

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of:	:
	:
James L. Griffith,	:
	:
Complainant,	:
	:
vs.	: Case No. 13-1956-EL-CSS
	:
Ohio Edison Company,	:
	:
Respondent.	:

- - -

PROCEEDINGS

before Mr. Kerry K. Sheets, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-C, Columbus, Ohio, called at 10:00
a.m. on Wednesday, October 15, 2014.

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1 APPEARANCES:

2 Mr. James Griffith
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3 Minerva, Ohio 44657

4 Pro se.

5 FirstEnergy Service Company
By Ms. Carrie M. Dunn
6 76 South Main Street
Akron, Ohio 44308

7 and

8 Roetzel
9 By Ms. Emily Ciecka Wilcheck
One SeaGate, Suite 1700
10 Toledo, Ohio 43604

11 On behalf of the FirstEnergy Company.

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Wednesday Morning Session,
October 15, 2014.

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THE ATTORNEY EXAMINER: The Public
Utilities Commission of Ohio has set for hearing at
this time and place Case No. 13-1956-EL-CSS In the
Matter of James L. Griffith versus the Ohio Edison
Company.

My name is Kerry Sheets. I am the
attorney-examiner for the Commission and I have been
assigned to hear this case.

I will now have the appearances of the
parties, please. Start with the Complainant.

Would you give your name and address,
sir.

MR. GRIFFITH: James L. Griffith
23541 Route 30, Minerva, Ohio, 44657.

THE ATTORNEY EXAMINER: Now the company.

MS. DUNN: Yes, your Honor. On behalf of
the Ohio Edison Company, my name is Carrie Dunn, 76
South Main Street, Akron, Ohio 43308, and also Emily
Wilcheck from Roetzel, address, One SeaGate, Suite
1700, Toledo, Ohio, 43604.

THE ATTORNEY EXAMINER: Thank you. Do we
have any preliminary matters to take care of this

1 morning?

2 MS. DUNN: No, your Honor.

3 THE ATTORNEY EXAMINER: Very good. Start
4 with Mr. Griffith. Do you want to take the stand,
5 sir?

6 MR. GRIFFITH: Yes.

7 - - -

8 JAMES L. GRIFFITH

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

11 DIRECT TESTIMONY

12 THE ATTORNEY EXAMINER: Very good. Now,
13 if you could just state your complaint.

14 MR. GRIFFITH: Well, they come in and
15 cleaned their right-of-way and kept the brush.

16 THE ATTORNEY EXAMINER: Who came in, sir?

17 MR. GRIFFITH: Ohio Edison had a
18 contract. A company came in to do it. They go under
19 ATV, I think, or something, the company that did it.

20 THE ATTORNEY EXAMINER: Okay. So you
21 have to speak loud enough and succinctly so she can
22 hear you. Go ahead.

23 MR. GRIFFITH: What they did is come and
24 get the brush. At first they took the brush and cut
25 it down, and then they come in and didn't clean

1 anything up. They just left it lay. And then they
2 come in with a helicopter and went up the treeline
3 and cut the trees off, left that lay.

4 And then after I was arguing about it,
5 they come in with another machine and put the dirt
6 up -- no. Then they come and sprayed it, killed
7 everything with an herbicide, which I told them not
8 to. I don't want herbicide used on my place.

9 Then they come with another machine, cut
10 the thing, chopped up the ground, basically is what
11 they did, but it didn't do nothing to clean the mess
12 up. The mess is still there. I can't use that
13 ground because I can't drive the tractor up there.
14 The brush is laying there. If you run over that it
15 will just take your tractor and turn it over. They
16 left it, and I got pictures there to show you what it
17 is if you would like to see them.

18 THE ATTORNEY EXAMINER: Does that
19 basically state your complaint?

20 MR. GRIFFITH: Yeah.

21 THE ATTORNEY EXAMINER: Do you have any
22 exhibits or anything you want to submit?

23 MR. GRIFFITH: Yeah. I have some
24 pictures here. Here's what's laying there now, and
25 you can look at all these pictures.

1 THE ATTORNEY EXAMINER: How many of them
2 have you got there?

3 MR. GRIFFITH: Quite a few. This is what
4 it looks like at my lake down below. This is up --

5 THE ATTORNEY EXAMINER: We have to have
6 opposing counsel come up and look at the pictures,
7 too.

8 MR. GRIFFITH: Okay. This is a tree they
9 cut that was off the line, and that was the first
10 one. They come in with a chain saw and cut it off
11 the line. I didn't know they was coming in. They
12 said they notified me, but they didn't.

13 Here's the mess they left from the
14 helicopter, and they did cut that down some. They
15 did come in and cut that down some, but it is still a
16 mess there. Here's one of the logs laying there, the
17 stuff that's laying up in that, and there's rocks,
18 too. The rock was dug up after that machine, the
19 last thing they did.

20 THE ATTORNEY EXAMINER: How many pictures
21 are there all together?

22 MR. GRIFFITH: I think 17.

23 THE ATTORNEY EXAMINER: Seventeen
24 pictures.

25 MR. GRIFFITH: Yeah.

1 THE ATTORNEY EXAMINER: Let's label them
2 Complainant's Exhibit 1, 17 pictures.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 THE ATTORNEY EXAMINER: Now, let me ask a
5 question. I want to know what the -- I want to know
6 why this looks more pristine than the others look.

7 MR. GRIFFITH: Well, yeah. This was all
8 like this. I built this lake and cleaned this
9 hillside up so far.

10 THE ATTORNEY EXAMINER: Excuse me, but
11 the one with no brush cut was taken before they cut
12 the brush or after?

13 MR. GRIFFITH: This was taken after they
14 cut the brush.

15 THE ATTORNEY EXAMINER: Okay.

16 MR. GRIFFITH: I always kept it clean
17 here.

18 THE ATTORNEY EXAMINER: Oh, I see.
19 There's a space in there.

20 MR. GRIFFITH: Yeah, there's a space in
21 there.

22 THE ATTORNEY EXAMINER: Okay. Show
23 counsel.

24 MS. WILCHECK: Right.

25 MR. GRIFFITH: Where I kept it mowed.

1 THE ATTORNEY EXAMINER: There's two of
2 them like that, two pictures.

3 MR. GRIFFITH: Yeah. I keep everything
4 around here mowed.

5 THE ATTORNEY EXAMINER: So a clear-cut
6 area here in back of a pond; is that correct?

7 MR. GRIFFITH: Yeah, that's right.

8 THE ATTORNEY EXAMINER: Okay. All right.
9 We will let those stand for a moment. 17 pictures,
10 Complainant's Exhibit 1.

11 Off the record.

12 (Discussion off record.)

13 MR. GRIFFITH: This is the second exhibit
14 I have.

15 THE ATTORNEY EXAMINER: You have a
16 document here?

17 MR. GRIFFITH: This is a document. This
18 is where they signed the lease. This is 1958. And
19 down here it says Ohio Edison.

20 THE ATTORNEY EXAMINER: Now, tell me what
21 the document is.

22 MR. GRIFFITH: Well, this is the lease or
23 the right-of-way they signed in 1958 for the ground
24 to put the power line through there.

25 Anyhow, here it says --

1 THE ATTORNEY EXAMINER: This is a lease
2 with Ohio Edison Company?

3 MR. GRIFFITH: Yeah.

4 THE ATTORNEY EXAMINER: Okay.

5 MR. GRIFFITH: It's not a lease. It's
6 the right-of-way.

7 THE ATTORNEY EXAMINER: Has counsel seen
8 this?

9 MS. WILCHECK: We have. I think we
10 probably gave it to him.

11 MR. GRIFFITH: Okay. "The Grantee will
12 repair or replace all fences, gates, lanes,
13 driveways" -- there, you can read this -- drains and
14 any damage arose by -- "...for all damage to fences,
15 gates, lanes, driveways..." If that's put in there
16 like that, then it's safe to assume when they do some
17 work on the property, they will clean their mess up.

18 THE ATTORNEY EXAMINER: What you just
19 read is from the lease?

20 MR. GRIFFITH: Right. I'm saying it's an
21 assumption.

22 THE ATTORNEY EXAMINER: That was page 1
23 at the bottom of the lease, okay.

24 MR. GRIFFITH: You can assume, reasonably
25 assume, that they're going to clean the brush up. If

1 they are going to fix everything else, you're going
2 to assume they're going to clean the brush up.
3 That's a reasonable assumption, I think.

4 THE ATTORNEY EXAMINER: We will mark the
5 lease as Complainant's Exhibit 2.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 THE ATTORNEY EXAMINER: Does that
8 conclude your statement of the case?

9 MR. GRIFFITH: Yep, that'll do it.

10 THE ATTORNEY EXAMINER: Now we have a
11 period of cross-examination.

12 MS. DUNN: I'm sorry, your Honor?

13 THE ATTORNEY EXAMINER: Do you have any
14 questions?

15 MS. DUNN: Yes, we do.

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Wilcheck:

19 Q. Mr. Griffith, you were just discussing
20 the easement. You don't dispute that an easement
21 exists on your property, correct?

22 A. No.

23 Q. It allows them to do vegetation?

24 A. Yes, it allows them to cut the brush. I
25 will agree with that, yes.

1 Q. Okay. We were looking at the pictures
2 you showed, and you have a place where you had built
3 a pond, and then you had made like a lawn area.

4 A. Right.

5 Q. And above that is -- think is the area we
6 are talking about.

7 A. Right. That's where they mowed, yeah.
8 They saw their right-of-way. Where the grass is,
9 too, is their right-of-way. Across the pond is the
10 right-of-way.

11 Q. But we are talking about that area.

12 A. Yeah, we're talking about that area.

13 Q. So that was before they did the mowing
14 work, that was filled with woody brush, correct?

15 A. Yeah.

16 Q. And I think when we deposed you, you
17 estimated it about 10 to 12 feet high. Do you agree
18 with that?

19 A. Yeah, about 10-foot.

20 Q. So as you testified to, part of that work
21 the company mowed that vegetation down; is that
22 correct?

23 A. Yeah.

24 Q. And so you made your initial complaint to
25 the Commission in July. And after that, Mr. Alan

1 Glover came out to meet with you about your concerns,
2 correct?

3 A. Right.

4 Q. When he came out in July, they cut that
5 brush down to smaller pieces and stacked it, correct?

6 A. No, they didn't stack it. They cut it
7 down in what they call a windrow, like a windrow of
8 hay. They left it lay there, but they cut it down
9 into smaller piles, but you still cannot go in the
10 woods through that windrow.

11 MS. WILCHECK: May I approach?

12 THE ATTORNEY EXAMINER: Yes.

13 MS. WILCHECK: I will show you what has
14 been marked Company Exhibit 3.

15 THE ATTORNEY EXAMINER: Respondent's you
16 mean? It's your first exhibit?

17 MS. WILCHECK: We marked some prior, but
18 I will make this 1.

19 THE ATTORNEY EXAMINER: Okay.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. (By Ms. Wilcheck) Would you look through
22 those pictures, please, Mr. Griffith? Would you
23 agree that those pictures on the right-of-way were
24 taken after they did the work in July to cut the
25 brush down?

1 A. Yeah. That's after they cut the brush
2 down.

3 Q. And so the company came out again in
4 October of 2013 to perform some additional mowing,
5 correct?

6 A. Right.

7 Q. Were you present for that additional
8 round of mowing? Were you present on the property
9 when that happened?

10 A. I don't think so, no.

11 Q. You don't think so?

12 A. No.

13 Q. Okay. I'd like to show you some pictures
14 we'll mark as Company Exhibit 2.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. I think you see the mowing performed on
17 that portion of the right-of-way where the brush was,
18 correct?

19 A. Yeah.

20 Q. Do you have any reason to dispute that
21 happened in October?

22 A. No.

23 Q. Okay.

24 MS. WILCHECK: I have what we will mark
25 Company Exhibit 3.

1 THE ATTORNEY EXAMINER: Respondent's.

2 MS. WILCHECK: Excuse me, Respondent's.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. (By Ms. Wilcheck) And would you agree
5 with me that's how the right-of-way looked when they
6 completed the second round of mowing in October?

7 A. Yeah, pretty much so. But it's from a
8 long distance. You can't see the mess.

9 Q. And you're referring to this stubble on
10 the ground as the mess?

11 A. Right. And along the tree line, that one
12 side you see stuff piled, and you can't see the stuff
13 piled on my tree line. Here is not mine.

14 Q. You are referring to the one on the
15 right-hand side?

16 A. That's not my property.

17 Q. The one on the right-hand side of the
18 property is not your tree line?

19 A. Well, if you come here a minute, I'll
20 show you how that runs. The line runs from here down
21 to about here.

22 MS. WILCHECK: Would you like to mark
23 this with a pen?

24 THE ATTORNEY EXAMINER: Make that clear
25 what we are pointing to. Respondent's Exhibit 3.

1 THE WITNESS: There's the marker here and
2 that runs to about that line someplace.

3 MS. WILCHECK: This is just for the
4 record. What you did is you marked a mark. Maybe
5 you can make a mark and label where you kind of
6 approximated the first part.

7 A. Yeah, this is the property line.

8 Q. And you're going to write "property line"
9 on Respondent's Exhibit 3. And then you drew a
10 diagonal line going to the right.

11 A. Right.

12 Q. To show that the property --

13 A. Yeah.

14 MS. WILCHECK: Would you mind if I show
15 the Hearing Officer?

16 Your Honor, I just want to show you so
17 you understand what we're talking about.

18 THE ATTORNEY EXAMINER: That's his
19 property line?

20 MS. WILCHECK: That's what he depicted as
21 his property line.

22 THE ATTORNEY EXAMINER: Thank you.

23 Q. (By Ms. Wilcheck) I want to segue into
24 the herbicide application quickly. Mr. Alan Glover
25 came out to speak to you about the herbicide,

1 correct?

2 A. Yeah. And I told him I didn't want it
3 put on.

4 Q. Did he explain to you that the company
5 had the easement that they felt --

6 A. Yeah, they think they have the easement.

7 Q. Is it true he explained to you that the
8 herbicide was an EPA-approved herbicide?

9 A. I don't know whether he explained it or
10 not. I don't believe none of that anyhow.

11 Q. You don't have any reason to dispute that
12 it was an EPA-approved herbicide.

13 A. Oh, I believe it was EPA approved, you
14 know.

15 Q. Okay. And the company left a buffer
16 between the portion of the right-of-way that
17 contained the lawn area and the portion that they
18 mowed, correct?

19 A. Yeah; until they came out the second
20 time, and they took that out.

21 Q. They didn't apply the herbicide in that
22 buffer, correct?

23 A. No.

24 Q. Okay. Prior to the company coming in and
25 doing this mowing work starting in the spring 2013

1 and going into October, you were not mowing or
2 otherwise using this area, correct?

3 A. No. And the reason I couldn't mow is
4 because the last time they was in, they left a mess.
5 This has been your right-of-way for years, and you've
6 never taken care of it.

7 Q. So when you're referring to a mess, are
8 you referring to the woody brush that was --

9 A. Well, they left logs laying up there and
10 everything. I went up there with a tractor and tried
11 to brush hog it. I about upset the tractor.

12 Q. Prior to them doing their vegetation
13 management work?

14 A. Yeah, prior to the last guy that was
15 there. I think it was Penn Ohio or somebody. I
16 forgot the name of the company. It's been five or
17 six years ago they did a cleanup. And before that,
18 they hadn't cleaned that thing for years, and, you
19 know, they just left -- your know, they just left
20 stuff lay wherever they wanted to left it lay. Like
21 Mr. Glover explained to me, we got the right to do
22 this, and we're going to do it.

23 To me, they're nothing but corporate
24 bullies. They come into your place, it's my
25 property. I pay taxes on it. It should be cleaned

up the way I want it cleaned up. I'm not disputing they got a right to cut it. I mean, everybody wants electric and everybody has electric lines go through their place, you know. I understand that. But to come in and say we're going to spray it no matter what, and that all runs downhill into that pond, and I got quite a bit of money in that pond and fish, you know.

Q. Mr. Griffith, can you explain when you purchased the property?

A. When did I purchase it?

Q. Yes.

A. 2003.

Q. 2003. Okay. I believe when we had your deposition, you might have told me 2007. Would you --

A. No. If I told you that, I was wrong because I purchased it in 2003. I said 2007 is when I thought they did the work the first time they cut.

Q. Okay. But you think it's 2003?

A. I know it's 2003 when I bought the property, yeah.

Q. Okay.

A. I think it was 2007 the first time they come and cut it, and they come out again in 2013.

1 Q. Okay. But prior to this work here in
2 2013, that area was filled with the woody brush,
3 correct?

4 A. Yeah.

5 Q. Okay. So you weren't going in there to
6 mow it, and you weren't --

7 A. No. I tried to mow it after they cut the
8 stuff the first time and I couldn't.

9 Q. What year was that?

10 A. That was 2007, I believe.

11 Q. Okay. So now fast-forward six years.

12 A. Six years, and they come in and cut it
13 again and still didn't clean it up.

14 Q. But in that time you weren't using that
15 area?

16 A. No. I couldn't mow it. I explained to
17 Alan Glover that if they cleaned that brush up and
18 sowed grass seed, I'd have kept that mowed and you
19 wouldn't have to come in again. I mow eight acres up
20 there. It wouldn't hurt to mow the rest of that
21 hill.

22 Q. Mr. Griffith, I want to show you the
23 transcript in your deposition. I want to show you
24 the part where we have 2007, so if you want to look
25 on page 5.

1 A. No. You said how long have I lived
2 there?

3 Q. How long have you lived at the address?

4 A. 2007. But I owned the land since 2003.

5 Q. Okay. Thank you for the clarification.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. I show you a set of exhibits marked
8 Respondent's Exhibit 4. I will represent to you the
9 pictures were taken this summer, in July 2014. Do
10 you dispute that depicts from a view what the
11 right-of-way looked like this past summer?

12 A. No. It looked like that was all weeds,
13 that's weeds up there.

14 Q. You don't dispute this would be a picture
15 of what that right-of-way looks like?

16 A. Yeah, right.

17 Q. Okay. And if you look at the second
18 page, this would be a picture, more of a close-up of
19 what you have termed weeds, the herbaceous growth you
20 termed weeds?

21 A. Right, they're weeds.

22 Q. So looking at picture 2 from Respondent's
23 Exhibit 4, you don't dispute that herbaceous growth
24 is now sprouting up in the area where the herbicide
25 was applied, correct?

1 A. Yeah. It's all dead now.

2 Q. It's dead now? Has it turned fall?

3 A. (Witness nods head.)

4 Q. Just to summarize what your complaint is
5 here, would you like the company to landscape this
6 area by clearing all the growth out and seeding it
7 with grass seed?

8 A. Right.

9 Q. Similar to how you did that work on the
10 lower portion of the your area?

11 A. Right. And I did it without herbicides,
12 too.

13 Q. But this area was not a lawn area prior
14 to this work taking place, correct?

15 A. No. But Ohio Edison has owned this right
16 since 1958, they built that line. And they're the
17 ones that are supposed to be maintaining that, not
18 the owner. They are, because if this was -- if Ohio
19 Edison didn't own this, this would all have been
20 trees up in here and woods, because -- would you go
21 along with that? There's woods on both sides.

22 They had to cut the woods out to put the
23 line in. So anything that grows up in there -- like
24 briars and that don't grow in a woods. The woods
25 would crowd it out. Briars grow up where you have an

1 open space.

2 Q. So your position is that it's the
3 company's responsibility to --

4 A. Right.

5 Q. -- seed this area with grass seed?

6 A. Right. I didn't have -- I didn't want
7 the grass seed sowed until they sprayed it. After
8 they sprayed it, then I wanted it sowed. If they
9 just come up there and chopped that up and cleaned it
10 up, I would have been happy. Once they sprayed it,
11 then it killed everything.

12 Q. Except for now the growth is coming back?

13 A. Yeah. The growth is coming back, but
14 it's just weeds.

15 Q. It's not the woody vegetation that was in
16 there before?

17 A. I don't know. For three or four years we
18 won't know that.

19 Q. But as of today, it's not vegetation.

20 A. Not as of today, no.

21 MS. WILCHECK: We are done.

22 THE ATTORNEY EXAMINER: Do you have
23 anything further? This would be your chance to do
24 redirect examination, and then they can respond. Do
25 you have anything more to add to your case?

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MR. GRIFFITH: No, not really. I pretty well stated my case, I think. It's their responsibility to clean up their mess, and after they sprayed it, then it should have been put in grass instead of just letting weeds grow up through there.

THE ATTORNEY EXAMINER: That concludes your case?

MR. GRIFFITH: Right.

THE ATTORNEY EXAMINER: Do you have anything else.

MS. WILCHECK: Just to summarize, make sure I heard, he was just saying there was not grass up there. Right now it's just weeds. Is that what he just said? I didn't hear.

MR. GRIFFITH: No. I said after you went up there and cut everything and killed everything, then I feel it was your responsibility to get it sowed down in grass so the weeds wouldn't grow back up.

MS. WILCHECK: Okay. I don't have anything further.

THE ATTORNEY EXAMINER: You're excused.

MS. DUNN: Your Honor, before the company presents its witnesses, may I take five minutes to

1 look at the photos?

2 THE ATTORNEY EXAMINER: You may.

3 (Recess taken.)

4 MS. DUNN: The company calls as its first
5 witness Katherine M. Bloss.

6 (Witness sworn.)

7 MS. DUNN: Your Honor, I'd like to mark
8 as Company Exhibit 5 the Direct Testimony of
9 Katherine M. Bloss -- as Respondent's Exhibit 5.

10 THE ATTORNEY EXAMINER: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 - - -

13 DIRECT EXAMINATION

14 By Ms. Dunn:

15 Q. Please introduce yourself.

16 A. My name is Katherine Bloss. I'm the
17 supervisor for transmission vegetation management for
18 most of Ohio.

19 Q. And I've handed you what has been marked
20 as Respondent Exhibit 5. Do you recognize that
21 document?

22 A. I do.

23 Q. What is it?

24 A. It is my direct testimony.

25 Q. And was this testimony prepared by you or

1 someone under your direction?

2 A. It was.

3 Q. And do you have any corrections today?

4 A. No.

5 Q. And if I asked you the same questions
6 today as is contained in Exhibit 5, would your
7 answers be the same?

8 A. Yes.

9 MS. DUNN: I have just one direct
10 question to ask Ms. Bloss in addition to her
11 testimony based on something Mr. Griffith said today.

12 THE ATTORNEY EXAMINER: Okay.

13 Q. (By Ms. Dunn) Ms. Bloss, you heard
14 Mr. Griffith testify today that he's unable to use
15 his property, the property under the line; is that
16 correct?

17 A. Yes.

18 Q. Do you agree with that statement?

19 A. I do not. The herbicide application that
20 was applied was to control the woody stems and the
21 root system to help it to stop regrowing and
22 sprouting. What's come back is herbaceous vegetation
23 instead of the dense woody stems, which allows for
24 ease of access, being able to get on the hillside and
25 maneuver through it much easier, so he would be able

1 to use it in that regard.

2 MS. DUNN: Your Honor, I have no further
3 questions. The witness is open for cross.

4 THE ATTORNEY EXAMINER: Mr. Griffith, do
5 you have any questions for this witness.

6 MR. GRIFFITH: Yes, I do.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Griffith:

10 Q. I didn't say I couldn't use that land
11 because of the stems.

12 THE ATTORNEY EXAMINER: You have to ask a
13 question. You can't make a statement now. You have
14 to ask a question.

15 Q. (By Mr. Griffith) You're saying that I
16 couldn't use that because of the stubbles; is that
17 correct?

18 A. I am saying with the herbicide
19 application that was applied, it has allowed for
20 herbaceous vegetation to grow instead of the woody
21 stems, which will allow for access onto that
22 right-of-way and make it more usable than the
23 condition that it was in before.

24 Q. Is it your testimony that I could run
25 over them rocks that's been dug up, the brush that's

1 been dug up with a tractor and not do any damage to
2 myself or the tractor?

3 A. I'm saying that with -- I'm saying with
4 the herbicide that was used, you would be able to use
5 it if you had the appropriate equipment to get onto
6 that right-of-way, depending on what your use would
7 be for. I'm not sure what you could use that for,
8 but I would say if you would want access, it is in a
9 much more usable condition than it was prior,
10 accessible condition than it was prior, to my
11 understanding.

12 Q. So you're saying it is more accessible
13 now than it was before?

14 A. Right, as I understand.

15 Q. But it wasn't accessible before either?

16 A. As I understand from your testimony, it
17 was full of brush, and that was my understanding of
18 that right-of-way. But now it is herbaceous -- you
19 can walk through it, and we patrolled through it and
20 have been on that hillside, so it's in a much more
21 usable condition in that regard.

22 Q. Okay. You're saying it's much more
23 usable, but it's still not usable. Okay.

24 Another thing is in your thing you say
25 under the "Transmission Management Contractor

1 Specifications," FirstEnergy transmission management
2 contractor specification, what's that mean?

3 A. I'm sorry, can you say that again?

4 Q. You said --

5 THE ATTORNEY EXAMINER: What page are you
6 on, Mr. Griffith?

7 MR. GRIFFITH: The "TVM programs as
8 required under Ohio Administrative Code
9 4901:1-10-27(E) ('the Plan') and the FirstEnergy
10 Transmission Management Contractor Specifications" --

11 THE ATTORNEY EXAMINER: Excuse me. What
12 page are you on of the testimony?

13 MR. GRIFFITH: It's page 2.

14 Q. You refer to the cleanup under
15 "Transmission Management Contractor Specifications
16 dated January 1, 2012." Now, whose specifications
17 are these?

18 A. You're looking at Answer 4, A4?

19 Q. Yeah, A4.

20 A. Okay. It says it's the "FirstEnergy
21 Transmission Management Contractor Specifications."
22 There are specifications.

23 Q. I can't hear you.

24 A. There are specifications.

25 Q. Yeah.

1 A. FirstEnergy.

2 Q. FirstEnergy wrote these specifications?

3 A. Correct.

4 Q. Okay. But they didn't talk to any
5 landowners; they just wrote the specifications?

6 A. We did write the specifications and the
7 guidelines to the contractor of how to complete the
8 work.

9 Q. Okay. But that's FirstEnergy's opinion
10 how to complete the work, in other words --

11 A. Right. It's what we're asking of the
12 contractors, their guidelines to complete that work.

13 Q. Okay. But that's not a law that that's
14 all they have to do for the cleanup or anything?

15 A. Right. The specifications, in
16 conjunction with the easement, is how we complete our
17 work.

18 Q. Well, yeah. The easement, where did you
19 find that on the easement that you could do this?

20 THE ATTORNEY EXAMINER: You have to make
21 it a question.

22 Q. On the easement, which I've already
23 presented right here --

24 MS. DUNN: It's in her testimony. It's
25 Attachment KB-4.

1 Q. (By Mr. Griffith) I'm asking where on
2 there you think that it says these specifications
3 apply?

4 THE ATTORNEY EXAMINER: What are you
5 reading from now?

6 MR. GRIFFITH: She's reading from the
7 lease agreement. I don't have that copy of mine.

8 THE ATTORNEY EXAMINER: Page 2 of the
9 lease agreement? Did we get the page number?

10 Q. (By Mr. Griffith) What's the page
11 number?

12 A. The lease agreement is on page 1, I
13 guess. That's where it starts. That's what you're
14 looking at.

15 MR. GRIFFITH: Page 1?

16 MS. DUNN: Do you mean the easement or
17 lease agreement? They're two different documents. I
18 think there's where the confusion is coming from.
19 There's the easement and then a lease agreement.

20 Were you asking her about both or one?

21 MR. GRIFFITH: I am asking her about this
22 copy here, the easement agreement.

23 THE ATTORNEY EXAMINER: That's the first
24 agreement of the lease agreement?

25 MS. DUNN: The easement.

1 MR. GRIFFITH: Huh?

2 MS. DUNN: That's the easement.

3 MR. GRIFFITH: Okay.

4 Q. (By Mr. Griffith) I'm asking you
5 under -- on what do you base this on that you can
6 just leave the brush laying there?

7 A. I do not see anything as I read through
8 this in regards to debris disposal on the property,
9 so we would use our specifications to guide how the
10 contractor is going to leave the debris.

11 Q. Well, if they agree to fix everything on
12 the premises, which they do, isn't it reasonable to
13 assume you would clean the brush up, too, when you're
14 done?

15 MS. DUNN: Object to the characterization
16 of what the easement says. It does not say that.

17 But she can answer.

18 THE ATTORNEY EXAMINER: Excuse me?

19 MS. DUNN: I said I'm going to pose an
20 objection because what he stated the easement says is
21 not what the easement says, but she can answer if she
22 can.

23 THE ATTORNEY EXAMINER: Well, he can ask
24 her a question about the easement, I think. I mean,
25 we're not reading anything more into the easement.

1 But your question to her was?

2 MR. GRIFFITH: I'm just asking her what
3 she thinks this easement says right there.

4 THE ATTORNEY EXAMINER: The last
5 paragraph on the page?

6 MR. GRIFFITH: Right.

7 THE ATTORNEY EXAMINER: You want to know
8 what?

9 Q. (By Mr. Griffith) Well, it says they
10 repair -- like, if there's any damage, they will
11 replace -- "repair or replace all fences, gates,
12 lanes, driveways, drains and ditches damaged or
13 destroyed on said premises," you know, if they're in
14 there. Then it's reasonable to assume they'll also
15 clean up the brush on the property when they're done.

16 THE ATTORNEY EXAMINER: Make it a
17 question.

18 Q. (By Mr. Griffith) I'm asking is that a
19 reasonable assumption?

20 A. No.

21 Q. It's not?

22 A. No. It clearly states in the easement
23 that "The Grantee will repair and replace the
24 following items." Vegetation under the easement, we
25 have the right to manage that vegetation. It doesn't

1 say that we'll repair or --

2 Q. When was this wrote?

3 MS. DUNN: Can she finish her answer,
4 please?

5 A. It doesn't say that we will replace the
6 vegetation that we're trying to manage for safety and
7 liability. It just lists these other items.

8 Q. What I'm saying is, is it reasonable to
9 assume they would? Would a reasonable person assume
10 that if you're going to fix everything, you would
11 also take care of the property, be good land
12 managers?

13 A. When it comes to vegetation, the easement
14 gives us the right the remove the vegetation, which
15 they did.

16 Q. This was wrote in 1958. There was no
17 spraying in 1958. Now, you might not remember that,
18 but I do --

19 MR. GRIFFITH: Objection, your Honor.

20 Q. -- because I was alive in 1958.

21 THE ATTORNEY EXAMINER: You have to make
22 that a question.

23 Q. (By Mr. Griffith) Do you think they
24 sprayed in 1958?

25 A. I do not know what they did in 1958.

1 MR. GRIFFITH: Thank you.

2 THE ATTORNEY EXAMINER: Any more
3 questions of this witness?

4 MR. GRIFFITH: No, I'm done. Thank you.

5 THE ATTORNEY EXAMINER: Any on redirect?

6 MS. DUNN: No, your Honor.

7 THE ATTORNEY EXAMINER: You're excused.

8 MS. DUNN: The company calls its next
9 witness, Mr. Alan M. Glover.

10 Your Honor, I'd like to mark the Direct
11 Testimony of Alan M. Glover as Respondent's Exhibit
12 6.

13 THE ATTORNEY EXAMINER: Very good.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 - - -

16 ALAN M. GLOVER

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

19 DIRECT EXAMINATION

20 By Ms. Dunn:

21 Q. Mr. Glover, I'm handing you what has been
22 marked as Respondent's Exhibit 6 -- again, excuse me.
23 Please introduce yourself.

24 A. My name is Alan Glover. Contracted
25 transmission forestry specialist for the Youngstown

1 area of Ohio Edison.

2 Q. I've handed you what has been marked as
3 Respondent Exhibit 6. Do you recognize that
4 document?

5 A. I do.

6 Q. What is it?

7 A. It's my direct testimony.

8 Q. That was prepared by you or under your
9 direction?

10 A. Yes.

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

13 A. No.

14 Q. If I asked you the same questions today
15 that are in Respondent Exhibit 6 would your answers
16 be the same?

17 A. Yes.

18 MS. DUNN: Your Honor, Mr. Griffith today
19 brought approximately 23 photos. Off the record I
20 have marked the back of those Complainant's Exhibits
21 1A through 1X, and I'd like to ask Mr. Glover a few
22 questions relating to that exhibit.

23 THE ATTORNEY EXAMINER: Very good.

24 Q. (By Ms. Dunn) Mr. Glover, I'm putting in
25 front of what you has been previously marked as

1 Complainant's Exhibit 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H,
2 1I.

3 THE ATTORNEY EXAMINER: Do you want to
4 take a look at these, Mr. Griffith?

5 MR. GRIFFITH: Yeah.

6 MS. DUNN: This pile I'm not going to ask
7 about.

8 MR. GRIFFITH: These are the ones you're
9 going to ask about?

10 MS. DUNN: Yes. And you can stay up here
11 if you like.

12 MR. GRIFFITH: Okay.

13 Q. (By Ms. Dunn) Mr. Glover, you have been
14 to Mr. Griffith's property?

15 A. Several times.

16 Q. So you're very familiar with it?

17 A. Yes.

18 Q. The pictures I've put in front of you
19 labeled Exhibit 1A through 1I, based on your
20 experience at the property, when were these taken?

21 A. These were taken sometime after our first
22 mowing and before our second mowing that we come in.
23 To appease the property owner, we mowed the property
24 twice. These were taken before the second mowing.

25 Q. And when was the second mowing?

1 A. In October.

2 Q. Of 2013?

3 A. Yes.

4 MS. DUNN: I have no further questions,
5 your Honor.

6 THE ATTORNEY EXAMINER: Very good.

7 Do you have any questions, Mr. Griffith?

8 MR. GRIFFITH: Yes.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Griffith:

12 Q. You say this was taken -- these were
13 taken after the helicopter went over, right?

14 A. I would imagine, yes.

15 Q. And you said in your testimony --

16 A. Well, yeah, I mean, more than likely they
17 were taken after the helicopter came.

18 Q. This was taken on the windrow, right?

19 THE ATTORNEY EXAMINER: What are you
20 pointing to, Mr. Griffith?

21 MR. GRIFFITH: This one, 1F.

22 Q. (By Mr. Griffith) And I'll tell you how
23 I know that. It was cut with a chain saw right here
24 where they cut it. They cut the brush down and
25 they -- the windrow sat up pretty high, and they --

1 THE ATTORNEY EXAMINER: Make it a
2 question.

3 MR. GRIFFITH: Okay.

4 Q. (By Mr. Griffith) But this was after the
5 windrow, you think? See the chain saw cut here?

6 A. To me that's not a chain saw cut.

7 Q. What is it?

8 A. I would say that's after the Fecon-head
9 mower. That's the type of mower we use to mow the
10 right-of-way. It has several teeth on it that mulch
11 the brush.

12 Q. Right. Do you think you went over that
13 windrow with that mower?

14 A. I'm sorry, do I think --

15 Q. When the windrow was right by the -- the
16 windrows was right along the trees. Did you get into
17 those windrows along the trees with that second
18 mowing?

19 A. Yes, we did.

20 Q. Okay.

21 A. That was part of your main concern. That
22 was why we brought the mower back the second time,
23 was to try to address your concern, to mow that
24 right-of-way better, to get the stubble down if there
25 was some debris left from the vegetation that was

1 left before.

2 Q. A lot of things are said, all right.

3 MS. DUNN: Wait for a question.

4 Q. (By Mr. Griffith) On this thing you said
5 I was notified January 31 you was coming in.

6 THE ATTORNEY EXAMINER: What page are you
7 reading from?

8 MR. GRIFFITH: Page 3.

9 THE ATTORNEY EXAMINER: What line of the
10 testimony?

11 MR. GRIFFITH: Line 19-20, answer 10.

12 Q. (By Mr. Griffith) You said I was
13 notified. Did you notify me?

14 A. I didn't notify you. That is -- that
15 responsibility goes to Asplundh Tree, and I do
16 believe Kenny Gearrin from Selina, Ohio --

17 Q. I know Kenny. He didn't notify me.

18 A. -- notified you January 21.

19 Q. No, he didn't.

20 A. I have a copy of a 1015 form.

21 MS. DUNN: Objection. He needs to answer
22 your question and then you can speak, but you're
23 talking over one another.

24 THE ATTORNEY EXAMINER: Yes. Let's let
25 him complete his answer.

1 A. I have the 1015 form that Kenny Gearrin
2 turned in to me. The form has three parts, a white
3 copy, a pink copy, and a yellow copy. The white copy
4 comes back, one goes to the property owner, one to
5 the contractor. I have a copy of that, you know,
6 Kenny said you didn't sign it. But I do have a copy
7 that you were notified on January 21. Now, sometimes
8 that is a phone call that he talked to you there,
9 but, I mean, to me I thought you were notified.

10 Q. I was not.

11 A. And I believed you were notified.

12 Q. Well, I wasn't notified. The first thing
13 I knowed you were in the woods up there.

14 MS. DUNN: Objection, move to strike.

15 THE ATTORNEY EXAMINER: You have to
16 confine yourself to questions.

17 Q. (By Mr. Griffith) It says here, "As a
18 TVM forestry specialist, I evaluate debris
19 disposal" --

20 THE ATTORNEY EXAMINER: What page are you
21 on now?

22 MR. GRIFFITH: I'm still on page 3.

23 THE ATTORNEY EXAMINER: Are you reading
24 from the top?

25 MR. GRIFFITH: Question A7 or answer A7.

1 Q. (By Mr. Griffith) It says "under the
2 Specifications." Now, these specifications are your
3 specifications or Ohio Edison's specifications,
4 right?

5 A. FirstEnergy's specifications.

6 Q. FirstEnergy's specifications. But
7 there's no law to this effect of what you did?

8 A. Law?

9 Q. Is there a law you're going by?

10 A. Not to my knowledge.

11 Q. Okay. That's what I want to know.

12 A. I do know that, you know, we conform to
13 NERC and FERC regulations.

14 Q. On page 4, on line 15, you said there was
15 stuff in there 16-foot tall. Do you think there was
16 stuff in there 16-foot tall?

17 MS. DUNN: Page 4, line 15.

18 THE ATTORNEY EXAMINER: What does it say
19 there?

20 MR. GRIFFITH: Line 5.

21 MS. DUNN: Page 4, line 5, okay.

22 A. Yes, I do. I mean, I was out there on
23 the property, and I believe that was the consistent
24 height of the vegetation, was around 16-foot. You
25 know, whenever I'm out in the field, I use a TruPulse

1 rangefinder. I do deal a lot with the vegetation
2 heights, and anything over 12-foot we would mow
3 anyway to our specification. But I do believe that
4 that brush height was consistently 16-foot tall
5 through there.

6 Q. What kind of trees was there?

7 A. There were several different species of
8 trees from Atlantis to cherry to oak. There may have
9 been some other species in there, too.

10 Q. As a specialist, how long does it take a
11 tree to grow to a 16-foot high?

12 A. It depends on the site, for one, but
13 16-foot high, if it was growing 4-foot a year --

14 Q. It doesn't grow 4-foot a year.

15 MS. DUNN: Objection, move to strike. He
16 made a comment on the record in between. You
17 probably didn't hear him?

18 A. Yeah. All tree rates growth is
19 different, Mr. Griffith. I have seen oak trees,
20 young, that have grown 6-foot a year. I mean, it
21 just depends on what the species is there.

22 Q. On page 5 you said windrowed, and then
23 you cut the brush again to get it down, diced it
24 down.

25 A. What's the question?

1 Q. Well, I'm just asking on page 5 you said
2 you windrowed and then diced down the debris, right?

3 A. Yes. I think what you're referring to is
4 after your initial complaint, I sent Asplundh Tree
5 back in to do some additional work for you, and that
6 was dicing down the windrow brush that was along the
7 corridor there, along the trees that were standing.

8 You know, that property was an
9 unmaintained property, you know, and that's what we
10 do whenever the property is unmaintained. You know,
11 we windrow that brush right along the tree edge and
12 dice it below knee height. I did send Asplundh back
13 in there to dice that up for you to please your
14 complaint, to make you happy there.

15 MR. GRIFFITH: Okay. I have no more
16 questions.

17 THE ATTORNEY EXAMINER: Do you have any
18 questions?

19 MS. DUNN: No, your Honor.

20 THE ATTORNEY EXAMINER: You're excused.

21 MS. DUNN: Your Honor, the company has no
22 further witnesses.

23 THE ATTORNEY EXAMINER: You're
24 concluding?

25 MS. DUNN: Yes.

1 THE ATTORNEY EXAMINER: Do you have
2 anything more to add, Mr. Griffith?

3 MR. GRIFFITH: Yes.

4 - - -

5 REDIRECT TESTIMONY

6 MR. GRIFFITH: He testified that the
7 trees grow four feet. I used to be in the timber
8 business, bought and sold trees and timber and cut
9 it, and it was my responsibility, because it was my
10 money, to know how much trees grow, and I have never
11 seen a tree grow four foot in one year. I have never
12 seen a tree grow three feet in one year.

13 THE ATTORNEY EXAMINER: Does that
14 conclude your statement?

15 MR. GRIFFITH: Yes.

16 THE ATTORNEY EXAMINER: Does the company
17 wish to make a statement?

18 MS. DUNN: No, your Honor.

19 THE ATTORNEY EXAMINER: Very good.

20 Let's go off the record.

21 (Discussion off record.)

22 THE ATTORNEY EXAMINER: Back on the
23 record. I'm looking at December 5 for the briefing
24 date.

25 MS. DUNN: That's fine, your Honor.

1 THE ATTORNEY EXAMINER: Is that
2 acceptable, December 5?

3 Let's just make them simultaneous briefs,
4 okay?

5 MS. DUNN: Okay.

6 THE ATTORNEY EXAMINER: What you do,
7 Mr. Griffith, is see that the docketing department
8 here has your brief with your case number on it.
9 Make sure your case number is on it so they know what
10 to file it under.

11 MR. GRIFFITH: December 15?

12 THE ATTORNEY EXAMINER: No, 5th.

13 MR. GRIFFITH: Okay, that's the date I
14 have to have it filed by?

15 THE ATTORNEY EXAMINER: You have your
16 brief filed, your statement of the case filed. Now,
17 the company is going to file it a little bit
18 different here. It's a legal brief. But since
19 you're not an attorney you can file what we call a
20 statement of the case. Just put down what you
21 contend and any legal authority accorded that you
22 know of.

23 MR. GRIFFITH: Okay.

24 THE ATTORNEY EXAMINER: And basically you
25 have it here by December 5.

1 MR. GRIFFITH: Okay.

2 THE ATTORNEY EXAMINER: The Complainant's
3 and Respondent's exhibits are admitted into the
4 record.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 THE ATTORNEY EXAMINER: Anything more to
7 add today?

8 MS. DUNN: No, your Honor.

9 THE ATTORNEY EXAMINER: I'll consider the
10 case submitted on the record then.

11 Thank you for coming.

12 (The hearing adjourned at 11:03 a.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 Wednesday, October 15, 2014, and carefully compared with my original stenographic notes.

Rosemary Foster Anderson,
Professional Reporter and
Notary Public in and for
the State of Ohio.

My commission expires April 5, 2019.
(RFA-76848)

- - -

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Case No(s). 13-1956-EL-CSS

Summary: Transcript in the matter of James L. Griffith vs. Ohio Edison Company hearing held on 10/15/14 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.