

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for a Certificate of)	
Environmental Compatibility and Public)	Case No. 16-253-GA-BTX
Need for the C314V Central Corridor)	
Pipeline Extension Project.)	

POST HEARING BRIEF OF INTERVENOR CITY OF READING, OHIO

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I. The City of Reading's Interests in the Outcome of this Proceeding.

The City of Reading is a first tier suburb of the City of Cincinnati located near the center of Hamilton County. Reading is bounded to the north by the Village of Evendale and to the south by Amberley Village and Cincinnati. Interstate 75 and the Mill Creek roughly define Reading's western border with the villages of Arlington Heights and Lockland. Blue Ash is to the east. Reading is a blue collar, working class community with a majority of its households earning low to moderate incomes. *Reading Ex. 2, Ross Trans. 9-8*. The housing stock within the city is predominately one and two family units that are both owner and rental occupied. *Id. at 9-14*. The major street through Reading is US 42, which is also known throughout Hamilton County as Reading Road. *Id. at 18-23*. There is also rail service in downtown Reading. *Reading Ex. 4*.

Duke Energy Ohio's application for its proposed central corridor pipeline described two suggested routes for the Board's consideration designated in the application as the "Preferred Route" and the "Alternate Route." The Preferred Route runs south and east from Sycamore Township in northern Hamilton County to a proposed facility to be constructed in the Fairfax area where it will connect to Duke Energy's "Line V". *See Duke Amended Application at 2-6 through 2-7*. The Alternate Route runs south and west from the same starting point to an existing facility known as Norwood Station. *Id. at 2-6*. The City of Reading lies along the proposed Alternate Route a little more than halfway between the Route's northern starting point in Sycamore Township and the southern terminus at the Norwood Station tie in to existing Line V. Much of the proposed Alternate Route through Reading is intended to run within the traveled portion of the rights of way on narrow residential streets in older neighborhoods consisting primarily of single family homes. These streets – West, Pleasant, Market, Mechanic, and Third –

are not designed to accommodate the construction that Duke Energy Ohio contemplates. Third Street is particularly narrow with limited setbacks. *Reading Ex. 2, Ross Trans. 46-20 through 52-1 and Ross Trans. Ex.s R23 – R46*. During construction of the pipeline, residents on Third Street would lose access to their homes. *Trans. Vol I, 137-16 through 138-2, Reading Ex. 4*. Assuming that Duke Energy’s estimated construction timetable is correct, residents on Third Street could lose access to their homes for up to one month. *Duke Amended Application at 7-6*.

The proposed Alternate Route also runs through a primary recreational area consisting of ballfields, a football stadium and track complex, a fieldhouse and the community pool. The facilities in this area are used year round by the Reading Community Schools, youth sports organizations, and the residents of the City. *Reading Ex. 2, Ross Trans. 13-2 through 14-24*.

The proposed Alternate Route also runs through a site owned by the City of Reading being held for future development. The site, known as the Life Science Expansion Site, was acquired in cooperation with and a substantial investment from the State of Ohio and its “Jobs Ready Site Program.” *Id. at pp 29-8 through 37-2, and Ross Trans. Ex.s R-6, R-7, and R-47*. A little over \$3,000,000 of government funds have been used to acquire, remediate, and prepare this site for future development. *Id. at Ex. R 47*. The Life Science Expansion Site is adjacent to other life science companies and is being actively marketed with the intent of bringing high paying technical and scientific jobs to the City. *Id. at 36-8 through 36-24*.

In addition to the safety concerns that are inherent to all gas pipeline construction, the City of Reading’s objections to the proposed Alternate Route encompass two primary areas. First, and most importantly, construction of the Alternate Route in the location and manner proposed will result in a significant disruption in the lives of those residents who live along the several thousand feet of the proposed route. In addition to lane closures and elimination of off-

street parking – which in some areas is all that is available – residents on Third Street will lose access to their homes during construction. Absent significant route adjustments, these disruptions are unlikely to be mitigated. Second, the location of the proposed Alternate Route has an adverse impact on City owned property. The location of the route through the City’s Life Science Expansion Site reduces the City’s ability to effectively market the site for economic development, particularly if location of the pipeline eliminates the ability to add rail service to the site. Construction of the proposed Alternate Route also will disrupt the use of the City’s primary recreational facilities which are used year round.

The role of the Power Siting Board is to evaluate and decide whether the Duke Energy’s proposal in its application, with any supplemental information meets the statutory criteria. The Board must render a decision based upon the record – either granting or denying the application as filed – or granting it upon such terms, conditions, and modifications as it deems appropriate. R.C. §4906.10(A). The Board may modify the location of the proposed facility should it find a change in the location appropriate, provided that the municipal corporations, counties, and persons residing therein have been given reasonable notice thereof. R.C. §4906.10(B). For the reasons that are stated above and those that follow, the City of Reading believes that the selection of the Alternate Route is unreasonable and must be revisited.

II. Duke Energy Ohio Did Not Provide Complete Information in its Application for a Certificate of Environmental Compatibility and Public Need to Allow the Staff of the Ohio Power Siting Board to Properly Review the Adverse Impacts of the Alternate Route Prior to the Staff’s Recommendation that the Facility be Located on that Route.

To be certified, Duke Energy’s Central Corridor Pipeline must have a minimal adverse impact on the environment. R.C. §4906.10(A). The Ohio Power Siting Board is required to weigh the preferred and alternate routes proposed by Duke against the criteria established by

R.C. §4906.10(A) and the applicable rules. The review envisioned is to be comprehensive. The certificate application is required to include “fully developed information” on two routes. OAC 4906-3-05.

Following the release of the initial Staff Report of Investigation recommending placing the facility along the Alternate Route, Duke Energy indicated that it had not evaluated that route with the level of detail necessary to pursue its potential construction. *Staff Ex. I, Amended Staff Report at 47*. While Duke conducted additional post hoc investigations along the Alternate route following its selection, *id.*, the Constructability Review of the Western (Alternate) Route of June 8, 2016, was never communicated to the OPSB Staff. *See: Trans. Vol II, 468-5 through 468-19* (Testimony of Robert Holderbaum), *Trans. Vol III, 691-20 through 692-2* (Testimony of Tim Burgener). That Duke Energy devoted its engineering and environmental efforts solely to its Preferred Route is perhaps not surprising as the Board’s staff rarely, if ever, elects to recommend a route different than that preferred by the utility. Duke Energy’s project manager, Gary Hebbeler, testified that such a recommendation had never happened in the several projects that he has been involved in. *Trans Vol. I, 89-12 through 89-22*. The lead analyst for the OPSB Staff considering Duke Energy’s application, Robert Holderbaum, confirmed, stating that of the 35 major utility siting projects he has been the lead analyst for, this application is the first where the OPSB staff has recommended a location or route not preferred by the utility. *Trans. Vol II, 470-13 through 470-22*.

Permitting Duke Energy to conduct the major investigations of the Staff’s recommended Alternate Route that are intended to inform the Board’s decision as an afterthought is problematic. It quite simply means that Staff developed its recommendation on something less than “fully developed information.” Proceeding in this manner undermines public confidence in

the communities along the Alternate Route that the process has been fair as no one can say now whether the Staff's decision would have been different had the Staff had the required "fully developed information" on the front end. Another risk in permitting after-the-fact investigations is that they may become an exercise in bias confirmation. In other words, the investigation may be conducted to search for and interpret information in a way that rationalizes and justifies a pre-existing decision or to reach a pre-determined result.

A couple of examples illustrate the problem.

The United States Environmental Protection Agency manages a superfund site in Reading known as the Pristine, Inc. Superfund Site. The site is adjacent to properties that the proposed Alternate Route will cross. In addition, the proposed Route is in close proximity to remedial infrastructure serving the Pristine site, including monitoring and groundwater extraction wells and underground piping connected to the extraction wells. Though the public record is littered with references to Pristine, *see Testimony of Julianne Schucker, Trans. Vol II, 376-17 through 377-3*, there was nary a mention of the site in the initial Staff Report of Investigation. The Amended Staff Report devotes an entire page to the Pristine Site and describes the extensive steps taken by Duke Energy to clear the site, all of which occurred after the Staff had arrived at its Alternate Route recommendation. *Staff Ex. 1, Amended Staff Report at 44.*

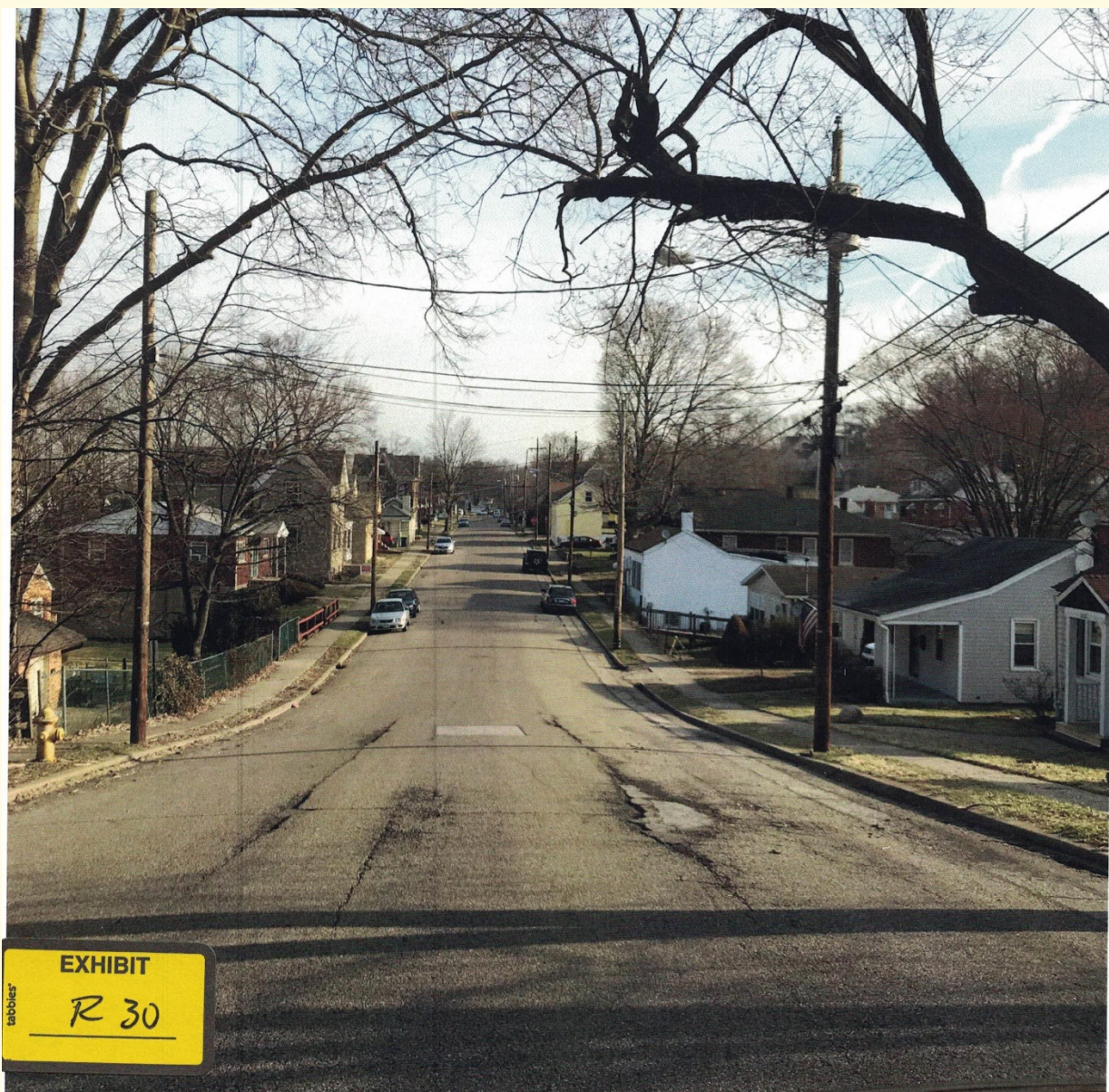
Likewise, the ownership of the City of Reading's Life Science Expansion Site is a matter of public record as is the extensive involvement of the State of Ohio in the acquisition and remediation of the site. *Reading Ex. 2, Ross Trans. Ex.s R-6, R-7, and R-47.* This is information that should have been communicated to the OPSB Staff as part of its investigation.

Most importantly, such concerns are magnified when, as here, there was important information – the Constructability Review (*Reading Ex. 4*) – that was never communicated to the

Staff. The problem with a major construction project intended to be located on the narrow residential streets in Reading is not a mystery. As the below photographs show, such construction in that area would be an engineering challenge. The setbacks are limited or non-existent. See *Reading Ex. 2, Ross Testimony at 49-13 through 47-20 through 50-3* (discussing setbacks and proximity of homes on Third Street).



(View of Third Street North of Vine Street, *Reading Ex. 2, Ross Testimony at 49-13 through 49-25 Ex R 37*)



(View of Third Street North of Benson Street, *Reading Ex. 2, Ross Testimony at 47-24 through 48-2, Ex R 30*)

The fact that residents along this street will be displaced from their homes for a month during construction would also seem to be an important matter for the Staff to consider when determining its recommendation as to the final placement of Duke Energy's pipeline. Duke

Energy's omission of the Constructability Review from the Staff's investigatory process denied the Staff the opportunity to consider this issue prior to issuing its recommendation. Prior to making the recommendation that the installation will proceed along the Alternate Route, the Staff should have – at a minimum – been apprised of this circumstance. “Fully developed information” requires Duke Energy to elaborate on its Constructability Review by identifying each house in Reading where access might be lost or restricted during construction. “Fully developed information” further requires Duke Energy to identify the anticipated length of time of such loss of access, the specific steps that Duke Energy is prepared to take to mitigate the anticipated loss of access, and how Duke Energy intends to compensate the residents who will be displaced from their homes. Requiring “fully developed information” on this issue prior to a route determination is required – and not too much to ask. OAC 4906-3-05.

In making its recommendation, the Staff paid particular attention to the number of residences within 1000 feet of the suggested routes. Staff noted in its recommendation of the Alternate Route that while the route has 67 more residences than the Preferred Route within 100 feet of the centerline of the pipeline, the Preferred Route has 967 more residences within 1000 feet of the centerline. *Staff Ex. 1, Amended Staff Report at 49*. While the higher rooftop count on the Preferred Route certainly bears consideration, it is the residents within 100 feet that are more likely to suffer displacement during construction. In failing to communicate the Constructability Review to the persons charged with making the recommendation, Duke Energy has rendered the Staff's conclusion that the Alternate Route “presents a lower potential for disruption of residences during construction,” wholly suspect. *Id. at 49-50*.

III. During its Route Siting Process, Duke Energy Applied its Technical Constraint Criteria in an Inconsistent Manner to the Detriment of the City of Reading and its Residents.

In completing its Route Selection Study, *Duke Amended Application, Appendix 4-1*, Duke Energy identified a number of technical preferences to be used in determining the placement of the route centerlines. These technical constraint criteria included placement of the routes along interstates at least ten feet outside of the Ohio Department of Transportation right-of-way, and along other roads placing the routes outside of the right-of-way. *Id. at 2-6*. City streets are considered “other roads” for the purposes of applying this technical constraint. *Testimony of James Nicholas, Trans. Vol II 283-10 through 283-16*. These technical criteria were treated by Duke Energy as mandatory constraints when considering ODOT interstate right-of-way, *see, Duke Amended Application at 4-1*, and largely ignored when locating the Alternate Route in the residential streets of Reading.

While cooperation between energy providers and state and local agencies is desirable, giving preference to state agency wishes over the concerns of local governments is unacceptable. State agencies and local political subdivisions stand in the same shoes with respect to facility siting decisions. R.C. § 4906.13. In this case, acceding to ODOT’s wishes effectively eliminated the largest contiguous properties – the interstate right-of-ways – within the project area from the siting process, forcing the pipeline to be constructed through residential, commercial, and recreational areas. *See Evendale Ex. 1 at 7*. This process resulted in the elimination of the best scoring prospective route (number 3) as much of it is located within Interstate 71 easement. *See Duke Amended Application, Appendix 4-1 at 3-7*. Protecting the grass and trees in the interstate easements will provide small solace to the people in Reading who will be displaced from their homes during the construction of the pipeline.

IV. Construction of the Pipeline on the Alternate Route will Interfere with the Construction of a Sewer Project Mandated by a Federal Consent Decree.

The City of Reading has been informed by the Metropolitan Sewer District of Greater Cincinnati that it intends to construct a major storm water project along West Street in Reading. *See Reading Ex.2 at pp 52-57 and Ross Ex.s R-3, R-4, and R-5; Reading Ex. 3.* The project is known as CSO513 and is required by a Global Consent Decree with the US EPA and Ohio EPA. *Reading Ex. 3.* The project is intended to reduce or eliminate future violations of the Clean Water Act.¹ The project is located in the same area proposed as the location for the Alternate Route. *See Reading Ex. 2, at pp 52-57.* Placing the pipeline along the current location of the proposed Alternate Route conflicts with this project and the Board should consider whether this project will affect the route selection or require an adjustment of the route location.

V. Adoption of City/County and N.O.P.E. Arguments

The City of Reading adopts and incorporates by reference the arguments advanced by the City of Cincinnati, Hamilton County and Neighbors Opposed to Pipeline Extension (N.O.P.E.) relating to pipeline safety and the need for Duke Energy's Central Corridor Pipeline Extension.

VI. The Board Should Re-open the Route Selection Process or Condition the Certificate to Require Construction on Duke Energy's Preferred Route.

Assuming that Duke Energy's application is not denied for other reasons, the Board will be faced with choosing where the pipeline will be located. The Board's options will be to

¹ In 2002, the United States EPA and the Ohio EPA sued Cincinnati and Hamilton County under the Clean Water Act for violations pertaining to the ownership and operation of MSD. Information related to that case may be found at: *United States of America and the State of Ohio v. The Board of County Commissioners of Hamilton County, Ohio and the City of Cincinnati*; case no. 1:02-cv-107, in the United States District Court for the Southern District of Ohio, Western Division. During the course of the litigation, the City of Cincinnati and Hamilton County have entered into several consent decrees with the USEPA and the Ohio EPA aimed at reducing and eliminating future violations of the Act. One of the remedies mandated by the consent decrees is the elimination of combined sewers which overflow during rain events, discharging raw sewage into streams and other watercourses in Hamilton County.

validate the Staff's recommendation of the Alternate Route that was based upon incomplete information, condition the Certificate upon construction on the Preferred Route, adopting one of the two routes with modifications, or opting to choose a different location altogether.

Duke Energy has made no secret of the fact that it believes that the Preferred Route, or something close thereto, best suits its needs. The Preferred Route best meets all of Duke Energy's objectives for the project: the improvement of north-south balance within its distribution system in the central Hamilton County, the retirement of the propane-air facilities, and to promote the testing, repair, and replacement of aging infrastructure within its distribution system. *Duke Amended Application at 2-7; Testimony of Gary Hebbeler, Trans. Vol I at 43-13.* By connecting to Line V in the Fairfax area, the Preferred Route provides the most favorable flow balance both east and west on Line V, and would also most directly offset flows from the Foster Station. *Id.* The Preferred Route will provide sufficient gas capacity in central Hamilton County, providing the ability to test and replace aging infrastructure without a loss of service. *Id.* Presumably, other routes that closely follow the I-71 corridor (such as Route 3) would provide similar benefits.

The testing, repair, and replacement of aging infrastructure is a critical component of Duke Energy's long term plans. Duke Energy currently operates 700 miles of high-pressure natural gas pipelines to bring natural gas to the central core of the Hamilton County area, and to then distribute that natural gas via "laterals," or smaller diameter pipelines. One of the main backbones of that system is known as Line A, a large diameter (18- to 24-inch) pipeline that feeds natural gas both from the north (from ANR and Texas Gas pipelines) and from the south (from Norwood Station). *Id. at 4-2.* The ability to test and if necessary repair and replace Line

A is particularly important. It was built in 1940, 1950s, and 1960s and does not meet today's stricter construction, inspection, and testing standards. *Id. at 4-2.*

While the Alternate Route also allows for retirement of the propane-air facilities and will generally improve the north/south supply balance, it offers less opportunity to directly offset gas flow from the Foster Station, providing a decrease in reliance from 55% to 50% as opposed to a decrease from 55% to 45% offered by the Preferred Route. *See Testimony of Andrew Conway Trans. Vol III, 657-2 through 659-8.* It will also increase the system dependency on the Norwood Station, limiting the flexibility for natural gas pipeline testing and replacement. *Duke Amended Application at 2-7.*

While the Alternate Route is projected to cost less to construct, *Staff Ex. 1, Amended Staff Report at 35-36*, Duke Energy's Preferred Route offers the better opportunity to satisfy Duke Energy's stated long-term needs. The Board should condition the grant of the Certificate on the installation of the facility on Duke Energy's Preferred Route. As proposed Route 3 is the best scoring route and lies in close proximity to the Preferred Route, conditioning the Certificate on installation along Route 3 would also be preferable to the Alternate Route.

Finally, within the City of Reading, the path selected as the Alternate Route follows an extremely intrusive path through narrow residential streets and prime property owned by the City for future economic development. To the extent that the installation is intended to occur on residential streets, specifically: West, Pleasant, Market, Mechanic, and Third Streets, and travel through valuable property held by the City of Reading, it is unreasonable and must be modified.

VII. Conclusion

For all of the foregoing reasons, Duke Energy Ohio's application for a certificate of environmental compatibility and public need is not well-taken and ought to be denied. Further,

as the recommendation of the Alternate Route over the Preferred Route was based on incomplete information, the siting process should be rejected and re-opened, or the installation route modified to the Preferred Route or another acceptable route to be determined.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Initial Brief filed on behalf of Intervenor City of Reading was served by electronic mail on May 12, 2019, upon counsel of record for the parties in the matter to the following electronic addresses:

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filed by Mr. DAVID T STEVENSON on behalf of CITY OF READING