

BEFORE

THE OHIO POWER SITING BOARD

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| In the Matter of the Application of The |) | |
| Cincinnati Gas & Electric Company for a |) | |
| Certificate of Environmental Compatibility and |) | Case No. 05-361-EL-BTX |
| Public Need for the Hillcrest-Eastwood 138 |) | |
| Kilovolt Transmission Line. |) | |

OPINION, ORDER, AND CERTIFICATE

The Ohio Power Siting Board (Board) coming now to consider the above-entitled matter; having appointed its administrative law judge (ALJ) to conduct a public hearing; having reviewed the exhibits introduced into evidence at the public hearing held in this matter, including the joint stipulation and recommended findings of fact and conclusions of law (stipulation); and being otherwise fully advised, hereby waives the necessity for an ALJ report and issues its opinion, order, and certificate in this case as required by Section 4906.10, Revised Code.

APPEARANCES:

Paul A. Colbert and Rocco O. D'Ascenzo, 139 East Fourth Street, 25 Atrium II, Cincinnati, Ohio 45202, on behalf of The Cincinnati Gas & Electric Company.

Jim Petro, Attorney General, by Duane W. Luckey, Senior Deputy Attorney General, Stephen A. Reilly and John H. Jones, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215-3793, and by Lauren C. Angell and Margaret A. Malone, Assistant Attorneys General, Environmental Enforcement Section, State Office Tower, 25th Floor, 30 East Broad Street, Columbus, Ohio 43215-3428, on behalf of the staff of the Board.

OPINION:

I. Summary of the Proceedings:

All proceedings before the Board are conducted according to the provisions of Chapter 4906, Revised Code, and Chapter 4906, Ohio Administrative Code (O.A.C.).

On December 7, 2004, The Cincinnati Gas & Electric Company (CG&E) held a public informational meeting in Brown County, Ohio regarding an application that it intended to file for a certificate of environmental compatibility and public need (certificate) for the construction of the Hillcrest-Eastwood 138 kilovolt (kV) electric transmission line (hereinafter referred to as "the project"). On April 15, 2005, CG&E filed a motion for a waiver of certain filing requirements associated with the application. In its motion, CG&E requested a waiver of Rule 4906-05-04(A), O.A.C., that provides, in part, that two routes

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shall be considered as alternatives if not more than 20 percent of the routes are common. In this case, the preferred and alternate routes for the project share 29.7 percent in common. By entry of May 20, 2005, the ALJ granted CG&E's waiver request.

On June 13, 2005, CG&E filed an application for a certificate for the project (CG&E Exhibit Ex. 1). By letter dated August 11, 2005, the Board notified CG&E that its application had been found to be complete pursuant to Rule 4906-5-05, O.A.C. On August 26, 2005, CG&E filed proof of service of the application.

By entry of September 9, 2005, a local public hearing was scheduled for December 5, 2005, at the Western Brown High School in Mt. Orab, Ohio, and an evidentiary hearing was scheduled for December 8, 2005, at the offices of the Public Utilities Commission of Ohio (Commission) in Columbus, Ohio. The public hearing in this case was consolidated with the public hearing regarding an application filed by CG&E for a certificate for a proposed electric substation. See, *In the Matter of the Application of The Cincinnati Gas & Electric Company for a Certificate of Environmental Compatibility and Public Need for Construction of the Hillcrest Substation*, Case No. 05-360-EL-BSB (05-360). On November 16, 2005, staff and CG&E filed a joint motion for a continuance of the public hearing and for an extension of time to file the staff report of investigation of the application (staff report). By entry of December 1, 2005, an extension of time until December 27, 2005, was granted to file the staff report and the local public hearing was rescheduled to January 12, 2006. The December 1, 2005 entry also directed CG&E to publish notices of the hearings, as required by Rule 4906-5-08, O.A.C., and directed that petitions to intervene by interested persons be filed up to five days prior to the scheduled date for the hearing.

The evidentiary hearing commenced on December 8, 2005, but was recessed at the request of the parties. On December 23, 2005, the staff report in this case was filed. The local public hearing was held on January 12, 2006, at which five people testified. On January 17, 2006, Valley Asphalt Corporation (Valley) filed a petition to intervene. On January 18, 2006, CG&E filed a memorandum in opposition to Valley's petition to intervene. Also, on January 18, 2006, the evidentiary hearing resumed. At the evidentiary hearing and prior to ruling on Valley's petition to intervene, CG&E and Valley requested a two-week continuance of the evidentiary hearing in order to resolve the issues raised by Valley. The ALJ approved of the continuance request and continued the hearing. On September 28, 2005, and January 17 and 18, 2006, CG&E filed proof of the public notices, which were published in the *Cincinnati Enquirer*, *Cincinnati Post*, and *The News Democrat*, pursuant to Rule 4906-5-09, O.A.C. On January 27, 2006, CG&E and staff filed a stipulation which resolves all of the issues in the case. Relevant portions of the stipulation will be discussed as appropriate below. On February 1, 2006, Valley withdrew its petition to intervene.

II. Proposed Facility and Siting:

According to the application, the project involves the construction of a new single-circuit, 138 kV overhead electric transmission line between CG&E's existing Eastwood substation and a proposed electric substation, which is the subject of CG&E's application in 05-360, which in turn, will be connected to the CG&E, Columbus Southern Power Company, and Dayton Power and Light Company (DP&L) (collectively CCD) Stuart-Foster 345 kV transmission line (CG&E Ex. 1, at 02-1). The project is located within Mt. Orab, and Sterling and Green townships, in Brown County, and Williamsburg Township in Clermont County. CG&E will construct, maintain, operate, and own the transmission line (*Id.* at 01-4).

CG&E indicated that a route selection study was conducted to identify and evaluate potential routes for the project and that 75 potential routes were identified, scored, and ranked prior to the selection of the preferred and alternate routes. The objective of the route selection study was to minimize the overall impacts to ecological and land use features, while taking into consideration engineering and construction needs for the project. CG&E identified its preferred and alternate routes for the project which were predominantly located along existing utility corridors, roadways, or railways (*Id.* at 01-2). The preferred and alternate routes for the project have 29.7 percent of the right-of-way (ROW) in common (*Id.*). CG&E proposes to begin construction on approximately July 1, 2006, and complete the project and place it in service by June 30, 2008 (*Id.* at 01-7). Both the preferred and alternate routes are fully described in the application and the staff report (CG&E Ex. 1, at Appendix 03-1; Staff Ex. 1, at 3).

The preferred route is approximately 9.3 miles in length. The preferred route departs the Eastwood Substation and parallels an existing 138 kV transmission line in a northwest direction across agricultural fields for approximately 0.4 miles until reaching Hagemans Crossing Road. The preferred route then travels north along the east side of Hagemans Crossing Road. For this segment of the route, CG&E is proposing to over-build existing distribution facilities and consolidate existing utilities from the west side of the road to the east side. After approximately 0.5 miles, the route reaches the former Norfolk and Western Railroad (N&W) tracks, at which point the route turns east following the south side of the railroad tracks. The route continues paralleling the railroad tracks for approximately 4.5 miles and then intersects with Brooks-Malott Road.

As the route follows the railroad tracks, it crosses Eastwood Road. At Brooks-Malott Road, the route turns to the north along the east side of the road. The route follows Brooks-Malott Road for approximately 1.9 miles until reaching Waits Road. At Waits Road, the route travels in a northeast direction along the south side of the road. At the intersection of Waits Road and U.S. 68, the route would travel north along the west side of U.S. 68 for a short distance. After nearly 0.2 miles, the route shifts to the east traveling

across agricultural properties for approximately 0.6 miles, before turning north to connect with Greenbush East Road. The route then follows the north side of Greenbush East Road to the east for approximately 800 feet before turning north in order to enter the planned Hillcrest substation at its preferred site.

The alternate route is approximately 8.7 miles in length. Upon exiting the Eastwood substation, this route heads north across agricultural fields for approximately 0.8 miles until it reaches the former N&W tracks. At this point, it crosses the railroad tracks and continues to travel northward for another 0.3 miles until reaching State Route (SR) 32. The alternate route turns east at SR 32 and follows the south side of the highway for approximately 4.1 miles until intersecting with Brooks-Malott Road. The eastern portion of this segment along SR 32 is located adjacent to the Brown County foreign trade zone (FTZ). As with the preferred route, the alternate route would head north along the east side of Brooks-Malott Road utilizing the over-build of existing distribution facilities. However, unlike the preferred route, the alternate route turns west at Waits Road for approximately 200 feet before proceeding north along the east side of Brooks-Malott Road. Approximately 1,800 feet north of Waits Road, the alternate route turns south-southeast for another 1,700 feet until it reaches U.S. 68. After crossing U.S. 68, the alternate route follows the preferred route to the east and north until it terminates at the preferred site for its Hillcrest substation.

III. Certification Criteria:

Pursuant to Section 4906.10(A), Revised Code, the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines all of the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or natural gas transmission line.
- (2) The nature of the probable environmental impact.
- (3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.
- (4) In case of an electric transmission line or generating facility, such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems; and that such facilities will serve the interests of electric system economy and reliability.

- (5) The facility will comply with Chapters 3704, 3734, and 6111, Revised Code, and all rules and standards adopted under those chapters and under Sections 1501.33, 1501.34, and 4561.32, Revised Code.
- (6) The facility will serve the public interest, convenience, and necessity.
- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929, Revised Code, that is located within the site and alternate site of the proposed major facility.
- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

IV. Summary of the Evidence:

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

According to the application, the purpose of the project is to relieve the transformer bank at the Stuart generating station and to provide increased distribution reliability and a source of distribution capacity for load growth throughout the extended project vicinity (CG&E Ex. 1, at 02-1). CG&E noted that a major source of power for its eastern service area is currently the Brown-Ford 138 kV transmission line which is supplied at the southern end from the Stuart generating station. The purpose of the project is to relieve the CCD-owned and DP&L-operated Stuart generating station and to support the Stuart-Foster 138 kV corridor. CG&E explained that it conducted load flow studies for the forecasted 2008 summer peak load condition with and without the transmission line and these studies indicate that the transmission line is required to address projected load growth and associated contingency overloads (*Id.* at 02-2).

According to the staff report, Cinergy Corporation's (Cinergy) load flow study demonstrated that, without the addition of the project, the Stuart 345/138 transformer is expected to overload its summer emergency capability in a scenario in which the Stuart-Clinton 345 kV transmission line is out of service.¹ However, when the project is assumed to be operational, the loading of the Stuart 345/138 kV transformer is 91.2 percent of its capability if the Stuart Clinton 345 kV transmission line is out of service. Staff

¹ Cinergy is a registered holding company that was created from the combination of CG&E and PSI Energy, Inc. and CG&E is a wholly owned subsidiary of Cinergy.

recommended that the Board find that the basis of need for the project has been demonstrated (Staff Ex. 1, at 15-16).

Under the stipulation, staff and CG&E recommend that the Board find the record establishes the need for the project as required by Section 4906.10(A)(1), Revised Code.

B. Nature of Probable Environmental Impact and Minimum Adverse Environmental Impact (Sections 4906.10(A)(2) and (3), Revised Code)

Staff reviewed the information contained in the record and has supplemented its review with site visits to the project area and discussions with employees and representatives of CG&E. Staff found the following with regard to the nature of the probable impact to the environment would be the following:

- (1) The project involves the construction of a 138 kV electric transmission line. The preferred route is approximately 9.3 miles long and the alternate route is 8.7 miles long. Both routes are located in Brown and Clermont counties.
- (2) The preferred route will consist of a 25-foot ROW along existing roadways, while the segment along the railroad tracks would use a 70-foot ROW. A 100-foot ROW will be used for the segment from U.S. 68 to Greenbush East Road. For the alternate route, a 60-foot ROW would be used for the segment paralleling SR 32. The remaining ROW for this route would be similar to the preferred route, although the segment from Brooks-Malott Road to U.S. 68 would involve a 100-foot ROW.
- (3) The preferred route crosses six streams and the alternate route crosses five streams. Potential impacts associated with crossing these streams include loss of riparian habitat, erosion related to vegetative clearing, sedimentation from storm water runoff, and water temperature increases due to loss of shade trees.
- (4) There are no major lakes or reservoirs within 100 feet of either route and neither route crosses any ponds.
- (5) There are 13 wetlands within 100 feet of the preferred route centerline and 11 of the 13 wetlands will be crossed by the preferred route. There are 11 wetlands within 100 feet of the alternate route centerline. Three are classified as Category 1, and eight are classified as Category 2.

- (6) Approximately 6.6 acres of woodlots would be cleared for the preferred route and 7.3 acres would be cleared for the alternate route. Impacts include loss of riparian vegetation along streams, loss of woodland habitat, increased storm water runoff/erosion, and aesthetic impacts.
- (7) Protected, threatened, or endangered species within the preferred and alternate routes include:
 - (a) Plants: The range of the federally-endangered running buffalo clover includes Clermont County. The project area, however, does not appear to contain suitable habitat for this plant. State-listed species whose ranges include Brown or Clermont counties include the following: blue false indigo, Missouri gooseberry, sparse-lobe grape fern, southern woodrush, Carolina willow, spring nettle, Missouri violet, one-sided rush, and maypop. However, the CG&E's field surveys did not identify any state or federal-listed plant species in or adjacent to the preferred or alternate route.
 - (b) Birds: The range of the bald eagle does include Brown and Clermont counties. However, the project area does not appear to contain habitat suitable for the bald eagle.
 - (c) Reptiles: No federal or state-protected reptile or amphibian species were identified as potential inhabitants of the preferred route.
 - (d) Mammals: The project routes contain potentially suitable roosting and foraging habitat for the federally endangered Indiana bat. Some suitable habitat, although minimal, could be cleared during construction activities. CG&E indicated that such clearing would be limited to outside the bats' traditional summer roosting season. However, if this is not possible, bat surveys of the area will be required prior to construction. A documented presence of the Indiana bat will require immediate coordination with staff prior

to proceeding with construction activities in the surveyed area.

- (e) Aquatic species: The rayed bean mussel and the sheepnose mussel, both federal candidate species, have ranges which include Brown and Clermont counties. However, the specific project area does not appear to contain habitat suitable for these species. No federal or state-protected fish species were identified as potential inhabitants of the preferred or alternate route.
- (8) Neither the preferred nor the alternate route traverses agricultural district land. Construction impacts to agricultural fields, which have been used primarily for soybean and corn production, will be temporary and are expected to include minor vehicular soil compaction which could cause a temporary effect on drainage systems. Soil compaction will likely be remedied with the next plow. Damaged drainage systems will be repaired to at least original conditions at CG&E's expense.
- (9) Nine residences are located within 100 feet of the preferred route, while 10 residences are located within 100 feet of the alternate route. One hundred twenty-eight residences are located within 1,000 feet of the preferred route with 93 residences located within 1,000 feet of the alternate route.
- (10) Two recreational land uses are located within 1,000 feet of the preferred route, one of which is also within 100 feet of the preferred route. However, these recreational areas are not expected to be impacted. One recreational land use is located within 1,000 feet of the alternate route, and no recreational land uses are located within 100 feet of the alternate route.
- (11) Eight commercial developments are within 1,000 feet of the preferred route, and 11 commercial developments are within 1,000 feet of the alternate route. Including the CG&E Eastwood substation, there are two commercial developments within 100 feet of both the preferred and alternate routes.
- (12) One institutional land use is located within 1,000 feet of the preferred route and no institutional land uses are located

within 100 feet of the preferred route. Institutional land uses are not present within the alternate route study corridor.

- (13) Approximately 16,900 feet of the preferred route and 9,550 feet of the alternate route would be built over existing distribution lines. CG&E has indicated that existing distribution poles would be removed and replaced with single-pole transmission structures on a one-to-one basis. In these sections of over-built configuration, the aesthetic impacts are expected to be lessened, as structures would be consolidated and more uniform in appearance.
- (14) There would be a temporary, minor increase in noise during construction of the project. Construction at any one location near noise-sensitive areas is expected to be limited to less than one month in duration and limited to daylight hours.
- (15) Construction debris is expected to consist of rubbish and debris, which CG&E indicates will be properly disposed.
- (16) No new permanent access roads will be required for the construction or operation of the preferred or alternate route.
- (17) There is one airport, the Clermont County Airport, located approximately 10 miles west-northwest of the CG&E Eastwood substation. The construction and operation of the project is not expected to have a significant impact on the airport.
- (18) When compared to the alternate route along SR 32, the railroad portion of the preferred route is expected to offer superior aesthetic benefits due to limited visibility. Construction of the alternate route along SR 32 would expose the new line to a greater number of viewers, although the siting of transmission lines along highways is not unusual.
- (19) The preferred route intersects two parcels that comprise a portion of the Brown County FTZ. The alternate route runs adjacent to a portion of this FTZ. Future lateral transmission line FTZ interconnections would be shorter for the preferred route, thereby enhancing potential future development by providing less costly electric interconnections.

- (20) A majority of the preferred and alternate routes follows existing transportation corridors. The preferred route parallels the former N&W tracks for approximately four miles, and the alternate route parallels SR 32 for approximately four miles. The alternate route along SR 32 would likely pose a greater detriment to future commercial development than the preferred route along the railroad corridor.
- (21) Construction of the project would result in air emissions primarily due to construction vehicles, but these are not considered significant due to their relatively low levels and the temporary nature of the construction activities. Fugitive dust resulting from construction activities would be controlled through water sprays and reseeded of disturbed areas. There are no air emissions associated with the operation of the project.
- (22) There were no archeological sites identified within 100 feet of either the preferred or alternate route. Six previously recorded archaeological sites were identified within 1,000 feet of each proposed route. The State Historic Preservation Office concurs with CG&E that none of these sites are of archaeological, cultural or historical value.
- (23) CG&E plans to initiate construction in the early spring of 2006 and place the facility in-service in the summer of 2008.
- (24) The preferred route is situated within 500 feet of the existing South Central Power Eastwood substation. CG&E asserts that providing the South Central Power Eastwood substation with a future 138 kV electrical supply would enhance service reliability and support future economic growth.
- (25) The project is estimated to generate annual property tax revenue in the range of \$130,000 to \$153,000 during the first ten years of operation.
- (26) The preferred route is estimated to cost \$4.9 million and the alternate route is estimated to cost \$5.6 million.

Id. at 16-20.

As part of the stipulation, the parties recommend that the Board find the record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the project as required by Section 4906.10(A)(2), Revised Code, and that the preferred route represents the minimum adverse environmental impact pursuant to Section 4906.10(A)(3), Revised Code.

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

In its investigative report, staff reviewed the impact of integrating the transmission line into the Cinergy local area and regional transmission grid (Staff Ex. 1, at 27). Staff determined that, based on Cinergy's studies, absent the project, an outage of the Stuart-Clinton 345 kV transmission line would cause DP&L's Stuart transformer to overload during the system's normal conditions. Staff also found that, even though the project appears to unload the Stuart transformer to some degree, this transformer is still significantly loaded to 91.2 percent of its summer emergency capability (*Id.*).

Staff also found that the reinforcement plans developed by Cinergy appear to relieve loading of the Stuart transformer to within an acceptable range. However, this transformer could become a limiting facility for future critical power transfers and outages. As a result, staff recommended that CG&E continue to monitor the transformer jointly with DP&L and possibly provide future reinforcement directly at the Stuart transformer bank to enhance overall reliability of the Cinergy and regional transmission grid. Staff recommended that the Board find that the project is consistent with regional plans for expansion of the regional power grid and will serve the interests of electric system economy and reliability (*Id.*).

As part of the stipulation, CG&E and staff agree that CG&E has provided the Board with adequate data to determine that the project is consistent with regional plans for the expansion of the electric grid for the electric systems serving this state and interconnected utility systems and that the project serves the interests of electric system economy and reliability as required under Section 4906.10(A)(4), Revised Code.

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

In its report, staff found that air quality permits are not required for construction of the project. However, fugitive dust rules adopted pursuant to the requirements of Chapter 3704, Revised Code, may be applicable to construction of the project (Staff Ex. 1, at 28). Staff also noted that CG&E has agreed to control fugitive dust by water spray, when necessary, in order to comply with Ohio's fugitive dust requirements. Staff determined that neither construction nor operation of the project will require the use of

significant amounts of water, so requirements under Sections 1501.33 and 1501.34, Revised Code, are not applicable to this project (*Id.*).

The application indicates that no construction equipment will cross wetlands or streams, thus avoiding direct impacts to surface water bodies during construction of the project. Indirect impacts could occur through erosion from construction activities near streams or wetlands, as well as through tree clearing activities in or near streams and wetlands. However, CG&E has indicated that a Storm Water Pollution Prevention Plan will be developed and best management practices will be followed to minimize any erosion-related impacts. Tree clearing will be conducted from outside wetland/stream areas, or by non-mechanized methods, minimizing any clearing-related disturbance to surface water bodies. There will be no clearing of vegetation in any Category 3 wetlands, while clearing of woody riparian vegetation will be minimized to the extent possible. Thus, construction of this facility will comply with requirements of Chapter 6111, Revised Code (*Id.*).

Staff also determined that CG&E's solid waste program would comply with Ohio Environmental Protection Agency (OEPA) regulations and with Chapter 3734, Revised Code. The application indicates that some volume of solid waste would be generated from construction activities and that all construction-related debris will be disposed of in approved landfills. Staff also noted that, where trees would be cleared, the timber would be cut into appropriate lengths for sale or use by the landowner, or otherwise chipped or windrowed at the edge of the ROW (*Id.*).

As noted by staff, there are no air transportation facilities within 1,000 feet of either the preferred or alternate route. In compliance with Section 4561.32, Revised Code, staff contacted the Ohio Office of Aviation during review of this application in order to coordinate review of potential impacts the facility might have on local airports. As of the date of preparation of the staff report, no such concerns have been identified. Staff found that the project will comply with the requirements specified in Section 4906.10(A)(5), Revised Code.

In their stipulation, the parties recommend that the Board find that the project at the preferred site will comply with Chapters 3704, 3734, and 6111, Revised Code, Sections 1501.33, 1501.34, and 4561.32, Revised Code, and all regulations adopted hereunder, as required by Section 4906.10(A)(5), Revised Code.

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

In its application, CG&E discussed how transmission lines, when energized, generate electromagnetic fields (EMF) (CG&E Ex. 1, at 06-18). In its report, staff noted that

there have been concerns that EMF may be detrimental to human health; however, after many studies throughout the world, no health correlations have been established (Staff Ex. 1, at 30). Staff explained that, because EMF concerns exist, CG&E was required to compute the EMF associated with the new circuits from the project and this information was provided in the application. Staff explained that the magnetic fields are a function of the electric current, the configuration of the conductors, and the distance from transmission lines. (*Id.*) Staff reported that several houses on the preferred route lie in the zone which is greater than five miligauss, which is the limit that most studies included in their data base. Staff recommended that either provisions be taken to shield the houses from the magnetic field or other means be taken to minimize the exposure to the higher values of magnetic fields (*Id.*). Staff also determined that, because the principal purpose of the project is to provide reliability and not load flow on a continuous basis, maximum load conditions would rarely occur; however, staff noted that it was prudent to calculate the fields based on the maximum load capabilities. Staff recommended that the Board find that the project will serve the public interest, convenience, and necessity as required under Section 4906.10(A)(6), Revised Code (*Id.*).

As part of the stipulation, the parties agree that sufficient data on the project has been provided to the Board to determine that the project will serve the public interest, convenience, and necessity as required under Section 4906.10(A)(6), Revised Code.

F. Agricultural Districts and Agricultural Lands (Section 4906.10(A)(7), Revised Code)

According to the application, much of the land in the project vicinity is used for agricultural purposes. Permanent loss of agricultural lands for the transmission line along either the preferred or alternate route is expect to be less than one-tenth of an acre and will be limited to pole locations. CG&E also noted that it has extensive experience in transmission line projects and will work to reduce excavation and compaction impacts during construction (CG&E Ex. 1, at 06-13).

According to the staff report, classification as agricultural district land is achieved through an application and approval process that is administered through local county auditor offices (Staff Ex. 1, at 31). Based upon Clermont and Brown County Auditors' records, there are six agricultural district parcels located within 1,000 feet of the preferred route and one agricultural district parcel within 1,000 feet of the alternate route and there are no designated agricultural district land is crossed by either the preferred or alternate route. It is staff's assessment that there will be no significant direct or indirect permanent impacts by the construction or maintenance of this project on agricultural land use. Staff recommended that the Board find that the impact of the project and related facilities on the viability of existing farmlands and agricultural districts has been determined (*Id.*).

The parties stipulate that the project's impact on the viability as agricultural land of any land in an existing agricultural district has been determined under Section 4906.10(A)(7), Revised Code.

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

Staff found that water conservation practice as specified in Section 4906.10(A)(8), Revised Code, is not applicable to the project (*Id.* at 26). For this reason, the parties recommend in the stipulation that the Board find that the project incorporates maximum feasible water conservation practices, considering available technology and the nature and economics of the various alternatives, as required by Section 4906.10(A)(8), Revised Code.

H. Local Public Hearing

The local public hearing was held in Mt. Orab, Ohio on January 12, 2006, at which five people testified. Several of the people who testified raised concerns about the size of the easement that CG&E would need for the project and the effect the easement and utility pole placement would have on farming operations and ingress and egress from their property. A few of the persons testifying noted that they had not been contacted by CG&E regarding the level of compensation that would be paid by CG&E and two people indicated that they were concerned about the health effects from EMF that would be caused by the project. One person was concerned that the project would affect the operation of the septic system on his property. Another individual indicated that he was concerned that the easement would be used for a gas line project. All of the people who testified indicated that they were generally uninformed about the project.

I. CG&E Responses to Concerns Raised at Public Hearing

At the evidentiary hearing, CG&E responded to the concerns raised at the public hearing. CG&E indicated that it provided copies of the application, held an informational meeting on the project, and provided public notice of the project in accordance with Board rules. CG&E also noted that issues regarding the size of easements, corresponding compensation paid to affected landowners, and ingress and egress to property, were not customarily discussed prior to the approval of the application by the Board and, that, if the Board approves the application, CG&E would then be in a position to discuss these issues with individual landowners. Further, CG&E stated that the pole locations would be sited between 200 and 235 feet apart along affected property and landowners would be able to farm within the ROW around the poles. CG&E also noted that any effects on the operations of septic systems would be discussed with landowners in order to attempt to cause the least impact. In addition, CG&E indicated that the concern raised about a gas line ROW was not the subject of this application. CG&E also stated that issues associated with EMF were addressed in the staff report.

V. Stipulation's Recommended Conditions:

In the stipulation, CG&E and staff believe that ample evidence has been provided to demonstrate that construction of the project on the preferred route meets the statutory criteria of Sections 4906.10(A)(1) through (8), Revised Code (Jt. Ex. 1). Staff and CG&E recommend that the Board issue a certificate for the preferred route, as described in the application subject to the 32 conditions identified below (*Id.* at 2-10).²

- (1) The facility should be installed following CG&E's preferred route as presented in the application filed on June 13, 2005, and as further clarified by CG&E's supplemental filings.
- (2) CG&E shall utilize the equipment and construction practices as described in the application, and as modified in supplemental filings, replies to data requests, and recommendations included in the staff report.
- (3) CG&E shall implement the mitigative measures described in the application, any supplemental filings, and recommendations included in the staff report.
- (4) CG&E shall properly install and maintain erosion and sedimentation control measures at the project site in accordance with the following requirements:
 - (a) During construction of the facility, seed all disturbed soil, except within cultivated agricultural fields, within seven days of final grading with a seed mixture acceptable to the appropriate county cooperative extension service. Denuded areas, including spoils piles, shall be seeded and stabilized within seven days, if they will be undisturbed for more than 21 days. Reseeding shall be done within seven days of emergence of seedlings as necessary until sufficient vegetation in all areas has been established.

² The stipulated conditions are substantially identical to the 26 conditions recommended in the staff report (Staff Ex. 1, at 25-27).

- (b) Inspect and repair all such erosion control measures after each rainfall event of one-half inch of rain per 24-hour period, and maintain controls until permanent vegetative cover has been established on disturbed areas.
 - (c) Obtain NPDES permits for storm water discharges during construction of the facility. A copy of each permit or authorization, including terms and conditions, shall be provided to staff within seven days of receipt. Prior to construction, the construction Storm Water Pollution Prevention Plan shall be submitted to staff for review and acceptance.
- (5) CG&E shall remove all temporary gravel and other construction laydown area and access road materials within 10 days of completing construction activities.
 - (6) CG&E shall not dispose of gravel or any other construction material during or following construction of the facility by spreading such material on agricultural land. All construction debris shall be promptly removed and properly disposed.
 - (7) CG&E shall avoid, where possible, any damages to field drainage systems resulting from construction and operation of the facility. Damaged systems shall be repaired to at least original conditions at CG&E's expense.
 - (8) CG&E shall dispose of excess soil excavated from pole locations off-site unless the property owner prefers that it remain on-site.
 - (9) CG&E shall employ the following construction methods in proximity to any watercourses:
 - (a) All watercourses, including wetlands, shall be delineated by fencing, flagging, or other prominent means.

- (b) All construction equipment shall avoid watercourses, including wetlands, except at specific locations where staff has approved construction.
 - (c) Storage, stockpiling and/or disposal of equipment and materials in these sensitive areas shall be prohibited.
 - (d) Structures shall be located outside of identified watercourses, including wetlands.
 - (e) All storm water runoff is to be diverted away from fill slopes and other exposed surfaces to the greatest extent possible, and directed instead to appropriate catchment structures, sediment ponds, etc., using diversion berms, temporary ditches, check dams, or similar measures.
- (10) Within the preferred route, CG&E shall maintain at least a 25-foot vegetated buffer on each side of Indian Camp Run. Within the buffers, vegetation removal shall be limited to trees perceived as an imminent danger to the construction or operation of the project. Any tree clearing shall be done by hand, and no construction vehicles will be permitted within the 25-foot buffers. Tree stumps shall be left in place. To help minimize adverse stream impacts, CG&E shall evaluate the potential of shifting the proposed centerline of the project near Indian Camp Run closer to the edge of the railroad ROW, and shall submit the results of this evaluation to staff for its consideration prior to completing project design work.
- (11) CG&E shall maintain at least a 25-foot vegetated buffer on each side of Stream 1a. Within the buffers, vegetation removal shall be limited to trees perceived as an imminent danger to the construction or operation of the project. Any tree clearing shall be done by hand, and no construction vehicles will be permitted within the 25-foot buffers. Tree stumps shall be left in place.

- (12) CG&E shall utilize wood poles of at least 90 feet in height on each side of both streams 4a and 5a. Tree clearing, which shall be conducted by hand, is to be limited to those trees that are perceived as posing an imminent risk to the construction and operation of the line. In addition, the riparian areas of these streams shall be clearly marked so as to prevent construction vehicle access and unapproved tree clearing.
- (13) After construction is complete, staff shall review the areas near the stream crossings to determine if additional vegetative planting is required, which would then be implemented by CG&E.
- (14) CG&E shall not clear any trees within or immediately south of Wetland D7, unless previously approved by staff.
- (15) CG&E shall utilize wood poles of at least 90 feet in height near the tree line and wetland along the southern edge of the railroad tracks beginning at the intersection of the railroad and Hagemans-Crossing Road and extending to the east. Any tree clearing in this area shall be conducted by hand and shall be limited to trees perceived as an imminent danger to the construction or operation of the project.
- (16) That any tree clearing required within Wetland 11 shall be done by hand and shall be limited to trees perceived as an imminent risk to the construction and operation of the line.
- (17) CG&E shall employ best management practices when working in the vicinity of environmentally sensitive areas. This includes, but is not limited to, the installation of silt fencing (or similarly effective tool) prior to initiating construction near streams and wetlands. The installation shall be done in accordance with generally accepted construction methods and shall be inspected regularly.
- (18) CG&E shall dispose all contaminated soil and all construction debris in approved landfills in accordance with OEPA regulations.

- (19) Prior to construction, CG&E shall obtain and comply with all applicable permits and authorizations as required by federal and state entities for any activities where such permit or authorization is required.
- (20) If applicable, CG&E shall limit the use of herbicides in proximity to surface waters, including wetlands, along the certificated ROW. CG&E shall submit a plan describing the use of herbicides near such areas for review and approval by staff, prior to initiating clearing work.
- (21) CG&E shall limit the removal of potential Indiana bat trees to the greatest extent possible. CG&E shall not remove any trees representing potential Indiana bat habitat between April 15 and September 15, unless specific pre-approval is granted by staff.
- (22) If CG&E seeks to remove trees representing potential Indiana bat habitat between April 15 and September 15, it shall first submit an Indiana bat survey plan for staff review and approval.
- (23) Removal of mature screening trees along residential properties should be avoided if possible. If such removal is necessary for the safe construction and operation of the project, then CG&E shall fund appropriate tree replacement following consultation with affected individual land owners.
- (24) CG&E shall have an environmental specialist on site at all times that construction (including vegetation clearing) is being performed in or near a sensitive area such as a designated wetland, stream, or river or in the vicinity of identified threatened/endangered species or their identified habitat.
- (25) CG&E shall investigate and implement means to reduce the level of magnetic fields, to the extent possible, resulting from the transmission line at the residences along the ROW of the transmission line.

- (26) If the Board selects the alternate route, CG&E shall prepare a Phase I Cultural Resource Survey prior to construction. This survey shall be coordinated with the State Historic Preservation Office and submitted to staff for review and acceptance at least 30 days prior to construction.
- (27) CG&E shall continue to monitor the Stuart 345/138 kV TB7 transformer jointly with DP&L and possibly provide future reinforcement directly at the Stuart 345/138 transformer bank to enhance overall reliability of the Cinergy and regional transmission grid.
- (28) CG&E shall conduct a pre-construction conference prior to the start of any project work, which staff shall attend, to discuss how environmental concerns will be satisfactorily addressed.
- (29) At the time of the pre-construction conference, CG&E shall have completed, for staff inspection, the following tasks along its preferred route:
 - (a) Marked all trees perceived as danger trees near Stream 4a, Stream 5a, Wetland 11, the southeast corner of the railroad tracks and Hagemans Crossing Road intersection, and within the 25-foot riparian buffers of Stream 1a and Indian Camp Run.
 - (b) Marked the route's centerline and ROW clearing limits in environmentally sensitive areas.
 - (c) Marked the 25-foot buffers around both crossings of Indian Camp Run and the single crossing of Stream 1a.
- (30) At least 30 days before the pre-construction conference, CG&E shall submit to staff, for review and approval, one set of detailed drawings for the certificated electric transmission line, including all laydown areas and access points so that staff can determine that the final project design is in compliance with the terms of the certificate.

- (31) CG&E shall provide to staff the following information as it becomes known:
- (a) The date on which construction will begin.
 - (b) The date on which construction was completed.
 - (c) The date on which the facility began commercial operation.
- (32) The certificate shall become invalid if CG&E has not commenced a continuous course of construction of the project within five years of the date of journalization of the certificate.

VI. Conclusion:

According to the stipulation, the parties recommend that, based upon the record, and the information and data contained therein, the Board should issue a certificate for construction, operation, and maintenance of the project on the preferred route as described in the application filed with the Board on June 13, 2005 (Jt. Ex. 1, at 15). Although not binding upon the Board, stipulations are given careful scrutiny and consideration, particularly where no party is objecting to the stipulation. Based upon the record in this proceeding, the Board finds that all the criteria in Section 4906.10(A), Revised Code, are satisfied for the construction, operation, and maintenance of the project using the preferred route and subject to the conditions set forth in the stipulation.

Under Board rules, CG&E was required to provide copies of the application to public libraries and other facilities, hold an informational meeting with the public about the project, and provide notice of that meeting. In addition, the Board is required to hold a public hearing and an evidentiary hearing on the project and publish newspaper notices of both hearings. The record shows that a local public hearing and an evidentiary hearing were held, CG&E provided copies of the application to libraries and other facilities, CG&E held an informational meeting in the local area, and CG&E provided all requisite newspaper notices. The Board also finds that CG&E adequately responded to the questions raised at the public hearing regarding ingress and egress from property, the amount of land CG&E would require for easements, the level of compensation CG&E would provide to affected landowners, and the effect of the project on farming operations. The Board is also satisfied that both staff and CG&E reviewed the EMF issue and the Board concurs with the findings of CG&E and staff on this issue.

Accordingly, based upon all of the above, the Board approves and adopts the stipulation and hereby issues a certificate to CG&E for the construction, operation, and maintenance of the project as proposed in its application filed in this case on June 13, 2005, along the preferred route and subject to the 32 conditions set forth in Section V of this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) The project is a "major utility facility" as defined in Section 4906.01(B)(2), Revised Code.
- (2) CG&E is a "person" under Section 4906.10(A), Revised Code.
- (3) On December 7, 2004, CG&E held a public informational meeting in Brown County, Ohio.
- (4) On April 15, 2005, CG&E filed a motion requesting waiver of the provision of Rule 4906-05-04(A), O.A.C., that provides that two routes shall be considered as alternatives if not more than 20 percent of the routes are common.
- (5) By entry of May 20, 2005, CG&E's waiver request was granted.
- (6) On June 13, 2005, CG&E filed its application for a certificate for the project.
- (7) By letter dated August 11, 2005, the Board notified CG&E that its application was complete.
- (8) On August 26, 2005, CG&E filed proof of service of the certified application on local officials and libraries in accordance with Rule 4906-5-06, O.A.C.
- (9) By entry of September 9, 2005, a local public hearing was scheduled for December 5, 2005, in Mt. Orab, Ohio, and an evidentiary hearing was scheduled for December 8, 2005, in Columbus, Ohio.
- (10) By entry of December 1, 2005, the local public hearing was rescheduled for January 12, 2006, and staff was granted an extension of time to December 27, 2006, to file the staff report.
- (11) On December 8, 2005, the evidentiary hearing commenced but was continued at the request of the parties.

- (12) December 23, 2005, the staff report was filed, recommending that a certificate be issued for CG&E's preferred route as described in CG&E and subject to the conditions listed in the report.
- (13) On September 28, 2005, and January 17 and 18, 2006, CG&E filed proofs of publication of the first and second newspaper notices regarding the project as required by Rule 4906-5-08, O.A.C.
- (14) A public hearing was held on January 12, 2006, in Mt. Orab, Ohio, at which five public witnesses provided testimony about the project.
- (15) On January 17, 2006, Valley filed a petition to intervene. Valley subsequently withdrew its petition to intervene on February 1, 2006.
- (16) The evidentiary hearing resumed on January 18, 2006, at the offices of the Commission in Columbus, Ohio. At the evidentiary hearing, CG&E responded to the comments received at the public hearing.
- (17) On January 27, 2006, CG&E and staff filed a stipulation.
- (18) The record establishes the need for the project as required by Section 4906.10(A)(1), Revised Code.
- (19) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the project as required by Section 4906.10(A)(2), Revised Code.
- (20) The record establishes that the preferred route for the project, subject to the conditions set forth in this order, 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 as required by Section 4906.10(A)(3), Revised Code.

- (21) The record establishes that the preferred route for the project, subject to the conditions set forth in this order, is consistent with regional plans for expansion of the electric grid for the electric systems serving this state and interconnected utility systems and that the preferred route, subject to the conditions set forth in this order will serve the interests of electric system economy and reliability as required by Section 4906.10(A)(4), Revised Code.
- (22) The record establishes that the preferred route for the project, subject to the conditions set forth in this order, will comply with Chapters 3704, 3734 and 6111, Revised Code, and Sections 1501.33, 1501.34, and 4561.32, Revised Code, and all rules and regulations hereunder, to the extent they apply, as required by Section 4906.10(A)(5), Revised Code.
- (23) The record establishes that the project, subject to the conditions set forth in this order, will serve the public interest, convenience, and necessity as required by Section 4906.10(A)(6), Revised Code.
- (24) The record contains adequate data on the project for the Board to determine the project's impact on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929, Revised Code, within the preferred and alternate sites as required by Section 4906.10(A)(7), Revised Code.
- (25) Inasmuch as water conservation practices are not involved with the project, Section 4906.10(A)(8), Revised Code, does not apply in this circumstance.
- (26) The record evidence provides sufficient factual data to enable the Board to make an informed decision.

ORDER:

It is, therefore,

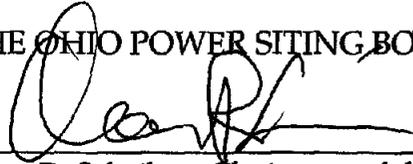
ORDERED, That the stipulation is approved and adopted. It is, further,

ORDERED, That a certificate be issued to CG&E for the construction, operation, and maintenance of the project as proposed along the preferred route. It is, further,

ORDERED, That the certificate contain the 32 conditions set forth in Section V of this Opinion, Order, and Certificate. It is, further,

ORDERED, That a copy of this opinion, order, and certificate be served upon each party of record and any other interested person.

THE OHIO POWER SITING BOARD



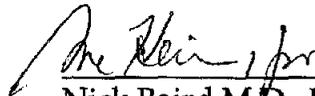
Alan R. Schriber, Chairman of the
Public Utilities Commission of Ohio



Bruce E. Johnson, Board Member
and Director of the Ohio Department
of Development



Samuel W. Speck, Board Member
and Director of the Ohio Department
of Natural Resources



Nick Baird M.D., Board Member
and Director of the Ohio Department
of Health



Joseph Koncelik, Board Member and
Director of the Ohio
Environmental Protection Agency



Fred L. Dailey, Board Member and
Director of the Ohio Department
of Agriculture

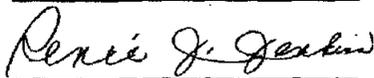


Andrew M. Boatright F.E., Board
Member and Public Member

SEF:ct

Entered in the Journal

MAR 20 2006



Renee J. Jenkins
Secretary