

**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 )  
Need for the C314V Central Corridor )  
Pipeline Extension Project. )

Case No. 16-253-GA-BTX

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**THE CITY OF BLUE ASH’S OBJECTIONS AND RESPONSES TO DUKE  
ENERGY OHIO’S FIRST SET OF INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS**

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The City of Blue Ash (“Blue Ash”), by and through counsel, hereby submits the following objections and responses to Duke Energy Ohio, Inc.’s (“Duke”) First Set of Interrogatories and Request for Production of Documents (“Discovery Requests”):

**PRELIMINARY STATEMENT**

These responses are made solely for the purpose of this litigation. These responses represent Blue Ash’s diligent and best efforts to respond to the Discovery Requests based on the investigations Blue Ash has thus far performed in connection with the this litigation. There may exist further information responsive to the Discovery Requests that is not within Blue Ash’s present knowledge or reasonably available to it. There may also exist documents relating to the subject matter of the Discovery Requests that Blue Ash has not yet located, identified, or reviewed, despite its best efforts to do so. Further, there may exist persons with knowledge relating to the subject matter contained in the Discovery Requests of whom Blue Ash is not presently aware or of whom Blue Ash has not yet conducted interviews.

Accordingly, these responses are based upon the facts and information now known to Blue Ash as well as its present analysis of this litigation, and do not constitute an admission or representation that additional facts, documents, or witnesses having knowledge relevant to the subject matter of discovery do not exist. As this litigation proceeds, Blue Ash anticipates it may discover or identify other facts, documents, or witnesses. Blue Ash reserves the right to alter, supplement, amend, or otherwise modify these responses in any way and at any time.

Except for the explicit facts stated herein, no incidental admissions are intended. The fact that Blue Ash responded to any of the Discovery Requests is not an admission that it accepts or admits the existence of facts set forth or assumed by any Discovery Request, or that such responses constituted admissible evidence. That Blue Ash answered all or part of any Discovery Request is not intended as, and shall not be construed to be, a waiver of all or any part of any objections to the Discovery Request. Blue Ash will follow Duke's instructions only to the extent required by the applicable provisions of the Ohio Revised Code, the Ohio Administrative Code, and/or the Ohio Power Siting Board's (the "Board") Local Rules and orders.

### **GENERAL OBJECTIONS**

1. Blue Ash objects to the Discovery Requests insofar as they are vague, ambiguous, overly broad or burdensome, not proportional to the needs of the case, or not relevant to any party's claims or defenses. Blue Ash objects to the Discovery Requests insofar as they seek information and/or documents that are not reasonably related to the underlying litigation.

2. Blue Ash objects to the Discovery Requests insofar as they seek information and/or documents that are confidential and protected by the attorney-

client privilege or attorney work-product doctrine, including trial preparation materials. Any information covered by this general objection will not be produced.

3. Blue Ash objects to the Discovery Requests insofar as they seek information and/or documents that are confidential and proprietary business or private information. Confidential or private information which is otherwise discoverable will only be provided subject to the terms of a protective order.

4. Blue Ash objects to the Discovery Requests insofar as they ask Blue Ash to provide information and/or documents that are not within Blue Ash's possession, custody, or control, or thereby compel Blue Ash to speculate when answering.

5. Blue Ash objects to the Discovery Requests insofar as they require answers or the production of documents that are neither appropriate nor required under applicable Ohio law. Thus, Blue Ash has no obligation to: (a) generate documents not currently existing; (b) describe any unsuccessful efforts to respond to any Discovery Request; (c) locate any document or tangible thing not in its possession, custody, or control; (d) add to or change the meaning of any Discovery Request in the conjunctive or disjunctive; or (e) respond to any portion or aspect of a Discovery Request not described with reasonable particularity by the express language of the Discovery Request.

6. Blue Ash's responses to the Discovery Requests do not concede the relevancy, materiality, or admissibility of the information and/or documents produced and are made without prejudice to Blue Ash's right to object to further discovery. Blue Ash's answers are subject to, and without waiver of, any objection to the competency, overbreadth, relevancy, materiality, privileged nature or admissibility of the information, and/or documents produced for any other purpose.

7. Blue Ash objects to these Discovery Requests to the extent they seek to require it to identify or produce documents that are equally available to Duke as they are to Blue Ash.

8. Blue Ash objects to each Discovery Request that asks it to identify and/or produce “each and every” or “all” documents or other things of a certain description. Blue Ash objects to each such Discovery Request because seeking “each and every” or “all” information, documents, or other things in the context of this litigation is overly broad and unduly burdensome. Such Discovery Requests seek information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

9. In answering the Discovery Requests, Blue Ash may or may not specifically reference a General Objection. If Blue Ash does not specifically reference a General Objection in answering a particular Discovery Request, the General Objections remain applicable to that Discovery Request.

10. Blue Ash reserves the right to object to the use of any answer produced pursuant to these Discovery Requests in any subsequent proceeding or in the trial of this or any other action on any grounds.

11. Blue Ash reserves the right at any time to revise, correct, add to, or clarify any of the responses herein.

Without waiving the foregoing objections, Blue Ash responds to the Discovery Requests as follows:

### **INTERROGATORIES**

1. Identify each person who answered or furnished information or documents, or assisted in answering or in furnishing any information or documents, used in

answering any of these Interrogatories and/or Requests for Production of Documents, and identify each Interrogatory and/or Document Request for which such person participated in the response.

**RESPONSE:** Blue Ash objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work product doctrine. Notwithstanding this objection and without waiving it, Blue Ash hereby identifies Gordon M. Perry, Blue Ash's Public Works Director.

2. Identify each person whom the City of Blue Ash intends to call to testify at the hearings in the above-captioned matters. To the extent the City of Blue Ash claims that it has not made a final determination as to which witnesses it intends to call to testify on its behalf, please supplement this response as soon as such a determination is made.

**RESPONSE:** Objection. This Interrogatory is premature to the extent it seeks disclosure of Blue Ash's witness lists. Blue Ash will supplement its response in accordance with the Board's December 18, 2018 Order. Notwithstanding this objection and without waiving it, Blue Ash intends to call Gordon Perry as a fact and expert witness at any hearings in this matter. Further answering, Blue Ash reserves the right to call any fact or expert witness identified by any other party in this matter.

3. For each person identified in response to Interrogatory No. 2 above, please state (1) the subject matter upon which the witness is expected to testify; (2) the facts to which each witness is expected to testify; (3) the opinions to be rendered by each witness; (4) a summary of the witness's qualifications to provide the testimony; and (5) a summary of each witness's testimony. To the extent the City of Blue Ash claims that it has not made a final determination as to witnesses it intends to call to testify, please supplement this response as soon as such a determination is made.

**RESPONSE:** Objection. This Interrogatory is overbroad and unduly burdensome. Further objecting, this Interrogatory is premature. Blue Ash will supplement its response in accordance with the Board's December 18, 2018 Order. Notwithstanding these objections and without waiving them, the subject matter of Gordon Perry's expert and fact testimony will be provided in accordance with the Board's December 18, 2018 Order.

4. Please identify each expert whom the City of Blue Ash has retained or is in the process of retaining to testify in the above-captioned proceedings. If the response indicates that a decision has not been made, please supplement the response as soon as the decision is made.

**RESPONSE:** See Objections and Response to Interrogatory No. 2, above. Further answering, Blue Ash reserves the right to call any expert witnesses identified by any other party in this matter.

5. For each expert identified in response to Interrogatory No. 4 above, please state (1) the subject matter upon which the witness is expected to testify; (2) the facts to which each expert is expected to testify; (3) the opinions to be rendered by each expert; (4) a summary of the expert's qualifications to provide the testimony; and (5) a summary of each expert's testimony.

**RESPONSE:** See Objections and Response to Interrogatory No. 2, above. Blue Ash will supplement its response in accordance with the Board's December 18, 2018 Order. Further answering, Blue Ash reserves the right to call any expert witnesses identified by any other party in this matter.

6. For each witness identified in response to Interrogatory Nos. 2 or 4 above, please identify all proceedings in all jurisdictions in which the witness has offered evidence, including but not limited to, pre-filed testimony, sworn statements, and live testimony. For each response, please provide the following:
- (a) the jurisdiction in which the testimony or statement was pre-filed, offered, given, or admitted into the record;
  - (b) the administrative agency and/or court in which the testimony or statement was pre-filed, offered, admitted, or given;
  - (c) the date(s) the testimony or statement was pre-filed, offered, admitted, or given;
  - (d) the identifying number for the case or proceeding in which the testimony or statement was pre-filed, offered, admitted, or given;
  - (e) whether the witness was cross-examined; and

(f) the custodian of the transcripts and pre-filed testimony or statements for each proceeding.

**RESPONSE:** Objection. This Interrogatory is overbroad, unduly burdensome, and seeks the production of information that is neither relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Blue Ash will supplement its response in accordance with the Board's December 18, 2018 Order. Notwithstanding these objections and without waiving them, Gordon Perry has never previously testified in any proceeding.

7. For each expert identified in Interrogatory No. 4, above, please identify all documents provided by the City of Blue Ash to the expert. To the extent that the City of Blue Ash contends that any such documents are privileged, please provide a privilege log for same.

**RESPONSE:** Objection. This Interrogatory is overbroad and unduly burdensome. Blue Ash further objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work product doctrine. Notwithstanding these objections and without waiving them, Gordon Perry has been provided the May 31, 2017 Ohio Power Siting Board Staff Report, the March 5, 2019 Amended Staff Report of Investigation, certain public filings by other intervening parties in this matter, and certain discovery responses by other intervening parties in this matter. Blue Ash will supplement its response in accordance with the Board's December 18, 2018 Order.



8. Identify all documents or other evidence that the City of Blue Ash may seek to introduce as exhibits or for purposes of witness examination in any proceeding related to the above-captioned matter. To the extent that the City of Blue Ash contends that any such documents are privileged, please provide a privilege log for same.

**RESPONSE:** Objection. This Interrogatory is premature to the extent it seeks disclosure of Blue Ash's exhibit lists, as Blue Ash has not yet determined what documents it will use as exhibits. Blue Ash will supplement its response in accordance with the Board's December 18, 2018 Order. Notwithstanding these objections and without waiving them, any document that Blue Ash may seek to introduce has already been exchanged by the parties in this matter or is a publicly available document.

9. Please state whether you agree to supplement your responses to these Interrogatories and Document Requests.

**RESPONSE:** Blue Ash will comply with all applicable requirements of the Ohio Revised Code, the Ohio Administrative Code, and any order entered by the Ohio Power Siting Board.

## **REQUESTS FOR PRODUCTION OF DOCUMENTS**

Duke Energy Ohio requests that the City of Blue Ash produce true and accurate copies of the following documents:

1. Any and all documents identified or referenced in response to any of the foregoing Interrogatories.

**RESPONSE:** Any document Blue Ash identified or referenced in response to any of the above Interrogatories has been exchanged by the parties in this matter or is a publicly available document. Blue Ash will supplement its response in accordance with the Board's December 18, 2018 Order.

2. Any and all documents that contain any information used, reviewed, or referenced in preparing the City of Blue Ash's responses to any of the foregoing Interrogatories.

**RESPONSE:** See Response to Request for Production No. 1, above. Blue Ash will supplement its response in accordance with the Board's December 18, 2018 Order.

3. Any and all documents that the City of Blue Ash may introduce as exhibits or use for purposes of witness examination at any hearing related to the above-captioned matter.

**RESPONSE:** Objection. This Request is premature to the extent it seeks disclosure of Blue Ash's exhibit lists, as Blue Ash has not yet determined what documents it will use as exhibits. Blue Ash will supplement its response in accordance with the Board's December 18, 2018 Order. Notwithstanding these objections and without waiving them, any document that Blue Ash may seek to introduce has already been exchanged by the parties in this matter or is a publicly available document.

4. Any and all documents relating to the testimony of any of the City of Blue Ash's witnesses and/or expert witnesses including, but not limited to, any and all *curricula vitae*, reports, papers, statements, notes, other documents, and any correspondence, communications, or other documents exchanged between City of Blue Ash and the expert.

**RESPONSE:** Objection. This Request is overbroad and unduly burdensome. Blue Ash further objects to the extent this Request seeks documents and information that are not discoverable under Civ. R. 26(B)(3) and (5). Notwithstanding these objections and without waiving them, *see* Response to Request for Production No. 1, above. Further answering, a copy of Gordon Perry's *curricula vitae* will be produced.

5. Any and all contracts for services between the City of Blue Ash and any expert retained or consulted to provide opinions, testimony, evidence, or analysis in relation to the above-captioned proceedings.

**RESPONSE:** Blue Ash has not entered into any contracts with any experts.

6. Please provide copies of any transcripts of depositions of each witness identified in Interrogatory No. 2. If a transcript is not available, please provide the name, address, and telephone number of the court reporting service used for purposes of each deposition.

**RESPONSE:** Objection. This Request is overbroad, unduly burdensome, and seeks the production of information that is neither relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Blue Ash will supplement its response in accordance with the Board's December 18, 2018 Order. Notwithstanding these objections and without waiving them, with respect to Gordon Perry, Blue Ash does not have any such transcripts of depositions in its possession, custody, or control.

7. Provide copies of any transcripts of depositions of each witness identified in Interrogatory No. 4. If a transcript is not available, please provide the name, address, and telephone number of the court reporting service used for purposes of each deposition.

**RESPONSE:** Objection. This Request is overbroad, unduly burdensome, and seeks the production of information that is neither relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Blue Ash will supplement its response in accordance with the Board's December 18, 2018 Order. Notwithstanding these objections and without waiving them, with respect to Gordon Perry, Blue Ash does not have any such transcripts of depositions in its possession, custody, or control.

Respectfully submitted,

s/ Bryan E. Pacheco

Bryan E. Pacheco (0068189)

Mark G. Arnzen, Jr. (0081394)

DINSMORE & SHOHL LLP

255 East Fifth Street, Suite 1900

Cincinnati, Ohio 45202

Telephone: (513) 977-8200

Facsimile: (513) 977-8141

E-mail: [bryan.pacheco@dinsmore.com](mailto:bryan.pacheco@dinsmore.com)

E-mail: [mark.arnzen@dinsmore.com](mailto:mark.arnzen@dinsmore.com)

**Attorneys for City Manager David Waltz  
and the City of Blue Ash, Ohio**

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the below-listed counsel and parties on this 11<sup>th</sup> day of March, 2019.

Adele M. Frisch  
Duke Energy  
139 East Fourth Street  
Cincinnati, Ohio 45202

Felecia D. Burdett  
PUCO  
180 E. Broad Street  
Columbus, Ohio 43215

Matt Butler  
PUCO  
180 E. Broad Street  
Columbus, Ohio 43215

Vesta R. Miller  
PUCO  
180 E. Broad Street  
Columbus, Ohio 43215

Ms. Donielle M. Hunter  
PUCO  
180 E. Broad Street, 11<sup>th</sup> Floor  
Columbus, Ohio 43215

Carys Cochern  
Duke Energy  
155 East Broad Street, 20<sup>th</sup> Floor  
Columbus, Ohio 43215

James Yskamp  
Fair Shake Environmental Legal Services  
159 South Main Street, Suite 1030  
Akron, Ohio 44308

Kevin K. Frank, Esq.  
Wood & Lamping LLP  
600 Vine Street, Suite 2500  
Cincinnati, Ohio 45202-2491  
*Attorney for Amberley Village and Scot  
Lahrmer, Village Manager*

Brian W. Fox, Esq.  
Graydon Head & Ritchey LLP  
312 Walnut Street, Suite 1800  
Cincinnati, Ohio 45202  
*Attorney for Mayor Melisa Adrien, City of  
Madeira*

James G. Lang, Esq.  
Steven D. Lesser, Esq.  
Mark T. Keaney, Esq.  
Calfee, Halter & Griswold LLP  
The Calfee Building  
1405 East Sixth Street  
Cleveland, Ohio 44114  
*Attorneys for City of Cincinnati*

R. Douglas Miller, Esq.  
Law Director, Sycamore Township  
Robert T. Butler, Esq.  
Donnellon, Donnellon & Miller LPA  
9079 Montgomery Road  
Cincinnati, Ohio 45242  
*Attorneys for Thomas J. Weidman,  
President Board of Township Trustees of  
Sycamore Township, Ohio and Sycamore  
Township*

Timothy M. Burke Esq.  
Micah E. Kamrass, Esq.  
Manley Burke, LPA  
225 W. Court Street  
Cincinnati, Ohio 45202  
*Attorneys for Village of Evendale*

Andrew J. Helmes, Law Director  
City of Deer Park  
7777 Blue Ash Road  
Deer Park, Ohio 45236  
*Attorney for Mayor John Donnellon and  
the City of Deer Park, Ohio*

Roger E. Friedmann, Esq.  
Michael J. Friedmann, Esq.  
Jay R. Wampler, Esq.  
Assistant Prosecuting Attorneys,  
Hamilton County, Ohio  
Suite 4000  
230 E. Ninth Street  
Cincinnati, Ohio 45202

And

James G. Lang, Esq.  
Steven D. Lesser, Esq.  
Mark T. Keaney, Esq.  
Calfee, Halter & Griswold LLP  
The Calfee Building  
1405 East Sixth Street  
Cleveland, Ohio 44114  
*Attorneys for Board of County  
Commissioners of Hamilton County, Ohio*

Terrence M. Donnellon, Solicitor, The  
Village of Golf Manor, Ohio  
Robert T. Butler, Esq.  
Donnellon, Donnellon & Miller LPA  
9079 Montgomery Road  
Cincinnati, Ohio 45242  
*Attorneys for The Village of Golf Manor,  
Ohio and Mayor Ron Hirth*

Patrick Ross, Safety Service Director  
David T. Stevenson, Law Director  
City of Reading  
1000 Market Street  
Reading, Ohio 45215  
*Attorneys for City of Reading, Ohio*

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

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

Thomas A. and Patricia H. Kreitinger  
6150 St. Regis Dr.  
Cincinnati, OH 45236

s/ Bryan E. Pacheco

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Summary: Response The City of Blue Ash's Objections and Responses to Duke Energy Ohio's First Set of Interrogatories and Requests for Production of Documents electronically filed by Mr. Mark G Arnzen on behalf of City of Blue Ash, Ohio