

**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. 16-0253-GA-BTX
Need for the C314V Central Corridor :
Pipeline Extension Project :**

**BRE DDR CROCODILE SYCAMORE SQUARE LLC'S
PETITION FOR LEAVE TO INTERVENE**

Pursuant to O.A.C. 4906-2-12(A)(2), BRE DDR Crocodile Sycamore Square LLC ("DDR") respectfully petitions the Ohio Power Siting Board (the "Board") for leave to intervene in the above captioned proceeding. DDR has a significant interest in the outcome of this proceeding; DDR's interests are not adequately represented by existing parties; DDR will contribute to a just and expeditious resolution of the issues before the Board; and DDR's intervention will neither delay the proceeding nor prejudice any existing party. A Memorandum in Support of this Petition is attached hereto for the Board's consideration.

Respectfully submitted,

s/ Richard B. Tranter

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MEMORANDUM IN SUPPORT OF PETITION FOR LEAVE TO INTERVENE

I. INTRODUCTION

BRE DDR Crocodile Sycamore Square LLC (“DDR”) petitions the Ohio Power Siting Board (the “Board”) for permission to intervene as a party who will be directly and significantly affected by the outcome in this matter. Duke Energy Ohio, Inc. (“Duke”) filed an Application for Certificate of Environmental Compatibility and Public Need for the C134V Central Corridor Pipeline Extension Project with the Board requesting approval to construct a natural gas pipeline through numerous communities in the Cincinnati area (the “Pipeline Project”). As currently proposed, the pipeline, measuring 20 inches in diameter and operating at 400 psig, will extend some 13 or 14 miles along one of two alternative routes commencing at a location near the intersection of Hamilton, Warren, and Butler Counties and terminating in either Norwood (the “Alternative Route”) or Fairfax (the “Preferred Route”).

DDR owns and operates Kenwood Square, an approximate 31-acre shopping center located at the intersection of Kenwood Road and Montgomery Road (the “Square”). The Square includes an approximate 260,000 square-foot main building and several outlot buildings occupied by multiple retail sales, service, and restaurant tenants.

The Square is situated along the Preferred Route of the Pipeline Project. As depicted in **Exhibit A** attached hereto, the pipeline would substantially encroach upon the Square property, disturbing portions of the Square's parking field, internal drives, utility lines and facilities, and access points on Kenwood Road.

II. CASE HISTORY

On September 13, 2016, Duke filed with the Board an Application for Certificate of Environmental Compatibility and Public Need for the Pipeline Project (the "Application"). On January 20, 2017, prior to a determination by the chairman of the Board whether to accept the Application as complete, *see* O.A.C. 4906-3-06(A), Duke filed an Amended Application for Certificate of Environmental Compatibility and Public (the "Amended Application"). In the Amended Application, Duke proposed adjustments to the pipeline routes, along with other changes. Duke subsequently filed supplements to the Amended Application on February 13, 2017 and March 3, 2017, and a correction to the Amended Application on February 24, 2017.

On March 3, the Board advised Duke that the Amended Application had been accepted as complete. On March 30, 2017, Duke notified the Board that service on local officials of certified copies of the accepted Amended Application was completed on March 23, 2017.

On April 13, 2017, the Administrative Law Judge entered an order which, among other things, set a deadline for the filing of the intervention petitions as the later of: (a) the 30th day following the publication of the initial notice under O.R.C. 4906.06(C), or (b) May 31, 2017.

III. LEGAL STANDARD

The Board shall grant a petition for leave to intervene if the petitioner can show good cause. O.A.C. 4906-2-12(B). "In deciding whether to permit intervention ... the board ... may consider:

- (a) The nature and extent of the person's interest.
- (b) The extent to which the person's interest is represented by existing parties.
- (c) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding.
- (d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.”

O.A.C. 4906-2-12(B)(1).

IV. ARGUMENT

For the following reasons, DDR has good cause to intervene in this matter, and the Petition should therefore be granted.

A. DDR has a Direct and Substantial Interest in the Outcome of these Proceedings

The first factor that the Board may consider is the nature and extent of the Petitioner’s interest. DDR has a compelling interest in the outcome of this matter because the Square is situated directly in the path of the Preferred Route. If the Board were to approve the Preferred Route, more than 1,000 feet of the pipeline would be installed on the Square property. DDR would be forced to grant Duke easements on its property for the pipeline, and future redevelopment opportunities would be restricted or precluded. Moreover, construction of the pipeline on the Square will disrupt two of the Square’s three access points, greatly complicate vehicular movement, and disrupt utility lines and facilities. In addition to the substantial long-term risks of personal injury and property damage associated with the presence of the pipeline on the Square, the disruption during the construction phase alone will likely have adverse consequences for the Square and its tenants.

B. DDR's Interests in this Matter are not Adequately Represented by the Current Parties

The second factor the Board may consider is the extent to which the Petitioner's interests are represented by existing parties. As of April 21, 2017 the online information repository for this case maintained by the Public Utilities Commission of Ohio identified the following as parties of record:

Duke Energy

Public Utilities Commission of Ohio

Anthony and Joan Boiano

Thomas A. and Patricia H. Kreitingner

In addition to the foregoing parties of record, the following municipalities and townships have noticed their intention to intervene (collectively, the "Public Intervenors"):

Amberley Village, Ohio
Scott Lahrmer, Village Manager

Board of County Commissioners of Hamilton County, Ohio
Jeff Aluotto, County Administrator

City of Blue Ash
David Waltz, City Manager

City of Cincinnati
Harry Black, City Manager

City of Deer Park
John Donnellon, Mayor

City of Madeira
Melisa Adrien, Mayor

City of Reading
Patrick G. Ross, Safety Service Director

Columbia Township
David Kubicki, President, Board of Trustees

Sycamore Township
Thomas J. Weidman, President, Board of Township Trustees

Village of Evendale, Hamilton County
Richard Finan, Mayor

Village of Golf Manor, Ohio
Ron Hirth, Mayor

Finally, the following two parties have filed petitions for leave to intervene which are currently pending before the Board (collectively, the “Private Intervenors”):

Neighbors Opposed to Pipeline Extension, LLC

Pleasant Ridge Community Council

The Jewish Hospital

IGS Energy

DDR’s interest as owner and operator of a multi-tenant shopping center will not be adequately represented by the current parties of record or the intervening parties.

Duke is the applicant and proponent of the Pipeline project, and therefore does not represent the interests of DDR.

The Public Utilities Commission of Ohio, which includes the Board, is charged with evaluating and adjudicating the Pipeline Project, not representing the interests of any particular party.

The Boianos and Kreitingers are individual parties, and, as such, can be expected to represent their own respective interests.

Similarly, the Public Intervenors will represent the concerns of their respective communities.

Finally, the Private Intervenors are organizations comprised of individual residents. Although the organizations arguably represent the interests of broader groups, they nonetheless

do not represent the interests of a commercial landowner like DDR. The Pipeline Project would uniquely impact DDR because of the particular configuration of the buildings and other improvements on the Square, as currently constructed and as contemplated in the future. The Pipeline Project would disproportionately impact the Square's vehicle access by disrupting two of the three access points to the Square property, as well as internal vehicular movement, parking, and utility lines and facilities on and serving the Square. DDR alone can fully understand the adverse implications that the Preferred Path of the pipeline would have on the Square property. It is clear that only DDR will be capable of ensuring that its interests are fairly represented in this matter.

C. DDR will make Important Contributions to a Just and Expeditious Resolution of this Matter

The third factor the Board may consider is whether the Petitioner will contribute to a just and expeditious resolution of the matter. DDR's contribution will indeed contribute to a just and expeditious resolution of this matter in several ways. First, because DDR stands to be deeply impacted by the Pipeline Project, a just resolution requires that DDR be heard.

Second, as the owner of a major shopping center, DDR will bring a unique perspective to the proceedings. Shopping centers are recognized as community gathering centers where large numbers of area residents congregate. Any large concentration of individuals in a single location raises serious personal safety concerns, and a thorough evaluation of the Pipeline Project necessarily demands consideration of the heightened risks resulting from the construction and operation of the pipeline in heavily populated zones.

Finally, DDR's participation in this matter will obviate the need for any the Square's tenants to intervene, as DDR's interests and the interests of the Square tenants are aligned as they relate to the Pipeline Project on this Site.

D. DDR's Participation in this Matter will neither Unduly Delay the Proceeding nor Unjustly Prejudice an Existing Party

Far from causing undue delay, permitting DDR to intervene would allow for a more thorough review of the issues that the Board must consider. As the owner of a large retail development, DDR will bring a perspective to the proceedings that would not be represented by the current parties of record. Further, this Petition has been filed within the period prescribed by the Administrative Law Judge.

Finally, DDR's participation would not unjustly prejudice any party. Indeed, given the significant impact on DDR if the Board were to approve the Pipeline Project and the Preferred Route, denying DDR the opportunity to participate in the proceedings would unjustly prejudice DDR.

V. CONCLUSION

For the foregoing reasons, DDR has demonstrated good cause to intervene in these proceedings, and thus DDR's Petition for Leave to Intervene should be granted.

Respectfully submitted,

s/ Richard B. Tranter

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Leave to Intervene was served on all parties who have electronically subscribed to this case through the Docketing Information System of the Public Utilities Commission of Ohio and the Ohio Power Siting Board on this 21st day of April, 2017. The docketing division's e-filing system will electronically serve notice of the filing of this document on the following parties:

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The following parties have not be served via the email notice and have been served by regular U.S. Mail on the same date indicated above:

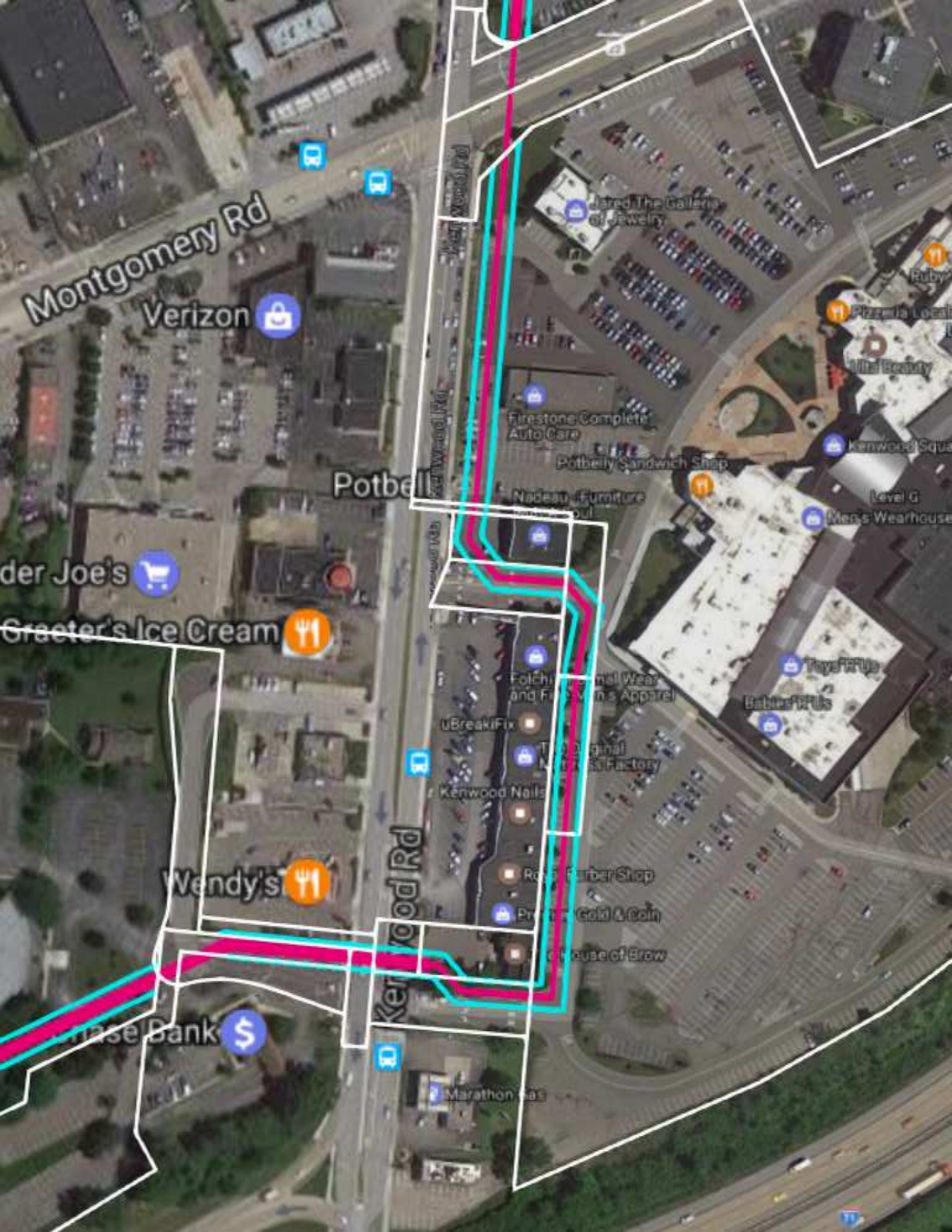
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s/ Richard B. Tranter
Richard B. Tranter

Exhibit A

(see attached)



Montgomery Rd

Verizon

Potbelly

Under Joe's

Graeter's Ice Cream

Wendy's

Chase Bank

Kenwood Rd

Jared The Galleria of Jewelry

Firestone Complete Auto Care

Potbelly Sandwich Shop

Nadeau Furniture

Folchi Personal Wear and Fine Men's Apparel

uBreakiFix

The Original Mattress Factory

Kenwood Nails

Royal Barber Shop

Premier Gold & Coin

House of Brow

Marathon Gas

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in

Case No(s). 16-0253-GA-BTX

Summary: Petition for Leave to Intervene electronically filed by Mr. Richard B Tranter on behalf of BRE DDR Crocodile Sycamore Plaza, LLC