

**BEFORE  
THE OHIO POWER SITING BOARD**

<b>In the Matter of the Application of NRG Ohio</b>	)	
<b>Pipeline Company, LLC, for a Letter of</b>	)	
<b>Notification to Construct, Own, and Operate</b>	)	<b>Case No. 14-1717-GA-BLN</b>
<b>a Natural Gas Pipeline to be Located in Lorain</b>	)	
<b>County, Ohio</b>	)	

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**POST-HEARING BRIEF  
BY  
LORAIN COUNTY PROPERTY OWNERS**

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**I. Introduction**

The Lorain County Property Owners<sup>1</sup> (“LCPO”) respectfully submit this post-hearing brief to the Ohio Power Siting Board (“OPSB” or “Board”) to request that the Application under consideration in this case be denied pursuant to Ohio Revised Code (“R.C.”) 4906.03(F).<sup>2</sup> The Application was submitted by NRG Ohio Pipeline Company LLC (“NRG Applicant”) on December 19, 2014. The Board suspended the Application on March 9, 2015, and an adjudicatory hearing was held on April 23, 2015.

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<sup>1</sup> The Lorain County Property Owners are: Betzel, Louis & Gale; Borling, Charles & David; Braatz, Richard & Ellen; Carter, Edmund & Angie; Conlin, Gary & Kathleen; Dennis, Samuel; Julius, Thomas & Johanna; K. Hovnanian Oster Homes LLC; Kurianowicz, Edward; Llado, Carlos & Sonia; Miller, Mary B.; Parker, Wesley A.; Petersen, Richard & Carol; Plas, James A.; Plas, Lawrence R.; Fathers of St. Joseph; Thorne, Brandon & Mary; Unger, Stephanie K.; Helfrich, Matthias & Joanne; Julius, Mark and Darlene; Kaulins, Marty & Irene; Oster, Thomas; Kubasak, Robert & Debra; Mekker, George; Noster, Irene; Kerecz, Joan; Kelling, Albert; Holt, William & Anna; and Wukie, Theresa.

<sup>2</sup> R.C. 4906.03(F) states: “[i]f an application is suspended, the board shall approve, disapprove, or modify and approve the application not later than ninety days after the date of the suspension.”

NRG Applicant is a shell corporation<sup>3</sup> and alter ego of NRG Energy, Inc. (“NRG Energy”), formed by NRG Energy, a competitive retail electric generating company, for the improper purposes of: (1) shielding the assets of NRG Energy from the liability associated with the risks it seeks to impose on the LCPO; and (2) gaining the competitive advantages of: (i) the Letter of Notification (“LON”) procedure; and (ii) eminent domain authority otherwise denied NRG Energy by law. For these reasons, as further explained below, the Ohio Power Siting Board should deny the Application of NRG Applicant to construct the Lorain County pipeline (“NRG Pipeline”) as currently proposed.

## **II. Law and Argument**

### **A. NRG Applicant is a Shell Corporation and Alter Ego with no Identity Separate from NRG Energy or the NRG Power Plant**

Ohio law defines “alter ego” as a corporation over which control is so complete that the corporation has “*no separate mind, will or existence of its own.*” *Belvedere Condominium Unit Owners’ Assn. v. Roark*, (1993) 67 Ohio St.3d 274, 1993-Ohio-119. *See also Dombroski v. Wllpoint, Inc.*, (2008) 119 Ohio St.3d 506, 511, 2008-Ohio-4827 (alter ego established where corporation was wholly owned by its principle, controlled by the same officers in a shared headquarters, and where principle’s officers contract on behalf of the corporation).

NRG Applicant has *no separate mind, will or existence of its own* separate from parent-company NRG Energy. NRG Applicant’s Vice President, Alan Sawyer

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<sup>3</sup> “Shell corporation” is company which serves as a vehicle for business transactions without having any significant assets or operations. USLegal.com, <http://definitions.uslegal.com/s/shell-corporation/>; *see also* “dummy corporation” – a corporation whose only function is to hide the identity and to protect the principle from liability. BLACK’S LAW DICTIONARY 152 (3d pocket ed. 2006).

(“Sawyer”), testified that NRG Applicant has no assets (Tr. Sawyer at 29:2, 3), no employees (*Id.* at 28:19; 28:23), no offices (*Id.*), no telephone (*Id.*, 28:20, 21), is wholly owned by NRG Energy (Sawyer Testimony at 2 (NRG Exhibit 8)), is controlled and managed by NRG Energy personnel (*Id.* at 1), and was created by NRG Energy just weeks prior to applying to the Public Utilities Commission (“Commission” or “PUCO”) for authority to operate as an Ohio intrastate pipeline company (PUCO Case No. 13-2315-PL-ACE). LCPO Exhibit 1, 5-7. In NRG Applicant’s case before the Commission (“Certification Case”), NRG Applicant asserted it has the “requisite (...) financial capability (...) needed to operate this type of natural gas transmission system.” LCPO Exhibit 1, ¶ 6. To establish this, NRG Applicant provided the Commission with parent-company NRG Energy’s financial information, not its own. *Id.* at 8. When questioned about NRG Applicant’s lack of assets, Sawyer characterized the issue as a matter of “accounting.” Tr. Sawyer at 29:2, 3. When asked whether revenue generated by NRG Applicant and the NRG Avon Lake Power Plant (“NRG Power Plant”) ultimately finds its way to NRG Energy’s financial statement, Sawyer also characterized that issue as a matter of accounting. *Id.* at 27:18-28:3. When asked to identify the NRG Applicant’s President, Sawyer responded that he didn’t know who it was (*Id.* at 23:7-11), which suggests that designation has no practical effect. Additionally, Sawyer’s authoritative roles include Vice President of **NRG Applicant**; Director of Asset Management for **NRG Energy** (Sawyer Testimony at 1:16 (NRG Exhibit 8)); and Asset Manager for the **NRG Power Plant**. *Id.* at 2:25-27. Moreover, Sawyer’s responsibilities include actively managing the NRG Power Plant (*Id.* at 1:17, 18), as well as overseeing and directing the development of the NRG Pipeline. *Id.* at 2:26, 27.

NRG Applicant is merely a shell corporation and alter ego of NRG Energy, created by NRG Energy to improperly avoid liability and circumvent Ohio law.

**B. NRG Applicant Seeks to Impose Unjust Risk on the Property Owners by Avoiding the Liabilities Associated with the NRG Pipeline, Contrary to Ohio Law**

Ohio law disfavors the use of shell corporations to avoid liability. The Eleventh District disregarded a shell corporation when it determined its principle was using the corporation to avoid liability for an environmental cleanup. *Kays v. Schregardus*, (2000) 138 Ohio App.3d 225, 231, 2001-Ohio-230. The Court noted, “[i]f liability (...) is assigned to a shell corporation as opposed to Kays [it’s principle], the Ohio EPA will be left holding the proverbial bag for the cost of the cleanup,” and it “would impose an unjust loss on the Ohio EPA and taxpayers as a result of Kays's control and acts.” *Id.* The Court also noted, “[s]uch a precedent could eviscerate Ohio's environmental protection laws in that those property owners could allow their property to be trashed and avoid all responsibility by simply transferring title to a shell corporation when the bill came due.” *Id.*

NRG Applicant acknowledges “*natural gas pipelines have a risk to them.*” Tr. Sawyer at 33:4. (Emphasis added). However, NRG Energy seeks to impose an unjust risk on the LCPO by limiting liability for the NRG Pipeline to a shell corporation with virtually no assets. The sum total of NRG Applicant’s “assets” provides no security for the LCPO against the risks the NRG Pipeline will impose on them. Conversely, the evidence indicates that NRG Energy has sufficient financial capability to provide adequate security against those risks. *See* LCPO Exhibit 1, at 8. However, neither NRG

Applicant nor NRG Energy has provided any assurances that NRG Energy will assume responsibility for the liabilities associated with the NRG Pipeline. Instead, NRG Energy is attempting to avoid that responsibility and leave the LCPO holding the proverbial bag. Such a precedent, if set by the Board, would enable utility companies in the future to improperly avoid their responsibilities simply by creating a network of shell corporations.

Additionally, NRG Energy's attempt to burden local property owners with unjust risk runs contrary to the statutory requirement that the NRG Pipeline serve the public interest, convenience and necessity. R.C. 4906.10(A)(6). Approval by the Board, without further oversight and investigation of NRG Applicant's ability to manage the project and the associated risk, places the risk squarely upon local property owners. The Board should not approve the proposal without first requiring a clear and complete delineation of who will shoulder the risk associated with the NRG Pipeline.

**C. The Property Owners are Entitled to Assurances that NRG Energy will Assume Responsibility for the Liability associated with the Construction, Operation and Maintenance of the NRG Pipeline**

The LCPO are entitled to assurances against the risks NRG Energy seeks to impose on them by a company that has the financial capability to honor those assurances. It stands to reason that NRG Energy should be required to guarantee the liabilities associated with the NRG Pipeline the same way it guaranteed the financial capabilities to operate the NRG Pipeline. NRG Energy should be required to guarantee the Property Owners, at a minimum: indemnification of the LCPO against any and all harm caused by the construction or operation of the NRG Pipeline; insurance, maintained by NRG

Energy, to protect against the risks associated with the NRG Pipeline; and specific contractual terms to ensure proper land restoration.

#### **D. NRG Applicant Does Not Qualify for the LON Procedure**

##### **1. NRG Energy Improperly Attempts to use its Alter Ego to Circumvent Ohio Law and use the LON Procedure**

Ohio law prohibits the use of alter ego entities to circumvent the law. The Supreme Court has held, “where the specific facts of a given case indicate that the subsidiary is essentially the alter ego of its parent formed primarily for the purpose of circumventing state law, the court will “*disregard the corporate fiction in order to give effect to the statutory purpose and intent.*” *See Independent Ins. Agents of Ohio v. Fabe*, (1992) 63 Ohio St.3d 310, 315, 587 N.E.2d 814. (Emphasis added). Similarly, Ohio courts have long held that the corporate entity “when urged to an intent and purpose not within its reason and policy, *may be disregarded.*” *Belvedere Condominium Unit Owners’ Assn. v. Roark*, (1993) 67 Ohio St.3d 274, 287, 1993-Ohio-119. (Emphasis added), *citing State v. Standard Oil Co.*, (1892) 49 Ohio St. 137.

NRG Energy has created the alter ego entities, putative seller-NRG Applicant and putative “customer”-NRG Power Plant<sup>4</sup> (Sawyer Testimony at 78:2, 3 (NRG Exhibit 8)), to circumvent Ohio law and the Board’s Rules. The LON procedure is available for pipeline projects that are “primarily needed to meet the requirements of a specific customer or customers.” OAC 4906-1-01 Appendix B; *see also* R.C. 4906.03(F)(3).

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<sup>4</sup> The Power Plant is owned by another of NRG’s entities, NRG Power Midwest, LP. Tr. Sawyer at, 23:22-24.

However, NRG Power Plant is not a “customer”—“buyer” or “purchaser,”<sup>5</sup> and NRG Applicant is not a seller. A “sale” is “a transfer of ownership of property from one person to another in return for money.”<sup>6</sup> The property involved in this matter will be natural gas owned by NRG Energy, or a subsidiary, and that Sawyer testifies will ultimately be consumed by NRG Power Plant. Tr. Sawyer at 78:23-25. NRG Energy attempts to characterize its various entities as seller and customer to circumvent the statute and the Rules. However, there is no “transfer” of ownership of the gas as indicated by the evidence. On the contrary, the gas will merely flow from one NRG Energy alter ego to another. Thus, the Board’s concern regarding the relationship of these entities is well-founded.<sup>7</sup> This activity does not rise to the level of a “sale” as contemplated by the Rules. Additionally, Sawyer concedes that NRG Energy’s methods for moving money between its various entities are mere “accounting treatment” (*see* Tr. Sawyer at 27:18-28:3), which also do not rise to the level of a “sale.” Because there is no “sale” there is no “customer,” and therefore NRG Applicant is prohibited from utilizing the LON procedure to build its 20 mile<sup>8</sup> pipeline pursuant to OAC 4906-1-01 Appendix B.

Additionally, the Board should follow the Supreme Court’s reasoning and disregard the alter ego entities as separate “customer” and “seller,” as NRG Energy has created that corporate structure to circumvent Ohio law. The Supreme Court’s wisdom is

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<sup>5</sup> MERRIAM-WEBSTER DICTIONARY 121 (New ed. 2005).

<sup>6</sup> MERRIAM-WEBSTER DICTIONARY 439 (New ed. 2005).

<sup>7</sup> *See* Entry of the Board, (March 9, 2015), Finding 7: “Upon review of the letter of notification application filed by NRG Pipeline (...) the Board finds that additional investigation is necessary to complete a thorough review of the application, particularly in light of the issues raised in this case, including NRG Pipeline’s assertion in the Certification Case that the proposed pipeline would be used to serve an affiliate (...)”

<sup>8</sup> NRG Exhibit 1 at 1.

readily apparent in this application. Upon removing NRG Energy's prohibited legal fiction, the fact is NRG Energy is merely supplying natural gas to *itself* and not a *customer*. This also gives the proper effect to R.C. 4906.03(F)(3) and OAC 4906-1-01, which require NRG Energy to file a standard BTX application for this 20 mile pipeline. If the Board declines to follow the Court's reasoning and allows NRG Energy to circumvent the law and Rules through a newly-created alter ego, such a precedent would undermine Ohio law and the General Assembly's aims in Senate Bill 3 (*see below*), and would open the door for utility companies to circumvent the law and Rules in this way.

## **2. NRG Energy and NRG Power Plant are Prohibited By Law from Gaining Competitive Advantages through an Affiliation with NRG Applicant**

Ohio law prohibits electric generation services from gaining competitive advantages through affiliates. In 1999 the Ohio General Assembly passed Senate Bill 3 ("SB 3" or "Act") (OH B., 1999 S.B. 3), which deregulated and made competitive electric generation services. Act summary, OH B. an., 1999 S.B. 3 at 1; *see also* R.C. 4928.01(A)(27). As evident from SB 3's legislative history, the General Assembly deemed that certain legal advantages granted to the electric generation segment during the preceding period of regulation were no longer appropriate, and denied the newly-deregulated electric generators certain of their former legal advantages. *See, e.g., Id.* at 18. The General Assembly also enacted requirements for corporate separation<sup>9</sup> between electric generation services and the regulated services (*See* R.C. 4928.17), to prevent

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<sup>9</sup> There is no evidence NRG and its affiliates have instituted a PUCO-approved corporate separation plan. When asked whether such a plan were in effect, Sawyer responded, "I have no idea. I don't know what one is." Tr. Sawyer at 77:14-15.



utility companies from “*gaining a competitive advantage solely because of a corporate affiliation.*” OAC 4901:1-37-02(A). Additionally, the statute states, “[i]t is the policy of this state to (...) ensure effective competition in the provision of retail electric service by *avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or a product or service other than retail electric service, and vice versa.*” R.C. 4928.02(H). (Emphasis added). Moreover, the Ohio Supreme Court has held, “[i]n the context of S.B. 3 electric utility deregulation, *each service component must stand on its own.*” *Industrial Energy Users—Ohio v. Public Util. Comm.*, 117 Ohio St.3d 486, 487, 2008-Ohio-990 (2008) *citing Migden-Ostrander v. Public Util. Comm.*, 102 Ohio St.3d 451, 453, 2004-Ohio-3924 (2004).

NRG Power Plant and NRG Applicant are “affiliates”—“companies related to each other through common ownership or control.” OAC 4901:1-37-01(A); *see also*, Tr. Sawyer at 77:5, 6 (Sawyer states, “Avon Lake generation and the pipeline company are affiliates, that’s correct.”). As such NRG Energy and NRG Power Plant are prohibited from gaining competitive advantages for the electric generation facility solely through an affiliation with NRG Applicant. The LON procedure and the power of eminent domain are such competitive advantages.

The LON procedure enables NRG Energy to avoid the lengthier, more stringent standard BTX application procedure that is generally required of this type of 20 mile pipeline under R.C. 4906.03(F) and OAC 4906-1-01, Appendix B(1)(c). NRG Energy is attempting to circumvent Ohio law and the Board’s Rules to gain the advantage of the LON procedure for the benefit of its electric generating station through its newly-created affiliate, NRG Applicant.

NRG Energy is also attempting to circumvent Ohio's eminent domain laws through NRG Applicant to gain the advantage of eminent domain power for the benefit of its electric generating station. SB 3 expressly denied the exercise of eminent domain authority "for the purpose of *erecting, operating or maintaining an electric generating station.*" Act summary, OH B. an., 1999 S.B. 3 at 18. (Emphasis added). This was subsequently codified by R.C. 4933.15(A). By creating the putative pipeline company, NRG Energy is attempting to gain the power of eminent domain through R.C. 1723.01, which grants such power to companies organized for the purpose of carrying or transporting natural gas. Although Sawyer admits the NRG Pipeline is designed specifically for operating the NRG Power Plant (Tr. Sawyer at 94:15-25), NRG Energy is attempting to circumvent Ohio law and gain the competitive advantage of eminent domain to serve that prohibited purpose.

As stated previously, the Board should follow the Supreme Court's reasoning and disregard NRG Applicant as separate entity apart from NRG Energy, and require NRG Energy to file a standard BTX application.

**E. The NRG Pipeline is Not Designed to *Primarily* Meet the Requirements of a Specific Customer or Customers as Required under the LON Procedure**

The NRG Pipeline is designed to serve far greater requirements than that of the NRG Power Plant-"customer." In fact, 85 to 100% of the NRG Pipeline's capacity will be free to serve other, unspecified customers. Tr. Sawyer at 89:20-23. The NRG Power Plant is projected to operate at "between 0 and 15% capacity factor." Tr. Sawyer at 83:20-23. Sawyer concedes that when the NRG Power Plant is not operating there will be

gas in the NRG Pipeline available for sale to other customers. Tr. Sawyer at 86:7-9; 86:25-87:5. Additionally, NRG Applicant specifically reserved the right in its Certification Case to sell the excess gas to other customers. Tr. Sawyer at 80:17-20; 86:13-18; LCPO Exhibit 1, ¶ 9; Finding and Order of the Commission, (Feb. 26, 2014) Finding 3, PUCO Case No. 13-2315-PL-ACE.

The NRG Pipeline, as designed, is not “primarily needed to meet the requirements of a specific customer or customers” as required to utilize the LON procedure. R.C. 4906.03(F)(3); OAC 4906-1-01, Appendix B(1)(d). Although the initial impetus behind the NRG Pipeline might have been to serve the NRG Power Plant, the majority of the NRG Pipeline’s capacity is available for sale to other unspecified customers. Additionally, the proceeds generated by the alter ego NRG Pipeline selling gas to other customers would ultimately end up in NRG Energy’s control, further undermining SB 3’s aims of preventing the flow of benefits from NRG Energy’s nonelectric services to NRG Energy’s electric generation service. *See also* R.C. 4928.02(H). Although the PUCO has established a corporate separation program to prevent such an outcome, the record indicates NRG Energy and NRG Applicant have not implemented a corporate separation plan. *See* Note 5, *supra*. Thus, the Application proposes construction of a pipeline that exceeds the requirements of the NRG Power Plant, and does so in a way that circumvents Ohio law. The Board should neither approve nor condone such a scheme.

## **F. NRG Applicant Failed to Adequately Consider Alternatives**

### **1. NRG Applicant did Not Consider the East Corridor as Represented to the Board**

The NRG Pipeline constitutes a “major utility facility” under R.C. 4906.01(B)(1)(c) (NRG Exhibit 3). As such,

*the Board shall not grant a certificate for the construction, operation, and maintenance of the [NRG Pipeline] unless it finds (...) that the [NRG Pipeline] represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.*

R.C. 4906.10(A). (Emphasis added). This necessary finding cannot be made in this proceeding because NRG Applicant has not undertaken the necessary analysis of alternatives.

In NRG Applicant’s Certification Case, NRG Applicant presented two “Proposed Pipeline Route Corridors” to the Commission on November 27, 2013 (LCPO Exhibit 1, ¶ 10, Exhibit B), which are referred to in this proceeding as the “East corridor” and “West corridor.” (Tr. Sawyer at 53:5-7). NRG Applicant claims the route submitted in its LON is “superior to the alternatives considered,” and acknowledges “this route falls entirely within the [West] corridor (...), but for a one-mile stretch at the southern end (...)” NRG Exhibit 7, at 3. Despite NRG Applicant’s claim, it is imperative that the Board recognize that none of the three firms NRG Energy and NRG Applicant retained to analyze and design the NRG Pipeline route ever analyzed the East corridor.

The Board, in its March 9, 2015 Entry ordered NRG Applicant to:

*provide a detailed explanation of the route selection process it used to determine the proposed route and the reasons why the proposed route is best suited for the pipeline, as well as descriptions of the major **alternatives considered, addressing both of the corridors** depicted in the application in the certification case (...)*

Entry of the Board, (March 9, 2015), Finding 8. (Emphasis Added). Contrary to the Board's order, NRG Applicant neglected to address the East corridor in its Supplemental LON. Tr. Sawyer at 55:11-16. Additionally, NRG Applicant provided no analysis of the East corridor in its LON or supplemental LON. Tr. Sawyer at 54:23-24; Caiazzo at 132:3-5; Murphy at 173:8-11. This is because NRG Energy<sup>10</sup> determined that the East corridor was infeasible as early as the spring or summer of 2013—months prior to presenting the two “proposed” corridors to the Commission. Tr. Sawyer at 58:4-12. NRG Energy's determination that the East corridor was infeasible was based on a conversation between Sawyer and Dominion East Ohio Gas (“DEO”), wherein it was decided that a supply tap from DEO's gas line to the NRG Pipeline located at the southern end of the East corridor allegedly would not provide sufficient pressure. Tr. Sawyer at 55:25-56; 58:21-25; 59:3-6. NRG Energy's spring/summer 2013 decision to not consider the East corridor is also apparent from the fact that AECOM, the first engineering firm NRG Energy retained in 2013, did not even discuss the East corridor in its route analysis due to the corridor having previously been deemed “technically infeasible.” Tr. Sawyer at 63:8-13. Similarly, the two firms that subsequently took over route analysis after AECOM was

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<sup>10</sup> NRG Energy in this context means NRG Energy, one of its entities, or Sawyer. NRG Applicant had not yet been created at the pertinent time.

terminated, Hanover Engineering and ERM, also did not consider the East corridor in their respective analysis, as discussed below.

Salvatore Caiazzo, Hanover Engineering (“Hanover”) project manager for the NRG Pipeline’s route analysis and design (Tr. Caiazzo at 125:13-15), testified that Hanover did not consider the East corridor. *Id.* at 132:3-5. Rather, Hanover was “given the route that was developed by AECOM” (*Id.* at 134:21, 22), which Hanover refers to as a “shape file” (LCPO Exhibit 4; Tr. Caiazzo at 135:15-18), and which is strikingly similar to the NRG Pipeline’s final proposed route in the LON. According to Caiazzo, this route *is* the West corridor. Tr. Caiazzo at 137:20, 21. Similarly, Donell Murphy, project manager for ERM (Murphy Testimony at 2:18 (NRG Exhibit 9)), the firm retained to conduct the environmental analysis, also testified that ERM did not consider the East corridor. Tr. Murphy at 173:8-11. Like Hanover, ERM was “provided a route that had been identified by NRG and AECOM (...)” (*Id.* at 172:24, 25), and admits ERM merely evaluated the single proposed route NRG provided to analyze the environmental impacts. Murphy Testimony at 3:44, 45 (NRG Exhibit 9). In sum, the East corridor alternative was not considered.

## **2. Applicant also did not Analyze the East Corridor’s Feasibility**

NRG Applicant has produced no analysis to support its claim that the East corridor is infeasible. As discussed above, NRG Applicant claims the East corridor is infeasible due to insufficient gas pressure from DEO’s gas line at the southern end of the corridor and claims this analysis and determination was made by AECOM. Tr. Sawyer at 59:7-14. However, NRG Applicant has provided no evidence of that purported analysis in

any of its filings before the Board. Additionally, no such analysis was conducted by Hanover even though that firm is fully capable of such analysis. Tr. Caiazzo at 146:25-147:8. Instead, as admitted, Hanover simply worked from the route it was given by NRG Energy. Furthermore, even if it were established that the East corridor tap would provide lower pressure than the proposed tap to the west, there is no evidence that lower pressure would be infeasible for operation of the NRG Pipeline or the NRG Power Plant. When asked whether a 30 inch pipe at lower pressure could deliver the same quantity of gas as a 24 inch pipe at higher pressure, Caiazzo conceded, “it’s possible, yes,” but admits that alternative was never analyzed. Tr. *Id.* at 146:25-147:3.

The analysis NRG Applicant has provided to the Board does not satisfy the requirements of R.C. 4906. It is impossible to determine whether the proposed NRG Pipeline route in the LON *represents the minimum adverse environmental impacts, considering the various alternatives* because there has been no analysis of alternatives.

## **G. Adverse Impacts to Property Owners**

Fourteen of the LCPO submitted testimony to the Board in this proceeding<sup>11</sup> and six traveled to Columbus and testified at the adjudicatory hearing.<sup>12</sup> Chief among the LCPOs’ concerns are the adverse impacts of the NRG Pipeline on the value,<sup>13</sup> aesthetic, natural characteristics and enjoyment<sup>14</sup> and safety<sup>15</sup> of their respective properties, as well

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<sup>11</sup> See Direct Testimony of Lorain County Property Owners, filed April 15, 2015; Testimony of Brandon and Mary Thorne, filed April 22, 2015.

<sup>12</sup> See LCPO Exhibits 8-13.

<sup>13</sup> See generally Oster Testimony (LCPO Exhibit 8), and Eavenson Testimony (LCPO Exhibit 9); see also Conlin Testimony at 35, 36 (LCPO Exhibit 10); Kubasak Testimony at 27 (LCPO Exhibit 11); Thorne Testimony at 31 (LCPO Exhibit 12); Dennis Testimony at 32, 38 (LCPO Exhibit 13).

<sup>14</sup> See Conlin Testimony at 38-43 (LCPO Exhibit 10); Kubasak Testimony at 33-39 (LCPO Exhibit 11); Thorne Testimony at 32-35 (LCPO Exhibit 12); Dennis Testimony at 33 (LCPO Exhibit 13).

as NRG Applicant's demonstrated lack of regard for those concerns.<sup>16</sup> Additionally, as discussed herein, NRG Applicant's lack of consideration of alternatives<sup>17</sup> is also a concern. The adverse impacts of the NRG Pipeline on the LCPO in this admittedly "densely populated" corridor (Tr. Caiazzo at 149:7-9) cannot be properly evaluated against alternatives because, as previously discussed, alternatives were never analyzed.

### **III. Conclusion**

This proceeding has provided sufficient evidence that NRG Applicant's Application as proposed is: (1) contrary to Ohio law because it attempts to shield NRG Energy from its due liability; (2) contrary to Ohio law because it attempts to gain unfair advantages for a competitive electric generation service through an affiliate; (3) unnecessary because the NRG Pipeline is designed to serve far greater requirements than those of the NRG Power Plant; (4) contrary to Ohio law because NRG Applicant did not adequately consider alternatives and therefore has failed to demonstrate that the NRG Pipeline represents the minimum adverse impacts relative to alternatives; and (5) cannot be characterized as serving the public's interest in light of the foregoing.

It is imperative that the LON procedure maintain credibility and the public's confidence and be reserved exclusively for projects that clearly meet the LON requirements as set forth by statute and the Board's Rules. As established in this proceeding, the NRG Pipeline is not such a project.

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<sup>15</sup> See Conlin Testimony at 25-33 (LCPO Exhibit 10); Kubasak Testimony at 23, 24 (LCPO Exhibit 11); Thorne Testimony at 32-35 (LCPO Exhibit 12); Dennis Testimony at 31 (LCPO Exhibit 13).

<sup>16</sup> See Conlin Testimony at 78-81 (LCPO Exhibit 10); Kubasak Testimony at 53-55 (LCPO Exhibit 11); Thorne Testimony at 42-25 (LCPO Exhibit 12).

<sup>17</sup> See Oster Testimony at 57-67 (LCPO Exhibit 8); Eavenson Testimony at 66-72 (LCPO Exhibit 9).



For these reasons the Lorain County Property Owners respectfully request that the Board deny the Application of NRG Ohio Pipeline Company LLC and require NRG Energy to provide assurances to property owners and consider alternative routes that minimize or eliminate the risks and impacts to the Lorain County Property Owners in any subsequent standard BTX application.

Respectfully submitted,

/s/ Michael Braunstein

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail this 5th day of May, 2015.

/s/ Michael Braunstein

Michael Braunstein (0060898)

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4835-4818-4867, v. 2

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**in**

**Case No(s). 14-1717-GA-BLN**

Summary: Brief POST-HEARING BRIEF BY LORAIN COUNTY PROPERTY OWNERS electronically filed by Mr. MICHAEL BRAUNSTEIN on behalf of Betzel, Louis & Gale and Borling, Charles & David and Braatz, Richard & Ellen and Carter, Edmund & Angie and Conlin, Gary & Kathleen and Dennis, Samuel and Julius, Thomas & Johanna and K. Hovnanian Oster Homes LLC and Kurianowicz, Edward and Llado, Carlos & Sonia and Miller, Mary B. and Parker, Wesley A. and Petersen, Richard & Carol and Plas, James A. and Plas, Lawrence R. and Fathers of St. Joseph and Thorne, Brandon & Mary and Unger, Stephanie K. and Vajda, Sheryl L. and Demaline, Thomas and Barbara and Holt, William and Anna and Julius, Mark and Darlene and Kaulins, Marty & Irene and Kelling, Albert and Kerecz, Joan and Kubasak, Robert & Debra and Oster, Thomas and Wukie, Theresa and Noster, Irene