BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

James L. Griffith,	)	Case No.: 13-1956-EL-CSS
	)	
Complainant,	)	
	)	
vs.	)	
	)	
Ohio Edison Company,	)	
	)	
Respondent.	)	

OHIO EDISON COMPANY'S POST HEARING BRIEF

I. INTRODUCTION

Complainant, James Griffith failed to carry his burden of showing that Respondent, Ohio Edison Company's ("Ohio Edison" or "Company") actions with respect to the herbicide application and debris disposal on his property constitute inadequate service. To the contrary, the overwhelming evidence demonstrates that the debris disposal on Complainant's property not only met, but exceeded the FirstEnergy Transmission Vegetation Management Contractor Specifications ("TVM Specifications" or "Specifications") to the Complainant's benefit. Moreover, the evidence clearly establishes that herbicide application was necessary and appropriate under the Specifications to control the stem and root system of the woody brush within the right-of-way.

Complainant does not dispute that Ohio Edison has the right to manage vegetation within the right-of-way traversing his property. He instead believes, without legal or factual support, or evidence of record, that the Company bears an additional obligation to create a maintained lawn area within that right-of-way. No such obligation exists. Accordingly, Complainant failed to

meet his burden of showing that the Company's actions were unreasonable or unjust in any respect. As a result, the Commission should dismiss the Complaint, with prejudice.

II. STATEMENT OF FACTS

A. Description of Complainant's Property

There is no dispute in this case that Ohio Edison has an easement over Complainant's property that grants it the "right to trim, cut, remove or otherwise control at any and all times such trees, limbs, underbrush or other obstructions within or adjacent to said right-of-way as may interfere with or endanger" its electric transmission lines and facilities. (Tr., at 11 (Griffith Cross); OE Ex. 5 at 9 (Bloss Direct); *Id.* at Att. KB-3, p.1)[1]. A 345 kV transmission line, referred to as the Sammis-Star transmission line, traverses Complainant's property pursuant to this easement. (OE Ex. 5, p. 6 (Bloss Direct)).

The right-of-way on the property consists of both maintained and non-maintained lawn areas. (OE Ex. 5 at 9 (Bloss Direct); *Id.* at Att. KB-3; Tr. at 8 (Griffith Direct)). A "maintained lawn area" is an area covered by grass that is kept closely mowed or areas where the landscape is cultivated, such as with flowerbeds or hedgerows. (OE Ex. 5 at 8 (Bloss Direct); *Id.* at Att. KB-2, p. 118). In contrast, a "non-maintained lawn area" is an area that is not kept closely mowed or has landscape that is not being cultivated, including wooded or agricultural sites. (*Id.* at 8-9, Att. KB-2, p. 118).

Complainant previously cleared and planted grass within a portion of the right-of-way near his pond, which he keeps closely mowed. (Tr. at 8-9 (Griffith Direct)). That maintained lawn area is not at issue. Rather, the debris disposal and herbicide application at issue in this

[1] Citations to the written, direct testimony of Ohio Edison's witnesses are identified by exhibit number as follows: 1) written testimony of Katherine Bloss is OE Ex. 5; and 2) written testimony of Alan Glover is OE Ex. 6. Citations to the attachments to the direct testimony are formatted as "Att.," with the corresponding attachment number. Citation to the transcript from the October 15, 2014 hearing is formatted as "Tr.," with the applicable page number.

case occurred in the non-maintained lawn area within the right-of-way, which consisted of dense, woody vegetation approximately 10 to 16 feet high. (Tr. at 12-13 (Griffith Cross); OE Ex. 6 at 4 (Glover Direct)). Complainant admits that he was not mowing or otherwise using this non-maintained portion of the right-of-way prior to the 2013 vegetation management work. (Tr. at 17-18 (Griffith Cross)).

B. <u>Ohio Edison's TVM Program</u>

FirstEnergy Corp.'s operating companies, including Ohio Edison and its transmission affiliate American Transmission Systems, Incorporated ("ATSI"), must comply with the Transmission Vegetation Management ("TVM") Program required under Ohio Admin. Code 4901:1-10-27(E) ("the Plan") and the TVM Specifications.[2] (OE Ex. 5 at 2 (Bloss Direct); *Id.* at Att. KB-1 and KB-2). The Plan was originally submitted to the Commission in January of 2001 and most recently revised in April of 2010. (OE Ex. 5 at 5 (Bloss Direct); *Id.* at Att. KB-1). The Plan establishes a five-year maintenance cycle and mandates vegetation control though the removal of vegetation that has the potential to interfere with the safe and efficient operation of the transmission system. (OE Ex. 5 at 5 (Bloss Direct); *Id.* at Att. KB-1, ATSI, p. 3). The TVM Specifications incorporate and provide more specific detail on compliance with the Plan. (OE Ex. 5 at 5 (Bloss Direct)).

The objective of the TVM Program is to ensure that vegetation with the potential to interfere with electric transmission lines is managed to prevent outages from vegetation located on the transmission corridor. (OE Ex. 5 at 6 (Bloss Direct); *Id.* at Att. KB-2, p. 5). Another purpose is to minimize outages from vegetation located adjacent to the transmission corridor in

[2] The TVM Specifications have been updated effective January 1, 2014. However, the version of the TVM Specifications dated January 1, 2012 is the version that was in effect at the time of the maintenance work on Complainant's property. (OE Ex. 5 at 2, f.n. 1).

order to maintain safe and reliable operation of the electric transmission system. (*Id.*). For lines such as the 345kV line in this case, the Specifications require that all incompatible vegetation in the wire zone and border zone that has the potential to interfere with the safe and efficient operation of the transmission system must be controlled or removed. (OE Ex. 5 at 7 (Bloss Direct); *Id.* at Att. KB-2, p. 25).

The "wire zone" is the section of the transmission corridor directly under the wires and extending outward at least 15' on each side of the outside conductors. (*Id.*). The Specifications require control of all woody vegetation in the wire zone, with the goal of promoting a low growing plant community of grasses, herbs and low growing shrubs (approximately 3-5' high). (*Id.*). The "border zone" extends from the transmission corridor edge to within 15' from the outside transmission conductor. (OE Ex. 5 at 7 (Bloss Direct); *Id.* at Att. KB-2, p. 26). The Specifications require control of all incompatible vegetation in the border zone, with the goal of supporting a plant community of forbs and taller compatible shrubs (approximately 12-15' high). (OE Ex. 5 at 7 (Bloss Direct); *Id.* at Att. KB-2, p. 25).

With respect to debris disposal following vegetation management work, the TVM Specifications provide that logs may be left at full length. (OE Ex. 5 at 8 (Bloss Direct); *Id.* at Att. KB-2, p. 41). In areas accessible by mechanical equipment, brush and logs must not be left in any waterway or more than 10' from the edge of the transmission corridor. (*Id.*). In areas not accessible by mechanical equipment, debris may be diced and left in place. (*Id.*). In maintained lawn areas where there is ground to sky pruning, the contractor will chip wood and leave the wood that is too large to be chipped in handling lengths for the property owner to cut into final firewood lengths. (*Id.).* In contrast, there is no requirement to chip or leave wood in handling

lengths in non-maintained lawn areas, such as the non-maintained portion of the right-of-way at issue in this case. (*Id.*).

As for the application of herbicide, "controlling" vegetation under the Specifications means that "[a]ll incompatible vegetation must be removed with an herbicide or be removed mechanically along with an herbicide application to eliminate the root system." (OE Ex. 5 at 7 (Bloss Direct); *Id.* at Att. KB-2, p. 117). As this language makes clear, herbicide application is an integral part of controlling vegetation under the TVM Program. (*Id.*). The Plan filed with the Commission specifically provides for herbicide application. (OE Ex. 5 at 7-8 (Bloss Direct); *Id.* at Att. KB-1, ATSI, p.3; *Id.* at Att. KB-2, p. 37). Likewise, the TVM Specifications dictate that all incompatible vegetation less than 6" in diameter within the transmission corridor will be controlled with herbicides. (*Id.*).

C. <u>Ohio Edison's Compliance with the TVM Specifications for Debris Disposal</u>

Ohio Edison hired contractor, Asplundh Tree Experts ("ATE") to perform the vegetation management work within the Company's right-of-way on the Complainant's property. (OE Ex. 6 at 3 (Glover Direct)). ATE gave notice to Complainant of the planned maintenance work on or about January 21, 2013. (*Id.*). On March 14, 2013, ATE began work to remove trees within the right-of-way using an aerial saw according to Ohio Edison's easement and the TVM Specifications. (OE Ex. 6 at 3 (Glover Direct)).

On March 20, 2013, Transmission Vegetation Management Forestry Specialist, Alan Glover, met with Complainant at the property to discuss the application of a United States Environmental Protection Agency ("EPA")-approved herbicide to control the woody vegetation within the non-maintained portion of the right-of-way. (OE Ex. 6 at 1, 4 (Glover Direct)). The dense, woody vegetation within this non-maintained portion of the transmission corridor was

mowed on April 3, 2013 with a Fecon head mower in order to prepare the area for the application of herbicide. (*Id*. at 4).

Following Complainant's informal complaint regarding debris disposal, Mr. Glover returned to the property on July 26, 2013 with a representative from ATE to meet with Complainant regarding his concerns. (OE Ex. 6 at 4 (Glover Direct)). At that meeting, Mr. Glover reviewed the condition of the right-of-way and confirmed that debris from the vegetation management work was maintained in a reasonable manner and in full compliance with the TVM Specifications. (*Id*.). Nonetheless, in an effort to satisfy Complainant's concerns, the Company agreed to stack and windrow the brush debris remaining from the aerial saw. (*Id*. at 4-5). "Windrow" means that the brush debris is stacked parallel to the woodline and diced down so that the debris lays at knee-length or lower. (*Id*. at 5). This work is above and beyond what is required under the Specifications for the non-maintained area of the right-of-way at issue in this case. (*Id*.).

Three days later, on July 29, 2013, ATE windrowed brush and diced debris below knee height as agreed. (*Id*. at 5, Att. AG-2; Tr. at 13 (Griffith Cross)) This additional work, not required under the TVM Specifications, took a two-man crew five hours to complete, for a total 10 additional hours of labor. (*Id*.) True and accurate copies of photographs depicting the right-of-way after this additional work were presented as Attachment AG-2 to the written testimony of Alan Glover and during the hearing as Respondent's Exhibit 1. (OE Ex. 6 at 5 (Glover Direct); *Id*. at AG-2; Tr. at 13-14 (Griffith Cross); *Id*. at OE Ex. 1).

Following Complainant's formal complaint to the Commission, Mr. Glover again returned to the property with a representative of ATE on October 1, 2013 to meet with the Complainant about his concerns. At that meeting, Complainant expressed dissatisfaction with

stubble within the right-of-way. (OE Ex. 6 at 5 (Glover Direct)). Although it was beyond the Company's requirements under the Specifications, Mr. Glover made arrangements for ATE to re-mow the non-maintained portion of the right-of-way. (*Id.*; Tr. at 14 (Griffith Cross)). ATE returned to the property and used a Fecon head mower to further mulch the brush, including the windrow stacks. (Tr. at 39 (Glover Cross)). This second, additional mowing above and beyond the requirements in the TVM Specifications took another 10 hours of labor to complete. *(Id.* at 5-6).

Mr. Glover inspected the property with Katherine Bloss, Supervisor of Transmission Vegetation Management for FirstEnergy Service Company, following this additional work in October of 2013. (OE Ex. 5 at 9 (Bloss Direct); OE Ex. 6 at 6 (Glover Direct)). Mr. Glover and Ms. Bloss both confirmed that the debris disposal on Complainant's property exceeded, to the Complainant's benefit, what was required under the TVM Specifications. (*Id.*). True and accurate copies of the right-of-way as it appeared following this additional mowing in October of 2013 were presented as Attachment KB-5 to the written testimony of Ms. Bloss and during the hearing as Respondent's Exhibits 2 and 3. (OE Ex. 5 at 10 (Bloss Direct); *Id.* at Att. KB-5; Tr. at 14-15 (Griffith Cross); *Id.* at OE Exs. 2 and 3)[3].

D. <u>The Herbicide Application Required Under the TVM Program</u>

Forestry Specialist Alan Glover met with Complainant on March 20, 2013 to discuss the application of an EPA-approved herbicide for the purpose of controlling the woody vegetation within the non-maintained portion of the right-of-way. (OE Ex. 6 at 1, 4 (Glover Direct)). Mr. Glover met with Complainant again on April 3, 2013 to further discuss the fact that it was

[3] Complainant presented photographs which predate this additional work. Accordingly, the photographs are not representative of the subject right-of-way following the additional mowing in October of 2013. (Tr. at 37-38 (Glover Direct)).

necessary to apply herbicide within the right-of-way consistent with the requirements of the TVM Specifications. (OE Ex. 6 at 4 (Glover Direct)). On April 4, 2013, Mr. Glover provided Complainant with written notice that the woody vegetation within the right-of-way would be treated with herbicide. (*Id*. at 4, Att. AG-1 (Glover Direct)).

ATE applied such herbicide to the root system of the woody vegetation in May of 2013. (OE Ex. 6 at 4 (Glover Direct)). Complainant does not dispute that this herbicide was an EPA-approved herbicide. (Tr. at 17 (Griffith Cross)) Nor does he dispute that the Company left a three (3) to five (5) foot buffer between the maintained lawn area within the right-of-way and the non-maintained woody vegetation area where the herbicide was applied. (*Id.*; *see, also,* OE Ex. 6 at 4 (Glover Direct); OE Ex. 5 at Att. KB-3).

Forestry Specialist Alan Glover discussed Complainant's concerns about the herbicide application with him again when he was at the property on July 26, 2013. (OE Ex. 6 at 5 (Glover Direct)). At that meeting, Mr. Glover again explained to Complainant that the herbicide had to be applied to control the stumps of the woody vegetation that was removed as part of the vegetation management work pursuant to the TVM Specifications. (*Id.).* He further showed Complainant specific areas within the right-of-way where the grass was already re-sprouting to demonstrate that the herbicide did not cause the complete brown-out as Complainant was worried about. (*Id.*). Rather, the herbicide was applied simply to target the stumps of the woody vegetation as required under the Specifications. (*Id.*).

Testimony established that this non-maintained portion of the right-of-way is now traversable and, therefore, in a more usable condition than it was prior to the vegetation management work as a result of the herbicide application. (Tr. at 26 (Bloss Direct); *Id.* at 27 (Bloss Cross)). Complainant admits that he was not mowing or otherwise using the non-

maintained portion of the right-of-way on his property prior to the 2013 vegetation management work. (Tr. at 17-18 (Griffith Cross)). Supervisor of Transmission Vegetation Management, Katherine Bloss testified that the herbicide halted regrowth of the woody brush that previously existed in this area. (Tr. at 26 (Bloss Direct)). This allowed for herbaceous vegetation to grow instead. (*Id.*). Such herbaceous growth allows for better ease of access and permits Complainant to maneuver through this area whereas the woody brush did not permit such access. (*Id.; Id.* at 27-28 (Bloss Cross))

III. ARGUMENT

A. Standard of Review

Complainant contends that Ohio Edison's debris disposal and herbicide application within the non-maintained portion of the right-of-way traversing his property was improper. Complainant bears of burden of proving that Ohio Edison's actions amounted to inadequate service. *See Ohio Bell Telephone Co. v. Pub. Util. Comm.*, 49 Ohio St.3d 123, 126 (1990); *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 190 (1966). He failed to meet that burden in this case.

Ohio Edison's statutory obligation relative to the service and facilities it must provide is set forth in R.C. 4905.22. This statute provides that:

> Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

(Emphasis added). Here, Complainant failed to set forth *any* evidence demonstrating that Ohio Edison's debris disposal efforts or its application of herbicide within the non-maintained portion of the subject right-of-way were in any way inadequate, unjust or unreasonable. To the contrary, the evidence demonstrates that Ohio Edison's conduct conformed with, and in fact exceeded, to the Complainant's benefit, the requirements set forth in the TVM Specifications. Accordingly, the Commission should find that Complainant failed to meet his burden of proof and should dismiss his Complaint.

B. **The Debris Disposal Work Performed by ATE Exceeded the TVM Specifications.**

The unrefuted evidence presented by Ohio Edison in this case clearly establishes that the debris disposal work on Complainant's property not only met, but exceeded the requirements set forth in the TVM Specifications for debris disposal on non-maintained lawn areas. Here, there is no dispute that the portion of the right-of-way at issue in this case was not kept closely mowed but instead consisted of dense, woody vegetation. (Tr. at 12-13, 17-18 (Griffith Cross)). Such area constitutes a "non-maintained lawn area," which is defined in the Specifications as an area that is not kept closely mowed or has landscape that is not being cultivated, including wooded or agricultural sites. (OE Ex. 5 at 8-9 (Bloss Direct); *Id.* at Att. KB-2, p. 118). Under the Specifications, logs may be left at full length following vegetation management work in such areas. (OE Ex. 5 at 8 (Bloss Direct); *Id.* at Att. KB-2, p. 41). Additionally, there is no requirement to chip or leave wood in handling lengths in such non-maintained areas. (*Id.*).

Nonetheless, Ohio Edison went above and beyond what is required under the Specifications for debris disposal in an effort to address Complainant's concerns. There is no dispute that Ohio Edison had its contractor, ATE, return to the property twice to dice down and mow debris within this non-maintained portion of the right-of-way in an attempt to satisfy

Complainant. (OE Ex. 6 at 5 (Glover Direct); *Id.* at Att. AG-2; Tr. at 13-14 (Griffith Cross); Tr. at 39 (Glover Cross)).

Supervisor of Transmission Vegetation Management, Katherine Bloss testified to her significant experience in the area of vegetation management and, specifically, her experience with evaluating debris disposal under the TVM Specifications. (OE Ex. 5 at 1, 2). Ms. Bloss has worked in the field of vegetation management for electric utilities since 1999 and currently oversees six vegetation management specialists, including Mr. Glover. (OE Ex. 5 at 1). As a Supervisor, Ms. Bloss' responsibilities include ensuring that all of the transmission lines for Ohio Edison, and their affiliate ATSI, comply with the TVM Programs as required under Ohio Admin. Code 4901:1-10-27(E). (*Id.* at 2). She oversees the implementation of, and compliance with, the TVM Specifications by contractors, conducts field visits to supervise and inspect work of contractors and transmission specialists, works with property owners to resolve work refusals and claims related to the TVM Program, and supervises vegetation management specialists who also interact with property owners on such issues. (*Id.*). She regularly reviews debris disposal practices following vegetation management to ensure that debris is reasonably maintained in accordance with the TVM Specifications and has significant on-site experience evaluating debris disposal under the TVM Specifications. (*Id.* at 4). Moreover, she directs contractors and others involved in the vegetation management work on appropriate debris management. (*Id.*).

Based upon her significant knowledge and experience in this area, Ms. Bloss opined to a reasonable degree of certainty that ATE's debris disposal work on the Complainant's property met the TVM Specifications in all respects. (OE Ex. 5 at 10 (Bloss Direct)). In fact, Ms. Bloss stated that the debris disposal work exceeded, to the Complainant's benefit, the requirements set forth in the TVM Specifications. (*Id.*).

Forestry Specialist Alan Glover likewise testified to a reasonable degree of certainty that the debris disposal work performed by ATE on Complainant's property not only met but exceeded the requirements set forth in the TVM Specifications. (OE Ex. 6 at 7 (Glover Direct)). Mr. Glover explained that prior to the vegetation management work, the right-of-way area at issue in this case consisted of a non-maintained lawn area that was filled with dense, woody vegetation as high as 16' tall. (*Id.*). This brush was mowed as low as possible with a Fecon head mower. (*Id.*). Additionally, the debris from the vegetation management work was windrowed and diced below knee-height at Complainant's request even though such work was not required under the TVM Specifications. (*Id.*). ATE returned to the property to mow the right-of-way area for a second time to further remove stubble within the right-of-way to accommodate Complainant even through such work was not required under the Specifications. (*Id.*).

Complainant presents no evidence or testimony to dispute the expert opinions offered by Ms. Bloss or Mr. Glover on the Company's compliance with the Specifications. Although Complainant contends that Ohio Edison should cultivate and landscape this non-maintained portion of the right-of-way by clearing all growth out of this area and seeding it with grass seed, he does not and cannot point to *any* rule, statute, regulation, or other evidence that imposes any duty or obligation upon Ohio Edison to landscape and sow grass seed within this non-maintained portion of the right of way. (Tr. at 22-23 (Griffith Cross)). Here, the Company went to extensive measures to accommodate Complainant's concerns about the debris within the non-maintained portion of the right-of-way.

The Commission previously rejected a similar allegation of inadequate service arising from an electric utility's debris disposal following vegetation management work in *In the matter of the Complaint of Charlene Rundo v. Duke Energy Ohio, Inc.*, Case No. 06-940-GE-CSS,

Opinion and Order (Mar. 5, 2008). The complainant in *Rundo* challenged the respondent utility's debris disposal following trimming within the company's transmission right-of-way. *Id.* at 1. With respect to the debris disposal, the respondent utility offered testimony that the company mulched debris when possible with a brush mower or alternatively stacked brush along the side of the right-of-way. *Id.* at 5.

Like the non-maintained portion of the right-of-way at issue in this case, the right-of-way in *Rundo* was filled with unkempt, thick brush. *Id.* After performing trimming work on the property, the respondent's contractor returned to the property to address the complainant's concerns about debris and ruts on the property. *Id.* The Commission concluded that the company's actions did <u>not</u> constitute inadequate service. *Id.* at 7. In so holding, the Commission specifically noted that the respondent in *Rundo*, like Ohio Edison here, made attempts to satisfy the concerns of the complainant with respect to the debris and condition of the right-of-way following the trimming work. *Id.*

Like *Rundo*, Complainant cannot show in this case that Ohio Edison's actions amounted to inadequate service. There is no dispute that Complainant did not mow or otherwise maintain the subject portion of the right-of-way as a landscaped lawn area prior to the vegetation management work. (Tr. at 17-18 (Griffith Cross)). Instead, this area was filled with dense, woody vegetation. (Tr. at 12-13 (Griffith Cross); OE Ex. 6 at 4 (Glover Direct)).

The non-maintained area was mowed pursuant to the Company's TVM Specifications and herbicide was applied to control the woody brush as required under the Specifications. (OE Ex. 6 at 4). The Company further returned to the property on two separate occasions in July and October of 2013 to address Complainant's concerns about the condition of the debris within this non-maintained portion of the right-of-way. (*Id.* at 5; Tr. at 13-14 (Griffith Cross); Tr. at 39

(Glover Cross)). This additional work, above and beyond the requirements of the TVM Specifications took an additional 20 hours to complete. (OE Ex. 6 at 5-6 (Glover Direct)). As such, Complainant cannot and does not demonstrate that Ohio Edison's actions were in anyway inadequate, unjust or unreasonable.

C. **Ohio Edison's Application of Herbicide Complied with the TVM Specifications.**

Likewise, Complainant fails to show that Ohio Edison's use of an EPA-approved herbicide to control the woody vegetation constitutes inadequate service. To the contrary, the evidence clearly establishes that the use of herbicide was necessary and appropriate under the Specifications to control such woody brush.

There is no dispute that herbicide application is an integral part of controlling vegetation in the TVM Program. (OE Ex. 5, 7 (Bloss Direct)). The Plan filed with the Commission specifically provides for herbicide application and the Specifications dictate that all incompatible vegetation less than 6" in diameter within the transmission corridor will be controlled with herbicides. (*Id*. at 7-8; *Id*. at Att. KB-2, ATSI, p.3; *Id*. at Att. KB-2, p. 37).

In this case, Supervisor Katherine Bloss testified to a reasonable degree of certainty that the application of herbicide within the transmission corridor on Complainant's property was appropriate and necessary under the TVM Specifications. (OE Ex. 5 at 10 (Bloss Direct)). Ms. Bloss's qualifications to render such an opinion cannot be disputed. She has a Bachelor of Science degree in Resource Management and Environmental Forest Biology from the State University of New York College of Environmental Science and Forestry. (*Id*. at 1). She is a certified arborist through the International Society of Arboriculture ("ISA") and has 15 years of experience working in the area of vegetation management for public utilities, such as Ohio

Edison. (*Id.*). She also holds a Pesticide Applicator license from the state of Ohio, which required that she pass the Department of Agriculture's pesticide exam. (*Id.* at 2).

Ms. Bloss explained that cutting the woody brush within the right-of-way increases stem densities and allows for rapid regrowth. (*Id.* at 10). Accordingly, herbicide is required to control the stems and root system in order to deter regrowth of this woody vegetation. *(Id.*; Tr. at 26 (Bloss Direct)). The herbicide application in this case allowed herbaceous vegetation to grow in place of the dense, woody vegetation that previously existed in the non-maintained portion of the right-of-way. (Tr. at 21-22 (Griffith Cross); Tr. at 26 (Bloss Direct); Tr. at 27 (Bloss Cross)). This herbaceous vegetation allows for better ease of access to the non-maintained portion of the right-of-way than the woody vegetation that previously existed in this area. (Tr. at 26 (Bloss Direct); Tr. at 28 (Bloss Cross)).

Forestry Specialist Alan Glover likewise confirmed that the application of herbicide within the right-of-way on Complainant's property was appropriate and necessary under the Specifications. (OE Ex. 6 at 6 (Glover Direct)). Like Ms. Bloss, Mr. Glover is an ISA Certified Arborist and holds a Pesticide Applicator License through the state of Ohio. (*Id.* at 1). He has ten years of experience in vegetation management and routinely oversees the implementation of, and compliance with, the TVM Specifications by contractors. *(Id.* at 2). Mr. Glover explained that the TVM Specifications require control of incompatible woody vegetation through the use of herbicides or mechanically along with an herbicide. (*Id.* at 6). He confirmed that it is unacceptable under the Specifications to simply cut or mow the type of woody brush here without the use of herbicides. (*Id.*) This is because cutting brush increases stem densities and allows for rapid growth. (*Id.).*

Such expert testimony is unrefuted. Complainant presented absolutely no testimony or evidence to dispute that Ohio Edison's use of herbicide to control the woody brush was necessary and appropriate under the Specifications.

Not only does the TVM Program require the use of herbicide to control such vegetation, there is no dispute that Ohio Edison has the legal right to control the woody brush growing within this non-maintained portion of the right-of-way under the plain language of its easement. The easement provides,

> The easement and the rights herein granted shall include the right to erect, inspect, operate, replace, repair, patrol and permanently maintain upon, over, under and along the above described right-of-way across said premises all necessary structures, wires, cables and other usual fixtures and appurtenances used for or in connection with the transmission and distribution of electric current, including telephone and telegraph and the right of ingress and egress upon, over and across said premises for access to and from said right-of-way, and **the right to trim, cut, remove or otherwise control at any and all times such trees, limbs, underbrush or other obstructions within or adjacent to said right-of-way** as may interfere with or endanger said structures, wires or appurtenances, or their operation.

(Emphasis added). (OE Ex. 5 at 9 (Bloss Direct); *Id*. at Att. KB-4). Complainant does not dispute the validity of Ohio Edison's easement or that the easement permits the Company to perform its vegetation management activities, which include "control" of trees and underbrush through the use of herbicides. (Tr. at 11 (Griffith Cross)).

In fact, the evidence demonstrates that the debris disposal activities and herbicide application within the non-maintained portion of the right-of-way at issue in this case actually left this area in a more usable condition than it existed prior to the vegetation management work. There is no dispute that the invasive woody brush that previously existed within this portion of the right-of-way has not grown back following Ohio Edison's work, but has instead been replaced by other herbaceous growth. (Tr. at 23 (Griffith Cross)). This new herbaceous growth

has left the area in a more usable and accessible condition than it was prior to the vegetation management work. (Tr. at 26 (Bloss Direct); *Id*. at 27-28 (Bloss Cross)).

IV. CONCLUSION

Complainant clearly failed to meet his burden of proving that Ohio Edison's debris disposal and application of herbicide within the non-maintained portion of the right-of-way amounted to unreasonable or inadequate service. Rather, the evidence shows that Ohio Edison went above and beyond the requirements of its TVM Program in an effort to appease Complainant's concerns while adhering to its vegetation management obligations. For the foregoing reasons, Ohio Edison respectfully requests that the Commission dismiss the Complaint with prejudice and find that Ohio Edison properly applied herbicide to the woody vegetation within the non-maintained portion of the right-of-way and met its debris disposal obligations under the TVM Program.

Respectfully submitted,

/s/ Emily Ciecka Wilcheck

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by ordinary U.S. Mail this 5th day of December, 2014 and that the PUCO's e-filing system will electronically serve notice of filing of this document on the following parties:

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Respectfully submitted,

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Summary: Brief Ohio Edison Company's Post Hearing Brief electronically filed by Mrs. Emily C. Wilcheck on behalf of Ohio Edison Company