

**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	:	
	:	

**APPLICATION FOR REHEARING SUBMITTED ON BEHALF OF THE CITY
OF BLUE ASH, OHIO**

Under R.C. 4906.12, R.C. 4903.12, and O.A.C. 4906-2-32(A), David Waltz, City Manager for the City of Blue Ash, Ohio (“Blue Ash”) applies for rehearing of the Ohio Power Siting Board’s (the “Board”) November 21, 2019 Opinion, Order, and Certificate (the “Order”) granting Duke Energy Ohio’s (“Duke”) Application for the Certificate of Environmental Compatibility and Public Need to proceed with the C314V Central Corridor Pipeline Extension Project.

The specific grounds for this Application for Rehearing are as follows:

(1) The Order is unlawful and unreasonable because the Board did not evaluate the legitimate safety concerns regarding the proposed pipeline, merely accepting Duke’s statements that were not supported in the record.

(2) The Order is unlawful and unreasonable because Blue Ash (and the other intervenors) were not provided sufficient information concerning the Project, preventing them from ever meaningfully participating in the routing and hearing process.

(3) The Order is unlawful and unreasonable because the Board found that Duke did not even review, much less follow, the most recent Blue Ash Comprehensive Plan in selecting the proposed routes.

(4) The Order is unlawful and unreasonable because the tax revenue benefits allegedly resulting from the pipeline, relied upon by Duke and the Board, were not supported by the evidence in record.

The basis for this Application for Rehearing is set forth in detail in the attached Memorandum in Support.

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**

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On September 13, 2016, Duke filed its Application for a Certificate of Environmental Compatibility and Public Need to proceed with the C314V Central Corridor Pipeline Extension Project. On January 20, 2017, Duke amended its application for the Central Corridor Pipeline. Thereafter, on February 13 and 24, 2017 and on March 3, 2017, Duke supplemented and corrected information in the amended application. The amended application dated March 3, 2017 is the operative Application for this proceeding (“Application”).

On March 31, 2017, Blue Ash intervened to oppose Duke’s Application for a Certificate for the proposed pipeline. The Application proposed two routes. Both the Preferred Route and Alternate Route run through Blue Ash. (Duke Energy Ohio Exhibit I-12, Application, at p. 2-5 –2-6).

On May 31, 2017, Staff submitted its initial Staff Report of Investigation. Staff recommended that the Board approve Duke’s Application, subject to certain conditions. (Staff Report of Investigation, at pp. 59-64). One such condition was that the proposed pipeline should be installed along the Alternate Route. (*Id.* at p. 59). On June 15, 2017, Duke held a local public hearing in Blue Ash.

On March 5, 2019, Staff submitted its Amended Staff Report of Investigation. Staff ultimately recommended that, based upon the information provided by Duke, the Board approve Duke’s Application for the Certificate, subject to certain conditions. (*See* Staff Exhibit 1, at pp. 60-65). In the Amended Staff Report of Investigation, Staff again recommended that Duke construct the proposed pipeline along the Alternate Route. (Staff Exhibit 1, at p. 60).

From April 9, 2019 through April 11, 2019, the adjudicative hearing was held before Administrative Law Judges See and Parrot. After the hearing, the parties submitted Post-Hearing Briefs.

On November 21, 2019, the Board issued its Order granting Duke's Application for a Certificate of Environmental Compatibility and Public Need regarding the C314V Central Corridor Pipeline Extension Project, subject to 41 conditions.

II. ARGUMENT

A. STANDARD ON REHEARING

R.C. 4906.12 provides that “[s]ections 4903.02 to 4903.16 and 4903.20-4903.23 of the Revised Code shall apply to any proceeding or order of the power siting board under Chapter 4906. of the Revised Code, in the same manner as if the board were the public utilities commission under such sections.” Furthermore, R.C. 4903.10 provides “[a]fter any order has been made . . . , any party 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.”¹ *See also* O.A.C. 4906-2-32(A). The “application shall be filed within thirty days after the entry of the order upon the journal of the” Board. *See also* O.A.C. 4906-2-32(a) & (C).

An application for rehearing “shall set forth specifically the ground or grounds on which the applicant considers the order to be *unreasonable or unlawful*.” R.C. 4903.10 (emphasis added).

“If, after such rehearing, the [Board] is of the opinion that the original order or any part thereof is *in any respect unjust or unwarranted*, or should be changed, the [Board]

¹ A “party” includes “[a]ny person granted leave to intervene” O.A.C. 4906-2-11(A)(3). *See also* R.C. 4906.08(B).

may abrogate or modify the same; otherwise such order shall be affirmed.” R.C. 4903.10 (emphasis added). If, upon reconsideration of the record, the court finds the order to be unlawful or unreasonable, then the order shall be reversed, vacated, or modified. *Constellation NewEnergy, Inc. v. Pub. Util. Comm.*, 104 Ohio St.3d 530, 2004-Ohio-6767, 820 N.E.2d 885.

A commission “abuses its discretion if it renders an opinion on an issue without record support.” *In re Champaign Wind, L.L.C.*, 146 Ohio St.3d 489, 2016-Ohio-1513, 58 N.E.3d 1142, ¶ 74 (Kennedy, J., dissenting) (quoting *Indus. Energy Users-Ohio v. PUC*, 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 30); *see also Tongren v. PUC*, 85 Ohio St.3d 87, 90, 199-Ohio-206, 706 N.E.2d 1255 (1999). The same standard applies to decisions issued by the Board. *In re Buckeye Wind, L.L.C.*, 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869, ¶ 26.

Blue Ash contends the Board’s Order granting Duke’s Application for the construction, operation, and maintenance of the C314V Central Corridor Pipeline along the alternate route is unreasonable and unlawful for the reasons addressed more fully below.² The Board consistently either ignored Blue Ash’s arguments, or merely accepted Duke’s word in the face of contrary evidence in the record. Accordingly, Blue Ash respectfully requests the Board grant this Application for Rehearing so that the Board can evaluate the matter and render a decision on the full record.

² Blue Ash hereby incorporates by reference, as if fully restated herein, the arguments contained within the Applications for Rehearing filed by City of Cincinnati, City of Reading, Village of Evendale, and Neighbors Opposed to Pipeline Extension, LLC (“NOPE”).

B. THE ORDER IS UNLAWFUL AND UNREASONABLE BECAUSE THE BOARD DID NOT EVALUATE THE LEGITIMATE SAFETY CONCERNS REGARDING THE PROPOSED PIPELINE, MERELY ACCEPTING DUKE'S STATEMENTS THAT WERE NOT SUPPORTED IN THE RECORD.

Under its statutory mandate, the Board must determine that the proposed pipeline serves the public interest, convenience, and necessity. R.C. 4906.10(A)(6). The Order disregarded the record evidence on these issues and Duke's own admissions establishing that it did not address, much less satisfy, the serious safety concerns regarding the proposed pipeline.

1. There Was Both Inaccurate And Inconsistent Information Provided Regarding The Potential Impact Radius Of The Proposed Pipeline.

Notably, in the Order, the Board agreed with Blue Ash that Duke did not provide accurate and consistent information regarding the potential impact radius. (Order at 72, ¶ 141). But in the face of this indisputable conclusion, the Board granted a certificate anyway.

Duke did not adequately address the numerous, serious safety concerns regarding the proposed pipeline. This includes, but is not limited to, the real risks for potential pipeline ruptures and gas leaks. Additionally and admittedly, the information Duke provided to the Board, Staff, the intervening parties, and the general public before the hearing was inaccurate and inconsistent. This prevented Blue Ash, as well as the public at large, from being able to effectively evaluate the impact and risks associated with the proposed pipeline at the hearing.

The Board even recognized the significant gaps in the Order. (Order at 72-81, ¶ 141, 142, 148, 154). More than just "gaps" even, the Board determined that Duke admitted it had provided inconsistent information related to the potential impact radius of the

proposed pipeline. (Order at 72, ¶ 141). The Board even highlighted Mr. Hebbeler's testimony that Duke did not think it was required to establish a potential impact radius in the first instance. (*Id.*).

Mr. Hebbler testified that the proposed pipeline's design specifications (*i.e.*, diameter and pressure) rendered it a high-pressure distribution pipeline under the applicable federal natural gas safety regulations. (Duke Energy Ohio Exhibit 7, at p. 15). As such, Mr. Hebbeler stated that the proposed pipeline was designed to ensure that, in the event of an integrity issue, the pipeline would leak instead of rupture. (Duke Energy Ohio Exhibit 7, at p. 22; Tr. Volume I, at p. 75). Despite Duke's attempt to minimize and to emphasize this distinction, the evidence established that gas leaks are still dangerous. (Tr. Volume II, at p. 394). This distinction does not answer the fundamental public safety question. Certainly, it was not enough to fulfill the statutory requirement.

In fact, Mr. Hebbeler conceded that Duke could never completely rule out the potential risk of a pipeline rupture. (Tr. Volume I, at pp. 102-103). The pipeline will traverse through dense residential, industrial, and institutional areas. So the consequences of a pipeline rupture or unmanaged leak could be catastrophic. (Tr. Volume II, at pp. 253, 299). On that point, as noted in the Amended Staff Report of Investigation, the Alternate Route has 182 residences within 100 feet and 2,186 residences within 1,000 feet of the pipeline. (Staff Exhibit 1, at p. 33).

Despite that potentially calamitous risk, Mr. Hebbeler acknowledged Duke had not provided Blue Ash any information regarding the potential impact of an explosion,

or rupture, involving the proposed pipeline:

12	Q. And Duke has not provided Blue Ash with
13	any information regarding the potential impact of
14	an -- of an explosion or a rupture involving the
15	proposed pipeline, correct?
16	A. This is designed as a high-pressure
17	distribution line and that does not apply.
18	Q. What does not apply? The giving
19	information to Blue Ash about the potential impact of
20	an explosion?
21	A. That's correct. There is no PIR.

(Tr. Volume I, at p. 97).³ Ultimately, the Board either disregarded these glaring inconsistencies, or seemingly deemed them to be so insignificant that Duke did not need to provide accurate information.

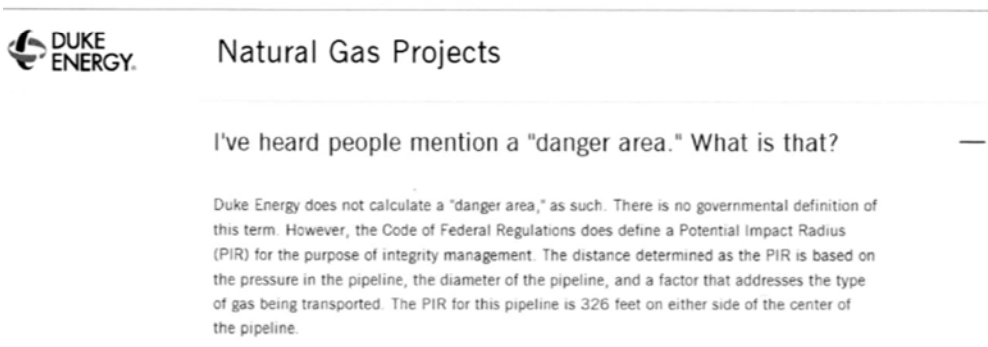
Significantly, on perhaps the most critical consideration (the impact of a potential pipeline rupture), Duke promulgated inaccurate information to the public for years. Duke maintained a website to provide information about the proposed pipeline to the general public. (Tr. Volume I, at pp. 97-98). Mr. Hebbeler testified that he was familiar with Duke's website. (*Id.*). He agreed Duke provided the information on its website for the public to garner accurate information about the proposed pipeline. (Tr. Volume I, at pp, 99, 102). Importantly, Mr. Hebbeler acknowledged the public was relying on the accuracy of that information. (Tr. Volume I, at pp, 99, 102).

Consequently, before the hearing and throughout the years-long process, the only information Duke provided concerning safety was wrong. And that information would

³ PIR refers to "potential impact radius," defined in the Code of Federal Regulations as "the radius of a circle within which the potential failure of a pipeline could have significant impact on people or property." *See* C.F.R. § 192.903.

never have been corrected unless it was elicited on cross-examination during the adjudicatory hearing.

Mr. Hebbeler was shown a screenshot of Duke's website, which contains certain "Frequently Asked Questions." (*Id.* at pp. 98-99; Blue Ash and Columbia Township Exhibit 1). In response to a frequently asked question, Duke stated:



(Blue Ash and Columbia Township Exhibit 1, at p. 6).

Before the hearing (contrary to Mr. Hebbeler's testimony at the hearing), Duke said to the world via its website that: "The PIR for this pipeline is 326 feet on either side of the center of the pipeline."⁴ (*Id.*). Thus, despite Mr. Hebbeler's testimony that the PIR was not relevant to the proposed pipeline and need not be calculated, Duke's own website inexplicably said something completely different---for years. The website was clearly important to the Board; it required Duke to maintain its "dedicated website." But that website that was wrong for years on the most significant safety issues impacting the public. (Order at 72, ¶ 141; Order at 82-823, ¶ 157).

⁴ In response to a discovery request (and over objection), Duke calculated a PIR of 308.58 feet for the proposed pipeline. That too is inconsistent with the information published on Duke's website and Mr. Hebbeler's testimony. (Tr. Volume II, at pp. 411-413; NOPE Exhibit 17, KENWOOD-POD-01-003 Supplement). This is yet another example of Duke providing inaccurate and unreliable information throughout this proceeding, again on perhaps the most crucial issue.

When confronted with Duke's own calculation of the PIR on its website, Mr. Hebbeler was unable to determine whether that information was simply outdated or just inaccurate. (Tr. Volume I, at pp. 100-101). Nevertheless, the Board still concluded that both Duke and Staff "thoroughly addressed the safety considerations," even when confronted with such a glaring inaccuracies in the record. (Order at 79, ¶ 154).

Given that the information Duke published on its website was inaccurate, misleading, and contradictory, all of the information Duke presented during this proceeding should be re-questioned and re-scrutinized by Staff, intervenors, and the public at a new hearing.

In *In Re Middletown Coke*, the Supreme Court of Ohio reversed an order granting a certificate of environmental compatibility and public need to Middletown Coke, a utility operator. *In re Middletown Coke Co.*, 127 Ohio St.3d 348, 2010-Ohio-5725, 939 N.E.2d 1210 (2010). Like Duke here, the applicant there did not provide the Board with sufficient information to allow it to determine if the proposed cogeneration plant posed the minimum environmental impact, as required under R.C. § 4906.10(A). *Id.* The Court held that the Board unreasonably denied Monroe an opportunity to test the applicant's assertion that its preferred location – located within close proximity to neighborhoods and a school – posed the minimum adverse environmental impact. *Id.* at ¶¶ 1-2.

Middletown Coke demonstrates that applicants, like Duke, must provide the Board and intervening parties sufficient information to effectively evaluate the impact of the proposed facility. And that information must be provided before the pipeline is certificated (at the very least well before the adjudicatory hearing) so intervening communities, like Blue Ash---and Staff and the Board for that matter---can determine

whether Duke satisfied the statutory requirements under R.C. 4906.10(A). Otherwise, the process is meaningless and that the statutory mandate is perfunctory.

As stated above, Duke has provided virtually no information to Blue Ash regarding the potential impact of the proposed pipeline. And the information Duke has provided is contradictory and misleading. Given the limited and inaccurate information Duke provided, Blue Ash (nor anyone else) has 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. *Middletown Coke* mandates that this matter be reheard, only after Duke can answer these questions, Staff actually scrutinizes the answers, and the intervenors and general public can react and plan accordingly.

2. The Information Regarding High-Consequence Areas Located Near The Proposed Pipeline In The Record Was Both Inaccurate and Inconsistent.

In addition to providing inaccurate and misleading information regarding the PIR for the proposed pipeline, the information Duke provided regarding high-consequence areas located near the proposed pipeline was wrong. “High-consequence area” is a defined term under the Code of Federal Regulations. *See* C.F.R. § 192.903.

Before the hearing, to the public, Duke specifically cited examples of certain high-consequence areas on its website:



Natural Gas Projects

DUKE ENERGY, THROUGH ITS SUBSIDIARIES, IS SUBJECT TO REGULATION BY STATE AND FEDERAL PUBLIC UTILITIES COMMISSIONS.

What regulations are in place?

PHMSA's current Transmission Integrity Management Program regulations, established in 2004, require operators to identify threats, rank risks and implement integrity management assessments to maintain structural integrity and safety of the transmission lines in High Consequence Areas (HCAs).

HCAs include areas such as residential neighborhoods, apartments, schools, hospitals, shopping centers, businesses, retirement communities, ballparks and parks. It is important to note that, even though only segments of the pipeline will be in identified HCAs, Duke Energy plans to construct the entire pipeline to adhere to the more stringent regulations of the pipelines in HCAs.

(Tr. Volume I, at p. 105; Blue Ash and Columbia Township Exhibit 1, at p. 10). In response to a discovery request (and over objection), Duke even stated that the entire pipeline was classified as a high-consequence area. (NOPE Exhibit 17, KENWOOD-POD-01-003 Supplement).

At the hearing, however, Mr. Hebbeler backtracked. He testified that he was familiar with the term “high-consequence area.” (Tr. Volume I, at p. 105). Contrary to Duke’s sworn interrogatory response, Mr. Hebbeler opined that high-consequence areas were irrelevant, and did not warrant Duke’s consideration, because the proposed pipeline was a distribution pipeline. (*Id.* at pp. 107-108).

Consequently, according to Mr. Hebbeler, Duke never performed any analysis to determine whether Summit Park, or any other area of Blue Ash, would be a high-consequence area. (Tr. Volume I, at pp. 107-108).

Dr. James Nicholas, Duke’s route-selection supervisor, conceded that Duke did not consider the more than 850,000 people that use Summit Park each year when it evaluated pipeline location options. (Tr. Volume II, at pp. 299-300). Strikingly, Duke proposed to construct a pipeline without even knowing that the Alternate Route abuts Summit Park -

a park that has close to one million visitors each year. The proposed impact was never analyzed, much less ever considered.

These are further examples of Duke not evaluating highly relevant and readily available information. These significant data gaps prevented Blue Ash (and others) from being able to effectively analyze the risks and dangers of the proposed pipeline running through these communities.

Nonetheless, the Board summarily determined that Duke thoroughly addressed the safety considerations raised by Blue Ash and others. (Order at 79, ¶ 154). That conclusion was not supported in the record. The Board could not reasonably credit nor accept Duke's evidence-less statements, particularly given the significant contrary evidence.

3. Duke Did Not Provide Sufficient Information Allowing the Board and Intervening Parties to Evaluate the Consequences of a Pipeline Failure.

a. Mr. Paskett's testimony was unreliable and should have been disregarded.

In addition to the above inaccurate information provided to the public, the Board, and Blue Ash, Duke claimed that, in the event of an integrity issue, the proposed pipeline would leak instead of rupture. (Duke Energy Ohio Exhibit 7, at p. 22; Tr. Volume I, at p. 75). Duke retained Bruce Paskett to provide expert testimony related to, among other topics, federal pipeline safety regulatory requirements pertaining to gas transmission pipelines and gas distribution pipelines and the safety of transmission pipelines and distribution pipelines. (Tr. Volume II, at p. 379; Duke Energy Ohio Exhibit 15, at p. 5).

As demonstrated below, Mr. Paskett's opinions were unreliable. Indeed, they only further confirmed that Duke must go back to the drawing board and that the Board must rehear this matter.

Mr. Paskett testified, on multiple occasions, that it is virtually impossible for a distribution pipeline to rupture. (Tr. Volume II, at p. 388; Duke Energy Ohio Exhibit 15, at p. 9). According to Mr. Paskett, in the event a distribution pipeline experienced an issue, the pipeline will “essentially always result in a leak, not a rupture, due to the relatively low operating pressures and relatively low operating stress levels in the pipe.” (Tr. Volume II, at p. 388; Exhibit 15, at p. 9). At the hearing, Mr. Paskett reiterated his opinion that “distribution pipelines do not rupture. Distribution pipelines do not explode.” (Tr. Volume II, at p. 391).

Nevertheless, on cross-examination, Mr. Paskett conceded that he “cannot guarantee that there won’t be a rupture” of the proposed pipeline. (Tr. Volume II, at p. 423). As noted above, Mr. Hebbeler also conceded that Duke could never completely rule out the potential risk of a pipeline rupture. (Tr. Volume I, at pp. 102-103).

Moreover, based upon the information contained on Duke’s own website, Duke has committed at least five Pipeline and Hazardous Materials Safety Administration (“PHMSA”) violations since 1996 involving *low-pressure distribution pipelines*. (Tr. Volume I, at pp. 108-110; Blue Ash and Columbia Township Exhibit 1, at pp. 12-14). According to Duke, four of the five incidents even resulted in what Duke itself characterized were pipeline “explosions.” (*Id.*).

The proposed pipeline here is anything but a low-pressure distribution pipeline. Rather, it is a high-pressure natural gas distribution pipeline, with a designed MAOP of 500 psig. (Staff Exhibit 1, Amended Staff Report of Investigation, at p. 54). The proposed pipeline will operate at a hoop stress of 19% of the SMYS at the MAOP. (Tr. Volume II, at p. 386). Staff also even acknowledged that the proposed pipeline “would operate at a

relatively high-pressure, close to the 20 percent SMYS threshold” for transmission pipelines. (Staff Exhibit 1, at p. 55).

Even Staff witness Peter Chace, PUCO’s Gas Pipeline Safety Program Manager, testified it is unusual to have a distribution pipeline with a MAOP of 500 psi. (Tr. Volume III, at pp. 727, 729-731). That is admittedly high for a distribution pipeline. (*Id.*). Thus, if low-pressure distribution pipelines can rupture, the notion that the high-pressure proposed pipeline will not is not credible.

Despite Mr. Paskett’s attempts to minimize and to disregard the potential risks and dangers associated with the proposed pipeline, he conceded that, if pipelines were not properly supported and protected, there were very serious risks of fire or explosion. (Tr. Volume II, at pp. 427-428; Blue Ash and Columbia Township Exhibit 3).

Likewise, and contrary to the testimony of Duke’s witnesses, Mr. Chace agreed it was possible for third-party damage to rupture the proposed pipeline. (Tr. Volume III, at p. 727, 737). Despite these known and reported risks, Duke maintains that the proposed pipeline was “rupture-proof.”

Undermining his own opinions, Mr. Paskett cherry-picked certain PHMSA data and statistics regarding the rate of “serious incidents”⁵ involving distribution pipelines. But he ignored the contrary facts that did not support his conclusions. (Tr. Volume II, at pp. 396,398). He even testified that serious incidents have decreased by 34% from 2005-2017. (Duke Energy Ohio Exhibit 15, at p. 26).

At the hearing, Mr. Paskett initially claimed to be familiar with PHMSA’s distribution pipeline incident data, which is published on PHMSA’s website. (Tr. Volume

⁵ PHMSA defines a “serious incident” as an incident that involves a fatality or an inpatient overnight hospitalization. (Tr. Volume II, at pp. 395-396; Duke Energy Ohio Exhibit 15, at p. 26).

II, at pp. 396-397, 420). When presented with PHMSA's 20-year trend for distribution pipeline serious incidents, Mr. Paskett claimed to be unfamiliar with that data. (*Id.* at p. 397).

The information published by PHMSA demonstrates there were 626 serious incidents, 222 fatalities, and 987 injuries involving natural gas distribution pipelines from 1999 through 2018. (NOPE Exhibit 15.) Contrary to the self-serving chart contained in Mr. Paskett's direct testimony, the information published on PHMSA's website demonstrates that the number of fatalities and injuries resulting from distribution pipeline serious incidents *have actually increased over the past ten years*. (NOPE Exhibit 15; Duke Energy Ohio Exhibit 15, at p. 26).

The Board discussed Mr. Paskett's testimony, yet did not acknowledge the importance of the critical information Mr. Paskett disregarded. (Order at 71-73, ¶ 140-42). The Board even noted the abundance of risks raised by Blue Ash and others. On top of that, the Board noted the increase of serious incidents over the past ten years.

For instance, from 2009 through 2013, there were 42 fatalities and 211 injuries involving gas distribution pipeline serious incidents. (NOPE Exhibit 15). In contrast, from 2014 through 2018, there were 53 fatalities and 311 injuries resulting from distribution pipeline serious incidents. (*Id.*). The real-world consequences caused by distribution pipelines incidents should not be overlooked or disregarded. (Tr. Volume II, at pp. 390-392).

On this point, Staff also disagreed with Mr. Paskett. Mr. Chace testified that the number of serious incidents involving natural gas distribution pipelines has not substantially decreased over the past twenty years. (Tr. Volume III, at pp. 738-739; NOPE Exhibit 15). Mr. Chace had no reason to doubt the numbers published on PHMSA's

website. (Tr. Volume III, at p. 738). Given that Mr. Paskett's testimony is unsupported and contradicted by numerous authoritative sources, including Staff's, his opinions on these crucial issues must be disregarded.

Nevertheless, the Board disregarded the seriousness of those risks and the most recent federal government statistics. (*Id.*). In the face of all this, the Board concluded that the safety considerations were thoroughly addressed, (Order at 79-80, ¶ 154), despite the overwhelming evidence to the contrary presented by Blue Ash, and the other intervenors, refuting Duke's testimony.

b. Duke attempted to minimize the potential risks associated with natural gas leaks.

In addition to disregarding the likelihood and impact of a pipeline rupture, Duke minimized the potential risks associated with natural gas leaks. Numerous Duke witnesses, including Mr. Hebbeler and Mr. Paskett, conceded that pipeline leaks can be dangerous. (Tr. Volume I, at p. 77; Tr. Volume II, at p. 394). Likewise, Adam Long testified that if the proposed pipeline is compromised in a way that causes a gas leak, the gas could ignite and cause an explosion. (Tr. Volume I, at pp. 187-188).

As the above testimony demonstrates, there are serious safety risks associated with high-pressure natural gas distribution pipelines, like this one, including threats associated with ruptures and gas leaks. This is particularly true for this proposed pipeline, which operates at an unusually high pressure for gas distribution pipelines, just 1% short of the definitional threshold for transmission pipelines. Nevertheless, the Board found none of this relevant, solely because the pipeline was wrongly classified as a distribution pipeline. (Order at 81-82, ¶ 155-56).

In the event of a pipeline failure, the consequences could be catastrophic and life-threatening, particularly when the proposed pipeline runs directly through densely populated neighborhoods and “highly congested” areas, including a park that has more than 850,000 visitors each year.

On this crucial issue, the Board did not even cite or address Blue Ash’s testimony on this issue. Mr. Perry testified that if a pipeline explosion occurred along the Alternate Route during one of Blue Ash’s major events at Summit Park, there could be several hundred, if not several thousand, people immediately upon or over the proposed pipeline, or at least within 100 feet of it. (Blue Ash Exhibit 6, at p. 27). Indeed, there potentially could be 100,000 people within several hundred yards of the proposed pipeline. (*Id.*).

The record demonstrated clear evidence establishing the dangers associated with the proposed pipeline. The Board did not consider this overwhelming evidence demonstrating that the R.C. 4906.10(A)(6) factors were not met. The matter must be reheard as the Order was unlawful and unreasonable.

C. THE ORDER IS UNLAWFUL AND UNREASONABLE BECAUSE BLUE ASH (AND THE OTHER INTERVENORS) WERE NOT PROVIDED SUFFICIENT INFORMATION CONCERNING THE PROJECT, PREVENTING THEM FROM EVER MEANINGFULLY PARTICIPATING IN THE ROUTING AND HEARING PROCESS.

Under R.C. 4906.10(A)(6), the Board must determine that the proposed pipeline serves the public interest, convenience, and necessity. Duke’s “wait and see” approach, requiring Blue Ash and others to wait for such further information until the proposed pipeline is approved does not satisfy the statutory mandate.

Unfortunately, the Board endorsed this approach. (Order at 54, ¶ 108). The Order allows Duke to wait until the certificate was issued to provide Blue Ash and others

regarding critical information chronicling the proposed pipeline's environmental or aesthetic impact. (Order at 54, ¶ 108).

But the Order ignored the fundamental flaw underscoring this approach: Blue Ash (nor anyone else, including Staff, the Board, and the other intervenors) cannot evaluate the consequences of the proposed pipeline without meaningful participation in the process. Information must be provided *before the pipeline is certificated* so the Board and intervening communities, like Blue Ash, can determine whether Duke satisfied the statutory requirements under R.C. 4906.10(A).

In fact, 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 Order did not follow this mandate.

Indeed, as a result, Blue Ash (nor any of the other intervening parties for that matter) was not provided enough information to consider all of the relevant factors. The process was flipped on its head. In fact, under this process, no intervenor could ever be successful. Without being given enough information to even know what the issues were, Blue Ash had a Sisyphean task: prove that Duke and Staff were wrong, even though Blue Ash never had all of the information.

Notably, the Order required that Duke provide fire and police departments, emergency responders, and local officials in the affected local jurisdictions contact information of officials who could educate and assist individuals on safety issues, and

evacuation and emergency planning. (Order at 93, ¶ 189, 190(41)). Before the hearing, Duke never provided any of this.

As of May 2017, Duke conceded that “no steps have been taken as of the present time with regard to an emergency response plan for the proposed pipeline.” (See Blue Ash First Set of Interrogatories, May 8, 2017, at Blue Ash-Int-01-014). Duke further acknowledged it has had no conversations with the Blue Ash Police Department, Fire Department, or Public Works Department regarding a potential emergency response plan or any specialized training needed for emergency first responders. (*Id.*). Once again, Duke admitted it was not going to have any such conversations with Blue Ash until the specific pipeline route has been approved. (*Id.*).

As noted above, this “wait and see” approach to providing information to Blue Ash until after the Certificate was issued prevented its (as well as the public’s) meaningful participation in this review process. In a dissent, Justice Stratton highlighted the concerns with such a process - one that allows a utility operator to withhold relevant information until after the OPSB approves a Certificate.

As she wrote, the “law requires otherwise. The legislature has required the board to settle issues like this up front on a public record, and it specifically guarantees affected citizens the right to participate in the review process and to have their voices heard.” *In Re Buckeye Wind, LLC*, 131 Ohio St.3d 449, 462, 2012-Ohio-878, 966 N.E.2d 869, 881 (2011) (*J. Stratton, dissent*). “Issues are not to be settled *after* construction is approved, much less by unaccountable staff members without public scrutiny or judicial review.” *Id.* (emphasis in original).

This is precisely what has happened here. There could be no meaningful participation in the review process, either by Blue Ash or the general public, when Duke

admitted that it would not provide all information until after the certificate was issued. This ultimate cart before the horse process violates the Board's statutory mandate.

There's even more danger to this approach in this case. In response to a discovery request seeking the required evacuation zone in the event of a leak or explosion, Duke responded that "[a]ny required evacuation zone would be dependent on numerous variables." (See Blue Ash First Set of Interrogatories, May 8, 2017, at Blue Ash-Int-01-014). To date, Duke has not provided any additional information to Blue Ash. (Blue Ash Exhibit 6, at p. 23). Nor has it had any conversations with Blue Ash regarding those variables, or any other information pertaining to a potential evacuation zone or safety plan. (*Id.*).

Notably, the Board recognized the importance of Duke informing Blue Ash throughout the pipeline selection process. (Order at 79-81, ¶ 154). Nevertheless, the Board ignored the evidence showing that Duke never involved Blue Ash in the numerous necessary ways throughout the process in the first place. (*Id.*).

Mr. Hebbeler also recognized that Duke had not provided any training to Blue Ash emergency first responders. (Tr. Volume I, at pp. 114-115). This lack of training presents a serious concern for Blue Ash. The potential impact on public services for Blue Ash residents could be devastating if there is a pipeline explosion or infrastructure issue. (Blue Ash Exhibit 6, at p. 24). Without any training and without even knowing all of the risks and the potential impact of a pipeline infrastructure issue, Blue Ash cannot adequately prepare for or respond to such an event.

Like Monroe in *Middletown Coke*, Duke has not provided Blue Ash sufficient information allowing it to effectively evaluate the impact of the proposed pipeline. As the Court instructs there, Duke has not satisfied the statutory requirements under R.C. §

4906.10(A)(6). The record shows that Duke did not provide Blue Ash sufficient information before the selection of the pipeline route. The Board chose to ignore the evidence, and merely took Duke for its word. The matter must be reheard because that deference is unlawful and unreasonable.

D. THE ORDER IS UNLAWFUL AND UNREASONABLE BECAUSE THE BOARD FOUND THAT DUKE DID NOT EVEN REVIEW, MUCH LESS FOLLOW, THE MOST RECENT BLUE ASH COMPREHENSIVE PLAN IN SELECTING THE PROPOSED ROUTES.

R.C. 4906.10(A)(3) requires Duke to provide sufficient information allowing the Board to determine the proposed pipeline represents the minimum adverse environmental impact. Additionally, under O.A.C. 4906-5-7(D), Duke was required to provide a description of the impact of the facility on regional development, referring to relevant formally adopted regional development plans, and an assessment of the compatibility of the proposed pipeline and the anticipated resultant regional development with *current* land use plans. Duke did not meet this requirement in several ways, including, but not limited to, relying on an outdated Blue Ash Comprehensive Plan.

The Order recognized that Duke's proposed pipeline route relied on a Blue Ash Comprehensive Plan from 2003. (Order at 36, ¶ 72). The Order noted that Duke made no effort to obtain a recent Comprehensive Development Plan. (*Id.*). Further, Dr. Nicholas testified that he did not have any communications with Blue Ash about any future development plans near Summit Park. (Tr. Volume II, at pp. 305-306). Nor did he have any communications regarding Blue Ash's Comprehensive Land Use Plan. (*Id.*). In fact, Dr. Nicholas testified that the route selection study relied only on the 2003 Blue Ash Comprehensive Development Plan. (*Id.* at 306). He was not even aware that Blue Ash updated the Comprehensive Development Plan in early 2016. (*Id.*).

Thus, as Dr. Nicholas recognized, the route selection study did not consider the most updated comprehensive plan in Blue Ash. (*Id.*). The Order firmly states that “an applicant should attempt to obtain the most recent land use planning documents in the course of preparing its application...” (Order at 38, ¶ 75). Testimony and facts show Duke did nothing to obtain the most recent Blue Comprehensive Plan. Yet, in the face of clear evidence showing Duke relied on outdated information, the Board nevertheless determined Duke met the statutory mandate. (Order at 38, ¶ 75).

Furthermore, the Board noted that ODOT restricted in some way the construction of the proposed pipeline. (Order at 60-61, ¶ 119). Specifically, the Order remarked that Duke investigated construction of the pipeline along Interstate 71. (*Id.*). The Board highlighted that ODOT’s regulations and policies generally do not permit placement of utility infrastructure within interstate right-of-ways due to maintenance access, potential road expansions, public safety, and utility construction and repair activities. (*Id.*).

But there is nothing in the record from any ODOT representative establishing this restriction. The Board abused its discretion when it concluded so without any support in the record. *See In re Champaign Wind, L.L.C.*, 146 Ohio St.3d 489, 2016-Ohio-1513, 58 N.E.3d 1142, ¶ 74 (Kennedy, J., dissenting) (quoting *Indus, Energy Users-Ohio v. PUC*, 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 30); *see also Tongren v. PUC*, 85 Ohio St.3d 87, 90, 199-Ohio-206, 706 N.E.2d 1255 (1999); *In re Buckeye Wind, L.L.C.*, 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869, ¶ 26.

The most recent Blue Ash Comprehensive Plan was not consulted and the pipeline restriction concerning the interstates was not supported in the record. Having approved the pipeline anyway in the face of these omissions, the Order is both unreasonable and unlawful.

E. THE ORDER IS UNLAWFUL AND UNREASONABLE BECAUSE THE TAX REVENUE BENEFITS ALLEGEDLY RESULTING FROM THE PIPELINE RELIED UPON BY DUKE AND THE BOARD WERE NOT SUPPORTED BY THE EVIDENCE IN THE RECORD.

Under O.A.C. 4906—5-06(D)(5), Duke was required to “provide an estimate of the increase in tax revenues as a result of facility placement.” Duke did not provide an accurate or reliable estimate.

Most notably, in the Order, the Board acknowledged that Duke’s economic impact calculations were speculative. (Order at 36, ¶ 72). The Board further noted Duke’s statement that the approximate annual property taxes associated with the Preferred and Alternate Routes were \$3.3 million and \$2.9 million, respectively. (Order at 38, ¶ 74). But the Board unreasonably ignored both the inconsistency in Duke’s tax revenue estimations, and the admitted absence of a basis to support such tax revenue benefit Duke touted.

Initially, Duke claimed that Blue Ash would receive approximately \$898,000 if the proposed pipeline was constructed along the Preferred Route and \$617,000 if the proposed pipeline is constructed along the Alternate Route. (Duke Energy Ohio Exhibit I-12, Application, at pp. 6-11 – 6-12). At the hearing, however, as the Board identified, Mr. Hebbeler testified that Duke estimated the annual property taxes associated with the Preferred Route and Alternate Route to be \$2.8 million and \$2.2 million, respectively. (Order at 38, n. 12; Tr. Volume I, at p. 116; Duke Energy Exhibit 7, at p. 31).

Mr. Hebbeler further testified that Blue Ash would receive approximately \$1,056,761 if the proposed pipeline was constructed along the Preferred Route and \$818,596 if the proposed pipeline was constructed along the Alternate Route. (Tr. Volume I, at p. 119; Duke Energy Exhibit 7, at p. 32).

Duke never explained the basis for the increased amounts allegedly apportioned to Blue Ash from the date of the Application to the date of the public hearing in this proceeding. On top of that, nothing established that either estimate was accurate. Mr. Hebbeler acknowledged he did not even know the person who actually performed those calculations. (Tr. Volume I, at p. 118). Nor did he personally verify the estimated tax revenues. (*Id.*).

Mr. Hebbeler admitted he did not know what Blue Ash would receive. (*Id.* at p. 119). So the \$818,596 number specified in his direct testimony is admittedly wrong. (*Id.*). He did not even know that other political subdivisions within Blue Ash receive the vast majority of that tax revenue. (*Id.*). Thus, Duke trumpeted the amount of tax revenue Blue Ash would allegedly receive, even though it had no idea what that amount really was. (*Id.*). This is another instance in which Duke has provided inaccurate information. Even so, whatever pittance is actually apportioned to Blue Ash is not nearly worth it.

Duke did not support in the record that it adequately evaluated the tax revenue impact of the proposed pipeline. The Board ignored this gap for the significant disparity in tax revenue estimations between those provided by Duke and Mr. Hebbeler.

The Board was presented with all the above. The inconsistent, unsupported revenue estimations could not be used to support the positive economic impact of the proposed pipeline trumpeted by Duke. The Board relied on such unsubstantiated revenue calculations to determine that Duke satisfied the statutory mandate. Having relied on an admittedly speculative tax calculation to support certification, the Board's Order was unlawful and unreasonable and must be reheard.

III. CONCLUSION

For the foregoing reasons, Blue Ash respectfully requests the Board grant their Application for Rehearing and order a new hearing regarding Duke's Application for the Certificate of Environmental Compatibility and Public Need regarding the C314V Central Corridor Pipeline Extension 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**

CERTIFICATE OF SERVICE

I certify that the foregoing Application for Rehearing by City Manager David Waltz, City of Blue Ash, Ohio, was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 23rd day of December, 2019. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

s/ Bryan E. Pacheco

Attorney for City Manager David Waltz, the
City of Blue Ash

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/23/2019 12:50:25 PM

in

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

Summary: App for Rehearing Application for Rehearing Submitted on Behalf of the City of Blue Ash, Ohio electronically filed by Mr. Bryan E. Pacheco on behalf of City of Blue Ash, Ohio