

**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. 16-0253-GA-BTX
Need for the C314V Central Corridor	)	
Pipeline Extension Project	)	

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**INITIAL POST-HEARING BRIEF SUBMITTED ON BEHALF OF INTERVENOR  
CITY OF MADEIRA, OHIO**

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Traci Theis, Mayor for the City of Madeira, Ohio, through undersigned counsel, submits this Initial Post-Hearing Brief opposing Duke Energy Ohio, Inc.'s Application for a Certificate of Environmental Compatibility and Public Need regarding its proposed C314V Central Corridor Pipeline Extension Project.

Respectfully submitted,

/s/ Brian W. Fox

Brian W. Fox (0086851)  
GRAYDON HEAD & RITCHEY LLP  
312 Walnut Street, Suite 1800  
Cincinnati, Ohio 45202-3157  
Phone: (513) 629-2706  
Fax: (513) 651-3836  
Email: bfox@graydon.law  
*Attorney for Intervenor City of Madeira, Ohio*

## **I. INTRODUCTION.**

Duke Energy Ohio, Inc. (“Duke”) applied to this Board for a Certificate of Environmental Compatibility and Public Need to build and operate a high-pressure natural gas pipeline 20-inches in diameter. Duke’s proposed high-pressure pipeline cuts through numerous communities in Southwest Ohio, including the City of Madeira, Ohio (“Madeira”). After countless public comment sessions, lengthy depositions, and three days of testimony before the administrative judges overseeing the Adjudicatory Hearing last month, Duke has failed to demonstrably prove its proposed Central Corridor Pipeline Project satisfies the requirements outlined by the General Assembly in R.C. 4906.10(A).

While Duke was obligated to provide probative and reliable evidence in support of R.C. 4906.10(A)’s eight factors, the record before this Board contains profound evidentiary gaps (especially with respect to the safety of Ohioans residing throughout Hamilton County), un rebutted testimony contradicting Duke’s positions, and a spotty presentation of biased testimony failing to even resemble “public interest” ... let alone “public necessity” (R.C. 4906.10(A)(6)). Accordingly, Duke’s Application for a Certificate of Environmental Compatibility and Public Need regarding its proposed C314V Central Corridor Pipeline Extension Project should be denied by this Board.

## **II. STATEMENT OF RELEVANT FACTS.**

As an initial matter, Madeira adopts and incorporates by reference the statement of facts advanced by intervenors City of Cincinnati, Hamilton County, and Neighbors Opposed to Pipeline Extension (N.O.P.E.).

To obtain the requested Certificate, Duke was required to evaluate “all practicable alternatives” within its defined study area and ultimately select a Preferred and Alternate Route

for this Board's review. *See*, Duke Energy Ohio Exhibit I-12, Application, at p. 2-4. After giving short shrift to various routes within the defined study area (which are referenced in its Application), Duke settled on two proposed routes. Duke chose the Orange Route as its "Preferred Route" and the Green Route as its "Alternate Route." *See*, Duke Energy Ohio Exhibit I-12, Application, at p. 2-7. The Preferred Route cuts through a portion of Madeira, which is largely why it intervened in this matter. OPSB Staff has advocated that this Board approve Duke's Application, subject to the Board granting a Certificate only as to the Alternate Route, subject to 38 conditions. While the record before this Board may be lengthy, that does not mean Duke's Application, or the evidence supporting the same, is well-developed. In other words, the quantity of evidence supplied *by all of the parties*, including the general public, intervenors, and OPSB Staff, should not confuse this Board as to the insufficient quality of evidence provided *by Duke*.

To the contrary, Duke failed to provide adequate evidence to this Board (or the general public) so that intervenors like Madeira could evaluate the adequacy of information, thoroughly cross-examine Duke's witnesses to evaluate the impact of the high-pressure pipeline, or offer rebuttal witnesses to counter the evidence supposedly supporting the subject Application. Simply put, the record in this matter is somehow verbose while remaining incomplete and insufficient under Ohio law.

### **III. LAW AND ARGUMENT.**

#### **A. DUKE HAS NOT PROVIDED ADEQUATE EVIDENCE SUPPORTING A FINDING IN FAVOR OF EITHER THE PREFERRED ROUTE OR ALTERNATE ROUTE.**

The General Assembly is clear and directive about when this Board may grant a certificate for the construction, operation, and maintenance of a high-pressure pipeline such as

the one proposed by Duke. Pursuant to R.C. 4906.10(A), “the board *shall not* grant a certificate...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;
- (2) The nature of the probable environmental impact;
- (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;
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
- (5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.
- (6) That the facility will serve the public interest, convenience, and necessity;
- (7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.
- (8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

(Emphasis added).

The record before this Board is saturated with public comments and intervenor testimony indicating that both routes do not serve the public interest, are not convenient, and are not necessary. By contrast, there’s hardly a drop of unbiased testimony from Duke supporting its

Application with respect to any of those factors, particularly as those factors relate to the Preferred Route. Because all eight factors under R.C. 4906.10(A) have not been satisfied, Duke's Application should not be granted.

**B. UNDER OHIO LAW, A MAJOR UTILITY CANNOT SERVE THE PUBLIC'S INTEREST BY BUILDING AND OPERATING AN UNSAFE FACILITY, AND DUKE FAILED TO PROVIDE ADEQUATE EVIDENCE CONCERNING THE SAFETY OF ITS PROPOSED HIGH-PRESSURE PIPELINE.**

Madeira 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.

**C. IF THIS BOARD GRANTS DUKE'S APPLICATION, THEN THE CERTIFICATE SHOULD ONLY BE ISSUED CONSISTENT WITH OPSB STAFF'S RECOMMENDATIONS REGARDING THE ALTERNATE ROUTE AND SUBJECT TO STAFF'S CONDITIONS.**

Should this Board issue a Certificate to Duke in this matter, OPSB Staff's recommendations with respect to the Alternate Route should be granted deference. Indeed, the Ohio Supreme Court expounded in *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978), that "the commission not bound by the findings of its staff" but "[n]evertheless, those findings are the result of detailed investigations and are entitled to careful consideration." Both the May 31, 2017 Staff Report of Recommendation and the March 5, 2019 Amended Staff Report of Recommendation analyzed all eight of R.C. 4906.10(A)'s factors, even stating that the Alternate Route costs less to construct. *See*, Staff Ex. 1, Amended Staff Report at 35-36. Beyond the foregoing staff reports, Andrew Conway testified during last month's adjudicatory hearing that the Alternate Route also allows for retirement of propane-air facilities and improves the north/south supply balance. *See*, Testimony of Andrew Conway Trans., Vol III, 657-2 through 659-8.

Ultimately, OPSB Staff concluded Duke's Application should be approved for the Alternate Route, subject to 38 conditions designed to balance the general public's need for the pipeline with the environmental impact, safety of communities, and convenience for impacted communities. If the Board approves Duke's Application, it should do so consistent with the OPSB Staff's recommendations.

### **III. CONCLUSION**

This Board can only grant a certificate for the construction, operation, and maintenance of a high-pressure pipeline like the one proposed by Duke if Duke has provided sufficient evidence to satisfy R.C. 4906.10(A)'s eight factors. Duke failed to carry its evidentiary burden in this matter. Accordingly, Duke's Application for a Certificate of Environmental Compatibility and Public Need regarding its proposed C314V Central Corridor Pipeline Extension Project should be denied.

Dated: May 14, 2019

Respectfully submitted,

/s/ Brian W. Fox

Brian W. Fox (0086851)

GRAYDON HEAD & RITCHEY LLP

312 Walnut Street, Suite 1800

Cincinnati, Ohio 45202-3157

Phone: (513) 629-2706

Fax: (513) 651-3836

Email: bfox@graydon.law

*Attorney for Intervenor City of Madeira, Ohio*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 14th day of May, 2019 upon all parties who electronically subscribed to the above-captioned case through the Docketing Information System of the Public Utilities Commission of Ohio, and upon the following parties by electronic mail:

Rocco.D'Ascenzo@duke-energy.com;  
Jeanne.Kingery@duke-energy.com;  
Brian.Heslin@duke-energy.com;  
Andrew.Garth@cincinnati-oh.gov;  
Howard.Miller@cincinnati-oh.gov;  
robert.holderbaum@puco.ohio.gov;  
john.jones@ohioattorneygeneral.gov;  
Robert.eubanks@ohioattorneygeneral.gov;  
jyskamp@fairshake-els.org;  
ecollins@fairshake-els.org;  
bfox@graydon.law;  
jlang@calfee.com;  
slesser@calfee.com;  
mkeaney@calfee.com;  
cjones@calfee.com;  
tburke@manleyburke.com;  
mkamrass@manleyburke.com;

Bryan.pacheco@dinsmore.com;  
Mark.arnzen@dinsmore.com;  
miller@donnellonlaw.com;  
kkfrank@woodlamping.com;  
Roger.friedmann@hccpros.org;  
Michael.friedmann@hccpros.org;  
Jay.wampler@hccpros.org;  
tmd@donnellonlaw.com;  
butler@donnellonlaw.com;  
dstevenson@cinci.rr.com;  
ahelmes@deerpark-oh.gov;  
joliker@igsenergy.com;  
Richard.tranter@dinsmore.com;  
Kevin.detroy@dinsmore.com;  
Kent.bucciare@gmail.com;  
glaux2001@gmail.com;  
Paula.boggsmuething@cincinnati-oh.gov

/s/ Brian W. Fox

Brian W. Fox

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Summary: Brief Initial Post-Hearing Brief Submitted on Behalf of Intervenor City of Madeira, OH electronically filed by Mr. Brian W. Fox on behalf of City of Madeira, Mayor Melisa Adrien