

**BEFORE
THE OHIO POWER SITING BOARD**

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

**APPLICATION FOR REHEARING OF
COLUMBIA GAS OF OHIO, INC.**

Pursuant to R.C. 4903.10, R.C. 4906.12, and Ohio Adm.Code 4906-2-32, Columbia Gas of Ohio, Inc. ("Columbia") files this Application for Rehearing of the Ohio Power Siting Board's ("Board") July 20, 2023 Finding and Order ("the Order"). Columbia respectfully requests that the Board reconsider its adoption of changes to certain rules contained within the Order for the following reasons:

- A. The Order is unreasonable because it adopted a definition of "route" that partially embraced the corridor concept, but not in a manner that solves the issue identified by Columbia and other parties;
- B. The Order is unreasonable because it adopted a change to the rules that unsafely permits Board Staff to enter project sites without providing applicants notice sufficient to ensure safety;
- C. The Order is unreasonable because it only protects CEII information from public disclosure, and not other information that should be protected;
- D. The Order is unlawful and unreasonable because the practical effect of the combination of the rules governing generation facilities and the rules governing pipelines creates additional regulatory restrictions and burdens on natural gas pipeline applicants;
- E. The Board should provide an opportunity to review and comment on the referenced "Appendix D" from proposed Ohio Adm.Code 4906-3-13(C) before finalizing its review of changes to the Rules as it is unreasonable to adopt such a change without this opportunity;
- F. The Order is unreasonable in that the changes to incident reporting requirements in Ohio Adm.Code 4906-7 still apply to natural gas pipelines; and
- G. The Order is unreasonable because it did not adopt a definition of "need" as previously proposed by Columbia.

Columbia respectfully requests that the Board grant this Application for Rehearing to make changes to the rules governing practice before the Board as further outlined in the attached Memorandum in Support.

Respectfully submitted by,

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MEMORANDUM IN SUPPORT

1. Introduction

The Order¹ adopts changes to the provisions of Chapter 4906 of the Ohio Administrative Code governing practice before the Board (“the Rules”). Columbia appreciates the extensive efforts of the Board and Staff in reviewing previous proposed iterations of the Rules as well as the comments filed in this docket by Columbia and other interested stakeholders. The Rules represent a step forward in updating the Board’s regulatory framework and complying with statutory requirements. However, there are certain changes to the Rules that have an unreasonable impact on gas pipeline infrastructure project applicants like Columbia, or that do not go far enough to accomplish the goals of such changes. For this reason, Columbia offers this Memorandum in Support highlighting certain practical considerations.

2. Request for Rehearing

A. The Order is unreasonable because it adopted a definition of “route” that partially embraced the corridor concept, but not in a manner that solves the issue identified Columbia and other parties.

As a starting point, Columbia acknowledges and appreciates the Board’s adoption of a definition of “Route” that partially embraces the corridor concept advocated for by Columbia and other commenters. The new language reads:

“Route” means, in the case of a proposed electric transmission line or gas pipeline, a proposed centerline and 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.²

¹ *In the Matter of the Ohio Power Siting Board’s Review of Ohio Adm.Code Chapters 4906-1, 44906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7*, Case No. 21-902-GE-BRO, Finding and Order (July 20, 2023) (hereafter “July 20 Order”).

² See proposed Ohio Adm.Code 4906-1(NN), July 20 Order, Attachment A, Page 5 of 9.

The corridor concept is intended to reduce the administrative burden associated with engineering adjustments, modifications, amendments, or the requirement to file new applications when approved routes for pipelines require adjustment after the approval of a certificate of environmental compatibility and public need (“Certificate”). These kinds of adjustments often happen at the request of an impacted landowner, at the request of a local government, as a result of discovering a condition of the land unknown at the time of filing an application, as a result of compliance with local government permitting requirements, or resulting from concerns related to land rights. The Board’s proposed language equating the corridor with “the proposed right-of-way width” still could be read to constrain the extent of minor engineering adjustments that do not rise to the extent of a modification or amendment. When obtaining a right-of-way, utility applicants only acquire the area reasonable and necessary to construct or operate a pipeline absent special circumstances. These widths are too small to accomplish the goal of adopting the corridor concept. Columbia thus respectfully reiterates its proposed language, which would define “route” as:

“Route” means, in the case of 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.

Columbia’s above-proposed alternative definition for “route” accomplishes the intent of the adoption of a corridor concept without any negative impact to the Board’s review of any application to construct a pipeline major utility facility. Applicants like Columbia would still provide all necessary information on the impact of the entire corridor. For this reason, Staff and the Board’s review will not be changed substantially. However, the flexibility provided to applicants will empower them to work with local governments and impacted residents after a Certificate is approved without the consequence of making additional filings with the Board, which could impact the timeline to construct the facility. If the Board maintains the currently proposed definition of “route,” applicants will instead have the perverse incentive to construct the exact facility as proposed, despite the desires of impacted landowners. Alternatively, Columbia would be able to account for many of these post-Certificate route changes with a corridor of 250 feet from each side of the centerline, should the Board feel that 500 feet is too great a length.

Additionally, adopting the corridor concept also helps applicants like Columbia avoid asking for accelerated, 28-day approval of amended routes, especially when construction is about to (or needs to) begin. Columbia and most applicants generally avoid requesting unnecessary accelerated, 28-day applications in recognition that such requests are a particular burden on Staff. The corridor concept, while completely preserving Staff and Board review, helps avoid these accelerated, 28-day applications. Without adoption of a sufficient corridor width, Columbia believes the accelerated, 28-day applications will become much more commonplace, especially with ever-challenging land rights acquisitions and continuing desires to mutually accommodate interested parties when possible.

By way of example, the Board recently approved two Certificates that permit Columbia to install a pipeline to serve the new Intel facility in Central Ohio (collectively, “the Intel Project”). After the initial Certificate was approved³ and construction began, Columbia was required to file a second application that included a request for accelerated approval⁴ to account for route changes and other items resulting from permitting requirements from the Ohio Department of Transportation and the City of New Albany. The route adjustments to the Intel Project ranged between 10 to 135 feet from what was originally approved. If Columbia’s proposed definition of “Route” were to have been in effect at the time, these route changes could have been made without impacting the Board’s review and without the delay in construction that accompanied the filing of the second application.

B. The Order is unreasonable because it adopted a change to the rules that unsafely permits Board Staff to enter project sites without providing applicants notice sufficient to ensure safety.

In its revision to Ohio Adm.Code 4906-1-05,⁵ the Board removed the language “should make all reasonable efforts to ensure that, upon prior notification,” Board personnel or contractors may make site visits to major utility facilities. To the extent that a visited site is a pipeline major utility facility under active con-

³ See *In the Matter of the Letter of Notification Application of Columbia Gas of Ohio, Inc. for the Intel Pipeline Project*, Case No. 22-1135-GA-BLN.

⁴ See *In the Matter of the Letter of Notification Application of Columbia Gas of Ohio, Inc. for an Adjustment to the Certificate of Environmental Compatibility and Public Need for the Intel Pipeline Project*, Case No. 23-0743-GA-BLN.

⁵ July 20 Order, Attachment A, Page 9 of 9.

struction, reasonable notice prior to entering an active construction site allows applicants time to take precautions to ensure the safety of Board personnel. This could include, among other things, ensuring that sufficient personal protective equipment is available, securing specific areas for inspection, or preparing for a safety meeting for Board personnel who may not otherwise be familiar with the applicant's standards for safety or the site layout. Further, the removal of a reasonable notice requirement prior to a site visit could create unnecessary and expensive legal questions related to indemnification if an injury occurs during the visit.

For the safety of its personnel and contractors, Columbia respectfully requests the retention of a reasonable notice requirement before visiting major utility facilities. Columbia does not in any way object to requiring applicants to permit site visits for proposed or approved major utility facilities, it would just like to be able to take steps to ensure safety during those visits, which requires reasonable notice.⁶

C. The Order is unreasonable because it only protects CEII information from public disclosure, and not other information that should be protected.

In the Board's revised language to what will become Ohio Adm.Code 4906-3-13(D);⁷ newly proposed Ohio Adm.Code 4906-3-14(C)(1);⁸ and newly proposed 4906-4-03(A)(5),⁹ the Board will require applicants to publicly submit certain design details and as-built drawings of approved and proposed major utility facilities. The Board included an allowance for redaction of critical energy infrastructure information ("CEII"). Columbia appreciates both the Board's movement towards additional transparency and the inclusion of this caveat. However, the term CEII is recognized and defined in federal law. The federal definition may not be broad enough to completely encompass all information that could be used by bad actors to cause damage to critical pipeline systems in a manner that compromises operators' ability to reliably serve its customers. In the Board's proposed changes

⁶ Please note that if Columbia's request is granted, a corresponding change will also need to be made to newly proposed Ohio Adm.Code 4906-7-07.

⁷ July 20 Order, Attachment C, Page 17 of 19.

⁸ *Id.* at Page 18 of 19.

⁹ July 20 Order, Attachment D, Page 4 of 55.

to new subsection Ohio Adm.Code 4906-3-03(B)(5),¹⁰ in addition to protecting CEII, the Board included an additional protection for “other facility information that is confidentially protected from public disclosure.”¹¹ Columbia respectfully requests that this kind of additional protection be provided in Ohio Adm.Code 4906-3-13(D) and 4906-3-14(C)(1) as outlined below (Columbia’s proposed addition is in green):

4906-3-13

~~(E)~~ (D) Within sixty days after the commencement of commercial operation, the applicant shall submit on the docket of its certificate case ~~to staff~~ a copy of the as-built drawings, subject to any redactions pertaining to critical energy infrastructure information and other facility information that is protected from public disclosure, for the entire facility. The applicant also shall use reasonable efforts to provide to the board’s staff as-built drawings in both hard copy and as geographically-referenced electronic data.

4906-3-14(C)

(1) submit to staff and on the docket of the certificate case one set of engineering drawings of the final project design, including associated facilities and construction access plans, subject to any redactions pertaining to critical energy infrastructure information and other facility information that is protected from public disclosure. The engineering drawings shall be sufficiently detailed and complete, so that staff can determine that the final project design is in compliance with the certificate. The final project layout shall be provided to staff in hard copy and as geographically-referenced electronic data. The drawings shall include references at the locations where the applicant and/or its contractors must adhere to a specific avoidance or mitigation measure in order to comply with the certificate

4906-4-03(A)

(5) The filing requirements in this chapter are subject to any redactions that are necessary to protect critical energy infrastructure information and other facility information that is protected from public disclosure.

¹⁰ July 20 Order, Attachment C, Page 1 of 19.

¹¹ *Id.*

The addition of this language will go a long way in ensuring that information is not required to be publicly disclosed that could be used by foreign or domestic terrorists to specifically target pipelines in a manner that could disrupt utility service.

D. The Order is unlawful and unreasonable because the practical effect of the combination of the rules governing generation facilities and the rules governing pipelines creates additional regulatory restrictions and burdens on natural gas pipeline applicants.

As outlined in the Reply Comments filed by the Ohio Gas Association,¹² R.C. 121.95(F) prohibits a state agency from merging two or more existing regulatory restrictions into a single surviving regulatory restriction for purposes of satisfying the statute.¹³ In the Order, the Board stated that “the function of merging the chapters is not for the sole purpose of R.C. 121.95(F) compliance.”¹⁴ One way to read this clause from the Order is that while not the only purpose of the merger, it remains *a* purpose for merging the chapters. This would make the Board’s action inconsistent with the statute.

The implied intent of the legislation that amended R.C. 121.95(F), Senate Bill 9,¹⁵ was to reduce the number of regulatory restrictions, defined as something that “require[s] or prohibit[s] an action,”¹⁶ contained within the Ohio Administrative Code. The merger of Chapters 4906-4 and 4906-5 of the Ohio Administrative Code, as applicable to natural gas pipeline applicants before the Board, increases the amount of information and analysis that applicants will need to compile. In several cases, these new regulatory restrictions are not logically applicable to pipelines. For example, proposed Ohio Adm.Code 4906-4-07(E)(2) and (3)¹⁷ contemplate the preparation information on airports, heliports, landing strips, and the FAA filing status of each of these structures in order to assess a project’s impact

¹² *In the Matter of the Ohio Power Siting Board’s Review of Ohio Adm.Code Chapters 4906-1, 44906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7*, Case No. 21-902-GE-BRO, Reply Comments of the Ohio Gas Association (September 2, 2022).

¹³ *Id.* at 3.

¹⁴ July 20 Order at 8.

¹⁵ 2022 Am. Sub. S.B. 9.

¹⁶ See R.C. 121.95(B).

¹⁷ July 20 Order, Attachment D, Pages 18 and 19 of 55.

on air navigation. Because they operate underground, this information is not germane to the Board's review of an application to construct a natural gas pipeline. Other similar examples include descriptions of operational noise levels,¹⁸ an analysis of wind velocity for the project area,¹⁹ and a description of air pollution control equipment installed on the facility.²⁰ These and other requirements are unsuitable as applied toward an application to construct a natural gas pipeline. Presumably, the differences between applications for generation facilities and natural gas pipelines/electric transmission lines is the reason the Board originally developed separate rules for these types of applications. In recognition of these differences, the Board should maintain the separation of these requirements, rather than the proposed merger of Ohio Adm.Code Chapters 4906-5 and 4906-4.

Columbia recognizes that the Board altered the language of the Rules in several places to remove explicit requirements (for example "shall submit," "shall provide," and "shall describe"), with less restrictive references such as "examples of relevant information include." While this new language may seem to remove regulatory restrictions from the Rules, the Board did not add language stating that a failure to provide such information shall not be grounds for an application to be denied. For this reason, applicants reviewing the Rules will likely prepare information responsive to every item listed as "examples of relevant information" when drafting applications before the Board. In practice, most of the "shalls" removed from the Rules, do not necessarily equate to the removal of a required step for applicants before the Board. For each of these reasons, Columbia respectfully requests that the Board grant this Application for Rehearing in order to reconsider its merger of Ohio Adm.Code Chapters 4906-4 and 4906-5.

¹⁸ See Ohio Adm.Code 4906-4-08(A)(3)(b), July 20 Order, Attachment D, Page 21 of 55.

¹⁹ See Ohio Adm.Code 4906-4-08(A)(6), July 20 Order, Attachment D, Page 23 of 55.

²⁰ See Ohio Adm.Code 4906-4-07(B)(1)(b), July 20 Order, Attachment D, Page 14 of 55.

- E. The Board should provide an opportunity to review and comment on the referenced “Appendix D” from proposed Ohio Adm.Code 4906-3-13(C) before finalizing its review of changes to the Rules as it is unreasonable to adopt such a change without this opportunity.**

The Board’s proposed rule governing certificate modifications²¹ references an “Appendix D” that is neither attached to the Order, nor made available for public/stakeholder review and comment:

~~(D)~~ (C) An applicant may seek review of a proposed modification(s) of a certificated facility by filing the proposed modification(s) in the public docket of the certificate case and by providing written notification of such filing to staff and all owners and residents of each property that would hold the proposed modified facility, or a portion of the proposed modified facility, or would require an easement for the proposed modified facility. The applicant shall also send a letter to the owner and resident of each property that is separated by a distance of less than forty feet from the aforementioned properties. Unless otherwise ordered by the board or administrative law judge, modification(s) shall not be considered amendments to the certificate if not listed within 4906-1-01 Appendix D, and such modification(s) would be minimal in nature and would be adequately addressed by the conditions of the certificate.²²

Columbia appreciates the Board’s efforts to create a new process for reviewing modifications and the need to file formal amendments to certificates. To the extent this language was not included in error, Columbia respectfully requests that this Application for Rehearing be granted in order to clarify questions that stakeholders may have related to this newly created Appendix D.

²¹ See proposed Ohio Adm.Code 4906-3-13(C), July 20 Order, Attachment C, Page 16 of 19.

²² *Id.* (reduced for purposes of size).

F. The Order is unreasonable in that the changes to incident reporting requirements in Ohio Adm.Code 4906-7 still apply to natural gas pipelines.

Columbia appreciates the limitation of the new notice requirements to “just electric generation facilities” due to the reporting requirements “with the Commission and at the federal level” for gas pipelines.²³ This represents a material improvement to the originally proposed changes to the Rules. However, the means by which this was effectuated seems to merely be the alteration of the heading of proposed Ohio Adm.Code 4906-7-06 from “Self-Reporting of Incidents”²⁴ to “Self-reporting of incidents for electric generation facilities.”²⁵ The body of new section 4906-7-06 can still be read to apply to gas pipelines because the definition of “incident” contained in proposed section (B) applies to “any certificated facility.”²⁶ In order to more clearly effectuate the Board’s intent, Columbia suggests the below change to 4906-7-06(B) in green:

(B) For purposes of this rule, “incident” includes but is not limited to an event occurring at the site of any ~~certificated facility~~ generation facility certified by the board where:

G. The Order is unreasonable because it did not adopt a definition of “need” as previously proposed by Columbia.

In its Finding and Order, the Board declined to adopt a new definition for the term “public interest, convenience, and necessity” as used in R.C. 4906.10(A)(6), stating that “the Board’s orders have explained how each application’s unique facts apply to our consideration of R.C. 4906.10(A)(6).”²⁷ However, the fact that multiple commenters have requested a definition during this proceeding indicates that the plain language of the statute creates unnecessary uncertainty. The adoption of a new definition could go a long way to mitigate this uncertainty and assist in the development of applications before the Board. For this reason,

²³ See July 20 Order at 11-12.

²⁴ See *In the Matter of the Ohio Power Siting Board’s Review of Ohio Adm.Code Chapters 4906-1, 44906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7*, Case No. 21-902-GE-BRO, Finding and Order (June 16, 2022), Attachment M, at Page 4 of 6.

²⁵ See July 20, Order, Attachment G at Page 4 of 7.

²⁶ See proposed Ohio Adm.Code 4906-7-06(B), July 20 Order, Attachment G, Page 4 of 7.

²⁷ See July 20 Order at 7.

Columbia respectfully reiterates the suggestion from its Initial Comments²⁸ that the following definition be adopted, which might now better fit as an addition to proposed Ohio Adm.Code 4906-4-03(C)(1)(a):²⁹

(a) The purpose of the proposed facility. To prove need, the applicant shall show that the Project will:

- (i) serve Ohio consumers;
- (ii) provide additional capacity for future growth;
- (iii) meet the requirements of a mandatory relocation;
- (iv) meet the policy of the State of Ohio;
- (v) improve the provision of adequate, safe, and reliable utility service; or
- (vi) show other good cause.

3. Conclusion

Columbia respectfully requests that the Board grant this application for re-hearing to reconsider the above-discussed changes to the Rules. With the above-outlined changes, the Rules can be improved to more effectively and efficiently govern the application process before the Board.

Respectfully submitted,

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²⁸ *In the Matter of the Ohio Power Siting Board's Review of Ohio Adm.Code Chapters 4906-1, 44906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7*, Case No. 21-902-GE-BRO, Initial Comments of Columbia Gas of Ohio (August 5, 2022) at 11.

²⁹ July 20 Order, Attachment D, Page 6 of 55.

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CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 21st day of August, 2023, upon the participants listed below.

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Summary: App for Rehearing Application for Rehearing of Columbia Gas of Ohio,
Inc. electronically filed by Mr. John R. Ryan on behalf of Columbia Gas of Ohio.