

**BEFORE  
THE OHIO POWER SITING BOARD**

<b>In the Matter of the Application of Duke</b>	<b>:</b>	
<b>Energy Ohio, Inc., for a Certificate of</b>	<b>:</b>	
<b>Environmental Compatibility and Public</b>	<b>:</b>	<b>Case No. 16-0253-GA-BTX</b>
<b>Need for the C314V Central Corridor</b>	<b>:</b>	
<b>Pipeline Extension Project</b>	<b>:</b>	

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**INITIAL BRIEF OF BRE DDR CROCODILE SYCAMORE PLAZA, LLC  
AND KENWOOD MALL, LLC**

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Duke Energy Ohio, Inc. (“Duke”) has submitted an Application for a Certificate of Environmental Compatibility and Public Need (the “Application”) in which it proposes to install a twenty inch high pressure natural gas distribution line through Hamilton County, Ohio. Duke advances two proposed routes for the pipeline—the Preferred Route and the Alternate Route.

Neither BRE DDR Crocodile Sycamore Plaza, LLC (“DDR”) nor Kenwood Mall, LLC (“Kenwood Mall”) takes a position on the issue of whether the Application should be granted. Instead, the sole position of DDR and Kenwood Mall is that the Alternate Route is clearly superior to the Preferred Route. DDR and Kenwood Mall submit that if the Application is granted, Duke should be required to install the pipeline in the Alternate Route.

**1. Staff Twice Recommended Selection of the Alternate Route**

OPSB Staff (“Staff”) is charged with investigating applications and making recommendations to the Board based upon its findings. O.A.C. 4906-3-06(C). The findings and recommendations of Staff are contained in the Staff Report of Investigation. In this case, Staff issued two reports. The first report, which was filed on May 31, 2017

considered Duke’s initial Application submitted on September 13, 2016. In its first report, Staff concluded, after conducting a thorough investigation, that “the Alternate Route represents the minimum adverse environmental impact”<sup>1</sup> and recommended that the pipeline be installed in the Alternate Route.<sup>2</sup>

In light of Staff’s recommendation of the Alternate Route in its May 31 report, Duke conducted further investigation of the Alternate Route and submitted a supplement to its Application on April 13, 2018. Staff issued its second report on March 5, 2019. This report, which amended and restated Staff’s first report, again recommended that the Board approve the Alternate Route.<sup>3</sup> Staff has had two opportunities to compare the routes, and in both instances, Staff found the Alternative Route to be preferable to the Preferred Route.

## **2. Relevant Factors Support the Alternate Route**

By nearly every objective measure, the Alternate Route is superior to the Preferred Route. Each of these factors is discussed below.

### **(a) Land Use Impacts during Construction**

Arguably the greatest impact to properties will occur during the construction of the pipeline. Regardless of the route selected, an 80 foot temporary work area will be required along the entire length the route. Considering the most sensitive land use categories, including residential, parks and recreation, educational, and institutional, the Preferred Route will have the greatest impact, as reflected in the following chart:<sup>4</sup>

Land Use Category	Construction Area (in acres)	
	Alternate Route	Preferred Route

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<sup>1</sup> Staff Report of Investigation, Case No. 16-0253-GA-BTX (May 31, 2017) at 47.

<sup>2</sup> Id. at 59.

<sup>3</sup> Amended Staff Report of Investigation, Case No. 16-0253-GA-BTX (March 5, 2019) at 50.

<sup>4</sup> Id. at 31.

Residential	5.9	8.4
Parks and Recreation	7.9	18.2
Educational	1.5	2.1
Institutional	0.4	0.5

Indeed, the only land use category for which the Alternate Route will have a notably greater impact during construction is existing road rights-of-way. DDR and Kenwood Mall submit this figure supports the selection of the Alternate Route, as utilization of roadways is far preferable to impacting other land uses.

**(b) Permanent Land Use Impacts**

To accommodate the pipeline, a permanent 30 foot right-of-way will be required along the entire length of either route. Similar to the construction impacts discussed above, the rights-of-way required for the Preferred Route will be more burdensome on sensitive land uses than those required for the Alternate Route, as shown in the following chart:<sup>5</sup>

Land Use Category	Permanent Rights-of-Way (in acres)	
	Alternate Route	Preferred Route
Residential	0.7	1.9
Parks and Recreation	3.2	7.3
Educational	0.5	0.7
Institutional	0.0	0.1

Again, existing road rights-of-way is the only land use category that will experience greater impacts from the Alternate Route. The Alternate Route's more intensive use of these rights-of-way is a more desirable outcome.

**(c) Avoidance of Residences**

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<sup>5</sup> Id.

The number of residential properties impacted is an important factor to consider in comparing proposed pipeline routes. While the Alternate Route is located within 100 feet of 67 more residences than the Preferred Route (182 versus 115), the Alternate Route is located within 1,000 feet of 967 fewer residences than the Preferred Route (2,186 versus 3,153).<sup>6</sup> On balance, the Alternate Route better avoids residences.

**(d) Properties Crossed**

In terms of the sheer number of properties that will be crossed by the pipeline, the Alternate Route is again demonstrably superior. The Alternate Route crosses 471 properties, while the Preferred Route crosses 723 properties.<sup>7</sup>

**(e) Streams Crossed**

The Alternate Route has a much smaller impact on streams than the Preferred Route. The Preferred Route crosses 24 streams, where the Alternate Route crosses only six streams.<sup>8</sup>

**(f) Cost**

The Alternate Route is preferable to the Preferred Route in terms of overall construction cost. Compared to the estimated \$111.7 million to construct the Alternate Route, construction of the Preferred Route is estimated to cost \$128.2 million.<sup>9</sup>

**(g) Pipeline Length**

The Alternate Route, at a distance of 12.9 miles, is a mile shorter than the Preferred Route.<sup>10</sup>

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<sup>6</sup> Id. at 33.

<sup>7</sup> Id. at 30.

<sup>8</sup> Id. at 37.

<sup>9</sup> Id. at 35.

<sup>10</sup> Id. at 30.

### **3. The Alternate Route Ranked Higher than the Preferred Route in the Route Selection Study**

Prior to filing its Application, Duke conducted a Route Selection Study (“Route Study”). The purpose of the Route Study was to evaluate a large number of pipeline routes in order to identify a Preferred Route and an Alternative Route. During the Route Study, many potential routes were evaluated. Ultimately, 28 routes were scored against relevant criteria. Based on the scoring, the 28 routes were ranked, and two routes were selected as the Preferred Route and the Alternate Route. Importantly, the Preferred Route ranked lower than the Alternate Route. The Alternate Route ranked third with an overall score 63.4, while the Preferred Route ranked sixth with an overall score of 78.5.<sup>11</sup> Thus, according to Duke’s own Route Study, the Alternate Route would produce fewer impacts than the Preferred Route.

### **4. The Preferred Route Unnecessarily Disturbs an Important Retail Area**

In addition to the reasons site above, the Preferred Route should be rejected in favor the Alternate Route because the installation of the pipeline in the Preferred Route would directly and adversely impact the Kenwood retail area. Kenwood is home to several of the largest and busiest retail shopping centers in the Cincinnati area, including Kenwood Towne Center and Kenwood Square, as well as numerous other retailers and service providers. These businesses employ many area residents and generate significant real estate tax revenues. The Preferred Route runs north to south along Kenwood Road, through the center of the retail area. If the Preferred Route is selected, the pipeline would affect the

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<sup>11</sup> Application for Certificate of Environmental Compatibility and Public Need, C314V Central Corridor Pipeline Extension Projection, Case No. 16-0253-GA-BTX, App’x 4-1, Route Selection Study Report, at 3-10.

Kenwood retail area in several significant ways. First, construction of the pipeline would impair vehicular traffic on Kenwood Road and Montgomery Road. These roads are heavily travelled and relied on by residents and local businesses. Second, locating the pipeline on Kenwood Road would restrict or prevent future development of Kenwood Towne Center and Kenwood Square. Finally, installing the pipeline would have a deleterious impact on Kenwood Towne Center's and Kenwood Square's access points to Kenwood Road. In sum, selecting the Preferred Route would unnecessarily disrupt one of the most significant economic centers in Cincinnati.

## **5. Conclusion**

For the foregoing reasons, if the Board approves the Application, the Board should require Duke to install the pipeline in the Alternate Route.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 13th day of May, 2019, upon the parties listed below by electronic mail or through the Docketing Information System maintained by the Ohio Public Utilities Commission.

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10 Q. Fair enough. 11 You ranked the various routes, correct? 12 A. In the route selection study, yes. 13 Q. Yes. Sorry. Thank you. 14 And there were two proposed routes that 15 ranked higher than the Alternate. 16 A. Correct. 17 Q. And there were five proposed routes that 18 ranked higher than the Preferred. 19 A. Correct, I think. 20 Q. And -- you already testified to that with 21 Mr. Keaney. We'll move on. 22 You talked about stakeholder impact --



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**Commission of Ohio Docketing Information System on**

**5/14/2019 3:50:15 PM**

**in**

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

Summary: Brief Initial Brief of BRE DDR Crocodile Sycamore Plaza, LLC and Kenwood Mall, LLC electronically filed by Mr. Richard B Tranter on behalf of BRE DDR Crocodile Sycamore Plaza, LLC and Kenwood Mall, LLC