

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Ohio Power Siting)
Board’s Review of Ohio Adm.Code) Case No. 21-902-GE-BRO
Chapters 4906-1, 4906-2, 4906-3, 4906-4,)
4906-6, and 4906-7.)

**REPLY COMMENTS OF
COLUMBIA GAS OF OHIO, INC.**

Columbia Gas of Ohio, Inc. (“Columbia”) provides the following reply to certain initial comments filed in the above-referenced docket on Staff’s proposed changes to Ohio Power Siting Board Rules (“Rules”). These reply comments supplement the initial comments filed in this docket by Columbia on August 5, 2022.

No inference should be made by Columbia’s silence with regard to any of the draft Rules or initial comments. By extension, the fact that Columbia has opted not to reply herein to any particular draft Rule or initial comment should not be construed as agreement, support, non-opposition, acquiescence, ambivalence, or otherwise, nor as waiver of any arguments relative to such draft Rule or comment.

I. General Reply Comments

A. Unduly Burdensome Informational Requirements

Columbia asks the Board to view – with more than a modicum of skepticism – any initial comment(s) suggesting that gas pipeline project applicants must provide new classes of information or meet new criteria outside the scope of that which is currently contemplated by the Ohio Revised Code or the Ohio Administrative Code. Such requirements create undue regulatory burdens contravening Ohio’s regnant policy objectives.¹

¹ R.C. 121.95 requires an agency to remove two regulatory restrictions for each new one added. S.B. 9 requires agencies to reduce regulatory restrictions by 10% before June 30, 2023 and to produce a revised inventory and historical progress report before September 15, 2022. The OPSB base inventory of regulatory restrictions located on the Public Utilities Commission of Ohio’s website is dated December, 27, 2019.

An illustration of this point, relative to environmental impacts, is the Ohio Environmental Council's ("OEC") proposed revisions to Ohio Adm.Code 4906-4-06 and 4906-4-08, which would require applicants to include information regarding the "social cost of carbon" and climate impacts (*e.g.*, provide an estimate of greenhouse gases ("GHGs") emitted over the project's useful life, a GHG mitigation plan, whether the proposed project will directly result in the decommissioning of other GHG-emitting projects, *etc.*) – information that is difficult and burdensome to calculate for gas pipelines and which is not required by any statute or current administrative rule. (*See generally* Initial Comments of OEC.) Applicants should not be required to expend time and resources on preparing hypotheses extraneous to the Board's statutory criteria under R.C. 4906.10(A). Moreover, the Board already undertakes a comprehensive environmental impact assessment under the existing rules.

Nor should the Board adopt the National Audubon Society's recommendation regarding additional avian studies, especially for an underground gas pipeline facility. (Initial Comments of National Audubon Society, at 2.) Given rigorous existing regulatory regimes of the Ohio Department of National Resources and the U.S. Fish and Wildlife Service, the Board's requiring gas pipeline applicants to perform lengthy avian studies would unreasonably delay projects without commensurate benefit.

Relatedly, Columbia generally objects to recommendations by initial commenters that would require a gas pipeline applicant to compile non-public information as part of its application to the Board. (*See e.g.*, Initial Comments of Ohio Farm Bureau Federation ("OFBF"), at 4 (proposing requirement for applicants to provide additional agricultural information, including "more robust information on irrigation systems, field drainage systems, soils, structures used for agricultural operations").) Even if compliance with such proposals were feasible, any requirement to obtain non-public information from non-parties to a siting proceeding would be contingent on voluntary cooperation and thus inherently risk interposing unreasonable delay in the Board's review process.

B. Critical Energy Infrastructure and Other Highly Sensitive Information

Columbia's Initial Comments expressed concern about any rule revision(s) that would jeopardize protection of critical energy infrastructure information ("CEII"), as well as other highly sensitive information. Tellingly, numerous other initial commenters raised this issue. For example, National Grid Renewables' ("National Grid's") initial comments noted that sensitive information regarding critical infrastructure and personally identifiable information should not be posted to a public docket, as the suggested rules seemingly would require. (Initial Comments of National

Grid, at 13.) Columbia agrees. Likewise, Columbia supports AES Ohio’s proposal of adding a rule to address filing CEII or other highly sensitive information under seal. (Initial Comments of Dayton Power & Light Company dba AES Ohio (“AES Ohio”), at 13.) And, as a threshold issue, Columbia encourages the Board to minimize the amount of CEII that might need to be filed as part of any submission to the Board.

II. Specific Reply Comments

A. Proposed Ohio Adm.Code Chapter 4906-1: General Provisions

Proposed Ohio Adm.Code 4906-1-01(D) – Definition of “Agricultural district.”

The OFBF recommends amendment of the definition of “agricultural district” to include lands enrolled in the Current Agricultural Use Valuation (“CAUV”) program. (See Initial Comments of OFBF, at 2-3.) The OFBF believes that the CAUV program has much higher enrollment than an agricultural district program, which would result in a more comprehensive farmland impact study during the application process. (*Id.*)

Columbia does not believe that the OFBF’s proposed change to the definition of “agricultural district” is needed because the current rules provide the Board with sufficient information relative to a project’s probable impact on lands in agricultural production. However, if the Board were to be persuaded that applicants should identify farmland properties enrolled in the CAUV program, such a requirement should only have force or effect if the CAUV designation is publicly available on the relevant county auditor’s website. Otherwise, this change would impose an undue regulatory burden on the applicant to identify for the Board. Accordingly, Columbia requests the following qualification to the OFBF’s recommendation:

(D) "Agricultural district" means any agricultural district established pursuant to Chapter 929. of the Revised Code, and if publicly available on the county auditor’s website, land enrolled in the Current Agricultural Use Valuation program under Section 5713.30 of the Revised Code and ensuing statutes.

Proposed Ohio Adm.Code 4906-1-01(MM) – Definition of “Route”

Columbia’s Initial Comments suggested that the proposed definition for “Route” should be amended to facilitate the Board’s adoption of a pipeline corridor concept. (Columbia’s Initial Comments, at 2-3.) Columbia concurs with Duke Energy that “Route” should mean a proposed corridor. (Initial Comments of Duke Energy Ohio, Inc. (“Duke”), at 6-7.) Columbia also agrees with Duke that rights-of-way and easements may not be acquired until after the project has been approved by the Board and are thus dependent variables of the final pipeline path. (*Id.* at 10.)

Although Columbia prefers that the Board expressly adopt corridor siting, Columbia is amenable to AES Ohio’s alternative reading of the new definition, as currently proposed by Staff.² (Initial Comments of AES Ohio, at 5.) Both approaches would afford applicants much-needed flexibility to shift the path of a major utility facility within the bounds of a certificated corridor reviewed by the Board.

Therefore, Columbia renews its request for the following revision:

(MM) “Route” means, ~~in the case of for~~ a proposed electric transmission line or gas pipeline, a proposed corridor, consisting of a centerline and, unless otherwise specified in the application, a 500-foot-wide area from a proposed distance from each side of the centerline, ~~with such total distance not to exceed the proposed right of way width~~. Route width may vary along the proposed electric transmission line or gas pipeline, as specified in the application.

Proposed Ohio Adm.Code 4906-1-01(KK) and (QQ) – Definition of “Replacement of an existing facility with a like facility.”

Duke suggests that the Board propose a formal methodology for addressing emergency replacements of existing facilities. (Initial Comments of Duke, at 2, 3.) Columbia agrees that gas pipeline owners must have authority to repair facilities in an emergency and notes that the definition of “substantial addition” in proposed Ohio Adm.Code 4906-1-01(QQ) contemplates an exemption from the Board’s application requirement for emergency construction to restore service. Additional guidance from the Board as to emergency replacements could instead be provided in the “substantial

² Such different interpretations of the proposed “Route” definition seem to indicate that some clarification is warranted, however.

addition” definition. Columbia, however, renews its request for a revision to the definition for “replacement of an existing facility with a like facility” as follows:

“Replacement of an existing facility with a like facility” means replacing an existing major utility facility with a major utility facility of equivalent [or functionally equivalent](#), rating, and operating characteristics, and within the same route. If the existing facility includes material sizes and specifications that are no longer widely manufactured and available, [or are inconsistent with the applicant’s current standards](#), replacement with the nearest equivalent material available that meets the needs of the project is considered a replacement with a like facility.”

Additionally, Columbia also refines its request for a revision to the definition for “substantial addition” as follows:

(QQ) “Substantial addition,” in the case of an electric power transmission line or gas pipeline already in operation, is any ~~addition or modification~~ [project](#) that meets any of the descriptions listed in the “Application Requirement Matrix” contained in appendix A and appendix B to this rule. [Minor upgrades or maintenance in the ordinary course of business or construction necessary to restore service of a transmission line in an emergency or](#) damaged by reason of natural or human-caused disaster or accident ~~does~~ not constitute a substantial addition and therefore ~~does~~ not necessitate the filing of a certificate application.

B. Proposed Ohio Adm.Code Chapter 4906-3: Certificate Applications Generally

Proposed Ohio Adm.Code 4906-3-03(B) – Public notification requirements

Columbia urges the Board to consider the united voices opposing the proposed timing for public informational meetings on the grounds that applicants may need more than 90 days to effectively incorporate public input regarding a project.³

³ See Initial Comments of Duke, at 7-8; AES Ohio, at 6-7; Ohio Chamber of Commerce, at 2; The American Clean Power Association, MAREC Action, and the Utility Scale Solar Energy Coalition of Ohio, at 11-12; Ohio Oil and Gas Association, at 2; Ohio Conservative Energy Forum, at 3; National Grid, at 9; Ohio Power Company and AEP Ohio Transmission Company, Inc. (“AEP”), at 9-12; and American Transmission Systems, Incorporated, at 7-8.)

Notwithstanding other time periods proposed by initial commenters,⁴ Columbia renews its suggested revision for this rule:

(B) After satisfying any applicable meeting requirements under section 303.61 of the Revised Code, ~~and no more than ninety days prior to submitting a standard certificate application to the board,~~ the applicant shall conduct at least two informational meetings open to the public to be held in the area in which the project is located. *** The second of these informational meetings, to occur no more than ninety days prior to submitting a standard certificate application to the board, should present the project to the public in a manner consistent with what will be presented in the application

Proposed Ohio Adm.Code 4906-3-05 – Fully developed site or route information

Columbia aligns with Duke in requesting a revision to the text of this rule in conformance with the Board’s longstanding, historical practice of differentiating between studies required for the preferred route and those required for the alternate route. (See Initial Comments of Duke, at 9-10. See also Initial Comments of National Grid, at 10-11.) Duke’s Initial Comments are also consistent with Columbia’s Initial Comments noting that providing “fully developed” information for both the preferred and alternative routes would inflate transmission costs borne by ratepayers and needlessly burden property owners along the alternate route with invasive field surveys. (Initial Comments of Columbia, at 8-9, and Duke, at 9-10.) Moreover, Columbia believes that Duke makes a compelling point that other states, including Kentucky, require only one route to be presented for siting approval. (*Id.* at 10.)

To the extent the Board does not eliminate the alternate route requirement, Columbia supports Duke’s suggestion that applicants need to provide no more than 60% engineering on the preferred route and even less on the alternate route, focusing on the actual footprint instead of the entire study corridor. (*Id.*) Columbia agrees with Duke’s contention that while “the Board should make its decisions based on adequate information, there is a limit to what customers should have to pay for as well as a limit

⁴ See, e.g., Initial Comments of Duke, at 7 (only second meeting held 90 days before the application date); AES Ohio, at 6 (first meeting held no earlier than one year ahead of the application date); Ohio Chamber of Commerce, at 2 (two meetings held within 180 days of filing the application); The American Clean Power Association, MAREC Action, and the Utility Scale Solar Energy Coalition of Ohio, at 12 (two meetings held within 180 days of filing the application); National Grid, at 9 (two meetings held within 180 days of filing the application); and American Transmission Systems, Incorporated, at 7-8 (only second meeting to occur no more than 90 days prior to application submission).

to what inconveniences project neighbors should have to put up with.” (*Id.*) Therefore, Columbia suggests the following language:

All standard certificate applications shall include fully developed information on two sites/routes. Applicants for electric power generation facilities may choose to include fully developed information on two or more sites. Each proposed site/route shall be designated as a preferred or an alternate site/route. Applicants need only provide 60% engineering information on the preferred route, focused on the actual footprint, to be considered fully developed. Fully developed information on the alternative route need not include cultural and archaeological resources field surveys or investigations.

Proposed Ohio Adm.Code 4906-3-09(A)(1) – Public notice of accepted, completed applications.

AES Ohio suggests placing some distance limitation on the requirement for notice to “adjacent” landowners and residents, with the proposed distance set at 1,000 feet on either side of the centerline. (Initial Comments of AES Ohio, at 8.) Though Columbia generally supports AES Ohio’s proposal, as it would add clarity to the rule while limiting unnecessary notice to owners and residents remote from the project’s vicinity, there is one caveat: Columbia suggests the distance be set to 500 feet from the preferred and alternate route corridor. Accordingly, Columbia’s proposed revision is:

(A)(1) The initial notice shall be a written notice to those persons that received service of a copy of the application pursuant to rule 4906-3-07 of the Administrative Code and each owner and resident of a property that would contain or be crossed by the proposed preferred or alternate equipment, route, or facility or any proposed alternatives and each owner and resident of a property that would be within 500 feet of the preferred or alternative route corridor or within 500 feet of the planned site ~~adjacent to a property that would contain or be crossed by the proposed equipment, route,~~ or facility or any proposed alternatives within fifteen days of the filing of the accepted, complete application....

C. Proposed Ohio Adm.Code Chapter 4906-4: Certificate Applications for Electric Generation Facilities, Electric Transmission Facilities, and Gas Pipelines.

Proposed Ohio Adm.Code 4906-4-06 – Economic impact and public interaction

Ohio Partners for Affordable Energy (“OPAE”) suggests that the Board insert a new provision requiring an applicant to meet with the community action agencies in the county or counties of the project area to discuss the needs of low- to moderate-income residents. (Initial Comments of OPAE, at 9.) Columbia respectfully believes this change is unnecessary because the community action agencies, when affected by a proposed project, have ample opportunity to comment and/or participate in the siting process. Accordingly, the Board should not adopt this proposal.

Proposed Ohio Adm.Code 4906-4-08 – Health and safety, land use and ecological information

Columbia agrees with Generation Pipeline LLC’s assessment that proposed Ohio Adm.Code 4906-4-08(E) would require a litany of new information that does not make practical sense for pipeline facilities, including but not limited to aviation impacts, decommissioning plan, noise, aquifers, grading plan, and drain tile systems mapping. (Initial Comments of Generation Pipeline LLC, at 2-5.) The Board should not adopt application requirements that either denegate operational realities for gas pipeline projects or compel applicants to perform work outside the ordinary course of business. For example, Columbia will compensate property owners for damage to crops and/or drainage tile, but should not be required to perform drainage tile repairs, especially as many farmers prefer to repair their own drain tiles. Any such rules are unduly burdensome to applicants.

Proposed Ohio Adm.Code 4906-4-09 – Regulations associated with renewable energy generation facilities.

Columbia opposes the OEC’s suggestion that Ohio Adm.Code 4906-4-09, which contains Staff’s proposed requirements specific to renewable energy generation facilities, should apply to gas pipeline applicants on the grounds that a renewable-specific section is unreasonable. (Initial Comments of OEC, at 9-11.) Yet no rule of law prohibits the Board from designating rules specific to certain major utility facility applicants and the Board has in fact done so for the entirety of its existence. The Board should not extend Ohio Adm.Code 4906-4-09 to all applicants simply for the sake of imposing an equal burden on all applicants, as OEC advocates. (*Id.*)

Columbia also adamantly opposes the OEC's recommendation that the Board impose setback requirements for natural gas pipelines. (*Id.*) Requiring setbacks for natural gas pipelines would unreasonably impede routing studies as well as invade the province of the Pipeline and Hazardous Materials Safety Administration ("PHMSA"), which regulates pipeline safety. Therefore, the Board should reject the OEC's proposed changes to Ohio Adm.Code 4906-4-09 to the extent they apply to natural gas pipelines.

D. Proposed Ohio Adm.Code Chapter 4906-7: Procedure

Proposed Ohio Adm.Code 4906-7-06 – Self-report of incidents.

Columbia supports AEP, National Grid, International Brotherhood of Electrical Workers, District 4 ("IBEW"), and Generation Pipeline, LLC in their shared requests that the Board either reject or limit Staff's proposed Ohio Adm.Code 4906-7-06. (Initial Comments of AEP, at 16-19; National Grid, at 22-23; Generation Pipeline, at 1, 5-6; IBEW, at 8-9; AEP, at 16-19.) The rule's requirement to suspend construction or shut down operation of a project, especially critical energy infrastructure, is highly problematic, especially for public utilities. Moreover, as Columbia noted in its Initial Comments, federal pipeline safety statutes already require natural gas pipeline operators to report pipeline safety-related incidents to the PHMSA and the Public Utilities Commission of Ohio. Hence, this proposed revision is duplicative.

If the Board is not persuaded by the concerns raised by multiple commenters, the Board should, at a minimum, narrow the proposed rule consistent with suggestions from AEP and National Grid, though Columbia would supplement National Grid's proposed language for (B)(2) as follows:

(B)(2) There is damage to property other than the property [subject to the facility operator's right-of-way or easement or leased or owned by the facility operator](#).

III. CONCLUSION

Columbia appreciates the Board and its Staff for its thoughtful consideration of the foregoing comments and recommendations.

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Summary: Comments Reply Comments electronically filed by Mr. John R. Ryan on
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