

**BEFORE
THE OHIO POWER SITING BOARD**

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

**POST-HEARING REPLY BRIEF SUBMITTED ON BEHALF OF THE CITY OF
BLUE ASH, OHIO AND COLUMBIA TOWNSHIP, OHIO**

I. INTRODUCTION

The Supreme Court of Ohio's mandate in this proceeding is resounding. Duke Energy, Ohio ("Duke") must provide the Ohio Power Siting Board ("Board" or "OPSB") and intervening parties with enough information to effectively evaluate the impact of the proposed facility. *In Re Middletown Coke Co.*, 127 Ohio St.3d 348, 2010-Ohio-5725, 939 N.E.2d 1210 (2010). On top of that, such information must be provided *before the pipeline is certificated* so the Board and intervening communities, like the City of Blue Ash, Ohio ("Blue Ash") and Columbia Township, can determine whether Duke satisfied the statutory requirements under R.C. 4906.10(A).

Justice Pfeifer appropriately stated this categorical mandate in a concurring opinion:

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).

The Board must also carefully scrutinize the evidence submitted at the adjudicatory hearing. After all, that is the only evidence tested by cross-examination. Otherwise, “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.

Justice Pfeiffer’s concerns are particularly apt here. Throughout this proceeding, Duke has provided either inaccurate and unreliable information, or no information at all, to the OPSB, Staff, the Intervenors, and the general public. Read together, the Post-Hearing Merit Briefs demonstrate that Duke has not met the requirements of R.C. 4906.10(A).

Further, Staff continues to rely on Duke’s outdated and inaccurate information, without considering the glaring contradictions presented at the adjudicatory hearing. Indeed, in its Initial Post-Hearing Brief, Staff cites very little from the adjudicatory hearing. Staff never mentions, much less addresses or analyzes, the significant contradictory admissions Duke made during such hearing, as outlined below and by the other Intervenors.

The Board cannot decide Duke’s Application for a Certificate of Environmental Compatibility and Public Need (“Application”) regarding the C314V Central Corridor Pipeline Extension Project (“proposed pipeline”) on inaccurate and indisputably wrong information. The stakes are too high. The real-world and life-threatening consequences caused by distribution pipeline incidents cannot be overlooked or disregarded.

The Intervenor's concerns are hardly "parochial," as Staff contends. The General Assembly, by statutory and administrative law, and the Supreme Court of Ohio, by case law, demand that the Intervenor's interests be meaningfully considered. In fact, the Board must consider such specific interests. Doing so is mandated under the promulgated public policy of the State of Ohio. Even more so here, where the Intervenor has adduced information establishing that Duke has not satisfied the statutory factors to obtain certification.

On that score, Duke acknowledges it bears the burden to satisfy the statutory requirements under R.C. 4906.10(A). (See Duke Merit Brief, at p. 4). Duke has not met this burden. Like the City of Monroe in *Middletown Coke*, Duke has not provided Blue Ash and Columbia Township with enough information allowing them to effectively evaluate the impact of the proposed pipeline. Without this crucial, statutorily-mandated information, the ultimate certificate determination under R.C. 4906.10(A) cannot be rendered - at least not in favor of Duke. Consequently, the Board should deny Duke's Application.¹

II. ARGUMENT

A. Duke Has Not Established that the Proposed Pipeline Satisfies the Requirements of R.C. 4906.10(A).

Duke has not presented enough evidence establishing the statutory mandates in R.C. 4906.10(A). In their Post-Hearing Briefs, Duke and Staff, at best, gloss over the requirements of R.C. 4906.10(A)(6). Notably, even Duke acknowledges that public safety

¹ Blue Ash and Columbia Township hereby incorporate by reference, as if fully restated herein, the arguments contained in the Reply Briefs filed on behalf of the City of Cincinnati, the Board of County Commissioners of Hamilton County, and the Neighbors Opposed to Pipeline Extension, LLC ("NOPE").

is a factor the Board should consider. (Duke Merit Brief, at p. 21). The proposed pipeline does not serve the public interest, convenience, and necessity.

For starters, on major details regarding the proposed pipeline, Duke has provided inconsistent and erroneous information. (*See, e.g.*, Tr. Volume I, at pp. 97-102, 105-108; Blue Ash and Columbia Township Exhibit 1, at pp. 6, 10). On other aspects, Duke contends that Intervenors must “wait and see” until the proposed pipeline is approved. This haphazard approach squelches any meaningful participation in the review process, either by Intervenors or the general public.

The below chart contains a number of examples of the inaccurate information presented by Duke and accepted as true by Staff. Contrasted with the evidence actually presented at the adjudicatory hearing, Duke did not present enough information satisfying R.C. 4906.10(A).

Inaccurate Information Presented by Duke and Accepted by Staff	Evidence Presented at the Adjudicatory Hearing
Safety is Duke’s top priority. (Duke Merit Brief, at p. 21).	Duke does not believe it is necessary to consider or calculate the potential impact radius for the proposed pipeline, nor to identify high-consequence areas located near the proposed pipeline. (Tr. Volume I, at pp. 97, 107-108).
Duke testified, on multiple occasions, that it is virtually impossible for a distribution pipeline, such as the proposed pipeline, to rupture. (Tr. Volume I, at p. 114; Tr. Volume II, at p. 388-391; Duke Energy Ohio Exhibit 15, at p. 9).	Mr. Paskett and Mr. Hebbeler conceded Duke cannot guarantee there won’t be a rupture of the proposed pipeline. (Tr. Volume I, at pp. 102-103; Tr. Volume II, at p. 423). Likewise, Staff’s pipeline safety expert, Mr. Chace, opined it is possible the proposed pipeline could rupture. (Tr. Volume III, at p. 727, 737).
Staff stated: “Duke is required to have an emergency response plan, which is reviewed by Staff, to minimize the hazard resulting from a pipeline emergency, and to inform the appropriate fire, police, and	Duke has not provided any information regarding a potential emergency response plan or any information allowing the Intervenors to prepare such a plan. (Blue Ash Exhibit 6, at pp. 23, 31-32).

other public officials of relevant details about the plan.” (Staff Post-Hearing Brief, at p. 39).	Similarly, Duke has not presented any safety plans or evacuation zones in the event of a rupture or gas leak involving the proposed pipeline. (Tr. Volume I, at p. 114).
Staff applauds Duke for maintaining a project website so members of the public can contact Duke regarding the proposed pipeline. (Staff Post-Hearing Brief, at p. 41). Staff further claims Duke is committed to continue to communicate project updates with the public and to respond to questions and concerns. (<i>Id.</i> at p. 42).	Duke provided admittedly inaccurate information to the public on the “Frequently Asked Questions” section of Duke’s website. (Tr. Volume I, at pp. 100-101, 107-108, 122). Mr. Hebbeler conceded the information on Duke’s website regarding Duke’s calculation of the potential impact radius was wrong and needed to be changed. (<i>Id.</i> at pp. 100-101).
Duke testified that the rate of serious incidents involving distribution pipelines has decreased by 34% from 2005-2017. (Tr. Volume II, at pp. 396,398; Duke Energy Ohio Exhibit 15, at p. 26). Likewise, Staff states that the risks associated with natural gas pipelines have been minimized through regulation and technology. (Staff Post-Hearing Brief, at p. 39).	Based upon information published by PHMSA, the number of fatalities and injuries resulting from distribution pipeline serious incidents <i>has actually increased over the past ten years</i> . (NOPE Exhibit 15; Duke Energy Ohio Exhibit 15, at p. 26). Mr. Chace agreed the number of serious incidents has not substantially decreased over the past twenty years. (Tr. Volume III, at pp. 738-739).
Staff states that Duke held stakeholder meetings and performed additional investigations that led Duke to modify the Alternate Route at locations where there was potential to reduce impacts to municipalities, businesses, and residents. (Staff Post-Hearing Brief, at p. 29).	Yet, the undisputed evidence demonstrates neither Blue Ash nor Columbia Township has been consulted regarding the pipeline routing or the ways to reduce the impacts to municipalities, business, and residents. (Blue Ash Exhibit 6, at pp. 10-12, 28-29, 32-33).
According to Staff, it is very important that Duke cooperate with local governments regarding construction scheduling. (Staff Post-Hearing Brief, at p. 22).	To date, Duke has not provided Blue Ash with any specific construction information or any construction schedule for the proposed pipeline. (Blue Ash Exhibit 6, at pp. 15, 23-24). Moreover, Duke does not intend to provide any such information until after the proposed pipeline is approved. (Tr. Volume I, at p. 93).

Staff asserts Duke did not identify any potential land-use conflicts along the Alternate Route. (Staff Post-Hearing Brief, at p. 19).	Duke did not request, much less, consider Blue Ash's most-recent Comprehensive Development Plan. The Plan was last revised in early 2016, prior to Duke submitting its revised Application in March of 2017. (Blue Ash Exhibit 6, at pp. 9-10). Likewise, Dr. Nicholas did not have any communications regarding Blue Ash's Comprehensive Development Plan, nor was he even aware Blue Ash updated the Comprehensive Development Plan in early 2016. (Tr. Volume II, at pp. 305-306). Thus, Staff relied on outdated and inaccurate information presented by Duke.
"Staff reviewed the Applicant's route selection study and concluded that the Applicant investigated all practicable routes, and used a reasonable process for selecting the Preferred and Alternate Routes." (Staff Post-Hearing Brief, at p. 29).	Dr. James Nicholas, Duke's route-selection supervisor, conceded that Duke not only delineated the study area in the route selection study, it also dictated where the route had to specifically start and end. (Tr. Volume II, at pp. 251, 277; Duke Exhibit 9, at pp. 2, 14). Even Dr. Nicholas confessed Duke never considered expanding the study area to the west, as proposed by Lummus Consultants. (Tr. Volume II, at pp. 253, 286). Consequently, Duke never seriously explored potential routes outside the highly-congested Central Corridor.
In December 2018, Duke published information on its website assuring local residents that "there are no residential properties crossed along the Alternate Route." (Tr. Volume I. at pp. 56-57; City/County Exhibit 1).	Staff witness, Mr. Burgener, testified that both the Preferred Route and the Alternate Route cross "some number of residential properties." (Tr. Volume III, at p. 706-707). Mr. Burgener specifically disagreed with the wrong information published on Duke's website. (<i>Id.</i> at p. 706; City/County Exhibit 1).
Staff accepted Duke's estimates for the annual property tax revenues to be generated as a result of the proposed pipeline, which allegedly total \$3.3 million for the Preferred Route and \$2.9 million for the Alternate Route. (Staff	Mr. Hebbeler acknowledged he does not even know the person who actually performed those calculations. Nor did he personally verify the estimated tax revenues. (Tr. Volume I, at pp. 118-119). Likewise, he does not know the amount

Post-Hearing Brief, at p. 23; Tr. Volume I, at pp. 116, 119; Duke Energy Exhibit 7, at pp. 31-32). Staff further states that each jurisdiction along the pipeline would benefit by receiving a portion of this tax revenue. (<i>Id.</i>).	Blue Ash actually receives, so the tax revenues specified in his direct testimony are admittedly wrong. (<i>Id.</i>).
Staff stated that the predominant impact to parks and recreation areas would be during construction and would be temporary in nature. (Staff Post-Hearing Brief, at p. 21; Amended Staff Report of Investigation, p. 34). Staff stated that since the proposed pipeline would be located underground, recreational use and parking may remain as it was prior to construction. (<i>Id.</i>).	The impact on parks and recreation areas is incomplete. That the pipeline is located underground does not eliminate the potential risks associated with a high-pressure pipeline in close proximity to highly-congested parks and recreation areas. Duke was unaware and did not consider the fact that more than 850,000 people visit Summit Park each year. (Tr. Volume II, at pp. 299-300). Clearly, Staff did not evaluate nor consider that input.
Duke intends to install a valve station near the entrance to the Park. (Staff Exhibit 1, at p. 8). Staff states that Conditions 15, 16, and 17 would mitigate the visual impact of the above-ground facilities by requiring green screening and vegetation around regulator and valve stations. (Staff Post-Hearing Brief, at p. 22). One of Staff's conditions requires Duke to "coordinate with local zoning officials to develop a screening plan" for such valve stations. (Staff Exhibit 1, at p. 67).	Duke has not provided any information regarding the procedures it will take to minimize any aesthetic impacts to Blue Ash or Columbia Township. (Tr. Volume I, at pp. 94-95; Blue Ash Exhibit 6, at p. 29). The aesthetic impact of the valve station to be located in Summit Park, something even Staff believed warranted a condition, is still not known because Duke has not disclosed that information to Blue Ash. (Blue Ash Exhibit 6, at p. 19).

These numerous samples have prevented the Intervenor, like Blue Ash and Columbia Township, as well as the public at large, from being able to effectively evaluate the impact and risks associated with the proposed pipeline.

Staff opines that all interested parties received "a full and fair opportunity" to express their views and to have their concerns heard. (Staff Post-Hearing Brief, at p. 4).

But the purpose of this proceeding is not so Blue Ash and Columbia Township can air their “parochial” grievances, so that box can be checked before the pipeline is certificated.

Rather, this process, particularly the adjudicatory hearing, generates information, tested by cross-examination, allowing the OPSB, Staff, the Intervenors, and the general public to further evaluate the impact of the proposed pipeline and the required statutory factors. The inconsistent and admittedly wrong information, which Staff has relied upon, does not nearly suffice.

Staff further claims that “the safety of the C314V Central Corridor Pipeline cannot be reasonably challenged – and, it was not challenged with opposing expert testimony at hearing.” (Staff Post-Hearing Brief, at p. 40). Not so.

At the adjudicatory hearing, NOPE expert, Dr. Guldmann, testified to the safety implications of avoiding densely populated areas, 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). Likewise, Staff’s own pipeline safety expert, Mr. Chace, agreed it is possible for third-party damage to rupture the proposed pipeline. (Tr. Volume III, at p. 727, 737).

Strikingly, there is no consideration given to, nor evaluation of, third-party damage risks to the proposed pipeline in Duke’s Application or in the Amended Staff Report of Investigation. This is true despite testimony from Duke that third-party damage is the leading cause of damage and risk to Duke’s distribution pipelines. (Tr. Volume I, at pp. 76,103). The consequences of a pipeline failure could be catastrophic and life-threatening, particularly for a high-pressure natural gas pipeline running through numerous densely-populated, “highly congested” communities, including a park that has more than 850,000 visitors each year. These grave concerns cannot be ignored.

Yet, when serious concerns about the proposed pipeline are raised by the Intervenor, many of which relate to potentially life-threatening issues that Duke has not addressed, these concerns are either ignored, belittled, or labeled “parochial.” Regrettably, Duke has largely dismissed local residents’ legitimate concerns regarding the siting of the proposed pipeline, as noted above.

The evidence presented at the adjudicatory hearing demonstrates serious safety risks associated with high-pressure natural gas distribution pipelines, like this one. This includes threats associated with ruptures and gas leaks. Indeed, Staff’s pipeline safety expert, Mr. Chace, agreed the proposed pipeline operates at an unusually high pressure for gas distribution pipelines, just 1% short of the definitional threshold for transmission pipelines. (Tr. Volume III, at pp. 727, 729-731). These legitimate concerns for the health and safety of Ohio citizens should not be overlooked nor demeaned.

In sum, Duke provided virtually no information to Blue Ash or Columbia Township regarding the potential impact of the proposed pipeline. And the information Duke has provided is contradictory and misleading. Staff relied on such information, without independent verification, which has proven wrong in many respects.

Given the limited and inaccurate information Duke provided, Blue Ash and Columbia Township have been unable to evaluate the risks associated with the proposed pipeline or to develop any sort of safety plan in the event of a pipeline failure. In this instance, the Ohio Supreme Court instructs that Duke has not satisfied the statutory requirements under R.C. § 4906.10(A). Duke’s Application for a Certificate should be denied.

III. CONCLUSION

For all of the foregoing reasons, Blue Ash, Ohio and Columbia Township, Ohio request that the Ohio Power Siting Board deny Duke Energy Ohio's Application for a Certificate of Environmental Compatibility and Public Need regarding the proposed Central Corridor Pipeline Project.

Respectfully submitted,

s/ Bryan E. Pacheco

Bryan E. Pacheco (0068189)

Mark G. Arnzen, Jr. (0081394)

DINSMORE & SHOHL LLP

255 East Fifth Street, Suite 1900

Cincinnati, Ohio 45202

Telephone: (513) 977-8200

Facsimile: (513) 977-8141

E-mail: bryan.pacheco@dinsmore.com

E-mail: mark.arnzen@dinsmore.com

**Attorneys for City Manager David Waltz,
the City of Blue Ash, Ohio, David
Kubicki, President of the Board of
Trustees of Columbia Township, Ohio
and Columbia Township, Ohio**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all parties who have electronically subscribed to this case through the Docketing Information System of the Public Utilities Commission of Ohio and the OPSB on this 10th day of June, 2019. The docketing division's e-filing system will electronically serve notice of the filing of this document on the following parties:

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

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

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

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

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

Carys Cochern
Duke Energy
155 East Broad Street, 20th Floor
Columbus, Ohio 43215

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

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

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

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

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

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

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

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

And

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

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

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

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

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

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

s/ Bryan E. Pacheco

15050549v1

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/10/2019 12:51:47 PM

in

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

Summary: Response Post-Hearing Reply Brief Submitted on Behalf of The City of Blue Ash, Ohio and Columbia Township, Ohio electronically filed by Mr. Bryan E. Pacheco on behalf of City of Blue Ash, Ohio and Columbia Township