

Notes for OPSB Rules Review

My comments are based mostly on the past several years of work regarding a pipeline project in the Cincinnati area.

Question 1 regarding engaging the public.

The current notification process needs to be updated. Newspaper ads are no longer sufficient. The Board should use all the vehicles of social media, local government webpages, etc., to reach the public. All property owners and tenants within several blocks or ½ mile of proposed pipelines, power lines, etc., should be **mailed** notice of proposal, meetings, hearings, etc. The applicant should not be the one writing or sending the notices. The Board itself, not the utility, should publicize the application and meetings to increase credibility and to assure that notices are unbiased, written clearly, and cannot easily be confused with “junk mail.”

The public views its participation as unimportant because the public’s perception is that public participation is just another “box to be checked” on the OPSB form prior to approval. People we’ve spoken to don’t believe the Board even considers the public input it receives. This is supported by the fact that no Board member was in attendance at the public information meetings, public hearings, or evidentiary hearings in the Duke pipeline case. In addition, testimony indicated that not even members of the Staff had read **all** the comments made by the public at meetings, hearings, and submissions to the Docket.

We are not convinced that Staff thoroughly reviews applications nor that they actually “consult with” subject matter experts on proposed projects. In all aspects of the case we have been involved with, the applicant’s statements were accepted, seemingly without question. That this is self-serving for the applicant is obvious. That the application may not be thorough has been observed in multiple cases. For example, in the Duke pipeline case, Duke was not aware of the EPA Superfund site along Duke’s alternate route — but neither was Staff. In another case I followed, the application was incomplete in a significant way and after I filed a comment to that effect, the applicant withdrew the application because they realized it wasn’t even needed. (As an aside, if the application wasn’t really needed, that’s a flaw in the regulations. It should have been!)

At public meeting organized by the applicant, the Board should be an active participant, not just to explain the process, but to listen to claims made by the applicant and to hold the applicant to those claims — or to correct the applicant when its personnel misrepresent the details of the Application. We can cite multiple instances from the Cincinnati pipeline case in which Duke representatives gave misinformation and when challenged on it, either walked away or changed the subject. At each table, different representatives had different answers or no answers to questions.

The Board should “trust but verify” all statements made by applicants. It is its job to protect the public, not “rubber stamp” applications. That may well require additional hiring and deeper expertise, but it is necessary.

Question 2 regarding modifications to application processing

An application should not be viewed in isolation. All public documents and official comments by the applicant should be included in the process. That would help the Board understand any “other” reasons for the project. Is this project really part of a corporate strategy that goes beyond the stated reasons? Is the project part of a series of projects that should be evaluated together? Is the overall project really an

interstate project merely broken into small intrastate pieces until a final short interstate project puts it all together?

Applications must be evaluated for environmental impact, but this should be an in-depth study, including studies of underground streams, sub-surface flow, drainage, and more. All of this needs to consider how a pipeline or other project will impact sub-surface movement of contaminants to streams, rivers, aquifers, etc. Such studies require environmental chemistry, geology, and hydrology expertise. It is insufficient to have the developer/utility hire a company to take a few samples at a few locations on one or days.

No application should be approved until final design drawings are approved. How can affected parties judge the plans if they don't know exactly what they entail? How can fire and safety departments judge the plans if they don't see exactly where the valves, or vents, or terminals will be? Furthermore, I don't believe that a tentative approval would ever lead to cancellation of a project, so all final designs, construction details, etc., must be in hand for approval. Once construction begins, will the Board really withdraw its approval if it finds issues? How would it even know if there was an issue, since the Board doesn't inspect projects? I reiterate, the Board cannot accept the applicant's word, it must "trust, but verify."

The application should not be considered complete without detailed decommissioning plans and expenses, whether this for the eventual removal of the generator, windmill, etc., or other part of the project. In the Duke pipeline project, one of the reasons given for the project was the decommissioning of the two propane peaking plants, yet the application does not mention how or when this would be done, what it would cost, or what environmental monitoring, etc., would be included in the process. In other words, the application was not complete!

One part of this question relates to supportive studies and their trustworthiness. They should be held to the highest level of scrutiny. The submissions of the applicant or its hired contractors must be verified by the Board. I have read reports, in the area of my expertise, submitted to the Board as part of an application, that were deficient. I have heard Board Staff cite the same report in testimony. No one reviewed the report or the actual work with a critical and impartial eye.

Question 3 regarding monitoring and enforcement

Quite simply, we do not trust applicants to honor the terms of their certificates. The Board must perform random inspections of both records and at project site. Board inspections must be performed by qualified State employees or **truly independent** inspectors. Perhaps OPSB inspectors at the Dominion Pipeline Infrastructure Replacement project in Pepper Pike, Ohio might have caught the weld failure and prevented the November 2019 explosion. (See <https://www.nbcnews.com/news/us-news/video-shows-large-fire-gas-line-explosion-ohio-n1083051> for video of the explosion and <http://dis.puc.state.oh.us/CaseRecord.aspx?CaseNo=19-2140> for the OPSB investigation report.) Similar problems have occurred on other pipeline installations, including the Mariner East project in Pennsylvania where a worker is accused of forging documents that indicated a weld had been x-rayed when it hadn't. Companies and workers cannot all be trusted. Independent inspection is imperative.

Many people have reported to us that they just don't trust the utility/developer or the Board to keep them safe. They believe the utility will use its financial might to influence opposition during the approval process **and** ongoing inspections.

Penalties for non-compliance must be significant enough to deter future “mistakes.” Corporate officers should be held responsible.

Additional Comment

The Stakeholder Meeting Questions do not cover **safety**. In fact, safety doesn’t appear in the OPSB decision criteria at all, despite statements on the PUCO website (<https://www.puco.ohio.gov/be-informed/consumer-topics/100-years-and-counting-the-history-of-the-puco/>).

PUCO MISSION

To assure all residential and business consumers access to adequate, safe, and reliable utility services at fair prices, while facilitating an environment that provides competitive choices.

The safety of Ohio citizens should be top priority of OPSB and should be one of the top criteria for making a siting decision.

Conclusion

We do not believe the public trusts the Board or its Staff. The public really wants to know how it can get through to the board in a meaningful way. Many people have told us that the Board “just goes along with the utilities.” One person told us of overhearing a conversation between two staff members outside a public hearing. One staff member told the other to come over to meet the boss, referring to the Duke CEO! That person felt it demonstrated the attitude of Staff towards the approval process and who was in charge.

The entire process supports the notion of “regulatory capture.” For example, the Staff meets frequently with the applicant, but not with intervenors. Statements by the applicant are taken as “true.” Verification of such statements is not performed. Even Board composition was mentioned to us as an additional concern. **To many, this means that the Board is not protecting the welfare of the public, only the financial interests of the utilities and developers.**

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