

**BEFORE THE POWER SITING BOARD OF THE STATE OF OHIO**

**In the Matter of the Application of North Coast )  
Gas Transmission, LLC for a Certificate ) Case No. 14-1754-GA-BLN  
Relative to the Oregon Lateral Pipeline )**

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**RESPONSE OF NORTH COAST GAS TRANSMISSION, LLC TO THE  
APPLICATION FOR REHEARING OF OREGON LATERAL CITIZENS  
COALITION, JAMES E. PODIAK, JANET E. PODIAK, BRADFORD L.  
CLOYNE, KIMBERLY A. WOODLING, SCOTT ROGERS, MARY A ROGERS,  
CECIL ADKINS, ROLAND NEIDERHOUSE, SANDRA K. NEIDERHOUSE,  
JAMES H. SHERMAN, MICHAEL A. KAZMAIER, MARK HENRY,  
MICHAEL G. ALEXANDER, STEPHEN S. COX, BRENDA L. COX, PAUL R.  
SWARTZ, PAT LESNIEWSKI, ROBERT D. TERDOEST, SHARON  
TERDOEST, CYNTHIA A PEIFFER, AND RONALD E. GLADIEUX.**

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**I. INTRODUCTION**

North Coast Gas Transmission, LLC (“North Coast”) submits this response to the February 5, 2015 application for rehearing of non-parties Oregon Lateral Citizens Coalition, James E. Podiak, Janet E. Podiak, Bradford L. Cloyne, Kimberly A. Woodling, Scott Rogers, Mary A Rogers, Cecil Adkins, Roland Neiderhouse, Sandra K. Neiderhouse, James H. Sherman, Michael A. Kazmaier, Mark Henry, Michael G. Alexander, Stephen S. Cox, Brenda L. Cox, Paul R. Swartz, Pat Lesniewski, Robert D. TerDoest, Sharon TerDoest, Cynthia A Peiffer, and Ronald E. Gladieux (jointly and separately referred to here as “OLCC”). OLCC has failed both procedurally and substantively in its application for a rehearing. Procedurally, OLCC failed to file a petition to intervene prior to the Ohio Power Siting Board’s (the “Board”) January 6, 2015 automatic approval of North Coast’s application for the construction of a 22-mile long 24-inch diameter natural gas transmission line in Lucas and Wood counties, Ohio; and failed to file a request for leave to file an application for rehearing as a non-party. Substantively, OLCC fails to address the requirements of a request for leave and, in fact, makes no request to the Board for

leave in its application for rehearing, which means the Board cannot consider the merits of OLCC's application for rehearing. Even if OLCC would have complied with Section 4903.10, Revised Code, its application for rehearing fails on the merits. The Board should reject OLCC's application for rehearing without consideration as to the merits of the application.

## **II. ARGUMENT**

On October 7, 2014, North Coast filed a letter of notification application with the Board, which was docketed as Case No. 14-1754-GA-BLN. In this application, North Coast proposed an underground natural gas transmission line and related above ground facilities in Lucas and Wood counties, Ohio. Letter of notification applications are evaluated under the Board's automatic approval process, as detailed in Section 4906.03(F) of the Revised Code and Rule 4906-5-02(A), Ohio Administrative Code as modified by the Dec. 17, 2012 Second Finding and Order, Case No. 12-1981-GE-BRO. If the Board does not act upon a filed letter of notification application within ninety days of filing, it is automatically approved. R.C. 4906.03(F).

On December 29, 2014, the Board's Staff filed a Staff Report of Investigation ("Staff Report") recommending automatic approval of the letter of notification application on January 6, 2015, subject to twenty-six (26) conditions. On January 2, 2015, as required in the Staff Report, prior to the automatic approval, North Coast responded to Condition 21 discussing the steps it had taken to address affected landowner concerns that had been filed in the public comments section of the docket as of December 29, 2014. On January 5, 2015, North Coast accepted and adopted the Staff Report's recommended conditions for the pipeline construction, subject to modifications to Conditions 4 and 17, along with a new proposed Condition 4a. On the same day, the Board's Staff issued revisions to the Staff Report, adopting Conditions 4, 4a and 17, and including Condition 27 recommending that North Coast continue to be open to landowner

concerns (“Revised Staff Report”). North Coast gave notice of its acceptance of Condition 27, and provided notice of North Coast’s separate agreement with intervenors American Transmission Systems, Incorporated (“ATSI”) and The Toledo Edison Company (“Toledo Edison”) on Condition 28. North Coast’s application was automatically approved on January 6, 2015.

On February 5, 2015, OLCC filed an application for rehearing of the January 6, 2015 automatic approval of North Coast’s application in which OLCC raises eight assignments of error.<sup>1</sup> Accordingly, in opposition to OLCC’s application for rehearing, North Coast has set forth its arguments herein.

**A. OLCC Failed to Perfect its Appeal Rights.**

OLCC has failed to perfect its right to appeal under Section 4903.10, Revised Code. As set forth in previous Board findings:

(3) Section 4906.12, Revised Code, states, in relevant part, that Sections 4903.02 to 4903.16 and 4903.20 to 4903.23, Revised Code, apply to a proceeding or order of the Board as if the Board were the Public Utilities Commission of Ohio (Commission).

(4) Section 4903.10, Revised Code, provides that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the entry of the order upon the journal of the Commission. Further, Section 4903.10, Revised Code, provides that leave to file an application for rehearing shall not be granted to any person who did not enter an appearance in the proceeding, unless the Commission finds that: (1) the applicant’s failure to enter an appearance prior to the Commission’s order complained of was due to just cause; and (2) the interests of the applicant were not adequately considered in the proceeding.

(5) Rule 4906-7-17(D), Ohio Administrative Code (O.A.C.), states, in relevant part, that any party or affected person may file an application for rehearing within

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<sup>1</sup> Preliminarily, there is an issue whether OLCC is permitted to file an application for rehearing at all given the automatic approval of North Coast’s application. Although North Coast asserts that right does not exist, the Board need not address this issue given OLCC’s failure to perfect its application for rehearing by seeking leave from the Board.

30 days after the issuance of a Board order in the manner and form and circumstances set forth in Section 4903.10, Revised Code.

*In the Matter of the Application of the City of Hamilton and American Municipal Power, Inc.*, Case Nos. 10-2439-EL-BSB, 10-2440-EL-BTX, Entry on Rehearing, 2012 Ohio PUC LEXIS 84, \*1-3 (Jan. 23, 2013) (hereinafter, “American Municipal”).

**1. OLCC is Not a Party in this Proceeding Because No Petition to Intervene Was Filed.**

Procedurally, neither OLCC nor its individual members are a party in this proceeding and, thus, pursuant to Section 4903.10, Revised Code, the Board is statutorily prevented from considering the issues OLCC has raised for reconsideration in its application for rehearing. *In the Matter of the Application by Hardin Wind Energy, LLC*, Case No. 09-479-EL-BGN, Entry on Rehearing, 2010 Ohio PUC LEXIS 735, \*5 (July 15, 2010) (emphasis added) (hereinafter, “Hardin Wind”).

On October 13, 2014, North Coast published a “Notice of Proposed Major Utility Facility” in *The Blade*, a newspaper of general circulation in Lucas and Wood counties, Ohio. After publication of the notice, numerous public comments were filed, including by a majority of the individuals associated as OLCC and their attorney of record.<sup>2</sup> Despite OLCC, and the individuals therein, having both actual and constructive notice of the project, none filed a notice of intervention prior to the Board’s approval. *See, e.g., Hardin Wind*, 2010 Ohio PUC LEXIS 735 at \*5-6; *In the Matter of the Application of Columbus Southern Power Company*, Case No. 08-170-EL-BTX, Order on Rehearing, 2010 Ohio PUC LEXIS 305, \*6 (Mar. 22, 2010)

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<sup>2</sup> Within thirty (30) days of publication of the notice, attorney Albin Bauer, II, on behalf of Cecil Adkins, filed a public comment on October 24, 2014. Mr. Bauer filed supplementation to Mr. Adkins’ public comments again on December 17, 2014 and January 2, 2015. Additionally, James E. Podiak, Janet E. Podiak, Scott Rogers, Mary A Rogers, Cecil Adkins, Mark Henry, Michael G. Alexander, Stephen S. Cox, Brenda L. Cox, Paul R. Swartz, Pat Lesniewski, Robert D. TerDoest, and Sharon TerDoest filed public comments prior to the Board’s December 29, 2014 Staff Report. Bradford L. Cloyne, Kimberly A. Woodling, and James H. Sherman also filed public comments prior to the Board’s automatic approval on January 6, 2015.

(hereinafter, “Southern Power”). Accordingly, as non-parties, OLCC and the individuals therein were required to seek leave from the Board to file their application for rehearing pursuant to Section 4903.10 of the Revised Code.

**2. OLCC Has Not Filed a Request for Leave to File an Application for Rehearing.**

As a non-party, OLCC was required to request leave to file an application for rehearing and satisfy the requirements for leave.

Section 4903.10, Revised Code, governs the rehearing process in Board proceedings. Among other things, Section 4903.10, Revised Code, requires leave to file an application for rehearing from any person, firm, or corporation who did not previously enter an appearance and become a party in a Board proceeding. In order to grant leave to file an application for rehearing, the Board must find: (a) that the applicant’s failure to enter an appearance prior to the entry upon the journal of the Board or the order complained of was due to just cause, or (b) that the interests of the applicant were not adequately considered in the proceeding.

*Hardin Wind*, 2010 Ohio PUC LEXIS 735 at \*6. A request for leave to file an application for rehearing is a statutory prerequisite under these circumstances to initiate a rehearing process under Section 4903.10, Revised Code. *See Southern Power*, 2010 Ohio PUC LEXIS 305 at \*7. Moreover, in Ohio, a court or administrative agency is without jurisdiction over an appeal that a party has failed to perfect pursuant to the statute. *Hughes v. Ohio DOC*, 114 Ohio St. 3d 47, 52 (2007) (a court cannot exercise subject matter jurisdiction over an appeal not perfected pursuant to the governing statute); *Brass Pole v. Ohio Dep’t of Health*, 10th Dist. Franklin No. 08AP-1110, 2009-Ohio-5021, ¶ 13 (“Just as [Ohio courts] require an agency to strictly comply with the requirements of [Revised Code Section 119 and statutes promulgated in accordance therewith] a party adversely affected by an agency decision must likewise strictly comply . . . in order to perfect an appeal.”).

Nowhere in OLCC's application for rehearing does OLCC ask for leave to file the application for rehearing, which is a requirement for any person, firm, or corporation who has not entered an appearance in the proceeding, before the Board will consider the arguments raised in an application for rehearing. *See, e.g., Southern Power*, 2010 Ohio PUC LEXIS 305 at \*7; *In the Matter of the Commission's Investigation into the Disconnection of Local Exchange Service for Failure to Pay Message Toll Charges*, Case. No. 85-1930-TP-COI, Entry on Rehearing, 1988 Ohio PUC LEXIS 548, \*5-6 (June 7, 1988) (hereinafter, "Commission's Investigation"). For this reason alone, the Board cannot consider OLCC's application for rehearing because OLCC did not seek leave as required by Section 4903.10, Revised Code.

### **3. OLCC Also Cannot Satisfy the Requirements of a Request for Leave.**

Even assuming that OLCC or the individuals have made a valid request for leave to file an application for rehearing (which they did not), OLCC failed to satisfy the statutory criteria to be granted leave to file an application for rehearing. "Leave to file an application for rehearing shall not be granted . . . unless the commission first finds: (A) The applicant's failure to enter an appearance prior to the entry upon the journal of the commission of the order complained of was *due to just cause*; and, (B) *The interests of the applicant were not adequately considered* in the proceeding." R.C. 4903.10 (emphasis added).

With regard to the first prong of the test in Section 4903.10, Revised Code, OLCC never sought intervention in this case. North Coast first published notice of this project in *The Blade* on October 13, 2014. This notice placed OLCC and the individuals on constructive notice of the project, and indeed gave OLCC and its attorney actual notice of the project based on the comments filed on the public docket. Despite having such notice, OLCC, and the individuals therein, chose not to file a motion for leave to intervene in the matter at any point, instead

electing to file comments with the Board. If at any point prior to the January 6, 2015 approval OLCC believed that North Coast was not adequately addressing its concerns, OLCC or the individuals could have taken action to intervene in the proceeding. Furthermore, others with an interest in this project, ATSI and Toledo Edison, jointly filed and were granted a motion to intervene in this proceeding. *See* Entry dated Dec. 30, 2014.

Thus, OLCC cannot establish that its failure to enter an appearance prior to the Board's January 6, 2015 approval was due to just cause. *See, e.g., In the Matter of the Application of Hardin Wind LLC*, Case Nos. 13-1177-EL-BGN, 13-1767-EL-BSB, 13-1768-EL-BTX, Entry on Rehearing, at ¶¶ 27-28 (May 19, 2014) ("just cause is not established when residents, some with earlier knowledge of the project, and others without earlier knowledge, fail to enter an appearance prior to the Order.") (hereinafter, "Hardin Wind II"); *see also, e.g., Commission's Investigation*, 1988 Ohio PUC LEXIS 548 at \*9 (finding, in part, that even though a non-party was on notice that the docket was pending, it chose not to participate until after the commission made its decision, therefore, denied its application for rehearing); *American Municipal*, 2012 Ohio PUC LEXIS 84 at \*7-8 (finding a failure to demonstrate that the lack of appearance prior to the order was due to just cause).

With regard to the second prong of the test in Section 4903.10, Revised Code, even had OLCC demonstrated that their failure to enter an appearance was due to just cause, the Board cannot find that their interests were not adequately considered in these proceedings. Based on its application for rehearing, North Coast assumes that OLCC's interests boil down to concerns regarding alternative routes available for the pipeline, environmental impact, and specific landowner requests. A number of these concerns were raised or are substantially similar to the individuals' public comments and were referenced in the December 29, 2014 Staff Report.

Moreover, the Board's Staff considered and addressed many of OLCC's other arguments in the Staff Report and Revised Staff Report.

Specifically, in the Staff Report, the Board's Staff addressed the environmental and socioeconomic concerns, as well as outlined twenty-six (26) conditions that North Coast was required to adopt. North Coast's response to Condition 21 set forth North Coast's reasons and considerations for the route taken by the pipeline, as well as other concerns previously raised in public comments and repeated in OLCC's application. Additionally, in the Revised Staff Report, the Board's Staff recommended in Condition 27 that North Coast continue to be open and responsive to the concerns of the affected landowners. As interests similar to OLCC's stated interests were investigated during the course of the proceedings and adequately addressed, the Board should find that OLCC did not satisfy the second prong of the statutory test and that their interests were adequately considered in the proceedings. *See, e.g., American Municipal*, 2012 Ohio PUC LEXIS 84 at \*8-9 (finding that interests were adequately considered); *Hardin Wind II* at ¶¶ 31-32 (same).

Because the interests of OLCC were adequately considered in these proceedings, and the movants failed to demonstrate that their failure to enter an appearance prior to the January 6, 2015 approval was due to just cause, the Board should find that OLCC has failed to demonstrate grounds to file an application for rehearing pursuant to Section 4903.10, Revised Code. Consequently, the Board should decline to grant OLCC leave to file an application for rehearing, and the application should not be considered on its substantive merits. *See American Municipal*, 2012 Ohio PUC LEXIS 84 at \*9; *Hardin Wind II* at ¶¶ 31-32; *see also, e.g., Hardin Wind*, 2010 Ohio PUC LEXIS 735 at \*7-8 (finding that the failure to intervene prior to the issuance of a certificate was not due to just cause and interests were adequately considered, therefore, denied



the leave to file and the application for rehearing); *In the Matter of the Application of The Ohio Bell Telephone Company to Revise its Exchange and Network Services Tariff*, PUCO No. 1, Case No. 87-1623-TP-ATA, Entry on Rehearing, 1987 Ohio PUC LEXIS 1112, \*3 (Dec. 15, 1987) (denying motion for leave to file an application for rehearing because failure to intervene was not due to just cause and their interests were adequately considered in the proceeding).

**B. OLCC's Rehearing Application Fails on the Merits.**

Even if OLCC procedurally and substantively satisfied the requirements for leave to file an application for rehearing (which it did not), the Board would still deny the application for rehearing because it fails on its merits.

**1. North Coast's Letter of Notification Does Not Require a Verification from the Chief Executive Officer and it Satisfies the Criteria of R.C. 4906.10.**

In its first ground for rehearing, OLCC contends that because North Coast's application does not include a verification statement from North Coast's chief executive officer, none of the information contained therein constitutes supporting evidence. However, OLCC's citation to Ohio Administrative Code 4906-1-10(B) is inappropriate because that rule refers to an application for a "certificate," and North Coast instead filed a letter of notification. Ohio Administrative Code 4906-1-01 defines "certificate" as "a certificate of environmental compatibility and public need, issued by the board." O.A.C. 4906-1-01(G). "Letter of notification" is separately defined as "a document filed with the board under the requirements of rule 4906-11-01 of the Administrative Code." O.A.C. 4906-1-01(K). As North Coast's application sets forth, and OLCC continually refers to throughout its application for rehearing, North Coast applied with a letter of notification, which under Board rules does not require a verification from its chief executive officer to its letter of notification.

In addition, OLCC asserts that the Board's January 6, 2015 approval is unlawful and unreasonable because North Coast's application does not contain evidence concerning alternative routes for the pipeline. OLCC claims that North Coast has not presented sufficient detail of alternative routes to enable the Board's Staff and adversely affected parties to test the validity of the proposed pipeline route. OLCC also claims that North Coast's application does not contain any discussion of analysis of the proposed pipeline's potential impact radius.

As an initial point, the Board's rules do not require the submittal of specific alternative routes for letters of notification unlike a certificate application. *Compare* O.A.C. 4906-5-02 and 4906-11-01 *with* O.A.C. 4906-5-03 to -04. North Coast's application (at pages 4-6) did, as required by Rule 4906-11-01(B)(4) present a discussion of the alternatives considered, as well as the numerous considerations and constraints that led to its proposed pipeline route, including the population of the surrounding areas, public safety concerns, increased traffic congestion, environmental impact, and higher construction costs. The December 29, 2014 Staff Report recognized and addressed these alternative route concerns throughout the report, and required North Coast to provide a discussion of steps it has taken to address this and other landowner concerns. In response to Condition 21, North Coast explained both how the proposed route was selected, as well as explained the specific reasoning behind route choices that were raised in public comments, including individual comments by James E. and Janet E. Podiak and Paul R. Swartz.

As to OLCC's reference to a calculated point of impact taken from the Part 192 federal pipeline safety rules, North Coast as an intrastate pipeline must construct and operate the pipeline in accordance with both state and federal pipeline safety requirements. *See* 49 CFR Part 192; R.C. §§ 4905.90 to 99. Many interstate and intrastate pipelines are installed and operated in

Ohio under these laws, including North Coast's pipeline system. OLCC's claim that North Coast should have identified and addressed any "adverse environmental impacts on people, occupied structures and improved properties" within OLCC's calculated point of impact is contrary to what is required under federal pipeline safety rules. The point of impact analysis required for pipelines in certain areas relates to the need to provide extra integrity protection for the pipeline, and not an analysis of the impact in the event of a pipeline incident. The fact that North Coast's pipeline will be constructed and operated in accordance with both federal and state pipeline safety standards supports the Board's automatic approval of North Coast's application. OLCC's request for rehearing on this point is without merit.

**2. The Pipeline is Properly Sited in Regards to the Evergreen Sanitary Landfill.**

In its second ground for rehearing, OLCC essentially argues that the pipeline should be rerouted to avoid the Evergreen Sanitary Landfill. OLCC also alleges that North Coast's application does not address the health and safety issues of locating the pipeline "adjacent" to an operating sanitary landfill. OLCC asserts that due to the Evergreen Sanitary Landfill's potential explosive nature, North Coast must implement additional measures to ensure pipeline construction, operation, and maintenance activities will not impact, disrupt, or compromise the integrity of the landfill. Furthermore, OLCC states that North Coast cannot use the landfill to move construction equipment, pipe, material, supplies, and construction personnel onto several landlocked parcels that are adjacent to the landfill because the landfill is required to restrict access to authorized personnel only.

OLCC's arguments mistakenly rely upon several sections of the Ohio Administrative Code that are, by their express terms, inapplicable to North Coast. OLCC's citation to Ohio Administrative Code 3745-27-20(A)(3)(e) and (C)(5) refer to prohibitions against an "owner" or

“operator” placing solid waste in any “new” units. OLCC also refers to Ohio Administrative Code 3745-27-12, which applies to “owners,” “operators,” or other person who has control of the landfill land. Similarly, Ohio Administrative Code 3745-27-19 specifically applies to the “owner” or “operator.” An “owner” is defined as “the person who holds title to the property on which the solid waste facility, infectious waste treatment facility, or scrap tire transportation business is located.” O.A.C. 3745-27-01(O)(7). “Operator” refers to “the person responsible for the on-site supervision of technical operations and maintenance of a solid or infectious waste facility, or any parts thereof” or “the person responsible for the supervision of technical operations of a scrap tire transportation business.” O.A.C. 3745-27-01(O)(5). North Coast clearly does not fall into either of the definitions of “owner” or “operator,” and, therefore, Ohio Administrative Code Sections 3745-27-20(A)(3)(e), 3745-27-20(C)(5), 3745-27-12, and 3745-27-19 do not apply to North Coast.<sup>3</sup>

Moreover, as noted above, North Coast’s pipeline will be constructed and operated in accordance with both federal and state pipeline safety standards. That fact supports the Board’s automatic approval of North Coast’s application and is counter to OLCC’s concerns about a lack of pipeline integrity near the landfill operation. Furthermore, to address any concerns regarding public safety and the protection of the landfill, the pipeline will be externally coated with fusion bonded epoxy and will be cathodically protected to safeguard it from external corrosion. The welds on the pipeline will be 100% non-destructively tested and the pipeline will be hydrostatically pressure tested at a pressure of one and one-half times the MAOP of the pipeline, which equates to testing at nearly two and one-half times the expected operating pressure of the

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<sup>3</sup> OLCC also refers to Sections 3745-27-08 and 3745-27-10, Ohio Administrative Code, however, does not contend these provisions should be carried out by North Coast.

pipeline. Additionally, the pipeline will be subject to routine maintenance inspections and periodically smart pigged or re-pressure tested in accordance with 49 CFR Part 192.

OLCC's concerns about the integrity of groundwater monitoring wells are also unfounded and based on speculation. In fact, North Coast's engineering firm, Utility Technologies International ("UTI"), has had discussions with the operator of the landfill. The pipeline route including construction activities are outside the boundary limits of the facility. Only one monitoring well at the southern end of the facility was identified by UTI and the landfill operator that potentially could be affected by the pipeline. However, this well is currently only used as a Piezometer for groundwater. This well will be located and avoided during construction. Due to the depth of the well and the depth needed for the installation of the pipeline the construction activities should not have an impact on its current use. Furthermore, per discussions between UTI and the landfill operator the area of the facility has only been used as a soil stockpile area and has no history of being part of the approved limits for disposal with the landfill. As to OLCC's claim that construction traffic should not be allowed to cross the landfill property, North Coast will coordinate any such traffic with the landfill property owner, which unlike OLCC, has not raised an objection to the pipeline in this proceeding. OLCC's second ground for rehearing is without merit.

### **3. North Coast's Proposed Pipeline was Eligible for Accelerated Review.**

In its third ground for rehearing, OLCC contends that the Board should not have allowed North Coast to use the accelerated review process for approval of the natural gas pipeline. Instead, OLCC alleges that because Oregon Clean Energy Center arranged for natural gas to be supplied to it via North Coast's pipeline at issue herein, Oregon Clean Energy Center and North Coast created a virtual joint venture for a single integrated energy project. OLCC believes that

such a joint venture prevents North Coast from receiving approval under the accelerated procedure of Section 4906.03, Revised Code. *See* R.C. 4906.03(F)(3).

North Coast's pipeline was eligible for accelerated review. First, North Coast is not affiliated with Oregon Clean Energy LLC, the owner of the Oregon Clean Energy Center, and Oregon Clean Energy LLC will be a customer served by North Coast in its capacity as a public utility. Second, OLCC's argument is in direct opposition to the clear and concise language of Section 4906.03, Revised Code, which permits an accelerated review for a gas pipeline "primarily needed to meet the requirements of a specific customer or specific customers." *See id.* Thus, as a separate project, which Ohio's legislature obviously intended could be approved through an accelerated procedure, North Coast's application was properly submitted as a letter of notification application under Section 4906.03, Revised Code.

Alternatively, OLCC claims that the use of a 24-inch pipeline is unnecessary and oversized based on the use of a 12-inch pipeline to a different facility in Pennsylvania. OLCC may have opinions on how to engineer and design a natural gas pipeline, but those unfounded opinions should not replace the design that North Coast presented to the Board. North Coast properly submitted its application through a letter of notification, and OLCC's third ground for rehearing is without merit.

#### **4. North Coast's Letter of Notification Complied with the Board's Rules and Provided Sufficient Information.**

In its fourth ground for rehearing, OLCC repeats its lack of alternative routes argument by stating that North Coast has not provided specific facts regarding the environmental impacts of the alternative routes it considered. As noted above, however, the Board's rules do not require the submittal of alternative routes for letters of notification. *Compare* O.A.C. § 4906-5-02 *with* O.A.C. § 4906-5-03. Furthermore, North Coast's application (at pages 4-6) discussed the

alternatives considered as well as the numerous considerations and constraints that led to its proposed pipeline route, including the population of the surrounding areas, public safety concerns, increased traffic congestion, environmental impact, and higher construction costs. North Coast attached Exhibits F and G to its application that identified species identified by the United States Fish and Wildlife Service and the Ohio Department of Natural Resources and the species' habitats that the pipeline could potentially impact and the plans to avoid or reduce impact to the identified species. Maps showing areas of ecological concern and tables listing delineated wetlands and streams and ditches also were included in the application. Moreover, the impact discussion and the conditions set forth in the Staff Report extensively consider the potential environmental impact of the proposed pipeline route. As the environmental impact of the pipeline has been extensively contemplated by both North Coast and the Board's Staff, OLCC's fourth ground for rehearing should be denied.

**5. The Use of an Existing Pipeline Was Considered an Inappropriate Alternative.**

In its fifth ground for rehearing, OLCC suggests an unsuitable alternative pipeline route as a reason to reverse the Board's approval of North Coast's application. OLCC believes that because North Coast did not list enlarging an alleged 10-inch pipeline or running a parallel new pipeline as an alternative to its proposed route, the Board's automatic approval was unlawful and unreasonable.

OLCC once again incorrectly assumes that if *any* alternative pipeline route could possibly exist, then North Coast's proposed route must be improper. More significantly, OLCC's speculation that the existing pipeline can be used or enlarged is misinformed. That pipeline is a 6-inch pipeline with limited capacity. Enlarging that pipeline means digging out an existing pipeline, displacing existing customers being served by that pipeline during the period of

construction, and replacing the pipeline with a much larger pipeline. As well, that pipeline does not have the interconnect capacity with interstate gas transmission lines needed to supply the Oregon Lateral pipeline.

North Coast presented information on alternatives in its application (pages 4-6) as required by Rule 4906-11-01(B)(4). North Coast was not required to list every possible option for designing and routing a pipeline and certainly not an option that is not operationally feasible or practical. OLCC's fifth ground for rehearing is without merit.

**6. North Coast is Not Required to Obtain a Certificate for its 6-inch Pipeline.**

In its sixth ground for rehearing, OLCC suggests that North Coast does not serve the public interest, convenience, and necessity because of an alleged failure to receive a certificate for the conversion of a 37.5 mile long, "10-inch" diameter pipeline, running from Oregon to Fostoria. This is the same pipeline that OLCC discusses in its fifth ground for rehearing.

OLCC has made a reckless misrepresentation to the Board. North Coast's pipeline running from the Oregon area to Fostoria is 6-inches in diameter, not 10-inches as alleged by OLCC. The "major utility facility" definition applies to "[a] gas pipeline that is greater than five hundred feet in length, and its associated facilities, *is more than nine inches in outside diameter* and is designed for transporting gas at a maximum allowable operating pressure in excess of one hundred twenty-five pounds per square inch." R.C. 4906.01(B)(1)(c) (emphasis added). A 6-inch pipeline regardless of the length is not subject to the Board's jurisdiction and does not require authorization to construct or modify. OLCC's sixth ground for rehearing is without merit.



**7. The Pipeline is Properly Sited in Regards to Electrical Transmission Lines.**

In its seventh ground for rehearing, OLCC again attacks North Coast's pipeline route by asserting that North Coast's application, and subsequent December 16, 2014 Responses to Staff's First Set of Data Requests, do not provide sufficient evidence for locating the a section of the pipeline closer to homes in relation to existing electric transmission lines and towers. OLCC asserts that North Coast's proffered safety concerns of locating the pipeline behind homes do not correspond with OLCC's allegation that parts of the pipeline run closer to electrical towers. OLCC also alleges that North Coast has failed to consider technologies that would permit the pipeline to run nearer to electrical transmission lines.

OLCC's request for rehearing on this issue should be denied, especially given that the electric utilities, Toledo Edison and ATSI, were involved in this proceeding as parties of record. As recognized in OLCC's argument, the location of the pipeline between Curtice Road and Seaman Road was questioned and considered by the Board's Staff, which noted that there was limited potential for moving the pipeline due to the proximity to the highway and electrical transmission lines. Now, OLCC contends that the entire pipeline should be moved closer to the electrical transmission lines because at one single point the pipeline route is closer to the electrical towers.

That does not present a basis for rehearing. Again, North Coast worked with the electric utilities (Toledo Edison and ATSI) to develop a design that reduces hazards associated with constructing a pipeline in close proximity to an electric transmission line as well as reducing the amount of AC current induction (which can be done by minimizing the instances where a pipeline is under transmission line). The fact that the pipeline may be within utility corridors at some points does not mean that it should then be placed along and under electric transmission

lines at all points. That negates the design mitigation developed in coordination with the electric utilities.

The coordination between North Coast and the electric utilities is evidenced by an agreed upon condition between North Coast, Toledo Edison and ATSI regarding North Coast's use of electrical corridors. That condition states:

The Applicant shall provide Intervenor American Transmission Systems, Incorporated and The Toledo Edison Company ("Intervenor"), as reasonably necessary, with drawings and other technical information for the construction of the gas pipeline within, or adjacent to, Intervenor's electric distribution and/or transmission line corridors. Applicant shall obtain the necessary land rights to permit the use of Intervenor's electric distribution and/or transmission corridors by Applicant prior to the construction of the pipeline within the corridors.

See correspondence docketed on Jan. 5, 2015. This condition along with the explanation given to Staff regarding specific routing along and within electric transmission corridors supports the automatic approval of the application. OLCC's seventh ground for rehearing is without merit.

**8. North Coast Has and Will Continue to Respond to Requests and Concerns of Landowners.**

In its eighth ground for rehearing, OLCC frames its request to reroute the pipeline within the individual landowner concerns previously addressed in their public comments. OLCC alleges that despite landowner requests to reroute the pipeline closer to the property boundaries to preserve future development opportunities, North Coast has failed to move the pipeline. OLCC also notes that North Coast neglected a written request of Stephen S. Cox to provide engineering and technical data concerning the construction of the pipeline across drainage tiles of his agricultural property.

Where it is feasible to do so, North Coast has attempted to reroute the pipeline in order to address landowners' concerns. And as repeatedly stated above, North Coast provided ample evidence in its application and responses to the Board's Staff's requests for clarification

regarding the pipeline routing and various issues raised by landowners in the public comment docket. Additionally, the Board's Staff recommended conditions—which North Coast has adopted—regarding landowner concerns now and in the future. This includes Condition 16, under which North Coast is to avoid or minimize the maximum extent practicable any damage to field tile drainage systems that Mr. Cox has raised concerns in the application for rehearing.

Admittedly, North Coast will be unable to accommodate all requests to reroute the pipeline from landowners; however, it has and will continue to discuss landowner concerns prior to and throughout construction of the pipeline. For example, North Coast recently held a public information meeting on a voluntary basis to meet with landowners and answer questions, and will to continue to engage landowners. *See* correspondence docketed on Jan. 22, 2015.

As to Mr. Cox specifically, North Coast has engaged in conversations with Mr. Cox regarding his proposed pipeline route (which would increase the pipeline approximately 2 to 2.3 miles in length from the existing route) and more specifically, his property over which the pipeline route passes. North Coast expects those conversations to continue as to Mr. Cox's property—but Mr. Cox's dissatisfaction with North Coast's answers is not a basis to seek rehearing. OLCC's eighth ground for rehearing is without merit.

### **III. CONCLUSION**

Procedurally, the non-parties failed to either file a request for leave to file a petition to intervene or file a request for leave to file an application for rehearing. Additionally, the non-

parties failed to address the requirements to a request for leave in the application for rehearing. For these reasons alone, the Board should reject the application for rehearing, and cannot consider the merits of the application for rehearing.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing document was served upon the persons below via electronic mail (as available) and via U.S. Mail where no electronic mail is available, this 13<sup>th</sup> day of February, 2015.

s/ Michael J. Settineri \_\_\_\_\_

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Summary: Response by North Coast Gas Transmission LLC to the Application for Rehearing of Oregon Lateral Citizens Coalition, James E. Podiak, Janet E. Podiak, Bradford L. Cloyne, Kimberly A. Woodling, Scott Rogers, Mary A Rogers, Cecil Adkins, Roland Neiderhouse, Sandra K. Neiderhouse, James H. Sherman, Michael A. Kazmaier, Mark Henry, Michael G. Alexander, Stephen S. Cox, Brenda L. Cox, Paul R. Swartz, Pat Lesniewski, Robert D. TerDoest, Sharon TerDoest, Cynthia A Peiffer, and Ronald E. Gladieux electronically filed by Mr. Michael J. Settineri on behalf of North Coast Gas Transmission LLC