

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of Duke)
Energy Ohio, Inc., for a Certificate of)
Environmental Compatibility and Public) Case No. 16-253-GA-BTX
Need for the C314V Central Corridor)
Pipeline Extension Project.)

**REPLY OF DUKE ENERGY OHIO, INC.,
TO MEMORANDA CONTRA MOTION FOR WAIVER**

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company), pursuant to O.A.C. 4906-2-27(B)(2), hereby submits to the Ohio Power Siting Board (Board) its reply to two memoranda (Memorandum or, jointly, Memoranda) contra the Company's motion for a waiver, filed by NOPE – Neighbors Opposed to Pipeline Extension LLC (NOPE) and the City of Madeira (Madeira) on September 28, 2016.

The matter in dispute relates to Duke Energy Ohio's motion, seeking confirmation from the Board that it has satisfied the requirement that it hold at least one "informational meeting open to the public . . . in the area in which the project is located."¹ The Company believes that this requirement has been more than satisfied through the holding of three informational meetings, at various locations. Furthermore, Duke Energy Ohio is continuing, and increasing, its regular communications with customers and communities. However, out of an abundance of caution, the Company filed a motion for a waiver of that rule, to the extent the Board deems that changes in the specifications of the pipe to be constructed would otherwise trigger a need for an additional such meeting. NOPE and Madeira oppose Duke Energy Ohio's motion, asking the

¹ O.A.C. 4906-3-03(B).

Board to require yet another informational meeting. They ignore the fact that there have not been any substantial changes to the proposed routes since the time of the third of three public meetings. And they fail to mention that the changes in pipe specification that have been made are reductions; these changes would only reduce any effect of the pipeline, as compared with the proposal that was discussed with the public at the three informational meetings.

Madeira argues that the requirement in O.A.C. 4906-3-03(B)(3) for additional mailings in the event of location changes is irrelevant.² Although Duke Energy Ohio does not dispute that such rule does not provide a definition of the “substantial changes,” it nevertheless believes that this section is instructive. The Board, under R.C. 4906.03, has jurisdiction over the location – that is, the siting, of a proposed natural gas transmission line. The changes that the Company made in its plans, taking into account the input it receive from the public, did not relate to the siting of its line. The Board’s rules, as written, make provision for due process. To the extent interested persons wish to participate, there are adequate procedural safeguards in place.

Madeira also suggests that the Board extend the deadline for opposing the Company’s motion, so that any potential intervenor might have an opportunity to join in the argument.³ This, however, is not the Board’s normal procedure. As the Board is aware, procedural matters are, and must be, decided as they arise, without waiting for additional parties to make their interest known. Such an approach, as suggested by Madeira, would extend a proceeding almost indefinitely.

NOPE also opposes the motion. It begins by asserting that the Company has not scheduled any public meeting to discuss what it terms a “revised Application.”⁴ But the

² Madeira’s Memorandum Contra to Duke Energy Ohio, Inc.’s Motion for Waiver (Madeira’s Memorandum), pg. 1.

³ Madeira’s Memorandum, pp. 1-2.

⁴ NOPE’s Memorandum Contra to the Motion for Waiver by Duke Energy Ohio, Inc. (NOPE’s Memorandum), pp. 2, 3 (September 28, 2016).

Company has only filed one Application. That Application has not been “revised.” Furthermore, and more importantly, NOPE apparently believes that the informational meeting required by O.A.C. 4906-3-03(B) should or could be held after the filing of an application. “To date, the company has not scheduled a public meeting to discuss its revised Application . . .”⁵ The rule in question, however, requires such meetings to be held prior to the filing date. The Company has held three public meetings and, again, has not revised its Application.

NOPE also asserts that Duke Energy Ohio “modified its preferred route.”⁶ Although there were several, small route modifications prior to the third informational meeting, that has not been the case since that time. Both the preferred route and the alternate route are almost identical to the “orange” and “green” routes presented at the third meeting and very similar to what was presented at the first and second meetings. NOPE makes the claim that the preferred route is modified, but does not back that claim up with any facts or citations to the Application.

NOPE next argues that the design and risk factors have changed substantially, claiming that such changes should be presented to the public for comment. But NOPE fails to acknowledge that these changes were made by the Company in direct response to the countless comments received from the public, including NOPE and its members, commenting about the design and risk factors. By decreasing the diameter and operating pressure, the Company is taking into account the public concerns. The public information program established by O.A.C. 4906-3-03 was not designed as an endless back-and-forth between members of the public and applicants for certificates. The Company presented its ideas to the public. The public provided input. The Company took that input into account as it prepared its Application for filing. The letter and the spirit of the rule have been fulfilled.

⁵ NOPE Memorandum, pp. 2-3.

⁶ NOPE Memorandum, pg. 4.

NOPE's final argument suggests that another informational meeting must be held on the ground that the Application contains "new information . . . that was not previously considered by members of the public."⁷ This is far beyond the scope of the public information program established by the Board. Rather, those rules require disclosure of "a basic description of the project [including] information about the anticipated function, equipment size, approximate areal extent, general location, schedule, and purpose of the project." Duke Energy Ohio disclosed all of that information, and more. Public comment regarding the project has been solicited, received (in unprecedented numbers), heard, and acted upon. That the Application included greater detail is normal and unavoidable.

Duke Energy Ohio respectfully requests that the Board either find that no waiver is necessary or, in the alternative, grant its motion for a waiver.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



Amy B. Spiller (0047277)

Deputy General Counsel

Jeanne W. Kingery (0012172) (Counsel of Record)

Associate General Counsel

139 E. Fourth Street, 1303-Main

Cincinnati, Ohio 45201

(614) 222-1334 (telephone)

(614) 222-1337 (facsimile)

Amy.Spiller@duke-energy.com

Jeanne.Kingery@duke-energy.com

⁷ NOPE Memorandum, pp. 5-6.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal, or electronic mail, on this 4th day of October, 2016, to the parties listed below.


Jeanne W. Kingery

William Wright
Section Chief
Robert Eubanks
Assistant Attorney General
Public Utilities Section
180 East Broad St., 6th Floor
Columbus, Ohio 43215

William.wright@ohioattorneygeneral.gov
Robert.eubanks@ohioattorneygeneral.gov

Counsel for Staff of the Commission

James Yskamp
Emily A. Collins
Fair Shake Environmental Legal Services
159 S. Main Street, Suite 1030
Akron, OH 44308

jyskamp@fairshake-els.org
ecollins@fairshake-els.org

**Counsel for NOPE – Neighbors
Opposed to Pipeline Extension, LLC**

Brian W. Fox
Graydon Head & Ritchey LLP
312 Walnut St. Suite 1800
Cincinnati, OH 45202

bfox@graydonlaw

**Counsel for Mayor Melisa Adrien,
City of Madeira**

Anthony and Joan Boiano
9528 Bluewing Terrace
Blue Ash, OH 45241

Thomas and Patricia Kreitinger
6150 St. Regis Drive
Cincinnati, OH 45236