

THE OHIO POWER SITING BOARD

IN THE MATTER OF COLUMBIA GAS OF
OHIO, INC.'S LETTER OF NOTIFICATION
FOR THE MARYSVILLE CONNECTOR
PIPELINE PROJECT.

CASE NO. 19-2148-GA-BLN

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal August 27, 2020

I. SUMMARY

{¶ 1} The Ohio Power Siting Board determines that a certificate should be issued to Columbia Gas of Ohio, Inc. for construction, operation, and maintenance of a 4.78-mile natural gas pipeline near Marysville, Union County, Ohio.

II. PROCEDURAL BACKGROUND

{¶ 2} All proceedings before the Ohio Power Siting Board (Board) are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906.

{¶ 3} Columbia Gas of Ohio, Inc. (Columbia) is a person as defined in R.C. 4906.01.

{¶ 4} R.C. 4906.04 provides that no person shall construct a major utility facility in the state without obtaining a certificate for the facility from the Board.

{¶ 5} R.C. 4906.03(F) instructs the Board to adopt rules that provide for an accelerated review and automatic certification of a gas pipeline that is not more than five miles in length or is primarily needed to meet the requirements of a specific customer or specific customers. In accordance with R.C. 4906.03(F), the Board has adopted Ohio Adm.Code Chapter 4906-6 addressing accelerated and expedited accelerated certificate applications.

{¶ 6} Ohio Adm.Code 4906-6-02 identifies the types of accelerated applications as either letter of notification (LON) or construction notice applications. Accelerated applications are subject to a 90-day automatic approval process. Ohio Adm.Code 4906-6-10(A).

{¶ 7} Accelerated applications may be suspended by the Board, executive director, or an administrative law judge (ALJ) for good cause. Ohio Adm.Code 4906-6-09(A). Once an accelerated certificate application has been suspended, the Board will act to approve, modify, or deny the accelerated certificate application within 90 days from the date that the application was suspended. Ohio Adm.Code 4906-6-09(C). The Board or ALJ may, at its discretion, set the matter for hearing. Ohio Adm.Code 4906-6-09(C).

{¶ 8} On December 13, 2019, Columbia filed a pre-application notification letter with the Board advising that it would be filing a LON application on December 20, 2019.

{¶ 9} On December 20, 2019, pursuant to Ohio Adm.Code Chapter 4906-6, Columbia filed a LON application seeking Board approval, on an accelerated review timeline, for the proposed Marysville Connector Pipeline Project (Project) near Marysville, Union County, Ohio. The proposed Project will be approximately 4.78 miles in length and will provide natural gas service to new industries, commercial, and residential development along the route.

{¶ 10} On December 24, 2019, Columbia filed an amendment to Appendix C, reflecting revisions to the Wetland and Waterbody Delineation Report, originally filed with the LON application.

{¶ 11} On December 27, 2019, Columbia filed its notice of compliance with the service requirements under Ohio Adm.Code 4906-6-07.

{¶ 12} On December 31, 2019, pursuant to Ohio Adm.Code 4906.08(A)(3) and Ohio Adm. Code 4906-2-12(A)(2), the Board of Trustees of Millcreek Township in Union County (Millcreek Township Trustees), the Board of Trustees of Jerome Township in Union County (Jerome Township Trustees), Union County Board of County Commissioners (Union County Board), and the Madison County Board of County Commissioners (Madison County Board) timely filed notices of intervention in this proceeding. On January 2, 2020, pursuant to the same provisions, the Logan County Board of County Commissioners (Logan

County Board), as well as the Ohio Gas Access Partnership, Inc. (OGAP), whose members consist of private and public entities from Franklin, Logan, Madison, and Union counties, timely filed separate petitions for leave to intervene. On January 8, 2020, Suburban Natural Gas Company (Suburban) filed an untimely petition for leave to intervene and/or motion for waiver. The Delaware County Board of Commissioners (Delaware County Board) filed an untimely petition for leave to intervene on January 17, 2020.

{¶ 13} On January 2, 2020, OGAP filed initial comments regarding Columbia's LON application.

{¶ 14} Pursuant to Ohio Adm.Code 4906-6-08(A), on January 6, 2020, Columbia filed its proof of publication of notice of the proposed Project made in the *Marysville Journal-Tribune* on December 23, 2019.

{¶ 15} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 16} By Entry issued on March 17, 2020, in *In re the Proper Procedures and Process for the Board's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-601-GE-UNC, Entry (March 17, 2020) at ¶4 and in response to the Executive Order, the ALJ ordered that any time period prescribed by order, statute, or rule for the Board to act upon a pending application or other filing should be tolled during the state of emergency and also during the 14 days thereafter.

{¶ 17} Pursuant to the Entry of April 21, 2020, the ALJ granted the motions to intervene of the Millcreek Township Trustees, Jerome Township Trustees, the Union County Board, the Madison County Board, the Logan County Board, as well as OGAP. The motions to intervene of Suburban and the Delaware County Board were denied.

{¶ 18} Pursuant to the Entry of May 20, 2020, the tolling directive was modified with its termination effective June 1, 2020. As a result, the automatic approval date of the LON application was June 3, 2020, unless otherwise suspended.

{¶ 19} Due to the Board's offices being closed from June 1, 2020, through June 5, 2020, filing deadlines occurring while the offices were closed were extended in accordance with R.C. 1.14.

{¶ 20} The Board Staff (Staff) filed a letter dated June 1, 2020, recommending a suspension of the automatic LON application approval process in this case. In support of its request, Staff submitted that additional time will provide stakeholders with the opportunity to resolve concerns in a manner that will result in an amicable and expeditious resolution of the matter. Additionally, Staff stated that the suspension of the automatic approval date will provide Columbia with the ability to provide further information relevant to the demonstration of need for the Project pursuant to R.C. 4906.10(A)(1).

{¶ 21} Pursuant to the June 8, 2020 Entry, the ALJ found that good cause existed to suspend the application and the 90-day automatic approval process, pursuant to Ohio Adm.Code 4906-6-09, in order to allow for the Board and Staff to further review this matter.¹ Pursuant to Ohio Adm.Code 4906-6-09(C), the Board must act on this application by September 6, 2020.

¹ On March 5, 2020, OGAP filed a motion for suspension and request for expedited ruling with regard to the LON application's automatic approval process. In light of the ALJ granting of Staff's request for suspension, OGAP's motion is moot and no ruling is necessary.

{¶ 22} On July 8, 2020, all intervenors, OGAP, Millcreek Township Trustees, Jerome Township Trustees, Union County Board, Madison County Board, and Logan County Board, filed a joint notice indicating they do not oppose Columbia's LON application in this proceeding. Furthermore, OGAP stated that it withdraws its initial comments filed on January 2, 2020, from the record. Additionally, in support of its non-opposition position, OGAP attached to the notice a letter from the Union County Community Improvement Corporation (Union County CIC), detailing Union County CIC's support for Columbia's LON application and, within which, provided information regarding the economic need for additional natural gas supply in Union County. On July 24, 2020, OGAP filed a letter in support of Columbia's LON application.

{¶ 23} On July 9, 2020, Staff filed its report of investigation (Staff Report) concerning Columbia's LON application.

III. PROJECT DESCRIPTION

{¶ 24} Columbia seeks certification to build a 4.78-mile long, 12-inch diameter natural gas pipeline, with a maximum allowable operating pressure of 190 pounds per square inch gauge, in Union County. The pipeline right-of-way begins four miles southwest of Marysville, ending seven miles northwest of the Columbus I-270 outer belt freeway. It runs parallel to U.S. Route 33, crossing through Jerome and Millcreek townships, and primarily traverses agricultural fields. (Staff Report at 1.)

{¶ 25} Columbia plans to install the pipeline using a combination of open cut and horizontal directional drilling (HDD), which will be used to cross under U.S. Route 33 for a span of 581 feet. Pipeline construction will occur within a 75-foot easement, 25-feet of which is temporary, with the remainder being permanent. Columbia intends to commence construction on the pipeline late 2021 and expects to place the line in service by late 2022. (Staff Report at 1.)

IV. CERTIFICATION CRITERIA

{¶ 26} Pursuant to R.C. 4906.10(A), 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 a gas 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 the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that the facility will serve the interests of electric system economy and reliability;
- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111, as well as all rules and standards adopted under those chapters and under R.C. 1501.33, 1501.34, and 4561.32;
- (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 R.C. Chapter 929 that is located within the site and alternate site of any proposed major facility; and

- (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.

{¶ 27} Although R.C. 4906.10 does not specifically set forth requirements for letter of notification applications filed under the accelerated process in R.C. 4906.03(F), the Board does consider the criteria enumerated in R.C. 4906.10 in all cases in which an applicant seeks a certificate from the Board, both nonaccelerated standard certificate applications and accelerated applications. *In re North Coast Gas Transmission, LLC*, Case No. 14-1754-GA-BLN, Entry (Apr. 6, 2015) at 10; *In re NRG Ohio Pipeline Company LLC*, Case No. 14-1717-GA-BLN, Opinion, Order, and Certificate (June 4, 2015) at 8.

V. SUMMARY OF EVIDENCE

{¶ 28} The Board will review the evidence presented with regard to the criteria by which we are required to evaluate these applications. Any evidence not specifically addressed herein has nevertheless been considered and weighed by the Board in reaching its final determination.

A. *Staff Report*

{¶ 29} According to Staff, Columbia claims that the Project will provide natural gas service to new industry, to residential developments near the Project alignment, and to existing customers on the north and west sides of Marysville who need an increased capacity for natural gas. Columbia also states that, in order to accommodate a new industrial customer, Columbia needs to connect the Project pipeline to Columbia's Columbus Northern Loop system, a project that will be considered by the Board in Case No. 20-1236-GA-BTX, *In re Application of Columbia Gas of Ohio, Inc., for a Certificate of Environmental Compatibility and Public Need for the Construction of the Northern Columbus Loop-Phase VII*. (Staff Report at 1-2.)

{¶ 30} Staff details the July 8, 2020 letter attached to the intervenors' notice of non-opposition from the Union County CIC, an economic development corporation as defined in R.C. Chapter 1724, which outlines Union County CIC's assessment of the economic need for the Project. Specifically, Union County CIC commissioned a natural gas capacity study from which it determined that the area surrounding the Project is affected by natural gas supply constraints and that the area has lost prospective business opportunities as a result. The letter notes that there are a large number of existing and planned residential, commercial, and industrial development projects along the U.S. Route 33 Smart Corridor and west of Marysville, all of which require natural gas. (Staff Report at 2.)

{¶ 31} Staff finds that the Marysville area requires additional demand for natural gas and that the proposed Project, especially when connected to Columbia's Columbus Northern Loop system, will provide an additional supply of natural gas. Therefore, Staff finds that Columbia has demonstrated the basis of need for the Project. (Staff Report at 2.)

{¶ 32} Highlighting the level of public interaction in this case, Staff notes that Columbia published notice of the application in the *Marysville Journal-Tribune* on December 23, 2019 and sent copies of the application to officials representing the city of Marysville, the village of Plain City, Union County, and Jerome and Millcreek townships, as well as public libraries in Marysville and Plain City. Columbia has also provided a copy of its application at <https://www.columbiagasohio.com/our-company/aboutus/regulatory-information>. Furthermore, Columbia mailed letters to affected and adjacent landowners, advising them of the proposed Project and how to engage in the Board process. Columbia also plans to create and maintain a website about the Project, update social media during construction, and send postcards to affected residents. (Staff Report at 2.)

{¶ 33} Public comments were filed in this proceeding concerning Columbia's proposed Project by the Arno Renner Trust, the Building Industry Association of Central Ohio, the Union County Chamber of Commerce and Union County CIC, Union County – Marysville Economic Development, Memorial Health, Logan County Chamber of

Commerce, Uptown Marysville Business Association, UCO Industries, Sumitomo Electric Wiring Systems Inc., the Champaign County Economic Partnership, the Plain City Business Association, Midwest Express Inc., Autotool Inc., and Legacy Pipeline Services, LLC (Staff Report at 2-3). These comments primarily center on the concern of whether the proposed Project provides a long-term solution to the natural gas capacity issues in Union County and surrounding areas, as well as note concern about agricultural properties through which the Project will traverse.

{¶ 34} Land use throughout the Project area consists primarily of agricultural uses, with some residential and industrial uses. The nearest structure to the Project is a residence located 100 feet from the centerline. Although three agricultural district parcels were identified within the Project area, Columbia concluded, after coordinating with the Union County Auditor, that the Project would not affect the status of these three parcels. The Project also crosses an agricultural easement held by the Ohio Department of Agriculture; however, the easement does not preclude installation over or under the property for purposes of providing gas. Farming activities can resume within the Project easement following completion of construction. (Staff Report at 3.)

{¶ 35} Columbia conducted a cultural resources review resulting in the identification of previously unrecorded archaeological sites, none of which were eligible for listing on the National Register of Historic Places (NRHP). Columbia determined that two structures in the Project area are potentially eligible for listing on the NRHP and further determined that the Project would not adversely affect historic or NRHP eligible properties. These findings were submitted to the Ohio Historic Preservation Office (OHPO), who concurred with the above findings, stating that no additional cultural resource studies or OHPO coordination is needed unless the scope of the Project changes or additional archaeological remains are discovered during construction. Staff concurs with this assessment. (Staff Report at 3.)

{¶ 36} The proposed centerline would cross four streams, including one perennial

stream, two intermittent streams, and one ephemeral stream. The perennial stream will not be impacted due to the use of HDD, though the intermittent and ephemeral streams will be impacted due to Columbia employing an open-cut method for installing the pipeline in these areas. The proposed centerline crosses one Category 2 wetland, and the proposed pipeline route does not impact any mapped floodplain areas. Staff notes that impacts to streams and wetlands will be temporary and covered under the Army Corps of Engineers Nationwide 12 permit. (Staff Report at 3-4.)

{¶ 37} Columbia developed a frac-out plan since HDD will be used to install portions of the line. The plan outlines monitoring, containment measures, cleanup, and follow-up in the event of an inadvertent return. Furthermore, Columbia will employ erosion control measures where appropriate, such as silt fencing, to minimize runoff impacts to stream channels. Columbia will submit a Notice of Intent for coverage under the Ohio Environmental Protection Agency National Pollutant Discharge Elimination System General Permit. (Staff Report at 3.)

{¶ 38} The Project area is in range of state and federal endangered Indiana bat and northern long-eared bat populations. The Project is not expected to impact any bat hibernacula; however, the above species tree roost in summer months, and, since some tree clearing is required for the Project, the habitat of these species will be impacted. To avoid impacts to these species, the Ohio Department of Natural Resources and the U.S. Fish and Wildlife Service recommend seasonal tree cutting dates of October 1 through March 31 for all trees three inches or greater in diameter. Columbia committed to these seasonal tree clearing guidelines. (Staff Report at 4.)

{¶ 39} Due to a lack of suitable habitats and since the Project does not propose in-water work in perennial streams, impacts to other state and federally listed species are not anticipated (Staff Report at 4).

{¶ 40} Staff concluded that Columbia's LON application meets the necessary criteria for granting a certificate pursuant to R.C. 4906.10 provided that the Company satisfies the two conditions outlined below:

- a. The certificate authority provided in this case shall not exempt the Project from any other applicable and lawful local, state, or federal rules or regulations nor be used to affect the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.
- b. Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, Columbia shall obtain and comply with such permits or authorizations. Columbia shall provide copies of permits and authorizations, including all supporting documentation, on the case docket within seven days of issuance or receipt by Columbia.

(Staff Report at 4.)

VI. CONCLUSION

{¶ 41} As an initial note, the Board appreciates the level of participation and interest from the intervenors and public commenters in this proceeding. The Board also acknowledges the intervenors' subsequent statement of non-opposition to Columbia's LON application and OGAP's withdrawal of its comments from the record. Based upon the record in this proceeding, the Board concludes that all of the elements established in accordance with R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the Marysville Connector Pipeline Project described in Columbia's LON application, subject to the two conditions set forth in the Staff Report and this Opinion, Order, and Certificate. Accordingly, based on all the above, the Board issues a certificate to Columbia in accordance with R.C. Chapter 4906.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 42} Columbia is a person under R.C. 4906.01(A) and is licensed to do business in the State of Ohio.

{¶ 43} The proposed 4.78-mile natural gas pipeline is a major utility facility as defined in R.C. 4906.01(B).

{¶ 44} On December 13, 2019, Columbia filed a pre-application notification letter with the Board advising that Columbia would be filing a LON application on December 20, 2019.

{¶ 45} Pursuant to Ohio Adm.Code 4906-6-10, a LON application is subject to a 90-day automatic accelerated application process barring suspension by the Board, executive director, or an ALJ . Once an accelerated application is suspended, the Board must act to approve, modify, or deny the accelerated application within 90 days from the date that the application was suspended. Ohio Adm.Code 4906-6-09(C).

{¶ 46} On December 20, 2019, as amended on December 24, 2019, Columbia filed its LON application for a Certificate of Environmental Compatibility and Public Need to construct the Marysville Connector Pipeline near Marysville, Union County, Ohio.

{¶ 47} On December 27, 2019, Columbia filed its notice of compliance with the service requirements under Ohio Adm.Code 4906-6-07.

{¶ 48} On December 31, 2019, the Millcreek Township Trustees, Jerome Township Trustees, Union County Board, and Madison County Board timely filed notices of intervention in this proceeding.

{¶ 49} On January 2, 2020, the Logan County Board, as well as OGAP, timely filed separate petitions for leave to intervene.

{¶ 50} On January 6, 2020, Columbia filed its proof of publication of notice of the proposed Project made in the *Marysville Journal-Tribune* on December 23, 2019.

{¶ 51} On January 8, 2020, Suburban filed an untimely petition for leave to intervene and/or motion for waiver.

{¶ 52} On January 17, 2020, Delaware County Board filed an untimely petition for leave to intervene.

{¶ 53} By Entry issued on March 17, 2020, in *In re the Proper Procedures and Process for the Board's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-601-GE-UNC, Entry (March 17, 2020) at ¶4, the automatic approval date for this proceeding was tolled during the state of emergency and also during the 14 days thereafter.

{¶ 54} On April 21, 2020, the ALJ issued an Entry granting the motions to intervene of the Millcreek Township Trustees, Jerome Township Trustees, the Union County Board, the Madison County Board, the Logan County Board, as well as OGAP. The motions to intervene of Suburban and the Delaware County Board were denied.

{¶ 55} Pursuant to the Entry of May 20, 2020, the tolling directive was modified with its termination effective June 1, 2020. As a result, the automatic approval date of the LON application was June 3, 2020.

{¶ 56} Due to the Board's offices being closed from June 1, 2020, through June 5, 2020, filing deadlines occurring while the offices were closed were extended in accordance with R.C. 1.14.

{¶ 57} By letter docketed on June 8, 2020, the Board Staff requested that the application be suspended from the automatic approval process.

{¶ 58} Pursuant to the June 8, 2020 Entry, the ALJ suspended the application and the 90-day automatic approval process, pursuant to Ohio Adm.Code 4906-6-09. Pursuant to Ohio Adm.Code 4906-6-09(C), the Board must act on this application by September 6, 2020.

{¶ 59} On July 8, 2020, the intervenors filed a joint notice indicating that they do not oppose Columbia's LON application in this proceeding. Furthermore, OGAP withdrew its initial comments filed on January 2, 2020, from the record. Additionally, a letter from the Union County CIC was attached to the notice regarding the economic need for additional natural gas supply in Union County.

{¶ 60} On July 9, 2020, Staff filed its Staff Report concerning Columbia's LON application, recommending approval of the application with two conditions.

{¶ 61} Adequate data was provided on the proposed Marysville Connector Pipeline Project to make the applicable determinations required by R.C. 4906.10 and Ohio Adm.Code 4906-6-05 for an accelerated application. The record evidence presented in this accelerated application proceeding provides sufficient factual data to enable the Board to make an informed decision.

{¶ 62} Based on the record, the Board finds that Columbia's LON application should be approved and, pursuant to R.C. Chapter 4906, a certificate should be issued for the construction, operation, and maintenance of the Marysville Connector Pipeline Project subject to the two conditions set forth in the Staff Report and this Opinion, Order, and Certificate.

VII. ORDER

{¶ 63} It is, therefore,

{¶ 64} ORDERED, That a certificate be issued to Columbia for the construction, operation, and maintenance of the Marysville Connector Pipeline Project, subject to the two conditions set forth in the Staff Report and this Opinion, Order, and Certificate. It is, further,

{¶ 65} ORDERED, That a copy of this Opinion, Order, and Certificate be served upon all parties and interested persons of record.

BOARD MEMBERS:

Approving:

Sam Randazzo, Chairman
Public Utilities Commission of Ohio

Rachel Near, Designee for Lydia Mihalik, Director
Ohio Development Services Agency

Brittney Colvin, Designee for Mary Mertz, Director
Ohio Department of Natural Resources

W. Gene Phillips, Designee for Lance Himes, Director
Ohio Department of Health

Laura Factor, Designee for Laurie Stevenson, Director
Ohio Environmental Protection Agency

Greg Murphy, Public Member

Recusal:

Sarah Huffman, Designee for Dorothy Pelanda, Director
Ohio Department of Agriculture

MJS/kck

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

Summary: Opinion & Order determining that a certificate should be issued to Columbia Gas of Ohio, Inc. for construction, operation, and maintenance of a 4.78-mile natural gas pipeline near Marysville, Union County, Ohio. electronically filed by Ms. Mary E Fischer on behalf of Ohio Power Siting Board