

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the :
Application of Duke Energy :
Ohio, Inc., for a :
Certificate of Environmental: Case No. 16-0253-GA-BTX
Compatibility and Public :
Need for the C314V Central :
Corridor Pipeline Extension :
Project. :

- - -

PROCEEDINGS

before Ms. Greta See and Ms. Sarah Parrot,
Administrative Law Judges, 180 East Broad Street,
Room 11-A, Columbus, Ohio, called at 9:0 a.m. on
Wednesday, April 10, 2019.

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VOLUME II

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1 Wednesday Morning Session,
2 April 10, 2019.

3 - - -

4 ALJ PARROT: Let's go back on the record.
5 This is the continuation of the hearing
6 in Case No. 16-253-GA-BTX. Good morning, everyone.
7 Again, my name is Sarah Parrot, with me is Greta See.
8 We are the Administrative Law Judges assigned by the
9 Board to hear this case.

10 Let's start with brief appearances, names
11 only, and on whose behalf you are appearing here
12 before the Board today. We will start to my right
13 and work our way around the table.

14 Mr. Stevenson.

15 MR. STEVENSON: Dave Stevenson on behalf
16 of the City of Reading.

17 MR. YSKAMP: James Yskamp, here on behalf
18 of Neighbors Opposed to Pipeline Extension.

19 MS. KINGERY: On behalf of Duke Energy
20 Ohio, Jeanne Kingery, Brian Heslin, Rocco D'Ascenzo.

21 MR. BEELER: On behalf of the Staff of
22 the Ohio Power Siting Board, Steve Beeler, Robert
23 Eubanks, Ina Avalon, and Janean Weber.

24 MR. KEANEY: And on behalf of the City of
25 Cincinnati and the Board of County Commissioners of

1 Hamilton County, Mark Keaney and Steven Lesser.

2 MR. MILLER: On behalf of Sycamore
3 Township, Doug Miller.

4 MR. PACHECO: Good morning, your Honors.
5 On behalf of Blue Ash and Columbia Township, Bryan
6 Pacheco. Thank you.

7 ALJ PARROT: Thank you, everyone. Is
8 there anyone we missed?

9 All right. Okay. The Applicant may call
10 its next witness.

11 MR. D'ASCENZO: Thank you, your Honor.
12 For its next witness, Duke Energy Ohio calls
13 Dr. James Nicholas.

14 (Witness sworn.)

15 ALJ PARROT: Please have a seat.

16 MR. D'ASCENZO: And, your Honor, for
17 purposes of the record, we would like to mark as Duke
18 Energy Ohio Exhibit 9, the Direct Testimony of
19 Dr. Nicholas.

20 ALJ PARROT: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. D'ASCENZO: May we approach, please?

23 ALJ PARROT: You may.

24 - - -
25

1 JAMES NICHOLAS

2 being first duly sworn, as prescribed by law, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 By Mr. D'Ascenzo:

6 Q. Good morning, Dr. Nicholas.

7 A. Good morning.

8 Q. Would you please state your name and
9 business address for the record.

10 A. Yes. My name is James Nicholas. My
11 address is 312 Elm Street, Suite 2500, Cincinnati,
12 Ohio 45202.

13 Q. And by whom are you employed and in what
14 capacity?

15 A. Louis Berger; Director of Transmission
16 Siting.

17 Q. And, Dr. Nicholas, did you prepare the
18 route selection study that was included with the
19 Company's Application in this proceeding?

20 A. Yes. Prepared by my team and under my
21 direction.

22 Q. Thank you.

23 And did you also prepare and cause to
24 file Direct Testimony in this proceeding?

25 A. Yes.

1 Q. Do you have any changes or corrections to
2 that testimony?

3 A. Yeah. There are several corrections. I
4 will go through those.

5 On page 1, line 20, the first sentence,
6 "I conduct industry research, take part in" rather
7 than "is."

8 Page 5, line 2, these are all related to
9 three rather than four categories, so I'll go through
10 those. "The criteria are divided into three" rather
11 than four "categories: land use/cultural, ecological,
12 and engineering." And the next sentence, "The first
13 two groups" rather than three groups "of criteria."

14 And then line 5, "The third category"
15 rather than "The fourth category." That's it.

16 Q. Dr. Nicholas, would you please pull the
17 microphone a little bit closer to you. Thank you.
18 And with those changes, if you were asked the same
19 questions today, would your answers then be the same?

20 A. Yep. I think so.

21 MR. D'ASCENZO: Thank you.

22 Your Honor, the witness is available for
23 cross-examination.

24 ALJ PARROT: Thank you.

25 Mr. Keaney

1 MR. KEANEY: Your Honor, would now be a
2 good time to entertain motions to strike?

3 ALJ PARROT: Go ahead.

4 MR. KEANEY: The City and County move to
5 strike page 13, beginning at line 7, through the end
6 of 14. Again, that's page 13, beginning at line 7,
7 all the way through the end of line 14. And the
8 basis for motion to strike, your Honor, is that
9 Mr. Nicholas testified under deposition that he
10 lacked any personal knowledge of this information,
11 that he relied solely on Duke for this portion of his
12 testimony, and I am happy to bring those deposition
13 transcripts up to you if you would like to review the
14 particular sections in question.

15 MR. D'ASCENZO: Thank you, your Honor.
16 What Mr. -- Dr. Nicholas testified to as -- as part
17 of the team that prepared, that worked on the routing
18 study, these issues were discussed. The -- he relied
19 upon information provided by Duke Energy as part of
20 this analysis and he was just citing to it and
21 discussing it in his testimony.

22 The section of his testimony here relates
23 specifically to whether or not a lateral was
24 required. In addition to other work that would need
25 to be done on some of the eastern routes. He was

1 providing this for context. The Siting Board is able
2 to take that information and give it the appropriate
3 weight, but he is providing this in terms of context
4 in why routes were selected and why routes were not.

5 MR. KEANEY: Your Honor, just if I can
6 give you a very specific example of why this should
7 be stricken. On page 13, line 10, there is a
8 specific sentence that reads "One lateral would
9 likely come from WW Feed Station down into Blue Ash
10 to connect with Line A along the general alignment of
11 Route 26 with the need and location for any
12 additional laterals to be determined."

13 Mr. Nicholas was asked specifically about
14 this, why he believed that, why as Mr. -- as Duke's
15 counsel, excuse me, explained whether a lateral would
16 be required. When he was asked specifically why, he
17 said he did not know. The only basis for his
18 information to make that statement was that Duke told
19 him that was the fact. And again, I have got
20 deposition transcripts to confirm exactly that point.

21 But I just want to follow up, it would be
22 unfair for the Commission -- excuse me, for the Board
23 to allow this into the record because it is entirely
24 immune from cross-examination. The City and County
25 are not able to go to the basis of his belief of that

1 statement, why only one lateral -- whether a lateral
2 would be required or not. And so the fair way to
3 deal with this is if Duke is not presenting a witness
4 with that information, it should be stricken from
5 Mr. Nicholas's testimony.

6 MR. D'ASCENZO: And, your Honor, he is
7 providing, again, context because he's stating on
8 line 7 "that the preliminary routing analysis of
9 these eastern routes did not include the routing
10 impact of at least one additional high-pressure
11 lateral...." So his point there that he is talking
12 about was these routes were eliminated
13 notwithstanding the fact that there was going to need
14 to be another lateral, that that wasn't included in
15 the analysis because the overall impacts were
16 greater. That's the context that he is providing
17 this statement.

18 MR. KEANEY: And, your Honor, it's more
19 than that. It's not just context. He specifically
20 is explaining where a lateral would come from and why
21 it's needed. And when we asked those questions, why
22 do you believe that, why is a lateral required, his
23 answer is simply "I don't know. That's what Duke
24 told me."

25 MR. D'ASCENZO: And in his testimony,

1 your Honor, in the deposition he said "This is
2 outside my area of expertise, but those eastern
3 routes did not come back to the central core area
4 where gas was needed." He was speaking based upon
5 his -- the extent of his knowledge.

6 ALJ PARROT: And, Mr. Keaney, I am going
7 to, at this time, deny the motion to strike, but you
8 should, of course, during your cross, feel free to
9 probe the witness's knowledge on this issue and the
10 Board will give his testimony the appropriate weight.

11 MR. KEANEY: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Keaney:

15 Q. Good morning, Dr. Nicholas.

16 A. Morning.

17 Q. When I use the term "proposed pipeline"
18 today, I am referring to the proposed Central
19 Corridor Pipeline at issue in this case. Do you
20 understand?

21 A. Yes.

22 Q. Duke had retained you some time in 2015
23 to conduct this route selection study, correct?

24 A. Correct.

25 Q. And at the time you were employed by

1 CH2M; is that correct?

2 A. That's correct.

3 Q. And you are no longer employed by them
4 now.

5 A. Correct.

6 Q. And you understand that Duke had changed
7 the proposed pipeline from an original 30-inch to a
8 20-inch pipeline, correct?

9 A. Correct.

10 Q. And the change from a 30- to a 20-inch
11 pipeline did not change or affect the way you
12 collected the data for purposes of the route
13 selection study, correct?

14 A. Correct.

15 Q. The first step in a route selection study
16 is to develop what you call the study area, correct?

17 A. Yes. Before that we would be provided
18 with a general context of the project, but, yes,
19 essentially the first step is the study area.

20 MR. STEVENSON: Your Honor, may I ask
21 that he move the microphone closer to his mouth? I
22 am having trouble hearing him. I am sure others are
23 as well.

24 THE WITNESS: I can't get much closer.

25 ALJ PARROT: Point it up more.

1 THE WITNESS: How about that? Can you
2 hear me now?

3 Q. (By Mr. Keaney) And, Dr. Nicholas, from
4 your experience, this study area can be developed by
5 the siting consultant or the utility or a combination
6 of both the siting consultant and the utility,
7 correct?

8 A. Correct.

9 Q. And for the route selection study in this
10 case, Duke, alone, developed this study area,
11 correct?

12 A. We -- we -- Duke -- we developed it in
13 coordination with each other. We, as the consultant,
14 were part of it.

15 Q. Can I refer you to page 6 of your
16 testimony, please, and specifically I am going to be
17 looking at line 14 on page 6. Let me know when you
18 are there.

19 A. I'm there.

20 Q. Now, you state here "The study area was
21 developed by Duke Energy Ohio, based on its system
22 needs, and a set of physical limitations in the
23 area." Did I read that correctly?

24 A. You did.

25 Q. Okay. And is it your testimony today

1 that you're modifying this portion to say it was
2 developed by Duke but also was developed by CH2M?

3 A. With -- with -- with reference to us, I
4 did cover this in the deposition that we provided
5 some input into the extent of it. But essentially
6 it's Duke Energy's final decision.

7 Q. Final decision as to what is the
8 delineation of the study area?

9 A. Yes.

10 Q. Thank you.

11 For the route selection study, Duke
12 advised that the route had to begin at the end of the
13 existing C314 pipeline which is the WW Feed Station,
14 correct?

15 A. Correct.

16 Q. And Duke also advised that the routes had
17 to end at Line V as in Victor, correct?

18 A. Correct.

19 Q. And as you describe in your testimony,
20 the main study area extended as far east as the
21 Little Miami River, correct?

22 A. Correct, as far as I can recall.

23 Q. Sure. So I can refer you to page 6,
24 lines 1 through 4 in your testimony. Please let me
25 know if that refreshes your recollection.

1 A. Yes, I'm there.

2 Q. And so just so the record is clear, the
3 main study area extended as far east as the Little
4 Miami River, correct?

5 A. Yes, I see that.

6 Q. Your initial analysis also included
7 Madeira and Indian Hill areas east of I-71, correct?

8 A. That I believe is when we extended the
9 study area over there a little bit more sometime in
10 the process.

11 Q. Okay. And, again, if you could look at
12 page 6, lines 4 through 5 is where I am looking, and
13 let me know after you get to read that, please.

14 A. Yes, that says in addition to that area,
15 the route selection study also considered
16 opportunities through Madeira and Indian Hill.
17 That's in addition.

18 Q. Thank you.

19 Now, you didn't consider Madeira and
20 Indian Hill as being in the main study area, correct?

21 A. Not initially because we had looked at
22 some of those eastern options as a concept for a
23 route.

24 Q. Okay. So after you had considered some
25 public comments, you then revisited some routing

1 options east of Interstate 71, correct?

2 A. Correct.

3 Q. Other than considering revising that
4 study area to include some of these eastern routes,
5 Duke did not reevaluate or reconsider any other
6 option, correct?

7 A. You mean expanding the study area in
8 another direction; is that what you mean?

9 Q. Yes, sir.

10 A. I don't believe so.

11 Q. Okay. You do not know if Duke
12 considered, say, expanding west of the study area,
13 correct?

14 A. Not to my knowledge.

15 Q. The study area in this case is congested
16 with development, correct?

17 A. There is a lot of development in this
18 study area, yes.

19 Q. Fair to call it congested with
20 development?

21 A. Yes, you could use that term, yeah.

22 Q. The study area consists of dense
23 residential, industrial and institutional land uses
24 among other land uses?

25 A. Among others, yes.

1 Q. You or CH2M had discussions with Duke
2 about the various challenges and constraints
3 attendant to identifying a route opportunity in a
4 densely-developed region, correct?

5 A. Yes.

6 Q. And the route selection study in this
7 case had presented some technical and engineering
8 challenges, correct?

9 A. Correct.

10 Q. After delineating the study area, the
11 next step in the route selection study process is to
12 collect and map both constraints and opportunities,
13 correct?

14 A. Correct.

15 Q. And the second step is a mere mapping
16 exercise to help place potential routes, correct?

17 A. Yes. Placing routes that try and avoid
18 as many constraints as possible and use as many
19 opportunities as possible.

20 Q. And then in the third step, the routes
21 are scored and ranked, correct?

22 A. Yeah. They are compared to each other,
23 yes, using these metrics.

24 Q. And using those metrics and then scoring
25 and ranking the routes, that's a quantitative

1 process, correct?

2 A. That is correct.

3 Q. After the routes are scored and ranked
4 using a quantitative process, the routes are then
5 subject to a constructability and qualitative review,
6 correct?

7 A. Correct.

8 Q. In this case, the key qualitative
9 components were primarily constructability issues,
10 correct?

11 A. Correct.

12 Q. And there are no specific rules or
13 guidelines applicable to the constructability and
14 qualitative review process, correct?

15 A. That's correct.

16 Q. There was no specific process the siting
17 team followed in this case during the
18 constructability and qualitative review, correct?

19 A. That's correct.

20 Q. The qualitative siting criteria is not
21 specifically defined or enumerated in the route
22 selection study in this case, correct?

23 A. Correct. It's a review of each route
24 constructability so it can vary between each route.

25 Q. So, in fact, there is no actual listing

1 of the qualitative criteria anywhere in the route
2 selection study in this case, correct?

3 A. Correct.

4 Q. Duke played an important role in the
5 constructability and qualitative review process,
6 correct?

7 A. Correct.

8 Q. And Duke was involved in all parts of
9 examining the route candidates, right?

10 A. Correct.

11 Q. Duke provided you certain data to use in
12 the route selection study such as electric line or
13 gas line location data, correct?

14 A. Probably limited to that so, yes.

15 Q. But they did provide you certain data in
16 the route selection study, correct?

17 A. Yes.

18 Q. Thank you.

19 You do not know if you or any of your
20 former colleagues at CH2M verified the data that Duke
21 had provided you, correct?

22 A. We -- I think I said in my deposition
23 we -- if we knew the location of those utilities, and
24 sometimes they are visible on aerial photographs, we
25 would adjust centerlines for those utilities if they

1 appeared to be off. We would do that. I am not sure
2 if we did it in this case for the whole length of
3 those utilities.

4 Q. Okay. So let me just ask the question
5 again so we're clear. You don't know in this case if
6 you or any of your former colleagues at CH2M had
7 verified the data that Duke provided in the way you
8 just described or otherwise, correct?

9 A. I do not know for sure, no.

10 Q. Thanks.

11 If you can just turn to page 11 of your
12 testimony and let me know when you are there, please.

13 A. I'm there.

14 Q. On page 11 of your testimony, you discuss
15 how Duke had retained an engineering consultant
16 Wilboros, correct?

17 A. Correct.

18 Q. And Wilboros, W-i-l-b-o-r-o-s, is the
19 same company as TRC Pipeline Services, correct?

20 A. Correct.

21 Q. You have reviewed the engineering and
22 constructability analysis that was prepared by TRC
23 Pipeline Services in this case, correct?

24 A. I read it. I didn't review it closely.

25 Q. You have not formed an opinion as to the

1 conclusions stated in the TRC report, correct?

2 A. No.

3 Q. Sorry?

4 A. Correct, correct.

5 Q. Thank you.

6 It is your understanding, based on
7 conversations you've had with Duke, that Duke had
8 commissioned the TRC report to have another set of
9 eyes looking at the route selection process, correct?

10 A. That's correct. From a constructability
11 standpoint.

12 Q. Thank you for the clarification.

13 Now, you reference what you call "the
14 siting team" several times in your testimony. The
15 siting team was comprised of about four or five
16 people, correct?

17 A. Correct.

18 Q. And specifically the siting team was
19 comprised of you and three or four Duke employees; is
20 that fair to say?

21 A. It was comprised of me and some of my
22 team at the CH2M and mapping folks and so on and then
23 several people at Duke.

24 Q. Okay. So let's break this down for me.
25 The siting team was about four or five people,

1 correct?

2 A. Roughly.

3 Q. One of those was you.

4 A. Yeah.

5 Q. How many of those four or five were Duke
6 employees?

7 A. Three. Three. The reason I am
8 hesitating, I had points of contact and those points
9 of contact would -- would solicit information from
10 their team, so in terms of the close siting team, I
11 would say five. Maybe two people at Duke, I worked
12 closely with.

13 Q. Two from Duke, one from you, and then was
14 the other person or the second person, would those be
15 from CH2M?

16 A. Yes, my team.

17 Q. Thank you.

18 So Duke worked in collaboration with your
19 team at CH2M throughout the route selection study
20 process, correct?

21 A. Correct.

22 Q. Duke told CH2M what was possible and what
23 was not possible from an engineering standpoint in
24 the route selection study, correct?

25 A. Correct.

1 Q. CH2M had to rely on Duke to identify the
2 technical and the engineering constraints in the
3 study area, correct?

4 A. Correct.

5 Q. Duke was involved in the identification
6 and adjustment of potential route candidates,
7 correct?

8 A. Correct.

9 Q. Duke, not you or CH2M, Duke set the
10 criteria for how close routes could be from
11 buildings, correct?

12 A. Correct.

13 Q. Duke established that the required
14 separation distance for structures to be at least
15 15 feet from the centerline of a route, correct?

16 A. Correct. That's what we used in the
17 routing study.

18 Q. And that number, 15 feet, was provided by
19 Duke, correct?

20 A. Correct.

21 Q. And you do not know how Duke had
22 determined that number, 15 feet, correct?

23 A. Correct.

24 Q. The selection of the final two routes,
25 the Preferred Route and the Alternate Route, was

1 ultimately Duke's decision, not your decision or
2 CH2M's decision, correct?

3 A. I need a clarification on that. Do you
4 mean the selection of Preferred versus Alternate or
5 selection of the Preferred and Alternate Routes?

6 Q. Can you tell me the difference?

7 A. Well, one is selecting Preferred versus
8 Alternate, which one is going to be the Preferred and
9 which one is going to be the Alternate. The other
10 side of the question is which routes are going to be
11 carried forward as Preferred and Alternate.

12 Q. Let's start with the first one.

13 A. Which was Preferred versus Alternate?

14 Q. Yes, sir.

15 A. Yes. Duke made that decision.

16 Q. And let's start with the second one then.

17 A. And Duke ultimately made the decision on
18 which to carry forward to the first public meeting
19 which was the three routes that we took to them.

20 Q. So in either interpretation, Duke was the
21 ultimate decision-maker, correct?

22 A. The ultimate decision-maker, correct.

23 Q. Thank you.

24 Duke made the decision to drop the Pink
25 Route, not you or CH2M, correct?

1 A. Correct.

2 Q. Duke had the final say on all decisions
3 made by the siting team, correct?

4 A. I think that's a little too simple of a
5 broad of a question.

6 Q. Okay.

7 A. So I would say perhaps not correct --

8 Q. Okay.

9 A. -- in all instances.

10 Q. Okay. The majority of instances, Duke
11 made the final decision in terms of the siting team,
12 correct?

13 A. Yes.

14 Q. And would you say an overwhelming
15 majority of decisions made by the siting team were
16 made by Duke?

17 A. "Overwhelming," I don't know how to
18 define "overwhelming."

19 Q. 80 percent.

20 A. That's a very, very precise. Maybe over
21 half, let's say over half the decisions.

22 Q. Okay. But in any event, the majority of
23 the decisions made were Duke's final decision on the
24 siting team, correct?

25 A. Major decisions, yes.

1 Q. Thank you.

2 The route selection process takes into
3 account stakeholder input, correct?

4 A. Correct.

5 Q. CH2M or you did not evaluate stakeholder
6 input as part of the route selection study, correct?

7 A. Not in the numeric analysis, correct.

8 Q. Duke exclusively handled that portion in
9 terms of the stakeholder input consideration in the
10 route selection study, correct?

11 A. Can you ask that question a different
12 way?

13 Q. Sure.

14 You had privately stated stakeholder
15 input is part of the route selection study, correct?

16 A. That is correct, yes.

17 Q. And my question is, in considering
18 stakeholder input as part of that process, Duke was
19 responsible for that, correct?

20 A. Duke organized the public information and
21 solicitation process or program. We used the data
22 inasmuch as we had it in the route selection process.
23 It wasn't part of the numeric route selection study.

24 Q. So is your answer no?

25 A. I don't know. So what precisely am I

1 answering here?

2 Q. Stakeholder input, that's one
3 consideration as part of your route selection study,
4 correct?

5 A. Yes, yes.

6 Q. And so what I am trying to understand is
7 the CH2M, did they evaluate that portion of the route
8 selection study?

9 A. We played a role in it, yes, yes.

10 Q. You were deposed in connection with this
11 case, correct?

12 A. Correct.

13 Q. And you were deposed in the presence of a
14 court reporter?

15 A. Yes.

16 MR. KEANEY: Your Honor, may I approach?

17 ALJ PARROT: You may.

18 Q. (By Mr. Keaney) Can you turn to page 59
19 of your deposition transcript.

20 A. Yes.

21 Q. And before we start reading that, I just
22 want to ask you two clarification questions. You
23 were deposed on April 3, 2019, correct?

24 A. Correct.

25 Q. And at your deposition you swore to tell

1 the truth, correct?

2 A. Correct.

3 Q. If -- on page 59 and go to line No. 1,
4 where it reads:

5 "Question: Is that your duty to evaluate
6 the stakeholder input or is that something that Duke
7 is supposed to do?

8 "Answer: Duke did it."

9 Did I read that correctly?

10 A. Yes, you did.

11 Q. Thank you.

12 The route selection study criteria is
13 divided into three categories that I think you
14 mentioned earlier in correcting your testimony,
15 correct?

16 A. Yeah, we organized it into three.

17 Q. And the first one is land use/cultural,
18 the second one would be ecological, and the third
19 would be engineering, correct?

20 A. Correct.

21 Q. One of the considerations in the
22 land use/cultural category is the number of
23 residences within 100 to 1,000 feet of a potential
24 route, correct?

25 A. Correct.

1 Q. Now, to help compare the routes, you
2 normalize the data so that a route with most
3 residences within the 100 feet to 1,000 feet would be
4 assigned the highest number, say 100, and then the
5 route with the fewest number of residences within
6 100 feet to 1,000 feet would be assigned the lowest
7 number, say zero, correct?

8 A. Correct.

9 Q. And each of the three categories that we
10 mentioned is weighted equally, correct?

11 A. Correct.

12 Q. So, in other words, when you perform the
13 route selection study, you weigh the land use/
14 cultural category equally with ecological or
15 engineering categories, correct?

16 A. Correct.

17 Q. Now, not all siting projects use or
18 consider the same three categories for comparing
19 routes as the ones used in this case, correct?

20 A. Correct.

21 Q. Every siting project is different in
22 terms of what factors are considered and how those
23 factors are weighed, correct?

24 A. Correct.

25 Q. Now, on pages 13 and 14 of your

1 testimony, you discuss assigning weights to various
2 factors in your evaluation of the three categories,
3 correct?

4 A. Yes, I discuss not assigning weights.

5 Q. Now, specifically on lines 21 and 22 on
6 page 13, you discuss applying more emphasis or
7 weighting on land-use factors, correct?

8 A. Correct.

9 Q. And you added a factor of three to the
10 land-use category, correct?

11 A. Correct, informally.

12 Q. You are blowing my next question. So
13 this was the weighting of a factor of three of the
14 three -- excuse me, of -- you adding a factor of
15 three to the land-use category that was an informal
16 process, correct?

17 A. Correct.

18 Q. Now, you evaluated the effect of applying
19 weight to land-use factors a long time ago, correct?

20 A. You have to clarify what you mean by "a
21 long time ago."

22 Q. Sure. Why don't we turn to page 38 of
23 your deposition.

24 MR. D'ASCENZO: Objection, your Honor.
25 This is an improper use of the deposition.

1 MR. KEANEY: Your Honor, I am just going
2 to establish the definition we can actually agree on
3 which was the definition in the deposition.

4 MR. D'ASCENZO: He can ask that question,
5 your Honor.

6 MR. KEANEY: Fair enough.

7 ALJ PARROT: Let's do it that way.

8 Q. (By Mr. Keaney) Dr. Nicholas, do you
9 remember in your deposition talking about the fact
10 you had not evaluated the effect of applying
11 weighting to land-use factors for a very long time?

12 A. That sounds familiar.

13 Q. Okay. How about this, is it fair to say
14 you don't remember to which route you applied the
15 weighting?

16 A. I believe we applied it to most of the
17 routes, although -- yeah, I think we applied it to
18 most of the routes, though I don't recall precisely.

19 Q. So the answer would be you don't
20 remember; is that fair to say?

21 A. Yes.

22 Q. And do you remember when you did this? A
23 long time ago?

24 A. Well, after the first, after the first --
25 at least the first public information meeting because

1 it was in response to some comments.

2 Q. That would have been maybe two or three
3 years ago?

4 A. Probably two, twoish, yeah.

5 Q. Twoish years?

6 A. Yeah.

7 Q. Okay. Thank you.

8 Each route selection project will have
9 its own unique elements, correct?

10 A. Correct.

11 Q. And there's a certain amount of
12 subjectivity in the siting team's criteria for
13 analyzing routes, correct?

14 A. Correct.

15 MR. KEANEY: Your Honor, may I approach?

16 ALJ PARROT: You may.

17 MS. KINGERY: 3. Mark, it's 3.

18 Q. (By Mr. Keaney) Dr. Nicholas, I have
19 handed to you what's already been marked as Company
20 Exhibit 3, which is the Amended Application in this
21 case. If I could ask you to turn to the route
22 selection study that you prepared which for your
23 reference is Appendix 4-1.

24 A. All right.

25 Q. And specifically in the route selection

1 study, can you refer to page 2-1. That's 2-1 and I
2 am going to be asking you about Section 2.2.1.

3 A. Okay.

4 Q. If you can go about halfway down that
5 paragraph there's a sentence that reads "It is
6 important to note that what is important often
7 depends on one's perspective or area of interest."
8 Did I read that correctly?

9 A. Yes.

10 Q. And do you see where I am?

11 A. Yes.

12 Q. Okay. For the route selection study in
13 this case, Duke provided its own input on the siting
14 criteria, correct?

15 A. Correct.

16 Q. You do not -- you did not use or CH2M did
17 not use, as part of the route selection study, cost
18 as a siting criteria, correct?

19 A. We didn't use a dollar figure for cost,
20 no.

21 Q. To your knowledge, Duke did not consider
22 cost as a siting criteria in this case, correct?

23 A. Again, not cost as an actual dollar
24 figure amount.

25 Q. When you prepared the route selection

1 study, you did not consider whether any particular
2 route would enable Duke to retire its propane-air
3 peaking facilities, correct?

4 A. Correct, because in this scenario the
5 assumption was they could do those things. This
6 would achieve all of the three criteria.

7 Q. And when you prepared the route selection
8 study, you did not consider whether any particular
9 route would enable Duke to replace aging
10 infrastructure, correct?

11 A. Correct, with the same answer I gave
12 before.

13 Q. Thank you.

14 Now, if I can refer you to page 13 of
15 your testimony, and I am going to be looking at
16 line 7 through 14. If you could read that paragraph
17 to yourself and let me know when you are finished.
18 That's page 13, lines 7 through 14.

19 A. Okay. I read it.

20 Q. Your testimony on page 13 contends that
21 if the eastern route had been selected, Duke would
22 still need to construct an additional high-pressure
23 lateral across the central route area to achieve the
24 project goals, correct?

25 A. Correct.

1 Q. You are not a technical expert, correct?

2 A. Not in gas flow, no.

3 Q. You did not independently perform an
4 analysis of Duke's system to reach the conclusions in
5 line 7 through 14 of page 13 of your testimony,
6 correct?

7 A. Correct.

8 Q. The sole basis for making the statements
9 in your testimony on page 13, line 7 through 14, is
10 what Duke told you, correct?

11 A. Correct.

12 Q. You do not know why a lateral from the
13 WW Feed Station down into Blue Ash to connect Line A
14 would have to be one of the other options, correct?

15 A. Correct.

16 Q. All of the information provided on
17 page 13 of your testimony, beginning on line 7
18 through 14, came from Duke, correct?

19 A. Other than the note that the routing
20 analysis did not include the impact of a lateral,
21 correct.

22 Q. And that would be the only part of 7
23 through 14 that would be based on your independent
24 personal knowledge, correct?

25 A. And the last sentence, there's "no

1 advantage to eastern routes from a siting
2 perspective."

3 Q. As they would result in greater overall
4 project impact?

5 A. Correct, even without the lateral.

6 Q. Okay. But to be clear, specifically on
7 line 10 through line 12, the sentence beginning "One
8 lateral would likely come from WW Feed Station down
9 into Blue Ash to connect with Line A along the
10 general alignment of Route 26 with the need and
11 location of any additional laterals to be
12 determined," that did not come from your personal
13 knowledge, correct?

14 A. That is correct.

15 Q. Do you see the reference to one
16 additional high-pressure lateral on line 8, page 13?

17 A. Yes.

18 Q. You did not perform any analysis with
19 respect to modeling anything related to one
20 additional high-pressure lateral that would achieve
21 project goals?

22 A. Modeling in what sense?

23 Q. In the sense of your route selection
24 study.

25 A. Route, route selection?

1 Q. Yes.

2 A. No, we did not.

3 Q. Thank you.

4 Compared to the routes in the Central
5 Corridor, the eastern route impacted fewer residences
6 within 200 feet of the route, correct?

7 A. Which eastern route are you referring to?

8 Q. You've got the route selection study in
9 front of you, correct?

10 A. Yes.

11 Q. Can you identify the different eastern
12 routes in front of you so we are on the same page?

13 A. So we're talking about eastern route --
14 the eastern route, not one of the eastern concepts,
15 right?

16 Q. Why don't we, for the record, clarify
17 those differences and for my own edification.

18 A. Yeah. There are no maps in this -- in
19 this version.

20 Q. Do you reference the difference between
21 the two concepts in the route selection study at all?

22 A. I think the route selection study focuses
23 on the actual routes, and by eastern route I think we
24 are referring -- are we referring to Route 23 east
25 of --

1 MR. D'ASCENZO: Your Honor, if it is
2 helpful, there is a full complete study of the
3 selection routes in that binder with maps. That's
4 Duke Energy Exhibit 4.

5 Q. Let me ask you this, did you look at
6 multiple eastern routes?

7 A. Again, eastern routes, we have got to
8 define what we are talking about.

9 Q. Do you remember having a discussion about
10 eastern routes that you looked at and how they
11 compared to the Central Corridor routes?

12 A. That was several discussions.

13 Q. Sure.

14 A. Based on the timing, so.

15 Q. Why don't you go to page 53 of your
16 deposition, please.

17 A. Okay. I'm there.

18 Q. On line 17, it reads:

19 "Question: Do you know why a lateral
20 from the WW Feed Station to Line A would have had to
21 be one of the other options?

22 "Answer: I do not.

23 "Question: With regard to the eastern
24 routes that you looked at, do you know how they
25 compared to the routes in the central core area in

1 terms of the pipeline being within 200 feet of
2 residences?

3 "Answer: To the best of my recollection,
4 I believe there were less -- there were generally
5 less residences within 200 feet for those routes
6 because of the less dense housing development in that
7 area."

8 Did I read that correctly?

9 A. Yes.

10 Q. Does that refresh your recollection of
11 eastern routes as I am defining it here today?

12 A. Yes. Those were the eastern concepts.

13 Q. And would your deposition answer be the
14 same answer if I asked you it directly again today?

15 A. Yes.

16 Q. Thank you. And just to clarify, that's
17 because the reason you say that the eastern route
18 would impact fewer residences within 200 of the route
19 is because there is less-dense residential
20 development in that region, correct?

21 A. Correct. And if you're -- if you're
22 putting a route on that's less dense, you can very
23 well avoid being within 100 feet or 200 feet of
24 residences. You might not be able to avoid being in
25 a thousand feet of residences. It's a density issue.

1 Q. Thank you.

2 As part of your route selection study,
3 did you consider a western route that did not start
4 at the WW Feed Station?

5 A. Western, how far west are we talking
6 about?

7 Q. It doesn't matter, any western route that
8 did not start at the WW Feed Station.

9 A. We did not consider a route that didn't
10 start at the WW Feed Station.

11 MR. KEANEY: Thank you, Dr. Nicholas.
12 Your Honor, I don't have any more
13 questions.

14 ALJ PARROT: Thank you.

15 Mr. Yskamp?

16 MR. YSKAMP: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Yskamp:

20 Q. Good morning, Mr. Nicholas.

21 A. Good morning.

22 Q. Would you please turn to page 4 of your
23 testimony. And starting at line 9, here you
24 reference a section of the Ohio Revised Code; is that
25 correct?

1 A. Correct.

2 Q. And that section you state "which
3 provides that the Board must find and determine that
4 'the facility represents the minimum adverse
5 environmental impact, considering the state of
6 available technology and the nature and economics of
7 the various alternatives, and other pertinent
8 considerations....'" Did I read that correctly?

9 A. Yes.

10 Q. You did not evaluate the nature and
11 economics of various alternatives of anything other
12 than pipeline routes; is that correct?

13 A. Correct.

14 Q. And you did not evaluate the nature and
15 economics of various alternatives of any pipeline
16 route that did not originate from WW Feed Station; is
17 that correct?

18 A. In the route selection study, we -- that
19 is correct.

20 Q. Is there another study where you
21 evaluated routes?

22 A. We do discuss, in Chapter 4 of the
23 Application, some of the eastern concepts we've been
24 talking about.

25 Q. Oh, and they do not originate at WW

1 Station?

2 A. Some of them do not.

3 Q. Did you evaluate the nature and economics
4 of the various route alternatives in the Gas System
5 Master Plan Study?

6 A. No.

7 Q. Would you please turn to page 15 of your
8 testimony. I would like to direct you to line 12 and
9 I will read the sentence that states "The Application
10 rules require the applicant to provide specific data
11 and/or tables to address land use, cultural,
12 ecological and socioeconomic impacts of the project."
13 Did I read that correctly?

14 A. Yes.

15 Q. And your route selection study did not
16 evaluate the routes based on income levels of
17 impacted communities; is that correct?

18 A. That is correct.

19 Q. And you did not evaluate the route based
20 on impact to minority communities; isn't that
21 correct?

22 A. That's correct. We were neutral with
23 regard to those.

24 Q. And you did not evaluate the routes based
25 on impact to Jewish communities; isn't that correct?

1 A. Correct.

2 Q. So in your testimony today, you discussed
3 how you -- the steps in the route selection study.
4 For my clarification, at what point in the route
5 selection study do you determine the amount of
6 residences within 200 and 2,000 feet of each route?

7 A. It's within 100 and 1,000 feet of the
8 centerline of each route. Once we have established
9 the route candidates, we then do that count in the
10 GIS system.

11 Q. Do you do that for more than just the
12 Alternative and the Preferred Route?

13 A. Yes.

14 Q. And in your evaluation, did you look at
15 residences and population, or only residences?

16 A. We looked at residences.

17 Q. So if a residence has multiple
18 apartments, for example, you didn't look to see how
19 many people might be impacted?

20 A. I don't know of a way to actually count
21 the number of people in each residence and we
22 wouldn't -- we wouldn't do that, no.

23 Q. Are you familiar with the term "potential
24 impact radius"?

25 A. Yes.

1 Q. Did you evaluate the route at all based
2 on the potential impact radius of the proposed
3 pipeline?

4 A. No, because it did not apply.

5 Q. How was -- was safety considered in any
6 way in your route evaluation?

7 A. Some of the criteria we used could be
8 regarded as safety related, like residences within
9 100 and 1,000 feet, sensitive land uses, so on.

10 Q. What about safety in the sense of a
11 potential worst-case scenario event?

12 A. No.

13 MR. YSKAMP: I think that's all the
14 questions I have. Thank you.

15 ALJ PARROT: Mr. Stevenson?

16 MR. STEVENSON: Thank you.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Stevenson:

20 Q. Dr. Nicholas, with respect to other
21 constraints that were placed upon the site selection
22 study, you used certain right-of-way guidelines; is
23 that correct?

24 A. Right-of-way width.

25 Q. All right. In -- I am looking at the

1 Staff Report, the Amended Staff Report. It
2 indicates, along interstates, placement must be
3 10 feet outside of ODOT right-of-way. Is that a
4 constraint that you used?

5 A. That was one of our constraints, yes.

6 Q. And who came up with that constraint?

7 A. Duke Energy gave that to us.

8 Q. Are you aware of whether or not that's a
9 legal requirement?

10 A. I'm not aware of whether it's legal or
11 not.

12 Q. All right. So you don't have -- you were
13 just told that it must be 10 feet outside of the ODOT
14 right-of-way?

15 A. Correct.

16 Q. All right. Had you been instructed
17 differently, would you have used ODOT right-of-ways
18 as a possible route selection -- in your possible
19 route selection?

20 A. There are scenarios where -- if Duke had
21 said ODOT has said yes, you may be within the
22 right-of-way, we would have used the right-of-way.

23 Q. In fact, there are scenarios where the
24 right-of-way may be the best placement.

25 A. I can't answer that question. I don't

1 know.

2 Q. All right. Okay. You have a -- you used
3 a -- the Amended Staff Report says that another one
4 of the constraints was along other roads, placement
5 outside of the right-of-way. What other roads are
6 you talking about there?

7 A. All other roads that Duke preferenced --
8 directed to us was to be outside of the road
9 right-of-way.

10 Q. What about city streets?

11 A. If possible, be outside road
12 right-of-way.

13 Q. All right. So city streets are treated
14 differently than other roads?

15 A. No. No. I gave the same answer.

16 Q. All right. And that's only if possible,
17 is that what you are talking about?

18 A. If possible with permission if there is a
19 -- if there is a municipality preference, I think
20 that scenario changes things, but that's a negotiated
21 issue.

22 Q. All right. With respect to your focus
23 study area, did I understand you correctly in your
24 testimony a minute ago that the focus study area was
25 bounded on the east by the Little Miami River?

1 A. Correct, initially.

2 Q. Initially.

3 A. Yeah.

4 Q. And why -- I'm confused here. Are -- is
5 there a second focus study area?

6 A. No. We looked at sub-routes outside of
7 that. We didn't regard it as a firm, hard, never
8 change boundaries. So for options to look outside of
9 that, that made sense, we were prepared to expand the
10 boundaries. The same is true of any route study
11 involved here.

12 Q. Would you take a look at Figure 2.6 on
13 the route selection study, please. Do you have it?

14 A. Yes. Figure 2-6?

15 Q. Correct. Just so we are sure we are all
16 on the same page, the routes that are drawn on that
17 particular map are 16, 17, and 23, correct?

18 A. Correct.

19 Q. All right. Is Route 23 inside the focus
20 study area or is it outside the focus study area?

21 A. It is outside the initial focus study
22 area.

23 Q. But you just testified that the eastern
24 boundary of the initial focus study area was the
25 Little Miami River, correct?

1 A. I did.

2 Q. And the Little Miami River is well to the
3 east of Route 23, correct?

4 A. Correct.

5 Q. So it's inside the initial focus study
6 area.

7 A. Technically, yes.

8 Q. All right. Now, you indicated that that
9 route was generated as a result of some public
10 comments that you received at one of the meetings; is
11 that correct?

12 A. We -- we received a weight of public
13 comments at the initial public meeting, yes, that
14 said why didn't you look at routes east of 71.

15 Q. All right. But this is still in the
16 focus study area, am I correct?

17 A. Correct.

18 Q. All right. And that's one of the routes
19 you looked at as a result of the public comments?

20 A. Yes.

21 Q. All right. And you testified, I think
22 earlier, that Duke indicated to you that there would
23 be a need for another lateral if that was the route
24 that was chosen?

25 A. Not -- not this route.

1 Q. Not that route?

2 A. Routes further east outside of 275 of the
3 route concept.

4 Q. So this route would not require that.

5 A. Correct.

6 Q. Okay. And I believe you testified, in
7 response to one of Mr. Keaney's questions, that you
8 did not look at any routes west of the focus study
9 area.

10 A. Correct.

11 Q. And the western boundary of the focus
12 study area was the Mill Creek; am I correct on that?

13 A. Essentially Mill Creek or Interstate 75.

14 Q. Did you look at any routes that were
15 inside of the Interstate 75 corridor?

16 A. Inside of the?

17 Q. I am talking about inside, along
18 Interstate 75. Did you look at any routes that
19 were -- where you would have constructed immediately
20 next to I-75?

21 A. I don't believe we did, no.

22 Q. All right. And is there a reason for
23 that?

24 A. Too far to the west essentially, and I
25 think we had enough routes to look at in the inside

1 of that, and going through some congested areas as
2 well as I recall.

3 Q. All right. So I-75 is too far to the
4 west; is that what you are telling me?

5 A. Well, following it all the way down, I
6 think it would have taken the route far to the west.

7 Q. You could have followed it to Galbraith
8 Road and it wouldn't have had that issue, would it?

9 A. I can't say for sure.

10 Q. All right. And, in fact, looking at
11 Route 17 on the same figure that you referred to
12 before, which I believe is the Alternate Route; is
13 that correct?

14 A. 17 is not the Alternate Route.

15 Q. What is the Alternate Route?

16 A. 27.

17 Q. And I believe you testified at your
18 deposition that 17 and 27 are virtually the same
19 route; is that correct?

20 A. They are virtually the same except for
21 some adjustments.

22 Q. All right. So let's take a look at
23 Route 27 which you'll find on Figure 2 point -- 2-9.
24 Do you have it?

25 A. I do.

1 Q. All right. And if you look at Route 27,
2 you will see that it comes very close to I-75, does
3 it not?

4 A. It does.

5 Q. All right. And you're testifying you did
6 not look at any alternatives that would either go
7 down the right-of-way of I-75 or very close to the
8 right-of-way of I-75, correct?

9 A. We did not propose any route candidates
10 that did that, that is correct.

11 Q. All right. A reason why?

12 A. Specifically I don't recall, but I would
13 suspect it's much more congested adjacent to the
14 highway.

15 Q. Mr. Nicholas, you did a helicopter survey
16 of the entire area, correct?

17 A. Correct.

18 Q. And you're saying that near I-75,
19 particularly on the area that is close to Route 27,
20 it's more congested nearer I-75?

21 A. I said I didn't know for sure. I suspect
22 that's why we didn't propose a route that way.

23 MR. STEVENSON: May I approach, please?

24 ALJ PARROT: You may.

25 MR. STEVENSON: Your Honor, for purposes

1 of the record, Reading Exhibits 1 through 47 were
2 marked as part of Patrick Ross, our Safety Service
3 Director's, Direct, which are not in evidence. I've
4 marked this R-48.

5 Q. Dr. Nicholas --

6 ALJ PARROT: Just a moment. We want to
7 decide how we are going to have this marked. Just a
8 moment.

9 Mr. Stevenson, I am going to ask you that
10 you mark this as Reading Exhibit 1 or, if you would
11 rather reserve that for Mr. Ross's testimony, let's
12 mark this as Reading Exhibit 2. Do you have a
13 preference?

14 MR. STEVENSON: Let's mark it as 1, I
15 guess.

16 ALJ PARROT: Okay. The exhibit is marked
17 as Reading Exhibit 1.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. (By Mr. Stevenson) Dr. Nicholas, can you
20 describe what's in that picture, please?

21 A. It's an aerial photograph.

22 Q. And is it an aerial photograph of the
23 air -- of Interstate 75 area near Reading, Ohio?

24 A. It's -- it looks like a Google Maps area
25 of Arlington Heights and Reading.

1 Q. Right. And are you -- you live in
2 Cincinnati?

3 A. Yes.

4 Q. And you are familiar with I-75?

5 A. I am.

6 Q. And it splits around Arlington Heights.
7 It's called the Lockland Split. Are you aware of
8 that?

9 A. Yes.

10 Q. And that's a picture of the Lockland
11 Split?

12 A. Correct.

13 Q. All right. And can you tell us, please,
14 inside the I-75 southbound and northbound lanes, you
15 see nothing but a bunch of grass and trees, correct?

16 A. Inside the Lockland Split?

17 Q. Yes.

18 A. I see it's about 80-percent developed.

19 Q. And the 20 percent --

20 A. One area.

21 Q. Big green area to the left?

22 A. There is a small area of grass and trees
23 by the creek area.

24 Q. Right. And that runs along Interstate
25 75.

1 A. Can you tell me where you are referring
2 to?

3 MR. STEVENSON: May I approach?

4 ALJ PARROT: You may.

5 Q. Here.

6 A. Yes.

7 ALJ PARROT: Mr. Stevenson, I am just
8 going to ask, I know it's difficult with a map in
9 particular, but please do your best to describe what
10 you are looking at just so it's clear for the record.

11 MR. STEVENSON: If I can, your Honor,
12 perhaps it would be easier for me to approach and
13 point to it.

14 ALJ PARROT: That doesn't help folks
15 reviewing the transcript later, though, is my issue.
16 It's not me I'm worried about, it's anyone else who's
17 reviewing this, so just do your best to describe --
18 maybe use quadrants. Are you in the top?

19 Q. If you look roughly at the lower center
20 of the photograph, you'll see an interchange.

21 ALJ PARROT: Okay.

22 Q. Correct?

23 ALJ PARROT: So you are in the lower left
24 corner of the map?

25 MR. STEVENSON: Correct.

1 ALJ PARROT: Okay.

2 Q. Do you see that? Dr. Nicholas?

3 A. Yes.

4 Q. And you see where I-75 North and I-75
5 separate to go around Arlington Heights which is
6 labeled on the picture?

7 A. From the south you are talking about?

8 Q. Sir, yes, sir.

9 A. Yes.

10 Q. All right. And in that area you see the
11 green space that appears on the left side of
12 Arlington Heights, correct?

13 A. Right. So on the west side?

14 Q. Right.

15 A. Near the center of the split.

16 Q. And immediately across the Interstate 75,
17 that area, do you see the open ground space that's
18 immediately across?

19 A. To the west?

20 Q. Yes, sir.

21 A. Yes.

22 Q. All right. And as you travel north on
23 I-75, the entire area between the end of the Lockland
24 Split and Glendale-Milford Road is largely
25 industrial, is it not?

1 A. I can see a limited amount on this.

2 Q. I understand. Is it an industrial area?

3 A. Along the west side of 75?

4 Q. Let's do this a different way. Let's go
5 to the east side of I-71 -- or I-75. What do you see
6 there?

7 A. You mean in the town of Reading?

8 Q. Yes, sir.

9 A. There's some residential development,
10 commercial developments, some ball fields. A creek,
11 a railroad.

12 Q. And as you follow I-75 South around
13 Arlington Heights, that's largely vacant land, is it
14 not?

15 A. I see a creek in there with -- treeline
16 creek and then adjacent to the east of that is
17 industrial and looks like residential.

18 Q. And the residential areas that lie along
19 I-75 are very small. There is a very small
20 residential development near that, correct?

21 A. Small in -- how would you define "small"?

22 Q. There is a handful of houses along I-75
23 South near that green space, correct?

24 A. I would say it's more than a handful.

25 Q. You would say more than a handful?

1 A. Yes.

2 Q. How many are within 100 feet, would you
3 say?

4 A. 100 feet of what exactly?

5 Q. All right. Never mind. In any event,
6 you did not look at putting a pipeline in that area.

7 A. We did not propose a route down here.
8 Like, I can see from here there are a lot of
9 constraints including creeks, there is a railroad,
10 there is dense industrial, there is dense
11 residential, and we have to get there from the north
12 and get from there to the south as well, so it's not
13 just looking at one area in isolation.

14 Q. When you came into Reading from the
15 north, you came through commercial areas, did you
16 not?

17 A. Commercial and industrial areas, yes.

18 Q. Correct. All right. And there are areas
19 along Route 27 which aren't very far from I-75,
20 correct?

21 A. They're within half a mile, quarter of a
22 mile maybe.

23 Q. A quarter of a mile maybe?

24 A. Yeah.

25 Q. All right. And, in fact, coming south on

1 Route 27 as you enter Reading, it's largely
2 commercial until it gets down to the ball fields,
3 correct?

4 A. I don't have the exact boundaries, but I
5 have no reason to doubt you are correct.

6 Q. All right. And at the point that you
7 enter the residential areas in Reading, you could
8 have gone right and gone to I-75 or into Lockland; is
9 that correct?

10 A. I don't know that for sure.

11 Q. All right. In any event, once you get
12 south of the ball field in Reading, you are primarily
13 in residential areas until you get to the -- near to
14 Galbraith Road, correct?

15 A. Do you have a specific map you are
16 looking at?

17 Q. You described that Route 27 is the
18 Alternate Route, correct?

19 A. Correct.

20 Q. And as you sit here today, you are aware
21 that the Alternate Route goes through Reading?

22 A. It does, yes.

23 Q. All right. And can you see, on Route 48,
24 where the Alternate Route would be? I'm sorry. On
25 Reading Exhibit 1, let me put it that way.

1 A. Yes.

2 Q. And from the time you leave the ball
3 field area that you previously talked about, until
4 the time that you hit the open space that's owned by
5 the City of Reading on Third Street, it's entirely
6 residential, is it not?

7 A. It's mostly residential, yeah.

8 Q. What isn't residential?

9 A. Well, further to the south there is, it
10 looks like some commercial/industrial.

11 Q. I understand that. I am talking about
12 from the time that you hit the open field that's
13 owned by the City of Reading, to the north of that on
14 Third Street, to the west of that on Mechanic, to the
15 north of it on Market, it's all residential, is it
16 not?

17 A. I just don't have the streets marked on
18 here, so when you are referring to streets, I don't
19 know where you are.

20 Q. All right. But you can see the route
21 there, correct?

22 A. I can -- I can -- the route is not marked
23 on this exhibit.

24 Q. It is not.

25 Did you walk the area of Reading before

1 you decided to put the route there?

2 A. I don't recall if I personally walked it.
3 I may have done this a long time ago.

4 Q. So you would have no way of remembering
5 what the streets were that you observed in Reading;
6 is that correct?

7 A. Correct.

8 Q. All right. And you are not aware of any
9 of the setbacks that homes may have within the City
10 of Reading on the streets you mapped out?

11 A. You mean how far they are from the
12 road --

13 Q. Correct.

14 A. Do I have the measurements? No.

15 Q. Do you have any memory at all of what
16 they are?

17 A. Other than what's on aerial photographs,
18 no.

19 Q. So you primarily did your mapping by
20 aerial photographs?

21 A. The initial mapping was done by aerial
22 photographs, yes.

23 Q. All right. Did you have any input on the
24 constructability review that was done with respect to
25 proposed pipeline No. 27?

1 A. No.

2 Q. Did you take into consideration any
3 subterranean infrastructure when you were
4 establishing the routes?

5 A. Initial route establishment, no.

6 Q. Did you take into consideration any
7 planned infrastructure developments that might be
8 along the proposed pipeline routes?

9 A. If we didn't know about them, they
10 wouldn't have been included in the initial placement.

11 Q. Okay. Would your opinion change about
12 whether the route should be -- strike that.

13 You indicated that you reviewed the
14 constructability review; is that correct?

15 A. I don't think I said that.

16 Q. I thought you said you read it.

17 A. Well, what are you talking about?

18 Q. The western route constructability review
19 that was prepared by Burns & McDonnell.

20 A. I have not read that.

21 Q. You have not?

22 A. No. I have never seen that.

23 Q. Did you review a constructability report
24 with respect to Route 27?

25 A. I did not.

1 MR. STEVENSON: Okay. I don't have any
2 further questions.

3 ALJ PARROT: Mr. Pacheco.

4 MR. PACHECO: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Pacheco:

8 Q. Dr. Nicholas, you told Mr. Keaney that
9 the route selection study area in this case is
10 congested with development, correct?

11 A. Correct.

12 Q. And that includes residential land uses?

13 A. Correct.

14 Q. Includes industrial land uses?

15 A. Correct.

16 Q. Includes recreational areas?

17 A. Correct.

18 Q. Includes parks?

19 A. Correct.

20 Q. Like Summit Park in Blue Ash.

21 A. Correct.

22 Q. Are you aware that approximately 850,000
23 people use Summit Park each year?

24 A. I am not aware of that.

25 Q. That was not taken into consideration by

1 you, at least during the route selection study, was
2 it?

3 A. Specifically that 850,000 people use
4 Summit Park a year was not taken into account.

5 Q. All right. Now, there were -- you are
6 aware that there were many public comments submitted
7 concerning this pipeline, right?

8 A. Yes.

9 Q. And you are aware that the majority of
10 them were opposed to the pipeline.

11 A. My understanding is that that is true.

12 Q. All right. And the public had complaints
13 about the Preferred and the Alternate Routes too,
14 correct?

15 A. I'm not aware of those specifically.

16 Q. All right. The public questioned why the
17 pipeline route was not further east of I-71, correct?

18 A. There was -- there was a series of
19 comments to that effect, yes.

20 Q. Right. And as the head of the route
21 selection study, you did not even see all of those
22 public comments, correct?

23 A. I did not see all of them, no.

24 Q. They were filtered through Duke, weren't
25 they?

1 A. Correct.

2 Q. Duke provided you with the starting
3 points and the limitations for the route selection
4 study, correct?

5 A. Correct.

6 Q. All right. And you relied on Duke to
7 tell you what was possible or not possible in terms
8 of engineering, right?

9 A. Correct.

10 Q. Now, when you were looking at potential
11 routes, you tried to avoid residences, right?

12 A. Correct.

13 Q. And one of the reasons for that is
14 safety.

15 A. Safety was one of the reasons, yes.

16 Q. All right. And other sensitive land
17 uses, right, such as parks?

18 A. Yes.

19 Q. And I think you testified with Mr. Keaney
20 that the eastern routes, that would have been -- I
21 think -- I am forgetting the term you used -- you
22 didn't use "routes." You used?

23 A. Concepts.

24 Q. Thank you. The eastern concepts you
25 talked about, you agreed that that would have had

1 less of an impact on residential areas, correct?

2 A. No. I agree that there is less dense
3 residential and less residential impacts close to,
4 like, within 100 feet, but perhaps the same within
5 1,000 feet.

6 Q. But less impact on the one specific
7 criteria?

8 A. 0 to 100, yes.

9 Q. Yes. Okay. And that would have had
10 less -- the eastern routes would have had less of an
11 impact on other land uses such as parks too, correct?

12 A. Likely correct because we could have
13 avoided them, yes.

14 Q. And one of the reasons the eastern routes
15 were rejected was because -- the eastern concepts,
16 I'm sorry, I want to use your term. One of the
17 reasons that the eastern concepts were rejected was
18 because they were longer than the other proposed
19 routes, correct?

20 A. Length played a factor.

21 Q. Right. And the longer the route is, the
22 more costly it is for Duke, correct?

23 A. Under -- under most circumstances I would
24 say that's probably correct.

25 Q. Well, under this circumstance, correct?

1 A. I don't know what that cost would be for
2 engineering and that kind of thing and slopes, so
3 that's why I am hedging a little bit.

4 Q. Fair enough.

5 As a general rule, would you agree that
6 length has the effect of increasing overall impacts?
7 It's frankly more costly?

8 A. All other things being equal, a longer
9 pipeline will cost more.

10 Q. Fair enough.

11 You ranked the various routes, correct?

12 A. In the route selection study, yes.

13 Q. Yes. Sorry. Thank you.

14 And there were two proposed routes that
15 ranked higher than the Alternate.

16 A. Correct.

17 Q. And there were five proposed routes that
18 ranked higher than the Preferred.

19 A. Correct, I think.

20 Q. And -- you already testified to that with
21 Mr. Keaney. We'll move on.

22 You talked about stakeholder impact --
23 input, sorry, with Mr. Keaney. Do you remember some
24 of that testimony?

25 A. Yes.

1 Q. Blue Ash is a stakeholder here, correct?

2 A. Yes.

3 Q. So is Columbia Township, correct?

4 A. Correct.

5 Q. And the general public is a stakeholder
6 too, correct?

7 A. Right.

8 Q. And public input is used to adjust
9 specific routes in specific places, true? As a
10 general rule.

11 A. It plays a role in it, yes.

12 Q. An example would be if you went through
13 your route selection study and you were informed by a
14 stakeholder that let's say there was an environmental
15 site or a major park, that would impact -- you would
16 go back to the drawing board or you might go back to
17 the drawing board and use that for a factor of
18 consideration?

19 A. We might consider how that would impact
20 route.

21 Q. You would at least consider it.

22 A. Yes.

23 Q. All right. And you don't know what
24 stakeholder impact was received from the City of Blue
25 Ash specifically, do you?

1 A. Not specifically, no.

2 Q. And you didn't believe it was your job,
3 as head of the route selection study, to contact Blue
4 Ash about its future development plans, right?

5 A. We were not directed to do so.

6 Q. That was from Duke, correct?

7 A. Correct.

8 Q. All right. And you would agree with me
9 that it would be important to know, as part of your
10 route selection, that the proposed route runs along a
11 park that can be used by about 850,000 people per
12 year, right?

13 A. We did know that from the routing.

14 Q. Okay. So that -- that was an
15 important -- that's an important factor that there is
16 a park that's used by 850,000 people.

17 A. The number of users, we wouldn't know
18 that, but we did know there was a park there.

19 Q. And that was an important part.

20 A. Part of the study.

21 Q. All right. And you personally did not
22 communicate with Blue Ash about any future
23 development plans that it has.

24 A. Correct.

25 Q. And you did not have communications about

1 Blue Ash's Comprehensive Land Use Plan.

2 A. We looked at the Comprehensive Land Use
3 Plan.

4 Q. But you didn't have any communications.

5 A. Correct.

6 Q. And you are aware, I think the route
7 selection study relied on a 2003 Blue Ash
8 Comprehensive Development Plan, right?

9 A. That is the one I remember seeing, yes.

10 Q. Correct. Are you aware the Comprehensive
11 Development Plan was updated by Blue Ash in late
12 2015, early 2016?

13 A. Not specifically, no.

14 Q. So your route selection study did not
15 look at the most-updated comprehensive plan in Blue
16 Ash, right?

17 A. Right.

18 Q. And since the study was completed, you
19 have not gone back and looked at any infrastructure
20 changes along either the Alternate or Preferred Route
21 that could impact the pipeline at least in Blue Ash,
22 right?

23 A. Me personally?

24 Q. You personally.

25 A. No, I have not been involved in the

1 siting of the project since the Application was
2 submitted.

3 Q. Which was about two years now or
4 approximately?

5 A. Yeah, yeah.

6 Q. All right. And you don't know if Duke
7 has done that either, do you?

8 A. I do know that Duke engineers have been
9 out, and adjustments have been made since I was
10 involved.

11 Q. But you don't know what specifics those
12 are?

13 A. Correct.

14 Q. And you don't know what communications
15 Duke has had with Blue Ash or not?

16 A. Correct.

17 Q. Now, I want to follow up with one other
18 thing you talked about with Mr. Yskamp, that you said
19 the PIR, the probable impact radius, does not apply
20 in this case. That was your testimony. Do you
21 recall that?

22 A. I do.

23 Q. Are you aware that Duke has a website
24 that says the PIR for this pipe is 326 feet on either
25 side of the center of the pipeline?

1 A. Only from testimony yesterday.

2 Q. Okay. So you are aware that that is the
3 representation by Duke to the world that the PIR for
4 this pipeline is 326 feet on either side of the
5 center of the pipeline?

6 A. I just know it was mentioned, yesterday,
7 it was on the website.

8 MR. PACHECO: Okay. I don't have
9 anything further, your Honor. Thank you.

10 ALJ PARROT: Mr. Miller.

11 MR. MILLER: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Miller:

15 Q. Dr. Nicholas, I would like to go back to
16 this ODOT issue for a moment. You said you were told
17 to stay out of the ODOT right-of-way?

18 A. That was one of the siting limitations
19 that we were working with.

20 Q. Okay. And why is that?

21 A. I wasn't involved in this negotiation or
22 contact, but my understanding is -- and it's typical
23 of all siting studies I think I have been involved
24 in, ODOT does not want you in their right-of-way and
25 that was the case. I think Duke contacted the DOT.

1 Q. Has anyone told you why ODOT doesn't want
2 this in their right-of-way?

3 A. No one has told me that.

4 Q. And yet, either the Preferred Route or
5 the Alternate Route goes into the ODOT right-of-way.

6 A. So say that again.

7 Q. That both the Preferred Route and the
8 Alternate Route enter into ODOT right-of-ways; isn't
9 that correct?

10 A. I believe they cross it.

11 Q. So it has to go into the right-of-way to
12 cross it, does it not?

13 A. Right, there is a difference between
14 crossing and then being within it longitudinally, is
15 my understanding.

16 Q. So it's your understanding that ODOT is
17 okay with crossing their right-of-way, but they don't
18 want you to go into it or use it or run alongside it.

19 A. That is my understanding.

20 Q. But you don't know why.

21 A. I don't know why.

22 Q. Do you have an idea as to why, the way
23 you answered that?

24 A. Yeah, it's just not my area. I wasn't
25 involved in that, so.

1 Q. I know. But I asked Mr. Hebbeler this
2 question yesterday and he told me I needed to talk to
3 you about it. That's why I am wondering if you know.

4 A. Yeah. I wasn't involved in that, those
5 series of contacts.

6 Q. Okay. I believe in your deposition you
7 said there were some sensitive land areas, land uses
8 that you consider, one of which is schools?

9 MR. D'ASCENZO: Objection, your Honor.
10 Improper use of a deposition.

11 ALJ PARROT: Just go ahead and ask the
12 question without reference to the deposition.

13 MR. MILLER: I will rephrase, your Honor.

14 Q. When you are looking at these siting
15 issues, do you have sensitive land issues that you
16 consider?

17 A. Yes.

18 Q. And are schools one of those?

19 A. Yes.

20 Q. Why would a school be considered
21 sensitive?

22 A. It's -- it's one of the safety issues
23 that we consider and one of the land use issues in
24 terms of disruption and so on.

25 Q. Disruption of the school?

1 A. Yes.

2 Q. During construction?

3 A. Construction, yes.

4 Q. And why is it a safety issue?

5 A. It's just one of the safety issues that
6 we look at keeping infrastructure and projects and
7 construction away from populated areas if we can.

8 Q. But I mean, we are told, all along, this
9 is safe. So why is it a safety issue?

10 A. Well, my assumption is it's safe, but I
11 think there's -- it is just one of the safety issues.
12 Keeping it away from people is one of the directions.
13 If possible and practical.

14 Q. Would a church also be considered a
15 sensitive land use?

16 A. Yes.

17 Q. And why is that?

18 A. Same, same reasoning.

19 Q. Because -- are you saying these are areas
20 where people, large numbers of people gather?

21 A. Yes.

22 Q. Which is why parks would also be a
23 sensitive land issue?

24 A. Parks can be sensitive from the
25 perspective -- ecological perspective as well.

1 Q. Thank you.

2 Would a fire station be considered a
3 sensitive land use?

4 A. I don't know that we classified fire
5 stations as a sensitive land use. I don't know for
6 sure.

7 Q. And a hospital would also be considered a
8 sensitive land use?

9 A. Yes.

10 Q. And I would assume you know that your
11 proposed Preferred Route runs past the Jewish
12 Hospital on two sides?

13 A. Correct.

14 Q. The fact that that's a sensitive land use
15 in that area did not make a difference to you?

16 A. We have to look at the entire route. So
17 though you may not agree or particularly like the
18 fact that a route is located close to a sensitive
19 land use, it's the totality of sensitive land uses
20 along an entire route that we have to consider.

21 Q. Would a large shopping center, regional
22 mall, be considered a sensitive land use?

23 A. I'm not sure that we considered that a
24 sensitive land use.

25 Q. But large numbers of people gather there.

1 A. Correct.

2 Q. Probably more than in a church on any
3 given Sunday.

4 A. Correct.

5 Q. But you would not consider it a sensitive
6 land use.

7 A. I'm not sure that we -- I think we
8 probably considered it a commercial land use with
9 parking lots and available space.

10 Q. And you are aware that your proposed
11 Preferred Route pipeline goes past a number of
12 churches?

13 A. Yes.

14 Q. As it traverses Kenwood Road in the
15 Kenwood area of Sycamore Township?

16 A. I don't know the number specifically in
17 that area but, yes.

18 Q. There is a number of churches that the
19 proposed Preferred Route passes.

20 A. Yes.

21 Q. And it also passes a school?

22 A. Is that a question?

23 Q. Yes. Are you aware that it is proposed
24 to be on a school property?

25 A. I am not specifically aware of that

1 information without looking at it.

2 Q. So you are not aware that the property is
3 on the Saint Vincent Church and School property?

4 A. I just don't recall -- I don't recall all
5 the properties every route crosses --

6 Q. Okay.

7 A. -- without referring back to mapping.

8 Q. You are familiar that it passes the
9 Jewish Hospital property?

10 A. Yes, yes.

11 Q. And when you did -- did you have any
12 conversations with anyone at Jewish when you were
13 siting this pipeline?

14 A. Not during siting, but my understanding
15 is there have been conversations since then.

16 Q. Okay. So when you chose this route or
17 made this route selection, you were not aware there
18 was nuclear fuel on that premises?

19 A. Nuclear fuel, no. I was not aware of
20 that.

21 Q. Were you aware there's 35,000 gallons of
22 fuel stored in there for their generators?

23 A. Not at that time.

24 Q. Okay. Do you recall that the route
25 crosses Kenwood Road, just about at the Jewish

1 Hospital, to go on to the Kenwood Towne Centre
2 property?

3 A. Yes.

4 Q. Why does it cross the road?

5 A. That was an engineering adjustment after
6 the initial routing was done. I can't specifically
7 answer why it does that.

8 Q. Okay. So that wasn't your decision?

9 A. No.

10 Q. And this project originates in Sycamore
11 Township, does it not, at the WW Station?

12 A. Yes.

13 Q. You would consider Sycamore Township to
14 be a stakeholder in this also?

15 A. Yes.

16 Q. But you didn't have any conversations
17 with anyone at Sycamore when you were planning this
18 route?

19 A. Not of the initial routes.

20 Q. Pardon?

21 A. No, not of the initial routes.

22 MR. MILLER: I have nothing further, your
23 Honor.

24 ALJ PARROT: Ms. Hernstein?

25 MS. HERNSTEIN: Yes, thank you, your

1 Honor. Kara Hernstein on behalf of Jewish Hospital -
2 Mercy Health.

3 - - -

4 CROSS-EXAMINATION

5 By Ms. Hernstein:

6 Q. Dr. Nicholas, it -- I know you can't
7 really see me, but can you hear me all right?

8 A. Yes. I can see you too.

9 Q. We will just pretend we are talking on
10 the phone. Now, as you testified earlier, the
11 Preferred Route passes Jewish Hospital, correct?

12 A. Correct.

13 Q. Okay. And prior to your deposition in
14 this case, you were unaware that Jewish Hospital
15 maintains a piece of equipment known as a Gamma
16 Knife, correct?

17 A. Correct.

18 Q. And prior to your deposition in this
19 case, you were unaware that in connection with the
20 Gamma Knife, Jewish Hospital maintains a nuclear-fuel
21 source on-site, correct?

22 A. Correct.

23 Q. So in determining the relative impact and
24 safety of the Preferred Route, the proximity to a
25 nuclear-fuel source was not considered, correct?

1 A. That's correct, correct.

2 Q. So in the route selection -- in the route
3 selection study and in your direct testimony there's
4 no mention of a nuclear-fuel source in proximity to
5 the Preferred Route, correct?

6 A. Correct.

7 Q. Now, prior to your deposition, you were
8 unaware that the main electric service for Jewish
9 Hospital is through underground -- what am I
10 saying -- underground lines that run along Galbraith
11 Road, correct?

12 A. Correct.

13 Q. So in determining the relative impact of
14 the Preferred Route, the proximity and effect on
15 Jewish Hospital's main electrical service was not
16 considered, correct?

17 A. Correct.

18 Q. So does the route selection -- so the
19 route selection study in your direct testimony does
20 not address Jewish Hospital's electric service at
21 all, correct?

22 A. Correct. That would be something that
23 would be addressed once the route was certificated,
24 through conversations with you, the engineering would
25 be adjusted as needed or in negotiation with.

1 Q. Is that also true for the nuclear-fuel
2 source? Something that -- that's something that
3 would have to be addressed later?

4 A. Yes.

5 Q. But the Preferred Route has already been
6 mapped out, correct?

7 A. There is a route, yes.

8 Q. All right. So if I am understanding your
9 testimony correctly, that was done without
10 consideration or inquiry into whether the Preferred
11 Route would be in proximity to a nuclear-fuel source,
12 correct?

13 A. Correct, correct.

14 Q. Now, prior to your deposition, you were
15 unaware that Jewish Hospital maintains a storage tank
16 of approximately 35,000 gallons of diesel fuel
17 on-site, correct?

18 A. Correct.

19 Q. So in determining the relative impact and
20 safety of the Preferred Route, the proximity to
21 Jewish Hospital's fuel storage tank was not a factor,
22 correct?

23 A. Correct.

24 Q. And, in fact, the route selection study
25 in your direct testimony does not address the

1 presence of a 35,000-gallon fuel tank at all,
2 correct?

3 A. That's correct.

4 Q. Now, prior to your deposition in this
5 matter, you were unaware that the primary entrance to
6 Jewish Hospital, for both patients and EMS or
7 emergency medical services, is on Kenwood Road,
8 correct?

9 A. Correct.

10 Q. Okay. So in determining the relative
11 impact of the Preferred Route, the potential effect
12 on traffic surrounding Jewish Hospital was not
13 considered, correct?

14 A. Yeah. That wouldn't be a route
15 consideration, construction consideration.

16 Q. Okay. Thank you. So it wasn't
17 considered.

18 A. Correct.

19 Q. Okay. In fact, the route selection study
20 and your direct testimony do not address EMS or
21 patient access to Jewish Hospital in any way,
22 correct?

23 A. Correct.

24 Q. Okay. Now, prior to your deposition, you
25 were unaware that Jewish Hospital currently operates

1 at 100 percent or over 100 percent capacity on work
2 days, correct?

3 A. Correct.

4 Q. Okay. And in determining the relative
5 impact of the preferred pipeline route, the effect on
6 Jewish Hospital's ability to expand its physical
7 footprint to meet patient need is not considered,
8 correct?

9 A. Correct.

10 MS. HERNSTEIN: All right. No further
11 questions. Thank you.

12 MR. BEELER: No questions.

13 ALJ PARROT: Mr. Beeler.

14 MR. BEELER: No questions. Thank you.

15 ALJ PARROT: I'm guessing Duke may want a
16 moment to determine whether there will be redirect,
17 so at this point let's go ahead and take a brief
18 break.

19 (Recess taken.)

20 ALJ PARROT: Let's go back on the record.
21 Any redirect?

22 MR. D'ASCENZO: Yes, your Honor. Just
23 briefly.

24 - - -

25

1 REDIRECT EXAMINATION

2 By Mr. D'Ascenzo:

3 Q. Dr. Nicholas, do you recall
4 cross-examination questions regarding
5 property-specific issues such as those with Jewish
6 Hospital?

7 A. Yes.

8 Q. Could you explain how those
9 property-specific issues are considered and addressed
10 as part of the overall routing process?

11 A. Yes. After the route selection study
12 process is complete, there is an additional process
13 of engineering, adjustments and property-specific
14 negotiations and engineering issues that are taken
15 into account in negotiation with the property owners
16 and during the design phase of the project.

17 Q. And do you know, is the engineering
18 complete on the Central Corridor project?

19 A. From what I've heard, it is not yet
20 complete.

21 MR. D'ASCENZO: No further questions.

22 ALJ PARROT: Mr. Keaney.

23 MR. KEANEY: No, your Honor. No recross.

24 ALJ PARROT: Mr. Yskamp?

25 MR. YSKAMP: Just very briefly.

1 - - -

2 RECROSS-EXAMINATION

3 By Mr. Yskamp:

4 Q. Dr. Nicholas, if -- if negotiations fail
5 with Jewish Hospital or any property owner, doesn't
6 Duke have the right to condemn the property if they
7 are granted a certificate?

8 MR. D'ASCENZO: Objection, calls for a
9 legal conclusion, your Honor. Dr. Nicholas is not an
10 attorney.

11 Q. If you know.

12 ALJ PARROT: Overruled. To the extent
13 that you can answer, go ahead.

14 A. I don't know.

15 MR. YSKAMP: Okay. That's all the
16 questions I have.

17 ALJ PARROT: Thank you.

18 Dr. Nicholas, we are having issues with
19 the mic again. Can you just move it closer?

20 Mr. Stevenson.

21 MR. STEVENSON: I don't have anything
22 further.

23 ALJ PARROT: Mr. Pacheco.

24 MR. PACHECO: None, your Honor. Thank
25 you.

1 ALJ PARROT: Mr. Miller.

2 MR. MILLER: No, your Honor.

3 ALJ PARROT: Ms. Hernstein?

4 MS. HERNSTEIN: Just very briefly, if I
5 may.

6 - - -

7 RECROSS-EXAMINATION

8 By Ms. Hernstein:

9 Q. When you referred to engineering
10 negotiations, could you just -- could you describe
11 those for me a little bit, what those entail?

12 A. I'm not -- I wouldn't be involved in
13 them, but it would be a dialogue between Duke Energy
14 and the property owner.

15 Q. So you wouldn't be able to testify that
16 if a -- an issue was discovered, that the route would
17 be moved after certification, correct?

18 A. Just say the question again.

19 Q. Yeah, that was a weird question. That
20 was on me.

21 So you were unaware -- so after a route
22 is certified, are you aware if that route is able to
23 be moved?

24 A. I think there are circumstances under
25 which it can be moved.

1 Q. Okay. Could you -- could you elaborate,
2 please?

3 A. My knowledge doesn't extend that far.

4 MS. HERNSTEIN: Okay. No further
5 questions.

6 ALJ PARROT: Mr. Beeler?

7 MR. BEELEER: No questions. Thank you.

8 ALJ PARROT: All right.

9 MR. D'ASCENZO: Your Honor, at this point
10 in time, we would move for the admission of Duke
11 Energy Ohio Exhibit 9.

12 ALJ PARROT: 9.

13 MR. D'ASCENZO: Thank you.

14 ALJ PARROT: Are there any objections?

15 MR. KEANEY: Just reserving my motion to
16 strike. Other than that.

17 ALJ PARROT: Noted.

18 MR. YSKAMP: I would just also like to
19 object for the record to the admission of line 7
20 through 14 on page 13 as well.

21 ALJ PARROT: Noted.

22 Consistent with my earlier ruling, Duke
23 Exhibit 9 is admitted in its entirety.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 ALJ PARROT: Mr. Stevenson, would you

1 like to go ahead and move your exhibit at this time?

2 MR. STEVENSON: Yes, ma'am.

3 ALJ PARROT: Okay. Is there any
4 objection to the admission of Reading Exhibit 1?

5 MR. D'ASCENZO: No, your Honor.

6 ALJ PARROT: All right. Hearing none, it
7 is -- it is admitted.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 ALJ PARROT: Thank you very much,
10 Dr. Nicholas.

11 ALJ SEE: Duke can call its next witness.

12 MS. KINGERY: Thank you, your Honor.

13 Duke Energy Ohio calls Steve Lane to the stand.

14 (Witness sworn.)

15 ALJ SEE: Thank you. Have a seat, and
16 cut your mic on, please.

17 MS. KINGERY: I would ask that Mr. Lane's
18 Direct Testimony filed in this case be marked as Duke
19 Energy Ohio Exhibit 10.

20 ALJ SEE: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MS. KINGERY: Thank you. May we
23 approach?

24 ALJ SEE: Yes.

25 - - -

1 STEPHEN R. LANE

2 being first duly sworn, as prescribed by law, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 By Ms. Kingery:

6 Q. Good morning, Mr. Lane.

7 A. Good morning.

8 Q. Would you please state your full name and
9 business address for the record.

10 A. Stephen Roy Lane, 139 East Fourth Street,
11 Cincinnati, Ohio 45202.

12 Q. And do you have in front of you what has
13 just been marked as Duke Energy Ohio Exhibit 10?

14 A. I do.

15 Q. And can you identify that document for
16 us, please?

17 A. That is my direct testimony on behalf of
18 Duke Energy Ohio in this case.

19 Q. Thank you. And was that testimony
20 prepared by you or under your direction?

21 A. Yes, it was.

22 Q. And do you have any corrections or
23 changes to make to your testimony today?

24 A. No, I do not.

25 Q. And if I were to ask you all of those

1 questions today, would your answers be the same?

2 A. Yes, they would.

3 MS. KINGERY: Thank you. The witness is
4 available for cross-examination.

5 ALJ SEE: Mr. Keaney?

6 MR. KEANEY: City and County do not have
7 any cross for this witness.

8 ALJ SEE: Mr. Yskamp?

9 MR. YSKAMP: Thank you, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Yskamp:

13 Q. Good morning, Mr. Lane.

14 A. Good morning.

15 Q. I would like you to turn to page 4 of
16 your testimony. Just for reference, here you discuss
17 landslides a little bit in your testimony; isn't that
18 correct?

19 A. That is correct.

20 Q. And you state that landslides have a
21 possible occurrence in -- in the area around the
22 pipeline; is that true?

23 A. Yes, and that they are generally
24 predictable.

25 Q. Would you agree with me that landslides

1 are actually fairly common in the Hamilton County and
2 Cincinnati area?

3 A. Landslides can be common in the
4 Cincinnati area. In specific -- on specific slopes
5 and specific areas of the city, yes.

6 Q. Have you seen a report from the Hamilton
7 County Soil and Water Conservation District on
8 landslides?

9 A. What specific report are you referring
10 to?

11 Q. A report titled "Landslides in Hamilton
12 County" by Robert E. Sheets.

13 A. I would need to see a copy of that report
14 to confirm the answer to your question.

15 MR. YSKAMP: I am going to mark NOPE
16 Exhibit 9.

17 Q. Mr. Lane, have you seen this document
18 before?

19 A. No, I have not.

20 MS. KINGERY: Your Honor, may I ask that
21 we get a date, a rough date as to when this was
22 prepared?

23 ALJ SEE: That, as well as a description
24 of what Mr. Yskamp wants marked.

25 MR. YSKAMP: Okay. If he hasn't seen it,

1 I would have very little chance of getting this into
2 evidence, I realize. So I'll just describe it. The
3 document marked NOPE Exhibit 9 is "Landslides in
4 Hamilton County." And I am not going to ask him
5 questions on the document. He hasn't seen it.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. So, Mr. Lane, you -- you discuss
8 landslides during construction, but in your testimony
9 is it true that you do not discuss how landslides can
10 impact the pipeline after construction?

11 A. That is not true. Page 4, line 10, I
12 discuss how the operation of the line, of gas
13 pipelines, the soils are suitable for the
14 installation and operation of gas pipelines
15 throughout the project area also.

16 Q. The soils of the project area? So
17 Line 10 states, "Likewise, soils throughout the
18 project area are generally suitable to installation
19 and operation of natural gas pipelines and the areas
20 currently support numerous existing natural gas
21 pipelines." That's -- that's the -- where you
22 discuss the potential for landslides to impact after
23 construction?

24 A. Correct. Operation occurs after
25 construction.

1 Q. So I don't see landslides mentioned in
2 that sentence.

3 A. Within the context of the initial part of
4 that question speaking of landslides, I am
5 specifically referring to soils and their stability,
6 which soil stability is the inherent reason why
7 landslides do or do not occur.

8 Q. If a landslide occurs in an area, could
9 it expose a pipe?

10 A. If a landslide were to occur in a
11 specific area, if there were a pipeline located
12 there, it could expose it.

13 Q. And that could impact the operation of
14 the pipe, could it not?

15 A. If there was a pipeline exposed in such a
16 condition.

17 Q. And would you agree with me, landslides
18 could damage utilities in an area where they occur?

19 A. Yes.

20 Q. So on -- I would like you to turn to
21 page 6. Just referencing here, lines 4 through 7,
22 you describe floodplain permitting in a sentence
23 here. But you only describe it in relation to
24 aboveground structures; is that correct?

25 A. I also discuss that floodplain permitting

1 is typically not required for underground facilities.
2 So I speak both to underground and aboveground
3 facilities.

4 Q. Do you know how much of the Preferred
5 Route and the Alternate Route will be within a
6 floodplain?

7 A. Not off the top of my head.

8 MR. YSKAMP: I would like to mark another
9 exhibit. I'll mark this as NOPE Exhibit 10. NOPE
10 Exhibit 10 is an answer to NOPE Interrogatory 03-007
11 received January 10, 2019.

12 ALJ SEE: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. (By Mr. Yskamp) Mr. Lane, have you seen
15 this document before?

16 A. Yes, I have.

17 Q. In fact, you helped answer this request,
18 didn't you?

19 A. That is correct.

20 Q. And the question asks "State whether any
21 portion of the Preferred Route is within a flood
22 plain" on the first page, and -- and in the answer
23 there are eight properties listed; is that correct?

24 A. Eight properties relative to the
25 Preferred Route, that's correct.

1 Q. And if you turn two pages, this
2 Interrogatory is titled NOPE Interrogatory 03-008;
3 isn't that correct?

4 A. That is correct.

5 Q. And this asks whether any portion of the
6 Alternate Route is within the floodplain; is that
7 correct?

8 A. That is correct.

9 Q. If you turn the page to where the answer
10 is, there are 18 properties along the Alternate Route
11 within a floodplain; is that correct?

12 A. That is my count also.

13 Q. Now, the proposed pipeline is going to
14 require tree removal along -- along whatever route is
15 chosen, it's going to require tree removal; isn't
16 that correct?

17 A. That's correct.

18 Q. And do you know how many trees will be
19 removed along the Alternate Route?

20 A. I do not know that count.

21 Q. Do you know along the Preferred Route?

22 A. No, I do not.

23 Q. You were involved with the construction
24 of the C314 line; is that right?

25 A. At the time it was certificated I was

1 involved as a contractor. I was not with Duke Energy
2 at that time.

3 Q. Do you recall if Duke Energy, which was
4 Cinergy at that time, if there were any environmental
5 violations related to the construction of that
6 pipeline?

7 A. I am not aware of that.

8 Q. Do you recall if there were any
9 violations of the certificate, issued by the Board,
10 in relation to that pipeline?

11 A. No.

12 MR. YSKAMP: I am going to mark NOPE
13 Exhibit 11. NOPE Exhibit 11 is a -- appears to be a
14 letter from Cinergy Services to James O'Dell of the
15 Ohio Power Siting Board.

16 ALJ SEE: Could you give us a Case No.
17 and date?

18 MR. YSKAMP: Regarding the C314 Natural
19 Gas Transmission Line, Case No. 01-520-GA-BTX. It is
20 date stamped December 7, 2005.

21 ALJ SEE: The exhibit is so marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. (By Mr. Yskamp) Mr. Lane, do you
24 recognize this document?

25 A. Yes, I do.

1 Q. And what is this document?

2 A. This is a document that describes
3 clearing of vegetation specifically along a stream
4 where we were instructed to replant vegetation
5 adjacent to that stream. It was cleared
6 inadvertently and we had to go back and replant that
7 area. And monitor -- monitor it for the required
8 years.

9 Q. Would you have considered that mistaken
10 clearing an environmental violation?

11 A. It was a condition of the certificate
12 that we perform this action and maintain it for a
13 certain number of years. In consideration of the
14 clearing having occurred, we still met that
15 condition, so I would not consider this an
16 environmental violation.

17 Q. So in the first line it says "As you are
18 aware, a crew contracted by CG&E mistakenly mowed the
19 streambank along both sides of Millers Creek in
20 October of this year." What does that mean, "mowed
21 the streambank"?

22 A. Vegetation management inadvertently
23 extended their clearing activities into this area
24 where the vegetation was replanted.

25 Q. I would like to direct your attention to

1 the second paragraph of this letter. It says, if you
2 follow along, "We know it's an inadequate expression,
3 but all of us involved with the C314 project and
4 subsequent ROW maintenance sincerely regret this
5 second error on our part." Did I read that
6 correctly?

7 A. Yes.

8 Q. What was the first error?

9 A. I do not remember.

10 Q. Do you remember -- okay. I would like to
11 show you another document that might refresh your
12 recollection of this event.

13 MR. YSKAMP: This will be marked NOPE
14 Exhibit 12. So NOPE Exhibit 12 is titled
15 "Investigation Report, Project Name: C314 Natural Gas
16 Pipeline." It is date stamped in the Docket of PUCO,
17 July 31, 2003.

18 ALJ SEE: The exhibit is so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. (By Mr. Yskamp) Before I ask you about
21 this document, just one more -- one or two more
22 questions on what was marked as -- the letter --
23 three more questions. The letter from Cinergy
24 Services, what is the marking of that exhibit in
25 front of you?

1 A. Could you repeat that question, please?

2 Q. Sorry. Is -- could you turn back to
3 Exhibit No. NOPE 11, the letter from Cinergy
4 Services.

5 A. Okay.

6 Q. And if you turn to the second page and
7 it's double-sided, so on the signature line, Steve
8 Lane, is that you that signed that?

9 A. Yes, that is correct. I was involved in
10 this under the direction of my supervisor at the
11 time, the second signature at the bottom of that
12 page.

13 Q. Okay. Were you with Cincinnati Gas &
14 Electric Company at this time?

15 A. This was two -- within a month of my
16 joining Cinergy.

17 Q. And what -- does this refresh your
18 recollection on what your role was with this C314
19 project?

20 A. At the time of this letter, yes.

21 Q. Okay. What was your role with the
22 project at the time of this letter?

23 A. I was serving as an Environmental
24 Scientist under Robert McElfresh at the time. My
25 responsibilities included environmental assessments

1 of projects, Power Siting Board applications, that
2 type of work.

3 Q. Okay.

4 A. Environmental compliance would be a part
5 of that too.

6 Q. Thank you.

7 If I could turn your attention to NOPE
8 Exhibit 12. Have you seen this document before?

9 A. No, I have not.

10 Q. Are you familiar with these Staff
11 Investigation Reports in general?

12 A. This was before I had joined Cinergy and
13 I was no longer involved in the project as a
14 consultant.

15 Q. At the time of this inspection report you
16 were not involved -- when you say "no longer," what
17 do you mean?

18 A. My -- well, let me think about this for a
19 minute. You are asking me to dredge far back.

20 Q. I understand.

21 A. I do not recall being involved in this --
22 the items discussed in this investigation report at
23 the time of this exhibit.

24 Q. So just to be clear, I just want to
25 direct your attention to the second paragraph under

1 "Field Inspection." It says "Staff's review showed
2 that all trees had been cleared to the edge of the
3 stream, in a path approximately 40 feet wide." Is
4 this a different event than the mowing event in the
5 prior letter?

6 MS. KINGERY: Objection. Your Honor,
7 Mr. Lane just stated that he had never seen and
8 doesn't remember the event, so I don't know how he
9 can be expected to answer that question.

10 MR. YSKAMP: If I may? If it refreshes
11 your recollection.

12 ALJ SEE: Well, then, do you intend to
13 ask that question?

14 MR. YSKAMP: Yeah, can I start my
15 question again?

16 ALJ SEE: Start over.

17 Q. (By Mr. Yskamp) So that sentence,
18 "Staff's review showed that all trees had been
19 cleared to the edge of the stream, in a path
20 approximately 40 feet wide." Does that refresh your
21 recollection of whether you know about this event?

22 A. I do recall that there was an event. I
23 do not recall that there were two separate events.

24 MR. YSKAMP: That's all the questions I
25 have. Thank you.

1 ALJ SEE: Mr. Stevenson?

2 MR. STEVENSON: Just briefly.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Stevenson:

6 Q. Mr. Lane, were you involved in the siting
7 process for the City of Reading?

8 A. I was involved in the siting process,
9 yes.

10 Q. And were you involved in the siting
11 process with respect to the route of the pipeline
12 through the city streets of Reading?

13 A. With respect to the route selection study
14 proper, yes.

15 Q. Do you want to elaborate, please?

16 A. The route selection study as given in the
17 application, engineering adjustments that occurred
18 since the completion of that, the finalization of
19 that siting study and the submittal of the
20 application. Primarily Duke engineering, not myself.

21 Q. All right. With respect to the route
22 being in the City of Reading, that goes down a number
23 of city streets, correct?

24 A. Yes.

25 Q. All right. Are you aware of the

1 constructability report that was prepared for Duke by
2 Burns & McDonnell?

3 A. No, I am not.

4 Q. All right. Fair enough. Was the nature
5 of your input with respect to the siting study in
6 Reading, did that deal primarily with the
7 environmental issues or did it deal with the location
8 of the pipeline?

9 A. Primarily environmental and land-use
10 issues.

11 Q. And was there any input that you had with
12 respect to the location of the proposed pipeline?
13 That's outside of the environmental issues.

14 A. Location of the pipeline corridor is
15 defined in the route selection study, yes, but as to
16 the exact location of where the pipe would or would
17 not be located related to engineering, pipeline
18 engineering, no.

19 Q. Well, let me ask it this way: Were you
20 involved in the siting study when the decision was
21 made to put the pipeline on Market Street in the City
22 of Reading?

23 A. I would need to see a map to answer that
24 question.

25 Q. I am not sure I have your maps, but. Let

1 me ask a different question. Are you aware of if the
2 proposed pipeline travels on residential streets
3 through the City of Reading?

4 A. Yes, I am.

5 Q. Were you involved in the process that
6 caused the pipeline location to be placed along those
7 residential streets?

8 A. I was involved in placing the routes as
9 defined in the route selection study, yes.

10 Q. And that includes along those residential
11 streets.

12 A. Where they are on residential streets,
13 yes.

14 Q. Did you walk those streets before you
15 made those decisions?

16 A. I drove many of those segments including
17 through Reading. I did not walk them.

18 Q. All right. Did you drive them before the
19 decision was made to put the pipeline there or was
20 the driving after the pipeline was routed through the
21 City of Reading?

22 A. It was before. I reviewed those routes
23 before.

24 Q. All right. So you -- you drove down West
25 Street and Market Street, Mechanic, and Third Street,

1 which is the pipeline route through Reading, before
2 those decisions were made.

3 A. Yes.

4 MR. STEVENSON: All right. I don't have
5 any further questions.

6 ALJ SEE: Mr. Pacheco.

7 MR. PACHECO: Nothing your Honor, thank
8 you.

9 ALJ SEE: Mr. Miller?

10 MR. MILLER: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Miller:

14 Q. Mr. Lane, you were involved in the
15 pipeline siting as it exists in Sycamore Township?

16 A. That is correct.

17 Q. And did you walk the proposed routes, and
18 I will use the term "routes" because both the
19 Alternate and Proposed are -- or, Preferred Routes
20 are in Sycamore Township. Did you walk either of
21 those in the township?

22 A. I do remember walking those northern
23 segments of the route, yes.

24 Q. How about the southern segments along
25 Kenwood Road or Galbraith Road?

1 A. Those were not pedestrian surveys. They
2 were done by vehicle.

3 Q. I'm sorry, by who?

4 A. I did not walk them. I was in a vehicle
5 reviewing them.

6 Q. Okay. So you drove those.

7 A. And got out at points, yes.

8 Q. How wide is this easement going to be
9 that the pipeline is going in?

10 A. I am not a pipeline engineer. That is
11 not within my expertise to answer.

12 Q. But you're involved in looking at the
13 effect on the environment where the pipeline is
14 going.

15 A. Correct.

16 Q. Wouldn't it be important to know how wide
17 of an area is going to be affected if you are
18 involved in the environment?

19 A. Once the engineering is advanced, that
20 information will be given to me and that information
21 will feed into the environmental permitting of the
22 project, you are correct.

23 Q. So in your input as far as the
24 environmental effect in Sycamore Township, you didn't
25 have any information as to how wide an area might be

1 affected where the pipeline is going.

2 A. As far as the environmental studies, we
3 looked at a preliminary 80-foot right-of-way and we
4 extended that investigation for certain factors out
5 an additional 200 feet to accommodate for engineering
6 adjustments or adjustments going forward. So we --
7 we did review a corridor that included what would be
8 expected to be, at the end of the day, the final
9 easements.

10 Q. But you don't know the width of that --
11 what that final easement would be.

12 A. It's my understanding it's going to vary
13 depending on where we are at specific locations and
14 what we can negotiate.

15 Q. Is there a minimum width that Duke always
16 at least receives for an easement?

17 A. I am not qualified to answer that
18 question, I'm sorry.

19 Q. And within that easement, all of the
20 vegetation will be removed?

21 A. It is my understanding that that is not
22 necessarily the case. With the exception of directly
23 over the pipe, there are instances where woody
24 vegetation is compatible, smaller shrubs and trees,
25 and, of course, herbaceous vegetation is completely

1 compatible with the maintenance and operation of the
2 pipeline.

3 Q. And I guess without knowing exactly where
4 this easement is going or where the pipeline is
5 going, you can't comment on how many mature trees
6 might be lost in the township?

7 A. No, I cannot comment on that.

8 Q. Did you consult with the township as to
9 their landscaping requirements and their zoning code
10 before putting your input in on the -- either of the
11 routes?

12 A. Those factors that you discuss are part
13 of the easement negotiations. But at this point of
14 the environmental surveys, no, I was not involved in
15 any of that.

16 Q. But easement negotiations are done with
17 property owners.

18 A. Correct.

19 Q. The township would have landscaping
20 requirements. Would you expect the property owners
21 to know what those are? Or -- go ahead and answer.

22 A. We also -- it is my understanding we also
23 have meetings with townships and we'll continue to
24 have those as the engineering moves forward; so that
25 information will be gathered as part of that process.

1 Q. And will you inform a property owner if
2 the pipeline will put then in violation of the zoning
3 code?

4 A. That is outside of my expertise to answer
5 how that would happen.

6 MR. MILLER: That's all I have, your
7 Honor.

8 ALJ SEE: Ms. Hernstein?

9 MS. HERNSTEIN: No, your Honor.

10 MR. KEANEY: Your Honor, would it be
11 permissible for me to ask a few questions following
12 up on Mr. Yskamp's?

13 ALJ SEE: Mr. Keaney, when you were
14 requested if you had any, you said no.

15 MR. KEANEY: Yes, your Honor, I did not,
16 until an exhibit had been brought up that I was not
17 aware of.

18 ALJ SEE: Well . . .

19 MR. KEANEY: I'll be quick.

20 ALJ SEE: Go ahead, Mr. Keaney.

21 MR. KEANEY: Thank you. I appreciate it.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Keaney:

25 Q. Mr. Lane, I believe you had said that you

1 did not describe what's stated in NOPE Exhibit 11 as
2 a violation of the certificate granted by the Board
3 in the C314 case, correct?

4 A. Correct.

5 Q. When the Board grants a certificate,
6 there are conditions that are imposed as outlined in
7 that certificate, correct?

8 A. That is correct.

9 Q. And if Duke does not comply with the
10 conditions in the certificate, is it your testimony
11 that that does not constitute a violation of the
12 certificate?

13 MS. KINGERY: Your Honor, I would like to
14 object at this point. We are now talking about
15 testimony that was quite a long time ago because it
16 was testimony from the first person who actually
17 crossed Mr. Lane and I believe that it is being
18 mischaracterized at this time. I could ask the court
19 reporter to go back to the cross-examination by
20 Mr. Yskamp and determine whether that is indeed what
21 Mr. Lane said. But I believe he is being
22 cross-examined unfairly at this point.

23 MR. KEANEY: Your Honor, if I may have an
24 opportunity to respond?

25 ALJ SEE: Go ahead.

1 MR. KEANEY: I just asked him about the
2 definition of what he constitutes an error versus a
3 violation. I am not characterizing his testimony;
4 I'm clarifying it.

5 And I also would like to say that in
6 terms of bringing up this issue, Duke has made the
7 C314 pipeline case, it's fundamental throughout
8 Mr. Hebbeler's testimony, as this being Phase I of
9 what is now Phase II. They have brought in the C314
10 pipeline and those issues as part of this case, not
11 the City or County nor any other Intervenor.

12 MS. KINGERY: Your Honor, if I might? I
13 have scrolled back in the unofficial transcript that
14 I have in front of me and I've found where that
15 conversation happened and this is at something -- I
16 don't know if it's line number or page number, the
17 number next to it of 93/6. And the question was
18 asked: "Would you have considered that mistaken
19 clearing an environmental violation?"

20 "Answer: It was a condition of the
21 certificate that we perform this action and maintain
22 it for a certain number of years. In consideration
23 of the clearing having occurred, we still met that
24 condition, so I would not consider this an
25 environmental violation."

1 And I believe Mr. Keaney asked Mr. Lane,
2 now recently in his second opportunity, whether he
3 had -- whether he recalled saying that it was not a
4 violation of the certificate. What he said is "I
5 would not consider this an environmental violation."

6 MR. KEANEY: Your Honor, he answered
7 correct. So while Ms. Kingery may not like her
8 witness's answer, that's how he answered. So to the
9 extent there is mischaracterizing testimony, the
10 witness and I agree on what his testimony said.

11 MS. KINGERY: Which was different than
12 the transcript.

13 ALJ SEE: Okay. And I am going to allow
14 the witness to answer the question.

15 THE WITNESS: Could you please repeat the
16 question?

17 MR. KEANEY: Can I ask the court reporter
18 to repeat the last question and answer.

19 ALJ SEE: Sure.

20 MR. KEANEY: Thank you.

21 (Record read.)

22 A. The requirement of the certificate was
23 that we plant this area with specific species and
24 monitor for a number of years. I don't see -- we met
25 that condition. I don't see where the violation was.

1 Q. So in NOPE Exhibit 11, you describe CG&E
2 "mistakenly mowed the streambank along both sides of
3 Millers Creek in October of this year," correct?

4 A. Correct.

5 Q. And you describe that as an error,
6 correct?

7 A. That is how it's described in this
8 letter, yes.

9 Q. So I am asking, do you have any -- do you
10 make any distinction between a violation of a
11 certificate and an error as described in NOPE Exhibit
12 11?

13 A. In my experience as an Environmental
14 Specialist, a violation is an event that is
15 identified by the permitting agency as such.

16 Q. Were you finished? I didn't want to
17 interrupt.

18 A. Yes.

19 Q. Thanks.

20 Is it your testimony that the Staff did
21 not inform CG&E that this constituted a violation of
22 the certificate?

23 A. That is correct.

24 Q. Now, Ray Strom is identified in your
25 letter, NOPE Exhibit 11. I am specifically looking

1 at the first paragraph. Do you see that?

2 A. I don't have the exhibit numbers here.
3 Are you referring to the November 29, 2004, item or
4 the July 24, 2003, item?

5 Q. November 29, 2004, the letter that you
6 drafted.

7 A. Okay. Thank you.

8 Yes, I see that.

9 Q. Now, Mr. Strom would have personal
10 knowledge of this event; is that fair to say?

11 A. Yes, that would be fair to say.

12 Q. Thank you.

13 Now, there are two errors mentioned in
14 this letter that we are looking at, again the
15 November 29, 2004, letter. Do you see the reference
16 to two errors on CG&E's part? The paragraph 2.

17 A. I see reference to this exhibit being a
18 second error, yes.

19 Q. And I understand you don't remember the
20 first error, but are you aware of any other errors
21 with respect to the construction of the C314
22 pipeline?

23 A. Errors respective to environmental
24 issues?

25 Q. Yes. Or any other errors. Let me

1 clarify that, any other errors to which you are
2 aware.

3 A. Any other errors outside of the
4 environmental arena would be outside of my area of
5 expertise.

6 Q. Let's keep it in your area. Any other
7 environmental errors?

8 MS. KINGERY: Your Honor, I would again
9 object to the use of the term "any other
10 environmental errors" since Mr. Lane has previously
11 testified that he does not deem this to have been an
12 environmental error.

13 MR. KEANEY: That's not his testimony,
14 your Honor. He testified it was not an environmental
15 violation.

16 A. I do not recall any.

17 MR. KEANEY: Should I move on, your
18 Honor?

19 ALJ SEE: Yes.

20 MR. KEANEY: Okay. I didn't know.

21 Q. Are you aware if -- I'm sorry. Let me
22 step back.

23 MR. KEANEY: No further questions, your
24 Honor. Thank you.

25 ALJ SEE: Staff? I'm sorry.

1 Mr. Fox has joined us. Do you want to
2 enter your brief appearance?

3 MR. FOX: Sure, yeah, on behalf of the
4 City of Madeira, Brian Fox, same address.

5 ALJ SEE: Do you have any questions for
6 this witness?

7 MR. FOX: I do not have questions for
8 this witness.

9 ALJ SEE: On behalf of Staff?

10 MR. BEELER: No questions. Thank you,
11 your Honor.

12 ALJ SEE: Ms. Kingery?

13 MS. KINGERY: If we could have just a
14 minute. We are trying to get a document.

15 ALJ SEE: Yes. Let's go off the record.

16 (Recess taken.)

17 ALJ SEE: Let's go back on the record.

18 Ms. Kingery. Redirect?

19 MS. KINGERY: Thank you, your Honor, very
20 briefly. We would like to mark a document as Duke
21 Energy Ohio Exhibit 11. And this is a
22 communication -- a letter from the Ohio Power Siting
23 Board to Cincinnati Gas & Electric Company. It was
24 filed in Case No. 01-520-GA-BTX and it's dated
25 December 7, 2005. I was asking if it could be marked

1 as Duke Energy Ohio Exhibit 11.

2 ALJ SEE: Yes.

3 MS. KINGERY: May we approach?

4 ALJ SEE: So marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MS. KINGERY: And I have to apologize, we
7 don't have copies for everyone in the room since we
8 just got it from docketing.

9 ALJ SEE: Okay.

10 - - -

11 REDIRECT EXAMINATION

12 By Ms. Kingery:

13 Q. Mr. Lane, you have just been presented
14 with what has been marked as Duke Energy Ohio
15 Exhibit 11. Do you have that in front of you?

16 A. Yes.

17 Q. And can you identify that, please.

18 A. It is a letter dated December 7, 2005, to
19 my supervisor at the time, Robert McElfresh. It is
20 from Klaus Lambeck, the Chief of Facilities, Siting
21 and Environmental, of the Power Siting Board. And it
22 states that the Staff has reviewed and accepted our
23 "proposed mitigation plan for the restoration of
24 Miller's Creek crossing, which was inadvertently
25 cleared by CG&E maintenance personnel."

1 MS. KINGERY: Thank you. That's all I
2 have.

3 ALJ SEE: Any recross, Mr. Keaney?

4 MR. YSKAMP: Your Honor, I don't have a
5 copy.

6 MR. KEANEY: No recross from the City or
7 County.

8 ALJ SEE: Mr. Yas -- Mr. Yskamp.

9 MR. YSKAMP: Yeah, just a couple of
10 questions.

11 - - -

12 RE CROSS-EXAMINATION

13 By Mr. Yskamp:

14 Q. Having seen this document which is Duke
15 Exhibit 11, does that refresh your recollection at
16 all as to whether this is the same tree-clearing
17 event that occurred that's described in NOPE
18 Exhibit 12 in front of you, which is the
19 Investigation Report?

20 A. No, it does not.

21 MR. YSKAMP: Okay. That's all I have.

22 ALJ SEE: Mr. Stevenson?

23 MR. STEVENSON: I have no questions.

24 Thank you.

25 ALJ SEE: Mr. Pacheco.

1 MR. PACHECO: Nothing, your Honor. Thank
2 you.

3 ALJ SEE: Mr. Miller.

4 MR. MILLER: Nothing, your Honor. Thank
5 you.

6 ALJ SEE: Mr. Beeler.

7 MR. BEELEER: No questions. Thank you.

8 ALJ SEE: Oh, I'm sorry. Mr. Fox.

9 MR. FOX: Nothing, your Honor.

10 ALJ SEE: Ms. Kingery, would you like to
11 move for the exhibits that have been marked?

12 MS. KINGERY: Yes, thank you, your Honor.
13 We would move for the admission of Duke Energy Ohio
14 Exhibits 10 and 11.

15 ALJ SEE: Are there any objections to the
16 admission of Duke Exhibits 10 and 11?

17 Hearing none, Duke Exhibits 10 and 11 are
18 admitted into the record.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 ALJ SEE: Mr. Yskamp.

21 MR. YSKAMP: I would move for the
22 admission of NOPE Exhibits 11 and 12.

23 ALJ SEE: Are there any objections to the
24 admission of NOPE Exhibits 11 and 12?

25 MS. KINGERY: Yes, your Honor. Duke

1 Energy Ohio would object to the admission of NOPE
2 Exhibit 12. The witness had not seen this document,
3 he had no knowledge of the events, and it was not
4 otherwise used other than to find out Mr. Lane had no
5 knowledge of the event or the document.

6 MR. YSKAMP: I would ask, your Honors, to
7 take judicial notice of Exhibit 12. It clearly has
8 a docketing stamp from the Public Utilities
9 Commission of Ohio.

10 MS. KINGERY: And, your Honors, if I
11 might, just one comment on that. I have not
12 reviewed, today, the Docket Card for that case, the
13 01-520 case, and I do not know whether there was any
14 response from CG&E or from Staff, following anything
15 that might have been in the docket from CG&E, so to
16 the extent that you decide that you will take
17 administrative notice of that document, I would ask
18 that you also take administrative notice of any such
19 responses.

20 ALJ SEE: Okay. We will -- NOPE Exhibit
21 11 is admitted into the record. We will take
22 administrative notice of what was previously marked
23 as NOPE Exhibit 12 and any responses thereto.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 MR. KEANEY: Your Honor, I don't want to

1 make things more complicated, but there's a lot in
2 the docket there that arguably could be responding to
3 that; so if the Company could identify specifically
4 which responses in the docket to which they are
5 referring, that would probably be helpful for all
6 parties.

7 MS. KINGERY: And, your Honor, as I
8 indicated, I have not looked at the Docket Card today
9 to see whether there was anything in response to
10 this. Frankly, I had not seen this document before.
11 So I can't do that at this time.

12 ALJ SEE: We will set that issue aside
13 until we get closer to the end of these proceedings,
14 to give Duke an opportunity to review the Docket Card
15 in that case and to propose if there is, in fact, a
16 response to what was marked as NOPE Exhibit 12 in the
17 docket.

18 MS. KINGERY: Thank you, your Honor. We
19 will do that.

20 ALJ SEE: With that, thank you, Mr. Lane.
21 You may step down.

22 ALJ PARROT: All right. Duke, you may
23 call your next witness.

24 MS. KINGERY: Thank you. Duke Energy
25 Ohio calls Daniel Earhart to the stand.

1 (Witness sworn.)

2 ALJ PARROT: Please have a seat.

3 MS. KINGERY: Your Honor, we would ask
4 that the previously-filed Direct Testimony of Daniel
5 Earhart be marked as Duke Energy Ohio Exhibit 12.

6 ALJ PARROT: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MS. KINGERY: And may we approach?

9 ALJ PARROT: You may.

10 - - -

11 DANIEL P. EARHART

12 being first duly sworn, as prescribed by law, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 By Ms. Kingery:

16 Q. Good morning, Mr. Earhart.

17 A. Good morning.

18 Q. Would you please state for the record
19 your full name and business address.

20 A. It's Daniel Paul Earhart. Business
21 address is 9400 Ward Parkway, Kansas City, Missouri
22 64114.

23 Q. Thank you.

24 And do you have in front of you what has
25 just been marked as Duke Energy Ohio Exhibit 12?

1 A. I do.

2 Q. And would you identify that document,
3 please?

4 A. Yes. It's Direct Testimony of Daniel P.
5 Earhart on behalf of Duke Energy Ohio, dated March
6 26, 2019.

7 Q. And did you prepare this document or have
8 it prepared under your direction?

9 A. I did.

10 Q. And do you have any changes or
11 corrections to make to your testimony today?

12 A. I do not.

13 Q. And if I were to ask you all of these
14 questions today, would your answers be the same?

15 A. That is correct.

16 MS. KINGERY: Thank you very much. The
17 witness is available for cross-examination.

18 ALJ PARROT: Mr. Keaney.

19 MR. KEANEY: The City and County, at this
20 time, do not have any cross for this witness, but if
21 anything new does come up, I would like to reserve
22 our right. Thank you.

23 ALJ PARROT: Do you want to take a minute
24 to think about it?

25 MR. KEANEY: No cross at this time, your

1 Honor.

2 ALJ PARROT: All right.

3 Mr. Yskamp?

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Yskamp:

7 Q. Good morning for a few minutes left,
8 Mr. Earhart.

9 A. Good morning.

10 Q. So you state in your testimony on page 3,
11 if you would like to refer to it, line 15.

12 A. I'm sorry, you said line 15?

13 Q. 15, yes. I think.

14 A. Okay.

15 Q. I'm on the wrong page. Yeah, so actually
16 starting on line 16, you state that the environmental
17 screening conducted was not a Phase I Environmental
18 Site Assessment?

19 A. That is correct.

20 Q. Why did you -- why did you note that in
21 your testimony?

22 A. As part of an Environmental Phase I,
23 property owners typically are covered under CERCLA
24 liability, and that's not the case for these, Duke is
25 not acquiring or applying for any CERCLA liability.

1 Q. Okay. Are there steps in the Phase I
2 process that you did not perform for your evaluation?

3 A. There are certain steps, you are going to
4 call it Phase I, what we did for the environmental
5 screening, the approach is similar, but for the
6 Phase I we didn't interview all property owners.

7 Q. Did you make reasonable attempts to
8 locate and interview property owners?

9 A. Not all property owners because we didn't
10 key in on all the properties along the route, there's
11 several properties, so, environmental properties that
12 we looked at. We did not talk with all of the
13 property owners that we were interested in.

14 Q. Did you inspect all the properties?

15 A. No, we did not. We were focused on the
16 area that the pipeline was going through.

17 Q. Did you inspect all the properties in the
18 areas that the pipeline was going through?

19 A. We inspected the areas that we looked at,
20 that we were looking at. We had -- we had personnel
21 physically drive the areas.

22 Q. And so, just so I understand was that --
23 was that based on your -- your public records
24 assessment. So did you identify properties based on
25 that assessment and then decide to inspect?

1 A. That is correct.

2 Q. On page 5, I would like to ask you a
3 couple of questions about the geotechnical borings
4 that was taken. So on line 21, you state that "Soil
5 cores were screened with a photo ionization
6 detector...." Is that a PID detector or just PID?
7 Is that what it's referred to?

8 A. That's correct.

9 Q. Okay. So is it the case that -- if -- so
10 tell me what the PID was supposed to -- is designed
11 to detect.

12 A. Yes, absolutely. So a PID is typically a
13 screening tool when you're out in the field. It
14 pulls in air and it runs across the land and the
15 land -- it measures the wavelength of -- for
16 volatiles, for volatile organic compounds. It
17 doesn't directly measure each individual compound, it
18 is a total -- like I said, it's just a screening
19 tool.

20 Q. And then you also -- you used a PID to --
21 is it a PID detector or is it just PID?

22 A. It's referred to several ways. PID is
23 fine.

24 Q. It's throwing me off. "Photo ionization
25 detector" should just be PID, right?

1 A. Correct.

2 Q. Okay. I am just going to call it "PID."

3 Sorry, that's for my benefit, not yours.

4 So you used the -- you used the PID and
5 then you did a visual observation of the geotechnical
6 samples?

7 A. That's correct.

8 Q. And if there was no -- so if there was no
9 PID reading and there was no visual observations that
10 was -- were there samples analyzed in any other way
11 after that?

12 A. Not for environmental analytes. Like I
13 said, they are geotechnical borings, so they were
14 analyzed for geotechnical properties.

15 Q. Okay.

16 A. But that was not for purpose of the
17 environmental screening. The geotechnical properties
18 were assessed for engineering.

19 Q. Does the PID detect metals?

20 A. It does not.

21 Q. Is it the case that in all of your
22 evaluation, a total of 14 borings were taken?

23 A. When you refer to "borings" --

24 Q. Geotechnical borings.

25 A. I don't remember that number off the top

1 of my head. I don't believe that's correct.

2 Q. Okay. Do you have your report in front
3 of you?

4 A. I do not.

5 Q. The Burns & McDonnell report?

6 A. I do not.

7 Q. Is it an exhibit to your testimony?

8 A. Yes.

9 Q. I don't have it either so. I think we're
10 getting it. You may be able to answer some of these
11 questions without the report. I don't have very many
12 for you. If you remember, so -- each -- did you take
13 samples by site? By that I mean did you, for
14 example, identify the Blue Ash shooting range site
15 and then decide you are going to take samples of that
16 site, or did you just take samples along the corridor
17 and it happened to be the Blue Ash site?

18 A. No. Those samples were collected based
19 on review of the property, so we did our historical
20 document review. From there, we identified areas of
21 interest and we dug into it more, we had certain
22 documents we reviewed, submitted boring requests.
23 Based on that is how we determined if we had some
24 sort of data gap, you know, specifically in the area
25 where the pipeline was going through, so that's how

1 we determined if we were going to take a sample there
2 or not.

3 MS. KINGERY: Your Honor, may we approach
4 for just a moment?

5 ALJ PARROT: You may.

6 MS. KINGERY: We have a copy of that
7 report. It should have been attached to the
8 testimony.

9 ALJ PARROT: It was not.

10 MS. KINGERY: It was not attached? Oh.
11 Can we mark this, then, as Duke Energy Ohio Exhibit
12 13?

13 ALJ PARROT: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MS. KINGERY: And we'll have to file that
16 in the docket. We'll do that today. I believe it
17 was also provided to parties as a response to
18 discovery request.

19 MR. STEVENSON: Is that the one dated
20 July 25 of 2018?

21 MS. KINGERY: What's the date?

22 THE WITNESS: Yes.

23 MS. KINGERY: I apologize for that.

24 ALJ PARROT: We need another copy up
25 here, please. Ms. Kingery, we're fine for now if you

1 want to keep going and provide it at a later time.

2 MS. KINGERY: It was docketed July 26 of
3 2017 -- '18. This is '19.

4 ALJ PARROT: So I have one up here on the
5 Bench for now.

6 MS. KINGERY: Again, I apologize.

7 ALJ PARROT: If you could find another,
8 that would be helpful.

9 MS. KINGERY: We will.

10 ALJ PARROT: Thank you.

11 Q. (By Mr. Yskamp) Thank you for your
12 patience.

13 A. Absolutely.

14 Q. Could you turn to page 32 of the report.
15 3-2.

16 A. Okay.

17 Q. So I just want to direct your attention
18 to 3.2.1.1, Blue Ash Airport - Former Shooting Range.
19 If you could just turn the page to 3-3. At the top
20 of the page, after the comma, it states "two soil
21 sampling locations were advanced along the route to
22 verify current site conditions." Is it the case that
23 for this site you took two -- two total soil samples?

24 A. That is correct.

25 Q. Do you feel that you can really profile a

1 site with just two soil samples?

2 A. Well, we are not trying to profile the
3 entire site. We were focused on the pipeline, the --
4 where the pipeline location would be.

5 Q. Okay. You would agree that that -- that
6 really doesn't tell you everything about this former
7 shooting range.

8 A. Correct.

9 Q. Did you sample at the site for lead?

10 A. I don't know off the top of my head.
11 When you look at the review of the summary of the
12 property, there is an area that was several -- I
13 think it was a thousand feet south of the property.
14 Small 8.6-acre area that they have limited use
15 controls on, so that's how we -- that was insight
16 summary and I don't remember off the top of my head
17 if we collected for that or not.

18 Q. Okay. Did you do any interviews of
19 former property owners on that property?

20 A. We did not.

21 Q. And if I could direct your attention to
22 page 3-3 under General Electric Aviation. And under
23 that heading, three lines down, beginning -- so the
24 start of the sentence in that line, "A grab
25 groundwater sample was collected from each borehole

1 at each location." Just how many -- how many
2 groundwater samples were taken from this site?

3 A. There was two.

4 Q. And for the Pristine Superfund Site, if
5 you turn to page 3-4. At the bottom it says, "Two
6 soil samples were advanced along the route to verify
7 current site conditions." Is it the case that two
8 soil samples were taken for this site total?

9 A. That is correct.

10 Q. So I don't want to go through all of
11 these, but is it fair to assume where each one says
12 the number of samples were taken, those were the
13 total number of samples taken for each site?

14 A. That is correct.

15 Q. Thank you.

16 If I could refer you back to your
17 testimony to page 11, line 1. It states that "A Soil
18 and Groundwater Management Plan may be prepared for
19 construction activities utilizing data obtained and
20 interpreted in this report." Are you aware if a Soil
21 and Groundwater Management Plan has been prepared?

22 A. It has not.

23 MR. YSKAMP: That's all the questions I
24 have.

25 ALJ PARROT: Mr. Stevenson?

1 - - -

2 CROSS-EXAMINATION

3 By Mr. Stevenson:

4 Q. Mr. Earhart, with respect to the
5 properties that you studied in this -- in your study,
6 let me put it that way, most of the information you
7 got, prior to going to the field, was from public
8 records?

9 A. Correct.

10 Q. And it would have been available to the
11 pipeline siting group as well?

12 A. Anybody, anybody could have requested the
13 documents, correct.

14 Q. Do you know whether the pipeline siting
15 group obtained any of those public records prior to
16 routing the pipeline?

17 A. I do not.

18 Q. All right. The data you reported is well
19 after the decision of the Power Siting Board Staff to
20 go to the Alternate Route, is it not?

21 A. I'm not sure of the date of when the
22 Power Siting Board --

23 Q. But your study was July 25 of '18?

24 A. That's correct.

25 Q. All right. When the proposed pipeline --

1 proposed Alternate Route turns south from
2 Glendale-Milford Road until it terminates, it travels
3 over the Mill Creek aquifer, does it not?

4 A. I don't have a map in front of me.

5 Q. All right. Fine. And you are not
6 familiar with that?

7 A. Not off the top of my head.

8 MR. STEVENSON: All right. Good enough.
9 I don't have anything further.

10 ALJ PARROT: Mr. Fox?

11 MR. FOX: Nothing, your Honor.

12 ALJ PARROT: Mr. Pacheco?

13 MR. PACHECO: Nothing, your Honor. Thank
14 you.

15 ALJ PARROT: Mr. Miller.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Miller:

19 Q. Mr. Earhart, did any of your study deal
20 with the Alternate Route as it runs through Sycamore
21 Township?

22 A. Yes, it would have.

23 Q. Okay. But there was nothing done -- you
24 didn't do any work on the Preferred Route.

25 A. Correct.

1 MR. MILLER: Okay. That's all.

2 ALJ PARROT: Mr. Beeler?

3 MR. BEELEER: No questions.

4 ALJ PARROT: Any redirect?

5 MS. KINGERY: Just a moment.

6 No redirect, your Honor.

7 ALJ PARROT: And your exhibits,

8 Ms. Kingery.

9 MS. KINGERY: Thank you, your Honor.

10 Duke Energy Ohio would move for the admission of
11 Exhibits 12 and 13.

12 ALJ PARROT: Are there any objections to
13 the admission of either Duke Exhibit 12 or 13?

14 Hearing none, they are admitted.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 MS. KINGERY: Thank you, your Honor.

17 ALJ SEE: Duke's next witness.

18 MS. KINGERY: Can we go off the record
19 for just a second?

20 ALJ SEE: Yes.

21 (Discussion off the record.)

22 ALJ SEE: Let's go back on the record.

23 Ms. Kingery, your next witness.

24 MS. KINGERY: Thank you, your Honor.

25 Duke Energy Ohio calls Julianne Schucker to the

1 stand.

2 (Witness sworn.)

3 ALJ SEE: Thank you. Have a seat.
4 Please cut your microphone on.

5 MS. KINGERY: And, your Honor, I would
6 ask that Duke Energy Ohio Exhibit 14 be marked for
7 Julianne Schucker's direct testimony.

8 ALJ SEE: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MS. KINGERY: And may we approach?

11 ALJ SEE: Yes.

12 - - -

13 JULIANNE SCHUCKER

14 being first duly sworn, as prescribed by law, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Ms. Kingery:

18 Q. Good afternoon, Ms. Schucker.

19 A. Good afternoon.

20 Q. Would you please state your full name and
21 business address for the record.

22 A. Julianne Marie Schucker, 1880 Waycross
23 Road, Cincinnati, Ohio 45240.

24 Q. And do you have in front of you what has
25 just been marked as Duke Energy Ohio Exhibit 14?

1 A. Yes.

2 Q. And would you identify that document for
3 us, please.

4 A. It is my testimony.

5 Q. As filed in this docket?

6 A. Yes.

7 Q. And did you prepare that testimony or
8 have it prepared under your direction?

9 A. Yes.

10 Q. And do you have any changes or
11 corrections to make to your testimony today?

12 A. No, I do not.

13 Q. And if I were to ask you all of those
14 questions today, would your be answers the same?

15 A. Yes.

16 MS. KINGERY: Thank you. The witness is
17 available for cross-examination.

18 ALJ SEE: Mr. Keaney?

19 MR. KEANEY: Your Honor, I am going to
20 allow my co-counsel intervenors to go first. Thank
21 you.

22 ALJ SEE: Okay. Mr. Yskamp? Mr. Yskamp,
23 could you move your microphone closer to you and
24 speak up.

25 - - -

CROSS-EXAMINATION

By Mr. Yskamp:

Q. Good morning.

A. Good morning.

Q. Or afternoon, I'm sorry.

A. Afternoon.

Q. Did you conduct any of your own sampling on the Pristine site?

A. No, I did not.

Q. Have you conducted sampling on or around the area where the proposed pipeline right-of-way would be?

A. No, I did not.

Q. And it is the case that the proposed pipeline was sited approximately 100 feet from the Pristine site?

A. East of the Pristine site, yes. And -- yes.

Q. Did you evaluate how the trench constructed during construction might change surface water flows in the area?

A. I evaluated the publicly-available information that the Pristine site for the -- that were available for the Pristine site to understand the effects to groundwater in that area.

1 Q. Right. So I am referring to -- more to
2 surface water or stormwater runoff.

3 A. No, I did not.

4 MR. YSKAMP: That's all the questions I
5 have.

6 ALJ SEE: Mr. Stevenson?

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Stevenson:

10 Q. Ms. Schucker, you are aware that the
11 Pristine matter was a very big deal for the City of
12 Reading?

13 A. Yes, I do.

14 Q. All right. It cost us our water plants;
15 you are aware of that?

16 A. Yes, I do.

17 Q. All right. And the information that you
18 reviewed with respect to the Pristine site was
19 available publicly?

20 A. Yes.

21 Q. All right. And it's available publicly
22 in several locations.

23 A. USEPA's files were publicly available at
24 the Reading library and then Ohio EPA also has it
25 available in their electronic files online.

1 Q. And USEPA also has a website devoted
2 specifically to that site?

3 A. Yes, yes.

4 Q. And do you have any knowledge of whether
5 or not the siting group was aware of the Pristine
6 site when they decided to route the pipeline where
7 they routed?

8 A. I am not aware of that.

9 MR. STEVENSON: All right. I don't have
10 any further questions.

11 ALJ SEE: Mr. Fox.

12 MR. FOX: Nothing, your Honor.

13 ALJ SEE: Mr. Pacheco.

14 MR. PACHECO: Nothing, your Honor. Thank
15 you.

16 ALJ SEE: Mr. Keaney.

17 MR. KEANEY: Nothing, your Honor. Thank
18 you.

19 ALJ SEE: And on behalf of Staff.

20 MR. BEELER: No questions. Thank you.

21 ALJ SEE: Ms. Kingery, any redirect?

22 MS. KINGERY: No, your Honor.

23 ALJ SEE: Would you like to move your
24 exhibit, Ms. Kingery?

25 MS. KINGERY: Yes, thank you very much.

1 Duke Energy Ohio would move into evidence Duke Energy
2 Ohio Exhibit 14.

3 ALJ SEE: Are there any objections to the
4 admission of Duke Exhibit 14?

5 Hearing none, Duke Exhibit 14 is admitted
6 into the record.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 MS. KINGERY: Thank you, your Honor.

9 ALJ SEE: Thank you. You may step down,
10 Ms. Schucker.

11 MR. HESLIN: Your Honor, Duke Energy Ohio
12 calls Bruce Paskett to the stand. Your Honor, could
13 we go off the record for a moment?

14 ALJ PARROT: Yes.

15 (Off the record.)

16 ALJ PARROT: Let's go back on the record.

17 MR. HESLIN: Once again, Duke Energy Ohio
18 calls Bruce Paskett to the stand.

19 (Witness sworn.)

20 ALJ PARROT: Please have a seat.

21 MR. HESLIN: May we approach, your Honor?

22 ALJ PARROT: You may.

23 MR. HESLIN: We would ask to mark the
24 direct testimony that was filed of Bruce Paskett as
25 Duke Energy Ohio Exhibit No. 15.

1 ALJ PARROT: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 - - -

4 BRUCE PASKETT

5 being first duly sworn, as prescribed by law, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Heslin:

9 Q. Mr. Paskett, could you state your full
10 name and your address for the record.

11 A. My full name is Bruce Lane Paskett. My
12 business address is 10731 East Easter Avenue,
13 Suite 100, Centennial, Colorado 80112.

14 Q. And do you have Duke Energy Ohio
15 Exhibit 15 in front of you which is your Direct
16 Testimony filed on March 26, 2019, consisting of
17 41 pages of testimony?

18 A. I do.

19 Q. Was that testimony prepared by you or
20 under your supervision?

21 A. It was.

22 Q. And if I asked you all those same
23 questions today, would your answers be the same?

24 A. They would.

25 Q. Do you have any corrections to make?

1 A. I do not.

2 MR. HESLIN: At this time, the witness is
3 available for cross-examination.

4 ALJ PARROT: Mr. Keaney, would you rather
5 wait?

6 MR. KEANEY: Yes, thank you, your Honor.

7 ALJ PARROT: Mr. Yskamp, are you ready?

8 MR. YSKAMP: One moment, please.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Yskamp:

12 Q. Mr. Paskett, good afternoon.

13 A. Good afternoon, sir.

14 Q. In reading your testimony, is it fair to
15 say one of the primary differences between
16 transmission lines and distribution lines is the
17 difference in size and maximum operating pressure?

18 A. There are a multitude of differences
19 between transmission and distribution lines. Two of
20 the multitude of lists of differences includes
21 operating pressure and diameter, but there are other
22 differences that are significant.

23 Q. If you could please turn to page 8 of
24 your testimony.

25 A. Okay. I'm there.

1 Q. So on line 5, the sentence reads
2 "Transmission lines typically operate at high
3 pressure levels, between 600 pounds per square inch
4 (psi) and 1,200 psi, and in some cases up to 2,000
5 psi." Did I read that correctly?

6 A. You did.

7 Q. And the source you have for that is
8 American Gas Foundation, "Safety Performance and
9 Integrity of the Natural Gas Distribution
10 Infrastructure," January 2005 at page 3-5. What is
11 that document that you sourced?

12 A. Well, as I mentioned in my testimony, the
13 American Gas Foundation Study, which I participated
14 in as a member, as a member of that work group, was
15 created to review the safety, performance, and
16 integrity of natural gas distribution pipeline
17 infrastructure. So that quote on the pressure levels
18 was one of the conclusions that was included in that
19 document.

20 Q. You agree with the conclusions in that
21 document?

22 A. Absolutely. I signed off on the
23 document. I was a participant. I was one of the
24 authors, co-authors.

25 Q. Would you agree with me that

1 transmission -- there are transmission lines that
2 operate at 500 psi and 400 psi?

3 A. There are exceptions. As I have in my
4 testimony, it says that they typically operate at
5 high pressure levels, excuse me, between 600 pounds
6 and higher. There are some transmission lines that
7 operate at lower.

8 Q. So, you described distribution lines much
9 later in your testimony. Can you turn to page 29,
10 please, for me.

11 A. I'm on page 29.

12 Q. Okay. So if I could direct your
13 attention to line 7. You state that "Distribution
14 pipelines are smaller in diameter (1/2-inch diameter
15 up to approximately 24-inch in diameter) and operate
16 at much lower pressures (1/4 psi - 600 psi) and much
17 lower stress levels (less than 20 percent of
18 SMYS)...." Did I read that correctly?

19 A. You did.

20 Q. And just for my knowledge, is that -- is
21 that SMYS, is it like -- is there a shorter way to
22 pronounce that? Is there like a?

23 A. Certainly. It's -- in the industry it's
24 referred to as "smize."

25 Q. "Smize," okay?

1 A. So that will maybe make the proceeding go
2 faster. If you want to use the SMYS, that would be
3 fine with me.

4 Q. We may get out of here for lunch after
5 all.

6 A. Okay. By the way, the acronym "S-M-Y-S"
7 or "SMYS" stands for Specified Minimum Yield
8 Strength. That's an attribute of the pipe material.

9 MR. YSKAMP: I'm going to mark a document
10 for an exhibit at this time, your Honor, NOPE Exhibit
11 13.

12 Q. Mr. Paskett, do you recognize this
13 document?

14 A. I do.

15 Q. Is this the study that you -- we talked
16 about earlier that you cited for the size of
17 transmission lines?

18 A. It is.

19 ALJ PARROT: Mr. Yskamp, just for the
20 record, just note the title of the study, please.

21 MR. YSKAMP: Right. So the document
22 marked as NOPE Exhibit 13 is titled "Safety
23 Performance and Integrity of the Natural Gas
24 Distribution Infrastructure" dated January 2005.

25 ALJ PARROT: Thank you. So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. (By Mr. Yskamp) Would you please turn to
3 page 3 -- 3-5 of the study.

4 A. Okay. I'm there.

5 Q. So if could I direct your attention to
6 the -- it's under the bold "System Pressures." The
7 paragraph under the second bullet point that starts
8 with "Transmission pipelines." Do you see that?

9 A. I do.

10 Q. It reads, so that sentence that starts
11 with "Transmission pipelines" reads: "Transmission
12 pipelines typically operate at pressure levels
13 between 600 pounds per square inch (psi) and 1200
14 psi, and in some cases up to 2000 psi." That's
15 pretty much exactly how you cite it in your
16 testimony; isn't that right?

17 A. That is a direct quote out of this as
18 cited and referenced in my testimony, correct.

19 Q. The next sentence states "Distribution
20 pipelines typically operate at pressures ranging from
21 .25 psi, with gas delivered directly to customers
22 without any additional reduction in pressure, to
23 60 psi with relatively few distribution pipelines
24 operating at higher pressures (high pressure
25 distribution pipelines) of up to 400 psi." Did I

1 read that correctly?

2 A. You did.

3 Q. Isn't that lower than the 600 psi you
4 state in your testimony?

5 A. That's -- that is lower than the 600
6 pounds in the testimony. The -- and if you read that
7 carefully, it says at higher pressure of up to 400
8 pounds, but that doesn't mean that there won't be any
9 distribution pipelines operating beyond 400 pounds.

10 Q. "Up to" means that's the top level
11 though, right?

12 A. That does not. That was the conclusion
13 there, but that does not mean there aren't exceptions
14 to that rule.

15 Q. You stated earlier that you agreed with
16 the conclusions in this report.

17 A. I do. But the federal regulations do not
18 preclude the design of a distribution pipeline beyond
19 400 pounds.

20 Q. I understand. They also don't preclude
21 the design of a transmission pipeline at 400 psi, do
22 they?

23 A. No, they do not. Whether or not the
24 pipeline is designated as a transmission line or a
25 distribution pipeline is based on the specific design

1 parameters of the pipeline.

2 Q. We will get to that later.

3 A. I hope so.

4 Q. So if I could refer you back to your
5 testimony, I would like to discuss a few other
6 things. Staying on page 29, at line 9, you note that
7 distribution lines, and I will quote, operate at
8 "much lower stress levels (less than 20 percent of
9 SMYS) than transmission pipelines." So a
10 transmission pipeline is at -- is 20-percent hoop
11 stress, right?

12 A. That's not correct.

13 Q. Okay.

14 A. A pipeline of 20 percent or more of SMYS
15 would be defined as a transmission pipeline by
16 definition.

17 Q. And the proposed pipeline is at 19
18 percent, correct?

19 A. That's correct.

20 Q. So it's --

21 A. Well, technically, for the record, the
22 proposed pipeline has a MAOP, which is Maximum
23 Allowable Operating Pressure, at 19.0 percent. The
24 typical operating pressure of the pipeline would be
25 15.2 percent SMYS.

1 Q. But the 19 percent hoop stress is
2 calculated at the maximum operating pressure, right?

3 A. That's correct.

4 Q. And it's 1 percent lower than the 20
5 percent hoop stress for a transmission pipeline.

6 A. That would appear to be, yes.

7 Q. So line 11 of your testimony.

8 A. I'm sorry, what page?

9 Q. Same page, page 29.

10 A. Okay. Thank you.

11 Q. So line 11, the start of the first
12 sentence, the first full sentence, is "Since gas
13 distribution lines deliver the natural gas to end use
14 customers, they are located in city streets and on
15 every natural gas customer's property up to the house
16 or business." The proposed pipeline is not
17 delivering gas to end customers, is it?

18 A. Actually I disagree with that assertion
19 because it is actually delivering gas to other
20 pipelines that deliver gas to end-use customers.

21 Q. It is not directly delivering gas to end
22 customers.

23 A. There are no -- currently no plans to tap
24 any service lines off of that pipeline. That doesn't
25 mean it doesn't deliver gas to downstream customers

1 however.

2 Q. Eventually, I understand, but there is no
3 service lines --

4 A. There are currently no service lines
5 intended to tap off that pipeline.

6 Q. I would like you to turn to page 9 of
7 your testimony. So I just want to ask you about this
8 opinion that you have. On line 13, you state "In the
9 unlikely event that a distribution pipeline
10 experiences an issue, they will essentially always
11 result in a leak, not a rupture, due to the
12 relatively low operating pressures and relatively low
13 operating stress levels in the pipe." Did I read
14 that correctly?

15 A. You did.

16 Q. So my question is does this -- does your
17 opinion -- is your opinion true for an outside force
18 on the pipeline?

19 A. My opinion for this statement is
20 applicable to any distribution pipeline that operates
21 less than 20 percent SMYS. Just to add to that
22 response, this is not only my opinion but it's the
23 opinion of the participants in the American Gas
24 Foundation study and the PHMSA Phase I report of
25 investigations, which included not only myself and

1 other industry subject-matter experts but also
2 experts from PHMSA, the Pipeline and Hazardous
3 Materials Safety Administration, and state pipeline
4 safety regulations; so it's not just my opinion but
5 it is, in fact, my expert opinion.

6 Q. Okay. So it's your opinion.

7 A. It is my opinion.

8 Q. So no matter the -- no matter the extent
9 the outside force, your opinion is that the pipeline
10 will essentially always leak and not rupture.

11 A. You are going to have to rephrase the
12 question.

13 Q. Let me rephrase it this way.

14 A. Overly broad.

15 Q. Does that opinion depend on the force of
16 the outside pressure?

17 A. You are going to have to rephrase your
18 question again, please.

19 Q. Does your opinion that the pipeline will
20 essentially always leak or rupture depend on the
21 force of outside pressure hitting the pipeline?

22 A. You're using the same -- you haven't
23 rephrased your question. That's the same question
24 over again.

25 Q. Is your opinion the same even if an

1 excavator smashes into the pipeline?

2 A. Okay. Thank you. Thanks for the
3 clarification. The answer to your question is yes.

4 Q. It will always leak instead of rupture?

5 A. It will essentially always leak versus
6 rupture.

7 Q. If you could turn back to the American
8 Gas study. So I think we're -- if you are still on
9 the page 3-5.

10 A. I am.

11 Q. Okay. On the bottom, so under "Typical
12 Failure Mechanism," under that heading, I want to
13 just read the second sentence under there that states
14 "The OPS transmission incident report asks operators
15 to report if the incident resulted in a leak or a
16 rupture, with a rupture being defined as a full
17 failure of the pipe wall." So do you define
18 "rupture" the same way here, as a full failure of the
19 pipe wall?

20 A. Yes.

21 Q. You don't think there can be a full
22 failure of the pipe wall from an outside force?

23 A. I didn't say the pipe wall couldn't be
24 penetrated from an outside force. I think it's
25 important for this proceeding and this matter to

1 understand the term "rupture" means a major
2 catastrophic rupture, or it's misused in this
3 proceeding, as well as an explosion. Distribution
4 pipelines do not rupture. Distribution pipelines do
5 not explode. With enough force, they can have a leak
6 from an outside force like a backhoe but not a
7 rupture. Important distinction.

8 Q. So this -- the -- there cannot be a full
9 failure of the pipe wall in a distribution pipeline;
10 is that your testimony?

11 A. A "rupture" being defined as a full
12 failure of the pipe wall, and the answer is
13 distribution pipelines do not rupture.

14 Q. Okay.

15 A. Okay?

16 MR. YSKAMP: I am going to mark another
17 exhibit, NOPE Exhibit 14.

18 Q. Mr. Paskett, you also cite to this study
19 in your expert testimony, correct?

20 A. I did.

21 Q. So you recognize this document?

22 A. I do.

23 Q. You cite --

24 ALJ PARROT: Mr. Yskamp, the title, the
25 date?

1 MR. YSKAMP: NOPE Exhibit 13 --

2 ALJ PARROT: 14.

3 MR. YSKAMP: -- is titled "Integrity
4 Management for Gas Distribution, Report of Phase I
5 Investigations," dated December 2005.

6 ALJ PARROT: And it's been marked as NOPE
7 Exhibit 14. Thank you.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. You cite this document for the -- for
10 your opinion that pipelines will always leak instead
11 of rupture, distribution pipelines will always leak
12 instead of rupture?

13 A. Modern-day distribution pipelines will
14 always leak and not rupture, correct.

15 Q. Okay. So I am going to ask you about a
16 couple of items in this document. If you could turn
17 to page 4.

18 A. I'm there.

19 Q. Okay. Just give me one minute. Okay.
20 I'd like to direct your attention to the third
21 paragraph.

22 A. Okay.

23 Q. It is the third sentence in the third
24 paragraph, six lines down. It starts with
25 "Distribution pipelines." I know a lot of them start

1 with that, but the one six lines down, "also have
2 frequent branch connections...." Do you see that
3 sentence?

4 A. I do.

5 Q. So this says "Distribution pipelines also
6 have frequent branch connections, since service
7 lines, providing gas to individual customers, branch
8 off of a common 'main' pipeline, typically installed
9 under the street." Again, that's not true for the
10 proposed pipeline, right?

11 A. Not at this point in time, right.

12 Q. It goes on to say "The dominant cause of
13 distribution incidents is excavation damage with
14 third party damage being the major contributor to
15 these incidents." Do you agree with that statement?

16 A. I believe I agree with that.

17 Q. If you could turn to page 23 of this
18 document. So the third paragraph down, I want to
19 read the first couple sentences of that paragraph.
20 It states "The group discovered that the record
21 indicates that failure is expected to be by leakage
22 when the failure results from corrosion. It is less
23 clear that the likely failure mode would be leakage
24 when the failure results from prior mechanical damage
25 (e.g., from outside force)." Did I read that

1 correctly?

2 A. You did.

3 Q. So do you disagree with that statement?

4 A. I think the statement speaks for itself,
5 but based on my expert opinion, my experience, I am
6 not aware of any instances where a distribution
7 pipeline, modern-day distribution pipeline has
8 ruptured.

9 Q. Okay.

10 A. So it would be in my expert opinion, any
11 failure that occurred or any issue that occurred
12 would be by leakage.

13 Q. But the source you cited to, it's less
14 clear if it's from outside force.

15 A. Perhaps less clear, but it does not
16 disagree with the primary assertion in the first
17 sentence which is leakage, not rupture. There is no
18 evidence to support rupture.

19 Q. Okay. That's how you read that sentence.
20 Leaking natural gas is dangerous too, right?

21 A. So my answer -- thank you for that
22 question. Leaking natural gas could potentially be
23 dangerous which is why the Federal Pipeline Safety
24 Regulations in 49 CFR Part 192 require operators to
25 have an effective leakage management program to

1 address those.

2 Q. And incidents occur every year from
3 distribution lines even though those federal
4 standards are in place.

5 A. Well, that may be true. The -- typically
6 the incidents that do occur from leaks on
7 distribution lines are attributable to pipelines that
8 are at the end of their useful life such as cast-iron
9 and bare steel, not modern-day pipelines such as the
10 proposed Central Corridor Pipeline.

11 Q. If the predominant cause of distribution
12 incidents is by outside force, how are you so sure
13 that they're mostly older pipelines?

14 A. Because in my expert opinion, I have been
15 involved with reviewing all of the incidents that I
16 am aware of, so all of the facts and all of the
17 incident investigation reports that I have reviewed
18 would lead towards the conclusion, which is my
19 conclusion, that they involve pipelines that are at
20 the end of their useful life.

21 Q. And, in fact, your testimony does discuss
22 the PHMSA serious incident data, doesn't it?

23 A. It does.

24 Q. And what is a serious incident according
25 to PHMSA?

1 A. Pipeline and Hazardous Materials Safety
2 Administration or PHMSA defines a serious incident as
3 an incident that involves a fatality or an inpatient
4 overnight hospitalization.

5 Q. And could you turn to page 27 of your
6 testimony. So here you -- you appear to graph
7 serious incident rates by year; is that correct?

8 A. No, that's not correct. The graph, which
9 is my Figure 1 on page 27, is actually a snapshot
10 directly off of PHMSA's website which is based on
11 reports from operators, but I did not develop that.
12 That's a direct copy and paste or cut and paste from
13 PHMSA. So that's PHMSA's draft.

14 Q. Did you review the actual data?

15 A. I did not. That's data that PHMSA
16 analyzes and puts on the website. So as I noted in
17 my testimony and attributed to the PHMSA website, I
18 did not develop this graph.

19 Q. So, for example, could you tell me how
20 many incidents -- how many fatalities occurred in
21 2017? From distribution pipeline incidents?

22 A. Not from this graph, I can't. That was
23 not in my testimony.

24 Q. I'm -- have you seen -- have you seen the
25 distribution incident data?

1 A. I have seen incident data, distribution
2 incident data. I have not memorized all those
3 statistics on PHMSA's website.

4 MR. YSKAMP: I am going to mark NOPE
5 Exhibit 15. NOPE Exhibit 15 is titled "Pipeline
6 Serious Incident 20 Year Trend." Date run was March
7 30, 2019.

8 ALJ PARROT: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. Mr. Paskett, does this document look
11 familiar to you?

12 A. Not necessarily, no. I can't attest that
13 I have reviewed or studied this document.

14 Q. Have you ever pulled the serious incident
15 data from PHMSA's website?

16 A. I have reviewed data from PHMSA's
17 website.

18 Q. But not this data?

19 A. Not necessarily this exact data. I
20 cannot in, my testimony, say I have looked at this
21 exact data in this graph.

22 Q. Would it surprise you to see there were
23 35 serious distribution incidents just in 2018?

24 A. I can't speak to that.

25 Q. Would it surprise you if that were the

1 number?

2 A. I can't speak to that. I would have to
3 review that.

4 Q. Would it surprise you to see there were
5 16 fatalities related to distribution incidents in
6 2017?

7 A. Same response. I have not reviewed and
8 analyzed and studied this document. It's not
9 contained in my testimony.

10 Q. So you have not thoroughly reviewed the
11 distribution pipeline serious incident data.

12 A. I have reviewed some of it. I have not
13 reviewed this exact data that you just entered as an
14 exhibit.

15 Q. Okay. I would like to turn back to your
16 testimony, so if you could turn to page 11 of your
17 testimony. Line 12 you state that based on the
18 factors in the -- correct me if I am wrong -- in the
19 Code of Federal Regulations, you feel that the
20 proposed pipeline has very little similarities with
21 the nation's inventory of gas transmission lines; is
22 that fair?

23 A. That's a fair statement.

24 Q. How does -- how does the proposed
25 pipeline compare to Duke Energy Ohio's inventory of

1 gas transmission lines?

2 A. I did not review Duke Energy Ohio's
3 inventory of pipelines.

4 Q. If I could direct you to NOPE Exhibit 1.
5 And I can help you find it. Have you ever seen this
6 document?

7 A. I don't believe I have ever seen this
8 document.

9 Q. For everyone's reference, NOPE Exhibit 1
10 is the 2017 Duke Energy Ohio Long-Term Forecast
11 Report. Could you turn to page 5-2 of the document,
12 which is misleading, it's very far back. It's like
13 the 65th page or something.

14 A. 5-2?

15 Q. 5-2.

16 A. Thank you.

17 Q. The title of the page is "Characteristics
18 of Existing Gas Transmission Lines." Do you see
19 that?

20 A. I do.

21 Q. And do you see where -- the line letters
22 in the left-most column, do you see those? So for
23 example --

24 A. The column that says "Name & Number"?

25 Q. Correct.

1 A. Okay. I see that.

2 Q. So for Line A, that is a 20-inch line at
3 225 psi; is that right?

4 A. That's what the document would say.

5 Q. And Line D appears to be 24-inch --
6 24 inches and 388 psi; is that correct?

7 A. I am not familiar with the document, so I
8 am not certain. There's three different pressures
9 underneath that column, so I don't know what they
10 mean. I have never seen this document before.

11 Q. Okay. You've never seen a Long-Term
12 Forecast from Duke Energy before?

13 A. I have not.

14 Q. Are you familiar with Duke Energy's other
15 pipelines besides the proposed pipeline?

16 A. I am familiar with some of Duke
17 Energy's pipelines.

18 Q. Are you familiar with Line V?

19 A. I am not. I'm sorry, V, victory?

20 Q. V, yes.

21 A. I am not.

22 Q. So you see -- you do see Line V named
23 here, correct?

24 A. I do.

25 Q. And do you see, at least according to

1 this document, it is a transmission line, correct?

2 A. It's on the listing of transmission
3 lines, so I assume so.

4 Q. Okay. So I would like to now discuss the
5 legal question that you opine on, of whether the
6 proposed pipeline is a distribution line. So, are
7 you a lawyer, Mr. Paskett?

8 A. I am not.

9 Q. Are you familiar with the legal
10 principles for statutory and regulatory
11 interpretation?

12 A. I am not, because I am not a lawyer.

13 Q. Do you believe that your opinion on
14 whether the proposed pipeline is a distribution line
15 is a legal opinion?

16 A. It is my personal opinion based on being
17 an expert in pipeline safety and in regulatory
18 compliance.

19 Q. Have you read the Staff Report in this
20 case?

21 A. I believe I have read the Staff Report in
22 this case.

23 Q. Are you familiar with the PHMSA
24 interpretation document they reference to come to the
25 same, basically the same opinion you do, that the

1 proposed pipeline is a distribution pipeline?

2 A. I don't recall that. I am aware of
3 staff's -- Ohio pipeline safety staff's
4 interpretation that came to the same conclusion I did
5 which is a distribution pipeline.

6 Q. Have you seen any PHMSA interpretation
7 letters that -- that interpreted the regulations for
8 distribution?

9 A. There are many, many interpretations on
10 PHMSA's website, so you have to be more specific.

11 Q. Have you seen any that go to this very
12 issue of whether a proposed pipeline -- sorry --
13 whether a pipeline is a transmission line or a
14 distribution line?

15 A. I have seen interpretation on this
16 subject.

17 Q. Okay.

18 MR. YSKAMP: I am going to mark NOPE
19 Exhibit 16.

20 ALJ PARROT: Mr. Yskamp, another copy,
21 please.

22 MR. YSKAMP: Mr. Paskett -- sorry. NOPE
23 Exhibit 16 is a letter from the U.S. Department of
24 Transportation, Pipeline and Hazardous Materials
25 Safety Administration, dated March 22, 2010.

1 ALJ PARROT: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. Mr. Paskett, have you seen this letter
4 before?

5 A. I have seen that at some point in time in
6 my professional career, yes.

7 Q. What do you recognize this letter to be?

8 A. This is an interpretation request to
9 PHMSA on a specific case in New Mexico. Asking for
10 interpretation of whether a pipeline was a
11 distribution pipeline or a transmission line.

12 Q. Do you know if this is the interpretation
13 letter cited by Staff in their report for this case?

14 A. I do not.

15 Q. Just as an example, I would like you to
16 turn to the third page, paragraph 5, No. 5, and this
17 is PHMSA's interpretation of a question given to them
18 by the New Mexico Public Regulation Commission; is
19 that right?

20 A. I'm sorry. Can you ask your question
21 again?

22 Q. Right. So the -- go back to the first
23 page --

24 A. All right.

25 Q. -- of the exhibit. So the first page,

1 very first paragraph, this states "In a letter to the
2 Pipeline and Hazardous Materials Safety
3 Administration (PHMSA) dated September 15, 2009, you
4 requested an opinion/interpretation on whether the
5 following pipelines operated by New Mexico Gas
6 Company (NMGC) should be regulated as transmission
7 pipelines or distribution pipelines (as described by
8 the New Mexico Public Regulation Commission)." So
9 did I read that correctly?

10 A. I believe so.

11 Q. Okay. And then they -- the letter goes
12 on to outline each pipeline by number that they are
13 being asked; is that right?

14 A. It would appear to do so.

15 Q. Okay. And then if you turn to page 2.

16 A. Page 2.

17 Q. Yes, please. So where the numbers are
18 broken up, that middle paragraph, the second sentence
19 in that middle paragraph states "PHMSA's responses
20 concerning each of the specified lines are as
21 follows...." So is it fair to say they are then
22 giving their responses to those questions?

23 A. I haven't read the whole document, so I
24 can't speak to that. I haven't read it currently.

25 Q. Okay. But you remember seeing it at some

1 time.

2 A. I read this at some point in time, yes,
3 but not recently.

4 Q. Okay. If you could turn to page 3.

5 A. Okay.

6 Q. No. 5. So this states "Regarding the
7 Northeast Distribution Mainline, we do not consider a
8 decrease in pressure to below 20 percent SMYS at a
9 transmission line to be a 'distribution center' and
10 lines downstream of that point to be distribution
11 lines - this would violate the intent of the pipeline
12 safety regulations." So did I read that correctly?

13 A. I believe you did.

14 Q. Okay. And this is the -- do you
15 understand this project to be the C314V pipeline
16 extension project?

17 A. I believe that is how it is docketed.

18 Q. And do you understand the proposed
19 pipeline to carry gas from C314 to Line V?

20 A. I understand that this pipeline connects
21 to Line C314 and goes downstream. I am not sure
22 exactly where the connection point is.

23 Q. You are not sure -- okay. Fair enough if
24 you don't know where it connects. If the line took
25 gas from one transmission line to another

1 transmission line, without any service lines, would
2 you still consider it a distribution pipeline?

3 A. I would still consider this specific
4 case, the Central Corridor Pipeline as proposed,
5 still to be a distribution pipeline.

6 And for the record, this is an
7 interpretation request for a specific application in
8 New Mexico and a specific response from PHMSA. It is
9 not necessarily applicable to the Central Corridor
10 Pipeline.

11 Q. Isn't this an interpretation letter
12 published on the PHMSA website?

13 A. It is.

14 Q. And didn't Staff use this letter in
15 determining whether the proposed pipeline is a
16 transmission line or distribution line?

17 A. I already testified I don't know that.

18 Q. Okay. Okay. So your testimony also
19 outlines some differences in the integrity management
20 programs between distribution lines and transmission
21 lines, correct?

22 A. So that is correct. Based on the AGF
23 Study that we've already discussed and on the PHMSA
24 report of Phase I investigations, the stakeholders,
25 myself, and PHMSA regulators, and state pipeline

1 safety regulators, all concluded that Duke, the
2 significance differences between transmission
3 pipelines and distribution pipelines, that
4 transmission integrity management is not applicable
5 to distribution pipelines, which is why the proposal
6 contained in the report of the Phase I investigation
7 says, and PHMSA accepted our recommendations, that
8 there should be different integrity management
9 regulations for distribution, yes.

10 Q. That was way -- so my question was
11 just --

12 A. Okay.

13 Q. You outline some differences in integrity
14 management programs between distribution lines and
15 transmission lines in your testimony.

16 A. Correct.

17 Q. Okay. And so, to get to your point a
18 little bit, the differences in the American Gas
19 Association study, they said distribution lines
20 operate at a pressure of up to 400 psi.

21 A. In general, yes.

22 Q. And they also said they typically have
23 service lines coming off of them.

24 A. Generally, yes.

25 Q. Okay. So it's not exactly -- it doesn't

1 exactly fit in with their statements in their report,
2 does it?

3 A. I'm sorry? Whose statement and what
4 report?

5 Q. The American Gas Association study.

6 A. The Central Corridor Pipeline in my
7 expert opinion is -- although there are some minor
8 differences between what's in the AGF Study, the
9 substantive difference is the fact that this pipeline
10 is going to operate at less than 20 percent SMYS.

11 Q. 1 percent less.

12 A. 1 percent less, but it's in the Part 192
13 regulations, that is a hard-and-fast cutoff between
14 transmission and distribution.

15 Q. Please turn to page 19 of your testimony.

16 A. Okay. I'm there.

17 Q. So line 11, the first full sentence
18 states "In simple terms, the gas transmission TAMP
19 Rule requires operators to calculate the 'potential
20 impact radius' (PIR) and use the PIR to identify
21 areas where High Consequence Areas (HCAs) are located
22 on a transmission pipeline." Did I read that
23 correctly?

24 A. You did.

25 Q. Do you know if a potential impact radius

1 was calculated for the proposed pipeline?

2 A. I believe that the potential impact
3 radius was calculated for the pipeline. That was
4 discussed in Mr. Hebbeler's testimony yesterday. I
5 believe, in my professional expert opinion, that was
6 calculated in error because distribution lines do not
7 have a PIR. If you look at the distribution
8 integrity management regulations, there are no
9 requirements to calculate the PIR.

10 Q. Is it fair to say there is no requirement
11 that they -- that their -- that they calculate a PIR
12 but they can have a PIR?

13 A. That is not a fair statement. In fact,
14 that's a totally inaccurate statement. I have
15 already testified, in this proceeding, they -- that
16 distribution lines do not rupture.

17 Q. Right.

18 A. And so, therefore, there is no reason --
19 in fact, it's irrelevant to calculate a PIR for
20 distribution lines.

21 Q. Because of the low stress, are
22 distribution line pipe walls indestructible?

23 A. I don't think it's an accurate statement
24 to say indestructible.

25 Q. Can their pipe walls fail?

1 A. As I've already testified here today,
2 distribution lines do not fail by rupture. If they
3 were to have any kind of an issue, in the highly
4 unlikely event that a newly-constructed distribution
5 pipeline has an issue, it will fail by a leak and not
6 by a rupture, which is why the DIMP rule does not
7 require operators to calculate a PIR.

8 ALJ PARROT: Let's go off the record for
9 a moment.

10 (Discussion off the record.)

11 ALJ PARROT: Let's go back on the record.

12 At this point, we are going to take a
13 break for lunch. We will reconvene at 2:15. Thank
14 you.

15 (Thereupon, at 1:19 p.m., a lunch recess
16 was taken.)

17 - - -

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1 Wednesday Afternoon Session,
2 April 10, 2019.

3 - - -

4 ALJ PARROT: Let's go back on the record.
5 Mr. Yskamp.

6 MR. YSKAMP: Thank you, your Honor.

7 - - -

8 BRUCE L. PASKETT
9 being previously duly sworn, as prescribed by law,
10 was examined and testified further as follows:

11 CROSS-EXAMINATION (Continued)

12 By Mr. Yskamp:

13 Q. Mr. Paskett, I believe we were discussing
14 the potential impact radius, and I have another
15 exhibit to mark.

16 MR. YSKAMP: Does anyone know what number
17 I am on?

18 ALJ PARROT: 17.

19 MR. YSKAMP: Thank you. May I approach?

20 ALJ PARROT: You may.

21 MR. YSKAMP: The exhibit marked NOPE
22 Exhibit 17 is a discovery answer to
23 Kenwood-POD-01-003 Supplement. The date received was
24 June 20, 2017.

25 ALJ PARROT: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. (By Mr. Yskamp) Mr. Paskett, have you
3 seen this document before?

4 A. I have not.

5 Q. If I could direct your attention to the
6 request. It asks to "Produce any and all reports,
7 studies, analyses, diagrams, charts, maps, and other
8 documents relating to one or more of the following,"
9 and do you see Part (e) that says "Potential Impact
10 Radius"? To that question? Do you see that?

11 A. Yes, I do.

12 Q. If you go to the response to Part (e), I
13 could just direct your attention to the last
14 sentence, it states "Without waiving said objection,
15 to the extent discoverable, and in the spirit of
16 discovery, if this was a transmission line," the PIR
17 would be 308-feet-and-some-change. Do you see that?

18 A. I do.

19 Q. Do you have any reason to doubt that
20 would be the potential impact radius for the proposed
21 pipeline?

22 A. I do. Because the last sentence is taken
23 out of context. If you read the rest of the
24 response, basically if I go to the end of the first
25 line, it says "given that it seeks information that

1 is neither relevant to this proceeding nor likely to
2 lead to the discovery of admissible evidence in this
3 proceeding. PIRs, as defined in 49 CFR Section
4 192.903, relate solely to transmission lines.

5 Because the proposed Pipeline is not a transmission
6 line, PIRs are not relevant. Without waiving said
7 objection, to the extent discoverable, and in the
8 spirit of discovery, if this was a transmission
9 line," then that would be the PIR. But this
10 response, I guess, since I haven't seen it before,
11 from Duke Energy Ohio, clearly states that it is not
12 relevant because it is not a transmission line.

13 Q. I understand that. Let's say
14 hypothetically it was just called a transmission
15 line. Do you have any reason to doubt that the
16 potential impact radius for the pipeline would be
17 308 feet?

18 A. Well, I can't agree with the hypothetical
19 assumption that it's a transmission line because in
20 my expert opinion, as I mentioned this morning, it is
21 not a transmission line.

22 Q. Okay. So you won't even -- you won't
23 answer the question.

24 A. PIRs, as I put in my testimony, PIRs are
25 not relevant for distribution lines, so it's not

1 applicable.

2 Q. Okay. Moving on. Are you familiar with
3 standards by the American -- pipeline safety
4 standards by the American Society of Mechanical
5 Engineers?

6 A. That's a very broad statement, so you are
7 going to have to narrow it down for me. I know that
8 such standards do exist.

9 Q. Okay. Are you familiar with the standard
10 ASME B318S?

11 A. I am.

12 Q. How are you familiar with that standard?

13 A. I reviewed that in the past.

14 Q. Has that been codified into law?

15 A. Portions of it are codified and
16 referenced in the transmission pipeline regulations.

17 MR. YSKAMP: I am going to mark another
18 exhibit. Exhibit 18.

19 Q. Do you recognize this document?

20 MR. YSKAMP: Sorry. Hold on one second.
21 NOPE Exhibit 18 is titled "ASME B318S: Managing
22 System Integrity of Gas Pipelines" by the American
23 Society of Mechanical Engineers.

24 ALJ PARROT: So marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. Do you recognize this document?

2 A. I do not recognize the cover page of the
3 document.

4 Q. Can you turn past the cover page, please.

5 A. I do recognize the second page of the
6 document.

7 Q. Okay. You can take a second to look
8 through it. Just take a second to just generally
9 look through it for me.

10 A. I'm sorry, you want me to read the entire
11 document?

12 Q. No.

13 A. This will take me some amount of time.

14 Q. I am not asking you to read the entire
15 document. Just look through it and let know if you
16 recognize the document.

17 A. If the remainder of the document is
18 consistent with the second page which is ASME
19 B31.8S-2004, I am familiar with the document.

20 Q. Could you turn to page 7, please.

21 A. Okay. I believe I'm there.

22 Q. So the very bottom paragraph, the second
23 sentence, starting with "The operator," states "The
24 operator shall count the number of houses and
25 individual units in buildings within the potential

1 impact area. The potential impact area extends from
2 the center of the first --

3 A. I'm sorry. Can you tell me exactly where
4 you are at again?

5 Q. Sorry.

6 A. Which column? Left-hand?

7 Q. Page 7.

8 A. I am on page 7.

9 Q. Right-hand column.

10 A. Right-hand column.

11 Q. Underneath all the calculations there.

12 A. Uh-huh.

13 Q. First -- very last paragraph on the page.

14 A. Okay.

15 Q. So the second sentence of that paragraph
16 starting with "The operator."

17 A. Okay.

18 Q. It states "The operator shall count the
19 number of houses and individual units in buildings
20 within the potential impact area." Has that been
21 done for this pipeline?

22 A. I do not know that it has been. But my
23 response is, if I can refer back to the cover page,
24 which says the CFR section says 49 CFR 192.9 --

25 Q. That's not my question.

1 A. -- 03. It is not applicable. This
2 document that you are asking me to reference is not
3 applicable.

4 Q. I understand you feel that way, but my
5 question is: Has the operator counted the number of
6 houses within the potential impact area?

7 A. I do not know.

8 Q. Okay.

9 A. I don't know the answer to that question.

10 MR. HESLIN: Your Honor, can he allow the
11 witness to answer the question?

12 ALJ PARROT: Yes. Let's do our best to
13 avoid talking over each other.

14 Q. If you could turn to the next page.

15 A. I'm sorry, what page?

16 Q. Page 8, the very next page.

17 THE WITNESS: Your Honor, could I
18 complete my response to the previous question?

19 ALJ PARROT: I think the point has been
20 made.

21 THE WITNESS: Thank you.

22 ALJ PARROT: Let's move along.

23 THE WITNESS: Thank you, your Honor.

24 Q. Under Section 3.3.

25 A. I'm sorry, which page are you on?

1 Q. Page 8.

2 A. Okay.

3 Q. The section states "Consequence Factors
4 to Consider" and it states "When evaluating the
5 consequences of a failure within the impact zone, the
6 operator shall consider at least the following:
7 Population density; proximity of the population to
8 the pipeline (including consideration of manmade or
9 natural barriers...); proximity of populations with
10 limited or impaired mobility (e.g., hospitals,
11 schools, child-care centers, retirement communities,
12 prisons, recreation areas), particularly in
13 unprotected outside areas; property damage;
14 environmental damage; effects of unignited gas
15 releases; security of gas supply...; public
16 convenience and necessity; potential for secondary
17 failures."

18 So has that -- has that been done within
19 the impact zone for this pipeline?

20 A. As I previously mentioned, if this were a
21 transmission line, I would expect that to be done,
22 but this section is not applicable to a distribution
23 pipeline.

24 The other answer to your question is I
25 don't know if that has been done or not because that

1 was outside the scope of my retention.

2 MR. YSKAMP: Okay. That's all of my
3 questions. Thank you.

4 ALJ PARROT: Mr. Stevenson.

5 MR. STEVENSON: I have no questions of
6 this witness. Thank you.

7 Mr. Fox?

8 MR. FOX: Nothing, your Honor.

9 ALJ PARROT: Mr. Pacheco.

10 MR. PACHECO: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Pacheco:

14 Q. Good afternoon, Mr. Paskett.

15 A. Good afternoon, sir.

16 Q. If you could take a look at NOPE Exhibit
17 15 in front of you.

18 MR. PACHECO: May I approach to help,
19 your Honor?

20 ALJ PARROT: You may.

21 A. I have no idea where NOPE Exhibit 15 is.

22 Q. Fair enough. It would be this one here.

23 Mr. Paskett, just to give you some
24 context. You had some discussion or a little bit of
25 discussion with Mr. Yskamp about this particular

1 document. These are statistics from PHMSA, two-page
2 document.

3 A. Okay.

4 Q. You testified you have not seen this
5 document before, correct?

6 A. I have not seen this specific document
7 before, correct.

8 Q. But you're aware of statistics like this
9 being put out by PHMSA, correct?

10 A. I am.

11 Q. All right. And in this particular
12 instance, they have categorized the number of serious
13 incidents involving gas distribution lines from 1999
14 to 2018, right?

15 A. That would appear to be the case, yes.

16 Q. All right. And the grand total, over the
17 last 20 years, of serious incidents involving gas
18 distribution lines is 626, correct?

19 A. That's what that table says.

20 Q. And the number of fatalities in the last
21 20 years --

22 MR. HESLIN: Objection, your Honor. He
23 is testifying here. This document -- the witness has
24 just stated he has never seen this document.

25 MR. PACHECO: Your Honor, on page 26 of

1 his prefiled testimony, he says he relies on PHMSA
2 statistics. These are PHMSA statistics. I am asking
3 about them. This is a public record that I can
4 cross-examine him with. There can be redirect if
5 counsel has an issue with a federal government
6 document.

7 ALJ PARROT: Overruled. Go ahead.

8 MR. PACHECO: Thank you, your Honor.

9 Q. (By Mr. Pacheco) And so, this document
10 shows that there are 222 fatalities over the last
11 20 years, resulting from pipeline incidents and
12 gas -- gas distribution pipeline incidents, right?

13 A. That's what the document says.

14 Q. And over the last 20 years, there are 987
15 injuries, serious injuries, resulting from pipeline
16 incidents, gas distribution pipeline incidents over
17 the last 20 years, right?

18 A. That's what the document says.

19 Q. All right. And in fact, the three-year
20 average for incident counts has gone -- it went --
21 from 2009, it was 29. The five-year average from
22 20 -- let me back up and start again. I apologize.

23 According to the middle of the document,
24 the three-year average for incident counts is 29,
25 from 2006 to 2018, correct?

1 A. I don't know that the -- the statistics
2 are correct. That's what the document says.

3 Q. Okay. So this is -- these are statistics
4 compiled by the federal government, correct?

5 A. That's correct.

6 Q. And these are statistics that you were,
7 at least at page 26 of your prefiled testimony, you
8 were willing to put in statistics from PHMSA as part
9 of your prefiled testimony, correct?

10 A. I did not review all of the statistics on
11 PHMSA's website. I looked at the specific ones that
12 were in my testimony on page 27 and -- 26 and 27, so
13 I did not necessarily agree with all statistics on
14 PHMSA's website.

15 Q. Right. You agreed with the statistics
16 you put in your prefiled testimony, right?

17 A. Which was a snippet, a snapshot of
18 PHMSA's statistics.

19 Q. All right. And according to this --
20 according to this snapshot of 20 years of PHMSA
21 statistics, the number of fatalities resulting from
22 pipe -- gas -- gas distribution pipeline incidents
23 went from 10 in 2016, to 16 in 2017, right?

24 A. I'm sorry. I don't -- what are you
25 referencing?

1 Q. So we're on the top hand -- the top
2 table, titled PHMSA Pipeline Incidents, 1999 to 2018.
3 The fatalities in 2016, according to this, were 10,
4 right?

5 A. I'm sorry, what year?

6 Q. 2016.

7 A. 2016. That table says 10 fatalities.

8 Q. And in 2017, that table says 16
9 fatalities, right?

10 A. Correct.

11 Q. And for 2017, in terms of injuries, the
12 number was 32, right?

13 A. That's what the table says.

14 Q. And in 2018, the injuries were 81, right?

15 A. That's what it says.

16 Q. Okay. You cannot eliminate the
17 possibility there may be a rupture on this
18 distribution pipeline, correct?

19 A. I cannot guarantee that there won't be a
20 rupture, but all the subject-matter experts from the
21 industry, PHMSA, and state regulators, pipeline
22 safety regulators, have all agreed that was the
23 conclusions of the AGF Study and from the Phase I
24 report.

25 Q. And that AGF Study is from 2005, correct?

1 A. Yes.

2 Q. And that's 14 years old, right?

3 A. Yes.

4 Q. So you are relying on 14-year-old data
5 for that conclusion, right?

6 A. I am not aware of any ruptures that
7 occurred on a modern-day distribution pipeline system
8 since that time.

9 Q. You cited the study in your prefiled
10 testimony, right?

11 A. I did.

12 Q. And that study is 14 years old.

13 A. It is.

14 Q. And you also cited a 2001 study, right?

15 A. No.

16 Q. You didn't cite the 2001 American Gas
17 Association?

18 A. I did not, that's incorrect.

19 Q. Okay.

20 A. That's 2005.

21 Q. Okay. Take a look at page 9 of your
22 direct -- of your prefiled testimony. And in
23 particular, if you would let me know when you are
24 there. Sorry, Mr. Paskett.

25 A. Page 9?

1 Q. Yes, sir.

2 A. Okay. I'm there.

3 Q. If you would take a look at Footnote 10.

4 A. Okay.

5 Q. You say -- well, let me look at the
6 sentence before that in line 19. "A 2001 study
7 conducted by Battelle Laboratories for the Gas
8 Technology Institute provides further information
9 about the conditions under which ruptures and leaks
10 occur in steel pipelines as referenced in the AGF
11 Study." Did I read that correctly?

12 A. That's correct.

13 Q. All right. So there it is, where you do
14 reference a 2001 study in your prefiled testimony,
15 correct?

16 A. I reference the 2001 leak-versus-rupture
17 study in the 2005 report, correct.

18 Q. Okay. So in 2005, you were relying on
19 information from 2001, right?

20 A. Correct.

21 Q. Okay. You were here for Mr. Hebbeler's
22 testimony, correct, Mr. Paskett?

23 A. I was.

24 Q. And you are aware that Duke has been --
25 had five prior citations for violations; you heard

1 that testimony?

2 A. I heard the testimony, but I am not
3 familiar with any of those probable violations.

4 Q. Fair enough.

5 MR. PACHECO: Forgive me, your Honor. I
6 am just making sure I am not repetitive.

7 Q. You are not aware, Mr. Paskett, in your
8 words, in the unlikely event of a pipeline rupture,
9 that Duke has provided any information to Blue Ash,
10 or any other intervenor community for that matter,
11 concerning the potential safety implications
12 resulting from such an incident.

13 A. I am not aware of what actions Duke may
14 have taken in that regards. However, what I would
15 expect Duke Energy to do, once there is a final
16 alignment approved, that would be part of the
17 Company's public information program and emergency
18 response plan to get together with the communities
19 and go through that kind of information on how to
20 respond.

21 Q. You would expect that but that's just
22 your speculation, right?

23 A. I think any prudent operator would do so
24 and would be required by Part 192 to do so.

25 Q. Now, leaks can be potentially dangerous,

1 you would agree with that, right?

2 A. If they're not managed appropriately,
3 yes.

4 Q. All right. And you would agree with this
5 statement, right, that properly supporting and
6 protecting pipelines ensures their continued safe
7 operation, and helps protect crew and the public from
8 the very serious risks of a fire or explosion?

9 A. I am not sure where that statement came
10 from.

11 Q. It's coming from a Duke website that they
12 instruct their contractors on. Would you like to see
13 it?

14 A. I would like to see it. Do you have it
15 in print for me?

16 Q. Yeah, I do.

17 A. Thank you.

18 MR. PACHECO: Your Honor, this would be
19 marked as Blue Ash and Columbia Township Exhibit 3.

20 A. Thank you.

21 ALJ PARROT: It is dated April 8.

22 MR. PACHECO: Thank you, your Honor.

23 ALJ PARROT: That's the date you accessed
24 the website?

25 MR. PACHECO: That's correct, top

1 left-hand corner. This is from -- the URL is below,
2 your Honor, bottom left-hand page, www.dukesafety.com
3 and there is a number of backslashes I won't read,
4 but they are there.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. (By Mr. Pacheco) Mr. Paskett, what I read
7 was the last sentence of the first paragraph, under
8 "It's Critical to Support and Protect Them."

9 A. Okay.

10 Q. Do you have -- so my question was --

11 A. May I review that, please?

12 Q. I'm sorry. I apologize, yes.

13 A. Okay.

14 Q. Now that you have had a chance to read
15 it, do you agree with that statement?

16 A. I think that's a valid statement.

17 Q. And let's keep going down there under
18 "Work Carefully Around Exposed Pipelines," it says,
19 under the first bolded bullet point, "Do not walk on,
20 climb on, strike, or attempt to move exposed
21 pipelines," and then the next sentence "Even a slight
22 impact or load can separate pipeline joints, damage
23 protective coatings, or destabilize supports." Did I
24 read that correctly?

25 A. You did.

1 Q. Do you agree with that statement?

2 A. General terms, that's correct. That's a
3 part of -- I have never seen this before but this
4 appears to be part of Duke Energy's Excavation Damage
5 Prevention Program and that is a generic statement
6 that would be applicable to pipelines of all types.
7 So basically the statement is don't damage our
8 pipeline which is a prudent thing to educate the
9 community on so, yes, I agree with it.

10 Q. Under "Report All Damages," it says "Even
11 a slight gouge, scrape, or dent to a pipeline, its
12 coating, or a wire attached to or running alongside
13 the pipe, may cause a break or leak in the future."
14 Did I read that correctly?

15 A. You did.

16 Q. And you agree with that statement, right?

17 A. I do.

18 Q. All right. I don't have anything further
19 for that document, that being City -- or Blue Ash and
20 Columbia Township Exhibit 3.

21 Are you aware that Duke Energy has
22 provided guidance to their contractors, as well, if
23 they suspect a natural -- "they" being the
24 contractors, suspect a natural gas leak?

25 A. I'm not sure what you are referring to.

1 Q. Okay.

2 A. I thought we were through with that
3 document.

4 Q. Yes, sir. If I show you a different
5 document.

6 A. Well, that would be helpful, so. I can't
7 opine on what I haven't seen.

8 Q. Fair enough.

9 MR. PACHECO: May I approach, your Honor?

10 ALJ PARROT: You may.

11 MR. PACHECO: Thank you.

12 Q. And I don't mean to interrupt your
13 reading, Mr. Paskett, but when you are ready for a
14 question, just let me know.

15 A. Do you have a particular part of this
16 document or would you like me to read it all?

17 ALJ PARROT: Mr. Pacheco, I'm sorry to
18 interrupt. Did you intend to mark this?

19 MR. PACHECO: Oh, thank you, your Honor.
20 I thought I did. Blue Ash and Columbia Township
21 Exhibit 4. Thank you, your Honor. I apologize.

22 ALJ PARROT: And just again for the
23 record, this is another excerpt, appears to be from
24 Duke's contractor website? April 8 --

25 MR. PACHECO: Your Honor, yes. It's

1 www.dukesafety.com/contractors and it was accessed on
2 4/8/2019. Thank you, your Honor.

3 ALJ PARROT: Thank you. So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 A. Okay.

6 Q. Thank you, Mr. Paskett. Just a couple of
7 questions on this document. There are seven steps
8 that Duke suggests, indicates, I don't want to load
9 the term, but lists, that doesn't load it, lists if
10 -- "If Equipment Contacts a Gas Line or You Suspect a
11 Leak" and it talks about evacuate the area
12 immediately; leave the excavation open; do not light
13 a match, start an engine, or operate any electrical
14 device, even a phone; abandon equipment; from a safe
15 location, call 911 and Duke Energy; stay away from
16 the area; and report the incident to your supervisor.
17 Did I generally read those correctly?

18 A. I think in general terms, yes.

19 Q. Okay. And you would agree those are good
20 practices, right?

21 A. I think those are good practices and,
22 both in previous documents and this document, are
23 required by federal code as part of the Public Safety
24 Awareness Program and the Excavation Damage
25 Prevention Program so, yes, those are good practices.

1 Q. And according to Duke, there is no such
2 thing as minor damage, right? In the next statement.

3 A. I believe what Duke says, that headline
4 says "There's No Such Thing as Minor Damage" because
5 part of the maintenance of the pipeline is to repair
6 any damages.

7 Q. Right. And the next line is "Even a
8 slight gouge, scrape, or dent to a pipeline, its
9 coating, or a wire attached to or running along side
10 the pipe may cause a break or leak in the future."
11 Did I read that correctly?

12 A. I think you did. That's what it says.

13 Q. We are done with that one. Thank you,
14 Mr. Paskett.

15 Do you agree with the statement,
16 Mr. Paskett, that one of the most potentially
17 hazardous situations in residential areas, industrial
18 plants and construction sites is accidental contact
19 with underground electric power lines, natural gas
20 lines, communication lines and other utility
21 services?

22 A. I'm sorry. Where did that statement come
23 from?

24 Q. I read it from a website that I haven't
25 shown. If you want me to show, I will. I am

1 wondering if you could agree with that statement
2 without looking at the website.

3 A. I would like to know what the source of
4 the statement is, please.

5 Q. All right. Happy to do that. It's
6 also --

7 MR. PACHECO: Your Honor, I will try and
8 walk and talk. Exhibit 5, this is -- this will --
9 this is from Duke's website that was also accessed on
10 April 9. It's entitled natural -- "Natural Gas and
11 Safety."

12 ALJ PARROT: So marked Blue Ash and
13 Columbia Township Exhibit 5.

14 MR. PACHECO: Thank you, your Honor.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. And, Mr. Paskett, to -- the statement I
17 read was on page -- I don't know if we marked them,
18 I'm sorry. I should have done that. It's the second
19 page under "Call before you dig."

20 A. Okay. I see it.

21 Q. Do you agree with that statement?

22 A. I think in general terms that is a valid
23 statement. And, again, it's required as part -- by
24 code as part of Duke Energy's Excavation Damage
25 Program.

1 MR. PACHECO: Thank you, your Honor. I
2 have nothing further.

3 MR. MILLER: I have no questions beyond
4 that, your Honor.

5 ALJ PARROT: Let's go off the record just
6 for a minute.

7 (Discussion off the record.)

8 ALJ PARROT: Let's go back on the record.
9 Mr. Keaney?

10 MR. KEANEY: No cross, your Honor.

11 ALJ PARROT: Mr. Beeler?

12 MR. BEELER: No cross. Thank you.

13 ALJ PARROT: Any redirect?

14 MR. HESLIN: Your Honor, could we have
15 just a very brief recess to confirm?

16 ALJ PARROT: You may.

17 MR. LESSER: Your Honor, before everybody
18 leaves, we have something we would like to discuss
19 off the record.

20 ALJ PARROT: Off the record?

21 Okay. Let's go off the record.

22 (Discussion off the record.)

23 ALJ PARROT: Let's go back on the record.
24 Any redirect?

25 MR. HESLIN: We do, your Honor.

1 - - -

2 REDIRECT EXAMINATION

3 By Mr. Heslin:

4 Q. Mr. Paskett, during your
5 cross-examination by Mr. Yskamp, as well as the City
6 of Blue Ash, you were asked to review a number of
7 documents that relate to major fatalities and
8 injuries in -- on distribution systems, as well as
9 some Duke Energy websites where the characterization
10 was that there's no such thing as minor damage. How
11 do you reconcile the cross-examination and the
12 documents that you reviewed with the conclusions that
13 you have arrived at in this case with respect to this
14 particular pipeline?

15 A. So I think in my expert opinion, what
16 I've just seen on Duke Energy's website with respect
17 to excavation damage prevention, while I agree with
18 the -- the postings on the website for excavation
19 damage prevention and call before you dig, those are
20 all very good applicable statements for, in general
21 terms, for general pipelines; but I think it's
22 critically important to recognize and focus the
23 attention, since this proceeding is all about the
24 Central Corridor Pipeline, on that pipeline.

25 So for the record, based on my review of

1 the documents, design documents for this pipeline,
2 and in Mr. Hebbeler's testimony yesterday, Duke has
3 taken exceptional measures to prevent any kind of
4 third-party damage or excavation damage to this
5 pipeline.

6 Q. And what are those?

7 A. Specifically, I will name off a number of
8 measures. No. 1, federal code would require for a
9 distribution pipeline 24 inches of cover and this
10 pipeline was going to have a minimum of 48 inches or
11 4 feet of cover and that is expressly determined,
12 that parameter, to reduce threat of excavation
13 damage.

14 Second, the Company has already agreed to
15 put excavation warning tape above the pipeline which
16 is yet another measure to protect the pipeline from
17 inadvertent damage from third-party excavators.

18 Third, and critically important here, and
19 it's in my testimony, Duke has actually designed this
20 pipeline with an exceptionally thick wall thickness
21 which is 0.438-inch wall thickness and yield strength
22 of 60,000 psi. For the non-engineers in the
23 audience, what that really means is it's a factor of
24 safety of over 50. In fact, to be precise, 5.25
25 compared to a transmission, and I've been very clear

1 this is not a transmission pipeline but a
2 transmission pipeline along the same alignment could
3 be designed with a factor of safety of 2.5. So the
4 factor of safety associated with design of this
5 pipeline is actually twice as much as it would have
6 to be according to federal code.

7 What that translates to, in my expert
8 opinion, with that thick of a wall, it's highly
9 unlikely that any outside force could actually
10 penetrate that wall. It is very, very thick, highly
11 resistant to any party -- type of damage, third-party
12 damage, or any other threats.

13 In addition, a couple more measures that
14 Duke has voluntarily initiated with this pipeline is
15 the installation of automatic -- or remote control
16 valves at four different locations on the pipeline.

17 And we talked a little bit about leaks
18 that may potentially, in the highly unlikely event of
19 any kind of a problem with the pipeline, Duke is
20 actually going to do a leak inspection on this
21 pipeline twice a year. Federal code requires a leak
22 inspection on this pipeline once every five years,
23 not to exceed 63 months. So what I am saying is Duke
24 is actually going to inspect this pipeline 10 times
25 as frequently as what's required by federal code.

1 Q. Thank you.

2 And I would ask you to look back at Blue
3 Ash/Columbia Township No. -- Exhibit Nos. 3 and 4
4 which are the Contractor Training Program website
5 pages. Do you see those?

6 A. I believe I do, yes. I am not sure which
7 one is 3 or which one is 4, but I have got both of
8 them in front of me.

9 Q. Let me refer you to Blue Ash/Columbia
10 Township No. 4 which is the website where, under the
11 Duke Energy banner, it is entitled "If You Suspect a
12 Natural Gas Leak." Do you see that?

13 A. I do.

14 Q. And then if you look towards the bottom
15 there, there's that statement "There's No Such Thing
16 as Minor Damage." Do you see that?

17 A. I do.

18 Q. And do you recall when counsel asked you
19 about that statement?

20 A. I do.

21 Q. Now, is there any distinction or
22 description of the type of pipe in either that
23 paragraph or any part of this page?

24 A. No, there is not, so this is --

25 Q. And why is that relevant?

1 A. Thank you. Thank you for that question.
2 So this is a general statement that's put out for the
3 public that is applicable to all pipelines, whether
4 it's a cast-iron pipeline, a bare-steel pipeline, a
5 plastic pipeline. It is not specific to the
6 requirements for the central core -- corridor
7 pipeline.

8 Q. And if you look at the other page which
9 is Blue Ash/Columbia Township Exhibit No. 3, with the
10 state -- the title "Exposed Duke Energy Pipelines,"
11 do you see that?

12 A. I do.

13 Q. And similarly is there any distinction or
14 description of a particular type of pipeline?

15 A. There's not.

16 Q. And why is that relevant?

17 A. Once again, it's a generic statement for
18 excavation damage prevention. It would be applicable
19 to educating the public on all types of pipeline, not
20 specific to the Central Corridor Pipeline.

21 Q. So it's fair to say that these particular
22 statements don't necessarily apply to the Central
23 Corridor Pipeline.

24 A. I think it's a fair statement to say that
25 they are not specifically applicable to the Central

1 Corridor Pipeline.

2 MR. HESLIN: Nothing further.

3 ALJ PARROT: Mr. Yskamp?

4 MR. YSKAMP: Thank you, your Honor.

5 - - -

6 RECROSS-EXAMINATION

7 By Mr. Yskamp:

8 Q. So you went over some voluntary measures
9 that Duke Energy is claiming they are going to do for
10 this pipeline, so I want to go through a couple of
11 those with you.

12 A. Okay.

13 Q. The warning tape above the pipeline.

14 A. Yes.

15 Q. Is that required by law?

16 A. It is not.

17 Q. What's the life of this pipeline?

18 A. In my expert opinion, it's at least 50
19 years, maybe 100 years.

20 Q. So is Duke going to have warning tape
21 over the pipeline for 100 years?

22 A. That warning pipe -- warning tape will be
23 in place as long as the pipeline is in place.

24 Q. And -- but they are not required by law
25 to do so.

1 A. That's why I testified that that's a
2 voluntary measure that Duke is agreeing to that
3 exceeds code.

4 Q. And if, in 10 years, they don't do it,
5 they are not in violation of any law?

6 A. Perhaps you don't understand what warning
7 tape is. Warning tape will be installed with the
8 pipeline at the time of construction, so it will be
9 installed with every foot of pipeline. It will have
10 warning tape above the pipeline to warn excavators
11 that there is a pipeline down below. It's one more
12 measure to minimize excavation damage.

13 Q. So there won't be warning tape on the
14 surface.

15 A. No. There won't be warning tape on the
16 surface. Warning tape by definition is installed in
17 the ditch with the pipeline. However, thank you for
18 asking, because there will be, by federal code,
19 pipeline markers on the surface to alert any -- any
20 excavators of the existence of a pipeline.

21 Q. And that is required by law.

22 A. That is in federal code.

23 Q. The inspections twice a year.

24 A. Yes.

25 Q. So if a leak is occurring within --

1 between those inspections, it may not be detected by
2 inspection.

3 A. Well, there's -- as I have testified in
4 my written direct testimony, there's multiple ways to
5 identify a leak on a distribution line. No. 1, there
6 is the instrument leak surveys that's conducted by
7 the operator, as noted on one of these exhibits here.
8 There also is mercaptan which is an odorant that the
9 Company puts in the gas so that anybody, the public,
10 customers, if there is -- in the event of a leak,
11 that they can report the leak and in which case Duke
12 will come out and investigate and repair as
13 necessary.

14 Q. And that's if they know who to report to?

15 A. Well, I would hope that they would know
16 who to report to because that's part of Duke
17 Energy's Public Safety Awareness Program and they
18 educate -- by federal code, they have to educate the
19 public on the existence of reporting leaks and that's
20 generally disseminated by the Public Communications
21 Program.

22 Q. And that's if they connect the smell to a
23 leaking pipe, right?

24 A. Well, it's not up to the public to
25 connect it. The public awareness communications, and

1 I have not seen Duke Energy's, but generally it is --
2 we just saw an example in these exhibits recognizing
3 gas leaks and about odor, et cetera. All they have
4 to do is recognize the gas odor smell and call Duke
5 Energy and say "I smell gas," and Duke will come out
6 and investigate it.

7 Q. The rotten egg smell.

8 A. That's the rotten egg smell. See, you
9 know about the rotten egg smell. They did a good job
10 educating you.

11 Q. It smells like rotten eggs, right?

12 A. There you go.

13 Q. Maybe not necessarily a gas leak.

14 A. It smells like rotten eggs and that's
15 what the industry educates the community on. You
16 smell the rotten egg smell, call the operator, and we
17 will come out and investigate it.

18 Q. Okay. And do they have these classes at
19 a general public school or something when they
20 educate the community?

21 A. I cannot speak specifically to Duke's.
22 However, based on my -- based on my industry
23 experience, they have those educations in public
24 schools, they have them on the website. They
25 actually push them out in bill stuffers. So it's

1 done all different directions so every customer that
2 is a Duke Energy customer will get a bill stuffer.
3 Typically operators do it once a year. I don't know
4 the details of Duke's program. But this is the
5 message that says, when you smell a rotten egg smell,
6 call Duke Energy at this number and we will come out
7 and investigate it.

8 Q. So back to the inspections.

9 A. Okay.

10 Q. Which is their voluntary agreement. If,
11 in five years, they decided they didn't want to
12 inspect twice a year, is there anything in the law
13 that would stop them from not doing that voluntary
14 requirement?

15 A. As I mentioned which -- I should ask
16 which inspections you are talking about.

17 Q. You mentioned that they were volunteering
18 to in -- to do leak inspections twice a year.

19 A. Uh-huh.

20 Q. Correct?

21 A. Okay. So, yes. Thank you for the
22 clarification. So basically there's nothing in the
23 law that would prevent them, but I believe, based on
24 my discussions with Company personnel, they would
25 agree to that as a condition of the construction of

1 this pipeline. So it wouldn't be in the law, per se,
2 but it would be a condition of this pipeline permit.

3 Q. I am concerned with legal requirements.
4 So there wouldn't be anything in the law to prevent
5 them from stopping that, right?

6 A. Well, I mentioned already they're
7 voluntarily agreeing to do 10 times as frequently as
8 what's in the code.

9 Q. And that is twice a year.

10 A. No. They are -- the code says every five
11 years, not to exceed 63 months. The Company is
12 voluntarily agreeing to twice per year.

13 Q. Right.

14 A. Okay. One more measure, I apologize,
15 that I --

16 Q. I didn't have a question.

17 A. Okay. Fine.

18 MR. YSKAMP: I think that's all the
19 questions I have.

20 ALJ PARROT: Mr. Stevenson?

21 MR. STEVENSON: I have nothing.

22 ALJ PARROT: Mr. Fox?

23 MR. FOX: Nothing, your Honor.

24 ALJ PARROT: Mr. Pacheco?

25 MR. PACHECO: Very briefly, your Honor.

1 - - -

2 RECROSS-EXAMINATION

3 By Mr. Pacheco:

4 Q. Mr. Paskett, could you take a look at
5 City and County Exhibit 5. That was the 17 page or
6 so website that I showed you.

7 MR. PACHECO: May I approach, your Honor?

8 ALJ PARROT: You may.

9 MR. PACHECO: Thanks. Mr. Keaney just
10 made a good point. I said City and County. I should
11 have said Blue Ash and Columbia Township Exhibit 5.
12 I apologize.

13 Q. That's it. Thank you, Mr. Paskett.

14 A. Thank you.

15 Q. If you could turn to page 6 of that
16 document, Mr. Paskett, and let me know when you're
17 there.

18 A. Pages do not appear to be numbered, so.

19 Q. I'm sorry. It starts "What's that smell"
20 in the top left-hand corner. I apologize.

21 A. Okay.

22 Q. All right? And you had talked about you
23 were discussing the odor -- let me rephrase that.
24 You were discussing the rotten egg smell with
25 Mr. Yskamp on recross. Do you remember that?

1 A. I do.

2 Q. Okay. And Duke says, and I am reading in
3 the middle of the page, "Don't rely on sense of smell
4 alone." Did I read that correctly?

5 A. Yes.

6 Q. And in fact, in the sentence before it,
7 it says "Even so, you should not rely solely on your
8 sense of smell to determine if a gas leak has
9 occurred or is occurring." Did I read that
10 correctly?

11 A. I am sorry. Where are you at again?

12 Q. The sentence before "Don't rely on sense
13 of smell alone."

14 A. Okay.

15 Q. Sorry.

16 A. Okay. You read that sentence correctly.

17 Q. All right. And then if you go under the
18 paragraph that says "Don't rely on sense of smell
19 alone," starting with the third sentence "Sometimes
20 the added odorant may be masked or overpowered by
21 other odors. In rare incidences, odor fade (loss of
22 odorant) may occur. This may cause the odor to
23 diminish so that it is not detectable." Did I read
24 that correctly?

25 A. You did.

1 MR. PACHECO: Your Honor, I don't have
2 anything further. Thanks.

3 ALJ PARROT: Mr. Miller?

4 MR. MILLER: I have no questions, your
5 Honor.

6 ALJ PARROT: Mr. Keaney?

7 MR. KEANEY: No questions, your Honor.

8 ALJ PARROT: Mr. Beeler?

9 MR. BEELER: Nothing, your Honor. Thank
10 you.

11 ALJ PARROT: Mr. Heslin?

12 MR. HESLIN: Your Honor, at this time, we
13 move Duke Energy Ohio Exhibit 15 into evidence.

14 ALJ PARROT: Are there any objections?

15 Hearing none, Duke Exhibit 15 is admitted
16 into the record.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 ALJ PARROT: I think, if I am not
19 mistaken, this is the last of the Company's witnesses
20 at this time. So with that, if you want to go ahead
21 and move Duke Exhibits 1 through 6.

22 MS. KINGERY: Thank you, your Honor.

23 ALJ PARROT: Which you may have already
24 done, but I reserved a ruling, so let's hear that at
25 this time. Any objections to the admission of Duke

1 Exhibits 1 through 6?

2 Hearing none, those are also admitted.

3 (EXHIBITS ADMITTED INTO EVIDENCE.)

4 MS. KINGERY: Thank you, your Honor.

5 ALJ PARROT: Mr. Yskamp?

6 MR. YSKAMP: Yeah. I would move to admit
7 NOPE Exhibits 13 through 18.

8 ALJ PARROT: Are there any objections?

9 MR. HESLIN: Your Honor, we just maintain
10 our objection to I believe it's NOPE 16, the pipeline
11 serious incidents, the 20-year trend.

12 ALJ PARROT: The PHMSA data is Exhibit
13 15.

14 MR. HESLIN: 15. We maintain that
15 objection. The witness didn't recognize this data;
16 and, therefore, I don't believe counsel laid the
17 foundation for this.

18 ALJ PARROT: Do you wish to respond? Go
19 ahead.

20 MR. YSKAMP: So this data, I believe, is
21 clearly admissible under both Ohio Rule 806(6)
22 [verbatim] and Ohio Rule 806(8) [verbatim]. Under
23 806(6) [verbatim], evidence of this kind is
24 admissible as reported data kept in the regular
25 course of government business activity. And this

1 data is reported yearly and kept in the regular
2 course of PHMSA's business activity. It's admissible
3 under Ohio Rule 806(8) [verbatim] as a record,
4 statement, or data compilation, in any form, of a
5 public office or agency that goes to the activity of
6 the agency. This clearly goes to the activity of the
7 Pipeline and Hazardous Materials Safety
8 Administration.

9 MR. PACHECO: Your Honor -- I'm sorry. I
10 didn't mean to go out of order.

11 ALJ PARROT: Were you finished?

12 MR. YSKAMP: That's okay.

13 ALJ PARROT: Go ahead, Mr. Pacheco.

14 MR. PACHECO: It's also -- I agree with
15 everything Mr. Yskamp said, plus it's also
16 self-authenticating under Evidence Rule 902-2
17 [verbatim]. It's a public document, purporting to
18 bear what it bears. Also, this witness testified at
19 page 26 and 27 that he was relying on certain PHMSA
20 documents -- or, PHMSA documents. This is another
21 PHMSA document that appears to be what it appears to
22 be and, thus, not only is it an exception to hearsay,
23 it's also self-authenticating so it would be
24 admissible. It also should be admitted for
25 impeachment as well.

1 MR. HESLIN: Your Honor, my concern about
2 this is, as to some of the rationale that was brought
3 up, there is no custodian here to assure that this is
4 what it purports to be. The witness didn't recognize
5 it. And as far as it being self-authenticating, this
6 isn't a -- this isn't a record; it's a printout.

7 MR. PACHECO: Your Honor, on the face of
8 the document it says "Data Source: US DOT Pipeline
9 and Hazardous Materials Safety Administration" on the
10 document itself. It is self-authenticating under
11 902-2 -- or (2). It's also a public record for the
12 reasons Mr. Yskamp stated.

13 MR. YSKAMP: Yeah, it is a record,
14 downloads as a PDF record, not a printout of a
15 website.

16 MR. HESLIN: Once again, there is no
17 foundation for that on the record.

18 MR. PACHECO: That's why it's
19 self-authenticating.

20 ALJ PARROT: Thank you, everyone. With
21 that, I am going to admit NOPE Exhibit 15 into the
22 record. The witness did, I believe, testify that he
23 generally does, at times anyway, refer to PHMSA data.
24 And as Mr. Pacheco noted, he did reference certain
25 PHMSA data in his testimony. We are going to admit

1 the exhibit and allow the Board to determine what
2 weight, if any, to give it.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 ALJ PARROT: Did you have any other
5 objections to the other NOPE exhibits?

6 MR. HESLIN: We don't.

7 ALJ PARROT: With that, Exhibits -- NOPE
8 Exhibits 14, 16, 17, and 18 are also admitted into
9 the record.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 ALJ PARROT: Mr. Pacheco?

12 MR. PACHECO: Blue Ash and Columbia
13 Township moves the admission of Exhibits 3, 4, and 5.

14 ALJ PARROT: Any objections?

15 All right. Hearing none, Blue
16 Ash/Columbia Township Exhibits 3, 4, and 5 are also
17 admitted into the record.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 ALJ PARROT: Mr. Keaney, I believe you
20 have an issue to raise?

21 MR. PACHECO: Thank you, your Honor.

22 MR. KEANEY: Yes. The City/County and
23 the Company have agreed to stipulate to 41 discovery
24 responses in this case, subject to the -- preserving
25 the objections stated in each of those discovery

1 responses. Would you like me to identify all 41?

2 ALJ PARROT: That's what I was going to
3 ask. Are you proposing to mark them individually or
4 just one exhibit?

5 MR. KEANEY: It would probably be easier
6 to mark them individually in terms of the
7 post-hearing briefing. I know it will take longer.

8 ALJ PARROT: Okay. Go ahead.

9 MR. HESLIN: Your Honor, may Mr. Paskett
10 step down?

11 ALJ PARROT: I'm sorry, yes. I'm sorry.

12 THE WITNESS: Okay. Thank you, your
13 Honor.

14 ALJ PARROT: I apologize. Thank you.
15 Thank you very much.

16 Go ahead.

17 MR. KEANEY: City/County Exhibit No. 2
18 will be AB-INT-01-007. City/County --

19 ALJ SEE: Just a minute.

20 ALJ PARROT: Do you have copies?

21 MR. KEANEY: I do.

22 ALJ PARROT: Get those to us, please.

23 Let's go off the record for a moment.

24 (Discussion off the record.)

25 ALJ PARROT: Okay. Let's go back on the

1 record.

2 I believe we are going to table this
3 issue just for now so that we can get the exhibits
4 marked, and we'll pick this up then tomorrow.

5 MR. KEANEY: Yes. Thank you, your Honor.

6 ALJ PARROT: Is there anything else from
7 the Company at this point?

8 MS. KINGERY: No, your Honor.

9 ALJ PARROT: Okay.

10 ALJ SEE: Do we have any confirmation on
11 the two intervenor witnesses? I believe Mr. Guldmann
12 is available tomorrow.

13 MR. YSKAMP: He told me he would be here
14 at 9:00 a.m.

15 ALJ SEE: Do we have any idea if
16 Mr. Miller is going to be here at 9:00 as well?

17 MR. LESSER: I do not have an update at
18 this time, but my request to him is to be here at
19 9:00. I am still hoping to hear from him or somebody
20 else from the City. We will ensure that he will be
21 here, but I cannot say that at this time.

22 ALJ SEE: Okay. Mr. Beeler, Staff's
23 witnesses.

24 MR. BEELER: Your Honor, with the
25 beginning of Staff's case, would it be permissible

1 for me, the pieces that I believe nobody has cross
2 for, to mark and admit, before Staff begins its case?

3 ALJ SEE: We can do that.

4 MR. BEELEER: Okay. And these are the
5 testimony of Jon Pawley, Jon Whitis, Scott Glum, and
6 Mark Bellamy.

7 ALJ SEE: Are you going to mark them
8 individually, Mr. --

9 MR. BEELEER: Yes.

10 ALJ SEE: Hold on just a second,
11 Mr. Beeler.

12 Go ahead.

13 MR. BEELEER: I would like to have marked
14 as Staff Exhibit 2, the testimony of Jon Pawley;
15 marked as Staff Exhibit 3, the testimony of Jon
16 Whitis; the testimony of Scott Glum, Staff Exhibit 4;
17 and have marked as Staff Exhibit 5, the testimony of
18 Mark Bellamy. Does the Bench need copies?

19 (EXHIBITS MARKED FOR IDENTIFICATION.)

20 MR. BEELEER: At this time, Staff would
21 move for the admission of Staff Exhibits 2, 3, 4, and
22 5.

23 ALJ SEE: Are there any objections to the
24 admission of Staff Exhibit 2, being the Direct
25 Testimony of Jon Pawley; Staff Exhibit 3, the

1 testimony of Jon Whitis; Staff Exhibit 4, Mr. Glum;
2 and Staff Exhibit 5, Mark Bellamy?

3 Hearing none, Staff Exhibits 2 through 5
4 are admitted into the record.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 MR. BEELEER: Thank you, your Honor. At
7 this time, Staff would call to the stand, Robert
8 Holderbaum.

9 (Witness sworn.)

10 ALJ SEE: Thank you. Have a seat.
11 Please cut your mic on and use it.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 - - -

14 ROBERT HOLDERBAUM
15 being first duly sworn, as prescribed by law, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 By Mr. Beeler:

19 Q. Good afternoon. Please state your full
20 name for the record.

21 A. Robert Holderbaum.

22 Q. Okay. Who do you work for and what is
23 your position?

24 A. I am employed by the Public Utilities
25 commission of Ohio as a Utility Specialist 2.

1 Q. Do you have in front of you what has been
2 marked as Staff Exhibit 6?

3 A. I do.

4 Q. What is it?

5 A. It's the -- my prefiled testimony.

6 Q. Was that testimony prepared by you or
7 under your direction?

8 A. Yes.

9 Q. Do you have any changes to that
10 testimony?

11 A. I do not.

12 Q. Is this document true and accurate to the
13 best of your knowledge?

14 A. Yes.

15 Q. If I asked you these same questions
16 today, would your answers be the same?

17 A. Yes.

18 MR. BEELER: Your Honor, at this time, I
19 would move for the admission of Staff Exhibit 6,
20 subject to cross.

21 ALJ SEE: Mr. Keaney, any
22 cross-examination for this witness?

23 MR. KEANEY: Yes, your Honor.

24 - - -
25

1 CROSS-EXAMINATION

2 By Mr. Keaney:

3 Q. Good afternoon, Mr. Holderbaum. I just
4 have a few questions for you. On page 2 of your
5 testimony, line 8.

6 A. Okay.

7 Q. You discuss here that you are the overall
8 Staff Project Lead for the investigation that
9 resulted in what we now know as the Staff Report in
10 this case, correct?

11 A. Correct.

12 Q. And you have been a Lead Analyst for more
13 than 34 applications for various Power Siting Board
14 applications, correct?

15 A. Correct.

16 Q. In this case, Staff is recommending Board
17 approval of the Application, subject to about 38
18 conditions, correct?

19 A. Correct.

20 Q. And in your experience, is it routine for
21 Staff to recommend various conditions in a Staff
22 Report of this nature?

23 A. Yes.

24 Q. Now, assuming the Board approves the
25 conditions as recommended by Staff in this case, are

1 those conditions required to be followed by the
2 Applicant?

3 A. Yes.

4 Q. And if during the construction of a
5 siting project like a natural gas pipeline, for
6 instance, if the conditions are not followed by the
7 Applicant, does Staff consider that a violation of
8 its certificate?

9 A. I believe it depends on the condition but
10 in general, yes.

11 Q. Does Staff view adherence or compliance
12 with the conditions in the certificate to be
13 important?

14 A. Yes.

15 Q. Does Staff regard noncompliance with
16 conditions in a certificate to be a serious concern?

17 A. Yes.

18 Q. Do you have in front of you NOPE Exhibit
19 11?

20 A. I do not.

21 MR. KEANEY: Your Honor, may I approach?

22 ALJ SEE: Yes.

23 Q. If you can just go ahead and read that
24 and let me know when you are finished. I am
25 specifically going to ask you about paragraph 2.

1 A. You want me to read the whole document or
2 just paragraph 2?

3 Q. Go ahead and read paragraph 2.

4 A. Okay.

5 Q. Do you see in paragraph 2 where there is
6 a reference to a "second error on our part"?

7 MR. BEELEER: At this time, your Honor, I
8 would object that this document here is -- there has
9 been a failure to create a foundation for this
10 witness. This is a case that's not within -- within
11 this case. This is a previous siting case that is
12 outside the scope of this investigation.

13 MR. KEANEY: Your Honor, if I could
14 respond to that?

15 ALJ SEE: Go ahead.

16 MR. KEANEY: I just have one more
17 question, and it's not based on whether he's seen
18 this letter before, or his knowledge about the
19 letter. I am simply going to ask him about a
20 violation compared to an error. I've just got one
21 more question left. Give me a little leeway. I
22 don't have any more questions about this document.

23 MR. BEELEER: I don't think this witness
24 has ever seen this letter, knows anything about it.

25 ALJ SEE: Let's ask that question first,

1 Mr. Keaney.

2 Q. (By Mr. Keaney) Does Staff recognize any
3 distinction between an error committed by an
4 applicant --

5 ALJ SEE: Not that question, Mr. Keaney.
6 Foundation, get some foundation for this particular
7 witness.

8 MR. KEANEY: Just to clarify, the
9 document has already been admitted. I am not seeking
10 to admit. I am merely asking based off of -- what he
11 has read in the second paragraph if there is any
12 difference between an error and a violation of a
13 certificate. That doesn't require him to have any
14 foundational knowledge about this document. The
15 document has already been admitted. It's already
16 been authenticated. That was the last of my
17 questions.

18 ALJ SEE: Do you wish to ask the witness
19 if he is familiar with it, ever seen it?

20 MR. KEANEY: I can ask that, but it
21 wouldn't -- I am happy to ask that, but even if he
22 says no, it's no bearing.

23 ALJ SEE: Well, try that one first.

24 Q. (By Mr. Keaney) Have you seen this
25 document before, Mr. Holderbaum?

1 A. I have not.

2 Q. All I want to know is, do you consider an
3 error the same thing as a violation of a certificate,
4 without looking at this document at all?

5 A. I'm not exactly sure what you are
6 referring to.

7 MR. KEANEY: Okay. No more questions,
8 your Honor.

9 ALJ SEE: Mr. Yskamp?

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Yskamp:

13 Q. Good afternoon, Mr. Holderbaum. I just
14 have a couple of questions for you.

15 A. Sure.

16 Q. As Project Lead, do you review the public
17 comments that have been filed in this case?

18 A. It is part of the -- part of my job to
19 review them. I have not reviewed all of them, but I
20 have reviewed some of them.

21 Q. Are you going to review all of them?

22 A. I will probably read all of them, yes.

23 Q. Probably?

24 A. Probably.

25 Q. So people take time to file public

1 comments, and they may not be read?

2 A. No. There's just a lot in this case to
3 read.

4 Q. Is there a lot in this case compared to
5 most other cases that you see?

6 A. It's hard to say.

7 Q. You have a lot of experience with these
8 Power Siting Board cases, right?

9 A. I mean, for the ones I see, yes, this is
10 a lot.

11 Q. Of the ones you read, would you say that
12 most of them are opposed to the project?

13 A. Yes.

14 Q. Would you say they are overwhelmingly
15 opposed to the project?

16 A. Yes.

17 Q. Do you consider residents of the greater
18 Cincinnati area who did not file comments to support
19 the project?

20 A. Are you asking if every -- if I consider
21 every resident that did not file a comment to be in
22 support?

23 Q. That's right.

24 A. I do not.

25 Q. Did you hear Mr. Hebbeler's testimony

1 yesterday?

2 A. I did not.

3 Q. What -- would it trouble you if one of
4 the lead project managers held the opinion that
5 people who do not comment on the project, he
6 considers them in support of the project?

7 A. I don't know. I don't think it would
8 trouble me, no.

9 MR. YSKAMP: That's all I have. Thank
10 you.

11 ALJ SEE: Mr. Stevenson?

12 MR. STEVENSON: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Stevenson:

16 Q. Mr. Holderbaum, you've handled how many
17 cases as a Staff Lead?

18 A. At least 35, I can't say exactly.

19 Q. Okay. How many of those were pipelines?

20 A. I couldn't say exactly.

21 Q. Do you have an estimate on how many of
22 them were pipelines?

23 A. I don't. Maybe half.

24 Q. All right. But you handle other things
25 other than pipelines; is that correct?

1 A. Correct.

2 Q. As part of your job duties, did you
3 inspect the two routes that were proposed by Duke?

4 A. Yes.

5 Q. And how did you inspect them?

6 A. Several ways. We took several field
7 visits to look at both routes. The Applicant submits
8 GIS data for us to look at both routes extensively.
9 They submit several studies that we look at. We
10 walked a lot of the routes.

11 Q. Specifically did you review the
12 constructability study that Duke Energy had prepared
13 on August 12 of 2016?

14 A. I did not.

15 Q. I'm sorry. You did not? So, therefore,
16 you are unaware that -- let me make sure that's the
17 right date. I'm sorry. The date was June 8, 2016.
18 You are not aware of that study either?

19 A. I don't believe so.

20 Q. And you did not take a look at what they
21 referred to as the pipeline through downtown Reading,
22 Ohio, correct?

23 A. Can you rephrase that? I am not exactly
24 sure what you are asking.

25 Q. Well, I am asking that you -- you

1 indicated you did not take a look at the western
2 route constructability review, correct?

3 A. When you refer to "the western route,"
4 are you referring to one of the Preferred or the
5 Alternate?

6 Q. Yes. The western route would be the
7 Alternate Route. Did you look at the
8 constructability review for that route?

9 A. I'm not exactly sure what document you
10 are talking about, but we looked at --

11 Q. Fine.

12 A. -- the Application.

13 Q. Let me show you.

14 ALJ SEE: Do you want to indicate what
15 you approached the witness and provided?

16 MR. STEVENSON: I'm sorry, what?

17 ALJ SEE: Do you want to indicate what
18 you approached the witness and provided?

19 MR. STEVENSON: I will have to get it
20 back from him here.

21 Q. Have you reviewed it?

22 A. No.

23 Q. Please do.

24 A. Okay.

25 MR. STEVENSON: For the record that's

1 page 5 of the western route constructability review
2 prepared by Burns & McDonnell on June 8 of 2016.

3 MR. BEELEER: Is this, your Honor, an
4 admitted exhibit?

5 MR. STEVENSON: It's one that was
6 referred to during the testimony of Mr. Hebbeler. It
7 was not admitted as an exhibit.

8 MR. BEELEER: I would object on the basis
9 that the witness has not seen this document, knows
10 anything about it.

11 MR. STEVENSON: The fact he hasn't seen
12 it is what I intend to explore.

13 MS. KINGERY: Your Honors, if I might, if
14 this was provided in response to a particular
15 discovery request, that might help us to get through
16 this.

17 MR. STEVENSON: It was provided in
18 response to CITY-POD-01-005. It was the confidential
19 attachment that Mr. Hebbeler referred to in his
20 testimony that you indicated we were no longer
21 standing on confidentiality.

22 MS. KINGERY: Thank you.

23 MR. BEELEER: And this -- these questions
24 may also be -- the Staff does have a witness on the
25 site study, Mr. Burgener. It might be a better

1 question for him.

2 ALJ SEE: Let's -- he has had an
3 opportunity to review it, see if -- let's see if
4 Mr. Holderbaum can respond to the question first.

5 Q. (By Mr. Stevenson) Mr. Holderbaum, prior
6 to the Alternate Route being chosen by the Staff of
7 the Ohio Power Siting Board, was that document
8 reviewed by you?

9 A. I have not seen this document.

10 Q. All right. Were you aware that there
11 were issues on Third Street in Reading that would
12 limit the access of people to their homes during the
13 construction process?

14 A. I personally was not, but --

15 Q. Was that ever raised at a meeting with
16 your team?

17 A. It was not, but we have Staff that looks
18 at that, and it might be a better question for the
19 Staff member that looked at that area.

20 Q. And who specifically would have looked at
21 that area?

22 A. As counsel said, Staff member Tim
23 Burgener.

24 Q. Did you personally go to the City of
25 Reading during your review of the process of choosing

1 the Alternate Route?

2 A. Yes.

3 Q. And did you drive the area of Third
4 Street?

5 A. I believe so.

6 Q. Did you walk the area of Third Street?

7 A. I could not say.

8 Q. Do you remember the area of Third Street?

9 A. I couldn't say off the top of my head.

10 Q. All right. Are you aware of what the
11 setbacks are on Third Street?

12 A. The exact setbacks, I am not.

13 Q. Are you aware, some of the properties are
14 immediately adjacent to the street?

15 A. I am.

16 Q. All right. And did you drive the area
17 near -- of the -- I'm sorry. Did you drive the --
18 strike that.

19 With respect to the pipeline location of
20 the City -- in the City of Reading, the Alternate
21 Route, it would be a fair statement that the
22 Alternate Route enters the City of Reading in a
23 primarily commercial/industrial area?

24 A. I don't know the exact boundaries of
25 Reading, so I couldn't say.

1 Q. All right. But you are aware that the
2 proposed pipeline route goes through heavily
3 congested residential areas in the City of Reading,
4 correct?

5 A. I'm aware.

6 Q. All right. You indicated you were not
7 present when Mr. Hebbeler testified, were you?

8 A. Correct, I was not.

9 Q. So you did not hear him say in his
10 experience the Staff has never chosen the Alternate
11 Route.

12 A. I did not hear him say that, no.

13 Q. All right. And how often does the Staff
14 choose the Alternate route when two routes are
15 proposed?

16 A. I could not say. I don't have any idea.
17 This is the first time I have, but that's all I can
18 tell you.

19 Q. In 35 times.

20 A. Correct.

21 Q. This was the first time.

22 A. Correct.

23 Q. And you indicated you looked at
24 ecological impacts --

25 A. It has --

1 Q. -- in making that determination; is that
2 right?

3 A. I did not individually, but as a staff,
4 we did, yes.

5 Q. And did you look at the residential
6 impacts or not?

7 A. As a staff, yes, we did.

8 Q. The Staff did that or did you do that?

9 A. I did not do that individually, but our
10 team did that, yes.

11 Q. All right. And what impact led your team
12 to decide in this case to move the route from the
13 Preferred Route to the Alternate Route?

14 A. It wasn't one impact. We looked at all
15 the impacts together, and we're not -- we're just
16 recommending the Alternate Route to the Board. We
17 did not switch it from the Preferred to the
18 Alternate.

19 Q. You cannot switch it from the Preferred
20 to the Alternate?

21 A. Our role is just to recommend the route
22 to the Board.

23 Q. So that's simply a recommendation.

24 A. Correct.

25 Q. And if Duke wants the Preferred Route,

1 they can make that case to the Board?

2 A. No.

3 Q. Okay. Tell us.

4 A. If -- it's the Board's decision.

5 Q. It's the Board's decision.

6 A. Correct.

7 Q. Is the Board going to give your decision
8 to recommend the Alternate Route more weight than
9 Duke's decision to stay with the Preferred Route?

10 A. I couldn't say.

11 Q. In 35 times, has the Board ever voted
12 against one of your recommendations?

13 A. Me, personally, no.

14 Q. All right. You have been doing the
15 lead -- you're a Utility Specialist 2, correct?

16 A. Correct.

17 Q. And you were in charge of determining --
18 you were the lead of the committee that determined
19 this, correct?

20 A. I was the Staff member assigned to be the
21 lead for the -- to review the Application, correct.

22 Q. All right. So ultimately the decision to
23 impose Condition No. 1, which is the Alternate Route,
24 is with you.

25 A. It was definitely a team effort, and I

1 look at all the evaluations that our staff did, and
2 based off of those evaluations, we, as a team, chose
3 the Alternate Route.

4 MR. STEVENSON: All right. I don't have
5 any further questions.

6 ALJ SEE: Mr. Fox?

7 MR. FOX: Nothing, your Honor.

8 ALJ SEE: Mr. Pacheco?

9 MR. PACHECO: Thank you, your Honor.
10 Famous last words, just one.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Pacheco:

14 Q. Page 3 of your prefiled testimony,
15 Mr. Holderbaum, line -- page 3, line 6, the Staff
16 compared -- are you there?

17 A. Yes.

18 Q. Thank you. "Staff compared the
19 cumulative impacts of both routes and believe the
20 Alternate Route will result in fewer overall impacts
21 and/or impacts that can be more effectively
22 addressed"; did I read that correctly?

23 A. Yes.

24 Q. Okay. And that is Staff's
25 recommendation -- or that is the reason Staff chose

1 the Alternate Route over the Preferred Route?

2 A. Correct.

3 MR. PACHECO: I have nothing further.
4 Thank you, your Honor.

5 ALJ SEE: Mr. Miller?

6 MR. MILLER: I have no questions, your
7 Honor.

8 MS. KINGERY: Your Honor, although I was
9 not planning to cross, I do have one single
10 clarifying question, if I might.

11 ALJ SEE: Yes, Ms. Kingery.

12 MS. KINGERY: Thank you.

13 ALJ SEE: I almost forgot you there.

14 - - -

15 CROSS-EXAMINATION

16 By Ms. Kingery:

17 Q. Mr. Holderbaum, a utility building a
18 facility, pursuant to a certificate, accidentally
19 takes an action that might be deemed a violation of a
20 condition of that certificate, and if Staff
21 subsequently accepts a proposed remedial action,
22 would you still deem that to be a violation of the
23 certificate?

24 A. I guess it depends on the violation, but
25 if we work together and came to a conclusion to

1 remediate it, then I don't see any reason why we
2 would.

3 MS. KINGERY: That's all. Thank you.

4 ALJ SEE: Any redirect, Mr. Beeler?

5 MR. BEELER: May I have one moment?

6 ALJ SEE: Yes.

7 Let's go off the record.

8 (Discussion off the record.)

9 ALJ SEE: Let's go back on the record.

10 Mr. Beeler?

11 MR. BEELER: Just a few questions, your
12 Honor, on redirect.

13 - - -

14 REDIRECT EXAMINATION

15 By Mr. Beeler:

16 Q. Mr. Holderbaum, you were asked a question
17 on whether you reviewed all of the written -- or
18 public comments in this case. Could you please
19 explain how the Staff does review all the comments.

20 A. Sure. I did indicate that I did not read
21 all of the comments personally, but Staff does review
22 all the comments, and we do have a Staff member who
23 evaluates all those himself, so we do have Staff that
24 is --

25 ALJ SEE: Mr. Holderbaum, you are going

1 to need to speak up.

2 THE WITNESS: I'm sorry. Staff member
3 Matt Butler is the Staff member responsible for that.

4 Q. Okay. So Staff -- Staff does have --
5 does review all of the comments submitted in these
6 cases.

7 A. Correct.

8 MR. BEELEER: No further questions, your
9 Honor.

10 ALJ SEE: Mr. Keaney?

11 MR. KEANEY: Yes, just a few questions,
12 your Honor.

13 - - -

14 RECROSS-EXAMINATION

15 By Mr. Keaney:

16 Q. Mr. Holderbaum, you were asked a question
17 by the Company's counsel about how, if at all,
18 remediation efforts would impact the Staff's decision
19 as to when a particular --

20 MR. BEELEER: Objection.

21 ALJ SEE: Any recross on the question
22 that was posed to the witness on redirect?

23 MR. KEANEY: No, your Honor.

24 ALJ SEE: Mr. Yskamp, any recross of this
25 witness on the -- on the question asked on redirect?

1 MR. YSKAMP: I did not hear the question,
2 but I do want to just object for the record to
3 friendly cross going last in this proceeding. It
4 does kind of create this awkward position where we
5 don't have an opportunity to follow up on what I
6 would consider friendly cross.

7 MR. KEANEY: City and County join that.

8 ALJ SEE: Do you have any questions for
9 this witness regarding the question his counsel asked
10 him on redirect?

11 MR. YSKAMP: I do not.

12 ALJ SEE: Mr. Stevenson?

13 MR. STEVENSON: I do not.

14 ALJ SEE: Mr. Fox?

15 MR. FOX: No, your Honor.

16 ALJ SEE: Mr. Pacheco?

17 MR. PACHECO: No, your Honor. Thank you.

18 ALJ SEE: Mr. Miller?

19 MR. MILLER: No, your Honor.

20 ALJ SEE: Ms. Kingery?

21 MS. KINGERY: No. Thank you.

22 ALJ SEE: Thank you very much,
23 Mr. Holderbaum. You can step down.

24 Mr. Beeler.

25 MR. BEELEER: At this time, Staff would

1 move for the admission of Staff Exhibit 6.

2 ALJ SEE: Any objection to the admission
3 of Staff Exhibit 6?

4 Hearing none, Staff Exhibit 6 is admitted
5 into the record.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 ALJ PARROT: Mr. Beeler.

8 MR. BEELEER: I think we have two
9 witnesses up here that can go this afternoon. Is
10 that okay? I know we only said a couple earlier but.

11 ALJ PARROT: Let's see how long it takes
12 to get through the first before we decide about the
13 second.

14 MR. EUBANKS: Staff would like to call
15 Grant Zeto to the stand. May I approach?

16 ALJ PARROT: You may.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 - - -

19 GRANT ZETO

20 being first duly sworn, as prescribed by law, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Eubanks:

24 Q. Could you state your name and spell it
25 for the record.

1 A. Grant Zeto, G-r-a-n-t Z-e-t-o.

2 ALJ PARROT: Mr. Zeto, please turn your
3 microphone on. Thank you.

4 Q. Let's try it again. Could you state your
5 name and spell it for the record.

6 A. Grant Zeto, G-r-a-n-t Z-e-t-o.

7 Q. Your duty and position?

8 A. I am a Utility Specialist 2. I reviewed
9 the ecological impacts with this project.

10 Q. You have before you what has previously
11 been marked Staff's Exhibit 7?

12 A. Yes.

13 Q. Could you identify it?

14 A. This is my prefiled testimony.

15 Q. It was prepared by you or under your
16 direction?

17 A. Yes, it was.

18 Q. Is it a true and accurate copy?

19 A. Yes, it is.

20 Q. Are there any corrections? Could you
21 look through it and see if there is any corrections
22 you would like to make?

23 A. I don't believe there are any corrections
24 I need to make.

25 Q. If I were to ask you the same questions

1 that are in your prefiled testimony, would you answer
2 them the same?

3 A. Yes, I would.

4 MR. EUBANKS: At this time, I would offer
5 the witness for cross-examination and would like to
6 have the exhibit moved into evidence, subject to
7 cross.

8 ALJ PARROT: Thank you, Mr. Eubanks.

9 Does the Company have any questions for
10 this witness?

11 MS. KINGERY: No, your Honor.

12 ALJ PARROT: Mr. Keaney?

13 MR. KEANEY: No, your Honor.

14 ALJ PARROT: Mr. Yskamp?

15 MR. YSKAMP: Just a couple, thank you,
16 your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Yskamp:

20 Q. Good afternoon, Mr. Zeto.

21 A. Yes.

22 Q. People mispronounce my last name all the
23 time, so I'm sensitive to it a little bit. If you
24 could turn to page 4 of your testimony.

25 A. Okay.

1 Q. So specifically I want to ask you,
2 starting at line 8, you state that "The Applicant
3 proposed horizontal directional drilling (HDD) as a
4 pipeline installation method through certain streams.
5 This method is usually preferred to open cutting as
6 it avoids impacts to water quality and wildlife
7 habitat. However, the HDD process has a risk of an
8 inadvertent return of drilling lubricant or
9 frac-out." Has the State of Ohio experienced spills
10 over the last few years related to this horizontal
11 directional drilling process to your knowledge?

12 A. Yes. I've seen it happen once before.

13 Q. Where have you seen it happen before?

14 A. Along another pipeline project, it
15 occurred around Circleville in a wetland.

16 Q. Do you know the name of the project?

17 A. It was the Sofidel pipeline.

18 Q. Are you familiar with the Rover pipeline
19 project?

20 A. Somewhat.

21 Q. Are you -- are you aware that they had
22 issues with their horizontal directional drilling
23 process?

24 A. Yes.

25 Q. Do you know how many -- how many gallons

1 of drilling fluid was spilled as a result of that
2 process?

3 A. I don't remember the number.

4 Q. Are you aware of how Ohio EPA's
5 enforcement action on that issue has played out?

6 MR. EUBANKS: Objection, outside the
7 scope of his testimony.

8 MR. YSKAMP: I don't think it's outside
9 the scope at all. This is a project that is
10 proposing horizontal directional drilling so I'm just
11 bringing up issues the State has had with it that he
12 is aware of.

13 ALJ PARROT: If you are able to answer
14 the question, Mr. Zeto, please do so.

15 A. Can you please repeat?

16 Q. Are you aware of Ohio EPA's enforcement
17 action on issues -- on the Rover spills has played
18 out?

19 A. No.

20 Q. Did you evaluate routes aside from the
21 Preferred Route or the Alternate Route in this case?

22 A. No, I did not.

23 Q. And you recommend that the Applicant has
24 a plan in place in order to address impact should
25 they occur; is that correct?

1 A. For horizontal directional drilling, yes.

2 Q. Do you know if they have completed that
3 plan?

4 A. I have not seen one.

5 MR. YSKAMP: That's all my questions.

6 ALJ PARROT: Mr. Stevenson?

7 MR. STEVENSON: I have no questions, your
8 Honor.

9 ALJ PARROT: Mr. Fox?

10 MR. FOX: No.

11 ALJ PARROT: Mr. Pacheco?

12 MR. PACHECO: No, your Honor.

13 ALJ PARROT: Mr. Miller?

14 MR. MILLER: I have none, your Honor.

15 Thank you.

16 ALJ PARROT: Any redirect?

17 MR. EUBANKS: We would like to take a
18 minute.

19 ALJ PARROT: Go ahead.

20 (Discussion off the record.)

21 ALJ PARROT: Let's go back on the record.
22 Redirect?

23 MR. EUBANKS: Yes, your Honor.

24 - - -

25 REDIRECT EXAMINATION

1 By Mr. Eubanks:

2 Q. Do you recall being asked a question
3 about whether or not you've seen a plan for the
4 horizontal directional drilling?

5 A. Yes.

6 Q. And your answer to that was you had not
7 seen such a plan yet. Do you recall that?

8 A. Correct.

9 Q. Is there a reason why you haven't seen
10 such a plan yet?

11 A. It's not typical for us to receive those
12 with the applications. It's required by the
13 condition that we review that prior to construction.

14 Q. And what condition number is that?

15 A. Condition No. 24.

16 Q. Could you -- do you have that condition
17 before you?

18 A. I do not.

19 MR. EUBANKS: May I approach?

20 ALJ PARROT: You may.

21 Q. Do you recognize the document that I
22 handed you?

23 A. Yes, I do.

24 Q. What is it?

25 A. The Amended Staff Report of

1 Investigation.

2 Q. Could you read Condition 24?

3 A. "Prior to construction, the Applicant
4 shall provide a frac-out contingency plan detailing
5 monitoring, environmental specialist presence,
6 containment measures, cleanup, and restoration."

7 MR. EUBANKS: I have no further
8 questions.

9 ALJ PARROT: Ms. Kingery?

10 MS. KINGERY: No. Thank you.

11 ALJ PARROT: Mr. Keaney?

12 MR. KEANEY: No. Thank you, your Honor.

13 ALJ PARROT: Mr. Yskamp?

14 MR. YSKAMP: Nothing further.

15 ALJ PARROT: Mr. Stevenson?

16 MR. STEVENSON: Nothing further.

17 ALJ PARROT: Mr. Fox?

18 MR. FOX: Nothing, your Honor.

19 ALJ PARROT: Mr. Pacheco?

20 MR. PACHECO: Nothing, your Honor.

21 ALJ PARROT: Mr. Miller?

22 MR. MILLER: Nothing, your Honor.

23 ALJ PARROT: Thank you very much.

24 MR. EUBANKS: At this point, I would like
25 to move to have Staff's Exhibit 7 moved into

1 evidence.

2 ALJ PARROT: Are there any objections to
3 the admission of Staff Exhibit 7?

4 Hearing none, it is admitted.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 ALJ SEE: Staff's next witness.

7 MR. EUBANKS: Yes. Next, Staff would
8 like to call to the stand, Derek Collins.

9 (Witness sworn.)

10 ALJ SEE: Thank you. Have a seat. Cut
11 your mic on.

12 MR. EUBANKS: May I approach?

13 ALJ SEE: Yes.

14 - - -

15 DEREK COLLINS

16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Eubanks:

20 Q. Could you state your name and spell it
21 for the record, please.

22 A. My name is Derek F. Collins, D-e-r-e-k,
23 middle initial F, last name C-o-l-l-i-n-s.

24 Q. Your position and your duties?

25 A. I am a Utility Specialist 3 with the

1 Public Utilities Commission of Ohio, and I look at
2 all the geotechnical information and data submitted
3 on the applications.

4 Q. Do you have before you what has been
5 previously marked Staff's Exhibit 8?

6 A. I do.

7 Q. Would you identify it.

8 A. It is my prefiled testimony.

9 Q. Was it prepared by you or under your
10 direction?

11 A. Yes, it was.

12 Q. Is it a true and accurate copy?

13 A. Yes, it is.

14 Q. Are there any corrections you would like
15 to make?

16 A. No, there is not.

17 Q. If I were to ask you the same questions
18 that are in your prefiled testimony again, would you
19 give the same answers?

20 A. Yes, I would.

21 MR. EUBANKS: At this time, I would like
22 to have Staff's Exhibit 8 moved into evidence,
23 subject to cross-examination.

24 ALJ SEE: Any cross -- Staff Exhibit 8 is
25 so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 ALJ SEE: Any cross-examination for this
3 witness on behalf of Duke?

4 MS. KINGERY: No, thank you, your Honor.

5 ALJ SEE: Thank you, Ms. Kingery.

6 Mr. Keaney?

7 MR. KEANEY: I have none, your Honor.

8 ALJ SEE: Mr. Yskamp?

9 MR. YSKAMP: Just a few questions.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Yskamp:

13 Q. Good afternoon, Mr. Collins.

14 A. Good afternoon.

15 Q. Did you evaluate any routes aside from
16 the Preferred Route and the Alternative Route?

17 A. No, I did not.

18 Q. Do you have the Staff Report in front of
19 you?

20 A. No, I do not.

21 Q. Let me find that for you.

22 MR. YSKAMP: Didn't somebody just have
23 it?

24 MR. EUBANKS: I handed it to him.

25 MR. YSKAMP: It is an exhibit, right?

1 ALJ SEE: Yes. It has been marked as
2 Staff Exhibit 1.

3 MR. YSKAMP: Thank you.

4 Q. (By Mr. Yskamp) Could you please turn to
5 page 37 of this report. Third -- so, first, under
6 Ecological Impacts, Geology, Slopes, and Foundation
7 Soils Stability -- Suitability, did you participate
8 in drafting this portion of the Staff Report?

9 A. Yes, I did.

10 Q. Okay. The third paragraph down, the
11 first sentence starts "The Applicant." Do you
12 follow?

13 A. I do.

14 Q. And states "The Applicant would conduct a
15 geotechnical investigation prior to construction to
16 obtain further site-specific detailed information and
17 engineering properties of the soils for construction
18 design purposes." Do you know if that investigation
19 has occurred?

20 A. No, I do not.

21 Q. And I want to direct your attention to
22 the last sentence that starts on the third line up.
23 It says "The subsurface drilling." So it states "The
24 subsurface drilling investigation would ensure that
25 the route selected would be sited along locations

1 either suitable based on soil and rock properties or
2 incorporate best management practices during
3 construction for the structural integrity of the
4 pipeline." And again, do you know if that
5 investigation has occurred?

6 A. No, I do not.

7 MR. YSKAMP: Okay. Thank you. That's
8 all I have.

9 ALJ SEE: Mr. Stevenson?

10 MR. STEVENSON: I have no questions of
11 this witness. Thank you.

12 ALJ SEE: Mr. Fox?

13 MR. FOX: Nothing, your Honor.

14 ALJ SEE: Mr. Pacheco?

15 MR. PACHECO: No, thank you, your Honor.

16 ALJ SEE: Mr. Miller?

17 MR. MILLER: No questions, your Honor.

18 ALJ SEE: Any redirect for this witness,
19 Mr. Eubanks?

20 MR. EUBANKS: We have no redirect, your
21 Honor.

22 ALJ SEE: Okay. Did Staff already move
23 for the admission of Staff Exhibit 8, subject to
24 cross?

25 MR. EUBANKS: I did, your Honor.

1 ALJ SEE: Okay. Are there any objections
2 to the admission of Staff Exhibit 8?

3 Hearing none, Staff Exhibit 8 is admitted
4 into the record.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 ALJ SEE: Thank you, Mr. Collins. You
7 may step down.

8 Let's go off the record for a minute.

9 (Discussion off the record.)

10 ALJ SEE: Let's go back on the record.

11 With that, we are adjourned for today to
12 start tomorrow at 9:00 a.m. Thank you.

13 (Thereupon, at 4:40 p.m., the hearing was
14 adjourned.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on Wednesday, April 10, 2019,
5 and carefully compared with my original stenographic
6 notes.

7
8

Karen Sue Gibson, Registered
Merit Reporter.

9
10

Carolyn M. Burke, Registered
11 Professional Reporter.

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Summary: Transcript in the matter of the Duke Energy Ohio, Inc. hearing held on 04/10/19 - Volume II electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.