

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Citizens Against Clear Cutting, et al.)	
)	
Complainants,)	
)	
v.)	Case No. 17-2344-EL-CSS
)	
Duke Energy Ohio, Inc.,)	
)	
Respondent)	

**CITIZENS AGAINST CLEAR CUTTING'S
MOTION TO COMPEL DISCOVERY**

Pursuant to Ohio Adm. Code 4901-1-12 and 4901-1-23, Complainants in the above-captioned matter (collectively, Citizens Against Clear Cutting (CACC) or Complainants), hereby move the Public Utilities Commission of Ohio (Commission) for an order compelling Duke Energy Ohio, Inc. (Duke) to fully answer the requests for admission and interrogatories, and to produce the documents requested in CACC's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents (First Set of Discovery), propounded upon Duke on January 25, 2018. Complainants further request that Duke be ordered to provide the requested discovery responses within five days of the issuance of an entry granting this motion. The reasons supporting the motion are set forth in the attached memorandum in support.

Respectfully submitted,

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402)

Brian W. Dressel (0097163)

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Counsel for Citizens Against Clear Cutting

April 17, 2018

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This discovery dispute is before the Commission because Duke has steadfastly refused to provide proper responses requested in discovery that is relevant to this proceeding, and to provide any supplemental information or responses to Complainants' subsequent efforts to obtain those discovery responses. Upon Duke's refusal to provide requested information and documents, Complainants undertook both informal and formal steps to work with Duke to obtain the discovery. At this point, those steps have been unsuccessful and it has become evident to Complainants that further attempts to work with Duke would be similarly futile.

Complainants filed claims against Duke based upon representations by Duke employees and contractors to Complainants that Duke would be removing all trees from Complainants' properties and would be clear cutting the 100-foot easement along Duke's transmission lines, equivalent to an eight-lane highway (the Complaint). Complainants

had, however, received inconsistent documentation and contradictory statements from Duke's authorized representatives and, thus, did not know the extent of Duke's proposed vegetation management activities. Given that the Commission will ultimately determine the outcome of this proceeding based on the lawfulness and reasonableness of Duke's proposed vegetation management policies and practices, vegetation management plan, and implementation of its plan, Complainants attempted to learn information about the scope of Duke's proposed vegetation management activities on their properties, the specific power lines at issue in the dispute, Duke's contentions regarding the necessity of its proposed policies and actions, Duke's assessments of Complainants' properties, Duke's past practices with regard to vegetation management on Complainants' properties, the development of Duke's planned vegetation management practices and the reasons for these practices and the cost recovery from customers for these activities.

Although it answered a handful of Complainants' requests, Duke's responses largely consisted of baseless and formulaic objections and assertions that it did not understand the requests. Duke claimed that terms used in the requests (even terms that came from Duke itself) were undefined, rendering the requests impossible to respond to. Although Complainants dispute the need to define these terms explicitly for Duke, especially since many were utilized by Duke previously, on March 19, 2018, Complainants provided Duke with definitions to cure any concerns that the requests were somehow vague.¹ In that same letter, Complainants also addressed the other objections raised by Duke.² Still, Duke failed to respond to the letter or the attached requests.³

¹ See Exhibit C, March 19, 2018 letter from Complainants to Duke regarding First Set of Discovery.

² Id.

Duke's refusal to participate in the discovery process is antithetical to the scheme envisioned by Ohio law. It also demonstrates the obstructionist tactics employed by Duke to drain the limited resources of its residential customers, requiring Complainants to file another pleading to compel responses to necessary and relevant discovery. Complainants are entitled to ample rights of discovery on any matter that is not privileged and relevant to the proceeding.⁴ The Commission should afford Complainants the substantial rights to discovery to which they are entitled and compel Duke to answer the attached discovery requests. See Exhibit B attached hereto.

II. STANDARD OF REVIEW

The Commission has held that "the policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly without taking undue advantage of the other side's industry or efforts."⁵ The Commission's discovery rules "do not create an additional field of combat to delay trials or to appropriate the Commission's time and resources; they are designed to confine discovery procedures to counsel and to expedite the administration of the Commission proceedings."⁶ The rules are also intended "to minimize commission intervention in the discovery process."⁷ The rules help to assure full and reasonable discovery, consistent with the statutory discovery rights of parties under R.C. 4903.082.

³ See Exhibit B, Requests included in Complainants First Set of Discovery (January 25, 2018).

⁴ See R.C. 4903.082 and Ohio Adm. Code 4901-1-16(B).

⁵ *In the Matter of the Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI, Entry at 23 (March 17, 1987).

⁶ *Id.*, citing *Penn Central Transportation Co. v. Armco Steel Corp.* (C.P. 1971), 27 Ohio Misc. 76.

⁷ Ohio Adm. Code 4901-1-16(A).

Specifically, R.C. 4903.082 states that “[a]ll parties and intervenors shall be granted ample rights of discovery.” Therefore, Complainants are entitled to timely and complete responses to its discovery inquiries. Additionally, R.C. 4903.082 directs the Commission to ensure that parties are allowed “full and reasonable discovery” under its rules.

Accordingly, the Commission has adopted Ohio Adm. Code 4901-1-16(B), which provides that “any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”

The Commission’s discovery rule is similar to Ohio Civ. R.26 (B)(1), which governs the scope of discovery in civil cases. Civ. R. 26(B) has been liberally construed to allow for broad discovery of any non-privileged matter relevant to the subject matter of the pending proceeding.⁸

The scope of discovery includes requests for admission,⁹ interrogatories,¹⁰ and requests for production of documents.¹¹ In Ohio Adm. Code 4901-1-23, the Commission provided the procedure for parties to obtain the enforcement of these discovery rights, guaranteed by law and rule. Ohio Adm. Code 4901-1-23(A) and (B) provide a means for

⁸ *Ohio Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, ¶83, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661 and *Disciplinary Counsel v. O’Neill* (1996), 75 Ohio St. 3d 1479.

⁹ Ohio Adm. Code 4901-1-22.

¹⁰ Ohio Adm. Code 4901-1-19.

¹¹ Ohio Adm. Code 4901-1-20.

the Commission to compel a party to answer discovery when the party has failed to do so, including when answers are evasive or incomplete. Ohio Adm. Code 4901-1-23(C) details the technical requirements for a motion to compel, and Complainants have met all of these technical requirements in this pleading.

The motion to compel is to be accompanied by a memorandum in support setting forth the basis of the motion and authorities relied upon; a brief explanation of how the information sought is relevant; and responses to objections raised by the party from whom the discovery is sought.¹² Copies of the discovery requests and the responses are also attached.¹³ Finally, Ohio Adm. Code 4901-1-23(C) also requires the party seeking discovery to file an affidavit explaining how it has exhausted all other reasonable means of resolving the differences with the party from whom the discovery is sought.¹⁴

III. DISCUSSION

A. The Information Complainants Seek Is Relevant and/or Reasonably Calculated to Lead to the Discovery of Admissible Evidence.

The full slate of discovery requests that Complainants now move the Commission to compel and Duke's responses to those requests are attached as Exhibit B to this Motion to Compel. As can be seen in Exhibit B, many of the disputed requests did not state any objections, but rather stated that the requests are not applicable based on the fact that they reference responses that Duke previously, and baselessly, failed to provide.

Complainants are contesting 81 different discovery requests. As required by the rules, Complainants provide the following descriptions of the relevance of these requests.

¹² See Ohio Adm. Code 4901-1-23(C)(1).

¹³ Ohio Adm. Code 4901-1-23(C)(2).

¹⁴ A notarized affidavit from Kimberly W. Bojko, counsel for Complainants, is attached to this Motion as Exhibit A.

For the sake of expediency, requests that serve similar relevant purposes are discussed collectively.

Requests for Admission Nos. CACC-RFA-01-001 through -008: These Requests for Admission each concern Duke's modification of its vegetation management plan. Complainants claimed in their Second Amended Complaint that Duke deceptively modified their vegetation management plan, practices, and procedures.¹⁵ Requests for Admission that concern the contents of Duke's motion to modify its vegetation management plan, practices, and procedures, how Duke modified its plan, practices, and procedures, and the modified plan, practices, and procedures themselves are relevant to that claim.

Request for Admission No. CACC-RFA-01-009: Complainants are asserting that Duke is improperly, unlawfully, and unreasonably seeking to remove or destroy trees and other vegetation on properties owned by the Complainants. A Request for Admission that seeks information on whether or not Duke has actually assessed the trees or other vegetation on Complainant's properties that it seeks to remove or destroy and whether Duke made certain determinations required by the Commission's rules and the easements is relevant to the claim that Duke is seeking to unjustly and unreasonably remove those trees and other vegetation.

Interrogatories Nos. CACC-INT-01-001 and -002: The location of other transmission lines owned by Duke in Complainants' communities is relevant because a comparison of the threat (or lack thereof) to safety and reliability that vegetation poses throughout Complainants' communities, especially in areas where Duke has already

¹⁵ See Second Amended Complaint at ¶ 129-38.

engaged in the practices that Complainants now challenge, is relevant to the necessity of deploying those same practices on Complainants' properties. Duke is claiming its clear cutting practices are necessary. Therefore, Complainants have a right to challenge that assertion and seek information about Duke's practices on other properties and how its practices have affected safety and reliability of the electric system.

Interrogatories Nos. CACC-INT-01-006 through -008: These Interrogatories ask Duke specifically about trees and other vegetation that Duke intends to remove or destroy on Complainants' properties. Given that the Complaint focuses extensively on the removal of trees and other vegetation from Complainants' properties, these Interrogatories, which ask Duke which trees or vegetation it intends to remove, are plainly relevant.

Interrogatories Nos. CACC-INT-01-009 through -012; Request for Production No. CACC-POD-01-017: These Interrogatories and this Request for Production ask Duke about its position regarding whether it is necessary to remove trees and vegetation from Complainants' property to enable safe and reliable operation of its power lines. And, if Duke contends that such removal is necessary, how Duke came to that conclusion. This issue goes directly towards the lawfulness and reasonableness of Duke's proposed vegetation management practices, policies, and activities.

Interrogatories Nos. CACC-INT-01-013 through -015: These Interrogatories ask Duke about its past vegetation management practices on Complainants' properties. This information, particularly if Duke has been able to safely and reliably maintain its transmission lines without engaging in the practices Duke now proposes to conduct on

Complainants' properties, is relevant to the reasonableness and justness of Duke's proposed practices in this case.

Interrogatories Nos. CACC-INT-01-018 and -019: Duke has, throughout this proceeding, claimed that its easements on Complainants' properties entitle the Company to engage in the challenged vegetation management practices. These Interrogatories ask Duke about the contents of those easements and whether Duke acted pursuant to the easement in proposing the challenged activities. This is directly relevant to the Complaint and Duke's claimed legal right to remove or destroy trees and other vegetation from Complainants' properties.

Interrogatories Nos. CACC-INT-01-020 through -022: These Interrogatories request information about the impact that the trees and other vegetation at issue on the Complainants' properties have had on the safety and reliability of Duke's electric transmission system. The impact, or lack thereof, of these trees and other vegetation, on the safety and reliability of Duke's electric transmission system is directly relevant to the reasonableness and justness of Duke's proposed vegetation management activities as well as the legality of its proposed vegetation management practices and policies.

Interrogatories Nos. CACC-INT-01-023 through -027, -029 through -034, and CACC-INT-01-029 through -034; Request for Production No. CACC-POD-01-015: These requests concern the use of herbicides by Duke on Complainants' properties. The use of herbicides is part of Duke's vegetation management plan, practices, and policies that are at issue in this case. Just like unnecessary removal or destruction of trees and other vegetation, the unjust and unreasonable use of herbicides as part of an electric utility's vegetation management plan is within the Commission's jurisdiction and is at

issue in this case. In order for Complainants to determine whether Duke's use of herbicides—and, by extension, its vegetation management plan, practices, and procedures—is unjust and unreasonable, they must first know where and how Duke intends to use herbicides.

The use of herbicides as part of Duke's implementation of its vegetation management plan on Complainants' properties is directly relevant to the Complaint and was not part of the Commission's dismissal associated with herbicide run off and impact on nearby waterways.¹⁶ Claims related to the unjust and unreasonable use of herbicides on Complainants' actual properties is within the Commission's jurisdiction.¹⁷ Additionally, these requests could lead to the discovery of admissible evidence. As such, these requests concerning the use of herbicides on Complainants' properties as part of Duke's implementation of its vegetation management plan are relevant to this case.

Interrogatories Nos. CACC-INT-01-037 through -052; Requests for Production of Documents Nos. CACC-POD-01-011 through 014, and CACC-POD-01-016: These Interrogatories and Requests for Production seek information regarding the Company's implementation of the disputed vegetation management plan, policies, and practices. Complainants are asking Duke what it considered in establishing its policies and practices in implementing its vegetation management plan, such as environmental factors, cost factors, soil erosion factors, the effect of the practices on Duke's electric infrastructure, etc. The factors that Duke considered, or failed to consider, in establishing its policies and practices are directly relevant to the

¹⁶ Entry at 18-19 (March 8, 2018).

¹⁷ Joint Application for Rehearing and Joint Motion for Clarification at 2 (April 9, 2018).

reasonableness and justness of Duke's plan to engage in clear cutting in this case, as are the requested documents related to Duke's consideration of those issues.

Interrogatories Nos. CACC-INT-01-053 and -054: These Interrogatories ask Duke about its legal basis for engaging in the challenged vegetation management practices. This is plainly relevant to Duke's authority to remove or destroy trees and other vegetation from properties owned by the Complainants.

Interrogatories Nos. CACC-INT-01-059 through -070: These Interrogatories ask Duke about its cost recovery it receives for various vegetation management activities. Duke's cost recovery mechanism and authority to implement such is relevant to what Duke legally can and cannot do as part of its vegetation management activities, and to what extent it may engage in such activities and when. Additionally, Complainants are customers of Duke who are being charged for Duke's activities through Duke's customer rates.

Request for Production No. CACC-POD-01-003: This Request asks for communications between Duke's authorized representatives (employees, agents, or contractors) regarding its plan to remove or destroy trees and other vegetation on Complainants' properties. Statements of Duke's authorized representatives about the plan at issue in this case are relevant to the case and also could lead to the discovery of admissible evidence.

Request for Production Nos. CACC-POD-01-005, -007, and -009: These Requests ask for Duke's communications with its customers regarding its plan to remove or destroy trees and other vegetation along the transmission circuits at issue pursuant to its vegetation management plan, practices, and procedures. This information would

presumably include the parameters of Duke's proposed vegetation management activities on Complainants' properties, which is information that is relevant to the reasonableness and justness of Duke's proposed actions.

Request for Production No. CACC-POD-01-008: This Request asks for documentation of information that Duke relied on in deciding to implement the challenged vegetation management plan, practices, and procedures. This information is relevant to the lawfulness, reasonableness, and justness of Duke's plan to engage in the challenged vegetation management plan, practices, and procedures.

Request for Production No. CACC-POD-01-010: This Request asks for communications between Duke's authorized representatives regarding Duke's challenged vegetation management policies and practices. This information is relevant to the justness and reasonableness of Duke's challenged vegetation management plan, practices, policies, and procedures.

B. Responses to Duke's Objections to the Disputed Discovery Requests.

In response to Complainants' discovery requests, Duke repeatedly raised the same objection responses, regardless of their applicability to the specific request to which they were asserted. Complainants' responses to these objections are detailed in the March 19, 2018 letter to Duke, attached to this Motion to Compel as Exhibit C.¹⁸ Complainants hereby incorporate that letter, which addresses each objection made on a request-by-request basis, into this Motion to Compel. Below, however, Complainants respond to several general objections found throughout Duke's discovery responses. Complainants also note that the Complainants object to some requests where Duke did not raise any

¹⁸ See Exhibit C.

specific objections, but rather, stated that the requests were not applicable because Duke had previously declined to respond to other requests to which the requests it stated are not applicable refer. Complainants request that if the Commission grants this Motion to Compel, the Commission will direct Duke to respond to any requests it previously deemed not to be applicable should the ruling make those requests applicable.

a) Duke's Objections to Relevance

Duke objected to several requests as irrelevant to this proceeding. The relevance of each request is discussed extensively above in the section of the Motion to Compel that dealt with the relevance of all disputed requests. The vast majority of Duke's objections to the relevance of the requests are conclusory statements that do not state a reason that Duke contends the requests are irrelevant. For the objections where Duke does not state a basis for the irrelevance of the requests, the objection is improper, should be overruled, and Duke should be required to provide a response.

In response to CACC-INT-01-013, -018, -020, -027, and -029, Duke stated that the Requests are not relevant to this case because they are not specifically limited to "the transmission lines at issue in the Second Amended Complaint."¹⁹ For each of these interrogatories, the objection to relevance based on a lack of a limitation to the "transmission lines at issue in the Second Amended Complaint" is nonsensical. Each of these interrogatories specifically references Complainants' properties, which provides for the limitation Duke seeks. Duke's activities on Complainants' properties are unambiguously relevant to the Complaint, and the Commission should compel Duke to answer the requests with responses concerning Complainants' properties.

¹⁹ Exhibit B at CACC-INT-01-013, -018, -020, -027, and -029.

b) Objections that Duke's Prior Filing "Speaks for Itself"

Complainants included a series of Requests for Admission²⁰ in the First Set of Discovery that request Duke to admit that it made certain statements in its application to modify its vegetation management program that it filed in Case No. 16-915-EL-ESS. Duke responded to each of these requests that the Application "speaks for itself."²¹ Ohio Adm. Code 4901-1-22 requires the matter to be either admitted or specifically denied or to set forth in detail the reasons why the answering party cannot truthfully make an admission or denial. If a proper objection is made, the reasons for the objection must be stated. Here, however, Duke did not make any objection to the requests, yet failed to either admit or deny any of them, thus failing to meet their obligations under Ohio Adm. Code 4901-1-22. Accordingly, Duke should be instructed to follow Ohio law and either admit, deny, or state why it cannot.

c) Duke's Objections Based on "Vague and Ambiguous" Definitions

Throughout its responses, Duke objected that several terms were "vague and ambiguous," which rendered Duke unable to answer the requests. In fact, Duke even made this objection to terms that were taken directly from Duke's own documentation and filings. Regardless of Duke's feigned inability to understand Complainants' requests in the context of this case, Complainants provided Duke with specific definitions for every term Duke deemed ambiguous in its March 19, 2018 letter to Duke's counsel. Duke's failure to supplement its responses based on the definitions provided reveals that Duke's assertion of these objections is much more of an attempt to deny Complainants

²⁰ Exhibit B at CACC-INT-01-001-007.

²¹ Id.

due process through discovery to which they are lawfully entitled and to cause Complainants to expend additional resources to obtain the information rather than a legitimate legal concern.

d) Duke's Objections to Lack of Time Parameters

Duke similarly raised several objections that Complainants did not confine their requests to reasonable time parameters. Similar to the definitional issue discussed above, Complainants do not concede that these requests were rendered defective because they did not contain reasonable time parameters. Nonetheless, Complainants have provided Duke with time parameters for each request to which it objected as having a lack of reasonable time parameters. Despite being presented with reasonable time parameters, Duke continues to refuse to respond to these requests.

e) Duke's Objections that Requests are "Unduly Burdensome"

Duke objected to several requests as "overly broad and unduly burdensome" based, essentially, on the claim that because there are many Complainants in this proceeding, it is unduly burdensome for Duke to provide discovery related to each Complainant.²² As an initial matter, Complainants' requests were not burdensome; each related to Duke's plans for vegetation management on Complainants' properties and/or Duke's past vegetation management practices on those properties. Such plans, assessments, and determinations are required under Ohio law and Complainants' easements.

Nonetheless, Duke does not cite to any Ohio law or Commission rules that stand for the proposition that basic discovery becomes unduly burdensome when there are

²² See Exhibit B at CACC-RFA-01-009, CACC-INT-01-006, -013, -014, -018, -020, -027, -029.

many parties to a case. If, instead of bringing their cases in a single proceeding, Complainants had each filed and prosecuted individual complaints against Duke, the Company would undeniably be required to provide the sought-after discovery. The fact that Complainants have each asserted their claims in this docket does not change Duke's discovery obligations.

Complainants also note that the Commission's March 8, 2018 Entry in this matter dismissed 17 Complainants from this case.²³ Additionally, three others have voluntarily dismissed their claims against Duke.²⁴ Thus, although Duke's response to these requests states that there are 85 Complainants, Duke would only be required to provide discovery related to 65 Complainants, as Complainants do not seek to compel discovery related solely to individuals who are no longer a part of this proceeding.

Notably, at the April 17, 2018 prehearing conference, Complainants were ordered to produce all 65 Complainants for discovery depositions by Duke's counsel, over Complainants objections that it is unduly burdensome and unnecessary for Duke to seek discovery in that manner when Duke could obtain the same information through less burdensome and expensive means. Duke cannot have it both ways. Duke cannot argue to the Commission that it be allowed to have discovery deposition on all 65 Complainants and simultaneously argue that it is too burdensome for itself to respond to discovery regarding those same 65 Complainants' and the properties on which Duke seeks to cut down or destroy trees and other vegetation. Surely, Complainants are entitled to discovery related to all 65 Complainants, just as Duke is. This is especially true given

²³ See Entry at 11 (March 8, 2018).

²⁴ Motion to Amend the Second Amended Complaint at 10 (April 9, 2018).

that Complainants are not asking for 65 depositions of Duke authorized representatives, but, instead, only ask Duke to produce information which Duke should already have in its possession.

f) Duke's Objections that Requests Would Require Duke to Speculate

Duke objected to many requests, stating that the requests would require the Company to engage in "impermissible speculation." Through its responses, Duke stretches the definition of "speculation" to the point that it is no longer recognizable. The Company states that requests related to its own *past* actions,²⁵ its own intentions,²⁶ and the past performance of Duke's electric system.²⁷ None of these discovery requests requires Duke to speculate. To state that a discovery request that asks about actions Duke has taken in the past requires the Company to engage in impermissible speculation can only be interpreted as an illegitimate attempt to stop Complainants from accessing discovery to which they are entitled and to force Complainants to drain its resources to obtain it.

²⁵ RFA9, INT18

²⁶ INT6, INT 27, 29

²⁷ INT20

IV. CONCLUSION

For the reasons stated herein, Complainants respectfully request that the Commission overrule Duke's objections and compel the Company to respond to the discovery requests attached hereto as Exhibit B.

Respectfully submitted,

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402)

Brian W. Dressel (0097163)

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(Will accept service via email)

Counsel for Citizens Against Clear Cutting

April 20, 2018

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing
was served on April 20, 2018 by electronic mail upon all parties of record.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

**BEFORE
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Respondent)	

AFFIDAVIT OF KIMBERLY W. BOJKO

I, Kimberly W. Bojko, attorney for Complainants in the above-captioned case, being first duly sworn, depose and state that the following efforts have been made to resolve the differences with Duke Energy Ohio, Inc. ("Duke") as to the motion to compel responses to Complainants' First Set of Interrogatories, Requests for Admission, and Requests for Production of Documents:

1. Complainants submitted their First Set of Discovery to Duke on Complainants' First Set of Discovery. In its responses, Duke objected to the vast majority of the Interrogatories, Requests for Admission, and Requests for Production, asserting a variety of objections and failing to produce the requested admissions, information, and documents. See Exhibit B attached to the Motion to Compel.
2. On March 19, 2018, Complainants, through counsel, then undertook to submit a detailed letter to counsel for Duke, stating Complainants' responses to Duke's objections and, when necessary, clarifying definitions, establishing time parameters, and otherwise narrowing the discovery requests that Duke claimed prevented the Company from answering the discovery requests in dispute. See Exhibit C attached to the Motion to Compel.

3. In addition to the detailed letter submitted to Duke's attorneys, counsel for Complainants have attempted to discuss specific discovery requests with counsel for Duke informally during in-person interactions at the Public Utilities Commission of Ohio (Commission) and during depositions at the Symmes Township Safety Center in Symmes Township Ohio.

4. On April 12, 2018, 24 days after Complainants' initial detailed letter disputing Duke's responses and objections to Complainants' First Set of Discovery, Brian W. Dressel, co-counsel for Complainants, emailed counsel for Duke requesting the status of the Company's response to the March 19, 2018 letter and questioning whether Complainants could assume that Duke would not be supplementing its responses discussed in the March 19, 2018 letter. Mr. Dressel's email is attached to the Motion Compel as Exhibit D.

5. On April 17, 2018, at a prehearing conference before the Attorney Examiners for this matter, counsel for Complainants undertook additional efforts to resolve this discovery dispute. These efforts were unsuccessful and resulted in counsel for Duke telling counsel for Complainants to file a motion to compel.

6. On April 18, 2018, counsel for Duke emailed counsel for Complainants indicating that Duke would not be amending its objections or responses to any of Complainants' discovery requests, regardless as to whether Complainants explained, clarified, or narrowed the discovery requests at issue. Mr. McMahon's email is attached to the Motion to Compel as Exhibit E.

7. Reasonable resolution of this discovery dispute may not be achieved without the Commission's intervention. Complainants, therefore, had no other recourse but to file this Motion to Compel.

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

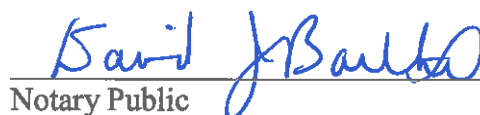
The undersigned, being of lawful age and duly sworn on oath, hereby certifies, deposes and state the following:

I have caused to be prepared the attached written affidavit for Complainants in the above referenced docket. This affidavit is true and correct to the best of my knowledge, information and belief.

Further affiant sayeth naught.


Kimberly W. Bojko, Affiant

Subscribed and sworn to before me this 20th day of April 2018.


Notary Public



David J. Barthel, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My commission term expires on date
Sec. 147.03 R.C.

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clearcutting First Set of Requests for Admission
Date Received: January 25, 2018

CACC-RFA-01-001

REQUEST:

Please admit that in the application that Duke submitted to modify its vegetation management program in Case No. 16-915-EL-ESS¹ stated that the proposed revisions to the vegetation management program “were made simply to clarify and make the terms more coherent” and that “[t]here are no substantive changes to the program.”

RESPONSE:

Objection. Duke Energy Ohio’s Application to modify its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as filed in Case No. 16-915-EL-ESS, speaks for itself.

PERSON RESPONSIBLE: Legal

¹ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Revised Paragraph (f) of Its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines*, Case No. 16-915-EL-ESS Application (April 28, 2016).

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clearcutting First Set of Requests for Admission
Date Received: January 25, 2018**

CACC-RFA-01-002

REQUEST:

Please admit that in the application that Duke submitted to modify its vegetation management program in Case No. 16-915-EL-ESS, Duke proposed removing language that said: “[m]ature, well established hardwood trees with structurally sound overhanging branches greater than six inches in diameter may remain.”

RESPONSE:

Objection. Duke Energy Ohio’s Application to modify its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as filed in Case No. 16-915-EL-ESS, speaks for itself.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clearcutting First Set of Requests for Admission
Date Received: January 25, 2018

CACC-RFA-01-003

REQUEST:

Please admit that in the application that Duke submitted to modify its vegetation management program in Case No. 16-915-EL-ESS, Duke proposed removing language that said: “in the absence of a legal right to remove and excluding an emergency situation, no removal may take place until the Contractor has contacted and received approval from the property owner or agent to remove such trees.”

RESPONSE:

Objection. Duke Energy Ohio’s Application to modify its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as filed in Case No. 16-915-EL-ESS, speaks for itself.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clearcutting First Set of Requests for Admission
Date Received: January 25, 2018**

CACC-RFA-01-004

REQUEST:

Please admit that in the application that Duke submitted to modify its vegetation management program in Case No. 16-915-EL-ESS, Duke proposed removing language that said: “when performing routine circuit line clearing, all unsuitable trees twelve inches diameter breast height (DBH) or less with the trunk within ten feet of the conductor shall be removed where permissible by the property owner or Township, but in the absence of a legal right to remove, and excluding an emergency situation, no removal may take place until the Contractor has contacted and received approval from the property owner or agent to remove such trees.”

RESPONSE:

Objection. Duke Energy Ohio’s Application to modify its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as filed in Case No. 16-915-EL-ESS, speaks for itself.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clearcutting First Set of Requests for Admission
Date Received: January 25, 2018**

CACC-RFA-01-005

REQUEST:

Please admit that in the application that Duke submitted to modify its vegetation management program in Case No. 16-915-EL-ESS, Duke proposed removing language that said: “[r]emoval of all trees greater than twelve inches DBH must be approved by a Duke Forester prior to beginning the work.”

RESPONSE:

Objection. Duke Energy Ohio’s Application to modify its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as filed in Case No. 16-915-EL-ESS, speaks for itself.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clearcutting First Set of Requests for Admission
Date Received: January 25, 2018

CACC-RFA-01-006

REQUEST:

Please admit that in the application that Duke submitted to modify its vegetation management program in Case No. 16-915-EL-ESS, Duke proposed removing language that said: “[r]emoval of all trees with the trunk more than ten feet from the conductor should be approved by a Duke Energy Forester prior to the beginning the work.”

RESPONSE:

Objection. Duke Energy Ohio’s Application to modify its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as filed in Case No. 16-915-EL-ESS, speaks for itself.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clearcutting First Set of Requests for Admission
Date Received: January 25, 2018**

CACC-RFA-01-007

REQUEST:

Please admit that in the application that Duke submitted to modify its vegetation management program in Case No. 16-915-EL-ESS, Duke proposed removing language that said: “[i]n the absence of a legal right to remove, and excluding an emergency situation, aA (sic) signed permission notice must be obtained from the property owner or their agent prior to removing such trees or brush.”

RESPONSE:

Objection. Duke Energy Ohio’s Application to modify its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as filed in Case No. 16-915-EL-ESS, speaks for itself.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clearcutting First Set of Requests for Admission
Date Received: January 25, 2018

CACC-RFA-01-008

REQUEST:

Please admit that the revisions to its vegetation management program that Duke proposed in Case No. 16-915-EL-ESS and referenced in Complainants' above requests, CACC-RFA-2 through CACC-RFA-6, propose substantive modifications to Duke's prior vegetation management program.

RESPONSE:

Objection. Duke Energy Ohio's Application to modify its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as filed in Case No. 16-915-EL-ESS, speaks for itself. Furthermore, this Request is vague and ambiguous as to the definition and meaning of the phrase "substantive modifications."

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clearcutting First Set of Requests for Admission
Date Received: January 25, 2018

CACC-RFA-01-009

REQUEST:

Please admit that Duke has not engaged in an individualized assessment of each tree or vegetation that it seeks to remove on properties owned by one or more of the Complainants to determine the threat to safety and reliability.

RESPONSE:

Objection. This Request is overly broad and unduly burdensome in that there are more than 85 properties and property owners at issue in the Second Amended Complaint. Furthermore, this Request seeks information that would require Duke Energy Ohio to engage in impermissible speculation and guesswork concerning future events and the condition of any particular property, especially when Complainants requested and obtained a stay of all vegetation management activities by Duke Energy Ohio along the transmission lines at issue in the Second Amended Complaint. Finally, this Request is vague and ambiguous as to the definition and meaning of the phrase "individualized assessment of each tree or vegetation."

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-001

REQUEST:

Which specific transmission lines, identified by circuit number and location, does Duke own in Hamilton County, Symmes Township, Deerfield Township, Montgomery, and Clermont County, Ohio? Please identify with specificity.

RESPONSE: Objection. This Interrogatory is overly broad and unduly burdensome. Furthermore, it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-002

REQUEST:

Since January 1, 2011, and referring to the transmission lines identified in response to CACC-INT-001, along which specific transmission lines has Duke conducted clear cutting of trees and vegetation as part of its vegetation management activities?

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome. Furthermore, it seeks information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence. Finally, this Interrogatory is vague and ambiguous as to the phrase, "clear cutting of trees and vegetation" as this phrase is undefined.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018

CACC-INT-01-006

REQUEST:

Does Duke intend to engage in the removal of trees or other vegetation on any of the properties owned by any of the Complainants to the Second Amended Complaint in this case?

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome in that there are more than 85 properties and property owners at issue in the Second Amended Complaint. Furthermore, this Interrogatory seeks information that would require Duke Energy Ohio to engage in impermissible speculation and guesswork concerning future events and the condition of any particular property, especially when Complainants requested and obtained a stay of all vegetation management activities by Duke Energy Ohio along the transmission lines at issue in the Second Amended Complaint. Finally, to the extent this Interrogatory seeks information unrelated to the transmission lines at issue in the Second Amended Complaint, it seeks information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-007

REQUEST:

If the answer to CACC-INT-006 is in the affirmative, on which Complainants' properties does Duke intend to engage in clear cutting, the removal of trees, and/or the removal of other vegetation?

RESPONSE:

Objection. This Interrogatory is vague and ambiguous as to the phrase, "clear cutting" as this phrase is undefined. Without waiving said objection, to the extent discoverable, and in the spirit of discovery, this response is not applicable.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-008

REQUEST:

Referring to CACC-INT-007, which trees and vegetation (identifying said trees and vegetation by their location relative to Duke's transmission and/or distribution lines and the species of tree or vegetation) does Duke intend to remove from each Complainant's property?

RESPONSE: Not applicable

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-009

REQUEST:

Does Duke contend, as stated on pages 8 and 9 of its Answer to the Amended Complaint filed on December 4, 2017, that the removal of trees and vegetation on Complainants' properties is "necessary to enable the continued safe and reliable operation of high-voltage power lines used in the provision of service to Duke Energy Ohio's customers"?

RESPONSE:

Objection. This Interrogatory seeks information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence because Complainants filed a Second Amended Complaint, thereby superseding their Amended Complaint.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-010

REQUEST:

If the answer to CACC-INT-009 is affirmative, has Duke conducted or commissioned another party to conduct any inspections, studies, reviews, calculations, analyses, assessments, or any other evaluations of the trees and vegetation on Complainants' properties that led to its determination that the removal of those trees and vegetation was necessary to enable the continued safe and reliable operation of high-voltage power lines used in the provision of service to Duke Energy Ohio's customers?

RESPONSE: Not applicable

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-011

REQUEST:

If the answer to CACC-INT-010 is affirmative, what were the conclusions of said inspections, studies, reviews, calculations, analyses, assessments, or other evaluations?

RESPONSE: Not applicable

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-012

REQUEST:

If the answer to CACC-INT-010 is affirmative, who (identifying by name, address, phone number, and email address) conducted said inspections, studies, reviews, calculations, analyses, assessments, or other evaluations?

RESPONSE: Not applicable

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-013

REQUEST:

On which Complainants' properties and on which date(s) has Duke previously engaged in any vegetation management activities, including pruning, trimming, and tree removal?

RESPONSE:

Objection. This Interrogatory is overly broad unduly burdensome in that there are more than 85 properties and property owners at issue in the Second Amended Complaint. Objecting further, this Interrogatory fails to contain any reasonable time parameters pursuant to which it is to be answered, thereby precluding Duke Energy Ohio from being able to answer with any reasonable specificity. Finally, to the extent this Interrogatory seeks information unrelated to the transmission lines at issue in the Second Amended Complaint, it seeks information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-014

REQUEST:

Within the last two Transmission Clearing Cycles, has Duke previously clear cut trees and vegetation on any of the Complainants' properties?

RESPONSE:

Objection. This Interrogatory is overly broad unduly burdensome in that there are more than 85 properties and property owners at issue in the Second Amended Complaint. Furthermore, this Interrogatory is vague and ambiguous as to the definition and meaning of the phrase "Transmission Clearing Cycles." Finally, this Interrogatory is vague and ambiguous as to the phrase "clear cut trees and vegetation" as this phrase is undefined.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-015

REQUEST:

If the answer to CACC-INT-009 is affirmative, and referring to Complainants for which the answer to CACC-INT-014 is negative, why not?

RESPONSE: Not applicable

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-018

REQUEST:

In reference to Duke's Easements relating to Complainants' properties, have Duke's engineers assessed every tree that Duke intends to remove on Complainants' properties?

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome in that there are more than 85 properties and property owners at issue in the Second Amended Complaint. Furthermore, this Interrogatory seeks information that would require Duke Energy Ohio to engage in impermissible speculation and guesswork concerning future events and the condition of any particular property, especially when Complainants requested and obtained a stay of all vegetation management activities by Duke Energy Ohio along the transmission lines at issue in the Second Amended Complaint. Finally, to the extent this Interrogatory seeks information unrelated to the transmission lines at issue in the Second Amended Complaint, it seeks information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-019

REQUEST:

Answering with regard to each specific tree individually, if the answer to CACC-INT-018 is affirmative, which engineers have assessed each specific tree Duke now seeks to remove (identify said engineers by name, address, phone number, and email address)?

RESPONSE: Not applicable

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-020

REQUEST:

Has Duke ever not met reliability commitments as a result of vegetation-caused outages on or near any of the Complainants' properties?

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome in that there are more than 85 properties and property owners at issue in the Second Amended Complaint, and the Interrogatory fails to contain any reasonable time parameters pursuant to which it is to be answered. Furthermore, this Interrogatory seeks information that would require Duke Energy Ohio to engage in impermissible speculation and guesswork concerning future events and the condition of any particular property, especially when Complainants requested and obtained a stay of all vegetation management activities by Duke Energy Ohio along the transmission lines at issue in the Second Amended Complaint. This Interrogatory also is vague as to the definition and meaning of the word "near" with respect to the location of a "vegetation-caused outage." Finally, to the extent this Interrogatory seeks information unrelated to the transmission lines at issue in the Second Amended Complaint, it seeks information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-021

REQUEST:

If the answer to CACC-INT-020 is affirmative, on which occasions did Duke fail to meet its reliability commitments as a result of vegetation-caused outages on or near any of the Complainants' properties?

RESPONSE: Not applicable

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-022

REQUEST:

If the answer to CACC-INT-020 is affirmative, which vegetation on or near any of the Complainants' properties caused the outages that led to Duke's inability to meet its reliability commitments?

RESPONSE: Not applicable

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-023

REQUEST:

Does Duke intend to engage in the spraying of herbicides as part of the implementation of its vegetation management plan on any of the properties owned by any of the Complainants?

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome in that there are more than 85 properties and property owners at issue in the Second Amended Complaint. Furthermore, this Interrogatory seeks information that would require Duke Energy Ohio to engage in impermissible speculation and guesswork concerning future events and the condition of any particular property, especially when Complainants requested and obtained a stay of all vegetation management activities by Duke Energy Ohio along the transmission lines at issue in the Second Amended Complaint. Finally, to the extent this Interrogatory seeks information unrelated to the transmission lines at issue in the Second Amended Complaint, it seeks information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection, to the extent discoverable, and in the spirit of discovery, no, not as part of the scope of this project.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-024

REQUEST:

If the answer to CACC-INT-023 is in the affirmative, on which Complainants' properties does Duke intend to engage in the spraying of herbicides?

RESPONSE: Not applicable

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-025

REQUEST:

If the answer to CACC-INT-023 is affirmative, which herbicides does Duke intend to use on or near any of the properties owned by any of the Complainants?

RESPONSE: Not applicable

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-026

REQUEST:

Does Duke intend to engage in the spraying of herbicides as part of the implementation of its vegetation management plan in Hamilton County, Symmes Township, Deerfield Township, Montgomery, and Clermont County, Ohio?

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome in that Duke Energy Ohio has tens of thousands of customers in the geographic areas listed. Furthermore, this Interrogatory seeks information that would require Duke Energy Ohio to engage in impermissible speculation and guesswork concerning future events and the condition of any particular property. Finally, to the extent this Interrogatory seeks information unrelated to the transmission lines at issue in the Second Amended Complaint, it seeks information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, to the extent discoverable, and in the spirit of discovery, yes.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018

CACC-INT-01-027

REQUEST:

If the answer to CACC-INT-026 is affirmative, which areas does Duke intend to spray herbicides (please state the address, including the Township or County with specificity)?

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome in that Duke Energy Ohio has tens of thousands of customers in the geographic areas listed. Furthermore, this Interrogatory seeks information that would require Duke Energy Ohio to engage in impermissible speculation and guesswork concerning future events and the condition of any particular property. Finally, to the extent this Interrogatory seeks information unrelated to the transmission lines at issue in the Second Amended Complaint, it seeks information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, to the extent discoverable, and in the spirit of discovery, Duke Energy Ohio cannot specify in advance where herbicide applications are needed without on-site review.

PERSON RESPONSIBLE:

As to objections: Legal

As to response: Ron A. Adams

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-029

REQUEST:

Within the next two tree trimming cycles, does Duke plan to use any herbicides on or near any of the properties owned by any of the Complainants?

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome in that there are more than 85 properties and property owners at issue in the Second Amended Complaint. Furthermore, this Interrogatory seeks information that would require Duke Energy Ohio to engage in impermissible speculation and guesswork concerning future events and the condition of any particular property, especially when Complainants requested and obtained a stay of all vegetation management activities by Duke Energy Ohio along the transmission lines at issue in the Second Amended Complaint. Finally, to the extent this Interrogatory seeks information unrelated to the transmission lines at issue in the Second Amended Complaint, it seeks information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-030

REQUEST:

If the answer to CACC-INT-029 is affirmative, which herbicides does Duke plan to use on or near any of the properties owned by any of the Complainants?

RESPONSE: Not applicable

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-031

REQUEST:

If the answer to CACC-INT-029 is affirmative, on or near which properties owned by any of the Complainants does Duke intend to spray with herbicides?

RESPONSE: Not applicable

Objection. The Interrogatory seeks information that would require Duke Energy Ohio to engage in impermissible speculation and guesswork concerning future events.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-032

REQUEST:

If the answer to either CACC-INT-023, CACC-INT-026, or CACC-INT-029 is affirmative, has Duke conducted, or commissioned any third parties to conduct, any inspections, studies, reviews, calculations, analyses, assessments, or any other evaluations on the impact that those herbicides will have on its customers' properties or the Polk Run Creek?

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome in that Duke Energy Ohio has tens of thousands of customers in the geographic areas listed. Furthermore, this Interrogatory seeks information that would require Duke Energy Ohio to engage in impermissible speculation and guesswork concerning future events and the condition of any particular property. Finally, to the extent this Interrogatory seeks information unrelated to the transmission lines at issue in the Second Amended Complaint, it seeks information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, to the extent discoverable, and in the spirit of discovery, specifically, no. However extensive testing is conducted prior to these products being cleared for use by the Federal and State EPA to determine that these products are safe to use in accordance with the label guidelines.

PERSON RESPONSIBLE:

As to objections: Legal

As to response: Ron A. Adams

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-033

REQUEST:

If the answer to CACC-INT-032 is affirmative, who (identifying by name, address, phone number, and email address) conducted those inspections, studies, reviews, calculations, analyses, assessments, or other evaluations?

RESPONSE: Not applicable

Objection. This Interrogatory is overly broad and unduly burdensome in that Duke Energy Ohio has tens of thousands of customers in the geographic areas listed. Furthermore, this Interrogatory seeks information that would require Duke Energy Ohio to engage in impermissible speculation and guesswork concerning future events and the condition of any particular property. Finally, to the extent this Interrogatory seeks information unrelated to the transmission lines at issue in the Second Amended Complaint, it seeks information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, see response to CACC-INT-01-032.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-034

REQUEST:

If the answer to CACC-INT-032 is affirmative, what were the conclusions of those inspections, studies, reviews, calculations, analyses, assessments, or other evaluations?

RESPONSE: Not applicable

Objection. This Interrogatory is overly broad and unduly burdensome in that Duke Energy Ohio has tens of thousands of customers in the geographic areas listed. Furthermore, this Interrogatory seeks information that would require Duke Energy Ohio to engage in impermissible speculation and guesswork concerning future events and the condition of any particular property. Finally, to the extent this Interrogatory seeks information unrelated to the transmission lines at issue in the Second Amended Complaint, it seeks information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, see response to CACC-INT-01-32.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-037

REQUEST:

On which date or dates did Duke decide to pursue its plan to clear cut trees and vegetation in Hamilton County, Symmes Township, Deerfield Township, Montgomery, and Clermont County, Ohio?

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome because it is not limited to the transmission lines at issue in this case. Objecting further, it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Furthermore, the Interrogatory is vague and ambiguous as to the “plan” referenced therein, and also misstates the terms and provisions of the Company’s Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved by Rule on June 13, 2017. Finally, this Interrogatory is vague and ambiguous as to the phrase “clear cut trees and vegetation” as this phrase is undefined.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018

CACC-INT-01-038

REQUEST:

Identifying by name, title with Duke, address, phone number, and email address, which Duke employees or other people were present, either in person or through any other means of communication, including, but not limited to, telephone and video communication software when Duke decided to pursue its plan to clear cut trees and vegetation in Hamilton County, Symmes Township, Deerfield Township, Montgomery, and Clermont County, Ohio?

RESPONSE:

Objection. This Interrogatory seeks to elicit privileged and confidential information that is protected by the attorney work product doctrine or the attorney client privilege. This Interrogatory also is overly broad and unduly burdensome because it is not limited to the transmission lines at issue in this case. Objecting further, it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Also, the Interrogatory is vague and ambiguous as to the “plan” referenced therein, and also misstates the terms and provisions of the Company’s Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved by Rule on June 13, 2017. Finally, this Interrogatory is vague and ambiguous as to the phrase “clear cut trees and vegetation” as this phrase is undefined.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-039

REQUEST:

Were any records kept of the meeting or meetings where Duke decided to implement its plan to clear cut trees and other vegetation in Hamilton County, Symmes Township, Deerfield Township, Montgomery, and Clermont County, Ohio?

RESPONSE:

Objection. This Interrogatory seeks to elicit privileged and confidential information that is protected by the attorney work product doctrine or the attorney client privilege. This Interrogatory also is overly broad and unduly burdensome because it is not limited to the transmission lines at issue in this case. Objecting further, it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Also, the Interrogatory is vague and ambiguous as to the "plan" referenced therein, and also misstates the terms and provisions of the Company's Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved by Rule on June 13, 2017. Finally, this Interrogatory is vague and ambiguous as to the phrase, "clear cut trees and other vegetation" as this phrase is undefined.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-040

REQUEST:

If the answer to CACC-INT-039 is affirmative, what records were kept of the meeting or meetings where Duke decided to implement its plan to clear cut trees and other vegetation in Hamilton County, Symmes Township, Deerfield Township, Montgomery, and Clermont County, Ohio?

RESPONSE:

Objection. This Interrogatory is vague and ambiguous as to the phrase, "clear cut trees and other vegetation" as this phrase is undefined. Without waiving said objection, to the extent discoverable, and in the spirit of discovery, the response is not applicable.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-041

REQUEST:

Has Duke conducted any review that compares the monetary cost to Duke of engaging in the clear cutting of trees and other vegetation with the monetary cost to Duke of continuing its prior practice of pruning and trimming trees and other vegetation as necessary as outlined in its vegetation and management plan filed in Case No. 16-126-EL-ESS?

RESPONSE:

Objection. This Interrogatory seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Duke Energy Ohio's Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), was approved by Rule through the Application filed in Case No. 16-915-EL-CSS, not Case No. 16-126-EL-ESS. Objecting further, the Interrogatory is vague and ambiguous with respect to the reference to the "plan," and is overly broad and unduly burdensome because it is not limited to the transmission lines at issue in this case. Finally, this Interrogatory is vague and ambiguous as to the phrase, "clear cut trees and other vegetation" as this phrase is undefined.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-042

REQUEST:

If the answer to CACC-INT-041 is affirmative, what were the results of said review(s)?

RESPONSE:

Not applicable.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-043

REQUEST:

If the answer to CACC-INT-041 is affirmative, who (identifying by name, address, phone number, and email address) conducted said review(s)?

RESPONSE:

Not applicable.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-044

REQUEST:

Has Duke conducted, or commissioned a third party to conduct, any inspections, studies, reviews, calculations, analyses, assessments, or other evaluations of the impact that clear cutting will have on the environment, including, but not limited to, its impact on the potential erosion of soil?

RESPONSE:

Objection. This Interrogatory seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Objecting further, the Interrogatory is vague, ambiguous, overly broad and unduly burdensome because it is not limited to the transmission lines at issue in this case. Finally, this Interrogatory is vague and ambiguous as to the meaning of the phrase "clear cutting" as such phrase is undefined. Without waiving said objections, to the extent discoverable, and in the spirit of discovery, no.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-045

REQUEST:

If the answer to CACC-INT-044 is affirmative, what were the conclusions of said inspections, studies, reviews, calculations, analyses, assessments, or other evaluations?

RESPONSE:

Not applicable.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-046

REQUEST:

If the answer to CACC-INT-044 is affirmative, who (identifying by name, address, phone number, and email address) conducted said inspections, studies, reviews, calculations, analyses, assessments, or other evaluations?

RESPONSE:

Objection. This Interrogatory seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Objecting further, the Interrogatory is vague, ambiguous, overly broad and unduly burdensome because it is not limited to the transmission lines at issue in this case. Finally, this Interrogatory is vague and ambiguous as to the meaning of the phrase "clear cutting" as such phrase is undefined.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-047

REQUEST:

Has Duke conducted, or commissioned a third party to conduct, any inspections, studies, reviews, calculations, analyses, assessments, or other evaluations related to the impact of soil erosion on its electric infrastructure?

RESPONSE:

Objection. This Interrogatory seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Objecting further, the Interrogatory is vague, ambiguous, overly broad and unduly burdensome because it is not limited to the transmission lines at issue in this case. Without waiving said objections, to the extent discoverable, and in the spirit of discovery, no, we are not aware of any such inspections, studies, reviews, calculations, analyses, assessments, or other evaluations related to the impact of soil erosion on its electric infrastructure.

PERSON RESPONSIBLE:

As to objections: Legal
As to response: Ron A. Adams

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-048

REQUEST:

If the answer to CACC-INT-047 is affirmative, what were the conclusions of said inspections, studies, reviews, calculations, analyses, assessments, or other evaluations?

RESPONSE:

Not applicable.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-049

REQUEST:

If the answer to CACC-INT-047 is affirmative, who (identifying by name, address, phone number, and email address) conducted said inspections, studies, reviews, calculations, analyses, assessments, or other evaluations?

RESPONSE:

Not applicable.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018

CACC-INT-01-050

REQUEST:

If the answer to CACC-INT-032 is negative, why has Duke not conducted, or commissioned any third parties to conduct, said inspections, studies, reviews, calculations, analyses, assessments, or any other evaluations?

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome in that Duke Energy Ohio has tens of thousands of customers in the geographic areas listed. Furthermore, this Interrogatory seeks information that would require Duke Energy Ohio to engage in impermissible speculation and guesswork concerning future events and the condition of any particular property. Finally, to the extent this Interrogatory seeks information unrelated to the transmission lines at issue in the Second Amended Complaint, it seeks information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-051

REQUEST:

If the answer to CACC-INT-044 is negative, why has Duke not conducted, or commissioned any third parties to conduct, said inspections, studies, reviews, calculations, analyses, assessments, or other evaluations?

RESPONSE:

Not applicable.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-052

REQUEST:

If the answer to CACC-INT-047 is negative, why has Duke not conducted, or commissioned any third parties to conduct, said inspections, studies, reviews, calculations, analyses, assessments, or other evaluations?

RESPONSE:

Not applicable.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-053

REQUEST:

Under what authority is Duke engaging in clear cutting practices on or near the Complainants' properties? (Please list all statutes, rules, or other authority).

RESPONSE:

Objection. This interrogatory calls for a legal conclusion and a narrative response more suitable for a deposition. Duke Energy Ohio's Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as filed in Case No. 16-915-EL-ESS and approved by Rule on June 13, 2017, speaks for itself. Finally, this Interrogatory is vague and ambiguous as to the meaning of the phrase "clear cutting" as such phrase is undefined.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-059

REQUEST:

Does Duke receive cost recovery for engaging in vegetation management practices?

RESPONSE:

Objection. This Interrogatory seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Objecting further, the Interrogatory is vague, ambiguous, overly broad and unduly burdensome because it is not limited to the transmission lines at issue in this case. Additionally, this interrogatory appears to be almost an exact duplication of CACC-INT-01-055 as it is not possible to know what is meant by the terms “implementation” found in that interrogatory v. “management” as found in this interrogatory. Accordingly, Duke Energy Ohio finds this duplication to be an attempt at harassment.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-060

REQUEST:

If the answer CACC-INT-059 is affirmative, under what authority is Duke permitted to receive cost recovery? (Please list all statutes, rules, or other authority).

RESPONSE:

See Response to CACC-INT-01-059.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-061

REQUEST:

If the answer CACC-INT-059 is affirmative, what is the cost recovery mechanism for which cost recovery is obtained for Duke's engagement in vegetation management practices?

RESPONSE:

See Response to CACC-INT-01-059.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-062

REQUEST:

If the answer CACC-INT-059 is affirmative, who pays for or funds the cost recovery for Duke's engagement in vegetation management practices?

RESPONSE:

See response to CACC-INT-01-059.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-063

REQUEST:

Does Duke receive cost recovery for its clear cutting activities on or near the Complainants' properties?

RESPONSE:

Objection. This Interrogatory seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Objecting further, the Interrogatory is vague, ambiguous, overly broad and unduly burdensome because it is not limited to the transmission lines at issue in this case. Also, this Interrogatory is vague and ambiguous as to the meaning of the phrase "clear cutting" as such phrase is undefined. Finally, this interrogatory appears to be almost an exact duplication of CACC-INT-01-055 and CACC-INT-01-059 as it is not possible to know what is meant by the terms "implementation" found in CACC-INT-01-055 v. "management" found in CACC-INT-01-059 v. "clear cutting" as found in this interrogatory. Accordingly, Duke Energy Ohio finds this duplication to be an attempt at harassment.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018

CACC-INT-01-064

REQUEST:

If the answer CACC-INT-063 is affirmative, under what authority is Duke permitted to receive cost recovery? (Please list all statutes, rules, or other authority).

RESPONSE:

See Response to CACC-INT-01-063.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-065

REQUEST:

If the answer CACC-INT-063 is affirmative, what is the cost recovery mechanism for which cost recovery is obtained for Duke's clear cutting activities on or near the Complainants' properties?

RESPONSE:

Objection. This Interrogatory is vague and ambiguous as to the meaning of the phrase "clear cutting" as such phrase is undefined. Without waiving said objection, to the extent discoverable, and in the spirit of discovery, see response to CACC-01-063.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-066

REQUEST:

If the answer CACC-INT-063 is affirmative, who pays for or funds the cost recovery for Duke's clear cutting activities on or near the Complainants' properties?

RESPONSE:

Objection. This Interrogatory is vague and ambiguous as to the meaning of the phrase "clear cutting" as such phrase is undefined. Without waiving said objection, to the extent discoverable, and in the spirit of discovery, see response to CACC-INT-01-063.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-067

REQUEST:

Does Duke receive cost recovery for its vegetation management activities on or near the Complainants' properties?

RESPONSE:

Objection. This Interrogatory seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Objecting further, the Interrogatory is vague, ambiguous, overly broad and unduly burdensome because it is not limited to the transmission lines at issue in this case. Finally, this interrogatory appears to be almost an exact duplication of CACC-INT-01-055, CACC-INT-01-059, and CACC-INT-01-063 as it is not possible to know what is meant by the terms "implementation" found in CACC-INT-01-055 v. "management" found in CACC-INT-01-059 v. "clear cutting" found in CACC-INT-01-063 v. "vegetation management activities" as found in this interrogatory. Accordingly, Duke Energy Ohio finds this duplication to be an attempt at harassment.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-068

REQUEST:

If the answer CACC-INT-067 is affirmative, under what authority is Duke permitted to receive cost recovery? (Please list all statutes, rules, or other authority).

RESPONSE:

See response to CACC-INT-01-067.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-069

REQUEST:

If the answer CACC-INT-067 is affirmative, what is the cost recovery mechanism for which cost recovery is obtained for Duke's vegetation management activities on or near the Complainants' properties?

RESPONSE:

See response to CACC-INT-01-067.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting First Set of Interrogatories
Date Received: January 25, 2018**

CACC-INT-01-070

REQUEST:

If the answer CACC-INT-067 is affirmative, who pays for or funds the cost recovery for Duke's vegetation management activities on or near the Complainants' properties?

RESPONSE:

See response to CACC-INT-01-067.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting Request for Production of Documents
Date Received: January 25, 2018

CACC-POD-01-001

REQUEST:

Produce and attach all communications, correspondence, and documents relied upon, identified, or referenced in response to any of the interrogatories and requests for admission set forth above: CACC-RFA-001 through CACC-RFA-010 and CACC-INT-001 through CACC-INT-070.

RESPONSE:

None.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting Request for Production of Documents
Date Received: January 25, 2018**

CACC-POD-01-002

REQUEST:

Produce and attach all communications, correspondence, and documents that contain any information used, reviewed, or relied upon in preparing your responses to any of the requests for admission and interrogatories set forth above: CACC-RFA-001 through CACC-RFA-010 and CACC-INT-001 through CACC-INT-070.

RESPONSE:

None.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS

Citizens Against Clear Cutting Request for Production of Documents
Date Received: January 25, 2018

CACC-POD-01-003

REQUEST:

Produce and attach true and accurate copies of all emails sent or received by any employee of Duke Energy Ohio regarding Duke's plan to clear cut vegetation on properties owned by Complainants.

RESPONSE:

Objection. This Document Request seeks privileged and confidential documents that are protected by the attorney work product doctrine or the attorney client privilege. The Document Request also is overly broad and unduly burdensome because it is not limited to the transmission lines at issue in this case. Objecting further, it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Finally, the Document Request is vague and ambiguous as to the "plan" referenced therein, and also misstates the terms and provisions of the Company's Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved by Rule on June 13, 2017. Finally, this Interrogatory is vague and ambiguous as to the meaning of the phrase "clear cut" as such phrase is undefined.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting Request for Production of Documents
Date Received: January 25, 2018

CACC-POD-01-005

REQUEST:

Produce and attach true and accurate copies of all notices, flyers, door hangers, or letters provided to residents of Hamilton County, Symmes Township, Deerfield Township, Montgomery, and Clermont County, Ohio regarding Duke's plan to clear cut or engage in vegetation management activities on properties owned by Complainants.

RESPONSE:

Objection. This Document Request is overly broad and unduly burdensome because it is not limited to the transmission lines at issue in this case. Objecting further, it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Also, the Document Request is vague and ambiguous as to the "plan to clear cut" referenced therein, and also misstates the terms and provisions of the Company's Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved by Rule on June 13, 2017. Without waiving said objections, to the extent discoverable, and in the spirit of discovery, it is not our standard practice to target entire communities regarding transmission vegetation management activity. Specifically the Company addresses directly impacted residents. However, Duke Energy Ohio is responsive to customer inquiries and communicates upcoming projects to government and community leadership.

PERSON RESPONSIBLE:

As to objections: Legal
As to response: Ron A. Adams

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting Request for Production of Documents
Date Received: January 25, 2018

CACC-POD-01-007

REQUEST:

Produce and attach true and accurate copies of all legal notices or letters provided to residents of Hamilton County, Symmes Township, Deerfield Township, Montgomery, and Clermont County, Ohio threatening or suggesting legal action regarding Duke's plan to clear cut or engage in vegetation management activities on properties owned by Complainants.

RESPONSE:

Objection. This Document Request fails to contain any reasonable time parameters pursuant to which it is to be answered nor is it limited to the transmission line at issue in the case, thereby rendering it overly broad, unduly burdensome, and vague. The Document Request also is overly broad and unduly burdensome because it is not limited to the transmission lines at issue in this case. Objecting further, it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Finally, the Document Request is vague and ambiguous as to the "plan" referenced therein, and also misstates the terms and provisions of the Company's Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved by Rule on June 13, 2017. Finally, this Interrogatory is vague and ambiguous as to the meaning of the phrase "clear cut" as such phrase is undefined.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting Request for Production of Documents
Date Received: January 25, 2018

CACC-POD-01-008

REQUEST:

Produce and attach all assessments, studies, statistics, surveys, reports, and any other documents that Duke relied upon in developing its plan to clear cut trees and vegetation on or near properties owned by Complainants.

RESPONSE:

Objection. This Document Request fails to contain any reasonable time parameters pursuant to which it is to be answered nor is it limited to the transmission line at issue in the case, thereby rendering it overly broad, unduly burdensome, and vague. The Document Request also is overly broad and unduly burdensome because it is not limited to the transmission lines at issue in this case. Objecting further, it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Also, the Document Request is vague and ambiguous as to the “plan” referenced therein, and also misstates the terms and provisions of the Company’s Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved by Rule on June 13, 2017. Finally, this Interrogatory is vague and ambiguous as to the meaning of the phrase “clear cut” as such phrase is undefined.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting Request for Production of Documents
Date Received: January 25, 2018**

CACC-POD-01-009

REQUEST:

Produce and attach copies of all documents, correspondence, notices, and other materials that Duke has given to any of the Complainants in this case electronically, in person, by United States mail, or any other form of delivery.

RESPONSE:

Objection. This Document Request fails to contain any reasonable time parameters pursuant to which it is to be answered nor is it limited to the transmission line at issue in the case, thereby rendering it overly broad, unduly burdensome, and vague. Objecting further, it seeks documents that are irrelevant and not likely to lead to the discovery of admissible evidence.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting Request for Production of Documents
Date Received: January 25, 2018

CACC-POD-01-010

REQUEST:

Produce and attach copies of all written communications, including emails and physical communications, between Duke employees or between Duke employees and third parties related to Duke's decision to implement, or actual implementation of, its plan to clear cut trees and other vegetation on or near properties owned by Complainants.

RESPONSE:

Objection. This Document Request seeks to elicit privileged and confidential information that is protected by the attorney work product doctrine or the attorney client privilege. This Document Request also fails to contain any reasonable time parameters pursuant to which it is to be answered nor is it limited to the transmission line at issue in the case, thereby rendering it overly broad, unduly burdensome, and vague. Objecting further, it seeks documents that are irrelevant and not likely to lead to the discovery of admissible evidence. Finally, this Interrogatory is vague and ambiguous as to the meaning of the phrase "clear cut" as such phrase is undefined.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting Request for Production of Documents
Date Received: January 25, 2018

CACC-POD-01-011

REQUEST:

If the answer to CACC-INT-039 is affirmative, produce and attach all records kept of meetings regarding Duke's decision to implement its plan to clear cut trees and other vegetation in Hamilton County, Symmes Township, Deerfield Township, Montgomery, and Clermont County, Ohio.

RESPONSE:

Objection. This Interrogatory is vague and ambiguous as to the meaning of the phrase "clear cutting" as such phrase is undefined. Without waiving said objection, to the extent discoverable, and in the spirit of discovery, the response is not applicable.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting Request for Production of Documents
Date Received: January 25, 2018

CACC-POD-01-012

REQUEST:

If the answer to CACC-INT-039 is affirmative, produce and attach all records kept of meetings regarding Duke's decision to implement its plan to clear cut trees and other vegetation on or near properties owned by Complainants.

RESPONSE:

Objection. This Interrogatory is vague and ambiguous as to the meaning of the phrase "clear cut" as such phrase is undefined. Without waiving said objection, to the extent discoverable, and in the spirit of discovery, the response is not applicable.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting Request for Production of Documents
Date Received: January 25, 2018

CACC-POD-01-013

REQUEST:

If the answer to CACC-INT-041 is affirmative, produce and attach all records, physical or electronic, of those reviews, studies, analyses, etc. discussed in CACC-INT-041.

RESPONSE:

Not applicable.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting Request for Production of Documents
Date Received: January 25, 2018

CACC-POD-01-014

REQUEST:

If the answer to CACC-INT-044 is affirmative, produce and attach all records, physical or electronic, of those inspections, studies, reviews, calculations, analyses, assessments, or other evaluations discussed in CACC-INT-044.

RESPONSE:

Not applicable.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting Request for Production of Documents
Date Received: January 25, 2018**

CACC-POD-01-015

REQUEST:

If the answer to CACC-INT-032 is affirmative, produce and attach all records, physical or electronic, of those inspections, studies, reviews, calculations, analyses, assessments, or other evaluations discussed in CACC-INT-032.

RESPONSE:

Not applicable.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting Request for Production of Documents
Date Received: January 25, 2018

CACC-POD-01-016

REQUEST:

If the answer to CACC-INT-047 is affirmative, produce and attach all records, physical or electronic, of those inspections, studies, reviews, calculations, analyses, assessments, or other evaluations discussed in CACC-INT-047.

RESPONSE:

Not applicable.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 17-2344-EL-CSS
Citizens Against Clear Cutting Request for Production of Documents
Date Received: January 25, 2018

CACC-POD-01-017

REQUEST:

If the answer to CACC-INT-010 is affirmative, produce and attach all records, physical or electronic, of those inspections, studies, reviews, calculations, analyses, assessments, or other evaluations discussed in CACC-INT-010.

RESPONSE:

Not applicable.

PERSON RESPONSIBLE: Legal

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March 19, 2018

Elizabeth H. Watts, Esq.
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Robert A. McMahon, Esq.
Eberly McMahon Copetas LLC
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Cincinnati, OH 45206

Re: *Citizens Against Clear Cutting, et al. v. Duke Energy Ohio, Inc.*,
Case No. 17-2344-EL-CSS

Ms. Watts and Mr. McMahon:

Complainants are in receipt of Duke Energy Ohio, Inc.'s (Duke) responses to Complainants First and Second Sets of Discovery in Case No. 17-2344-EL-CSS. Complainants have concerns relating to a number of the responses to the Requests for Admission, Interrogatories, and Requests for Production provided by Duke. By this letter, Complainants hope to bring those concerns to Duke's attention in an attempt to resolve them amicably.

- **CACC-RFA-01-001, -002, -003, -004, -005, -006, -007:** Your response to these seven interrogatories was to object and state that Duke's prior filing speaks for itself. You have not stated any other basis for not answering Requests for Admission Nos. 1-7. Ohio Adm. Code 4901-1-22 requires the matter to be either admitted or specifically denied or to set forth in detail the reasons why the answering party cannot truthfully make an admission or denial. If a proper objection is made, the reasons for the objection must be stated. Duke's objection is improper and its responses fail to comply with the requirements of the rule. As such, please admit or deny accordingly.
- **CACC-RFA-01-008:** Duke itself stated in its application filed in Case No. 16-915-EL-ESS that "there are no substantive changes to the program." The term "changes"

March 19, 2018

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is synonymous with the word “modifications.” Therefore, the language that Duke claims is vague is Duke’s own language. Certainly, Duke is not contending that it filed an application with the Public Utilities Commission of Ohio that contained vague and unclear language. Nonetheless, to the extent Duke deems it necessary, Duke can assume that the phrase “substantive modifications” means “changes to Duke’s vegetation management plan or program which change the practices or activities Duke engages in or the way Duke manages its right of way as part of its vegetation management plan.” Using that definition, please admit or deny the request for admission as is appropriate.

- **CACC-RFA-01-009:** You responded by stating that responding to this Request for Admission would require Duke to engage in impermissible speculation and guesswork. The request specifically asks about past actions by Duke, so responding to it would not require speculation or guesswork; either Duke has or has not conducted an individualized assessment of the trees and vegetation on the Complainants’ properties that Duke has stated that it intends to remove. As a public utility, Complainants expect that Duke keeps business records that it can consult to determine whether it has taken particular actions in the past with regard to its customers. Furthermore, the phrase “individualized assessment of each tree or vegetation” is not vague. But, to the extent that Duke claims it is unable to answer the request due to vagueness, Duke can consider the phrase to mean “an assessment of each tree or other piece of vegetation that Duke intends to remove on properties owned by Complainants in this case to determine whether or not the tree or other vegetation poses a threat to the safety or reliability of the electric transmission system.” With these clarifications, please supplement your response to admit or deny the request as is appropriate.
- **CACC-INT-01-001, -002:** Interrogatories Nos. 1 and 2 are neither overly broad nor unduly burdensome. Duke, as demonstrated by its own prior pleadings in this case and in these discovery responses, has the ability to identify its own transmission lines within specified geographical areas. In fact, Duke has identified conflicting transmission circuits in various pleadings before the PUCO to state whether a Complainant has or does not have standing. Complainants are attempting to discover the transmission lines in these areas that are being affected by Duke’s vegetation management practices and that activities that have occurred along such transmission lines. Given that Complainants have alleged that Duke is improperly seeking to remove trees and vegetation on Complainants’ properties, Duke’s vegetation management practices along the transmission lines in the referenced geographical locations where Complainants reside are directly relevant to the assessment of the reasonableness of its proposed actions in this case. To the extent that Duke contends that it does not know what clear cutting means, Complainants state: “clear cutting means the removal of or leveling to the ground all trees and vegetation within a specified area.” With these clarifications, please supplement your response to provide an answer these interrogatories.

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- **CACC-01-003, -005:** Interrogatory Nos. 3 and 5 ask Duke about its distribution lines. Complainants have alleged that Duke is improperly seeking to remove trees and vegetation on Complainants' properties. Duke's stated basis for those actions is the plan filed in Case No. 16-915-EL-ESS, which applies to both transmission and distribution lines. If Duke owns distribution lines on or adjacent to Complainants' properties and intends to use its vegetation management plan as a basis for removing trees or other vegetation, that would certainly be relevant to the Second Amended Complaint. To the extent that Duke contends that it does not know what clear cutting means, Complainants mean "the removal of or leveling to the ground all trees and vegetation within a specified area." If Duke does not have any plans to conduct vegetation management along distribution lines or facilities (as discussed in CACC-INT-01-003) on property owned by Complainants in this case (as discussed in CACC-INT-01-005), it can say so. With these clarifications, please supplement these answers accordingly.
- **CACC-INT-006, -007, -008:** These responses are difficult to comprehend. Duke has asserted a right and a need to engage in the challenged vegetation management activities repeatedly in these proceedings and in others challenging Duke's practices. Stating, as you do in response to Interrogatory No. 6, that answering Duke's current intent to engage in vegetation management activities would require it to engage in "impermissible speculation" is entirely inconsistent with stating in this proceeding, and to Complainants prior to this proceeding, that the removal of these trees and vegetation is necessary. Additionally, the issues in the Second Amended Complaint are not limited to the transmission lines that Duke states are at issue. Complainants filed the Second Amended Complaint regarding Duke's stated intent to remove trees and vegetation on Complainants' properties, among other issues. The removal of trees or vegetation on the Complainants' properties, and by what means and in what fashion, is directly relevant to the issues in this case. With these clarifications, please revise the response to CACC-INT-01-006, and by extension the response to CACC-INT-01-007 and CACC-INT-01-008, as appropriate. To the extent that Duke contends that it does not know what clear cutting means, Complainants mean "the removal of or leveling to the ground all trees and vegetation within a specified area." With this clarification, please supplement these answers accordingly.
- **CACC-INT-01-009, -010, -011, -012; CACC-POD-01-017:** This response cannot be interpreted as anything other than an attempt to be evasive and deny Complainants discovery to which they are entitled. Complainants asked Duke if it stands by a legal contention that it made in one of its pleadings. Duke's answer to this Interrogatory is that it is not relevant because the Complaint to which Duke was answering when this statement was made has been amended. Whether or not Duke contends the assertion asked about in CACC-INT-01-009 is not dependent on the First Amended Complaint still being in place. Moreover, Duke made the same statement in its answer to the Second Amended Complaint, filed on the same day that this Interrogatory was served. There is no reason that Duke is not able to answer this Interrogatory. To the extent Duke requires the request to be revised to

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reference the Second Amended Complaint and Duke's answer to the Second Amended Complaint, it is hereby revised. Please replace "Does Duke contend, as stated on pages 8 and 9 of its Answer to the Amended Complaint filed on December 4, 2017, ..." with "Does Duke contend, as stated on pages 10 and 11 of its Answer to the Second Amended Complaint filed on January 25, 2018, ..." With this clarification and revision, please supplement the answer to CACC-INT-01-009 accordingly. To the extent that the supplementation of CACC-INT-01-009 makes CACC-INT-01-010-012 applicable, please supplement those responses as well.

- **CACC-INT-01-013:** As a public utility, Complainants expect that Duke keeps business records that it can consult to determine whether it has taken particular actions in the past. Based on those records, Duke should be able to list the properties upon which it has performed vegetation management activities. Additionally, the issues in the Second Amended Complaint are not limited to the transmission lines that Duke states are at issue. Complainants filed the Second Amended Complaint regarding Duke's intent to remove trees and vegetation on Complainants' properties, among other issues. The removal of trees or vegetation on the Complainants' properties, and by what means and in what fashion, is directly relevant to the issues in this case. With these clarifications, please supplement this response. If Duke contends that it cannot answer without reasonable time parameters, the response can be supplemented as it relates to the last ten years.
- **CACC-INT-01-014, -015:** An interrogatory limited in time and to the properties at issue in the Second Amended Complaint is not unduly burdensome. Duke has an obligation to provide discovery related to the Complainants. Moreover, "Transmission Clearing Cycle" is a term taken directly from Duke's own modified vegetation management plan filed in Case No. 16-915-EL-ESS; therefore, your claim that the term is vague or ambiguous lacks any support. If, however, Duke is unable to answer based on the use of its own term, please answer for the past 12 years, as such time is the equivalent of two Transmission Clearing Cycles, as defined by Duke. To the extent that Duke contends that it does not know what clear cutting means, Complainants mean "the removal of or leveling to the ground all trees and vegetation within a specified area." With these clarifications, please supplement the response to CACC-INT-01-014, and, to the extent that supplementation changes the response to CACC-INT-01-015, supplement that response as well.
- **CACC-INT-01-016, -017:** An interrogatory limited in time and to the properties at issue in the Second Amended Complaint is not unduly burdensome. Duke has an obligation to provide discovery related to the Complainants. Moreover, "Distribution Clearing Cycle" is a term taken directly from Duke's own modified vegetation management plan filed in Case No. 16-915-EL-ESS; therefore, your claim that the term is vague or ambiguous lacks any support. If, however, Duke is unable to answer based on the use of its own term, please answer for the past 8 years, as such time is the equivalent of two Distribution Clearing Cycles as defined by Duke. To the extent that Duke contends that it does not know what clear cutting

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means, Complainants mean “the removal of or leveling to the ground all trees and vegetation within a specified area.” As for your contention that this discovery seeks irrelevant information, the Complainants are entitled to discovery about Duke’s vegetation management practices as they relate to Complainants, their communities, and their properties. With these clarifications, please supplement the response to CACC-INT-01-016, and, to the extent that supplementation changes the response to CACC-INT-01-017, supplement that response as well.

- **CACC-INT-01-018, -019:** CACC-INT-01-018 specifically asks about *past* actions by Duke, so responding to it would not require speculation or guesswork; either Duke’s engineers have or have not assessed the trees that Duke intends to remove on Complainants’ properties. As a public utility, Complainants expect that Duke keeps business records that it can consult to determine whether it, and its employees, have taken particular actions in the past. Based on those records, Duke should be able to list the properties upon which its engineers have assessed the need for the removal of trees and vegetation. Additionally, the issues in the Second Amended Complaint are not limited to the transmission lines that Duke states are at issue. Complainants filed the Second Amended Complaint regarding Duke’s intent to remove trees and vegetation on Complainants’ properties, among other issues. The removal of trees or vegetation on the Complainants’ properties, and by what means and in what fashion, is directly relevant to the issues in this case. With these clarifications, please supplement your response to CACC-INT-01-018, and, to the extent that supplementation changes the response to CACC-INT-01-019, supplement that response as well.
- **CACC-INT-01-020, -021, -022:** Duke has asserted that the vegetation management plans, practices, and activities at issue in this case are necessary to ensure the safety and reliability of its electric system. Complainants are entitled to discovery that tests the accuracy of that assertion. Moreover, CACC-INT-01-020 specifically asks about events that occurred *in the past*, so responding to it would not require speculation or guesswork. As a public utility, Complainants expect that Duke keeps business records of outages and its progress in meeting reliability commitments that it can consult. To the extent that Duke claims it cannot answer because the word “near” is undefined, for purposes of these interrogatories, it can consider near to mean within one mile of any Complainant’s property. To the extent that Duke claims it cannot answer because “vegetation-caused outage” is undefined, vegetation-caused outage means a disruption in the provision of electric power due to interference with Duke’s electric system by trees or other vegetation. To the extent that Duke requires time parameters to answer, the response may be limited to the past ten years. With these clarifications, please supplement your response to CACC-INT-01-0020, and, to the extent that supplementation changes the response to CACC-INT-01-021 or CACC-INT-01-0021, please supplement those responses as well.
- **CACC-INT-01-027:** Complainants understand that Duke has set forth plans to conduct vegetation management on Complainants’ properties. Complainants are

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inquiring into those plans with regard to Complainants' properties at issue in this case. More specifically, on which Complainants' properties does Duke intend to engage in the spraying of herbicides as part of its vegetation management practices and the implementation of its vegetation management plan? With this clarification and redraft of the question, please supplement Duke's response.

- **CACC-INT-01-029, -030, -031:** Duke has asserted that the vegetation management plans, practices, and activities at issue in this case are necessary to ensure the safety and reliability of its electric system. Additionally, the issues in the Second Amended Complaint are not limited to the transmission lines that Duke states are at issue. Complainants filed the Second Amended Complaint regarding Duke's intent to use herbicides on or adjacent to Complainants' properties, among other issues. The use of herbicides on or near the Complainants' properties to remove or eliminate trees or vegetation on the Complainants' properties is directly relevant to the issues in this case. With these clarifications, please supplement the response to CACC-INT-01-029 as to whether Duke has determined that it will spray herbicides to eliminate trees and vegetation on any Complainant's property within the next two Distribution Clearing Cycles (8 years) or Transmission Clearing Cycles (12 years). If the response to CACC-INT-01-029 is supplemented, please also supplement CACC-INT-01-030 and -031.
- **CACC-INT-01-037, -038, -039, -040; CACC-POD-01-011, -012:** The issues in the Second Amended Complaint are not limited to the transmission lines that Duke states are at issue. Complainants filed the Second Amended Complaint regarding Duke's intent to remove trees and vegetation on Complainants' properties, among other issues. Knowing when and how Duke decided to proceed with the vegetation management plan that led to the Second Amended Complaint could certainly lead the Complainants to the discovery of admissible information. If Duke claims that its vegetation management plan and practices for the lines at issue in this case is different than the lines in other areas where it implements, or plans to implement, its vegetation management plan, practices, and procedures, it can say so and limit the response to the vegetation management plan and practices being implemented on or adjacent to Complainants' properties. If Duke claims that it cannot answer these interrogatories because the phrase "clear cut" is undefined, Duke can consider its meaning to be, mean "the removal of or leveling to the ground all trees and vegetation within a specified area." With these clarifications, please supplement the responses to the above interrogatories and produce documents as is appropriate.
- **CACC-INT-01-041, -042, -043; CACC-POD-01-013:** Duke's reasons for engaging in the challenged actions are relevant to this proceeding and could lead to the discovery of admissible evidence. Moreover, despite your response to CACC-INT-01-041, Complainants did not state that Duke's vegetation management plan, practices, and procedures were approved in Case No. 16-126-EL-ESS. Rather Complainants' asked whether Duke made a comparison of the cost to implement its vegetation management plan described in its filing in Case No. 16-126-EL-ESS with its modified vegetation management plan, filed in Case No. 16-915-EL-ESS. The

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plan to clear cut or remove or level to the ground all trees and vegetation clearly refers to the vegetation management plan at issue in this case. However, to the extent that Duke claims it cannot answer CACC-INT-01-041 because “plan” and “clear cut” are not defined, “plan” refers to Duke’s vegetation management plan, practices, and procedures that Duke states govern the actions it proposes to take to Complainants’ properties, which was filed in Case No. 16-915-EL-ESS. And “clear cut” means “the removal of or leveling to the ground all trees and vegetation within a specified area.” With these clarifications, please supplement the response to CACC-INT-01-041, and, to the extent that supplementation results in changes to the answers to CACC-INT-01-042 and -043 and/or CACC-POD-01-013, please supplement those responses as well.

- **CACC-INT-01-044, -045, -046, -051; CACC-POD-01-014:** These requests are unambiguously relevant to the Second Amended Complaint. Complainants alleged in the Second Amended Complaint that Duke’s proposed actions are unreasonable, in part because they would lead to soil erosion. Whether Duke has considered this possibility and, if so, the conclusions it made, are relevant to that allegation. Additionally, the issues in the Second Amended Complaint are not limited to the transmission lines that Duke states are at issue. Complainants filed the Second Amended Complaint regarding Duke’s intent to remove trees and vegetation on Complainants’ properties, among other issues. The removal of trees or vegetation on the Complainants’ properties—and the impact of that removal—is directly relevant to the issues in this case. Finally, to the extent that Duke claims it cannot answer because “clear cutting” is undefined, “clear cutting” means “the removal of or leveling to the ground all trees and vegetation within a specified area.” With these clarifications, please supplement the response to CACC-INT-01-044 and, to the extent that such supplementation results in changes to the answers to CACC-INT-01-045, -046, and -051 or CACC-POD-01-014, please supplement those responses as necessary.
- **CACC-INT-01-047, -048, -049, -052; CACC-POD-01-016:** These requests are unambiguously relevant to the Second Amended Complaint. Complainants alleged in the Second Amended Complaint that Duke’s proposed actions would lead to soil erosion. Whether Duke has considered this possibility and, if so, the conclusions it made, are relevant to that allegation, especially as those conclusions relate to Duke’s own infrastructure, given that damage to that infrastructure could impact the safety and reliability of Duke’s electric transmission and distribution infrastructure. Additionally, the issues in the Second Amended Complaint are not limited to the transmission lines that Duke states are at issue. Complainants filed the Second Amended Complaint regarding Duke’s intent to remove trees and vegetation on Complainants’ properties, among other issues. The removal of trees or vegetation on the Complainants’ properties—and the impact of that removal—is directly relevant to the issues in this case. If Duke contends, however, that the impact of soil erosion is different for its infrastructure on or adjacent to Complainants’ properties compared to in other locations, it can say so and limit its response to the impact on

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or adjacent to Complainants' properties. Finally, to the extent that Duke claims it cannot answer because "clear cutting" is undefined, "clear cutting" means "the removal of or leveling to the ground all trees and vegetation within a specified area." With these clarifications, please supplement the response to CACC-INT-01-047 and, to the extent that such supplementation results in changes to the answers to CACC-INT-01-048, -049, and -052 or CACC-POD-01-016, please supplement those responses as necessary.

- **CACC-INT-01-053, -054:** Complainants asked for Duke's legal basis to engage in the actions challenged in this case. A deposition setting is not necessary for Duke to state such a basis. To the extent that Duke claims it cannot answer because the term "clear cutting" is undefined, clear cutting means "the removal of or leveling to the ground all trees and vegetation within a specified area." To the extent Duke is inferring that its vegetation management plan filed in Case No. 16-915-EL-ESS is the authority Duke is relying on to engage in the activity of removing or leveling to the ground all trees and vegetation within a specified area, please so state. With these clarifications, please supplement these responses.
- **CACC-INT-01-059, -060, -061, -062:** CACC-INT-01-059 is not irrelevant. Whether Duke receives cost recovery, from whom, and the methodology by which it does so is relevant to this proceeding and could also lead to the discovery of additional relevant evidence. To the extent Duke claims that it cannot answer because the request is too broad and not limited to the transmission lines Duke claims are at issue in this case, Duke can answer only with regard to the cost recovery it receives for conducting vegetation management on the properties of Complainants in this proceeding. Moreover, the implementation of a vegetation management plan and the engagement in vegetation management practices are distinct concepts, and, thus, the request is not duplicative or harassing. If the cost recovery discussed in CACC-INT-01-059, -060, -061, and -062 is the same as in CACC-01-055, -056, -057, and -058, Duke can state as such. With these clarifications, please supplement these responses accordingly.
- **CACC-INT-01-063, -064, -065, -066:** CACC-INT-01-063 is not irrelevant. Whether Duke receives cost recovery, from whom, and the methodology by which it does so is relevant to this proceeding and could also lead to the discovery of additional relevant evidence. To the extent Duke claims that it cannot answer because the request is too broad and not limited to the transmission lines Duke claims are at issue in this case, Duke can answer only with regard to the cost recovery it receives for conducting vegetation management on the properties of Complainants in this proceeding. Moreover, the implementation of a vegetation management plan, the engagement in vegetation management practices, and the engagement in clear cutting practices are distinct concepts, and, thus, the request is not duplicative or harassing. If the cost recovery discussed in CACC-INT-01-063, -064, -065, and -066 is the same as the cost recovery mechanism discussed in prior

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responses, Duke can state as such. With these clarifications, please supplement these responses accordingly.

- **CACC-INT-01-067, -068, -069, 070:** CACC-INT-01-067 is not irrelevant. Whether Duke receives cost recovery, from whom, and the methodology by which it does so is relevant to this proceeding and could also lead to the discovery of additional relevant evidence. Duke's contention that CACC-01-067 is not limited to the issues of this case is baseless given that CACC-INT-01-067 is explicitly limited to vegetation management activities on or adjacent to Complainants' properties. If the cost recovery discussed in CACC-INT-01-067, -068, -069, and -070 is the same as the cost recovery mechanism discussed in prior responses, Duke can state as such. To the extent that Duke claims it cannot answer because the term "clear cutting" is undefined, clear cutting means "the removal of or leveling to the ground all trees and vegetation within a specified area." With these clarifications, please supplement these responses accordingly.
- **CACC-POD-01-001:** Please supplement this response to the extent that Duke relies on any communications, documents, or correspondence in supplementing its answers to CACC RFA-01-001 through CACC-RFA-01-010 or CACC-INT-01-001 through CACC-INT-01-070.
- **CACC-POD-01-002:** Please supplement this response to the extent that Duke relies on any communications, documents, or correspondence in supplementing its answers to CACC RFA-01-001 through CACC-RFA-01-010 or CACC-INT-01-001 through CACC-INT-01-070.
- **CACC-POD-01-003:** As an initial matter, CACC-POD-01-003 is not overly broad. It is explicitly limited to properties owned by Complainants on the Second Amended Complaint. The issues in the Second Amended Complaint are not limited to the transmission lines that Duke states are at issue. Complainants filed the Second Amended Complaint regarding Duke's intent to remove trees and vegetation on Complainants' properties, among other issues. Duke's reasoning behind its plans to remove trees and vegetation on Complainants' properties that are at issue in this case is relevant and could lead to the discovery of additional admissible information. Moreover, the claim that all Duke's communications regarding its vegetation management plan, practices, and procedures is protected as attorney work product or by the attorney-client privilege strains credulity. Given that attorneys would have no expertise related to trees, vegetation, safety and reliability of electric infrastructure, or many other issues Duke presumably would consider in determining which vegetation it will remove, the requested communications seem unlikely to be protected by such privileges. Additionally, presumably those determinations and communications would have been done in the normal course of a public utility's business, prior to making such determinations, and prior to the filing of any complaints. To the extent that Duke claims it cannot produce documents because the word "plan" is undefined, Complainants are referring to Duke's plan to conduct

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vegetation management on or adjacent to Complainants' properties. To the extent that Duke claims it cannot produce documents because "clear cut" is not defined, "clear cut" means "the removal of or leveling to the ground all trees and vegetation within a specified area." Using those definitions, please produce responsive documents.

- **CACC-POD-01-005:** The parameters of this case are not defined by the transmission lines that Duke states are at issue. As stated in the Second Amended Complaint, this case is about Duke's vegetation management activities on or near (adjacent to) Complainants' properties. A comparative assessment of Duke's proposed actions on or adjacent to Complainants' properties with its actions elsewhere in Complainants' communities could lead to the discovery of admissible information. To the extent that Duke claims it cannot answer because the term "clear cutting" is undefined, clear cutting means "the removal of or leveling to the ground all trees and vegetation within a specified area." With these clarifications, please supplement this response.
- **CACC-POD-01-007:** The parameters of this case are not defined by the transmission lines that Duke states are at issue. As stated in the Second Amended Complaint, this case is about Duke's vegetation management activities on or near (adjacent to) Complainants' properties. A comparative assessment of Duke's proposed actions on or adjacent to Complainants' properties with its actions elsewhere in Complainants' communities could lead to the discovery of admissible information. To the extent that Duke claims it cannot answer because the term "clear cut" is undefined, clear cutting means "the removal of or leveling to the ground all trees and vegetation within a specified area." With these clarifications, please supplement this response.
- **CACC-POD-01-008:** The issues in the Second Amended Complaint are not limited to the transmission lines that Duke states are at issue. Complainants filed the Second Amended Complaint regarding Duke's intent to remove trees and vegetation on Complainants' properties, among other issues. Duke's analysis that it conducted in developing its vegetation management plan is relevant to the case and could lead to the discovery of additional admissible evidence. To the extent that Duke claims it cannot produce documents because the word "plan" is undefined, Complainants are referring to Duke's plan to conduct vegetation management on or adjacent to Complainants' properties. To the extent that Duke claims it cannot produce documents because "clear cut" is not defined, "clear cut" means "the removal of or leveling to the ground all trees and vegetation within a specified area." Using those definitions, please produce responsive documents. To the extent that Duke claims that it cannot produce documents because the request does not include time parameters, Duke can produce only those assessments, studies, statistics, surveys, reports, and other documents created in the past five years. With these clarifications, please supplement this response with the production of responsive documents.

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- **CACC-POD-01-009:** Duke's communication with the Complainants in the Second Amended Complaint is relevant to this case and could lead to the discovery of additional admissible evidence. To the extent that Duke claims that it cannot produce documents because the request does not include time parameters, Duke can produce only those communications that occurred in the past five years. With this clarification, please supplement this response with the production of responsive documents.
- **CACC-POD-01-010:** The claim that all Duke's communications regarding its vegetation management plan, practices, and procedures is protected as attorney work product or by the attorney-client privilege strains credulity. Given that attorneys would have no expertise related to trees, vegetation, safety and reliability of electric infrastructure or, or many other issues Duke would presumably consider in determining which vegetation it will remove, the requested communications seem unlikely to be protected by such privileges. Additionally, presumably those determinations and communications would have been done in the normal course of a public utility's business, prior to making such determinations, and prior to the filing of any complaints. Moreover, the communications Duke had in deciding to pursue the vegetation management plans at issue in this case are relevant to the case and could lead to the discovery of additional admissible information. To the extent that Duke claims it cannot produce documents because "clear cut" is not defined, "clear cut" means "the removal of or leveling to the ground all trees and vegetation within a specified area." To the extent that Duke claims that it cannot produce documents because the request does not include time parameters, Duke can produce only those communications that occurred in the past five years. With these clarifications, please supplement this response with the production of responsive documents.

Complainants look forward to discussing these concerns with Duke and/or receiving supplemental discovery responses from Duke in light of the above clarifications.

Sincerely,



Kimberly W. Bojko

cc: Rocco D'Ascenzo

Brian Dressel

From: Brian Dressel
Sent: Thursday, April 12, 2018 1:56 PM
To: 'Bob McMahon'; 'Watts, Elizabeth H'
Cc: Kimberly W. Bojko; Ned E. Dutton; 'Rocco.dascenzo@duke-energy.com'; 'Olive, Emily A.'
Subject: RE: Letter Regarding Duke Responses to Complainants' First Set of Discovery
Attachments: CACC Letter to Duke Regarding CACC First Set of Discovery (718294x833A3)....pdf

Ms. Watts and Mr. McMahon,

It has now been more than three weeks since this letter was sent, and we have not received a response. At this point, can we assume that Duke will not be supplementing or revising the responses discussed in the letter?

Thank you,

Brian W. Dressel
CARPENTER LIPPS & LELAND LLP
Columbus • New York • Chicago
280 Plaza, Suite 1300
280 N. High Street
Columbus, OH 43215
(614) 365-4131
dressel@carpenterlipps.com

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From: Brian Dressel
Sent: Monday, March 19, 2018 4:19 PM
To: Bob McMahon <bmcMahon@emclawyers.com>; Watts, Elizabeth H <Elizabeth.Watts@duke-energy.com>; 'Rocco.dascenzo@duke-energy.com' <Rocco.dascenzo@duke-energy.com>; Olive, Emily A. <Emily.Olive@duke-energy.com>
Cc: Kimberly W. Bojko <bojko@CarpenterLipps.com>; Ned E. Dutton <dutton@CarpenterLipps.com>
Subject: Letter Regarding Duke Responses to Complainants' First Set of Discovery

All,

Attached is a letter to Duke from Kimberly W. Bojko detailing Complainants' objections and concerns with Duke's responses to Complainants' First Set of Discovery Propounded Upon Duke and requesting supplementation of those responses.

Thank you,

Brian W. Dressel
CARPENTER LIPPS & LELAND LLP
Columbus • New York • Chicago
280 Plaza, Suite 1300
280 N. High Street
Columbus, OH 43215

(614) 365-4131
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Exhibit D

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Brian Dressel

From: Bob McMahon <bmcMahon@emclawyers.com>
Sent: Wednesday, April 18, 2018 4:14 PM
To: Brian Dressel
Cc: Kimberly W. Bojko; Watts, Elizabeth H; Olive, Emily A.
Subject: RE: Letter Regarding Duke Responses to Complainants' First Set of Discovery

Brian,

I apologize for the delay in getting back to you, but we do not believe that Duke Energy Ohio, Inc. needs to amend its objections or responses to any of the discovery requests. Therefore, the company stands by such objections and responses.

Regards,

Bob

Robert A. McMahon
Eberly McMahon Copetas LLC
2321 Kemper Lane, Suite 100
Cincinnati, OH 45206
(513) 533-3441 (direct)
(513) 460-5490 (mobile)
(513) 533-3554 (fax)
bmcMahon@emclawyers.com

From: Brian Dressel [mailto:dressel@CarpenterLipps.com]
Sent: Thursday, April 12, 2018 1:56 PM
To: Bob McMahon <bmcMahon@emclawyers.com>; 'Watts, Elizabeth H' <Elizabeth.Watts@duke-energy.com>
Cc: Kimberly W. Bojko <bojko@CarpenterLipps.com>; Ned E. Dutton <dutton@CarpenterLipps.com>; 'Rocco.dascenzo@duke-energy.com' <Rocco.dascenzo@duke-energy.com>; 'Olive, Emily A.' <Emily.Olive@duke-energy.com>
Subject: RE: Letter Regarding Duke Responses to Complainants' First Set of Discovery

Ms. Watts and Mr. McMahon,

It has now been more than three weeks since this letter was sent, and we have not received a response. At this point, can we assume that Duke will not be supplementing or revising the responses discussed in the letter?

Thank you,

Brian W. Dressel
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From: Brian Dressel

Sent: Monday, March 19, 2018 4:19 PM

To: Bob McMahon <bmcMahon@emclawyers.com>; Watts, Elizabeth H <Elizabeth.Watts@duke-energy.com>; 'Rocco.dascenzo@duke-energy.com' <Rocco.dascenzo@duke-energy.com>; Olive, Emily A. <Emily.Olive@duke-energy.com>

Cc: Kimberly W. Bojko <bojko@CarpenterLipps.com>; Ned E. Dutton <dutton@CarpenterLipps.com>

Subject: Letter Regarding Duke Responses to Complainants' First Set of Discovery

All,

Attached is a letter to Duke from Kimberly W. Bojko detailing Complainants' objections and concerns with Duke's responses to Complainants' First Set of Discovery Propounded Upon Duke and requesting supplementation of those responses.

Thank you,

Brian W. Dressel

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Case No(s). 17-2344-EL-CSS

Summary: Motion Citizens Against Clear Cutting's Motion To Compel Discovery electronically filed by Mrs. Kimberly W. Bojko on behalf of Complainants