

**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 :
:
:

**INITIAL POST-HEARING BRIEF SUBMITTED ON BEHALF OF THE CITY
OF BLUE ASH, OHIO AND COLUMBIA TOWNSHIP, OHIO**

David Waltz, City Manager for the City of Blue Ash, Ohio (“Blue Ash”) and David Kubicki, President of the Board of Trustees of Columbia Township (“Columbia Township”), submit their Initial Post-Hearing Brief opposing Duke Energy, Ohio’s (“Duke”) Application for a Certificate of Environmental Compatibility and Public Need regarding the C314V Central Corridor Pipeline Extension Project.

Respectfully submitted,

s/ Bryan E. Pacheco

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and Columbia Township, Ohio**

I. INTRODUCTION

Duke applied to the Ohio Power Siting Board (“Board” or “OPSB”) for a Certificate of Environmental Compatibility and Public Need (“Certificate”) to construct and to operate a 20-inch, 500 psig high-pressure natural gas pipeline. The pipeline will run through numerous densely-populated, “highly congested,” fully-developed communities within Hamilton County, Ohio, including Blue Ash and Columbia Township. Duke has not demonstrated that the proposed Central Corridor Pipeline Project (“proposed pipeline”) satisfies the requirements in R.C. 4906.10(A). The Certificate should be denied.

Throughout this proceeding before the OPSB, Duke has provided inaccurate, unreliable, and contradictory information to the Power Siting Board, Staff, the Intervenors, and the general public. Plus, Duke has provided virtually no information to the Intervenors, or the general public for that matter, which would allow them to evaluate the impact and risks of the proposed pipeline. Instead, Duke argues that such information need not be provided until after the Board issues the Certificate.

But, as illustrated in *In Re Middletown Coke*, 127 Ohio St.3d 348, 939 N.E.2d 1210 (2010), the Intervenors here (and the general public) have not been provided enough information to even test Duke’s assertion that the proposed pipeline meets the requirements of R.C. 4906.10(A). Like *Middletown Coke*, the significant data gaps here compel denial of certification.

Specifically, as described in greater detail below, Duke has provided inaccurate information regarding the following:

- The potential impact radius in the event of a rupture involving the proposed pipeline. (Tr. Volume I, at pp. 100-101).

- The potential dangers involving unmanaged gas leaks. (Tr. Volume I, at pp. 187-188).
- Any specific high-consequence areas located in close proximity to the proposed pipeline. (Tr. Volume I, at pp. 107-108).
- The economic impact of the proposed pipeline to Blue Ash or Columbia Township. (Tr. Volume I, at pp. 118-119).
- That the proposed pipeline crosses residential properties. (Tr. Volume III, at p. 707; City/County Exhibit 1).

Moreover, Duke has provided either no information or incomplete information to Blue Ash and Columbia Township regarding:

- Any potential emergency response plan or any information allowing Intervenors to prepare such a plan. (Blue Ash Exhibit 6, at p. 23).
- Safety plans or evacuation zones in the event of a rupture or gas leak involving the proposed pipeline. (Tr. Volume I, at p. 114).
- The steps Duke has taken to assess or minimize the probable environmental impact of the proposed pipeline. (Blue Ash Exhibit 6, at p. 28).
- The procedures Duke is planning to take to minimize any aesthetic impacts to Blue Ash or Columbia Township. (Tr. Volume I, at pp. 94-95).
- Any limitations on future construction as a result of the proposed pipeline. (Tr. Volume I, at p. 93).
- Any potential traffic impacts that will be caused by construction of the proposed pipeline. (Tr. Volume I, at p. 96).

Without this crucial information, the mandatory statutory determinations set forth in R.C. 4906.10(A) cannot be rendered - at least not in favor of Duke. Indeed, given the significant data gaps in this record, the certification must be denied. In this vacuum, the Intervenor and the general public cannot effectively analyze the risks and dangers of the proposed pipeline running through their respective communities.

Duke should return to the drawing board. The critical statutory requirements should be decided only after the public is provided with answers to the fundamental public interest, convenience, and necessity issues outlined above. Waiting to provide such answers until the pipeline is sited is much too late. There is then no accountability, nor real recourse, for those negatively impacted by the proposed pipeline. This is particularly true here, where the expected useful life of the proposed pipeline is 50-100 years. (Tr. Volume II, at p. 440). For these reasons, Duke's application for a Certificate should be denied.¹

II. FACTUAL AND PROCEDURAL BACKGROUND

On September 13, 2016, Duke filed its Application for a Certificate of Environmental Compatibility and Public Need regarding 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

¹ Duke has not satisfied its burden of presenting sufficient information demonstrating compliance with numerous provisions of R.C. 4906.10(A). Other intervening parties will predominantly address those statutory requirements. Blue Ash and Columbia Township will primarily focus on Duke's failure to satisfy the requirements of R.C. 4906.10(A)(3) and (6). Blue Ash and Columbia Township hereby incorporate by reference, as if fully restated herein, the arguments contained within the Initial Briefs filed on behalf of the City of Cincinnati, the Board of County Commissioners of Hamilton County, and the Neighbors Opposed to Pipeline Extension, LLC ("NOPE").

amended application dated March 3, 2017 is the operative Application for this proceeding (“Application”).

The proposed pipeline is a 20-inch diameter pipeline that would extend approximately 13 to 14 miles from the southern terminus of the existing 24-inch diameter Line C314 pipeline at the WW Feed Station to a point along the existing 20-inch diameter Line V pipeline in the Fairfax or Norwood area. (Duke Energy Ohio Exhibit I-12, Application, at p. 2-1). The proposed pipeline is classified as a high-pressure natural gas distribution pipeline, with a designed Maximum Allowable Operating Pressure (“MAOP”) of 500 psig and a normal operating pressure of approximately 400 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 specified minimum yield strength (“SMYS”) at MAOP. (Tr. Volume II, at p. 386).

As part of the application process for a Certificate, Duke is required to evaluate “all practicable alternatives” within Duke’s defined study area and ultimately select a Preferred and Alternate Route for the OPSB’s review. (Duke Energy Ohio Exhibit I-12, Application, at p. 2-4). After considering various routes, which are described in greater detail in Duke’s Application, Duke settled on two potential route options. Duke selected the Orange Route as the Preferred Route and the Green Route as the Alternate Route. (Duke Energy Ohio Exhibit I-12, Application, at p. 2-7).

On March 31, 2017, Blue Ash intervened to oppose Duke’s Application for a Certificate for the proposed pipeline. Both the Preferred Route and Alternate Route run through Blue Ash. (Duke Energy Ohio Exhibit I-12, Application, at p. 2-5 –2-6). Likewise, on April 12, 2017, Columbia Township intervened. The Preferred Route traverses through Columbia Township, but the Alternate Route does not. (*Id.*).

On May 31, 2017, Staff submitted its initial Staff Report of Investigation. There, Staff recommended that the Board approve Duke's Application, subject to certain conditions contained therein. (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.

Thereafter, on August 23, 2017, Duke moved for Suspension of the Procedural Schedule. On August 24, 2017, Administrative Law Judge Parrott issued an entry granting Duke's Motion to Suspend the Procedural Schedule until otherwise ordered by the Board.

On April 13, 2018, Duke moved for Reestablishment of the Procedural Schedule. On December 18, 2018, Administrative Law Judge Parrott ordered that Duke's supplemental information should be considered an amendment of a pending accepted, complete application. In that same entry, Administrative Law Judge Parrott established the procedural schedule for the instant proceeding.

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 specified therein. (*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). On March 21, 2019, Duke held a second local public hearing at the University of Cincinnati Blue Ash College.

From April 9, 2019 through April 11, 2019, the adjudicative hearing was held before Administrative Law Judges See and Parrot.

III. ARGUMENT

A. Legal Standard.

The Board must make eight specific determinations in order to grant a certificate for construction and operation of a major utility facility. *See* R.C. 4906.10(A). Under Ohio law, a “major utility facility” includes a “gas pipeline that is greater than five hundred feet in length, and its associated facilities, is more than nine inches in outside diameter and is designed for transporting gas at a maximum allowable operating pressure in excess of one hundred twenty-five pounds per square inch.” *See* R.C. 4906.01(B)(1)(c).

There is no dispute the proposed pipeline constitutes a major utility facility under Ohio law. So Duke was required to file an application for a Certificate of Environmental Compatibility and Public Need pursuant to R.C. 4906.04 and R.C. 4906.06.

Specifically, R.C. 4906.10(A) provides, in relevant part:

The board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the board, unless it finds and determines all of the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline;
- (3) That the facility 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;
- (6) That the facility will serve the public interest, convenience, and necessity;

Under the statutory scheme, the Board cannot grant a Certificate unless Duke presents sufficient information allowing the Board to determine all of the statutory requirements under R.C. 4906.10(A) are satisfied.

Duke has not met this burden. Consequently, neither the Preferred Route nor the Alternate Route can be approved. The Board should deny Duke's Application for a Certificate of Environmental Compatibility and Public Need with respect to the proposed pipeline.

B. Duke Has Not Established that the Proposed Pipeline Serves the Public Interest, Convenience, and Necessity.

Under R.C. 4906.10(A)(6), Duke must provide sufficient information to allow the Board to determine that the proposed pipeline serves the public interest, convenience, and necessity. Duke has not done so. Notably, with respect to major details, Duke has provided inconsistent and unreliable information. On other aspects, Duke counters that Intervenor must "wait and see" for such further information until the proposed pipeline is approved. For these reasons, the Board should deny Duke's Application for a Certificate for the proposed pipeline.

1. Duke Has Not Evaluated Serious Safety Concerns Regarding the Proposed Pipeline.

a. Duke provided inaccurate and inconsistent information regarding the potential impact radius for the proposed pipeline.

Duke has not adequately addressed 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, the information Duke provided to the OPSB, Staff, the intervening parties, and the general public is inaccurate and inconsistent. This has prevented the Intervenor, like Blue Ash and Columbia Township, as well as the public at large, from being able to effectively evaluate the impact and risks associated with the proposed pipeline.

Gary Hebbeler is Duke's Vice President of Special Projects. (Tr. Volume I, at p. 14). Mr. Hebbeler is responsible for the design, construction, permitting, and commissioning of the proposed pipeline. (Tr. Volume I, at p. 103:5-9). Mr. Hebbeler testified that, given the proposed pipeline's design specifications (*i.e.*, diameter and pressure), it is 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 is designed to ensure that, in the event of an integrity issue, the pipeline will 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, gas leaks are still dangerous. (Tr. Volume II, at p. 394). So this distinction is really just a distraction.

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). Given that the study area for the proposed pipeline consists of dense residential, industrial, and institutional land uses, the consequences of a pipeline rupture or unmanaged leak could be catastrophic. (Tr. Volume II, at pp. 253, 299).

As noted in the Amended Staff Report of Investigation, the Preferred Route has 115 residences within 100 feet and 3,153 residences within 1,000 feet of the pipeline. (Staff Exhibit 1, at p. 33). 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 has not provided Blue Ash any information regarding the potential impact of an explosion, or rupture, involving the proposed pipeline. (Tr. Volume I, at p. 97). Indeed, Mr. Hebbeler testified as follows:

| | |
|----|---|
| 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).²

Not only has Duke not provided this information, it has not provided Blue Ash any information regarding the expected traffic impact during construction of the proposed pipeline, the aesthetic impact of the proposed pipeline, emergency response plans or evacuation routes in the event of an emergency, the procedures or the amount of time required to repair or replace the damaged pipeline in the event of a failure, or the environmental impact of the proposed pipeline. (See Direct Testimony of Gordon Perry, Blue Ash Exhibit 6, at pp. 23-24, 26-31).

Significantly, on perhaps the most critical consideration (the impact of a potential pipeline rupture), Duke promulgated inaccurate information to the public for years. Duke maintains 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 is familiar with Duke's website. (*Id.*). He agreed Duke provides the information on its website for the public to garner accurate information about the proposed pipeline. (Tr. Volume I,

² 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.

at pp, 99, 102). Importantly, Mr. Hebbeler acknowledged the public is relying on the accuracy of that information. (Tr. Volume I, at pp, 99, 102).

At the hearing, Mr. Hebbeler was presented with 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:



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I've heard people mention a "danger area." What is that? —

Duke Energy does not calculate a "danger area," as such. There is no governmental definition of this term. However, the Code of Federal Regulations does define a Potential Impact Radius (PIR) for the purpose of integrity management. The distance determined as the PIR is based on the pressure in the pipeline, the diameter of the pipeline, and a factor that addresses the type of gas being transported. The PIR for this pipeline is 326 feet on either side of the center of the pipeline.

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

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."³ (*Id.*). Thus, despite Mr. Hebbeler's testimony that the PIR is not relevant to the proposed pipeline and need not be calculated, Duke's own website inexplicably says something completely different.

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). That data was not changed until Mr. Hebbeler admitted it was wrong under cross-examination. Given that the information

³ 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.

Duke published on its website was inaccurate, misleading, and contradictory, all of the information Duke presented during this proceeding should be questioned and scrutinized.

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 OPSB with sufficient information to allow the OPSB 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 OPSB's rulings 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, such as Duke, must provide the OPSB 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 so intervening communities, like Blue Ash and Columbia Township, can determine whether Duke satisfied the statutory requirements under R.C. 4906.10(A).

As stated above, Duke has provided virtually no information to Blue Ash or Columbia Township 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 and Columbia Township have 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 the Certificate be denied.

b. Duke provided inaccurate and inconsistent information regarding high-consequence areas located near the proposed pipeline.

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 also wrong. “High-consequence area” is a defined term under the Code of Federal Regulations. *See* C.F.R. § 192.903.

To the public, Duke specifically cites examples of certain high-consequence areas on its website:



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Duke Energy, therefore, is subject to regulation at both the federal and state levels.

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).

So, at least before the adjudicatory hearing, Duke claimed that the entire pipeline is a high-consequence area, highly congested with development. At the hearing,

however, Mr. Hebbeler backtracked. He testified that he is 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 are irrelevant, and thus need not be considered by Duke, because the proposed pipeline is classified as a distribution pipeline. (*Id.* at pp. 107-108).

Consequently, according to Mr. Hebbeler, Duke has not performed any analysis to determine whether Summit Park, or any other area of Blue Ash or Columbia Township, would be considered a high-consequence area. (Tr. Volume I, at pp. 107-108). Summit Park is a 130-acre park in Blue Ash that has sidewalks, community buildings, restaurants, a playground, an observation tower, a lake, natural forested areas, and other attractions. (Blue Ash Exhibit 6, at p. 4). In 2018, 884,559 people visited the park. (*Id.*).

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 knowing that the Alternate Route abuts a park that has close to one million visitors each year.

Even more, Dr. Nicholas did not consider the PIR of the proposed pipeline when he evaluated the potential pipeline routes. (*Id.* at p. 281). Nor did he analyze the impact of a potential worst-case scenario event in his route evaluation. (*Id.*).

These are further examples of Duke not evaluating highly relevant and readily available information. These significant data gaps prevent Blue Ash and Columbia Township from being able to effectively analyze the risks and dangers of the proposed pipeline running through these communities. This is the precise vacuum the Supreme

Court of Ohio condemned when it reversed the OPSB's certificate grant in *Middletown Coke*.

Even accepting Duke's testimony that it need not consider or calculate a PIR for the proposed pipeline or high-consequence areas surrounding the proposed pipeline, Duke emphasized that it went "above and beyond" certain federal regulations on the design and construction of the proposed pipeline. (Tr. Volume I, at pp. 113-114). Duke even trumpeted at the public hearing (via a brand new circular) seven ways in which it will exceed federal regulations, including using higher grade steel and increased pipe wall thickness. (Tr. Volume I, at pp. 112-114; Blue Ash and Columbia Township Exhibit 2). Yet on issues as crucial as calculating the PIR and identifying high-consequence areas in the event of a pipeline failure, Duke simply says that those critical considerations do not apply. (*Id.*).

2. Duke Has Not Provided Sufficient Information Allowing the OPSB and Intervening Parties to Evaluate the Consequences of a Pipeline Failure.

a. Mr. Paskett's testimony is unreliable and should be disregarded.

In addition to the above inaccurate information provided to the public, the Board, and the Intervenors, Duke claims that, in the event of an integrity issue, the proposed pipeline will essentially always 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 are

unreliable. Indeed, they only further buttress that Duke must go back to the drawing board.

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 experiences 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 pipeline “explosions.” (*Id.*).

The proposed pipeline here is anything but a low-pressure distribution pipeline. Rather, it is classified as 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 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, Duke’s position that the high-pressure proposed pipeline will not is not credible.

Additionally, Mr. Paskett agreed that: “Even a slight gouge, scrape, or dent to a pipeline, its coating, or a wire attached to or running alongside the pipe, may cause a break or leak in the future.” (Tr. Volume II, at p. 429; Blue Ash and Columbia Township Exhibit 3). Likewise, Mr. Paskett acknowledged that even a slight impact or load can separate pipeline joists, damage protective coating, or destabilize supports. (Tr. Volume II, at pp. 428-429; Blue Ash and Columbia Township Exhibit 3). Therefore, despite his best attempts to minimize and to disregard the potential risks and dangers associated with the proposed pipeline, Mr. Paskett concedes that, if pipelines are not properly supported and protected, there are very serious risks of fire or explosion. (Tr. Volume II, at pp. 427-428; Blue Ash and Columbia Township Exhibit 3).

Even more, Duke’s testimony that gas distribution pipelines do not rupture contradicts information published by PHMSA. For instance, the Integrity Management for Gas Distribution, Report of Phase 1 Investigations, which was prepared, in part, by PHMSA, provides that the “dominant cause of distribution incidents is excavation damage with third party damage being the major contributor to these incidents.”

(NOPE Exhibit 14, at p. 4).⁴ Mr. Hebbeler agreed that third-party damage, such as excavation, is the leading cause of damage and risk to Duke's distribution pipelines. (Tr. Volume I, at pp. 76,103). The Integrity Management for Distribution Pipelines further provides: "*Other than as caused by excavation damage*, distribution pipeline failures almost always involve leaks, rather than ruptures, because the internal gas pressure is much lower than for transmission pipelines." (NOPE Exhibit 14, at p. 4) (emphasis added).

So, according to information published by PHMSA, excavation damage can cause pipelines to rupture, not just leak. Notably, excavation damage is also the leading cause of damage and risk to Duke's distribution pipelines. (Tr. Volume I, at pp. 76,103).

Likewise, and contrary to the testimony of Duke's witnesses, Mr. Chace agreed it is 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 is "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 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.

⁴ Notably, Mr. Paskett relies on NOPE Exhibit 14, the Integrity Management for Gas Distribution, Report of Phase 1 Investigations, for his opinion that distribution pipelines will always leak instead of rupture. (Tr. Volume II, at p. 392).

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).

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

Pipeline Serious Incident 20 Year Trend
Date run: 3/30/2019

Portal - Data as of 3/28/2019
Data Source: US DOT Pipeline and Hazardous Materials Safety Administration

PHMSA Pipeline Incidents: (1999-2018)
Incident Type: Serious System Type: GAS DISTRIBUTION State: (All Column Values)

| Calendar Year | Number | Fatalities | Injuries |
|--------------------|------------|------------|------------|
| 1999 | 52 | 16 | 80 |
| 2000 | 51 | 22 | 59 |
| 2001 | 30 | 5 | 46 |
| 2002 | 30 | 10 | 44 |
| 2003 | 51 | 11 | 58 |
| 2004 | 38 | 18 | 37 |
| 2005 | 28 | 14 | 37 |
| 2006 | 24 | 16 | 28 |
| 2007 | 29 | 9 | 29 |
| 2008 | 28 | 6 | 47 |
| 2009 | 37 | 9 | 47 |
| 2010 | 25 | 8 | 39 |
| 2011 | 29 | 11 | 48 |
| 2012 | 23 | 7 | 43 |
| 2013 | 19 | 7 | 34 |
| 2014 | 24 | 18 | 92 |
| 2015 | 22 | 2 | 32 |
| 2016 | 31 | 10 | 74 |
| 2017 | 20 | 16 | 32 |
| 2018 | 35 | 7 | 81 |
| Grand Total | 626 | 222 | 987 |

(NOPE Exhibit 15).

As this graph demonstrates, there were 626 serious incidents, 222 fatalities, and 987 injuries involving natural gas distribution pipelines from 1999 through 2018. (*Id.*). 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).

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 cannot be overlooked or disregarded. (Tr. Volume II, at pp. 390-392).

Thus, although Mr. Paskett states that the number of serious incidents involving distribution pipelines has decreased significantly, the most recent statistics, which he claimed to be unaware of, demonstrate the opposite. Mr. Paskett was unable to opine on these differing statistics. He eventually relented, stating that he “did not necessarily agree with all statistics on PHMSA’s website.” (Tr. Volume II, at pp. 397-398, 422). Essentially, Mr. Paskett agreed with the statistics that supported his opinions and disregarded those that did not.

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.

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

In addition to disregarding the likelihood and impact of a pipeline rupture, Duke minimizes 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).

In fact, on Duke's website, Duke advises the public that if equipment contacts a gas pipeline or, if someone suspects a gas leak, the area should be immediately evacuated. (Tr. Volume II, at pp. 430-431; Blue Ash and Columbia Township Exhibit 4). The public is advised not to light a match, start an engine, or operate any electrical device, including a phone, as a spark could ignite the leaked gas. (Tr. Volume II, at pp. 430-431; Blue Ash and Columbia Township Exhibit 4).

Similarly, Duke advises the public that damage to a natural gas service line presents a serious hazard that can lead to a gas leak, fire, and explosion. (Blue Ash and Columbia Township Exhibit 4, at p. 10). This is yet another example where Duke's hearing testimony contradicted information it published and disseminated to the public.

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.

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. Mr. Perry testified that, according to his understanding of the Alternate Route, if a pipeline explosion occurred 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 Board cannot ignore these grave concerns, for which no information has been provided to evaluate.

3. Duke Has Not Provided Any Information Allowing Blue Ash or Columbia Township to Develop an Emergency Response Plan.

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.*). Nor has Duke had any such conversations with Columbia Township personnel. In fact, Duke will not have any such conversations with Blue Ash or Columbia Township until the specific pipeline route has been approved. (*Id.*).

Likewise, 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.*).

At the time of the hearing, Mr. Hebbeler agreed Duke had not provided any kind of evacuation plan or safety plan to Blue Ash in the event of a pipeline rupture. (Tr. Volume I, at p. 114). Given Mr. Hebbeler’s position that “a pipeline rupture will not

apply to this [proposed] pipeline,” Duke apparently does not intend to provide any kind of evacuation plan or emergency response plan to Blue Ash or Columbia Township anyway. (*Id.*).

Mr. Hebbeler also recognized that Duke had not provided any training to Blue Ash emergency first responders. (*Id.* at pp. 114-115). This lack of training presents a serious concern for Blue Ash and Columbia Township. The potential impact on public services for Blue Ash and Columbia Township 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 and Columbia Township cannot adequately prepare for or respond to such an event.

Like the City of Monroe in *Middletown Coke*, Duke has not provided Blue Ash or Columbia Township sufficient information that would allow them 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). Duke’s Application for a Certificate should be denied.

4. Duke Has Not Evaluated the Social and Economic Impact of the Proposed Pipeline.

In addition to not considering or addressing numerous serious safety concerns regarding the proposed pipeline, Duke has not adequately evaluated the social and economic impact of the proposed pipeline.

Staff witness, Matt Butler, is responsible for docketing and responding to questions and comments received from the public. (Tr. Volume III, at p. 714). Mr. Butler attended two of the four public informational meetings regarding the proposed

pipeline. (*Id.* at 714). He testified that the general consensus was that there is overwhelming opposition to the proposed pipeline. That is consistent with the public comments filed on the OPSB docket.⁶ (*Id.* at 714-715, 718-719). At the public hearings, no attendees expressed support for the proposed pipeline. (*Id.* at p. 716). In fact, Mr. Butler testified that the Staff received hundreds of comments from the public. (*Id.* at pp. 715-716). Yet, he recalls approximately only 15 written comments in support of the proposed pipeline. (*Id.*).

Similarly, Mr. Butler acknowledged receiving correspondence from a number of government officials on behalf of the communities impacted by the proposed pipeline. (Tr. Volume III, at pp. 724-725). Mr. Butler agreed that the comments received on behalf of those communities were likewise opposed to the proposed pipeline. (*Id.*).

Despite the vehement and vociferous opposition to the proposed pipeline, Duke has continued to proceed with seeking to construct the pipeline along the densely populated Proposed Route and Alternate Route. Dr. Nicholas, who was responsible for Duke's route selection study, testified that he has not even seen all of the public comments (he's seen only those pre-filtered by Duke). (Tr. Volume II, at pp. 300-301). And he was not even aware of public complaints regarding the Preferred and Alternate Routes. (*Id.*). Duke has advanced its own economic interests ahead of the general public's interests and well-being.

Moreover, the information Duke provided with respect to the economic impact of the proposed pipeline is simply speculation. Initially, in its Application, Duke stated

⁶ In the Amended Staff Report of Investigation, Staff stated that, as of February 26, 2019, it received 1,534 document records filed in the record for this proceeding. (Staff Exhibit 1, at p. 56). Staff noted that the "public comments received by the OPSB are overwhelmingly opposed to the proposed pipeline, with commenters citing concerns with issues including but not limited to, pipeline safety, the need for the pipeline, potential impacts to property value, and route selection." (*Id.* at p. 57).

that the approximate annual property taxes associated with the Preferred and Alternate Routes are \$2.8 million and \$2.2 million, respectively. (Duke Energy Ohio Exhibit I-12, Application, at p. 6-11). Initially, Duke claimed that Blue Ash would receive approximately \$898,000 if the proposed pipeline is 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).

In his pre-filed testimony, 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. (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 is constructed along the Preferred Route and \$818,596 if the proposed pipeline is constructed along the Alternate Route. (Tr. Volume I, at p. 119; Duke Energy Exhibit 7, at p. 32).

But 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. So it is unclear whether either estimate is accurate.

More importantly, Mr. Hebbeler acknowledged he does 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.*).

Crucially, Mr. Hebbeler admitted that he does not know the amount Blue Ash actually receives. (*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 will allegedly receive, even though

it had no idea what that amount really is. (*Id.*). This is another instance in which Duke has provided inaccurate information. Even so, whatever pittance is actually apportioned to Blue Ash or to Columbia Township is not nearly worth it.

Duke has not presented enough demonstrating it adequately evaluated the social and economic impact of the proposed pipeline. Duke essentially ignored the public comments in opposition to the proposed pipeline. And Duke has no basis to support the economic benefit it touts will result from the proposed pipeline.

For all of the above reasons, Duke has not satisfied its burden of presenting sufficient information to allow the Board to determine that the proposed pipeline serves the public interest, convenience, and necessity, as required under R.C. § 4906.10(A)(6). Consequently, the Board should deny Duke's Application for a Certificate.

C. Duke Has Not Satisfied its Burden of Establishing that the Proposed Pipeline Represents the Minimum Adverse Environmental Impact, Considering the State of Available Technology and the Nature and Economics of the Various Alternatives.

Under R.C. 4906.10(A)(3), Duke must provide sufficient information to allow the OPSB to determine that the proposed 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. Duke has not done so.

Initially, Duke does not know the environmental impact that the proposed pipeline will have on Blue Ash or Columbia Township. Duke has had virtually no communication with Blue Ash or Columbia Township representatives regarding the impact of the proposed pipeline. As noted above, Gordon Perry is the Blue Ash Public Works Director. (Tr. Volume III, at 608-609; Blue Ash Exhibit 6, at p. 1). Other than

the information that has been provided publicly, Mr. Perry testified that Duke has not informed Blue Ash of any steps Duke has taken to assess or minimize the probable environmental impact of the proposed pipeline in Blue Ash. (*Id.* at p. 28).

Likewise, Duke has not informed Blue Ash of the steps Duke is taking to minimize any aesthetic impacts to Blue Ash. (*Id.* at p. 29). One major issue involves Summit Park. Duke intends to install a valve station near the entrance to the Park. (Staff Exhibit 1, at p. 8). In fact, one of Staff's conditions requires Duke to "coordinate with local zoning officials to develop a screening plan" for such valve stations. (Staff Exhibit 1, at p. 67).

To date, however, Duke has provided nothing to Blue Ash, much less "coordinated" with it to develop a screening plan. (Blue Ash Exhibit 6, at p. 19). Mr. Perry testified that, other than knowing there will be a chain-link fence, Duke has not provided the size, the screening method, or even the precise location of the valve station. (Blue Ash Exhibit 6, at p. 19).

For the benefit of the Park's users, Blue Ash has spent a significant amount of time and money on Summit Park's aesthetic design and quality, including using premium finishes on all amenities. (*Id.* at pp. 19, 26-27). A chain-link fence would neither be consistent, nor appropriate, for such finishes, particularly because it would scar one of the Park's gateway entrances. (*Id.* at pp. 26-27). The aesthetic impact of that valve station, something even Staff believed warranted a condition to address, is still not known because Duke has not disclosed that information to Blue Ash. This is just another example of Duke not providing enough information to warrant certification.

The proposed Alternate Route is located within or adjacent to the Blue Ash Sports Center, Crosley Field, and Summit Park. (Amended Staff Report of Investigation, p. 34).

Nevertheless, Staff stated that the predominant impact to these parks and recreation areas would be during construction and would be temporary in nature. (*Id.*). Staff opined that permanent impacts “should be minimal as the pipeline would be located underground.” (*Id.*).

Staff’s conclusion with respect to the impact on the parks and recreation areas referenced above is incomplete. That the pipeline is located underground does not eliminate the potential risks associated with a high-pressure pipeline in close proximity to highly-congested parks and recreation areas. Duke was unaware and did not consider the fact that more than 850,000 people visit Summit Park each year. (Tr. Volume II, at pp. 299-300). Obviously, Staff could not have evaluated that information when it concluded the Alternate Route was optimal.

Moreover, Duke publishes information on its website stating: “In fact, there are no residential properties crossed along the Alternate Route.” (Tr. Volume III, at p. 707; City/County Exhibit 1). That information was published in December of 2018. (*Id.*).

But Staff witness Mr. Burgener testified that both the Preferred Route and the Alternate Route cross “some number of residential properties.” (*Id.* at p. 706). Mr. Burgener specifically disagreed with the contrary information published on Duke’s website. (*Id.* at p. 706). Even as late as December of 2018, Duke was providing inaccurate information regarding critical aspects of the proposed pipeline.

Mr. Hebbeler testified he is not aware of any conversations in which Duke has informed Blue Ash of any limitations on future construction if the proposed pipeline is constructed on either route. (Tr. Volume I, at p. 93). This will not occur until after the Board approves Duke’s Application for a Certificate. (*Id.*).

Likewise, Mr. Hebbeler conceded that complete construction plans will not be developed until after the Board issues the Certificate. (*Id.* at pp. 93, 96). Duke has not provided Blue Ash or Columbia Township any information regarding the potential traffic impacts that will be caused by construction of the proposed pipeline. (*Id.* at pp. 93, 96).

Furthermore, 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 on a 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.*). Likewise, Mr. Hebbeler did not know whether Duke considered the 2016 Revised Blue Ash Comprehensive Plan in determining the potential impacts along the preferred or alternate routes in Blue Ash. (Tr. Volume I, at pp. 95-96).

Mr. Lane was involved in considering the environmental impact for the location of the proposed pipeline. (Tr. Volume II, at p. 343). Mr. Lane and Dr. Nicholas both conceded the engineering plans for the proposed pipeline are incomplete. (*Id.*; Tr. Volume II, at p. 321). Mr. Lane further stated that the environmental permitting process could not occur until engineering plans are more advanced. (Tr. Volume II, at p. 343). Nor will Blue Ash or Columbia Township know the width of the easement for the proposed pipeline until after the pipeline is approved. (*Id.* at pp. 343-344).

This “wait and see” approach to providing information to the Intervenor until after the Certificate is issued prevents their (as well as the public’s) meaningful participation in this review process. Indeed, in 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 exactly what Duke has done here.

For all of the above reasons, Duke has not presented adequate information allowing the Board to determine that the proposed pipeline represents the minimum adverse environmental impact, as required under R.C. 4906.10(A)(3). Consequently, the Board should deny Duke’s Application for a Certificate for the proposed pipeline.

IV. CONCLUSION

For all of the foregoing reasons, Blue Ash, Ohio and Columbia Township, Ohio request that the Ohio Power Siting Board deny Duke Energy Ohio's Application for a Certificate of Environmental Compatibility and Public Need regarding the proposed Central Corridor Pipeline Project.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all parties who have electronically subscribed to this case through the Docketing Information System of the Public Utilities Commission of Ohio and the OPSB on this 13th day of May, 2019. The docketing division's e-filing system will electronically serve notice of the filing of this document on the following parties:

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