

**BEFORE
THE OHIO POWER SITING BOARD**

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

**INITIAL POST-HEARING BRIEF FILED ON BEHALF OF INTERVENOR
THOMAS J. WEIDMAN, CHAIRMAN OF THE BOARD OF TOWNSHIP
TRUSTEES OF SYCAMORE TOWNSHIP AND SYCAMORE TOWNSHIP,
HAMILTON COUNTY, OHIO**

Intervenor Thomas J. Weidman, Chairman of the Board of Township Trustees of Sycamore Township, Hamilton County, Ohio ("Sycamore" or the "Township") submits this Initial Post-Hearing Brief on behalf of Sycamore Township, Hamilton County, Ohio.

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INTRODUCTION

The purpose of the review by the Ohio Power Siting Board (“OPSB”) is to consider the impact of the proposed C314V Central Corridor Pipeline Extension Project (the “Pipeline”) with regard to and in light of the requirements of R.C. 4906.10(A). The Pipeline has two proposed routes, Preferred and Alternate, both of which impact Intervenor, Sycamore Township. Both routes being considered begin in Sycamore Township. The orange route, dubbed the Preferred Route (even though the applicant, Duke Energy Ohio, Inc. (“Duke”) agrees that the Pipeline should be installed on the green, i.e. Alternate Route) exits Sycamore Township and enters the City of Blue Ash; it then re-enters Sycamore Township in its southern Kenwood area and runs past a hospital, a high population retail area, a number of churches, and a school. The green Alternate Route originates at the same location in Sycamore Township, again transverses into the City of Blue Ash, but does not return to the highly and densely populated areas of the Township in the south Kenwood area. Duke has not met its burden of proof in establishing the need for the Pipeline nor has it established the appropriateness of either the Preferred or Alternate Route.

PROCEDURAL HISTORY

The Amended Staff Report of Investigation sets forth a procedural history for this matter which history is adopted herein by reference.¹ The adjudicatory hearing was held on April 9 through April 11, 2019 before Administrative Law Judges See and Parrott.

¹ Staff Exhibit 1 - Amended Staff Report of Investigation. pp. 5-7

ARGUMENT

Duke has not proven the basis of the need for the Pipeline nor has it demonstrated a need to retire the propane-air plants

It is the duty of the OPSB to weigh the Application of Duke against the criteria set forth in R.C. 4906.10(A). While not inclusive of all of the criteria found in R.C. 4906.10(A), the following sections of R.C. 4906.10(A) pertain to the Pipeline as it relates to Sycamore Township:

the board **shall not** (emphasis added) grant a certificate for the construction, operation, and maintenance of a major utility facility either as proposed or as modified by the board, unless it finds and determines all of the following:

- 1.) The basis of the need of the facility if the facility is an electric transmission line or gas pipeline;
- 2.) The nature of the probable environmental impact;
- 3.) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- 6.) That the facility will serve the public interest, convenience, and the necessity;

In the interest of judicial economy, Sycamore adopts the arguments of the City of Cincinnati, Ohio, (the "City"), Hamilton County, Ohio, (the "County" or combined, the "City/County"), Neighbors Opposed to Pipeline Extension, LLC ("NOPE"), and the City of Blue Ash, Ohio and Columbia Township as those arguments relate to the basis of the need for the Pipeline, the environmental impact of the Pipeline, the safety issues and questions surrounding the Pipeline, the need to retire the propane-air plants, and the failure of the Pipeline to serve the public interest, convenience, and necessity, as if fully rewritten herein. There is

no question that the Pipeline falls under the auspices of R.C. 4906.10 as it constitutes a major utility facility under R.C. 4906.01(B)(1)(c). Thus, the Board must consider the Application for the Certificate Environmental Compatibility and Public Need in light of the requirements of R.C. 4906.10.

Quite simply, Duke has failed to meet its burden of proof to show the necessity of the Pipeline. It is incumbent upon the OPSB to balance the interest of the Applicant with that of the public and it is necessary that enough valid, true, correct, and relevant information be provided by the Applicant in order to establish its right to a certificate.² In this instance, Duke has offered the OPSB no evidence or inaccurate evidence as to the benefit to the public. For instance, Duke witness, Gary J. Hebbeler, submitted direct testimony regarding estimated payments of taxes that various communities located along the routes would receive.³ However, under cross-examination Mr. Hebbeler admitted that: (a) he did not perform the calculations nor did he know who did; and (b) he was not aware that the communities themselves would not receive the full amounts indicated.⁴

Further, with regard to the placement of the routes, Duke could not, or would not, give any direct answers as to the effect of the routes on the local communities. Mr. Hebbeler testified that until the engineering plans are developed, Duke is unable to give exact routing details and, in fact, the local communities, including Sycamore, would not have any useable information until Duke actually applied for a permit from those communities.⁵ This is clearly information that is needed now in order that a proper evaluation of the Application and the Pipeline can be made by the Board. It is the height of arrogance for Duke to, in effect, say “give us our

² *In re: Application of Middletown Coke Co.*, 127 Ohio St. 3d 348 (2010).

³ Duke Exhibit 7 - Gary J. Hebbeler direct testimony, p. 32.

⁴ Transcript, Volume I, pp. 116-120 and 123.

⁵ Transcript, Volume I, p. 126.

certificate and then we'll tell you our plans.” It is no wonder that so many local governments, citizens, and businesses have filed to intervene in this action.

Even though a large portion of the Pipeline is proposed to be located in Sycamore Township, no discussion was had with the Township to inquire as to what might be an optimum location to the community.⁶ Clearly, as is evident in all of the evidence, testimony, and exhibits presented in this matter, there is no indication that sufficient information has been provided to the communities that the Pipeline serves the public interest and convenience. There have been no communications with the Township with regard to any safety plans, evacuation plans or protocols in the event of a pipeline failure in either the residential or commercial areas of the Township.⁷ It has been a unilateral decision on the part of Duke with no consideration given for those elected or appointed to represent the public.

Other potential Pipeline routes have less impact to the community at large than the Preferred and Alternate Routes

The adverse impact on the residential and commercial areas on either proposed route is an unacceptable consequence of the selection of those routes. Duke failed to adequately investigate other, less invasive routes. NOPE witness Dr. Guldman identified a number of routes other than the two proposed routes that are less impactful of the residential and commercial properties that are affected on either route.⁸ As Dr. Guldman explained, the lines W-1 or W-2 proposed by the Lummus report present the best options by far, both in terms of population exposure and ability to provide a good north-south flow.⁹

⁶ Sycamore Township Exhibit 1, p. 5.

⁷ Sycamore Township Exhibit 1, p. 15

⁸ NOPE Exhibit 19, p. 24.

⁹ NOPE Exhibit 19, p. 27.

The Recommended Staff Conditions

The record in this matter is replete with overwhelming evidence that Duke has not proven the basis of the need for the Pipeline, nor has it shown that the Pipeline represents the minimum adverse environmental impact on the real properties located along the routes, nor that the Pipeline will serve the public interest, convenience, and necessity.

However, in the event the OPSB determines that a certificate should be issued, then the Board should impose all of the Recommended Conditions of Certificate and in particular General Condition (1) which states:

The facility shall be installed on the Applicant's Alternate Route, utilizing the equipment, construction practices, mitigation measures as presented in the Application filed on September 13, 2016, and further clarified by an amended Application, supplemental information and replies to data requests, as well as the recommendations in this *Staff Report of Investigation*.¹⁰

Getting past all of the evidence that the issuance of a certificate is not warranted under the law, and assuming a certificate is granted, Staff was correct in setting forth the condition that the Pipeline be constructed along the Alternate Route. First, the Alternate Route is a mile shorter than the Preferred Route and impacts less residential acreage. The permanent right-of-way along the Preferred Route includes 1.9 acres of residential property and .7 acres of educational property, whereas the Alternate Route only affects .7 acres of residential property and .5 acres of educational property.¹¹ The effect on parks and recreation and woodlots is the same with an even greater effect on the Preferred Route.¹² The permanent right-of-way of the Preferred Route affects 7.3 acres of parks and recreational property, whereas, on the Alternate

¹⁰ Staff Exhibit 1 - Amended Report of Staff Investigation. Pg. 60

¹¹ Staff Exhibit 1 - Amended Report of Staff Investigation. Pg. 31

¹² Staff Exhibit 1 - Amended Report of Staff Investigation. Pg. 31

Route, 2.3 acres of parks and recreational property are affected. The same holds true for woodlots – 7.1 acres are affected on the Preferred Route while the Alternate Route affects the lesser amount of 5.6 acres. The only category where the number of acres of affected property on the Alternate Route exceeds the Preferred Route is in the road right-of-way, which does not affect an owner's use of their property.¹³

Further, the Preferred Route as it would exist in the southern area of Sycamore Township, (known as the Kenwood area) has a very significant adverse impact on schools, churches, hospitals, and major retail areas. All of these areas are considered particularly sensitive as they are gathering places for large numbers of people and children.¹⁴ In particular, the Pipeline as it would exist in the Kenwood area of Sycamore Township would immediately abut the Jewish Hospital – Mercy Health, a 196-bed full capacity hospital, on both its west and south sides.¹⁵ Jewish Hospital, an Intervenor in this matter, has expressed its concerns with the close proximity of the Pipeline to its electric service and its inherent risk to patient care.¹⁶ Further, Jewish Hospital maintains and operates the only Gamma Knife in the Cincinnati area. The Gamma Knife is a unique medical apparatus that is fueled with a nuclear fuel source whose delivery and maintenance is overseen by the Department of Homeland Security.¹⁷ In addition, the hospital has an underground storage tank of approximately 35,000 gallons of diesel fuel that would be approximately 85 feet from the Pipeline.¹⁸ It is clearly unsafe to locate the Pipeline in such close proximity to those items, yet Duke did not even deign to talk with the hospital when choosing the route.¹⁹

¹³ Staff Exhibit 1 - Amended Report of Staff Investigation. Pg. 31

¹⁴ Transcript, Volume II, pp. 310-314

¹⁵ Jewish Hospital Exhibit 1, p. 2

¹⁶ Jewish Hospital Exhibit 1, pp. 3-4

¹⁷ Jewish Hospital Exhibit 1, pp. 4-5

¹⁸ Jewish Hospital Exhibit 1, pp. 5-6

¹⁹ Transcript of Proceedings, Volume II, p. 314

Across Kenwood Road from the Jewish Hospital is the Kenwood Towne Center, a large regional shopping mall of approximately 1.7 million square feet which can be clearly seen on Sycamore Township Exhibit 1, page 19. On a normal day, the daytime population in the area is 50,000 people. During the Christmas shopping season, the daytime population that population can increase to 150,000 people.²⁰ The Pipeline would be slated to run along Kenwood Road either on or abutting the Kenwood Towne Center property. The Duke witness as to the routing of the Pipeline was unable to provide an answer as to why the Pipeline was to cross Kenwood Road from the Jewish Hospital property to run onto the Kenwood Towne Center property.²¹ Further, even though Duke considers Sycamore to be a stakeholder in this matter, there were no conversations with anyone at Sycamore when the route was planned.²²

Duke considers schools, churches, parks, and hospitals to be sensitive land areas.²³ They are considered sensitive areas because large numbers of people gather there.²⁴ Yet, Duke would not concede that a regional shopping mall is a sensitive land use area.²⁵ Sensitive land use areas are considered such for safety reasons.²⁶ Clearly, a large regional shopping mall that can have upwards of 100,000 to 150,000 people on the premises, across from a major hospital, is a sensitive land use area. Yet Duke chose to align the Pipeline right alongside it.

Further along the route, the Pipeline passes another large shopping mall of 350,000 square feet, a number of churches and a school.²⁷ All of these areas should be avoided in the interest of safety, yet Duke chose to locate the Pipeline along this route, even crossing

²⁰ Sycamore Township Exhibit 1, p. 8

²¹ Transcript of Proceedings, Volume II, pp. 314-315

²² Transcript of Proceedings, Volume II, p. 315

²³ Transcript of Proceedings, Volume II, pp. 310-312

²⁴ Transcript of Proceedings, Volume II, p. 311

²⁵ Transcript of Proceedings, Volume II, pp. 312-313

²⁶ Transcript of Proceedings, Volume II, p. 311

²⁷ Sycamore Exhibit 1, p. 5 and 7-8

Kenwood Road (again) to place the Pipeline on the property of St. Vincent Ferrer Church and School.²⁸

Given all of these land uses in the Kenwood area of the Township, given all of the safety concerns which were supposedly taken into account because of the sensitive nature of these areas and uses, no safety plans nor evacuation plans or protocols were given to Sycamore²⁹ nor to Jewish Hospital.³⁰ This lack of planning and information precludes the use of the Preferred Route.

With regard to the impact on surface waters, it is clear that the Alternate Route is less obtrusive to the environment. The Preferred Route would cross twenty-four (24) streams and the construction work area would cover thirty-seven (37) streams, the Alternate Route only crosses six (6) streams and the construction work area only contains fourteen (14) streams.³¹

Further, the effects on vegetation are much less using the Alternate Route. Staff has set forth the effects on woodlots in that in a table showing that the Preferred Route impacts 21.1 woodlots and the Alternate Route impacts 17.1 woodlots. The difference in the routes impacts on landscape areas in commercial and industrial areas is negligible, but the impact on recreational areas is much greater on the Preferred Route. 18.2 acres of recreational areas are affected on the Preferred Route whereas only 7.9 acres of recreational areas are affected on the Alternate Route. Given that RC §4906.10(A)(3) requires that the facility represent the minimum adverse environmental impact, it is clear that the Preferred Route would be more greatly impacted whereas the Alternate Route has much fewer impacts on the environment and

²⁸ Sycamore Exhibit 1, p. 5

²⁹ Sycamore Exhibit 1, p. 15

³⁰ Jewish Hospital Exhibit 1, p. 6

³¹ Staff Exhibit 1 – Amended Staff Report of Investigation. p. 37

greenspace. Staff is correct that, in choosing between the two routes, the Alternate Route represents less adverse environmental impact for the Pipeline Facility.

The cost to the rate payers is much less utilizing the Alternate Route. The estimated cost for construction of the Pipeline along the Preferred Route is \$128.2 million whereas the estimated cost along the Alternate Route is \$111.7 million, a difference of \$16.5 million.³²

It is noted that these estimates do not include the allowance for funds used during construction or overhead. If anything, those costs should be higher for the larger amount of money spent. Therefore, there is an enormous cost savings by routing the Pipeline along the Alternate Route.

Since, the cost of the project will be paid by Duke's rate payers, it stands to reason that from a monetary standpoint, it would not matter to Duke as to which route is chosen. However, since the rate payers will be picking up the cost for this project, if approved, it only makes sense to approve the Alternate Route as it represents the cheaper cost to the rate payers, particularly given the other factors that argue that the Alternate Route is a better choice.

Finally, even Duke agrees that the Alternate Route is the better choice. Under questioning by Mr. Beeler, Gary J. Hebbeler answered that Duke agrees with the Staff conditions with the only exceptions of Condition 11 and Condition 30.³³ Neither of these conditions differentiate between the Alternate or Preferred Routes. Duke had no objection to Staff's Condition 1 that the Pipeline be installed on the Alternate Route.

CONCLUSION

For the reasons stated above, and for the reasons set forth in the post-hearing briefs of the other intervening communities and NOPE, Sycamore Township remains steadfastly

³² Duke Exhibit 7 - Direct testimony of Gary Hebbeler. Pg. 31

³³ Transcript of Proceedings, Volume I, p. 134

opposed to the entire project as it is abundantly clear that Duke has not met its burden of proof on the necessity of the Pipeline, nor has it complied with the requirements of the issuance of a certificate by the Board. It is only pointed out that, should a certificate be issued, the Alternate Route is clearly the better choice for the number of people affected. As stated previously, and in the evidence, either route would be located in Sycamore Township since it commences at the WW Station in the northern part of the Township. However, the use of the Alternate Route would at least avoid the highly congested areas of the southern portion of Sycamore Township, which contains a hospital, churches, school, and major retail shopping area.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all parties who have electronically subscribed to this case through the Docketing Information System of the Public Utilities Commission of Ohio and the OPSB on this 13th day of May, 2019. The docketing division's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Brief Initial Post-Hearing Brief of Sycamore Township, Hamilton County, Ohio electronically filed by Mr. R. Douglas Miller on behalf of Sycamore Township, Hamilton County, Ohio and Weidman, Thomas J. Mr.