

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>MARY-MARTHA AND DENNIS CORRIGAN,</b>	)	
	)	
	)	
<b>Complainants,</b>	)	
	)	<b>Case No. 09-492-EL-CSS</b>
<b>v.</b>	)	
	)	
<b>THE CLEVELAND ELECTRIC ILLUMINATING COMPANY,</b>	)	
	)	
	)	
<b>Respondent.</b>	)	

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**MEMORANDUM CONTRA OF THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY TO COMPLAINANTS' APPLICATION FOR REHEARING**

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION .....	1
II. ARGUMENT .....	3
A. The Commission Correctly Found That Removal Of The Tree Is Reasonable .....	4
1. The Commission correctly found that pruning the Tree is not a viable option.....	5
2. The Commission’s finding that the Tree could potentially interfere with the transmission line is supported by overwhelming evidence in the record .....	9
B. The Commission Correctly Found That It Would Be Inappropriate For Customers To Manage Vegetation Located Near Power Lines.....	13
III. CONCLUSION.....	16

## **I. INTRODUCTION**

The Commission's decision here is well supported by the record, Commission and Ohio Supreme Court precedent and sound policy. In its March 26, 2014 Opinion and Order (the "Order"), the Commission found that the plan of The Cleveland Electric Illuminating Company ("CEI") to remove a decaying silver maple tree (the "Tree") is reasonable. The Commission found that CEI's plan to remove the Tree is consistent with its vegetation management plan. The plan requires removal of vegetation that has the potential to interfere with a transmission line. The record evidence established that given its height, location and decaying health, the Tree could potentially interfere with the transmission line by falling or growing into the line. Given the safety hazards the Tree could cause if left standing and the extensive decay in the Tree, the Commission determined that pruning the Tree is not a viable option. The Commission also found that it would be inappropriate for a utility to allow customers (including Complainants) to manage vegetation located near power lines, particularly transmission lines. Accordingly, the Commission properly dismissed the Complaint.

In their Application for Rehearing ("Application"), Complainants, in inflammatory prose, mostly repeat the same arguments and unsupported allegations that the Commission has already fully considered and rejected. For example, Complainants continue to argue that the history of the Tree's co-existence with the transmission line shows that the Tree should not be removed. But the reality is that the Tree is not inert or unchanging. The Commission's Order correctly recognizes that the record evidence shows that the Tree has matured to where the Tree now is extensively decayed so that the Tree or parts of the Tree will likely fall in the near future. Complainants' logic suggests that CEI should gamble that when the Tree fails, it won't affect the line. But, as the evidence shows, this is a risk that is unreasonable, especially given the

consequences to safety of persons and property and to system reliability. This warning was underscored by the testimony of CEI witness Stephen Cieslewicz:

I will say that every case I have been involved with in court after a fatality, after a fire, or after a significant event, fits the exact same model of the Corrigan tree. As to whether or not somebody has done that yet or the Corrigan tree has [fallen] into the line, it is my job to make sure that it doesn't. We do not provide a pathway to disaster for that to happen. [Tr. at 317-18.]<sup>1</sup>

Unlike Complainants' improper exclusive focus on the past, CEI's vegetation management policy deals with present conditions to avoid future consequences. CEI seeks to prevent any potential contact between the Tree and line and avoid the associated risks. Contrary to what Complainants suggest, as Mr. Cieslewicz observed, "[I]t's not a good idea to wait for [disasters] to happen." (*Id.*) Further, given CEI's undisputed easement rights to remove vegetation that threatens to interfere with the line, it's also unnecessary.

Complainants also continue to make allegations that either ignore evidence or mischaracterize it. Complainants would have the Commission ignore the un rebutted testimony that:

- a) if the Tree or parts of the Tree fall towards the line, then the Tree will interfere with the line (CEI Ex. 5 at 8; CEI Ex. 6 at 12-13; CEI Ex. 7 at 8);
- b) contact between the Tree and the transmission line may cause severe consequences, including power outages affecting a large number of

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<sup>1</sup> Citations to the Application for Rehearing will be identified as "App. at \_\_\_" and citations to the Opinion and Order will be identified as "Order at \_\_\_." Citations to the direct testimony of CEI's witnesses will be identified by the exhibit number as follows: the Direct Testimony of Thomas Neff, Jr. is CEI Ex. 4; the Direct Testimony of David Kozy is CEI Ex. 5; the Direct Testimony of Rebecca Spach is CEI Ex. 6; the Direct Testimony of Robert J. Laverne is CEI Ex. 7; and the Direct Testimony of Stephen Cieslewicz is CEI Ex. 8. Citations to the attachments to the direct testimony will be formatted as "Att." and the attachment number. Citation to the transcript from the July 25, 2013 hearing will be formatted as "Tr. at \_\_\_."

customers, fire and possible electrocution (CEI Ex. 5 at 8; CEI Ex. 6 at 12; *see also* CEI Ex. 8 at 7);

- c) according to the expert opinion of certified arborists, pruning the Tree (as Complainants continue to advocate for) cannot remove these risks (CEI Ex. 6 at 13; CEI Ex. 7 at 8-9); and
- d) the only way to prevent the Tree from interfering with the line is to remove the Tree (*Id.*).

The record evidence fully supports the Commission's finding that given the decayed condition of the Tree and the public safety hazards it poses, CEI's plan to remove the Tree is reasonable. With its already rejected arguments and unsupported points, the Application does not remotely meet Complainants' burden on rehearing to show that the Order was unreasonable or unlawful. The Commission should reject all of Complainants' assignments of error, deny the Application and allow CEI to move forward with the removal of the Tree.

## **II. ARGUMENT**

Complainants wrongly contend that even though they hold the burden of proof, there is no "presumption for or against the complainant" in this case. (*See* App. at 1.) But that is not true. Complainants have the burden to prove that CEI's plan to remove the Tree is unreasonable. Moreover, in an application for rehearing, Complainants' burden is to show that the Commission's Order is unreasonable or unlawful. R.C. 4903.10; *see* Rule 4901-1-35(A), O.A.C. Complainants failed to meet their burden at hearing. The Application does not meet Complainants' burden for rehearing.

In the Application, Complainants rehash the same arguments that they argued in their post-hearing brief. (*Compare* Complainants' Post-Hearing Brief at 11-12, 16-18, 20 (arguing that the Tree does not threaten the line, the Tree should be pruned and not removed and

Complainants should be allowed to prune the Tree) *with App. at 2-3, 6-7, 9 (same).*) By dismissing the Complaint, the Commission rejected all of these arguments. (Order at 14-15.) Complainants' failure to raise new arguments dooms their Application. The Commission regularly denies applications for rehearing where the applicant fails to raise new arguments and simply restates previously-rejected arguments. *See, e.g., Complaint of Buckeye Energy Brokers, Inc. v. Palmer Energy Company*, Case No. 10-693-GE-CSS, 2012 Ohio PUC LEXIS 188, at \*22 (Feb. 23, 2012) (holding that "the application for rehearing should be denied inasmuch as the complainant has failed to raise any new arguments for the Commission's consideration"); *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case No. 09-872-EL-FAC, 2012 Ohio PUC LEXIS 655, at \*9 (July 2, 2012) (same). Accordingly, for this reason alone, the Application should be denied.

In addition, and as set forth below, none of Complainants' arguments meets their burden to show that the Order is unreasonable or unlawful. Instead, the record evidence overwhelmingly supports the Commission's findings that removal of the Tree is reasonable and that it would be inappropriate to allow customers to maintain vegetation near transmission lines. As a result, the Commission should deny the Application.

**A. The Commission Correctly Found That Removal Of The Tree Is Reasonable.**

As they did in their post-hearing brief, Complainants assert that because the Tree has not yet fallen into the transmission line, CEI's plan to remove the Tree (rather than prune the Tree) is unreasonable. (*Compare* Complainants' Post-Hearing Brief at 12, 15 *with App. at 2-3.*) Complainants' logic fails. The fact that the Tree has not yet fallen down does not prove that the Tree does not have the potential to interfere with the transmission line. And it certainly does not show that a rehearing is required regarding the Commission's findings that pruning the Tree is not viable and that CEI's plan to remove the Tree is reasonable.

In the Application, Complainants' first and third alleged assignments of error are interrelated. Complainants believe the Commission erred by finding that pruning the Tree is not a viable option and that the Tree could potentially interfere with the line. Because Complainants intersperse arguments addressing both assignments throughout their first and third sections of the Application, both assignments will be addressed together here. As demonstrated below, both assignments lack merit and should be rejected.

**1. The Commission correctly found that pruning the Tree is not a viable option.**

The Commission's finding that pruning the Tree is not a viable option is well-supported by the evidence in the record. As the Commission explained in its Order:

The evidence of record reveals that the Tree is decayed extensively and that parts of it are almost certain to fail in the not-too-distant future (Tr. at 251). Moreover, continued pruning will cause the Tree to respond by either re-growing branches at a rapid rate back into the areas that have been pruned, or if pruning is done enough times, the Tree will run out of energy reserves and die (Co. Ex. 7 at 8-9; Tr. at 259-260).

(Order at 13.)

Indeed, the Commission correctly found that "CEI's witnesses presented credible, expert testimony with respect to the removal of the Tree." (*Id.* at 12.) Moreover, the undisputed testimony shows that pruning would not remove the threat that the Tree would interfere with the transmission line. (CEI Ex. 6 at 13; CEI Ex. 7 at 8-9.) CEI witness Robert Laverne further explained that pruning cannot stop the spread of the decay in the Tree. (Tr. at 227.) In contrast, pruning can lead to additional decay in the Tree. (Tr. at 226, 234-235.) Pruning also will result in either rapid growth of weakly attached branches similar to those that currently pose threats to the transmission line or the death of the Tree. (CEI Ex. 7 at 8-9; Tr. at 259-260.) Neither of

these results is a viable option to remove the risk that the Tree could interfere with the transmission line. (CEI Ex. 7 at 8-9.) Complainants offered no testimony to the contrary.

Complainants offered no evidence that pruning the Tree will reduce the risk that the Tree will interfere with the transmission line. At best, Complainants offered the testimony of Mrs. Corrigan, who provided her unsupported lay opinion that the Tree is “healthy” and its removal is “unnecessary.” (Tr. at 30.) But the Commission correctly afforded the proper weight to this self-serving testimony. The Commission found that Mrs. Corrigan is not an arborist and her opinions are based on personal beliefs and what others may have told her. (Order at 13.)

Given the lack of evidence presented by them, Complainants resort to making unsupported arguments that ignore large swaths of evidence in the record. For example, Complainants contend that CEI “radically alter[ed] its policy” in 2000 from pruning to removal of vegetation and suggest that this change somehow makes pruning the Tree a viable option today. (App. at 2-3.) This is false. There is no evidence in the record to support any “radical” change of policy. Instead, CEI witness Spach testified that “we always have sought the removal of incompatible vegetation along our transmission corridors.” (CEI Ex. 6 at 9.)

In any event, even if there was a change in policy, Complainants’ allegation does not show how past pruning demonstrates that pruning is a viable option to remove the current risk that the Tree poses to the transmission line. Instead, the record evidence is otherwise. CEI witness Cieslewicz testified that pruning leaves little margin for error, can damage a tree and waste money. (CEI Ex. 8 at 12.) He explained that by removing the risk, the vegetation management program removes the “pathway” for a disaster to happen. (Tr. at 318.) Thus, the vegetation management industry recognizes that removal of incompatible vegetation is the best practice. (CEI Ex. 8 at 12-14, 19-20.) This makes imminent sense: the best way to remove a risk to a line posed by vegetation is to remove the vegetation. (*Id.* at 12-13; CEI Ex. 6 at 8.)

Complainants also assert that CEI's witnesses' testimony verified that "nothing changed" since December 31, 1999, except that the Tree has been "magically and mysteriously transformed" from compatible to incompatible vegetation. (App. at 3.) Complainants further argue that CEI's witnesses testified that the 2003 power outage is an "after the fact" rationale for the removal of the Tree. Complainants wrongly contend that CEI did not report any "issues" with the Tree via regular "ground and aerial inspections." (*Id.*) Similarly, Complainants erroneously assert that "[t]here were no growth spurts or other abnormalities connected with the Tree." (*Id.*)

These arguments are flawed on a number of fronts. First, Complainants mischaracterize CEI's witnesses' testimony. There is no testimony whatsoever that, prior to 2000, the Tree did not threaten to interfere with the lines. Nor is there any testimony that CEI changed the classification of the Tree from "compatible" to "incompatible" or that the 2003 power outage was an "after-the-fact" rationale for seeking to remove the Tree. (*See* App. at 3.) Instead, CEI witness Spach testified that the Tree has been incompatible since it was a seedling. (Tr. at 133.) The Tree is incompatible vegetation because, as a silver maple, the Tree has the genetic disposition to grow and has grown tall enough to interfere with the transmission line. (*Id.*) CEI has always sought to remove incompatible vegetation, like the Tree. (CEI Ex. 6 at 9.) And CEI has attempted to remove the Tree as incompatible vegetation since 2004. (*Id.* at 11.)

Second, Complainants' contention that "nothing changed" since 1999 is patently false. The evidence shows that both the industry practice and the Tree have changed. As CEI witness Cieslewicz testified, the industry practice changed; the August 2003 outage had a lasting effect on the utility vegetation management industry. (CEI Ex. 8 at 8.) As a result, accepted utility industry practice moved towards the removal of incompatible vegetation. (*Id.* at 13.) Further, CEI witness Spach explained that although CEI had always sought the removal of incompatible

vegetation from its transmission right of ways, starting in 2000 and especially after the 2003 outage, CEI more aggressively pursued the removal of incompatible vegetation. (CEI Ex. 6 at 9.) This is because pruning is a less effective form of vegetation management. (*Id.*) Ms. Spach explained, the “current approach to removals will ensure the safety and reliability of our system [for our customers].” (*Id.*) By seeking to remove the Tree, CEI is thus following its vegetation management program as well as the industry best practices that were established after the 2003 outage.

The Tree also has changed. As the evidence shows, since 1999, the Tree has grown and has matured to a point of decline. (Tr. at 156-158; 221-222; 233-234.) As the Commission correctly found, CEI’s expert witnesses “emphasized that the Tree is decayed and needs to be removed in order to preserve the integrity of the transmission lines from the damaging effects that contact with the Tree might cause.” (Order at 12 citing Co. Ex. 5 at 7-8; Co. Ex. 6 at 12-13; Tr. at 134, 157; Co. Ex. 7 at 4-6, 8-9; Tr. at 236-237, 244.) CEI witness Laverne is a certified arborist and an expert in tree risk assessment. He testified, based on his personal observation, that the Tree has multiple structural defects “caused by the Tree’s co-dominant stems with included bark (which prevents strong attachment between the two stems), decay throughout the Tree’s crown and weakly attached branches with associated decay.” (CEI Ex. 7 at 4.) Mr. Laverne also explained that the Tree contains an extensive amount of decay that has advanced vertically throughout the Tree. (Tr. at 229-230.) He testified that the rate of the decay in the Tree is beginning to outpace the Tree’s ability to compartmentalize the decay. (CEI Ex. 7 at 7.) This rate of decay will increase with time. (Tr. at 228-229, 233-234.)

Further, CEI witness Rebecca Spach, who also is a certified arborist, testified that based on her personal observation of the Tree: (a) the Tree is taller than the middle and lower wires of the transmission line; and (b) the Tree has multiple structure defects, including decay, its co-

dominant stems and growth attributed to sucker branches. (CEI Ex. 6 at 12.) She explained, “Given the amount of decay and other structural defects, the potential for the Tree to fail is increased.” (*Id.*)

Nonetheless, Complainants blithely contend that the Commission erred by relying on CEI’s witnesses’ testimony because their testimony amounts to “because we say so.” This is nonsense and has the position of the parties exactly backwards. CEI presented expert witnesses who, based on personal observations and extensive experience and qualifications, provided their opinions. In contrast, Complainants offered no expert testimony. All Complainants offered was the self-serving lay testimony of Mrs. Corrigan who could offer nothing other than her “say so” about the health of the Tree – an opinion based largely on the fact that the Tree still had leaves. (Tr. at 35.) As the Commission correctly pointed out, “Complainants did not rebut the evidence of either the decayed condition of the Tree or the safety hazards that the Tree, if left standing, might cause.” (Order at 13-14.) Complainants’ unsupported “say so” falls far short of their burden to show that the Order is unreasonable.

**2. The Commission’s finding that the Tree could potentially interfere with the transmission line is supported by overwhelming evidence in the record.**

Complainants similarly fail to show that the Commission erred by finding that the Tree could interfere with the transmission line. Despite having the burden of proof, Complainants presented *no evidence* that the Tree was not a threat to the transmission line. In contrast, the Commission’s finding that the Tree could potentially interfere with the transmission line was supported by the testimony of five expert witnesses presented by CEI.

Complainants again repeat previously rejected arguments and again ignore the evidence in the record. They allege that the Tree is not a threat because it is outside the minimum standards set by the National Electrical Safety Code (“NESC”). (*Compare App. at 4 with*

Complainants' Post-Hearing Brief at 17-18.) But as CEI previously showed, the NESC clearances are minimum standards. They are not thresholds for vegetation management programs – the purpose of which is to anticipate and prevent vegetation from interfering with electrical lines. Prudent vegetation management must attempt to assure that vegetation does not come close to violating the NESC clearances. (CEI Post-Hearing Reply at 9-10.) Complainants' reliance on NESC clearance standards thus is beside the point. A tree may interfere or threaten to interfere with the line even though the tree is not violating NESC clearance standards. (*Id.*) As the Commission correctly found, the Tree is a threat to the line because of the potential that the Tree may fall on the line. (Order at 13-14.)

Complainants argue that CEI's witnesses testified that the Tree is outside of the "zone of danger be it sagging, arcing or rapid regrowth." (App. at 4.) This is false. There is no testimony that the Tree is outside a "zone of danger" to the transmission line. The unrebutted evidence is that if the Tree falls towards the transmission line, the Tree will interfere with the line. (CEI Ex. 4 at Att. TN-1; CEI Ex. 5 at 8; CEI Ex. 6 at 12; CEI Ex. 7 at 8.) This is not speculation or "fearmongering," as Complainants contend. (App. at 5.) The fall-line of the Tree was measured and testified to by an expert surveyor, Thomas Neff. (CEI Ex. 4 at 1, 5 and Att. TN-1.) CEI's witnesses Spach, Laverne and David Kozy testified that if the Tree fell in the direction of the transmission, it would contact the line. (CEI Ex. 5 at 8; CEI Ex. 6 at 12; CEI Ex. 7 at 8.) No witness testified to the contrary. Apparently, Complainants want CEI and the Commission to gamble that the Tree, when it falls, will fall in a direction away from the line. CEI and the Commission cannot take that risk. Given that the Tree will fall and that, if it falls in the direction of the line, the Tree will hit the line, the Tree poses a threat to the line now. (CEI Ex. 5 at 8; CEI Ex. 6 at 12; CEI Ex. 7 at 8.)

Complainants further assert that the Tree's supplemental support system shows that the useful life of the Tree may be preserved by 10 to 30 years. (App. at 9.) Not so. In fact, the evidence is the opposite. CEI witness Laverne testified that the Tree *did not* have a useful life of ten years. (Tr. at 251.) Mr. Laverne further testified, "I can say with relatively high certainty that within ten years that supplemental support system will no longer be attached in a meaningful way because of the decay that is present." (*Id.*)

Next, Complainants say that the Commission incorrectly found that the Tree is a safety hazard. (App. at 9-10.) They blithely suggest that the Tree should not be removed because "generic public safety hazards exist outside the public utility area." (App. at 9.) They liken the potential hazard posed by the Tree to the potential for injuries from using airline travel or attending baseball games and point out that these activities go forward despite their risks. Complainants ignore that several experts in this case have opined that the public safety hazard here is not merely hypothetical, it's real. But flying planes and baseballs (and the lack of evidence regarding the risks thereof relative to the decaying Tree on Complainants' property falling on the line) aside, Complainants miss the point. The evidence -- as well as the Ohio Supreme Court's and the Commission's precedent -- establish that removal of vegetation that threatens to interfere with transmission lines is reasonable.

As an initial matter, CEI's vegetation management program is not an uncertain term that is open to Complainants' risk analysis. This program, which has been approved by the Commission, seeks to prevent vegetation from interfering with the safe and reliable operation of the transmission system. As a result, CEI's vegetation management program requires the removal of any vegetation located on CEI's transmission corridors that has "the potential to interfere with the safe and efficient operation of the transmission system." (CEI Ex. 6 at 7 quoting Att. RS-1.) Vegetation, including trees, can interfere "through direct vegetation-line

contact, vegetation encroachment or trees falling into a transmission line.” (*Id.* at 6.) The Specifications also require the removal of “[d]ead or defective [trees] which pose a threat to the conductor.” (*Id.* at 7 quoting Att. RS-2, p. 36.)

In addition, the Commission has found on at least two other occasions that removal of vegetation that has the potential to interfere with transmission is reasonable: *In the Matter of the Complaint of Leo and Cindy Jeffers and Ilene Jeffers v. Toledo Edison Co.*, Case No. 10-430-EL-CSS, Opinion and Order at 10 (Jan. 23, 2013); *In the Matter of the Complaint of Kurt Wimmer/Wimmer Family Trust*, Case No. 09-777-EL-CSS, Opinion and Order at 9-10 (Jan. 27, 2011.). In *Wimmer v. Pub. Util. Comm.*, 131 Ohio St.3d 283, 286, 964 N.E.2d 411 (2012), the Ohio Supreme Court affirmed the Commission’s order holding that removal of incompatible vegetation was reasonable.

Here, the record testimony similarly established that the removal of a tree that threatens to interfere with a transmission line is reasonable. As the Commission stated, CEI witness Cieslewicz testified that the threats caused by contact between vegetation and electrical lines are real, and they are deadly. (Order at 12.) Although Complainants repeatedly state that the Tree has yet to interfere with the transmission line (App. at 10), their emphasis is misplaced. As Mr. Cieslewicz testified, “every case he has been involved with in court, after a fatality, fire or other significant event, fits the same model as the Tree. . . [and] if a serious accident had happened, the Tree would have been removed by now.” (Order at 12 quoting Tr. at 317-318.) Mr. Cieslewicz explained that “it is not a good idea to wait for something to happen.” (*Id.*) The prudent action is to remove the Tree before it falls. (*Id.*)

When stripped of the nonsense, mischaracterizations, and “colorful” wording, Complainants’ argument is simply that the Commission should rely on the past history of the Tree’s existence, ignore all of the evidence of the current decayed condition of the Tree, and find

that the Tree cannot be a risk until it falls into the line. Complainants may have the luxury of viewing the risk of tree/line contact in that manner. But prudent vegetation management requires more. The evidence supports the removal of the Tree as a sound practice given its size, location and decaying health. A prudent policy is to remove the Tree before it interferes with the line. The Commission correctly found that the CEI's plan to remove the Tree was reasonable. Complainants failed to meet their burden to establish a need for rehearing.

**B. The Commission Correctly Found That It Would Be Inappropriate For Customers To Manage Vegetation Located Near Power Lines.**

Complainants' second argument for rehearing is their repeated plea that they should be allowed to maintain the Tree. (App. at 5-8.) In the Order, the Commission correctly rejected this argument. The Commission held:

[A]s we stated in *In the Complaint of Leo and Cindy Jeffers and Ilene Jeffers v. Toledo Edison Company*, Case No. 10-430-EL-CSS, Opinion and Order (Jan. 23, 2013) at 10-11, because of the danger to customers and because of the unduly burdensome situation that might develop for a utility in trying to enforce its vegetation management policies, the Commission believes that it would be inappropriate for any utility to allow customers to manage vegetation located near power lines in a utility's easement.

(Order at 14.)

This finding is supported by the evidence. For example, CEI witness Spach testified that allowing customers to maintain vegetation would lead to an unworkable and potentially dangerous situation. (CEI Ex. 6 at 14.) She further explained, "Given the implications of tree/line contacts and the expertise required to avoid them, this function simply cannot be delegated to customers." (*Id.*)

In addition, and as noted by the Commission, the Commission's finding that customers should not manage vegetation located near power lines follows the Commission's precedent in the *Jeffers* case. Case No. 10-430-EL-CSS, Opinion and Order at 10-11 (Jan. 23, 2013). In that

case, the Commission explained that providing safe and reliable electricity means that “[the utility] must discourage and seek to prevent customers from approaching or contacting a line.” *Id.* at 10. The Commission further held, “Allowing a customer to maintain vegetation near a transmission line would be inherently dangerous to the customer.” *Id.*

Complainants fail to show that the Commission’s similar finding here is unreasonable. They say that they are somehow better suited than CEI to maintain the Tree. (App. at 6.) But their “support” for their qualifications to maintain the Tree reveal that they are willing simply to say anything (regardless of its accuracy) to show that pruning the Tree is acceptable. For example, Complainants contend that “only Mrs. Corrigan was able to explain why her tree ha[d] not fallen from decay.” (App. at 6.) Mrs. Corrigan, however, offered no such testimony. Nor is there any evidence to support Complainants’ allegation that the Tree has been “properly” maintained by Complainants.

In any event, Complainants continue to miss the point. As CEI previously demonstrated, pruning the Tree cannot remove the threat that the Tree poses to the line. (CEI Post-Hearing Reply at 19 (citing CEI Ex. 6 at 8).) Given the structural defects in the Tree and its deteriorating condition, pruning is not a viable option. (CEI Ex. 7 at 8-9.) The evidence shows that it’s only a matter of time before the Tree will fail. (See Tr. at 241, 248.) If it falls in the direction of the line, the Tree will interfere with the line.

Complainants also contend that during the past 10 years, CEI did not object to Complainants’ maintenance of the Tree. This is false. Since 2003, CEI has sought to remove the Tree and has consistently maintained that pruning the Tree is inappropriate. Further, there is no evidence to support Complainants’ allegation that they have a “10-year track record” of properly maintaining their Tree. (App. at 7.) Indeed, the evidence is that past pruning has contributed to the advancement of the decay throughout the Tree. (Tr. at 221-222, 226, 234-235.)

Next, Complainants try to foist their burden on to CEI. They contend, without any support, that CEI has failed to present any evidence that Complainants cannot properly maintain the Tree. This argument is contrary to the Ohio Supreme Court's well established precedent that the burden of proof in a complaint proceeding is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). It also contradicts Complainants' own acknowledgement that they hold the burden of proof in a complaint proceeding. (App. at 8.) Attempts at burden shifting aside, Complainants' argument ignores the unrebutted evidence that pruning (whether performed by CEI or others) cannot remove the threat the Tree could interfere with the line.

Finally, Complainants contend that "this case is not about all homeowners who are CEI customers," but is instead about the Tree and Complainants' ability to maintain it. (App. at 7.) They allege that regardless of the outcome, CEI will continue to observe the vegetation on their property. (*Id.*) But this argument fails to show any error with the Commission's finding that customers, like Complainants, should not be allowed to manage vegetation near power lines. Indeed, Complainants fail to recognize that by advocating for pruning the Tree, instead of its removal, Complainants demonstrate that they have refused and will continue to refuse to follow CEI's vegetation management program. Their refusal serves as a further example of why it is inappropriate for customers to manage vegetation near power lines.

Complainants' argument also overlooks that the objective of CEI's vegetation management program is "to ensure vegetation with the potential to interfere with electric transmission lines is managed to prevent outages from vegetation located on the transmission corridor . . . to maintain safe and reliable operation of the electric transmission system." (CEI Ex. 6 at Att. RS-2 (Specifications), p. 5.) CEI's plan to remove the Tree is part of a larger plan to manage vegetation for the benefit of all customers. The removal of the Tree is part of this

plan and necessary to prevent the Tree's interference with the reliability and safety of CEI's transmission system as well as serious and potentially deadly consequences of that interference.

As set forth above, the overwhelming evidence in the record supports the Commission's findings that: (a) pruning the Tree is not a viable option to remove this threat; (b) the Tree poses a threat to the transmission line; and (c) customers should not be allowed to manage vegetation located near power lines. The Commission correctly found that CEI's plan to remove the Tree is reasonable. Complainants have failed to meet their burden on rehearing to show that the Commission has erred. Accordingly, the Commission should deny the Application and allow CEI to move forward with the removal of the Tree.

### **III. CONCLUSION**

For the foregoing reasons, The Cleveland Electric Illuminating Company respectfully requests that the Commission deny Complainants' Application for Rehearing.

DATED: May 1, 2014

Respectfully submitted,

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THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered to the following person by email and by placing a copy in the mail this 1st day of May 2014:

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\_\_\_\_\_  
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**Case No(s). 09-0492-EL-CSS**

Summary: Memorandum Contra of The Cleveland Electric Illuminating Company to  
Complainants' Application for Rehearing electronically filed by Lydia M. Floyd on behalf of The  
Cleveland Electric Illuminating Company