

In the Matter of the Application of Duke
Energy Ohio, Inc. for a Certificate of
Environmental Compatibility and Public Need
for the C314V Central Corridor Pipeline
Extension Project

Case No. 16-0253-GA-BTX

**INTERVENOR NEIGHBORS OPPOSED TO PIPELINE EXTENSION, LLC'S
REPLY BRIEF**

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Intervenor, Neighbors Opposed to Pipeline Extension, LLC (“NOPE”), by and through their undersigned counsel, hereby files and serves their Reply Brief to Duke Energy, Ohio’s (“Duke”) Initial Brief and the Post-Hearing Brief submitted on behalf of the Staff of the Ohio Power Siting Board (“Staff”). This Brief is designed to address the arguments raised by Duke and Staff in their Briefs. NOPE maintains the arguments set forth in their Post-hearing Brief even if such argument is not repeated herein.

I. INTRODUCTION

Staff and Duke filed Initial and Post-hearing Briefs that are virtually devoid of evidence to support the conclusion that the Application for the C314V central corridor pipeline extension project (the “proposed pipeline”) complies with Ohio Revised Code Section 4906.10(A) and the requirements for obtaining a certificate for construction, operation, and maintenance for the proposed pipeline. Both Staff and Duke rely almost solely on unsubstantiated statements either in written testimony or in the Applications and Staff Report, and virtually ignore all of the testimony and evidence introduced in the record in the form of public comments, public hearing testimony, and evidence introduced at the adjudicatory hearing. However, the Board must render the decision based on the evidence in the record. R.C. § 4906.10(A). If the Board finds that any one of the requirements in Section 4906.10(A) are not met, it must deny the Application for the proposed pipeline. Altogether, Staff and Duke’s reliance on unsubstantiated third party opinions, reports that are not in the record, and mysterious data requests that were never submitted as evidence in the record cannot be grounds for determining the requirements for obtaining a certificate have been met. As argued more fully below and in NOPE’s Post-hearing Brief, the evidence in the record undoubtedly shows that the Board cannot determine 1) Duke’s stated need for the proposed pipeline; 2) the nature of the probable environmental impact; 3) 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 4) that the facility will serve the public interest, convenience, and necessity. The Board should deny the application for each of these reasons.

II. LAW AND ARGUMENT

A. Duke has not Proven that the Proposed Pipeline Project is Needed.

Duke claims the proposed pipeline is needed because it would allow the company to retire its propane-air facilities, it would help Duke improve the balance of supply, and it would allow for the “efficient replacement of aging infrastructure in the area.” Duke Brief at p. 9. Likewise, Staff claims that Duke “indicated” that the purpose of the pipeline is to help Duke with these three items. Staff Brief at p. 9. However, neither Duke nor Staff are able to argue that the proposed pipeline is “needed” or “necessary.” The Ohio Power Siting Board regulations require a “[r]eview of the need and schedule” for every application. Ohio Adm.Code 4906-5-03. Pursuant to this section, among other things, the applicant is required to describe *why* the proposed facility was selected to meet the need, and *how* the facility will serve the public interest, convenience, and necessity. *Id.* at 4906-5-03(E). Neither need nor necessity is defined in the statute, but the Ohio Supreme Court has defined “necessity” in other contexts when interpreting the “necessity” portion of “public interest, convenience, and necessity” as “contemplating a definite need of the general public...where no reasonably adequate public service exists.” *Mason v. Pub. Util. Com.*, 34 Ohio St.2d 21, 23, 295 N.E.2d 412 (1973). This scrutiny is necessary because such certificates “are granted for the benefit of the public and not the recipients of the certificates.” *Id.* at 26. Indeed, “[p]roof that additional service would be more convenient does not justify issuing a

certificate.” *Canton Storage & Transfer Co. v. Pub. Util. Comm.*, 72 Ohio St.3d 1, 11, 1995-Ohio-282, 647 N.E.2d 136.

As argued below, and more fully in NOPE’s Post-hearing Brief, Duke has not shown that the propane-air plants need to be retired, that the proposed pipeline will meet Duke’s stated need to significantly improve its north/south system balance, or that the proposed pipeline is needed or necessary to repair and replace its existing infrastructure. Ultimately, Duke’s stated “needs” really amount to conveniences for Duke, at the expense of many impacted Ohio communities. Even assuming Duke’s stated reasons for the proposed pipeline have been proven, although they have not been, the evidence at hearing did not establish that the proposed pipeline is needed for those purposes, and there are better, less costly, and less impactful alternatives available to Duke that have not been properly evaluated by Duke or Staff.

1. Duke has not shown that the propane-air plants need to be retired.

1a. The maintenance requirements of the propane-air plants do not justify a need for the proposed pipeline.

To support the need for a pipeline that would allow the propane-air plants to be retired, Duke must show that the propane-air plants *need* to be retired, and if they are retired, that the proposed pipeline is the best alternative for that need. In arguing that the plants must be retired, Duke claims that the plants require maintenance, and Mr. Long “indicated” that parts sometimes must be custom made. Duke Brief at p. 10. Staff claims that there are several unspecified “risks” associated with the propane-air facilities, but an inspection of the actual evidence shows that most of these risks are simply maintenance issues. Staff Brief at p. 10 and NOPE Ex. 19 at 78-79 (stating that the propane-air facilities “require additional maintenance expense”, that the propane-air plant containment buildings “are aged and have been modified over time”, and noting that the boilers at the Erlanger Facility have not been replaced); Tr. Vol. III 619:3-620:13 (Mr. Conway

testifying that the plants contain “outdated” equipment, and that “they need to be placed in service quickly”). Contrary to Duke and Staff’s assertions, utilities successfully utilize propane-air plants throughout the county. *See* NOPE Ex. 19 at Exhibit JMG-7, pp. 74-75 (Table 16) (showing 56 propane-air plants in use). Surely maintaining infrastructure doesn’t rise to the level of “need” for a project that will so significantly impact a large portion of Ohio’s citizens and Duke’s customers. Staff appears to support the claim that the plants need to be retired because during “some maintenance repair activities” the propane-air plants would be unavailable for “short timeframes.” Staff Brief at p. 11. Staff doesn’t state what these vague “some” repair activities even are, but the record shows that Duke has always been able to make repairs at the facilities without causing any outages to customers. Tr. Vol. I 171:9-22. Finally, to the extent Duke does need parts custom made, its witness specifically testified that Duke has never had an issue with obtaining the required custom parts. Tr. Vol. I 185:2-12.

In addition, both Duke and Staff’s witnesses clearly lacked knowledge about propane-air plants, and relied almost exclusively on general third-party conclusions for their opinions. *See* Tr. Vol. III (Mr. Conway relying on “another Staff member” he “spoke with” for his opinion that the “industry trend is to retire these”); *see also* Tr. Vol. I 173:14-22 and 178:1-11 (Mr. Long testifying that he relied on a third party for his opinions on the propane-air caverns, and that he is not aware of any other propane-peaking facilities despite there being more than 50 such facilities).

1b. Duke and Staff’s claims regarding the need to retire the caverns are not supported by substantial evidence.

Duke makes a number of unsupported claims in its Brief about the caverns used to store the propane at the propane-air plants, including that if the caverns leaked, there is no possible repair of “the pressure dome”, that the caverns would have to be abandoned should a hypothetical leak occur, and that propane poses certain risks in leaking. Duke’s Brief at p. 10. First, Duke cites

nothing in the record to support these claims, nor can it. Its only witness on the issue of the caverns is not a geologist and is not capable of opining on the nature of the caverns. *See* Tr. Vol. I 177:15-22. The facts in the record show that the caverns have operated, and continue to operate, safely and reliably, and they do not need maintenance. Tr. Vol. I 156:13-16, 170:8-17, 171:17-172:6, 177:5-9. In fact, the few times there have been leaks related to the plants, Duke was able to safely repair them, which is more than it can say for its pipeline system. *Compare id.* at 203:2-204:8 *with id.* at 109:9-111:8. The only third-party assessment discussed at the hearings found that Duke’s East Works caverns were safe and not leaking. *Id.* at 205:16-23. Since Duke cannot show that its caverns are unsafe, Duke vaguely references “similar, third party owned and operated underground storage caverns...that have been forced into retirement due to geological failure resulting in unrepairable leaks.” Duke Brief at p. 11. Again, Duke does not cite to any evidence in the record on the “caverns” it is referencing. The only similar cavern discussed at the adjudicatory hearing was the Enterprise Cavern, which Duke’s witnesses stated was not investigated by Duke, so it is unclear what the nature or cause of that failure was, or even if there was a failure. *See* Tr. Vol. I. 198:21-199:1; *see also id.* at 217:11-19 (Mr. Long testifying that the third parties he relied on did not know how the caverns failed). This sample of size of exactly **one**, combined with the fact that there is so little information in the record about this supposed failure, cannot be said to meet Duke’s burden of showing that its caverns have reached the end of their useful lives. Notably, Duke doesn’t provide any evidence on what the “useful life” of a limestone cavern is. These are natural formations, and there is nothing to suggest that there is an expiration point to their “useful lives.”

Moreover, Duke’s claim that “businesses and residents should similarly be unwilling to allow such a risk to persist” (Duke Brief at p. 11) ignores the risks posed by installing a

permanent, high-pressure pipeline through densely populated communities. In addition, unlike the properties that would be above and surrounding the proposed pipeline, there are no homes, public parks, and hospitals on and surrounding the properties where the propane-air peaking plants are located. *See* Tr. Vol. I 185:18-25. In addition, Duke's witness specifically stated that he could not say that building the proposed pipeline and removing the propane-air plants will make Duke's system more or less safe. Tr. Vol. I 157:5-9.

1c. Staff's assumption that the propane-intolerant customers cannot be served with the propane-air plants in place has been proven false.

Although Duke does not make the argument in its Brief, Staff continues to maintain that retiring the propane-air plants would cause "customers that are intolerant of the propane-air mixture to no longer need curtailments...." Staff Brief at p. 11. Like many of their claims on the issue of the need to retire the propane-air plants, Staff only cites the unsupported written testimony of Mr. Conway for this position. *See id.* However, this claim has been proven false. As argued more fully in NOPE's Post-hearing Brief at part II.B.2a., Duke has admitted, without qualification, that these propane intolerant users can simply be supplied from a portion of Duke's system segregated from the propane-air plants. City/County Ex. 28. This was clearly pointed out to Mr. Conway at the adjudicatory hearing, and it is puzzling that Staff would continue to maintain this argument without any support in the face of clear evidence. *See* Tr. Vol. III 626:11-21.

Overall, the exaggerated risks and stated needs that both Duke and Staff claim exist were not proven with substantial evidence at the adjudicatory hearing, and in fact were rebutted by credible evidence.

1d. Duke's projections of system conditions and load flow studies are based on inaccurate forecasts and are statistically invalid.

As part of the review of the need and schedule of the project, the Board's rules require the Applicant to "provide specific projections of system conditions, local requirements, or any other pertinent factors that impacted the applicant's opinion on the need for the proposed facility." Ohio Adm.Code 4906-5-03(A)(2). The applicant is also required to provide "relevant load flow studies and contingency analyses, if appropriate, identifying the need for system improvement." *Id.* at § 4906-5-03(A)(3). Staff states that they evaluated the "relevant load flow studies and contingency analysis by recognizing that the Applicant used a hydraulic modeling software program called Gas Synergi Version 4.7 to analyze its gas delivery system and specifically develop load flows and contingency analyses." Staff Brief at p. 13. After "recognizing" the software used, and reviewing the model results, Staff concluded that a loss of the propane-air plants "without a replacement supply source would cause the system to have inadequate supply to service customers...on peak winter days." *Id.* at p. 14. However, evaluating the studies and analyses by simply "recognizing" the software used is an extremely deficient evaluation, and ignores the fact that the inputs of the model are flawed, and, as a result, the outputs of the model are clearly flawed and unreliable.

To explain, for purposes of the load flow studies and contingency analyses, the system was modeled at a peak demand of 45,500 MCFH. Duke Ex. 3 at pp. 3-7 and 3-9. The actual peak hourly demand was 39,038 MCFH in 2016, 39,382 MCFH in 2017, and 41,984 MCFH in 2018. City/County Ex. 5. Therefore, some kind of growth in firm demand must justify using 45,500 MCFH as the peak demand. The modelers claim that the 45,500 MCFH peak demand is based on Duke's load growth forecasts and peaking factors. NOPE Ex. 19 at p. 16. Importantly, a 2019 Audit Report by Exeter and Associates, Inc. found that Duke's forecast was statistically invalid and resulted in inflated forecasts. *Id.* at p. 10 (citing the 2019 Exeter Audit Report, pp. 4-25 to 4-

26).¹ Thus, Duke's forecasts, which are decidedly inflated, cannot be used to justify the significant increase in peak day demand. Also, Duke did not submit any evidence to suggest that there will be growth in the region for the foreseeable future. Furthermore, a close inspection of the data in the record shows conclusively that population in Hamilton County is actually projected to **decrease** over the next 20 years. Tr. Vol. III 695:7-19 and 702:15-703:1; *see also* City/County Ex. 44 (ODSA data from April 2018 reflecting that the population of Hamilton County is expected to decrease over the next 20 years). In addition, Dr. Guldmann, conducted an extensive population forecast analysis of Duke's service area and found that all of the forecasts "are consistent with a weak population growth" for the area. *Id.* at pp. 5-6. He also opined that "[c]onservation efforts, prodded by technological innovations, are likely to intensify, leading to further declines in residential and commercial gas deliveries." *Id.* at p. 6. Therefore, the 45,500 MCFH projection is simply not based on any reasonable growth projection and, as a result, is an inaccurate system modeling target.

Finally, an inaccurate and inflated peak day demand target renders the load flow studies inaccurate and not in compliance with Ohio Adm.Code Section 4906-5-03(A)(2) and (3). *See* NOPE Ex. 19 at pp. 9-10. In evaluating peak-hour flow data for the Base Case System configuration provided in discovery, Dr. Guldmann stated that the data "would suggest that the 43,000 mcfh demand could be supplied without the [propane-air] plants." *Id.* at pp. 17-18. Dr. Guldmann further elaborated that "[w]ith continued conservation efforts and the possible effects of climate change, notwithstanding the occasional polar vortex, it is likely that the current system, even without the [propane-air] plants, could serve the peak day demand for the foreseeable future." *Id.* at p. 21. Therefore, the Board must reject the Application for the proposed pipeline

¹ The 2019 Exeter Audit Report is docketed in PUCO Case No. 18-218-GA-GCR.

because the evidence in the record disproves the need to achieve a peak demand of 45,500 MCFH. As stated in NOPE's Post-hearing Brief, the burden is on Duke to prove the need for the pipeline, and it cannot possibly meet that burden until it models its system with accurate projections and information.

2. The proposed pipeline does not meet the purpose of meaningfully improving the balance of supply.

In its Brief, Duke states that it receives up to approximately 55 percent of its gas supply from transmission lines located south of the Cincinnati area, and that improving this balance of supply is critical. Duke Brief at p. 3. Duke does not, however, explain *why* this is critical or why the proposed pipeline is needed to improve the balance by just 5 percent. Duke simply states that more gas is now available in the north, so it would like to be able to access it. Duke Brief at pp. 13-14. There is no proof, however, that Duke *needs* to access the gas just because it is available. At hearing, Duke's witness stated that reliance on the Foster station was not a major risk to Duke's system. Tr. Vol. I 73:13-15. Likewise, Staff's witness on the issue testified that this reliance on peak days is not excessive reliance. Tr. Vol. III 670:19-20.

Staff, in their Brief, explains that this reliance on the Foster station is an issue because "a loss of supply from the Foster Station on a high demand day would result in widespread service outages." Staff Brief at p. 9. To be clear then, this risk exists only when there is a *complete* loss at Foster station during an *extreme* weather event. Perhaps this why Duke and Staff do not describe the balance issue as a major risk. Staff then claims that just a 5 percent change in balance from north to south "addresses the issue of balancing the system...." *Id.* at p. 9. However, this does not reflect the evidence and testimony at hearing, where Staff clearly acknowledged the obvious fact that a 5 percent change in balance would still result in widespread outages if Foster station were interrupted during the highest demand days, as reflected in the following exchange:

Q. So loss of supply from Foster on a high demand day, even with the proposed pipeline, would still result in widespread outages, correct?

A. Yes. The Foster Station is a critical station. And, yes, it would -- there would be widespread outages.

Tr. Vol. III 614:1-7 (Conway testimony). In addition, Mr. Hebbeler's testimony acknowledges that Duke will need to make additional upgrades and enhancements beyond the C314V pipeline in order to adequately improve the north/south balance. *See* Duke Ex. 7 16:4-22; Tr. Vol. I 168:11-15. It is frankly worrying that Staff takes the position that any "noticeable" change in balance is enough to justify the highly impactful pipeline Duke is proposing. Staff Brief at pp. 9-10. Staff's position is absurd on its face, as it would allow a utility to justify any pipeline, regardless of impacts, as long as there was a "noticeable" change to a system.

Duke, in its Brief, additionally claims that the proposed pipeline's allowance for retirement of the propane-air plants would somehow additionally improve the balance, stating that it would "increase the amount coming from the north, not only by the 5 to 10 percent differential, but also by the amount currently being provided by the propane-air facilities." Duke Brief at p. 14. This is misleading at best. The current reliance on Foster Station is 55 percent, with the propane-air plants in place. Staff Ex. 1 at p. 25. The change in balance with the proposed pipeline in place is simply 5 percent for the alternate, and 10 percent for the preferred route. City/County Ex. 18. The propane-air plants have no impact on this balance, and are only used a handful of days each year. This is another example of Duke trying to manufacture benefits of the proposed pipeline where none exist.

In any event, considering cost and impact of the proposed pipeline, the Board should reject Duke's argument that the proposed pipeline meets Duke's stated need to balance system supply.

3. Duke does not need the proposed pipeline to upgrade and replace its existing infrastructure.

Both Duke and Staff explain that Duke has aging infrastructure in its transmission and distribution system that needs to be replaced, and that Duke must provide safe and reliable service during the replacement process. Duke Brief at pp. 11-12; Staff Brief at p. 12. What is not explained in any convincing way is why Duke needs the proposed pipeline, along with all of its costs and impacts, in order to make these replacements. Staff states that the proposed pipeline “supports” the inspection, replacement, and upgrade of aging infrastructure. Staff Brief at p. 12. However, there are no taps or service lines being proposed for the C314V line, so it remains unclear exactly how the C314V line would prevent outages during other line replacements. Tr. Vol. I 58:23-59:5. In addition, Staff only points to the Amended Staff Report to make the misleading claim that it is “impossible to take Line A out of service without disruption to customers during the peak winter season.” *Id.* at p. 16 (citing Staff Ex. 1 at p. 28). This portion of the Staff Report simply states, without citing to any reports or supporting evidence, that Duke “found that there is limited backup gas capacity of the pipeline system, making it impossible to take Line A out of service without disruption to customers during the peak winter season.” Staff Ex. 1 at p. 28. Here, Staff makes two unreasonable and disproven assumptions: 1) that Line A can’t be or will not be replaced in sections; and 2) that sections of Line A can’t be replaced outside of “the peak winter season.” Mr. Conway seemed flustered, as he often did, with the question of whether Line A could be replaced in portions (*See* Tr. Vol. III 631:11-632:7), but Duke’s witnesses acknowledged that Duke is capable of taking actions to minimize or eliminate outages during replacements, such as bringing in laterals to serve a section of people, and planning the replacements at times of the year when gas use is at its lowest. Tr. Vol. I 29:7-20 and 30:13-21; *id.* at 154:16-21. Indeed, Duke has already completed replacement of 1,100 miles of

main lines and 120,000 associated service lines. Duke Ex. 7 8:8-11. Ohio customers have paid for the cost of these replacements (Tr. Vol. I. 26:20-25), and these same customers should not also be on the hook for an expensive, redundant pipeline just because it would make replacement more convenient for Duke. *See Canton Storage & Transfer Co.*, 72 Ohio St.3d at 11. It should be reiterated that Duke has admitted that it can perform maintenance, repairs, and replacements on its lines, including Line A, without the proposed pipeline in operation. City/County Exs. 31 and 33. In fact, Duke has already been replacing portions of pipelines within the central corridor without causing a single lengthy outage to customers. Tr. Vol. I 32:19-23.

Duke, in its Brief, attempts to distinguish the replacements on Lines A, V, EE, and AM07, by claiming that these lines “are all slated for replacement in the next few years.” Duke Brief at p. 13. However, this claim is not supported by testimony or other evidence, and is directly contradicted by Duke’s sworn discovery statements that these lines are being upgraded and replaced over the next 20 years with flexible timing. *See City County Ex. 39* (responding that Lines A, EE, and V “are being upgraded/replaced as part of the Duke Energy Ohio plans to replace aging infrastructure over the next 20 years.”); *see also City/County Ex. 40*. Certainly this leaves enough time for Duke to plan the replacement of the lines in portions and in ways that will minimize or eliminate outages.

Therefore, it is clear that a costly, new, and highly impactful pipeline project is not justified by simply “supporting” Duke’s plans to upgrade and replace its aging infrastructure.

B. Duke has not Provided Sufficient Information to Determine the Nature of the Probable Environmental Impact of the Preferred and Alternate Routes.

Both Staff and Duke ignore serious environmental impacts associated with siting the proposed pipeline on the preferred and alternate routes. Nowhere in Staff’s Brief, the Amended Staff Report, or in Duke’s Brief or Applications do they address the fact that the alternate route

directly conflicts with a planned sewer project in the City of Reading. Reading Ex. 2 52:2-18 *and* 55:16-56:1; Reading Ex. 3. Nowhere does Staff or Duke address the fact that the preferred route would run through Jewish Hospital's electric lines and potentially conflicts Jewish Hospital's fuel oil storage tank and nuclear fuel source. Jewish Hospital Ex. 1 at pp. 3 and 5. Nowhere does Staff or Duke address how landslides or sinkholes, which are known to occur in the areas of the routes, could impact or damage the pipeline. Tr. Vol. II 330:10-19; *See* Public Hearing Tr. 213:5-215:10 (March 21, 2019). The Staff Report describes a required subsurface drilling investigation to ensure that the route selected would be sited along suitable locations, but that study has not yet occurred. *See* Tr. Vol. II 489:14-490:6. In addition, neither Staff nor Duke has informed the Board of how many trees would have to be removed along either the alternate or the preferred pipeline routes. Tr. Vol. II 332:13-22. These are just some of the probable environmental impacts that cannot be determined at this time.

Even the information referenced by Duke and Staff as showing compliance with this section is insufficient to determine the environmental impact of either the preferred or alternate route. Duke, in its Initial Brief, acknowledges that various streams will be crossed, but cannot yet say whether those streams will be crossed by trenching or by using horizontal directional drilling. Duke Brief at p. 6. Duke claims that the "various advantages and disadvantages" of either method will be evaluated at some later time. *Id.* Duke discusses conducting an environmental screening along the alternate route, but this screening consisted of very limited evaluation and sampling. *See* Duke Brief at pp. 17-18; Tr. Vol. II 367:17-369:14. In addition, no environmental screening whatsoever was conducted along the preferred route. Tr. Vol. II 371:19-25. Even Duke's analysis of the much discussed Pristine Superfund Site is lacking information to determine the environmental impact the proposed pipeline will have on the site. Specifically, Duke's expert

witness on the issue of the Pristine Superfund Site only looked at publically available information on the site itself. Tr. Vol. II 376:17-20. She did not conduct any sampling on or around the area where the proposed pipeline right-of-way will be, and she did not evaluate potential surface water and stormwater runoff issues related to constructing the proposed pipeline. *Id.* at 375:10-13 and 376:1-3. Therefore, even the items that were evaluated lack sufficient information to determine the nature of the environmental impact of constructing and operating the proposed pipeline.

As evidence of compliance with this regulation, Duke simply claims that data related to socioeconomic and ecological impacts, as well as impacts on public services and facilities, were “presented” in its Application and in responses to Staff’s data request. Duke Brief at p. 15. Duke doesn’t cite to or point to any specific evidence, but only makes this general statement. Staff likewise only cites the testimony of Mr. Burgener when discussing socioeconomic impacts from the proposed routes. Staff Brief at pp. 18-19. However, cross-examination and the evidence admitted at the hearing revealed that Mr. Burgener’s data and conclusions were outdated and incorrect. *See* Tr. Vol. III 695:7-19 and 702:10-703:24. Mr. Burgener additionally testified that although both the preferred and alternate routes cross residential properties, the Application falsely states that there are no residential properties crossed by the alternate route. *Id.* at 706:4-12. In addition, Dr. Nicholas, who presented Duke’s routing analysis, specifically testified that the route selection study did not evaluate the routes based on income levels or minority status of the impacted communities. Tr. Vol. II 279:7-280:1.

Section 4906.10(A)(2) of the Ohio Revised Code requires that **before** a certificate can be granted, the Board must be able to determine the nature of the probable environmental impact of the pipeline. Staff and Duke ask this Board to take a wait-and-see approach in determining the environmental impact of these pipeline routes, violating this portion of the statute. This type of

after-the-fact review process has been rightfully criticized as taking away the public’s “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, dissenting).

C. Duke and Staff Fail to Address Alternative Options to Meet Duke’s Goals that Would Represent a Minimum Adverse Environmental Impact Compared to the Proposed Pipeline.

The Board cannot approve an application if the proposed major utility facility does not “represent the minimum adverse environmental impact, considering the state of the available technology and the nature and economics of the various alternatives.” R.C. § 4906.10(A)(3); *see also Ohio Edison Co. v. Power Siting Com.*, 56 Ohio St.2d 212, 212, 383 N.E.2d 588 (1978). NOPE maintains that Duke has not adequately proven need, but Duke also did not consider alternative options that represent a minimum adverse environmental impact, and still allow Duke to meet its stated goals for the proposed project – replace aging infrastructure, retire the propane-air plants, and balance the north/south system supply. In determining the minimum adverse environmental impact, the applicant must “evaluate all practicable sites, routes, and route segments for the proposed facility within the study area.” Ohio Adm.Code 4906-5-04(A). The Board also must “require applicants to provide a detailed explanation of the process used to select the proposed site and a description of alternative sites.” *In re Application of Middletown Coke Co.*, 127 Ohio St.3d 348, 349, 2010-Ohio-5725 ¶ 8, 939 N.E.2d 1210, 1211.

As argued below, and more fully in NOPE’s Post-hearing Brief, Duke has not shown that the routes in the Application represent the minimum adverse environmental impact. A large majority of Staff’s claims regarding minimum adverse environmental impact only relies on its own Amended Staff Report, which was based on information provided by Duke, all of which was proven to be misleading or faulty throughout the adjudicatory hearing. Likewise, Duke only relies

on the same Amended Staff Report and the Direct Testimony of its own witness and, like Staff, ignores the contrary evidence and testimony from the adjudicatory hearing. As a result, Duke and Staff are lacking the support needed to prove that the two central corridor routes in Duke's Application represent the minimum adverse environmental impact.

1. Duke and Staff did not consider non-pipeline alternatives to meet Duke's stated goals.

Staff states that Duke considered non-pipeline alternatives, but the only alternative discussed was not making any improvements and just maintaining the infrastructure in place. Staff Brief at p. 15. It is notable that Staff's discussion of alternatives is not in the minimum adverse environmental impact section of Staff's Post-hearing Brief, but rather in a separate alternatives section. *See id.* This indicates that Staff did not consider the non-pipeline alternatives pursuant to the statutory and regulatory requirements for determining the minimum adverse environmental impact, considering the nature and economics of various alternatives. Surely, as presented below, if the alternatives were considered in light of those requirements, Staff would have concluded that a non-pipeline option would present far less of an impact, and be less costly.

The little analysis conducted by Staff is clearly faulty. First, Staff states that maintenance for the existing propane-air plants and associated equipment would increase Duke's costs but Staff does not provide numbers for the cost to maintain the plants, and does not compare maintaining the propane-air plants to the costs of building a new pipeline. *Id.* Duke's own consultant estimated that maintaining the propane-air plants would cost \$15.1 million in investment, but building a new pipeline would cost \$128.2 million in capital to build the alternative route, and \$111.7 million to build the preferred route, plus an additional \$50 million in estimated overhead costs, which would not be fully understood until after approval. NOPE Ex. 19 at pp. 19-20; Tr. Vol. I 52:20-54:24.

Staff then claims that this option would not address the risk of failure of the plants, the propane intolerant industries, and would not reduce reliance on the Foster station for system flexibility. Staff Brief at p. 16. As argued more fully in Section II.A, *infra*, of this Reply Brief, the record does not contain reliable or substantial evidence proving these so-called needs, and the record contains no evidence whatsoever that the propane-air plants are impacting Duke's service to propane intolerant customers. Maintaining the propane-air plants simply amounts to an operational inconvenience for Duke, and the propane intolerant industries can be supplied from a portion of the system segregated from the propane-air plants. Tr. Vol. III 626:16-22; City/County Ex. 28. Therefore, the maintaining current infrastructure option is feasible based on available technology and represents far less of an impact than building a new pipeline would, and would present far lower cost to Ohio ratepayers.

Staff's claim that Duke would be unable to service its customers while it upgrades existing infrastructure without the proposed pipeline is equally flawed. Staff claims that Duke could not replace Line A because the backup gas capacity of the pipeline system would not allow for replacement without disruption to customers during the peak winter season. Staff Brief at p. 16. Yet, as explained in Section II.A.3., *infra*, of this Reply Brief, Staff makes this claim without citing to reports or evidence, and ignores the fact that these lines can be replaced in non-peak seasons. Again, Duke admits to being able to minimize or eliminate outages during replacements, as it has previously done. Tr. Vol. I 29: 7-20 and 30:13-21. In addition, Duke admitted that it is able to perform maintenance on the existing lines in the central corridor. Tr. Vol. III 628:10-15 and 630:9-13; City/County Ex. 31.

Finally, Staff's claim that replacing their aging infrastructure would not offset the use or need of the propane-air peaking plants (Staff Brief at p. 16) is not supported by evidence because

Duke did not evaluate whether its already planned system upgrades would obviate the need for a replacement peaking service. Tr. Vol. I 181:24-182:14. As explained by Dr. Guldmann and in NOPE's Post-Hearing Brief, the planned upgrades to existing lines would increase capacity in the central corridor area. NOPE Ex. 19 at p. 14; City/County Ex. 11. Yet, Duke's modelers have not conducted modeling with the planned upgrades in place to determine what system needs exist, if any, after the upgrades are in place. Tr. Vol. I 181:24-182:14. In addition, as argued more fully in Section II.A.1d., *infra*, of this Reply Brief, the model's target overestimated the system's peak day capacity requirements, and the system may be able to provide adequate service without the propane-air plants in place. Therefore, Staff's statement that key replacements would not obviate the need for replacing the propane-air plants should they be retired is not based on credible or substantial evidence.

In addition, Staff ignores the fact that there are more non-pipeline options than just maintaining its existing infrastructure. Neither Staff nor Duke evaluated the possibility of replacing the propane-air plants by installing common above-ground storage to replace the cavern storage. NOPE Ex. 19 at pp. 21-22 and at Ex. JMG-7, p.75. Also, neither Staff nor Duke fully analyzed if using liquid natural gas ("LNG") peaking would be a suitable replacement option. Tr. Vol. I 176:19-24; NOPE Ex. 19 at p. 21 and at JMG-7, p. 94. Duke admits that an LNG plant would allow it to replace and retire the propane-air plants. NOPE Ex. 8. Yet, Duke did not analyze if there were suitable sites available for the LNG peaking service. Both of these options would represent a minimum adverse environmental impact compared to a new, expensive, high-pressure pipeline in densely populated areas.

Duke must show that it evaluated all feasible non-pipeline options before the Board can approve a costly, disruptive, and impactful pipeline project. As explained above, Duke and Staff

clearly did not do that. With the availability of non-pipeline alternatives that represent a minimum adverse environmental impact, the Board must deny Duke's Application at this time.

2. Duke and Staff did not consider alternative pipeline options for the proposed project that would represent a minimum environmental impact.

Duke claims that the minimum environmental impact criteria at R.C. 4906.10(A)(3) is met solely through the route selection process testified to by Dr. Nicholas. Duke Brief at pp. 18-20. This, of course, ignores all non-pipeline alternatives discussed above and in NOPE's Post-hearing Brief that would clearly represent minimum environmental impacts compared to the proposed central corridor pipeline. In addition, Duke and Staff did not meaningfully consider the seven pipeline options outlined in the Gas System Master Plan. Staff claims, without any justification, that the options outlined in The Gas System Master Plan would not be viable. Staff Brief at 16. However, Staff only reviewed the route selection study, which Duke limited to essentially one of the system improvement options, and Staff then only considered the preferred route and the alternative routes from that single option.

Both Duke and Staff claim that a typical route selection process includes 1) defining a study area that encompasses the entire region where the pipeline may be located; 2) considering all possible alignments within the study area; and 3) creating a justifiable method for eliminating alternatives. Duke Brief at pp.18-19; Staff Brief at pp. 30-31. Staff relies on several journal articles, and Duke relies on Staff's statements, to claim this is how route selection studies typically take place. *See* Staff Brief at p. 30, fns. 144-148. Staff did not enter these articles into evidence in the record at the adjudicatory hearing, and they cannot be used to justify Staff's basis for route evaluation. Even assuming Duke and Staff are correct in that this is how typical route selection studies take place, Duke did not meet the standard that Staff suggests.

2a. The study area is artificially limited to the central corridor.

Duke artificially limited the study area for the route selection process to the central corridor – a 90 square mile radius, starting at the end of the C314 line, the WW Feed Station, and ending at Line V. Tr. Vol. II 251:11-18. This is essentially the C-1 route option in the Gas System Master Plan. NOPE Ex. 19 at p. 23. According the Gas System Master Plan, based on reliability, flexibility, and regional expansion, C-1 ranked poorly, while other options, including the western options, scored significantly higher. NOPE Ex. 19 at pp. 25-26. Thus, despite having other, better, options, Duke limited the study area to an area that is highly congested with residences. Tr. Vol. II 253:15-25. Duke defined the study area without input from the siting team and it did not provide a rationale for why the route had to be within the central corridor. *See* Tr. Vol. II 250:20-251:18. Ultimately, Duke did not support limiting the study area to only options within the central corridor with any substantial evidence.

One option just outside of the central corridor that Duke did not adequately consider are the eastern routes that were discussed at the adjudicatory hearing. Staff states that an eastern option would bring a significant supply of natural gas from the northern suppliers and would allow for the retirement of the propane-air peaking plants. Staff Brief at p. 17. However, Staff goes on to state that the eastern options would require a longer pipeline, and would need a larger-diameter, high-pressure line in the “central core” area to support the aging central corridor infrastructure. Staff Brief at p. 17. As discussed in NOPE’s Post-hearing Brief, the need for the lateral line is an unsubstantiated claim that was outside of the witnesses’ knowledge who testified to that opinion. Tr. Vol. II 272:3-15. There was no modeling performed as to the need of this hypothetical lateral line. *Id.* at 272:1-274:4. There is simply no basis for Staff to continue to rely on this unsubstantiated opinion, and the fact that they do so shows that Staff is simply taking what

Duke says as true without any independent analysis. Duke claims that the routes east of the route selection study area had similar or larger impacts compared to those in the central corridor. Duke Brief at p. 20. Contrary to Duke's claim, despite being longer, the eastern routes have significantly less residences within 200 feet compared to the central corridor options. Tr. Vol. II 275:23-276: 21. The eastern routes would, therefore, have fewer impacts on Ohio residents, yet the routes were not meaningfully considered by Duke or Staff as alternatives to a central corridor option.

More importantly, Staff, again, incorrectly claims that the western options in the Gas System Master Plan would not allow for the retirement of the propane-air plants or improve system reliability in the central corridor area. Staff Brief at p. 17. Staff uses this now proven incorrect statement to continue to justify not considering the western options as part of the study area. Staff Brief at p. 17. To be clear, Staff's witness admitted at the adjudicatory hearing that the "western" option Duke was referring to, and referred to by Staff in their Amended Report, is not one of the western options in the Gas System Master Plan. Tr. Vol. III 642:11-643:8. The Gas System Master Plan assumes that for all seven improvements suggested, the propane-air plants are not contributing. NOPE Ex. 19 at p. 22. In the Gas System Master Plan, the western options, W-1 and W-2, are highly rated compared to C-1. NOPE Ex. 19 at pp. 25-26. The W-1 option would have a lesser impact on the population, as found by Dr. Guldman, who concluded that within 100 feet on either side of line there would be a 62 percent reduction of residences along the preferred route, and a 76 percent reduction compared to the alternative route. *Id.* at p. 32 and at Ex. JMG-6 at Table 1. When looking at the population impact within 1000 feet on either side of the line there would be an 83 percent reduction of residences compared to the preferred route and a 76 percent reduction compared to the alternate route. NOPE Ex. 19 at p. 32. W-1 would also

pose fewer land use impacts and greatly reduce reliance on the Foster station. *Id.* at p. 29. Given this extraordinary difference in residential and land use impacts, it is absolutely vital that both Staff and Duke properly evaluate the western options in the Gas System Master Plan. Until such an evaluation occurs, the Board cannot determine that the central corridor pipeline represents the minimum environmental impact, considering the availability of alternatives.

While both Duke and Staff claim that Duke used a study area that encompassed the entire region, it is clear that Duke did not. The study area did not include potential western options and did not properly characterize the eastern routes, both of which are viable options. By artificially limiting the study area, Duke did not evaluate all practicable sites, routes, and route segments, resulting in preferred and an alternative routes that do not represent the minimum adverse environmental impact.

2b. Duke did not consider all alignments within the study area.

Even if Duke properly defined the study area, Duke did not properly consider all alignments within the study area, as Duke and Staff allege. Duke Brief at pp. 18-19; Staff Brief at pp. 30-31.

First, Duke and Staff did not consider socioeconomic or other relevant factors. By not evaluating socioeconomics or other relevant factors, the routes Duke proposed do not represent the minimum adverse environmental impact. NOPE Brief at p. 26. Certainly, impacts to the residential environments surrounding the proposed pipeline routes should be a major consideration in the route evaluations. *See In re Champaign Wind, L.L.C.*, 146 Ohio St.3d 489, 510 (2016) (Kennedy, J. dissenting) (defining “environment” as “[t]he physical conditions of a particular place where a living thing exists.”) The central corridor is highly populated and the routes would adversely impact the physical conditions where Duke builds the line. Tr. Vol. II

253:15-25. As an example of such adverse impact, construction of the alternative route, as planned by Duke and recommended by Staff, will cause residents to lose access to their homes during construction. Reading Ex. 4. This is something Staff's lead investigator, Mr. Holderbaum, did not know, nor did Staff discuss this concern in meetings when considering the routes. Tr. Vol II. 468:10-19. Clearly, residents losing access to their homes represents an extremely adverse impact to the environments of these Ohio residents. Conversely, the routes analyzed by Dr. Guldmann represent significantly fewer environmental impacts to the residents.

Second, Duke and Staff also did not consider looping Line A as a pipeline routing option. NOPE Ex. 19 at 27. Looping Line A is an alignment within the study area that Duke defined. Looping – laying another pipeline next to an existing pipeline – expands capacity without traversing through a new route. Tr. Vol. III 552:11-16. While it is likely that Duke would need to expand its easement to make this possible, it is still an alignment within the study area that Duke and Staff did not investigate or consider. Tr. Vol. III 552:17-24. Moreover, Dr. Guldmann testified that because there is not a significant concentration of buildings or structures along Line A, it would likely not be a major issue to expand Duke's easement. Tr. Vol. III 554:12-21.

2c. Duke did not justify its method for eliminating alternatives.

Duke and Staff claim that Duke justified why it eliminated alternative routes, using methods to assign values and normalize the routes for comparison. Duke Brief at pp. 18-19; Staff Brief at pp. 30-31. However, there was no real explanation of why each value was assigned, and ultimately the routes selected were Duke's subjective favorites. Duke's preferred route ranked sixth and the alternative route ranked third in the routing analysis. Without providing an adequate rationale for why it eliminated the other routes, the Board cannot conclude that Duke's methods are justified.

Staff claims that route siting “[c]riteria are sensitive to different contexts, including project needs, physical characteristics of the project area, political climates, and regulatory regimes,” which are “subjective and dependent on the backgrounds and perspectives of various stakeholders.” Staff Brief at p. 30. While Duke is claiming constructability as its justification for choosing the routes it did (Duke Brief at p. 20), there is no evidence that the routes it selected were more constructible than better scoring routes. As stated above, Staff and Duke did not discuss the fact that construction of the alternate route would preclude residents from accessing their homes. Tr. Vol II. 468:10-19. How is that considered constructible? Likewise, Duke and Staff did not consider the effect the construction would have on sensitive areas. For example, there were no conversations with Jewish Hospital during the process of siting the routes and, as a result, Staff reviewed the preferred route without knowing there was nuclear fuel on the property of the hospital. Tr. Vol. II 314: 11-20. Duke and Staff also did not consider the Hospital’s electric service and its fuel storage for its emergency generator, nor did either consider that construction would block the main road to access the hospital, both for civilians and emergency vehicles. Tr. Vol. II 317:18-25 and 319:4-9. Altogether, there were no constructability guidelines for the siting team to follow and Duke played a major role in quantifying the constructability of the routes. Tr. Vol. II 255:12-25 and 256: 4-7. Duke was responsible for gathering and evaluating stakeholder input in the route selection study. Tr. Vol. II 365:5-11. However, stakeholder input indicates that constructability of both the preferred and alternative routes would cause extraordinary adverse impacts to the local communities, and given the range of alternatives not considered by Duke or Staff, the Board should not conclude that Duke justified its route selection decision.

In conclusion, Duke did not properly define its study area, did not consider all alignments within the study area, and did not justify its manner in eliminating the other routes. Because Duke

failed in properly executing the route selection process, the routes in Duke's Applications do not represent the minimum adverse environmental impact, considering the availability of other alternatives. Therefore, the Board must deny Duke's Application.

D. Staff and Duke Fail to Address Serious Safety Concerns and as a Result the Proposed Pipeline Fails to Serve the Public Interest, Convenience and Necessity.

Staff and Duke acknowledge that safety is a vital consideration in determining whether the proposed pipeline will server the public interest, convenience, and necessity. Staff Brief at p. 39; Duke Brief at p. 21. However, both Staff and Duke fail to address, and they even downplay, the legitimate safety concerns a high-pressure pipeline running through densely populated areas poses to local residents and communities.

Duke argues that the proposed pipeline will serve the public interest, convenience and necessity because it was originally planned to be a 30-inch diameter pipeline, operating at 600 psig, and, at some point prior to filing the original Application, Duke changed the pipeline's size and operating pressure. *See* Duke's Brief at p. 21. Putting aside the reason for the change, the fact remains that Duke in its first Application proposed the 20-inch high-pressure pipeline through densely populated communities at issue in this matter. *See* Duke Ex. 2 (September 13, 2016 Application proposing a "20-inch diameter pipeline"). This means that the vast majority of the public opposition in the record of this case, from many thousands of public comments, to the hundreds of testimonies at the public hearings, to the Intervenor's oppositions at the adjudicatory hearing, applied to the 20-inch, 500 psi high-pressure pipeline that is currently at issue. *See e.g.* public comments in Case No. 16-0253-GA-BTX² ; *see also* Public Hearing Tr. 60:21-61-1, 67:7-

² Found at <http://dis.puc.state.oh.us/CaseRecord.aspx?Caseno=16-0253&link=COM>

68:5, 93:13-94:15, 103:2-17, 167:11-22, 171:18-22, 185:3-10, 206:6-210:10, and 229:22-230:7 (June 15, 2017) and Public Hearing Tr. 16:20-20:10, 41:4- 43:22, 56:1-60:10, 64:5-14, 98:1-99:10, 122:9-124:20, 182:3-183:22, and 213:2-215:10 (March 21, 2019). It is plainly false then for both Duke and Staff to claim that the change from a 30-inch high-pressure pipeline running through densely populated communities to a 20-inch high-pressure pipeline running through densely populated communities in any way addressed the public's legitimate safety concerns *for this pipeline*. All public concerns in the record are for the 20-inch diameter high-pressure pipeline.

Neither Staff nor Duke address the fact that a 20-inch diameter, 500 psi pipeline is an unusually high-pressure pipeline to run through densely populated communities. Most pipelines running through such densely populated areas are operating at pressures ranging from .25 psi to 60 psi and are a mix of plastic and steel pipe. *See* NOPE Ex. 13 at pp. 3-3, 3-5, and 3-7 (describing lower pressure distribution pipelines compared to transmission pipelines, and noting that distribution pipelines are located “in the mostly congested urban areas” while higher pressure pipelines transmit gas in places with primarily low population density); *see also* NOPE Ex. 14 at p. 4. Indeed, Staff's expert witness admitted that this would be a very unusual distribution line because of its size and pressure. *See* Tr. Vol. III 730:10-13. In addition, distribution line significant incidents cause fatalities every single year, and there is no evidence of a pattern of decline. *See* NOPE Ex. 15. Importantly, outside forces, such as third party excavations, are the primary cause of distribution line incidents, and because distribution lines are located in densely populated areas, there is a much higher and more significant risk of excavation-related incidents than for transmission pipelines. *See* NOPE Ex. 13 at p. 3-11, ¶ 3.61. Nowhere does Staff or Duke acknowledged this heightened risk, and as result, neither Staff nor Duke even attempt to address

it. The only apparent measure related to third-party damage that is proposed to be implemented is to bury tape with the pipeline. *See* Duke Brief at p. 23. It is unreasonable to consider this as taking the public concerns seriously; there is no assurance that tape is going to even slow down the force of an excavator.

Overall, both Staff and Duke ignore this safety concern associated with third-party damage and simply claim that because the pipeline may comply with distribution pipeline regulations, and to a small extent regulations for transmission lines, the public's safety concerns are addressed. Staff Brief at p. 40; Duke Brief at pp. 22-23. However, it is universally recognized that preventing third-party damage is "an area in which significant actions are needed that go beyond the authority of pipeline safety regulators to implement." NOPE Ex.14 at p.19 (Integrity Management for Gas Distribution, December 2005). Thus, when it comes to the risks from third-party damage, even a properly regulated pipeline poses a significant risk to a community. One way Staff and Duke could consider these legitimate public safety concerns would be to actually consider alternative options for Duke that do not involve a high-pressure pipeline through the most densely populated communities in Duke's service area. This Board has recognized that because "the leading cause of pipeline accidents is damage by outside forces," Staff may properly recommend a route "because it minimizes the possibility of third-party damage." *In the Matter of the Application of Northeast Ohio Natural Gas for a Certificate of Environmental Compatibility and Public Need to Construct a Natural Gas Pipeline in Lorain County, Ohio*, Case No. 99-541-GA-BTX, 2000 Ohio PUC LEXIS 675, *21-22. As argued more fully in Section II.C.2 of this Reply Brief, and in NOPE's Post-hearing Brief, there were alternative pipeline options available to Duke that were not analyzed, and these options would both greatly improve the north/south balance, allow retirement of the propane-air plants, and be located in far less densely populated

areas, which would impose far less risk from third-party damage. If Duke and Staff were actually considering the public's safety concerns, they would have meaningfully evaluated these less impactful options. They did not, and the Application is, therefore, not in the public interest, convenience, and necessity.

Duke additionally claims that the categorization of the proposed pipeline from a transmission pipeline to a distribution pipeline actually demonstrates that its goal was to increase the level of safety. Duke Brief at p. 22. A look at the purposes of the regulations, and closer look at the requirements, proves that Duke is able to avoid safety requirements by labeling the proposed pipeline a distribution line rather than a transmission line, disproving the claim that Duke made the change for safety. First, it should be noted that when Duke originally filed its pre-application Notification Letter it described the pipeline as an “**extension of a pipeline** that was completed in 2003”, referring to the C314 transmission pipeline. *See* Duke Ex. 1 at p. 1 (emphasis added). The PHMSA has stated multiple times that simply decreasing pressure to below 20 percent SMYS in order to label a transmission pipeline a distribution pipeline “would violate the intent of the pipeline safety regulations.” NOPE Ex. 16 at p. 3, ¶ 6. In fact, the PHMSA has recently found that Duke wrongfully mislabeled a transmission line as a distribution for this very reason. *See* NOPE Ex. 7 at p. 4 (Notice of Probable Violation dated June 29, 2018). Thus, labeling the proposed pipeline extension a distribution line simply because of the reduction in size and pressure at the C314 transmission pipeline clearly violates the intent of the pipeline safety regulations.

In addition, because Staff proposes to regulate the pipeline as a distribution pipeline, there are indeed regulatory safety measures that will not be followed. Staff appears to recognize that transmission line regulations for pipelines in high consequence areas are safer with its

recommendation that the pipeline be constructed in accordance with requirements for transmission lines. Staff Brief at p. 9 (stating “Staff has requested the Commission make the pipeline even safer” by requiring it to be “constructed in accordance with code requirements for transmission lines...”). Importantly, Staff is not recommending the pipeline be *operated* and *managed* in accordance with transmission pipeline safety regulations. Likewise, Duke is voluntarily utilizing some measures consistent with transmission line regulations, but neither Duke nor Staff discuss all of the ways the proposed pipeline will not be required to meet regulations for transmission pipelines. *See* Duke Brief at p. 23. For example, transmission integrity management plan requirements are very different than for distribution pipelines, and provide for more prescriptive measures for pipelines near high consequence areas using more specific methods. *See* Staff Ex. 12 11:21-12:8; *see also* 49 C.F.R. §§ 192.901-192.951 and §§ 192.1001-192.1015; NOPE Ex. 18. A simple comparison of the required elements for a transmission line integrity management program and a distribution line integrity management program shows that unlike distribution lines, transmission lines must include, among other things, regular direct assessments of corrosion, follow up reassessments by pressure tests, a performance plan consistent with ASME/ANSI B31.8S, and a communications plan that addresses safety concerns. *Compare* 49 C.F.R. §§ 192.911(i) and (m), 192.937(c)(3), and 192.939(b), *with* 49 C.F.R. §§ 192.1007 and 192.1005. In addition, as discussed in NOPE’s Post-hearing Brief, because Staff would allow Duke to meet the technicality of operating a distribution line, Duke is not required to calculate the potential impact radius (“PIR”) of the pipeline and, among other things, count the number of houses and individual units within the potential impact area, evaluate the consequences of failure within the impact zone, consider environmental damage within the impact zone, or consider the potential for secondary failures. Tr. Vol. II 418:3-23; 49 C.F.R. §

192.907(b) (incorporating ASME/ANSI B31.8s); NOPE Ex. 18 at p. 8, ¶ 3.3; *see also* NOPE Ex. 19 at p. 27 (Dr. Guldmann noting that “while [Duke] estimates the number of residences within the two buffers ... it does not show how many residences are with[in] the [Potential Impact Radius] of 308.6 feet”). As a result, the Board and public are unable to evaluate different pipeline and non-pipeline alternatives based on the potential impact radius of the proposed pipeline. This is just another failure in Duke and Staff’s safety analysis in the application process.

As detailed in NOPE’s Post-hearing Brief, all of these public interest issues and concerns were raised in this proceeding through thousands of public comments, hundreds of testimonies and by arguments made by many Intervenor municipalities. *See* NOPE’s Brief at pp. 31-34. None of these issues are addressed by Duke or Staff. Insultingly, Staff brushes off these concerns as “parochial” and asks the Board “to rise above the fray” and approve the pipeline regardless of the public’s safety concerns. Staff Brief at p. 1. Staff argues that it is enough that the public was given a process to voice their concerns, and that the public’s concerns are addressed through some unspecified future measures. *See id.* at p. 42. Staff’s claim that they are taking “measures” to ensure that the regulations are met, without evidencing what those measures are, do not cure the many safety deficiencies in the Applications. *See id.* at p. 39. Staff claims that a field inspector will be assigned to do a safety inspection for the proposed pipeline, but there are no details or requirements on the frequency of such inspections. *Id.* Staff notes that Duke is required to have an integrity management plan for the proposed pipeline, but because Duke’s integrity management plan would be for a distribution line, it is unclear what measures are being implemented under the plan. *See id.* Staff claims that Duke is required to have an emergency response plan, but to date no emergency response plan has even been created for the proposed pipeline. *See* NOPE Ex. 17; *see also* Tr. Vol. I 114:9-20. Moreover, because of Duke’s insistence that the potential impact

radius of the proposed pipeline is irrelevant,³ the emergency response plan will not take this vital information into account. *See id.* Staff's additional recommendations apply to construction of the proposed pipeline (Staff Brief at p. 40) and do not address the legitimate public concerns surrounding the long-term operation of such a high-pressure pipeline through these densely populated communities. Notably, nowhere does Staff discuss the fact that Duke's safety team has been responsible for dozens of PHMSA violations in the last few years, and Duke has experienced a number of fires, explosions, and injuries from incidents on its distribution system. NOPE Exs. 6 and 7; Tr. Vol. I 79:1-12 and 109:9-111:8. Overall, if the Board were to "rise above the fray" as Staff suggests, it would simply be rubber-stamping the Application as meeting the public interest, convenience, and necessity without requiring the analysis necessary to ensure the public interest, convenience, and necessity is met by the pipeline project. Rather, the Board must recognize the very real concern that Staff is simply following "the path of least resistance, without giving proper consideration" to the public's legitimate criticisms and concerns. *In re Am. Transm. Sys.*, 125 Ohio St.3d 333, 2010-Ohio-1841, 928 N.E.2d 427, ¶ 31 (Pfeifer, J. concurring).

III. CONCLUSION

As detailed above, and in NOPE's and the other Intervenor's Post-hearing Briefs, the evidence in the record overwhelmingly demonstrates that Duke has not met its burdens under R.C. 4906.10(A) and the relevant Board rules and regulations. This Board should deny the certificate for the proposed pipeline project until and unless Duke shows that it is needed, that it is in the public interest, convenience, and necessity, and until and unless Duke submits the necessary information to determine the nature of the probable environmental impact of the proposed pipeline. If the Board does find a basis of need, Intervenor NOPE respectfully requests

³ This is despite the fact that Duke has calculated the PIR for the proposed pipeline and described the PIR for the pipeline on its public website. NOPE Ex. 17; Tr. Vol. I 100:21-101:18.

that the Board deny the certificate because Duke has not shown that the proposed pipeline represents the minimum adverse environmental impact compared to all available alternatives.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

Summary: Reply Intervenor Neighbors Opposed to Pipeline Extension LLC's Reply Brief electronically filed by James Yskamp on behalf of NOPE - Neighbors Opposed to Pipeline Extension, LLC