

**BEFORE
THE OHIO POWER SITING BOARD**

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

**POST-HEARING BRIEF OF INTERVENOR NEIGHBORS OPPOSED TO PIPELINE
EXTENSION, LLC**

TABLE OF CONTENTS

TABLE OF CONTENTS	i
I. INTRODUCTION AND BACKGROUND	1
II. LAW AND ARGUMENT	5
A. Standard of Review.	6
B. Duke has not Proven that the Proposed Pipeline Project is Needed.	8
1. Duke has not accurately described its system capacity and future load projections, and therefore has not shown the proposed pipeline project is needed..	10
2. Duke has not proven the need to retire the propane-air plants.	12
a. <i>The use of the propane-air plants does not significantly impact Duke’s ability to service propane-intolerant customers.</i>	16
3. The proposed pipeline is not justified by an insignificant change in north/south balance.	17
4. Duke does not need the proposed pipeline to upgrade and replace its existing infrastructure.	18
C. Duke has not Provided Sufficient Information to Determine the Nature of the Probable Environmental Impact of the Preferred and Alternate Routes.	19
D. The Preferred and Alternate Routes do not Represent the Minimum Adverse Environmental Impact, Considering the Availability, Nature, and Economics, of the Various Alternatives, and Other Important Considerations.	22
1. Duke and Staff did not meaningfully consider non-pipeline alternatives to meet Duke’s stated needs.	22
2. The proposed routes in the application do not represent the minimum environmental impact compared to other route alternatives, and Duke has not evaluated all practicable route alternatives.....	24
a. <i>The Route Selection Study was arbitrarily limited to the central corridor area.</i>	24
b. <i>Duke and Staff did not evaluate better and less adverse route alternatives.</i>	26

E.	Duke has not Shown that the Proposed Pipeline Will Serve the Public Interest, Convenience, and Necessity.	30
1.	The public interest is in overwhelming opposition to the proposed pipeline.	31
2.	The proposed pipeline is more properly classified as a transmission line, and it is not in the public interest, convenience, or necessity to regulate it as a distribution line.	35
3.	The proposed pipeline is not in the public interest, convenience, and necessity because the Applications and Staff conditions do not address legitimate public concerns related to safety and impacts.	39
III.	<u>CONCLUSION</u>	42
	<u>CERTIFICATE OF SERVICE</u>	43

Intervenor, Neighbors Opposed to Pipeline Extension, LLC (“NOPE”), by and through their undersigned counsel, hereby files and serves their Post-hearing Brief.

I. INTRODUCTION AND BACKGROUND

Duke Energy, Ohio Inc. (“Duke” or “Duke Energy”) and its subsidiary Duke Energy, Kentucky are natural gas companies that provide transmission and distribution services for natural gas through an integrated system for approximately 525,000 customers in Kentucky and Ohio. Staff Ex. 1 at p. 5. On September 13, 2016, Duke Energy filed an Application to issue a certificate of environmental compatibility and public need for the C314V Central Corridor Pipeline Extension Project with the Ohio Power Siting Board for a 20-inch diameter pipeline that would extend approximately 13 to 14 miles through Hamilton County from the existing 24-inch diameter C314 pipeline, to a point along the existing 20-inch diameter Line V pipeline. *Id* at pp. 5 and 7. The proposed pipeline would be designed for a maximum operating pressure (“MAOP”) of 500 pounds per square inch (“psi”). *Id.* at p. 9.

In order to grant such a certificate for a gas pipeline the Ohio Power Siting Board must determine the basis of the need for the facility, the nature of the probable environmental impact, that the facility represents the minimum adverse environmental impact, and that the facility will serve the public interest, convenience, and necessity. R.C. 4906.10(A); Staff Ex. 1 at p. 3. Duke Energy and Staff of the Ohio Power Siting Board (“Staff”) claim that the basis of the need and the purpose of the proposed pipeline is to 1) retire its propane-air peaking plants; 2) better balance system supply from north to south; and 3) to support the inspection, replacement, and upgrading of aging infrastructure. Staff. Ex. 1 at p. 25; Duke Ex. 3 at p. 3-1.

Duke’s current system is capable of supplying up to 43,000 thousand cubic feet per hour (“MCFH”) to its natural gas customers in its integrated system in southwestern Ohio and

Kentucky. Staff Ex. 1 at p. 25; Duke Ex. 3 at p. 3-1. To date, the system has never exceeded a demand of 43,000 MCFH, even on the coldest winter days. NOPE Ex. 19 at Ex. JMG-7, p. 48 at Table 12; *see also* City/County Ex. 36. Natural gas is received into Duke's integrated system through 22 stations that connect with several interstate pipelines. Duke Ex. 3 at p. 3-1. Most of these stations are located in the northern portion of Duke's system, and one gate station, Foster station, is located in the southern portion of the system and serves the southern gates. *Id.* Duke receives approximately 55 percent of its customer load through Foster station on its highest demand days, also known as peak days. *Id.* Duke contends that their system is over-reliant on Foster station because an interruption at Foster on a peak days could potentially mean a large number of Duke Energy, Ohio's customers would be without natural gas for the duration of the interruption. *Id.* at p. 4-1.

Duke describes transmission Lines A and V as part of the "backbone" of their transmission and distribution system. Duke Ex. 3 at p. 2-3. Duke claims it needs to replace, repair, and upgrade portions of its transmission and distribution system, including portions of Lines A and V. *Id.* Upgrades to these lines would also have the effect of allowing Duke to increase capacity and supply in its system. NOPE Ex. 19 at p. 14. Duke has already been repairing and replacing lines in the central corridor without imposing lengthy outages on its customers. Tr. Vol. I 32:19-23. Duke plans to continue to upgrade its pipeline infrastructure regardless of whether the C314V pipeline is constructed. *Id.* at 32:11-16.

Duke, like most gas companies, has two broad categories of gas supply: base supplies purchased from interstate companies, and peaking supplies that exist within the service area of the company. *See* NOPE Ex. 19 at JMG-7, p. 74. Duke Energy currently operates two propane-air peaking plants, known as the Erlanger plant and the East Works plant, that intermittently supply

peaking service to boost supply on high demand days in winter, when natural gas demand is at its greatest. Duke Ex. 3 at p. 4-1. The East Works plant is located in Cincinnati and is operated by Duke Energy, Ohio. Tr. Vol. I 148:17-21. The Erlanger plant is located in Kentucky, and is owned and operated by Duke Energy, Kentucky. *Id.* at 148:22-149:1-3. The propane-air plants are utilized for only approximately 9 to 15 days per year. *See* NOPE Ex. 19 at p. 20. Both propane-air plants utilize underground storage caverns to store large amounts of propane to use during peaking times. *Id.* at Ex. JMG-7, p. 79. Propane-air plants are a common form of peaking service, and are used throughout the country as reliable peaking options. *Id.* at Ex. JMG-7, pp.74-75. The propane-air plants have always been safe and reliable, continue to be safe and reliable, and there has not been a single instance when the two plants have failed to provide the needed supply or pressure for Duke's system needs. Tr. Vol. I 154:23-155:1-3 and 156:17-19.

To meet the three stated needs, the Application proposes a new high-pressure natural gas pipeline and proposes potential pipeline routes, labeled the preferred route and the alternate route. *See* Staff Ex. 1 at p. 8. Both routes would begin at a pressure reduction station, referred to as WW station. *See* Tr. Vol. I 58:10-19. Both routes would receive gas from the existing C314 pipeline, which is a transmission pipeline in Duke's integrated system. Staff Ex. 1 at p. 5; Nope Ex. 1 at p. 5-2. The existing C314 pipeline was built to address pressure and capacity issues in Warren County and northern Clermont County. Tr. Vol. I 63:18-64:7; NOPE Ex. 2 at p. 2-3. Both routes would end at a point along Live V, which is another transmission pipeline in Duke's integrated system. Staff Ex. 1 at p. 5; Nope Ex. 1 at p. 5-2. The preferred route would run through the densely populated communities of Sycamore Township, Columbia Township, Blue Ash, Deer Park, Sharonville, Silverton, Madeira, Cincinnati, and Fairfax before ending at a proposed Fairfax Station. Staff Ex. 1 at pp. 10 and 30-33; Duke Ex. 2 at pp. 6-9. The alternate route would run

through the densely populated communities of Evendale, Reading, Amberley Village, Sharonville, and Golf Manor before ending at Norwood Station. *Id.* Nearly all of the communities along the preferred and alternate routes have filed Interventions in this proceeding opposing the proposed pipeline's siting through their communities. *See* Staff Ex. 1 at pp. 5-6 and 57. The Application and its amendments do not explore non-pipeline alternatives that would meet the stated needs, and they do not explore routes that are outside of the densely populated central corridor area. *See* Duke Ex. 3 at pp. 4-1-4-7.

Duke estimates the cost of the preferred route to be approximately 128.2 million dollars, and the alternate route to be 111.7 million dollars. Duke Ex. 7 31:5. Duke estimates an *additional* 50 million dollars in costs for construction and overhead. Tr. Vol. I 52:13-19. However, the actual total costs of the project will not be known or revealed until after the Board approves the proposed pipeline. Tr. Vol. I 52:7-10. In addition, Duke has not yet analyzed the costs of decommissioning the propane-air peaking facilities. *Id.* at 150:9-12. If approved, Duke's ratepayers, including the communities opposed to the project, will be asked to bear the costs of the proposed pipeline. *See id.* at 42:7-11.

Selection of the alternate route would reduce reliance on Foster station from 55 percent to 50 percent on peak days. City/County Ex. 18. Selection of the preferred route would reduce reliance on Foster station from 55 percent to 45 percent on peak days. *Id.* On May 31, 2017, Staff of the Ohio Power Siting Board filed a Staff Report recommending the alternate route over the preferred route. *See* Staff Report and Recommendation filed on May 31, 2017. On August 24, 2017, Duke filed a motion for suspension of the procedural schedule while they investigated the proximity of the Pristine Superfund Site to the alternate route. Prior to Staff's recommendation of the alternate route, Duke had not evaluated the route with the scrutiny necessary to determine its

potential for construction. Staff Ex. 1 at p. 47. On April 13, 2018, Duke filed supplemental information with the Board outlining some revisions to the alternate route, apparently based on its investigations while the proceeding was delayed. *See id.* at p. 9. Duke also conducted an environmental study on the alternate route, which discussed multiple historically contaminated sites along, or in close proximity to, the alternate route. *See generally* Duke Ex. 13. No similar environmental studies have been conducted for the preferred route. Tr. Vol. II 371:19-25. On March 5, 2019, Staff filed an Amended Staff Report of Investigation, again recommending the alternate route. *See* Staff Ex. 1.

The public has been overwhelmingly opposed to the proposed pipeline, and continues to be overwhelmingly opposed to the project. On June 15, 2017, a local public hearing was held in Blue Ash, Ohio where 68 individuals testified, nearly all of whom testified in opposition to the proposed pipeline and requested the Board to deny the certificate. *See generally* Public Hearing Tr. pp. 4-7 (June 15, 2017). On March 21, 2019, a second local public hearing was held where 63 individuals testified, and again nearly all of whom testified in opposition to the proposed pipeline and requested the Board to deny the certificate. *See generally* Public Hearing Tr. pp. 4-5 (March 21, 2019). Thousands of public comments have been submitted to the Board, and the overwhelmingly majority of these comments express opposition to the proposed pipeline. Staff Ex. 1 at pp. 56-57; Tr. Vol. III 715:14-17. Comments have continued to be received by the Ohio Power Siting Board through the dates of the adjudicatory hearing, and they continue to be overwhelmingly opposed to the proposed pipeline project. Tr. Vol. III 721:16-21.

II. LAW AND ARGUMENT

As argued more fully below, Duke has not shown that the propane-air plants need to be retired, Duke has not shown that the proposed pipeline will meet Duke's stated need of balancing

its system supply, and Duke has not shown that the pipeline is necessary to upgrade its aging infrastructure. In addition, the environmental impact of the proposed pipeline has not been adequately determined. Finally, Duke has not addressed the legitimate and substantial impacts and safety concerns of the public, and Duke has not shown that the project would serve the public interest, convenience, and necessity.

To the extent Duke does need to retire its propane-air peaking plants, Duke did not adequately assess peaking alternatives and other system upgrades as an alternative to the pipeline. To the extent Duke needs to better balance system supply, Duke's own consultants proposed better options that would be less impactful to the areas and communities that would be subject to a pipeline route that were not adequately investigated by Duke or Staff.

A. Standard of Review

The Ohio Power Siting Board has the exclusive authority to issue certificates of environmental compatibility and public need for the construction, operation, and maintenance of "major utility facilities" such as the proposed central corridor pipeline at issue in this matter. *In re Champaign Wind, L.L.C.*, 146 Ohio St.3d 489, 2016-Ohio-1513, 58 N.E.3d 1142, ¶ 8. R.C. 4906.10(A) states that the Ohio Power Siting Board "shall not grant a certificate" for a major pipeline utility facility unless it finds and determines all of the following, *inter alia*:

- (1) The basis of the need for the facility;
- (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; and
- (4) That the facility will serve the public interest, convenience, and necessity.

R.C. 4906.10(A). Accordingly, any application for a certificate must contain:

- (1) A description of the location and of the major utility facility;
- (2) A summary of any studies that have been made by or for the applicant of the environmental impact of the facility;
- (3) A statement explaining the need for the facility;
- (4) A statement of the reasons why the proposed location is best suited for the facility;
- (5) A statement of how the facility fits into the applicant's forecast contained in the report submitted under section 4935.04 of the Revised Code; and
- (6) Such other information as the applicant may consider relevant or as the board by rule or order may require.

R.C. 4906.06(A).

The default position is "shall not grant", and thus the burden of persuasion is properly on the applicant. R.C. 4906.10(A); *see also In re Buckeye Wind, L.L.C.*, 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869, ¶ 64 (Lundberg Stratton, J., dissenting). The Ohio Power Siting Board is charged with regulating the siting of major utility facilities, including natural gas pipelines, to ensure the projects are needed and that they are in the public interest, convenience and necessity.

As one Ohio Supreme Court Justice stated:

Any utility involved in a siting decision will invariably be better organized and able to devote more resources advocating its preferred route than any group opposing the utility....The power imbalance between utilities and ordinary Ohioans is another reason for the Power Siting Board to ensure that it carefully considers all relevant factors before reaching its decisions.

In re Am. Transm. Sys., 125 Ohio St.3d 333, 2010-Ohio-1841, 928 N.E.2d 427, ¶ 41 (Pfeifer, J. concurring). Moreover, there is concern "that hearing officers will continue to follow the path of least resistance, where the line is straightest or cheapest, without giving proper consideration to

other values prized by Ohioans.” *Id.* at ¶ 42. Therefore, the Ohio Power Siting Board must independently weigh the evidence in the record to determine whether Duke has met the requirements necessary to obtain a certificate for environmental compatibility and public need for a new pipeline project.

B. Duke has not Proven that the Proposed Pipeline Project is Needed.

In order to obtain a certificate, Duke must show that the project is needed. R.C. 4906(A)(1). Ohio Power Siting Board regulations provide that an applicant for a certificate “shall provide a statement explaining the need for the proposed facility, including a listing of the factors upon which it relied to reach that conclusion and references to the most recent long-term forecast report (if applicable).” Ohio Adm.Code 4906-5-03(A). In addition, the applicant is required to describe why the proposed facility was selected to meet the need, and how the facility will serve the public interest, convenience, and necessity. *Id.* at 4906-5-03(E).

Duke Energy and Staff claim the basis of the need for the pipeline is to 1) retire its propane-air peaking plants; 2) better balance system supply from north to south; and 3) to support the inspection, replacement, and upgrading of aging infrastructure. Staff Ex. 1 at p. 25. As is more fully described below, Duke’s system is currently safely and reliably serving its customers, and none of these stated “needs” have been proven to rise anywhere near a reasonable definition of the word “need.” As an initial matter, when asked how Staff defines the word “need”, Staff’s witness incorrectly stated that that the Ohio Revised Code and the Ohio Administrative Code have definitions of the word “need.” Tr. Vol. III at 617:20-21. This is not accurate, and only highlights how little care Staff took in addressing whether there is a need for the project. “Need” is not statutorily defined, nor is it defined in the administrative code. Where a statute does not define a term, the adjudicatory body must “look to the plain and ordinary meaning of the words.” *Hewitt v.*

L.E. Myers Co., 134 Ohio St.3d 199, 2012-Ohio-5317, 981 N.E.2d 795, ¶ 17 (citing *Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St. 3d 100, 103, N.E.2d 489 (1988)). The Merriam-Webster dictionary defines “need” simply as “a necessary duty.”¹

It should also be noted that granting a certificate gives Duke the power to initiate condemnation proceedings to take both public and private property for the proposed pipeline project. *See* Tr. Vol. I 127:8-10 (Mr. Hebbeler testifying that should negotiations over easements with property owners be unsuccessful, Duke has “the right to perform condemnation...”). This power should be granted only after careful consideration because “Ohio has always considered the right of property to be a fundamental right.” *City of Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶ 38. Indeed, “[t]here can be no doubt that the bundle of venerable rights associated with property is strongly protected in the Ohio Constitution and must be trod upon lightly, no matter how great the weight of other forces.” *Id.* When granting the power of eminent domain, the state must proceed fairly and “without bad faith, pretext, discrimination, or improper purpose.” *Id.* at ¶ 69. As described more fully in part. II.E.1 *infra*, of this Brief, there is great public interest and opposition to this project by the residents and municipalities it will impact. This should add additional caution “because a municipality (or other political subdivision) is presumed to know what its own needs are.” *City of Toledo v. Kim's Auto & Truck Serv.*, 6th Dist. Lucas No. L-02-1318, 2003-Ohio-5604, ¶ 20. Moreover, the very people and communities opposing the proposed pipeline are going to be asked to bear its costs, if a certificate is granted. *See* Tr. Vol. I 42:7-11. In light of these important considerations, Duke must clearly prove and justify that the proposed pipeline is actually needed, not just wanted, to serve a public purpose.

¹ “need” Merriam-Webster Online Dictionary. 2019. <http://www.merriam-webster.com> (22 April 2019).

1. Duke has not accurately described its system capacity and future load projections, and therefore has not shown the proposed pipeline project is needed.

The Board's rules require the Applicant to "provide specific projections of system conditions, local requirements, or any other pertinent factors that impacted the applicant's opinion on the need for the proposed facility." Ohio Adm.Code 4906-5-03(A)(2). The applicant is also required to provide "relevant load flow studies and contingency analyses, if appropriate, identifying the need for system improvement." *Id.* at 4906-5-03(A)(3). Duke claims they would need to replace the capacity of the propane-air plants should they need to be retired. However, the forecasts and growth projections relied on by Duke and Staff are inaccurate, and as a result, the load flow studies used by Duke to determine this need are inaccurate.

Duke's integrated system is currently capable of supplying up to 43,000 MCFH to all of its combined customers. Duke Ex. 3 at p. 3-1. However, for purposes of the modeling used in the application, the system was modeled at a peak demand of 45,500 MCFH. *Id.* at p. 3-7 and 3-9. When modeled at this peak demand, the modelers found that the system was unable to maintain service to all of Duke's customers without the propane-air plants. *Id.* The 45,500 MCFH peak demand number used by the modelers was based on load growth forecasts and peaking factors. NOPE Ex. 19 at p. 16. However, a 2019 Audit Report by Exeter and Associates, Inc. found that Duke's forecast was statistically invalid and resulted in inflated forecasts. *Id.* at p. 10 (citing the 2019 Exeter Audit Report, pp. 4-25 to 4-26).²

The actual peak hourly demand was 39,038 MCFH in 2016, 39,382 MCFH in 2017, and 41,984 MCFH in 2018. City/County Ex. 5. Duke did not submit any evidence to suggest that there will be growth in the region for the foreseeable future. Staff, however, testified that based on

² The 2019 Exeter Audit Report is docketed in PUCO Case No. 18-218-GA-GCR.

“the most recent census data for Hamilton County...the population of the county is expected to grow over the next 20 years.” Staff Ex. 10 2:19-21. This opinion was based solely on the Ohio Development Services Agency, Office of Research’s Hamilton County Profile data, which is cited at footnote 29 at page 30 of the Amended Staff Report. *See* Tr. Vol. III 692:9-693:17. However, a closer inspection of the data from the Ohio Development Services caused Staff’s witness to admit that population in Hamilton County is actually projected to **decrease** over the next 20 years. *Id.* at 695:7-19 and 702:15-703:1; *see also* City/County Ex. 44 (ODSA data from April 2018 reflecting that the population of Hamilton County is expected to decrease over the next 20 years).

Dr. Jean-Michelle Guldmann has over 40 years of experience in population and economic forecasting, industrial systems engineering, and energy planning related to energy transmission and distribution systems. NOPE Ex. 19 at pp. 1-2. Dr. Guldmann conducted a thorough analysis on the need for the proposed pipeline, as well as whether there are better alternatives for Duke’s stated needs. *See* NOPE Ex. 19. Dr. Guldmann, in his written testimony, explained that “[p]opulation is the primary driver of the residential and commercial markets, and also indirectly impacts the industrial and power markets.” NOPE Ex. 19 at p. 4. Accordingly, Dr. Guldmann conducted an extensive population forecast analysis of Duke’s service area and found that all of the forecasts “are consistent with a weak population growth” for the area. *Id.* at p. 5-6. In addition, “[c]onservation efforts, prodded by technological innovations, are likely to intensify, leading to further declines in residential and commercial gas deliveries.” *Id.* at p. 6. The Gas System Master Plan likewise describes limited customer growth and flat demand “due primarily to energy efficiency programs, better home insulation, and more efficient natural gas appliances.” *Id.* at p. 10. According to Dr. Guldmann’s analysis, The Gas System Master Plan ultimately

projected that Duke will experience “the same, or lower, amount of send out in 2020, 2025, 2030, and 2035 as in 2014.” *Id* at p. 11.

Ultimately, Dr. Guldmann’s analysis caused him to offer this professional opinion:

If the increase of the peak-hour flow from 43,000 mcfh to 45,500 mcfh (or 5.8%) is assumed to take place over 10 years (2017-2027), this would translate into an annual growth rate of 0.56%, which is outside and above the range (0.10%-0.50%) that was derived from the earlier analyses of CMA population forecasts, and is not consistent with the forecast of a 0.07% rate of decline for the population of Hamilton County, the core of DE’s service territories.

NOPE Ex. 19 at p. 8. Importantly, none of this expert testimony was rebutted at the hearing.

Thus, the 45,500 MCFH projection is simply not based on any reasonable growth projection and as a result, is an inaccurate system modeling target. Dr. Guldmann opined further that “[w]ith continued conservation efforts and the possible effects of climate change, notwithstanding the occasional polar vortex, it is likely that the current system, even without the P-A plants, could serve the peak day demand for the foreseeable future. *Id.* at p. 21. At the very least, Duke’s application should be rejected until the system is modeled at a number that more accurately reflects projections, and using a statistically valid forecast. The burden is on Duke to prove the need for the pipeline, and it cannot possibly meet that burden until it models its system with accurate projections and information.

2. Duke has not proven the need to retire the propane-air plants.

Duke claims it needs to retire the propane-air plants because they are based on “old technology that is expensive to maintain and impractical to repair in a permanent fashion.” Duke Ex. 2 at pp. 2-2. Staff, in their Amended Report, added that: (1) the propane-air plants have the potential to fail and be taken out of operation; and (2) “some” of Duke’s customers are intolerant to the propane-air mixture. Staff Ex. 1 at p. 26. At the adjudicatory hearing these stated reasons

were either proven to be false, or were simply not proven by any credible evidence, especially in order to rise to the level of any reasonable interpretation of the word “need.”

There has yet to be a single instance where a service outage has occurred as a result of the use of the propane-air plants. City/County Ex. 22. The only evidence presented by Duke at the hearing on the need to retire the propane-air plants was in the form of Adam Long’s testimony. *See* Tr. Vol. I at pp. 143-228; Duke Ex. 8. Mr. Long opines that because “it is not possible to maintain or update the caverns, Duke Energy Ohio must proactively plan for their retirement.” Duke Ex. 8 7:18-19. First, as Mr. Long admitted, the caverns are natural formations and do not *require* maintenance, so it is misleading to claim that maintenance can’t be performed. *See* Tr. Vol. I 177:5-9. Mr. Long stated that he is not aware of any leaks, problems, or other defects at the Erlanger peaking plant. *Id.* at 171:1-4. Mr. Long testified that the East Works facility is generally safe and reliable. *Id.* at 170:18-25. Mr. Long did testify that Duke has to maintain and sometimes make upgrades at the propane-air plants. *Id.* at 153:3-6. However, when Duke has had to make repairs at the facilities, they have done so without any outages to customers resulting from those repairs. *Id.* at 171:9-22. Mr. Long also testified that although the plants have always provided the required pressure and supply, Duke has to start the plants early in case there is something they need to fix. *Id.* at 155:3-5. It may be true that operating the plants for a few weeks each year inconveniences Duke, and it may be easier to operate a pipeline, but the operational requirements of a peaking service do not rise to the level of “need” justifying a certificate for a costly new pipeline that will impact new, densely populated areas, by the Board.

In addition, Mr. Long’s expertise in this area is highly questionable. He was not even aware that other operators throughout the country use propane-air peaking facilities. Tr. Vol. I 173:14-17. This is despite the fact that there are more than 50 propane-air plants currently

operating in the United States. *See* NOPE Ex. 19 at Exhibit JMG-7, pp. 74-75 (Table 16). In addition, none of Mr. Long's opinions regarding the useful life of the caverns are based on any credible evidence. Mr. Long is not a geologist capable of opining on the nature of the geology of the caverns and their useful lives. *See* Tr. Vol. I 177:15-22. In fact, his opinion was based on the opinions of "third-party experts." *Id.* at 178:1-11. This is clearly hearsay, and "[w]hen evidence is admitted despite being hearsay, the trier of fact must consider whether the evidence is reliable enough to be considered substantial and probative." *Rudd v. Ohio Dept. of Job & Family Servs.*, 2d Dist. Miami No. 2015-CA-9, 2015-Ohio-3796, ¶ 14. In general, hearsay should be rejected as substantial and probative if it "appears not to be reliable, credible or corroborated by other evidence...." *Williamson v. Complete Healthcare for Women, Inc.*, 5th Dist. Licking No. 10CA0044, 2010-Ohio-3693, ¶ 22. There is no evidence in the record of any analysis whatsoever, including any reports or any site visits, by the third-party experts that Mr. Long relied upon. Therefore, the hearsay opinions regarding the caverns and the propane-air plants were not supported or corroborated by any other evidence and should be rejected as credible or supportive evidence.

Staff's testimony in support of the need to retire the propane-air plants was equally unsupported by evidence. Aside from being costly to maintain (which cannot rise to any reasonable definition of the word "need") Mr. Conway testified that the propane-air plants need to be retired because when he visited one of the plants he identified "outdated" equipment, he observed that "they need to be placed in service quickly", he noted that a pipe has leaked in the past, that there is a "cap" with "multiple welds", and there is an "old transformer which has PCBs", and if the "PCBs leaks you have an environmental contamination problem." Tr. Vol. III 619:3-620:13. It is difficult to tell how any of these apparent maintenance needs or hypotheticals

amount to any urgent need to completely retire the propane-air plants and install a highly impactful pipeline through densely populated communities. Rather, it appears Duke needs to repair or replace some equipment and there may be a need to replace an old transformer that should be addressed as soon as possible if there is truly a risk of PCB releases. Along with being erratic and evasive, Mr. Conway's testimony about the timing of this site visit highlights the many reaches he makes in his testimony. Specifically, Mr. Conway testified this visit where he identified the "risks" did not even occur until March 1, 2019. *Id.* at 681:14-682:9. This is long after the original Staff Report determined that the propane-air plants needed to be retired. Moreover, the plant wasn't even operating during the visit. *Id.* at 682:10-12. Mr. Conway's visit to just one of the plants and his testimony about these so-called risks he observed are therefore riddled with confirmation biases.

Mr. Conway also falsely claimed that both the Gas System Master Plan (the Lummus Report) and the 2015 audit report stated that the propane-air plants needed to be retired. *See* Tr. Vol. III at 646:6-15. The Lummus Report states "Duke Energy should **evaluate** the phasing out, closing, and decommissioning of both propane air facilities...." NOPE Ex. 19 at Exhibit JMG-7, p. 91 (emphasis added).³ Likewise, the audit report simply recommended that Duke Energy "**assess the potential**" for the two propane-air plants to become unavailable. Staff Ex. 1 at p. 26 (emphasis added). The Exeter Audit Report made no finding and conducted no analysis on the issue of whether the propane-air plants should be, or need to be, retired. Therefore, these documents cannot, on their own, support the position that Duke needs to retire the propane-air plants. Moreover, the only third-party report discussed at the adjudicatory hearing that evaluated

³ It should also be noted that there is no evidence Duke even followed up on this recommendation. Duke has yet to evaluate the decommissioning process for the propane-air plants in any detail. *See* Tr. Vol. I 150:1-152:4.

cavern integrity at either of the two caverns found that the cavern was safe and not leaking. Tr. Vol. I 205:12-23. As Dr. Guldmann recognizes, “ ‘evaluate’ is not like saying that Duke Energy should decommission the plants ... so there is a process of evaluation of analysis that has to be involved.” Tr. Vol. III 532:17-20. Dr. Guldmann further notes that the recommendations to evaluate the potential failure of the propane-air plants were based on a potential cavern leak at a separate propane-air facility known as the Dicks Creek facility, and “the geological failure at [that facility] does not imply storage integrity issues at EW and ERL, and DE does not clarify the storage problems at EW and ERL.” NOPE Ex. 19 at p. 20.

Finally, Duke is planning on utilizing the propane-air plants for “several years”, suggesting that the need to retire the plants is not urgent or imminent. *See* City/County Ex. 41. Clearly then, these plants have not reached the end of their useful lives. Overall, the evidence in the record shows that the plants are currently safe and reliable, and Duke has not shown a need to retire the propane-air plants in order to justify a certificate for a gas pipeline from the Board.

2a. The use of the propane-air plants does not significantly impact Duke’s ability to service propane-intolerant customers.

Both Staff and Duke partially base their opinion that the propane-air plants need to be retired on Duke’s unsupported assertion that the use of the propane-air plants has inhibited growth in the area because certain customers are propane intolerant. Duke Ex. 3 at p. 2-2; Tr. Vol. III 624:20-625:2. To be clear, there are only a total of six of these propane-intolerant customers. City/County Ex. 8. In any event, an inspection of the evidence easily disproves this assertion. Duke has admitted, without qualification, that these propane intolerant users can simply be supplied from a portion of Duke’s system segregated from the propane-air plants. City/County Ex. 28. Moreover, neither Staff nor Duke has evaluated whether these propane-intolerant users

could simply store gas for use during the handful of days per year that the propane-air plants are in use. *See* Tr. Vol. II 625:10-15. Thus, there is simply no merit to this claim by Duke and Staff.

3. The proposed pipeline is not justified by an insignificant change in north/south balance.

The Amended Staff Report notes that because Foster Station serves up to 55 percent of Duke Energy's customer load on peak days, a loss of supply from Foster station on a high demand day would result in widespread outages. Staff Ex. 1 at p. 25. However, Mr. Conway, who wrote this portion of the Amended Staff Report, also testified that 55 percent reliance on Foster station is not excessive reliance. Tr. Vol. III 662:2-9. Indeed, Mr. Conway would not even describe this reliance on Foster station as a problem. *See id.* at 670:19-20. Likewise, Duke's witness, Mr. Hebbeler, also testified that reliance on Foster Station is not a major risk. Tr. Vol. I. 73:13-15. Therefore, according to Staff and Duke, it does not appear that improving this balance can be justified as a "need" requiring the impactful, high pressure pipeline at issue in this matter.

Mr. Conway also admitted that his written testimony's statement that the proposed pipeline would reduce reliance on Foster Station to 45 percent is incorrect and needs to be corrected to 50 percent. Tr. Vol. III 658:9-19; City/County Ex. 18. Therefore, the proposed pipeline as recommended by Staff would improve balance by just 5 percent. *See id.*; Tr. Vol. III 613:23-25. Mr. Conway acknowledged that even with the proposed pipeline in operation, a loss of supply from Foster station on a peak day would result in widespread service outages. *Id.* at 614:1-7. Duke admitted that even with the proposed pipeline in place "[t]he need to balance supply will no longer be fully met." City/County Ex. 30. However, and unfortunately for the people of Ohio, Staff appears to believe that virtually any change in balance, no matter how small, is enough to justify the 180 million dollar cost of the proposed pipeline and its impacts on the highly congested residential communities it would run through. *See* Tr. Vol. III 615:6-616:6 and 659:17-661:11.

Dr. Guldmann's opinion, however, is that although the proposed pipeline "would improve the balance...the project does improve it in a very marginal way and, therefore, it is my opinion that it doesn't achieve a real goal of significantly lessening the dependence of the whole system on the supply from Foster." Tr. Vol. III 541:10-15.

In addition, Mr. Hebbeler's testimony states that Duke will need to make additional upgrades and enhancements beyond the C314V pipeline in order to better improve the north/south balance. Duke Ex. 7 16:4-22; Tr. Vol. I 168:11-15. However, what these additional upgrades are remains a mystery, as Duke's witnesses claim they do not have specific information about what these upgrades may be. *See* Tr. Vol. I 168:16-25. This evasiveness prevents both the public and the Board from evaluating the total effectiveness of the plan to reduce reliance on Foster station, and to evaluate the alternatives that may be available for Duke to meet its stated need of addressing reliance on Foster Station. As argued more fully in part II.D.2., *infra*, of this Brief, objectively better options have been recommended to Duke that would better improve the north/south system balance and cause far less impacts to densely populated communities.

In any event, the Board should reject Duke's argument that the proposed pipeline meets Duke's stated need to balance system supply.

4. Duke does not need the proposed pipeline to upgrade and replace its existing infrastructure.

Arguably the most tenuous and unsupported of Duke's three stated needs is the need for a new pipeline constructed in completely new, highly residential areas in order to upgrade its already existing pipeline infrastructure. Duke's witness described lines A, V, and AM as making up the "backbone" of Duke's system, and that Line A in particular is "reaching the end of its useful life." Duke Ex. 7 7:2-12. While Duke likely does need to upgrade its infrastructure as it ages, Duke has not shown that it needs the C314V project in order to do so. Indeed, Mr. Hebbeler

admitted in his testimony that Duke Energy is perfectly capable of upgrading its existing infrastructure without the proposed pipeline. Specifically, Mr. Hebbeler references Duke's "recently completed" AMRP program where 1,100 miles of main lines and 120,000 associated service lines were replaced, presumably without building redundant high-pressure pipelines. *See* Duke Ex. 7 8:8-11. Mr. Hebbeler testified that Duke is capable of taking actions to minimize or eliminate outages during replacements, such as bringing in laterals to serve a section of people and planning the replacements at times of the year when gas use is at its lowest. Tr. Vol. I 29:7-20 and 30:13-21; *see also id.* at 154:16-21 (Long testimony). In fact, Duke has already performed replacements on Line A without any outages. Tr. Vol. I 27:4-14. Maybe most importantly, Duke has outright admitted that it can perform maintenance, repairs, and replacements on these "backbone" system lines, including Line A, without the proposed pipeline in operation. City/County Ex. 31; City/County Ex. 33. Duke even admits that future upgrades, replacements, or improvements of Lines A and V do not impact the need for the proposed pipeline. City/County Ex. 2; City/County Ex. 14.

Therefore, based on these clear admissions and the testimony at hearing, it is clear that the proposed pipeline project is simply not needed in order for Duke to upgrade and replace its aging infrastructure.

C. Duke has not Provided Sufficient Information to Determine the Nature of the Probable Environmental Impact of the Preferred and Alternate Routes.

Section 4906.10(A)(2) of the Ohio Revised Code requires that before a certificate can be granted, the Board must be able to determine the nature of the probable environmental impact of the pipeline. Duke and Staff have not adequately determined the nature of the impact of the pipeline, and serious probable and potential environmental impacts remain unaddressed.

The alternate route recommended by Staff has had a number of serious environmental issues come to light since the filing of the Application. First, the route directly conflicts with a planned sewer project in the city of Reading. Specifically, the Metropolitan Sewer District is planning a project to address combined sewer overflows required by a consent decree. Reading Ex. 2 52:2-18 (Ross testimony). Testimony from Reading's safety service director and the planned route of the sewer project show that the alternate route would directly cross and conflict with this important and necessary planned project. *Id.* at 55:16-56:1; Reading Ex. 3. Notably, Duke never addresses this issue in any of their Application materials or in their testimony, and likewise this is nowhere addressed in the Amended Staff Report or in any Staff testimony. Such a serious conflict about a major environmental issue is a clear deficiency in determining the probable environmental impact of the alternate route, and the Application should be rejected until the impact is properly determined.

In addition, although Duke is supposed to do an extensive route selection study, it did not discover that the alternate route was located in very close proximity to an environmental superfund site until long after the Application was filed. *See* Motion for Suspension of Procedural Schedule, filed on Aug. 23, 2017 (filed almost one year after the filing of the original Application identifying the alternate route); *see also* Staff Ex. 1 at p. 47. The Pristine Superfund Site is a historically contaminated property, with documented contamination issues, including volatile and semi-volatile organic compounds documented in the soil and groundwater at the site and beyond its property boundaries. Staff Ex. 1 at p. 44. Only a public records search was conducted in order to identify other potentially impacted properties. Tr. Vol. II 362:22-363:1. Even with utilizing just a public records search, a number of properties with serious historical contamination were identified along the alternate route. *See generally* Duke Ex. 13. However, these areas were not

followed up on with any reasonable detail in order to determine whether the proposed pipeline might have an impact on contaminated properties. Specifically, each of the properties in question had a total of just one or two soil or water samples taken from them. *See* Tr. Vol. II 367:17-369:14. Thus, even the areas that were studied weren't studied in an amount of detail to determine with any confidence whether the properties were contaminated. It should be noted that no similar analysis, or really any environmental impact analysis appears to have been done for the preferred route. Tr. Vol. II 371:19-25.

Numerous other environmental impacts were never properly determined. Landslides are common in at least some of the areas where the proposed pipeline is proposed to be sited. *See* Tr. Vol. II 328:3-5. While Duke apparently considered whether landslides could impact the construction of the pipeline, they do not appear to have considered how landslides could impact the long-term operation of the pipeline by exposing or damaging pipelines. *See id.* 330:10-19. At the second public hearing, credible evidence was submitted to the Board by a local resident showing large sinkholes in close proximity to the planned route. *See* Public Hearing Tr. 213:5-215:10 (March 21, 2019). These risks are not mentioned by Staff or Duke and are therefore unaccounted for. Moreover, the Amended Staff Report notes that a "subsurface drilling investigation would ensure that the route selected would be sited along locations either suitable based on soil and rock properties or incorporate best management practices during construction for the structural integrity of the pipeline." Staff Ex. 1 at p. 37. This investigation has not yet occurred, so it remains unclear whether the location of the route is suitable. *See* Tr. Vol. II 489:14-490:6. In addition, Duke does not yet know how many trees would have to be removed along either the alternate or the preferred pipeline route. Tr. Vol. II 332:13-22. This is something that should be understood before approval, especially considering the fact Duke had improperly

removed trees and vegetation during construction of the related C314 pipeline. *See* Tr. Vol. II 334:17-24 and 337:24-338:23; NOPE Ex. 11 and NOPE Ex. 12.

D. The Preferred and Alternate Routes do not Represent the Minimum Adverse Environmental Impact, Considering the Availability, Nature, and Economics, of the Various Alternatives, and Other Important Considerations.

The Ohio Revised Code requires that the pipeline “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.” R.C. 4906.10(A)(3). The Board’s rules “require applicants to provide a detailed explanation of the process used to select the proposed site and a description of alternative sites.” *In re Middletown Coke Co.*, 127 Ohio St.3d 348, 2010-Ohio-5725, 939 N.E.2d 1210, ¶ 8.

1. Duke and Staff did not meaningfully consider non-pipeline alternatives to meet Duke’s stated needs.

Duke did not adequately consider non-pipeline options for their stated needs. As Dr. Guldmann found, Duke “could replace these P-A plants with modern technology” and the “continued operation of the P-A plants is the most economical option.” NOPE Ex. 19 at p. 20. It does not appear that an evaluation of replacing the propane-air plants, possibly even with above-ground storage, has ever been fully assessed. There are approximately 56 propane-air plants in use across the country, so clearly these plants are still useful as peaking options. Tr. Vol. III 662:2-5; NOPE Ex. 19 at Ex. JMG-7, p.75. Second, a liquid natural gas (“LNG”) peaking option should be fully evaluated. Duke’s own consultants noted that LNG peaking facilities are “commonly used for peaking service.” *Id.* at Ex. JMG-7, p. 94. Duke admits that a LNG plant would allow them to replace and retire the propane-air plants. NOPE Ex. 8. Duke would need to find a suitable site for a LNG plant, but there is no evidence that Duke has conducted a comprehensive study in order determine whether a suitable site exists. *See* Tr. Vol. I 176:19-24.

Finally, Duke has not adequately explored the potential for increasing pipeline peaking services, which is referenced as a possibility in the Lummus Report. NOPE Ex. 19 at p. 21 and JMG-7, p. 94. All of these options should be evaluated in detail, with consideration paid to how each option's adverse environmental impact compares to the proposed pipeline.

Additionally, Duke has not evaluated whether its already planned system upgrades would obviate the need for a replacement peaking service, or whether and how much they will improve the north/south system balance. Duke's plan to upgrade Line A to contain 20-inch piping along the entire pipeline would also include increasing the pressure of the pipeline, resulting in additional capacity. NOPE Ex. 19 at p. 14. In fact, all of Duke's planned upgrades to its existing lines would bring additional supply into the central corridor area. *See City/County Ex. 11*. In addition, the proposed line CG04 project will bring additional gas into the northwest portion of the area and address capacity issues. Tr. Vol. I 160:7-23 and 163:1-7. Another planned project would be a small project to move more gas into Line A, at the origination point for Line C314. *Id.* at 164:8-21. This project would strengthen Line A with additional supply. *Id.* at 165:5-8. Duke's modelers have not conducted modeling with these planned upgrades in place to determine what the system needs, if any, would be after the upgrades. Tr. Vol. I 181:24-182:14. In addition, Duke is already planning to "increase peak flow from Fernald by 1,800 mcfh...independent of construction of C314V, and does not require new investment on the line from Fernald." NOPE Ex. 19 at p. 21. Duke should be required to evaluate whether these planned upgrades would eliminate need for the proposed pipeline before the Board approves the proposed pipeline.

Altogether, the Board must require Duke to evaluate all feasible non-pipeline options before it approves such a costly, disruptive and impactful pipeline project, as those alternatives

are important to considering the availability and economics of alternatives that could represent the minimum adverse environmental impact.

2. The proposed routes in the application do not represent the minimum environmental impact compared to other route alternatives, and Duke has not evaluated all practicable route alternatives.

The Board's rules require that the applicant "shall conduct a site and route selection study prior to submitting an application for an electric power transmission line or gas pipeline, and associated facilities. **The study shall be designed to evaluate all practicable sites**, routes, and route segments for the proposed facility within the study area." Ohio Adm.Code 4906-5-04(A) (emphasis added). In addition, Duke is required to provide "a summary table comparing the routes, route segments, and sites, utilizing the technical, financial, environmental, socioeconomic, and other factors identified in the study. Design and equipment alternatives shall be included where the use of such alternatives influenced the siting decision." *Id* at 4906-5-04(B). The burden is on Duke to show that it "had considered other sites for the entire project...or how it settled on the location chosen." *In re Middletown Coke Co.*, 127 Ohio St.3d at ¶ 9.

2a. The Route Selection Study was arbitrarily limited to the central corridor area.

First, Duke did not conduct a site and route selection study that evaluated all practical sites, routes, and route segments, nor did they adequately consider other sites for the project. The route selection study area was arbitrarily limited by Duke to begin at the existing C314 Line and end on Line V. Tr. Vol. II 251:11-18. This limitation essentially limited the routes selected to those in the central corridor area, making each route run through densely populated, congested areas. *See id.* at 253:15-18. The only apparent reason given in Dr. Nicholas' testimony for this limitation was that routes outside of the central corridor would require "at least one additional high-pressure lateral that would have to be constructed across the central route area to achieve the

Project goals”, and that this would result “in greater overall Project impact.” Duke Ex. 9 13:7-14. However, Dr. Nicholas testified that he did not do any analysis whatsoever to come up with this opinion, and it was solely based on a statement someone at Duke told him. Tr. Vol. II 271:20-272:11. He further testified that he does not know why an additional lateral would be needed at all. *Id.* at 272:8-18. Thus, this opinion is clearly not based on the witnesses’ knowledge and should be stricken from his testimony completely. At the very least, the statement is unsubstantiated and should not be taken as substantive evidence.

It is possible that Duke is limiting the study area to within the central corridor to take advantage of unused capacity of Line C314. Mr. Hebbeler’s testimony states that:

The proposed pipeline reflects the next stage in the Company’s ongoing attention to its natural gas distribution system and allows us to continue the operational efficiencies and improvements that were planned and initiated by the construction of the C-314 pipeline in the northern part of our service territory in 2003.

Duke Ex 7. 9:6-10. Mr. Hebbeler further states that that the C314 pipeline was implemented in anticipation of the proposed C314V pipeline as part of Duke’s plan to diversify north/south supply. *Id.* at 14:16-19. He goes on to state that the proposed pipeline would allow Duke “to take full advantage of the capacity of Line C-314.” *Id.* at 14:22-23. However, the existing C314 pipeline was built to address pressure and capacity issues in Warren County and northern Clermont County, not Hamilton County. Tr. Vol. I 63:18-64:7; NOPE Ex. 2 at p. 02-3. At the time of its siting, Staff questioned whether the C314 pipeline’s size and pressure were needed to serve current and anticipated loads in the area. Tr. Vol. I 67:5-10; NOPE Ex. 3 at p. 13. Duke never informed staff about their plans to bring another pipeline into the central corridor, even though Duke is now arguing that it was part of the plan to improve north/south balance the entire time. *See* Tr. Vol. I 67:11-16. In fact, according to the application for the C314 pipeline, the C314 pipeline alone would ensure that “pressures are still adequate in year 2030 with current load

growth projections. Therefore CG&E believes that the proposed facility will address natural gas load growths in the short term and well into the future.” NOPE Ex. 2 at p. 02-3. Duke apparently withheld their actual and complete plan from Staff, this Board, and the general public, depriving everyone except Duke of their lawful opportunity to evaluate the need for a central corridor pipeline, and to evaluate alternative sites for such a project. Duke should not now be able to benefit from overbuilding capacity of the C314 Line and limiting the entire universe of options for increasing capacity and supply to one point on their system, especially when it would require a costly high-pressure pipeline through densely populated communities, and when it would ultimately require those same communities to bear the costs.

The route selection study is additionally flawed because it did not evaluate socioeconomic and other relevant factors in its evaluation. The study did not evaluate routes based on income levels of the impacted communities. Tr. Vol. II 279:15-18. The study did not evaluate the routes based on impacts to minority communities, and, particularly relevant to the central corridor areas, impacts to Jewish communities were not considered. *Id.* at 279:15-280:1. In addition, as referenced above, the elimination of the eastern options is based on an unsupported and unsubstantiated opinion. Therefore, the study itself, even within the central corridor, is not in compliance with Rule 4906-5-04(B).

2b. Duke and Staff did not evaluate better and less adverse route alternatives.

Since the General Assembly did not define the term environmental under Chapter 4906, it should be given its usual and ordinary meaning. *See* R.C. 1.42. Environment is commonly understood to mean “[t]he physical conditions of a particular place where a living thing exists.” *In re Champaign Wind, L.L.C.*, 146 Ohio St.3d 489, 2016-Ohio-1513, 58 N.E.3d 1142, ¶ 78 (Kennedy, J. dissenting) (quoting Black’s Law Dictionary 651 (10th Ed. 2014)). The impact on the

residential and densely populated environments in the areas of both proposed routes would be highly adverse to those environments. *See* part II.E., *infra*, of this Brief. In particular and by way of example, construction of the alternate route as planned on Third Street in Reading will cause some residents to lose access to their homes. Tr. Vol. I 16-25; Reading Ex. 4. Some residences along this route will have no setback at all due to the proximity of the pipeline, which is contrary to Duke's stated 15-foot setback *See* Reading Ex. 2 20:7-16; *see also* Public Hearing Tr. 135:8-136:1-4 (June 15, 2017). By contrast, virtually every route alternative that was discussed by Dr. Dr. Guldmann would represent significantly fewer impacts to residential environments and the communities surrounding the two proposed routes. *See* NOPE Ex. 19 at pp. 21-33.

The Lummus Report (also referred to as the Gas System Master Plan) evaluated several options for the purpose of decommissioning the propane-air plants and increasing the reliability of Duke's overall system by decreasing the vulnerability of reliance on Foster station. NOPE Ex.19 at p. 22. The C-1 scenario in the Lummus Report reflects connecting Line C314 at WW station to a point on Line V, which is essentially the central corridor options that Duke ended up limiting its entire route selection study to. *See id.* at p. 23. Lummus modeled and evaluated each of seven different scenarios based on reliability, flexibility, and regional expansion. *Id.* at pp. 25-26. Notably the C-1 option was poorly ranked in the study, while the W-1 and W-2 (western options) were highly ranked. *Id.* at p. 26. Therefore, based on Duke's stated needs, there is simply no basis for not including the options in the Lummus Report in the route selection study.

Every route selection process can be evaluated differently in terms of what factors are considered and how those factors are weighed. Tr. Vol. II 246:17-24. Dr. Guldmann identified the W-1 option as an alternative route that would greatly reduce impact to residents, land uses, and avoid densely populated areas. *See* NOPE Ex. 19 at pp. 27-33. The W-1 option is a western

scenario that would run a lateral from Harrison station to the AF station on the Ohio River. *Id.* at pp. 23-24. Maps reflecting this option can be found at Figures 1-3 at Exhibit JMG-6 attached to NOPE Ex. 19. For a population impact comparison, Dr. Guldmann conducted an analysis to estimate the total number of households and housing units within two buffers along the W-1 line: 100 feet on either side of the line (200 feet wide), and 1,000 feet on either side of the line (2,000 feet wide). *Id.* at p. 30.⁴ Duke reports the number of residences within 100 feet of the preferred route to be 115, and 182 for the alternate route. *Id.* at p. 32; Staff Ex. 1 at p. 33. By comparison, the number of residences with 100 feet of the W-1 option would be 44, which is a reduction of 62% from the preferred route and 76% from the alternate route. NOPE Ex. 19 at p. 32 and Ex. JMG-6 at Table 1. Duke reports the number of residents within 1,000 feet of the preferred route to be 3,153, and 2,186 for the alternate route. *Id.*; Staff Ex. 1 at p. 33. By comparison, the number of residences within 1,000 feet of the W-1 option is approximately 532, which is an 83% reduction from the preferred route and a 76% reduction from the alternate route. NOPE Ex. 19 at p. 32 and Ex. JMG-6 at Table 1. In addition, Dr. Guldmann compared the land use impacts of the W-1 to the two central corridor routes proposed by Duke, and found that land use impacts would be far less on the W-1 option. *Id.*; see also *id.* at Ex. JMG-6, Tables 2 and 4. Moreover, the W-1 option would greatly reduce reliance on the Foster station, down to 21.6%. *Id.* at p. 29. To the extent Duke is concerned about going through a jurisdictional process in Kentucky, it could evaluate a close alternative that stays on the Ohio side of the river. Tr. Vol. III 548:18-549:6. Therefore, the fact that this option, and all of the other options in the Lummus Report, were not evaluated in any meaningful way renders the Application incomplete.

⁴ Dr. Guldmann additionally analyzed the route based on population and residential units, which is an exercise neither Duke nor Staff conducted in their evaluations. NOPE Ex. 19 at pp. 30-33.

Staff appears to have been misled about the viability of the western options in the Gas System Master Plan document. In reference to the Gas System Master Plan, the Amended Staff Report states that Duke “found that the western options did not allow for retirement of the propane-air peaking plants or improve reliability in the central core area.” Staff Ex. 1 at p. 28. Staff’s witness testified that the western options referred to here include the W-1 option in the Lummus Report. Tr. Vol. III 640:24-641:11. Duke was specifically asked to describe the basis for the contention at page 28 of the Staff Report that Duke found that the western options did not allow for retirement of the propane-air plants, and Duke stated that this was based on “modeling of a 20” proposed western connection to the Duke high pressure distribution loop with propane/air peaking plants off line....” City/County Ex. 9. As Staff’s witness recognized at hearing, this **is not** the W-1 option referenced in the Gas System Master Plan. Tr. Vol. III 643:2-8. Rather, this reference is more likely referring to the western options in Dr. Nicholas’ route selection study. Furthermore, all of the scenarios evaluated by the Lummus Report, including the western options, assume the propane-air plants are inoperable, and all were able to achieve the target peak-hour send-out. NOPE Ex. 19 at p. 29.

Dr. Guldmann also testified to the viability of “looping” Line A, instead of building out through completely new and densely populated areas. *Id.* at pp. 27-28; Tr. Vol. III at pp. 551-553. Looping Line A would consist of laying a pipeline directly next to Line A, with as much of it in the current right of way as possible, to eliminate disruption of new populations and land use activities. NOPE Ex. 19 at p. 28; Tr. Vol. III 552:11-16. Based on map reviews, Dr. Guldmann testified that he could not see any structures in any significant concentration along the line that would prohibit expansion of the right of way, and that the preferred and alternate routes seem to

have many more structures along them. Tr. Vol. III 554:12-21. This option was unjustifiably not considered by Duke or Staff.

Finally, Dr. Guldmann notes the safety implications of avoiding densely populated areas by stating that “[a]ccidents regularly occur along pipelines, due to excavation or malfunctioning, and may result in explosions. The less people in the proximity of the pipeline, the safer.” NOPE Ex. 19 at p. 32. The fact that other viable, less impactful options exist and were not evaluated renders the application incomplete and not in compliance with R.C. 4906.10(A)(3). This Board and Staff have recognized that the route selection study and the Board’s analysis should factor in safety and population impacts, stating:

According to federally published pipeline safety accident statistics, the leading cause of pipeline accidents is damage by outside forces, in other words, primarily dig-ins. Therefore, Staff considers the preferred route for the proposed pipeline superior to the alternate route because it minimizes the possibility of third-party damage.

In the Matter of the Application of Northeast Ohio Natural Gas for a Certificate of Environmental Compatibility and Public Need to Construct a Natural Gas Pipeline in Lorain County, Ohio, Case No. 99-541-GA-BTX, 2000 Ohio PUC LEXIS 675, *21-22. Accordingly, the Board should deny the certificate because Duke has not proven that the two proposed routes represent the minimum adverse environmental impact, considering the availability of less impactful routes, and other pertinent considerations.

E. Duke has not Shown that the Proposed Pipeline Will Serve the Public Interest, Convenience, and Necessity.

The burden is on Duke to show that the proposed pipeline will serve the public interest, convenience, and necessity. R.C. 4906.10(A); Ohio Adm.Code 4906-5-03(E). When evaluating whether a certificate project is in the public interest, courts generally require the assessment of

potential safety concerns. *See City of Boston Delegation v. FERC*, 897 F.3d 241, 254 (D.C.Cir.2018). Safety findings should be supported by substantial evidence. *See Id.*

1. The public interest is in overwhelming opposition to the proposed pipeline.

The public interest in the safety concerns and other impacts from the proposed pipeline are well documented in the record through comments in the docket, testimony at the public hearing, and through the Intervenor's evidence and arguments presented at the adjudicatory hearing. The comments received by the Board have been overwhelmingly opposed to the proposed pipeline. Tr. Vol. III 715:14-15. Specifically, as of the third day of hearing there had been 1,570 document records filed in the docket. *Id.* at 720:3-6. Comments are often filed in groups, so one filing may have tens of comments within it. Staff Ex. 1 at p. 56. For example, as recently as April 19, 2019, eighteen (18) comments were filed in one docket filing.⁵ On occasion, more than thirty (30) comments have been filed in one docket filing.⁶ Unfortunately, Staff has not counted or kept track of the actual number of comments (Tr. Vol. III 720:7-9), but it is reasonable to assume there have been upwards of 10,000 comments. Of the many thousands of comments received, only fifteen (15) have been filed in support of the project. Tr. Vol. III 716:2-5.

The two public hearings contain hours of unrebutted testimony related to the public interest, convenience, and necessity of the proposed pipeline. A total of 131 testimonies were taken between the two hearings (68 at the June 2017 hearing and 63 at the March 2019 hearing). *See generally* Public Hearing Tr. pp. 4-7 (June 15, 2017) and Public Hearing Tr. pp. 4-5 (March

⁵ Found at: <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=9034d7e3-5fae-4b17-9049-9018fb08533e>. As is consistent with virtually every one of these comment filings, the comments are all opposed to the project for salient and well thought out reasons. One comment notes that "people are frustrated and angry that Duke and OPSB have trivialized concerns rather than addressing them." *Id.* at p.1, ¶ 3. Another comment notes the lack of analysis on non-pipeline peaking solutions, and offers examples of utilities using innovative solutions. *Id.* at p. 3.

⁶ *See e.g.* comments found at: <http://dis.puc.state.oh.us/TiffToPDF/A1001001A19D09B62543A06564.pdf> (filed April 11, 2019).

21, 2019). Residents testified that after reviewing the Application and the Staff Report, Duke's claimed needs were unjustified. Public Hearing Tr. 59:10-60:6, 64:10-66:15, 119:2-15, 252:19-257:15, and 259:14-262:20 (June 15, 2017); Public Hearing Tr. 47:20-50:2, 82:2-83:2, 149:8-152:11, and 171:8-173:9 (March 21, 2019). Residents testified to specific issues with route selection and specific alternatives that were not adequately considered. Public Hearing Tr. 33:6-10 and 113:3-25, (June 15, 2017); Public Hearing Tr. 74:4-75:23, 94:6-96:16, 195:11-200:25, and 211:1-212:10 (March 21, 2019). Many residents testified to unaddressed safety concerns and environmental impacts related to the high-pressure pipeline running through their densely populated communities, such as concern about the potential impact radius of the pipeline, potential third party damage issues, its proximity to vulnerable or at-risk individuals, its proximity to railroad lines, sinkholes and earthmoving activities observed in the paths of the proposed pipeline, risks related to running the line through contaminated properties, and the risks of classifying the pipeline as a distribution line instead of a transmission line. *Id.* at 60:21-61:1, 67:7-68:5, 93:13-94:15, 103:2-17, 167:11-22, 171:18-22, 185:3-10, 206:6-210:10, and 229:22-230:7; Public Hearing Tr. 16:20-20:10, 41:4-43:22, 56:1-60:10, 64:5-14, 98:1-99:10, 122:9-124:20, 182:3-183:22, and 213:2-215:10 (March 21, 2019). Community leaders, such as youth leaders and local school leaders, testified to the adverse impacts the proposed pipeline is already having and will have on their communities. Public Hearing Tr. 98:1-100:20, 121:21-128:2, 149:15-152:19, and 188:4-191:2, (June 15, 2017); Public Hearing Tr. 125:11-127:3 and 128:1-132:6 (March 21, 2019). Business owners and organizational leaders testified to the adverse impacts the pipeline will have and is already having on their employees, organizations, and businesses. *See* Public Hearing Tr. 160:23-166:12 (June 15, 2017); Public Hearing Tr. 14:10-15:14 and 110:17-8, (March 21, 2019) Importantly, a number of Jewish community members and

community leaders testified to the large and disproportionate number of Jewish communities along both routes, and to the unique impacts such a high-pressure natural gas pipeline could have on those communities, including from a potential terrorist attack. Public Hearing Tr. 107:1-7 and 148:1-6 (June 15, 2017); Public Hearing Tr. 77:8-78:19, 87:1-91:8, and 229:5-232:32 (March 21, 2019). Residents raised a number of other important issues that remain unaddressed by Staff and Duke, and it would be prudent for the Board to view the full public hearings before coming to a decision. *See e.g.* Public Hearing Tr. 34:7-24 (June 15, 2017) (questioning why there is such a difference in cost between the preferred and alternate routes).

Many local representatives testified in opposition to the proposed pipeline on behalf of their constituents. Senator Richard J. Finan, who is serving as the Mayor of the Village of Evendale, testified that Duke has not shown the pipeline is needed because, among other things, the peaking plants can be upgraded and the current market is flat. Public Hearing Tr. 27:9-29:1 (June 15, 2017). He also testified that the pipeline route would restrict planned upgrades to a service building, eliminate a wildflower preserve, and kill 100-year old trees along the path. *Id.* at 28:2-29:6. A councilman for Evendale testified that a school for gifted children decided not to locate in the community after learning about the proposed pipeline. *Id.* at 37:13-18. An official from the city of Reading testified that the alternate route has virtually no setbacks in residential areas, coming within a few feet of some homes, with most homes being in low to moderate income areas. *See id.* at 43:7-13 and 45:3-17. The Mayor of Reading testified that the pipeline “would be devastating” to the city’s economic development. *Id.* at 55:23-14. The Mayor of Amberley Village testified to Duke’s unwillingness to share information and work with communities on justifying the need for the pipeline, characterizing Duke’s interactions as a “disdain for the public and their concerns.” Public Hearing Tr. 137:22-141:6 (June 15, 2017). A

number of impacted communities have gone so far as to pass a resolution recognizing the need for natural gas pipeline siting setbacks and encouraging the general assembly to implement changes.⁷ Altogether, virtually all of the communities along both central corridor routes put forth opposition testimony by public officials and community leaders representing their constituents. *See* Public Hearing Tr. 104:13-108:5, 131:1-133:12, 134:13-137:1, 145:14-148:20, 200:25-204:1, and 308:11-313:24 (June 15, 2017); Public Hearing Tr. 51:7-54:16, 144:5-145:18, and 235:12-239:3 (March 21, 2019). As one city council member aptly stated:

...on this issue, people have come together across age, across race, across income, across geography, across political party to say no. No, we have not approved of this process. No, we have not been convinced of the need. No, our public safety concerns have not been alleviated, and no we do not wish Duke and the Ohio Power Siting Board to move forward with the project as currently proposed.

Public Hearing Tr. 36:11-18 (March 21, 2019).

The Application and the Staff Reports were so devoid of information related to the safety concerns of the proposed pipeline project through these densely populated communities that it caused multiple community members to be confused as to whether public safety can even be a factor in a Power Siting Board Decision. *See e.g.* Public Hearing Tr. 103:4-6, 237:16-19, and 267:14-20 (June 15, 2017). Staff's resolution of the potential safety concerns is simply to state that Duke would construct and maintain the proposed pipeline in compliance with the Pipeline Safety Regulations. Staff Ex. 1 at p. 55. This ignores and does not address the potential safety concerns and the range of other negative impacts even the lawful operation of the pipeline is having, and will have, on these communities.

⁷ A number of these resolutions are in the record filed as public comments. *See* The City of Reading's resolution at: <http://dis.puc.state.oh.us/TiffToPDF/A1001001A19D02B45948B05250.pdf> (filed April 2, 2019).

2. The proposed pipeline is more properly classified as a transmission line, and it is not in the public interest, convenience, or necessity to regulate it as a distribution line.

Staff recommends that the proposed pipeline be classified as a distribution line, but because it would “operate at a relatively high-pressure” and “in order to account for any potential future increases in operating pressure”, Staff recommends the Applicant *construct* the pipeline in accordance with requirements for transmission lines. Staff Ex. 1 at p. 55. However, classifying and regulating the proposed pipeline as a distribution line violates the intent of the pipeline safety regulations, and therefore fails to serve the public interest, convenience, and necessity.

The relevant regulations discuss three types of pipelines. First, a "gathering line", which is "a pipeline that transports gas from a current production facility to a transmission line or main." 49 C.F.R. § 192.3. Second, a "transmission line", which is "a pipeline, other than a gathering line," that: (1) Transports gas from a gathering line or storage facility to a distribution center or storage facility, (2) operates at a hoop stress of 20 percent or more of SMYS, or (3) transports gas within a storage field. *Id.* Finally, a "distribution line", which is "a pipeline other than a gathering or transmission line." *Id.*

Both Staff and Duke take the position that the proposed pipeline is a distribution line because the pipeline will operate at a hoop stress of 19 percent SMYS (just 1% below the regulatory 20%), and it is located within a “distribution center.” Duke Ex. 15 11:1-11; Staff Ex. 12 9:7-21. However, “distribution center” is undefined in the regulations, and Duke and Staff’s reliance on this term is dubious. Specifically, the Amended Staff report relies on a PHMSA interpretation letter that interpreted “distribution center” to generally mean the point at which gas enters piping used primarily to deliver gas to customers who purchase it for consumption. Staff Ex. 1 at p. 54, fn. 47. Importantly, there will be no service lines on the proposed pipeline, so it

will not be distributing gas directly to customers. Tr. Vol. I 58:23-59:1 Staff, however, concludes that the proposed pipeline is downstream from a distribution center because Duke “is a local distribution company (LDC) that provides gas to customers who purchase it for consumption as opposed to customers who purchase it for resale.” *Id.* at p. 54; Staff Ex. 12 9:7-21. By this logic, none of Duke’s pipelines having similar or smaller operating pressures and sizes would qualify as transmission lines. Of course, a review of Duke’s most recent Long Term Forecast shows that this isn’t the case. Duke’s transmission lines include Lines A, D, V, AA, EE, and C314. NOPE Ex. 1 at pp. 5-2 and 5-3. Line A is a 20-inch pipeline with a MAOP of 225 PSI; Line D is a 24-inch pipeline with a MAOP of 388 psi; Line V is a 20-inch pipeline with a MAOP of 200 psi; Line AA is a 20-24-inch pipeline with a MAOP of 175 psi; and Line EE is a 24-inch pipeline with a MAOP of 200 psi. *Id.* Thus, a look at Duke’s current transmission pipelines shows that the proposed pipeline would be a typical transmission line in Duke’s system. Notably, Duke has recently wrongfully claimed that a pipeline was a distribution line instead of a transmission line in violation of 49 C.F.R. §§ 191.17 and 192.3 simply because the line operated at a hoop stress of less than 20-percent of the pipe’s SMYS. NOPE Ex. 7 at p. 4 (Notice of Probable Violation dated June 29, 2018).

Altogether, the proposed pipeline would be a very unusual distribution line. *See* Tr. Vol. III 730:10-13 (Mr. Chase testifying that it is unusual to see a distribution line with a MAOP of 500 psi). Mr. Paskett’s own source on the issue of transmission line and distribution line characteristics described distribution lines as follows:

Distribution lines typically operate at pressures ranging from .25 psi, with gas delivered directly to customers without any additional reduction in pressure, to 60 psi with relatively few distribution pipelines operating at higher pressures (high pressure distribution pipelines) of up to 400 psi.

NOPE Ex. 13 at p. 3-5. The proposed pipeline has a maximum operating pressure of 500 psi, which is well outside of this range, and it is not designed to have any service lines, and therefore will not be delivering gas directly to end customers. Aside from being located in a densely populated area, it simply doesn't fit the mold of a distribution line.

In addition, the interpretation letter on which the Staff relies actually supports the position that the proposed pipeline is more properly classified as a transmission line. *See* NOPE Ex. 16. In the letter PHMSA answered questions from a state regulatory commission about whether six separate pipelines should be regulated as transmission lines or distribution lines. *See* NOPE Ex. 16; Tr. Vol. III 735:12-15. Importantly, PHMSA interpreted all of the pipelines at issue to be transmission lines and not distribution lines. *See id.* A close inspection of the proposed pipeline reveals that its characteristics are similar to some of the lines interpreted by PHMSA to be transmission lines. The proposed pipeline project would extend approximately 13 to 14 miles from Line C314 at WW feed station and connect to Line V. Staff Ex. 1 at p. 8. The WW station would only reduce the pressure of the gas for travel through the C314V line. *See* Tr. Vol. I 58:10-19. Line C314 is a transmission line and Line V is also a transmission line. *Id.* at 59:6-8 and 60:17-25; Nope Ex. 1 at p. 5-2. Thus, the proposed pipeline would be carrying gas from one transmission line to another transmission line, without any service lines delivering gas directly to customers. Tr. Vol. I 60:21-25 (Mr. Hebbeler admitting that according to the Long Term Forecast it "would be correct" to say the proposed pipeline would be carrying gas from one transmission line to another transmission line); *Id.* at 58:23-59:1. By comparison, the Portales Main line from the PHMSA interpretation letter is a natural gas pipeline that transports natural gas from a transmission line to, among other things, regulator stations. NOPE Ex. 16 at p. 2, ¶ 6. In its evaluation, the PHMSA stated:

...we do not consider a decrease in pressure to below 20 percent SMYS at a transmission line to be a “distribution center” and lines downstream of that point to be distribution lines – **this would violate the intent of the pipeline safety regulations.**

Id. at p. 3, ¶ 6 (emphasis added). Similarly, a decrease in pressure from C314, a transmission line, extending to Line V, another transmission line, would not qualify as downstream from a “distribution center” delivering gas to customers. Classifying the C314V pipeline as a distribution line would similarly violate the intent of the pipeline safety regulations.

There are regulatory differences between transmission line construction and operations in high consequences areas and distribution line construction and operations. Integrity management plan requirements for transmission lines are described in Subpart O, and the requirements for distribution lines are described at Subpart P of the Pipeline Safety Regulations. Transmission integrity management plan requirements are more prescriptive and require pipeline operators to periodically assess pipelines near high consequence areas using more specific methods. Staff Ex. 12 11:21-12:8; *see also* 49 C.F.R. §§ 192.901-192.951 and §§ 192.1001-192.1015; NOPE Ex. 18. In addition, transmission pipeline operators are required to calculate the potential impact radius (“PIR”) of the pipeline and use that to identify, among other things, High Consequence Areas. 49 C.F.R. § 192.905. Even a cursory review of the public comments and the public hearing testimony would show that the potential impact of a failure or explosion of the proposed pipeline in the densely populated communities is a major public concern for the project. At some point, a PIR for the pipeline was calculated at 308 feet. Nope Ex. 17. However, because of its labeling as a distribution line, Duke is not required to, among other things, count the number of houses and individual units within the potential impact area, evaluate the consequences of failure within the impact zone, consider environmental damage within the impact zone, or consider the potential for secondary failures. Tr. Vol. II 418:3-23; 49 C.F.R. § 192.907(b) (incorporating ASME/ANSI

B31.8s); NOPE Ex. 18 at p. 8, ¶ 3.3; *see also* NOPE Ex. 19 at p. 27 (Dr. Guldmann noting that “while DE estimates the number of residences within the two buffers ... it does not show how many residences are with[in] the PIR of 308.6 feet”).

Safety legislation, and the promulgated regulations thereunder, must be liberally construed. *Hamman v. Southwestern Gas Pipeline, Inc.*, 721 F.2d 140, 143 (5th Cir.1983). As argued herein, the classification and regulation of the proposed pipeline as a distribution line violates the intent of the pipeline safety regulations, and is therefore clearly not in the public interest, convenience and necessity.

3. The proposed pipeline is not in the public interest, convenience, and necessity because the Applications and Staff conditions do not address legitimate public concerns related to safety and impacts.

Instead of addressing the public’s legitimate concerns about safety-related impacts of the proposed pipeline, particularly the risk of third-party damage, Duke’s witness on pipeline safety downplayed these concerns and asserted that any pipeline that operates below 20 percent SMYS will essentially always leak instead of rupture, even in the case where an outside force damages the pipeline Tr. Vol. II 388:6-21. Rupture is defined as a “full failure of the pipe wall.” Tr. Vol. II 390:11-20; Nope Ex. 13 at p. 3-5. Mr. Paskett’s testimony is unequivocally that “[d]istribution pipelines do not rupture. Distribution pipelines do not explode. With enough force, they can have a leak from an outside force like a backhoe but not a rupture.” *Id.* at 391:3-7. Because it is his opinion that distribution lines do not rupture, Mr. Paskett’s opinion is that a potential impact radius for the pipeline is not relevant. *Id.* at 409:10-20. Indeed, Duke stated that they have not provided an evacuation or safety plan to the community of Blue Ash because they believe “a pipeline rupture will not apply to this pipeline.” Tr. Vol. I 114:8-13. Shockingly, Mr. Paskett, Duke’s purported safety expert, further downplayed the danger of potential damage to the

pipeline by claiming that Duke's damage prevention measures do not even apply to the proposed pipeline. *See* Tr. Vol. II. 439:17-440:1.

Mr. Paskett's testimony is contradicted by yearly pipeline incident statistics and is not consistent with his own cited authorities. *See* NOPE Ex. 14 at p. 4 (stating that “[o]ther than as caused by excavation damage, distribution failures almost always involve leaks, rather than ruptures, because the internal gas pressure is much lower than for transmission pipelines”) (emphasis added); *see also id.* at p. 23 (stating “[i]t is less clear that the likely failure mode would be leakage when the failure results from outside damage (e.g., from outside force)”). Excavation damage is recognized as “the most significant threat to distribution system integrity.” NOPE Ex. 14 at p. 2; *see also* Tr. Vol. III 737:11-14. Indeed Duke admits that third party damage is “the leading risk” to their system. Tr. Vol. I 74:22-76:3. In 2016, Duke itself experienced a gas ignition resulting in property damage when an excavation contractor struck a buried gas line. Tr. Vol. I 110:5-15. Importantly, the few similarities the proposed pipeline shares with distribution lines are the same attributes that make it more susceptible to third party damage than a typical transmission line. *See* NOPE Ex. 14 at p. 4 (stating “[d]istribution pipeline systems exist in ...areas that are predominantly urban and suburban”).

Moreover, Mr. Paskett's opinion that these lower stress pipelines, i.e. distribution lines, are virtually risk-free is proven false by federal pipeline safety statistics. Just last year there were 81 serious injuries and 7 fatalities from distribution line incidents. NOPE Ex. 15 at p. 1. In 2017 there were 16 fatalities and 32 injuries, and in 2016 there were 10 fatalities and 24 injuries. *Id.* A full look at the data does not show a trend toward safety, but rather all that can be said is that these serious incidents fluctuate from year to year. *See* Tr. Vol. III 739:11-13. Mr. Paskett's only response to this data is to question, without any basis, whether the numbers are correct. Tr. Vol. II

422:10-14. In addition, Mr. Paskett’s unsupported assertion that the pipeline wall of the proposed pipeline cannot possibly fail is contradicted by the testimony of Staff’s pipeline safety expert. *See* Tr. Vol. III 737:15-21 (Mr. Chase testifying that it is possible for the proposed pipeline to rupture by third party damage, and that it would just depend on the force of the third-party mechanism). Overall, Mr. Paskett’s testimony is simply unsupported by the very authorities he relies on, and his unsupported assertions about the indestructability of the proposed pipeline reflect a dangerous and cavalier attitude toward potential risks, particularly from third party damage.

Even if the pipeline risks were somehow limited to just leaks, leaks can be very dangerous. Tr. Vol. I 77:4. Mr. Paskett downplays the danger of leaks by claiming the pipeline will be inspected twice per year. Tr. Vol. II 437:17-21. Of course, twice per year isn’t enough to ensure non-leaks for the other 363 days, but even that “voluntary” measure is not required of Duke, and they can decide not to inspect as they please. *See id.* at 444:10-23. Notably, Duke’s lines have experienced explosions related to gas leaks a number of times. Since 2010, Duke has had four explosions resulting from leaks from its lines related to non-rupture events. *See* Tr. Vol. I 110:16-111:8. In 2010, a fire from one of Duke’s lines occurred at a townhome causing seven injuries and one million dollars of damage. *Id.* at 79:1-12. Furthermore, the record also contains two recent Notices of Probable Violations detailing multiple violations of twenty-four (24) different Pipeline Safety Regulations at Title 49 of the Code of Federal Regulations. *See* NOPE Ex. 6 and NOPE Ex. 7.⁸

Nowhere in the Applications or the Staff Report is there any consideration or evaluation of third-party damage risks to the proposed pipeline. Altogether, the testimony submitted by Duke at

⁸ Duke’s pipeline safety staff are responsible for both Ohio and Kentucky pipelines within the integrated system, so these violations are relevant to Duke Energy, Ohio’s pipeline safety compliance issues. *See* Tr. Vol. I 81:1-9.

the hearing only serves to exacerbate the public's concern about potential safety issues. Given the totality of the evidence in the record, the Board should reject the Application because the proposed pipeline has not been shown to be in the public interest, convenience, and necessity.

III. CONCLUSION

As detailed above, the evidence presented at hearing overwhelmingly demonstrates that Duke has not met its burdens under R.C. 4906.10(A) and the relevant Board rules discussed herein. This Board should deny the certificate for the proposed pipeline project until and unless Duke shows that it is needed, that it is in the public interest, convenience, and necessity, and until and unless Duke submits the necessary information to determine the nature of the probable environmental impact of the proposed pipeline. If the Board does find a basis of need, Intervenor NOPE respectfully requests that the Board deny the certificate because Duke has not shown that the proposed pipeline represents the minimum adverse environmental impact compared to all available alternatives.

Respectfully submitted,

/s/ James Yskamp
James Yskamp (0093095)
Email: jyskamp@fairshake-els.org
Fair Shake Environmental Legal Services
159 S. Main Street, Suite 1030
Akron, Ohio 44308
Telephone: (234) 571-1970
Fax: (330) 319-8856

Attorney for NOPE

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing **Post-hearing Brief** was served on May 13, 2019 to the following counsel of record via electronic mail:

rocco.d'ascenzo@duke-energy.com
jeanne.kingery@duke-energy.com
brian.heslin@duke-energy.com
patrick.donlon@puco.ohio.gov
robert.holderbaum@puco.ohio.gov
jlang@calfee.com
slesser@calfee.com
mkeaney@calfee.com
roger.friedmann@hcpros.org
michael.friedmann@hcpros.org
jay.wampler@hcpros.org
jeff.aluotto@hamilton-co.org
joliker@igsenergy.com
paula.boggsmuething@cincinnati-oh.gov
andrew.garth@cincinnati-oh.gov
howard.miller@cincinnati-oh.gov
steven.beeler@ohioattorneygeneral.gov
robert.eubanks@ohioattorneygeneral.gov
lauxlawesq@gmail.com

miller@donnellonlaw.com
butler@donnellonlaw.com
tmd@donnellonlaw.com
bryan.pacheco@dinsmore.com
mark.arnzen@dinsmore.com
richard.tranter@dinsmore.com
kevin.detroy@dinsmore.com
tburke@manleyburke.com
mkamrass@manleyburke.com
kkfrank@woodlamping.com
kcmcdonough@woodlamping.com
bfox@graydon.law
ahelmes@deerpark-oh.gov
dborchers@bricker.com
dparram@bricker.com
dstevenson@cinci.rr.com
kent.bucciery@gmail.com

By: /s/ James Yskamp
James Yskamp #0093095
Attorney for Intervenor-NOPE

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/13/2019 3:21:16 PM

in

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

Summary: Brief Intervenor Neighbors Opposed to Pipeline Extension LLC's Post-Hearing
Brief electronically filed by James Yskamp on behalf of NOPE - Neighbors Opposed to
Pipeline Extension, LLC