

**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             )  
Extension Project                                     )

Case No. 16-0253-GA-BTX

**APPLICATION OF NEIGHBORS OPPOSED TO PIPELINE EXTENSION, LLC FOR  
REHEARING**

Pursuant to R.C. 4906.12, R.C. 4903.10 and O.A.C. 4906-2-32, Neighbors Opposed to Pipeline Extension, LLC (NOPE) seeks rehearing of the Opinion, Order, and Certificate issued by the Ohio Power Siting Board (“Board”) in this proceeding issued on November 21, 2019. The specific grounds for this Application for Rehearing are as follows:

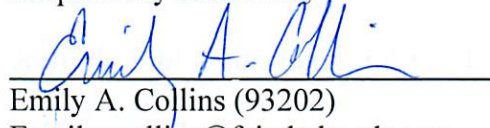
- (1) The Board unlawfully applied a standard of mere convenience to Duke to determine “basis of need” rather than the Ohio Supreme Court’s standard of “definite need of the general public...where no reasonably adequate public service exists.”
- (2) The Board unreasonably and unlawfully issued the Certificate without a finding that “no reasonably adequate public service exists.”
- (3) Using that unlawful standard, the Board unreasonably and unlawfully found that Duke demonstrated the basis of need because the evidence that additional service is “necessary” relies on discredited and inadmissible evidence on growth and capacity, aging infrastructure and balance of supply.
- (4) The Board unreasonably and unlawfully issued the Certificate when Duke simply failed to evaluate environmental impacts to allow the Board to consider a determination of the

nature of the probable environmental impacts or whether the preferred or alternative routes posed minimum environmental impacts.

- (5) The Board unreasonably and unlawfully disregarded less impactful routes proposed by Lummus for Duke and by Dr. Guldmann.
- (6) The Board unreasonably and unlawfully determined that the proposed pipeline is a distribution line when the evidence in the record demonstrates that it is a transmission line.

NOPE has attached a Memorandum in Support of this Application.

Respectfully submitted,



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

**MEMORANDUM IN SUPPORT**

Intervenor Neighbors Opposed to Pipeline Extension, LLC (“NOPE”) seeks rehearing of the Opinion, Order, and Certificate (“Order”) issued by the Ohio Power Siting Board (“Board”) in this proceeding issued on November 21, 2019. In its Order, the Board issued a certificate of environmental compatibility and public need to Duke Energy Ohio, Inc. (“Duke Energy”), for the construction, operation and maintenance of the C314V Central Corridor Extension along the alternate route with some public engagement and ongoing monitoring conditions.

**I. BACKGROUND**

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 granting 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.

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 Line 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, Sycamore Township, Blue Ash, Cincinnati, 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.

While Duke's own Gas System Master Plan provides a high rating to western route options instead of central corridor routes when considering impacts, the Application and its amendments do not explore those options and also do not even identify 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; *see also* NOPE Ex. 19 at pp. 25-26.

## **II. ARGUMENT**

### **A. Standard for Rehearing**

In the same manner as if the Board were the public utilities commission, "[s]ections 4903.02 to 4903.16 and 4903.20 to 4903.23 of the Revised Code shall apply to any proceeding or order of the power siting board under Chapter 4906 of the Revised Code." R.C. 4906.12.

Pursuant to R.C. 4903.10, any party, including an intervenor, "who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in the proceeding." O.A.C. 4906-2-11(A)(3), 4906-2-32(A); R.C. 4906.08(B). An application for rehearing must provide specific grounds for which the applicant considers the order to be unreasonable or unlawful. R.C. 4903.10; O.A.C. 4906-2-32(A). In considering the application, the Board has the authority to determine that its original order is, in full or in part, "unjust or unwarranted, or should be changed." R.C. 4903.10.

Intervenor NOPE considers the Board's Order unreasonable and unlawful upon the grounds discussed below. As such, NOPE respectfully requests that the Board modify its order

because, when applying the appropriate standard, the evidence in the record does not demonstrate need for the pipeline and each of those routes have much higher impacts than the alternatives provided in Duke's own master plan and discussed in detail by NOPE's expert witness, Dr. Guldman.

**B. The Board unlawfully applied a standard of mere convenience to Duke to determine "basis of need" rather than the Ohio Supreme Court's necessity standard of "definite need of the general public...where no reasonably adequate public service exists."**

In analyzing both the basis of need for the pipeline in terms of reliability, stability, capacity and forecasts *as well as* alternatives that are less impactful and safer, the Board applied a standard that merely accommodates the convenience of the potential certificate holder. If the Board had applied a necessity standard that contemplated a definite need of and benefit to the general public, then the evidence presented by Duke and Staff could not have resulted in issuance of the Certificate. In paragraphs 54 through 60 of the Order, the Board routinely finds that Duke and Staff's unsupported claims were persuasive in establishing the basis of need. However, the Board could not have made such a finding based on the evidence presented unless it was using a standard of convenience and benefit to Duke rather than a legal standard that would allow analysis of the evidence under a definite need of and benefit to the general public.

While evidence in the record barely even establishes that Duke needs to perform maintenance on its propane air plants, the only evidence related to the company's desire to retire those plants comes from Duke and Staff witnesses who lacked knowledge about the plants and relied almost exclusively on general third-party conclusions for their opinions that the plants should be retired. In short, if the Board were focused on definite needs of the general public

related to the proposed pipeline, the “need to retire” such plants should amount to something more than corporate desire: the only reasons provided were that someone else told both Duke and Staff witnesses that a need existed. Tr. Vol. III, Tr. Vol. I 173:14-22 and 178:1-11. The only remaining evidence about the propane-air plants relates to the need to repair or maintain the plants, which has not caused any outages to customers. Tr. Vol. I 171:9-22. While the convenience of obtaining custom parts for maintenance and repair may pose some challenges, the risks of outages due to the continued use of the propane-air plants simply relates to the need to maintain and repair equipment at the propane-air plants.

The Board appears to assert that any level of opinion that the peaking plants need to be replaced and are at the end of their useful lives is better than none. Order at ¶ 57. However, the reasons provided for that opinion could only be linked to either hearsay or what amounts to Duke’s need to maintain or repair the propane-air plants. Tr. Vol III 619:3-620:13; Tr. Vol. I 171:9-22, 173:14-22, 178:1-11, 185:2-12; NOPE Ex. 19 at 78-79 & Exhibit JMG-7, pp. 74-75 (Table 16). The Board similarly adopts Duke and Staff conclusory opinions and applies this “some opinion evidence is better than no evidence” approach to every other opinion related to the basis of need. Such conclusory opinions cannot amount to definite need of the general public and merely amount to corporate desire to build the proposed pipeline.

When addressing Duke’s claim that it needs to retire its storage caverns due to the potential for leaks, the Board decides without any testimony from a geologist on the record that such a conclusory assertion constitutes a basis of need because use of storage caverns is not “standard” and risks may exist to the caverns that did not exist when the caverns were constructed. Order at ¶ 56. If all a pipeline company or other utility needs to do to obtain a certificate is to have a staff member testify that they heard from someone that they trust that a

potential for a problem may exist in the future without any scientific analysis of definite risk to the general public or facts that such a risk is likely, then the decisionmaker is simply using the wrong standard to analyze the evidence. Again, the Board relies on inadmissible evidence related to the reasons for Duke's opinion that the storage caverns need to be replaced. Tr. Vol I 198:21-199:1, 217:11-19 (related to vague and third party references to similar caverns that need replacement). It is clear that Duke would like to retire the caverns, but no credible evidence was presented establishing a need to do so for the purpose of serving the needs of the general public. The facts in the record show that the caverns have operated and continue to operate safely and reliably, and no maintenance is required. Tr. Vol. I 156:13-16, 170:8-17, 171:17-172:6, 177:5-9.

Similarly, the Board states that it is "not persuaded by NOPE's claims that Duke has inaccurately modeled system capacity and that, even without the propane-air plants, the current system could serve peak day demand for the foreseeable future." Order at ¶ 57. While the Board attempts to mask its decision as one based on its perception of credibility of Staff witnesses versus Dr. Guldman's testimony on the important issues of reliability and forecasting – a credibility judgment made from the transcripts – the Board's failure to acknowledge the 2019 Exeter Audit Report's invalidation of Duke's growth forecasts, the evidence showing that population is actually expected to decrease in the next 20 years, *and* Dr. Guldman's own analysis of population trends projecting "weak population growth" along with his opinion that "the current system, even without the [propane-air] plants, could serve the peak day demand for the foreseeable future" completely discredits and contradicts Duke and Staff conclusory opinions. Once again, the Board found a "basis of need" on growth and forecasting because Duke would like to build a new pipeline rather than applying the legal standard of "definite need of the general public." The opposite of a definite need of the general public exists under the



evidence presented. The evidence demonstrates that Duke would like to build this pipeline *despite* weak growth forecasts, declining population projections and the ability of the current system to serve public needs for the foreseeable future.

When addressing Duke's claims of need related to the inspection, replacement and upgrading of aging infrastructure, the Board struggles to explain any kind of definite need of the general public. Order ¶ 60. Instead, the Board cites generalized agreement with Duke that the company needs to be able to "inspect, test, and upgrade its existing infrastructure" and that Duke's system needs flexibility and reliability. *Id.* It is likely correct that the proposed project will "support the Company's need to upgrade and replace aging pipelines and related infrastructure." *Id.* However, that is not the "need" that the Board is obligated to address and Duke's needs are not the subject of the "basis of need" standard at all. The need for which the Board must answer to is the definite needs of the general public in relationship to the *proposed pipeline*, not the existing infrastructure.

Duke admitted and the Board acknowledged that Duke does not need the proposed pipeline to replace Line A in short sections. Order at ¶ 60. The Board appears to rely only upon the service outages that Duke believes would happen without the Central Corridor project in place. *Id.* However, if the standard of "definite needs of the general public" is applied to that same testimony, it is clear that the proposed pipeline will give Duke a convenient way to avoid the logistics of performing maintenance, repairs and replacements on its lines in the central corridor. Tr. Duke has already performed those same tasks for over 1,100 miles of main lines and 120,000 associated service lines without the proposed pipeline in place. Duke Ex. 7 8:8-11.

The Board's finding that such inconveniences and corporate desires constitute public need means that the Board unlawfully and unreasonably used convenience as the legal standard rather than a definite need of the general public.

**C. The Board unreasonably and unlawfully issued the Certificate without a finding that "no reasonably adequate public service exists."**

While applying an unlawful standard in determining the "basis of need," the Board amplifies its use of that standard by routinely admitting that the current system and service meets the needs of the general public. In similar contexts as this, the Ohio Supreme Court has interpreted the "necessity" language in determining "public interest, convenience, and necessity" as "contemplating a definite need of the general public...where no reasonably adequate public service exists." *Mason v. Pub. Util. Com.*, 34 Ohio St.2d 21, 23, 295 N.E.2d 412, 414-415 (1973) (upholding decision to deny a certificate when evidence demonstrated certificate holders could meet demand even though inconvenient measures had to be taken). Significantly, the record routinely demonstrates that adequate service currently exists and will continue to exist well into the future. Tr. Vol. I 29:7-20, 30:13-21, 32:19-23, 154:16-21, 156:13-16, 157:5-9, 170:8-17, 171:9-172:6, 177:5-9 185:2-12; Tr. Vol. III 631:11-632:7, 695:7-19, 702:15-703:1; NOPE Ex. 19 at pp. 9-10, 17-18, 21; City/County Exs. 31 and 33, 39-40. Therefore, the Board unreasonably and unlawfully found that a basis of need exists when adequate service exists currently and is projected to exist well into the future.

**D. Using an unlawful standard, the Board unreasonably and unlawfully found that Duke demonstrated the basis of need because the evidence that additional service is "necessary" relies on discredited and inadmissible evidence on growth and capacity, aging infrastructure and balance of supply.**

Aside from the Board's use of an unlawful standard to determine that a basis of need exists, the Board's reliance on witnesses who lacked knowledge of what they were opining upon

and on inadmissible hearsay evidence is both unreasonable and unlawful. Mr. Conway clearly stated that he relied on “another Staff member” he “spoke with” for his opinion that the “industry trend is to retire [propane-air plants].” Tr. Vol. III. Mr. Long also testified that he relied on a third party for his opinion on the propane-air caverns, and that he is not aware of any other propane-peaking facilities despite the presence of more than 50 facilities. Tr. Vol. I 173:14-22 and 178:1-11. Similarly, Duke’s opinions about the storage caverns come from unsupported opinion testimony of someone who is not a geologist. Tr. Vol. I 157:5-9, 177:15-22.

**E. The Board unreasonably and unlawfully issued the Certificate when Duke simply failed to evaluate environmental impacts to allow the Board to consider a determination of the nature of the probable environmental impacts or whether the preferred or alternative routes posed minimum environmental impacts.**

The purpose of requiring applicants to investigate the impacts of its proposed pipeline routes, including the nature of those impacts, is to determine and require the use of the least impactful route or, if the impacts of proposed routes are simply too great, deny the certificate entirely. *Ohio Edison Co. v. Power Siting Commission*, 56 Ohio St.2d 212, 215-217; 383 N.E.2d 588, 590-591 (finding that in making a determination under R.C. 4906(a)(3) & (6), the Commission was required to answer questions about how much harm the proposal will have to the environment and how much it will benefit the public to decide whether to withhold the certificate). The Board rests its conclusions on the nature of impacts and minimizing impacts on a check-the-box approach. In other words, if any evidence was provided by Duke on impacts, the Board accepted it and moved on to the next requirement as if an administrative checklist was the intent of the impacts analysis. Order ¶¶ 61-122. The record demonstrates a number of probable, but unanalyzed impacts and critiques of the nature of impacts, including socioeconomic, ecological and environmental. Tr. Vol. II 279:7-280:1, 330:10-19, 332:13-22, 367:17-369:14,

371:19-25, 376:17-20, 375:10-13, 376:1-3, 489:14-490:6; Tr. Vol. III 695:7-19, 702:10-703:24.

The Board's response to that evidence is to either require ongoing consultation with impacted communities *or* to check the box that Duke provided sufficient information about impacts. Order ¶¶ 122-123. However, the purpose of disclosure of impacts in this proceeding is to allow the Board to accurately assess alternatives and determine the route with the least impacts or deny the certificate. *Ohio Edison Co. v. Power Siting Commission*, 56 Ohio St.2d 212, 216-217. The Board's Order unlawfully and unreasonably shifts responsibility to address those impacts to the public and individuals who may suffer property damage and personal injury as a result of a high-impact siting decision of the Board. Such an after-the-fact review process is both unreasonable and unlawful. *See In Re Buckeye Wind, LLC*, 131 Ohio St.3d 449, 462, 2012-Ohio-878, 966 N.E. 2d 869, 881 (2011) (J. Stratton, dissenting).

**F. The Board unreasonably and unlawfully disregarded less impactful routes proposed by Lummus for Duke and by Dr. Guldmann.**

Using jurisdictional scope as an excuse, the Board dismissed less impactful and highly-ranked western and eastern pipeline expansion route scenarios described in Duke's Gas System Master Plan Study because the study "was based on existing Ohio and Kentucky transmission and distribution systems of Duke Energy Corporation and...the western options evaluated by Lummus were based partly in the Kentucky portion of the system, beyond the Board's purview." Order ¶ 120. While it may be correct that the Board only has authority to issue a Certificate that has impacts on Ohio residents, it is incorrect, unlawful and unreasonable to use that same restriction on the Board's authority to assert that pipeline routes that include areas outside of the Board's jurisdiction cannot be considered as the least impactful. Nothing in R.C. 4906.10 restricts the Board from considering less impactful routes that traverse multiple jurisdictions.

Astonishingly, the Board appears to believe that it can only consider pipeline routes proposed by the Applicant for a Certificate even when, as in this case, Intervenors provide extensive evidence that less impactful routes than the two proposed by the Applicant exist. Order ¶ 121 (“Turning to the specific routes proposed in this proceeding, the Board finds, based on the evidence of record, that the alternate route represents the minimum adverse environmental impact....”). The Board imposes restrictions upon its decision-making authority that simply do not exist in the Revised Code. In doing so, the Board’s decision on the route that minimizes environmental impacts rests on an unreasonable and unlawful assumption that the Board cannot consider less impactful and tangible routes proposed by both Duke’s own consultant and the Intervenors.

**G. The Board unreasonably and unlawfully determined that the proposed pipeline is a distribution line when the evidence in the record demonstrates that it is a transmission line.**

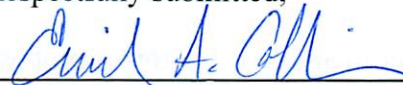
The Board appears to acknowledge that Duke’s proposed pipeline is a distribution line rather than a transmission line, but unreasonably and unlawfully allows the distribution line designation to hold by allowing Duke to merely commit on the administrative record to follow the enhanced design, construction and assessment criteria applicable to transmission lines. Order ¶ 152-153. Such a contractual-type arrangement between Duke and the Board has no place in administrative adjudication and is extremely unreasonable and unlawful and violates the intent of 40 C.F.R. § 192.3. There is no dispute that C314V will connect one transmission line to another transmission line with a pressure reduction station in between. Order ¶ 138-140. The line will not have service lines to distribute gas to customers. *Id.* The PHMSA has stated that decreasing pressure to below 20 percent SMYS for the purpose of labeling a transmission pipeline as a distribution line “would violate the intent of the pipeline safety regulations.” NOPE Ex. 16 at

p.3, ¶ 6. The Board should reconsider its issuance of a Certificate to a distribution line if the pipeline is actually a transmission line.

### **III. CONCLUSION**

For the foregoing reasons, Intervenor NOPE respectfully urges the Board to grant their Application for Rehearing and modify its Order to reflect that Duke has not met its burden under R.C. 4906.10(A) and the relevant Board rules and regulations and deny the Certificate.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Emily A. Collins", is written over a horizontal line.

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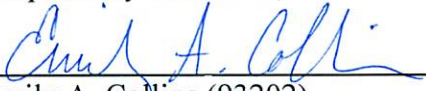
### CERTIFICATE OF SERVICE

A true and correct copy of the foregoing **Application for Rehearing and Memorandum in Support** was served on December 23, 2019 to the following counsel of record via electronic mail:

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Respectfully submitted,

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

Summary: App for Rehearing Application of Neighbors Opposed to Pipeline Extension, LLC  
for Rehearing and Memorandum in Support electronically filed by Emily A Collins on behalf of  
Neighbors Opposed to Pipeline Extension, LLC