

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of:	:
Mary-Martha and Dennis	:
Corrigan,	:
	:
Complainants,	:
	:
vs.	: Case No. 09-492-EL-CSS
	:
The Cleveland Electric	:
Illuminating Company,	:
	:
Respondent.	:

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PROCEEDINGS

before Jonathan Tauber and Mandy W. Chiles, Attorney
Examiners, at the Public Utilities Commission of
Ohio, 180 East Broad Street, Room 11-C, Columbus,
Ohio, called at 10:00 a.m. on Thursday, July 25,
2013.

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16 On behalf of the Respondent.

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1 Thursday Morning Session,
2 July 25, 2013.

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4 EXMINER TAUBER: The Public Utilities
5 Commission of Ohio has called for hearing at this
6 time and place Case No. 09-492-EL-CSS, being In the
7 Matter of the Complaint of Mary-Martha and Dennis
8 Corrigan versus The Cleveland Electric Illuminating
9 Company.

10 My name is John Tauber, with me is Mandy
11 Chiles, and we're the attorney examiners assigned by
12 the Commission to preside over this morning's
13 hearing.

14 At this time we'll go ahead and take the
15 appearances. We'll begin with the plaintiffs.

16 MR. POTASH: My name is Lester Potash,
17 I'm here on behalf of the Corrigan. Thank you.

18 EXMINER TAUBER: Thank you.

19 On behalf the company?

20 MS. DUNN: Carrie Dunn on behalf of
21 Cleveland Electric Illuminating Company, 76 South
22 Main Street, Akron, Ohio, 44308, and Lydia Floyd of
23 the Jones-Day law firm, 901 Lakeside Avenue,
24 Cleveland, Ohio, 44141.

25 EXMINER TAUBER: Thank you.

1 Mr. Potash, you may proceed.

2 MR. POTASH: Would you like an opening
3 statement or can we?

4 EXMINER TAUBER: We can go right to the
5 witnesses.

6 MR. POTASH: Very good. Then I would
7 call Mary-Martha Corrigan as our first witness.

8 EXMINER TAUBER: Could you please raise
9 your right hand.

10 (Witness sworn.)

11 EXMINER TAUBER: You can have a seat.

12 MR. POTASH: Before she begins, I would
13 ask if there's policy that there be a separation of
14 witnesses.

15 EXMINER TAUBER: Let's go off the record
16 real quick.

17 (Discussion off the record.)

18 EXMINER TAUBER: We can go back on.
19 Let's go back on the record.

20 Mr. Potash?

21 MR. POTASH: The basis for the motion is
22 that as is often the case, you do not wish to have
23 witnesses hear testimony that has already taken place
24 because that could affect what it is that they may
25 otherwise testify to.

1 I'm not questioning the integrity of
2 anybody here, I'm just making that request so that
3 there is no possibility that a witness' testimony may
4 be influenced by what had been previously said to
5 which they observed. Thank you.

6 EXMINER TAUBER: Would the company like
7 to respond to this?

8 MS. DUNN: Yes, your Honor. On behalf of
9 the company we have prefiled our testimony per
10 Commission rules. All five witnesses did that. They
11 already know what their testimony is, and it is not
12 the custom of the Commission to separate witnesses.

13 EXMINER TAUBER: Thank you.

14 At this time we're going to go ahead,
15 we're not going to separate the witnesses as is
16 Commission precedent to allow all the witnesses to be
17 here. In light of the fact that we do have prefiled
18 direct testimony, it doesn't appear necessary.

19 I will note that, of course, counsel for
20 the complainants will have the opportunity to
21 cross-examine all the witnesses. So with that, we
22 can proceed.

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MARY-MARTHA CORRIGAN

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

DIRECT EXAMINATION

By Mr. Potash:

Q. Ms. Corrigan, would you please introduce
yourself to the hearing panel? State your name and
where you live.

A. Mary-Martha Corrigan, 4520 Outlook Drive,
Brookline, Ohio.

Q. And the gentleman that's seated to my
right is who?

A. Dennis Corrigan.

Q. And he is your?

A. My husband.

Q. Okay. Now, the address on Outlook, is
that your home?

A. Yes.

Q. And for how long have you resided there
with your husband?

A. Since 1975.

MR. POTASH: Can you hear her?

EXMINER TAUBER: Yes.

MR. POTASH: Is it all right if I stand

1 over there so she can talk to you as opposed to
2 talking to me?

3 EXMINER TAUBER: Absolutely.

4 MR. POTASH: Thank you.

5 Q. (By Mr. Potash) Would you please describe
6 the plot of land? I mean, what is Outlook?

7 A. Our property is 50 feet by 150 feet.

8 Q. Single-family home?

9 A. Single-family home, yes.

10 Q. And how long have you lived there?

11 A. Since 1975.

12 Q. Now, at the time you moved onto Outlook,
13 how many trees were on the property?

14 A. Two trees.

15 Q. Where were they located?

16 A. One was at the corner of our -- the back
17 corner off our garage, and the other one was pretty
18 much adjacent to it right at the corner of our
19 neighbor's garage.

20 Q. How many trees do you have now?

21 A. We have one.

22 Q. What happened to the other one?

23 A. The other one had carpenter ants in it
24 and so we decided to take it down.

25 Q. And approximately when was that tree

1 removed?

2 A. I'm going to -- it's hard for me to
3 remember, but probably around 1980, somewhere around
4 in there.

5 Q. Now, can you describe the -- well, you
6 said the remaining tree is in the back of your, as
7 opposed to being in the front by the street.

8 A. Yes.

9 Q. Can you describe the nature of the tree,
10 if you know the type of tree it is?

11 A. It's a silver maple.

12 Q. And that was there when you moved in?

13 A. Yes, it was.

14 Q. And it's still there now.

15 A. It is.

16 Q. Now, up until 1993 or so, from 1975 to
17 1993, what sort of maintenance did you or your
18 husband do in connection with the tree?

19 A. Pretty much nothing. We had -- The
20 Illuminating Company did major maintenance during
21 that period.

22 Q. I'm going to get there.

23 Was the tree being maintained between
24 1975 and 2003?

25 A. Yes, it was.

1 Q. And how was it being maintained?

2 A. It was maintained by keeping it -- by it
3 having been pruned.

4 Q. Let me back up. Who maintained it?
5 Start with that.

6 A. The Illuminating Company.

7 EXMINER TAUBER: When did you move into
8 your house?

9 THE WITNESS: 1975.

10 Q. And when you say "The Illuminating
11 Company," did you contact them to come out to your
12 yard to maintain this tree?

13 A. No. They did it as every four to five
14 years they would maintain the tree.

15 Q. Was yours the only tree that they would
16 come out and maintain --

17 A. No; they would do the whole neighborhood.

18 Q. I'm going to ask you to wait until I
19 finish the question --

20 A. Sorry.

21 Q. I know. But the court reporter, she's
22 good but she needs to do one at a time.

23 A. I know.

24 Q. I asked was yours the only tree that was
25 being maintained on Outlook by The Illuminating

1 Company?

2 A. No.

3 Q. Did they maintain the rest of the trees
4 within the area?

5 A. Yes.

6 Q. Now, do you know why The Illuminating
7 Company came out to maintain your tree?

8 A. It was part of care for the program for
9 easement.

10 Q. You mentioned the word and I want to go
11 into that, you talked about an "easement"?

12 A. Yes.

13 Q. Are you aware there is an easement on
14 your property?

15 A. Yes.

16 Q. And are you aware to whom the easement
17 was granted? Who has the right of the easement?

18 A. The Illuminating Company did.

19 Q. Right. Now, as this tree is situated, if
20 the beginning of the easement line is closest to your
21 house and the end of the easement line is furthest
22 away from your house, where is this tree situated?

23 A. It's extremely close to the beginning of
24 the line.

25 Q. Now, you talked about The Illuminating

1 Company maintaining the tree. Did you ever see what
2 they were doing between 1975 and 2003? What sort of
3 services they provided?

4 A. They provided a pruning service for the
5 tree. Davey Tree for the majority of the years took
6 care of this tree. I am assuming that The
7 Illuminating Company hired them.

8 Q. Did you hire them?

9 A. No; The Illuminating Company did.

10 Q. How do you know Davey Tree was involved?

11 A. Because they had their names on their
12 truck and they, you know, had conversations with us.
13 They were very courteous and very neat.

14 Q. So again, I'm talking about that period
15 of time from 1975 to 2003, which is 28 years.

16 A. Yes.

17 Q. At any time did you or your husband
18 personally contract with any tree service, tree
19 maintenance company, to do any sort of maintenance or
20 service on the trees?

21 A. No.

22 Q. Between the years 1975 and 2003 how many
23 notices did you ever receive from The Illuminating
24 Company indicating that your tree interfered with a
25 transmission line that crossed through the easement

1 of your property?

2 A. Never.

3 Q. Between 1975 and 2003 how many notices
4 did you get from The Illuminating Company that
5 indicated that that silver maple tree that was being
6 maintained by them threatened to interfere with a
7 transmission line of The Illuminating Company?

8 A. No, no notices.

9 Q. Did something change as related to the
10 relationship between and among you, your tree, and
11 The Illuminating Company after 2003? Did something
12 change?

13 A. I believe that The Illuminating Company
14 was -- around that time either 2003 to 2004
15 FirstEnergy took over.

16 Q. Did you receive any sort of notice from
17 The Illuminating Company? And I'm going to hand you
18 what has been marked for purposes of identification
19 as Corrigan Exhibit 1.

20 EXMINER TAUBER: The exhibit is so
21 marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. I've handed you what has been marked as
24 Corrigan Exhibit 1. Do you recognize that?

25 A. It's a letter --

1 Q. We'll start with do you recognize that?

2 A. Yes.

3 Q. Okay. Please tell the hearing panel what
4 that is.

5 A. This is a letter from the Asplundh Tree
6 Expert Company that has not been able to contact us
7 to discuss the right-of-way to their wires.

8 Q. What were their intentions as related to
9 your tree?

10 A. Their intention was to cut our tree,
11 clear-cut our tree.

12 Q. Remove it totally?

13 A. Yes.

14 Q. And you agreed to that?

15 A. No, I did not.

16 Q. Did you have any opportunity to discuss
17 with an agent or representative of The Illuminating
18 Company registering your objection?

19 A. First I made a telephone call and I got
20 no response. Then I wrote a letter and I got no
21 response. And then they sent a representative for
22 the whole neighborhood one day. I mean, we weren't
23 really alerted to that. I mean, the person just came
24 and discussed in our backyards what their intention
25 was.

1 Q. Did you make your feelings known as to
2 whether you wanted the tree removed from your
3 property?

4 A. Yes, I did.

5 Q. And what did you tell them, if you
6 recall?

7 A. I told them that I didn't feel that our
8 tree was causing a problem and that I didn't want it
9 cut down, and was there anything I could do.

10 Q. And they said sure.

11 A. No.

12 Q. What did they say?

13 A. They said no, that they were going to
14 just clear-cut the whole area.

15 Q. Were you given a date by which they
16 anticipated cutting down your tree?

17 A. I believe that we had --

18 Q. If you recall.

19 A. I don't recall the exact time, no.

20 Q. When you got no conversation/discussion
21 with the representative of the utility, you went to
22 court, did you not?

23 A. Yes. I sought your --

24 Q. And what happened at court? I don't want
25 to go through the whole proceedings. What was the

1 upshot of the initial court proceeding?

2 A. The Court of Common Pleas ruled in our
3 favor.

4 Q. They issued an injunction --

5 A. Yes, an injunction against The
6 Illuminating Company or the FirstEnergy to stop the
7 cutting.

8 Q. As that was taking place, what
9 maintenance had the utility undertaken for the tree?
10 Had they continued to maintain and prune and cut the
11 tree?

12 A. Well, unfortunately, in 2003, this is
13 kind of an unusual thing, they just came, they didn't
14 even let us know they were coming, and they cut the
15 whole back of the tree off.

16 Q. I'm not talking about the lopping, we're
17 going to get there some other time.

18 A. Okay.

19 Q. I'm only talking about after we filed the
20 hearing in court.

21 A. No, and there was no maintenance of the
22 tree at all.

23 Q. So they stopped whatever tree service
24 that had been provided, they stopped as of that
25 moment.

1 A. Right.

2 Q. Correct?

3 A. The tree service was going to be cutting
4 it down though.

5 Q. And you just left the tree unguarded,
6 unattended, uncared for.

7 A. No. We sought the help of Forest City
8 Tree Protection Company and Lauren Lanphear to take
9 care of our tree and maintain it from that point on.

10 Q. When you say "from that point on," what
11 year?

12 A. That was 2004.

13 Q. I'm going to hand you what has been
14 marked for purposes of identification as Corrigan
15 Exhibit 2. And ask you to look at it first.

16 EXMINER TAUBER: The exhibit is so
17 marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. Do you recognize what has been marked as
20 Corrigan Exhibit 2?

21 A. Yes.

22 Q. Can you please discuss and identify what
23 the collection of documents in the staple, what they
24 purport to represent?

25 A. These are invoices and also analysis of

1 what was to be done with the tree by the Forest City
2 Tree Company.

3 Q. Now, this does not go back to 2004. I
4 think it starts in 2009 up there, the current date.

5 A. Okay.

6 Q. Do you recognize those as being invoices,
7 some containing copies of checks?

8 A. Yes.

9 Q. And others job estimates from the Forest
10 City Tree Company?

11 A. Yes.

12 Q. And that pertains to your tree?

13 A. Yes.

14 Q. And to your knowledge were the services
15 rendered?

16 A. They were rendered, yes.

17 Q. And how does the -- over the years how
18 has the tree been looking?

19 A. Very healthy and strong. And beautiful.

20 Q. All right.

21 A. And it's provided shade.

22 Q. Now, since you started with the Forest
23 City Tree Protection Company to the present date,
24 have you received any notices from FirstEnergy or CEI
25 that indicates that that tree in its then-state from

1 2004 to the present interfered with the transmission
2 line?

3 A. No.

4 Q. Had you ever received anything from the
5 utility as relates --

6 A. No.

7 Q. Before you say no, I got to ask the
8 question.

9 Have you received anything from the
10 utility that indicated that the tree, having been
11 maintained by the Forest City Tree Protection
12 Company, threatened to interfere with the utility
13 transmission line?

14 A. No.

15 Q. Now, between 2004 and the present has
16 anybody from the utility come and visited your
17 property in general, the tree in particular, as it
18 relates to the transmission line?

19 A. Not that I was notified about.

20 Q. Well, there were surveyors that were out
21 there.

22 MS. DUNN: Objection, your Honor. He's
23 leading the witness at this point.

24 A. Well --

25 EXMINER TAUBER: Hang on one second,

1 there's an objection.

2 Do you have a response, Mr. Potash?

3 MR. POTASH: I'll rephrase the question.

4 EXMINER TAUBER: Thank you.

5 Q. (By Mr. Potash) Do you recall whether
6 anybody from the utility or on their behalf ever came
7 and visited the property? If you recall, you do; if
8 you don't, you don't, I move on.

9 A. There were occasions when maintenance men
10 came to just overlook the whole area. And I don't
11 recall exactly, sir, days.

12 Q. That's fine.

13 I handed you what has been marked for
14 purposes of identification as Corrigan Exhibit 3. Do
15 you recognize what that document purports to
16 represent?

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 A. A view of our backyard area and the
19 wires.

20 Q. It's a compilation of four pictures?

21 A. Yes.

22 Q. Now I'm going to ask you if you would --
23 on each picture if you can to point -- I'm handing a
24 you pen. Draw an arrow that reflects your tree.

25 A. (Witness complies.)

1 Q. Let me just have that. I want to show
2 the other side so she has a chance to see.

3 EXMINER TAUBER: Mrs. Corrigan, before
4 you do that, can you just explain where you drew the
5 arrow so we have a full --

6 THE WITNESS: In the upper right-hand
7 corner of each of these pictures.

8 EXMINER TAUBER: So there's four pictures
9 on the page and the first which would be the upper
10 left corner, the upper right corner reflects your
11 tree?

12 THE WITNESS: Yes.

13 EXMINER TAUBER: And then the second
14 picture which would be the picture on the top right
15 corner of the page, it again would be in upper right
16 corner?

17 THE WITNESS: Yes.

18 EXMINER TAUBER: And then in the bottom
19 go into the two pictures on the bottom, again the
20 upper right?

21 THE WITNESS: Yes.

22 EXMINER TAUBER: And right next to the
23 shed looks like?

24 THE WITNESS: Yes.

25 EXMINER TAUBER: And same thing on the

1 bottom left, right next to the shed?

2 THE WITNESS: Yes.

3 EXMINER TAUBER: Thank you.

4 Q. (By Mr. Potash) The tree look any
5 different from 2004 to the present day than is
6 depicted in those pictures?

7 A. I think it's been pruned a little neater.
8 Other than that, it's pretty much the same.

9 EXMINER TAUBER: What was the timeframe
10 of these pictures?

11 MS. DUNN: Actually, your Honor, that
12 brings up a very good point. At this time I am going
13 to object to the use of this exhibit with this
14 witness. At deposition she testified she didn't know
15 who took the picture, when the picture was taken.
16 It's completely without foundation. He has not laid
17 a foundation.

18 I was kind of letting it go a little
19 because if she wants to point out what her tree looks
20 like, that's fine, but there's no evidence what the
21 tree looks like today or what the land looks like
22 today.

23 EXMINER TAUBER: Mr. Potash?

24 MR. POTASH: I can tell you that picture
25 was taken on September 9, 2009, with Harry

1 Flannery --

2 MS. DUNN: Your Honor, now he's
3 explaining to his witness --

4 MR. POTASH: I try not to interrupt --

5 EXMINER TAUBER: Just the response right
6 now to the objection that Ms. Dunn has.

7 MR. POTASH: The question was do you
8 recognize the photos and the trees. She said yes.
9 The question was have your trees looked any different
10 from 2004 to the present than is depicted in those
11 photos, and she says other than a little pruning, no.

12 She's identified the trees, we have a
13 timeframe. If you want, I mean as I said, Harry
14 Flannery was with me when those photos were taken --

15 MS. DUNN: Your Honor, he's testifying
16 for his witness.

17 EXMINER TAUBER: I'll give you a chance.

18 MR. POTASH: But that's not the issue.
19 The issue is a set timeframe. I asked the question,
20 she gave the answer, she recognized -- she doesn't
21 have to take the pictures to identify what is on a
22 picture. I can see this is a picture of Abraham
23 Lincoln. I never took it.

24 Her focus is this is my tree, this is how
25 it's looked and it hasn't changed other than an

1 occasional pruning from 2004 to the present. That's
2 all that is being offered.

3 EXMINER TAUBER: Thank you.

4 Ms. Dunn, do you have a response?

5 MS. DUNN: Yes. And I apologize for the
6 interruption.

7 Ms. Corrigan does not know who took the
8 picture, when the picture was taken. There's no
9 foundation as to whether the property looks the same
10 today. Testifying that the tree is the same without
11 a foundation laid of what she knows about the picture
12 is improper and shouldn't be used.

13 EXMINER TAUBER: At this point
14 Mrs. Corrigan identified she's familiar with the
15 scene of the picture, she's familiar with the tree,
16 so I will allow questioning along those lines for the
17 time being and then when we review exhibits at the
18 end of her testimony, we'll consider whether it
19 should be admitted for the record.

20 MS. DUNN: Thank you, your Honor.

21 EXMINER TAUBER: Thank you.

22 Q. (By Mr. Potash) Mrs. Corrigan, I'm going
23 to hand you what's been marked as Corrigan Exhibit 4.
24 Ask you to look at that for a second.

25 EXMINER TAUBER: We'll mark these as

1 Corrigan Exhibit 4.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. POTASH: Correct.

4 EXMINER TAUBER: Thank you.

5 Q. Do you recognize what is depicted on
6 that?

7 A. Yes, it is the satellite Google photo and
8 it's kind of an overview of my tree and my neighbor's
9 tree.

10 Q. If you could on that picture either
11 circle or identify somehow where your tree is
12 located.

13 A. (Witness complies.)

14 Q. And for the benefit of the hearing panel,
15 if you look on the picture there's, on the right
16 quarter there's a little marker with an "A" on it.

17 A. Yes.

18 Q. And it looks like it's on top of a
19 structure.

20 A. Yes.

21 Q. You've circled the tree that's to its
22 left --

23 A. Yes.

24 Q. -- as being your tree.

25 A. Yes.

1 EXMINER TAUBER: Directly left to the
2 marker before what appears to be a line right there?

3 MR. POTASH: May be looking at the
4 shadow.

5 EXMINER TAUBER: Okay. So let the record
6 reflect when looking from -- at the whole page
7 starting with "Google" being in the top left corner,
8 the tree is halfway down on the right side of the
9 page below what appears to be a structure that may or
10 may not be a garage and above the structure that is
11 marked "A."

12 Thank you.

13 Q. (By Mr. Potash) Now, we started to talk a
14 little bit about the Court issuing an injunction, the
15 Common Pleas Court. So the Common Pleas Court issued
16 an injunction preventing the tree from being cut
17 down. Was this matter taken up to the Court of
18 Appeals?

19 A. Yes.

20 Q. And do you know the result of the Court
21 of Appeals ruling?

22 A. It ruled in our favor. Majority ruled in
23 our favor.

24 Q. The injunction was upheld.

25 A. Yes.

1 Q. And the matter was taken up to the Ohio
2 Supreme Court.

3 A. Yes.

4 Q. And the Ohio Supreme Court ruled that the
5 Common Pleas Court and Court of Appeals did not have
6 jurisdiction, only the PUCO.

7 A. Yes.

8 Q. They did not rule on the merits of the
9 tree case; is that correct to your knowledge?

10 A. That is correct.

11 Q. Has Forest City Tree Protection Company,
12 are they still involved in the care and maintenance
13 and protection of your tree?

14 A. Yes, to this present moment.

15 MR. POTASH: May I have one moment,
16 please?

17 EXMINER TAUBER: You may.

18 Q. Were you aware that there was an easement
19 on your property during the course of the timeframe
20 from 1975 to the present day?

21 A. In general, yes.

22 Q. You didn't know the exact details of it
23 but you were aware there was an easement.

24 A. Yes.

25 Q. At any time did you refuse -- other than

1 to have them destroy your tree, did you refuse to
2 have the utility come onto the area of the easement
3 to -- and onto your property to maintain the tree?

4 A. No.

5 Q. Did you ever call them and tell them that
6 they were maintaining the tree improperly?

7 A. No.

8 Q. Did you ever notify them that they may
9 have been maintaining the tree in a manner that would
10 be inconsistent with either statutory, regulatory,
11 utility, or arbor practices and standards?

12 MS. DUNN: Objection, your Honor. Lack
13 of foundation. Not an expert witness. How would she
14 know?

15 EXMINER TAUBER: Mr. Potash?

16 MR. POTASH: She could observe the tree.
17 If she said "I never called anybody," that's fine.
18 If she says the tree is looking bad or the tree is
19 growing out of control. I'm just saying she can --

20 EXMINER TAUBER: Can I have the question
21 read back, please.

22 (Record read.)

23 EXMINER TAUBER: Why don't you rephrase
24 your question, Mr. Potash?

25 Q. (By Mr. Potash) Did you ever observe the

1 tree being mistreated?

2 A. No.

3 Q. Did it --

4 MS. DUNN: Go ahead.

5 Q. What if any observations did you have as
6 to the condition of the tree in connection with the
7 transmission lines that were located a distance away?
8 What if any concerns did you have?

9 A. I didn't have any concerns because I felt
10 that the company was doing its job.

11 Q. From the entire time '75 to 2003.

12 A. Yes.

13 Q. Now let me ask you a little bit about
14 this tree. Why are we here? Why are you fighting
15 for this tree? Other than the fact that it's yours.

16 A. Because it's a part of my property, it's
17 a value to our home. And I feel that it's healthy
18 and to cut it down would be unnecessary.

19 Q. If that tree were gone, what would you be
20 looking at from your back window?

21 A. Probably the wires and the open field.

22 Q. You're not an arborist, correct?

23 A. Yes, that's correct.

24 Q. You're not an expert in the utility
25 field, are you?

1 A. No.

2 Q. You're not somebody who knows how to
3 maintain trees; landscaper or something like that.

4 A. That is correct.

5 Q. And that tree is located on your
6 property.

7 A. Yes.

8 Q. Even though within the easement.

9 A. Yes.

10 Q. Has anybody ever said that was not your
11 tree? Has anybody from the utility ever said that
12 was not your tree?

13 A. No.

14 MR. POTASH: I don't have any other
15 questions. Thank you.

16 EXMINER TAUBER: Thank you.

17 Ms. Dunn?

18 - - -

19 CROSS-EXAMINATION

20 By Ms. Dunn:

21 Q. Good morning, Ms. Corrigan.

22 A. Good morning.

23 Q. We've not met before. My name is Carrie
24 Dunn, I'm one of the attorneys for the Cleveland
25 Electric Illuminating Company.

1 If I use the term "CEI" or "the company,"
2 you understand that to mean Cleveland Electric
3 Illuminating Company, correct?

4 A. Correct.

5 Q. And if I use the term "FirstEnergy," you
6 understand that to mean I mean FirstEnergy Service
7 Company, correct?

8 A. Correct.

9 Q. You have no education in forestry,
10 correct?

11 A. Correct.

12 Q. And you have no education in
13 arboriculture, correct?

14 A. Correct.

15 Q. You have no education in botany, correct?

16 A. Correct.

17 Q. And you have no education, training, or
18 experience in pruning or trimming the tree, correct?

19 A. Correct.

20 Q. You do not have any education, training,
21 or experience regarding how to determine the health
22 of the tree, correct?

23 A. Just common sense observation.

24 Q. You have no formal training,
25 experience --

1 A. No formal training.

2 Q. Now, you've not measured the tree,
3 correct?

4 A. Correct.

5 Q. And you don't know today for a fact how
6 tall the tree is, correct?

7 A. Correct.

8 Q. And you do not have any knowledge
9 regarding electric transmission lines, correct?

10 A. Correct.

11 Q. And you can't speak with any authority as
12 to what the industry standard is in maintaining trees
13 around electric lines, correct?

14 A. Correct.

15 Q. Now, you would agree that a tree growing
16 into an electric transmission line is a serious
17 matter, correct?

18 MR. POTASH: Objection.

19 MS. DUNN: Basis?

20 MR. POTASH: He would ask me the basis,
21 if you don't mind.

22 EXMINER TAUBER: Mr. Potash?

23 MR. POTASH: Thank you.

24 Unless there's going to be evidence that
25 this tree is growing into the transmission line,

1 there's no basis for this question.

2 EXMINER TAUBER: Ms. Dunn?

3 MS. DUNN: I'm asking her if she agrees
4 whether it's a serious matter or not in her opinion.

5 EXMINER TAUBER: I'll allow the question.

6 MR. POTASH: If she's not an expert, as
7 she's indicated, in a formal training, all she's
8 doing is giving a speculative guess to an answer
9 they're looking to get.

10 EXMINER TAUBER: Your objection is
11 overruled. Ms. Corrigan opened the door by
12 testifying to the tree's health and in her opinion
13 the tree was healthy.

14 MR. POTASH: I'm not questioning the
15 health, I'm questioning it's not growing into a
16 utility line. That was her question.

17 EXMINER TAUBER: Ms. Dunn, you may
18 proceed.

19 Q. (By Ms. Dunn) Ms. Corrigan, you agree
20 that a tree growing into an electric transmission
21 line is a serious matter, correct?

22 A. Correct.

23 Q. And you would also agree that contact
24 between a tree and an electric transmission line
25 would be a bad thing, correct?

1 A. Correct.

2 Q. Now, you had testified earlier that the
3 tree brings value to your property, correct?

4 A. Correct.

5 Q. Your opinion regarding, though, the value
6 to the property that the tree brings is based on
7 opinions from other people, correct?

8 A. Not totally. But, yes, correct.

9 Q. Now, you had indicated earlier that you
10 thought the tree was healthy, correct?

11 A. Correct.

12 Q. And that opinion is based on two things,
13 correct? One being your conclusion that because it's
14 growing foliage it must being healthy; is that
15 correct?

16 A. Perhaps, yes.

17 Q. And the second reason is because other
18 people have told you they thought it was healthy,
19 correct?

20 A. Correct.

21 Q. Now, you don't know what definition a
22 utility uses for "compatible vegetation," do you?

23 A. Correct.

24 Q. And would you also agree that it's a
25 reasonable goal for CEI and FirstEnergy to take steps

1 to prevent trees from contacting electric
2 transmission lines? Correct?

3 A. Correct.

4 Q. Now, you testified earlier that the care
5 of your tree from at least 2003 or 2004 to the
6 present has been left to your arborist, correct?

7 A. Correct.

8 Q. And you don't dispute that the tree is
9 within CEI's easement, correct?

10 A. Correct.

11 MS. DUNN: Your Honor, may I approach the
12 witness?

13 EXMINER TAUBER: You may.

14 MS. DUNN: One moment, your Honor.

15 This is going to be Company Exhibit 1.

16 EXMINER TAUBER: The exhibit is so
17 marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. Ms. Corrigan, I'm handing you what's been
20 marked as Company Exhibit 1. Do you recognize that
21 document?

22 A. It appears to be an invoice to me and my
23 husband from the Forest City Tree Protection Company.

24 Q. Now, is that an invoice for at least in
25 2012 the care that was done at least at one point to

1 your tree?

2 A. As in the box above it says the "silver
3 maple in the backyard, remove two large sections from
4 the top of each trunk due to decay/hollow at a point
5 of connection to the trunk. Maintenance to reduce
6 the height and west-directing limbs."

7 Q. Thank you. And that was an invoice from
8 2012, correct?

9 A. I'll look, see the date on here.

10 Yes.

11 MS. DUNN: May I approach?

12 EXMINER TAUBER: You may.

13 MS. DUNN: May I mark this as Company
14 Exhibit 2?

15 EXMINER TAUBER: Exhibit is so marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. Ms. Corrigan, do you recognize Company
18 Exhibit 2?

19 A. Yes.

20 Q. And what is that?

21 A. Again an invoice from the Forest City
22 Tree Protection Company for the date of June 16,
23 2011.

24 Q. And what does that invoice say with
25 regard to the work that was done on the tree?

1 A. "Prune silver maple on back line: Remove
2 sucker growth on the back/west side; reduce height by
3 six to eight feet; thin out to reduce wind resistance
4 and snow load; remove deadwood; remove top section on
5 north trunk that has decay where it connects to the
6 trunk; install one cable between two main sections."

7 MS. DUNN: I only have one copy of this
8 one. Can I mark this Company Exhibit 3, please?

9 EXMINER TAUBER: The exhibit is so
10 marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Ms. Corrigan, let me hand you what's been
13 marked as Company Exhibit 3. Can you tell me what
14 that is?

15 A. An invoice for December 2, 2009, from the
16 Forest City Tree Protection.

17 Q. And what does that invoice say about the
18 work that was done to the tree?

19 A. That "silver maple: Remove all new
20 shoots on the back/west side of the tree that grow
21 outwards from the tree towards the wires, leave only
22 those that are going straight up or inwards; reduce
23 the height by ten foot minimum; thin out good tree to
24 reduce wind and snow load and increase interior light
25 and air penetration; remove deadwood and rubbing and

1 crossing sections," not sure, some kind of "to
2 provide clearance for both garage."

3 Q. And I've handed you Company -- excuse me,
4 I'm sorry.

5 A. I just couldn't get that word, "trim."

6 Q. I apologize, didn't hear you.

7 The Company Exhibits 1, 2, and 3 then are
8 an example of three invoices you received from Forest
9 City for three separate occasions of maintenance,
10 correct?

11 A. Yes, correct.

12 Q. Now, since 2004 on, so nine years, you've
13 had to have Forest City maintain that tree
14 approximately nine times?

15 A. No. It was kind of like where I called
16 every year and then Mr. Lanphear would come out and
17 he would take a look at the tree and decide whether
18 there was work that needed to be done. And so it
19 wasn't done every year.

20 Q. You don't recall specifically, though,
21 here today what was done every year, do you?

22 A. No, specifically not. I would have to
23 check the invoices.

24 Q. Now, there was some discussion in your
25 testimony earlier regarding the Common Pleas case and

1 Court of Appeals and Supreme Court cases that you
2 went through with CEI, correct?

3 A. Correct.

4 Q. Now, since at least July of 2004, CEI and
5 FirstEnergy have been restrained from doing anything
6 to the tree, correct?

7 A. Correct.

8 MR. POTASH: Objection to the word "doing
9 anything." If she just says "cutting it down," I
10 have no objection. If she says "maintaining it," I
11 have an objection.

12 EXMINER TAUBER: Ms. Dunn?

13 MS. DUNN: I'm not sure what the basis
14 for the objection is. I'm asking her belief of what
15 the company -- what she was restraining from doing
16 and she was asked about the TRO and the injunction
17 during her direct.

18 MR. POTASH: The injunction restrained
19 the removal of the tree.

20 MS. DUNN: That's not what she testified
21 to.

22 MR. POTASH: The injunction restrained
23 the removal of the tree, that's all that was sought.
24 They never had any restriction on care or
25 maintenance. That they chose not to is a different

1 story.

2 EXMINER TAUBER: I'll allow the question.
3 I think Mrs. Corrigan testified to that on direct
4 and, Mr. Potash, you'll have the opportunity to
5 clarify on redirect.

6 Do you need the question repeated,
7 Mrs. Corrigan?

8 THE WITNESS: Yes, please.

9 (Record read.)

10 MS. DUNN: I'll let my question stand.

11 EXMINER TAUBER: You may proceed.

12 MS. DUNN: If I could just have one
13 moment, your Honor.

14 EXMINER TAUBER: Sure.

15 Q. (By Ms. Dunn) Now, prior to 2003, you had
16 no issues with CEI pruning the tree, correct?

17 A. Prior to 2003.

18 Q. Yes.

19 A. Yes.

20 Q. And you had testified earlier regarding a
21 letter that you had received from CEI about the tree,
22 correct?

23 A. Yes.

24 Q. Now, isn't it true that when you received
25 that letter, you did not attempt to talk to anybody

1 from CEI in response to that letter?

2 A. I believe that I did try and call and
3 telephone and I may have even written them a letter.
4 However, I am not sure whether that came before this
5 letter or after this letter. I am not sure.

6 MS. DUNN: I'm just going to use this as
7 a refreshing the recollection, not as an exhibit.

8 EXMINER TAUBER: So you don't want to
9 mark it?

10 MS. DUNN: No.

11 Q. Ms. Corrigan, I've handed -- can you tell
12 me what that is?

13 A. This is the Court of the Common Pleas
14 case.

15 Q. And does it appear to be a transcript of
16 the Court of Common Pleas case?

17 A. It appears, yes.

18 Q. And this is from your Corrigan versus
19 Illuminating Company Case No. CV 04 535563, correct?

20 A. Correct.

21 Q. And it's dated July 14, 2004?

22 A. That's correct.

23 Q. And you testified during this proceeding?

24 A. Yes.

25 Q. If you would please turn to page 32.

1 Are you there?

2 A. I am there.

3 Q. If you look at line 19 to 20, it says --
4 MR. POTASH: Objection.

5 EXMINER TAUBER: I'll allow the question
6 first.

7 MR. POTASH: Can I give the basis and
8 then you can overrule it?

9 EXMINER TAUBER: I'll hear the question
10 first. There's clearly no question, Mr. Potash.

11 Q. On line 19 to 20 you were asked "What is
12 the date of the letter?"

13 And your response was "The date is July
14 1, 2004."

15 EXMINER TAUBER: Mr. Potash?

16 MR. POTASH: Now is an objection. This
17 document is not being offered as an exhibit. This
18 document, as I heard, was used to refresh a witness'
19 recollection. I'm not quite certain what needs
20 refreshing, but when you refresh a recollection you
21 have a witness look at a document, ask if that helps
22 refresh your recollection, and is your testimony any
23 different, and then we move on. We do not read the
24 document, is what I am proffering to you.

25 Obviously you make the decision. But if

1 it's a recollection refreshment purposes, we don't
2 read the document; the witness takes a look. In
3 fact, with all due respect, you shouldn't even have
4 it.

5 I realize there's no jury here and all
6 this other, but that was what I understood this
7 document is for, so we're not reading this document
8 into the record -- excuse me, I submit that we do not
9 read this document into the record. If there is a
10 problem of refreshment of recollection, the witness
11 will say it helps or it doesn't and then we move on.

12 EXMINER TAUBER: As this is an
13 administrative proceeding and this is ultimately
14 going to the Commission for a decision on this
15 complaint case, I'll allow it to stay in the record.
16 I'll overrule your objection and allow the witness to
17 answer the question.

18 MS. DUNN: On July 1, 2004 -- excuse me,
19 lost my train of thought.

20 MR. POTASH: Before I go on, would you
21 note a continuing objection to any reference of this
22 reading so I don't have to stand up each time and we
23 can move on?

24 EXMINER TAUBER: Yes, we'll note your
25 continuing objection.

1 MR. POTASH: Thank you.

2 Q. (By Ms. Dunn) Ms. Corrigan, on line 21 it
3 says your answer was "The date is July 1, 2004,"
4 correct?

5 A. That's what it says.

6 Q. I'm sorry?

7 A. That's what it says.

8 Q. And the letter that Mr. Potash had given
9 to you, that's dated July 1, 2004?

10 A. Yes.

11 Q. Is it safe to say that the letter that
12 you were talking about at the time of your testimony
13 and the one you presented today is the same letter?

14 A. I'm not sure.

15 Q. Well, let's go on in your testimony then.
16 It says in that question "To whom is it addressed?"

17 And it says "Addressed to Dennis
18 Corrigan," correct?

19 A. Correct.

20 Q. And the letter in front of you that
21 Mr. Potash presented, is that also addressed to Mr.
22 Corrigan?

23 A. Correct.

24 Q. And then turning on to page 33 from lines
25 5 to 8 -- excuse me, line 9, you were asked "The

1 letter to you?"

2 And your answer was "It meant there was a
3 possibility they would do that on that day."

4 Do you see that?

5 A. Yes.

6 Q. The July 1, 2004, letter that Mr. Potash
7 brought in to you, does that also indicate that
8 they're going to do work on the tree?

9 A. Are you referring to this letter here?

10 Q. Yes, I am.

11 A. If you're saying "work on the tree," it's
12 not work, it's removal. It says "remove." Not
13 "work."

14 Q. Did you receive any other letters on
15 July 1, 2004, from CEI?

16 A. Not that I recall.

17 Q. So would you agree that this is the only
18 letter you received on July 1, 2004, from CEI?

19 A. Strong possibility.

20 Q. Now, I had asked you a few minutes ago
21 whether you talked to anybody from CEI or attempted
22 to talk to anybody from CEI when you got that letter.
23 Do you remember that question?

24 A. Yes.

25 Q. And you said, and I believe I can have

1 the court reporter read it back, but you said you
2 didn't know, you may have, and you may have sent a
3 letter; is that accurate?

4 A. I'm not sure.

5 Q. On page 33 of the transcript that I gave
6 you, back in 2004 you were asked "Did you make an
7 attempt to talk to anybody from The Illuminating
8 Company in response to the letter?"

9 Your answer was "No." Correct?

10 A. Can you repeat that again?

11 Q. Sure. On the transcript that I had
12 handed to you "Did you make an attempt to talk to
13 anybody from The Illuminating Company in response to
14 the letter?"

15 Your answer was "No," correct?

16 A. My answer was "No."

17 Q. Now, eventually prior to the July 14,
18 2004, hearing you were able to speak to individuals
19 from CEI regarding the tree, correct?

20 A. What was that date again?

21 Q. Sorry. July 14, 2004.

22 A. Prior to that?

23 Q. Yes.

24 A. I'm not sure when I was able to speak to
25 those individuals. We came -- they spoke to us as a

1 group in the neighborhood.

2 Q. But you had the opportunity to speak with
3 somebody from CEI, correct?

4 A. As a part of a group but not
5 specifically, you know. I mean, they didn't
6 individually talk to me.

7 Q. They didn't individually meet with you
8 but you were able to actually physically talk to
9 somebody from CEI, correct?

10 A. All right, yes.

11 MS. DUNN: One moment, your Honor, I
12 apologize.

13 Q. Mrs. Corrigan, do you have in front of
14 you the set of photographs that Mr. Potash marked as
15 Corrigan Exhibit 3?

16 A. Yes.

17 Q. Now, Mrs. Corrigan, you do not know when
18 these four photographs were taken, do you?

19 A. No.

20 Q. And you do not know who took those
21 photographs, do you?

22 A. I know that Mr. Potash said that he took
23 them.

24 Q. And did you learn that today when he was
25 talking during the hearing?

1 A. No. I think we had --

2 MR. POTASH: I would need to object as to
3 any conversation that I would have with
4 Mrs. Corrigan.

5 MS. DUNN: I asked about the hearing.

6 MR. POTASH: Before there is any
7 discussion I had would be privileged. The question
8 was did you learn, she answered yes. How she learned
9 about that, we had a conversation. Anything beyond
10 that I think goes into an attorney/client privilege.

11 EXMINER TAUBER: I think we're treading
12 close to that area, so Ms. Dunn, why don't you
13 rephrase your question.

14 MS. DUNN: Sure. You know what, I'll
15 withdraw the question.

16 EXMINER TAUBER: Thank you.

17 Q. (By Ms. Dunn) You do not know sitting
18 here today for a fact yourself who took those
19 photographs, do you?

20 A. I do know who took them.

21 Q. Based on your personal knowledge? Or
22 conversations you had with somebody else?

23 A. What I can say is there is a vague
24 recollection of photographs being taken in my
25 backyard.

1 MS. DUNN: May I approach?

2 EXMINER TAUBER: You may.

3 MS. DUNN: I'm not going to mark this as
4 an exhibit, it's being used for impeachment purposes.
5 May I approach one more time, you Honor --

6 MR. POTASH: Before we do that, this
7 appears to be a transcript from a deposition for
8 which there was no waiver of signature. We did not
9 get notice this was transcribed. Had no idea that
10 this had even been prepared. We are entitled to
11 review and this is not for recollection purposes.

12 The Commission has rules about
13 depositions being transcribed and signature. And I
14 object on many levels, to a reference, to the use, to
15 even a notation about a deposition that took place.

16 EXMINER TAUBER: So you did not waive
17 right to read it? And you're saying you have not had
18 an opportunity to review this?

19 MR. POTASH: If you asked her if she ever
20 received notice from the court reporter this was
21 being transcribed, I can tell you as an officer of
22 the court and administrative agency, I never received
23 notice. I had no knowledge this was being
24 transcribed.

25 And we did not waive and I believe for

1 sole purposes of reference only, on page what was
2 100, line 18, the witness says "I do not waive."

3 MS. DUNN: Your Honor, may I respond?

4 EXMINER TAUBER: You may.

5 MS. DUNN: I have a letter dated July 15,
6 2013, from Veritext to Mr. Potash at his office, a
7 copy given to us from Veritext, which is the court
8 reporter, indicating that a copy of the deposition is
9 available at the office from 9:00 to 4:00 and that
10 within seven days of the -- she'll have seven days
11 from submission, which is the 15th, to review and
12 sign the deposition.

13 MR. POTASH: Can I see that letter,
14 please?

15 MS. DUNN: Sure. And in addition, your
16 Honor, I would also say that if he has corrections on
17 the deposition or something he wanted to change about
18 the part that I could ask, he could certainly
19 redirect her on that issue.

20 EXMINER TAUBER: Let's go off the record.
21 (Discussion off the record.)

22 EXMINER TAUBER: Let's go back on the
23 record.

24 At this time we're going to take a brief
25 ten-minute recess and we'll reconvene at 11:25.

1 Let's go off the record.

2 (Recess taken.)

3 EXMINER TAUBER: Let's go back on the
4 record.

5 Mr. Potash, you're asserting that you've
6 not received a copy of the deposition, correct?

7 MR. POTASH: I'm asserting that I never
8 received notification of the preparation of the
9 transcript for Mrs. Corrigan's review. And as such,
10 we have been denied the opportunity to review it
11 prior to today's hearing.

12 EXMINER TAUBER: Is your current address
13 of note on the deposition transcript of the address
14 is 25700 Science Park Boulevard, Suite 270,
15 Beechwood, Ohio? Is that your correct address?

16 MR. POTASH: That is my correct address.
17 Is there a suite number? I didn't hear you say it.

18 EXMINER TAUBER: 270.

19 And you're saying you never received
20 notification from Veritext and there's this letter
21 here that you received notification or at least this
22 letter was sent from Veritext indicating that you did
23 not waive the right to read the transcript in the
24 above referenced deposition and a copy of the
25 deposition is now available at our office weekdays

1 9:00 a.m. to 4:00 p.m.

2 Are you asserting that you did not
3 receive this letter?

4 MS. DUNN: Absolutely.

5 EXMINER TAUBER: It indicates in this
6 letter that you indicated this address is correct for
7 your law offices and this is consistent with the
8 deposition, so what we can do at this time is either
9 we can take an early lunch and I'll give you an
10 opportunity to review the transcript with your
11 client, or we can continue proceeding with questions.

12 MR. POTASH: Well, as I indicated before,
13 this is not something that I would want to do on the
14 spur of the moment, and if there are corrections or
15 modifications or whatever, I believe it's
16 inappropriate right now as of this moment to try to
17 do this under pressure. I'm making my position
18 clear.

19 I just do not believe that that would
20 permit me sufficient time. I don't know if there
21 will be any corrections. But the point is, is that
22 as of this moment it would be unfair to require that
23 we do this, even if it's over a luncheon break.

24 MS. DUNN: Your Honor, I will just to cut
25 to the chase, I will not use the deposition at this

1 point but if I feel like I need to use it further,
2 then we can break and go from there.

3 EXMINER TAUBER: Why don't we do that and
4 if we need to circle back and address this, we'll do
5 that.

6 MR. POTASH: Thank you.

7 MS. DUNN: And if I can have one second,
8 I need to find my train of thought.

9 EXMINER TAUBER: Sure.

10 Q. (By Ms. Dunn) Mrs. Corrigan, I'd like you
11 to direct your attention back to the photographs
12 which was Corrigan Exhibit 3. Now, these pictures,
13 they weren't taken this week, correct?

14 A. As far as I know, correct.

15 Q. And you yourself did not take these
16 pictures, correct?

17 A. Correct.

18 Q. You don't know how old these pictures
19 are, do you?

20 A. From the discussion I do.

21 Q. What discussion are you referring to?

22 A. Everything that's taken place here, but
23 also an awareness, a vague awareness of when these
24 were taken by the lawyer. It's vague, but.

25 MS. DUNN: Your Honor, I'm afraid I did

1 need to use the deposition. I can try to lay a
2 better foundation, I don't know what else to do at
3 this point.

4 EXMINER TAUBER: I'll allow you to ask
5 questions; then when necessary, Mr. Potash, you may
6 raise an argument or objection. We'll just start
7 with that and see where we end up.

8 MR. POTASH: I've already made my
9 position clear. If she's going to use it, you'll
10 note my objection.

11 EXMINER TAUBER: We'll allow her to ask a
12 question and she can use a foundation without
13 necessarily having to go somewhere where you're
14 uncomfortable with. So you can make an objection
15 after her question, we'll just circle back if we need
16 to.

17 MR. POTASH: Okay, thank you.

18 Q. (By Ms. Dunn) Mrs. Corrigan, you remember
19 having your deposition taken in this case?

20 A. Yes.

21 Q. You remember it was approximately two
22 weeks ago?

23 A. July 12.

24 Q. So you do remember that day, the date.

25 A. The date.

1 Q. And there was a court reporter there?

2 A. Yes.

3 Q. And were you asked to swear under oath?

4 A. Yes.

5 Q. And were you asked about those pictures
6 at the deposition?

7 MR. POTASH: Again, any reference to the
8 deposition, note my continuing objection.

9 EXMINER TAUBER: We'll note it at this
10 time. I don't think we've gone into the specifics of
11 the deposition yet, but we'll note your objection.

12 MR. POTASH: This way I don't have to
13 stand up each time.

14 A. Can you please repeat the question?

15 Q. Sure. You remember -- do you remember
16 having those pictures shown to you during the
17 deposition?

18 A. Yes.

19 Q. And do you recall at that time that you
20 said you did not remember when the photos were taken?

21 A. Yes.

22 Q. Okay.

23 A. A vague recollection, yes.

24 Q. Do you recall at that time saying you
25 didn't recall who took the photographs?

1 A. At that time, yes, I remember saying
2 that. I wasn't quite sure.

3 There were many photos --

4 MS. DUNN: I don't have a question
5 pending, your Honor.

6 EXMINER TAUBER: I'll allow the witness
7 to give context.

8 Do you have anything you wish to add,
9 Mrs. Corrigan?

10 THE WITNESS: Just that there were many
11 photographs on that -- on the table at the time.
12 Which could cause a little confusion.

13 MS. DUNN: If I could just have one more
14 moment, I think I may be finished.

15 EXMINER TAUBER: You may.

16 MS. DUNN: Your Honor, I have no further
17 questions.

18 EXMINER TAUBER: Thank you.

19 Mr. Potash, redirect?

20 MR. POTASH: Thank you.

21 - - -

22 REDIRECT EXAMINATION

23 By Mr. Potash:

24 Q. Those three exhibits that you were
25 handed, the Company Exhibits 1, 2, and 3, those are

1 identical and contained within the package of
2 Corrigan Exhibit 2; is that correct? Take a look
3 just to make sure.

4 A. Yes.

5 Q. The three exhibits that were handed to
6 you as Company Exhibits 1, 2, and 3, these are
7 invoices for work that was done.

8 A. Correct.

9 Q. On occasions did you have somebody from
10 the Forest City Tree Protection Company come out
11 ahead of time to indicate what work needed to be
12 done?

13 A. Yes.

14 Q. Take a look again at Corrigan Exhibit 2,
15 the second page.

16 A. Yes. Yes, I mean there was an evaluation
17 or inspection done.

18 Q. So that is dated April 17, looks like
19 it's signed by Mr. Lanphear?

20 A. Yes.

21 Q. And indicated what his observations were
22 at the time?

23 A. Yes.

24 Q. And then the first page of that exhibit
25 reflects the work that was done and the bill that was

1 paid.

2 A. Yes.

3 Q. And that's consistent with the other
4 invoices.

5 A. Yes.

6 Q. And if no work needed to be done, what
7 bills did you pay?

8 A. None.

9 Q. How often did Mr. Lanphear's office or
10 company come out to your property to inspect to
11 determine what if any work needed to be done?

12 A. They came out to inspect when I called
13 them every year, but they did not -- if they didn't
14 feel that there was work that needed to be done, then
15 there was nothing.

16 Q. So they didn't bill you for things that
17 didn't need to be done.

18 A. No.

19 Q. Now, you were asked questions about The
20 Illuminating Company being restrained from doing
21 anything to the tree. Did anytime -- at any time had
22 you received any communication by whatever means, I
23 don't care if it's letter, phone call, I don't care
24 what communications, did you receive from The
25 Illuminating Company from the moment they were

1 restrained from cutting down the tree to today's date
2 as to their efforts to try to maintain the tree
3 comparable to what they did before -- comparable to
4 what they did before 2003?

5 A. There was no communication.

6 Q. Had they come to you and said
7 Mrs. Corrigan, we would like to prune, we'd like to
8 trim, we would like to use growth retardants, we'd
9 like to do what Mr. Lanphear has been doing, maybe
10 even better than Mr. Lanphear?

11 MS. DUNN: Objection, your Honor, lack of
12 foundation.

13 MR. POTASH: I said "what if." This is
14 hypothetical.

15 EXMINER TAUBER: I'll allow Mr. Potash to
16 continue.

17 Q. Had The Illuminating Company communicated
18 to you between the moment that restraining order
19 became effective to today's date that they wanted to
20 care and maintain, not destroy the tree --

21 A. No.

22 EXMINER TAUBER: Let me interject here
23 for a second. There is an outstanding objection,
24 Mr. Potash.

25 MR. POTASH: I misunderstood what you

1 were saying.

2 EXMINER TAUBER: I thought you were
3 responding to the objection.

4 MR. POTASH: First of all, the question
5 was misput to the witness because the company was
6 never restrained from doing anything. They were
7 restrained from cutting it down. The question was
8 what if anything were they restrained from or did
9 they do anything, whatever the question was, and she
10 said no. And I want to distinguish between
11 "restrained from cutting down" and "restrained from
12 maintenance," and had they called and said we would
13 like to maintain the tree would she have turned them
14 down.

15 EXMINER TAUBER: Ms. Dunn, do you have a
16 response?

17 MS. DUNN: That was not his question nor
18 the reason I objected. If we read back his question,
19 it was a paragraph about maintaining, cutting down,
20 doing what Mr. Lanphear did and what he did. I mean
21 that was my objection. There's no foundation for any
22 of that and it's a long, leading question.

23 EXMINER TAUBER: Why don't we just start
24 over. Mr. Potash, you can rephrase your question and
25 with the context you provided.

1 Q. (By Mr. Potash) Ms. Corrigan, at any time
2 in the nine-year period since the issue had The
3 Illuminating Company communicated with you that they
4 wanted to maintain your tree, would you have refused
5 them the opportunity to have done so?

6 A. No, I wouldn't have refused them if they
7 wanted to maintain my tree.

8 Q. How much did The Illuminating Company
9 charge you to maintain the tree?

10 A. They did not charge me.

11 Q. Those bills reflect what you paid out of
12 pocket to maintain the tree.

13 A. Yes.

14 Q. Now, you were asked about that letter,
15 Exhibit 1, and whether you had called them and
16 whether you had done anything else, and there was a
17 reference to the trial transcript. Do you remember
18 all that?

19 A. Yes.

20 Q. And, in fact, you were directed to page
21 33.

22 A. Yes.

23 Q. Where they asked did you make an attempt
24 to talk to anybody, and your testimony at that time
25 indicated you did not.

1 Did you try to get in contact with them
2 by letter?

3 A. Yes, I did.

4 Q. And this would be after.

5 A. After I received their letter I tried to
6 contact them by letter because I was . . .

7 Q. And that's what you told the Court.

8 A. Yes.

9 Q. In the litigation on July 14, 2004, more
10 than nine years ago.

11 A. Yes.

12 Q. You said that then.

13 A. Yes.

14 Q. Fresher in your mind at that time that
15 you did try to contact them after you got the letter.

16 A. Yes.

17 Q. And how did they respond?

18 A. They did not respond to me directly.

19 Q. Did they respond to you at all?

20 A. No.

21 Q. And do you recall at the time of the
22 hearing that pictures were taken and submitted to the
23 Court? Pictures of the tree?

24 A. Yes.

25 Q. You don't know -- you don't have a direct

1 recollection whether the exhibit containing the four
2 pictures were taken at that time or some other time,
3 you don't have a direct recollection.

4 A. I don't have a direct recollection.

5 Q. But you know it's your tree.

6 A. Yes.

7 Q. And you know it was taken after the
8 complaint was filed.

9 A. Yes.

10 Q. And you did not take the photos.

11 A. I did not.

12 Q. Does that mean you can't recognize what
13 the photos represent?

14 MS. DUNN: Your Honor, I've been trying
15 to give Mr. Potash some leeway but he's leading the
16 witness a lot. So I would --

17 Q. Can you depict what is represented on
18 those four photos?

19 A. Yes.

20 Q. Is there any question in your mind as to
21 what those four photos represent?

22 MS. DUNN: Objection, leading.

23 EXMINER TAUBER: Mr. Potash, could you
24 rephrase your question?

25 MR. POTASH: It's kind of hard to ask a

1 person if they have any doubt without asking them if
2 they have any doubt. "Are you absolutely certain," I
3 mean this is a yes or no question.

4 EXMINER TAUBER: Could you please
5 rephrase your question?

6 Q. Do you recognize what those -- can you
7 describe what each of those pictures depict?

8 A. Yes.

9 Q. And what do they depict?

10 A. They depict my backyard and the tree and
11 the wires.

12 Q. Now, you were under oath in July of 2004,
13 correct?

14 A. Yes.

15 Q. You were under oath here today, correct?

16 A. Yes.

17 Q. Any difference in the oath that you took?

18 A. No.

19 Q. All right. Are you employed outside the
20 home?

21 MS. DUNN: Objection. This is not within
22 the scope of my --

23 MR. POTASH: They asked if she were an
24 expert in this and that and for me to find out what
25 she's an expert in, I need to get there. If you find

1 that it's not relevant, I'll move on.

2 EXMINER TAUBER: Where are you going with
3 this, Mr. Potash?

4 MR. POTASH: She's not an arborist, that
5 doesn't mean she doesn't have knowledge in common
6 sense. I haven't asked her age but we will let that
7 go. That she can form an opinion as to the value of
8 the tree even though she's not an arborist. She can
9 give an opinion as to how the tree appears even
10 though she's not a utility specialist.

11 EXMINER TAUBER: I'll allow a very
12 limited series of questions on that, but you're very
13 close to going outside of redirect.

14 MR. POTASH: I'm going to let it go.

15 Q. (By Mr. Potash) Have you ever received
16 any information other than from the utility that that
17 tree is in such poor health that it needs to be
18 removed?

19 A. No.

20 MR. POTASH: I don't have any other
21 questions. Thank you.

22 EXMINER TAUBER: Ms. Dunn, recross?

23 MS. DUNN: One moment, please.

24 EXMINER TAUBER: Okay.

25 MS. DUNN: Thank you, your Honor, I just

1 have one question.

2 - - -

3 RECROSS-EXAMINATION

4 By Ms. Dunn:

5 Q. Mrs. Corrigan, in 2004 after you received
6 the letter from CEI, do you recall having a
7 conversation with a CEI employee allowing them to --
8 giving them permission to initially remove the tree?

9 A. No.

10 Q. So since 2003 to the present, you never
11 told CEI initially they could remove the tree.

12 A. No. It's not within my nature. I would
13 not do that.

14 Q. Mrs. Corrigan, could you please turn to
15 the transcript I had handed you dated July 14, 2004?
16 Now, to be fair, I'm going to use this for -- I'm not
17 admitting it as an exhibit, it's page 51 of that
18 transcript.

19 Are you there, Mrs. Corrigan?

20 A. I am.

21 Q. On that page you were asked: "Do you
22 deny meeting with and discussing your tree with a CEI
23 representative on July 6?"

24 Your answer was "I believe" --

25 MR. POTASH: On what line?

1 MS. DUNN: Page 51, line --

2 MR. POTASH: Note my objection because
3 there had not been any uncertainty for which a
4 recollection needs refreshment.

5 EXMINER TAUBER: We'll note your
6 continuing objection.

7 MS. DUNN: For the record I'm using it
8 for impeachment, not recollection.

9 Q. (By Ms. Dunn) "I believe that was
10 Jennifer Brurick. She did come to our home. It was
11 not a planned meeting. She was visiting another
12 homeowner, and we were returning back from a doctor's
13 appointment with my husband. She came over to our
14 property. But I did request a meeting with her, but
15 it was never established so she did come, yes."

16 Question: "You agreed at that meeting on
17 July 6, didn't you, that CEI could cut your tree
18 down?"

19 Answer: "I didn't agree to that.
20 Absolutely not."

21 Question: "You didn't, in fact, make
22 arrangements for them in cutting your tree down to
23 also take care of the stump?"

24 "What we did, she gave us no option
25 whatsoever and at that point I was pretty much

1 devastated. Afterwards when I talked to her I said
2 we had changed our mind, we did not want to go
3 through with this. She said, Do you want to go
4 through with this or not? And I said, No, we do not
5 want to go through with this. That was like
6 afterwards, after that original meeting with her,
7 which was probably maybe an hour later."

8 Did I read that correctly, Mrs. Corrigan?

9 A. You did, but I feel that like this was a
10 situation where she almost said I had no choice. And
11 at some point I realized I did have a choice.

12 MS. DUNN: Your Honor, I would move to
13 strike everything after I asked her if that was her
14 testimony.

15 THE WITNESS: It's the way it's written.

16 EXMINER TAUBER: Hang on one second,
17 Mrs. Corrigan, there's an outstanding motion.

18 Mr. Potash, would you like to respond?

19 MR. POTASH: I've been told these
20 proceedings are a little bit different, maybe a
21 little bit looser, and I don't mean that in a
22 pejorative sense, than a hearing, court hearing. If
23 the witness wants to give an explanation to a piece
24 of paper which has been read to her, especially under
25 the circumstances which has been read to her, I don't

1 understand what the problem is.

2 EXMINER TAUBER: I'll allow the witness
3 to provide context.

4 Mrs. Corrigan, you can continue.

5 THE WITNESS: Just that I, as far as I
6 was concerned, that tree was never going to come down
7 ever. If it was healthy, if it was strong. And
8 because, you know, like the way that it was presented
9 to us in that group meeting, that was like, you know,
10 a situation where we were being presented that we had
11 no choice. And then I realized I did have a choice.
12 And so I took action.

13 MS. DUNN: No further questions.

14 EXMINER TAUBER: Thank you,
15 Mrs. Corrigan, you may be excused.

16 Mr. Potash?

17 MR. POTASH: Yes, I know I said that
18 Mrs. Corrigan was the only witness, but based on the
19 developments here, I have a very short witness that I
20 wish to call for a very limited purpose only, that's
21 Mr. Harry Flannery.

22 MS. DUNN: Excuse me?

23 EXMINER TAUBER: Before we proceed --
24 I'll let you make that request -- why don't we handle
25 the exhibits.

1 MR. POTASH: If he's going to testify, I
2 need him -- he's going to answer questions about one
3 of the exhibits.

4 EXMINER TAUBER: I understand that, but
5 do you wish to move the exhibits? We typically
6 handle each witness, we'll go through the exhibits,
7 and you have four outstanding exhibits.

8 MR. POTASH: I move the admission of
9 those four.

10 EXMINER TAUBER: Are there any objections
11 to Corrigan Exhibits 1, 2, 3, and 4?

12 MS. DUNN: Yes, there are, your Honor.
13 First to Exhibit 2, well, let's start with Exhibit 3.
14 I object to the moving of those photographs as
15 exhibits due to the fact that she doesn't know when
16 they were taken, who took them, whether they depict
17 her property today, whether they don't. I think
18 they're unreliable. She said she was not the
19 photographer and for that reason I do object to the
20 admissibility of Exhibit 3.

21 I do have another objection to the
22 exhibits if you want me to keep going.

23 EXMINER TAUBER: Yes. Go ahead.

24 MS. DUNN: I also have objection to
25 Exhibit 2. I do not have an objection -- I only have

1 an objection to part of Exhibit 2.

2 EXMINER TAUBER: Which part?

3 MS. DUNN: That would be the
4 second-to-the-last page. The reason that I have an
5 objection to the job estimate is due to the hearsay
6 opinions that are on there from Mr. Lanphear: My
7 opinion there appears to be sufficient amount of
8 sound wood.

9 He's not here to cross-examine on that
10 issue and because of that, this is hearsay. And it's
11 expert opinion that wasn't prefiled.

12 EXMINER TAUBER: So you have no
13 objections to Corrigan Exhibit 1 and Corrigan
14 Exhibit 4?

15 MS. DUNN: No.

16 EXMINER TAUBER: I'm going to go ahead
17 and admit Exhibits 1 and 4 into the record.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 EXMINER TAUBER: Mr. Potash, would you
20 like to respond to Ms. Dunn's arguments?

21 MR. POTASH: As to 2, Ms. Corrigan -- in
22 fact, they used parts of Exhibit 2. Now, this is
23 what I'm trying to understand: They can use parts of
24 Exhibit 2 where it talks about a little bit of decay
25 but we can't use parts of Exhibit 2 where it talks

1 about solid wood. And that doesn't make sense.

2 In fact, Ms. Corrigan testified that she
3 received the estimate, she authorized the work and
4 paid the bill. These go hand in glove. And these
5 have been identified and so there's no question as to
6 either authenticity.

7 As to what is contained therein, as I
8 said, you can't cherry-pick. Or you shouldn't be
9 allowed to cherry-pick. And so all of this goes in
10 as a package because it provides the supporting
11 documentation: This is what we intend to do; this is
12 what we did; this is what you paid for.

13 EXMINER TAUBER: And then regarding
14 Exhibit No. 3, the backyard pictures.

15 MR. POTASH: First of all, the pictures,
16 Ms. Corrigan identified the pictures of being of her
17 house. That she couldn't tell if it was 2004 or 2013
18 is not material to the fact this is how the tree
19 looked at some moment in time. And I'm going to call
20 Mr. Flannery to give you that moment in time.

21 EXMINER TAUBER: At this time we're going
22 to go ahead and overrule the objections and admit
23 Corrigan Exhibits No. 2 and 3 in the record, they'll
24 be helpful to the Commission as they review these
25 proceedings and the Commission will determine the

1 appropriate weight to give these two exhibits.

2 (EXHIBITS ADMITTED INTO EVIDENCE.)

3 MR. POTASH: Based on what you said, one
4 is always concerned about looking over their
5 shoulder. I'd like to proffer what it is I
6 anticipate Mr. Flannery would say and --

7 EXMINER TAUBER: Let's take this one step
8 at a time. Why don't you make your request first.
9 We haven't ruled on anything; we don't know what your
10 request is.

11 MR. POTASH: My request for what?

12 EXMINER TAUBER: You said --

13 MR. POTASH: Mr. Flannery. I was going
14 to proffer but you've admitted it but you said to the
15 Commission for them to determine, and I want to lay a
16 foundation as to the date of those pictures.

17 MS. DUNN: Your Honor, did you admit the
18 pictures?

19 EXMINER TAUBER: Yes, we did.

20 MS. DUNN: Then I don't understand what
21 the need for the testimony is.

22 EXMINER TAUBER: I don't either. Unless
23 you have something to add to the pictures, they're
24 going to be for the Commission's consideration.

25 MR. POTASH: That's fine then, forget

1 about it. Thank you. Mr. Flannery can relax now.

2 MR. FLANNERY: I was going to object,
3 your Honor.

4 EXMINER TAUBER: So at this point,
5 Mr. Potash, do you have any other witnesses you wish
6 to call?

7 MR. POTASH: We have no other witnesses,
8 and we do rest.

9 EXMINER TAUBER: Thank you.
10 You may be seated, Ms. Corrigan.

11 EXAMINER CHILES: Let's go off the record
12 briefly.

13 (Discussion off the record.)

14 EXAMINER CHILES: Let's go back on the
15 record, then.

16 Ms. Floyd?

17 MS. FLOYD: Good afternoon, your Honor.
18 The company calls Mr. Thomas Neff as our first
19 witness.

20 EXAMINER CHILES: Please raise your right
21 hand.

22 (Witness sworn.)

23 EXAMINER CHILES: Thank you. You may be
24 seated.

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THOMAS J. NEFF, JR., P.S.

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

DIRECT EXAMINATION

By Ms. Floyd:

Q. Mr. Neff, would you please introduce
yourself?

A. My name is Thomas Neff. I'm a surveyor
with the firm Neff & Associates, and I was asked to
do a survey of the tree in question for CEI.

MS. FLOYD: Your Honor, may I approach?

EXAMINER CHILES: You may.

MR. POTASH: What was it that was marked?

MS. FLOYD: Your Honor, for the record I
just marked as Company Exhibit 4 the direct testimony
of Thomas J. Neff, Jr. on behalf of the Cleveland
Electric Illuminating, and it's Exhibit 4.

EXAMINER CHILES: So marked. Thank you.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. (By Ms. Floyd) Mr. Neff, do you recognize
what's been handed to you as Company Exhibit 4?

A. Yes, I do.

Q. What is it?

A. It's my testimony.

Q. Do you have any corrections or additions

1 to your testimony?

2 A. I have one correction to line 7, A2,
3 where it says "After graduating Parma High School," I
4 should say "attending Parma High School." I never
5 graduated. While I did go on and earn my license and
6 done many other surveys since.

7 EXAMINER CHILES: Could you repeat that
8 one more time, please? Did you say it was page and
9 2, line 7?

10 THE WITNESS: After graduating Parma High
11 School, I want to change that to attending high
12 school.

13 EXAMINER CHILES: Thank you.

14 Q. Mr. Neff, if you can keep your voice up
15 so that we can hear you.

16 A. All right.

17 Q. With that correction, if I asked you the
18 same questions that appear in Company Exhibit 4
19 today, would your answers be the same that appear in
20 the text of Company Exhibit 4?

21 A. Yes, they would.

22 MS. FLOYD: Your Honor, I now tender
23 Mr. Neff for cross-examination.

24 EXAMINER CHILES: Thank you.

25 Mr. Potash?

1 MR. POTASH: Thank you.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Potash:

5 Q. Mr. Neff, did you prepare this statement?
6 I'm asking did you actually type this statement up?

7 A. No, I did not type it up.

8 Q. How was the information conveyed to the
9 person who did type it up?

10 A. Basically we sat down, went over it. I
11 made all my comments, it was typed up. I reviewed it
12 and then signed it.

13 Q. So it was a general conversation? Or is
14 this a verbatim reproduction of question and answer?

15 A. General conversation.

16 Q. So this format was created for you to
17 review and sign.

18 A. Yes.

19 Q. Actually, did you sign it?

20 A. Yes.

21 Q. All right. I don't have one but that's
22 neither here nor there.

23 A. Okay.

24 Q. When you conducted the survey, what was
25 the date on it, if you recall? I'm looking at the

1 survey here.

2 A. I don't recall right now.

3 Q. Looks like May 16, 2013? Does that sound
4 right?

5 A. Yes, that sounds good.

6 MS. FLOYD: Mr. Neff, do you have a copy
7 of your testimony?

8 THE WITNESS: I do now.

9 Q. It indicates it was 2:00 p.m. and the
10 winds were gusty.

11 A. Correct.

12 Q. Maybe typical Cleveland spring day maybe.
13 Typical Cleveland spring day?

14 A. Typically it was pretty cool out that
15 day.

16 Q. And pretty windy.

17 A. Yes, it was.

18 Q. Did you observe the tree at issue here?

19 A. Yes, I did.

20 Q. Is that tree directly underneath any of
21 the transmission wires?

22 A. No, it's not.

23 Q. It's off to the side, is it not?

24 A. Yes, it is.

25 Q. Did you -- you did a variety of

1 measurements. Did you do -- I don't see here a
2 measurement of a vertical line from a transmission
3 wire to the tree. Did you do that?

4 A. No.

5 Q. Were you asked to do that?

6 A. I was asked to --

7 Q. I'm just asking, were you asked among the
8 var -- I got to ask the question, then can you say
9 no.

10 Among the various things you were asked
11 to do, were you asked to measure the vertical
12 distance from each transmission wire or line to the
13 tree?

14 A. No.

15 Q. How far was the tree itself from a
16 horizontal line extending from the transmission line?

17 A. Offhand I could -- probably have to
18 estimate 22-23 feet, because that wasn't a
19 measurement that was of concern at the time.

20 Q. Maybe --

21 A. It's in the field form; I don't have that
22 information with me.

23 Q. Is it on this document?

24 A. No, it is not.

25 Q. Were you asked to put it on the document?

1 A. No, I was not.

2 MR. POTASH: I have no further questions.

3 Thank you.

4 EXAMINER CHILES: Thank you.

5 Ms. Floyd?

6 - - -

7 REDIRECT EXAMINATION

8 By Ms. Floyd:

9 Q. Mr. Neff, do you have a copy of your
10 testimony in front of you?

11 A. Yes, I do.

12 Q. And Attachment TN-1 to your testimony,
13 what is that?

14 A. That's a copy of my survey.

15 Q. And what does your survey show?

16 A. Basically it's a depiction of where the
17 tree is in relationship to the lines. It shows the
18 crown of the tree, it also shows that if the tree
19 were to fall for whatever reason --

20 MR. POTASH: I object and move to strike
21 any of that; that was never raised in
22 cross-examination.

23 MS. FLOYD: Excuse me, Mr. Neff hasn't
24 had an opportunity to finish his answer.

25 MR. POTASH: The point is I'm moving to

1 strike anything after that because none of that was
2 raised in cross-examination as relates to the crown
3 of the tree. All I asked was the distance of the
4 tree trunk to the horizontal line.

5 EXAMINER CHILES: Thank you.

6 Do you have a response to the motion to
7 strike?

8 MS. FLOYD: Yes, I do. First of all,
9 Mr. Neff wasn't finished with his answer. And
10 second, Mr. Potash did ask Mr. Neff whether he
11 measured how far the tree was away from the line. He
12 started to answer questions about what he did that
13 day and this goes to directly response.

14 EXAMINER CHILES: I think the questions
15 are appropriate, so your motion to strike is denied.

16 You may continue.

17 THE WITNESS: What is the question?

18 MS. FLOYD: Can I have the question I
19 asked reread, please?

20 (Record read.)

21 THE WITNESS: As I said before, its
22 relationship between the tree and the lines. It also
23 shows simulated tree fall line, which would -- if the
24 tree were to fall towards the lines, how much of the
25 tree would actually be over or hit the wires.

1 It shows the easement of the property, it
2 shows the property itself, and that's pretty much it.

3 Q. (By Ms. Floyd) You were asked earlier by
4 Mr. Potash if you measured the vertical distance
5 between the line and the tree.

6 A. Yes. The vertical, the horizontal
7 distance.

8 Q. Did you measure the horizontal distance?

9 A. The horizontal distance was measured,
10 yes. It is not depicted in this survey. I would
11 have to refer to my field notes for that answer. And
12 it's approximately about 23 feet. Exactly, I would
13 not know.

14 MS. FLOYD: Thank you. I have no further
15 questions.

16 EXAMINER CHILES: Thank you.

17 MR. POTASH: If I could.

18 EXAMINER CHILES: Recross.

19 MR. POTASH: Thank you.

20 - - -

21 RE CROSS-EXAMINATION

22 By Mr. Potash:

23 Q. You observed the tree and you talked
24 about the crown?

25 A. Uh-huh.

1 Q. Yes?

2 A. Yes.

3 Q. You got to say "yes."

4 A. Yes.

5 Q. Tree's lopsided, is it not?

6 A. Yes, it is.

7 Q. In fact, the overwhelming majority of the
8 crown, being the top of the tree with the leaves and
9 everything faces the house away from the wires,
10 correct?

11 A. The bulk of it does, yes.

12 Q. There's a very limited portion that faces
13 the wires; is that correct?

14 A. As depicted, yes.

15 Q. You're a person of science, I take it.

16 A. Of survey.

17 Q. All things being equal, that tree was not
18 rooted in the ground --

19 MS. FLOYD: Objection your Honor. Beyond
20 the scope.

21 EXAMINER CHILES: I'm sorry, were you
22 finished completing your question?

23 MR. POTASH: No.

24 EXAMINER CHILES: I'll let you complete
25 your question, then you can make your objection.

1 If you can refrain from answering until I
2 make a ruling, that would be great.

3 Q. As that tree stands, if it were not
4 firmly rooted in the ground, just standing itself,
5 that tree would fall towards the Corrigan's house,
6 correct? Because of the weight of the crown facing
7 the house. Correct?

8 MS. FLOYD: Objection.

9 EXAMINER CHILES: Thank you. Basis?

10 MS. FLOYD: Objection, your Honor,
11 Mr. Neff -- that goes beyond the scope of Mr. Neff's
12 testimony. Mr. Neff was asked to take a survey of
13 the tree. He was not asked to render an opinion of
14 which direction the tree would fall.

15 EXAMINER CHILES: Mr. Potash --

16 MR. POTASH: I'm only asking for his
17 observation. He's a surveyor, he talked about the
18 tree, he observed that it's weighted or that the
19 crown is heavily cut off towards the wires and the
20 bulk of it faces the house, and he testified that
21 were this tree to fall, it would hit the wires. And
22 we're talking about reasonable.

23 This Commission is charged with being
24 reasonable. And so is it reasonable if that tree
25 were not secured whatsoever would it be reasonable

1 that the tree would fall onto the Corrigans' house.

2 EXAMINER CHILES: I do believe at this
3 point your question is going beyond the scope of
4 Mr. Neff's testimony so I'm going to sustain the
5 objection.

6 MR. POTASH: I don't have any other
7 questions.

8 EXAMINER CHILES: Thank you.

9 MS. FLOYD: Your Honor, at this time CEI
10 moves for the admission of Company Exhibits 1 through
11 4.

12 EXAMINER CHILES: Are there any
13 objections to admission of Company Exhibits 1, 2, 3,
14 4?

15 MR. POTASH: 1, 2, and 3 are duplicative,
16 and for whatever it's worth, if you want to have
17 extra paper, I don't have any objections.

18 As to 4, other than the survey, I don't
19 have a problem.

20 EXAMINER CHILES: You're objecting to the
21 survey itself?

22 MS. FLOYD: Right.

23 EXAMINER CHILES: What is your basis?

24 MR. POTASH: Doesn't provide essential
25 information that is the crux of this case. And that

1 is, does the tree interfere or threaten to interfere.
2 We don't have any testimony as to any distance of the
3 tree vis-à-vis the wires, therefore of what value is
4 the survey?

5 EXAMINER CHILES: Ms. Floyd, do you have
6 a response?

7 MS. FLOYD: Actually the survey is
8 relevant. It shows the easement lines, it shows that
9 the Corrigan's tree is located within CEI's easement.
10 It shows the location of the tree and it shows the
11 location of the wires, it shows the height of the
12 tree. It shows the height of the wires and it shows
13 that if the tree falls towards the wires, the amount
14 of the tree that would strike the conductors when it
15 falls over.

16 EXAMINER CHILES: Thank you.

17 I am going to admit Company Exhibits 1,
18 2, 3, and 4 in its entirety. To the extent there's
19 any information that you believe is missing from the
20 survey, I believe that's apparent for the Commission
21 from your questioning and I believe this survey would
22 be very helpful for the Commission. So I am
23 admitting Company Exhibit 4 in its entirety.

24 MR. POTASH: You're aware that we're not
25 contesting the fact that there's an easement and the

1 tree is in the easement. You're aware of that,
2 aren't you?

3 EXAMINER CHILES: Yes, I am aware --

4 MR. POTASH: Just wanted to make sure in
5 case there was a question or not.

6 EXAMINER CHILES: Thank you.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 Let's go off the record briefly.

9 (Discussion off the record.)

10 EXAMINER CHILES: Let's go back on the
11 record.

12 We're taking a recess until 1:10.

13 Off the record.

14 (Lunch recess taken.)

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1 Thursday Afternoon Session,
2 July 25, 2013.

3 - - -

4 EXMINER TAUBER: Let's go back on the
5 record.

6 Ms. Dunn, Ms. Floyd, would you like to
7 call the next witness?

8 MS. DUNN: Yes, your Honor. The company
9 calls Mr. David Kozy.

10 EXMINER TAUBER: Mr. Kozy, please raise
11 your right hand.

12 (Witness sworn.)

13 EXMINER TAUBER: Thank you.

14 - - -

15 DAVID KOZY, P.E.
16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Ms. Dunn:

20 Q. Good afternoon, Mr. Kozy.

21 A. Good afternoon.

22 Q. Would you please introduce yourself for
23 the Commission, please?

24 A. Yes. My name is David Kozy, I'm the
25 general manager of transmission engineering for the

1 FirstEnergy Service Company.

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

3 EXMINER TAUBER: You may.

4 MS. DUNN: May I mark this exhibit as
5 Company Exhibit 5?

6 EXMINER TAUBER: The exhibit is so
7 marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Mr. Kozy, I'm handing you what has been
10 marked as Company Exhibit 5. What is that?

11 A. This is my direct testimony on behalf of
12 CEI in this case.

13 Q. And that was -- was that prepared by you
14 or under your direction?

15 A. Yes.

16 Q. And do you have any corrections today?

17 A. No, I do not.

18 Q. If I asked you the same questions
19 contained in Exhibit 5, the same questions today,
20 would your answers be the same?

21 A. Yes, it would.

22 MS. DUNN: The witness is open for cross.

23 EXMINER TAUBER: Thank you.

24 Mr. Potash?

25 MR. POTASH: Before I do that, is this

1 what you presented me identical to what you gave me
2 previously?

3 MS. DUNN: Yes.

4 MR. POTASH: So I don't have to read it.

5 MS. DUNN: No, no, it's exactly the same.

6 MR. POTASH: Thank you.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Potash:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. You have been to the Corrigan's property
13 on several occasions, have you not?

14 A. Yes, I have.

15 Q. And you have had an opportunity to view
16 the tree and the lines and the relationship to each
17 other, correct?

18 A. Yes, I have.

19 Q. When was the first time you visited the
20 Corrigan property? If you recall.

21 A. Although I don't recall the exact date,
22 it's been five, six years ago.

23 Q. Because some time has passed, you know
24 you were there, you just don't remember exactly.

25 A. For the first time I do not recall

1 exactly, correct.

2 Q. And the last time I think, according to
3 your statement, was March of this year?

4 A. Correct.

5 Q. And then there's some time in between.

6 A. Correct.

7 Q. Do you recall when that in-between time
8 was?

9 A. I do not have exact dates.

10 Q. Would it be fair to say that on all three
11 occasions the tree and the line appeared to be the
12 same whether you went -- whatever time of the year
13 you went and whenever you saw the tree and the line
14 on those three occasions? The tree didn't move
15 closer to the line, did it?

16 A. As far as the trunk, correct. The trunk
17 was in the same location.

18 Q. The lines didn't move closer to the tree.

19 A. And the lines stayed in the same location
20 more or less with the sag differences.

21 Q. Did you do any measurements on your own?

22 A. No, I did not do any measurements on my
23 own.

24 Q. Were you there when the tree was in full
25 glory? Talking about full crown, leaves all over?

1 A. I was there the first time during the
2 summer, other time was in the fall. Not knowing what
3 year, the leaves were falling. And in March the
4 leaves were just starting to bud.

5 Q. Whenever you were there, would you --
6 would it be fair to say that the tree and the line
7 appear similar to what was -- not in the fall because
8 there wouldn't be the leaves, but in the summer and
9 the spring would it be fair to say that this is how
10 the tree and the line appear to each other?

11 EXMINER TAUBER: Mr. Potash --

12 Q. I'm handing you Exhibit 3.

13 EXMINER TAUBER: Which is the
14 photographs.

15 Q. The photographs, correct.

16 A. You have to define "similar." There was
17 a tree out there and there was lines out there, but.

18 Q. Does the picture, to the best of your
19 recollection, accurately reflect the Corrigan tree
20 and the transmission lines?

21 MS. DUNN: At what period of time?

22 MR. POTASH: As he saw them.

23 MS. DUNN: On what day?

24 MR. POTASH: Whenever he was there. We
25 know that it wasn't in the winter because there

1 wouldn't have been the leaves.

2 A. These images do not reflect exactly what
3 I saw there in the spring. I do not recall all these
4 other trees there.

5 Q. But it may reflect how it looked in the
6 summer.

7 A. I do not recall all the other trees
8 there.

9 Q. They had already been cut down.

10 A. Not all these trees were there.

11 Q. Okay. But at least the Corrigan tree,
12 I'm only interested in the Corrigan tree.

13 A. The pictures depict that there was a tree
14 there that belonged to the Corrigans which we know
15 about, and there was a transmission line there with
16 the conductor. So as far as being shown these
17 pictures, yes.

18 Q. But when you were there, whenever it was,
19 you can't recall the date, but what you saw is pretty
20 well depicted in Exhibit 3?

21 MS. DUNN: Objection, asked and answered.
22 The witness answered his question.

23 MR. POTASH: If he said "yes," I'll move
24 on.

25 MS. DUNN: That's not how it works, your

1 Honor.

2 MR. POTASH: I'm just saying did he say
3 yes?

4 EXMINER TAUBER: Mr. Potash, you wish to
5 respond to the objection?

6 MR. POTASH: I did not hear a yes or no.
7 He said there's a line and there's trees. I'm trying
8 to get the fact that the picture, whenever it was
9 taken, gives an accurate representation of how the
10 trees and the lines were situated.

11 EXMINER TAUBER: Can I have the question
12 read back, please?

13 MR. POTASH: That's the question I want.

14 EXMINER TAUBER: Let me have the question
15 read back.

16 (Record read.)

17 EXMINER TAUBER: I'm going to sustain the
18 objection.

19 Q. (By Mr. Potash) The tree that you
20 observed, we've heard some comment that one side of
21 the tree is -- has a pretty full crown and the other
22 side of the tree facing the wires has been cut. Did
23 you observe that?

24 A. Correct. Yes, I did observe that.

25 Q. And that was within the six years or so

1 each time you were there you observed that?

2 A. Yes, I did.

3 Q. Now, in your written testimony -- by the
4 way, did you prepare this? Did you type this
5 information?

6 MS. DUNN: Objection, your Honor. I
7 asked about the relevancy. He testified that it is
8 his testimony and it was prepared by him or under his
9 direction. I don't know the relevancy of typing.
10 It's Commission rule that we submit written
11 testimony; whether he physically typed it or not is
12 not relevant.

13 EXMINER TAUBER: Mr. Potash?

14 MR. POTASH: All I want to know is did he
15 dictate the information. It was a question and
16 answer like we have here: Was there a conversation
17 and somebody took what they perceived to be the
18 conversation and then put it down here? That's all I
19 want to know.

20 MS. DUNN: He already testified that he
21 prepared the testimony.

22 EXMINER TAUBER: Where do you want to go
23 with this, Mr. Potash?

24 MR. POTASH: I just want to know how this
25 was prepared, then I'll move on.

1 EXMINER TAUBER: I'll allow the question.

2 Q. (By Mr. Potash) Did you have a
3 conversation with somebody else or was it like we
4 have here, I ask a question, you give back an answer?

5 A. No; it was prepared during a
6 conversation.

7 Q. And did you also sign the document after
8 it was prepared?

9 MS. DUNN: Objection, your Honor, again
10 relevancy. Everyone knows you file the testimony per
11 Commission rule. Whether he signed it or not is of
12 no relevance to this.

13 EXMINER TAUBER: Mr. Potash?

14 MR. POTASH: All I want to know is if he
15 signed a document because I didn't get a signature.
16 In deposition you either waive it or you sign it and
17 that confirms that you reviewed it.

18 EXMINER TAUBER: I've given you a little
19 bit of leeway but I'm going to sustain the objection.

20 MR. POTASH: Fine.

21 Q. (By Mr. Potash) In your written testimony
22 on page 5 you talk about something called "arcing."
23 Is that correct?

24 A. Yes, it is.

25 Q. And you make reference to the fact that

1 the transmission line is 138 kilovolt?

2 A. 138 kV, yes.

3 Q. And I think you indicate that under
4 certain conditions, we don't know what those
5 conditions are, but under certain conditions there
6 can be arcing that can occur to objects that are
7 approximately 4 feet away from the line, correct?

8 A. Correct, that is my testimony.

9 Q. Is it fair to say from your visual
10 observation, since you didn't measure, from your
11 visual observation there was nothing within 4 feet of
12 a transmission line?

13 A. Excuse me?

14 Q. Was there any part of the Corrigan tree
15 within a 4-foot radius from the transmission line?

16 A. No, there was not.

17 Q. We heard an estimate -- never mind.

18 And you also talked about sagging, do you
19 not?

20 A. Yes, I do.

21 Q. And sagging more or less pertains to the
22 transmission line vertically dropping in height, does
23 it not?

24 A. Yes. It's the drooping or sagging the
25 transmission line.

1 Q. And that is a concern about anything that
2 would be underneath those lines. The concern about
3 sagging would be because there may be something
4 underneath those lines for which there could be
5 contact.

6 A. No, that is not correct.

7 Q. Okay. Regardless, there was no -- the
8 Corrigan tree was not directly underneath any
9 transmission line; is that correct?

10 A. Correct, there was nothing --

11 Q. So no matter --

12 MS. DUNN: Your Honor, can he finish?

13 MR. POTASH: I apologize. Three
14 questions ahead. I apologize.

15 A. Correct, the tree was not below the
16 transmission line; however, the tree was positioned
17 such that it can interfere with the transmission
18 line --

19 Q. From sagging?

20 A. -- in various manners.

21 MS. DUNN: Your Honor, he's interrupting.

22 EXMINER TAUBER: If we can just have
23 question/answer, question/answer, to make the
24 transcript more clear.

25 Mr. Kozy, were you finished?

1 THE WITNESS: I'm finished now.

2 Q. My question only concerned sagging. The
3 Corrigan tree would not have any adverse affect on
4 the transmission lines due to sagging; is that
5 correct?

6 A. You're asking me if it had any adverse
7 affects due to sagging and I'm saying yes, it does in
8 that the tree is positioned such that if it falls
9 toward the line, due to the conductor location and
10 its sag, that tree will contact that line creating
11 outage to the line.

12 Q. Let's remove if the tree falls. If we
13 take that out of the equation, there is no issue
14 pertaining to sagging and the Corrigan tree, correct?

15 MS. DUNN: Your Honor, asked and
16 answered.

17 EXMINER TAUBER: I'm going to overrule
18 the objection. I think it's a fair question.

19 A. If you eliminate the tree from moving,
20 yes, you're correct.

21 Q. Are you learned as an arborist?

22 A. No, I am not.

23 Q. Do you know the root structure of that
24 tree?

25 A. No, I do not.

1 Q. Do you know the health of that tree from
2 personal knowledge?

3 A. My personal knowledge is from when I
4 visited the site I overheard the discussions, I was
5 part of the discussions --

6 Q. That's not personal knowledge.

7 EXMINER TAUBER: Again, Mr. Potash,
8 please let Mr. Kozy answer.

9 Q. I'm sorry.

10 A. Prefiled testimony of others, that, yes,
11 the tree is not in good health.

12 Q. I'm talking about what you know
13 personally. Not what somebody else may have told you
14 or what you may have read.

15 A. My knowledge comes from information that
16 I read, listen to, and learn. So, yes, I do know
17 that information now.

18 Q. Did you read, listen to, and learn any
19 information from the Forest City Tree Protection
20 Company?

21 A. No, I did not.

22 Q. Do you know that tree was maintained --

23 MS. DUNN: Objection, your Honor.

24 Q. -- over the years between 2004 and 2013?
25 Do you have any knowledge whether that tree was

1 maintained during those years?

2 MS. DUNN: Objection, your Honor. This
3 is going beyond the scope of Mr. Kozy's testimony. I
4 gave him some leeway to see where he was going but
5 there is one other witness here that is talking about
6 the maintenance of the tree.

7 This is a transmission engineer. When
8 asked about line sagging, et cetera, this is your
9 guy, not relating to how the tree is maintained.

10 EXMINER TAUBER: Mr. Potash?

11 MR. POTASH: I don't know whether you
12 were questioning the business about sagging or
13 arcing. I don't know if you're doing that but you
14 permitted him to talk about what others indicated to
15 him about the health of the tree.

16 Had you not permitted that, I wouldn't
17 ask these questions. But you permitted it so I think
18 I'm entitled to ask him what he knows or what he took
19 into consideration in making that statement.

20 EXMINER TAUBER: I actually think the
21 witness opened the door in this subject matter, so
22 I'll allow the question.

23 Q. (By Mr. Potash) You indicated you did not
24 review anything from the Forest City Tree Protection
25 Company.

1 MR. POTASH: Senior moment; could you
2 read back that question for before the objection?

3 (Record read.)

4 Q. Do you have any knowledge whether the
5 Corrigan tree was maintained in the period between
6 2004 and 2013?

7 A. I do not know how the Corrigan tree was
8 maintained.

9 Q. Would that be consequential to you before
10 you would give an opinion as to the health of the
11 tree?

12 A. No, it would not.

13 Q. In your prepared testimony on page 7,
14 actually beginning the bottom of page 6, you
15 indicated that with a transmission line comparable to
16 that running through the Corrigan's' easement that a
17 minimum horizontal clearance would be 9.6 feet,
18 correct?

19 A. Correct.

20 Q. "Minimal" meaning what? I mean, who set
21 this minimal?

22 A. Those clearances were established by the
23 National Electrical Safety Code.

24 Q. So that's more or less a floor below
25 which a utility should not go, the 9.6 feet.

1 A. Correct. For these types of objects.

2 Q. Right. Well, when you say "these types
3 of objects," any object.

4 A. No.

5 Q. No?

6 A. You mentioned National Electric Safety
7 Code. The National Electric Safety Code covers a
8 number of different clearance requirements. This
9 particular type of clearance requirement is 9.6 feet.

10 Q. That's all I asked. Okay.

11 What is it exactly that you do as a
12 transmission engineer?

13 A. I'm responsible for the design of
14 transmission facilities in the FirstEnergy operating
15 companies. I'm responsible for the right-of-way,
16 engineering, easement descriptions. I'm responsible
17 for the surveying group. I'm also responsible for
18 the siting and permitting for FirstEnergy.

19 Q. And you have been with FirstEnergy since
20 how long?

21 A. Just completed my 26th year.

22 Q. And up until about six years ago did you
23 have any involvement with the Corrigan tree?

24 A. Yes, I have.

25 Q. Before six years what involvement if any

1 did you have?

2 A. As a member of the transmission
3 engineering group, at different times I performed
4 support for the vegetation management group, people
5 under my responsibility. I've gone out there and
6 helped stake that line.

7 Q. Helped?

8 A. Stake. Surveyed, identified property
9 locations, we performed calculations on that line
10 determining what the sag differences are.

11 Q. Were you involved in this before 2003?

12 A. No, I was not.

13 Q. Did you have any involvement with the
14 management of the tree, its being cared, its prune,
15 whatever. Were you involved whatsoever?

16 A. Other than what I just testified to where
17 I provided support to the vegetation management
18 group, no.

19 Q. What do you mean "support"?

20 A. As I stated, we provide surveying
21 support, we staked the right-of-way property
22 locations in determining clearances to the line. We
23 do the engineering analysis to determine what the sag
24 is.

25 Q. But you did not provide care or

1 maintenance directly to the tree.

2 A. No.

3 Q. Were you familiar with these clearances,
4 the horizontal and vertical clearances, from the time
5 you became involved supporting the vegetation
6 management people at the Corrigan's property?

7 A. Yes, I was.

8 Q. At any time did you indicate to anybody
9 of the vegetation management people, support people,
10 that the Corrigan tree was within the 9.6 feet
11 clearance that you've described?

12 A. Although I've never had to identify the
13 NESC clearance issue, we did examine and review the
14 tree and determine that it could endanger and
15 interfere with the transmission line.

16 Q. The question that I asked -- we're going
17 to get to what could happen. I'm asking you what you
18 did or did not do.

19 Did you notify anybody of the vegetation
20 management people that the Corrigan tree was within
21 the 9.6 feet corridor of the horizontal clearance
22 that you described?

23 MS. DUNN: Objection, your Honor, asked
24 and answered. Same question, he answered it.

25 EXMINER TAUBER: I think the witness

1 answered in a context that wasn't what Mr. Potash was
2 looking for so I'm going to allow the question.

3 MS. DUNN: Thank you.

4 Q. Do you remember the question?

5 A. No.

6 Q. All I want to know, did you ever tell
7 anybody that the Corrigan tree fell within 9.6 feet
8 of the transmission line?

9 A. Yes, I did.

10 Q. When did -- when was the first time you
11 told somebody?

12 A. Review the fact that your statement was
13 did the tree ever -- if it fell, would it be in that
14 range. We reviewed the survey data. We knew if it
15 fell, it would fall within the NESC range.

16 Q. Remove the tree falling. I'm just asking
17 as you look at the tree, did it ever encroach within
18 9.6 feet of a transmission line?

19 MS. DUNN: Objection, your Honor. I
20 think he just is asking the same question again.

21 EXMINER TAUBER: I think you need to
22 rephrase your question because you keep using the
23 same terminology. I think the witness is answering
24 based on the terminology.

25 Q. You premised your concern "if the tree

1 fell." Correct?

2 A. I believe your statement was asking me if
3 the tree fell, did I say anything, and I did.

4 Q. No. I told to exclude the tree from
5 falling.

6 MS. DUNN: Objection, argumentative. Ask
7 a question.

8 EXMINER TAUBER: Let's hold off here for
9 a second.

10 Mr. Potash.

11 MR. POTASH: All I want to know -- I'm
12 not looking if the tree falls. I'm looking the tree
13 as it stands.

14 EXMINER TAUBER: You're asking every
15 question if the tree falls.

16 Q. If I used the word "if the tree falls," I
17 apologize. I don't remember saying it. Forget the
18 tree falling. At no time am I interested in the tree
19 falling for purposes of this question.

20 The tree is straight up. We got a tree,
21 we have transmission line. At any time did you
22 observe the tree as it stood encroaching within
23 9.6 feet of the horizontal clearance?

24 A. No, I did not.

25 Q. And this would be in summer, winter, or

1 fall, the three times that you went.

2 A. Correct.

3 Q. Now -- let me move on.

4 Would it be fair from my understanding
5 what you said, your concern is if the tree were to
6 fall in the direction of the lines, correct?

7 A. Yes, that is my concern.

8 Q. There is no other concern that you have
9 pertaining to the Corrigan tree other than that one
10 contingency.

11 A. That is one of my concerns. My main
12 concern is if the tree falls. However, the tree does
13 have to the propensity to continue to grow, the tree
14 can continue to grow toward the line which would then
15 interfere with the transmission line. And as such,
16 it's an incompatible tree, which is what we're
17 concerned with.

18 Q. Falling towards the line and growing.
19 Are there any other concerns?

20 A. No.

21 Q. How quickly does that tree grow annually?

22 A. I don't know that.

23 Q. What measures can be taken to control or
24 retard the growth of a tree?

25 MS. DUNN: Objection, your Honor. Now he

1 is outside the scope and the witness did not open the
2 door to that line of questioning.

3 MR. POTASH: The witness talked about
4 concern of tree growth. He has no basis in which to
5 say that because that's not his field. But if you're
6 going to accept that as evidence, I have the right to
7 question on what he makes that basis. Is it somebody
8 told him that?

9 EXMINER TAUBER: I'll allow the question.

10 Q. (By Mr. Potash) You don't have training
11 as it relates to trees, correct?

12 A. Correct.

13 Q. You may have a tree in your yard. Do you
14 have a tree in your yard?

15 A. Yes, I do.

16 Q. So you've observed your tree.

17 You don't know the propensity of the
18 Corrigans' silver maple tree to grow or not to grow,
19 do you?

20 MS. DUNN: Objection, asked and answered.

21 EXMINER TAUBER: Sustained.

22 MR. POTASH: I don't have anything else.

23 Thank you.

24 EXMINER TAUBER: Redirect, Ms. Dunn?

25 MS. DUNN: Just one moment.

1 I just have one question on redirect,
2 your Honor.

3 EXMINER TAUBER: Go ahead.

4 - - -

5 REDIRECT EXAMINATION

6 By Ms. Dunn:

7 Q. Mr. Kozy, you were asked many questions
8 about the health of the tree.

9 A. Correct.

10 Q. And you were asked questions about the
11 maintenance of the tree.

12 A. Correct.

13 Q. Who from the company here today can speak
14 about that?

15 A. We have Ms. Spach and Mr. Laverne.

16 MS. DUNN: That's all I have, your Honor.

17 EXMINER TAUBER: Thank you.

18 Mr. Potash, recross?

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Potash:

22 Q. So you were not giving -- your opinion
23 testimony was personal opinion as to the health of
24 the tree.

25 A. Based on what I learned, yes, it was.

1 MR. POTASH: I'm done. Thank you.

2 EXMINER TAUBER: Thank you. You may be
3 excused.

4 Ms. Dunn?

5 MS. DUNN: Your Honor, at this time I
6 move to admit Company Exhibit 5.

7 EXMINER TAUBER: Are there any objections
8 to Company Exhibit 5?

9 MR. POTASH: The only objection -- the
10 objection I have are the conclusions of incompatible
11 vegetation. I don't have problems with facts, I have
12 problems with opinions based on information that the
13 witness is not competent or qualified -- "competent"
14 in the legal sense, I'm not saying he's an
15 incompetent person -- but not competent or qualified
16 to give.

17 He can talk about transmission, he can
18 talk about engineering, he can talk about design; I
19 believe he is not competent or qualified to talk
20 about incompatible vegetation or trees falling or the
21 health of the tree, things of that nature.

22 MS. DUNN: Your Honor, I would ask
23 Mr. Potash to clarify by line and page which part of
24 the testimony he has issues with so that I can review
25 those quickly.

1 EXMINER TAUBER: Mr. Potash?

2 MR. POTASH: One second.

3 EXMINER TAUBER: Take your time.

4 MR. POTASH: For example, and this is not
5 all of them --

6 MS. DUNN: Your Honor, I'd like all of
7 them.

8 EXMINER TAUBER: Please let Mr. Potash
9 finish and then you'll have an opportunity.

10 MR. POTASH: Page 6, starting on 8,
11 talking about transmission lines are dynamic because
12 trees themselves can grow and sway, critical to
13 achieve proper clearances, and he talks about -- and
14 before that wind may blow the transmission line.
15 That's not what he is here to testify to. That's not
16 his area of expertise.

17 EXMINER TAUBER: You're talking lines 4
18 through 8 --

19 MR. POTASH: Correct. And the sag.
20 First of all, that's not his area; secondly, these
21 are suppositions as opposed to any sort of fact.
22 There's never been any testimony that the Corrigan
23 tree did, in fact, act in a manner that would cause
24 him to raise these opinions that he's not, in my
25 opinion, qualified to give based on what he does.

1 Let me go on. Starting on page 7, line
2 8, or following the question on line 8 he talks about
3 having spoken with other people and reviewed
4 testimony of other people. That's not -- his
5 testimony is what he knows, not based on the
6 testimony of other people which we don't know what it
7 is that he relied on and whether it's proper.

8 Again, his area is limited to design and
9 survey and has nothing to do with anything else.

10 And then on page 8, in your opinion, and
11 he says based on my review of the testimony of all
12 these other people, my opinion is. And again, that's
13 not for him to say what everybody else has said. He
14 has to give an opinion based on what he knows.

15 Those are examples.

16 EXMINER TAUBER: Thank you.

17 Ms. Dunn, do you have a response?

18 MS. DUNN: I have to the -- not
19 knowing -- I'm still unsure, your Honor, as to -- I
20 have three examples that he gives, whether those are
21 everything, if he's objecting to the whole testimony.
22 I mean, I'm just unsure what that is. He just says
23 those are examples.

24 This is not a qualification of a witness.
25 I want to take issue with that, procedural issue

1 first, because this is not excluding his whole
2 testimony.

3 Customarily at the Commission when you're
4 going to strike someone's testimony, you do so line
5 by line so somebody understands what is and isn't in.
6 I can respond to these three circumstances. In the
7 event that you're going to look at excluding other
8 testimony or look at other lines, I'd like the
9 opportunity to speak on those.

10 EXMINER TAUBER: These are the three he
11 raised. So let's go through these.

12 MS. DUNN: On page 6, lines 4 through 9,
13 this is discussing the transmission line, how much
14 that particular transmission line can vary from day
15 to day.

16 His personal experience as a transition
17 line that it can sway and what it can sway to,
18 sagging that can occur, he's talking about the
19 transmission line here, that's well within his
20 purview of experience and there was nothing brought
21 out on cross that would dispute that experience. For
22 those reasons that testimony should not be excluded.

23 EXMINER TAUBER: And then the next?

24 MS. DUNN: The next, lines 7 -- lines 8
25 through 12 the answer that was pointed out was to the

1 question are you familiar with the silver maple tree
2 at issue in this case that remains on complainant's
3 property. The answer to that was yes.

4 How does he know what that tree is? He's
5 observed it, he reviewed the testimony, and he
6 reviewed the survey. He's personally observed that
7 tree. He read the testimony, he is familiar with the
8 tree. So there's no reason to dispute those issues
9 there and have those excluded.

10 EXMINER TAUBER: And the third?

11 MS. DUNN: Lines 4 through 7, this is on
12 his personal observations. He's testified here --
13 this whole paragraph discusses how the tree is higher
14 than the conductor line if it falls in the direction
15 of that conductor line, that's going to fall into the
16 line. He has reviewed that personally. He has
17 reviewed the testimony of Ms. Spach and Mr. Laverne.

18 There's no issue here about the
19 maintenance of the tree. Asked the question from his
20 engineering standpoint that tree's low enough to hit
21 the line, and his answer is yes.

22 EXMINER TAUBER: At this time the
23 Commission will admit Exhibit No. 5 and the
24 Commission will afford the appropriate weight.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 MS. DUNN: Thank you, your Honor.

2 EXAMINER CHILES: Let's continue with
3 Witness Spach.

4 MS. FLOYD: Your Honor, the company calls
5 Rebecca Spach as our next witness.

6 EXAMINER CHILES: Please raise your right
7 hand.

8 (Witness sworn.)

9 EXAMINER CHILES: Thank you. You may be
10 seated.

11 - - -

12 REBECCA SPACH
13 being first duly sworn, as prescribed by law, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Ms. Floyd:

17 Q. Good afternoon, Ms. Spach.

18 A. Good afternoon.

19 Q. Will you please introduce yourself to the
20 Commission?

21 A. My name's Rebecca Spach. I'm employed by
22 FirstEnergy Service Company. And my title is manager
23 of transmission vegetation management.

24 MS. FLOYD: Your Honor, may I approach?

25 EXAMINER CHILES: You may.

1 MS. FLOYD: May I have the copy of the
2 direct testimony of Rebecca Spach marked as CEI
3 Company Exhibit 6.

4 EXAMINER CHILES: So marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. Ms. Spach, I'm handing you what's been
7 marked as Company Exhibit 6. Ms. Spach, do you
8 recognize what's been marked as Company Exhibit 6?

9 A. Yes, I do.

10 Q. What is it?

11 A. It's my testimony, direct testimony on
12 behalf of Cleveland Electric Illuminating Company.

13 Q. Do you have any corrections or additions
14 to your testimony?

15 A. No, I do not.

16 Q. If I asked you the same questions that
17 are contained in CEI Company Exhibit 6 today, would
18 your answers be the same as the text?

19 A. Yes.

20 Q. Was this testimony prepared by you and
21 under your direction?

22 A. Yes, it was.

23 MS. FLOYD: Your Honor, I now offer
24 Ms. Spach for cross-examination.

25 EXAMINER CHILES: Thank you.

1 Mr. Potash?

2 MR. POTASH: Thank you. One second.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Potash:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. When was the first time you saw the
9 Corrigan tree?

10 A. I first saw the Corrigan tree in 2009.

11 Q. When was the first time you had any
12 involvement with the Corrigan tree?

13 A. My involvement with the Corrigan tree
14 became awareness of it back in 2003-2004 timeframe.

15 Q. And how did you become aware of the
16 Corrigan tree back in 2003-2004?

17 A. My responsibilities during that time were
18 to assist with the designing and writing the
19 company's vegetation management practices and also
20 supporting our operating companies within their
21 implementation of the transmission vegetation
22 program.

23 Q. Were you ever involved in the direct care
24 and maintenance of vegetation in general, trees in
25 particular?

1 A. Yes.

2 Q. And you would go out to the properties
3 where CEI or sister companies had easements and you
4 would care and maintain the trees?

5 A. My involvement with the operating
6 companies would be at times to provide field visits
7 from a technical basis as well as the program and
8 guidelines that they were utilizing to implement the
9 company's programs.

10 Q. Did you oversee the care and maintenance
11 of vegetation as applied to the various trees within
12 the easements that were operated -- that were owned
13 by the utility?

14 A. Well, I didn't physically conduct the
15 work myself. I did oversee contractors and staff
16 that do the work.

17 Q. And for how long had you overseen the
18 contractors and staff that did the work? When did
19 you first become involved with that?

20 A. Back in 1987 when I first started with
21 the company I was -- had those responsibilities.

22 Q. And back in 1987 CEI, either directly
23 through its forestry department or indirectly through
24 its contractors, would care and maintain trees within
25 its easement, such as pruning them, growth

1 retardants, things of that nature, correct?

2 MS. FLOYD: Objection. Lack of
3 foundation.

4 EXAMINER CHILES: Mr. Potash?

5 MR. POTASH: I don't understand. I said
6 starting in 1987 her involvement she would agree that
7 CEI would care and maintain trees such as by pruning
8 them and using growth retardants. She said this is
9 what she did.

10 MS. FLOYD: The issue is that Mr. Potash
11 hasn't established whether Ms. Spach had worked for
12 CEI.

13 EXAMINER CHILES: I agree. The objection
14 is sustained. I think you need to ask questions to
15 lay a better foundation.

16 Q. (By Mr. Potash) When did you become
17 involved with CEI or any of its other entities?

18 A. In 1998.

19 Q. Before 1998 where were you employed?

20 A. I was employed by Ohio Edison.

21 Q. That was not at that time part of the
22 umbrella or part of the group that's now operated by
23 FirstEnergy?

24 A. At that time FirstEnergy did not exist.

25 Q. All right. When you were with Ohio

1 Edison, did you do the care and maintenance of trees
2 that you would oversee would be any different than
3 the care and maintenance of trees that you engaged in
4 once you became part of CEI in 1997? Was there any
5 difference in policy and practice, procedure?

6 MS. FLOYD: Objection, compound.

7 EXAMINER CHILES: I agree. I think you
8 need to separate your question.

9 Q. Did you do pretty much the same thing
10 once you came to CEI after leaving Ohio Edison?

11 A. My field visit when I was with Ohio
12 Edison I was in the field so I had a field position.
13 When I moved to FirstEnergy Service Company, my
14 position was with the corporate organization that
15 offered support to CEI.

16 Q. You did not do fieldwork.

17 A. That's correct.

18 Q. Did you inspect the fieldwork?

19 A. From time to time I did make field
20 visits, as I mentioned earlier in particular
21 situations to talk about our program, the guidelines.
22 I was not involved at that time with the execution of
23 the program.

24 Q. Between -- did you -- were you a person
25 to whom any of the field people would call if there

1 were concern about a tree's placement in proximity to
2 transmission lines?

3 A. Yes, I was. I received those types of
4 phone call.

5 Q. Would that be from the contractors that
6 would do the fieldwork?

7 A. It could be, yes.

8 Q. Had you ever, between 1997 and 2000,
9 received any information pertaining to the Corrigan
10 tree as posing a hazard, as interfering with the
11 transmission line between 1997 and 2000?

12 MS. FLOYD: Objection, your Honor.

13 EXAMINER CHILES: Basis?

14 MS. FLOYD: I'm objecting to the form of
15 the question.

16 EXAMINER CHILES: What specifically about
17 the form of the question?

18 MS. FLOYD: He's not -- it's vague. He's
19 saying two things, he's -- whether it's a hazard or
20 interfere, he's asking two things to the witness.

21 EXAMINER CHILES: Could you read the
22 question back to me?

23 MR. POTASH: I'll take out the word
24 "hazard." The easement -- I say "hazard" but the
25 easement talks about interfering.

1 EXAMINER CHILES: Would you just restate
2 your question?

3 Q. Between 1997 and 2000 did you receive any
4 information from any of your field reps that the
5 Corrigan tree interfered with the transmission line
6 that runs across their property?

7 A. No.

8 Q. Between 1997 and 2000 did you receive any
9 information from any of your field technicians that
10 the Corrigan tree threatened to interfere with any
11 transmission lines?

12 A. No.

13 Q. Between 1997 and 2000 who maintained the
14 Corrigan tree? Who was responsible for maintaining
15 the Corrigan tree, if you know?

16 A. The Corrigan tree is on The Illuminating
17 Company easement so The Illuminating Company
18 maintained that easement and looked at vegetation
19 including the Corrigan's tree to determine what
20 maintenance would be required for that quarter.

21 Q. Between 1997 and 2000 the people that you
22 hired -- let me back up.

23 Were you responsible for contracting the
24 companies that would service the vegetation?

25 A. Only from a technical support. I

1 supported The Illuminating Company who would pursue
2 and obtain that contract to do that work.

3 Q. You were familiar with the -- were there
4 more than one company that was hired to maintain,
5 provide services for the vegetation along the
6 easements?

7 A. Our company uses various different
8 vegetation contractors to do the thin-out work.

9 Q. And these would all be qualified and
10 knowledgeable how to care and maintain a tree?

11 A. Yes.

12 Q. Vis-á-vis utility requirements.

13 A. That's correct.

14 Q. And for the entire -- for the three-year
15 period that you were with -- that you started with
16 CEI until 2000, would it be fair to say that all of
17 the people that cared and maintained that tree did so
18 in compliance with all rules, regulations, utility
19 requirements, things of that nature, consistent with
20 the provision of safe and effective electrical
21 service?

22 MS. FLOYD: Objection. It's a compound
23 question. Also it incorrectly states facts that
24 aren't in the record.

25 EXAMINER CHILES: Could you read the

1 question back, please?

2 (Record read.)

3 EXAMINER CHILES: Mr. Potash, do you have
4 any response to the objection?

5 MR. POTASH: If it's too many, I'll break
6 it down.

7 EXAMINER CHILES: I think that would be
8 helpful.

9 Q. (By Mr. Potash) Between 1997 and 2003, to
10 your knowledge was CEI ever cited for any violation
11 for its vegetation management policy in connection
12 with the Corrigan tree?

13 A. Well, I'm not aware of any violations or
14 citations.

15 Q. Did you look to see?

16 MS. FLOYD: Excuse me, I don't believe
17 Ms. Spach was done with her answer.

18 Q. I'm sorry, I thought you were.

19 A. The company does have a vegetation plan
20 and a practice in which they would implement through
21 that timeframe.

22 Q. No question about that. My question was,
23 was the company cited for violation of its vegetation
24 management plan?

25 MS. FLOYD: Objection.

1 Q. Vis-à-vis the Corrigan tree.

2 MS. FLOYD: Objection. There needs to be
3 additional facts added to that. He's not explaining
4 who would be cited by.

5 MR. POTASH: This is a global citation.
6 I don't care who it was.

7 (Record read.)

8 EXAMINER CHILES: I believe the witness
9 stated she wasn't aware, so we should move on.

10 MR. POTASH: That's fine.

11 Q. (By Mr. Potash) The people that CEI hired
12 to take care of the Corrigan tree along with all the
13 other trees in the easement were competent arborists
14 and forestry people to your knowledge.

15 MS. FLOYD: Objection, your Honor. This
16 is -- he hasn't -- Mr. Potash has not laid foundation
17 that this would be something that Ms. Spach could
18 speak to. And this is also a vague question by
19 talking about the "people." Needs to be more
20 specific.

21 EXAMINER CHILES: Mr. Potash?

22 MR. POTASH: Hold on one second.

23 I'll move on.

24 Q. Has the practice of tree maintenance
25 changed since 1997 to today? I'm not talking about

1 utility, I'm talking about the care and maintenance
2 of a tree.

3 MS. FLOYD: Objection. Compound.

4 EXAMINER CHILES: Could you break your
5 question --

6 MR. POTASH: I don't know what
7 compound -- has the care and maintenance of a tree
8 changed since 1997? And I'm excluding from the
9 utility right. You have a tree, has it changed? Has
10 anything changed? Has there been a dynamic change in
11 how you care for a tree over the last 16 years?

12 EXAMINER CHILES: I think you need to
13 rephrase your question so perhaps you're just
14 referring to maintenance.

15 Q. (By Mr. Potash) Okay. Has there been any
16 change in the maintenance of a tree, silver maple
17 tree, since 1997 to today's date to your knowledge?

18 MS. FLOYD: Objection. From whose
19 standpoint?

20 MR. POTASH: Her knowledge. I said we're
21 excluding utility. Just talking about the tree
22 itself.

23 MS. FLOYD: Are you asking as an
24 arborist?

25 MR. POTASH: Isn't that what she is?

1 MS. FLOYD: I think your question needs
2 to be clarified. It's vague.

3 Q. (By Mr. Potash) Are you an arborist?

4 EXAMINER CHILES: I'm going to sustain
5 the objection. I think you need to lay a foundation
6 for her.

7 Q. Are you an arborist?

8 A. Yes, I am.

9 Q. Are you trained in the care of trees?

10 A. Yes.

11 Q. Are you trained in the care of silver
12 maple trees?

13 A. Yes.

14 Q. Have you ever cared for a silver maple
15 tree?

16 A. Yes. At a home that I owned I actually
17 had silver maple trees on my property.

18 Q. Do you know how old the Corrigan tree is
19 today? Can you from your professional perspective
20 give an estimate to a reasonable degree of some
21 certainty, because I know you weren't there when it
22 was planted, can you give an estimate as to how old
23 that tree is?

24 A. Well, I'm not able to know the exact age
25 of the tree because we didn't take any types of tests

1 such as an increment or anything such as that. I
2 would estimate just a range maybe 30 years, 45 years.

3 Q. Would you call this a young tree,
4 sapling, a growing tree like a teenager, or a mature
5 tree?

6 MS. FLOYD: Objection. There were three
7 questions there. It's a compound question.

8 MR. POTASH: If the hearing panel is
9 unable to figure that one out, I will rephrase it.
10 But I think you get the gist of what I'm asking:
11 What was state of the tree.

12 EXAMINER CHILES: I'll allow that
13 question.

14 MS. FLOYD: Just so the record's clear,
15 can we reread back the question?

16 (Record read.)

17 A. There's different ways to describe the
18 stage in the life of a tree. I don't know that I
19 would select one of those. I would say that the tree
20 is more like a middle-ager.

21 Q. Okay, that's fair.

22 Does it grow as quickly in middle age as
23 it does in younger age?

24 A. Yes, trees have the propensity to
25 continue to grow in middle age, yes.

1 Q. Do you know how much this tree grew in
2 the years on an annual basis between 1997 and today's
3 date?

4 A. Although I didn't take any measurements
5 during that timeframe, I really could not give an
6 accurate assessment of that.

7 Q. You don't know, that's all.

8 A. Although silver maple trees, just by the
9 genetic species that they are, can grow anywhere from
10 5 to 10 foot per year depending on a lot of different
11 factors and conditions.

12 Q. Did this tree grow between 5 and 10 feet
13 per year between 1997 and 2013?

14 A. I did not take any annual measurements of
15 the tree so I don't know.

16 Q. When was the last time you saw the tree?

17 A. I saw the tree this year.

18 Q. In 2013. Do you recall when?

19 A. Yes. In about March.

20 Q. When was the time before that?

21 A. In 2009 is when I saw the tree.

22 Q. Had that tree to your observation grown
23 20 feet or more in that timeframe?

24 A. The tree has grown.

25 Q. That's not what I asked.

1 MS. FLOYD: Objection. I'm sorry, I just
2 want to make sure that Ms. Spach is able to finish
3 her answer.

4 EXAMINER CHILES: Please allow the
5 witness to finish her answer.

6 MR. POTASH: The tree has grown, that was
7 her answer.

8 Q. Is that your answer?

9 MS. FLOYD: Ms. Spach, were you finished?

10 THE WITNESS: I'm sorry, I got lost what
11 the original question was.

12 EXAMINER CHILES: Could you please reread
13 the question?

14 Give the witness an opportunity to
15 answer.

16 (Record read.)

17 EXAMINER CHILES: Do you have anything to
18 add?

19 THE WITNESS: While the tree has grown, I
20 do not know how much it's grown in that timeframe.

21 EXAMINER CHILES: Thank you.

22 Q. (By Mr. Potash) If I asked you this, I
23 apologize: When did you first observe this tree?

24 A. In 2009.

25 Q. When did this tree interfere -- and I

1 want a date -- when did this tree interfere with the
2 utility transmission line?

3 A. It's difficult to give a date by the fact
4 that the tree is a silver maple tree and it's located
5 on Illuminating Company's easement and it's a silver
6 maple tree which has the propensity, based on its
7 genetic species, to grow tall enough to interfere.
8 From the time it became a seedling it was not the
9 proper tree in the proper location.

10 Q. Did you understand my question?

11 A. I did.

12 Q. I asked you for a date, not an
13 explanation to some other question.

14 MS. FLOYD: Objection.

15 Q. When did the tree inter -- are you
16 stating that the silver maple tree interferes with
17 the transmission line?

18 EXAMINER CHILES: Before you answer, we
19 have an objection.

20 What's the basis for your objection.

21 MS. FLOYD: Objection, this is
22 argumentative. There's been multiple statements now
23 posed to Ms. Spach. On top of that, the first
24 question that Mr. Potash asked was the exact same
25 question that Ms. Spach had answered.

1 EXAMINER CHILES: I'm going to allow the
2 question at this point.

3 Q. The question is, and I want a date, the
4 allegation is that under the easement you may have
5 the right to remove a tree that interferes or
6 threatens to interfere. So I'm going to start with
7 the interference part.

8 Is it your testimony that the Corrigan's
9 silver maple tree interferes with the transmission
10 line?

11 A. Yes.

12 Q. On what basis is that your testimony?
13 Not what it could be; I want to know interference as
14 opposed to threatens to interfere. Because I'm going
15 to get to that question so you'll have a chance to do
16 that.

17 How does it interfere with the
18 transmission line?

19 A. It interferes because the tree is a
20 silver maple tree, it's located on the transmission
21 easement, and it has the propensity to grow into the
22 transmission line, as well as due to the condition of
23 that tree a branch could break out of it, the amount
24 of decay that's in the tree, as well as or the tree
25 could fall over. So the tree by our definition from

1 our vegetation management plan today interferes.

2 Q. In 1997 did the tree interfere with the
3 transmission line?

4 A. Yes, by our definition.

5 Q. Your definition in 1997?

6 A. Yes. The program essentially even in
7 1997 required tree removal of incompatible vegetation
8 on an easement area.

9 Q. Didn't that program begin in 2000? 1997?

10 A. I've been with the company since 1987 and
11 it's been the company's program from Ohio Edison
12 through today to perform continuing vegetation
13 management which involves removing incompatible
14 vegetation on easements. And again, incompatible
15 vegetation is any type of tree that will grow tall
16 enough to interfere with the transmission line.

17 Q. Do you know who Gerald Western is or was?

18 A. Yes, I do.

19 Q. Was he not the person involved in the
20 vegetation management plan, maybe your predecessor?

21 A. Yes, he was employed by The Illuminating
22 Company.

23 Q. Would you disagree with Mr. Western when
24 he said --

25 MS. FLOYD: Objection.

1 EXAMINER CHILES: Go ahead and state your
2 question and I'll take your objection.

3 Q. I'm going to represent to you that in the
4 trial, in the Corrigan trial that was previously
5 referenced to Mrs. Corrigan, that on July 14, 2004,
6 called on behalf of CEI as one of its witnesses was
7 the Mr. Gerald Weston [verbatim] who said that the
8 best -- the accepted best practice as far as removal
9 that was begun in and around 2000. Would you
10 disagree with him when he testified to that under
11 oath?

12 MS. FLOYD: Objection. And I move to
13 strike the part of the answer where -- sorry, the
14 question, part of the question that was read into the
15 record. There is a hearsay issue here, there's a
16 lack of foundation that has not been laid. There's
17 no testimony that Ms. Spach was at that hearing or
18 where that statement was said. So there's no proper
19 foundation.

20 EXAMINER CHILES: Thank you.

21 Mr. Potash?

22 MR. POTASH: First of all, this is not
23 hearsay. Under the Ohio Rules of Evidence which are
24 a lot stricter than may be allowed in administrative
25 hearings this is not hearsay. This is a statement by

1 a company representative authorized to make that
2 statement under oath in a trial proceeding.

3 And if you want the definition of hearsay
4 excludes that. 801D2, admission by a party opponent.
5 The statement is offered against the party and the
6 party's own statement in an individual or
7 representative capacity or statement by which a party
8 has manifested an adoption or belief in the truth or
9 a statement by a person authorized by a party
10 concerning the subject.

11 I have the transcript here if you wish to
12 see it.

13 EXAMINER CHILES: Can you read into the
14 record what transcript you're reading from?

15 MR. POTASH: July 14, 2004, proceedings
16 before the Honorable Ann T. Mannen, M-a-n-n-e-n, in
17 Mary-Martha Corrigan, et al., versus The Illuminating
18 Company, Cuyahoga County Common Please Case No.
19 535563.

20 I'm referring to the testimony of
21 Mr. Gerald Western, W-e-s-t-e-r-n, on page 78, where
22 is he talking about the best practices being removal,
23 and on line 16, that was begun in and around 2000.
24 Probably 1999 to 2000 when the specification book was
25 originally written. The point being, before 2000

1 there was no removal policy.

2 EXAMINER CHILES: Thank you.

3 Ms. Floyd, do you want to briefly
4 respond?

5 MS. FLOYD: There was lack of foundation
6 laid to establish the hearsay. On top of that, there
7 is lack of foundation and this is improper
8 impeachment. We don't know that Ms. Spach knows.
9 That she wasn't present for that hearing, we don't
10 have any foundation that she knows what was said or
11 not. So this is improper impeachment of Mr. Potash
12 reading into the record something. It's also
13 mischaracterizing the testimony in that record.

14 MR. POTASH: First of all, this is not
15 impeachment; this is used as evidence. All I asked
16 her is does she agree or disagree with a statement
17 previously testified to under oath by her predecessor
18 at the time when she may not have had involvement.

19 EXAMINER CHILES: Ms. Floyd, you want to
20 respond?

21 MS. FLOYD: He has not laid a foundation
22 Ms. Spach was there to hear the statement or had any
23 knowledge of the statement. It's hearsay.

24 EXAMINER CHILES: We're going to take a
25 brief five-minute recess to consider.

1 MS. FLOYD: If I may respond briefly.

2 EXAMINER CHILES: Sure, go ahead.

3 MS. FLOYD: One of my other points is
4 this is hearsay on hearsay. So it's double hearsay.
5 He's reading in a transcript to someone who -- of
6 someone else that's been said that was outside of
7 this Court. So it's hearsay on hearsay.

8 MR. POTASH: Read Rule 801D2. Statements
9 which are not hearsay.

10 EXAMINER CHILES: I'm aware of the rule.

11 MR. POTASH: I didn't mean that you
12 weren't.

13 EXAMINER CHILES: We're going to take a
14 brief five-minute recess to consider this issue.
15 We'll be back in five minutes.

16 (Recess taken.)

17 EXAMINER CHILES: Let's go ahead and go
18 back on the record.

19 Mr. Potash, at this point I am going to
20 overrule the objection; however, because you're using
21 a lengthy excerpt from the transcript you were
22 reading from, I'm going to have you go ahead and mark
23 it as an exhibit and move the specific pages you're
24 referring to into evidence. And you also need to
25 give an opportunity for the witness, opposing

1 counsel, and the Bench to read what you're reading.

2 MR. POTASH: Okay. Try to remember to do
3 all of those things. I do not have photocopies of
4 the specific pages.

5 EXAMINER CHILES: You can just show us.
6 That would be very helpful and we can make copies for
7 evidence.

8 MR. POTASH: I believe opposing counsel
9 has it. Do you have the transcript for the Court?

10 MS. FLOYD: You have not given me a page.

11 MR. POTASH: Page 78.

12 MS. FLOYD: And a line number, please.

13 MR. POTASH: Starting with we can go 13.

14 MS. FLOYD: Just for the record if you
15 can tell us the date of the transcript you're
16 reading.

17 MR. POTASH: I think I said July 14,
18 2004.

19 EXAMINER CHILES: Page 78, line 13.

20 MR. POTASH: Starting with 13. Line 12
21 the last sentence was "Now the best practices
22 removal."

23 Question was then: "As of what date?"
24 And then the rest of that that I read.

25 EXAMINER CHILES: So starting with line

1 12 and continuing?

2 MR. POTASH: Yes, last full sentence in
3 line 12 through line 18.

4 EXAMINER CHILES: Thank you.

5 MS. FLOYD: I need to clarify since he's
6 marking as an exhibit that it's only lines 12 to 18
7 that he's marking? And I note also that at line 12
8 is actually the very last line of a much longer part,
9 actually an answer there, but it's incomplete.
10 Marking part of an answer that's not complete which
11 doesn't include the question before that.

12 MR. POTASH: If you want the whole page,
13 I'll give you the whole page.

14 EXAMINER CHILES: Is this all on one
15 page? What we'll be doing is marking the entire
16 page.

17 MR. POTASH: Fine. Again, this wasn't
18 submitted as an exhibit but if you wish, I don't have
19 a problem, obviously.

20 EXAMINER CHILES: And I'd also like you
21 to show it to the witness so she can examine it.

22 MR. POTASH: The question that I asked as
23 I recall is: Do you disagree with Mr. Western when
24 he indicated that the removal practice started in
25 1999 or 2000, and I'll show you here on page 78, line

1 13 as of what date.

2 MS. FLOYD: Can I have the question
3 reread, please?

4 (Record read.)

5 Q. (By Mr. Potash) So the question is: Do
6 you disagree with Mr. Western?

7 A. Well, I agree with Mr. Western that the
8 best practices changed in the 2000 timeframe in terms
9 of removal. Utilities really started aggressively
10 removing trees. It was company policy prior to that
11 that tree removal was in our policy as well as tree
12 trimming.

13 Q. I'm not questioning whether tree removal.
14 I'm talking about the aggressiveness of removing
15 trees within an easement. That started around 2000,
16 did it not?

17 A. Yes, that did start in April around 2000,
18 and I didn't understand that your question was
19 regarding the aggressiveness. You said "best
20 practices," which is different than a policy.

21 Q. In fact, do you agree with Mr. Western,
22 and I'm referring to page 61 of the same testimony.

23 MS. FLOYD: Objection, your Honor.

24 EXAMINER CHILES: Basis?

25 MS. FLOYD: This is hearsay. He's

1 attempting to bring in out-of-court statements from a
 2 transcript that Ms. Spach was not at the hearing.
 3 He's not established that this witness is not
 4 available. He could have called him in person. So
 5 right now what he's trying to do is just read in
 6 testimony from a hearing that's not the hearing today
 7 when he could have called that person. So this goes
 8 beyond just asking Ms. Spach about removal practices.

9 EXAMINER CHILES: Your objection is noted
 10 for the record but it's overruled at this time.

11 Could you give us a specific page and
 12 line reference?

13 MR. POTASH: I'm going to start at the
 14 bottom of the page 60, line 23. And I'll read it and
 15 I'll read it slowly. That's all right if I -- this
 16 is my only copy.

17 This is Mr. Western's response to a
 18 question under oath.

19 MS. FLOYD: Can I have the line and page
 20 number again?

21 MR. POTASH: I thought I said 60, line
 22 23.

23 Q. (By Mr. Potash) "In implementing
 24 specifications, and also looking at the system, we
 25 began to implement the specifications and we

1 implemented them based on the priority of the lines
2 that we were managing and also on the greatest risk
3 being presented to our lines."

4 Question: "Again, that process began in
5 2000?"

6 Answer. "Around 2000, yes."

7 Question: "Are you aware of prior
8 clearing in the Outlook Drive area?"

9 Answer: "Yes. The line that traverses
10 through the Outlook Drive area is a transmission line
11 that we call the Fox/Clinton line. It runs from the
12 Fox substation to the Clinton substation.

13 "A lot of the land that is underneath
14 this transmission corridor is land The Illuminating
15 Company owns and feeds. It's actually our land. And
16 beginning around 2000 we began removing trees that
17 had been previously trimmed, specifically on this
18 corridor, and we also at the same time did trimming.

19 "After that we came back, it was in the
20 summer of 2003, and we began further implementing
21 enforcing our specifications because the trees that
22 we had trimmed in 2000 had grown such that they came
23 back and were beginning to touch and what we call
24 present a real threat to the wires.

25 "As a result, we began in the summer of

1 2003 working on this line or these sets of lines to
2 meet with the individual property owners and we
3 removed some of the trees at that time."

4 Now, I read that verbatim?

5 A. Yes.

6 Q. Do you agree with Mr. Western's statement
7 that he made under oath back in July of 2004 as to
8 the implementation of the policy change from
9 maintaining to removal?

10 MS. FLOYD: Objection. There was
11 multiple statements read. There was started with an
12 answer, then a question, then an answer, then a
13 question, then an answer. Mr. Potash is asking her
14 whether she agrees with one thing when he's read in
15 question/answer, question/answer. Improper form.

16 MR. POTASH: I don't believe that is what
17 I did.

18 Would you please read back the question
19 to me?

20 (Read record.)

21 EXAMINER CHILES: I'm going to allow the
22 question. If the witness feels she needs
23 clarification, you can just state that you need a
24 clarification before you can answer.

25 THE WITNESS: I guess I do need

1 clarification. In this whole dissertation what is
2 the specific question regarding his testimony?

3 Q. (By Mr. Potash) Mr. Western discussed, as
4 I read this -- I'm giving you my interpretation since
5 you're asking for clarification. He discussed the
6 change of policy from maintenance to removal of trees
7 starting in 2000 and then more aggressive in 2003.

8 What I'm asking you is do you agree with
9 that?

10 MS. FLOYD: Objection. Mr. Potash is now
11 characterizing the statement.

12 MR. POTASH: She asked for clarification;
13 I'm giving my clarification.

14 MS. FLOYD: He's characterizing.

15 EXAMINER CHILES: I'm going to allow the
16 question. The witness can answer to the extent she
17 knows.

18 A. As I explained earlier, during that
19 timeframe my position with the company was that I
20 provided technical support to our operating
21 companies. Mr. Western was responsible for executing
22 the vegetation policies and plan at that time. And
23 as in his testimony, he described it I believe that
24 executed according to the company policy.

25 I also agree that starting in early

1 2000s, and having said this in prior testimony, to
 2 today, we have aggressively removed trees on
 3 easements; however, in the past we have also always
 4 removed trees on easements where we work with -- we
 5 have easement rights, we work with property owners,
 6 they're open to it and allow it, and in cases in the
 7 past also we did pruning as an acceptable method of
 8 vegetation control.

9 Since 2000 moving forward, we've always
 10 had that opportunity for tree removal, we have
 11 implemented that even more aggressively since that
 12 timeframe.

13 Q. Are you aware of whether the Davey Tree
 14 Company helped maintain the Corrigan tree before
 15 2003? Are you aware that that occurred?

16 A. I was not involved with that execution so
 17 I'm not aware. I don't know the specifics of that.

18 Q. Okay. Are you familiar with the Davey
 19 Tree Company?

20 A. Yes, I know Davey Tree Company.

21 Q. Have they, in the past, performed
 22 maintenance work on behalf of CEI or Ohio Edison or
 23 Toledo Edison, any of those companies to your
 24 knowledge?

25 A. Yes.

1 Q. And if Davey Tree performs maintenance
2 work on trees, you are comfortable that they know the
3 rules and the regulations and the policies and the
4 procedures to assure that tree maintenance is
5 consistent with proper utility vegetation management.

6 MS. FLOYD: Objection. I think that Mr.
7 Potash has gone -- hasn't laid a foundation for this
8 question to ask what Davey Tree Company is doing.
9 Ms. Spach does not work for Davey Tree Company.

10 EXAMINER CHILES: Mr. Potash?

11 Q. Would you hire -- not you --

12 EXAMINER CHILES: Do you have a response
13 to the objection, is what I'm asking.

14 MR. POTASH: I wish I did. I don't
15 understand it. All I asked is if you hire somebody
16 to take care of your trees, you have confidence they
17 know what they're doing vis-à-vis what needs to be
18 done to maintain safe and efficient electrical
19 service. That's what I thought I asked.

20 EXAMINER CHILES: I'm going to overrule
21 the objection at this point.

22 MS. FLOYD: Can I have the record read?

23 (Record read.)

24 A. The company hires Davey Tree as a
25 qualified vegetation management contractor. The

1 company has policies and plans to conduct vegetation
2 management for transmission reliability and safety.

3 And working with Davey Tree over the
4 years, and I've been doing this for 25 years, we've
5 had times when they follow our plan, they execute and
6 do the work to specification. There have been times
7 when we have to send them back to do more work
8 because it wasn't in accordance with the
9 specification.

10 So our company's relationship with the
11 contractor is we lay out the expectation, we have a
12 contract that requires them to follow those
13 specifications, and then we verify that they complete
14 the work as needed.

15 Q. How many times has CEI told Davey Tree to
16 return to the Corrigan's property because of improper
17 tree maintenance?

18 A. I don't know the answer to that question.

19 Q. Did you look at any records before you
20 came here knowing that you were going to be
21 testifying on behalf of the company relating to the
22 care and maintenance of the Corrigan tree?

23 A. I looked at some records, yes.

24 Q. Did you look to see whether or not the
25 Corrigan tree had ever been cited or written up or --

1 other than trying to cut it down in 2003, I'm talking
2 about before 2003, had you looked to see if there was
3 any issue, any problem, any concern, any interference
4 or threatened interference of the Corrigan tree to a
5 utility line? Had you looked for any of that?

6 MS. FLOYD: Objection. It's asked and
7 answered, there's also multiple questions.

8 EXAMINER CHILES: I'm going to allow the
9 question. If the witness needs clarification on any
10 point in that question, she may ask for it.

11 A. Can you rephrase the question?

12 Q. Had you looked at the history of the care
13 and maintenance of the Corrigan tree from 2000
14 backwards?

15 A. Records that were available, I reviewed
16 them, yes.

17 Q. I don't know what you reviewed but
18 whatever you reviewed, did it indicate before 2003
19 going backwards that the Corrigan tree interfered or
20 threatened to interfere with the utility transmission
21 line?

22 A. The records that I reviewed showed that
23 the tree was last trimmed in 2003 and the tree, the
24 definition of our policy in our plan today is
25 interfering with the transmission line.

1 The fact that it's taller than the
2 transmission line, it's on the easement, it's an
3 incompatible vegetation, from our perspective, my
4 perspective, it is interfering and has interfered in
5 the past ever since it's been there.

6 Q. Maybe you didn't understand my question.
7 I wasn't talking about today. I was asking about the
8 records you reviewed. I was asking about the records
9 reviewed from 2003 going backwards. And I was asking
10 about the records that you reviewed from 2003 going
11 backwards as to any indication that the Corrigan tree
12 interfered or threatened to interfere with the
13 transmission line. That was my question. You didn't
14 answer that. That's the question I want answered.

15 MS. FLOYD: Objection, asked and
16 answered.

17 MR. POTASH: With all due respect, she
18 talked about today.

19 EXAMINER CHILES: I'm going to allow the
20 question.

21 MR. POTASH: Thank you.

22 MS. FLOYD: Can we have the question read
23 back?

24 EXAMINER CHILES: Please.

25 (Record read.)

1 A. The records I reviewed included our 2001
2 vegetation management specifications. Based on that
3 specification and the definition of incompatible
4 vegetation, that tree has interfered in the past.

5 Q. (By Mr. Potash) The records you reviewed
6 was 2001. What was the definition of incompatible
7 vegetation in 2001?

8 A. Any tree that can grow tall enough to
9 interfere with the transmission line.

10 Q. Did CEI send anybody out there to cut the
11 tree down in 2001?

12 A. I can't answer that.

13 Q. Did CEI send somebody out there to
14 maintain the tree, such as pruning, growth retardants
15 or other tree survival procedures after 2001?

16 A. Yes; in 2003.

17 Q. They didn't seek to cut down the tree at
18 that time; is that correct?

19 A. In 2004 we sought to remove the tree.

20 Q. When I -- we're not talking about 2003.
21 2004. You didn't seek to cut down the tree in 2003,
22 correct?

23 A. In the records it was trimmed in 2003.

24 Q. And when it was trimmed, it was trimmed
25 by people that CEI hired to do a competent job

1 consistent to what your vegetation management policy
2 was at the time, correct?

3 I'll rephrase it.

4 Would you send incompetents out?

5 A. No.

6 MS. FLOYD: Objection.

7 Q. So can we, for the sake of discussion,
8 accept the fact that if you sent somebody out to
9 maintain the tree, such as pruning it, they were
10 competent?

11 MS. FLOYD: Objection. This is
12 argumentative and he just asked that question.

13 EXAMINER CHILES: Could you read that
14 question and answer back to me, please?

15 (Record read.)

16 EXAMINER CHILES: Mr. Potash, the
17 question you just asked and answered, how does that
18 differ from the prior question you asked?

19 MR. POTASH: I was just making a positive
20 statement that they did send competent people out. I
21 really one can infer they didn't send incompetents.

22 I will move on.

23 EXAMINER CHILES: Thank you.

24 Q. (By Mr. Potash) Upon sending out the
25 competents to maintain the Corrigan tree in 2003, did

1 they report to you that that tree constituted a
2 hazard to the utility company?

3 Did you receive a report from those
4 people? I don't care about anybody else; I'm talking
5 about the people that you hired to maintain the tree.

6 A. As I explained, I was not involved in the
7 execution of our program at that time. I was in a
8 support role. So I did not receive -- I would not
9 have received any type of reports in 2000.

10 Q. Did anybody -- you're here, you're the
11 company representative, you're the only guy I got.
12 Did anybody from CEI receive such a report of the
13 Corrigan tree following the maintenance performed in
14 2003?

15 MS. FLOYD: Objection. Mr. Potash is
16 arguing with Ms. Spach. It's his demeanor, he's
17 going on, he's arguing with her now. I think we need
18 to keep it as one question and then an answer.

19 EXAMINER CHILES: The objection is
20 overruled at this point, but, Mr. Potash, if you can
21 try and lean it in a little bit.

22 MR. POTASH: Sometimes I get exuberant.
23 But it is not crossing the line in my opinion.

24 EXAMINER CHILES: I don't think it is,
25 but you may continue.

1 Q. (By Mr. Potash) You are the company
2 representative here today.

3 A. Yes.

4 Q. As it relates to the forestry issue.

5 A. Yes.

6 Q. Well-being of the tree.

7 A. Well-being of the transmission line.

8 Q. Of the transmission line and the
9 well-being of the tree.

10 You're familiar with the tree's
11 condition, correct?

12 A. Yes, I am.

13 Q. You have examined the tree personally?

14 A. Yes, I have.

15 Q. The last time you examined it was earlier
16 this year?

17 A. Yes, it was.

18 Q. And you examined it in 2009?

19 A. Yes, I did.

20 Q. 2009 -- well, I'm getting ahead of
21 myself.

22 I asked you before as the company
23 representative to your knowledge did CEI receive any
24 note, any communication -- if I leave something out
25 I'll be accused I wasn't all inclusive. Did they

1 receive some message from the people that maintained
2 the Corrigan tree in 2003 that that tree constituted
3 a hazard to the utility transmission line? To your
4 knowledge.

5 A. The position that I was in, to my
6 knowledge I did not have access to any reports such
7 as that. Not the reports such as that.

8 Q. And in preparation for your appearance
9 today you found none.

10 A. I did not receive any or see any type of
11 reports such as that.

12 Q. Good, now let's move on.

13 What was the health of the tree in 2009?

14 A. In 2009 --

15 Q. You said you first saw the tree in 2009.

16 A. I was getting ready to answer.

17 Q. I'm sorry, I thought you were asking me.
18 Go ahead.

19 A. No. In 2009 I was on the property when
20 the survey was conducted to prepare for potential
21 settlement as this case was before the Commission, as
22 well as I was on the right-of-way because we were
23 conducting our vegetation exam.

24 The health of the tree from my
25 observation at that time and today has -- the silver

1 maple tree that has a predominant stem which included
2 bark that's been pruned numerous times, it has sucker
3 growth, which means the tree, as a result of pruning,
4 has grown back rapidly.

5 There's evidence of decay pockets
6 throughout the tree, and the tree is taller than the
7 mission line and that branches that potentially could
8 break out and strike the line as well as if the tree
9 were to fall towards the line could strike the line.

10 That condition existed in 2009 and has
11 continued to decline to today.

12 Q. So you're saying the tree is in worse
13 condition today than it was in 2009.

14 A. Yes.

15 Q. Was the tree decayed?

16 A. Yes.

17 Q. Was the tree dying?

18 A. While the tree's not dying, I do believe
19 in my professional opinion that it is slowly
20 declining.

21 Q. As we all are.

22 My question is was the tree dying? Was
23 death imminent?

24 A. Well, death was imminent for all trees
25 but looking at it --

1 Q. If you cut them down --

2 MS. FLOYD: Objection. Can she finish
3 her answer?

4 EXAMINER CHILES: I'm sorry, were you
5 finished answering the question?

6 THE WITNESS: I was saying death is
7 imminent for all trees, but it was not dying in 2009.

8 EXAMINER CHILES: Thank you.

9 Q. Was it growing in 2009?

10 A. Yes.

11 Q. And it continued to grow?

12 A. Yes, it has grown.

13 Q. And it continues to sprout?

14 A. Yes, it does.

15 Q. And it continues to have a full -- well,
16 it can't have a full crown because you cut half of it
17 off, but whatever crown it can have, it's there.

18 MS. FLOYD: Move to strike, your Honor,
19 objection. Move to strike.

20 EXAMINER CHILES: I'm going to deny the
21 motion to strike.

22 Q. The tree bears leaves, does it not?

23 A. Yes.

24 Q. Throughout the entire what I guess is
25 called the crown, the cover, the top of the tree?

1 A. Yes, it has leaves on it.

2 Q. And did it have that in 2009?

3 A. Yes.

4 Q. Did it -- how many times did you visit
5 the tree?

6 A. I've been to the property about three
7 times.

8 Q. Did it have it the second time?

9 A. The second time would have been this past
10 spring. I was there March and the tree was dormant.

11 Q. When was the third time?

12 A. In March of this year. 2013.

13 Q. Okay. You said you were there in 2009
14 when the surveyor was there?

15 A. Yes.

16 Q. Was Harry Flannery there?

17 A. I don't remember.

18 Q. Was Ebony Miller there?

19 A. Ebony Miller was involved at the time.

20 Q. Was I there?

21 A. I know --

22 Q. I can give you the exact date, if that
23 would help. September 9, 2009.

24 EXAMINER CHILES: Mr. Potash, please give
25 the witness an opportunity to answer.

1 A. It's 2013, and 2009 was a long time ago
2 and I just don't recall who specifically was on the
3 site.

4 Q. I'm going to hand you a copy, I can't
5 find No. 3. But whatever it is, I'm going to hand
6 you a copy of what has been marked as Exhibit 3 and
7 ask you if you would take a look at this and if the
8 pictures depicted thereon are consistent with how you
9 viewed the trees -- the tree and the transmission
10 line when you were on the Corrigan property or on the
11 easement.

12 A. So your specific question is? What's
13 your specific question?

14 Q. There are four pictures there.

15 A. Okay.

16 Q. I will represent to you that -- I won't
17 represent anything. I'll leave it to you.

18 Do you recognize anything on any of those
19 four pictures?

20 A. I recognize the Corrigan's tree and the
21 transmission line, yes.

22 Q. Does the picture depict the Corrigan tree
23 vis-à-vis the transmission line?

24 A. The picture shows the transmission lines
25 and the tree.

1 MR. POTASH: Do we have the official
2 Exhibit 3 with the arrows?

3 Q. Now I have the official exhibit. I'm
4 going to show you what has been marked. Do you see
5 the various arrows on each of those pictures?

6 A. Yes.

7 Q. Would you agree that that is what the --
8 that each arrow points to the Corrigan tree?

9 EXMINER TAUBER: Are you referring to all
10 four pictures?

11 MR. POTASH: Yes, I am. I'm sorry.

12 A. Yes.

13 Q. And you're saying that this is a fair
14 represent -- this looks like it's in the summer, it's
15 not in the winter, correct?

16 MS. FLOYD: Objection.

17 Q. Given the leaves and the crown, it
18 doesn't look like it's spring.

19 MS. FLOYD: Objection. I'm sorry. He's
20 assuming facts that are not in testimony. He just
21 said you're saying that it's a fair representation.
22 I don't believe there's been any testimony by
23 Ms. Spach that that is a representation of today's
24 condition or a condition on any certain date.

25 EXAMINER CHILES: Could you read the

1 question back to me?

2 (Record read.)

3 EXAMINER CHILES: Can you clarify your
4 question?

5 MR. POTASH: We got past -- the witness
6 is identifying the question -- identifying the tree
7 and the lines, correct?

8 EXAMINER CHILES: I believe we are past
9 that.

10 Q. (By Mr. Potash) The pictures as
11 represented, does this appear to be winter?

12 A. No.

13 Q. Does it appear to be spring?

14 A. There are leaves on the trees. It's
15 difficult to tell whether it's specifically spring.
16 I mean, the trees leaf out in early spring.

17 Q. Does it appear to be fall?

18 A. Doesn't appear that the tree's leaves are
19 containing colors, so. No.

20 Q. So but this would be the spring into
21 summer as an active growing period for the trees,
22 isn't it?

23 A. Yes.

24 Q. Is there any question that the Corrigan
25 own the tree?

1 A. No.

2 Q. That means the Corrigan's do own the tree.

3 A. Yes, they own it.

4 Q. I didn't establish that.

5 A. Yes, they own the tree.

6 Q. Has the -- if I asked you this, again, I
7 apologize. Has the science for maintaining trees
8 changed over the years?

9 A. Yes; there's always more research that
10 comes out and information. Science doesn't stay
11 stagnant; it will change over time. So I would say
12 yes, there's more information today than there was in
13 the past about trees.

14 Q. Are growth retardants one way of
15 maintaining vegetation?

16 A. Yes.

17 Q. And are growth retardants a means to
18 maintain, stabilize, or minimize tree growth?

19 A. That's their intention, yes.

20 Q. And has CEI used growth retardants to
21 maintain trees?

22 A. I am not aware specifically of CEI
23 utilizing a tree growth regulator.

24 Q. Since 2009 hasn't CEI undertaken
25 monitoring, active monitoring of the Corrigan tree?

1 A. Yes.

2 Q. In fact, every two years you go out and
3 you take a look at that tree, correct?

4 A. Yes, that's correct.

5 Q. Now, when I say "you," I want to make
6 sure, is it you personally or somebody on behalf of
7 the company?

8 A. It's someone on behalf of the company.

9 Q. And they go out with the specific purpose
10 of checking to see how that tree is in connection
11 with the transmission lines, correct?

12 A. Yes. The purpose of the inspection is to
13 look at the tree and make sure that there is no
14 immediate concern with the tree growing into the
15 transmission line.

16 Q. Had there been immediate concern about
17 the trees affecting the transmission line, there
18 would be a process for you to seek some sort of
19 immediate action or at least attempt immediate
20 remedial action, correct?

21 A. Well, we would first have to reach out to
22 legal, the legal department, because there is
23 currently a Commission stay that we're not -- the
24 company is not permitted to remove the tree or take
25 any vegetation management action that would adversely

1 affect the tree.

2 Q. But that's not my question again. I'll
3 try it again.

4 Were you, on behalf of the company,
5 concerned that immediate action needed to be taken,
6 there is a protocol that you could seek to initiate
7 for such relief, is there not?

8 A. Yes.

9 Q. And you have had maintenance or
10 monitoring in 2009, correct?

11 A. Yes.

12 Q. 2011. Correct?

13 A. Yes.

14 Q. And 2013.

15 A. Yes.

16 Q. How many times did you seek immediate
17 remedial relief because of the condition of that
18 tree?

19 A. None of those times.

20 Q. CEI does a flyover on its transmission
21 lines, does it not?

22 A. Yes.

23 Q. So you get an aerial view of the lines
24 and trees and whatever other vegetation within the
25 corridor, correct?

1 A. Yes.

2 Q. And this is done how many times a year?

3 A. By the vegetation management group it's
4 done one time.

5 Q. I thought it was twice a year. Hold on.

6 A. One time by vegetation management and
7 twice a year by our transmission line maintenance --

8 MS. FLOYD: If we can make sure that
9 Ms. Spach has a chance to answer her question.

10 Q. So is it three times total or one
11 combined with the other?

12 A. They're not combined flights, they're
13 separate flights.

14 Q. So during the course of a year there are
15 three flyovers of the transmission lines. Is this by
16 helicopter?

17 MS. FLOYD: Objection. I think that
18 mischaracterizes the testimony.

19 Q. How many flights are there over the
20 transmission lines in the course of a year to your
21 knowledge?

22 THE WITNESS: I'm a little confused.
23 There was an objection. Should I answer the
24 question?

25 EXAMINER CHILES: You may answer the

1 question that was just posed to you.

2 A. What was your question again?

3 Q. In the course of a calendar year how many
4 flyovers are there over the transmission lines, I
5 don't care by what group, division, department?

6 A. There is at least two to three.

7 Q. Two by the transmission and one by the
8 vegetation.

9 A. Yes.

10 Q. So since -- how many have taken place in
11 2013 to your knowledge?

12 A. To my knowledge there has been one
13 flyover.

14 Q. So three in 2009, three in 2010, '11,
15 '12, so that's four times three is 12 and one is 13.
16 So we've got 13 flights over the transmission line on
17 the Corrigan property, correct?

18 A. That's correct.

19 Q. How many times has there been reported
20 that the Corrigan tree constitutes an immediate
21 hazard to a transmission line?

22 A. The purpose of our flights are to look at
23 the conditions of the vegetation along the corridor
24 as well as any vegetation that does not meet our
25 current vegetation management plan or policy.

1 So therefore, those flights are conducted
2 as well as the every-two-year inspection on the
3 ground, as you mentioned.

4 Q. Let's try again.

5 The purpose of the flights is to observe
6 from the air what might not be visible from the
7 ground or recognizable from the ground, correct?
8 Among other reasons.

9 A. The purpose of the flight is to look for
10 all vegetation conditions that could just look at
11 basically all vegetation conditions.

12 Q. And these are trained observers.

13 A. Yes.

14 Q. And if they observe something that they
15 would -- that would cause them to believe there's an
16 immediate hazard to a transmission line, they would
17 report it.

18 A. Yes.

19 Q. And that would include the flyover of 13
20 times over the Corrigan property, correct?

21 A. Yes.

22 Q. Of the 13 times how many times has there
23 been reported some immediacy for remedial action
24 involving the Corrigan tree and your transmission
25 lines?

1 MS. FLOYD: Objection. This has been
2 asked and answered.

3 EXAMINER CHILES: I don't believe the
4 witness has actually answered that direct question so
5 I'm going to overrule the objection at this point.

6 A. None.

7 Q. All right. Were such to take place,
8 there are -- there is a protocol to try to remedy any
9 perceived issue involving the Corrigan tree and the
10 transmission line, correct?

11 A. Yes.

12 Q. Now, are you familiar with the injunction
13 that was issued by the Common Pleas Court in 2004?

14 A. Yes.

15 Q. Is it fair to say that the Common Pleas
16 Court prohibited CEI from cutting down the Corrigan
17 tree?

18 A. Yes.

19 Q. Did the Common Pleas Court ever prohibit
20 CEI from performing maintenance service on the tree?

21 A. I don't know the answer to that. I've
22 not looked at that.

23 Q. All right. Did CEI ever volunteer to
24 come out to the Corrigan property and bring the
25 competent people that they hired in the past to take

1 care of this tree -- to take care of this tree?

2 Since 2003.

3 A. CEI, since 2003, since that tree was last
4 pruned, has looked at that tree on a routine basis to
5 assure that it doesn't pose an immediate threat due
6 to the fact that this has been a legal proceeding
7 since that timeframe.

8 Q. Let's try and answer the question again.

9 MS. FLOYD: Objection.

10 Q. That was not --

11 MS. FLOYD: My objection is that
12 Mr. Potash is making extraneous comments. Should be
13 a question to the witness. He's not testifying here.

14 EXAMINER CHILES: Mr. Potash, we're all
15 going to talk one at a time. You may ask your full
16 question and then you may object and then you may
17 respond to it.

18 MS. FLOYD: My objection is that for the
19 clarity of the record it needs to be a question and
20 then an answer. And he's making extraneous comments,
21 he's been doing this, he's argumentative, he's trying
22 to bully the witness.

23 MR. POTASH: The witness did not answer
24 the question. She has a tendency of saying what she
25 wants to say but not answering the question directly

1 and I'm just trying to get her back on the question.

2 I didn't ask about anything else other
3 than did she seek to have the competent contractors
4 who used to maintain the tree before 2003 come out to
5 try to maintain the tree after 2003, notwithstanding
6 the injunction against cutting it down. That's what
7 I asked.

8 MS. FLOYD: May I respond?

9 EXAMINER CHILES: Sure.

10 MS. FLOYD: That question didn't elicit a
11 yes or no answer, so it allows for Ms. Spach to give
12 a full answer.

13 MR. POTASH: It was a yes or no question
14 but I'll rephrase it to be very yes or no specific.

15 EXAMINER CHILES: If you could rephrase
16 your question without extraneous comments, I think
17 that would be helpful in helping us get through this.

18 MR. POTASH: I want to get through this
19 as well.

20 EXAMINER CHILES: Thank you.

21 Q. (By Mr. Potash) Since 2003, since the
22 last trimming that you had mentioned, had CEI offered
23 to send its competent contractors onto the Corrigan
24 property to maintain the Corrigan tree?

25 A. Although we have not sent a contractor to

1 trim the tree --

2 Q. That was a yes or no.

3 EXAMINER CHILES: The witness does not
4 need to answer your question yes or no if she feels
5 that she needs to provide a fuller answer.

6 MR. POTASH: Okay.

7 A. Although we have not sent a contractor to
8 trim the tree, we have, as we've discussed, sent a
9 helicopter to review the corridor which reviews the
10 Corrigan tree as we -- as we put the tree on a
11 mitigation inspection to look at the tree on a
12 routine basis to determine if conditions had changed
13 such that we needed to take immediate action.

14 The program requires that that tree be
15 removed. It's incompatible, it's on the easement,
16 it's taller than the transmission line. We're
17 concerned about the state of decline, and it poses a
18 threat to the transmission line.

19 So we were proactive in keeping an eye on
20 it. It's the only incompatible tree left on that
21 corridor since we've maintained it.

22 Q. Having said all that, would it be fair to
23 say that CEI has not sent anybody out to do
24 maintenance work on the Corrigan tree since 2003?
25 Period?

1 A. We have not sent anyone out to maintain
2 the tree.

3 Q. Thank you.

4 I want to talk about incompatible
5 vegetation. Had you read the easement at all?

6 A. Yes, I have.

7 Q. Can you tell me where in the easement are
8 the terms -- is the term "incompatible vegetation"?

9 A. If may I refer to the easement in my
10 testimony?

11 Q. I just want to know those two words,
12 "incompatible vegetation." Where on the easement is
13 it located?

14 MS. FLOYD: Objection. She had a fair
15 question --

16 MR. POTASH: She asked me a question. I
17 said no.

18 EXAMINER CHILES: I'm sorry, could you
19 please state your objection?

20 MS. FLOYD: My objection is I think
21 Ms. Spach had a fair question and if she has her
22 testimony in front of her that she may refer to a
23 document that he's referencing.

24 EXAMINER CHILES: Mr. Potash, are you
25 referring to a specific document?

1 MR. POTASH: The easement.

2 EXAMINER CHILES: Would you be willing to
3 show that document to the witness to answer your
4 specific question?

5 MR. POTASH: Yeah. It's part of her
6 testimony but I want her to refer to the document,
7 that's all.

8 Q. If you take a look, if you have your
9 statement before you?

10 A. I do. I was asking to look at the
11 easement.

12 Q. Yeah, the easement. I don't have any
13 problem with you looking at the easement. I
14 encourage you to.

15 EXAMINER CHILES: If you have a specific
16 page reference, that would be helpful for everyone.

17 MR. POTASH: It's unnumbered. There's
18 attachment RS3.

19 EXAMINER CHILES: Thank you.

20 MR. POTASH: Yeah.

21 A. Well, your -- I believe your question was
22 is the word "incompatible" in the easement.

23 Q. "Incompatible vegetation," that phrase.

24 A. That specific phrase is not in the
25 easement language.

1 Q. Okay.

2 MS. FLOYD: Excuse me.

3 Ms. Spach, were you done with your
4 answer?

5 A. However --

6 MR. POTASH: "However." I can go on to
7 the next question.

8 EXAMINER CHILES: I want the witness to
9 provide a full answer. I'm going to give a certain
10 amount of leeway.

11 You may continue with your answer.

12 A. However, the easement language states
13 that with the full authority to cut and remove any
14 trees, shrubs, or other obstructions which may
15 interfere or threaten to interfere with the
16 construction, operation, maintenance of said
17 transmission lines.

18 Our company's plan and policy's
19 definition of "incompatible vegetation" is any tree
20 that or vegetation that will grow to such height that
21 may interfere or threaten to interfere.

22 Q. When did that company policy come into
23 effect?

24 A. As I mentioned earlier in my testimony,
25 since I've been with the company tree removal has

1 been in the company's policy.

2 Q. Was that the company policy before you
3 came there, to your knowledge?

4 A. I don't have any knowledge of that.

5 Q. In fact, "incompatible vegetation" is a
6 company created term, is it not?

7 A. It's a company and industry term.

8 Q. But CEI imposed its definition of
9 "incompatible vegetation" for purposes of its
10 vegetation management policy only, correct?

11 A. Yes.

12 Q. CEI's definition of "incompatible
13 vegetation" may not be the definition of
14 "incompatible vegetation" for somebody else, correct?

15 A. That could be correct. It depends on the
16 objectives of the vegetation and whatever it is that
17 you're trying to manage.

18 Q. Reasonable people could disagree as to
19 what is compatible or incompatible, correct?

20 A. People disagree, yes.

21 Q. By the way, were you involved at all when
22 the Corrigan's put up their objection to having CEI
23 cut down the tree? Did you have any involvement at
24 that time?

25 A. I was not involved at that time. Other

1 than, as I explained earlier, corporate support for
2 our operating companies.

3 Q. In preparing for our hearing today --

4 MR. POTASH: And I'm sorry, I don't have
5 copies but this is part of documents that were
6 supplied to me by CEI that are exhibits. I don't
7 know if they sent it to you.

8 EXAMINER CHILES: Would you show those to
9 us?

10 MR. POTASH: This is all I have but I'll
11 be happy, CEI, I'll leave off the leading zeros, 65
12 and 67.

13 MS. FLOYD: Objection. May I also see?

14 EXMINER TAUBER: Yes.

15 MR. POTASH: Everybody okay?

16 EXMINER TAUBER: The Bench is.

17 Q. Ma'am, I'm going to hand you two items,
18 I'll mark them for identification as Corrigan
19 Exhibit 6 and 5. 5 and 6. I'll state that Exhibit 5
20 corresponds to a number that was provided to me by
21 utility CEI 65, and Exhibit 6 corresponds to the
22 document provided by the utility CEI 67.

23 EXMINER TAUBER: I think we are 6 and 7.

24 EXAMINER CHILES: We are marking pages
25 from the July 14, 2004, transcript, so it needs to be

1 6 and 7.

2 MR. POTASH: I'm flexible. So 6 remains
3 page 67, 7 is page 65.

4 EXMINER TAUBER: 7 is page 65?

5 MR. POTASH: And 6 is page 67.

6 (EXHIBITS MARKED FOR IDENTIFICATION.)

7 MS. FLOYD: Your Honor, may I approach
8 too? I haven't been provided a copy so I would just
9 like to look over.

10 EXAMINER CHILES: Yes.

11 MS. FLOYD: Thank you.

12 Q. (By Mr. Potash) The first question I'm
13 going to ask you is, have you seen these documents
14 before?

15 A. Yes, I have.

16 Q. And you've seen both of them.

17 A. Yes, I have.

18 Q. And you're aware of what those documents
19 represent.

20 A. Yes, I do.

21 Q. And these are documents that reflect the
22 fact that the Corrigan's, before July 1, contested
23 CEI's plan to remove their tree.

24 A. Yes.

25 Q. And they contested it by telephone?

1 A. Yes.

2 Q. Mrs. Corrigan called to say she doesn't
3 want the tree out and you wrote down that the tree
4 was to be removed and there's a big "no" on it,
5 right?

6 MS. FLOYD: Objection. For the clarity
7 of the record, he's pointing to two different things
8 and it's not clear.

9 EXAMINER CHILES: Could you please
10 clarify?

11 MR. POTASH: I will do that. I'm sorry.

12 Q. On Exhibit 7 it's dated June 23, 2004,
13 and it reflects a telephone call from Mrs. Corrigan
14 saying she doesn't want the tree cut down.

15 A. Yes.

16 Q. She wants somebody to contact her.

17 A. Yes.

18 Q. Who contacted her?

19 A. According to your Exhibit 6, Jennifer
20 Brurick contacted her.

21 Q. Same Jennifer that wrote the letter on
22 July 1?

23 A. Yes.

24 Q. That said we're cutting down your tree.

25 A. Yes.

1 Q. And then on Exhibit 6, this is a
2 Forestry Work Refusal Form, is it not?

3 A. Yes, it is.

4 Q. And it's dated June 23, 2004?

5 A. Yes, it is.

6 Q. And it indicates although there was a
7 plan to remove the tree on July 11, there's a big
8 "no" with an exclamation mark.

9 A. That's correct.

10 Q. And then it talks about the TRO, the
11 temporary restraining order that issued.

12 A. Yes.

13 Q. Okay. The vegetation management policy
14 that CEI implemented, is the specifics what
15 designates incompatible vegetation, is that found
16 anywhere in the regulations issued by the Public
17 Utilities Commission of Ohio?

18 A. I'm not familiar with all the Commission
19 regulations, so I can't answer that question.

20 Q. To your knowledge does the Public
21 Utilities Commission of Ohio plan state how far away
22 a tree should be from a transmission line? To your
23 knowledge. I'm talking about the specifics.

24 A. To my knowledge the PUCO mandates that
25 the company has a vegetation management plan which

1 then contains that type of information.

2 Q. And this is supervised by the PUCO as to
3 its reasonableness if questioned.

4 Let me rephrase it.

5 Does the PUCO, to your knowledge, have
6 the authority to say that what you classify as
7 incompatible vegetation that must be removed may not
8 be incompatible and need not be removed? Does the
9 PUCO have that authority to your knowledge?

10 MS. FLOYD: Objection. This is beyond
11 the scope of Ms. Spach. She's not here as an
12 attorney. That's beyond the scope.

13 EXAMINER CHILES: Mr. Potash?

14 MR. POTASH: Just asking if she's the
15 company representative, there's nobody else I can
16 ask. She can either say "yes, it does," "no, it
17 doesn't," or "I don't know."

18 EXAMINER CHILES: With the notation that
19 the witness is not an attorney -- you're not an
20 attorney, correct?

21 THE WITNESS: I'm not.

22 EXAMINER CHILES: The witness can answer
23 the question to which we're not going to hold her to
24 the matter.

25 (Record read.)

1 A. I don't know.

2 Q. (By Mr. Potash) That's fair.

3 I'm going to hand you what has been
4 marked for identification purposes as Corrigan
5 Exhibits 8 and 9.

6 (EXHIBITS MARKED FOR IDENTIFICATION.)

7 Q. Before I ask you about what these are,
8 I'm asking you if you have ever seen --

9 EXAMINER CHILES: Mr. Potash, can you
10 identify which is --

11 MR. POTASH: 8 is the one that has the
12 caption "Tree Service," 9 is taken from, well, you
13 can see where it's taken from but it says
14 "Professional Tree Service."

15 EXAMINER CHILES: Thank you.

16 MR. POTASH: I'm sorry. Again, I forget
17 and I get ahead of myself and I apologize.

18 Q. (By Mr. Potash) Having observed Exhibits
19 8 and 9, do you recognize what those are?

20 A. I recognize these are from FirstEnergy's
21 website; however, I have not seen these in any recent
22 time.

23 Q. But at least you can verify that these
24 are FirstEnergy publications, whether it's on a
25 brochure or through the Internet, whatever.

1 A. Yes.

2 Q. And although you have not -- you may not
3 have previously seen it, from your observation it
4 involves tree services provided by FirstEnergy to its
5 customers.

6 A. Yes.

7 Q. And, in fact, on Exhibit 9, when they
8 talk about professional tree services, FirstEnergy
9 talks about the fact "We all enjoy the trees that
10 make our homes more attractive. Not only do they
11 provide beauty and shade, but they increase the value
12 of our property and neighborhoods."

13 MS. FLOYD: Objection.

14 Q. Is it not what FirstEnergy wrote?

15 EXAMINER CHILES: There's a pending
16 objection.

17 Basis?

18 MS. FLOYD: Objection this is lack of
19 foundation; this is also hearsay.

20 EXAMINER CHILES: Mr. Potash?

21 MR. POTASH: How can this be hearsay,
22 this is the parties' own statement?

23 EXAMINER CHILES: I'm going to allow the
24 question at this point.

25 Q. Is that not what FirstEnergy promotes?

1 A. Yes, those are the words on the paper
2 there.

3 Q. Does FirstEnergy still offer professional
4 tree services?

5 A. I'm not involved in this part in the
6 company so I don't know.

7 Q. That's fair.

8 MR. POTASH: I need a minute. I'm sorry.

9 EXAMINER CHILES: Take your time.

10 Q. The removal of a tree on an easement is
11 not an absolute but a judgment call.

12 A. Based on our plan and our policy, the
13 "absolute" part of it is that depends on the tree
14 species and the easement that the rights the company
15 has.

16 Q. But it's a judgment call, is it not?

17 A. It's not a judgment call; it's dependent
18 upon the tree species that exists on that easement.

19 Q. I'm going to again refer to Mr. Western's
20 testimony, July of 2004, page 82. Starting with line
21 18. Actually line 19.

22 And do you agree with Mr. Western when he
23 indicated "So vegetation that might be incompatible
24 in one location could be compatible in another
25 location. Again, it's back to the species of the

1 tree, location of the tree, and the electrical
2 facilities that are there."

3 "Judgment call?"

4 "Yes."

5 Do you agree with him?

6 MS. FLOYD: Objection. This is hearsay
7 on hearsay. This is a transcript that Mr. Potash is
8 trying to read into evidence. He has not established
9 what he needs to to read this transcript into
10 evidence. This witness is not unavailable, as would
11 be required to do this.

12 EXAMINER CHILES: Consistent with -- your
13 objection's noted for the record, but consistent with
14 our prior ruling, your objection is overruled.

15 Q. Do you agree with Mr. Western where he
16 said that it's a judgment call as to the removal of a
17 tree?

18 A. I agree that --

19 Q. You got to speak up.

20 A. I agree with his statement that it's
21 dependent on the species of the tree, the location of
22 the tree, the electrical facilities that are there.

23 Q. And before 2003 the judgment call was
24 that the tree was compatible with the utility line.

25 A. I disagree with that.

1 Q. Okay. Did the tree change in any
2 material or noticeable respect from December --
3 December 31, 2002, to January 1, 2003?

4 A. The first time that I was on the
5 right-of-way was 2009. So I can only observe when I
6 was there.

7 Q. Do you have any --

8 MS. FLOYD: Objection. Ms. Spach, were
9 you done with your answer?

10 THE WITNESS: I was done.

11 MR. POTASH: That's all right, I've done
12 it before so there's no problem.

13 MS. FLOYD: Ms. Spach was -- I'm sorry,
14 Ms. Spach, were you done your answer? You did say
15 yes? Okay?

16 MR. POTASH: We all clear? All good?

17 Q. In preparation for your testimony today,
18 did you look and observe -- forget "look" -- did you
19 observe any materials that reflected material change
20 in the tree's condition from December 31, 2002, to
21 January 1, 2003?

22 MS. FLOYD: Objection, asked and
23 answered.

24 EXAMINER CHILES: I'm going to allow the
25 question.

1 A. I'm sorry, can you ask your question
2 again?

3 Q. I'm asking in preparation for your
4 testimony today you said you looked at stuff. I
5 don't know what you looked at. But you looked at
6 stuff. The stuff that you looked at, did it indicate
7 that the Corrigan tree changed in some observable or
8 material manner from December 31, 2002, to January 1,
9 2003?

10 A. What I observed really were the documents
11 that you showed me as exhibits. So the fact that the
12 tree was trimmed and the fact that we sought to
13 remove it, those were really the documents that I
14 observed as to the extent of what I saw.

15 Q. So the answer is no, you did not observe
16 anything that showed a material manifestation of
17 change of the tree over that one-day period.

18 A. I can't really answer that question based
19 on what I looked at.

20 Q. Okay. When did you first start with
21 FirstEnergy?

22 A. Started with FirstEnergy Service Company
23 in 1998.

24 Q. Whatever the date was in 1998 till the
25 time you first observed the tree in 1999, were you

1 provided with any information to show that that tree
2 had changed in any material respect?

3 A. I didn't observe the tree until 2009.

4 Q. All right. When did you first become
5 involved with the tree, period? Not observing it.
6 When did you first become involved with the tree?

7 A. As I mentioned in my prior testimony, in
8 2004, 2003-2004 timeframe I became aware of it
9 because The Illuminating Company was executing our
10 program.

11 Q. From the day you hired on to CEI to
12 2003-2004 did you observe any records demonstrating
13 material change in the tree itself?

14 MS. FLOYD: Objection. That's assuming
15 facts that are not in the record. She's not
16 testified that she had worked for CEI.

17 EXAMINER CHILES: Could you read the
18 question back, please?

19 (Record read.)

20 EXAMINER CHILES: I'll allow the
21 question. If the witness needs to distinguish
22 anything in her answer, she may do that.

23 A. I don't work for The Illuminating
24 Company. I know it's confusing. So 2003 and 2004 I
25 worked for FirstEnergy Service Company. In my role I

1 was in a corporate role providing support to The
2 Illuminating Company responsible for writing the
3 policies and the plans, the operating company which
4 is The Illuminating Company execute those plans.

5 So to do that work they had all those
6 records, they did all of that work. I wasn't
7 directly involved in that. So to answer the
8 question, I've not seen any documents to that effect.
9 I wasn't in a role to do so.

10 Q. Fine. Since 2009 to the present has that
11 tree changed in any material respect?

12 A. Yes.

13 Q. How has that tree changed? I'm not
14 talking about it grew an inch. Material,
15 substantive, how has that tree changed?

16 A. Since 2009 the tree has grown, the tree
17 continues to decay and decline. And it's condition
18 has changed.

19 Q. Are you familiar with the Forest City
20 Tree Protection Company?

21 A. Yes.

22 Q. Are you familiar with Mr. Lauren
23 Lanphear?

24 A. I've met Lauren before, yes.

25 Q. Has CEI -- who hires him; CEI or

1 FirstEnergy, the contractors?

2 A. I guess both, depending on what timeframe
3 you're talking.

4 Q. How about current?

5 A. So currently FirstEnergy Service Company
6 hires the contractors to do the transmission
7 vegetation management work.

8 Q. How are you familiar with Mr. Lanphear?

9 A. Through the industry.

10 Q. He's an arborist?

11 A. He's an arborist.

12 Q. Of some notoriety to your knowledge?

13 A. I've attended certified arborist
14 conferences and he's been in the same attendance.

15 Q. He does not contract with CEI to your
16 knowledge, does he? If you don't know.

17 A. I don't know.

18 Q. Do you know whether he's, like, held any
19 position in any of these international arborist
20 societies?

21 A. I don't know.

22 MS. FLOYD: Objection. There's no
23 relevance for what Ms. Spach knows about Lauren
24 Lanphear.

25 EXAMINER CHILES: Mr. Potash, will you --

1 MR. POTASH: I'll move on.

2 EXAMINER CHILES: Thank you.

3 Q. Is it fair to say that FirstEnergy, or
4 the operating companies before they became
5 FirstEnergy, had a maintenance program of four or
6 five years where they would go out and take care of
7 the trees on the easements? To your knowledge.

8 A. Yes. The cycle has been five years.

9 Q. And then FirstEnergy decided they did not
10 want to continue that cycle of maintenance; is that
11 correct?

12 A. No, that's not correct.

13 Q. Do you still continue the five years
14 cycle of maintenance?

15 A. Yes.

16 Q. Is there a reason -- never mind.

17 The current vegetation management plan
18 was developed in the year 2000?

19 A. The original plan was developed in 2000,
20 yes.

21 Q. Has that plan changed in any material
22 respect to today?

23 A. What plan are you specifically referring
24 to?

25 Q. The vegetation management plan, VMP.

1 A. So the company has a plan that is filed
2 with the Public Utilities Commission and the most
3 current filing of that was in 2010. The company also
4 has a contractor's specification as well.

5 Q. All I asked is the plan that you filed in
6 2010, does it vary materially from the plan that was
7 filed in 2000?

8 A. No.

9 Q. So for the sake of the next question we
10 can accept the fact that the plan in 2000 and the
11 plan in 2010 are comparable.

12 A. Yes.

13 Q. So the vegetation management plan and the
14 tree removal and the enforcement of the easement
15 occurred three years before the blackout. Do you
16 know what I mean by the "blackout"? I don't want
17 anybody to be confused.

18 A. I do. Can you repeat your question?

19 Q. The vegetation management plan of 2000
20 was implemented three years before the great blackout
21 of August 2003.

22 A. Yes.

23 Q. The great blackout had nothing to do with
24 the implementation of the vegetation management plan
25 that called for the removal of trees in easements.

1 MS. FLOYD: Objection. This is calling
2 for facts that are not in evidence.
3 Mischaracterizing testimony, and he's referring to
4 terms that have not been spoken to.

5 EXAMINER CHILES: What terms?

6 MS. FLOYD: And on top of that is the
7 scope of her testimony.

8 EXAMINER CHILES: What specific terms?

9 MS. FLOYD: He's talking about the --
10 referring to "the great blackout."

11 EXAMINER CHILES: Right.

12 MS. FLOYD: I'm not quite sure that
13 he's -- I'm not agreeing with how he classifies it,
14 but what I'm saying is this is beyond the scope of
15 Ms. Spach's testimony. And if Mr. Potash wants to
16 ask questions about the industry standards and how
17 things have changed since the 2003 blackout, we have
18 a witness who he can ask those questions to.
19 Ms. Spach is our company witness and she's speaking
20 about the company's vegetation management policies.

21 EXAMINER CHILES: I believe the witness
22 testified that she was familiar with the great
23 blackout.

24 Is that correct?

25 THE WITNESS: Yes.

1 EXAMINER CHILES: I'm going to allow the
2 questioning at this point, but I feel like you might
3 be veering beyond the scope of the testimony.

4 MR. POTASH: I'm not asking her about the
5 cause, I'm not asking about remedies, I'm putting in
6 time perspective because I anticipate you're going to
7 hear some testimony as to why certain things were
8 done as a result of the great blackout.

9 EXAMINER CHILES: If you can keep your
10 questions limited to the scope of her testimony, that
11 would be very helpful.

12 MR. POTASH: I will do so. I want to be
13 helpful.

14 Q. (By Mr. Potash) Did you understand the
15 question I asked you?

16 A. No, I didn't.

17 Q. Then I'll rephrase it.

18 We are in agreement as to whether -- when
19 I refer to "the great blackout," we're talking about
20 the blackout that occurred along the Eastern Seaboard
21 and United States and parts of Canada in August of
22 2003.

23 A. Yes.

24 Q. You're familiar with that.

25 A. Yes.

1 Q. I didn't say you caused it, I'm just
2 asking about familiarity. You're aware of that.

3 A. Yes, I am.

4 Q. The vegetation management plan that we
5 spoke of of 2000 was implemented a full three years
6 before this blackout of August 2003. Makes sense,
7 doesn't it?

8 A. It existed before 2003, yes.

9 Q. The great blackout had nothing to do with
10 the implementation of the vegetation management plan
11 of 2000 that called for removal of trees within the
12 easement. Could not have had anything to do with it
13 since it occurred a full three years before the
14 blackout, correct?

15 MS. FLOYD: Objection. There's multiple
16 parts to that question. If Mr. Potash could break it
17 down.

18 MR. POTASH: If the witness doesn't
19 understand the question, she is fully capable of
20 saying "I don't understand it."

21 EXAMINER CHILES: Overruled at this
22 point. If the witness has questions about the
23 question, she can ask for clarification.

24 A. Okay.

25 Q. Do you need me to repeat it?

1 A. No. The company has a vegetation
2 management plan prior to the blackout and after the
3 blackout, it's the same plan.

4 Now, to the extent that the company
5 executed that plan, the plan you asked me earlier,
6 material is the same in that plan incompatible
7 vegetation is to be removed. And after the blackout
8 the company fully executed easement rights and
9 removed incompatible vegetation more aggressively
10 than it had done so beforehand because we worked with
11 customers prior to that and at times we did do
12 pruning, which is a less effective method of assuring
13 that we have safe and reliable transmission power.

14 Q. You raised a variety -- I was almost done
15 but you raised a variety.

16 First of all, "less effective" meaning if
17 you remove a tree, you don't have to prune it,
18 correct?

19 A. If you remove a tree, you do not have to
20 prune it --

21 Q. And you do not have to apply growth
22 retardants, correct?

23 A. Our company currently doesn't use growth
24 retardants.

25 Q. Did the company use growth retardants?

1 A. Not on transmission that I'm aware of.

2 Q. Are growth retardants an accepted
3 practice in controlling tree growth?

4 MS. FLOYD: Objection. It's been asked
5 and answered.

6 MR. POTASH: Tell me what the answer was
7 and I'll move on.

8 EXAMINER CHILES: I'm going to overrule.
9 I don't recall hearing this question before.

10 You may answer the question.

11 A. They're a method of slowing down the tree
12 growth.

13 Q. And if you remove a tree, you do not have
14 to pay people to prune or apply growth retardants,
15 correct?

16 A. Vegetation still exists, we're still
17 going to be performing vegetation management.

18 Q. And before we talked about Mr. Western
19 saying that the implementation of the vegetation
20 policy in 2000 was in earnest for tree removal within
21 the easements. Do you remember that portion of the
22 testimony?

23 A. Yes.

24 Q. The blackout had nothing to do with
25 increased vigilance by the utility in monitoring its

1 vegetation within the easement.

2 MS. FLOYD: Objection, outside the scope
3 of Ms. Spach's testimony. Mr. Potash is going into
4 the causes or going into things about the blackout
5 that are not part of Ms. Spach's testimony.

6 EXAMINER CHILES: Mr. Potash?

7 MR. POTASH: The issue here is whether in
8 the terms of the easement there's interference or may
9 threaten to interfere. If there could not have been
10 interference and if there could not have threatened
11 to interfere before a certain date, and they
12 implement the policy because they say so, that
13 doesn't necessarily mean that all of a sudden what
14 was a healthy tree living in harmony with the lines
15 is no longer a healthy tree living as a terrorist to
16 the lines.

17 EXAMINER CHILES: I'm going to allow the
18 question at this point but you're getting very close
19 to going beyond the scope of Ms. Spach's testimony.

20 MS. FLOYD: Can I have that question
21 reread?

22 EXAMINER CHILES: Please.

23 (Record read.)

24 A. The blackout did cause utilities, ours
25 and the industry, to change and remove trees in the

1 easement.

2 Q. (By Mr. Potash) But you were aggressive
3 before the blackout, correct?

4 A. Within our plan --

5 Q. The plan --

6 MS. FLOYD: Objection. She's not
7 finished her answer.

8 MR. POTASH: I thought she paused.

9 EXAMINER CHILES: All right, Ms. Spach,
10 go ahead.

11 A. In the 2000s we began to remove trees
12 more on transmission rights-of-way. And when the
13 blackout occurred, mandatory enforceable regulations
14 came into force and our company reacted, as the
15 industry did, and even more aggressively began to
16 enforce easement rights removing incompatible
17 vegetation.

18 Q. Do you know whether those mandatory
19 regulatory enforcement policies applied to
20 transmission lines under 200 kV?

21 A. They only applied if those facilities are
22 deemed critical.

23 Q. Okay. How many -- again, in all the
24 stuff that you looked at in preparation for here, and
25 the danger that you've talked about the Corrigan tree

1 possessing, vis-à-vis the transmission line, how many
2 power outages has that tree caused?

3 MS. FLOYD: Objection. Beyond the scope
4 of Ms. Spach's testimony.

5 EXAMINER CHILES: Mr. Potash?

6 MR. POTASH: If she doesn't know, she's
7 the company representative. I don't have anybody
8 else. This is who they brought. I ask -- I'm not
9 interrupting you, please.

10 She either knows whether there are power
11 outages based on the tree. I didn't ask for any
12 other reason. I didn't ask if it was a line that
13 fell down, I didn't care if it was a hurricane, all I
14 wanted to know is how many power outages, based on
15 her review of all the records coming here for her
16 testimony today, how many outages were caused by the
17 Corrigan tree.

18 EXAMINER CHILES: Thank you.

19 Ms. Floyd.

20 MS. FLOYD: Mr. Potash had an opportunity
21 to examine our company representative that could
22 speak to transmission lines and the engineering and
23 transmission lines. It's outside the scope of
24 Ms. Spach's testimony.

25 EXAMINER CHILES: I'm going to allow the

1 question. The witness may answer with respect to
2 whether she holds an opinion or knowledge on the
3 subject.

4 A. I'm not aware that the Corrigan tree has
5 caused any power outage to date. That's the reason
6 why we have a vegetation management program, so we
7 don't have transmission power line outages.

8 Q. (By Mr. Potash) Last question:
9 Vegetation management is not equated with vegetation
10 removal, is it?

11 A. Vegetation management has various methods
12 of control.

13 MR. POTASH: Thank you.

14 EXAMINER CHILES: Thank you.

15 Redirect, Ms. Floyd?

16 MS. FLOYD: If we may take a sort break,
17 please?

18 EXAMINER CHILES: How much time do you
19 need?

20 MS. FLOYD: About five minutes.

21 EXAMINER CHILES: Let's take a
22 five-minute recess.

23 (Recess taken.).

24 EXAMINER CHILES: Ms. Floyd, are you
25 ready to proceed? I believe we were at redirect.

1 MS. FLOYD: Your Honor, I have no
2 redirect.

3 EXAMINER CHILES: I have no questions, so
4 thank you very much. You are excused.

5 Ms. Floyd, exhibits?

6 MS. FLOYD: I move for admission of
7 Company Exhibit 6 and the attachments.

8 EXAMINER CHILES: Are there any
9 objections to Company Exhibit 6 and the attachments?

10 MR. POTASH: No. I'm good.

11 EXAMINER CHILES: Hearing none, Exhibit 6
12 will be admitted.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 EXAMINER CHILES: Mr. Potash, actually,
15 I'm sorry, the Bench has marked as Corrigan
16 Exhibit 5, pages 78, 60, and 82 from the July 14,
17 2004, transcript. Any objections to the admission of
18 that piece of evidence will be taken at this time.

19 MS. FLOYD: No objection.

20 EXAMINER CHILES: All right, Corrigan
21 Exhibit 5 will be admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 EXAMINER CHILES: Mr. Potash, Corrigan
24 Exhibits 6 through 9?

25 MR. POTASH: I would move for their

1 admission as well.

2 EXAMINER CHILES: Is there any objection
3 to Corrigan Exhibits 6, 7, 8, and 9?

4 MS. FLOYD: Yes, your Honor, there are
5 objections to 8 and 9. These documents are hearsay.
6 Ms. Spach testified that she was not familiar with
7 the documents. Mr. Potash has not laid a foundation
8 to show that these documents have anything to do with
9 CEI. On the face of these documents it indicates
10 that they are not CEI documents. And they have, on
11 top of that, no relevance to this action.

12 EXAMINER CHILES: Mr. Potash?

13 MR. POTASH: If that's the case, I move
14 to strike the testimony of the prior witness. She is
15 not CEI.

16 EXAMINER CHILES: First taking Corrigan
17 Exhibit 6 and 7, there was no objection to those
18 exhibits. They will be admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 EXAMINER CHILES: The Bench finds that
21 Corrigan Exhibits 8 and 9 will be admitted. They
22 will be helpful for the Commission. The Commission
23 is capable of affording them the weight to which they
24 are entitled.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1 EXAMINER CHILES: Mr. Potash, you want to
2 make a motion to strike?

3 MR. POTASH: I did, but sometimes
4 recognizing the futility of certain acts, so I will
5 not make that motion.

6 EXAMINER CHILES: Thank you very much.

7 MR. POTASH: Based on the admission of
8 those other exhibits.

9 EXAMINER CHILES: Thank you.

10 EXMINER TAUBER: The next witness,
11 Ms. Dunn?

12 MS. DUNN: The company will call
13 Mr. Robert J. Laverne.

14 EXMINER TAUBER: Please raise your right
15 hand.

16 (Witness sworn.)

17 EXMINER TAUBER: Thank you.

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

19 EXMINER TAUBER: You may.

20 MS. DUNN: I'd like to mark the direct
21 testimony of Robert J. Laverne as Company Exhibit 7.

22 EXMINER TAUBER: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

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ROBERT J. LAVERNE

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

DIRECT EXAMINATION

By Ms. Dunn:

Q. Mr. Laverne, I've handed you Company
Exhibit 7. What is that document?

A. It is the direct testimony of myself on
behalf of The Cleveland Electric Illuminating
Company.

Q. And I did forget to ask you this: Could
you introduce yourself to the Attorney Examiners,
please?

A. My name is Robert James Laverne and I'm
the manager of education and training for the Davey
Tree Expert Company.

Q. Was that testimony prepared by you or
under your direction?

A. Yes, it was.

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

A. I have one correction and one update.

Q. Okay. For the -- which would you like to
start with?

A. The correction.

1 Q. Okay. Could you please point out the
2 page number and the line number of the correction?

3 A. Yes. On page 3, on line 14, it states
4 that "I have visited 4520 Outlook Drive in Cleveland,
5 Ohio two times...." In reality I've been to the
6 property three times: Twice -- two times mentioned
7 in my testimony were this year; once in March, one in
8 May, and previous to that once in 2009.

9 Q. Okay. And the update, could you also do
10 the same thing, point the page and the line number?

11 A. Yes. On page 1, on line 18 it says "In
12 addition, I'm currently training to be an instructor
13 in the ISA Tree Risk Assessment Qualification
14 Program." The update is that I have completed the
15 ISA Tree Risk Qualification course and have signed a
16 contract with ISA to be an instructor in training.

17 Q. Other than those, the update and the
18 correction that you made today, if I asked you the
19 questions contained in Exhibit 7 today, would your
20 answers be the same?

21 A. They would.

22 MS. DUNN: Your Honor, the witness is
23 open for cross.

24 EXMINER TAUBER: Thank you.

25 Mr. Potash?

1 A. It was.

2 Q. Did you provide it to Ms. Spach?

3 A. I did.

4 Q. Is it part of your package that we have
5 here?

6 A. It is not.

7 Q. Were you ever -- I'm talking about you
8 personally, then we'll go to Davey Tree. Were you
9 ever personally responsible for care and maintenance
10 of trees for CEI, its sister companies, Ohio Edison,
11 Toledo Edison, I don't know all the names of them, or
12 FirstEnergy?

13 A. No.

14 Q. Have you ever done tree maintenance?

15 A. I indeed have done tree maintenance from
16 trees in my own yard to limited tree maintenance for
17 various clients.

18 Q. On behalf of Davey Tree had you ever
19 performed, on a professional basis, tree maintenance?

20 A. Yes.

21 Q. When was the last time?

22 A. I believe the last time I actually
23 performed hands-on tree maintenance would have been
24 in July of last year at Jefferson Barracks National
25 Cemetery.

1 Q. Now, frequently in the last ten years
2 have you personally hands-on done tree maintenance?

3 A. Professionally?

4 Q. Yes. I'm not asking you about your
5 house.

6 A. Sure.

7 Q. You value your trees, you want to keep
8 your trees, but that's not part of this case.

9 A. Yes.

10 Q. Professionally how often or frequently or
11 infrequently have you been involved in tree
12 maintenance in the last ten years?

13 A. May I include or should I include the
14 occasions on which it was part of a training event?

15 Q. Let's exclude training, then we'll go
16 training. For example, Davey Tree sends out somebody
17 to maintain a tree. How many times did you do that
18 in the last ten years?

19 A. Perhaps a dozen.

20 Q. And you were involved in training
21 exercises?

22 A. Yes.

23 Q. How often do you perform the training
24 exercises?

25 A. With respect to hands-on tree

1 maintenance?

2 Q. Yes. That's all I'm interested in.

3 A. Okay. During the month of February on an
4 annual basis probably on a daily basis. The rest of
5 the year on average two or three times a month.

6 Q. Now, you observed the silver maple tree
7 of the Corrigan's three occasions; twice this year and
8 once in 2009, correct?

9 A. Correct.

10 Q. Were you aware that Davey Tree Company
11 maintained the Corrigan's' tree during some period in
12 the past?

13 A. I became aware of that this morning when
14 Mrs. Corrigan mentioned it. Prior to that I had no
15 knowledge.

16 Q. To your knowledge was Davey Tree -- what
17 is the formal name so I don't --

18 A. The Davey Tree Expert Company.

19 Q. All right. To your knowledge were they
20 certified contractors for CEI and Ohio Edison, Toledo
21 Edison and the like?

22 A. To my knowledge Davey Tree Expert Company
23 has been a contractor to those companies as well as
24 dozens of other utility companies across North
25 America.

1 Q. So you're saying they know their
2 business.

3 A. Yes.

4 Q. As it comes to tree maintenance.

5 A. Yes.

6 Q. As it comes to vegetation maintenance.

7 A. Yes.

8 Q. As it comes to vegetation maintenance
9 involving utilities.

10 A. Yes.

11 Q. As it comes to vegetation maintenance
12 involving utilities as to may or may not constitute a
13 hazard to the utility or transmission line.

14 A. Not to be difficult, but to --

15 Q. That's my job.

16 A. -- to clarify terminology, just so that
17 the answer that I give is complete and it's
18 understood and we're all on the same page, in the
19 professional business of tree risk assessment we
20 refer to a "hazard" as a tree risk that exceeds a
21 threshold. And the threshold is set by those people
22 who either own the tree or are responsible for
23 managing the tree, similar to how society sets a
24 speed limit threshold.

25 So we might say that driving underneath

1 the threshold of 70 miles an hour on the Turnpike is
2 an acceptable risk, but exceeding the speed limit is
3 an unacceptable risk and therefore it is a hazard.

4 So I'm delving into this just to let you
5 know that when you ask me a question that includes
6 the word "hazard," I equate that with a risk that
7 exceeds a threshold and I'm not sure if that's really
8 what you're intending to ask.

9 Q. If somebody goes 75 miles an hour in a
10 70-mile-an-hour speed limit, that doesn't necessarily
11 mean that that person is a hazard.

12 A. Means they have exceeded the threshold
13 that society has set beyond which we deem as an
14 unacceptable hazard. Admittedly, in my definition,
15 which is framed by the industry that I am employed
16 in, when you say the word "hazard" to me, that's my
17 understanding. And my reason for going on about this
18 is so that I am better able to understand your
19 question and respond to it.

20 Q. I'm not going to use the word "hazard"
21 anymore. I'll try a different word then.

22 A. Okay.

23 Q. Do you have any involvement in
24 supervising those persons who may be tending to
25 utility vegetation maintenance within the utility

1 company's easement?

2 A. I do not.

3 Q. If I asked you this, I apologize. Had
4 you ever done any utility vegetation maintenance,
5 hands on?

6 A. No.

7 Q. Do you hold yourself out to be a utility
8 vegetation maintenance expert, vis-à-vis whatever
9 rules, regulations, statutory laws that are in
10 effect?

11 MS. DUNN: Objection. What statutes,
12 what regulation, what rules? If he's asking if he's
13 a utility arborist but asking vis-à-vis statutes,
14 rules, regulation, that's a compound, not-fair
15 question.

16 MR. POTASH: I'll start with the first
17 proffered and work my way up.

18 EXMINER TAUBER: Let's do that. Thank
19 you.

20 Q. Do you hold yourself out to be an expert
21 in utility vegetation management?

22 A. I'm a board certified master arborist
23 which requires a general knowledge of utility
24 education management. I am not specifically
25 certified as a utility line clearance arborist.

1 Q. Are you familiar, do you feel comfortable
2 talking about utility line clearances, utility line
3 vegetation -- just I'll start with the clearances.

4 Are you comfortable holding yourself out
5 as a utility line clearance expert?

6 A. No.

7 Q. Saves me a lot of questions.

8 Do you know Mr. Lanphear? Lauren
9 Lanphear?

10 MS. DUNN: Objection, your Honor,
11 relevance.

12 EXMINER TAUBER: I'll allow the question
13 first.

14 Q. Let me back up.

15 Do you know the Forest City Tree
16 Protection Company? Are you aware of it?

17 A. I am aware of it.

18 Q. Are you aware of Mr. Lanphear from the
19 Forest City Tree Protection Company?

20 A. I met Mr. Lanphear on several occasions.

21 MS. DUNN: Would you like me to continue
22 to object or what do you want me to do? I object to
23 this whole line of questions.

24 EXMINER TAUBER: State your objection.

25 MS. DUNN: There is no relevance to the

1 case about who Mr. Lanphear is or whether
2 Mr. Lanphear is an arborist. He has not presented
3 testimony from Mr. Lanphear.

4 Mr. Lanphear's qualifications have not
5 even been an issue in this case because he has not
6 presented any expert testimony on that, therefore
7 whether or not Mr. Laverne does or does not know
8 Mr. Lanphear or Forest City, there's been no issue
9 brought up about the work or care that Forest City
10 did.

11 So for those reasons, and I know it's
12 information leading to who Mr. Lanphear is or what
13 qualifications he may have is relevant today.

14 EXMINER TAUBER: Mr. Potash?

15 MR. POTASH: Admitted as Exhibit 2 are
16 the very statements from Forest City Tree Protection
17 Company bearing Mr. Lanphear's name. So we have had
18 reference to Mr. Lanphear.

19 All I want to do is have this witness,
20 who is a verified arborist, indicate whether he knows
21 Mr. Lanphear, knows of Mr. Lanphear's reputation,
22 knows whether Mr. Lanphear is a qualified arborist,
23 things of a nature.

24 Because you have Ms. Corrigan's testimony
25 and Mr. Lanphear seems to have been relegated to a

1 less-than-honorable standing, and so, right,
 2 Mr. Lanphear is not here, he is not on trial. But by
 3 the same token, you have testimony from Mrs. Corrigan
 4 as to Mr. Lanphear. I want to make sure the hearing
 5 panel is aware that Mr. Lanphear is not a
 6 fly-by-night arborist.

7 MS. DUNN: Your Honor, I mean, again, the
 8 question that hasn't been answered by Mr. Potash is
 9 why are Mr. Lanphear's qualifications even relevant
 10 to this case?

11 He has the invoice, he signed the
 12 invoice. Whether that work was or wasn't done or
 13 wasn't done in a good manner has not been an issue
 14 brought up by any witness in this case.

15 And, your Honor, if I may, he's trying to
 16 bootstrap expert testimony without being subject to
 17 cross, that he's not brought that witness for today
 18 nor filed prefiled testimony.

19 EXMINER TAUBER: That's our concern too
 20 is that we are potentially veering into an area that
 21 might be trying to use the bills as expert testimony.
 22 I think if we allow very limited cross-examination on
 23 this, I think that's acceptable. So as long as we
 24 keep this really tight, Mr. Potash.

25 MR. POTASH: Extremely tight.

1 EXMINER TAUBER: Thank you.

2 Q. (By Mr. Potash) Are you familiar with
3 Mr. Lanphear?

4 A. As I mentioned, I've met Mr. Lanphear on
5 several occasions.

6 Q. Do you know whether he is active as an
7 arborist?

8 A. Yes. I believe Mr. Lanphear is an ISA
9 certified arborist. I can't state with absolute
10 certainty.

11 Q. Do you know whether he was president of
12 that organization at any time in which you were a
13 member?

14 MS. DUNN: Objection, your Honor. I
15 don't understand the relevance of whether he's a
16 president of ISA or not.

17 MR. POTASH: I'll move on.

18 EXMINER TAUBER: Thank you.

19 Q. Had you looked at any records to see how
20 the Corrigan tree was maintained while maintained by
21 the Davey Tree Company?

22 A. No.

23 Q. To your knowledge are the Davey Tree
24 Company maintenance people cognizant that if a tree
25 presents a risk to a utility line, that they would

1 call that to the attention of the utility company?

2 A. Yes.

3 Q. That is a policy.

4 A. In the event that a tree or part of a
5 tree poses an imminent threat, then it is our policy
6 to notify the proper manager of the property.

7 Q. Is that Davey Tree's policy?

8 A. It is.

9 Q. To your knowledge how many times has
10 Davey Tree notified the utility that the Corrigan's
11 tree represents an imminent risk to the utility?

12 A. I have no knowledge of any
13 communications, since that's outside of my
14 responsibilities.

15 Q. What did you review for purposes of your
16 testimony today?

17 A. I reviewed my testimony, I reviewed the
18 photographs that I took on site.

19 Q. You saw the tree in 2009 --

20 MS. DUNN: Object.

21 A. I'm still thinking.

22 Q. Go ahead, I'm sorry. I thought you were
23 done.

24 A. I reviewed the photographs that I took in
25 2009.

1 Q. Do you have those here?

2 A. They are in my briefcase.

3 Q. Can I take a look at them, please?

4 A. I have no --

5 MS. DUNN: Wait. Were those
6 photographs -- I mean we have to -- sorry. They're
7 delving into privilege and settlement discussions.

8 MR. POTASH: What?

9 MS. DUNN: I can stay on the record with
10 this or we can go off and back on.

11 EXMINER TAUBER: Let's go off the record
12 real quick.

13 (Discussion off the record.)

14 EXMINER TAUBER: Let's go ahead and go on
15 the record.

16 Ms. Dunn, you have an objection?

17 MS. DUNN: Yes. Mr. Potash has requested
18 Mr. Laverne's photographs that were taken during the
19 context of settlement discussions at the request of
20 counsel. He also has documents that he could have
21 been obtained during discovery. They were not asked
22 for in discovery.

23 Simply because there are documents in
24 this room that people possess does not mean it's free
25 game to now conduct discovery. The time for that has

1 closed.

2 MR. POTASH: Hold on. I want to take a
3 look at my requests. Because I believe I parroted
4 their discovery, which asked for everything under the
5 sun.

6 MS. DUNN: In addition, Mr. Potash
7 himself refused to produce a survey that was done
8 during the process of settlement negotiations, which
9 we did specifically ask for, and then we didn't --
10 when he indicated they were in the context of
11 settlement discussions, we did not push the issue
12 anymore.

13 MR. POTASH: That is incorrect.

14 EXMINER TAUBER: Let's deal with the
15 photographs right now which Mr. Potash was
16 requesting.

17 Mr. Potash, any response?

18 MR. POTASH: I can't get my head around
19 the fact that photographs are work product. I
20 just -- especially if it's not done by a lawyer, but
21 that's neither here nor there.

22 The point is that the witness is
23 testifying based on his recollection of having viewed
24 the photographs. I'm entitled to take a look at what
25 he viewed if that's part of his testimony.

1 MS. DUNN: That was mischaracterizing his
2 testimony. He did not base his testimony based on
3 the photographs. He was asked what did you review
4 for your testimony. He said I reviewed -- honestly,
5 he reviewed photographs he had taken before in his
6 testimony. He did not base any of the response to
7 Mr. Potash's question on those photographs.

8 EXMINER TAUBER: Let me just, the Bench
9 isn't comfortable taking anything that was discussed
10 or came up during the settlement conference; that's
11 confidential in nature before us today. So I don't
12 think this is an appropriate venue.

13 MR. POTASH: I don't know that it is.

14 Q. (By Mr. Potash) Is any of your testimony
15 here based on the photographs you took in 2009?

16 A. No.

17 Q. Do you have an independent recollection
18 of the tree as it existed in 2009?

19 A. Yes.

20 Q. Was the tree decayed?

21 A. Yes.

22 Q. Was the tree dying?

23 A. The tree was in a state of decline.

24 Q. How long had it been in a state of
25 decline?

1 A. Well, in 2009 there were numerous pruning
2 wounds that had established decay. Since that time
3 the tree is quite a bit smaller than it was in 2009.

4 Q. It's not bigger?

5 A. No. It's smaller because the work that
6 Mr. Lanphear's company has done has removed several
7 of the largest leaders. And they've reduced the
8 height of the tree.

9 Q. So the tree's not taller, it's smaller is
10 what you're saying.

11 A. It's smaller today than it was in 2009.
12 And it is in a state of decline because of the amount
13 of foliage that has been removed from the tree, which
14 limits the tree's ability to engage in
15 photosynthesis.

16 Q. When you were there in May of 2013, did
17 the tree have a full crown?

18 A. No.

19 Q. Was it getting there? Could you tell
20 whether the tree would develop a full crown during
21 the course of the spring and summer of 2003? Could
22 you tell yes, the tree will; no, the tree will not?

23 MS. DUNN: 2003 or 2013?

24 Q. I'm sorry, 2013.

25 A. If I understand your question correctly,

1 which I may not, the crown of the tree is imbalanced.

2 I could tell that the tree was not going to grow a
3 new portion of the crown to retain a balanced crown.

4 Are you asking if when I was at the site
5 in March I could tell that the crown that remained
6 was going to produce foliage?

7 Q. Correct.

8 A. Okay. In observing the tree in March I
9 observed that --

10 Q. I asked in May.

11 A. I'm sorry. In May. When I observed the
12 tree in May, the majority of the crown that remains
13 supported live foliage, although there are a number
14 of dead branches that do not support live foliage.

15 Q. And when you talked about the imbalance,
16 the imbalance is the portion of the tree that would
17 be facing the transmission lines is pretty much
18 lopped off.

19 A. Correct.

20 Q. So the imbalance is that the majority of
21 the tree faces the Corrigan's house.

22 A. Yes.

23 Q. I'm going to hand you what has been
24 marked as Corrigan Exhibit 3. It's already been
25 identified. In fact, you were here when we've gone

1 over this, were you not?

2 A. That's true.

3 Q. I'm going to ask you from your
4 recollection in 2009 when you were on the property,
5 did the property appear to be as represented in any
6 one or more of those photographs? The tree, I don't
7 mean the property, did the Corrigan tree appear as it
8 is represented in any one or more of those
9 photographs?

10 A. The tree as it exists today is smaller.
11 There is less of a crown on the tree than what
12 appears in these photos.

13 Q. So the tree would not be as high in 2013
14 as it appears in these photos?

15 A. I don't know the specific day on which
16 these photos were taken.

17 Q. Assume they were 2009.

18 A. Okay. In 2009 the crown of the tree was
19 larger and the branches were taller and there were
20 more large scaffold, the large branches in the tree
21 trunk. And as we heard in previous testimony today,
22 the Forest City Tree Protection Company was asked to
23 remove a number of the large branches and to reduce
24 the size of the tree crown.

25 And the evidence is that the tree as it

1 appears today did indeed have large scaffold branches
2 that were removed and the height of the tree crown
3 has been reduced repeatedly between the time that
4 these photos were taken and the time that I last
5 viewed the tree in May.

6 Q. Do you know when the tree was pruned to
7 the effect that half of that side facing the wires
8 was lopped off? Do you know when that occurred?

9 A. No.

10 Q. It occurred before 2009, that condition
11 existed before 2009.

12 A. For the most part, yes.

13 Q. Could you tell for how long that existed?

14 A. No.

15 Q. How old is the tree? To the best of your
16 ability.

17 A. I did not take an increment core of the
18 tree and I have not examined the growth rings of the
19 trunk. In my knowledge of silver maple trees in
20 general and the rate at which they grow and the size
21 of this tree, I would estimate it to be between 50
22 and perhaps 65 years old.

23 Q. Would that be classified as a young tree,
24 a mature tree? If you could give some sort of
25 classification. I heard "middle age." I'm just

1 asking. I don't know, how would you classify the
2 tree?

3 A. Well, silver maples can live to be
4 hundreds of years old. However, when a tree such as
5 this tree repeatedly is subjected to the large scale
6 removal of foliage, and those pruning sites become
7 established with decay, then it's easy to see that
8 this tree is closer to the end of its life than it
9 would be if, for example, it had not been subjected
10 to this amount of pruning.

11 Q. What do you mean by "viable buds"?

12 A. Viable buds are those that when they
13 swell and expand and open, produce living foliage.
14 Or flowers.

15 Q. It's a good thing?

16 A. It's an essential thing.

17 Q. You noted that the tree -- in your
18 testimony here you noted that the tree has minor root
19 decay.

20 A. Yes.

21 Q. That was at what time? Was that in 2009,
22 was that March of 2013, or May of 2013?

23 A. I observed the minor root decay both in
24 March and in May of this year.

25 Q. Can minor root decay be treated by

1 fertilization?

2 A. Once decay is established in wood, there
3 is no practical way to remove the decay from the
4 wood. So the decay cannot be cured by fertilization.

5 Q. I don't know if I used the word "cured,"
6 I thought I used the word "treated." If I did not
7 use the word "treated," that's what I meant.

8 Can the decay be -- can minor root decay
9 of a tree such as a silver maple tree be treated,
10 stabilized by fertilization?

11 A. Minor root decay, major root decay, decay
12 of any type cannot be stabilized with fertilization.

13 Q. How about watering through drugs?

14 A. It cannot be stabilized through watering.

15 Q. Through any means? What I mean,
16 stabilize, maybe I should explain.

17 A. Perhaps.

18 Q. I'm talking about it doesn't get any
19 worse. Can you treat the minor, not major root
20 decay, the minor root decay so that it can be
21 localized or limited?

22 A. You cannot fertilize, you cannot water,
23 you cannot use any maintenance procedure to limit, to
24 stop, to arrest the spread of the decay.

25 There are methods that you can employ to

1 assist the tree in compartmentalizing the decay, and
2 I could, if you would like, launch into a description
3 of how trees respond to decay.

4 Q. Before you do that, when you say
5 "compartmentalize decay," what does that mean?

6 A. Trees cannot cure or push out decay.
7 Once the wood is decayed, it will always be decayed.
8 Some tree species are able to build chemical and
9 physical walls within the new wood that is produced
10 which acts as a barrier to the spread of the decay.
11 Some species are better than others.

12 Silver maple is not particularly good at
13 compartmentalizing the spread of decay. So what
14 typically happens is that the decay spreads most
15 rapidly in the same direction as the xylem cells.
16 The tubes, if you will, that conduct water throughout
17 the tree.

18 The fungus, the decay-producing organism,
19 uses the very vessels that the tree uses to conduct
20 water as pathways to spread itself. And those are
21 particularly weak walls going up and down.

22 The most effective walls are those that
23 are made by the tree after the decay has become
24 established, after the wound has taken place. As I
25 mentioned, some species are fairly good at building

1 that wall, others are not.

2 EXMINER TAUBER: So when you're talking
3 about the decay, how fast can this spread, then, if
4 the walls aren't solid or aren't as thick as maybe
5 some other tree species? How long of a process is
6 this usually?

7 THE WITNESS: It could be inches of new
8 fungal hyphae that expand per year, it could be feet.
9 And typically again, the spread is fastest up and
10 down. To some degree it will spread radially. And
11 some trees have protective barriers against the
12 radial spread.

13 So, for example, if you look at a
14 cross-section of an oak tree, you see those
15 spoke-like features that come out from the center of
16 the tree, those are called ray cells and they're
17 panels, if you will, of wood that work themselves
18 radially around the tree. And those are physical
19 barriers to the spread radially of the decay.

20 Oak trees have very large ray cells.
21 Silver maple don't have very large ray cells at all.
22 So it's not uncommon to see a tree with an extensive
23 column of decay in the trunk, in the branches, and
24 still support a full crown of green foliage

25 EXMINER TAUBER: So with the silver maple

1 in question here in this proceeding, is it spread
2 vertically, as you discussed?

3 THE WITNESS: It has. And as I mentioned
4 in my testimony, I used a method called a sounding
5 mallet and it's like a hammer and the arborist taps
6 on the outside of the wood. And in the case of solid
7 wood the sound that is produced is similar to a hard
8 ball coming off of a wood baseball bat. If you go to
9 the Indians game you hear that high pitch. It's
10 quite localized, comes from a very small area.

11 And as you are tapping on the tree,
12 you're listening to any change in the pitch. And so
13 if you encounter an area where the pitch goes from
14 "tock" to something that sounds more like rapping on
15 a watermelon, "thok," then that's an indicator of
16 internal decay.

17 So you tap your way around the tree and
18 you tap up and down the tree and you use your ears to
19 visualize the extent of the decay within the tree.

20 EXMINER TAUBER: And that indicator was
21 present here?

22 THE WITNESS: Yeah, both from a sound
23 standpoint sounding the trunk of the tree as well as
24 visually observing the decay that is present on the
25 base of the pruning wounds. And some of those

1 pruning wounds are quite large, 12 inches in diameter
2 where the largest scaffold branches have been taken
3 off. And some of those pruning wounds are quite
4 small scattered throughout the trunk of the tree
5 where previous branches have been taken off.

6 And one indicator of how fast the tree is
7 growing is to look on the face of the former pruning
8 cuts and observing how much reaction, how much new
9 growth the tree puts on after a pruning cut is made.
10 And by observing some of the older pruning cuts in
11 the tree, it appears that the tree was able to
12 produce that reaction wood at a faster rate than it
13 is now on more recent cuts.

14 EXMINER TAUBER: Thank you. You may
15 proceed.

16 Q. (By Mr. Potash) Are you aware that the
17 major lopping off of the one/half of the tree
18 occurred before 2003?

19 A. I not aware of that.

20 Q. Does it look, from your observation, does
21 it appear that the age of the stump, or whatever you
22 would call when you lop off that size of branch, is
23 something that could have occurred -- or, would have
24 occurred, I should say, not could have, would have
25 occurred on or before 2003?

1 A. There are wounds in the crown that
2 appears at least ten years old.

3 Q. Before Mrs. Corrigan hired somebody to
4 try to take care of the tree.

5 You don't know. All right, I'll move on.

6 Can you indicate the rate of decay?

7 A. The rate of spread of the decay?

8 Q. Yeah. The rate of the advancement of the
9 decay that you talked about.

10 A. I can't quantify that in terms of inches
11 or centimeters per year. I suspect that as the
12 amount of leaf area in the tree crown is reduced
13 because of previous pruning operations, because of
14 branches dying, because of deadwood being removed,
15 the tree has a reduced capacity to conduct
16 photosynthesis.

17 It's like putting gas in your gas tank;
18 the tree is no longer able to produce and conduct
19 photosynthesis as it used to when it had a full
20 crown.

21 And when the photosynthesis rate is
22 diminished, the capacity of tree to attempt to
23 compartmentalize the decay is also reduced. There's
24 less energy in the gas tank and therefore the tree
25 has less energy to grow new wood cells in an attempt

1 to eliminate or reduce the spread of the decay.

2 So while I can't quantify in terms of
3 inches per year, I can state with a high degree of
4 certainty that that rate of spread from decay is
5 increasing.

6 Q. Do you know what the rate of decay was
7 last year?

8 MS. DUNN: Objection. I believe he
9 answered that question.

10 EXMINER TAUBER: Mr. Potash?

11 MR. POTASH: How did he answer that? He
12 said he cannot quantify what the rate of decay was
13 currently but it's getting quicker.

14 MS. DUNN: He said in inches per year.

15 MR. POTASH: Last year?

16 MS. DUNN: He just said he couldn't
17 quantify what the rate of decay was at the rate of
18 inches per year.

19 MR. POTASH: The current rate of decay
20 was what he couldn't quantify. I want to know if he
21 knows what the rate of decay was last year.

22 A. I suspect the rate of decay last year was
23 something less than the rate of decay this year. And
24 the rate of decay next year will exceed the rate of
25 decay this year.

1 Q. (By Mr. Potash) And these are just
2 suppositions because you do not have any way of
3 measuring what -- when the decay started and how it
4 has progressed over whatever years are at issue.

5 A. Given the opportunity to map the internal
6 decay with the appropriate equipment, I can map the
7 presence and location of decay in the various parts
8 of the tree today, I can do that again next year, and
9 I can tell you the rate of spread of decay. If we do
10 it the following year, I can tell you whether that
11 rate is increasing or decreasing.

12 Q. As we sit here today you cannot state
13 with any certainty when the decay began; is that a
14 fair statement?

15 A. No; I can say with certainty that the
16 decay in the trunk of the tree in places exceeds ten
17 years.

18 Q. Where did the decay begin?

19 A. The decay usually begins when there's a
20 break in the bark of the tree. Whether that's a
21 mechanical damage or whether that's a pruning cut.
22 The bark serves as a barrier against the spores that
23 grow and cause the decay.

24 So the decay began when the pruning,
25 first pruning cuts were made.

1 Q. You're talking about the major lopping of
2 the branch.

3 A. I'm talking about any pruning cut that
4 was made on a branch that still exists in the tree.
5 There may have been decay that began in the branches
6 that have since been removed.

7 Q. Now, this tree that is -- again, you said
8 that to the best of your ability to prognosticate,
9 it's at least ten years old, the decay.

10 A. There are pockets of decay that in my
11 estimation are at least ten years old.

12 Q. Fatal to the tree? Is this part of the
13 decay that you were talking about that runs up and
14 down the tree or is this in a different area?

15 A. The decay in all parts of the tree, once
16 it becomes established, moves most rapidly in the
17 direction of the xylem cells, in the direction that
18 the water would flow from the roots up the trunk
19 through the branches to the foliage.

20 Q. And you're saying that this --

21 MS. DUNN: I'm not sure he was finished
22 with his answer.

23 THE WITNESS: Yes, I'm finished.

24 EXMINER TAUBER: Go ahead.

25 A. I'm not sure that I answered your

1 question.

2 Q. Yeah, I know. We have this problem here,
3 but I'm going to move on.

4 With the decay the tree still grows, does
5 it not? Are you saying the decay stunts the growth
6 of the tree?

7 A. The tree continues to grow as the decay
8 continues to spread and at some point the decay
9 exceeds the strength of the wood and the branch
10 fails. Or the trunk fails or the roots fail.

11 So the branch or the portion of the tree
12 that we're looking at may be extensively filled with
13 decay and yet still support living cells, living
14 foliage, viable buds, if you will. It's not uncommon
15 for us to see trees that have failed in landscape
16 that have extensive decay that fall over and as they
17 fall over they have full crowns of green foliage.
18 We've seen that just within the last couple of weeks
19 with the storms that have moved through this area.

20 Q. Did that occur to the Corrigan tree?
21 Given the storms -- in fact, there was a tornado in
22 Northeast Ohio. Do you know if the tree was uprooted
23 and thrown into the transmission lines?

24 A. I haven't seen the tree since May, but
25 unless you tell me otherwise, I would say not.

1 Q. You would have heard about it.

2 How about the root system, did you look
3 at the root system of the tree?

4 A. I looked at the root collar and the roots
5 that extend just beyond the trunk of the tree. So
6 the root collar is the swell at the base of the trunk
7 as the roots meet the base of the trunk. And on the
8 western-most side of the tree there's evidence of
9 some root decay that I suspect became established
10 because of the lawn being mowed over the top of the
11 roots.

12 Silver maples typically have a shallow
13 root system and if you are cutting the grass in the
14 area, the lawnmower will frequently clip the top of
15 the roots, and when that happens, decay becomes
16 established.

17 Q. For ease of understanding, if you're
18 talking about western, you're talking about the side
19 that faces the lines and the eastern is the side that
20 faces the house.

21 A. That's right.

22 Q. The lopping is on the western side
23 towards the line, the overbalance faces the house.

24 A. Yes.

25 Q. Did you try to push over the tree?

1 A. No.

2 Q. I just wondered how fragile that tree is
3 because I see that given sufficient -- according to
4 your statement page 8, line 9, "Given sufficient
5 force from strong winds the potential exists for the
6 Tree to fail from the trunk or roots and fall towards
7 the line."

8 I'm just curious, did you try to see how
9 loose -- was that tree wobbly?

10 A. I had my hands on the tree as I was
11 measuring the diameter of the tree. I did not
12 specifically try to push it over.

13 Q. Well, if you leaned against it, would it
14 fall over?

15 A. I don't suspect so.

16 Q. And when we talk about "given sufficient
17 force," are we talking about hurricane force winds
18 that would knock over any tree that we have seen in
19 the news?

20 A. Well, once again, we have to look at
21 various parts of the tree and the wood. Typically
22 what happens when a tree fails, it's not simply
23 gravity that pulls the branch or the tree over. More
24 often than not a tree fails when there's a
25 combination of the strength lost in the wood,

1 typically by advancing decay, combined with an
2 external force, which in this part of the world is
3 frequently wind.

4 As you mentioned this morning when you
5 were speaking to one of the other witnesses and you
6 mentioned that it was a breezy morning, that it was a
7 typical spring morning in Ohio. So it's not uncommon
8 that we get high winds. So as the decay is spreading
9 in this tree, over time it will take less and less
10 external force to cause the tree or parts of the tree
11 to fail.

12 Q. Would that be something that a certified
13 arborist would be able to determine from periodic
14 observation and maintenance of a tree?

15 A. There's actually a pull test that we can
16 employ where you attach a cable into the tree and the
17 cable is attached to a dynamometer and you apply a
18 force to the tree and there's a couple of instruments
19 that are attached to the tree that measure the
20 holding capacity of the root system. And if we were
21 to do that, that may tell us the relative strength of
22 the root system in the tree.

23 Q. You were here this morning when you heard
24 that the utility monitors the tree every two years --
25 I take it back.

1 Were you here this morning when a witness
2 testified that the utility monitors the tree in 2009,
3 2011, and 2013?

4 A. Yes.

5 Q. And were you here when that witness
6 testified about the monitoring that these were people
7 who were well-versed in utility tree vegetation
8 maintenance?

9 A. Yes.

10 Q. Do you believe that if the tree were
11 continued to be monitored every two years by the
12 utility that were that tree to present some risk of
13 harm, that a two-year interval would be sufficient?
14 Let me back this up.

15 Is it your testimony that tomorrow this
16 tree's going to decay beyond belief and blow away?

17 A. Could.

18 Q. All right. Well, pigs could fly. I'm
19 asking you with reasonableness.

20 MS. DUNN: Your Honor, I would object to
21 the extraneous comment. He answered the question.
22 And argumentative nature.

23 EXMINER TAUBER: Let's move on,
24 Mr. Potash.

25 Q. I'm asking you from your evaluation and

1 examination of the tree is it likely that that tree
2 tomorrow is going to topple over, regardless of which
3 direction?

4 A. With my knowledge of the current state of
5 the tree, it is completely possible that a wind of
6 sufficient force could topple the tree. Will it
7 happen tomorrow? I cannot state with any certainty.
8 Will it happen within the next hundred years? I can
9 say with relatively high certainty there will become
10 a -- there will come a force of sufficient strength
11 combined to the advancing loss of strength in the
12 wood that will cause the tree to fail.

13 So what timeframe should we define?

14 Q. I'll tell you in a second.

15 When you talk about a wind of sufficient
16 force, can you be a little bit more specific? Can
17 you quantify that specific force?

18 A. No.

19 Q. Are we talking about a 20-mile-an-hour
20 wind?

21 MS. DUNN: Objection, your Honor. He
22 asked him if he could quantify, he said no.

23 EXMINER TAUBER: Mr. Potash?

24 MR. POTASH: I'm just trying to get a --
25 "a wind of sufficient force" means nothing. It means

1 nothing. A hurricane is a wind of sufficient force.
 2 I want to know if he's talking about a
 3 20-mile-an-hour, a 50-mile-an-hour gust, tornado.
 4 That's all I'm asking.

5 EXMINER TAUBER: Fair enough, I'll allow
 6 the question.

7 A. I'm sorry.

8 Q. Are you talking about a 20-mile-an-hour
 9 wind force?

10 A. I don't know.

11 Q. Well, here's the problem as I see it: "A
 12 wind of sufficient force" means what?

13 A. A wind of sufficient force is any wind
 14 that applies sufficient force to the wood which we
 15 know is weakened because of the decay to cause that
 16 to break.

17 Now, there's one limb in particular
 18 that's of interest that is growing toward the
 19 western-most side of the tree in the northern-most of
 20 the two codominant steps. And that branch is growing
 21 straight up, which is evidence that it began as a
 22 water sprout in response to heavy pruning.

23 The relevance of that is that branches
 24 that start as water sprouts have inherently weak
 25 attachments. The wood fibers don't go deep into the

1 trunk or the parent stem, but rather the wood fibers
2 are attached more like suction cups on the outside.

3 They originate as adventitious buds that
4 are right under the bark so it doesn't go deep into
5 the wood fiber. So here we have a long, tall branch
6 that grows straight up and at the very base of that
7 branch there's a pocket of decay.

8 So when the original branch was cut off,
9 decay became established, the tree, recognizing that
10 it needed more leaf area than it had, sent out these
11 emergency branches, if you will. So now we have a
12 very tall branch that has a weak attachment to begin
13 with and a pocket of decay at the base of it.

14 Now, when you have a long lever, the
15 amount of force that's applied to the end of the
16 lever doesn't have to be very much. So forgive me
17 for a moment, but if you ever tried to change the
18 tire on your car using the ridiculously short wrench
19 that they give you in the trunk, you know that as you
20 tug and tug and tug, it's very, very difficult to
21 move that lug nut. If you apply a pipe over the
22 wrench and extend the length of the lever, you can
23 remove that lug nut with one hand. And it's simply
24 because the length of the lever with the same amount
25 of force applies more work to the task.

1 So we have a long lever in this long,
2 tall branch with a pocket of decay and inherently
3 weak branch attachment. So to answer your question,
4 might it be a 20-mile-per-hour wind in a case where
5 you have a long lever with a weak attachment and
6 strength loss because of decay? It very well could
7 be a 20-mile-per-hour wind and that branch happens to
8 be tall enough that if it does fail, it will reach
9 the wires.

10 Q. Would you say that the tree, the
11 condition of the decay in Corrigan tree is worse
12 today than it was a year ago?

13 A. Yes.

14 Q. Worse today than it was two years ago?

15 A. Yes.

16 Q. You don't know the rate of decay but you
17 can say that from your -- in your opinion that it is
18 worse today.

19 A. Yes.

20 Q. All right. Are you aware that on June 25
21 of this year the Greater Cleveland Area experienced
22 wind gusts of 58 miles an hour and average wind speed
23 of 43 miles an hour?

24 MS. DUNN: Objection, lack of foundation.

25 Q. I'm just asking if you're aware.

1 A. I am not aware.

2 EXMINER TAUBER: There is an outstanding
3 objection. I'm going to sustain the objection.
4 Excuse me, strike it.

5 MR. POTASH: Say again.

6 EXMINER TAUBER: We're going to strike
7 the testimony to -- the answer.

8 Q. Are you a resident of the Greater
9 Cleveland Area?

10 A. I reside in Stark County.

11 Q. Do you get up to Cleveland often?

12 A. I am currently a PhD student at Cleveland
13 State, so I do.

14 Q. How often do you get up to Cleveland?

15 A. During the school year twice a week;
16 during the summer months less than that.

17 Q. How long have you been doing this?

18 MS. DUNN: Excuse me, doing what?

19 Q. Doing this commuting to Cleveland twice a
20 week during the school year and less in the summer
21 months?

22 A. Going on seven years now.

23 Q. In the seven years that you have been
24 visiting the Greater Cleveland Area, we have
25 experienced some significant wind gusts, have we not?

1 A. I believe that's true.

2 Q. In the seven years that you've been doing
3 this, have you ever -- let me back up, I'm sorry.

4 Have you ever been advised that as a
5 result of the severe wind gusts that Cleveland has
6 experienced over the past seven years that any part
7 of the Corrigan tree separated and flew into a
8 utility line?

9 A. I have not been advised of that.

10 Q. Have you been advised that any part of
11 the Corrigan tree separated as a result of serious
12 wind gusts? I'm not talking about being lopped, I'm
13 talking about as a result of serious wind gusts.

14 A. Are you asking me if I've been advised or
15 if I have observed?

16 Q. Well, we'll do either one. Start with
17 being advised, then I'll ask you about observation.

18 A. I have not been advised.

19 Q. Have you observed portions of the
20 Corrigan tree being separated as a result of serious
21 wind gusts?

22 A. There is a separation at the base of the
23 two codominant stems; as the two stems have grown,
24 there is a layer of bark that separates the base of
25 those two.

1 Now, when branches grow in their proper
2 form, there's an overlap of wood tissue between the
3 parent stem or the trunk and branch. And that makes
4 for a stronger wood attachment.

5 In the case when you have trunks that are
6 of roughly equal size as we have here that are
7 growing in a tight V angle such as we have here,
8 instead of having solid wood attachment between the
9 two stems, we have a layer of bark that separates two
10 stems. And that's an inherent weakness. It's called
11 included bark.

12 So when I was on site in March and in
13 May, I observed and noted the presence of the
14 included bark at the base of the stems. Now, it
15 wasn't windy on either of the days that I was out
16 there. I would suspect if I observed the tree during
17 a windy situation, that you could actually observe
18 the two stems separating because of that included
19 bark. And given sufficient force, that inherent
20 weakness will cause one or the other or both of the
21 codominant stems to fail.

22 Q. Given a wind of sufficient force, it
23 could uproot an oak tree, could it not?

24 A. It happens with regularity, yes.

25 Q. Do we cut down every oak tree that

1 exists?

2 A. Well, once again, returning to --

3 Q. That's a yes or no. Do we cut down every
4 oak tree because there's a potential for a sufficient
5 wind force that an oak tree would be uprooted?

6 MS. DUNN: I believe he didn't finish his
7 answer.

8 EXMINER TAUBER: We'll allow the witness
9 to answer the question.

10 A. Trees are living organisms. Every tree
11 shares one thing in common with human beings, and
12 that is that we're all going to die. Whether it's an
13 oak tree, whether it's a maple tree, an ash tree.
14 All the trees are going to die. And at some point in
15 time there will come sufficient force to either break
16 parts of the tree or topple the entire tree.

17 So we know with all certainty that all
18 oak trees, all maple trees, and all other trees are
19 going to die and if we don't do something to catch
20 them before they come over, then indeed they will
21 fail and they'll come over.

22 So --

23 Q. How many of your trees have you cut down
24 knowing that they're going to die?

25 MS. DUNN: Objection, relevant.

1 A. Actually --

2 MS. DUNN: Objection, the relevance of
3 what his personal trees have to do with here.

4 MR. POTASH: Fine. I'll move on.

5 Q. When you observed the Corrigan tree, did
6 you observe any sort of device attached to the tree?

7 A. I did.

8 Q. And was this device like a brace to hold
9 together the two separate, what you described as the
10 two separate parts of the tree?

11 A. Call that a supplemental support system.

12 Q. Okay, we'll use your terms. Did you
13 observe a supplemental support system on the Corrigan
14 tree?

15 A. I did.

16 Q. Is that something that is common,
17 uncommon, unheard of?

18 A. Supplemental support systems are
19 frequently installed to supply some measure of
20 strength to an inherently weak branch attachment.
21 It's an effort to compensate for the included bark
22 that we've observed on this tree.

23 The unfortunate part is that the
24 supplemental support system is installed directly
25 below one of the large pruning wounds. So decay has

1 become established in this pruning wound and right
2 underneath that is the attachment of the supplemental
3 support system.

4 So in the not-too-distant future, the
5 wood at that site will decay to an extent that the
6 lag bolt that holds that in place will let loose. So
7 there is the supplemental support system,
8 unfortunately the decay right above that will render
9 that useless.

10 Q. Again, I asked a very simple question:
11 Is the supplemental support system common, uncommon,
12 unheard of?

13 MS. DUNN: Objection, asked and answered.

14 MR. POTASH: With all due respect, he
15 answered everything but this question.

16 EXMINER TAUBER: I'll allow the question.

17 A. In the realm of all tree maintenance,
18 supplemental support systems I would say are
19 uncommon.

20 Q. But not unheard of.

21 A. Not unheard of, and they are more common
22 in trees that have a structural defect. In fact,
23 they're only installed in trees that have a
24 structural defect.

25 Q. To help support whatever defect may

1 exist.

2 A. That's the purpose of the supplemental
3 support system.

4 Q. To save the tree. To attempt to save the
5 tree.

6 A. It is a maintenance tool that cannot save
7 the tree but may preserve the useful life of the tree
8 before it becomes a liability.

9 Q. And that useful life could be ten years,
10 it could be 30 years, could it not?

11 A. Yes.

12 Q. Are you saying that this Corrigan tree
13 does not have a useful life of ten years? Is that
14 your testimony here today?

15 A. Yes.

16 Q. So within ten years that tree's going to
17 topple is your testimony.

18 A. It is not my testimony that within ten
19 years that tree will topple. I can say with a
20 relatively high degree of certainty that portions of
21 the tree will fail within the next ten years, and I
22 can say with relatively high certainty that within
23 ten years that supplemental support system will no
24 longer be attached in a meaningful way because of the
25 decay that is present.

1 Q. Is that something that somebody who
2 maintains or -- is that something that a person who
3 monitors a tree would be able to determine with
4 periodic monitoring?

5 A. So when the supplemental support system
6 is likely to give way?

7 Q. Correct.

8 A. Yes.

9 Q. Can you say with any certainty that the
10 tree -- that the supplemental support system is
11 likely to give way within the next two years?

12 A. I can't say with absolute certainty, no.

13 Q. I didn't ask you for absolute. Very few
14 things are absolute.

15 A. I'm sorry.

16 Q. I'm just saying you've given opinions.
17 With reasonable certainty can you say that that
18 supplemental support system will give way within two
19 years?

20 A. I don't know.

21 Q. Do you know how long the supplemental
22 support system has been in effect?

23 A. I believe it was one of the invoices that
24 came from Forest City between 2009 and 2011 that may
25 have referenced the support system. So I'm

1 relatively certain it was in that time period.

2 Q. Can you say that without the supplemental
3 support system the tree would be in worse shape?
4 From a stability standpoint.

5 A. From a stability standpoint I believe
6 that the supplemental support system offers very
7 minor additional strength.

8 Q. Have you used -- I'll start with you
9 personally and we'll go to Davey Tree.

10 A. Sure.

11 Q. Have you used growth retardants in the
12 care and maintenance of trees?

13 A. No.

14 Q. Does Davey Tree Company, Davey Tree
15 Expert or Davey Expert Tree.

16 A. Davey Tree Expert Company.

17 Q. Have they used growth retardants as part
18 of a care and maintenance program for trees?

19 A. I believe that the Davey Tree Expert
20 Company has. I don't know that with absolute
21 certainty.

22 Q. That's fair. You don't use it; you've
23 indicated that and you're not certain about Davey
24 Tree Expert Company.

25 Is that something that is used in the

1 industry, growth retardants?

2 A. Yes.

3 Q. Is it an accepted form of tree
4 maintenance?

5 A. In the proper application, the proper
6 situation, yes.

7 Q. If it were improper, we'd have problems.
8 I'm just asking in general, growth retardants are a
9 course of treatment in the care and maintenance of
10 trees?

11 MS. DUNN: Objection, asked and answered.

12 EXMINER TAUBER: Sustained.

13 Q. Did you do any measurements as relates to
14 the tree and its relationship to the transmission
15 lines?

16 A. Yes.

17 Q. Did you -- how did you measure that?

18 A. I measured tree height from three
19 different angles. I used three different instruments
20 to measure tree height. And I used a diameter tape
21 to measure the diameter of each of the codominant
22 stems. And I used a 100-foot tape on a reel to
23 measure the distance from the base of the tree to a
24 point on the ground directly underneath one of the
25 utility wires.

1 Q. But you did not use surveying equipment?

2 A. The one instrument that I used to measure
3 tree height is called a survey laser. It's a
4 handheld device that measures the distance from your
5 location to whatever target it is that you're
6 interested in. And then it also measures the angle
7 to the top of the tree in this case. And it
8 calculates tree height.

9 I didn't use a surveyor's transom.

10 Q. However, your written testimony did not
11 provide any numbers. I'm not asking you for numbers;
12 your written testimony did not provide any numbers.
13 I have diagrams and arrows and colored lines and
14 stuff like that. But you did not provide any
15 numbers; is that correct?

16 A. No, it does provide numbers.

17 Q. Where does it provide numbers, maybe I
18 missed it?

19 A. At the top of page 4 the question was
20 "Please describe the tree," and my answer is "The
21 Tree is a silver maple. It has codominant stems (two
22 trunks). The northern stem is 21.6 inches in
23 diameter and the southern stem is 22.3 inches in
24 diameter. The Tree is located at the rear of the
25 Complainant's property," so on and so forth.

1 Q. You're right, you had that but that
2 wasn't my focus. The question was different, and I
3 apologize.

4 Your attachment to RJL-5 is a colored
5 photograph with looks like an arc drawn and various
6 colored lines --

7 A. Yes.

8 Q. -- representing something.

9 Just want a yes or no out of this. Are
10 there any numbers associated with those colored lines
11 on RJL-5 within your written testimony?

12 A. No.

13 MR. POTASH: I don't have any other
14 questions. Thank you.

15 EXMINER TAUBER: Thank you.

16 Redirect, Ms. Dunn?

17 MS. DUNN: Two minutes?

18 EXMINER TAUBER: Sure. Let's go off the
19 record.

20 (Off the record.)

21 EXMINER TAUBER: Let's go back on the
22 record.

23 Ms. Dunn?

24 MS. DUNN: Yes, your Honor, I just have
25 one question.

- - -

REDIRECT EXAMINATION

By Ms. Dunn:

Q. Mr. Laverne, when you were testifying earlier in response to Mr. Potash's questions, you indicated that the tree was smaller than it is -- was in 2009. Could you explain what you meant by that?

A. Yes. It's shorter because between 2009 and 2013 the crown had repeatedly been reduced. And therein lies part of the problem, because every time you do a substantial removal of leaf area, the tree resprouts and those branches typically grow straight up.

So the tree is shorter than it was in 2009 because of the work by Forest City to reduce the canopy height, and I fully expect that the tree height will be back to its 2009 dimensions if the water sprouts resume their position.

Q. In 2009 when you observed the tree, was it taller than the lowest conductor on the line?

MR. POTASH: Objection.

EXMINER TAUBER: What grounds?

MR. POTASH: I did not ask about any of that in my cross-examination. This is totally new stuff.

1 MS. DUNN: He asked about measurements,
2 he asked about whether it appeared smaller than it
3 did in 2013. That's a fair question.

4 EXMINER TAUBER: I'll allow the question.

5 MR. POTASH: I asked about the tree had
6 nothing to do vis-à-vis the transmission lines.

7 EXMINER TAUBER: I'll allow the question.
8 You'll have an opportunity on recross as well.

9 Q. (By Ms. Dunn) In 2009 was the tree taller
10 than the lowest conductor on the line, lowest wire?

11 A. Yes.

12 Q. In 2013 was that condition the same --
13 let me rephrase.

14 In 2013 is the tree still taller than the
15 lowest line?

16 A. Yes.

17 MS. DUNN: No further questions.

18 EXMINER TAUBER: Thank you.

19 Recross, Mr. Potash?

20 - - -

21 RECROSS-EXAMINATION

22 By Mr. Potash:

23 Q. The tree, you indicated that the tree
24 will increase in height over the next few years?
25 That was your estimation?

1 A. Based on its previous growth patterns in
2 response to severe crown reduction, we can expect the
3 same pattern of growth.

4 Q. Is that a good thing for the tree?

5 A. The tree is doing everything that it can
6 to survive. So when you remove a substantial portion
7 of the leaf area of a tree to the point where it can
8 no longer conduct adequate photosynthesis, the tree's
9 response is to send out these emergency, if you will,
10 water sprouts, these branches that grow very fast and
11 produce leaves at a rapid rate. And the tree has no
12 other choice but to attempt to get leaf area out into
13 the sunlight so it can resume photosynthesis.

14 So one of two things will happen if you
15 continue to manage the tree in the same way that it
16 has been managed in the past. If you repeat the
17 crown reduction, especially if you remove the
18 branches lower than the lowest line, there will be
19 very little leaf area left, and the tree will do one
20 of two things: Either it will resprout the water
21 sprouts and those will grow straight up in an attempt
22 to resume photosynthesis; or if you do that
23 repeatedly to a tree, it runs out of energy reserves
24 and it can't even send out the water sprouts, it just
25 doesn't have enough energy left in the tank, and the

1 tree will die.

2 Q. Been accused of cutting you off so I
3 wanted to make sure there's a little bit of dead
4 area.

5 Is that something that can be monitored
6 by utility vegetation maintenance workers?

7 A. If pruning is once again attempted or
8 achieved, then certainly we can observe the results
9 and we know with just about absolute certainty how
10 the tree is going to respond.

11 Once again, it will respond in one of two
12 ways: It will either grow branches straight up back
13 into the area that we have just removed branches
14 from; if you do that enough times the tree doesn't
15 have enough reserve energy and the tree will die.

16 Q. I thought it was just more or less a yes
17 or no.

18 Can this whole process be monitored by
19 utility vegetation maintenance people?

20 MS. DUNN: Objection, asked and answered.
21 He asked a question and he answered it.

22 EXMINER TAUBER: I'll allow the question.

23 Q. Yes, it can be monitored; no, it cannot
24 be monitored.

25 A. If we remove the branches to a level

1 below the lowest wires, we can monitor the response
2 of the tree. And I can predict that with a high
3 level of certainty what the response of the tree will
4 be. So yes, we can monitor, and yes, we can predict
5 what the response will be.

6 MR. POTASH: Thank you.

7 EXMINER TAUBER: Thank you.

8 Thank you. You may be excused.

9 Ms. Dunn?

10 MS. DUNN: We have one last witness.

11 EXMINER TAUBER: Would you like to move
12 for exhibits?

13 MS. DUNN: Yes. Move for the admission
14 of Company Exhibit 7.

15 EXMINER TAUBER: Are there any objections
16 to admission of Exhibit 7.

17 MR. POTASH: Not to the testimony; I have
18 an objection to Attachment 5.

19 EXMINER TAUBER: What's the objection?

20 MR. POTASH: There's no testimony as to
21 what this means. We have a bunch of lines from a
22 tree to a transmission line. It looks nice but it
23 bears no context to anything that has been presented
24 to this hearing.

25 EXMINER TAUBER: Thank you.

1 Ms. Dunn, do you have a response?

2 MS. DUNN: Actually if you look at page
3 8, question 17, his testimony does describe what
4 RJJ-5 is and he's described what it is and what it
5 depicts. There is no evidence to the contrary. It's
6 reliable and the Commission can afford it its weight.

7 EXMINER TAUBER: I'm going to go ahead
8 and admit Company Exhibit No. 7. The Commission will
9 afford it its appropriate weight, and especially in
10 the light of the fact there were questions on this
11 helpful to the Commission, so it will be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXMINER TAUBER: At this time I know it's
14 the end of the day, but I think we can use a break,
15 we'll reconvene at 5:35.

16 (Recess taken.)

17 EXAMINER CHILES: Let's go ahead and go
18 back on the record then.

19 Go ahead.

20 MS. FLOYD: Your Honor, CEI calls Stephen
21 Cieslewicz as our next witness.

22 EXAMINER CHILES: Thank you.

23 Please raise your right hand.

24 (Witness sworn.)

25 EXAMINER CHILES: Thank you. You may be

1 seated.

2 MS. FLOYD: Your Honor, may I approach?

3 EXAMINER CHILES: You may.

4 MS. FLOYD: May I have the direct
5 testimony of Stephen Cieslewicz marked as CEI
6 Exhibit 8.

7 MR. POTASH: Is that the same item you
8 previously supplied me?

9 MS. FLOYD: Yes, it is.

10 - - -

11 STEPHEN CIESLEWICZ

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

14 DIRECT EXAMINATION

15 By Ms. Floyd:

16 Q. Mr. Cieslewicz, I'm handing you what's
17 been marked as Company Exhibit 8.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. Mr. Cieslewicz, would you please
20 introduce yourself to the Attorney Examiners?

21 A. Yes. My name is Stephen Cieslewicz. I'm
22 president of CN Utility Consulting out of California,
23 and president of a company that deals with all
24 aspects of utility vegetation management, or UVM.

25 Q. Do you recognize Company Exhibit 8?

1 A. Yes, I do.

2 Q. What is it?

3 A. This is my testimony.

4 Q. Was it prepared under your supervision or
5 at your direction?

6 A. Yes, it was.

7 Q. Do you have any corrections or additions
8 to your testimony?

9 A. No, I do not.

10 Q. If I asked you the same questions
11 contained in Company Exhibit 8 today, would your
12 answers be the same as the text?

13 A. Yes, they would.

14 MS. FLOYD: Your Honor, I now tender
15 Mr. Cieslewicz for cross-examination.

16 EXAMINER CHILES: Thank you.

17 Mr. Potash?

18 MR. POTASH: Thank you.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Potash:

22 Q. Are you assessing as the proximate cause
23 of the blackout of 2003 on tree contact with the
24 transmission wire? Transmission line?

25 A. You'll have to clarify what you mean I'm

1 "assessing." I don't understand your question;
2 please rephrase it.

3 Q. Okay. Were you involved in the
4 investigation as to the circumstances surrounding the
5 blackout that took place on the Eastern Seaboard in
6 August of 2003?

7 A. Yes, I was. Immediately following the
8 blackout, President Bush, Prime Minister Chrétien put
9 together a joint U.S./Canadian task force looking at
10 the causes of the northeast blackout and determining
11 what could be done to prevent this in the future.

12 I along with my retired partner, Robert
13 Novembri, investigated the UVM-related aspects of the
14 northeast blackout. We were the tree experts for the
15 U.S. and Canadian government.

16 Q. Having established that, are you saying
17 that the primary predominant cause of the blackout
18 was tree contact with the power line?

19 A. I do not think -- I believe we would be
20 rewriting history if we said there was a primary
21 cause of the northeast blackout.

22 If you review the official reports from
23 both the joint -- from the task force, you'll find
24 out that there was a series of causes of the
25 northeast blackout. They ranged from incompatible

1 vegetation on transmission right-of-ways to issues
2 with switching, loading. There was a whole myriad of
3 items that contributed to the cascade blackout.

4 Q. So the answer to the question, then, is
5 tree contact with a transmission line was not the
6 primary cause of the blackout.

7 A. Tree unmanaged vegetation on several
8 right-of-ways contributed to the total affect of the
9 blackout. Had it not been for those tree contacts,
10 the blackout would not have occurred the way it did.

11 Q. I'm trying to get my question answered.
12 The question is you said that there's several causes.
13 Correct?

14 A. Correct.

15 Q. Now, sometimes one may be more
16 predominant and others may be a contributing factor.
17 All right? You understand that part?

18 A. Yes.

19 Q. Was the tree contact with the power line
20 the predominant cause of the -- I'm not talking about
21 of a blackout but of the massive blackout that took
22 place along the Eastern Seaboard and in Canada?

23 MS. FLOYD: Objection. Mr. Cieslewicz
24 has responded to the question already.

25 EXAMINER CHILES: Sustained. I believe

1 the witness fairly answered your question. If you
2 don't like the answer, you can ask another question.

3 Q. I'll ask a different question.

4 Was not because of the massive blackout
5 the failure -- the human failure and the equipment
6 failure to control what was a localized contact
7 between the tree and the transmission wire?

8 A. The entire event was nowhere as simple as
9 you're trying to pigeonhole it in. It was a series
10 of events which did include human error but a main
11 contributor of that, and it was pointed out in the
12 official report, the official joint U.S./Canadian
13 task force report, one of the principal causes of the
14 northeast blackout was unmanaged vegetation on
15 transmission right-of-ways.

16 What contributed to the cascading of this
17 event were trees growing up underneath transmission
18 lines and the examination of the growth of the trees,
19 the unmanaged trees and the sag of the conductors,
20 which can be very significant; that was one of the
21 principal causes attributed to the totality of the
22 northeast blackout.

23 Q. Would you agree or disagree with the
24 following statement: The blackout's primary cause
25 was a software bug in the alarm system at a control

1 room of FirstEnergy Corporation in Ohio. Operators
2 were unaware of the need to redistribute power after
3 overloaded transmission lines hit unpruned foliage.
4 What would have been a manageable local blackout
5 cascaded into widespread distress on the electric
6 grid.

7 Would you agree or disagree?

8 MS. FLOYD: Objection. Mr. Potash, if he
9 would like Mr. Cieslewicz to respond, he should show
10 Mr. Cieslewicz the document.

11 MR. POTASH: I asked him a question.
12 Whether I have a document or I made it out of thin
13 air is immaterial. He would either agree with the
14 statement read or not agree with the statement read.
15 That's all I asked.

16 EXAMINER CHILES: Mr. Potash, you're
17 obviously reading from a document. The Bench would
18 like to see a copy of what you're reading and I'd
19 also like you to show it to the witness.

20 MR. POTASH: All right. Among the
21 documents and, again, I did not intend to introduce
22 this as evidence, so I don't have copies for
23 everybody, but this is a copy of a National
24 Aeronautics and Space Administration System Failure
25 Case Study that was formed five years after or four

1 years after the fact. Show it to you.

2 MS. FLOYD: Your Honor, we don't have a
3 copy of this in front of us.

4 EXAMINER CHILES: You can take this copy
5 back. If you would show this to opposing counsel.

6 MR. POTASH: Okay.

7 MS. FLOYD: Having reviewed the document,
8 he hasn't established that -- what this document is.
9 It's hearsay, he hasn't established the author of the
10 document, what the document is, so there's no
11 foundation for this document.

12 EXAMINER CHILES: Mr. Potash, your
13 response?

14 MR. POTASH: All this started was a
15 question whether you agree or disagree with the
16 statement. If he says I agree, I move on. If he
17 disagrees, then I may continue with it. But I
18 haven't offered the document into evidence. I just
19 asked a question.

20 This is cross-examination. I am asking
21 the witness whether he agrees with the statement that
22 I presented to him. It's no different than any other
23 question you ask any other witness.

24 EXAMINER CHILES: Ms. Floyd, do you have
25 a response?

1 MS. FLOYD: You know, if all he's asking
2 if he agrees with a statement on a document, it's
3 still a hearsay statement.

4 MR. POTASH: I didn't ask about a
5 document.

6 MS. FLOYD: It's a statement on a
7 document; that's hearsay.

8 EXAMINER CHILES: Mr. Potash, I think the
9 problem is that you're reading a statement into the
10 record which has not been introduced into evidence.
11 If you wish to try and admit it into evidence, you
12 could make a motion. Or if you want to rephrase your
13 question.

14 MR. POTASH: With all due respect, if I
15 had written that question out on this tablet here and
16 read it --

17 MS. DUNN: You would still be giving
18 facts that are not in evidence as part of the
19 question. I think you need to --

20 MR. POTASH: I'm not going to tell you
21 your business.

22 EXAMINER CHILES: I don't need a
23 lesson --

24 MR. POTASH: I said I'm not going to tell
25 anybody their business. All I did was ask a

1 question. I'll move on.

2 EXAMINER CHILES: You can't ask it, you
3 need to move on. Not assuming facts that aren't in
4 evidence.

5 MR. POTASH: That's fine.

6 Do you know what the last Corrigan
7 exhibit was?

8 EXMINER TAUBER: We're up to 10. This
9 will be 10.

10 (EXHIBITS MARKED FOR IDENTIFICATION.)

11 Q. Sir, I'm handing you a copy of what has
12 been marked for purposes of identification as
13 Corrigan Exhibit 10. This is what purports to be a
14 study prepared by the National Aeronautics and Space
15 Administration in December of 2007. First question I
16 have is have you -- are you familiar with this item?

17 A. No.

18 Q. Okay. Are you familiar with the National
19 Aeronautics and Space Administration?

20 A. Yes, I am.

21 Q. Good enough. Now, did you agree or
22 disagree with the following statement --

23 MS. FLOYD: Objection, your Honor.
24 Before we go into the statement being read from the
25 exhibit, Mr. Cieslewicz just said he's not familiar

1 with the document. There is no foundation for any
2 questions about this document because he's not
3 familiar with it.

4 EXAMINER CHILES: Mr. Potash?

5 MR. POTASH: Government publication,
6 self-authenticating.

7 EXAMINER CHILES: I think you need to lay
8 a foundation for what this document is and how you're
9 trying to admit this document.

10 MR. POTASH: The document is a system
11 failure case study published by the National
12 Aeronautics and Space Administration, December 2007.

13 MS. FLOYD: If I may also say.

14 EXAMINER CHILES: Ms. Floyd?

15 MS. FLOYD: There's no foundation that it
16 meets any of the hearsay exceptions. There's no
17 foundation that this witness recognizes it or has --
18 can testify about this. So this is improper.

19 It's also no foundation that there's a
20 public record. And on top of that, he hasn't
21 established -- it's hearsay.

22 EXAMINER CHILES: Mr. Potash, could you
23 bring that document up here?

24 MR. POTASH: Sure will.

25 EXAMINER CHILES: The exhibit that's been

1 marked as Corrigan Exhibit 10 appears to be a study
2 entitled "System Failure Case Studies," from
3 December 2007 publication of the National Aeronautics
4 and Space Administration.

5 The Bench is willing to accept this as a
6 learned treatise. As such, Mr. Potash, you may refer
7 to this document; however, as is general Commission
8 procedure, we will not take this as -- admit this as
9 an exhibit of learned treatise but you may refer to
10 this in your questioning of the witness.

11 MR. POTASH: Thank you very much. Given
12 what has just taken place, I'm now doing preemptive.
13 I'm handing first the hearing panel and I will pass
14 it around when we're done, what purports to be
15 studies from the North American Electric Reliability
16 Corporation. I was going to ask the witness if he
17 was familiar with it, but before I do that, might as
18 well show you these documents.

19 MS. DUNN: Can we get a copy of that?

20 EXAMINER CHILES: Mr. Potash, do you have
21 copies of these three documents?

22 MR. POTASH: I do not.

23 MS. DUNN: Can we see it then?

24 MR. POTASH: I indicated I was giving it
25 to the hearing panel first and I would give to you

1 second and.

2 MS. DUNN: Your Honor, we would like the
3 opportunity to read the entire document.

4 EXAMINER CHILES: You'll have the
5 opportunity in just a minute.

6 MS. FLOYD: Your Honor, if we may go off
7 the record for a moment?

8 EXAMINER CHILES: Sure, let's go off the
9 record.

10 (Off the record.)

11 EXAMINER CHILES: Let's go back on the
12 record.

13 Mr. Potash, you may continue.

14 Q. (By Mr. Potash) Before I get to some of
15 the documents that we just recently raised, I want to
16 ask a few preliminary questions. Have you ever
17 visited the Corrigan property?

18 A. No, I have not.

19 Q. So you have not personally examined the
20 Corrigan tree, vis-à-vis the transmission lines. You
21 were not present on the property.

22 A. No, I've not been on the property. I
23 have reviewed various photographs and statements, et
24 cetera.

25 Q. I understand that, but the question was

1 personal visit; you said no.

2 A. Yes. Twice.

3 Q. From your observation from the
4 photographs and whatever, the tree is not underneath
5 any transmission line; is that correct?

6 A. The tree appears to be adjacent to the
7 conductors. On the existing easement.

8 Q. There are three types of -- three
9 categories of I guess that are used to discuss
10 tree/transmission line situations: The trees that
11 grow into the lines; trees that do not grow into the
12 lines but are within the right-of-way; and trees that
13 are outside of the right-of-way. Is that a fair
14 summary?

15 A. You are representing the categories of
16 different violations that occur, can occur, in
17 FAC-003, which is the NERC standard. If there's an
18 incident that occurs, there's three categories of
19 violations.

20 EXMINER TAUBER: And what is the 003
21 category of violation? What is the NERC category
22 003? You said that's one of the classifications.

23 THE WITNESS: Shortly after the northeast
24 blackout they passed the Policy Energy Act which gave
25 FERC, as I'm sure you know, certain powers to oversee

1 that they had not had prior to 2004.

2 Their first charge, FERC's first charge
3 was to develop an electric reliability organization,
4 which is NERC, North American Electric Reliability
5 Corporation. Shortly after this big change in
6 oversight of the transmission activities, NERC was
7 charged with developing a standard that would apply
8 across North America regarding voltages, 200,000
9 volts and above, and also below 200,000 volts as a
10 part of the bulk electric power system.

11 Having developed over a hundred different
12 standards that utilities are compelled to comply with
13 from a maintenance perspective, and one of those
14 standards is FAC-003, which is the vegetation
15 management standard that has to be adhered to by
16 utilities across North America.

17 I actually participated in the drafts of
18 the first FAC-003 and I currently serve on the
19 current standard drafting team committee for the new
20 version FAC-003 version 2.

21 EXMINER TAUBER: Thank you for clarifying
22 that.

23 MR. POTASH: With all due respect, I
24 don't know if he answered my question.

25 Q. (By Mr. Potash) The question was there

1 are three categories as they relate to
 2 tree/transmission line situations: The trees grow
 3 into the lines; the trees are adjacent to the lines
 4 but within the right-of-way; and where trees are
 5 outside the right-of-way. That is all I'm asking.
 6 Is that a fair summary of the three categories?

7 A. It's not a -- allow me to explain.

8 Q. Let me ask a different question.

9 A. It's not a fair summary.

10 Q. I'd like the hearing panel to let me ask
 11 a different question.

12 Would you take a look at Corrigan
 13 Exhibit 13. And ask you if you recognize that
 14 document.

15 A. Yes, I do.

16 Q. All right. Is it not prepared by the
 17 North American Electric Reliability Corporation?

18 A. It is prepared by them.

19 Q. Is it not a vegetation --

20 MS. FLOYD: I think, Mr. Cieslewicz, were
 21 you finished with your answer?

22 Q. I asked was it prepared by this entity
 23 and you said yes.

24 A. Yes, it was.

25 Q. Next, on the first page does it not

1 indicate three categories? I'll read it: The
2 revised standard requires each outage to be
3 categorized as the following, and gives three
4 categories, correct?

5 A. Correct.

6 Q. Are those categories correct as set forth
7 in that document?

8 A. These categories are sections of
9 reporting requirements that are found in FAC-003 for
10 if there is an incident. If there is an outage, a
11 momentary outage, sustained outage, these are the
12 categories of types of outages that can occur.

13 Category 1 as specified here would be
14 vegetation that grows directly into the conductors;
15 category 2 would be a fault caused by a tree within
16 the right-of-way controlled by the utility, if, for
17 example, it falls into the conductor or it grows into
18 the conductor; and category 3 is fall-ins from areas
19 outside of the control of the utility.

20 In other words, utilities have prescribed
21 easements. If a tree falls, a tall tree from outside
22 of that, that would be considered a category 3
23 violation.

24 But these categories here are developed
25 to categorize the types of violations that occur as a

1 result of noncompliance with FAC-003.

2 Q. Just want to make sure he's done.

3 The cause -- a cause of the August 2003
4 blackout involved trees that grew into the
5 transmission lines as a category 1 fault as opposed
6 to a category 2 or category 3; is that correct?

7 A. Had this standard been in place when the
8 blackout occurred, these would have been categorized
9 as a category 1 for outage reporting.

10 Q. Okay.

11 A. With the main criteria being here they
12 were trees that were within a utility easement that
13 the utility had the right and obligation to remove
14 prior to that event occurring.

15 MR. POTASH: Did he answer the right
16 question?

17 EXAMINER CHILES: Yes, I believe he did
18 answer your question.

19 MR. POTASH: I'll move on. I don't know
20 what he said.

21 Q. I'm going to hand you what has been
22 marked as Corrigan Exhibit 14. Have you had a chance
23 to take a look that?

24 A. I have seen this before, yes. It is --

25 Q. Does it fairly and accurately represent a

1 portion of the report on which you discussed as it
2 relates to the causes and recommendation of the
3 August 14, 2003, blackout?

4 I realize it's not the entire report.
5 I'm asking that which is contained therein, you
6 recognize it as being true and accurate -- an
7 accurate portion of your report?

8 A. This was not my report.

9 Q. All right. Do you recognize it as being
10 a true and accurate portion of the final report?

11 A. I recognize these few pages as a section
12 taken out of the final report submitted by the joint
13 U.S./Canadian task force. But this was not a report
14 I wrote.

15 Q. Do you recognize it as being a -- this is
16 a yes or no. Try to do that.

17 Do you recognize it as being a portion of
18 the report starting at page 17 through page 22?

19 A. Yes.

20 MS. FLOYD: Objection.

21 EXAMINER CHILES: I believe the witness
22 has already answered the question twice.

23 MS. FLOYD: It was asked and answered.

24 MR. POTASH: Good, I'll move on.

25 Q. Are you aware that the utility began a --

1 were you present during the testimony of Ms. Spach?

2 A. Today? Yes, I was.

3 Q. And you heard her testimony as to the
4 utility beginning a more aggressive vegetation
5 management policy in 2000. Were you present when
6 some of that testimony was given?

7 MS. FLOYD: Objection. Mischaracterizes
8 the scope of the prior testimony -- I mean,
9 mischaracterizes the prior testimony.

10 EXAMINER CHILES: Mr. Potash?

11 MR. POTASH: I don't believe it
12 mischaracterizes. I cited to a portion of the prior
13 testimony where Mr. Western said we started this in
14 2000, Ms. Spach confirmed that and she independently
15 on her own said we filed the policy in 2000, we filed
16 a second policy in 2010 which is virtually comparable
17 to the 2000. I don't know how I mischaracterized it.

18 MS. FLOYD: He's mischaracterizing what
19 Ms. Spach said whether she was talking about an
20 industry policy, whether we're talking about
21 vegetation management policy for the company. The
22 record will stand for itself but this is a
23 mischaracterization of Ms. Spach's testimony.

24 EXAMINER CHILES: Could you read the
25 question back to me, please?

1 (Record read.)

2 EXAMINER CHILES: The objection is
3 overruled.

4 Q. (By Mr. Potash) Were you present when
5 that testimony was given by Ms. Spach?

6 A. I was present when she was on the witness
7 stand, yes.

8 Q. And did you hear her testimony?

9 A. Yes.

10 Q. Are you aware that CEI began a more
11 vigorous enforcement of its vegetation management
12 policy three years before the blackout? Are you
13 aware of that?

14 A. I am aware based on our benchmarking that
15 utilities over the last 20 years have progressively
16 increased their efforts on transmission right-of-ways
17 in particular.

18 I would not be surprised if FirstEnergy
19 had increased their efforts in 2000 -- in the year
20 2000, but I know for a fact based on our research
21 that once the northeast blackout occurred, vegetation
22 management activities across North America increased
23 their efforts as a result of our recommendations to
24 reclaim right-of-ways and remove incompatible
25 vegetation.

1 Q. Are you saying that you did not do that
2 before 2003?

3 A. I am saying --

4 Q. Yes or no, are you saying --

5 MS. FLOYD: Objection.

6 EXAMINER CHILES: We're going to talk one
7 at a time. When an objection is raised, I don't want
8 you to answer, I want you to hold off just so the
9 record's very clear. I believe that question has
10 been asked and answered by the witness.

11 Q. To your knowledge has the CEI changed,
12 and its sister FirstEnergy, have they changed their
13 vegetation management policy, substantially changed
14 their vegetation management policy as it relates to
15 the Corrigan tree between 2000 and 2010 to your
16 knowledge?

17 A. Absolutely, yes. And it would have had
18 to change because of the promulgation of the FAC-003
19 which requires a whole myriad of new reporting
20 requirements. You actually handed me one of the
21 reasons they would have to change their reporting on
22 transmission-related outages.

23 FAC-003 placed new burdens on all utility
24 companies across North America; as a result all
25 transmission vegetation management programs have

1 become more robust and I would suggest more
2 aggressive in reclaiming right-of-ways.

3 Q. Does this aggressive policy apply to
4 force transmission lines under 200 kV?

5 A. It would depend on the particular
6 transmission line.

7 Q. So the answer is no.

8 A. It would --

9 Q. Transmission lines under 200 are not --
10 all transmission lines under 200 kV are not treated
11 equally in comparison with the requirements for
12 transmission lines over 200 kV?

13 MS. FLOYD: Objection.

14 A. FAC-003, the regulation compels certain
15 actions on all lines 200,000 volts above. However,
16 the current version and also the version that would
17 become into affect next year applies to bulk electric
18 power system lines that can be as low as 60,000
19 volts.

20 Q. All I ask is right now. I'm not talking
21 about next year. We don't know what happens next
22 year. I'm asking right now is there a distinction
23 between 200 kVs as relates to what the policy has
24 applied?

25 MS. FLOYD: Objection. Mr. Potash, this

1 is argumentative.

2 EXAMINER CHILES: Mr. Potash?

3 MR. POTASH: I asked a present-day
4 question, I get something that's happening next year.

5 EXAMINER CHILES: I'm going to allow you
6 to ask the question but I'm going to tell you again
7 to please allow the witness to provide a full answer.
8 You can --

9 MR. POTASH: He's not shy.

10 EXAMINER CHILES: Don't speak over me.
11 You can ask me to direct a question yes or no but I
12 don't want you to limit in that way. I want him to
13 provide a full answer.

14 MR. POTASH: This is a yes or no
15 question.

16 EXAMINER CHILES: I need to hear what the
17 question is.

18 MR. POTASH: I'm prefacing this is a yes
19 or no question.

20 Q. (By Mr. Potash) Today is there a
21 distinction in policy for 200 kV lines and above
22 versus under 200 kV?

23 A. As I already stated, the bright line
24 breakoff is 200,000 volts and above directly FAC-003
25 applies. However, today certain lines that have

1 lower voltages that are part of the bulk electric
2 power system which can go down to 60,000 volts,
3 FAC-003 applies to those lines also today.

4 Q. Do you know the number of power outages
5 that occurred on the transmission line that crosses
6 over the Corrigan easement as a result of the
7 Corrigan tree?

8 A. I do not have any information on
9 reliability statistics on that line.

10 Q. You provided some information relating to
11 statistics of power outages caused by trees? Is this
12 part of your written statement? I think there's a
13 graph or something to that effect.

14 A. Yes. I provided the actual NERC
15 reporting of growing-related outages across North
16 America for voltages. It was 345.

17 Q. I think it's on page 15.

18 A. Yes. This was a NERC chart.

19 Q. I think you have my copy of Exhibit -- do
20 you recognize what has been marked as Corrigan
21 Exhibit 12?

22 A. Yes, I do. It's another NERC quarterly
23 reporting of tree-related outages in North America.

24 Q. Your chart talks about outages at 230 kV
25 or higher. Correct? On page --

1 A. My chart is a NERC chart.

2 Q. Okay. You referenced as part of your
3 testimony on page 15 a chart that reflects outages of
4 230 kV or higher; is that correct?

5 A. That is correct.

6 Q. What is the Corrigan transmission -- or,
7 yeah, transmission line?

8 A. I believe it's 138 kV.

9 Q. Nationwide how many such outages occur
10 in -- during the reporting period? As reflected --

11 A. They were not reported. NERC did not
12 report that. I use the exact same chart that you
13 just handed me. This exact same chart. So NERC did
14 not report anything below 230.

15 Q. Hold on. All right, on page 1, the
16 fourth quarter summary, how many category 1 grow-ins
17 were there under 200 kV?

18 A. Zero, according to this chart.

19 Q. How many category 2?

20 A. Zero.

21 Q. How many in category 3?

22 MS. FLOYD: Objection, asked and
23 answered. Mr. Cieslewicz has already said that this
24 chart is not -- I believe Mr. Cieslewicz has already
25 answered these questions.

1 EXAMINER CHILES: I don't believe he has.
2 I'm going to allow the questions at this point.

3 Q. For all categories for under 200 kV how
4 many reported outages were there?

5 A. In the fourth quarter of 2012 there were
6 zero.

7 Q. Okay. Do you know for the monthly
8 calendar year for 2012 how many there were?

9 A. I do not know without --

10 Q. Hold on, I'll get you that.

11 Will you please refer to Corrigan
12 Exhibit 13, which you've already identified as having
13 recognized the document. I'm going to ask you to
14 turn to page 3. For the calendar year 2006 how many
15 under 200 kV events occurred regardless of category?

16 A. I actually would have to look at this a
17 second because I'm not seeing where it references 200
18 kV lines.

19 Q. Here. I'm pointing out to the witness so
20 that he has a reference first quarter category 1,
21 second row 1-230 kV. Do you see that?

22 A. This indicates it references that there
23 was one category 1 grow-in that was 230,000 volts.
24 It is not sub-200 kV.

25 Q. No, you said you weren't certain how the

1 chart works so I wanted to explain that it indicates
2 the number of incidences and the level of the voltage
3 of the transmission line.

4 MS. FLOYD: Objection. I believe that
5 Mr. Potash is talking over Mr. Cieslewicz. If we can
6 get down to one answer and a question rather than
7 talking over each other.

8 EXAMINER CHILES: I'll just try to tell
9 everyone again, please try to avoid talking over each
10 other. It makes for a very messy record and very
11 difficult for the court reporter.

12 Q. Let me rephrase the question.

13 From viewing the chart can you determine
14 whether there were any category 1, category 2, or
15 category 3 incidences involving lines of less than
16 200 kV?

17 A. There appears on the chart in the first
18 quarter to have been two less than 200,000-volt
19 category outages. There also appears in the third
20 quarter to have been four fall-ins from outside the
21 right-of-way that were less than 200,000 volts. And
22 category 3 in the fourth quarter for less than
23 200,000 volts there were 14 incidents.

24 Q. The Corrigan tree, if any incident
25 occurred, would be a category 2, correct?

1 A. No. The Corrigan tree would have a
2 spread large enough to encroach had it not been
3 routinely pruned back within the required clearances.
4 So it could have been a growth-related outage. And
5 which would be a category 1.

6 It could also fall into the lines which
7 would indeed be a category 2 reporting outage. So it
8 could be either category 1 or it could be either
9 category 2.

10 Q. In the ten years prior to today we've had
11 testimony that it could not have been a category 1.

12 MS. FLOYD: Objection.

13 MR. POTASH: We've had testimony that it
14 was at least ten years that that tree was lopped off
15 facing the wires. Could not have been category 1.

16 MS. FLOYD: Objection. There has been no
17 facts in evidence as to what Mr. Potash is
18 representing that there's been testimony.

19 EXAMINER CHILES: I agree. At this
20 point, Mr. Potash, I think that you need to rephrase
21 your question.

22 MR. POTASH: Mr. Laverne testified his
23 opinion that that lopping took place at least ten
24 years ago. I'm basing if you're going to rely on his
25 testimony for whatever reason, I figure I can be able

1 to use it as a basis of a question.

2 EXAMINER CHILES: Ms. Floyd, do you have
3 a response?

4 MS. FLOYD: Mr. Laverne -- again is
5 mischaracterizing testimony. Mr. Laverne did not
6 testify about category 1 violations.

7 EXAMINER CHILES: Can you read the
8 question back to me, please?

9 (Record read.)

10 EXAMINER CHILES: Mr. Potash, I'm in
11 agreement that you need to rephrase your question.
12 I'm going to sustain the objection.

13 Q. (By Mr. Potash) Were you present during
14 the testimony of Mr. Laverne?

15 A. Yes, I was.

16 Q. Did you hear him testify as related to an
17 opinion as to when the portion of the tree that was
18 cut and facing the wires was approximately at least
19 ten years ago?

20 A. You're going to have to rephrase that.

21 Q. Did you hear Mr. Laverne give testimony
22 that it was at least ten years that the severe cut to
23 half of the tree that causes it to be lopsided, that
24 it was at least ten years ago? Were you present?

25 MS. FLOYD: Objection. Mischaracterizes

1 Mr. Laverne's testimony.

2 MR. POTASH: It was, I'm sorry?

3 EXAMINER CHILES: She said it
4 mischaracterizes Mr. Laverne's testimony. Do you
5 have a response?

6 MR. POTASH: Yeah. It doesn't. He gave
7 an opinion of ten years.

8 EXAMINER CHILES: I think you need to try
9 again to rephrase your question making sure that you
10 are not --

11 Q. Were you present during Mr. Laverne's
12 testimony? You said yes. Did you hear Mr. Laverne
13 give an opinion to when in his opinion he thought
14 that the tree was severed to become lopsided?

15 MS. DUNN: Attorney Examiner Willey, I
16 would --

17 MR. POTASH: Only one person should be
18 objecting.

19 EXAMINER CHILES: Are you finished asking
20 your question?

21 MR. POTASH: I asked him if he was
22 present during any part of that testimony.

23 EXAMINER CHILES: Ms. Floyd? Ms. Dunn?

24 MS. DUNN: My concerns, Ms. Willey,
25 pardon me, Attorney Examiner Chiles, is that the

1 record is not being made clear. You were apparently
2 cut off in the middle of making your ruling and it
3 makes the record not clear. So I would be -- I'd
4 appreciate it if we could get your entire statement
5 that you were saying on the record.

6 EXAMINER CHILES: Ms. Dunn, I appreciate
7 that but, however, Ms. Floyd should be making the
8 objections at this point. I know you know our
9 procedures; one attorney. I do appreciate that.

10 I was saying that I think you needed to
11 rephrase your question for a third time to avoid
12 attributing specific phrases to Mr. Laverne that he
13 did not specifically use. And I'm not sure if we
14 have achieved that quite yet.

15 MR. POTASH: I'll try again.

16 Q. (By Mr. Potash) During Mr. Laverne's
17 testimony while you were present did you hear him
18 give an opinion as to how long ago the Corrigan tree
19 was pruned to the extent that it was lopped, became
20 lopsided?

21 A. I listened to that exchange and my take,
22 my interpretation was that he was saying that some of
23 the wounds that existed on that tree had happened
24 approximately ten years ago.

25 Q. Now, some of the wounds. Can we be

1 specific?

2 Let me back up.

3 You saw pictures of the tree?

4 A. Yes.

5 Q. Is the tree lopsided?

6 A. As a certified arborist I need to know
7 what you mean by "lopsided."

8 Q. Does the tree -- is the tree equally
9 balanced in its crown?

10 MS. FLOYD: Objection.

11 MR. POTASH: He just asked me to try to
12 clarify. I'm not quite certain, if we want to get
13 home while it's still daylight.

14 EXAMINER CHILES: Can I have the basis
15 for your objection?

16 MS. FLOYD: I believe it's beyond the
17 scope of Mr. Cieslewicz's testimony.

18 EXAMINER CHILES: I'm going to overrule
19 your objection at this point. I believe it's within
20 the witness' expertise. I'm going to allow the
21 question.

22 Q. (By Mr. Potash) Do understand what a
23 "crown" is? Is that within your expertise?

24 A. I absolutely understand what a "crown"
25 is.

1 Q. Your lawyer wanted to make sure you did.

2 Now, is the crown equal balanced on the
3 Corrigan tree?

4 A. You are going to have to define to me by
5 what you mean "equal balanced." And I will, after
6 this, I am a certified arborist and I understand tree
7 structure and tree shapes. You are throwing out a
8 layman's term of "balanced" and "imbalanced," which
9 if you would study the shapes of trees, you would
10 understand that the vast majority of trees do not fit
11 one what would be perceived by the layman as that's
12 balanced or that's imbalanced.

13 Q. Is the crown symmetrical?

14 A. The crown --

15 Q. Do you need the definition of
16 "symmetrical"?

17 EXAMINER CHILES: Mr. Potash, we're going
18 to speak one at a time.

19 Please finish your answer.

20 A. My interpretation of viewing those
21 pictures, and I would add that I have in person seen
22 thousands of trees, many of which were silver maples
23 that had been pruned historically for line clearance,
24 and what was done there regarding the removal of one
25 side of the tree, the major limbs heading towards the

1 conductors, were consistent with what industry
2 practices are regarding that tree.

3 Q. All I asked is the tree crown
4 symmetrical? I didn't ask about industry practices.
5 Is the tree crown symmetrical?

6 I'll define "symmetrical" if you want but
7 you said you understood what that term means.

8 MS. FLOYD: Objection, argumentative.

9 EXAMINER CHILES: There is an objection.
10 Would you note the basis for your objection?

11 MS. FLOYD: It's argumentative. There's
12 multiple statements made and it's argumentative.

13 EXAMINER CHILES: I'm overruling the
14 objection. That the question was argumentative
15 however, I believe that the witness has answered your
16 question by saying this is not the way things are
17 defined in the industry and I think we need to move
18 on in the questioning.

19 MR. POTASH: Fine.

20 Q. (By Mr. Potash) The tree in its present
21 condition, do you know how long it has been in that
22 shape? Do you have any idea?

23 A. You're going to have to clarify that
24 compound question of time and "that shape." What do
25 you mean by "that shape"?

1 Q. When did you last view a picture of the
2 tree?

3 A. Yesterday.

4 Q. Do you know when that picture was taken?

5 A. No, I do not.

6 Q. So you have no idea whether it was taken
7 yesterday or last year.

8 A. That's what I said: No, I do not.

9 Q. Just want to make sure. Don't want any
10 misunderstanding.

11 Was it in color?

12 A. I believe I've seen pictures in color.

13 Q. When was the first time you saw a color
14 picture of the Corrigan tree?

15 A. I believe I saw pictures of the Corrigan
16 tree in color approximately a month or two ago. But
17 I do not know the date they were taken.

18 Q. Were there leaves on the tree?

19 A. I have seen pictures of the Corrigan tree
20 with leaves and I've seen pictures of the Corrigan
21 tree without leaves.

22 Q. Pictures of the Corrigan tree with
23 leaves, do you have that in your mind now?

24 A. I'd be much happier if I could see the
25 tree, if you have a picture. I'd be more than happy

1 to look at it.

2 Q. I'm going to hand you what has been
3 marked previously as Corrigan Exhibit 3. Have you
4 seen any of those pictures?

5 A. I don't believe I've seen these before.

6 Q. Please take a moment to look at them and
7 when you're done let me know, please.

8 A. I'm done.

9 Q. Can you tell by looking at that picture
10 how long the tree has been in that condition?

11 A. I'm going to have to ask for
12 clarification of what you mean "condition." If
13 you're asking me did it have that appearance, is it
14 healthy, is it unhealthy? You have to define what
15 you mean by "condition."

16 Q. Okay. Change the word "condition" to
17 "appearance." Can you tell from that picture how
18 long the tree presented that appearance?

19 A. Well, I would suggest since it's a
20 deciduous tree, it would not have the same appearance
21 during the winter months as it does during spring or
22 fall. So I would suggest, to answer your question
23 specifically, it could have been months since it
24 looked differently.

25 Q. Assume for the sake of discussion, I'm

1 only talking about the tree with the leaves on it.
2 I'm not talking about winter, I'm not talking about
3 spring. Talking about the way the tree looks now.

4 Can you tell whether that tree has
5 been -- has presented that appearance when it -- how
6 long it has presented that appearance in that
7 particular shape? Can you tell?

8 A. I cannot make those types of
9 determinations with these pictures.

10 Q. Swell, thank you.

11 Are statistics kept for power outages
12 caused by human activity?

13 A. Power outages are typically documented at
14 the utility companies, they're documented, as you
15 pointed out, NERC documents tree-related outages in
16 their regular reports. And I would imagine the
17 Public Utilities Commission here in Ohio as well as
18 others tracks tree-related outages.

19 MR. POTASH: I'm going to ask if the
20 witness can answer the question yes or no because it
21 was a clear yes or no. I didn't ask about tracking
22 tree-related outages.

23 EXAMINER CHILES: Can you read the
24 question back to me, please?

25 (Record read.)

1 EXAMINER CHILES: And the answer, I think
2 that's a fair answer to your question, Mr. Potash.

3 MR. POTASH: He didn't say whether it
4 keeps track of outages due to human-related
5 activities.

6 EXAMINER CHILES: If you want to follow
7 up with a more specific question, that's fine, but
8 the question you asked, I think you got an answer.

9 MR. POTASH: I'll try again.

10 Q. (By Mr. Potash) Are there different
11 statistics kept for the causes of power outages?

12 A. Yes.

13 Q. Great. Tree involvement is one, correct?

14 A. Tree involvement is one.

15 Q. Name me another.

16 A. There can be equipment failure.

17 Q. Name me another.

18 A. Can be human error.

19 Q. Name me another.

20 A. Car/pole accident.

21 Q. Name me another.

22 MS. FLOYD: Objection. This has been --
23 he's continuing to ask the same question. He should
24 give the witness an opportunity --

25 EXAMINER CHILES: Overruled.

1 Q. Name me another.

2 A. Lightning.

3 Q. Excellent. Let's categorize them as
4 weather-related so we don't have to go wind and rain
5 and all this other. If you don't want to, we can go
6 for each weather or inclement weather condition.

7 Name another.

8 THE WITNESS: Can you repeat back,
9 please, my answers to the last questions, if that's
10 all right?

11 EXAMINER CHILES: Yes. Would you please
12 read it back?

13 (Record read.)

14 A. Fire.

15 Q. Any others can you think of?

16 A. As I mentioned in my last answer, every
17 utility accumulates this information as do the public
18 utilities commissions and industry organizations and
19 the list could be endless and it would differ from
20 one utility to the other as well as differ from one
21 public utilities commission to the other. I've
22 covered the major types of events that would be
23 tracked regarding outage statistics.

24 Q. From your experience how frequent is
25 human-involvement-causing power outages?

1 A. It can be quite frequent. It can be.

2 Q. You're not going to ban humans from
3 engaging in electrical work, are you?

4 A. Actually it is -- the human-related
5 events that I know of typically involve private
6 citizens or loggers or foresters cutting down trees
7 adjacent to power lines where they cause, the humans
8 cause the tree to fall into the lines. And that is
9 quite frequent.

10 Q. I misunderstood your answer.

11 Through the electrical system humans
12 involved in the production, transmission,
13 distribution, whatever, of electrical power, is there
14 any causal relationship between that and power
15 outages?

16 A. There can be human error involved and
17 switching, it can occur in a whole myriad of
18 different activities.

19 Q. Equipment failure, you're talking about
20 utility equipment failure, correct?

21 A. Yes.

22 Q. Good. Car accidents don't necessarily
23 involve the utility, that's outside the utility's
24 control, correct?

25 A. Car/pole accidents are typically tracked

1 by utilities, as are other force majeure items such
2 as storms, derecho going through an area.

3 Q. All I wanted to know, are car incidents
4 outside of the utility's control in general?
5 Correct?

6 A. Unless it's a utility employee driving
7 the car.

8 Q. Okay. Weather-related incidents, be they
9 lightning, be they tornado, be they hurricane or rain
10 or wind or whatever, utility cannot control that,
11 correct?

12 A. Utilities cannot control nature but they
13 do continually move towards making their system
14 resilient to those types of threats and take
15 mitigating actions and stuff.

16 Q. They can control the human the equipment
17 issues, correct?

18 A. They continually strive to eliminate the
19 potential of human errors.

20 Q. To your knowledge were statistics kept
21 for tree/power line interaction before 2004?

22 A. Are you talking regarding the industry, a
23 specific utility, a specific commission, a specific
24 regulatory body?

25 Q. The statistics that you mentioned before

1 that we've been talking about, are those nationwide
2 statistics?

3 A. As I mentioned, utilities have
4 historically always tracked what causes the lights to
5 go out. So the act of tracking outages, whether
6 human caused or tree related or human related, that
7 has happened and occurred since we've had electric
8 systems.

9 Q. You've indirectly answered the question.
10 The answer is yes, for years utilities have made
11 studies on causes of outages which includes
12 tree-related incidences, correct?

13 MS. FLOYD: Objection. That
14 mischaracterizes Mr. Cieslewicz's testimony.

15 EXAMINER CHILES: Mr. Cieslewicz, do you
16 believe that mischaracterizes your testimony or is
17 that a fair summery?

18 THE WITNESS: I believe it's fair.

19 EXAMINER CHILES: Thank you.

20 Overruled.

21 Q. Have you looked at any of those studies
22 of tree-related outages which would be categorized as
23 category 2 today that occurred before 2003? Yes, I
24 have looked at this and I've studied it; no, I have
25 not. It's a yes or no question.

1 EXAMINER CHILES: Mr. Potash, the witness
2 may indicate that it's not a yes or no question, as
3 is often the case. You may ask me to direct him to
4 answer the question that way. I'm not inclined to
5 direct him to answer it yes or no.

6 MR. POTASH: Then I'll rephrase the
7 question.

8 EXAMINER CHILES: Thank you.

9 Q. Have you looked at any causation studies
10 that predated 2003?

11 MR. POTASH: I ask the witness to answer
12 that yes or no.

13 EXAMINER CHILES: I'm not going to
14 instruct the witness to answer it yes or no at this
15 time unless he feels that it calls for a yes or no
16 answer.

17 A. Please ask the question again.

18 Q. I am dealing with a period of time before
19 2003 as it relates to power outages, period. Of
20 whatever cause. Okay? We okay with that right now?

21 A. Yes.

22 Q. Good. Have you looked at any studies
23 that were prepared relating to power outages of
24 whatever cause that occurred before 2003?

25 A. Yes. I've reviewed quite a few studies

1 related to tree-related outages and outages in
2 general in my 30-year career.

3 Q. Tree-related outages, nothing else. We
4 okay with that now?

5 A. Absolutely.

6 Q. Good. If category 2 as currently
7 defined -- are we okay with that now?

8 A. With the caveat that category 2 outages
9 did not exist until 2007.

10 Q. I understand that. I'm saying as
11 currently defined. I'm giving you a parameter as to
12 instead of going through the long detail, we're using
13 category 2 as you previously discussed as currently
14 defined. You understand what that is, right?

15 A. I understand that as long as you're
16 asking me about the period from when category 2
17 existed, not applying it to something that didn't
18 exist.

19 Q. Do me a favor, then, please define
20 category 2.

21 A. Category 2 became effective and did not
22 exist as a standard metric for vegetation management
23 until the rule was adopted in 2007. Prior to that
24 the adoption of category 2 reporting outages,
25 utilities classified outages in a myriad of different

1 ways.

2 There is some consistency, but the bottom
3 line, most used metric prior to category 1, 2, and 3,
4 was it an avoidable outage or an unavoidable
5 tree-related outage. So that would be the criteria
6 prior to 2007. Not category 2.

7 Q. That's not what I asked. All I asked was
8 would you please define category 2.

9 EXAMINER CHILES: I think the witness
10 misunderstood your question.

11 Mr. Cieslewicz, as defined in 2007, can
12 you give us a definition for the record as to what a
13 category 2 violation refers to?

14 THE WITNESS: Yes. Category 2 violation
15 is a tree-related incident where the tree fell into
16 the conductors or the facilities, namely the tower or
17 the pole that was located at that location, fell into
18 it but did not grow into it. But it had to have been
19 located on the defined easement.

20 In other words, if we make an analogy
21 here, the FirstEnergy or CEI easement we're talking
22 about, if their tree fell over onto the lines, that
23 would be categorized as a category 2. If it was left
24 unmanaged and grew into the lines, that would be a
25 category 1. If their tree was located outside of

1 FirstEnergy's easement and fell into the lines, that
2 would be considered a category 3.

3 EXAMINER CHILES: Thank you for defining
4 those.

5 Mr. Potash, you may continue.

6 Q. (By Mr. Potash) Using what you have
7 defined as category 2 in answer to the Attorney
8 Examiner, using your definition, not category 1, not
9 category 3, category 2, using that definition, and
10 using a time period before 2003, were there studies
11 prepared as to such tree/transmission lines
12 incidences?

13 A. As I've stated earlier, I have reviewed
14 countless studies regarding both transmission and
15 distribution systems which is different than what
16 we're talking about here --

17 Q. Let's stick with what we're talking
18 about.

19 EXAMINER CHILES: Mr. Potash.

20 Q. I'm sorry.

21 A. I have reviewed many studies and
22 participated in many studies about both the mechanics
23 of tree-related outages on transmission lines, the
24 causality or the frequency of these events occurring,
25 yes, I have reviewed many studies.

1 Q. I only asked for one. Did you review
2 anything that related to studies of what you have
3 defined as category 2 incidences or violations which
4 studies were prepared before 2003?

5 I'm not talking about distribution lines
6 because we don't have a distribution line here. I'm
7 not talking about the myriad of other studies you
8 had. It's a limited focus question: Category 2 type
9 violations as you defined it which may have occurred
10 by way of a study you saw before 2003.

11 MS. FLOYD: Objection. It's been asked
12 and answered. On top of that, it's a long, compound
13 question. But it has been asked and answered and
14 gone over.

15 EXAMINER CHILES: I'm going to allow the
16 question. If the witness needs clarification, he may
17 ask for a clarification.

18 A. I will need clarification. And
19 rephrasing of the question.

20 Q. Of the myriads of studies, thousands of
21 studies --

22 A. I did not say "thousands."

23 Q. Myriad. I think you used the word
24 "myriad." I don't know what that means, but of the
25 myriad of studies, was one of them involving

1 violations that you have defined for the Attorney
2 Examiner as a category 2 violation were it to occur
3 today, did you review any such study that was
4 prepared before 2003?

5 THE WITNESS: Your Honors, I'm having a
6 problem with him suggesting there would be a study
7 about something that did not exist at the time. The
8 category 2 outage was invented as a result, it was a
9 measure invented to quantify the effectiveness of
10 FAC-003.

11 Q. We'll try it differently. I don't give
12 up easy.

13 A. Neither do I.

14 Q. You indicated that a category 2 violation
15 today, and I'm going to summarize it because I can't
16 do the exact words, is basically a tree existing
17 within a utility's right-of-way that is not growing
18 underneath the transmission line but comes into
19 contact either by tipping over or by some other
20 circumstance. Is that a fair summary?

21 A. That is a fair summary.

22 Q. Fine. Take that fair summary. Did you
23 ever review any study that discussed the number, the
24 quantity or study, any aspect of that type of
25 incident which study was prepared before the year

1 2003?

2 MS. FLOYD: Objection, asked and
3 answered.

4 EXAMINER CHILES: I'm going to allow the
5 question.

6 A. I have reviewed studies prior to the
7 northeast blackout, prior to the 2007 adoption of
8 FAC-003 that have looked at the frequency of trees
9 that fell over and caused outages and the frequency
10 of trees that grew into conductors. And looked at
11 very many of those studies.

12 So I do, I do and have hooked at
13 information specific to the difference between what
14 is referred to as avoidable and unavoidable and tree
15 growth related and related to storm events where
16 entire trees fall over or limbs fly off of trees into
17 the conductors. So I have reviewed many of those
18 things.

19 Q. Ignore everything whether limbs are
20 flying off or trees are growing in. Is it your
21 testimony you have reviewed studies prepared before
22 2003 where trees in a right-of-way toppled over onto
23 a transmission line?

24 A. I will once again state I explained what
25 I looked at. And the primary issues we were looking

1 at were the outages avoidable or unavoidable. Were
2 they impacted by weather events, were they impacted
3 by specific species of trees. A whole myriad of
4 criteria. I have looked at those issues.

5 EXAMINER CHILES: Prior to 2003 did you
6 look at any studies specifically considered outages
7 that were caused where a tree fell into lines from
8 inside the right-of-way?

9 THE WITNESS: Not that that was a
10 determining criteria.

11 EXAMINER CHILES: Okay. Thank you.

12 Q. Fine, thank you.

13 A. If I may add, part of the reason was
14 during our blackout investigation, if you read the
15 entire report and if you read the report we submitted
16 to the government, which was accepted as an official
17 report, we had said prior to this 50 million people
18 out of power, that the bar for utilities was set
19 rather low and what needed to be done is this needed
20 to be higher standards to live up to.

21 And one of the specific best practices we
22 recommended and was included in our report to FERC
23 and I believe subsequently went to Congress and
24 FERC's report to Congress was utilities needed to
25 reclaim their right-of-ways.

1 And prior to that event occurring, all
2 across United States utilities were allowing
3 incompatible vegetation within the transmission
4 right-of-way.

5 So given that prior to FAC-003 utilities
6 across United States had trees within the
7 right-of-way, category 1, category 2, category 3 were
8 moot because there was no reason to report them as
9 such.

10 EXAMINER CHILES: Thank you. I
11 appreciate the clarification.

12 Mr. Potash, you may continue.

13 MR. POTASH: Thank you.

14 Q. Do you have any direct knowledge as to
15 how the Corrigan tree is being maintained? Direct
16 knowledge. Not what somebody told you.

17 A. I have no direct knowledge.

18 Q. Thank you.

19 Have you ever heard of a utility
20 monitoring the maintenance of a tree within its
21 easement even though the utility does not do hands-on
22 maintenance of the tree? Have you ever heard of such
23 a thing?

24 A. I'd like to explain what the industry
25 standard is for maintaining transmission

1 right-of-ways, because he is using words that are not
2 used within our industry. I can answer his question.

3 Q. Then I will withdraw the question,
4 please.

5 EXAMINER CHILES: Okay. Thank you.

6 Q. Do you get involved in direct tree
7 maintenance? Currently. Today. Do you get involved
8 in hands-on tree maintenance?

9 A. As president of my company, no.

10 Q. If you weren't president of your company,
11 would you get hands-on involvement of tree
12 maintenance?

13 A. Yes.

14 Q. When was the last time you had hands-on
15 involvement of tree maintenance?

16 A. Two weeks ago.

17 Q. And was that for hire?

18 A. No.

19 Q. When was the last time you had hands-on
20 involvement of tree maintenance for hire?

21 A. I have 50 degreed foresters working
22 throughout United States that patrol lines and
23 identify required line clearance work. I provide the
24 training for them to do that in many cases, and I
25 also go out there and spend time with them on a

1 regular basis. So I am exposed to it. It does not
2 involve a chainsaw, it involves making determinations
3 of what should stay and what should go.

4 Q. The question was, I'll say it again, when
5 was the last time you involved yourself in tree
6 maintenance for hire? Hands on.

7 A. Since we have no mutual understanding by
8 what you mean "tree maintenance," please define that
9 for me.

10 Q. Fine, I will. Have you ever been
11 involved in the hands-on caring of a tree, whether
12 it's to pruning, I'm talking about for hire on a
13 commercial basis, whether it's pruning, whether it's
14 removing, whether it's growth retardants, whether
15 it's fertilizing, I don't care? Have you ever done
16 that?

17 A. Yes, I have done that.

18 Q. Fine, "yes" is good. When was the last
19 time?

20 MS. FLOYD: Objection. I don't believe
21 Mr. Cieslewicz was allowed to answer his question.

22 EXAMINER CHILES: I'm sorry, can you say
23 that again?

24 MS. FLOYD: Mr. Potash -- I believe
25 Mr. Cieslewicz wasn't able to finish the answer to

1 his question.

2 EXAMINER CHILES: Were you finished
3 answering the question?

4 THE WITNESS: No, I wasn't.

5 EXAMINER CHILES: Please continue.

6 A. I have a great deal of experience when I
7 worked -- I worked at a utility for 21 years and
8 probably five years of that was myself in a bucket
9 truck pruning trees away from conductors, and that
10 would have occurred probably 25 years ago.

11 Q. All right, so the answer to the question
12 was 25 years ago is when you last did anything with
13 your hands involving a tree.

14 A. No. Two weeks ago.

15 Q. For hire.

16 A. For hire? I will once again say that
17 utility vegetation management includes -- it's not
18 limited to pruning, fertilizing, it includes
19 identification of incompatible vegetation, hazard
20 trees, trees that are too close to conductors, that
21 is my business.

22 My people do it, degreed foresters,
23 certified arborists, on a daily basis. I visit them,
24 I train them on a regular basis. I do not use a
25 chainsaw.

1 Q. You consult.

2 A. As part of my job, yes.

3 Q. Are you able to estimate the age of the
4 Corrigan tree?

5 A. No. Other than what I've heard testified
6 to by qualified people.

7 Q. When was the last time anybody jumped
8 from the Corrigan tree to an energized line?

9 THE WITNESS: Would you repeat that
10 question, please?

11 (Record read.)

12 A. Would you like to rephrase?

13 Q. No. I'm just reading a line that you
14 have in your testimony page 7, line 22, talking how
15 tragically each year many adults and children are
16 also electrocuted or seriously injured while climbing
17 trees adjacent to energized lines. I want to know
18 how much of a probability that is with the Corrigan
19 tree.

20 A. I will say that every case I have been
21 involved with in court after a fatality, after a
22 fire, or after a significant event, fits the exact
23 same model of the Corrigan tree. As to whether or
24 not somebody has done that yet or the Corrigan tree
25 has fell into the line, it is my job to make sure

1 that it doesn't. We do not provide the pathway to
2 disaster for that to happen.

3 But as I specifically said, I have no
4 information that somebody got killed on that tree. I
5 would suggest if that did happen, that if a tree
6 worker, whether it's from Davey Tree or whoever is
7 doing that line clearance worker, I would suggest
8 that if that happened, that tree would be gone by
9 now. I would also suggest it's not a good idea to
10 wait for it to happen.

11 Q. Do you drive a car?

12 A. Yes, I do.

13 Q. Ever been involved in an auto collision?

14 A. Not to my recollection.

15 Q. Never?

16 A. Not to my recollection.

17 Q. Good enough.

18 A. I'm a safe driver.

19 Q. Do you have any reason -- never mind.

20 MR. POTASH: I don't have any other
21 questions. Thank you.

22 EXAMINER CHILES: Would you like a few
23 minutes?

24 MS. FLOYD: Yes, please.

25 EXAMINER CHILES: Let's take a very brief

1 like five minutes. Two minutes?

2 MS. DUNN: Yes.

3 EXAMINER CHILES: Very brief recess.

4 (Recess taken.)

5 EXAMINER CHILES: Please proceed. Let's
6 go back on the record.

7 MS. FLOYD: Your Honor, we have no
8 redirect.

9 EXAMINER CHILES: Do you have any
10 questions?

11 EXMINER TAUBER: I do not.

12 EXAMINER CHILES: We have no questions so
13 you are excused. Thank you.

14 THE WITNESS: Thank you.

15 EXAMINER CHILES: Ms. Floyd, exhibits?

16 MS. FLOYD: Yes, your Honor, I move for
17 admission of Company Exhibit 8.

18 EXAMINER CHILES: Are there any
19 objections to the admission of Company Exhibit 8?

20 MR. POTASH: No.

21 EXAMINER CHILES: Hearing none, Company
22 Exhibit 8 will be admitted.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 MR. POTASH: I don't remember which one
25 was proffered but every one thereafter.

1 EXAMINER CHILES: I believe that the
2 Bench has already stated we will accept Corrigan
3 Exhibit 10, we will not admit it into record but we
4 will recognize it as learned treatise. If you are
5 moving to admission of Exhibits 11, 12, 13, and 14?

6 MR. POTASH: Correct.

7 EXAMINER CHILES: Ms. Floyd, are there
8 any objections to the admission of Corrigan Exhibits
9 11, 12, 13, and 14?

10 MS. FLOYD: You know, I need to
11 clarify what Exhibit 14 is because we have two
12 marked.

13 EXAMINER CHILES: I believe Exhibit 14,
14 Mr. Potash, correct me if I'm wrong, is the final
15 report on the August 14, 2003, blackout, says
16 "Canada" on the front?

17 MR. POTASH: It is a portion of the
18 report, clearly not the entire report.

19 EXAMINER CHILES: One section of that
20 report.

21 MS. FLOYD: Your Honor, Exhibit 14 -- is
22 it 14?

23 EXAMINER CHILES: It is 14?

24 MS. FLOYD: Exhibit 14 has been held as
25 previously inadmissible under the S.G. Foods case,

1 and in addition, Exhibit 14 is incomplete. So it's
2 not a complete report.

3 EXAMINER CHILES: I understand. I
4 recognize the case you're talking about, however, as
5 an administrative hearing, especially because this
6 section of the report was referred to multiple times
7 in testimony, we will admit this as an exhibit.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 EXAMINER CHILES: Do you have any
10 objections to the admission of Exhibits 11, 12, and
11 13?

12 MS. FLOYD: No, your Honor.

13 EXAMINER CHILES: All right. Exhibits
14 Corrigan 11, 12, 13, and 14 will be admitted.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 EXAMINER CHILES: Let's talk about
17 briefing while we're still on the record. Actually
18 before we talk about briefing is there anything
19 further to come before us?

20 (No response.)

21 EXAMINER CHILES: Attorney Examiner
22 Tauber and I came up with some briefing schedules
23 earlier. August 30, which is a Friday, will be the
24 due date for initial briefs. September 20, which is
25 a Friday, will be the deadline for reply briefs. Are

1 there any strong objections to these dates? I'll
2 give you a minute.

3 MS. DUNN: Your Honor, I don't know if I
4 would classify it as a strong objection. I'm
5 actually out of the country from the 23rd to
6 September 1. So if we could extend just by a week, I
7 would really appreciate that.

8 EXAMINER CHILES: You want to extend the
9 deadline for both of the briefs?

10 MR. POTASH: What 30th are we talking
11 about, August or September?

12 EXAMINER CHILES: August.

13 MR. POTASH: All right, see now what she
14 started. It may not be applicable to you but I will
15 totally be unavailable the next week. Not the whole
16 next week but Wednesday, Thursday and Friday, because
17 of other commitments.

18 EXAMINER CHILES: So you want to extend
19 it. If we extend it two weeks from what we
20 originally proposed, is that acceptable?

21 MR. POTASH: I can do that. Yeah, I can
22 get it done by Friday.

23 EXAMINER CHILES: That Friday would be
24 Yom Kippur. Why don't we go one week beyond that.

25 MR. POTASH: I guess I wasn't that obtuse

1 then.

2 EXAMINER CHILES: So it would be --

3 MR. POTASH: How about the following
4 Monday? The 16th? Or the 11th. I don't care.

5 EXAMINER CHILES: So initial briefs will
6 be due September 16, then reply briefs will be due
7 September 30.

8 MR. POTASH: September 30? Two weeks?

9 EXAMINER CHILES: Yes.

10 EXMINER TAUBER: These dates agreeable to
11 everybody? So we're looking at Monday, September 16
12 for initial briefs, and we're looking at Monday,
13 September 30 for the reply briefs.

14 MR. POTASH: Why not. You're going to
15 send that in an order as well, right, or is this it?

16 EXMINER TAUBER: It will be in the
17 transcript.

18 EXAMINER CHILES: We wouldn't typically
19 issue an order.

20 MR. POTASH: Now I got to make sure I
21 write it down.

22 EXAMINER CHILES: Feel free to call us
23 and ask.

24 MR. POTASH: You got other stuff to do.

25 EXAMINER CHILES: Is there anything

1 further to come before us?

2 (No response.)

3 EXAMINER CHILES: Then we are adjourned.

4 Thank you very much.

5 MS. FLOYD: Thank you, your Honors.

6 MR. POTASH: Thank you.

7 (Hearing adjourned at 7:28 p.m.)

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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, July 25, 2013, and carefully compared with my original stenographic notes.

Julieanna Hennebert, Registered Professional Reporter and RMR and Notary Public in and for the State of Ohio.

My commission expires February 19, 2018.

(72938jul)

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8/8/2013 9:51:44 AM

in

Case No(s). 09-0492-EL-CSS

Summary: Transcript in the matter of Mary-Martha and Dennis Corrigan vs The Cleveland Electric Illuminating Company hearing held on 07/25/13 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Hennebert, Julieanna Mrs.