

**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)	Case No. 16-0253-GA-BTX
Need for the C314V Central Corridor)	
Pipeline Extension Project.)	
)	

**POST-HEARING BRIEF
OF
THE CITY OF CINCINNATI AND THE BOARD OF COUNTY COMMISSIONERS OF
HAMILTON COUNTY**

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TABLE OF CONTENTS

I. INTRODUCTION	1
II. ARGUMENT	2
A. The Overwhelming Majority of the Public Vociferously Opposes the Construction of the Proposed Pipeline Through Dense and Congested Residential, Commercial, and Industrial Areas.	2
B. Duke Has Not Carried Its Burden to Demonstrate Need for the Proposed Pipeline as Required by R.C. 4906.06.	5
1. <i>The Proposed Pipeline does not solve the north/south system supply balance problem in the central Hamilton County area.</i>	6
2. <i>The Proposed Pipeline is not needed to replace or upgrade aging infrastructure.</i>	8
3. <i>The propane air peaking plants do not need to be retired, but even if they do, the Proposed Pipeline is not a viable solution to address that need.</i>	9
C. Duke Failed to Seriously Consider More Viable, Less Disruptive Routing Options for the Proposed Pipeline.	12
D. The True Cost of the Proposed Pipeline Will Far Exceed Duke's Current Estimates.	14
E. If the Board Approves the Proposed Pipeline (Which It Should Not), the Board Should Strengthen the Staff Conditions as Proposed by City/County Witness Howard Miller.	15
III. CONCLUSION	17

I. INTRODUCTION

Duke Energy Ohio, Inc. (“Duke”) has proposed the construction of a high-pressure natural gas pipeline (“Proposed Pipeline”) through the middle of a dense urban core inhabited by hundreds of thousands of Ohioans with schools, parks, businesses, churches, a hospital (with a radioactive nuclear fuel source), retirement communities, a fire station, and/or other critical public and private infrastructure nearby (“Central Corridor”). Although Duke insists the Proposed Pipeline will improve its balance of supply, allow for the replacement of aging infrastructure, and enable the retirement of propane air peaking facilities, the evidence adduced in this proceeding proves otherwise.

The City of Cincinnati and the Board of County Commissioners of Hamilton County (“City/County”) support prudent, cost-effective investment in Duke’s natural gas system and wish to collaborate and cooperate with Duke in good faith to meaningfully address Duke’s system needs. The City/County intervened in this proceeding not to obstruct Duke’s efforts, but rather to obtain a clear-eyed assessment of the need for the Proposed Pipeline. The City/County do not dispute that Duke has identified legitimate goals in connection with north-south balance and reduced reliance on Foster Station.

In making its case for the *general need* for construction of a natural gas pipeline to address the long-term reliability and operational concerns, however, Duke has failed to demonstrate that the Proposed Pipeline meets the specific need articulated in Duke’s application to the Board in support of the project. It is as though Duke’s need assessment process and its capital construction planning process were on separate, independent paths. Instead of the record supporting the need for the Proposed Pipeline, it indicates that Duke predetermined the route selection of the Proposed Pipeline through the Central Corridor and dismissed compelling alternatives proposed (and even recommended) by Duke’s own third-party consultant.

Consequently, the City/County must oppose the Proposed Pipeline. The steep price of the Proposed Pipeline to ratepayers and to the affected communities would be paid without Duke delivering on its essential promise to resolve system needs.

The Board should reject the Amended Application filed by Duke in this proceeding and encourage Duke to evaluate *all* of the options available to it, especially those that are more viable, less disruptive, and safer than constructing a high-pressure natural gas pipeline in the heart of a bustling residential, commercial, and industrial hub.

II. ARGUMENT

A. The Overwhelming Majority of the Public Vociferously Opposes the Construction of the Proposed Pipeline Through Dense and Congested Residential, Commercial, and Industrial Areas.

This is not your typical pipeline project. The Proposed Pipeline, if constructed, will slice through congested residential, commercial, and industrial areas in Hamilton County that Duke calls the Central Corridor.¹ In particular, the Proposed Pipeline would be constructed within 100 feet of 115 residences and within 1,000 feet of 3,153 residences along the Preferred Route, compared to within 100 feet of 182 residences and within 1,000 feet of 2,186 residences for the Alternate Route.² In addition, the Proposed Pipeline will cross through sensitive land uses such as parks and recreational areas,³ a hospital (with a nuclear-fuel source and 35,000 gallons of diesel fuel on-site), educational and religious institutions, retirement communities, a fire station,

¹ See Tr. Vol. II at 253; Duke Exhibit 3, Amended Application dated 1/20/17 (“Duke Ex. 3”), pp. 2-5, 3-5, Appendix 4-1 at 1-1.

² Staff Exhibit 1, Amended Staff Report of Investigation (“Staff Ex. 1”), p. 33.

³ For example, some 850,000 people visit Summit Park in Blue Ash, Ohio. Tr. Vol. II at 299. Stunningly, the third-party retained by Duke to conduct a route selection study admitted that the siting team completely ignored that fact. *Id.* at 299-300.

shopping malls, and/or other heavily populated and traveled urban areas.⁴ To make matters worse, the Alternate Route (recommended by Staff) runs adjacent to an area of hazardous soil and groundwater contamination currently being managed by the United States Environmental Protection Agency's Superfund Program.⁵

Given the foregoing, it is regrettable that Duke has persisted in its plan to construct a high-pressure natural gas pipeline in the middle of a dense urban core over the well-founded objections of residents whose lives (and property) will be materially disrupted⁶ and potentially endangered⁷ by a pipeline that could (and should) be constructed in a less populated, less environmentally-compromised area. Equally unfortunate, Duke has largely dismissed local residents' legitimate concerns about the siting of the Proposed Pipeline, denying that the health and safety risks from pipeline accidents in densely populated areas are significantly greater than the risks in rural areas.⁸ Even the consultant retained by Duke to conduct the route selection study (i.e., CH2M) conceded that when considering potential pipeline routes, it is customary to keep pipeline projects away from these types of congested, heavily populated, urban areas.⁹

Plus, Duke's public outreach efforts have been marked by missteps and errors, such as when Duke mistakenly assured local residents that "there are no residential properties crossed

⁴ See Tr. Vol. II at 312-313, 316; Tr. Vol. I at 106; Staff Ex. 1, p. 34.

⁵ Staff Ex. 1, p. 44.

⁶ As one of many examples of the materially disruptive nature of the project, construction of the Proposed Pipeline will restrict access to certain residential homes. See Tr. Vol. I at 137-138. More severely, construction of the Proposed Pipeline may result in Duke pursuing condemnation proceedings against individual property owners. *Id.* at 127.

⁷ See, e.g., NOPE Exhibit 15, Pipeline Serious Incident 20 Year Trend ("NOPE Ex. 15"); Blue Ash Exhibit 3, Duke Website "Exposed Duke Energy Pipeline" ("Blue Ash Ex. 3").

⁸ City/County Exhibit 35, NOPE-RFA-01-006 ("City/County Ex. 35").

⁹ Tr. Vol. II at 310-311.

along the Alternate Route,” which Staff acknowledged was incorrect.¹⁰ Similarly, Duke provided regrettably inaccurate and inconsistent information to the public on the “Frequently Asked Questions” section of the Proposed Pipeline website, admitting on several occasions that “correction[s]” to the website needed to be made.¹¹ This suggests Duke could benefit from a re-start of its need analysis and public engagement process.

The communities impacted by the Proposed Pipeline remain overwhelmingly opposed to it.¹² In fact, the Staff member assigned to public affairs, Mr. Matthew Butler, testified that the public perception of the project was “overwhelmingly negative” and that government officials from the affected communities expressed opposition to the project on behalf of their constituents.¹³ Not only that, Mr. Butler explained that he could not recall a single instance where an attendee at the public informational meetings expressed support for the Proposed Pipeline.¹⁴

In sum, the City/County and the general public unequivocally oppose the construction of the Proposed Pipeline in one of the most heavily populated, developed regions in the entire state of Ohio. As described below, this opposition is justified given Duke’s unfortunate failure to seriously explore more viable, less disruptive, safer options.

¹⁰ See Tr. Vol. I at 56-57; City/County Exhibit 1, Central Corridor Pipeline Extension Project Leaflet (“City/County Ex. 1”). Tr. Vol. III at 706-707.

¹¹ Tr. Vol. I at 97-101, 107-108, 122; *see also* Blue Ash/Columbia Township Exhibit 1, Screen Shots of Duke’s Website (“Blue Ash Ex. 1”).

¹² Tr. Vol. I at 45, 51-52; Tr. Vol. II at 300, 463; Tr. Vol. III at 714-719.

¹³ Tr. Vol. III at 715, 724-725; Staff Ex. 1, p. 57.

¹⁴ Tr. Vol. III at 716.

B. Duke Has Not Carried Its Burden to Demonstrate Need for the Proposed Pipeline as Required by R.C. 4906.06.

As the applicant in this proceeding, Duke is required to demonstrate need for the Proposed Pipeline per R.C. 4909.06. Duke has failed to carry its burden. Duke sought approval of the Proposed Pipeline to accomplish three objectives: (1) improve the north/south balance of gas supply to the central Hamilton County area; (2) facilitate the retirement/decommissioning of two propane air peaking plants; and (3) enable the replacement and/or repair of aging infrastructure.¹⁵ Yet, the evidence demonstrates that the Proposed Pipeline will not achieve the first objective and is not needed to achieve the other two objectives. Indeed, there appear to be better, more viable options that would meaningfully address all of these objectives without endangering the public and without creating widespread disruptions to the public. All stakeholders, including Duke, would benefit from further consideration of these legitimate, cost-effective alternatives.

The original purpose behind constructing the Proposed Pipeline, which allegedly has been part of Duke's "regional expansion plans" and "long-range plan" for years,¹⁶ was two-fold: 1) to further improve pressures in the area, and 2) to accommodate potential growth.¹⁷ But as both Staff and Duke now recognize, population forecasts consistently project a population *decrease* in Hamilton County over the next twenty years.¹⁸ Recognizing it could no longer

¹⁵ Duke Ex. 3, p. 2-2.

¹⁶ Staff Exhibit 9, Prefiled Testimony of Andrew Conway ("Staff Ex. 9"), p. 8; Tr. Vol. III at 664-666; Duke Ex. 3, pp. 3-10, 3-11.

¹⁷ Duke Ex. 3, pp. 3-10, 3-11.

¹⁸ See, e.g., Tr. Vol. III at 701-703; City/County Exhibit 44, ODSA Population Projections: County Totals (April 2018) ("City/County Ex. 44"); Tr. Vol. I at 23. The Amended Staff Report cites an outdated, superseded population projection to support the claim that there will be a population increase in Hamilton County over the next twenty years. Staff Ex. 1, p. 30. However, Staff conceded at hearing that more recent population projections show a population decrease and that Staff failed to examine other publicly

justify the Proposed Pipeline based on the purported need to “accommodate potential growth,”¹⁹ Duke transitioned to the three objectives in its Application to justify this costly capital improvement project.²⁰ While the City/County generally support prudent, cost-effective investment in Duke’s natural gas distribution system, the Proposed Pipeline is not needed to achieve any of the three objectives put forward by Duke.

1. The Proposed Pipeline does not solve the north/south system supply balance problem in the central Hamilton County area.

Duke’s natural gas system is presently configured so that one gate station, i.e., Foster Station located in Kentucky, supplies 55% of the total natural gas supply to Duke customers in Ohio.²¹ Lummus Consultants, Inc. (“Lummus”), a third-party consultant retained by Duke to recommend the “most-effective and least cost capital improvements” to Duke’s system, concluded that “the major reliability risk in Duke Energy’s system at this time is due to the excessive reliance on gas supplies that enter the system through a single gate station in the south [Foster Station].”²² To address this “major reliability risk”, Duke initially proposed a 30-inch transmission line with a higher operating pressure, only later to substantially reduce it to a 20-

available data, which consistently forecasts a decline in annual population growth in Hamilton County, as well as a decrease in per-customer energy consumption. *See, e.g.*, Tr. Vol. III at 703-704; NOPE Exhibit 19, Direct Testimony of Jean-Michel Guldman (“NOPE Ex. 19”), pp. 2-7.

¹⁹ Staff confirmed that Duke’s “regional expansion plans” assume load growth in Hamilton County even though all relevant indicators conclude otherwise. Tr. Vol. III at 664; NOPE Ex. 19, p.

²⁰ If the Proposed Pipeline is approved, Duke will have invested over \$1 billion in the last two decades alone in capital improvement projects, with even more costly enhancements, upgrades, and undisclosed projects to come (the cost and details of which remain unknown). *See, e.g.*, Tr. Vol. I at 25-26; Duke Exhibit 7, Direct Testimony of Gary Hebbeler (“Duke Ex. 7”), pp. 2, 8, 16; *In the Matter of the Application of The Cincinnati Gas & Electric Company for a Certificate of Environmental Compatibility and Public Need for the C314 Natural Gas Transmission Pipeline in Butler, Warren, and Hamilton Counties, Ohio* (“C314 Case”), Case No. 01-520-GA-BTX, Opinion, Order, and Certificate (Jan. 28, 2002), p. 10; Staff Ex. 1, p. 36; Tr. Vol. I at 44, 52; Tr. Vol. III at 675-676.

²¹ Duke Ex. 3, p. 3-1.

²² NOPE Ex. 19, Ex. JMG-7, pp. 1, 10

inch pipeline with a lower operating pressure.²³ But in making that change, Duke concedes that the Proposed Pipeline does not significantly change the north/south supply balance, and, thus, does nothing to substantively address its “major reliability risk”:

The disadvantage of the 20-inch pipeline is that it will not provide the natural gas throughput to significantly change the north/south supply balance that a 30-inch diameter pipeline could, nor does it allow for future growth within the city. Note that moving to the 20-inch, approximately 400 PSIG option will require upgrades of existing lines in the future throughout the central Hamilton County area, some of which would not be required by the 30-inch, 600 PSIG option.²⁴

Duke similarly confessed that the 20-inch pipeline will *not* eliminate existing pressure and supply constraints in the Central Corridor.²⁵ That is because the Preferred Route only reduces reliance on Foster Station from 55% to 45%, while the Alternate Route is even worse – reducing reliance on Foster Station only from 55% to 50%.²⁶

Tellingly, both Duke and Staff agree that the Proposed Pipeline, if constructed, would *not* prevent widespread outages if Foster Station went down on a cold weather peak day.²⁷ In other words, even after spending an estimated \$160+ million on the Proposed Pipeline,²⁸ Duke’s system will remain dangerously exposed to the same major reliability risk, thereby doing almost *nothing* to meaningfully address its north/south balancing problem. The Board should decline to sanction such an imprudent, ill-advised, costly investment.

²³ Duke Ex. 3, p. 2-1; Duke Ex. 7, pp. 16-17.

²⁴ Duke Ex. 3, p. 4-27.

²⁵ Tr. Vol. I at 33-34.

²⁶ City/County Exhibit 18, CITY-INT-02-008 (“City/County Ex. 18”).

²⁷ Tr. Vol. I at 68-69; Tr. Vol. III at 614.

²⁸ Duke estimated that the Preferred Route would cost \$128.2 million while the Alternate Route would cost \$111.7 million. *See* Duke Ex. 7, p. 31. Importantly, however, those costs do not include allowance for funds used during construction or overhead, which Duke has estimated to be an additional \$50 million. Tr. Vol. I at 52-54.

2. *The Proposed Pipeline is not needed to replace or upgrade aging infrastructure.*

Another stated objective for building the Proposed Pipeline is that it will enable Duke to replace and upgrade aging infrastructure in the Central Corridor.²⁹ While the Proposed Pipeline might make it more *convenient* for Duke to replace/upgrade aging infrastructure in certain cases (which is debatable given the lack of hard evidence³⁰), both Duke and Staff concede that the Proposed Pipeline is not *necessary* to repair/replacing aging infrastructure, as evidenced by the successful completion of recent repair/replacement work on several existing pipelines in the Central Corridor (i.e., Lines A, EE, V).³¹

But Duke insists that the Proposed Pipeline will not only make it easier to perform maintenance/upgrades on aging assets, it will also benefit customers by avoiding the “lengthy outages” attendant to such work.³² Yet, when Duke repaired and replaced segments of Line A (located in the Central Corridor) in 2013, Duke admitted that it did so without causing any interruption in service to customers.³³ Likewise, when Duke performed replacement work on Line EE (also in the Central Corridor) in late 2018, Duke admitted that its work had no impact whatsoever on customers.³⁴ Even more broadly, when asked to identify a *single* instance where customers in the Central Corridor experienced lengthy outages due to Duke’s repair or

²⁹ Duke Ex. 7, pp. 13-14.

³⁰ In discovery, the City/County asked Duke to “produce any engineering studies concerning whether or how the construction of the Alternate or Preferred Routes may make it easier to undertake maintenance and replacement work on the existing pipelines in the central corridor area.” City/County Exhibit 15, CITY-POD-05-003 (“City/County Ex. 15”). Duke admitted that no such studies existed. *Id.*

³¹ See Tr. Vol. III at 648-649; City/County Exhibit 2, AV-INT-01-007 (“City/County Ex. 2”); City/County Exhibit 14, CITY-INT-01-036 (“City/County Ex. 14”); City/County Exhibit 39, STAFF-DR-14-001 (“City/County Ex. 39”).

³² Duke Ex. 7, p. 14.

³³ Tr. Vol. I at 27.

³⁴ Tr. Vol. I at 158.

replacement activities in the Central Corridor, Duke could not do so.³⁵ The simple fact is that Duke is more than capable of repairing and replacing its aging infrastructure, without forcing customers to endure lengthy outages, whether the Proposed Pipeline is approved or not.

3. *The propane air peaking plants do not need to be retired, but even if they do, the Proposed Pipeline is not a viable solution to address that need.*

The last objective of the Proposed Pipeline is to enable the retirement/decommissioning of the two propane air peaking plants and related storage caverns at the East Works (aka Eastern Avenue) facility in Cincinnati, Ohio and the Erlanger facility in Erlanger, Kentucky (collectively, the “Propane Facilities”). Although Duke concedes that the Propane Facilities are currently safe and reliable, Duke surmises that they are “likely to fail at an unpredictable and uncontrollable time.”³⁶ Therefore, Duke seeks to retire and replace the Propane Facilities, which Duke says provide critical supplemental supply and hydraulic pressure to the system, with the Proposed Pipeline.

The evidence adduced at the hearing shows that the Propane Facilities not only do *not* need to be retired, but also that Duke intends to continue using the Propane Facilities even after the Proposed Pipeline is constructed. As an initial matter, Duke never undertook any study or analysis to evaluate the longevity of either Propane Facility if the Proposed Pipeline is not constructed,³⁷ nor has Duke prepared any study or plan for retiring the Propane Facilities.³⁸ Even more revealing, Duke admitted that it intends to continue using the Propane Facilities even

³⁵ Tr. Vol. I at 32, 158.

³⁶ Duke Exhibit 8, Direct Testimony of Adam Long (“Duke Ex. 8”), p. 14.

³⁷ Tr. Vol. I at 152.

³⁸ Tr. Vol. I at 151-152. In fact, as explained later, Duke has never examined or analyzed the estimated cost of retiring/decommissioning the Propane Facilities, nor would Duke elucidate whether it intends to seek cost recovery from customers for decommissioning the Propane Facilities. Tr. Vol. I at 151.

after the Proposed Pipeline is constructed, belying Duke's bald assertion that the Propane Facilities are "likely to fail at an unpredictable and uncontrollable time" and must be immediately retired.³⁹ In fact, Mr. Adam Long, the Duke witness sponsoring testimony on the issue, candidly revealed that retiring the Propane Facilities is *not* an urgent concern given that Duke continually monitors the facilities to keep them safe and reliable.⁴⁰

Furthermore, Duke lacks any actual evidence justifying the retirement of assets that even Duke concedes have served customers well over the years and continue to provide safe and reliable service.⁴¹ Indeed, Duke is unaware of any specific safety concerns, defects, or inoperable conditions associated with the Propane Facilities, and Duke is unaware of any state inspection (or any other inspection) the Propane Facilities did not pass.⁴² While Mr. Long testified that the propane storage caverns have reached the end of their useful lives,⁴³ he lacks experience and personal knowledge to support this point: he has almost no experience operating propane air peaking facilities, is not trained or educated in geology or subterranean structures, and his opinion is based on what he was told by an unidentified "third-party."⁴⁴

Mr. Long justifies the need to retire the Propane Facilities, at least in part, on two prior incidents at the Propane Facilities where there was a temporary leak in a pipe connected to the storage caverns.⁴⁵ Importantly, however, a consulting firm retained by Duke to evaluate the integrity of the storage caverns at the Propane Facilities concluded, among other things, that 1)

³⁹ City/County Exhibit 41, STAFF-DR-18-002 ("City/County Ex. 41").

⁴⁰ Tr. Vol. I at 226-227.

⁴¹ Tr. Vol. I at 156-157.

⁴² Tr. Vol. I at 171-172, 204.

⁴³ Duke Ex. 8, p. 13.

⁴⁴ Tr. Vol. I at 146, 177-178.

⁴⁵ Tr. Vol. I at 198-204.

none of the cavern shafts were leaking; 2) the limestone in the storage caverns showed no pressure loss and was suitable for use in propane storage service; and 3) the leaks in the pipes were contained and successfully remediated.⁴⁶ In other words, not only does Duke lack evidentiary support for its claim that the caverns are “likely to fail at an unpredictable and uncontrollable time,” but, as is common in this case, Duke’s own consultant provides a contrary view.

The historical performance of the Propane Facilities further buttresses that conclusion. Duke cannot identify a *single* instance where the Propane Facilities: 1) failed to provide needed supply or pressure to the system; 2) failed to operate during a peak day; 3) caused firm customer curtailments or interruptions; or 4) resulted in widespread outages to customers.⁴⁷ And to top it all off, Mr. Long acknowledged that retiring the Propane Facilities and constructing the Proposed Pipeline will have *no impact* on the safety of Duke’s system.⁴⁸ Yet, despite all of this, Duke maintains that the Proposed Pipeline is necessary to facilitate the retirement of an extremely valuable asset that even Duke concedes has consistently provided (and continues to provide) safe and reliable service to customers.

In sum, Duke has not shown that the Proposed Pipeline is needed to decommission the Propane Facilities.

⁴⁶ City/County Exhibit 13c, CITY-POD-02-003 Supplemental and Highly Confidential (“City/County Ex. 13c”).

⁴⁷ Tr. Vol. I at 154-156; City/County Exhibit 22, NOPE-INT-01-014 (“City/County Ex. 22”); City/County Exhibit 37, NOPE-RFA-01-008 (“NOPE Ex. 37”); City/County Exhibit 17, NOPE-INT-01-006 (“City/County Ex. 37”).

⁴⁸ Tr. Vol. I at 157.

C. Duke Failed to Seriously Consider More Viable, Less Disruptive Routing Options for the Proposed Pipeline.

In selecting the Preferred and Alternate Routes for the Proposed Pipeline, Duke failed to consider more viable, less disruptive, safer routing possibilities. Indeed, the evidence reveals that Duke decided many years ago, long before conducting the route selection study (“RSS”), that the Proposed Pipeline would be routed through the dense, congested Central Corridor region. Adam Long testified that Duke’s system planners determined in 2014 that constructing a new pipeline through the Central Corridor would address the need to retire the propane air peaking plants.⁴⁹ Similarly, Gary Hebbeler explained that when Duke constructed the C314 pipeline (i.e., the predecessor to the Proposed Pipeline) in the early 2000s, Duke knew at that time it would eventually construct additional system enhancements in the Central Corridor.⁵⁰ Thus, the location/placement of the Proposed Pipeline was a predetermined outcome for Duke, a *fait accompli*.

This fact is further corroborated by the testimony of Dr. James Nicholas, the consultant retained by Duke to help conduct the RSS. Dr. Nicholas testified that Duke not only delineated the study area in the RSS, it also dictated where the route had to specifically start and end.⁵¹ As a result, Duke never seriously explored potential routes outside the Central Corridor. For example, Duke disregarded the western route options proposed by Lummus, which would have enabled the retirement of the Propane Facilities *and* substantially reduced reliance on Foster

⁴⁹ Tr. Vol. I at 149

⁵⁰ Tr. Vol. I at 18-19.

⁵¹ Tr. Vol. II at 251, 277; Duke Exhibit 9, Direct Testimony of James Nicholas (“Duke Ex. 9”), pp. 2, 14. For instance, Mr. Nicholas confirmed that he never considered any route that did not start at the WW Feed Station. Tr. Vol. II at 277.

Station.⁵² Even Dr. Nicholas confessed that Duke never considered expanding the study area to the west as proposed by Lummus.⁵³ And neither did Staff because Duke incorrectly advised Staff that “the western options did not allow for retirement of the propane-air peaking plants or improve reliability in the central core area.”⁵⁴ In fact, Lummus specifically observed that *all* routes proposed in its report, including the western routes, enabled the retirement of the Propane Facilities.⁵⁵

Although Duke eventually expanded the study area to the east (but never to the west), Duke (via James Nicholas) dismissed the eastern routes because they would require the construction of “at least one additional high-pressure lateral” across the Central Corridor, negating any advantage from a siting perspective.⁵⁶ But when questioned about the underlying basis for this assertion, Dr. Nicholas admitted he lacked any personal knowledge of it and that this contention was based solely on what Duke told him to be true.⁵⁷ In so doing, Duke effectively insulated this dubious contention from cross-examination; as such, the Board should discount it. Nevertheless, Dr. Nicholas did confirm that an eastern route would impact less residential areas.⁵⁸ And Lummus concluded that, in sharp contrast to the Preferred Route and

⁵² See NOPE Ex. 19, Ex. JMG-7, pp. 64-68.

⁵³ Tr. Vol. II at 253, 286.

⁵⁴ Staff Ex. 1, p. 28.

⁵⁵ NOPE Ex. 19, Ex. JMG-7, p. 61 (“Each scenario assumes a system peak sendout of 42,462 Mcfh, available Foster pressure of 400 psig, and no contribution from the propane air plants.”).

⁵⁶ Duke Ex. 9, p. 13.

⁵⁷ Tr. Vol. II at 272.

⁵⁸ Tr. Vol. II at 276.

Alternate Route, an eastern route would completely eliminate the excessive reliance on Foster Station.⁵⁹

The record also demonstrates that the RSS was heavily influenced and controlled by Duke, not CH2M or Dr. Nicholas. For example, Duke established the subjective criteria by which the RSS would ultimately be conducted, interpreted, and evaluated.⁶⁰ Rather than objectively evaluating the routes proposed (and even recommended) by Lummus, Duke predetermined the outcome of the RSS by manipulating the subjective siting criteria.⁶¹ As a result, the Board should deny the Amended Application, and encourage Duke to seriously consider and evaluate *all* possible routes, including the eastern/western options outside the Central Corridor proposed by its own consultant, that would have much less impact on residences and businesses in Hamilton County while achieving Duke's stated objectives.

D. The True Cost of the Proposed Pipeline Will Far Exceed Duke's Current Estimates.

Although Duke estimates that the Preferred Route will cost \$128.2 million with the Alternate Route costing \$111.7 million, the true cost of the Proposed Pipeline is much higher.⁶² As an initial matter, those estimated costs do not include allowance for funds used during construction or overhead, which Duke has estimated to be an additional \$50 million.⁶³ Moreover, Duke's estimates do not include the cost of decommissioning the Propane Facilities.⁶⁴

⁵⁹ NOPE Ex. 19, Ex. JMG-7, p. 69.

⁶⁰ Tr. Vol. II at 256-262, 269-270, 281-282, 300-301

⁶¹ *Id.*

⁶² *See* Duke Ex. 7, p. 31

⁶³ Tr. Vol. I at 52-54.

⁶⁴ Tr. Vol. I at 151.

Adding further expense, Duke admitted that by reducing the Proposed Pipeline from 30-inches to 20-inches, “additional upgrades and enhancements to the system” must be made, including funding future projects to definitively address the major reliability risk at Foster Station.⁶⁵ As Duke explained it, the Proposed Pipeline is merely phase 2 of a larger plan for the region.⁶⁶ Curiously, however, when asked to disclose phase 3 (or any subsequent phase(s)) of its larger plan), Duke could not provide any substantive details (e.g., estimated cost of these “additional upgrades and enhancements”, whether Board approval would be required, whether cost recovery from customers will be sought, whether Duke will publicly disclose the nature of these additional upgrades/enhancements, etc.).⁶⁷ As such, the Board, Staff, and ratepayers are left in the dark and can only speculate about the actual cost to address Duke’s system needs. What is certain, however, is that the Proposed Pipeline, once combined with future projects designed to address the Proposed Pipeline’s admitted shortcomings, will cost substantially more.

E. If the Board Approves the Proposed Pipeline (Which It Should Not), the Board Should Strengthen the Staff Conditions as Proposed by City/County Witness Howard Miller.

In the alternative, to the extent the Board approves either the Preferred or Alternate Route (which it should not), the Board should adopt the additional conditions proposed in Mr. Howard Miller’s direct testimony.⁶⁸ In particular, the Board should strengthen the Staff conditions to protect residents and municipalities by including clearer and stronger language to hold Duke accountable for more conservative safety and property owner-friendly construction, operations,

⁶⁵ Duke Ex. 7, p. 16.

⁶⁶ Tr. Vol. I at 17-18; Duke Ex. 7, pp. 16-17 (explaining that “Duke Energy Ohio is pursuing a more systematic approach over a longer period of time.”).

⁶⁷ Tr. Vol. I at 44-45, 168-169.

⁶⁸ See City/County Exhibit 43, Expert Testimony of Howard Miller (“City/County Ex. 43”).

and maintenance specifications (e.g., mandating Class 4 construction for the entirety of construction).⁶⁹ This is especially critical given Duke’s prior record of violating a similar Board-approved certificate during the construction of the C314 natural gas pipeline in 2003.⁷⁰ In that case, during a routine field inspection, Staff observed that Duke had improperly cleared trees (including some estimated to have been in place nearly 50 years) near and on the banks of Millers Creek, in a path approximately 40 feet wide, which Staff explained “was not permitted by the certificate”.⁷¹ Troublingly, even though Duke explicitly acknowledged the improper tree clearing as a violation of its certificate in a subsequent letter to Staff,⁷² Duke downplayed its non-compliance by insisting it was not a certificate violation, only a mere “error” on Duke’s part.⁷³ Duke’s quibbling over semantics and unfortunate refusal to acknowledge its prior mistakes underscores the critical importance of requiring clearer and stronger language holding Duke accountable for its actions.

The Board should also require Duke to provide impacted communities, upon request, its construction plans and drawings prior to the preconstruction conference.⁷⁴ Further, the Board should require Duke to submit a more deliberate plan of action 1) to decommission the Propane Facilities, and 2) to inspect, service, and replace Line A upgrades (all while including the

⁶⁹ City/County Ex. 43, pp. 4-5

⁷⁰ See, e.g., *C314 Case*, Case No. 01-520-GA-BTX, Investigation Report (July 31, 2003) (“Staff Investigation Report”) (administrative notice taken, Tr. Vol. III at 505); *C314 Case*, Case No. 01-520-GA-BTX, Duke Letter to Ohio Power Siting Board (Aug. 22, 2003) (“Duke Violation Letter”) (administrative notice taken, Tr. Vol. III at 505) (confirming that Duke violated its certificate conditions).

⁷¹ Staff Investigation Report.

⁷² See Duke Violation Letter.

⁷³ Tr. Vol. II at 347-350. Staff properly rejected the non-existent distinction between a mere “error” and certificate “violation.” Tr. Vol. III at 744-745.

⁷⁴ City/County Ex. 43, p. 5.

City/County in the planning and implementation).⁷⁵ Finally, the Board should direct Duke to confer and collaborate early and often with local governments as part of its planning process for the undefined, unidentified “additional upgrades and enhancements” referenced in Mr. Hebbeler’s testimony.⁷⁶

III. CONCLUSION

The City/County appreciate the importance of proactively addressing Duke’s natural gas system needs by supporting prudent investments in necessary capital improvement projects. Here, however, Duke has failed to meet its burden to demonstrate need for the Proposed Pipeline. Most importantly, unlike other potential pipeline routes, the Proposed Pipeline will not materially address the major reliability risk at Foster Station.⁷⁷ Nor is it needed to replace or repair aging infrastructure or to retire the Propane Facilities.

It is regrettable that Duke has insisted on moving forward with such an ill-conceived, deeply unpopular project, especially since it disregarded viable, compelling alternatives, including those proposed (and even recommended) by its own consultant. The Board should deny the Amended Application and encourage Duke to earnestly evaluate these alternatives so that its system needs are substantively and efficiently addressed in a cost-effective manner to the collective benefit of all interested stakeholders, including Duke.

⁷⁵ *Id.* at 5-6.

⁷⁶ *Id.* at 6; Duke Ex. 7, p. 16.

⁷⁷ Duke Ex. 3, p. 4-27.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing Initial Post-Hearing Brief of the City of Cincinnati and the Board of County Commissioners of Hamilton County was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 13th day of May, 2019. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

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One of the Attorneys for the City of
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