Ohio 43215-7509, on behalf of American Chemical Society.

Richard C. Sahli, 981 Pinewood Lane, Columbus, Ohio 43230-3662, on behalf of the Sierra Club.

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 July 22, 2011, Columbia Gas of Ohio, Inc. (Columbia or Applicant), filed a request for a waiver of Section 4906.06(A)(6), Revised Code, which requires that applicable project applications be filed not less than one year prior to the planned commencement of construction. The request for a waiver concerned the construction of approximately 1.3 to 1.5 miles of natural gas pipeline from the south side of Ackerman Road to a tie-in point along West Tulane Road in Franklin County, Ohio (pipeline project). Thereafter, the ALJ granted the request for a waiver.

On July 29, 2011, Columbia filed an application for a certificate to construct the pipeline project. (Applicant Ex. 1). Thereafter, Columbia supplemented its application on September 25, 2011. (Applicant Ex. 2).

By letter dated September 19, 2011, the Board notified Columbia that its application for the pipeline project had been certified as complete pursuant to Rule 4906-5-05, O.A.C.

On October 4, 2011, Columbia filed its proof of service of the application to the appropriate government officials and public agencies pursuant to Rule 4906-5-06, O.A.C. (Applicant Ex. 3).

By entry issued October 26, 2011, the ALJ scheduled a local public hearing for January 10, 2012, at 6:00 p.m., at the Whetstone Park of Roses Shelter House, Columbus, Ohio, and an evidentiary hearing for January 12, 2012, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio (Commission), in Columbus, Ohio. Further, the October 26, 2011, entry directed Columbia to publish notice of the application and hearings, as required by Rule 4906-5-08, O.A.C. On November 17, 2011, Columbia filed its proof of publication in local newspapers as required by Rules 4906-5-08(C)(1) and 4906-5-09(A), O.A.C. (Applicant Ex. 3).

On December 2, 2011, motions to intervene were filed by The Ohio State University (OSU), the Franklin Soil and Water Conservation District (FSWCD), and American Chemical Society (ACS). Additionally, on December 8, 2011, a motion to intervene was filed by the Sierra Club. Subsequently, the ALJ granted the petitions to intervene filed by OSU, FSWCD, ACS, and the Sierra Club.

On December 19, 2011, OSU filed a motion for an approximate four-week extension of the evidentiary hearing. Thereafter, Columbia and the Staff filed memoranda expressing the need for expediency and avoidance of undue delay due to the age of the pipeline and federally-mandated pipeline inspection requirements in Title 49 of the Code of Federal Regulations (C.F.R.), specifically 49 C.F.R. Section 192. Consequently, by entry issued December 22, 2011, the ALJ extended the date of the evidentiary hearing approximately one week, until January 18, 2012. Additionally, on December 22, 2011, Staff filed its report of investigation of the application (staff report) (Staff Ex. 1).

On January 6, 2012, Columbia filed its proof of publication of the second newspaper notice required by Rules 4906-5-08(C)(2) and 4906-5-09(B), O.A.C. (Applicant Ex. 3).

The local public hearing was held, as scheduled, on January 10, 2012. At the local public hearing, fifteen individuals offered testimony regarding the pipeline project.

The evidentiary hearing commenced as rescheduled on January 18, 2012, and was called and continued until Monday, January 23, 2012, at the request of OSU. Additionally, on January 18, 2012, Columbia, Staff, OSU, FSWCD, ACS, and the Sierra Club filed a Joint Stipulation and Recommendation (Stipulation) resolving all issues in this case (Joint Ex. 1). The hearing continued on Monday, January 23, 2012, during which Columbia's witness, Gary L. Estep, testified in support of the Stipulation.

II. Proposed Facility and Siting:

According to the application, the pipeline project involves the construction of a new, 20-inch natural gas pipeline originating from an existing natural gas pipeline supply point on the south side of Ackerman Road between Fred Taylor Drive and Defiance Drive. The pipeline will extend to a tie-in point along West Tulane Road west of North High Street located approximately 0.8 miles to the northeast. Installation of the pipeline, in some locations, will require excavation of a 4-foot wide by 6-foot deep trench. Columbia contends that the new pipeline will replace an existing 18-inch natural gas pipeline as part of Columbia's integrity management program. The existing pipeline was constructed prior to 1958 and crosses Union Cemetery. The application proposes that the existing

pipeline will be capped and taken out of service rather than being removed. Columbia asserts that construction of the new pipeline will ensure the operational integrity of the pipeline segment and upgrade the pipeline to meet the federal safety standards set forth in 49 C.F.R. Section 192. Columbia further states that the replacement of the pipeline is necessary to continue providing safe, reliable service to current customers within the northern metropolitan Columbus area. The application further states that the pipeline project is scheduled for completion by December 2012. (Applicant Ex. 1 at 01-1 - 01-2, 02-4.)

Columbia conducted a route selection process to identify and evaluate potential routes for the pipeline project. According to Columbia, the objective of the route selection process was to collect and evaluate engineering, ecological, land use, and cultural information to identify, score, and rank potential routes for the pipeline. (Applicant Ex. 1 at 01-2.)

The preferred route is approximately 1.3 miles long and, from the southern tie-in point south of the Ackerman Road right-of-way, extends 1,650 feet east along the south side of Ackerman Road, crosses Olentangy River Road, and then shifts into the southern lane of Dodridge Street, continuing east for 1,670 feet. Thereafter, the route shifts south of Dodridge Street onto the northeast corner of the Chemical Abstracts Service (CAS) property. From that point, the route is constructed by horizontal directional drilling (HDD) and heads north from CAS' property, crosses Dodridge Street, and parallels the Olentangy River for approximately 1,810 feet. Within this HDD segment, the route crosses under the Olentangy River and continues north for 750 feet down the middle of Neil Avenue, where the HDD concludes. The route then continues northeast up Neil Avenue for 325 feet to Tulane Road, where the route continues east for 330 feet to the northeast tie-in point. (Staff Ex. 1 at 5.)

The alternate route is approximately 1.5 miles long and contains about 0.2 miles in common with the preferred route. The alternate route follows the preferred route from the southern tie-in point for approximately 420 feet and then crosses Ackerman Road, continuing east along the southern edge of a University City Shopping Center service road for 750 feet, before turning north and following the service road for approximately 3,000 feet. The route then continues north along the west edge of Olentangy River Road for 650 feet before turning east, crossing Olentangy River Road, and continuing east 500 feet into a vacant lot where the HDD segment begins. The HDD segment will continue under the Olentangy River and come up in Clinton-Como Park before angling southeast for 250 feet until reaching a trail that extends from Weber Road to Olentangy Trail. The route follows the trail onto Weber Road and continues for 550 feet before turning south on

Sunset Drive for 530 feet, and then turning east on Tulane Road for 1,050 feet to the northeast tie-in point. (*Id.*)

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) 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 case of an electric transmission line or generating facility, such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems; and such facility will serve the interests of electric system economy and reliability.
- (5) The facility will comply with 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) 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 alternative site of the proposed major facility.
- (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.

IV. Local Public Hearing:

At the local public hearing, fifteen individuals testified. A majority of the witnesses testified in opposition to the preferred route and in favor of the alternate route, while several individuals testified in opposition to both the preferred and alternate routes and favored creation of an entirely new route or an alternative energy source. The concerns raised by these individuals primarily concerned effects that the pipeline project along the preferred route could have on wetlands, specifically the Wetland Research Park, in the event of a frac-out. Over 500 letters filed in the public comment section of the case docket also voiced this concern. Several individuals testified in opposition to the alternate route due to concerns about possible effects on the Olentangy watershed, the natural wetland located near the alternate route, as well as the use of Clinton-Como Park as a staging area. One individual testified in favor of the pipeline project on the basis that it could create engineering and contracting jobs. (January 10, 2012, Local Hearing Transcript.)

V. Summary of the Evidence:

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

Columbia states that the pipeline project is necessary in order to provide adequate, safe, and reliable service to customers in the northern metropolitan Columbus area. Columbia specifies that federal safety standards contained in 49 C.F.R. Section 192 caused Columbia to identify this segment of the system to be subject for replacement, as the existing pipeline segment was installed prior to the adoption of the safety standards set forth in 49 C.F.R. Section 192. Further, Columbia states that the existing pipeline is a bare, mechanically-coupled high pressure pipeline, which Columbia seeks to eliminate. Columbia states that replacement of the old pipeline with the proposed pipeline would ensure operational integrity of the segment and compliance with 49 C.F.R. Section 192. (Applicant Ex. 1 at 02-1.)

According to the staff report, Columbia has shown the need for replacing the current pipeline. The new natural gas pipeline proposed by Columbia would maintain the safety and reliability of Columbia's north Columbus high-pressure natural gas system. (Staff Ex. 1 at 16.)

For these reasons, Staff recommends that the Board find the basis of need for the pipeline project has been demonstrated as required by Section 4906.10(A)(1), Revised Code, provided the certificate include the conditions specified in the staff report (*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 determined the nature of the probable impact to the environment. The following is a summary of Staff's findings.

- (1) The project area is densely populated with an average population density of 3,467 people per square mile. The pipeline project would not limit future population growth or have an impact on the regional demographics. (*Id.* at 17.)
- (2) There are 1,563 residences within 1,000 feet of the preferred route, 54 of which are located within 100 feet. There are 1,763 residences within 1,000 feet of the alternate route, 75 of which are located within 100 feet. The minimum residential distances from the preferred route and alternate route, respectively, are 53 feet and 29 feet. No residential buildings would be removed during the construction of the project along either route; however, there would be temporary impacts to residential land during the pipeline installation including excavation, access restrictions, and traffic controls. Cutting through neighborhood roads, however, would occur in phases to limit the duration of access restrictions. (*Id.*)
- (3) Extensive commercial development is concentrated to the west and south of the project area. No commercial building would be removed as part of the project; however, impacts to commercial land uses would occur during pipeline installation including short-term access restrictions and traffic controls. Access restrictions, however, would be planned to accommodate commercial traffic and inaccessibility would be avoided, limited to short duration, and accommodated with alternate access points. Additionally, construction of the pipeline would not permanently change the commercial land in the project area. (*Id.* at 18.)
- (4) Both routes cross property owned by OSU. Additionally, the preferred route runs across the eastern corner of the Wilma H. Schriemeier Olentangy River Wetland Research Park (Wetland Research Park). Use of HDD would avoid surface disturbance

of the Wetland Research Park. Both routes are within 100 feet of a cemetery and the preferred and alternate routes are 2,500 feet and 600 feet, respectively, from a mosque. No permanent impacts to institutional land uses are expected. (*Id.* at 18-19.)

- (5) The northern portion of the alternate route will cross Clinton-Como Park. Approximately 59,000 square feet of the park land would be impacted by HDD equipment for approximately 45 days, as the area would be used for assembly of the pipe. A portion of the park would be closed to the public during this time; however, no permanent changes would occur. Additionally, both routes cross beneath the Olentangy Trail multi-use recreational path. Other than temporary construction noise, however, no impacts are expected to the trail. No permanent recreational land use changes should occur. (*Id.* at 19.)
- (6) No cultural resources were identified within 1,000 feet of either route. The Ohio Historical Inventory, however, identified 37 structures within 1,000 feet of the preferred route and 10 structures within 1,000 feet of the alternate route. Any potential impacts to cultural resources would be minimized and mitigated in coordination with the Ohio Historic Preservation Office. (*Id.*)
- (7) The preferred route would cross one unnamed tributary of the Olentangy River, and both of the routes would cross the Olentangy River. No direct impacts are expected on either route as use of HDD in these areas is proposed. (*Id.* at 20.)
- (8) The manmade wetlands associated with the Wetland Research Park are located approximately 120 feet from the preferred route. Additionally, the preferred route crosses a natural palustrine forested wetland. The alternate route crosses approximately 40 feet from another natural palustrine forested wetland. No direct impact to any wetland is expected due to the proposed use of HDD. There is a risk of a frac-out, or the escape of drilling mud or lubricants used in the drilling process, through fractures in the underlying material; however, drilling equipment would be set up away from riparian corridors and drilling would be closely monitored for signs of a

frac-out. Impacts to the manmade and natural wetlands and the Olentangy River, although unlikely, are possible. Columbia would be required to submit a detailed frac-out contingency plan for Staff's review and approval. (*Id.*)

- (9) No lakes, ponds, or reservoirs would be impacted during construction or operation of either route (*Id.*).
- (10) Protected, threatened, or endangered species within the project site include the following:
 - (a) This project is within the known range of the state-endangered golden-winged warbler. Data requests and field assessments conclude that suitable habitat was not found. Additionally, staff reports that it needs to confirm the presence in the project area of the federal species of concern and state-threatened bald eagle.
 - (b) This project lies within the known range of the state and federally-endangered Indiana bat. Data requests and field assessments conclude that suitable habitat was found.
 - (c) This project lies within the known range of several fish species of concern, including the state and federally-endangered Scioto madtom. Data requests and field assessments conclude that this species has not been found since 1957. Additionally, this project lies within the known range of the state-endangered Northern brook lamprey, blacknose shiner, and state-threatened bluebreast darter.
 - (d) This project lies within the range of several mussel species of concern, including the state and federally-endangered clubshell and Northern riffleshell, state-endangered and federally-proposed endangered rayed bean and snuffbox, state-endangered and federal candidate rabbitsfoot, and state-endangered elephant-ear. Data requests and field assessments conclude that

suitable habitat was found for these species, but no specimens were found in the survey. The project also lies within the range of the state species of concern wavy-rayed lampmussel and round pigtoe; one live specimen and two live specimens, respectively, were found at the alternate route crossing.

(*Id.* at 20-21.)

- (11) Along the preferred route, the glacial till is up to 86 feet deep along the property adjacent to the Wetland Research Park, and the bedrock underlying the glacial deposits consists of limestone, shale, and sandstone. The rock quality description indicates that the shale was of very poor quality. The proposed HDD design would reduce the risk of soil piping and frac-out. Based upon the known geology, additional precautions are needed to ensure protection of the wetland from a potential frac-out and to maintain the integrity of the bore hole. (*Id.* at 22.)
- (12) With the exception of one HDD location on both the preferred and alternate routes, construction activity would be limited to daylight hours. Noise impacts from the project would be most intense during the HDD process, which would occur in the evening and throughout the night for approximately three months. (*Id.* at 23.)

Staff reports that Columbia conducted a systematic route selection study to identify preferred and alternate pipeline routes that minimize cost as well as ecological, cultural, and land use impacts that would result from the construction of the pipeline project. Staff reports that the primary constraints include Union Cemetery, the Olentangy River, woodlots, wetlands, habitat of endangered or threatened species, high-density residential and commercial development, sensitive land uses, and sites of historic or archaeological significance. Staff concludes that the selection process properly led to the choice of the preferred and alternate routes. (*Id.* at 24.)

Staff further states that the preferred route has fewer expected and potential impacts than the alternate route, but that the expected impacts of either route are temporary. Additionally, Staff states that the potential impacts, primarily from the risk of a frac-out during the HDD process, could be equally mitigated on either route through the

implementation of a frac-out contingency plan. Staff concludes that, due to the nature of the impacts, neither route significantly minimizes impacts over the other. However, Staff notes that, during the investigation, Columbia informed Staff that securing an easement for the entire length of the preferred route without the use of eminent domain was no longer an option. Consequently, as eminent domain proceedings can take several years and would delay the construction schedule, Staff recommends the preferred route because it would allow Columbia to comply with the federal pipeline integrity management requirements in 49 C.F.R. Section 192. Staff concludes that this route would promote safety to a greater extent without impacting gas supply to Columbia's customers. (*Id.* at 25.)

Therefore, Staff recommends the Board find that record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the pipeline project as required by Section 4906.10(A)(2), Revised Code, and that the proposed facility represents the minimum adverse environmental impact and complies with the requirements of Section 4906.10(A)(3), Revised Code, provided the certificate include the conditions specified in the staff report (*Id.*).

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

Staff states that the pipeline project is not an electric transmission line and recommends that the Board find that Section 4906.10(A)(4), Revised Code, is not applicable to the certification of the proposed facility (*Id.* at 26).

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

Staff states that air quality permits are not required for construction of the pipeline project. However, Staff points out that fugitive dust rules adopted pursuant to the requirements of Chapter 3704, Revised Code, may be applicable to the project. Columbia indicates that fugitive dust would be controlled, where necessary, through watering or application of calcium chloride and/or other palliatives. Staff proffers that these methods of dust control would be sufficient to comply with fugitive dust rules. (*Id.* at 27.)

Staff reports that neither construction nor operation of the pipeline project would require the use of significant amounts of water and that, consequently, requirements under Sections 1501.33 and 1501.34, Revised Code, are not applicable to this project. Staff additionally states that Columbia indicates that it will apply for a Section 10 Permit under the River and Harbors Act of 1899 and an Ohio National Pollutant Discharge Elimination System (NPDES) Construction Water Permit. (*Id.*)

Columbia indicates that a Storm Water Pollution Prevention Plan (SWPPP) will be developed for the pipeline project, pursuant to Ohio Environmental Protection Agency (EPA) regulations. Staff states that, with these permits and provisions, construction of the pipeline project will comply with requirements of Chapter 6111, Revised Code, and the rules and laws adopted under that chapter. (*Id.*)

Staff indicates that Columbia's solid waste disposal plans will comply with the solid waste disposal requirements in Chapter 3734, Revised Code, and the rules and laws adopted under that chapter. Furthermore, Staff states that aviation requirements do not apply to the underground pipeline project (*Id.* at 27-28).

Staff finds that the proposed pipeline project complies with the requirements specified in Section 4906.10(A)(5), Revised Code, provided that any certificate issued by the Board for the pipeline project includes the conditions specified in the section of the staff report entitled Recommended Conditions of Certificate (*Id.* at 28).

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

Staff reports that the Pipeline and Hazardous Materials Safety Administration (PHMSA) requires operators of natural gas pipelines to develop an integrity management program. Additionally, PHMSA requires operators to complete a baseline assessment of all covered segments by December 17, 2012. Staff further reports that it is not feasible to inspect the existing pipeline that Columbia seeks to replace due to various factors including the location beneath the Olentangy River, the age of the pipeline, exacerbation of or creation of new integrity issues, and service interruption caused by removing the line from service for a period of time. Therefore, Staff concludes that Columbia will need to replace the existing pipeline by December 17, 2012. (*Id.* at 29.)

As stated above, Columbia has notified Staff that securing an easement for the entire length of the preferred route without the use of eminent domain is no longer an option. Consequently, as eminent domain proceedings can take several years and would delay construction, Staff recommends that it is in the public interest to recommend the alternate route for approval. With this conclusion, Staff recommends the Board find that the proposed facility will serve the public interest, convenience, and necessity, and complies with Section 4906.10(A)(6), Revised Code, subject to the conditions set forth in the staff report. (*Id.*)

F. Agricultural Districts and Agricultural Lands (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 reports that there are no agricultural districts or agricultural land along either route. Staff recommends that the impact of the proposed facility on the viability of existing agricultural land in an agricultural district has been determined, and, therefore, complies with the requirements specified in Section 4906.10(A)(7), Revised Code, subject to the conditions set forth in the staff report. (*Id.* at 30.)

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

Staff states that the proposed pipeline project will not use significant amounts of water for operation and that, consequently, water conservation practices as specified in Section 4906.10(A)(8), Revised Code, are not applicable to the project. Staff recommends the Board find that the project would incorporate maximum feasible water conservation practices and, therefore, complies with the requirements specified in Section 4906.10(A)(8), Revised Code, subject to the conditions set forth in the staff report. (*Id.* at 31.)

VI. Stipulation's Recommended Conditions:

In the Stipulation, the parties stipulate and recommend to the Board that adequate evidence has been provided to demonstrate that the pipeline project meets the statutory criteria of Section 4906.10(A)(1) through (8), Revised Code (Joint Ex. 1 at 5-7). As part of the Stipulation, the parties recommend that the Board issue a certificate of environmental compatibility and public need for the pipeline project, along the alternate route, as described in the application and supplement thereto, subject to the 32 conditions set forth in the Stipulation (*Id.* at 9-15). The following is a summary of the conditions agreed to by the stipulating parties and is not intended to replace or supersede the Stipulation. The stipulating parties agree to the following:

- (1) The facility shall be installed at Columbia's alternate route as presented in the application, and as modified and/or clarified by Columbia's supplemental filings and by the recommendations in the staff report.
- (2) Columbia shall utilize the equipment and construction practices as described in the application and as modified and/or clarified by supplemental filings, replies to data requests, and recommendations in the staff report.

- (3) Columbia shall implement the mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the staff report.
- (4) Prior to commencement of construction, Columbia shall obtain and comply with all applicable permits and authorizations as required by federal and state laws and regulations for any activities where such permit or authorization is required. Copies of the permits and authorizations, including all supporting documentation, shall be provided to Staff within seven days of issuance or receipt by Columbia.
- (5) Columbia shall conduct a preconstruction conference prior to the start of any construction activities. The preconstruction conference shall be attended by Staff, Columbia, and representatives from the prime contractor and all subcontractors for the project. The conference shall include a presentation of the measures to be taken by Columbia and the contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction.
- (6) Columbia shall develop a public information program that informs affected property owners of the nature of the project, specific contact information of Columbia's personnel who are familiar with the project, the proposed timeframe for project construction, and a schedule for restoration activities. Notification to property owners or affected tenants, within the meaning of Rule 4906-5-08(C)(3), O.A.C., of upcoming construction activities, including potential for nighttime construction, shall be given at least 30 days prior to work on the affected property.
- (7) At least 30 days prior to the preconstruction conference and subject to Staff review and approval, Columbia shall have in place a complaint resolution procedure to address potential public grievances resulting from the pipeline construction. Columbia shall work to mitigate or resolve any issues with those who file a complaint. All complaints submitted must be immediately forwarded to Staff.

- (8) Columbia shall have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas, as mutually agreed upon between Columbia and Staff, and as shown on Columbia's final approved construction plan. Sensitive areas include, but are not limited to, areas of vegetation clearing, designated wetlands and streams, and locations of threatened or endangered species or their identified habitat. The environmental specialist shall be familiar with water quality protection issues and potentially threatened or endangered species of plants and animals that may be encountered during project construction.
- (9) Columbia shall not work in the types of streams listed in the Stipulation during fish spawning restricted periods (April 15 to June 30), unless a waiver is sought from and issued by the Ohio Department of Natural Resources, Division of Wildlife (ODNR-DOW), and approved by Staff releasing Columbia from a portion of or the entire restriction period.
- (10) Columbia, in consultation with the city of Columbus Recreation and Parks Department, shall prepare a restoration plan for Clinton-Como Park to be submitted for review and approval by Staff. Upon approval of the plan, Columbia shall implement the restoration plan after completion of construction.
- (11) At least 30 days before the preconstruction conference, Columbia shall submit to Staff, for review and acceptance, a detailed frac-out contingency plan for stream and wetland crossings that are expected to be completed via HDD. Such contingency plan may be incorporated within the required stream and/or wetland crossing plan, and shall include the following:
 - (a) Site-specific construction diagrams that show the location of the bore pits, mud pits, pipe assembly areas, and all areas disturbed for the HDD;
 - (b) A description of who would be contacted if a frac-out or inadvertent release of drilling mud occurs;
 - (c) A description of the containment and clean-up procedures to be implemented should an

inadvertent release of drilling mud occur on land, in a stream, or in a wetland;

- (d) A plan to inspect and ensure the integrity of the bore hole throughout the HDD process;
 - (e) An alternate HDD plan for crossing the waterbody or wetland in the event directional drilling is unsuccessful, and how the abandoned drill hole would be plugged.
- (12) Any stuck equipment within the HDD bore shall not be recovered by surface excavation, unless otherwise approved by Staff, in consultation with the property owner.
 - (13) Columbia shall perform soil tests at various locations along the proposed pipeline right-of-way to document potential geotechnical issues prior to soil excavation.
 - (14) At least 30 days before the preconstruction conference, Columbia shall submit to Staff, for review and acceptance, a tree clearing and restoration plan. The plan shall be developed in consultation with the city of Columbus Forester and shall describe how trees and shrubs along access routes, in gas transmission corridors, at construction staging areas, and in proximity to other project facilities will be protected from damage during construction, and where clearing cannot be avoided, how such clearing work will be done so as to minimize removal of woody vegetation. Priority should be given to protecting mature trees throughout the project area, and all woody vegetation in wetlands and riparian areas, both during construction and during subsequent operation and maintenance of all facilities. The plan shall also address impacts and mitigation to residential screening trees and vegetation. Where appropriate, the plan shall focus on the installation of new compatible vegetation.
 - (15) Columbia shall permanently limit clearing in all riparian areas, and specifically within at least 25 feet from the top of the bank on each side of all streams. Vegetation clearing in these areas shall be selective hand clearing of taller-growing trees only, leaving all low-growing plant species, particularly woody ones

(including other trees) undisturbed unless otherwise directed by Staff. All stumps shall be left in place.

- (16) Columbia shall adhere to seasonal cutting dates of September 30 through April 1 for removal of suitable Indiana bat habitat trees, if avoidance measures cannot be achieved. If suitable Indiana bat habitat trees must be cut during the summer season of April 2 through September 29, a mist-netting survey must be conducted in May or June prior to cutting.
- (17) Staff, ODNR-DOW, and the U.S. Fish and Wildlife Service (USFWS) shall be contacted within 24 hours if state or federally-threatened or endangered species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by Columbia, Staff, and the ODNR-DOW, in coordination with the USFWS. This provision shall not preclude agencies having jurisdiction over the facility with respect to threatened or endangered species from exercising their legal authority over the facility consistent with law.
- (18) Columbia shall contact the ODNR-DOW Crane Creek Wildlife Research Station prior to commencement of construction to confirm that there are no bald eagle nests within a half mile of the final selected route. If nests are located within a half mile, then further coordination with the ODNR-DOW shall be required.
- (19) At least seven days before the preconstruction conference, Columbia shall submit to Staff, for review and acceptance, a copy of all NPDES permits including its approved SWPPP, approved spill prevention, containment, and countermeasure plan procedures, and its erosion and sediment control plan. Any soil issues must be addressed through proper design and adherence to the Ohio EPA best management practices (BMPs) related to erosion and sedimentation control.
- (20) Columbia shall employ the following erosion and sedimentation control measures, construction methods, and BMPs when working near environmentally-sensitive areas

and/or when in close proximity to any watercourse, in accordance with the Ohio NPDES permit(s) and SWPPP obtained for the project:

- (a) During construction of the facility, seed all disturbed soil, except within actively 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) Delineate all watercourses, including wetlands, by fencing, flagging, or other prominent means.
- (d) Avoid entry of construction equipment into watercourses, including wetlands, except at specific locations where construction has been approved.
- (e) Prohibit storage, stockpiling, and/or disposal of equipment and materials in these sensitive areas.
- (f) Locate structures outside of identified watercourses, including wetlands, except at specific locations where construction has been approved.
- (g) Divert all storm water runoff away from fill slopes and other exposed surfaces to the greatest extent possible, and direct it instead to

appropriate catchment structures, sediment ponds, etc., using diversion berms, temporary ditches, check dams, or similar measures.

- (21) Columbia shall provide a copy of any floodplain permit required for construction of this project, or a copy of correspondence with the floodplain administrator showing that no permit is required, to Staff within seven days of issuance or receipt by Columbia.
- (22) Columbia shall comply with any drinking water source protection plan for any part of the facility that is located within drinking water source protection areas of the local villages and cities.
- (23) Columbia shall remove all temporary gravel and other construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner. Impacted areas shall be restored to preconstruction conditions in compliance with the NPDES permit(s) obtained for the project and the approved SWPPP created for this project.
- (24) Columbia shall comply with fugitive dust rules by the use of water spray or other appropriate dust suppressant measures whenever necessary.
- (25) Columbia shall restrict public access to the site with appropriately placed warning signs or other necessary measures.
- (26) Prior to commencement of construction, Columbia shall obtain all required transportation permits. Columbia shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, or road and parking access restrictions necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, the state of Ohio, the city of Columbus, the county engineer, the Ohio Department of Transportation, local law enforcement, and health and safety officials. This coordination shall be detailed as part of a final traffic plan submitted to Staff

prior to the preconstruction conference for review and acceptance.

- (27) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m., Monday through Saturday. Impact pile driving, helicopter use, rock drilling, and blasting operations, if required, shall be limited to the hours between 10:00 a.m. and 5:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary.
- (28) At least 30 days before the preconstruction conference, Columbia shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project design, including the gas transmission line, temporary and permanent access roads, construction staging areas, and any other associated facilities and access points, so Staff can determine that the final project design is in compliance with the terms of the certificate. The final project layout shall be provided in hard copy and as geographically-referenced electronic data. The final engineering drawings shall include all conditions of the certificate and references at the locations where Columbia and/or its contractors must adhere to specific conditions in order to comply with the certificate.
- (29) If any changes are made to the project layout after the submission of final engineering drawings, all changes shall be provided to Staff in hard copy and as geographically-referenced electronic data. All changes outside the environmental survey areas and any changes within environmentally-sensitive areas will be subject to Staff review and approval prior to construction in those areas.
- (30) Within 60 days after the commencement of commercial operation, Columbia shall submit to Staff a copy of the as-built specifications for the entire facility. If Columbia demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an

extension of time for the filing of such as-built specifications. Columbia shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically referenced electronic data.

- (31) The certificate shall become invalid if Columbia has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate.
- (32) Columbia 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 9-15.)

VII. Conclusion:

According to the Stipulation and the testimony of Columbia witness Estep, the parties agree that the Stipulation represents the product of a number of serious discussions between the parties; that the Stipulation represents a reasonable compromise that balances competing positions; that the Stipulation serves the public interest, convenience, and necessity; and that the Stipulation does not violate any regulatory principles or practices (*Id.* at 6-8, 16). Additionally, in the Stipulation, the parties recommend that, based upon the record and the information and data contained therein, the Board issue a certificate of environmental compatibility and public need for the construction, operation, and maintenance of the pipeline project, on the alternate route, as described in the application and supplement thereto (*Id.* at 17). Although not binding on the Board, stipulations are given careful scrutiny and consideration, particularly where no party objects to the stipulation.

As mentioned previously, witnesses appeared at the local hearing and raised various concerns. However, upon review of the evidence submitted at the evidentiary hearing, the Board finds that these issues were investigated during the course of this proceeding. Specifically, the Board finds that a majority of the witnesses raised concerns about the proximity of the preferred route to the Wetland Research Park. However, the Board finds that these concerns have been addressed as the parties have stipulated and recommended that the alternate route be approved, which does not cross the Wetland Research Park. Additionally, although several witnesses raised concerns about the alternate route and the possible effects on the natural wetland and Clinton-Como Park, the

staff report found that the potential impacts from a frac-out could be mitigated by a frac-out contingency plan, that permanent land use changes should not occur as a result of the pipeline project, that any project-related damage would be repaired, and that the underground pipeline would not be visible after installation with the exception of pipeline markers and corrosion test stations (Staff Ex. 1 at 19, 25). Additionally, Condition (10) of the Recommended Conditions in the Stipulation requires Columbia, in consultation with the city of Columbus Recreation and Parks Department, to prepare a restorative plan for Clinton-Como Park to be submitted for review by Staff, and, upon approval, implemented after completion of construction (Joint Ex. 1 at 10). Further, Condition (14) requires that, prior to construction, Columbia submit to Staff a tree clearing and restoration plan to be developed in consultation with the city of Columbus Forester that addresses minimization of tree removal, protection of mature trees, and installation of new compatible vegetation where appropriate (*Id.* at 11). The Board is satisfied that the findings in the staff report and conditions required by the Stipulation adequately address these concerns raised at the local public hearing.

Therefore, 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 pipeline project, along the alternate route, subject to the conditions set forth in the Stipulation.

The Ohio Supreme Court has recognized that the statutes governing these cases vest the Board with the authority to issue certificates upon such conditions as the Board considers appropriate; thus acknowledging that the construction of these projects necessitates a dynamic process that does not end with the issuance of a certificate. The Court concluded that the Board has the authority to allow Staff to monitor compliance with the conditions the Board has set. *In re Application of Buckeye Wind, L.L.C. for a Certificate to Construct Wind-Powered Electric Generation Facilities in Champaign County, Ohio*, 2012-Ohio-878, ¶16-17, 30 (*Buckeye*). Such monitoring includes the convening of preconstruction conferences and the submission of follow-up studies and plans by the Applicant. As recognized in *Buckeye*, if an applicant proposes a change to any of the conditions approved in the certificate, the applicant is required to file an amendment. In accordance with Section 4906.07, Revised Code, the Board would be required to hold a hearing, in the same manner as on an application, where an amendment application involves any material increase in any environmental impact or substantial change in the location of all or a portion of the facility.

The Board finds that the Stipulation is the product of serious bargaining among knowledgeable parties, will promote the public interest, convenience and necessity, and does not violate any important regulatory principle or practice. Accordingly, based upon

all of the above, the Board approves and adopts the Stipulation and hereby issues a certificate to Columbia for the construction, operation, and maintenance of the proposed pipeline project, on the alternate route, as described in the application and supplement thereto, subject to the 32 conditions set forth in the Stipulation and this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) The pipeline project is a major utility facility as defined in Section 4906.01(B)(2), Revised Code.
- (2) Columbia is a person under Section 4906.01(A), Revised Code.
- (3) On June 27, 2011, Columbia held a public information meeting in the city of Columbus, Franklin County, Ohio.
- (4) On July 29, 2011, Columbia filed its application for a certificate for the pipeline project.
- (5) On September 19, 2011, the Board notified Columbia that the application was complete.
- (6) On October 4, 2011, Columbia filed its proof of service of the application to the appropriate government officials and public agencies pursuant to Rule 4906-5-06, O.A.C.
- (7) By entry issued October 26, 2011, the ALJ scheduled a local public hearing for January 10, 2012, at the Whetstone Park of Roses Shelter House, Columbus, Ohio, and an evidentiary hearing for January 12, 2012, at 10:00 a.m., at the offices of the Commission in Columbus, Ohio.
- (8) On November 17, 2011, Columbia filed its proof of publication in local newspapers as required by Rules 4906-5-08(C)(1) and 4906-5-09(A), O.A.C.
- (9) On December 2, 2011, petitions to intervene were filed by OSU, FSWCD, and ACS. Additionally, on December 8, 2011, a petition to intervene was filed by the Sierra Club. By entry issued December 21, 2011, the ALJ granted the petitions to intervene.

- (10) On December 22, 2011, Staff filed its report of investigation of the application.
- (11) By entry issued December 22, 2011, the ALJ continued the evidentiary hearing until January 18, 2012.
- (12) On January 6, 2012, Columbia filed its proof of publication of the second newspaper notice required by Rules 4906-5-08(C)(2) and 4906-5-09(B), O.A.C.
- (13) A local public hearing was held, as scheduled, on January 10, 2012. At the local public hearing, fifteen individuals offered testimony on the pipeline project.
- (14) The evidentiary hearing commenced as rescheduled on January 18, 2012, and was called and continued until Monday, January 23, 2012.
- (15) On January 18, 2012, the parties filed a Stipulation resolving all issues raised in this proceeding.
- (16) The record establishes the need for the pipeline project as required by Section 4906.10(A)(1), Revised Code.
- (17) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the pipeline project as required by Section 4906.10(A)(2), Revised Code.
- (18) The record establishes that the pipeline project represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations as required by Section 4906.10(A)(3), Revised Code.
- (19) The record establishes that the pipeline project is not an electric transmission line, and that Section 4906.10(A)(4), Revised Code, regarding the electric power grid, is inapplicable.
- (20) The record establishes that the pipeline project, subject to the conditions set forth in this order, will comply with 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.

- (21) The record establishes that the pipeline project, subject to the conditions set forth in this order, will serve the public interest, convenience, and necessity, as required by Section 4906.10(A)(6), Revised Code.
- (22) The record establishes that the pipeline project, subject to the conditions set forth in this order, has been assessed as to viability of agricultural land in an existing agricultural district as required by Section 4906.10(A)(7), Revised Code.
- (23) Inasmuch as water conservation practices are not involved with this project, Section 4906.10(A)(8), Revised Code, does not apply in this circumstance.
- (24) The record evidence of this proceeding provides sufficient factual data to enable the Board to make an informed decision.
- (25) Based on the record, the Board shall issue a certificate of environmental compatibility and public need pursuant to Chapter 4906, Revised Code, for construction, operation, and maintenance of the pipeline project, along the alternate route, subject to the conditions set forth in the Stipulation and this order.

ORDER:

It is, therefore,


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

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


ORDERED, That the certificate contain the 32 conditions set forth in the Stipulation. 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 of record.

THE OHIO POWER SITING BOARD



Todd A. Snitchler, Chairman
Public Utilities Commission of Ohio

Christiane Schmenk, Board
Member and Director of the Ohio
Department of Development


James Zehringer, Board Member
and Director of the Ohio
Department of Natural Resources


Theodore Wymyslo, Board
Member and Director of the
Ohio Department of Health


Scott Nally, Board Member
and Director of the Ohio
Environmental Protection Agency


David Daniels, Board Member
and Director of the Ohio
Department of Agriculture

Board Member
and Public Member

MLW/sc
Entered in the Journal

MAR 26 2012



Barcy F. McNeal
Secretary