

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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Charles Paquelet, MD, :  
:   
Complainant, :  
:   
vs. : Case No. 11-4177-EL-CSS  
:   
Ohio Edison Company, :  
:   
Respondent. :

- - -

PROCEEDINGS

before Mr. Kerry K. Sheets, Hearing Examiner, at the  
Public Utilities Commission of Ohio, 180 East Broad  
Street, Room 11-C, Columbus, Ohio, called at 10:00  
a.m. on Thursday, June 14, 2012.

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Pro se.

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Roetzel & Andress, LPA  
By Ms. Denise M. Hasbrook  
One SeaGate - Suite 1700  
Toledo, Ohio 43604-1504

On behalf of the Respondent.

ALSO PRESENT:

Mr. Joe Liss;  
Mr. Stephen Paquelet;  
Ms. Tara Weckerly;  
Mr. Douglas Yates.

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Thursday Morning Session,  
June 14, 2012.

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EXAMINER SHEETS: The Public Utilities Commission of Ohio has set for hearing at this time and place case No. 11-4177-EL-CSS, In the Matter of Charles Paquelet, MD, versus Ohio Edison Company. My name is Kerry Sheets, I'm an attorney examiner for the Commission, and I have been assigned to hear this case.

May I now have the appearance of the parties, please, starting with Dr. Paquelet.

Would you give your name and address, please.

DR. PAQUELET: Charles Paquelet.

EXAMINER SHEETS: You'll have to speak up so that the reporter and everybody can hear you.

DR. PAQUELET: Charge Paquelet, P-a-q-u-e-l-e-t, 11849 Northcrest Street Northwest, Massillon, Ohio, 44647.

EXAMINER SHEETS: All right. Now the company.

MS. HASBROOK: Denise Hasbrook representing Ohio Edison, Roetzel & Andress, R-o-e-t-z-e-l, and Andress, A-n-d-r-e-s-s, One

1 SeaGate, 17th floor, Toledo, Ohio, 43604.

2 EXAMINER SHEETS: Thank you.

3 MS. DUNN: And Carrie Dunn, Ohio Edison  
4 Company, 76 South Main Street, Akron, Ohio, 44308.

5 EXAMINER SHEETS: Thank you.

6 Do you have any preliminary matters to  
7 take care of this morning?

8 MS. DUNN: No.

9 MS. HASBROOK: I do not believe so.

10 EXAMINER SHEETS: Well, we'll call our  
11 first witness, then, which will be Dr. Paquelet.

12 I want to swear you in first, sir. If  
13 you'd raise your right hand.

14 (Witness sworn.)

15 EXAMINER SHEETS: Very good. Now go  
16 ahead and give a statement of your complaint, and  
17 please speak up for the reporter.

18 - - -

19 CHARLES PAQUELET, MD

20 being first duly sworn, as prescribed by law, was  
21 examined and testified as follows:

22 DIRECT TESTIMONY

23 DR. PAQUELET: Thank you for the  
24 opportunity to present my case. I'm a retired  
25 doctor, a part-time farmer, an amateur gardener, I

1 don't hear very well, and I don't see very well, and  
 2 these legal proceedings are really not familiar to  
 3 me; however, I'll do my best to cooperate with them.  
 4 If I don't do as you expect of me, please be patient,  
 5 I'm doing the best I can.

6 The material I've put together would show  
 7 without any doubt the Ohio Edison Company's failed to  
 8 comply with the vegetation specification standards  
 9 they're required to submit for acceptance with the  
 10 PUCO and that failure has caused irreparable damage  
 11 to a rare and unusual tree located on my property.

12 I've prepared an exhibit that will  
 13 explain my complaint.

14 EXAMINER SHEETS: Very well. You'll want  
 15 to give copies to -- here, why don't I just  
 16 distribute the copies here. You're keeping one for  
 17 yourself, correct?

18 DR. PAQUELET: Yes, sir.

19 EXAMINER SHEETS: You would like this  
 20 marked as an exhibit, correct?

21 DR. PAQUELET: Yes, sir.

22 EXAMINER SHEETS: We'll mark this as  
 23 Complainant's Exhibit 1.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 EXAMINER SHEETS: And would you explain

1     what it is.

2                   DR. PAQUELET:   Okay.   Exhibit 1 is a  
3     packet of information that explains my complaint or  
4     why I think there's been a violation in the protocol  
5     followed by the Ohio Edison Company.

6                   EXAMINER SHEETS:   And the exhibit's a  
7     multiple-page document, consists, it looks like an  
8     aerial map and photographs?

9                   DR. PAQUELET:   Yes, sir.

10                  EXAMINER SHEETS:   And these are  
11     photographs of the tree that features in your  
12     complaint?

13                  DR. PAQUELET:   Yes, sir.

14                  EXAMINER SHEETS:   And you have a diagram  
15     there too.   And there's also a, I'm looking at some  
16     paragraphs here, printed paragraphs; would you  
17     explain where they came from?

18                  DR. PAQUELET:   Sir?

19                  EXAMINER SHEETS:   The printed paragraphs,  
20     could you --

21                  DR. PAQUELET:   Well, there are multiple  
22     paragraphs, some come from a vegetation specification  
23     manual and some come from the Best Management  
24     Practices of a Utility Pruning of Trees, the  
25     so-called ANSI 300 pruning of trees that the Ohio



1 Edison Company identifies as an authoritative guide  
2 to their pruning practices.

3 EXAMINER SHEETS: Very good. I'll let  
4 you continue.

5 DR. PAQUELET: Sir?

6 EXAMINER SHEETS: I'll let you continue  
7 to state your complaint.

8 DR. PAQUELET: Okay. On what I have  
9 marked as item 1 at the top of the page, this is an  
10 aerial view of part of my property that shows  
11 primarily pastoral land and the electric service to  
12 two homes. I live at A and one of my sons lives at  
13 B. And this electric service is 7.2 kilovolts.

14 And on this property there are five  
15 telephone poles, and these five telephone poles all  
16 have crossbars at 35 feet except one, the one in my  
17 yard. The crossbar was broken in an ice storm in  
18 2004 and at that time the electric company did an  
19 emergency repair, and what they did, they cut off the  
20 crossbar, and this can be seen on what I noted as  
21 Exhibit 2.

22 EXAMINER SHEETS: That's not exactly an  
23 exhibit. It's page 2, correct?

24 DR. PAQUELET: Yes, sir.

25 EXAMINER SHEETS: Of Complainant's

1 Exhibit 1. Go ahead.

2 DR. PAQUELET: You can see where the  
3 crossbar has been amputated. And the lower  
4 photograph shows where what I call the hot line has  
5 remained at 35 feet and what I call the ground line  
6 is now at 28 feet.

7 It's also in the note that, on item 1, in  
8 the electric line that extends across the pasture  
9 there's a row of Washington Hawthorns and other trees  
10 in the pasture. There's also a few trees on the  
11 grounds of my home that include some common lilacs,  
12 some eastern arborvitae, and the tree in question,  
13 *Fagus sylvatica fastigiata*, otherwise known as the  
14 upright European beech.

15 In the 25 years that the beech has been  
16 present I've never noticed that it had ever been  
17 pruned. The most recent pruning in 2006, two years  
18 following relocation of the power line, the tree at  
19 that time must have been at acceptable heights.

20 No. 3 shows a photo taken in February of  
21 2010 following the pruning of the tree. When I saw  
22 the tree, I was shocked. It looked more like  
23 vandalism than pruning. It's what sometimes is seen  
24 in newspapers around the Christmas holidays when  
25 someone cuts out the top of a pine tree ostensibly

1 for a Christmas tree and ruins an otherwise specimen  
2 tree in a park or arboretum.

3 The severe damage to the tree prompted me  
4 to first call customer service at the Ohio Edison  
5 Company, from which I got little satisfaction. I  
6 then contacted the PUCO and received a letter from  
7 Mr. Stephen Watson, which is item No. 4. In that  
8 letter I've highlighted that the electric companies  
9 are required to trim every circuit at least once  
10 every four years, they're required to trim enough so  
11 the regrowth will not make contact with the electric  
12 lines before the next four-year trim is due.

13 It seemed to me there must be a standard  
14 for this kind of activity, and with the help of my  
15 State Representative, Mr. Kirk Schuring, I was  
16 eventually able to get copies of the Vegetation  
17 Management Specification Manual and the Best  
18 Management Practices Utility Pruning of Trees.

19 I subsequently filed a complaint with the  
20 PUCO and soon thereafter I was vetted by Mr. Jack  
21 Dedmon of the PUCO with Representative Kurt Schuring  
22 and representatives of the Ohio Edison Company  
23 present in October of 2010. Eventually, a formal  
24 complaint was filed that has led to this hearing.

25 Item No. 5 is taken from the FirstEnergy

1 Vegetation Specification Manual, and I highlighted at  
2 the bottom of the page "A copy of the FirstEnergy  
3 Vegetation Management Specifications shall be given  
4 to every crew before starting work on any project and  
5 Contractor and the Contract Supervisor shall go over  
6 the FirstEnergy Vegetation Management Specification  
7 with every crew member prior to starting work under  
8 any project."

9 Item 6 is an interrogatory I received  
10 from Ms. Dunn in January as part of my initial  
11 interrogatories. I asked if any special instructions  
12 had been given to the crew performing the pruning on  
13 my property. The response was: "In your third  
14 question, you asked what instructions were given the  
15 crew" --

16 MS. HASBROOK: I'll object to this as  
17 hearsay, reading from the letter of another.

18 EXAMINER SHEETS: Well, we'll let the  
19 document stand for what it states there in the  
20 document. He's reading it into the record, but we'll  
21 let it stand.

22 MS. HASBROOK: Thank you.

23 DR. PAQUELET: "In your third question,  
24 you asked what instructions were given the crew that  
25 performed the most recent work on your property.

1 Ohio Edison instructed Nelson Tree Service to get  
2 full clearance and proper cuts in accordance with the  
3 vegetation management specifications and ANSI A300  
4 standards for utility pruning."

5 Item 7 is taken from the FirstEnergy  
6 Vegetation Specification Manual and describes the  
7 distribution clearing zone. I've highlighted the  
8 degree and type of tree clearance required for  
9 electric lines to function effectively. It's  
10 dependent on the voltage of the conductor, the type  
11 of tree, its growth rate, and branching habit.

12 Further down, "Pruning shall be done in  
13 such a manner to achieve a minimum of four years of  
14 clearance from FirstEnergy primary conductors based  
15 on tree species and growing conditions. In cases  
16 where four years of clearance is unattainable 12 feet  
17 of clearance around primary conductors shall be  
18 achieved."

19 Please note, it does not say "either-or."  
20 It says if four years of clearance is unattainable,  
21 then 12 feet of clearance shall be obtained. And  
22 please note that the word "shall" is defined as  
23 mandatory.

24 This particular tree, *Fagus sylvatica*  
25 *fastigiata*, the genus *Fagus*, is common not only in

1 the northern hemisphere and in America, but also in  
2 Europe; however, the species *sylvatica* is native to  
3 Europe. It is not native to the United States. It's  
4 not commonly grown in this area.

5 It's a slow-growing tree. Under ideal  
6 circumstances this tree will grow 9 to 12 inches a  
7 year. It's tightly compact. All lateral branches  
8 turn immediately upward. Some clones are more narrow  
9 than others, the one I had happened to be a very  
10 narrow clone.

11 In their native habitat these trees are  
12 often used as a windbreak because of their  
13 durability. As a matter of fact, during the invasion  
14 of Normandy these trees were planted in hedgerows and  
15 represented a significant obstacle to our troops  
16 advancing on the Germans. Our 30-ton Sherman tanks  
17 had trouble breaching the hedgerows and that led to  
18 General Patton's famous end-run that led to the  
19 breakout on Normandy.

20 I'm off the record here. I'm missing a  
21 page.

22 (Off the record.)

23 EXAMINER SHEETS: Back on the record.

24 DR. PAQUELET: There may be some  
25 confusion in what I have -- the next exhibit I want

1 to show is a photograph of the tree, and I have that  
2 marked item 9, and then I have another marked 8,  
3 they're out of order is what they are. They're just  
4 simply out of order; that may or may not be the case  
5 with you.

6 EXAMINER SHEETS: Page 8 and 9 of Exhibit  
7 1, correct?

8 DR. PAQUELET: Sir?

9 EXAMINER SHEETS: It's page 8 and 9 of  
10 Exhibit 1.

11 DR. PAQUELET: I think they're back -- 8  
12 ought to be 9, and 9 ought to be 8, I think so.

13 EXAMINER SHEETS: That's fine.

14 DR. PAQUELET: So what I am referring to  
15 now is an exhibit that shows the tree immediately  
16 after pruning, that's -- is that the one?

17 MS. HASBROOK: For the record, you're  
18 holding up the one that says "9," right?

19 DR. PAQUELET: You see that?

20 MS. HASBROOK: Yes.

21 DR. PAQUELET: You see that, okay.

22 The tree height is now 16 feet, the trunk  
23 is 8 feet, the logs on the ground represent a part of  
24 the trunk that was amputated and too large for the  
25 chipper.

1           The next item is a picture of the logs  
2       laid end to end with a broom alongside for scale that  
3       measures 8 feet to represent the part of the tree  
4       that was amputated.

5           I have also an exhibit showing the  
6       natural characteristics of this tree, one with leaves  
7       and one without leaves.

8           EXAMINER SHEETS: That's page 8.

9           DR. PAQUELET: That shows generally the  
10      general shape of the tree and its habit of growth.

11          Item 11 is also taken from the vegetation  
12      specification management manual, and it describes  
13      debris and wood removal. Knowing that logs or debris  
14      with a diameter of 4 inches or less are chipped, it  
15      may be assumed that part of the tree missing measures  
16      about 8 feet in height. That means the tree most  
17      likely was about 24 feet in height.

18          Item 12 is a schematic representation of  
19      the location of the tree relative to the electric  
20      line showing that it was not growing into the line  
21      but, rather, alongside the line. Because of its  
22      habit of growth, left undisturbed it most likely  
23      would never have been a threat to the electric line.

24          The other diagram explains how the  
25      pruning crew used the lower 28-foot line as a



reference point to achieve 12 foot of clearance.

Twelve foot of clearance is not only unnecessary, but in direct violation of the distribution clearing zone guidelines noting that four years of clearance would have been sufficient. I can find absolutely no explanation of why the trunk was amputated at 8 feet.

Item 13 is also taken from the Vegetation Specification Manual, it describes tree pruning methods. "All pruning, both initial and re-pruning, shall be done in accordance with modern agricultural standards using the current ANSI 300 Standards and Amendments. Directional pruning is the preferred method of line clearance . . . . Whenever possible, the Contractor shall obtain clearance in this manner.

"The drop crotch method will be used.

"Pruning cuts are to be made back to the main stem, or to a lateral branch which is at least one third of the diameter of the portion being removed. Limbs shall not be stubbed off at the edge of the clearing limits. Pruning shall be done in a manner that will promote growth away from the power lines."

"The practices known as 'shearing', 'stubbing', pollarding, or 'rounding over' shall be avoided. Exceptions to drop crotch directional

1 pruning techniques shall be used only when directed  
2 by doing so by FirstEnergy representatives."

3 Again, "shall" meaning mandatory.

4 The last item is taken from Best  
5 Management Practices - ANSI A300 Part 1. It  
6 describes pre-established clearing limits.

7 "Many pruning specifications require a  
8 minimum clearance between tree branches and utility  
9 facilities. If used, such pre-established clearing  
10 limits should allow for variables such as tree  
11 species characteristics, expected growth rate,  
12 natural tree structure, expected reaction to pruning,  
13 wood strength, overall tree health, length of time  
14 until next scheduled pruning, and type of facility  
15 (voltage, construction type, et cetera)."

16 "Utility arborists should be familiar  
17 with the characteristics of trees in the area where  
18 they work and should obtain clearances accordingly.  
19 For example, more clearance may be necessary on  
20 fast-growing or weak-wooded trees. When minimum  
21 clearances are required, pruning cuts should be made  
22 at the next suitable lateral or parent limb beyond  
23 the specified distance whenever practical."

24 "Rounding over, or topping, is the now  
25 discredited practice of indiscriminately stubbing the

entire crown of a tree. In this process, a series of heading cuts are made between lateral branches, rather than at the lateral. This widespread practice is now considered unacceptable because it severely damages trees and encourages rapid re-growth. Many tree species respond to heading, topping, rounding over, or other severe treatments with a flush of fast-growing sprouts, which can rapidly overtake conductors."

My conclusion is utility tree pruning programs are necessary to ensure safe and reliable delivery of vital services such as electricity; however, utility arborists must recognize that in most cases trees and urban forest add value to property and enhance the quality of life in a variety of ways.

The guidelines offered by the Ohio Edison Company do indeed enhance the safe and reliable delivery of reliable electric service while preventing unnecessary injury to trees to the greatest extent possible.

Unfortunately, in this case those guidelines were not followed. More foliage than necessary was removed and it was done inappropriately, and that has led to irreparable

1 damage and the probable eventual death of a rare and  
2 unusual tree located on my property. Thank you.

3 EXAMINER SHEETS: That concludes your  
4 statement?

5 DR. PAQUELET: Yes, sir.

6 EXAMINER SHEETS: Do you have any  
7 questions?

8 MS. HASBROOK: Yes, I do. Could we take  
9 a short recess in light of the fact that some of this  
10 information is new to us?

11 EXAMINER SHEETS: Sure.

12 MS. HASBROOK: Thank you.

13 EXAMINER SHEETS: We'll take five or ten  
14 minutes off the record.

15 (Recess taken.)

16 EXAMINER SHEETS: Go back on the record.

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Hasbrook:

20 Q. Dr. Paquelet, we've met before, and of  
21 course I've got a few questions today off of what you  
22 read. First, you were reading a preprepared  
23 statement today, correct?

24 A. Partially.

25 Q. All right. And you say "partially"

1 because, did someone else prepare part of it for you?

2 A. No, because some of it just came to me  
3 while I was speaking.

4 Q. Okay. And you prepared your own notes  
5 for today.

6 A. That's right.

7 Q. Now, this tree was planted in 1985?

8 A. Well, I don't know for sure, but that's a  
9 guess, and that's a reasonable guess.

10 Q. Okay. You think it's sometime near 1985.

11 A. That's right.

12 Q. Okay. And when you planted the tree, the  
13 lines were already on your property, right?

14 A. That's right.

15 Q. And the lines, as far as the number of  
16 lines, were the same number of lines that were there  
17 when the tree was trimmed in 2010, right?

18 A. That's right.

19 Q. Now, your property is in, and we can tell  
20 from your No. 1 here, you own a lot of property here.  
21 How many acres is it?

22 A. Shown there?

23 Q. Yes.

24 A. Twenty-five, 30 acres.

25 Q. You could have planted this tree

1 virtually anywhere on that acreage, right?

2 A. Yes.

3 Q. And you alone chose to plant it in the  
4 distance that it was both away from the pole with the  
5 transformer and from the line.

6 A. That's right.

7 Q. Now, you chose the type of tree as well,  
8 correct?

9 A. I beg your pardon?

10 Q. You chose the type of tree to plant  
11 there.

12 A. Yes, I did.

13 Q. All right. Now, you mentioned that this  
14 type of tree can provide a windbreak.

15 A. Yes, it can.

16 Q. Would you agree with me that in order to  
17 have an effective windbreak you'd need to have a row  
18 of these trees?

19 A. Well, if you want to have a windbreak,  
20 yes.

21 Q. Okay. So in this case you only had one,  
22 so you didn't plant it for a windbreak.

23 A. That's right.

24 Q. Would you agree with me that when the  
25 Ohio Edison contractors trimmed the tree, that it was

1 approximately 25 to 30 feet tall?

2 A. I think so.

3 Q. And you have a diagram, and you still  
4 have your exhibit in front of you --

5 A. Yes, ma'am.

6 Q. -- Exhibit 1, but we've got multiple  
7 pages and I'd like to draw your attention to No. 12.  
8 Diagram 12. Do you have it?

9 A. Yes, I have it.

10 Q. Now, first of all, did you prepare this  
11 diagram?

12 A. Yes, I did.

13 Q. And is it to scale?

14 A. Pretty close.

15 Q. Okay. Did you make the measurement that  
16 says 11 foot from the beech to the pole?

17 A. Yes, I did.

18 Q. Now some of the -- where the beech tree  
19 is planted, the trunk is planted, because of where  
20 it's planted the limbs go, some of them go directly  
21 under the line, correct?

22 A. In this case, no.

23 Q. Okay. You mean after trimming?

24 A. Before trimming.

25 Q. Did you attempt to look at the distance

1 between where the trunk is and the line is, or are  
2 you putting the distance where, when you wrote  
3 "beech," where the limbs are to the line?

4 A. This is the location of the trunk. These  
5 numbers represent the trunk.

6 Q. You'd agree with me that a 25- to 30-foot  
7 tree, there's going to be limbs, then, going off the  
8 trunk some horizontal distance, right?

9 A. No. This particular tree, the lateral  
10 branches do not go horizontally. They sprout out  
11 from the side of the tree and immediately turn  
12 upwards.

13 And if you'll notice on the Exhibit 8, I  
14 think that shows the characteristics of *Fagus*  
15 *sylvatica fastigiata*.

16 Q. I'm going to show you --

17 MS. HASBROOK: May I approach the witness  
18 to show him an exhibit, your Honor?

19 EXAMINER SHEETS: Yes.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. I'm going to show you what we've marked  
22 Company Exhibit 1. Now, this is also a diagram that  
23 you prepared, correct?

24 A. That's right.

25 Q. All right. And in this -- and when did



1 you do this diagram?

2 A. Well, this was done sometime before the  
3 diagram that I've shown you recently.

4 Q. All right. And so you did it -- the  
5 first diagram that you prepared is Defendant's  
6 Exhibit 1 and then later in time comes No. 12.

7 A. That's right.

8 Q. Okay. Now, on that one you have 8 feet  
9 between the pole and the beech tree.

10 A. That's right.

11 Q. And you made that measurement as well,  
12 right?

13 A. That was an estimate.

14 Q. Okay.

15 A. That was not a direct measurement.

16 Q. But you're telling us that on 12, that is  
17 a direct measurement, right?

18 A. That's correct.

19 Q. And you're also telling us that none of  
20 the branches go under the wire, correct?

21 A. That's right.

22 MS. HASBROOK: Just give me a moment to  
23 finish marking.

24 If I might approach.

25 (EXHIBITS MARKED FOR IDENTIFICATION.)

1 Q. I'm going to hand you some photos that we  
2 have marked Company Exhibit 2 and Company Exhibit 3.

3 EXAMINER SHEETS: Just for the record,  
4 your first exhibit is labeled "Defendant's" exhibit.  
5 Let's make them all "Company" exhibits.

6 MS. HASBROOK: All right. Thank you.  
7 And Company Exhibit 4.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Now, are those true and accurate photos  
10 of your tree after it was trimmed and as it exists  
11 near the line?

12 A. What was the last part of that statement?

13 Q. Are those true and accurate photos of the  
14 tree after it was trimmed and the power line?

15 A. I can see the tree, and I can see the  
16 power lines, yes.

17 Q. Okay. Now, did you make -- then you made  
18 all of the measurements on both Company Exhibit 1 and  
19 in your own Exhibit 1, No. 12, right?

20 A. Well, the measurements on Exhibit 1, as  
21 you pointed out, those were estimates.

22 Q. Now, you agreed with me that the tree was  
23 approximately 25 to 30 feet. Did you ever actually  
24 measure that, or is that just an approximation?

25 A. No, I did not measure the tree.

1           Q.    I'd like you to look at your own Exhibit  
2   1, No. 12, and we have been looking at the first  
3   page, the one that says "12" on it. Right behind  
4   that there's another unnumbered page, do you see  
5   that, with another diagram? And I'll hold it up for  
6   you so you can see what it is I'm looking at.

7           A.    Yes, ma'am.

8           Q.    All right. For our record, it's the page  
9   right behind the one that you numbered 12 and on the  
10  bottom it says -- well, there's a green triangle,  
11  inverted triangle on it; that's the one you're  
12  looking at, right?

13          A.    Yes, ma'am.

14          Q.    Now, there are some measurements here in  
15  various places, 16 feet, 8 feet, 12 feet. Did you  
16  actually measure those distances?

17          A.    Well, I measured the 12 -- the 16 feet;  
18  that was a direct measurement. That's the height of  
19  the tree after it was pruned. I measured the  
20  remaining stump of the tree, it was 8 feet. We  
21  actually measured the, what I call the hot line is at  
22  35 feet, and we actually measured the line, what I  
23  call the ground line, at 28 feet. Those were direct  
24  measurements taken by me personally.

25          Q.    And how did you do that?

1           A.    We did it with a -- what do you call  
2 those trucks that go up in the air?

3           Q.    Like a bucket truck?

4           A.    A bucket truck, yeah. I have  
5 photographs, would you like to see them?

6           Q.    No, I'm just -- I'm looking for an answer  
7 to the question how did you do it, and you did it  
8 with a bucket truck.

9           A.    That's how we did it. The others I could  
10 do with a ladder. I have a 17-foot ladder.

11          Q.    You did not, then, actually measure that  
12 12-feet distance, did you?

13          A.    That's right, I did not.

14          Q.    Now, Mr. Yates, who's here today, has  
15 never actually visited your property, correct?

16          A.    Beg your pardon?

17          Q.    Mr. Yates, Douglas Yates, has never  
18 actually visited your property, correct?

19          A.    Well, yes, he has.

20          Q.    And when did he do that?

21          A.    Today.

22          Q.    Okay. Let me rephrase my question, then.  
23 Before he submitted his direct testimony and drafted  
24 that he had not seen your property, correct?

25          A.    That's right.

1           Q.    And that direct testimony was submitted  
2 in April, right? Several months ago.

3           A.    Oh, I understand. Yes, that's true.

4           Q.    Okay. And so the first time he ever was  
5 on your property was today.

6           A.    Yes, ma'am.

7           Q.    Did you prevent him from visiting your  
8 property in any way before his direct testimony was  
9 submitted as an expert in this case?

10          A.    No.

11          Q.    Now, I'd like for you to go back to your  
12 Exhibit 1, page 11, it's No. 11. I'm sorry. Page 7.  
13 It's No. 7 in your Exhibit 1, but it happens to be  
14 page 11 of the vegetation management policy, correct?  
15 No. 7.

16          A.    Yes.

17          Q.    Okay. Now, you read for us and you said  
18 that it was mandatory to have four years of  
19 clearance, and you talked about the 12 feet of  
20 clearance that has to be around primary conductors,  
21 and I'd like to focus on that section that you read.

22                At the bottom of the second full  
23 paragraph it says "In cases where four years of  
24 clearance is unattainable, 12 feet of clearance  
25 around primary conductors shall be achieved." Did I

1 read that correctly?

2 A. That's right.

3 Q. All right. So farther up there's another  
4 distance that if it can be achieved, should be  
5 achieved, and it's 15 feet, correct?

6 A. I didn't follow that.

7 Q. Sure. Let's look farther up in that  
8 paragraph, the same paragraph I was reading. It  
9 says, and I don't believe you read this, "The  
10 distribution clearing zone is defined as a corridor  
11 measured at a distance of 15 feet on either side of  
12 the pole line or to the established large tree edge,  
13 whichever is greater in width." Do you see that?

14 A. Yes, ma'am.

15 Q. All right. And so you did not highlight  
16 that section, did you?

17 A. No, I didn't.

18 Q. Now, before Mr. Yates drafted his expert  
19 testimony, since he had not been to your property, I  
20 assume he hadn't taken any measurements of his own,  
21 correct?

22 A. That's right.

23 Q. Did you give him what is in front of you  
24 as Company Exhibit 1, that's the one where the  
25 estimate of the 8 foot of the pole line is there?

1           A.    Did I give him what?

2           Q.    Did you give him Company Exhibit 1 before  
3 he drafted his testimony?

4           A.    I think -- yeah.  Yes, I did.

5           Q.    Now, today you have Exhibit 12 --

6           A.    That's right.

7           Q.    -- with a revised measurement of 11 feet.

8           A.    That's right.

9           Q.    Did you prepare this recently?

10          A.    Yes, I did.

11          Q.    So this was prepared after he submitted  
12 his testimony, correct?

13          A.    That's right.

14          Q.    Now, this tree is in close proximity or  
15 fairly close to your home, right?

16          A.    This tree is located 149 feet from my  
17 home.

18          Q.    It's visible from one of your --

19          A.    My kitchen window.

20          Q.    Okay.  If there was a contact with the  
21 primary and a fire would occur, you wouldn't want a  
22 fire close to your home, that close to your home,  
23 would you?

24          A.    I don't think anyone would.

25          Q.    Now, let's talk about the setting that

1 this tree is in. And you labeled some other trees on  
2 both of your diagrams. You do have quite a few other  
3 types of trees in this area, right?

4 A. Quite a few? I made note of the fact  
5 that in the area we're talking about there were some  
6 common lilacs and some eastern arborvitae. You're  
7 talking about this 30-foot easement or distribution  
8 zone, that's what you're talking about.

9 Q. That's right. That's right.

10 A. So those trees do exist there.

11 Q. And then beyond that you've got other  
12 trees. I mean, this is practically an arboretum,  
13 you've got brass plates and you've got other trees  
14 planted of some significance, correct?

15 A. Yes.

16 Q. And I assume that you have people who  
17 walk this area, you have grandchildren, visitors,  
18 guests who walk around and look at the property?

19 A. Rarely.

20 Q. But it is a, it's a part of your yard,  
21 isn't it?

22 A. Yes, it is.

23 Q. And you certainly want them to be safe as  
24 they do this.

25 A. Yes, ma'am.



1           Q.    Now, did a representative from Nelson  
2 Tree Service come to your home in December of 2009  
3 and explain what they needed to do and why?

4           A.    No.

5           Q.    Did a representative ever come to your  
6 home and explain what they needed to do and why?

7           A.    No.

8           Q.    Are you saying that Tara Weckerly never  
9 met with you or Joe Liss never met with you before  
10 the tree was trimmed?

11          A.    I first met Ms. Weckerly following the  
12 pruning in 2010 after we had complained to the  
13 customer service -- no. I beg your pardon.  
14 Following the pruning in February of 2010, I first  
15 saw Ms. Tara Weckerly at that time.

16          Q.    Didn't Ms. Weckerly send you a certified  
17 letter before the trimming to tell you that this was  
18 going to take place?

19          A.    Yes, she did.

20          Q.    Okay. And so you were aware, through  
21 that letter at least, that that's what the company  
22 planned to do, right?

23          A.    That's right.

24          Q.    Okay. Did Joe Liss -- I think my  
25 question was Joe Liss or Tara Weckerly. Did you meet

1 with someone else? Did you meet with Joe Liss before  
2 the tree was trimmed?

3 A. According to the record, I was visited by  
4 Joe Liss. I didn't know who he was at the time --

5 Q. Okay.

6 A. -- on February -- or, in January of 2010,  
7 and I remember that visit very well.

8 Q. And that was before the tree was trimmed,  
9 right?

10 A. That's right. I remember very, very well  
11 what happened, because someone came in a company  
12 truck, he didn't identify himself, I was outside at  
13 the time, and he rolled down the window and he  
14 informed me they were coming to trim the trees and  
15 left.

16 Q. And that was my question. Did someone  
17 inform you that the company planned to trim the tree  
18 before it occurred?

19 A. That's right.

20 Q. Okay. And so now we've talked about two  
21 notifications, the certified letter from Tara  
22 Weckerly that you said you got, correct?

23 A. That's right.

24 Q. And the person that you just described  
25 who came and told you that they were going to trim

1 the trees.

2 A. That's right.

3 Q. Okay. Now, you have no experience  
4 maintaining electric lines, do you?

5 A. Pardon?

6 Q. You have no experience in the utility  
7 industry maintaining electric lines.

8 A. Absolutely none.

9 Q. And you also have no experience trimming  
10 trees in relation to lines, do you?

11 A. In what?

12 Q. Trimming. You also have no experience in  
13 trimming trees as they relate to electric lines.

14 A. That's right.

15 Q. After the trimming occurred did you see  
16 Joe Liss on your property again, the same gentleman  
17 who came in and rolled down his window?

18 A. I think that was the same, as it turns  
19 out it was the same fellow, and he was in attendance  
20 with Ms. Weckerly at the time the crew was cleaning  
21 up and about to leave.

22 Q. Did you thank them for doing their job?

23 A. No.

24 Q. Did you -- you didn't complain about this  
25 tree until your wife called several weeks later.

1 A. That's right.

2 Q. All right. Then after your wife called  
3 several weeks later, Tara Weckerly came back out to  
4 your -- she came out to your home, right?

5 A. That's right.

6 Q. And did Ms. Weckerly offer to take down  
7 the tree completely at that time if you wanted that?

8 A. She offered to cut down the tree.

9 Q. And you didn't want that. You didn't  
10 accept -- you didn't accept that offer.

11 A. No.

12 Q. Okay. Now, this tree is not dead, is it?

13 A. No. It's sort of like if you have  
14 cancer; it's dying.

15 Q. You have not -- you are not an arborist,  
16 are you?

17 A. No.

18 Q. And you have not presented any photos of  
19 the tree as it exists today in your packet, have you?

20 A. No.

21 Q. It has leaves right now, correct?

22 A. That's right.

23 Q. And it has budded since then?

24 A. That's right.

25 Q. And did Mr. Yates explain to you when --

1 first of all, you brought a branch, a small branch of  
2 the tree to Mr. Yates's office at one point, right?

3 A. That's right.

4 Q. It is not the same branch that we have  
5 over here.

6 A. That's right.

7 Q. And that smaller branch that you brought  
8 in, did he explain to you how the rings on the branch  
9 work, and there's a certain distance for each year  
10 that you can see on the branch?

11 A. That's right.

12 Q. And did he explain to you that -- and did  
13 you observe that the largest distance of the ring on  
14 the entire branch was actually after it was trimmed?

15 A. What was that now?

16 Q. Did he show you the specific rings that  
17 were for 2010 and 2011?

18 A. I don't follow the question. The branch  
19 shows the rate of growth of the tree.

20 Q. Right. And it does that by showing a  
21 little mark kind of each year so you can work  
22 backwards and say this would be last year, and this  
23 would be the year before; did he explain that to you?  
24 Maybe he didn't.

25 A. I don't remember.

1           Q.    Okay.  Do you have that branch that you  
2 brought in to him here today?

3           A.    No.

4           Q.    Why not?

5           A.    He forgot it.

6           Q.    But you remembered to bring a whole  
7 different branch today.

8           A.    Well, we just cut one off to bring today.

9           Q.    You are not disputing that Ohio Edison  
10 has the right to maintain its lines, are you?

11          A.    Doing what?

12          Q.    You're not disputing that Ohio Edison has  
13 the right to maintain its electric lines.

14          A.    No.  No.

15          Q.    But you're saying you don't like the way  
16 your tree looked after it was trimmed.  Is that fair?

17          A.    I was shocked.

18          Q.    You are not saying that the  
19 specifications are not correct in order to accomplish  
20 what they need to do.

21          A.    Are you saying I'm disagreeing with their  
22 protocol?

23          Q.    Do you disagree with the specifications  
24 that they've put in place?

25          A.    I don't disagree with the protocol, their

1 specification management program and the ANSI, I  
2 agree with -- well.

3 Q. Now, you did a letter to Bill at Klyn  
4 Nurseries on October 16th of 2011, correct?

5 A. I don't know. To Bill at Klyn Nurseries?

6 Q. Do you know a Bill at Klyn Nursery?

7 A. Yeah, I know him.

8 Q. I'm going to show you, I believe we're up  
9 to No. 5. Yes.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. We'll call this Company Exhibit 5. I  
12 have "company" over "defendant" there. Showing you  
13 Company Exhibit 5, do you recognize this letter?

14 A. It would be my letter, yes.

15 Q. All right. And who's Bill?

16 A. Who was Bill?

17 Q. Uh-huh.

18 A. Bill Hendricks is the owner of Klyn  
19 Nursery.

20 Q. And Klyn Nursery is where Doug Yates is  
21 employed, correct?

22 A. Is what?

23 Q. That's where Doug Yates is employed.

24 A. That's right.

25 Q. And you've been a customer of Klyn

1 Nursery for about 20 years?

2 A. Well, no. I've only known Bill for  
3 probably the last five or six years at the most.

4 Q. Okay. At the last paragraph it looks  
5 like you're making plans to get together with him and  
6 his wife and maybe make plans for Italy, doesn't it?

7 A. What was that now?

8 Q. The last paragraph, it looks like you're  
9 making plans to get together with he --

10 A. Oh, yes, I see. That's right.

11 Q. And maybe you're talking about making  
12 plans to go to Italy, right?

13 A. Yes.

14 Q. All right. Now, in the letter, and this  
15 was, the date of it is October 16th, 2011, correct?

16 A. That's right.

17 Q. All right. And you estimated in the  
18 third paragraph that the tree was 25 to 30 feet tall,  
19 right?

20 A. That's right.

21 Q. And that's still your estimate today.  
22 That's what you believe. That's what you believe how  
23 tall it was before it was trimmed, right?

24 A. That's right.

25 Q. All right. Then you have in the next



1 sentence -- well, next two sentences, "The existing  
2 trunk measures 8 feet and the logs on the ground that  
3 represent the middle part of the tree measure 8  
4 feet." Did you make those measurements yourself?

5 A. Yes.

6 Q. And did you pass that information on to  
7 Mr. Yates, then, when he started working with you?

8 A. Well, I think I did.

9 Q. Okay. The fourth paragraph, this fourth  
10 paragraph is similar to some of the opinions that  
11 Mr. Yates holds today, correct?

12 A. That's right.

13 Q. All right. And this was your personal  
14 opinion on October 16th, 2011, that you passed on  
15 to Mr. -- to Bill and he gave it to Mr. Yates, right?

16 A. I didn't follow. I have a little trouble  
17 hearing. I hope you'll forgive me.

18 Q. Sure. I'm going to try to talk louder  
19 for you.

20 This was your personal opinion, it's  
21 on -- the fourth paragraph, about what the crews did,  
22 correct?

23 A. That's right.

24 Q. All right. Did you ask Mr. Yates to  
25 adopt that opinion, that opinion on paragraph 4?

1           A.    I don't know if I asked him to adopt it.  
2    I think I -- that's how I explained how the tree got  
3    to the size it got.

4           Q.    Okay.  And when you got to paragraph 5,  
5    your suspicion that the crew that pruned your tree  
6    used the lower wire as a guide and achieved a  
7    clearance of 12 foot, that became Mr. Yates's  
8    opinion, didn't it?  I mean, he testified to that in  
9    his direct testimony, didn't he?

10          A.    Again, I just don't follow what you say.  
11   The only way I could account for the tree being 16  
12   feet tall to get a 12-foot clearance from a 28-foot  
13   line, that's the only way I could do it.

14          Q.    And you explained that to Mr. Yates,  
15   right?

16          A.    Yeah.

17          Q.    And that became Mr. Yates's opinion too,  
18   didn't it?

19          A.    I guess.

20          Q.    And Mr. Yates was never at your property  
21   before he did his direct exam and never made a single  
22   measurement of anything, did he?

23          A.    That's right.

24                MS. HASBROOK:  I have nothing further.  
25   Thank you.

1 THE WITNESS: You're welcome.

2 EXAMINER SHEETS: Do you have anything  
3 else?

4 DR. PAQUELET: Beg your pardon?

5 EXAMINER SHEETS: Any other statements to  
6 make?

7 DR. PAQUELET: Well, I'd like to  
8 explain --

9 EXAMINER SHEETS: Based on what she just  
10 said.

11 DR. PAQUELET: Beg your pardon. I'd like  
12 to explain Ms. Weckerly's letter to me dated February  
13 the 3rd, 2010. In the second paragraph it is  
14 noted --

15 EXAMINER SHEETS: What are you reading  
16 from? Excuse me. What are you reading from, sir?  
17 Explain for the record what you're reading from.

18 DR. PAQUELET: Mrs. Weckerly's letter to  
19 me dated February the 3rd, 2010.

20 EXAMINER SHEETS: Okay. Go ahead.

21 DR. PAQUELET: Let her get the letter.  
22 Do you have the letter, Ms. Hasbrook?

23 MS. HASBROOK: I'm sorry. I think this  
24 is your chance to make a statement.

25 DR. PAQUELET: I was just going to read

1 it so you could read it.

2 EXAMINER SHEETS: This is more redirect  
3 testimony. Is there anything else you want to add?

4 - - -

5 REDIRECT TESTIMONY

6 DR. PAQUELET: Well, the Ohio Edison  
7 Company or a subsidiary has, as needed, pruned and  
8 removed incompatible vegetation. Our present need to  
9 prune vegetation is a continuation of that activity.

10 This implied to me that the Ohio Edison  
11 Company intended to do what they had done in the  
12 past, and because what they had done in the past was  
13 of no real -- it didn't alarm me that my beech tree  
14 would be affected, as a matter of fact, I don't ever  
15 recall the tree ever having been pruned in the past  
16 or, if it had, I hadn't noticed any pruning.

17 And so that this tree was pruned in 2006  
18 and at that time there would have been acceptable  
19 clearance in 2006, and to come back in 2010 and a  
20 tree that grows at most 9 to 12 inches a year under  
21 ideal circumstances, and our tree is growing probably  
22 3 to 4 inches a year, the likelihood of that tree  
23 encroaching on those lines is zero.

24 EXAMINER SHEETS: Does that conclude your  
25 statement?

1 DR. PAQUELET: Yes, sir.

2 EXAMINER SHEETS: Do you have any  
3 recross?

4 MS. HASBROOK: I do.

5 - - -

6 RECROSS-EXAMINATION

7 By Ms. Hasbrook:

8 Q. In looking at that letter, which I  
9 believe you do have in front of you, it says in the  
10 first paragraph "It has come to our attention that  
11 trees and other vegetation in your area are  
12 interfering, or will interfere in the near future,  
13 with our lines. Therefore, we will be trimming and  
14 removing that vegetation in the near future." That's  
15 how it starts, correct?

16 A. That's right.

17 MS. HASBROOK: That's all I have. Thank  
18 you.

19 EXAMINER SHEETS: Okay, sir. You're  
20 excused.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 EXAMINER SHEETS: Now, you have another  
24 witness to call, Dr. Paquelet? Your expert witness.

25 DR. PAQUELET: I can call their expert or

1 my expert?

2 EXAMINER SHEETS: Your expert witness I'm  
3 talking about; Mr. Yates.

4 DR. PAQUELET: Mr. Yates, yes.

5 EXAMINER SHEETS: Are you going to call  
6 him as a witness?

7 DR. PAQUELET: Yes.

8 EXAMINER SHEETS: Raise your right hand.

9 (Witness sworn.)

10 EXAMINER SHEETS: Please be seated.

11 Do you have any questions for this  
12 witness?

13 Wait a minute. Let's have you give your  
14 name and address for the record.

15 THE WITNESS: My name is Douglas K.  
16 Yates. I live at 7540 Anchor Court, Mentor, Ohio,  
17 44060.

18 EXAMINER SHEETS: Go ahead.

19 - - -

20 DOUGLAS K. YATES

21 being first duly sworn, as prescribed by law, was  
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 By Dr. Paquelet:

25 Q. Mr. Yates, would you describe the

1 characteristics of the tree Fagus sylvatica  
2 fastigiata.

3 MS. HASBROOK: I have to object.  
4 Mr. Yates is an expert. His testimony has been  
5 prefiled, it was prefiled and sent to the Commission  
6 on April 6th of 2012, and under Administrative Code  
7 4901-1-29 all expert testimony must be in writing and  
8 must be prefiled. This has already occurred and we,  
9 of course, are ready to cross-examine on that, and  
10 this appears to be a variation of that mandatory rule  
11 and letting in additional evidence.

12 EXAMINER SHEETS: I think you're correct.  
13 Let's mark his testimony, his direct testimony, as  
14 Complainant's Exhibit 2.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 EXAMINER SHEETS: I want to let you  
17 clarify on the expert testimony that you had  
18 submitted before.

19 DR. PAQUELET: Beg your pardon?

20 EXAMINER SHEETS: I was going to let you  
21 ask a few questions to clarify that. But what we  
22 will do is we'll let that stand, his expert  
23 testimony, as his direct and then we'll go to  
24 cross-examination and then you can have some redirect  
25 on that. That's the procedure we'll follow.

1 DR. PAQUELET: The way it works?

2 EXAMINER SHEETS: Okay. So we have --  
3 let's go off the record here briefly and locate a  
4 copy of your direct testimony for the court reporter.

5 (Discussion off the record.)

6 EXAMINER SHEETS: Go ahead.

7 MS. HASBROOK: Could I just approach and  
8 just see what you have in front of you. Thank you.  
9 This is not your direct testimony. This is -- these  
10 are other things.

11 Should we just have the direct testimony  
12 in front of him? I have an extra copy if you'd like  
13 my copy.

14 THE WITNESS: Okay.

15 EXAMINER SHEETS: Do you have a copy?  
16 This is the only one I have.

17 MS. HASBROOK: I do.

18 I'm going to just give you that back.

19 EXAMINER SHEETS: Why don't you show him  
20 that if you have another copy.

21 MS. HASBROOK: I do. It may have some  
22 underlining on it, I apologize for that.

23 THE WITNESS: All right.

24 - - -

25



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CROSS-EXAMINATION

By Ms. Hasbrook:

Q. Okay. Mr. Yates, now you have a copy of your testimony in front of you, correct?

A. Yes.

Q. All right. Let me ask you a few questions, first about your qualifications. You are currently in sales for Klyn Nurseries.

A. Correct.

Q. And your background is that you are a municipal specialist, correct?

A. Yes. Board certified master arborist, master specialist.

Q. This is not a line-clearance arborist, is it?

A. Correct.

Q. And you've worked for various municipalities in the past, but none of this work has involved guidelines for staying away from electrical lines, correct?

A. Correct.

Q. And you do understand that the work that was being done by Ohio Edison here was for line clearance work.

A. Correct.

1           Q.    The testing that you went through to  
2   become a municipal specialist did not cover the  
3   distance that you have to stay away from electrical  
4   lines.

5           A.    Correct.

6           Q.    When I -- I took your deposition, if you  
7   recall, just June 4th of 2012 --

8           A.    Yes.

9           Q.    -- right? Okay. And at that time I  
10   asked you if you planned to do any further work in  
11   connection with this case, and you said that you did  
12   not. Correct?

13          A.    Correct.

14          Q.    Now, you are familiar with ANSI Z133.1,  
15   the 2006 edition?

16          A.    Yes.

17          Q.    And you're familiar that within that  
18   there is a qualified -- a definition of a qualified  
19   line-clearance arborist, correct?

20          Q.    And you do not qualify for that, do you?

21          A.    Correct.

22          Q.    Okay. And that standard that I just  
23   quoted, ANSI Z133.1, the 2006 edition, is the  
24   industry standard for safety practices when working  
25   around -- when trimming trees around electrical

1 lines, right?

2 A. Yes.

3 Q. Okay. And because you are not a  
4 qualified line-clearance arborist as defined in that  
5 code, then you would not be qualified to do the trim  
6 work that Ohio Edison did here, right?

7 A. Correct.

8 Q. You are, however, a qualified arborist.

9 A. Yes.

10 Q. All right. And that also has a  
11 definition under the ANSI code, right?

12 A. Yes.

13 Q. But that does not, then, have the  
14 subcategory of the more specific work of working  
15 around electrical lines when you're trimming --

16 A. Correct.

17 Q. -- right? Now, you're also familiar, I  
18 assume, with ANSI A300?

19 A. Yes.

20 Q. All right. And are you familiar that  
21 Section 4.2.3 of that code only allows a qualified  
22 line-clearance arborist or a qualified line-clearance  
23 arborist trainee to do work around electrical  
24 hazards?

25 A. Yes.

1 Q. And I assume you are likewise not  
2 qualified to do any work under ANSI A300, correct?

3 A. No.

4 Q. Now, that is the standard that deals with  
5 industry practices in performing this type of work,  
6 around electrical lines, right?

7 A. Yes.

8 Q. There's another group called the ISA;  
9 you're familiar with that?

10 A. Yes.

11 Q. All right. And they have also a  
12 certification called a Certified Utility Specialist.  
13 Are you aware of that?

14 A. Yes.

15 Q. You do not hold that either, do you?

16 A. Correct.

17 Q. All right. Now, you've never worked for  
18 a utility company, have you?

19 A. No.

20 Q. And you've never been tested on -- tested  
21 on or worked around specific issues that are unique  
22 to utility line clearance, have you?

23 A. No.

24 Q. You've never authored any papers  
25 regarding utility line clearance, have you?

1 A. No.

2 Q. Have you heard of the National Electrical  
3 Safety Code that deals with distances that lines need  
4 to be away from buildings and other structures? Are  
5 you familiar with that?

6 A. Yes.

7 Q. All right. And you have never applied  
8 that in anything that you've done as far as trimming  
9 trees, have you?

10 A. No.

11 Q. There are certain tables there of how far  
12 trees and objects need to be away from electric  
13 lines, and you're not familiar with those.

14 A. No.

15 Q. You don't know the voltage that we're  
16 dealing with here, do you?

17 A. No.

18 Q. Now, you don't have -- I could ask you a  
19 whole bunch of questions, but the bottom line is you  
20 don't have any criticisms of Ohio Edison's utility  
21 vegetation management plan, do you?

22 A. No, only the application.

23 Q. Okay. The application being in this --

24 A. In this instance.

25 Q. -- instance?

1           A.     Right.

2           Q.     But although you have those criticisms,  
3     you have no idea what the proper clearance zones for  
4     this voltage would be --

5           A.     No.

6           Q.     -- do you?  So although you think they  
7     should have done it differently, you don't know what  
8     the clearances were that they were even trying to  
9     accomplish.

10          A.     Correct.

11          Q.     You've never worked as a consultant for a  
12     forestry program that serves a public utility, have  
13     you?

14          A.     No.

15          Q.     And you yourself have never trimmed to  
16     maintain clearances around electric lines, have you?

17          A.     No.

18          Q.     Your former work as an expert has been in  
19     the area of valuing trees that were damaged or  
20     removed; is that fair?

21          A.     Correct.

22          Q.     And you have had some cases against CEI,  
23     another public utility, where you provided an opinion  
24     on what the tree was worth, right?

25          A.     Correct.

1 Q. And because you've said you're not an  
2 expert in this, you did not give any opinions on  
3 whether they trimmed too close to the line or should  
4 have taken more or less of the tree.

5 A. Correct.

6 Q. Now let's go back to ANSI A300. We've  
7 talked about that as being authoritative for trimming  
8 near power lines, and are you familiar with Section 9  
9 of ANSI 300?

10 A. Yes.

11 Q. You were not familiar with it when I took  
12 your deposition on June 4th, 2012, were you?

13 A. No.

14 Q. In fact, I put it in front of you and you  
15 read it for the first time while we were sitting at  
16 your deposition, correct?

17 A. Correct.

18 Q. You didn't even know Section 9 existed  
19 before I put it in front of you and showed it to you  
20 at your deposition, correct?

21 A. Actually, that's not correct because I  
22 had read it a couple years ago, but I had just  
23 forgotten that I read it.

24 Q. You did not review it, however, before  
25 you submitted your direct testimony in April of 2012

1 in connection with this case, did you?

2 A. Correct.

3 Q. Okay. Now, in the course -- did you  
4 review it between June 4th, 2012, and today?

5 A. Yes.

6 Q. All right. And so that would be after  
7 your deposition, right?

8 A. Correct.

9 Q. And in your deposition we talked about  
10 Section 9.3.1.3. Let me put that in front of you so  
11 that you have it.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Showing you what we marked Company  
14 Exhibit 6. Now, Company Exhibit 6 is an excerpt of  
15 certain pages from A300, correct?

16 A. Yes.

17 Q. Okay. I'd like you to -- first of all,  
18 let's just kind of go through it in order. Section  
19 4.2.3 is the section -- do you have it there? It  
20 would be about two pages in.

21 A. Yes.

22 Q. Okay. That's the section that says only  
23 qualified line-clearance arborists or trainees shall  
24 be assigned to do work near electrical hazards --

25 A. Yes.



1 Q. -- right?

2 A. Yes.

3 Q. That was the section we were talking  
4 about before that you do not meet that qualification.

5 A. Correct.

6 Q. Further on in ANSI A300, just the next  
7 page, also in Section 4, Section 4.57 defines  
8 "utility space" as "The physical area occupied by a  
9 utility's facility and the additional space required  
10 to ensure its operation." Do you see that?

11 A. Yes.

12 Q. Now, I assume from the answers to the  
13 other questions, since you're not an expert on this,  
14 you don't know, nor are you offering an opinion, on  
15 what that utility space should have been for this 7.2  
16 kV line, correct?

17 A. Yes.

18 Q. I am correct on that.

19 A. Yes.

20 Q. Now let's go up to Section 9, and that  
21 was the section that we were actually talking about a  
22 moment ago that you did not read or review before  
23 your testimony was filed in April of 2012; Section 9,  
24 correct?

25 A. Correct.

1 Q. Now, I'd like you to look at Section  
2 9.3.1.3.

3 A. I'm sorry, 9.1?

4 Q. No. I'm sorry. It's so confusing. 9.3,  
5 it's actually the second-to-the-last page of that  
6 exhibit. It's section 9.3.1.3. Do you see that?

7 A. Yes.

8 Q. Now, that section deals with trees that  
9 are directly under and growing into the  
10 facility/utility space, and we've said before you  
11 don't know what that exact space is, right?

12 A. No.

13 Q. Okay. That section says that those  
14 trees, whatever that space is, "should be removed or  
15 pruned." Correct?

16 A. Yes.

17 Q. Now, you had no opinions on whether this  
18 tree was growing under the line, directly under the  
19 line, therefore, falling under this provision, at  
20 least when I took your deposition, because at that  
21 time you had never seen it, right?

22 A. Correct.

23 Q. Okay. It does -- you can tell, by  
24 reading this section, that if that is true, that the  
25 tree can either be removed entirely or it can be

1 pruned, right?

2 A. Yes.

3 Q. I'm going to back you up a couple pages  
4 to Section 9.1, it's right under "Utility pruning,"  
5 the Purpose section, it's actually labeled page 8  
6 down on the lower left. Do you see that, "Utility  
7 pruning"?

8 A. I see "Utility pruning."

9 Q. Okay. Now, under the Purpose, "The  
10 purpose of utility pruning is to prevent the loss of  
11 service, comply with mandated clearance laws" --  
12 those are the laws you said you don't know what they  
13 are, right?

14 A. Uh-huh.

15 Q. Okay. And to ". . . prevent damage to  
16 equipment, maintain access, and uphold the intended  
17 usage of the facility/utility space." And we said  
18 before you don't know what that space is, right?

19 A. Right.

20 Q. Okay. And the purpose, then, as stated  
21 under ANSI 300, Section 9, the purpose is to do all  
22 that "while adhering to accepted tree care  
23 performance standards," right?

24 A. Yes.

25 Q. And so there's competing principles here

1 of what the utility needs to accomplish under Section  
2 9; would you agree with me on that?

3 A. Yes.

4 Q. Okay. And also, on that same page,  
5 Section 9.3 allows this to be done by utility crown  
6 reduction pruning, doesn't it?

7 A. Yes.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. I'm going to show you Company Exhibit 7.  
10 Showing you Company Exhibit 7, this is a manual that,  
11 I've actually got the manual in my hand here, but  
12 this is a copy of this manual, the Best Management  
13 Practices of Utility Pruning of Trees, right?

14 A. Yes.

15 Q. So this is not -- this is not the ANSI  
16 standard itself, but this is a manual that describes  
17 those -- that describes the best management practices  
18 in applying that, right?

19 A. Yes.

20 Q. Okay. Now, again, this has a Purpose  
21 section, and if we go to page 2, there's some Roman  
22 numeral pages, but the actual page 2 has the "Purpose  
23 of Utility/Facility Pruning." Do you have that on  
24 page 2? Okay, do you have that?

25 A. Yes.

1           Q.    All right.  The second paragraph, I'm  
2   reading the second sentence of this Best Management  
3   Practices, it states "In some areas, government  
4   authorities have adopted performance standards such  
5   as mandatory minimum clearances between energized  
6   conductors and surrounding vegetation.  Utility tree  
7   pruning programs must be designed to meet those  
8   requirements."  And that's part of the best  
9   management practices, right?

10          A.    Yes.

11          Q.    All right.  And, as far as you understand  
12   it, this is incorporated into the utility vegetation  
13   management program for FirstEnergy?

14          A.    Yes.

15          Q.    And Ohio Edison.

16                Now let's go down to the next paragraph,  
17   the last sentence, "At the same time, inadequate  
18   clearance could result in service interruptions,  
19   damaged infrastructure, or safety hazards."  So you  
20   understand that one of the reasons for doing this is  
21   to keep that from happening, right?

22          A.    Yes.

23          Q.    Now, Pruning Methods, if we go up to page  
24   8 in this best practices, do you see on page 8 --  
25   first of all, I'll let you make sure you have it.

1 Under "Pruning Method," we're in the first full  
2 paragraph about the second-to-the-last sentence. So  
3 we just talked about the purpose, now the method. Do  
4 you have the page?

5 A. Yes.

6 Q. Okay. According to the Best Management  
7 Practices for ANSI 300 "There could be many  
8 acceptable approaches. While every effort should be  
9 made to minimize injuries to trees, however, utility  
10 pruning operations must achieve required clearance  
11 objectives," correct?

12 A. Correct.

13 Q. All right. And so do you understand that  
14 to mean that, you know, you've got to get the  
15 clearance, whatever it is, and you do your best to  
16 try to minimize the injuries to trees?

17 A. Yes.

18 Q. All right. And then the next sentence,  
19 "Achieving the required objectives may require  
20 considerable change in the appearance of the tree.  
21 However, the visual impact of utility pruning will be  
22 softened as the tree responds to new growth," right?

23 A. Except for trees that can't respond with  
24 new growth.

25 Q. I don't see that that says that there.

1 That doesn't say that, right?

2 A. I'm just stating my opinion.

3 Q. Okay. Okay. But just so we're clear on  
4 the record, what you just said is your opinion, but  
5 it's not in the Best Management Practices.

6 A. Correct.

7 Q. All right. And that's what happened  
8 here, this tree, the visual impact of this tree,  
9 after the company did its clearing for the required  
10 clearing zone, it looked different, didn't it?

11 A. Yes.

12 Q. Now, let's talk about your testimony,  
13 which I know you have in front of you. You never  
14 went to the property before you drafted this  
15 testimony, correct?

16 A. Correct.

17 Q. Any measurements that are in your  
18 testimony were supplied to you by Dr. Paquelet,  
19 correct?

20 A. That's correct.

21 Q. And you never verified a single  
22 measurement that he gave you before writing your  
23 testimony.

24 A. No.

25 Q. You did not speak to or consult with any

1 utility line-clearance arborist before you drafted  
2 that testimony in April, did you?

3 A. No.

4 Q. You didn't know if the tree was within 15  
5 feet of the line before it was trimmed, did you?

6 A. No.

7 Q. Okay. And did you understand that  
8 according to the policy -- which you've read that  
9 policy, right?

10 A. Yes.

11 Q. Vegetation management policy?

12 A. Right.

13 Q. Pursuant to page 11 of that policy the  
14 distribution clearance zone was 15 feet --

15 A. Yes.

16 Q. -- right? So you didn't know before you  
17 drafted your policy whether it was within that  
18 established clearing zone or not, did you?

19 A. Correct.

20 Q. Now, page 3 of your testimony, if you  
21 could pull that up. And I don't think they're  
22 numbered so you just have to kind of count in to  
23 number 3. So you can find it easier, I'm looking for  
24 the answer at the bottom of the page that starts with  
25 "Irregardless." Do you see that?



1           A.    I see that.

2           Q.    Okay.  Oh, and actually it's Bates  
3   labeled, it's Bates labeled CP0004, right?  So we all  
4   have the same page.

5           A.    Yes.

6           Q.    Now, in that section you state that  
7   "Irregardless of the size or location of the tree  
8   there should be no more than four feet of clearance  
9   between the tree and the primary conductors."  
10  Correct?

11          A.    Yes.

12          Q.    All right.  Now, you told me in your  
13  deposition about a week ago that you had no idea  
14  where that 4 feet came from.

15          A.    Correct.

16          Q.    And you're not aware, as you sat there in  
17  your deposition, nor, I assume, today of any industry  
18  standard or guideline that says there should be 4  
19  feet between a 7200-volt line and a tree.

20          A.    Correct.

21          Q.    All right.  Actually, the vegetation  
22  management plan says that the clearance zone is 15  
23  feet, but in cases where 4 years of clearance is  
24  unattainable, there should be 12 feet of clearance  
25  around primary conductors, doesn't it?

1 A. Yes.

2 Q. Okay. Now, I --

3 A. That sentence was supposed to be "four  
4 years of clearance," not "four feet of clearance," it  
5 was just a typo.

6 Q. Okay. I'd like to show you, and if we  
7 could pull this out of the exhibits we have marked,  
8 the letter from Dr. Paquelet. Showing you Company  
9 Exhibit 5, this is a letter that's dated October  
10 16th of 2011 from Dr. Paquelet to you, correct? Or  
11 to Bill, right?

12 A. Uh-huh.

13 Q. And Bill owns the nursery that you work  
14 for so we --

15 A. Correct.

16 Q. -- can identify Bill, okay.

17 And Bill, I think you told me, you know,  
18 gave this assignment to you after he got the letter,  
19 correct?

20 A. Yes.

21 Q. And Dr. Paquelet is a customer of Bill's  
22 and Klyn Nursery, correct?

23 A. Yes.

24 Q. All right. Now, if you still have your  
25 testimony in front of you, I'd like you to look at

1 page 3, and on page 3 -- did you take that opinion on  
2 the bottom that you offer, on the bottom of page 3  
3 and going over to page 4 -- first of all, before I  
4 ask about the opinions, all of the measurements about  
5 the 12 feet of clearance, those are not your -- any  
6 of the measurements in here are not yours; they are  
7 Dr. Paquelet's, correct?

8 A. Yes.

9 Q. Okay. And the opinion -- what you state  
10 about the ice storm in 2004, that is certainly not  
11 something you had personal knowledge of; that came  
12 right from Dr. Paquelet's letter, didn't it?

13 A. Yes.

14 Q. And then as we go on and flip the page to  
15 your testimony, page 4, again, you're talking about  
16 the emergency repair, that's from the Dr. Paquelet  
17 letter, right?

18 A. Yes.

19 Q. All right. And what happened about the  
20 35 feet and the ground wire at 28 feet, you took that  
21 right out of his letter also, right?

22 A. Correct.

23 Q. Now, Dr. Paquelet offers the opinion in  
24 his letter and he told us here on cross-examination  
25 that he supposed or had the supposition that the crew

1 pruning the tree used the lower ground line as a  
2 reference for their pruning rather than the higher  
3 line leaving it at 16 feet in height, right?

4 A. Yes.

5 Q. And you put that almost verbatim, that  
6 same opinion that he wrote in his October 16th,  
7 2011, letter, you came up with that same opinion on  
8 page 4 of your testimony; didn't you?

9 A. That's correct.

10 Q. Okay. At the top of Company Exhibit 5,  
11 that's your notation at the top, 3- to 5,000 dollars.  
12 That's your notation, right, on the top of that  
13 letter?

14 A. I don't see that.

15 Q. Did you say you do see that?

16 A. I don't.

17 Q. Okay. And you wrote that at the top  
18 before you knew any facts or did any investigation,  
19 right?

20 A. Oh, I found it. Wrong paper.

21 Yes, that was an estimate of just as a  
22 random guess when I do appraisals.

23 Q. So your testimony on page 4, then, at  
24 least as it relates to what we just went through and  
25 the supposition of what the crews were doing when

1 they pruned, that's really just a restatement of  
2 Dr. Paquelet's opinion, right?

3 A. Yes.

4 Q. Now, the health of the tree, would you  
5 agree with me that it will sucker for the next few  
6 years? It will continue to have sucker growth on it?

7 A. No. It's going to die within the next  
8 five years.

9 Q. Okay. Didn't you tell me in your  
10 deposition that will sucker, it will have sucker  
11 growths for about 20 more years?

12 A. It might survive. I said it will  
13 probably die in the next five years, but it will  
14 probably -- it could probably suffer along with  
15 sucker growth that may last 20 years. But if the  
16 tree's dead, it's dead.

17 Q. All right. That tree --

18 A. Sucker growth does not mean suckers.

19 Q. This tree is not dead today, is it?

20 A. No.

21 Q. And you have not come with a single photo  
22 of the tree as it exists in its fully leafed out form  
23 today, have you?

24 A. No. The February pictures show it much  
25 better, the effect of the pruning.

1           Q.    And that would be the February right  
2 after the -- after it was trimmed, February of 2010?

3           A.    Yes.

4           Q.    And maybe I'm not being clear. I want to  
5 be sure we have a good record. I'm talking about  
6 today, 2012, you didn't bring us any pictures of what  
7 this tree looks like today as far as its health, did  
8 you?

9           A.    No. And I did bring a branch.

10          Q.    Okay. Now, we looked, in your office  
11 when I took your deposition, we looked at a branch  
12 that is not the branch that you have here today --

13          A.    Correct.

14          Q.    -- correct? Okay. And you told me that  
15 that was a branch that Dr. Paquelet had brought to  
16 you several months earlier, right?

17          A.    Yes.

18          Q.    It was really, it looked to me, and I'm  
19 not an expert, but it kind of looked more like a twig  
20 and there was just a couple, I mean, it was old so  
21 there weren't a lot of leaves on it; is that fair to  
22 say?

23          A.    Right.

24          Q.    And you sat at the deposition and you  
25 showed me how you can see rings on those -- on the

1 branch and how each ring represents a year, a year of  
2 growth.

3 A. Right.

4 Q. And when we looked at it and we started  
5 from the end, which would be -- the end of it would  
6 be the most recent year, correct?

7 A. Correct.

8 Q. And as we went through and put on the  
9 record there was 8 inches of stem for the year 2010  
10 right after it was trimmed, right?

11 A. Correct.

12 Q. Okay. And there was 5 inches the  
13 following year, 2011, right?

14 A. Yes.

15 Q. And we looked at that -- now, that was  
16 post trim. That's after it was trimmed, right?

17 A. Yes.

18 Q. And we compared that to what it looked  
19 like before, and there was approximately only  
20 2 inches of growth every year before that, right?

21 A. Yup. That's absolutely right.

22 Q. And so what that told us is actually  
23 after the trimming its growth was greater, greater by  
24 several times what it had been before it was trimmed,  
25 right?

1           A.    Yes.  That's correct.  Because we had a  
2   severe, a severe storm pattern two years ago of  
3   excess water with 500 year floods regularly and the  
4   tree got ten times more water than it had in any  
5   other year probably.

6           Q.    Okay.

7           A.    Just because of the storminess.

8           Q.    And that might explain 2010, but in 2011  
9   there was 5 inches when previously there had only  
10  been 2, right?

11          A.    Right.

12          Q.    Okay.  Now, even as an arborist like  
13  yourself, you can't predict with, you know, complete  
14  certainty how much a tree is going to grow in any one  
15  year, right?

16          A.    No.

17          Q.    Now, in your testimony one of your  
18  opinions is that directional pruning was not used  
19  here?

20          A.    Yes.

21          Q.    You do not -- to phrase it better, you do  
22  not believe directional pruning was used, correct?

23          A.    Directional pruning was not used on this  
24  job.

25          Q.    And you are aware that the Ohio Edison



1 witnesses say that drop crotch or directional pruning  
2 was used, right?

3 A. That's what they say, but if you look at  
4 the photographs, there are still stubs in the tree  
5 today.

6 Q. Okay. That's what I want to go to. The  
7 entire basis of your opinion versus theirs is based  
8 upon photographs, right?

9 A. Yes.

10 Q. And they would be the photographs that  
11 you included in your testimony, and it's embedded  
12 right into your testimony, right?

13 A. Yes.

14 Q. You didn't take those photographs, did  
15 you?

16 A. No; Dr. Paquelet did.

17 Q. All right. And so the photographs,  
18 you'll agree with me, they don't have any scale,  
19 anything to give you a scale reference for the  
20 branches within the tree.

21 A. True.

22 Q. There is one, and it's a broom, but those  
23 are for logs on the ground, right?

24 A. Yes.

25 Q. So when you are talking about opinions

1 that the side branches are way too big for the  
2 branches on the tree, your entire opinion is based  
3 upon what you see in a one-dimensional photograph  
4 taken by Dr. Paquelet, correct?

5 A. Yes, but I also saw it today.

6 Q. Well, but -- let me make this clear. The  
7 opinions you offered on April -- in April of 2012  
8 that have been submitted in this case were rendered  
9 before you ever saw the tree, right?

10 A. Yes.

11 Q. All right. And so those opinions that  
12 you are testifying to were made entirely based on  
13 looking at a one-dimensional photograph, or two, that  
14 Dr. Paquelet took, right?

15 A. I've done hundreds of appraisals based on  
16 photographic evidence without ever seeing the tree.

17 Q. And I think it was kind of a yes-or-no  
18 question. The only thing you looked at in order to  
19 render the opinion in this case, I really didn't ask  
20 how many other times you've done it, the only thing  
21 that you looked at was a photograph.

22 A. Yes.

23 Q. A one-dimensional photograph.

24 A. Yes.

25 Q. And we've already established there's

1 nothing to establish a scale in that photograph.

2 A. Correct.

3 Q. Are you aware from reviewing the  
4 vegetation management plan that directional pruning  
5 is the preferred method? Correct?

6 A. Yes.

7 Q. It also says on page 16 of the plan that  
8 whenever possible, the contractor has to obtain  
9 clearance in this manner. Wherever possible. Right?

10 A. Yes.

11 Q. Okay. Now, you don't know if it was  
12 possible to get the required clearance by using a  
13 different method because you don't even know what  
14 that required clearance was, do you?

15 A. No.

16 Q. I'm sorry, that was "no"?

17 A. No.

18 Q. All right. You're also aware on page 16  
19 that there can be an exception to the drop crotch or  
20 directional pruning techniques that can be used only  
21 when indicated as being acceptable by FirstEnergy  
22 representatives, correct?

23 A. Yes.

24 Q. All right. So I'm just about done, but  
25 just to summarize, you're not offering any

1 disagreements with the clearance zone distances that  
2 Ohio Edison had under its specifications here,  
3 correct?

4 A. Correct.

5 Q. And you don't know if the company could  
6 have obtained whatever these required clearances are  
7 by doing this trimming any other way, do you?

8 A. Well, the pruning -- the pruning should  
9 have been done properly because the pruning of the  
10 branches, they left stubs on each one of the branches  
11 that should not have happened.

12 Q. The question was: Do you know if the  
13 company could have required -- could have obtained  
14 the required clearances by doing the trimming any  
15 other way here?

16 A. Yes. I just said, because there are  
17 stubs left, they could have cut the stubs off and  
18 left the tree intact.

19 Q. I'm going to show you your deposition,  
20 and -- there's my glasses. Boy, this has been hard.

21 I have a copy for you.

22 MS. HASBROOK: Should we mark the  
23 deposition since we're using it for impeachment?

24 EXAMINER SHEETS: If you want to mark it,  
25 you can do that.

1 MS. HASBROOK: You know, let's not.  
2 Let's -- I'll just read it from there, but there's a  
3 copy for you.

4 Q. I'm going to show you page 86, it's just  
5 a lot in here so I will open it for you. Okay. I've  
6 opened it up to page 86.

7 EXAMINER SHEETS: This isn't filed, is  
8 it?

9 MS. HASBROOK: Pardon me?

10 EXAMINER SHEETS: You haven't filed this.

11 MS. HASBROOK: We have not filed it, no.

12 EXAMINER SHEETS: Maybe we better mark it  
13 if you haven't.

14 MS. HASBROOK: Okay. Let me mark -- let  
15 me take this back here and we'll go ahead and mark  
16 it.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. (By Ms. Hasbrook) All right. Now I'm  
19 showing you Company Exhibit 8 and I've reopened it to  
20 page 86, and I refer you to question 22 on page 86.  
21 You were asked "Do you know if the company could have  
22 gotten its required clearance by not doing it this  
23 way?"

24 And I'll just go back up, back a  
25 question, so that we know some perspective. On page

1 17 [verbatim], "I got it." -- Question -- "Go ahead.  
2 I interrupted you.

3 "Answer: If you look at the page, there  
4 are at least five cuts here that were cut back just  
5 stubs instead of back to a qualified branch."

6 Then I asked: "Do you know if the  
7 company could have gotten its required clearance by  
8 not doing it this way?"

9 And you answered: "No." Correct?

10 A. Yes, that's correct.

11 Q. All right.

12 A. But what I --

13 Q. That's really -- I'm just asking you if  
14 that was your answer under oath.

15 A. That was my answer.

16 Q. Okay. And at least in your deposition I  
17 asked you if you held any other opinions other than  
18 what you had given in your testimony, and at that  
19 time you said "No," correct?

20 A. Correct.

21 MS. HASBROOK: That's all. Thank you.

22 EXAMINER SHEETS: Hold on. We'll let  
23 Dr. Paquelet ask some questions now.

24 Redirect?

25 DR. PAQUELET: May I speak now?

1 EXAMINER SHEETS: Go ahead.

2 - - -

3 REDIRECT EXAMINATION

4 By Dr. Paquelet:

5 Q. It's been said that the height of this  
6 tree was 25 or 30 feet tall, up to this point. If  
7 that were the case and if the line were at 35 feet,  
8 would have any pruning been required at all?

9 A. No.

10 Q. In other words --

11 EXAMINER SHEETS: Let me get you to move  
12 a little bit closer to the reporter. Could you move  
13 up this way with the chair. You can bring your --

14 DR. PAQUELET: Stuff.

15 EXAMINER SHEETS: I hate to have you  
16 stand. Why don't you wheel your chair up here just a  
17 little bit closer.

18 DR. PAQUELET: Okay. Thank you.

19 EXAMINER SHEETS: Just come a little  
20 bit --

21 DR. PAQUELET: Is that far enough?

22 EXAMINER SHEETS: A little bit closer.

23 All right.

24 Go ahead. Please speak up.

25 Q. (By Dr. Paquelet) There's been discussion

1 that this tree has been estimated to be between 25  
2 and 30 feet tall. And it's a matter of record that  
3 during an ice storm in 2004 a crossbar broke, an  
4 emergency repair was done, and one of the lines was  
5 lowered to 28 feet. And if the company had come back  
6 and done a definitive repair and put the line back up  
7 to 35 feet where it should have been in the first  
8 place --

9 EXAMINER SHEETS: Sir, you have to ask a  
10 question of this witness now.

11 Q. -- then the line would be at 35 feet.  
12 Would any pruning be required if the line were at 35  
13 feet and the tree is between 25 and 30 feet, below  
14 the line?

15 MS. HASBROOK: I'll object on the  
16 assumptions made in that question.

17 THE WITNESS: Should I answer?

18 EXAMINER SHEETS: Do you have an answer  
19 for that?

20 A. No, because if the tree was lower than  
21 that, there would be no reason to make any cuts.

22 EXAMINER SHEETS: That's your answer?

23 THE WITNESS: Yes.

24 DR. PAQUELET: I didn't hear it though.

25 A. I said there would be no reason to make



1 any cuts on that tree.

2 Q. That would satisfy the clearance.

3 A. Yes.

4 Q. So the 5 feet would be a satisfactory  
5 clearance, okay.

6 Now, in my Exhibit No. 12 it talks about  
7 required clearances for a distribution line.

8 EXAMINER SHEETS: What are you referring  
9 to now? No. 4 of Exhibit 1, Complainant's Exhibit 1?

10 DR. PAQUELET: Let me see which one it is  
11 here now. It's No. 7.

12 EXAMINER SHEETS: No. 7 of Complainant's  
13 Exhibit 1.

14 MS. HASBROOK: Thank you.

15 DR. PAQUELET: You got it? Okay.

16 Q. (By Dr. Paquelet) "Pruning shall be done  
17 in such a manner to achieve a minimum of four years  
18 of clearance from FirstEnergy primary conductors  
19 based on tree species and growing conditions." How  
20 many feet or inches could be expected in four years  
21 from *Fagus sylvatica fastigiata*?

22 A. How many inches for the future?

23 Q. How much growth can be expected in four  
24 years?

25 A. Between 1 and 2 inches of growth at the

1 most. The tree will probably be dead in five years.

2 Q. I can't hear you, Doug.

3 A. I said the tree will probably be dead in  
4 five years. So the rate of growth is every year is  
5 going to get less and less and less.

6 Q. No. I'm talking about "Pruning shall be  
7 done in such a manner to achieve a minimum of four  
8 years of clearance from FirstEnergy primary  
9 conductors based on tree species and growing  
10 conditions." That means how much growth can be  
11 expected in a *Fagus sylvatica fastigiata* over a  
12 four-year period? How fast does this tree grow?

13 A. This tree averaged 4 inches per year over  
14 the last ten years.

15 Q. Okay. That's --

16 A. Sixteen inches.

17 Q. -- this tree.

18 A. Yes, this tree. Sixteen inches max.

19 Q. Now, if four years' clearance could not  
20 be achieved, then it says 12 feet of clearance around  
21 a primary conductor shall be achieved. Now, these  
22 are mandatory requirements. These have to be  
23 followed. Is that true?

24 A. Yes.

25 Q. Okay. So in this particular case if this

1 tree can be expected to grow less than 3 or 4 feet in  
2 four years, removing more foliage than that is in  
3 violation with FirstEnergy management standards.

4 A. Yes.

5 Q. That's true.

6 Now, this tree was topped and there was  
7 not crown reduction. Could you explain the  
8 difference between crown reduction and topping?

9 MS. HASBROOK: I'll object. We didn't  
10 get into topping at all in the cross-exam, so this  
11 redirect is a whole new area.

12 EXAMINER SHEETS: You have to confine  
13 your questions to what she went over on cross.

14 DR. PAQUELET: Pardon me?

15 EXAMINER SHEETS: You have to confine  
16 your questions to what the material that she went  
17 over on cross with him.

18 DR. PAQUELET: Well, can I ask him to  
19 explain the crown reduction? Is that possible?

20 EXAMINER SHEETS: Let's have a repeat of  
21 the question. Can we read that back?

22 (Record read.)

23 EXAMINER SHEETS: And your objection was?

24 MS. HASBROOK: We did not talk about  
25 topping at all in his testimony.

1 EXAMINER SHEETS: Did we cover a manner  
2 of trimming the trees? Was that a general topic?

3 DR. PAQUELET: Pardon me?

4 EXAMINER SHEETS: Did we cover that as a  
5 general topic, the manner in which the tree was  
6 trimmed?

7 MS. HASBROOK: No. I only used that word  
8 of crown reduction in reading the ANSI standard  
9 Section 9 that talks about crown reduction being  
10 allowed, but I didn't ask him is that what was done  
11 here.

12 EXAMINER SHEETS: Okay. Well, since it  
13 wasn't covered on cross-examination, we'll have to  
14 disallow the question. So you'll have to go on to  
15 another question.

16 Q. (By Dr. Paquelet) Well, could you discuss  
17 pruning? I think that was discussed. The pruning of  
18 this tree.

19 A. The pruning of this tree was done in a  
20 manner that severely damaged both the branches and  
21 the leader of the tree, which was cut back to just a  
22 stub sticking up 16 feet aboveground with nothing  
23 above it, and that's totally -- totally wrong.

24 DR. PAQUELET: I think I have nothing  
25 further.

1 EXAMINER SHEETS: Does that conclude your  
2 questioning?

3 DR. PAQUELET: Yes, sir.

4 EXAMINER SHEETS: Do you have any on  
5 recross?

6 MS. HASBROOK: I do not. Thank you.

7 EXAMINER SHEETS: I hate to dismiss you  
8 without -- we'll go off the record here.

9 (Discussion off the record.)

10 (Witness excused.)

11 (Recess taken.)

12 EXAMINER SHEETS: Let's go back on the  
13 record.

14 Do you have witnesses to call?

15 MS. DUNN: Yes, your Honor. The company  
16 calls Tara Weckerly.

17 (Witness sworn.)

18 EXAMINER SHEETS: Be seated.

19 - - -

20 TARA WECKERLY

21 being first duly sworn, as prescribed by law, was  
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 By Ms. Dunn:

25 Q. Good morning, Ms. Weckerly.

1 A. Good morning.

2 Q. Could you please state your full name for  
3 the record.

4 A. Tara Weckerly.

5 Q. Could you spell your last name.

6 A. W-e-c-k-e-r-l-y.

7 Q. And what is your business address?

8 A. 1910 West Market Street, Akron, Ohio,  
9 44313.

10 MS. DUNN: May I approach, your Honor?

11 EXAMINER SHEETS: Yes.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Ms. Weckerly, I'm handing you what I have  
14 previously marked as Company Exhibit 9.

15 Ms. Weckerly, do you recognize this exhibit?

16 A. Yes.

17 Q. And what is it?

18 A. It is my direct testimony.

19 Q. And was that direct testimony prepared by  
20 you or someone under your direction?

21 A. I did prepare it in conjunction with you  
22 and Denise.

23 Q. But did you prepare it or someone under  
24 your direction prepare it?

25 A. Someone under my direction.

1 Q. And do you have any corrections to your  
2 testimony?

3 A. No. No, I don't.

4 Q. If I asked you the same questions here  
5 today, would your answers be the same?

6 A. Yes.

7 MS. DUNN: No further questions. The  
8 witness is open for cross.

9 EXAMINER SHEETS: Dr. Paquelet, do you  
10 have any questions for this witness?

11 - - -

12 CROSS-EXAMINATION

13 By Dr. Paquelet:

14 Q. On your testimony, on question 29 -- I  
15 beg your pardon, question 12. A lot of papers here.  
16 You have it, do you?

17 A. Yeah.

18 EXAMINER SHEETS: Excuse me. What are  
19 you on now, sir?

20 DR. PAQUELET: Sir?

21 EXAMINER SHEETS: What are you reading  
22 from?

23 DR. PAQUELET: Her direct testimony.

24 EXAMINER SHEETS: Okay.

25 DR. PAQUELET: And it's question 12.

1 EXAMINER SHEETS: Question?

2 DR. PAQUELET: Twelve.

3 EXAMINER SHEETS: Twelve, okay.

4 Q. (By Dr. Paquelet) The question was  
5 "Describe Ohio Edison's UVM program," and in your  
6 answer, "The objective of the UVM policy is to  
7 maintain safe, reliable electric service and line  
8 clearance by controlling incompatible vegetation  
9 through a four year maintenance cycle."

10 Would you describe how much foliage  
11 should be removed from the tree in question in a  
12 four-year maintenance cycle?

13 A. I will say that I cannot give an exact  
14 distance --

15 Q. I can't hear you.

16 A. -- for any tree. I cannot give an exact  
17 distance.

18 Q. I don't hear so good, you speak fine,  
19 but --

20 EXAMINER SHEETS: Yeah, just move a  
21 little bit closer.

22 MS. HASBROOK: If you would like to use  
23 this corner of the table.

24 DR. PAQUELET: I don't want to get that  
25 close.



1 MS. HASBROOK: I mean, if you want to put  
2 documents there or something.

3 EXAMINER SHEETS: You could sit at the  
4 table if you want to.

5 Q. The question was: How much vegetation  
6 should be removed from my tree in a four-year cycle?

7 A. I cannot give an exact answer as to how  
8 much vegetation for each specific tree should be  
9 removed. I can give estimates based on growth rate  
10 and things of that nature, but the tree trimmers who  
11 trim the tree, when they make a proper cut, that's  
12 when they can determine the exact footage that gets  
13 trimmed out of the tree.

14 Q. I'm sorry. I just -- you say you can't  
15 make a determination?

16 A. I can't tell you an absolute exact number  
17 of inches that needs to be trimmed out of each tree.

18 MS. DUNN: Tara, please speak up.

19 THE WITNESS: I'm sorry, I thought I was  
20 yelling.

21 As an estimate we use our 12-foot rule.

22 Q. A 12-foot rule?

23 A. Uh-huh. As far as clearance from the  
24 conductor.

25 Q. Unclear. Well, it says --

1           A.    I might be confused by the question.

2           Q.    -- in the FirstEnergy Vegetation  
3   Specification Manual under Distribution Clearing  
4   Zone, ". . . achieve a minimum of four years of  
5   clearance from FirstEnergy conductors." It shall be;  
6   that means it's mandatory to achieve four years'  
7   clearance.

8           A.    Right.

9           Q.    And how much of my tree should be removed  
10   in four years to achieve that clearance?

11           MS. DUNN:  Objection.  Asked and  
12   answered.  We can read back the answer from the court  
13   reporter if it was not able to be heard, but she did  
14   answer that question.

15           EXAMINER SHEETS:  I think she provided an  
16   answer to the question.  I think she provided an  
17   answer to the question already.  She said she  
18   couldn't give an exact figure.

19           MS. DUNN:  I believe her answer was --  
20   actually can I just request that the court reporter  
21   please repeat the question and the answer so  
22   Dr. Paquelet can hear it.

23           EXAMINER SHEETS:  Yes.  Go ahead, please.

24           (Record read.)

25           MS. DUNN:  Thank you.

1 EXAMINER SHEETS: I think that's her  
2 answer.

3 Q. (By Dr. Paquelet) Well, how do tree  
4 trimmers make that decision? How do they base that  
5 decision?

6 A. We base that decision on how far the tree  
7 is already from the wire, that is something we  
8 consider, as well as where the best lateral is.

9 Q. Where the what?

10 A. Where the best lateral is, the best cut  
11 to make.

12 Q. According to the Distribution Clearing  
13 Zone, the degree and type of tree clearance is  
14 dependent upon the type of tree, its growth and  
15 branching habit. Do you agree with that?

16 MS. DUNN: I just would like to have the  
17 witness have the document in front of her that he's  
18 reading from. So could we clear up what you're  
19 reading from, Dr. Paquelet?

20 DR. PAQUELET: This is page 11 of the  
21 vegetation management -- vegetation standards.

22 EXAMINER SHEETS: Is that your Exhibit  
23 No. 1?

24 DR. PAQUELET: Well, it's my Exhibit 7,  
25 but it's page 11.

1 EXAMINER SHEETS: It is Complainant's  
2 Exhibit 1, okay, and you're reading from the page  
3 that's marked, 7?

4 DR. PAQUELET: Yes.

5 MS. DUNN: Actually, for the record, if  
6 this will help out, in Ms. Weckerly's testimony we  
7 have the vegetation management plan as an exhibit and  
8 it's marked as TW-1, page 7.

9 THE WITNESS: Seven?

10 MS. DUNN: Yes.

11 THE WITNESS: Page 7 is Damages and  
12 Unplanned Outages.

13 MS. HASBROOK: It's actually page 11.

14 MS. DUNN: Page 11. I'm sorry.

15 THE WITNESS: Oh, page 11.

16 MS. DUNN: Yeah, page 11 of the  
17 vegetation management, which is page 7 of  
18 Dr. Paquelet's Exhibit 1. I think we got it clear  
19 now.

20 THE WITNESS: Okay.

21 Q. (By Dr. Paquelet) Okay. So if I  
22 understand it correctly, you said that the pruning  
23 crew will determine how much foilage to remove  
24 depending upon their observation at the time they do  
25 the pruning. That's what you're saying?

1           A.     Yes.

2           Q.     So what I want to know is can they look  
3     at a tree and can they determine the rate of growth  
4     by looking at the tree?

5           A.     Yes, within reason as far as those  
6     general growth patterns for species of trees.

7           Q.     Okay. Well, if that's the case, then in  
8     my tree how much growth should have been removed to  
9     achieve this pruning for a four-year cycle?

10          MS. DUNN: Objection. Asked and  
11     answered.

12          EXAMINER SHEETS: I think she answered  
13     that already. She couldn't give an exact estimate.

14          DR. PAQUELET: Pardon me?

15          EXAMINER SHEETS: I think we already  
16     answered that question already. She couldn't give an  
17     exact answer, only an estimate. We've been through  
18     that question I believe already. You asked the  
19     question before and she answered it.

20          DR. PAQUELET: Just a minute here. I beg  
21     your pardon.

22          MS. DUNN: Sure.

23          Q.     (By Dr. Paquelet) If a person can make  
24     that estimate, how much -- why wasn't it done in this  
25     case?

1           A.    May I clarify?  Make what estimate?  Make  
2   the estimate of what, sir?  I'm sorry, I don't  
3   understand the question.

4           Q.    Well, if the crew that pruned my tree  
5   made an estimate, why didn't they make the proper  
6   estimate in this case?

7           A.    In my opinion, they did make the proper  
8   estimate.

9           Q.    And what do you base your opinion on?

10          A.    My knowledge as a utility forester.

11          Q.    Your knowledge on what?

12          A.    As a utility forester.

13          Q.    Okay.  On this particular tree, *Fagus*  
14   *sylvatica fastigiata* in my yard, how much growth  
15   should be removed from that tree?

16               MS. DUNN:  Objection.  Asked and  
17   answered.

18               EXAMINER SHEETS:  Well, she's already  
19   given an answer to that.  I guess the estimate --

20               He wants you to give an estimate as an  
21   answer.  And your estimate is "What was removed."

22               THE WITNESS:  Right.  Exactly.  Yeah.  We  
23   did what we felt was necessary.

24               MS. DUNN:  Tara, speak up.

25               THE WITNESS:  I'm sorry.  We did what we

1 felt was necessary.

2 EXAMINER SHEETS: So your estimate would  
3 be what the result was?

4 THE WITNESS: Yes. What we trimmed out  
5 of the tree would be the estimate.

6 EXAMINER SHEETS: Okay.

7 Q. (By Dr. Paquelet) Okay. What is the  
8 estimated growth of *Fagus sylvatica fastigiata*?

9 A. Without a growth chart in front of me I  
10 cannot --

11 Q. Pardon me?

12 A. Without a growth chart in front of me, I  
13 do not have the growth rates of all species of trees  
14 memorized, I would need to consult a growth chart  
15 which I do not have.

16 Q. Well, if you had a branch of the tree in  
17 front of you, could you make that decision?

18 A. Of that particular species, no. Of that  
19 particular tree, you can -- yes, you can determine  
20 the growth rate of a tree based on an individual  
21 tree.

22 Q. Well, this is the branch.

23 MS. DUNN: I'm going to object to the use  
24 of the exhibit for lack of foundation.

25 DR. PAQUELET: What?

1 EXAMINER SHEETS: I'll allow the witness  
2 to answer the question.

3 Q. Can you tell me how fast it grows?

4 MS. DUNN: I'm sorry. He's --

5 EXAMINER SHEETS: I said I'll allow him  
6 to go ahead and answer -- to ask the question.

7 A. I cannot tell from this branch the growth  
8 rate that it has been growing out for the past --

9 Q. Without what?

10 A. -- several years, but I can tell you that  
11 there is growth evident at the end of the branch.

12 Q. You can't tell me the rate of growth of  
13 the tree from this branch.

14 A. I don't feel I can, no.

15 Q. Well, you're an expert in this and you  
16 determine how much to remove from trees. You should  
17 know how fast they grow.

18 A. I do. I do know how fast they grow by  
19 species --

20 Q. But you don't know how fast this grows.

21 MS. DUNN: Objection. Argumentative.  
22 The witness is trying to answer.

23 DR. PAQUELET: I'm sorry?

24 EXAMINER SHEETS: Let the record show  
25 that the previous questions are directed to a branch



1 that the complainant brought into the hearing room.

2 And it's a branch --

3 Is that a branch from your tree,  
4 Dr. Paquelet?

5 DR. PAQUELET: Sir?

6 EXAMINER SHEETS: That was a branch from  
7 your tree that you were questioning the witness  
8 about?

9 DR. PAQUELET: Yes, sir.

10 EXAMINER SHEETS: Thank you.

11 Okay. You don't have any more questions  
12 on that branch?

13 Q. (By Dr. Paquelet) Well, I want to know if  
14 you can't determine the rate of growth of the tree,  
15 how can you determine how much foliage to remove?

16 A. By the average growth rate of species.

17 Q. Well, then what is the average growth  
18 rate of this species?

19 A. We have a slow to moderate growth rate on  
20 a beech tree.

21 Q. Pardon me?

22 A. Slow to moderate on a beech tree.

23 Q. That's how much in inches or feet?

24 A. I don't have a determination. It's a  
25 very broad average.

1 Q. Pardon me?

2 A. It's a very broad average, low to  
3 moderate.

4 Q. My tree is not a broad average. My tree  
5 is *Fagus sylvatica fastigiata*.

6 A. Yes.

7 Q. Well, you should be able to give the  
8 growth; is that right?

9 MS. DUNN: Objection. Asked and  
10 answered.

11 EXAMINER SHEETS: Move on to another  
12 question.

13 DR. PAQUELET: Sir?

14 EXAMINER SHEETS: Let's move on to  
15 another question.

16 MR. PAQUELET: May we have a second?

17 EXAMINER SHEETS: Sure.

18 (Discussion off the record.)

19 Q. (By Dr. Paquelet) So it's my  
20 understanding that you don't know the growth rate of  
21 this tree.

22 MS. DUNN: Objection. Asked and  
23 answered.

24 EXAMINER SHEETS: I think we've been  
25 through that before, but I'll let her provide another

1 answer here at this point.

2 A. Of your particular species of tree I  
3 cannot, without a growth rate chart, give an  
4 absolute, definitive answer.

5 Q. Okay. Well, if that's the case, then how  
6 does the crew know how much to prune?

7 MS. DUNN: I think he asked this too,  
8 but --

9 EXAMINER SHEETS: All right. One more  
10 time. Go ahead and see if you can --

11 MS. DUNN: And please speak up, Tara.

12 A. Okay. I'm sorry. By average growth  
13 rates. So a moderately growing tree, we use averages  
14 across the industry for tree species in our area.

15 Q. What's the average growth rate of *Fagus*  
16 *sylvatica fastigiata*?

17 MS. DUNN: Again, your Honor, I'm sorry,  
18 I'm really not trying to be obstructionist, but she's  
19 answered that question three or four different times  
20 and it just keeps getting asked.

21 EXAMINER SHEETS: And I believe the  
22 answer was you didn't know without a chart in front  
23 of you.

24 THE WITNESS: Uh-huh.

25 EXAMINER SHEETS: So the answer was --

1 she's answered it before, but she can't give you an  
2 answer without a chart in front of her. She doesn't  
3 have the growth rate chart for the tree. And she  
4 doesn't, she doesn't have it in her memory that she  
5 can answer that question without a chart.

6 DR. PAQUELET: But she's got a branch of  
7 the tree in front of her.

8 EXAMINER SHEETS: Well, apparently that's  
9 not sufficient to tell the average growth rate of the  
10 tree.

11 Q. (By Dr. Paquelet) Well, if it's not clear  
12 what the average growth rate of the tree is, as I  
13 understand it, how can you make a decision about how  
14 much to remove for four years' clearance?

15 A. Again, we try to achieve a minimum of  
16 four years' clearance. Like I said, slow to  
17 moderate, you know, we generally follow our 12-foot  
18 rule --

19 Q. Pardon me?

20 A. -- 12 to 15 feet that we have in our  
21 specification.

22 Q. I'm sorry. I'm having trouble. I keep  
23 getting closer.

24 A. I'll try to project a little more. I  
25 apologize.

1                   We try to get a minimum of four years of  
2 clearance, but also, you know, we do have the 12-foot  
3 specification from our primary conductor.

4                   Q.     A minimum of four years' clearance.

5                   A.     Yes.

6                   Q.     And this species in cultivar is how much?

7                   MS. DUNN:  Objection.  Asked and  
8 answered, again.

9                   EXAMINER SHEETS:  Your answer was that  
10 you try for a minimum of 12-foot clearance; is that  
11 correct?

12                  THE WITNESS:  Minimum of four years,  
13 uh-huh, 12 foot is a good way to gauge I guess I  
14 should say.

15                  EXAMINER SHEETS:  Okay.  That will have  
16 to stand as the answer then.

17                  DR. PAQUELET:  Okay.

18                  Q.     (By Dr. Paquelet) Well, it says if four  
19 years' clearance cannot be obtained, then 12 feet of  
20 clearance around conductors shall be achieved.  So  
21 only if four years of clearance cannot be obtained.  
22 Would four years of clearance be less than 12 feet in  
23 this case?

24                  MS. DUNN:  Object to the form of the  
25 question, but . . .

1           A.    Not necessarily.  What we pruned out of  
2   the tree is what needed to be pruned to get  
3   sufficient clearance for safety and reliability on  
4   this tree.

5           Q.    Well, how much is that?  How much was  
6   necessary to get safety and reliability of electric?

7           MS. DUNN:  Objection, for the record,  
8   same standing.

9           THE WITNESS:  I believe it is in the  
10   testimony as well somewhere that we've answered that.

11          MS. DUNN:  Can we go off the record, your  
12   Honor, for a moment?

13          EXAMINER SHEETS:  Yes.

14          (Discussion off the record.)

15          EXAMINER SHEETS:  Let's go back on the  
16   record.

17          Q.    (By Dr. Paquelet) Maybe I can ask it this  
18   way:  Why did you use 12 feet of clearance in your  
19   testimony instead of four years?

20          A.    I believe we have both in here, a minimum  
21   of four years of clearance as well as 12 feet.

22          Q.    Well, is it true that 12 feet of foliage  
23   in my tree was removed?

24          A.    Again, I can't answer as to how much  
25   foliage was removed.  We removed enough foliage in

1 order to get the proper clearance from our  
2 conductors.

3 Q. Well, I furnished on a -- on the material  
4 that I gave you, it would be my Exhibit No. 12,  
5 that's this.

6 EXAMINER SHEETS: Reading from your  
7 Exhibit No. 1.

8 DR. PAQUELET: Yes.

9 EXAMINER SHEETS: It's marked 12.

10 DR. PAQUELET: Twelve.

11 MS. HASBROOK: I'm just going to give the  
12 witness my copy for you.

13 THE WITNESS: Thank you.

14 EXAMINER SHEETS: This is a diagram that  
15 you prepared.

16 Q. (By Dr. Paquelet) I have a diagram that  
17 shows that the top of the tree following the pruning  
18 was 12 feet from the line that was 28 feet from the  
19 ground.

20 MS. HASBROOK: Next page.

21 THE WITNESS: Next page.

22 Q. You see that.

23 A. Yes.

24 Q. So would you agree that that line was  
25 used as a reference for the crew to prune this 12

1 feet of clearance?

2 A. No.

3 Q. You don't think so.

4 A. No.

5 Q. Well, how is it that -- you said they  
6 showed 12 feet. Twelve feet from the line, that's  
7 the clearance that they arrived at, but it turned out  
8 to be the -- the line. How do you account for that?

9 A. I'm not sure I understand the question.

10 Q. Well, the line is at 28 feet, the tree is  
11 16 feet, that's 12 feet of clearance. And you said  
12 that the clearance in this particular case was 12  
13 feet. So it's reasonable -- is it not reasonable to  
14 assume that that line was used as a reference to  
15 achieve this 12-foot clearance that --

16 A. No, it's not reasonable to assume that.

17 Q. Well, how did they arrive at 12 feet,  
18 then?

19 A. We trimmed from our conductors the  
20 appropriate amount of foliage in order to achieve the  
21 necessary clearance that we need.

22 Q. Well, it's 12 feet from that line. Now,  
23 had that line been at the 35 feet where it should  
24 have been, there would have been no need to trim any  
25 foliage; is that right?



1           A.    No; I do not agree.  And I cannot state  
2   that that's where the line should have been.  There  
3   is no engineering witness who has testified that  
4   that's where the line should have been.

5           Q.    Pardon me?

6           A.    There has been no engineering witness  
7   from Ohio Edison testifying that that's where the  
8   line should have been.

9           Q.    Well, all the lines in my yard are at 35  
10  feet except one.  And how high are the lines supposed  
11  to be?

12          A.    I cannot answer that question.  It's  
13  outside of my job scope.

14          Q.    Except you agree that on my property  
15  they're all 35 feet except one.

16          A.    I cannot agree with that.  There's been  
17  no official record that states the height of wires  
18  from Ohio Edison on the property.

19          Q.    What is the official policy concerning  
20  the distribution clearing zone?

21          A.    I'm not sure I understand the question.  
22  If you could be more specific.

23          Q.    Well, on my page 7 --

24          A.    So is that page 11 of the spec. book?

25          Q.    That's this one.  It's No. 11 in the

1 first management --

2 A. Okay, I have that.

3 Q. Do you have that?

4 A. Uh-huh.

5 Q. Okay. What is the policy of the  
6 Distribution Clearing Zone?

7 A. I'm sorry, sir. I'm unclear on what  
8 you're wanting me to answer. Are you wanting me to  
9 read this section?

10 Q. Well, you can read it if you like, but  
11 what is the policy?

12 A. Basically, in this section -- I'm  
13 thinking I should read it to be more clear. "The  
14 degree and type of tree clearance required for  
15 electric lines to function effectively is dependent  
16 on the voltage of the conductor, the type of tree,  
17 its growth rate and branching habit."

18 And "The distribution clearing zone is  
19 defined as a corridor measured at a distance of  
20 fifteen feet on either side of the pole line or to  
21 the established large tree edge, whichever is greater  
22 in width. Emphasis is to be placed on controlling  
23 all incompatible vegetation within this clearing  
24 zone. All incompatible vegetation overhanging the  
25 clearing zone corridor shall be pruned back to the

1 main stem, only if specified by Regional Forestry.  
 2 In cases where incompatible vegetation is not  
 3 controlled, such as in maintained lawn areas,  
 4 vegetation shall be pruned following directional  
 5 pruning methods and as further defined in the current  
 6 ANSI 300 Standards and Amendments. Pruning shall be  
 7 done in such a manner to achieve a minimum of four  
 8 years of clearance from FirstEnergy primary  
 9 conductors based on tree species and growing  
 10 conditions. In cases where four years of clearance  
 11 is unattainable twelve feet of clearance around  
 12 primary conductors shall be achieved."

13 Q. Okay. And you said that you really don't  
 14 know about the growth and branching habit of this  
 15 tree. You said you just don't know that.

16 MS. DUNN: Objection.

17 Q. Is that true?

18 MS. DUNN: Asked and answered.

19 Q. That's what you said?

20 A. I said I could not determine --

21 Q. Pardon me?

22 A. I said I could not determine the exact  
 23 growth rate of that species.

24 Q. You don't know. You said you don't know.

25 MS. DUNN: Objection. Asked and

1 answered.

2 EXAMINER SHEETS: I think she's answered  
3 the question.

4 DR. PAQUELET: Pardon me?

5 EXAMINER SHEETS: I think she's answered  
6 the question.

7 DR. PAQUELET: That she doesn't know, all  
8 right.

9 Q. (By Dr. Paquelet) Then it says "Pruning  
10 shall be done in a manner to achieve . . . four years  
11 of clearance from FirstEnergy primary conductors  
12 based on tree species and growing conditions. In  
13 cases where four years of clearance is unattainable  
14 twelve feet of clearance around primary conductors  
15 shall be achieved."

16 That doesn't say "either-or." It says  
17 "Pruning shall be done in such a manner to achieve a  
18 minimum of four years of clearance," and only if four  
19 years of clearance cannot be obtained, then 12 feet  
20 is to be obtained; is that right?

21 MS. DUNN: Objection. There wasn't a  
22 question; compound; misreading the document.

23 EXAMINER SHEETS: Yeah, you put an "only"  
24 in there. I didn't hear a question there.

25 DR. PAQUELET: I beg your pardon?

1 EXAMINER SHEETS: What is your question  
2 for this witness?

3 DR. PAQUELET: Well, we're talking about  
4 the distribution --

5 EXAMINER SHEETS: Yeah, she read that.  
6 We've read that several times, actually. Now what we  
7 need is a question for this witness.

8 DR. PAQUELET: Well, the question is the  
9 clearing zone, the amount of foliage removed is  
10 dependent upon the type of tree and its growth and  
11 branching habit. And she said that she doesn't know  
12 what that is.

13 EXAMINER SHEETS: Okay. Now what is your  
14 question for her? We've had that previous question  
15 answered.

16 Q. (By Dr. Paquelet) So if you don't know  
17 what it is, how can you determine how much foliage to  
18 remove?

19 MS. DUNN: Objection. Asked and  
20 answered.

21 EXAMINER SHEETS: We've answered that  
22 question before too.

23 DR. PAQUELET: Okay.

24 Q. Then we go to the next part, it says that  
25 "Pruning shall be done in a manner to achieve a

1 minimum of four years of clearance." And if that  
2 can't be done, then 12 feet of clearance is done. It  
3 doesn't say "either-or," it says to remove four years  
4 of clearance.

5 MS. DUNN: Objection. Same as before.

6 EXAMINER SHEETS: Yeah, I don't think  
7 you're quite reading it. It says "In cases where  
8 four years of clearance is unattainable twelve feet  
9 of clearance . . . shall be achieved." Now, what is  
10 your question about that?

11 Q. Well, why was 12 feet removed when four  
12 years' clearance could have been achieved with less  
13 than 12 feet?

14 A. I don't believe that I have ever  
15 testified to the fact that 12 feet of clearance would  
16 have been less than what we removed from the tree.

17 Q. Pardon me?

18 A. What we removed from the tree is exactly  
19 what was necessary to remove from the tree. We  
20 pruned it exactly enough to get the proper clearance  
21 that we required.

22 Q. Well, how do you determine 12 feet?

23 A. Twelve feet is in our specification.

24 Q. Pardon me?

25 A. Twelve feet is in our specification.

1 Q. Where?

2 A. We weren't -- we weren't going to trim  
3 the tree -- we didn't measure 12 feet out of the tree  
4 and then just cut. We pruned the tree in accordance  
5 to get proper clearance from our wires, and whatever  
6 that footage ends up being is what it ends up being.  
7 But we want to achieve the proper clearance. We  
8 don't just measure a certain feet back and make a  
9 cut.

10 Q. Well, what is the proper clearance?

11 A. Exactly what we achieved.

12 Q. Well, it says the proper clearance is  
13 four years and if that's unattainable, then 12 feet.  
14 Do you agree with that?

15 A. Yeah. Our specification, yes, it does  
16 say that.

17 Q. Then how is it that you removed 12 feet  
18 instead of four years' clearance?

19 MS. DUNN: Objection. Misstates her  
20 prior testimony.

21 EXAMINER SHEETS: I think she's answered  
22 the question. They removed what they thought needed  
23 to be done; that was her answer.

24 Q. Well, if you removed 12 feet, then you're  
25 in direct violation of your procedure under

1 Distribution Clearing Zones.

2 EXAMINER SHEETS: No. That's not a  
3 question. You're making a statement here.

4 (Discussion off the record.)

5 DR. PAQUELET: I'll let my professor son  
6 handle this.

7 Q. If you cut 12 years' growth -- or, 12  
8 feet, then why didn't you follow the guidelines of  
9 the Distribution Clearing Zone that describes  
10 "Pruning shall be done in such a manner to achieve a  
11 minimum of four years of clearance from FirstEnergy  
12 conductors based on tree species and growing  
13 conditions"?

14 A. I believe we did follow those guidelines.

15 Q. You think they did.

16 A. We did.

17 Q. So you think -- you're testifying that  
18 this species of tree will grow a minimum of 12 feet  
19 in four years.

20 A. I'm sorry. Could you rephrase that  
21 question, please?

22 Q. Well, you're saying that this tree will  
23 grow 12 feet in four years.

24 MS. DUNN: Objection.

25 EXAMINER SHEETS: I think we covered



1 this, but I don't think that was her testimony, that  
2 it would grow 12 feet.

3 But you can provide an answer if you can;  
4 go ahead.

5 A. No, that's not what I'm saying.

6 Q. Pardon me?

7 A. That's not what I'm saying, that it will  
8 grow -- that the growth rate is what you've said.

9 Q. Well, what are you saying then?

10 A. I'm saying that we did what was necessary  
11 to get our clearance from our lines, like I have  
12 stated before.

13 DR. PAQUELET: Thank you so much.

14 EXAMINER SHEETS: Any more questions?

15 MS. DUNN: May we have a few minutes  
16 before redirect?

17 (Off the record.)

18 EXAMINER SHEETS: You're still under  
19 oath, so go ahead.

20 - - -

21 REDIRECT EXAMINATION

22 By Ms. Dunn:

23 Q. Ms. Weckerly, you were asked a few  
24 questions regarding the growth rate of this  
25 particular tree. When you are determining what

1 proper clearance is, how do you determine the growth  
2 rate of a tree?

3 A. We use averages for species.

4 Q. And did you do that in this case?

5 A. Yes.

6 Q. And which species did you use the  
7 averages for?

8 A. The beech tree.

9 Q. A generic beech tree?

10 A. Yes.

11 Q. And then you also testified that you trim  
12 to achieve proper clearance, correct?

13 A. Correct.

14 Q. What factors do you consider in achieving  
15 that proper clearance?

16 A. We do not want vegetation to contact the  
17 lines so we need to keep the tree clear of the wires  
18 for a minimum of four years, so that's not touching  
19 once we get there, as well as there's wire sag and  
20 safety issues that we have to consider.

21 Q. And in this particular case were there  
22 other factors that you considered in achieving proper  
23 clearance?

24 A. We need -- in order to make a proper cut  
25 you can't just measure off so many feet and cut. In

1 order to trim to a proper lateral, you do need to  
2 take that branch a little further to make that cut  
3 proper.

4 MS. DUNN: No further questions, your  
5 Honor.

6 EXAMINER SHEETS: Do you have any on  
7 recross, Dr. Paquelet? Questions have to be based on  
8 what she went over on redirect, okay?

9 DR. PAQUELET: Yes, sir.

10 - - -

11 RECROSS-EXAMINATION

12 By Dr. Paquelet:

13 Q. You testified that the amount of foliage  
14 was based on the average beech tree growth. Fagus  
15 sylvatica fastigiata. And what is the average growth  
16 rate of Fagus sylvatica fastigiata?

17 MS. DUNN: Objection. I'm not sure  
18 that's what she testified to.

19 EXAMINER SHEETS: You asked the average  
20 growth rate of what, now?

21 DR. PAQUELET: Well, she testified that  
22 the amount of foliage removed is based upon the type  
23 of tree, and so I'm asking what is that growth  
24 rate --

25 EXAMINER SHEETS: Okay.

1 DR. PAQUELET: -- for that type of tree.

2 EXAMINER SHEETS: I think we've been  
3 through this before; she needs charts. But go ahead  
4 and see if she can provide an answer.

5 A. What you were asking specifically, again,  
6 was for *Fagus sylvatica fastigiata*, which is this  
7 particular tree, and in my testimony I said for a  
8 generic beech tree, so that was the *Fagus* genus.

9 Q. You said what?

10 A. The *Fagus* genus in general, not your  
11 specific species of tree.

12 Q. Well, *Fagus sylvatica*, the species of the  
13 genus. So there's a difference between *Fagus*  
14 *sylvatica* and *Fagus grandis* and so on. So the  
15 species of tree, what is the growth rate of this  
16 species?

17 A. As I've said before, I cannot tell you  
18 the exact growth rate of a particular species of tree  
19 without the charts in front of me.

20 Q. Well, if you don't know the growth rate  
21 of the species, how can you determine how much  
22 foliage to remove?

23 MS. DUNN: Objection. Asked and  
24 answered.

25 EXAMINER SHEETS: We've been through that

1 before.

2 Q. If you made a judgment of the amount of  
3 foliage to remove from my tree based upon this  
4 average and you don't know what it is, how did you  
5 decide how much to remove?

6 MS. DUNN: Objection. Same.

7 EXAMINER SHEETS: I think we've been  
8 through that before, Doctor.

9 DR. PAQUELET: Well, thank you so much.

10 EXAMINER SHEETS: You're excused.

11 (Witness excused.)

12 EXAMINER SHEETS: You have another  
13 witness?

14 MS. DUNN: Yes, your Honor. The company  
15 calls Mr. Joe Liss.

16 Do you mind if we remove the branch?

17 EXAMINER SHEETS: Go ahead.

18 (Witness sworn.)

19 EXAMINER SHEETS: Be seated.

20 MS. DUNN: Approach the witness, your  
21 Honor?

22 EXAMINER SHEETS: Yes. Go ahead.

23 - - -

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JOE LISS

being first duly sworn, as prescribed by law, was  
examined and testified as follows:

DIRECT EXAMINATION

By Ms. Dunn:

Q. Mr. Liss, could you please state your  
full name for the record.

A. Joe Liss.

Q. And your business address?

A. 3300 Office Park Drive, Dayton, Ohio.

Q. And zip code?

A. I'm not sure what the zip code is.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Okay. I'm going to hand you what's  
previously been marked as Company Exhibit 10. Do you  
recognize this exhibit, Mr. Liss?

A. Yes.

Q. What is it?

A. It's my direct testimony.

Q. And was it prepared by you or someone  
under your direction?

A. Someone under my direction.

Q. And do you have any corrections to your  
testimony?

A. No, I don't.

1           Q.    Okay.  You'll see in your testimony, just  
2   to make it clear for the record, or in the exhibit,  
3   do you see a paper-clipped sheet in your testimony?

4           A.    Yes.

5           Q.    Okay.  And on the paper-clipped sheet,  
6   that's a color photograph, correct?

7           A.    Yes, it is.

8           Q.    And if you'll look underneath it,  
9   under -- the page underneath it, that's a black and  
10  white of the same --

11          A.    Yes.

12          Q.    -- photo, correct?

13          A.    Uh-huh.

14          Q.    And that has not changed from what we  
15  prefiled in this case, correct?

16          A.    That's correct.

17          Q.    And if I asked you the same questions  
18  that are in Exhibit 10 today, would your answers be  
19  the same?

20          A.    Yes, they would.

21                MS. DUNN:  No further questions.  Open  
22  for cross.

23                EXAMINER SHEETS:  Do you have any  
24  questions, Doctor?

25                DR. PAQUELET:  I don't have any

1 questions.

2 EXAMINER SHEETS: No questions?

3 DR. PAQUELET: No.

4 EXAMINER SHEETS: Thank you. You're  
5 excused.

6 (Witness excused.)

7 EXAMINER SHEETS: Do we have any other  
8 witnesses?

9 MS. DUNN: No, your Honor, we do not.

10 EXAMINER SHEETS: Very good. Let's go  
11 off the record here and we'll discuss a briefing  
12 schedule.

13 MS. DUNN: And we also need to move into  
14 evidence our exhibits.

15 EXAMINER SHEETS: I'm sorry?

16 MS. DUNN: We also need to move into  
17 evidence our exhibits.

18 EXAMINER SHEETS: Yes, we'll do that in a  
19 while.

20 (Discussion off the record.)

21 EXAMINER SHEETS: Let's go back on the  
22 record. We discussed a briefing schedule while we  
23 were off the record, and we'll file simultaneous  
24 briefs on August 3rd. And I will now admit all  
25 exhibits into evidence.



1 MS. HASBROOK: We do have a few  
2 objections if we could note them on the record.

3 EXAMINER SHEETS: You want to make some  
4 objections?

5 MS. HASBROOK: Yes.

6 EXAMINER SHEETS: Okay.

7 MS. HASBROOK: We object to, in  
8 Plaintiff's Exhibit 1, we object to No. 4, which is  
9 that's the letter of the Public Utilities Commission  
10 to Dr. Paquelet, you know, on the basis that it's  
11 just, it's not relevant. Their response to his  
12 complaint and that letter is not relevant to the  
13 rulings that this court may make. And it's hearsay  
14 also.

15 Would you like me to keep going, or do  
16 you want to take them one by one?

17 EXAMINER SHEETS: Yeah, go ahead.

18 MS. HASBROOK: Okay. No. 6 is just a  
19 partial copy of a letter apparently from Ms. Dunn,  
20 it's hearsay, it wasn't authenticated, and so we have  
21 that objection as well.

22 And we also object to the pages from the  
23 vegetation management policy and, they are listed on  
24 pages, they're kind of interspersed, 5, 7, 11, and  
25 13, for the reason that these are from a 2003 version

1 of the vegetation management policy. This was  
2 trimmed in 2010 and the proper policy language is as  
3 revised in 2007. And we've attached that to Tara  
4 Weckerly's Exhibit 1.

5 They are only slightly different, but I  
6 guess for one thing, on the record, you know, I want  
7 it to be clear that there are two different versions  
8 and we object. It is already in, all those sections  
9 are already in through Tara Weckerly; it's a complete  
10 copy. He's taken excerpts from a different version,  
11 and so we wanted to note that and let you know about  
12 that.

13 And we are also just moving for  
14 Exhibits -- for admission on our behalf of Exhibits 1  
15 through 7, 9, and 10. We are not moving in the  
16 deposition transcript, Exhibit 8; that was simply  
17 used for impeachment, nothing else. That's in the  
18 record. We read that answer into the record and so  
19 we're not moving for admission of that exhibit that  
20 we did mark.

21 EXAMINER SHEETS: I think we better have  
22 the deposition in the record as an exhibit.

23 MS. HASBROOK: Okay.

24 EXAMINER SHEETS: And as far as your  
25 other objections, I don't think there's enough

1 difference between the versions of 2003 and the 2007  
2 version to quibble about. It's in the record one way  
3 or the other. So I don't think that objection's --  
4 I'll sustain that.

5 And the letters from Ms. Dunn and -- what  
6 was the other one? The Commission letter?

7 MS. HASBROOK: Yes. No. 4.

8 EXAMINER SHEETS: -- the Commission  
9 letter should be a matter of public record somewhere,  
10 and I don't see how you're objecting to your own  
11 letter from Ms. Dunn. That's a company -- from the  
12 company, correct?

13 MS. HASBROOK: It is. It's only -- it's  
14 legal counsel, it's actually discovery that's coming  
15 in, and it's just a partial --

16 EXAMINER SHEETS: I'm going to overrule  
17 those objections, too.

18 So I will admit everything in  
19 Complainant's Exhibit No. 1, yes.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER SHEETS: And we've already  
22 discussed the hearing -- I will admit the company's  
23 exhibits, too, into the record at this time.

24 MS. HASBROOK: Thank you.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER SHEETS: With that said, I thank  
you all for coming.

MS. DUNN: Thank you.

(The hearing concluded at 1:21 p.m.)

- - -

# CERTIFICATE

I do hereby certify that the foregoing is a  
true and correct transcript of the proceedings taken  
by me in this matter on Thursday, June 14, 2012, and  
carefully compared with my original stenographic  
notes.

\_\_\_\_\_  
Maria DiPaolo Jones, Registered  
Diplomate Reporter and CRR and  
Notary Public in and for the  
State of Ohio.

My commission expires June 19, 2016.

(MDJ-4030)

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Summary: Transcript of Charles Paquelet, MD vs. Ohio Edison Company hearing held on 06/14/12 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.