

From: [Puco ContactOPSB](#)
To: [Puco Docketing](#)
Subject: FW: 16-253-GA-BTX - Comment on OPSB Lack of Legal Jurisdiction
Date: Monday, May 15, 2017 11:46:22 AM

From: joreilly@fuse.net [mailto:joreilly@fuse.net]
Sent: Monday, May 15, 2017 11:14 AM
To: Puco ContactOPSB <contactopsb@puco.ohio.gov>
Subject: 16-253-GA-BTX - Comment on OPSB Lack of Legal Jurisdiction

16-253-GA-BTX

1. I request the opportunity to participate orally in making comments at the June 15 public hearing to be held in Blue Ash, Ohio. This submission is separate from those comments.
2. I am an individual and am not an intervenor. My city is outside the planned route for the Duke methane superhighway. I am not employed by any intervenor.
3. I taught hundreds of law students in the specialized area of federal and state administrative law for 25 years, chaired the American Bar Assn. Section of Administrative Law & Regulatory Practice, testified in Congress six times, served as an expert consultant to the FTC, EPA and Administrative Conference of the United States, and was one of the international experts on the European Commission project for improvement of its regulatory activities in 2005-6.
4. My textbooks include the standard reference work on "Federal Preemption of State & Local Laws" published by the American Bar Assn. Press, as well as 49 other texts and treatises.
5. The OPSB appears to lack jurisdiction over this portion of Duke Energy's cross-border interstate movement of natural gas. The Natural Gas Act is the foundation of federal preemption of state gas pipeline regulation. The Duke pleadings, including the most recent public statements and responses to discovery requests, as well as the Duke Public Informational Hearing statements in that required public hearing, repeatedly emphasize the terms "balance" regarding cross-border gas movement. Duke makes numerous references to a Northern Kentucky propane "peaking plant" and has emphasized in the Public Informational Meeting that this gas flows to the south to a "gate" across the Ohio River and that the commodity gas transported by Duke had formerly flowed north through Kentucky.
6. In my treatise, The Law of Fracking, I address the large volumes of Marcellus Shale and Utica Shale flowing out of Ohio to the southwest for chemical factories and for export as liquidized natural gas. Duke's profitable plans to carry gas into Kentucky are intentionally dependent on this project as one piece of an interstate movement. At no time in the record does Duke officially disclaim the intent to maximize its profits by carriage of gas into Kentucky.
7. Duke's 13-mile pipeline proposal does not have any of the typical points of local delivery, but is a direct massive pipe through these PHMSA-classified High Consequence Areas to deliver the gas via Fairfax across the river on existing pipes into the Kentucky "balance" and

from there, presumably, to other interstate destinations to the south and southwest.

8. The eventual outcome of the hearings will probably rebut the claims of need and the claims that the environmental safety of this shallow pipe could be justified. Even apart from those elements, the Duke statements about the integral role of the Kentucky "balance" make this an interstate project and not solely an Ohio licensure.

9. Therefore the project belongs in a Federal Energy Regulatory Commission proceeding. OPSB should dismiss for lack of Ohio-exclusive jurisdiction. Thank you for your consideration.

Prof. James T. O'Reilly

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Summary: Public Comment electronically filed by Docketing Staff on behalf of Docketing