

**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.	)	
	)	

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

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## I. INTRODUCTION

In its hurry to move forward with some version of the Central Corridor natural gas pipeline project (the “Proposed Pipeline”), Duke Energy Ohio, Inc. (“Duke”) has looked past the earnest, well-documented concerns raised by the public and local jurisdictions about the costs and benefits associated with the project. Many of these concerns arise from Duke’s insistence in adhering to a plan to route 13-14 miles of high-pressure natural gas pipeline through one of the most populated, congested, and commercially active regions in Ohio, notwithstanding the availability of alternative routes that better accomplish Duke’s stated need. While 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 distribution, the City/County must join the near unanimous public opposition to a project that in its current form is ill-conceived, needlessly disruptive, and amounts to an inefficient use of ratepayer funds.

Although Staff’s Initial Post-Hearing Brief (“Staff Brief”) acknowledges the vociferous and widespread public opposition to the Proposed Pipeline<sup>1</sup> (e.g., observing that “[l]iterally thousands of pages of public letters and inquiry were submitted to the Board almost all protesting the proposed project”<sup>2</sup>), Duke’s Initial Post-Hearing Brief (“Duke Brief”) completely ignores this unfortunate reality. Making matters worse, Duke’s Brief is replete with conclusory statements that are unproven, unsupported, or refuted by the evidence adduced in this proceeding.

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<sup>1</sup> While Staff has accurately documented the public opposition to the project, Staff dismissively characterizes this opposition as merely reflecting a “parochial viewpoint.” Staff Initial Post-Hearing Brief (“Staff Brief”), p. 1. Instead of actually addressing the substantive concerns of the public and the obvious shortcomings of the Proposed Pipeline, Staff’s Initial Brief largely regurgitates inaccurate or incomplete information provided by Duke (e.g., the western route options did not permit the retirement of the propane air peaking plants). *See infra* Section II(B).

<sup>2</sup> Staff Brief, p. 4.

Duke has identified three goals it seeks to achieve by constructing the Proposed Pipeline: (1) address the north/south supply imbalance and excessive reliance on Foster Station; (2) upgrade and replace aging infrastructure; and (3) retire the propane air peaking plants. Unfortunately, a careful and impartial review of the evidence indicates that the construction of the Proposed Pipeline will not achieve the first objective and is not needed to achieve the other two objectives. With the Proposed Pipeline estimated to cost customers at least \$160 million (likely much more), the Board must reject such a costly project with so little benefit. Instead, the Board should encourage Duke to return to the drawing board and collaborate in good-faith with local communities like the City/County who genuinely seek to improve Duke's system vulnerabilities with cost-effective, prudent solutions.

In sum, Duke has failed to demonstrate need for the Proposed Pipeline as required by R.C. 4906.06 and 4906.10. Therefore, as a matter of law, the Board must deny Duke's application for a certificate to construct the Proposed Pipeline.

## **II. ARGUMENT**

### **A. Duke Has Failed to Demonstrate Need for the Proposed Pipeline.**

Despite having over three years to develop a comprehensive evidentiary record, Duke has failed to provide any compelling evidence demonstrating "need" for the Proposed Pipeline as required by R.C. 4906.06 and 4909.10. Indeed, look no further than Duke's Brief for confirmation of this unfortunate fact. Duke devoted only six pages (out of twenty-four) toward explaining the need for the Proposed Pipeline. And to make matters worse, those six pages are riddled with conclusory statements that are unproven, unsupported, or refuted by the record evidence. As such, the Board should find that Duke has failed to demonstrate need for the Proposed Pipeline.

*1. The parties agree that the Proposed Pipeline will not resolve the north/south supply imbalance and excessive reliance on Foster Station.*

Both Duke and Staff concede, as they must, that the Proposed Pipeline will not resolve the “major reliability risk” identified by Duke’s own consultant, Lummus Consultants, Inc. (“Lummus”).<sup>3</sup> With 55% of the total natural gas supply passing through one southern gate station (i.e., Foster Station), Lummus warned that “[t]he alleviation of this vulnerability is seen as a key impetus in implementing prudent system enhancements . . .”<sup>4</sup> To meaningfully address (and even eliminate) this critical system vulnerability, Lummus proposed numerous capital expansion projects.<sup>5</sup> Regrettably, Duke ignored those proposals, as well as the legitimate concerns of the local communities impacted by the Proposed Pipeline.

After spending at least \$160 million (which is by far the most conservative estimate<sup>6</sup>), the Proposed Pipeline will reduce reliance on Foster Station by only 10% if the Preferred Route is chosen and only 5% if the Alternate Route (recommended by Staff) is selected.<sup>7</sup> Despite its paltry impact, Staff lauds the Alternate Route for providing a “noticeable reduction” (i.e., 5%) to the overreliance on Foster Station.<sup>8</sup> Duke goes even further, celebrating the Proposed Pipeline for “greatly reduc[ing]”<sup>9</sup> the dependency on Foster Station and “greatly improv[ing] the balance of

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<sup>3</sup> Duke Initial Post-Hearing Brief (“Duke Brief”), p. 14; Staff Brief, p. 9; NOPE Ex. 19, Ex. JMG-7, pp. 1, 10.

<sup>4</sup> NOPE Ex. 19, Ex. JMG-7, p. 4.

<sup>5</sup> NOPE Ex. 19, Ex. JMG-7, p. 5.

<sup>6</sup> 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.

<sup>7</sup> *See* City/County Ex. 18.

<sup>8</sup> Staff Brief, p. 9.

<sup>9</sup> Tr. Vol. I at 36.

supply from north to south.”<sup>10</sup> Incredibly, Duke and Staff ignore that Duke’s own gas system master plan outlined pipeline routes that actually would *eliminate* or *greatly reduce* the dependency on Foster Station.<sup>11</sup> There could be a situation when spending \$160+ million for a 5% improvement in reliability is justified because there are no better options, but this is not that situation. For \$160+ million dollars, customers deserve much more bang for their buck.

Further adding to the hyperbole, Duke claims that constructing the Proposed Pipeline “could mean the difference between a widespread outage in the winter-heating months or no outage at all.”<sup>12</sup> Duke is mistaken. At the hearing, both Duke and Staff acknowledged that even after the Proposed Pipeline is constructed, there would still be widespread outages to Duke customers if Foster Station became non-operational.<sup>13</sup> With Duke still perilously relying on a single gate station to supply half of its total load in Ohio, construction of the Proposed Pipeline will do *nothing* to prevent widespread outages to customers should Foster Station go down. So even after spending at least \$160 million, Duke’s system will remain dangerously exposed to the same major reliability risk. The Board must refuse to sanction such a wasteful and ineffective investment that does nothing to meaningfully address or resolve Duke’s most pressing system vulnerability.

2. *The parties agree that the Proposed Pipeline is not needed to replace, repair, or upgrade aging infrastructure.*

The parties also agree that Duke does not need the Proposed Pipeline to continue replacing, repairing, and upgrading its aging infrastructure.<sup>14</sup> In fact, Duke expressly admits in its Initial

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<sup>10</sup> Tr. Vol. I at 69.

<sup>11</sup> See NOPE Ex. 19, Ex. JMG-7, pp. 61-73.

<sup>12</sup> Duke Brief, p. 15.

<sup>13</sup> Tr. Vol. I at 68-69; Tr. Vol. III at 614.

<sup>14</sup> Duke Brief, pp. 12-13; City/County Ex. 2; City/County Ex. 14; Tr. Vol. III at 648-649.

Brief that it will continue to replace, repair, and upgrade its aging infrastructure whether the Proposed Pipeline is approved or not.<sup>15</sup> Duke even concedes that its repair and replacement work “can be made without causing heating-season outages to customers.”<sup>16</sup> Although Duke explicitly recognizes that the Proposed Pipeline is not necessary, Duke nevertheless justifies the Proposed Pipeline on the basis that it will “help facilitate repairs and replacements” in the future.<sup>17</sup>

As an initial matter, there is no evidence that the Proposed Pipeline would actually make Duke's repair/replacement activities more convenient in the future.<sup>18</sup> But even if Duke had provided such evidence (which it did not), Duke must show *need* for the Proposed Pipeline, not mere *convenience*.<sup>19</sup> Accordingly, Duke's justification is insufficient as a matter of law. Duke has failed to meet its burden of proof demonstrating need for the Proposed Pipeline.

3. *There is no need to retire the Propane Facilities as the record evidence reveals they remain safe and reliable.*

The third and final justification for constructing the Proposed Pipeline is that it will enable the retirement of two propane air peaking plans and related storage caverns in Cincinnati, Ohio and Erlanger, Kentucky (hereinafter, the “Propane Facilities”). But Duke lacks any credible reason for retiring the Propane Facilities, which continue to serve as valuable utility assets with an

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<sup>15</sup> Duke Brief, pp. 12-13.

<sup>16</sup> *Id.* at 13.

<sup>17</sup> *Id.*

<sup>18</sup> 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.” *See* City/County Ex. 15. Duke admitted that no such studies existed. *Id.*

<sup>19</sup> Before granting a certificate for the construction, operation, and maintenance of a major utility facility like the Proposed Pipeline, Ohio law requires that the Board must determine there is “*need* for the facility.” R.C. 4906.10(A)(1) (emphasis added).

unblemished record of providing safe and reliable service to customers for decades.<sup>20</sup> To justify retiring the Propane Facilities, Duke complains about the “difficulties inherent” in finding custom-made repair parts for the equipment at the Propane Facilities.<sup>21</sup> Further, Duke describes the inconvenience of having to conduct annual tests to ensure the Propane Facilities are operational before they are actually needed.<sup>22</sup>

But once again, Duke conflates *need* with *convenience*. While operating the Propane Facilities may be slightly more inconvenient for Duke insofar as they allegedly require more attention than other utility assets, inconvenience alone cannot justify the premature retirement of an extremely valuable utility asset. Even more telling, Duke does not contend that these inconveniences have diminished or compromised the safety and reliability of the Propane Facilities.<sup>23</sup> On the contrary, Duke admits that the Propane Facilities have always provided safe and reliable service to its customers notwithstanding the purported “difficulties inherent” in operating them.<sup>24</sup> More revealingly, Duke even confessed that constructing the Proposed Pipeline and retiring the Propane Facilities will have *no impact* on the safety of Duke’s system.<sup>25</sup> Thus, even if there were questions about the safety of the Propane Facilities (which there are not), construction of the Proposed Pipeline would do *nothing* to address that problem. In essence, the Proposed Pipeline is Duke’s solution to a non-existent problem, and even if the problem actually existed, the Proposed Pipeline would do nothing to resolve it.

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<sup>20</sup> Tr. Vol. I at 156-157, 171-172, 204.

<sup>21</sup> Duke Brief, p. 10.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Tr. Vol. I at 154-156; City/County Ex. 22; City/County Ex. 37.

<sup>25</sup> Tr. Vol. I at 157.



Duke also insists (without any citation or support) that although the Propane Facilities have successfully operated for decades, continued reliance on the propane storage caverns presents an “enormous” risk to the system.<sup>26</sup> Duke warns that a leaking propane storage cavern would lead to a permanent shut-down of the Propane Facilities, potentially leaving tens of thousands of customers without access to safe and reliable service “for an infinite period into the future.”<sup>27</sup> But Duke has *no evidence* that any of the storage caverns associated with the Propane Facilities are, in fact, leaking, are prone to leaks, or have any defects or inoperable conditions, nor is Duke aware of any regulatory, state, or third-party inspection the Propane Facilities did not pass.<sup>28</sup> Instead, evidence adduced in this case convincingly illustrates that the Propane Facilities (including the propane storage caverns) have been and continue to be safe and reliable. For instance, a third-party consultant *retained by Duke* recently found that 1) none of the storage caverns were leaking; and 2) the limestone in the caverns showed no pressure loss and was suitable for continued use in propane storage service.<sup>29</sup>

Lacking evidentiary support, Duke’s argument for retiring the Propane Facilities is based on speculation. Specifically, Duke claims – without a single citation to the record – that it “is aware of similar, third-party owned and operated underground propane storage caverns . . . that have been forced into retirement due to geological failure resulting in unrepairable leaks.”<sup>30</sup> Duke’s reference to this unidentified “third-party owned and operated underground propane storage cavern” should be disregarded by the Board. As an initial matter, it is wholly unsupported

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<sup>26</sup> Duke Brief, p. 10.

<sup>27</sup> *Id.* at 10-11.

<sup>28</sup> Tr. Vol. I at 171-172, 204.

<sup>29</sup> City/County Ex. 13c.

<sup>30</sup> Duke Brief, p. 11.

by any evidence or citation to the record; Duke never produced a single witness with personal knowledge of this “third-party owned and operated” storage cavern.<sup>31</sup> In fact, at hearing, when Duke witness Adam Long referenced the retirement of a different propane storage cavern in southwest Ohio known as Dick’s Creek,<sup>32</sup> Mr. Long confessed that 1) he lacked any personal knowledge of it, 2) he never actually visited or inspected the storage caverns, and 3) the actual cause of its alleged failure was unknown.<sup>33</sup> Therefore, to the extent Duke’s reference to a “third-party” underground storage cavern is the Dick’s Creek facility, Duke lacks basic knowledge about it, including, most importantly, the actual cause of its alleged failure.

Without any evidentiary support, Duke posits that the “Commission previously acknowledged impacts of geological failure of similar propane caverns and the related risk of geological failure at the East End propane facility as evidenced by a recent order.”<sup>34</sup> Duke is mistaken. The Commission never acknowledged as much. The Commission’s order merely summarized portions of a third-party auditor’s report, which recommended (among other things) an assessment of the potential for retiring the Propane Facilities, and it approved the terms of a multifaceted, global stipulation.<sup>35</sup> The Commission never explicitly took any position on the need to assess the potential impact of geological failure at the Propane Facilities as Duke represents.

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<sup>31</sup> In fact, throughout Duke’s entire discussion of the alleged “need” to retire the Propane Facilities, Duke fails to provide *any* record evidence in support its arguments. *See* Duke Brief, pp. 9-11.

<sup>32</sup> Given that Duke failed to cite to the record or provide any evidentiary support for its generic and conclusory statements about the “third-party owned and operated underground propane storage caverns”, it is not certain whether Duke is referencing the Dick’s Creek facility or some other propane storage facility.

<sup>33</sup> Tr. Vol. I at 227-228.

<sup>34</sup> Duke Brief, p. 11.

<sup>35</sup> *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained in the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 15-218-GA-GCR, et al., Opinion and Order (Sept. 7, 2016), ¶ 22.

What is more, the decision by an undisclosed “third-party” to retire its underground storage caverns has no bearing on whether the Propane Facilities should be retired. The “third-party” storage cavern referenced in Duke’s Brief is not at issue in this case. As such, it cannot justify the retirement of completely different facilities owned/operated by different companies located on different properties (one of which is located in a different state) with different subterranean structures.<sup>36</sup>

Finally, Duke describes the current operation of the Propane Facilities as “plac[ing] its delivery system at risk for an infinite period into the future” and admonishes customers to be “similarly unwilling to allow such a risk to persist.”<sup>37</sup> First, one is left to wonder when the operation of the Propane Facilities became so risky and system-threatening. After all, Duke has successfully operated the Propane Facilities for decades without any safety or reliability problems, including today. And without any indication or evidence that the Propane Facilities (including the storage caverns) are leaking, prone to leaks, or are otherwise defective, Duke’s urgent threat of imminent catastrophe appears overblown and hollow. Perhaps more revealingly, Duke witness Adam Long, who sponsored testimony on the Propane Facilities, confirmed that retiring the Propane Facilities is *not* an urgent concern for Duke:

Q. Is it fair to say Duke considers the retirement of these propane-air peaking plants as an urgent matter?

A. It’s one of the goals of the Central Corridor Project, and I would say that it is a very important goal of the project.

Q. Would you describe it as an urgent matter?

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<sup>36</sup> While Duke summarily claims that the “third-party” storage caverns are “of comparable age and formation” to those associated with the Propane Facilities, Duke fails to cite any evidentiary support for its dubious claim. As such, the Board should disregard it.

<sup>37</sup> Duke Brief, p. 11.

A. To me “urgent” gives an impending sense that something will go wrong, and Duke continually monitors these to keep them safe, ready to shut them down if there is an issue. So today I will probably hesitate to use the word “urgent”, but it is a very important goal of this project.

Q. So today you are not prepared to describe it as an urgent matter; is that fair to say?

A. Yes.<sup>38</sup>

In short, much like the other two goals of the project, there is no *need* to retire the Propane Facilities, as the evidence indisputably demonstrates they are safe and reliable.

**B. Duke Neglected to Evaluate More Compelling Alternatives that Would Actually Address Duke’s System Needs While Being Safer and Less Disruptive to the Public.**

Duke’s Brief misleadingly portrays the route selection process as objective, comprehensive, and inclusive of all relevant concerns. In reality, before Duke even commenced the route selection process, Duke had already decided that the Proposed Pipeline would be routed through the residential, commercial, and industrial heart of southwest Ohio, which Duke calls the Central Corridor. Duke determined as early as 2014 that the Proposed Pipeline would run through the Central Corridor.<sup>39</sup> Although Duke retained a third-party consultant, CH2M, to assist with the route selection study (“RSS”) for the project, Duke controlled and dictated the material aspects of the RSS. For example, Duke delineated the study area for the RSS,<sup>40</sup> dictated where the route would specifically start and end (i.e., within the Central Corridor), and refused to consider any

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<sup>38</sup> Tr. Vol. I at 226-227. Mr. Long’s testimony is further buttressed by Duke’s system planning once the Proposed Pipeline is constructed. In particular, Duke admitted that it intends to continue using the Propane Facilities even after the Proposed Pipeline is constructed. *See* City/County Ex. 41.

<sup>39</sup> Tr. Vol. I at 149.

<sup>40</sup> Duke Ex. 9, p. 6.

route that did not start at the WW Feed Station.<sup>41</sup> Moreover, Duke, not CH2M, decided which routes would be selected.<sup>42</sup> And Duke, not CH2M, established the subjective criteria by which routes were evaluated and scored.<sup>43</sup>

Duke's unwillingness to consider alternative routing options is especially perplexing in light of its own consultant, Lummus, proposing numerous routes to the east and west of the study area. While Duke eventually revised the study area to include some eastern routes<sup>44</sup> (due to public scrutiny over the artificially circumscribed study area), Duke refused to consider expanding the study area to the west contrary to the proposals of its own consultant.<sup>45</sup> In particular, Lummus proposed routes outside of the study area, including the western options ignored by Duke, that would have enabled the retirement of the Propane Facilities and substantially reduced reliance on Foster Station unlike the Preferred and Alternate Routes.<sup>46</sup>

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<sup>41</sup> Tr. Vol. II at 251, 277.

<sup>42</sup> Tr. Vol. II at 261-262.

<sup>43</sup> Tr. Vol. II at 255, 260, 269-270, 281-282, 300-301.

<sup>44</sup> Duke claims that it ultimately rejected the eastern routes because "the study found that the additional length of such routes resulted in similar or larger impacts overall, even without considering the impacts of any additional lateral line that would have been required, in order to get the gas where it is needed." Duke Brief, p. 20. But like most other statements in its Brief, Duke fails to cite a single source or provide any evidentiary support for this claim. *Id.* The only source Duke cites when discussing other alleged shortcomings associated with the eastern route is the direct testimony of James Nicholas. *Id.* But as more fully described in the City/County's Initial Brief, Dr. Nicholas lacked any personal knowledge to support these assertions, thereby shielding Duke's claims from cross-examination. *See* City/County Initial Brief, pp. 13-14. Accordingly, as a matter of basic fairness, the Board should disregard Duke's unsupported and unproven attack on the viability of an eastern route as proposed by Lummus.

<sup>45</sup> Tr. Vol. II at 253, 286; NOPE Ex. 19, Ex. JMG-7, pp. 64-68.

<sup>46</sup> NOPE Ex. 19, Ex. JMG-7, pp. 64-73. As described in the City/County's Initial Brief, Staff never questioned Duke about the viability of western route options because Duke incorrectly represented to Staff that "the western options did not allow for retirement of the propane-air peaking plants or improve reliability in the central core area." City/County Initial Brief, pp. 12-13. In reality, however, Lummus specifically observed that all routes summarized in its report, including the western route options, enabled the retirement of the Propane Facilities. NOPE Ex. 19, Ex. JMG-7, p. 61 ("Each scenario assumes a system peak demand of 42,462 Mcfh, available Foster pressure of 400 psig, and no contribution from the propane air plants.").

In sum, the evidence indicates that Duke unnecessarily constrained and manipulated the RSS to arrive at a predetermined outcome, and in so doing, disregarded more promising, safer, and less disruptive routes outside of the Central Corridor. As such, the Board should reject the application for the Proposed Pipeline and encourage Duke to consider all potential routes, especially the far more compelling eastern and western routes proposed by Duke's own consultant.

### **III. CONCLUSION**

For the foregoing reasons, and as more fully described in the City/County's Initial Brief, the Board should deny Duke's application for a certificate to construct the Proposed Pipeline. Further, the Board should encourage Duke to 1) consider all viable alternative options available to it (including those options evaluated and recommended by its own consultants), and 2) collaborate in good faith with local communities and other interested stakeholders in the development of a project that will garner public support and meaningfully address Duke's critical system needs, especially the alarming overreliance on Foster Station.

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Despite being made aware of this fact during the hearing, Staff's Brief incorrectly states that the western route options did not allow for the retirement of the Propane Facilities. *See* Staff Brief, pp. 16-17.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I certify that the foregoing Post-Hearing Reply 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 10th day of June, 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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Summary: Brief Post-Hearing Reply Brief of the City of Cincinnati and the Board of County Commissioners of Hamilton County electronically filed by Mr. Mark T Keaney on behalf of City of Cincinnati and The Board of County Commissioners of Hamilton County