

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for a)
Certificate of Environmental Compatibility) Case No. 05-360-EL-BSB
and Public Need for Commencement of)
Construction of the Hillcrest Substation.)

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 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 a new electric substation called the Hillcrest substation (hereinafter referred to as "the project"), to be located in Brown County. On June 13, 2005, CG&E filed an application for the project. By letter dated August 11, 2005, the Board notified CG&E

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that its application had been found to be complete pursuant Rule 4906-5-05, O.A.C. Thereafter, CG&E filed proof of service of the application on August 26, 2005.

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 on another certificate application filed by CG&E for an overhead electric transmission line. See, *In the Matter of the Application of The Cincinnati Gas & Electric Company for a Certificate of Environmental Compatibility and Public Need for the Hillcrest-Eastwood 138 Kilovolt Transmission Line*, Case No. 05-361-EL-BTX (05-361). 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 continued 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. No petitions to intervene were filed. The evidentiary hearing commenced as scheduled on December 8, 2005, but was recessed at the request of the parties. On December 23, 2005, the staff report was filed. On September 28, 2005, and January 17 and 18, 2006, CG&E filed proof of the public notices, which were timely published in the *Cincinnati Post*, *Cincinnati Enquirer*, *The News Democrat*, and *The Community Press*, pursuant to Rule 4906-5-09, O.A.C.

The local public hearing was held on January 12, 2006, at which five people testified; however, all of their testimony was directed at the transmission line project in 05-361. The evidentiary hearing resumed on January 18, 2006, and staff and CG&E indicated that they had resolved the issues in the case and that they would be filing a settlement agreement. On January 27, 2006, the parties filed a stipulation which resolves all of the issues in the case. Relevant portions of the stipulation will be discussed as appropriate below.

II. Proposed Facility and Siting:

According to the application, the project will be located in Green Township, Brown County, Ohio, beneath the existing CG&E, Columbus Southern Power Company, and Dayton Power and Light Company (DP&L) (collectively CCD) Stuart-Foster 345 kilovolt (kV) transmission line (CG&E Ex. 1, at 01-1). The project will be constructed, owned, and operated by CG&E. The project is a "major utility facility" as defined in Section 4906.01(B)(1), Revised Code. Construction of the project is proposed to begin on July 1, 2006, and is planned to be placed in service by June 30, 2008 (*Id.* at 01-4). In the

application, CG&E explained that it evaluated several potential sites prior to the selection of the preferred and alternate sites, which are fully described in the staff report and in the application (Staff Ex. 1, at 3-7; CG&E Ex. 1, at 01-1).

The preferred site is located three miles north of the city of Mt. Orab and approximately one-third of a mile northwest of the intersection of Greenbush East Road and Hillcrest Road. The substation would occupy seven acres and an associated access road would require an additional two acres, bringing the total land requirement to nine acres for the substation project at the preferred site for which CG&E holds an option. The cost of constructing the substation at the preferred site is projected to be approximately \$6.1 million, with the vast majority of expenditures related to transmission system equipment. (Staff Ex. 1, at 3). The alternate site is also located in Brown County and is approximately 9.9 acres in size. The alternate site is approximately one-quarter of a mile southeast of the preferred site and is situated on the southwest corner of the Greenbush East Road and Hillcrest Road intersection. The cost of constructing the project at the alternate site is projected to be approximately \$6.3 million, with the extra cost (relative to the preferred site) attributed to land acquisition. CG&E currently owns a portion of the alternate site, but would need to purchase two adjacent parcels (*Id.* at 4-5).

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 alternative 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 project will be located beneath the CCD Stuart-Foster-345 kV transmission line and at the northeastern terminus of the Hillcrest-Eastwood 138 kV overhead electric transmission line proposed by CG&E in 05-361. CG&E indicated that, based on its studies, load growth in eastern Clermont County and western Brown County will place significant pressure on the existing electric transmission and distribution system. The installation of the Hillcrest substation will assist in alleviating load issues and increase the electric transmission system's reliability in the area (CG&E Ex. 1, at 02-2). CG&E explained that it conducted load flow studies for the forecasted 2008 summer peak load condition both with and without the substation which demonstrate that the Hillcrest substation will provide long-term reliable distribution and a level of load relief to the system (*Id.* at 02-2).¹ Staff noted that Cinergy Corporation (Cinergy) conducted a load flow study which demonstrated that the Stuart 345/138 transformer, owned by DP&L, is expected to overload its summer emergency capacity for a specific set of single or double contingencies (Staff Ex. 1, at 12). Staff reported that, without the addition of the project, the Stuart transformer is expected to overload its summer emergency capacity (*Id.* at 13). Staff also noted that Cinergy's load flow study demonstrated that the substation will relieve overloading during the 2008 summer conditions and that the project appears justified in that it contributes to maintaining overall system reliability (*Id.* at 12, 13).

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

Under the stipulation, staff and CG&E recommend that the Board find the record establishes the need for the project.

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 made site visits to the project area. In its report, staff found the following with regard to the nature of the probable environmental impact of the facility:

- (1) The project involves the construction of an electric transmission power substation in Brown County. The substation would be intended to both tap the existing Stuart-Foster 345 kV transmission line and connect with the proposed Hillcrest-Eastwood 138 kV transmission line.
- (2) The property that comprises the preferred site is presently located on approximately 32 acres. CG&E has an option to purchase 23 acres of this total for the substation site, and has indicated that a residential property totaling nine acres would be split off. The substation, plus the access drive, would require approximately nine of the 23 acres, with the remaining 14 acres being made available for continued agricultural production. CG&E's alternate site is approximately 9.9 acres in size.
- (3) No residences would be located within the site boundaries, or within 100 feet, of the preferred site. Four residences are within 1,000 feet of the preferred site. Sixteen residences are within 1,000 feet of the alternate site, five of which are located within 100 feet. Two of these five residences would be purchased by CG&E if the alternate site were selected.
- (4) There are no wetlands within either the preferred or alternate site. In addition, neither site contains any streams or ponds.
- (5) Neither the preferred nor alternate site would require tree clearing for development of the facility.
- (6) Both sites are within the historic range of several state and federally-listed threatened or endangered wildlife species. However, as both sites lack the habitat required for these species, it is unlikely that development at either location would impact any threatened or endangered wildlife species.

- (7) Neither the preferred nor alternate site is located within an agricultural district. Therefore no impacts to agricultural districts will result from the construction of the project.
- (8) CG&E completed a phase I cultural assessment at its preferred site. As no significant findings were discovered, there are no specific precautions or avoidance measures required at this site. If the alternate site is selected for development, CG&E will cause a phase I assessment to be completed prior to initiating any construction activities.
- (9) New permanent gravel access roads will be required for the construction and operation of the project at either site. Temporary impacts include dust from the temporary access road and increased truck traffic. Access to the preferred site will be directly from Greenbush East Road to the south of the project, while access to the alternate site would be achieved either via Greenbush East Road to the north or Hillcrest Road to the east.
- (10) Traffic will include construction and delivery truck traffic during the construction of the project. Post-construction traffic related to the substation will be limited to light-duty operation and maintenance trucks limited to daylight hours, except under emergency conditions.
- (11) 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, which may result from construction activities, will be controlled through the use of water sprays and reseeding of disturbed areas. No air emissions will be associated with the operation of the facility.
- (12) A temporary increase in noise during construction will occur at the project site from the use of construction equipment. CG&E states that construction noise will be limited to daylight hours, and that minimal noise impacts are anticipated from the operation of the project.
- (13) As the existing mature trees along the perimeter of the preferred site are to remain, aesthetic impacts are expected to be minimal at the preferred site. The substation will be visible

from the south along Greenbush East Road. The preferred site is in close proximity to an existing transmission line. As such, interconnection with the transmission line will require only minimal additional facilities, minimizing aesthetic impacts associated with the interconnection at the preferred site. In addition, aesthetic impacts will be greater at the alternate site location because of a lack of mature screening vegetation, the presence of more residential units in closer proximity, and the lack of a substantial road setback.

- (14) During operation of the substation, CG&E does not expect sound levels to exceed 61 decibels at the nearest property line.
- (15) CG&E has purchased an option to acquire the preferred site. Not all of the parcels comprising the alternate site are currently owned by CG&E, but will be if the alternate site is certificated. No structures or inhabited dwellings will be removed from the preferred site.
- (16) According to the application, the Clermont County Airport is located approximately 10 miles west-northwest of the proposed sites. The project is expected to have no impact on air traffic.
- (17) No recreational, institutional, commercial, or industrial land uses were identified in the vicinity of either proposed site.
- (18) CG&E expects to commence construction in the early spring of 2006, with the project being placed into service in the summer of 2008.
- (19) Constructing the project at the preferred site is projected to cost \$6.1 million, while construction at the alternate site is projected to cost \$6.3 million.

Id. at 14-16.

Staff recommended that the Board find that the nature of the probable environmental impacts has been determined for the project. Overall, staff determined that the preferred site represents the minimum adverse environmental impact (*Id.* at 20).

In 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 location 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)

CG&E explained that the project is included in its 2004 long-term forecast report and that the substation will maintain system reliability and allow CG&E to cope with projected load growth demands, thereby eliminating projected system overloads throughout the Brown County area (CG&E Ex. 1, at 02-17). CG&E also indicated that the project will provide improved electricity economy and reliability to new and existing customers from its Eastwood substation (*Id.* at 02-18).

In its report, staff noted that an outage of the Stuart-Clinton 345 kV transmission line would cause the Stuart 345/138 kV transformer to overload during the system's normal conditions. Even though the project appears to unload the Stuart 345/138 kV transformer, staff believes that this transformer would still be significantly loaded during its summer emergency capability (Staff Ex. 1, at 21). Staff also recommended that CG&E, jointly with DP&L, continue to monitor the Stuart 345/138 kV transformer. Depending on the monitoring results, CG&E and DP&L may need to develop and implement additional reinforcement directly at the Stuart 345/138 kV transformer bank in the near future to improve power transfer capability. Such improvements could aid in avoiding future system limitations, which in turn would enhance overall system reliability of the Cinergy and regional transmission grid. Staff recommended that the Board find that the need for the project is consistent with regional plans for expansion of the regional power grid and will insure economy and reliability in the electric system (*Id.* at 21).

As part of the stipulation, the parties 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)

Staff determined 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 facility. CG&E has agreed to control fugitive dust by water spray, when necessary, in order to comply with Ohio's fugitive dust requirements (*Id.* at 22). Staff also noted that neither construction nor operation of the facility 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. The application indicated that no surface water bodies are located on either the preferred or alternate site. However, CG&E states that indirect impacts to surface water bodies could occur through erosion from construction activities near streams or wetlands. Staff reported that CG&E has indicated that a storm water pollution prevention plan will be developed, and implemented, to minimize any possible erosion related impacts. Thus, construction of the project will comply with requirements of Chapter 6111, Revised Code. (*Id.*) Also, staff states that CG&E's solid waste program will 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. All construction-related debris will be disposed of in approved landfills. Tree clearing will not be necessary at either site, so woody debris will not be generated through construction activities.

As noted by staff, there are no air transportation facilities within 1,000 feet of either the preferred or alternate site. In compliance with Section 4561.32, Revised Code, staff contacted the Ohio Office of Aviation (OOA) during a review of this application in order to coordinate review of potential impacts the facility might have on local airports. At the time of the preparation of this decision, no project concerns had been raised by OOA (*Id.*). 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 will comply with Chapters 3704, 3734, and 6111, Revised Code, Sections 1501.33, 1501.34, and 4561.32, Revised Code, and all regulations adopted thereunder, 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 indicated that sources of electromagnetic fields (EMF) at electric substations include power distribution equipment such as transformers, switchgear, buses, feeders, service panels, and general wiring. CG&E noted that the maximum predicted EMF levels for the project are well below the 24-hour reference levels for public exposure (CG&E Ex. 1, at 06-11). CG&E also reported that no additional radio or television interference should result from the operation of the substation at either the preferred or alternate site (*Id.*). In its report, staff stated that radio and television interference should be insignificant under normal weather conditions. During inclement weather, some interference might be encountered in close proximity to the substation; however, should such interference occur, staff indicated that CG&E will correct the anomaly and restore reception to pre-construction levels (Staff Ex. 1, at 24). EMF levels were calculated at the fence line of the substation. The magnetic fields were projected to be in an amount that is consistent with magnetic fields generated by existing substations.

The electric fields are easily shielded by walls and foliage. Hence, staff concluded that the substation should not pose any health effects. Staff also noted that the project will comply with safety standards and equipment specifications set by the Occupational Safety Health Administration and the Commission, and that CG&E has designed the facility to meet or exceed the requirements of the National Electric Safety Code. 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)

CG&E reported that the 22.7-acre parcel comprising the preferred site is agricultural cropland last used for soybean cultivation and that agricultural cropland is also the dominant land-use within 1,000 feet of both the preferred and alternate sites (CG&E Ex. 1, at 07-3). CG&E also reported that the entire 22.7 acres of agricultural land comprising the preferred site will be converted to substation use if this site is selected and that approximately eight acres of old-field habitat at the alternate site will be converted to substation use if this site is selected (*Id.* at 07-7). Staff noted that, as stated in the application, there is no agricultural district land located within the preferred or alternate site, or within 1,000 feet of either the preferred or alternate site. Land is classified as agricultural district land through an application and approval process that is administered through local county auditor offices (Staff Ex. 1, at 25). However, the preferred site has been used for agricultural production recently. Staff concluded that there will be no direct or indirect impacts to agricultural district lands at either site. Staff also indicated that construction and operation of the project at the preferred site will result in the conversion of nine acres of land, previously used for farming, to comprise the substation footprint and access road (*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 stipulated that, as required by Section 4906.10(A)(8), Revised Code, the record established

that the project incorporates maximum feasible water conservation practices, considering available technology and the nature and economics of the various alternatives.

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 site 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 site, as described in the application, subject to the 18 conditions identified below (*Id.* at 2-6).²

- (1) The facility be installed at CG&E's preferred site as presented in the application filed on June 13, 2005.
- (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 this 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 20 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 greater than 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 the staff within seven days of receipt. Prior to construction, the construction Storm Water Pollution Prevention Plan shall be submitted to the staff for review and acceptance.
- (5) CG&E shall remove all temporary gravel and other construction laydown 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 damage 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 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.
- (9) CG&E shall dispose all contaminated soil and all construction debris in approved landfills in accordance with OEPA regulations.
 - (10) 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.
 - (11) CG&E shall conduct a pre-construction conference prior to the start of any project work, which staff shall attend, to discuss how any construction concerns will be satisfactorily addressed.
 - (12) 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 substation project, 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.
 - (13) CG&E shall not remove any existing trees from the perimeter of the preferred substation property.
 - (14) Additional vegetative screening shall be added at the southwest property line and to the south of the substation fence line as a means of addressing visual and sound impacts associated with the project. CG&E shall submit a landscape plan for staff review and approval at least 30 days prior to construction.
 - (15) If the Board selects the preferred site, then CG&E will obtain ownership of the 23-acre parcel prior to commencement of construction.

- (16) If the Board selects the alternate site, 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 commencing construction.
- (17) CG&E shall provide to the 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.
- (18) 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 site, as described in the application filed with the Board on June 13, 2005, and subject to the conditions set forth therein (Jt. Ex. 1, at 11). 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 established in Section 4906.10(A), Revised Code, are satisfied for the construction, operation, and maintenance of the project using the preferred site and subject to the conditions set forth in the stipulation.

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, at the preferred site and subject to the 18 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)(1), Revised Code.
- (2) CG&E is a "person" under Section 4906.10(A), Revised Code.

- (3) A public informational meeting was held in Brown County, Ohio, on December 7, 2004.
- (4) On June 13, 2005, CG&E filed its application for a certificate for the project.
- (5) By letter dated August 11, 2005, the Board notified CG&E that its application was complete.
- (6) 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.
- (7) 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.
- (8) By entry of December 1, 2005, the public hearing was continued to January 12, 2006.
- (9) On December 23, 2005, the staff report was filed, recommending that a certificate be issued for the project at CG&E's preferred site as described in the application and subject to the conditions listed in the report.
- (10) On September 28, 2005, and on 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.
- (11) A public hearing was held on January 12, 2006, at the Western Brown High School in Mt. Orab, Ohio.
- (12) The evidentiary hearing was held on December 8, 2005, and resumed on January 18, 2006, at the offices of the Commission in Columbus, Ohio.
- (13) The parties filed a stipulation on January 27, 2006.

- (14) The record establishes the need for the project as required by Section 4906.10(A)(1), Revised Code.
- (15) 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.
- (16) The record establishes that the preferred site for the project, as 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.
- (17) The record establishes that the preferred site for the project, as 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 this facility will serve the interests of electric system economy and reliability as required by Section 4906.10(A)(4), Revised Code.
- (18) The record establishes that the preferred site for the project, as 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 thereunder, to the extent they apply, as required by Section 4906.10(A)(5), Revised Code.
- (19) The record establishes that the project, as 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.
- (20) 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, as required by Section 4906.10(A)(7), Revised Code.

- (21) Inasmuch as water conservation practices are not involved with the project, Section 4906.10(A)(8), Revised Code, does not apply in this circumstance.
- (22) The record evidence provides sufficient factual data to enable the Board to make an informed decision.

ORDER:

It is, therefore,

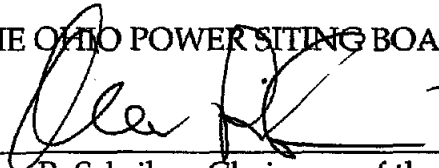
ORDERED, That the stipulation is approved and adopted. It is, further,

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

ORDERED, That the certificate contain the 18 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



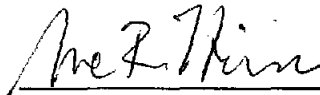
Alan R. Schriber, Chairman of the
Public Utilities Commission of Ohio



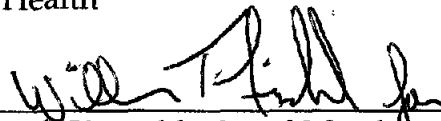
Bruce E. Johnson, Board Member
and Director of the Ohio Department
of Development



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

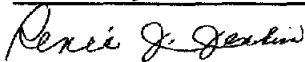


Andrew M. Boatright P.E., Board
Member and Public Member

SEF:ct

Entered in the Journal

MAR 20 2008



Renee J. Jenkins
Secretary