

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Ms. Megan Addison and Ms. Anna Sanyal,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:05 a.m. on Wednesday,
November 7, 2018.

- - -

VOLUME II

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, 2nd Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481

- - -

APPEARANCES:

Carpenter Lipps & Leland LLP
By Kimberly W. Bojko, Esq.
and Brian W. Dressel, Esq.
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215

On behalf of Complainants, Citizens
Against Clear Cutting.

Duke Energy Business Services LLC
By Elizabeth H. Watts, Esq.
Associate General Counsel
139 East Fourth Street, 1303-Main
P.O. Box 960
Cincinnati, Ohio 45201-0960

Eberly McMahon Copetas LLC.
By Robert A. McMahon, Esq.
2321 Kemper Lane, Suite 100
Cincinnati, Ohio 45206

On behalf of Respondent, Duke Energy
Ohio, Inc.

Bruce J. Weston, Consumers' Counsel
Office of the Ohio Consumers' Counsel
By Terry L. Etter, Esq.
Assistant Consumers' Counsel
65 East Street, 7th Floor
Columbus, Ohio 43215-4313

On behalf of Ohio's Residential Utility
Consumers.

- - -

1	INDEX		
2	- - -		
3	WITNESSES	PAGE	
4	Ron A. Adams		
	Cross-Examination (Continued) by Ms. Bojko	247	
5	Redirect Examination (Continued) by Ms. Watts	342	
	Recross-Examination by Ms. Bojko	388	
6	Recross-Examination by Mr. Etter	401	
7	Tim L. Back		
	Direct Examination by Ms. Bojko	417	
8	Cross-Examination by Mr. McMahon	419	
	Redirect Examination by Ms. Bojko	479	
9	- - -		
10	COMPLAINANTS EXHIBITS	IDENTIFIED ADMITTED	
11	19 - CACC-POD-01-003	I-165	415
12	20 - Ohio Power Company's	I-170	415
13	Commission Requested		
14	Revised Vegetation		
	Management Program,		
15	Case No. 12-3320-EL-ESS		
16	21 - Application of the	I-174	415
17	Dayton Power and Light		
18	Company to Amend its		
19	Transmission and		
	Distribution Inspection,		
20	Maintenance, Repair and		
21	Replacement Programs,		
22	Case No. 14-1771-EL-ESS		
23	23 - CACC-POD-02-002,	I-208	415
24	FAC-003-1		
25	24 - CACC-POD-02-002,	I-211	415
	FAC-003-4		
	25 - CACC-INT-01-004	I-218	415
	26 - CACC-INT-04-027	I-222	415
	27 - CACC-INT-05-004	I-226	415

INDEX (Continued)

- - -

COMPLAINANTS EXHIBITS IDENTIFIED ADMITTED

28 - CACC-INT-01-057 I-240 415

29 - CACC-INT-05-045 255 415

30 - CACC-INT-05-014 257 415

31 - Duke Energy, Transmission
and Distribution Vegetation
Management General
Specifications, 2015 to
2019, Revised 12/18/2017 272 415

32 - Duke Energy's FAC-003
Vegetation Management
Program Document 274 415

33 - Duke Energy Midwest (DEM)
Transmission Technical
Specifications 276 415

34 - ANSI A300 Standards 313 415

35 - Direct Testimony of
Tim Back 417 493

- - -

DUKE ENERGY OHIO EXHIBITS IDENTIFIED ADMITTED

2 - Direct Testimony of
Ron A. Adams I-131 414

- - -

1 Wednesday Morning Session,
2 November 7, 2018.

3 - - -

4 EXAMINER ADDISON: At this time, we'll go
5 back on the record.

6 Good morning, everyone. Today is our
7 second day of hearing. We will dispense with taking
8 appearances this morning.

9 Mr. Adams, I will remind you that you are
10 still under oath.

11 THE WITNESS: Yes, Your Honor.

12 EXAMINER ADDISON: Thank you.

13 Ms. Bojko, you may continue whenever
14 you're ready.

15 MS. BOJKO: Thank you, Your Honor.

16 - - -

17 RON A. ADAMS
18 being previously duly sworn, as prescribed by law,
19 was examined and testified further as follows:

20 CROSS-EXAMINATION (CONTINUED)

21 By Ms. Bojko:

22 Q. Good morning, Mr. Adams.

23 A. Good morning.

24 Q. Could you turn to page 9 of your
25 testimony. I want to clear up something I think we

1 figured out last night.

2 A. Okay.

3 Q. When we left yesterday, we were talking
4 about the voluntary ANSI standard that you reference
5 on page 9, lines 17 to 23 of your testimony. Do you
6 recall that discussion?

7 A. I do, yes.

8 Q. And, sir, just so the record is clear
9 because there's no citation, is it your understanding
10 that this is a definition of "reclamation" from ANSI
11 Standard A300, Part 7 of A300?

12 A. That is correct.

13 Q. And it would be Section 72.10; is that
14 correct?

15 A. I do not have it in front of me. If you
16 need, I can look it up.

17 Q. Subject to check, do you think that --

18 A. It sounds -- it's in the Definitions
19 section of the standard.

20 Q. Okay. Great. Thank you.

21 Now, also on page 9, if you look at lines
22 16 to 17, here you state that you believe that
23 Duke -- or, you're telling me there is a change in
24 philosophy at Duke; is that correct?

25 A. That is correct. Reclamation, we

1 initiated reclamation on these lines.

2 Q. And you would say that, in the past,
3 Duke's plan with regard to these transmission lines
4 could be characterized as vegetation maintenance,
5 right?

6 A. Yes. There's a big difference in what
7 we've done historically as maintenance versus
8 management and that's the whole philosophy of IVM.
9 IVM is -- from a utility vegetation-management
10 perspective, IVM is a much broader preventative
11 approach than just managing clearances. It's
12 managing an ecosystem to mitigate the risk of an
13 outage.

14 Q. And that vegetation management would be
15 what you intend to do going forward; is that correct?

16 A. That is correct. And actually in
17 Mr. Williams' testimony, he filed the Midwest
18 vegetation plan. That is a broader plan and that
19 plan -- actually IVM, that concept was introduced in
20 2013 to the Midwest. So he's -- I think he
21 submitted, in one of the exhibits, the plan for 2017.
22 But if you go back to the objective and purpose in
23 2013, that was when it was actually initiated in the
24 Midwest.

25 Q. Okay. But as far as Ohio, the change in

1 philosophy is now being implemented in Ohio, on a
2 going-forward basis, beginning with the transmission
3 project at issue in this case.

4 A. Not beginning with it. We've already
5 completed 260 miles. We started -- really in my
6 testimony I say '16, but it's really late '15. We
7 started in Indiana in '14.

8 Q. Right. I'm talking about Ohio now. I
9 didn't ask you about the Midwest plan. I'm talking
10 about Ohio. In Ohio, you started --

11 A. The Midwest plan applies to Indiana and
12 Ohio, from my perspective, because I manage both.

13 Q. In your testimony you stated that in Ohio
14 it was around 2016, which is about the time that
15 these transmission projects that are at issue in this
16 case came about, in 2016-'17.

17 A. Yes, that's the bulk of the work.

18 Q. Okay.

19 A. And I will say --

20 Q. There's no question pending, sir.

21 EXAMINER ADDISON: Ms. Bojko, just allow
22 him, if he would like to finish his answer, and then
23 you can --

24 THE WITNESS: Thank you, Your Honor.

25 EXAMINER ADDISON: -- move to strike if

1 you need to.

2 THE WITNESS: Thank you, Your Honor.

3 A. When you look at IVM, it's a strategy and
4 a philosophy. It's an overall strategy. The program
5 that was filed was more practices and procedural and
6 more in alignment with our technical specs.

7 If you look at Mr. Williams' document,
8 2017 is the document he put in his exhibit that
9 actually outlines -- that is a better document that
10 globally covers the overall program.

11 MS. BOJKO: Your Honor, I move to strike
12 everything. I'm not talking about Mr. Williams'
13 testimony. This is great stuff for redirect if
14 that's what Counsel wants to do. I gave him a second
15 bite of the apple, this morning, by not moving to
16 strike his last statement about Mr. Williams'
17 testimony. We're going to be here all day if we
18 elaborate about everybody else's testimony in the
19 room on each question.

20 EXAMINER ADDISON: Thank you, Ms. Bojko.

21 I will grant the motion to strike after I
22 believe Mr. Adams answered "that is correct."

23 Mr. Adams, please listen to Ms. Bojko's
24 questions. You have already used your one bite at
25 the apple, yesterday. I know it's a new day, but my

1 rule still applies.

2 THE WITNESS: Thank you, Your Honor.

3 EXAMINER ADDISON: Ms. Watts can
4 certainly bring up any additional information on
5 redirect.

6 MS. WATTS: And, Your Honor, may I be
7 heard?

8 EXAMINER ADDISON: You may.

9 MS. WATTS: There seems to be some
10 general confusion with respect to the Application the
11 Company filed in 2016 and the program change that the
12 witness is describing, and I think he was only trying
13 to clarify the time differences between those two
14 things.

15 EXAMINER ADDISON: And I respect that,
16 but I think it's more appropriate, if you do think
17 further clarification is needed, to bring that out on
18 redirect.

19 MS. WATTS: Thank you.

20 EXAMINER ADDISON: Thank you.

21 MS. BOJKO: Thank you, Your Honor.

22 EXAMINER ADDISON: Please proceed.

23 Q. (By Ms. Bojko) And one difference between
24 the maintenance that you described in the past and
25 the management you propose today, is that Duke

1 accommodated property owners' desires in the past,
2 and you state that on page 8 of your testimony,
3 correct?

4 A. That is correct.

5 Q. And, Mr. Adams, would you agree with me
6 when I say Duke's prior practices never put the
7 safety and reliability of Duke's transmission system
8 at risk?

9 A. I will say that it put operational risk
10 on us that we had to manage. We had to manage that.
11 When you look at minimum approach distances, it
12 really does three things. And when we were doing
13 that, we were managing that system more like as a
14 distribution system. That's the issue. And we were
15 doing a lot of pruning, but it really puts three
16 things at risk.

17 There's operational risk that we have to
18 do more off-cycle management. We have to stay on our
19 toes with the aerial patrols, the follow-up. If you
20 look at the growth studies, things of that nature, it
21 will show that the growth rates of these trees were
22 pretty rapid. With that minimum clearance, it will
23 be back in the line. Transmission, you don't have
24 trees growing in the line.

25 The second thing is it promotes

1 incompatible species in the right-of-way which
2 requires you to do topping, excessive topping,
3 pruning that is inappropriate and not good for the
4 health of the trees.

5 And the third, it puts our employees at
6 risk from a safety standpoint because they're having
7 to work within minimum approach distance on those
8 lines which, to me, you look at the MVCD stuff that
9 we talked about, to me I'm about protecting people,
10 and I don't want that stuff to get in the minimum
11 approach distance at all. I want barriers between us
12 and an incident.

13 This is considered hazardous work. If it
14 was dangerous, we wouldn't do it, but it's hazardous,
15 and we've got policies and procedures in place to
16 protect people, and that's the core of what we're
17 trying to do here.

18 MS. BOJKO: Your Honor, may I --

19 Were you finished, sir?

20 THE WITNESS: Yes, ma'am.

21 MS. BOJKO: Your Honor, I'd like to mark
22 as Complainants Exhibit 29, Duke's discovery response
23 to CACC-INT-05-045. May I approach?

24 EXAMINER ADDISON: You may, and it will
25 be so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Mr. Adams, did I hand you what's been
3 marked as Complainants Exhibit 29 which is a Duke
4 discovery response to CACC-INT-05-045?

5 A. Yes.

6 Q. Is this a discovery response from Duke,
7 and you are the responsible party for that discovery
8 response?

9 A. Yes, and I did prepare this response.

10 Q. This appears to be a true and accurate
11 copy?

12 A. Yes.

13 Q. In the discovery response that you
14 prepared, does it not say, sir, "Duke Energy Ohio
15 never put the safety and reliability of its
16 transmission system at risk"; is that correct?

17 A. That is true and that's how I answered
18 the question because we managed that risk. We took
19 that risk on and we were taking the burden of having
20 to manage that risk as a utility which is -- is
21 something that is -- I actually empathize with our
22 employees who have to deal with that and manage that
23 off-cycle work all the time and then the employees
24 that have to go out there and work around minimum
25 approach distance. If you recall when we did the

1 follow-up work, we had to ground a lot of those lines
2 in order to safely remove that vegetation this
3 spring.

4 Q. And, sir, you would agree with me that
5 the Commission's rules and regulations -- the
6 Commission -- the Public Utilities Commission's rules
7 and regulations are with regard to the safety and
8 reliability of Duke's system; is that correct?

9 A. That is correct. And that is our
10 responsibility, as a utility, to the Commission, so.

11 Q. And also, sir, when asked just
12 specifically, Complainants asked in this discovery
13 request: "by focusing on non-contentious removals and
14 accommodating individual property owners, it was
15 risking the safety and reliability of Duke's
16 transmission system" and Duke responded "no." Is
17 that correct?

18 A. Yes, we responded "no."

19 Q. Thank you.

20 And isn't it true, sir, that Duke's
21 vegetation management program allows it to do
22 line-clearance work on the transmission facilities
23 every six years?

24 A. That is correct.

25 Q. And you would agree that Duke first

1 approached the Complainants in this case regarding
2 the vegetation on their property in 2017?

3 A. Yes, that is correct.

4 MS. BOJKO: Your Honor, at this time --
5 could I have one minute, Your Honor?

6 EXAMINER ADDISON: You may.

7 We can go ahead and go off the record.

8 (Off the record.)

9 EXAMINER ADDISON: Let's go back on the
10 record.

11 Ms. Bojko.

12 MS. BOJKO: At this time, Your Honor, I'd
13 like to mark as Complainants Exhibit 30, Duke's
14 discovery response to Complainants. It is
15 CACC-INT-05-014. May I approach?

16 EXAMINER ADDISON: You may, and it will
17 be so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. Mr. Adams, do you have in front of you
20 what I have marked as Complainants Exhibit 30 which
21 is a discovery response from Duke for
22 CACC-INT-05-014?

23 A. Yes, I do.

24 Q. And you're the responsible party in this
25 interrogatory; is that correct?

1 A. That is correct.

2 Q. And this is a true and accurate copy of
3 Duke's response?

4 A. That is correct.

5 Q. This interrogatory requested information
6 about the instructions Duke gave to contractors
7 regarding the maintenance of vegetation along the
8 transmission lines at issue in this case, the last
9 time that Duke performed vegetation management along
10 these lines; is that correct?

11 A. That is correct.

12 Q. And in response to those requests, Duke
13 stated "assuming you are talking about work that was
14 performed in 2011, the directive to the crews would
15 have been to remove incompatible trees within the
16 right of way and target six years growth clearance."
17 Is that right?

18 A. That is correct.

19 Q. You would agree that 2011 is six years
20 before 2017?

21 A. That is correct.

22 Q. Let's turn to page 4 of your testimony,
23 sir. Mr. Adams, have you reviewed the easement
24 language for the properties at issue in this case?

25 A. Have I reviewed the easement language?

1 Q. Yes, sir.

2 A. Yes. I've reviewed some, not all of it.

3 Q. Sir, you're not a lawyer; is that
4 correct?

5 A. That is correct.

6 Q. And on page 4 of your testimony, lines 5
7 through 18, here you're not specifically quoting any
8 of the easements that you reviewed, you're just
9 generally speaking about easements; is that correct?

10 A. That is correct. That is my
11 understanding of easements.

12 Q. Of easements generally; not specifically
13 the Complainants' easements.

14 A. Correct.

15 Q. And you mentioned property owners getting
16 paid for easements. Do you see that?

17 A. Can you point me to the row? The line.

18 Q. Sure. Line 12.

19 A. Yes.

20 Q. And do you know whether the Complainants
21 in this case receive payments currently for their
22 easements?

23 A. I do not know, but I don't know how many
24 of them lived there in 1952 because those easements
25 were purchased in 1952.

1 Q. So that's your point, sir, right, that
2 back in 1952, when an easement was originally
3 acquired, that is when the payment is. You're not
4 suggesting that Complainants in this case get ongoing
5 payments for their easements, are you?

6 A. No, not at all. That's why we bought the
7 easements rights back then, was to have the right to
8 use the facilities to build our transmission facility
9 and serve our communities.

10 Q. So then you jump and talk about easements
11 again on page 10. Could you turn there? On page 10,
12 you discuss the easements for Circuit 3881; is that
13 correct?

14 A. That is correct.

15 Q. And do you know what development that is?
16 I may have asked you that yesterday.

17 A. No. I know it's, in general, from Port
18 Union down to Summerside. Generally in that northern
19 Cincinnati area.

20 Q. And, sir, the easements that you're
21 specifically referring to in this section, you didn't
22 enter into any of those easements, I'm assuming; is
23 that correct?

24 MS. WATTS: Objection as to form.

25 A. I'm not sure that I understand your

1 question. You're talking about me personally?

2 Q. Yes, you personally. Did you have
3 discussions with the original property owners and
4 engage and enter into easements?

5 A. No.

6 Q. So you were getting this information,
7 this historic information from someone else at the
8 Company; is that correct?

9 A. That is correct.

10 Q. And did you speak with the Duke employee
11 that originally entered into these easements with the
12 property owners?

13 A. No, I did not.

14 Q. So this is historic information from
15 somebody at the Company that received the historic
16 information from somebody else.

17 A. Yes. It's maintained in our Land
18 Services organization and they maintain all those
19 easements for us.

20 Q. And on page 10, line 14, you state that
21 the trees have grown over several decades with an
22 ever increasing risk to reliability and public
23 safety. Do you see that?

24 A. I do.

25 Q. And you're not stating that Duke has

1 risked safety and reliability over the past several
2 decades, are you?

3 A. No. We've took on more operational risk
4 that we've had to manage, and it's increased our
5 cost, and it puts our employees and contactors at a
6 higher risk because of allowing these incompatible
7 trees in the right-of-way.

8 Q. And you go on to state on page 10, lines
9 13 through 16, that the overgrown, incompatible
10 vegetation took 20-plus years to get to this state;
11 is that right?

12 A. I would -- I would -- yes. And based on
13 the easements probably in the 50s, the ones I did
14 look at, it was probably rural farmland back then.

15 Q. Okay. So let's look at page 15. I want
16 to talk about your use of "incompatible" there. On
17 page 15, you define "incompatible" to mean
18 "vegetation within the rights of way corridor is
19 generally any vegetation that at mature height poses
20 a risk of growing into the power lines." Did I read
21 that correctly?

22 A. Can you point me to the lines, please?

23 Q. It's on page 15; 7 to 8.

24 A. Yes, you did.

25 Q. So if vegetation is not close to the

1 lines, it would be considered compatible under your
2 definition, correct?

3 A. No.

4 Q. There has to be a risk of actually
5 growing into the power lines, correct?

6 A. It's incompatible if it can grow to a
7 height that can contact the line, yes.

8 Q. There has to be a risk of actually
9 growing into the power lines per your definition.

10 A. Well, when you look at IVM and what we're
11 trying to do, it's around safety, reliability, and
12 access. And the piece you're missing there is
13 access. And in that wire zone is when you really
14 want the lower-growing, herbaceous-type shrubbery,
15 things of that nature. I'll just end it there.

16 Because there was a lot of access issues
17 on 3881. Backyards, fences, no access. We ended up
18 putting a lot of gates in just to be able to respect
19 people's yards of not having to go through their
20 yards. We put multiple gates in to be able to go
21 down that easement in order to bring the wood out to
22 the street and do minimal impact to the property
23 owners.

24 Q. Sir, just to be clear, you said I am
25 missing. This isn't my definition.

1 A. Okay, I'm sorry. That's a point that I
2 would add that I think is very important. When you
3 look at IVM, there's three goals: Safety,
4 reliability, and access.

5 Q. I'm focusing on your definition
6 of "incompatible." Are you saying that we need to
7 revise your testimony today --

8 A. No.

9 Q. -- with regard to your definition of
10 "incompatible"?

11 A. No. I'm good with that definition.

12 Q. Okay. So that's what I'm talking about
13 is your definition of "incompatible."

14 Would you agree with me that compatible
15 vegetation, if it doesn't meet your definition, is
16 allowed to remain in the right-of-way?

17 A. Yes, as long as it meets our spec of the
18 wire zone/border zone criteria.

19 Q. Okay. So that's different. Is it
20 "incompatible versus compatible" or "meet your spec
21 of wire zone/border zone"?

22 A. Based on our definition with our
23 specifications and the door hangers, the
24 communication that we were very open with with the
25 property owners, it's our wire zone/border zone. And

1 that's 7-foot in the wire zone, 15-foot in the border
2 zone. Anything that matures above that height is
3 classified incompatible.

4 Q. So the "incompatible" definition is now
5 expanded to include --

6 MS. WATTS: Objection.

7 Q. -- wire zone/border zone; is that --

8 MS. WATTS: Mis --

9 Q. -- correct?

10 MS. WATTS: Objection. Mischaracterizes
11 the witness's testimony.

12 EXAMINER ADDISON: If he feels it
13 mischaracterizes, he can clarify, but I'll allow the
14 question.

15 A. IVM is a program. This is more textbook
16 of the definition of "incompatible." The wire
17 zone/border zone is a practical application of that
18 and it's very consistent with other utility
19 practices.

20 Yesterday, you asked me about
21 FirstEnergy. Theirs is 5-foot in the wire zone.
22 That's the maximum they allow. And they don't allow
23 -- they allow border zone only if the easement is
24 less than 100-foot.

25 So we're very consistent with our

1 application, so I think it's an academic question.

2 MS. BOJKO: Your Honor, I move to strike
3 the discussion of FirstEnergy because he
4 mischaracterizes the evidence that was introduced
5 yesterday which clearly stated that FirstEnergy works
6 on a project-by-project basis, location-by-location
7 basis, and allows trees that have existed for a long
8 period of time to remain.

9 EXAMINER ADDISON: Ms. Watts.

10 MS. WATTS: Ms. Bojko's characterization
11 of the testimony from yesterday is quite different
12 from what we heard and what is in the record, and the
13 witness is just trying to answer the question.

14 EXAMINER ADDISON: Thank you.

15 I will allow the answer to stand. The
16 Commission can certainly verify whether or not
17 Mr. Adams' characterization of FirstEnergy's
18 vegetation management is correct, but I believe you
19 do owe Ms. Bojko a more direct answer to her last
20 question. So may we have that last question.

21 THE WITNESS: Can you repeat the
22 question?

23 EXAMINER ADDISON: Thank you, Carolyn.

24 (Record read.)

25 THE WITNESS: Okay, one more time.

1 MS. BOJKO: Would you like me to clarify,
2 sir?

3 THE WITNESS: Please.

4 MS. BOJKO: I'm happy to clarify, Your
5 Honor.

6 EXAMINER ADDISON: Please. That was a
7 series of questions and we may have lost it.

8 Q. (By Ms. Bojko) So when Duke is making its
9 determination, is Duke focusing on compatible versus
10 incompatible, or is Duke focusing on border zone
11 versus wire zone in its guidelines?

12 A. We are looking for incompatible species
13 according to our specifications.

14 Q. So if a 7-foot ornamental tree would be
15 25 to 30 feet away from the wire, it would be
16 considered compatible, correct?

17 A. A 7-foot tree. Is it in the border zone?
18 If it's in the border zone, it would be, if it does
19 not mature above a height of 15 feet. If it's in the
20 wire zone, we do not allow trees in the wire zone.

21 Q. So even if there is a tree that has no
22 risk of growing into the power lines at a mature
23 height, Duke would remove that tree.

24 A. In the wire zone.

25 Q. So it's not whether it's incompatible or

1 compatible, because that tree has no risk of growing
2 into the power lines under your definition of
3 "incompatible."

4 A. No. I would --

5 MS. WATTS: Objection. Mischaracterizes
6 the testimony.

7 A. No. I would --

8 EXAMINER ADDISON: I'll allow some
9 latitude.

10 A. I would look, and "incompatible
11 vegetation" there's a key word in there which is
12 "generally." You need to look at "generally."

13 Q. So, sir, if there's a tree that is at a
14 mature height of 20 feet, and the lowest line is
15 53 feet, so the tree is 33 feet away from the power
16 line at full maturity and has no possible risk of
17 growing into the power line, would Duke remove that
18 tree as being incompatible?

19 A. Possibly not. And let me tell you, if
20 you look, you should have a copy of our spec, and we
21 talk about leave areas in our spec. Now, in our
22 spec, I think it's on a 345, a leave area is anywhere
23 that a tree will not mature within 35 feet of the
24 conductor at any time.

25 Now, you have to remember this is

dynamic, Your Honor. On a 345, that line can sag 15-, 20-foot during the summer during a hot summer day. So if you're -- and these are in areas that usually are ravines. Like a lot of times you'll have things and particularly in Cincinnati you'll go from hilltop to hilltop across an area. If those lines are tall enough and the vegetation is there on 230 -- 345s, 35; 230s, 25. On the 138 and 69, it's at the discretion of the owner.

And I think that's an area of opportunity where we need to put more specificity, as I look at it, into our spec, to help people in the field make those calls. But it just depends on the parameters. There's a lot of dynamics you have to consider.

Q. Mr. Adams, just so the record is clear, you keep referring to something called a "spec." I want to be clear that you believe that the spec that you are -- not "you believe" -- the spec that you are referencing is what has previously been marked in this case as Complainants Exhibit 6 -- 5 -- Complainants Exhibit 5 which is Attachment E to Mr. Grossi's testimony and it looks like it's a series of documents.

A. No, that is not what I'm referring to.

Q. Okay. Are you referring to this diagram

1 of the wire zone/border zone documents?

2 A. No. Those are all documents we use in
3 the door hanger and communications.

4 Q. Okay.

5 A. What I'm referring to, which you should
6 have a copy in discovery, we gave you our FAC-003
7 program document which governs our NERC lines, 230
8 and above. 200 kV by their rating, but we operate
9 230. We gave you our general and technical specs.
10 We gave you our general specs and we gave you our
11 technical specs. What I'm referring to is the
12 technical specs for our Midwest Transmission
13 Vegetation Management Program.

14 Q. Okay. To you, are "technical specs"
15 FAC-3-1-004?

16 A. No.

17 Q. I don't think there's a "1." I think
18 it's FAC --

19 A. Our technical specs has nothing to do
20 with the NERC standards. Our technical specs is what
21 we give our contractors to execute the work. You
22 should have had those because that was -- that was
23 the information -- that is the information we gave
24 our expert witnesses and we provided all three of
25 those documents around our programs.

1 Q. Okay. Is that called -- is that a Duke
2 vegetation management program?

3 A. No. It's called our technical specs.

4 MS. BOJKO: Your Honor, could we go off
5 the record?

6 EXAMINER ADDISON: Let's go off the
7 record for a moment.

8 (Discussion off the record.)

9 EXAMINER ADDISON: At this time, we'll go
10 back on the record.

11 MS. BOJKO: Thank you, Your Honor.

12 Q. (By Ms. Bojko) I think before the break,
13 Mr. Adams, you had referred to a document called a
14 "spec" and it's my understanding that the document
15 that you are referencing is entitled "Duke Energy
16 Midwest, Transmission Technical Specifications,
17 Applicable to All Vegetation Management Activity,
18 Including Time and Equipment and Planned Vegetation
19 Management, 2015 to 2017." Is that correct?

20 A. That is correct.

21 Q. And, sir, we've also been given two other
22 documents by Duke, and we believe that you referenced
23 all three documents in one of the answers to my
24 questions; is that correct?

25 A. I did.

1 Q. Okay. So let's identify all three
2 documents that you referred to. The first one I'm
3 going to identify is titled "Duke Energy,
4 Transmission and Distribution Vegetation Management
5 General Specifications." Do you have that, sir?

6 A. I do.

7 Q. And that's dated 2015 to 2019, correct?

8 A. Correct.

9 Q. And it says it was revised December 18,
10 2017?

11 A. That is correct.

12 MS. BOJKO: Your Honor, at this time, I'd
13 like to mark that document as Complainants
14 Exhibit 31.

15 EXAMINER ADDISON: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. And, Mr. Adams, you have that document in
18 front of you?

19 A. I do.

20 Q. And from reading this document, it
21 appears to me to read similar to a request for
22 proposal that is given to contractors, and it lists
23 the rights and obligations of contractors if they win
24 the tree-trimming contract; is that fair?

25 A. That is fair.

1 Q. So this document, in and of itself, is
2 more rights and obligations to the contractor.

3 A. That is correct.

4 Q. If you look at page 14 of that document.
5 At the bottom it says "14 of 26." Do you see that?

6 A. I do.

7 Q. I'm going to look at Section 20 called
8 "Specific Trees."

9 A. Okay.

10 Q. In 20.1, this document says "At the
11 Owner's discretion, compatible vegetation should be
12 preserved unless it presents an accessibility issue
13 for the Owner."

14 A. That is correct.

15 Q. Okay. Now I'm going to look -- and then
16 this document also talks, if you look at page 11,
17 Section 15, it talks about herbicides and chemical
18 use; is that correct?

19 A. That is correct.

20 Q. And other than the Specific Trees section
21 which is only consisting of five provisions in
22 Section 20, there are no other instructions with
23 regard to tree-trimming, pruning, or removal of
24 trees; is that correct?

25 A. That appears to be correct. I'd have to

1 flip through just to make sure, but I think that's
2 the only section. I can go back to the outline.
3 Yes, Section 20 is tree-specific.

4 Q. And then if we look at what's been handed
5 to us and it's titled "Duke Energy's FAC-003
6 Vegetation Management Program Document." Do you have
7 that?

8 A. I do.

9 MS. BOJKO: Your Honor, at this time, I'd
10 like to mark Complainants Exhibit 32, a document
11 entitled "Duke Energy's FAC-003 Vegetation Management
12 Program Document."

13 EXAMINER ADDISON: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. And this document doesn't have a date on
16 the cover page, but if you look at the bottom, it
17 appears that it may have been revised in 8/16, so
18 August 2016. Is that your understanding?

19 A. That's probably when it was filed in our
20 Document Management System. If you look on the back,
21 the Document Approval Form, I signed off on it on
22 February 24th of 2016.

23 Q. Okay. Thank you.

24 And let's turn to the second -- well, I
25 guess it's Section 2.0. "Applicability" of this

1 document.

2 A. I'm with you.

3 Q. It says "This FAC-003 Document applies to
4 DE's transmission and generation lines operated at
5 200 kilovolts or higher...."

6 A. Yes. And it continues on. It's just
7 pretty much direct out of the standard.

8 Q. Out of the FAC standard?

9 A. Yes, FAC-003.

10 Q. So it would only apply to lines below the
11 200 kV if they meet the exception that we talked
12 about yesterday.

13 A. You are correct.

14 Q. So this document would not govern the
15 138-kV lines.

16 A. No, but we use the same operational
17 concepts on all our transmission, the 138 and the
18 69s, the 44s, across the enterprise.

19 Q. Okay.

20 A. But it does not govern those voltages.

21 Q. And then let's go to the third document
22 that I referenced before. This is entitled "Duke
23 Energy Midwest, Transmission Technical
24 Specifications" and it's dated 2015 to 2017, and it
25 says on the cover that it was revised February 22nd,

1 2016; is that correct?

2 A. That is correct.

3 MS. BOJKO: Your Honor, at this time, I'd
4 like to mark this document as Complainants
5 Exhibit 33.

6 EXAMINER ADDISON: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. So, Mr. Adams, is it your testimony today
9 that you relied on all three of these documents in
10 drafting your testimony, or that you only relied on
11 the Complainants Exhibit 33, the technical
12 specifications, when drafting your testimony?

13 A. Well, when I drafted my testimony I
14 probably didn't refer to the general specs. It's my
15 operating knowledge of these that I have that I
16 prepared my testimony on. So I don't know that I
17 actually pulled these documents as I wrote the
18 testimony.

19 Q. Okay. And throughout this morning, I was
20 under the misunderstanding of which documents you
21 were referring to when you used the word "spec" or
22 "specs" and --

23 A. And I apologize for that, sorry.

24 Q. My error.

25 You're talking about what's been marked

1 as Complainants Exhibit 33.

2 A. I'm sorry?

3 Q. You were referring to or you were
4 thinking about what's been identified as Complainants
5 Exhibit 33, when you would answer a question and use
6 the word "spec" or "specs."

7 A. When you talk about the "technical spec,"
8 that is correct.

9 Q. Okay. So let's look at the technical
10 specs. If you could turn to page 4 of 13. Actually,
11 I'm sorry, it starts at page 3. There's a
12 Definitions section in this document; is that
13 correct?

14 A. That is correct.

15 Q. And in this Definitions section it does
16 talk about a danger tree; is that correct?

17 A. I see that.

18 Q. In this document there's no discussion of
19 or definition for compatible or incompatible tree; is
20 that correct?

21 A. Not in this definition, but in the spec,
22 itself, they are in Section 5. If you like, I can
23 take you to that section. It's 5.4.4. It says --

24 Q. Wait, wait. There's no question pending.
25 Thank you, sir.

1 MS. WATTS: Your Honor, the witness is
2 trying to answer the question.

3 MS. BOJKO: I asked about the Definitions
4 section, Your Honor.

5 EXAMINER ADDISON: Thank you. Okay. I
6 think it's going to reveal itself in Ms. Bojko's
7 cross-examination as to what definition he's trying
8 to say. Please continue, Ms. Bojko.

9 MS. BOJKO: Thank you.

10 Your Honor, can I have the prior question
11 -- I'm not sure if he answered my question, or I
12 didn't hear it.

13 EXAMINER ADDISON: Sure.

14 Thank you, Carolyn.

15 (Record read.)

16 EXAMINER ADDISON: I think, based on
17 that, I'd like to retract my prior ruling.

18 MS. BOJKO: I'll go there anyway, Your
19 Honor. Thank you.

20 EXAMINER ADDISON: I'm sorry.

21 MS. BOJKO: You're right, that was a
22 poorly-worded question.

23 Q. But my question, the point of my
24 question -- it brings up a point. You took me to
25 5.4.5, sir.

1 A. I said .4, I believe.

2 Q. Look at both. Could you tell me where in
3 this definition -- and I don't need you to read the
4 whole definition -- is the word -- I'm going to ask a
5 very specific question this time.

6 Is the word "compatible" used in either
7 of these sections?

8 A. No.

9 Q. Is the word "incompatible" used in either
10 of these sections?

11 A. No.

12 Q. Sir, if you look at 5.4.4, it says it has
13 what the wire zone is for 69 kV, and then it has what
14 the wire zone is for 230 kV. Isn't it true that it
15 does not specify a wire zone for 138 kV in this
16 section?

17 A. That is correct. Now, in the documents
18 and the door hangers and everything, it does specify
19 that, and I think that was an error in the spec.

20 Q. So now you're saying when you talked
21 about "specs" you're talking about the guidelines
22 that I thought you were talking about previously?

23 A. No. It -- it would be the guidelines.
24 It's actually the illustration that's in the door
25 hanger. It has 69 kV and 138 at 15 feet.

1 Q. But you believe these technical specs is
2 what governs your program, correct?

3 A. Correct.

4 Q. And 138 kV is not in here.

5 A. It is not.

6 Q. Okay. And if you could look at the last
7 sentence of this 5.4.4, it says "Considerations may
8 be given for situations as the Owner deems
9 appropriate"; is that correct?

10 A. That is correct, and Duke Energy would be
11 "the Owner."

12 Q. So there is considerations for exceptions
13 or concessions or changes to the plan.

14 A. There is -- there's special
15 circumstances. But when we execute our specs, we
16 execute to our specs. But that's just a general
17 statement.

18 Q. Can you look at 5.4 --

19 MS. WATTS: Your Honor, with respect to
20 that last question, I think there may be some
21 misunderstanding about what "Owner" means.

22 MS. BOJKO: Your Honor, he defined
23 "Owner." There's no reason for Ms. Watts to try to
24 clarify.

25 MS. WATTS: Could I have the answer read

1 back then, please?

2 EXAMINER ADDISON: You may.

3 (Record read.)

4 MS. WATTS: Thank you.

5 Q. (By Ms. Bojko) Sir, could you go to
6 5.4.5?

7 A. Yes.

8 Q. Here it says that "All trees in
9 maintained areas that have a mature height of more
10 than 7 feet for the wire zone and 15 feet for the
11 border zone shall be removed unless the property
12 owner refuses"; is that correct?

13 A. That is correct.

14 Q. Let's turn page 11 of the technical
15 specs. 5.4.16. It uses the term "no-spray areas."
16 Do you see that?

17 A. I do.

18 Q. And if you go back to the Definitions
19 section, "no-spray area" is actually defined as "Any
20 area within the right-of-way easement that should not
21 have herbicides applied, as designated by agreement
22 between the Owner and property owner"; is that
23 correct?

24 A. That is correct.

25 Q. And it says that these areas, if you go

1 back to 5.4.16, it says these areas "should be marked
2 by the property owner with no-spray signs at a
3 minimum of two points, identifying the beginning
4 point...and ending point...where herbicides will not
5 be applied"; is that correct?

6 A. That is correct.

7 Q. Could you turn now to what's page 12 of
8 this tech spec document. Section 5.5 -- well, let's
9 jump up first.

10 5.4.22. There's a "leave area" that I
11 believe you referenced before in response to my
12 question. A "leave area," is that the area -- a
13 "leave area" is "An area defined by the Owner where
14 fully mature trees will not interfere with the safe
15 and reliable operation of the line, considering all
16 factors of the growing conditions, line design, sag,
17 wind and conductor blowout"; is that correct?

18 A. I don't see the --

19 Q. That's in the Definitions section.

20 A. Oh.

21 Q. I apologize.

22 A. I didn't see it in there.

23 Q. I apologize.

24 A. Yes, that is correct.

25 Q. Okay. In 5.4.22, it says that "if the

1 Contractor encounters a location that has not been
2 maintained previously and has trees of more than
3 24 inches..., the Contractor shall contact the Owner
4 to review...the area"; is that correct?

5 A. That is correct.

6 Q. And then 138 kV is actually noted in this
7 section; is that correct?

8 A. That is correct.

9 Q. So this section applies to 138 kV,
10 correct?

11 A. That is correct.

12 Q. And it says "leave areas may apply"; is
13 that correct?

14 A. That is correct.

15 Q. Then if we go down to 5.5. This is
16 technical specs for voltages above 200 kV; is that
17 correct?

18 A. That is correct.

19 Q. And in 5.5.1, it talks about minimum
20 clearances for voltages above the kV; is that
21 correct?

22 A. It does.

23 Q. And then if you go down, it says -- well,
24 the minimum clearance of a 230-kV line is 25 feet; is
25 that correct?

1 A. That is correct.

2 Q. So then if you go to 5.6, it says these
3 are technical specs for voltages below 200 kV.

4 A. That is correct.

5 Q. And 5.6.1 says there are no technical
6 specs for voltages below 200 kV that differ from the
7 technical specs listed previously; is that right?

8 A. That is correct.

9 Q. I'm completed with this document at this
10 time, Mr. Adams. Thank you.

11 Well, maybe I'm not.

12 Sir, if one of the three documents is
13 inconsistent with the other, which document governs?

14 A. It depends on what voltage that you're
15 at. That 200 kV and above, the FAC-003 governs.

16 Q. Okay.

17 A. Below that, it is the Midwest technical
18 specs because this --

19 Q. Thank you.

20 A. -- is not applicable to voltages below
21 200 kV.

22 Q. And you're talking about the FAC-003,
23 what's been marked as Complainants Exhibit 32?

24 A. Yes.

25 Q. Thank you.

1 Now, let's go back to your testimony,
2 sir. I want to go to page 12 of your testimony. You
3 said something in response to a question I asked
4 before we started talking about the specifications,
5 and I want to go back to that.

6 As I understand your chart on page 12,
7 the bottom line, because I know some people don't
8 have color in the room so I'm going to try to do my
9 "bottom" and "top." The bottom line is green on
10 mine, but the bottom line represents Ohio and
11 Kentucky; is that correct?

12 A. That is correct.

13 Q. And the top line, which is purple on my
14 chart, represents Ohio, Kentucky, and Indiana.

15 A. That is correct.

16 Q. So the only difference between the top
17 line and the bottom line is Indiana.

18 A. That is correct.

19 Q. And on this chart it demonstrates that
20 Indiana's outages increased from 2014 to 2016; then
21 it went back down to 2014 levels, it appears, in
22 2016; and then jumped back up in 2017. Is that
23 correct?

24 A. That is correct.

25 Q. And again, in all of those years, from

1 2014 to present, the top line which includes Indiana
2 is higher than the line that excludes Indiana.

3 A. That is correct.

4 Q. So the difference would be including
5 Indiana.

6 A. Yes, at those voltages.

7 Q. And Indiana was -- excuse me. That's a
8 good point. This chart is describing the 100- to
9 199-kV lines, correct?

10 A. Right.

11 Q. And in Indiana, you stated before the
12 break, you said that in Indiana, the IVM program
13 started in Indiana in 2014; is that correct?

14 A. The reclamation program. IVM actually
15 started -- I was given -- in 2010, December 2010, I
16 became General Manager of the Carolinas and Midwest.
17 And when I got introduced here, there was a lot of
18 tree topping, inconsistent herbicide. And with tree
19 topping, that's very inconsistent to the industry
20 best practices. Tree topping underlines, it creates
21 a witch-broom effect where trees grow aggressively.

22 So that -- 2011 was when we first
23 introduced the IVM concept. 2012 was when we
24 introduced the wire zone/border zone. 2013 was when
25 we changed the program document that Mr. Williams has

1 put into the exhibit. So it's kind of a continuous
2 journey as we develop the program. And that goes
3 back to my testimony earlier about the system
4 forester who oversees those program documents. So
5 it's kind of grown out over time.

6 MS. BOJKO: Your Honor, I move to strike
7 everything after "when I got here" was where he
8 started. I specifically asked him when the IVM
9 program started in 2014, not anything about canopies,
10 tree topping, Mr. Williams' testimony.

11 MS. WATTS: Could we have the answer read
12 back, please?

13 EXAMINER ADDISON: You may.

14 (Record read.)

15 MS. WATTS: So, Your Honor, the answer is
16 absolutely responsive to the question because IVM is
17 not a specific document or program that's embodied in
18 one particular piece of specification or anything.
19 IVM is an overall program that's grown in the Company
20 since Mr. Adams took his role as General Manager; so
21 he's describing how that program developed and
22 answering the question as best he can.

23 EXAMINER ADDISON: Thank you. I'm going
24 to deny the motion to strike this time. I also found
25 the timeline to be quite helpful in keeping

1 everything straight, so.

2 MS. BOJKO: Thank you, Your Honor.

3 EXAMINER ADDISON: Thank you.

4 Q. (By Ms. Bojko) So you started to answer
5 my question, you said the reclamation project. So I
6 understood your testimony before the break correctly
7 that, in 2014, you started the reclamation project,
8 you're clarifying not the whole IVM, but you started
9 the reclamation project in 2014, correct?

10 A. On the lower-voltage lines, 138, 69, in
11 Indiana, that is correct.

12 Q. Okay. Thank you.

13 Now let's go back to your statement on
14 page 10, lines 13 to 16. Again, this is the section
15 that you're talking about "overgrown, incompatible
16 vegetation" that "took 20 plus years to get to this
17 state and it will take several years to convert the
18 transmission rights of way...to compatible vegetation
19 such that it can safely coexist with the transmission
20 lines." Do you see that?

21 A. I do.

22 Q. You're saying that these lines are so
23 overgrown that safety and reliability has been in
24 jeopardy for the past 20 years; is that correct?

25 A. It puts more -- I'll go back to the

1 answer I've had before. It puts more operational
2 risk on our folks that manage the programs. Our
3 expert witnesses will testify that the conditions of
4 those lines out there are abnormal compared to other
5 industry utilities. Those lines have been managed
6 like a distribution line and not like a transmission
7 line.

8 MS. BOJKO: Your Honor, may I have that
9 response read back?

10 EXAMINER ADDISON: You may.

11 (Record read.)

12 MS. BOJKO: Your Honor, at this time,
13 could we allow the record to reflect that I'm going
14 to hand the witness what has been previously marked
15 as Attachment F to Ms. Wiethorn's testimony which was
16 marked as Complainants Exhibit 14, as well as
17 Attachment D to Mr. Gump's testimony which was
18 previously marked as Complainants Exhibit 6. May I
19 approach?

20 EXAMINER ADDISON: You may.

21 Q. Let's look at the one that's called "Gump
22 - Attachment D." The one that has a swimming pool
23 right under the transmission lines.

24 A. I see that.

25 Q. So if you look at these aerial

1 photographs that appear to be taken -- were taken by
2 a drone is the testimony of Mr. Gump, and if you turn
3 to page 2, you can see the transmission lines over
4 top of the swimming pool. You can see grass right
5 under the lines as well as some trees. But this is
6 what you're talking about when you say that these
7 lines are so overgrown that a truck couldn't access
8 them or that they're interfering with the wires
9 somehow?

10 MS. WATTS: Objection. Mischaracterizes
11 the witness's testimony.

12 EXAMINER ADDISON: I'll allow him to give
13 his opinion as to these pictures, but I will allow
14 him additional latitude.

15 MS. BOJKO: Your Honor, I was asking if
16 this is what he's referring to.

17 EXAMINER ADDISON: Thank you.

18 MS. WATTS: This is one particular
19 property. It's not --

20 EXAMINER ADDISON: And he can -- he can
21 make a note of that in his answer, so.

22 A. Yes. This -- as you look down the line,
23 you can see the incompatible vegetation that's in the
24 right-of-way all the way down, and particularly that
25 stuff that's directly under the line and things of

1 that nature.

2 Q. So would Duke make an exception for the
3 swimming pool in this case?

4 A. Actually, the swimming pool, according to
5 our asset protection guidelines, should not be there.
6 That's a concern. When I look at these pictures, the
7 first place I go is looking for safety issues, pools,
8 swing-sets, things of that nature. That's a concern.

9 Q. Because a swing-set is -- do you know the
10 height of these wires?

11 A. I do not.

12 Q. So would you be surprised that the height
13 these wires sag is about 53 feet?

14 A. I do not know. I don't have any
15 information about -- there's a lot of factors that go
16 into that. It depends on a lot of engineering
17 parameters, the tensions of the lines.

18 Q. So you believe a swing-set would reach to
19 the level of the wires that would become
20 incompatible?

21 A. No, ma'am. When I see swing-sets, I
22 think of children playing and climbing trees, and
23 that's the first red flag that goes to me.

24 Q. So every swing-set has a tree by it?

25 A. Not every swing-set, but I look for them.

1 Q. And if you look at Attachment F,
2 "Wiethorn" it's called, and look at her drone aerial
3 photos. Do you see --

4 A. Which picture are you on? The first one?

5 Q. Yes.

6 A. Okay.

7 Q. Do you see the direct line of sight to
8 the tower?

9 A. I do.

10 Q. And do you see the easement that looks to
11 be -- there's a grass area, there's some trees on the
12 left side, and then you see a small building
13 underneath the tree. Do you see that?

14 A. I do.

15 Q. Do you know the height of that structure?

16 A. I do not. I would only speculate from
17 the picture. Pictures can be deceiving.

18 Q. Okay. So it looks to be about 10-feet
19 high? Do you know?

20 A. I would take your word for it.

21 Q. Okay. Does it look like the tree on the
22 right is about the same height as the building?

23 A. It does. It's close. It's a little
24 taller.

25 Q. From this, does it appear that these

1 small, ornamental Pine trees are anywhere close to
2 the lines?

3 A. From this picture, no.

4 Q. Let's turn to -- I'm sorry, these
5 pictures aren't numbered. If you go to the fourth
6 photo.

7 EXAMINER ADDISON: Which attachment are
8 you in?

9 MS. BOJKO: I'm sorry. I'm still in
10 Wiethorn's.

11 EXAMINER ADDISON: Thank you.

12 Q. And I think this is taken from the other
13 direction. If you look down to the front of the
14 document, you see the small ornamental Spruce to the
15 left that was the same height as the building and
16 then you see the other three Pine trees. Do you see
17 that?

18 A. To the left or to the right of the
19 picture?

20 Q. Well, it looks like there's two of those
21 little White Spruces on both sides of the three
22 taller ones in the middle.

23 A. Okay. I see one down at the bottom.

24 Q. There's one that's almost cut off at the
25 edge to the right and then there's one on the left

1 that's directly in the middle of the lines.

2 A. Yeah, I see that.

3 Q. And do those trees appear to be anywhere
4 reaching or close or be able to have a limb that
5 grows into the wires?

6 A. They do not, but I don't know what
7 species they are and what their height at maturity
8 would be.

9 Q. Okay. If you turn -- go down -- well,
10 shoot.

11 A. Do you want me to go from the back?

12 Q. The seventh page which is 1, 2, 3, 4 from
13 the back. Here's the barn. An angle from the barn
14 -- or the shed that we were referencing in the last
15 picture. Does that seem to be true?

16 A. Yes.

17 Q. Okay. Could I direct your attention to
18 page 5 of your testimony, please, sir?

19 A. Sure.

20 Q. Page 5 of your testimony, lines 6 through
21 11, here's where you say "some of the easements in
22 Ohio." Are you referring to the Complainants'
23 easements or just easements in general in Ohio?

24 A. Just easements in general.

25 Q. So you're not talking about easements

1 concerning the transmission lines at issue in this
2 case.

3 A. I would say they are very close though,
4 the wording. I think it was paraphrased from those.

5 Q. Okay. And in this paraphrasing you
6 state, "As an example, some of the easements in Ohio
7 state that the Company has the right to cut, trim or
8 remove any trees, overhanging branches or other
9 obstructions both within and without the limits of
10 the easement which in the opinion of the Company's
11 engineers and other subject matter experts may
12 endanger the safety of or interfere with the
13 construction, operation or maintenance of the
14 system." Did I read that correctly?

15 A. You did.

16 Q. That's the language in your testimony.

17 A. Yes. And that is close to the language
18 that's in the easements.

19 Q. Okay. Do you know which easement
20 contains the words "in the opinion of Duke's
21 engineers and other subject matter experts"?

22 A. I don't know property by property, but I
23 do know that was common language in the easements
24 here in Ohio.

25 Q. Okay.

1 MS. BOJKO: Your Honor, at this time, I
2 would ask that the record reflect that I will be
3 handing the witness what's been previously marked as
4 Attachment A to Mr. Grossi's testimony which was
5 Complainants Exhibit 5.

6 EXAMINER ADDISON: Thank you.

7 MS. BOJKO: May I approach?

8 EXAMINER ADDISON: You may.

9 Q. Does this appear to be one of the
10 easements or similar to one of the easements that you
11 reviewed?

12 A. It does, yes.

13 Q. And if you look under what is -- there's
14 stamps in the middle of the easements, two rectangle
15 boxes. Do you see that?

16 A. I do. I may have trouble reading the
17 font with my readers. It's a little small.

18 Q. And the easement would be on file at,
19 like, the Recorder's Office, attached to the
20 property; is that correct?

21 A. That is correct.

22 Q. And under the stamps is where the
23 language talks about the easement provides that the
24 company may cut, trim. Do you see those words, sir?

25 A. I do.

1 Q. It says it may cut, trim or remove any
2 trees, overhanging branches or other obstructions
3 both within and without the limits of the easement
4 which in the opinion of the Company's engineers -- so
5 far that's verbatim from what you put in your
6 testimony; is that correct?

7 A. That is correct.

8 Q. Which in the opinion of the Company's
9 engineers may endanger the safety of or interfere
10 with the construction, operation and maintenance of
11 said system; is that correct?

12 A. That is correct.

13 Q. So this easement does not add the phrase
14 "other subject matter experts" that you added in your
15 testimony; is that correct?

16 A. That is correct.

17 Q. And except for your addition of "other
18 subject matter experts," the rest of the language is
19 identical.

20 A. I believe you're correct.

21 Q. So would you agree, per this easement,
22 Duke is allowed to cut, trim or remove trees?

23 A. Yes.

24 Q. And it doesn't talk anything about other
25 vegetation; is that correct?

1 A. It does not say "vegetation." It
2 specifically says "trees."

3 Q. And in your line of work, implementing
4 the plan, "trees" and "vegetation" mean different
5 things to you?

6 A. "Vegetation" is a broader term. "Trees"
7 fall under "vegetation."

8 Q. And the Company often distinguishes trees
9 from other vegetation; is that fair?

10 A. It is fair.

11 Q. And you would agree that the Company has
12 to -- under this easement, you would agree that the
13 Company has to make a determination that the tree,
14 overhanging branch or other obstruction may endanger
15 the safety or interfere with the construction,
16 operation or maintenance of the system prior to
17 trimming or removing; is that correct?

18 A. That is correct.

19 MS. BOJKO: Your Honor, at this time, I
20 would like the record to reflect that I will be
21 handing the witness what's been previously marked as
22 Attachment A to Mr. Vonderhaar's testimony which was
23 admitted as Exhibit 16. May I approach, Your Honor?

24 EXAMINER ADDISON: You may.

25 Q. Does this appear to be another easement

1 on a Complainant's property, sir?

2 A. It does.

3 Q. If I could direct your attention to the
4 third full -- and this easement appears to be
5 different than Mr. Grossi's easement; is that
6 correct?

7 A. Its format appears different.

8 Q. If you could look at the third paragraph,
9 the third full paragraph, beginning with the word
10 "Together."

11 A. I see that.

12 Q. Okay. In that provision, the easement
13 provides that the Company may cut, trim or remove any
14 trees, overhanging branches or other obstructions
15 both within and without the limits of the easement
16 which in the opinion of the Company's engineers may
17 endanger the safety of or interfere with the
18 construction, operation and maintenance of said
19 system, correct?

20 A. Correct.

21 Q. And that provision also does not say
22 anything about other subject matter experts, correct?

23 A. That is correct.

24 Q. And again, the language appears to be
25 identical to that of your testimony, except for the

1 fact that you included "other subject matter
2 experts."

3 A. Yeah. I paraphrased it.

4 Q. So you paraphrased it? Does it not say
5 Company's engineers and only Company's engineers?

6 A. Well, when you use the term "engineers,"
7 that's a broad term. I'm a professional engineer; a
8 licensed engineer. There are sanitation engineers.
9 There's custodial engineers. A lot of companies have
10 -- I would advocate that our vegetation management
11 folks are right-of-way engineers. They are trained
12 specifically to go out and do those assessments.

13 Q. But the easement says, it says Company's
14 engineers so it would include all of those types of
15 engineers you just referenced, right?

16 A. I -- I didn't speak to the person that
17 wrote the easement.

18 Q. Right.

19 A. And I do not know what their intent was
20 with the "engineers." "Engineers" is a broad term.

21 Q. Fair enough, but in your paraphrasing you
22 used the words "Company's engineers"; is that
23 correct?

24 A. Well, I paraphrased right out of it and
25 added subject matter experts because --

1 Q. Right. So you cut and pasted the exact
2 language, but then added --

3 MS. WATTS: Your Honor, the witness was
4 not finished answering the question.

5 MS. BOJKO: Sorry.

6 EXAMINER ADDISON: Thank you.

7 Please finish answering, Mr. Adams.

8 THE WITNESS: Well, I kind of lost my
9 train of thought there. I'm sorry.

10 EXAMINER ADDISON: Then we'll continue.

11 Q. (By Ms. Bojko) So you cut and pasted the
12 exact language that is identical in these two --

13 MS. WATTS: Your Honor, I object with
14 respect to the term "cut and pasted." That's not
15 what the witness testified to.

16 MS. BOJKO: Well, Your Honor, I was not
17 even finished with my question.

18 EXAMINER ADDISON: Allow Ms. Bojko to
19 finish her question.

20 MS. BOJKO: I'll rephrase, Your Honor.

21 EXAMINER ADDISON: Thank you.

22 Q. (By Ms. Bojko) You took the language and
23 copied it verbatim from these two easements, except
24 you inserted the words in the middle of the paragraph
25 "or other subject matter experts"; is that correct?

1 A. That is correct because, after seven
2 decades of things, things change in the industry.

3 Q. Okay. So you're saying these easements
4 are no longer valid because things change in the
5 industry?

6 A. No, no. I'm saying that -- I find your
7 questioning very interesting because you hired, I
8 think, an arborist to go out and do your assessments.
9 Did you not hire an engineer when your expert went
10 out and did some assessments?

11 MS. BOJKO: Your Honor, I think I'm
12 asking the questions here.

13 THE WITNESS: Okay. My --

14 MS. BOJKO: I think my --

15 EXAMINER ADDISON: Yes.

16 THE WITNESS: -- apologies.

17 MS. BOJKO: My arborist --

18 EXAMINER ADDISON: I think we're both --
19 I think we're both talking over each other. So if we
20 could just take a moment, after he finishes his
21 answer before you start your question, and after she
22 finishes her question before you start your --

23 THE WITNESS: Yes, Your Honor.

24 EXAMINER ADDISON: -- answer.

25 THE WITNESS: Thank you.

1 EXAMINER ADDISON: To make sure everyone
2 is being --

3 MS. BOJKO: I'm --

4 EXAMINER ADDISON: -- thorough.

5 MS. BOJKO: Sorry.

6 EXAMINER ADDISON: Thank you.

7 Q. (By Ms. Bojko) Mr. Adams, I'm focusing on
8 the legal easement language that you have referenced
9 in your testimony. Does it or does it not include
10 "other subject matter experts"?

11 A. It does not.

12 Q. Thank you.

13 Let's turn to page 5 of the document.
14 Actually, it has a No. 14 but I don't think you can
15 see it on the copies, so it's page 5 of the document.
16 It's another Grant of Easement. Are you there?

17 A. I am.

18 Q. And this one appears to be different for
19 a different piece of property; is that correct?

20 A. It appears to be.

21 Q. Okay. In this Grant of Easement, there
22 are two smaller square stamps in the middle. Do you
23 see that?

24 A. I do.

25 Q. And under those two smaller squares -- so

1 this one appears to be different than the one we
2 looked at for Mr. Grossi as well; is that correct?

3 A. It appears to be. I can't read the
4 language. It's very difficult to read. I can't make
5 it out.

6 Q. Well, you can tell -- so if you look at
7 the top, it says Lloyd and Ethel Miller; is that
8 right?

9 A. I see that.

10 Q. The property owner presumably back in
11 1950?

12 A. August 1950, yeah.

13 Q. And then if you look at the other
14 easement that we gave you from Mr. Grossi, it says
15 Ella Rempler; is that correct?

16 A. It does. October 1950.

17 Q. So they appear to be different easements
18 for different pieces of property.

19 A. Appears to be.

20 Q. And in this easement, if you look in the
21 middle of the page, underneath the stamps, it also
22 reads the same way and says the Company may cut,
23 trim, or remove any trees, overhanging branches or
24 other obstructions both within and without the limits
25 of the easement which in the opinion of the Company's

1 engineers may endanger the safety or interfere with
2 the construction, operation and maintenance of said
3 system, correct?

4 A. I take your word for it. I can't read
5 it. It's such a blurred copy.

6 Q. And similar to the other two easements
7 we've been talking about, you wouldn't expect to see
8 "other subject matter experts" in that easement
9 language, would you?

10 A. No, not in these easements.

11 Q. And similar to the other two easements,
12 you would agree that, per the easement, Duke is
13 allowed to cut, trim or remove trees, subject to
14 making a determination that the tree, overhanging
15 branch or obstruction may endanger the safety or
16 interfere with the construction, operation or
17 maintenance of the system; is that correct?

18 A. That is correct.

19 MS. BOJKO: Your Honor, at this time --
20 hold on to Mr. Vonderhaar's.

21 THE WITNESS: That's the one we were just
22 looking at?

23 MS. BOJKO: Yes, sir.

24 THE WITNESS: Okay.

25 MS. BOJKO: We're going to come back to

1 that, but first I want to take you to another
2 document that's been previously marked. Your Honors,
3 this was marked previously as Attachment B to
4 Mr. Grossi's testimony, Complainants Exhibit 5. May
5 I approach?

6 EXAMINER ADDISON: You may.

7 Q. Sir, this appears to be a discovery
8 response from Duke and it's responding to
9 CACC-INT-01-018; is that correct?

10 A. Yes.

11 Q. And you, sir, are the responsible party?

12 A. That is correct.

13 Q. In this discovery request, Complainants
14 asked if Duke's engineers have assessed every tree
15 that Duke intends to remove on Complainants'
16 properties; is that correct?

17 A. That is correct.

18 Q. And in response to that request, you or
19 Duke responded "No"; is that correct?

20 A. That is correct. And I responded based
21 on the term "engineers" in that respect.

22 Q. Let's go back to Attachment A to
23 Mr. Vonderhaar's testimony that you have in front of
24 you which, for the record, was Complainants
25 Exhibit 16. Let's turn to page 3 of this document.

1 This is a letter from Cincinnati Gas &
2 Electric Company which was the predecessor or one of
3 the predecessors to Duke Energy; is that correct?

4 A. That is correct.

5 Q. And this letter appears to be regarding
6 the Montgomery Farms subdivision; is that correct?

7 A. Yes, I see that.

8 Q. And does this letter from Duke's
9 predecessor explain that structures are not to be
10 installed in the easement?

11 A. It does.

12 Q. And does this letter to the developer say
13 anything about trees and whether trees may be in the
14 easement?

15 A. I do not see anything about trees.

16 Q. And let's turn to page 25 of your
17 testimony, sir. On 25, you again jump back to
18 talking about easements, and this time we are at
19 lines 14 through 16. Do you see that, sir?

20 A. I do.

21 Q. And here you say that "All of the work,
22 to date, has been consistent with the Company's
23 easements." Do you see that?

24 A. I do.

25 Q. Again, you're not a lawyer, sir.

1 A. I'm not a lawyer, so --

2 Q. So you're not --

3 A. -- I'm only offering my opinion on these
4 questions you ask me.

5 Q. So you're not drawing a legal conclusion;
6 is that correct?

7 A. That is correct.

8 Q. And isn't it true, sir, that you haven't
9 read every single easement on every piece of property
10 that's at issue in this case?

11 A. That's true.

12 Q. And in drawing your conclusion, it's true
13 that you didn't assess each property in making that
14 conclusion; is that correct?

15 A. That is true.

16 MS. BOJKO: Your Honor, may we go off the
17 record?

18 EXAMINER ADDISON: Let's go off the
19 record for a moment.

20 (Discussion off the record.)

21 (Recess taken.)

22 EXAMINER ADDISON: Let's go ahead and go
23 back on the record.

24 Ms. Bojko.

25 MS. BOJKO: Thank you, Your Honor.

1 Q. (By Ms. Bojko) Mr. Adams, I want to take
2 you back to the ANSI standards that you reference on
3 page 9. I know we talked a little bit about this
4 yesterday, but just to lay some foundation. These
5 standards are voluntary, correct?

6 A. That is correct.

7 Q. And they are standards generated by an
8 association, not by a Federal or State agency,
9 correct?

10 A. That is correct.

11 Q. And the standards are not mandatory
12 standards that have been issued by NERC, FERC, or the
13 PUCO.

14 A. No. But as I mentioned yesterday, NERC
15 does note that ANSI A300 is a best practice in their
16 standard.

17 Q. And this ANSI standard you've been
18 referencing to what I think has been titled Part 7;
19 is that correct?

20 A. Part 7 is integrated vegetation
21 management. That's basically where, in my opinion,
22 most of this lies.

23 Q. Okay. But there are 10 parts to this
24 association's --

25 A. There's --

1 Q. -- standards.

2 A. There's a lot of parts. I think 10 is
3 correct, yes.

4 Q. And --

5 A. The focus we've had here has been
6 integrated vegetation management.

7 Q. Sure. These standards are about tree
8 care operations; is that correct?

9 A. That is correct.

10 Q. And are you aware, sir, that these
11 standards state in the standards that they may be
12 revised or withdrawn at any time?

13 A. I was not aware. It's probably in the
14 preface or forward there somewhere. I'd have to find
15 that.

16 Q. And the scope of the standards, A300, the
17 standards state that the scope is to provide
18 voluntary performance standards for the care and
19 management of vegetation; is that right?

20 A. I believe you're correct.

21 Q. So it's intended to guide the work
22 practices.

23 A. Yes. Programs, strategies, work
24 practices; the whole programs.

25 Q. And the standards themselves specifically

1 say that they're not work specifications in and of
2 themselves, correct?

3 A. I would have to -- I think you're reading
4 right from the standards, so I would think that would
5 be correct, because each utility will have to develop
6 their own standards and work practices. That's more
7 the practical operation application level.

8 Q. And these standards also discuss proper
9 pruning and trimming techniques; is that correct?

10 A. Yes.

11 Q. And proper soil management and planting
12 and transplanting trees, correct?

13 A. I believe that's correct.

14 Q. So these are 10 parts about a variety of
15 tree and vegetation management, care and maintenance;
16 is that fair?

17 A. That is fair.

18 Q. Does Duke follow all of these standards?

19 A. Not all of them are applicable to what we
20 do, but Part 1, the pruning, typical. Part 7 is a
21 core component. Part 7 is the big component of our
22 program. That's kind of where I was talking about
23 the change here in the Midwest, when I got involved,
24 was rolling out that integrated vegetation management
25 strategy. But saying that we dot the I's, cross the

1 T's on every bit of those, I --

2 Q. Well, let's --

3 A. -- do not know. I wouldn't think so.

4 Q. I apologize.

5 Let's talk about, then, each of the
6 standards. There's a part regarding tree
7 conservation. Does Duke promote tree conservation?

8 A. I'm not familiar with that standard, that
9 part of it, so I cannot speak to what's relevant in
10 that standard in Duke's program.

11 Q. So there's a part called restoring
12 plants.

13 MS. WATTS: Your Honor --

14 Q. Does Duke practice that?

15 MS. WATTS: -- if we're going to continue
16 down this path with this particular document, it
17 might be helpful if the witness were permitted to
18 have the document in front of him.

19 EXAMINER ADDISON: We should afford the
20 witness the same courtesy that we took some time to
21 review some earlier publications, so if --

22 MS. BOJKO: Your Honor, I'm not reviewing
23 any document. I'm looking at my written questions.

24 EXAMINER ADDISON: And that's fine, but I
25 think for his purposes he would feel more comfortable

1 having the actual standard in front of him while he's
2 answering your questions.

3 MS. BOJKO: Your Honor, we were only
4 provided Part 7 and 9. I don't have all of the
5 standards. What I do have that might be helpful,
6 it's just what I'm reading, is a list of the parts,
7 if that's --

8 EXAMINER ADDISON: That's a good start.

9 MS. BOJKO: Okay. I don't have all of
10 the standards, Your Honor. It's a subscription-based
11 service.

12 Okay. So then I guess for ease, Your
13 Honor, we can mark this as Complainants Exhibit 34.

14 EXAMINER ADDISON: It will be so marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. (By Ms. Bojko) Mr. Adams, I handed you
17 what's been marked as Complainants' Exhibit 34 just
18 to assist our discussion. Does this appear to be a
19 print-off of the ANSI's internet list of A300
20 standards?

21 A. It appears to be.

22 Q. Okay. You can see on this document that
23 the parts are listed, there's 10 parts.

24 A. I do.

25 Q. Okay. There's some general information

1 about the different parts. Then if you turn to --

2 MS. BOJKO: Your Honor, I'm sorry, these
3 pages aren't numbered.

4 Q. It would be called "Part 1 - 2017
5 Pruning." It's probably about 15 pages back. It's 1
6 of 5, and I think we're at about the third 1 of 5.

7 A. Is this it? Part 1?

8 Q. Yes.

9 Here, sir, does it say the pruning
10 standards recognize certain pruning objectives and
11 this would include branch and trunk architecture?

12 A. That is correct.

13 Q. And if you turn the page, does it also
14 state that the standard is to provide appropriate
15 clearances?

16 A. That is correct.

17 Q. And to do that, you would manage size or
18 shape?

19 A. Based on this.

20 This -- this was developed with some
21 early development with Dr. Shigo and proper pruning
22 techniques and things of that nature. This -- this
23 is broader than just utilities.

24 Q. Well, all of these standards are broader
25 than just utilities; isn't that correct?

1 A. That is correct. That's why I go back
2 to, in a utility program what we really focus on are
3 Part 1, Part 7, and Part 9. Part 9 is recently new.
4 So those are the ones that are really part of our
5 utility program.

6 Q. And the standards set forth the promotion
7 of healthy growth of trees and vegetation; is that
8 correct?

9 A. Yes.

10 Q. And they would also improve aesthetics as
11 you can see on this page?

12 A. Yes.

13 Q. And managing the size and shape of
14 vegetation?

15 A. Yes.

16 Q. And this one also says manage the
17 production of fruit and flowers and other vegetation
18 products?

19 A. Yes. I'm familiar with these, but not --
20 I don't know every word on it, but yeah, the purpose
21 and objective.

22 Q. Sure. And if you turn to the next set of
23 1 through 5 pages, it's called "Part 2," and that
24 Part 2 is soil management; is that correct?

25 A. That is correct.

1 Q. And so, in the soil management it talks
2 about managing that soil loosening and managing soil
3 erosion, correct?

4 A. Based on what appears here. I'm not as
5 familiar with Part 2. I would not say I'm an expert
6 on Part 2.

7 Q. Okay. And would it be fair to say that
8 the ANSI standards also recommend and support the use
9 of growth regulators?

10 A. I know there's references, in several
11 industry documents, about growth regulators.

12 Q. So you would assume that that would be
13 part of the ANSI standards?

14 A. ANSI -- I know TCIA, UAA, other documents
15 in ANSI. It's referenced in the A300 documents, yes.

16 Q. So, sir, am I understanding your
17 testimony correctly that Duke would select standards
18 from the different parts to apply to its vegetation
19 management? It doesn't apply all of these standards.

20 A. We do not apply all of these, no; that is
21 correct.

22 Q. I'm finished with the ANSI document.
23 Thank you, sir.

24 A. Thank you.

25 Q. On page --

1 EXAMINER ADDISON: I'm sorry, Ms. Bojko.
2 I just want to make sure that the record is clear.

3 This is not the actual ANSI A300 standard
4 that we looked at that's been marked as Complainants
5 Exhibit No. 34, correct?

6 THE WITNESS: Your Honors, what we
7 submitted was Part 7, which is the integrated
8 vegetation management standard, and Part 9, the tree
9 risk assessment.

10 EXAMINER ADDISON: And I understand that,
11 but the document that we just reviewed that Ms. Bojko
12 handed you that's been marked as Complainants
13 Exhibit No. 34, that is not the actual ANSI A300
14 standard.

15 THE WITNESS: No, it is not. It's a
16 summary.

17 EXAMINER ADDISON: Just a summary. An
18 outline of the different parts and objectives,
19 correct?

20 THE WITNESS: Yes, ma'am.

21 EXAMINER ADDISON: Okay. I just wanted
22 to make sure the record was clear.

23 MS. BOJKO: Your Honor, it's an executive
24 summary that's available on the website by TCIA --

25 EXAMINER ADDISON: Thank you very much.

1 MS. BOJKO: -- which is the association
2 that publishes the standards. It's tcia.org.

3 EXAMINER ADDISON: Thank you. I didn't
4 want anyone to think that we were actually looking at
5 the standard.

6 MS. BOJKO: Exactly.

7 EXAMINER ADDISON: Thank you.

8 Q. (By Ms. Bojko) Let's turn to page 4 of
9 your testimony, sir. You were responsible for the
10 development of Duke's current transmission vegetation
11 management program and strategy; is that accurate?

12 A. That is correct.

13 Q. And you participated directly in the
14 process of developing that strategy.

15 A. For the IVM program, our recent merger in
16 2013, when we merged with Progress Energy, that was a
17 huge merger, and bringing in what was the Carolinas
18 East and our Florida operations in, we stood back and
19 revamped our whole look and developed -- and that's
20 when we really started pulling all the IVM strategy
21 together and the documentation and stuff, yes.

22 Q. So, I'm sorry, 2013, is that when you
23 said?

24 A. 2013, I think, was when the merger
25 closed. I'm thinking that's correct. It was in that

1 time frame.

2 Q. Okay.

3 A. And that's --

4 Q. And --

5 A. That's the most-current as I gave the
6 timeline before of introducing the IVM in the Midwest
7 but, as I've stated, it's a continuous process as we
8 grow. And as industry standards, best practices,
9 research, other factors comes into play, it increases
10 our knowledge.

11 Q. On page 8 of your testimony, you state
12 that Duke did previously accommodate individual
13 property owners' concerns regarding some trees in the
14 right-of-way; is that correct?

15 A. That is correct.

16 Q. And now Duke is focused on implementing a
17 standard specification across all lines.

18 A. That is correct.

19 Q. And you would agree that when Duke was
20 accommodating individual property owners, it was
21 acting consistently with the vegetation management
22 plan that was on file with the Commission.

23 A. Acting consistent? That one, I don't
24 know that I could -- well, we were consistent with
25 the plan as it was filed. We were not consistent

1 with individual property owners. It was almost --
 2 this is my perception -- it was a negotiation,
 3 negotiation per property owner, per property owner.
 4 But it was consistent with the plan that was in
 5 place. Now we're trying to bring equity across every
 6 property owner so that just one property doesn't have
 7 their desires over another.

8 Q. But you were consistent with the plan.

9 A. We were.

10 Q. And I heard a lot of dates here today. I
 11 believe on page 11, lines 7 and 8 of your testimony,
 12 you state that Duke began implementing its integrated
 13 vegetation management program strategy on the 138-kV
 14 system in Ohio in 2016, correct?

15 A. Yes. And that's in direct relation to
 16 when we talk about reclamation.

17 Q. The reclamation began in Ohio in 2016?

18 A. Correct.

19 Q. And in 2016, do you know what month in
 20 2016?

21 A. I don't.

22 Q. In 2016 --

23 A. Actually, I think I said earlier it
 24 probably started late '15, a little bit of it, but
 25 predominantly it was in '16.

1 Q. And in 2016, Duke updated its vegetation
2 management plan on file with the Commission; is that
3 right?

4 A. That is correct.

5 Q. And Duke made substantive changes to that
6 plan on file at the Commission, correct?

7 A. I disagree fully with that statement.

8 Q. So let me understand your timeline.
9 Well, there was a redlined document where significant
10 paragraphs were changed in the plan on file with the
11 Commission, correct?

12 A. Correct. Do you happen to have that
13 redlined document?

14 Q. Sure, I do, but I'm not going to ask you
15 any more questions about that at the moment. We will
16 get there.

17 A. Okay.

18 Q. I first want to understand your timeline
19 because I've heard a lot of timelines today. It's my
20 understanding from your testimony that the blackout
21 occurred in 2003; is that correct?

22 A. That is correct.

23 Q. And there was a blackout report issued in
24 2004; is that correct?

25 A. Probably, yes.

1 Q. And then the NERC rule that you cite went
2 into effect in 2007.

3 A. June of 2007.

4 Q. And then Duke implemented its IVM
5 somewhere around 2010-'11?

6 A. In the Midwest.

7 Q. But more when Progress joined in 2016?

8 A. No. It got just more global and we
9 expanded it to new business units that had been added
10 on.

11 Q. I see.

12 A. The Carolinas have been performing the
13 IVM program prior to 2010.

14 Q. So the 2010-'11 time frame is three to
15 four years after the rule became effective, correct?

16 A. In the Midwest, correct.

17 Q. And Duke filed the modified vegetation
18 management program plan, five to six years later, in
19 2016.

20 A. Correct.

21 Q. And you believe that the vegetation
22 management plan filed with the Commission provides
23 for the vegetation management activities that Duke is
24 proposing to conduct in this case, correct?

25 A. As I've mentioned, I'm not an attorney,

1 but we are operating within our legal rights in my
2 opinion.

3 MS. BOJKO: I'm sorry, may I have that --
4 I didn't hear that response.

5 EXAMINER ADDISON: Let's have it read
6 back.

7 (Record read.)

8 Q. You believe that you are operating under
9 the guise of the vegetation management plan on file
10 with the Commission, correct?

11 A. Yes, and our easements.

12 Q. Sir, I think you're going to get what you
13 asked for or wished for here. I'm going to give you
14 what's been previously marked as Attachment D to
15 Mr. Grossi's testimony which was Complainants
16 Exhibit 5.

17 MS. BOJKO: If I may approach?

18 EXAMINER ADDISON: You may.

19 Q. Sir, is this the document that you were
20 referencing previously which is the Application of
21 Duke Energy Ohio, Inc. for Approval of Revised
22 Paragraph (f) of its Programs for Inspection,
23 Maintenance, Repair and Replacement of Distribution
24 and Transmission Lines that was filed in Case No.
25 16-915-EL-ESS?

1 A. Yes, it is.

2 Q. And you're familiar with this plan, I
3 take it, sir?

4 A. I am. I have read it.

5 Q. And do you believe this modified plan to
6 be a true and accurate copy?

7 A. Yes. It appears to be, yes.

8 MS. BOJKO: Your Honor, at this time, let
9 the record reflect that I'm handing the witness what
10 has been previously marked as Attachment E to
11 Mr. Grossi's testimony, Complainants Exhibit 5.

12 Q. Sir, does this Attachment E to
13 Mr. Grossi's testimony appear to be Duke guidelines
14 that I believe you stated earlier today that Duke
15 puts on door hangers on Complainants' doors as
16 guides? "Guidelines," I think you used?

17 A. That is correct.

18 Q. Okay. On the first page of the
19 guidelines, there's a date of 2014; is that correct?

20 A. That is correct.

21 Q. It's the last revised date?

22 A. Yes.

23 Q. And Item 2 of the guidelines, on the
24 first page, states that fences and gates shall not
25 exceed 10 feet, correct?

1 A. That is correct.

2 Q. And then if you go down to Item 5, it
3 states that Duke will not object to certain
4 vegetation as long as it does not interfere with the
5 access to or the safe, reliable operation and
6 maintenance of Duke's facilities; is that correct?

7 A. Is that in 5 or --

8 Q. I'm sorry. That would be 8.

9 A. 8. 8 is the vegetation section of this
10 document, that is correct.

11 Q. And Section 8 also states that property
12 owners need to obtain prior written approval prior to
13 planting low-growing shrubs in the wire zone, and it
14 says that trees cannot be taller than 15 feet in the
15 border zone, correct?

16 A. That is correct.

17 Q. As I read this document, Duke intends to
18 remove all vegetation in the wire zone, unless you
19 have that prior written approval; is that correct?

20 MS. WATTS: Objection as to "all
21 vegetation."

22 EXAMINER ADDISON: Ms. Bojko.

23 MS. BOJKO: Your Honor, that's what the
24 document says, that Duke -- "With prior written
25 approval, Duke does not object to low-growing shrubs

1 and grasses within the 'Wire Zone.'"

2 THE WITNESS: Let me --

3 EXAMINER ADDISON: Mr. Adams, sorry.

4 When there's an objection pending, you should wait
5 for the ruling.

6 THE WITNESS: Okay. Thank you.

7 EXAMINER ADDISON: I'll allow the
8 question, but I'll allow Mr. Adams to clarify if he
9 feels it's necessary.

10 MS. BOJKO: Your Honor, I'll withdraw the
11 question and rephrase.

12 EXAMINER ADDISON: Thank you.

13 Q. (By Ms. Bojko) Mr. Adams, isn't it true
14 that it says Duke will not object to certain
15 vegetation plantings as long as they do not interfere
16 with the access to or the safe, reliable operation of
17 the system?

18 A. That is correct.

19 Q. And then it says with prior written
20 approval, Duke does not object to low-growing shrubs
21 and grasses within the wire zone, correct?

22 A. That is correct.

23 Q. So prior written approval is required, by
24 Duke, for low-growing shrubs and grasses, correct?

25 A. No.

1 Q. Okay.

2 A. Let me -- this document is used with
3 developers quite a bit, new construction, things of
4 that nature and that's a large portion of the use of
5 it, but this is an outline of our guidelines and
6 right-of-way restrictions.

7 Q. This document was given to Complainants,
8 correct?

9 A. It was, yes.

10 Q. And you're stating here today that it
11 does not properly reflect Duke's position because
12 customers do not need to get prior written approval
13 to plant low-growing shrubs and grasses?

14 A. It states what it says. With written
15 approval, does not object to the low-growing shrubs
16 or grasses.

17 Q. So saying that conversely, Duke will
18 object if you don't have written prior approval,
19 correct?

20 A. According -- I'll go back to our
21 technical spec and what we do, and when we do
22 vegetation management on these properties that's part
23 of it. If it's in the wire zone and it's vegetation,
24 a shrub that grows less than 7 feet, we do not
25 object.

1 Q. So a customer receiving this is not
2 supposed to believe that they have to go obtain Duke
3 approval to plant, in the wire zone, low-growing
4 shrubs and grasses?

5 A. Yes. This is, like I said, we use this
6 with developers and things of that nature quite a
7 bit.

8 Q. I'm sorry, developers? Was this handed
9 out and put in a door hanger to consumers --

10 A. It was.

11 Q. -- and Complainants in this case?

12 A. It was.

13 Q. And those are residential customers,
14 correct?

15 A. They are.

16 Q. Okay.

17 A. It just is the general guidelines that's
18 on file on our website that we use quite often and
19 reference people to.

20 Q. So as I understand this document, 10-feet
21 fences are allowed in the wire zone, but 10-feet
22 trees are not, correct?

23 A. That is correct.

24 Q. And can you please turn to the second
25 page. This page has a diagram on it; is that

1 correct?

2 A. That is correct.

3 Q. And it has information about the type of
4 vegetation allowed in the wire zone; is that correct?

5 A. That is correct.

6 Q. And it says that under the wire zone
7 there can be no tree species; is that correct?

8 A. That is correct.

9 Q. And it says that some low-growing plants
10 and shrubs and grasses are permitted.

11 A. That is correct.

12 Q. And then look down to where it says "In
13 all zones."

14 A. Yes.

15 Q. The second paragraph. It says "Written
16 approvals by Duke Energy are required for all plans,"
17 correct?

18 A. Yes.

19 Q. And this diagram also explains the type
20 of vegetation allowed in the border zone; is that
21 right?

22 A. That is correct.

23 Q. And only trees up to 15 feet, by this
24 document, are allowed in the border zone.

25 A. Correct.

1 Q. And it appears that a property owner must
2 obtain prior written approval from Duke, even for
3 trees in the border zone and peripheral zone, per the
4 second paragraph at the bottom saying written
5 approvals by Duke are required for all plans in all
6 zones.

7 A. I can see it being interpreted that way.

8 Q. Do you know how long it takes to receive
9 Duke approval for vegetation plans that a customer
10 submits?

11 A. This is a different group that these
12 plans are used and they're mainly the commercial
13 developers and things of that nature who are doing
14 major developments in communities that we serve, and
15 that can be from a couple weeks to several months
16 depending on the scope of the project.

17 Q. Was this second document provided to
18 consumers, residential consumers in this case?

19 A. Yes. This was part of the door hanger.

20 Q. And do you know where customers would go
21 to obtain approval?

22 A. Basically when we come through and we're
23 executing our vegetation management specifications,
24 at that point with the notification and everything,
25 that would be the approval. We're not actually

1 writing approval for the shrubs and the grasses as we
2 go through and do the maintenance.

3 Q. So if a customer were to pull these
4 guidelines off your website, it's not your intent to
5 make them go obtain prior approval before landscaping
6 these areas?

7 A. If they were doing landscaping, stuff
8 like that, and they wanted to seek -- they -- in
9 order to have -- it's more toward the commercial
10 development and stuff, but it's a general guide.
11 It's a good-faith effort for the residential
12 customers of trying to make this stuff available for
13 what our technical specs and operating practices are
14 in the field.

15 Q. So are you telling me you don't know
16 where customers would go to obtain approval prior to
17 planting in the wire zone?

18 A. They could contact Duke, and our Customer
19 Call Center would direct them to our vegetation
20 management specialists who would then respond and
21 meet with them and be glad to talk through what
22 plantings, share this document, and talk about our
23 policies.

24 Q. Sir, are you aware that two Complainants
25 in this case actually received prior Duke approval to

1 plant certain trees and bushes in the wire and border
2 zone that Duke is now attempting to remove?

3 MS. WATTS: Objection. Assumes facts not
4 in evidence.

5 MS. BOJKO: I asked him if he was aware,
6 Your Honor.

7 EXAMINER ADDISON: You may answer the
8 question.

9 A. No.

10 Q. Let's turn to page 3 of this document.
11 This document is titled "Why must Duke Energy remove
12 trees?"; is that correct?

13 A. That is correct.

14 Q. Paragraphs 3 and 6, those paragraphs do
15 actually explain that Duke, in fact, uses herbicides;
16 is that correct?

17 A. That is correct.

18 Q. And does Duke state that its approach is
19 based on the voluntary ANSI standard?

20 A. "These approaches are based on widely
21 accepted standards...." Yes, they do.

22 Q. And these documents do not use the terms
23 "incompatible" or "compatible trees," do they?

24 A. I haven't read the whole thing.

25 (Witness reviewing the document.)

1 No, it does not.

2 Q. Do these documents constitute the
3 integrated vegetation management concept that you say
4 you're implementing uniformly across all transmission
5 lines?

6 A. Yes, and it kind of tries to put it in
7 layman's terms and that's what our intent was.

8 Q. And you believe that the information on
9 this document accurately reflects what Duke considers
10 to be vegetation allowed in these different zones?

11 A. I do.

12 Q. And do you know, sir, have these
13 documents been approved by the Public Utilities
14 Commission of Ohio?

15 A. That I do not know. I'm not aware that
16 they would have been approved. These were
17 communication tools to help educate the general
18 public and that was the intent behind these
19 communications.

20 Q. Sir, do you know whether these documents
21 were attached to the application to revise your
22 vegetation management plan in 2016?

23 A. I do not know that.

24 Q. Let's go back to that document,
25 Attachment D. Can you ascertain whether those

1 guidelines were, in fact, attached to the Application
2 Duke filed in the 16-915 case?

3 A. I don't see them here, so I assume they
4 were not. But I didn't file it, so I don't know what
5 all was filed.

6 Q. But you can see the last page of the
7 document appears to be the end, where it says this
8 foregoing document was filed with the Commission.

9 A. What page are you on?

10 Q. The last page.

11 A. Yes.

12 Q. Turn to page 5, please, of the -- I want
13 to turn to 5 of the actual vegetation management plan
14 which is Exhibit 1. I understand these are not
15 numbered, so you would have to go to page 5 of the
16 entire packet which is -- well, wait.

17 It's actually 5 of the plan, Exhibit 1,
18 Section (f).

19 A. Section (f). Where the red lettering
20 starts? Is that what you're looking at?

21 Q. Hold on. I'm sorry. I'm going to start
22 at the new Section (f) which is on page 5 of the
23 total packet but page 3 of Exhibit 1. It's the first
24 redlined provision.

25 A. I'm with you.

1 Q. Paragraph (f) is the new language; is
2 that correct?

3 A. That is correct.

4 Q. Okay. It states here that "The following
5 overhead electric line vegetation management
6 requirements are intended to establish minimum
7 clearing cycles by Duke..., and minimum clearances of
8 vegetation from Duke...overhead electric line
9 facilities following such clearing cycles"; is that
10 correct?

11 A. That is correct.

12 Q. So that means that there are minimum
13 clearing -- excuse me -- that there are minimum
14 clearances after the completion of Duke's vegetation
15 management, correct?

16 A. There's minimum acceptable that's
17 documented in this document.

18 Q. It also states that Duke's rights to cut
19 down and remove vegetation from a Duke corridor is
20 not limited when Duke has the legal right to do so,
21 and that legal right is defined here by statutes,
22 easements, other legal documents; is that correct?

23 A. That is correct.

24 Q. And if you turn to the --

25 MS. WATTS: Your Honor, I'm sorry. In

1 that last question I'm not sure where we were
2 referring to. I was having trouble following.

3 EXAMINER ADDISON: Would you mind just
4 specifying where, in the document, you were referring
5 to for the last question.

6 MS. BOJKO: The last several questions we
7 were talking about the first paragraph of Section (f)
8 which is the new paragraph added under "Overhead
9 Electric Line Vegetation Management."

10 MS. WATTS: I'm with you now. Thank you.

11 EXAMINER ADDISON: And that was your
12 understanding as well, Mr. Adams, correct?

13 THE WITNESS: I was reading, following
14 along as she was reading.

15 EXAMINER ADDISON: Perfect.

16 Please continue.

17 Q. (By Ms. Bojko) Now, if we could turn to
18 the sixth page of the document, so it would be the
19 next page, sir, of the plan. I'm looking at the
20 heading that says "Transmission Clearing Cycle." Do
21 you see that, sir.

22 A. I do.

23 Q. Here in the document, Duke states that
24 the goal of this program is to "maintain and improve
25 safe and reliable electric service by limiting or

1 eliminating the possibility of contact by vegetation
2 which has grown towards the overhead transmission
3 lines"; is that correct?

4 A. That is correct.

5 Q. And then if we turn to the next page, the
6 plan, at this point, sets forth minimum clearances
7 for both transmission and distribution facilities; is
8 that correct?

9 A. That is correct.

10 Q. And these clearances are set with the
11 goal of eliminating contact between the vegetation
12 and the transmission, correct?

13 A. That is correct.

14 Q. And under the "Minimum Transmission Line
15 Clearances" -- it's on page 7 of the packet, sorry.
16 Under the "Minimum Transmission Line Clearances," do
17 you see that?

18 A. I do.

19 Q. The plan states that "vegetation shall be
20 no closer than fifteen feet to an energized conductor
21 when the clearing is completed"; is that correct?

22 A. Yes.

23 Q. And isn't it true that the modified
24 vegetation management plan removed the coordination
25 with the property owners, that language is actually

1 struck out of this document.

2 A. It is removed there. But if you look in
3 our technical specs, it's still in our technical
4 specs.

5 Q. But the plan that the Commission has on
6 file, that's been deemed approved, does not include
7 that language; is that correct?

8 A. That's correct.

9 Q. And you would agree with me when I say
10 that Duke's vegetation management plan on file with
11 the Commission does not include any language about
12 the border zone or the wire zone.

13 A. That is correct.

14 Q. And it doesn't contain any height
15 restrictions, is that correct, of the vegetation?

16 A. That is correct, in this document.

17 Q. And it doesn't say that trees under the
18 transmission wires of any height are incompatible; is
19 that correct?

20 A. That is correct.

21 Q. And it doesn't talk about compatible
22 vegetation at all, does it?

23 A. It does not.

24 Q. And, sir, the plan does not talk about
25 danger or hazard trees; is that correct?

1 A. I do not see it in the revised plan. I
2 think the old plan did have a reference, the next
3 page with the red stripe, the very bottom paragraph,
4 "leaning, weakened or dead trees." That's hazard
5 trees.

6 Q. Right. And that language has been
7 removed --

8 A. It is.

9 Q. -- from the new plan, correct?

10 A. Yeah.

11 Q. So it would be fair to say that a
12 customer looking at the plan that is on file with the
13 Public Utilities Commission of Ohio, would not know
14 what vegetation is compatible in the wire zone; is
15 that correct?

16 A. Looking at this plan, yes.

17 Q. Or the border zone?

18 A. Yes.

19 Q. Isn't it true that the modified plan
20 states that Duke can only remove trees if it has a
21 right to do so?

22 A. Can you repeat that question?

23 Q. Sure. Doesn't the plan state that Duke
24 can only remove trees if it has the legal right to do
25 so?

1 A. Could you refer me to what section?

2 Q. It's in the first paragraph that we
3 discussed where it says that this does not construe
4 to limit Duke's rights when it has the legal right to
5 do so -- we discussed that earlier -- to remove
6 vegetation.

7 Then if you look at the next page, under
8 the term "Transmission Clearing Cycle," here it says
9 that Duke can remove vegetation if it has the legal
10 right to do so. Do you see that?

11 A. Yeah, but I think it infers its with
12 owner's consent we can remove, but it's not in here.

13 Q. Okay. But the language says Duke can
14 remove the trees if it has the legal right to do so.

15 A. Correct.

16 Q. And isn't it true that this modified
17 vegetation management plan did not -- does not
18 include any reference to an integrated vegetation
19 management plan?

20 A. That is correct.

21 Q. And isn't it true that the modified
22 vegetation management plan does not discuss
23 reclamation?

24 A. It does not.

25 Q. And isn't it true that the modified plan

1 does not include any reference to the use of
2 herbicides as a method of clear cutting?

3 A. That is correct.

4 Q. And isn't it true that the modified
5 vegetation management plan, on file with the
6 Commission, does not reference or attach the
7 guideline documents that Duke provided to the
8 Complainants?

9 A. That is correct.

10 Q. And isn't it true that this modified plan
11 focuses on clearance distances and the minimum
12 clearance distances required for the safe and
13 reliable operation of the system?

14 A. Yes.

15 MS. BOJKO: Your Honor, if I can have one
16 minute?

17 EXAMINER ADDISON: You may.

18 (Pause in proceedings.)

19 MS. BOJKO: Thank you, Your Honor. I
20 have no further questions.

21 Thank you so much for your patience and
22 time over the last couple days, Mr. Adams.

23 THE WITNESS: Thank you.

24 EXAMINER ADDISON: Thank you, Ms. Bojko.
25 Mr. Etter.

1 MR. ETTER: Well, Your Honor, I think
2 Ms. Bojko covered everything I was going to ask, so I
3 don't have any questions.

4 EXAMINER ADDISON: Terrific. Thank you
5 very much.

6 Ms. Watts, redirect?

7 MS. WATTS: May we go off the record,
8 please?

9 EXAMINER ADDISON: Let's go off the
10 record.

11 (Discussion off the record.)

12 (Recess taken.)

13 EXAMINER ADDISON: At this time, we will
14 go back on the record.

15 MS. WATTS: Thank you, Your Honor.

16 EXAMINER ADDISON: Redirect, Ms. Watts?

17 MS. WATTS: Yes. And thank you for your
18 indulgence with our breaktime.

19 EXAMINER ADDISON: Of course.

20 - - -

21 REDIRECT EXAMINATION (CONTINUED)

22 By Ms. Watts:

23 Q. Mr. Adams.

24 A. Yes.

25 Q. On many occasions over the course of the

1 last few hours, including yesterday, you were asked
2 questions related to industry best practices and
3 industry standards; is that correct?

4 A. That is correct.

5 Q. Could you explain how it is you are aware
6 of industry standards and industry best practices?

7 A. Yes. For many years I've been involved
8 in standard development. I was a member of the
9 Version 2 Standard drafting team for NERC for
10 FAC-003-2. I was actually asked by NERC to be the
11 technical -- to be an advisor to the testing that
12 EPRI performed at the Lenox high-voltage lab that
13 Mr. Goodfellow, our co-witness, I actually was the
14 lead research investigator with that one.

15 I chaired the FAC-003-4 Committee. And
16 I've been involved with the Utility Arborist
17 Association for several years. And I was the former
18 chair of the Utility Summit Committee which is
19 responsible for the development and implementation of
20 industry best practices. So I've got a lot of
21 industry engagement and we work through those ISA,
22 UAA industry associations.

23 Q. And is it fair to say that you've
24 capitalized, let's say, on the benefit of that
25 knowledge in forming the Company's integrated

1 vegetation management program?

2 A. Absolutely. That is where I first really
3 understood and internalized IVM was when we went
4 through Version 2, and that was when it was actually
5 put into the NERC standard as a best practice, but my
6 education development, that network that I developed
7 over the years is very valuable.

8 Q. Okay. And I believe Ms. Bojko put before
9 you some documents, and you may still have them on
10 the stand and, if you do not, I'll be happy to
11 provide them to you. They were marked as
12 Complainants Exhibit 20 and Complainants Exhibit 21
13 and they consist of filed vegetation management
14 programs by Ohio Power Company and Dayton Power &
15 Light Company. I'll give you a moment to locate
16 those.

17 A. I don't know that they're still here.
18 Here they are.

19 MS. BOJKO: Your Honor, may we have a
20 moment to locate them as well, please?

21 EXAMINER ADDISON: Absolutely.

22 A. I've got, let's see, this is Dayton, this
23 is Ohio Power Company's. I've got two.

24 Q. And do you recall that Ms. Bojko pointed
25 you to specific provisions within those documents and

1 asked you about them?

2 EXAMINER ADDISON: Before you proceed,
3 Ms. Watts, I was just going to give Ms. Bojko time to
4 find them.

5 MS. WATTS: Oh, I'm sorry.

6 MS. BOJKO: I don't have them yet.

7 MS. WATTS: Kim, here.

8 MS. BOJKO: Thanks.

9 EXAMINER ADDISON: Thank you.

10 MS. BOJKO: Thank you.

11 EXAMINER ADDISON: Please continue.

12 Q. (By Ms. Watts) Sir, do you have an
13 understanding of either of those companies'
14 vegetation management programs?

15 A. With the reference to I think AEP was one
16 that is here, yes, and I've had involvement with
17 them. I know what's on their website. I know their
18 industry reputation. They're very focused on their
19 utility vegetation management program. Based on
20 their website, they're real aggressive and they only
21 allow a 15-foot height, maturity height in their
22 right-of-way. They do not offer a wire zone/border
23 zone concept to accommodate customers, they go edge
24 to edge, where we try to accommodate customers with a
25 wire zone/border zone concept. But with that 15-foot

1 height, if you go on their web page and you pull down
2 their document, that criteria is based on the
3 conductor being 100-foot in the air.

4 MS. BOJKO: Your Honor, I'm going to
5 object to this. We have no document. He's now
6 referring to the internet as if it's the law and
7 citing from it without giving us any documents that
8 he cannot state the truth of the matter asserted. I
9 provided him documents with their vegetation
10 management plan.

11 EXAMINER ADDISON: Thank you.

12 Ms. Watts.

13 MS. WATTS: Mr. Adams was -- there was no
14 foundation laid for either of these two documents.
15 There was no question that Mr. Adams had ever seen
16 them before, and so there's --

17 EXAMINER ADDISON: Did you object on
18 those grounds at that time?

19 MS. WATTS: They were not offered into
20 evidence yet, so I haven't entered that objection.

21 EXAMINER ADDISON: But during the
22 questioning --

23 MS. WATTS: They were marked but not
24 submitted.

25 EXAMINER ADDISON: During the

1 questioning, you did not object based on foundation
2 grounds.

3 MS. WATTS: The questioning consisted of
4 having him read sections of those documents and say
5 is that what that section means or is that what that
6 section says.

7 EXAMINER ADDISON: That's fair, but you
8 did not object on foundational grounds at that point,
9 correct?

10 MS. WATTS: I didn't have an opportunity
11 yet.

12 EXAMINER ADDISON: I will allow questions
13 as to these documents, but if we could refrain from
14 extrapolating to other portions because this -- even
15 if it -- even if I do agree with you, it's at least
16 outside the scope of her cross-examination, so.

17 MS. WATTS: Okay.

18 EXAMINER ADDISON: Thank you.

19 Q. (By Ms. Watts) So we were just --

20 EXAMINER ADDISON: Please continue.

21 MS. WATTS: Sorry, I didn't mean to --

22 EXAMINER ADDISON: No, you're fine. I
23 was just saying please continue.

24 MS. WATTS: Okay. Thank you.

25 Q. (By Ms. Watts) Mr. Adams, you were

1 talking about your knowledge of industry practices
2 and standards, correct?

3 A. That is correct.

4 Q. And in connection with your work, do you
5 obtain information and have an understanding about
6 industry practices and standards as -- as executed by
7 other utilities in Ohio and in other states?

8 A. Yes.

9 Q. And how do you obtain such information?

10 A. Informal face-to-face meetings, industry
11 meetings, informal benchmarking that we've done
12 through the UAA Summit Committee, and formal
13 benchmarking practices that we do as utilities.

14 Q. And so far as you understand, based on
15 that knowledge and experience, is Duke Energy Ohio's
16 industry -- Duke Energy Ohio's program and practices,
17 are they consistent with industry best management
18 practices?

19 A. For what -- the existing right-of-way,
20 the conditions of the right-of-way for the 69 and 138
21 transmission system here in Ohio, it has been managed
22 more as a distribution line rather than a
23 transmission system, and that's what I've testified,
24 because of the high number of mature, incompatible
25 vegetation that's in the right-of-way, it has the

1 ability to interfere with the lines.

2 The concept of the best practice, if you
3 don't mind, let me take the philosophy that was
4 developed during the NERC standards. When you look
5 at the development of NERC after the blackout in
6 2003, and the development of the 2007 standard and
7 then Version 2 shortly -- that was probably '10 that
8 we finally got it, NERC's philosophy was you got a
9 corridor, you got an easement, okay?

10 In that easement, you have the potential
11 of vegetation to grow into the line; that is the most
12 egregious violation.

13 You also have the potential of vegetation
14 to fall in that line; that's the second-most
15 egregious.

16 And the third is you have the opportunity
17 for vegetation to encroach into that line. That is
18 where the MVCD distance came from. That was when
19 Version 4 came about because, theoretically, in
20 Version 2 we developed that through engineering
21 calculations, we did empirical field testing with
22 Mr. Goodfellow at the Lennox high-voltage lab to
23 quantify that, and that's how Version 4 came about.

24 NERC and FERC's philosophy is a zero
25 tolerance --

1 MS. BOJKO: Objection. Your Honor, this
2 answer is going on. I was waiting for my objection
3 until the end, but he's now talked about NERC's
4 intent. He doesn't work for FERC. There's been no
5 foundation that he works for FERC. There's been no
6 foundation that he actually drafted the standards.
7 This is the first time we're hearing that he was on
8 the advisory committee, so we have no ability to
9 challenge any of the statements or assertions. We
10 have no ability to go get background data or
11 documentation on what he claims to be NERC's intent.

12 This is also irrelevant. The NERC
13 standard only applies to 200 kV. It doesn't apply to
14 the transmission circuits at issue in this case. So
15 he has now been talking for 10 minutes about a
16 standard that does not apply and which he has no part
17 of. It's hearsay.

18 He is not -- he is not FERC. He is not
19 on NERC's staff. He's not on FERC's staff. He
20 cannot speak to NERC's and FERC's intent. He just
21 started to talk about FERC's intent in that last
22 response. I move to strike his whole response. I
23 also move to strike the inappropriate --

24 EXAMINER ADDISON: Well, I think it's a
25 little improper to move to strike if he hasn't

1 finished his answer yet.

2 MS. BOJKO: Well, Your Honor, it's been
3 going on. It's also improper to have a response to a
4 question that is a dissertation instead of a series
5 of responses. That's against the Rules of Evidence
6 as well. So I let it go on for 5, 10 minutes, and it
7 keeps continuing while this is prejudicial to the
8 record.

9 EXAMINER ADDISON: I, first of all,
10 decide what's prejudicial to the record. I will
11 allow the witness to finish his answer.

12 THE WITNESS: I will be brief, Your
13 Honor.

14 EXAMINER ADDISON: Thank you.
15 Then we can take up your motion to
16 strike.

17 MS. BOJKO: Thank you.

18 THE WITNESS: The bottom line, it's a
19 zero tolerance toward an outage or an encroachment
20 into the MVCD. This is transmission. That same
21 philosophy is what we're wanting to apply to our
22 transmission grid and that's where we're going by
23 applying our easement rights. In the standard, in
24 the discussions in the drafting team that I was a
25 member of, when we would bring this up, the response

1 back is it's a zero tolerance, and you've got the
2 legal rights, execute your legal rights to clear the
3 right-of-way.

4 Thank you, Your Honor.

5 EXAMINER ADDISON: Before we move on,
6 Carolyn, could I have Ms. Watts' last question read
7 back, please? Thank you.

8 (Record read.)

9 EXAMINER ADDISON: Thank you.

10 MS. BOJKO: Your Honor --

11 EXAMINER ADDISON: Ms. Bojko.

12 MS. BOJKO: I was going to say objection
13 before she started again. At this time, I move to
14 strike the response to that. First, it was not
15 responsive to the question. Secondly, it was a
16 narrative response in violation of Rule 611(A) of
17 Ohio Rules of Evidence. Thirdly, the prejudicious
18 value of that outweighs the probative value which is
19 what I was referencing earlier, Your Honor, in
20 violation of Rule 4 -- 403. It also is unresponsive
21 under 611(A). And then authentication is lacking.
22 Proof must be offered before the witness can speak to
23 it, so that violates Rule 901(A). And then it's
24 beyond the scope of direct in violation of 611(B).

25 And I think that it also does not meet

1 the foundational requirements that he is able and
2 capable to talk about what NERC's or FERC's intent
3 is, not being on the staff of neither NERC or FERC,
4 in violation of Rules 602, 703, 803, 804, and 901.

5 EXAMINER ADDISON: Thank you, Ms. Bojko.

6 Ms. Watts.

7 MS. WATTS: I can rephrase the question,
8 Your Honor.

9 EXAMINER ADDISON: Are you not objecting
10 to Ms. Bojko's motion to strike then?

11 MS. WATTS: Oh, yes, I'm very much
12 objecting to it.

13 Well, first of all, I appreciate all the
14 quotes of the rules, but the Commission's practice is
15 to allow a bit of latitude in respect of those rules,
16 from time to time. And I believe the response to the
17 question was directly -- the information he provided
18 was directly responsive to the question in that he is
19 explaining how the Company's programs and practices
20 are consistent with industry standards.

21 He has explained that his knowledge of
22 industry standards is directly related to his work
23 with the various federal agencies that have
24 jurisdiction over transmission vegetation management
25 and transmission reliability and safety; and, in

1 fact, has been involved himself directly with
2 formulating some of those standards. So whereas,
3 perhaps, it was a little bit long, it was, in fact,
4 completely responsive to the question.

5 EXAMINER ADDISON: Thank you.

6 At this time, I will deny the motion to
7 strike. Ms. Watts is correct that, especially during
8 redirect, we have provided witnesses a little bit
9 more latitude to explain themselves and clarify to
10 the extent that they feel necessary.

11 I do feel that he is qualified to make
12 the statements in relation to NERC as he has already
13 indicated that he has had specific experience and
14 cooperation with that particular agency, so we will
15 deny the motion to strike.

16 Please proceed, Ms. Watts.

17 MS. WATTS: Thank you, Your Honor.

18 MS. BOJKO: Your Honor, may I ask a
19 clarifying question?

20 EXAMINER ADDISON: Absolutely.

21 MS. BOJKO: We had no -- we asked for a
22 CV for this witness and that was not provided. We --
23 there's nothing in his testimony that justifies or
24 backs up his statements that he just made that you
25 said you think he's qualified to answer these

1 questions on. We do not believe he's qualified to
2 answer these questions. So without knowing the
3 specifics of his background, we have no ability to go
4 investigate and get rebuttal testimony on what he --
5 or, cross-examination questions on what he now has
6 come up with.

7 I mean, he's been on the stand for two
8 days and he's never stated these qualifications, and
9 now, all of a sudden, he's stating these
10 qualifications that you're relying on in making your
11 decision.

12 So I think it's only fair that we be
13 provided with a CV; that we be provided with all of
14 the things that he's stated, in writing, today; and
15 that we have a chance to challenge his assertions
16 on -- it goes to the credibility of this witness,
17 Your Honor.

18 EXAMINER ADDISON: Thank you. And as to
19 his credibility, I will provide you quite a bit of
20 latitude in your recross to this particular witness
21 and those statements that he's just made. To the
22 extent that you feel that any additional rebuttal
23 testimony will be necessary, we can certainly take
24 that up at the end of the hearing.

25 MS. BOJKO: And I'm sorry, Your Honor, I

1 didn't necessarily mean rebuttal. I meant
2 cross-examination of this witness.

3 EXAMINER ADDISON: Thank you.

4 MS. BOJKO: I guess, then, I would ask
5 that -- thank you, I appreciate that. I guess I
6 would ask for at least all of the things -- unless we
7 go back and read the record and let me sit down and
8 write all of this down -- in order for me to do
9 recross, I would need a listing of these, what he
10 stated today of his qualifications.

11 MS. WATTS: Your Honor, may I be heard?

12 EXAMINER ADDISON: You may.

13 MS. WATTS: There was a discovery request
14 for the witness's CV. One was not provided because
15 the witness does not have a CV. He hasn't drafted or
16 created a CV for a number of years now; so there was
17 not one to provide.

18 Secondly, this witness was not deposed
19 prior to the hearing, although other witnesses were
20 deposed. So to the extent Ms. Bojko is complaining
21 that she doesn't know any of this information is
22 primarily because she chose not to depose the witness
23 prior to the case. So it may come as a surprise to
24 her that this particular witness is well versed in
25 industry standards, but that could have been

1 discovered prior to the hearing.

2 MS. BOJKO: Your Honor, that's
3 argumentative --

4 EXAMINER ADDISON: Thank you.

5 MS. BOJKO: -- and she's testifying.

6 EXAMINER ADDISON: Thank you. We'll move
7 on. As I said before, I'm not going to be modifying
8 my ruling but, Ms. Bojko, I will provide you quite a
9 bit latitude in your recross of this particular
10 witness, and Ms. Watts will honor that decision.

11 MS. BOJKO: Your Honor, I'm just asking,
12 maybe we can take a break and I can look at the
13 transcript or something. I just didn't write down
14 everything he said.

15 EXAMINER ADDISON: Let's go off the
16 record for a moment.

17 (Discussion off the record.)

18 EXAMINER ADDISON: Let's go back on the
19 record.

20 Ms. Watts.

21 MS. WATTS: Thank you, Your Honor.

22 Q. (By Ms. Watts) Mr. Adams, I believe there
23 has been a certain amount of confusion in the record,
24 over the past couple days, with respect to references
25 to minimum clearance and minimum clearance in

1 particular with respect to a 15-foot minimum
2 clearance. Could you explain what is -- how that
3 15-foot minimum clearance works and what it means in
4 relation to vegetation management?

5 MS. BOJKO: Objection, Your Honor.

6 EXAMINER ADDISON: Grounds?

7 MS. BOJKO: I believe that the question
8 misstates the evidence and the hearing for the past
9 two days. I don't believe there was any confusion.
10 Ms. Watts may have a different take on the testimony
11 that's been heard, but her characterization of that
12 testimony is inappropriate in the form of a question
13 and should be stricken.

14 EXAMINER ADDISON: Thank you, Ms. Bojko.

15 Would you just care to rephrase your
16 question, Ms. Watts?

17 MS. WATTS: I would be happy to do that.
18 Thank you.

19 EXAMINER ADDISON: Thank you.

20 Q. (By Ms. Bojko) Mr. Adams, with respect to
21 minimum clearance being 15 feet, to the extent that's
22 been discussed in testimony today and yesterday,
23 would you describe the Company's standard minimum
24 clearance of 15 feet?

25 A. That is the least acceptable. That is

1 the lowest threshold. And even with 15 feet, and I
 2 think this is information that was shared with the
 3 plaintiffs' attorneys, is we had a growth study in
 4 2016 -- it was done for distribution but it applies
 5 to transmission because it's all around tree species
 6 and tree types and growth rates. Over a six-year
 7 period, you could see 18 feet of -- and that's
 8 average mean growth of vegetation that's been top
 9 pruned up under a line. So the 15 is the bare
 10 minimum. Our objective is to obtain more clearance
 11 than the 15 feet.

12 MS. BOJKO: Objection, Your Honor. I
 13 move to strike his response. It's beyond the scope
 14 of cross. We did not talk anything about a growth
 15 study. And I think it's very inappropriate that the
 16 witness keeps saying what counsel did or did not
 17 receive. He has no knowledge of what was actually
 18 received. He did not produce any documents; his
 19 counsel did. And as we've seen earlier today, that
 20 is providing a lot of confusion to the record.
 21 Whether we saw something or were given something by
 22 counsel, whether counsel made a decision to give us
 23 something is not appropriate for him to opine on.

24 So I move to strike his testimony and
 25 it's beyond the scope of cross. There was no growth

1 study talked about earlier today or yesterday.

2 EXAMINER ADDISON: Carolyn, could I have
3 his answer -- I may not need the entire answer, but
4 may I have his answer read back? Thank you.

5 (Record read.)

6 EXAMINER ADDISON: Thank you so much.

7 MS. BOJKO: I modify my motion to strike.
8 The first sentence that he said about the clearances
9 is fine. It started with "I think this is
10 information that was shared with plaintiffs'
11 attorneys."

12 EXAMINER ADDISON: Thank you.

13 Ms. Watts.

14 MS. WATTS: I would agree, Your Honor,
15 that we would not object to striking just "I think
16 that was provided to attorneys" if that's the
17 objectionable portion of it.

18 EXAMINER ADDISON: Thank you.

19 MS. BOJKO: My motion was to start with
20 that and then the rest.

21 EXAMINER ADDISON: Thank you. I think
22 we're agreeing to the same thing. I will grant the
23 motion to strike after the words "lowest threshold."

24 MS. BOJKO: Thank you, Your Honor.

25 MS. WATTS: So, Your Honor, I'm sorry,

1 now I'm unclear what was stricken. You know what,
2 maybe I can move on.

3 EXAMINER ADDISON: Please. Thank you so
4 much.

5 Q. (By Ms. Watts) Mr. Adams, 15-foot minimum
6 clearance is not a goal, correct?

7 A. That is correct.

8 Q. How would you characterize it?

9 A. That is the bare minimum that we can
10 tolerate, and we're still going to have to go back
11 and deal with it probably mid-cycle sometime in
12 between six years because it's not going to give us a
13 six-year clearance.

14 Q. And have you -- and how are you aware of
15 that?

16 A. That growth study that I referenced that
17 we had ECI develop, but it's also operational
18 knowledge of what I testified to and even in my
19 testimony about having to go back with all these
20 trees in the right-of-way and having to work them
21 mid-cycle. When I was talking about the operational
22 risk that we have to take on and we have to manage,
23 those are the things I was talking about because
24 we're not getting those clearances beyond 15 feet
25 that we really needed.

1 MS. BOJKO: Your Honor, may I just have
2 the beginning of that answer read back?

3 EXAMINER ADDISON: You may.

4 (Record read.)

5 MS. BOJKO: I move to strike the
6 response. The growth study that Mr. Adams is again
7 attempting to reference, he did not produce that
8 study. He just stated it was ECI's study, so that
9 witness is not here to testify, we have no ability to
10 cross that witness on that study.

11 Additionally, under the best evidence
12 rule, Rule 1002, that document cannot be offered on
13 recross without -- in the absence of having the
14 witness here to authenticate as well as authenticate
15 the contents of that study.

16 EXAMINER ADDISON: Thank you.

17 Ms. Watts.

18 MS. WATTS: Your Honor, the witness is
19 here and obviously can be re-recrossed, but he isn't
20 actually trying to admit the growth study into
21 evidence. He's merely referring to the growth study
22 as one tool that the Company uses to determine
23 appropriate distances. So it's just a fact that
24 that's a tool the Company uses. I would think that
25 would not be objectionable.

1 MS. BOJKO: Your Honor, he's offering it
2 for the truth of the matter asserted therein which is
3 hearsay.

4 EXAMINER ADDISON: Thank you.

5 I'll deny the motion to strike, but it is
6 noted for the record that we do not have a copy of
7 the study in front of us. Mr. Adams is merely just
8 referring to it, and the Commission will certainly
9 take that into account when they're providing any
10 weight to this particular evidence.

11 MS. BOJKO: Thank you, Your Honor.

12 Q. (By Ms. Watts) Mr. Adams, you mentioned
13 just now operationally that you have an understanding
14 of why it's necessary to trim more than 15 feet and
15 that 15 feet is the minimum, correct?

16 A. That is correct.

17 Q. And did you have a recent occasion
18 operationally to experience?

19 A. Absolutely. Back in the spring you
20 recall that when we were stopped, by the Commission
21 Order, to stop work, per the Plaintiffs' Complaint,
22 we went out and did three field surveys.

23 The first one was in, I think, the end of
24 March, and we established what we call Priority 1
25 work and Priority 2 work. Priority 1 work was two

1 times the MVCD distance, roughly it was about 5 feet,
2 6 feet -- 5 feet, and Priority 2 work was 15 feet.

3 On the initial survey at the end of March
4 which, if I recall completely, Priority 1, we had
5 found 7 trees that were within 5 feet, and we found
6 about 100 trees that were within 15 feet.

7 We did another survey in May. And then
8 in June, we were getting concerned, we wanted to go
9 back and check before summer peak and you had maximum
10 sag and loading and ambient temperatures on the line,
11 at that point in time the Priority 1's had quadrupled
12 from 7 to 28, and the Priority 2's had doubled from
13 100 to 200.

14 So it just shows how dynamic of an
15 environment. You've got a conductor moving, you've
16 got trees growing. This is not something that's a
17 fixed point in time that we're trying to manage. And
18 that -- that's the dynamics that we face.

19 MS. BOJKO: Your Honor, I'm going to move
20 to strike everything after the word "Absolutely."

21 This is in direct violation of an
22 agreement between Duke and Complainants. There is a
23 document out there that says that this information
24 about what occurred during the Revised Stay, by
25 agreement, would not be allowed to be used in any

1 fashion during this hearing.

2 Complainants have abided by that and not
3 used this document or any of the line inspections in
4 order to -- in cross-examination of any of the
5 witnesses, and we have purposely tried to honor this.

6 This is sanctionable. They are now
7 violating a Stipulation that they agreed to abide by,
8 and it was filed at the Commission, and it was
9 approved and managed by the mediator in this case.
10 And as you know, settlement discussions are
11 inappropriate to be used in a hearing setting by any
12 witness or by counsel.

13 If we look at specifically on page 4 of
14 the Agreement that was filed with the Commission on
15 July 6th, it states that this amendment shall not be
16 construed or used against Duke or CACC in this
17 proceeding, nor shall this agreement constitute any
18 waiver of either parties' rights regarding their
19 legal arguments concerning the vegetation management
20 activities. This specifically says that this
21 Agreement cannot be used against either party and
22 that is exactly what Mr. Adams just did. So all this
23 testimony after the word "Absolutely" needs to be
24 struck from the record.

25 EXAMINER ADDISON: Thank you. Do you

1 have a copy for the Bench of --

2 MS. BOJKO: I can give you my copy.

3 EXAMINER ADDISON: Thank you.

4 MS. BOJKO: May I approach?

5 EXAMINER ADDISON: You may.

6 Ms. Watts.

7 MS. WATTS: Thank you, Your Honor. We
8 are not asking Complainants to waive any of their
9 rights in respect of this particular line of
10 questioning, nor are we suggesting -- and I don't
11 have a copy of the document with me either -- we're
12 not offering this evidence as proof that the -- of
13 any of the Complainants' claims. We're merely
14 offering this evidence to prove that -- to discuss
15 the growth of trees and how dynamic it is, and that's
16 actually exactly what the witness was saying.

17 MS. BOJKO: Your Honor, that's the
18 exact --

19 MS. WATTS: We did not discuss the
20 Stipulation in any respect; nor have we discussed any
21 privileged communications, between counsel, to arrive
22 at that Stipulation.

23 MS. BOJKO: Your Honor, that -- this
24 issue was exactly discussed and specifically written
25 into the Agreement because Mr. McMahon did not want

1 this information to be used. Complainants would have
2 never agreed to what they agreed to if they would
3 have known that this was going to be used against
4 them. That was the whole point of that provision
5 being added to the Agreement.

6 MR. McMAHON: Your Honor, if I may?

7 MS. BOJKO: No, you may not. One
8 attorney --

9 MR. McMAHON: I didn't know you were the
10 Attorney Examiner, Kim.

11 EXAMINER ADDISON: But I do agree with
12 Ms. Bojko. We typically have one attorney --

13 MR. McMAHON: Except she mentioned me.

14 EXAMINER ADDISON: Agreed, but Ms. Watts
15 can certainly --

16 MR. McMAHON: Okay.

17 EXAMINER ADDISON: -- talk on everyone's
18 behalf.

19 Ms. Bojko, what information are you
20 exactly asserting was in violation of the
21 Stipulation?

22 MS. BOJKO: Sure, Your Honor. It's the
23 three inspections that he discussed that led to the
24 determination of Priority 1 trees and what would need
25 to be done with those trees. In the contents,

1 there's a chart that actually goes along with this,
 2 Your Honor, that was agreed not to be submitted
 3 because of -- well, I think there is actually a chart
 4 in one of these Agreements, but the idea was that the
 5 Complainants permitted the inspection that resulted
 6 in the reports. The Commission, I think, actually
 7 directed and ordered it as well, but we allowed that
 8 information to occur and then we allowed the results
 9 of that inspection to be shared and put into a chart
 10 that then led to what he is talking about which is
 11 what Duke is concluding needed or didn't need to be
 12 done with respect to particular trees.

13 So the whole discussion he's having about
 14 the three different inspections and the results of
 15 those inspections is all covered by this Agreement
 16 and what Complainants agreed to not do or do under
 17 this Agreement.

18 EXAMINER ADDISON: But you do agree that
 19 the Commission directed Duke to continually inspect
 20 these particular lines during the pendency of this
 21 proceeding.

22 MS. BOJKO: Absolutely, but the -- I
 23 think it's in one of the Orders, if I recall, Your
 24 Honor, but the result of that and the Agreement
 25 between by the parties to amend the Stay and to allow

1 the trees to be trimmed and the number of trees, all
2 that was under agreement by this and was not to be
3 disclosed.

4 EXAMINER ADDISON: Has there been any
5 instances in which the number of trees, either P1 or
6 P2, which I do believe it has been publically filed
7 that those two categories exist, has there been any
8 instance in which the number of trees subject to
9 those two categories have been filed in this
10 proceeding?

11 MS. BOJKO: I'm sorry, could you say that
12 again?

13 EXAMINER ADDISON: Sure. Has there been
14 any instance in which there's been a filing, in this
15 docket, pertaining to the number of P1 versus P2
16 trees?

17 MS. BOJKO: I don't think he actually
18 filed, Your Honor, but let me look.

19 MS. WATTS: I believe, Your Honor, they
20 were filed with a Motion to Modify at some point.

21 EXAMINER ADDISON: It's my recollection
22 that, at some point, certain numbers of trees. I
23 don't know if the total aggregate numbers, as
24 described by Mr. Adams, were ever filed, but . . .

25 MS. BOJKO: Your Honor, I do have a

1 Motion here that was filed on June 20th. I can't
2 read it. The attachment is very small, I can't read
3 it, but it appears this is what you're referring to.
4 The indication of P1 and P2 trees was filed, but not
5 the information that was just explained and discussed
6 by Mr. Adams.

7 And again, we filed this Motion with that
8 same caveat that, under the Agreement, that this work
9 that we agreed to would not be able to be -- it's
10 actually in this Motion, as well, with that log
11 attachment. "This Amendment shall not be construed
12 or used against Duke or CACC in this proceeding," and
13 that's exactly the purpose they're using it today is
14 to use it against CACC.

15 EXAMINER ADDISON: Thank you.

16 Ms. Watts, I'll allow you a final word.

17 MS. WATTS: Your Honor, the Commission
18 directed the Company to walk these lines and maintain
19 safety and security and reliability during the
20 pendency of this case, and the witness is merely
21 describing his experience while he did that.

22 The formation of the Stipulation and the
23 Stipulations that were filed along the way, there was
24 a great deal of interaction between counsel in order
25 to arrive at those Stipulations. The fact there was

1 a Stipulation, in and of itself, there should not be
2 any problem disclosing them; they're, in fact, filed
3 in the record.

4 So we're not getting into -- we're not
5 seeking to prejudice Complainants' rights. We're not
6 discussing anything that includes confidential
7 discussions with either counsel or the mediator.
8 We're merely describing the experience we had with
9 maintaining the lines in that interim period.

10 EXAMINER ADDISON: Thank you.

11 At this point, I will deny the motion to
12 strike, but I will also include an instruction that
13 Mr. Adams' testimony regarding the P1 and P2 trees,
14 resulting from these various inspections that were
15 instructed by the Commission to be conducted, are to
16 only be used for the sake of establishing that yes,
17 growth was happening during this season and there may
18 have been a change from the designation of P1s and
19 P2s as that time progressed, and we will just leave
20 it at that. The Commission can certainly take into
21 account all of your additional arguments when they're
22 reviewing his testimony.

23 MS. WATTS: Thank you, Your Honor. I'll
24 move on.

25 EXAMINER ADDISON: Thank you.

1 Q. (By Ms. Watts) Mr. Adams.

2 A. Yes.

3 Q. Do you recall questions from counsel
4 regarding the manner in which Duke Energy engages
5 publicly with either townships or villages or the
6 public in general?

7 A. I do.

8 Q. And can you describe your understanding
9 of how Duke Energy engages with the public --

10 A. Yes.

11 Q. -- in respect of vegetation management?

12 A. In respect of vegetation management, we
13 put together annual plans and we share those with our
14 community relations management team. We sit down, we
15 talk to them, we review those plans, we let them know
16 what communities we're planning to work in, and we
17 work with them so they can reach out to city
18 officials and others, homeowners associations or
19 whatever, but we do proactively work with them to
20 communicate and share our intent of our maintenance
21 plans and work that we do for that calendar year.

22 In this case, due to the Plaintiffs'
23 Complaint with the Commission, we were advised by
24 counsel not to do that with Symmes Township.

25 Q. Thank you.

1 Mr. Adams, would you turn your attention
2 to Exhibit 19, please. I'm sorry. Exhibit 17. If
3 you have it up there, Complainants Exhibit 17. It's
4 Attachment I to Ms. Kuhne's testimony, and right at
5 the moment I can't tell you which Complainants
6 Exhibit that is.

7 MR. McMAHON: That is 17.

8 Q. 17.

9 A. I'm sorry, I don't seem to have that.

10 Q. One moment. We're looking for it here as
11 well.

12 MS. WATTS: We're having trouble finding
13 it.

14 EXAMINER ADDISON: Perhaps I can help.

15 MS. WATTS: I, myself, don't need to see
16 it because I remember it, but the witness may need to
17 see it.

18 EXAMINER ADDISON: Mr. Adams.

19 THE WITNESS: Oh, thank you, yes.

20 MS. WATTS: Thank you, Your Honor.

21 Q. (By Ms. Watts) Mr. Adams, do you have
22 that exhibit?

23 A. I do.

24 Q. Is there an attachment to that exhibit
25 that consists of an e-mail that involves people that

1 work for Duke Energy Ohio?

2 A. It does.

3 Q. And you were asked some questions about
4 some bullet points that are attached to that e-mail?

5 A. That is correct.

6 Q. Could you explain your understanding of
7 what those bullet points represent?

8 A. Those were only the opinions and thoughts
9 of Sally Thelen, who is our corporate communications
10 person, who was just trying to bring forth what she
11 thought were issues and concerns that needed to be
12 shared during an employee forum that Donald
13 Broadhurst was preparing for.

14 Q. And so, were the bullets actually
15 questions she was anticipating to be brought from the
16 public and not her own questions?

17 MS. BOJKO: Objection.

18 A. Yes.

19 MS. BOJKO: I objected to the question.

20 THE WITNESS: I'm sorry.

21 EXAMINER ADDISON: I think he already
22 answered. Let's move along.

23 MS. BOJKO: Well, Your Honor, that
24 response calls for hearsay. She asked -- the way the
25 questions was phrased, she asked what Sally intended.

1 He cannot answer what Sally intended.

2 EXAMINER ADDISON: Ms. Watts.

3 Q. (By Ms. Watts) Is there a page missing
4 from that particular series of e-mails, sir?

5 A. Yes, there is.

6 Q. And if that page were included, would
7 that demonstrate that you were part of the discussion
8 that was involved in that e-mail?

9 A. Yes, it would.

10 MS. BOJKO: Objection.

11 EXAMINER ADDISON: Well, I think she is
12 getting to it, Ms. Bojko.

13 Q. So having seen that e-mail previously,
14 and having been involved in the discussions back and
15 forth that were included in that e-mail, is that how
16 you understand what was included on that page?

17 MS. BOJKO: Objection. She's referring
18 to a hypothetical page of an e-mail that we have not
19 seen, was not produced in discovery, was not
20 cross-examined, so it's beyond the scope of cross.

21 And now, once again, we're supposed to
22 take their word that something that wasn't produced
23 in discovery actually exists, and she's trying to
24 demonstrate that it was done for the truth of the
25 matter asserted therein. And I don't even have it in

1 front of me. The witness doesn't have it in front of
2 him.

3 EXAMINER ADDISON: Ms. Watts.

4 MS. WATTS: Your Honor, as you indeed
5 likely recall yourself, the e-mails that were
6 researched for purposes of discovery, when you ask in
7 e-discovery for an e-mail, if it has five people on
8 it, you'll get five iterations of that e-mail because
9 each person that received it, it gets pulled from
10 their database.

11 Although that particular e-mail doesn't
12 have Mr. Adams included in it, there is one that was
13 produced in discovery that did have that page
14 missing; it's just that apparently the version they
15 pulled didn't. So indeed Mr. Adams understands there
16 was a page missing from that and has so testified.
17 And if that page were there, he would better be able
18 to explain how he knows what's in it.

19 MS. BOJKO: Your Honor, that's implying
20 that the e-mail we have, and it's marked as evidence,
21 has a page missing. It does not. The entire e-mail
22 string is there and this alleged response is not
23 contained therein. He does not have the document in
24 front of him. I do not have the document. So the
25 characterization that we produced an e-mail that has

1 a page missing is plainly incorrect and is very
2 prejudicial to the record. There is no page missing
3 on the e-mail that was produced. Every e-mail and
4 forward is attached to this e-mail and there is no
5 such correspondence from Mr. Adams.

6 If there is a different document, then I
7 would ask that that be produced to counsel and the
8 witness so that we all have it in front of us. As
9 you have ruled for other things, that I needed to
10 show the ANSI web pages, maybe we need to have it in
11 front of us.

12 EXAMINER ADDISON: Ms. Watts.

13 MS. WATTS: Your Honor, if Mr. Adams is
14 permitted, I think he can look at the document and
15 demonstrate how it's missing an e-mail, missing a
16 page.

17 EXAMINER ADDISON: Mr. Adams.

18 THE WITNESS: Well, there was a response
19 that Mr. Lux -- if you look on the 11/26, from Matt
20 to me. Do you see that at the bottom of the page?

21 EXAMINER ADDISON: Yes.

22 THE WITNESS: And then up at the next
23 piece it says from Donald to Matt. There was a
24 correspondence that Matt had sent to me that had an
25 explanation of the public safety, the safety of the

1 system, reliability, everything that I don't see in
2 here. To me it appears that -- and I don't know how
3 all of these were pulled, but it's not in there.
4 Plus, it doesn't have my direct conversation with
5 Donald which is not part of the e-mail.

6 EXAMINER ADDISON: Thank you, Mr. Adams.

7 My colleague has informed me that
8 apparently page 2 might be missing from this
9 document. There are page numbers listed at the
10 bottom of this exhibit.

11 MS. BOJKO: I have page 2, Your Honor. I
12 have 1, 2, 3, 4, and there is no missing page.

13 EXAMINER ADDISON: All right. I think it
14 would be best if we just move on. This can certainly
15 be something that the parties can bring up in their
16 briefing, and certainly something that the Commission
17 will look into during their consideration of this
18 case. If there was information that was not provided
19 during discovery, that is certainly something that is
20 very concerning to us and we will -- we will address
21 it then.

22 THE WITNESS: Your Honor, I think this is
23 your copy.

24 EXAMINER ADDISON: Thank you very much.

25 MS. BOJKO: Your Honor, just for clarity,

1 do you need to see my copy that has page 2?

2 EXAMINER ADDISON: No. I think --

3 MS. BOJKO: I'm concerned that you don't
4 have it.

5 EXAMINER ADDISON: That's fine. I think
6 we're just going to go ahead and move on. Thank you,
7 though.

8 Q. (By Ms. Watts) Mr. Adams, do you recall
9 responding to a question by Ms. Bojko, with the
10 answer that the Company manages ecosystems versus
11 trees?

12 A. I do. That's -- I think that's the core
13 fundamental difference between utility vegetation
14 managers and arborists. Arborists are focused on
15 managing trees. Utility vegetation managers are
16 managing ecosystems. And that's the premise -- and
17 I'll go back, I think I mentioned that the role, from
18 a utility vegetation management perspective, when it
19 comes to IVM, is a more preventive approach, looking
20 proactively to manage an ecosystem than just trying
21 to manage minimum clearances.

22 MS. BOJKO: I'm sorry, could I have the
23 question he's responding to read back?

24 EXAMINER ADDISON: You may.

25 (Record read.)

1 MS. BOJKO: Thank you.

2 EXAMINER ADDISON: Please continue.

3 Q. (By Ms. Watts) Mr. Adams, do you have
4 before you, up there on the stand somewhere,
5 Attachment D to Complainant Grossi's testimony, which
6 is the Application the Company filed with the
7 Commission?

8 A. I do. I have it in front of me.

9 Q. And you've answered some questions with
10 respect to that Application today, correct?

11 A. Correct.

12 Q. Is it your understanding that the revised
13 paragraph (f), that was filed in that case, changed
14 anything with respect to the Company's vegetation
15 management program?

16 A. No.

17 Q. Could you explain how you know that?

18 A. Well, that's through my operational
19 knowledge and everything about the program, but I
20 don't know that you can have a document that clearly
21 goes to the nth detail of everything we do.

22 And this document was -- I don't know
23 when the genesis of this document occurred with the
24 Commission, but it seems like it was formatted a long
25 time ago. When this case occurred, I did read the

document and I read the change, and the representation that is here now, in my opinion, is a better representation of the program than what was there previously. And I'll be glad to elaborate on that if needed.

Q. Please do.

A. Okay. Well, if you really look -- and I'm on the redlined section, Your Honor -- it starts with distribution veg management and clearance. And then it goes to transmission veg management in the second paragraph.

This third paragraph is for two-phase and three-phase primary lines. That doesn't apply to transmission. That's purely distribution.

Then you go to the fourth paragraph. That's transmission.

If you go to the next page, it talks about overbuild. That's transmission.

Then the next paragraph is single-phase. That's distribution.

The next paragraph for open wire secondary, that's distribution.

MS. BOJKO: I'm sorry, could you just give me a page that you're --

THE WITNESS: I'm on the redlined.

1 MS. BOJKO: Are you on the struck-out
2 paragraphs?

3 THE WITNESS: Yes, the -- the one that
4 was changed.

5 MS. BOJKO: Thank you.

6 A. To me -- and I can go on. The next
7 paragraph is distribution. The next paragraph is
8 distribution.

9 The last paragraph applies to
10 transmission, on this page, with the leaning -- and I
11 can't make it out -- weakened or dead trees, that
12 applies to transmission.

13 But then the very last paragraph was
14 totally distribution.

15 Now, in the Plaintiffs' Complaint, I
16 think they brought up things of the 6-inch DBH limbs
17 and stuff like that. I think they brought up being
18 within 10-foot of the conductor, 12-inch DBH trees.
19 None of that is in our transmission spec. But if you
20 go back to that time frame, 2014, 2016, you'll find
21 all that language in our distribution technical spec.

22 So this -- I'm very knowledgeable of our
23 program. When I first read this, it took me a few
24 minutes to try to figure out what it was really
25 saying. The modification is a better representation;

1 to me, it's clearer. And then I would say even the
2 document that Mr. Williams has, with the OCC, in my
3 opinion is probably the more robust document.

4 But again, the question is how much
5 detail do we need, and I don't know that we can cover
6 every operational practice that goes on in the field.

7 MS. BOJKO: Your Honor, I move to strike
8 the portion of the witness's response that refers to
9 Complainants and Complainants' Complaint and what
10 they did or did not do and what they intended to do
11 or some language regarding that with regard to the
12 Complainants and the Complaint. I think it
13 mischaracterizes the Complaint. I think if you look
14 at the Complaint, you will not see the words "DBH"
15 which is what he just said the Complaint does and
16 says.

17 EXAMINER ADDISON: Ms. Watts.

18 MS. WATTS: I hate to take the time, but
19 could I hear the answer read back because . . .

20 (Record read.)

21 MS. WATTS: Your Honor, what is filed in
22 the Complainants' Second Amended Complaint speaks for
23 itself. Mr. Adams' recollection may be accurate or
24 not accurate, but the record will demonstrate that
25 one way or the other.

1 EXAMINER ADDISON: I agree. I think the
2 Commission will be able to distinguish whether or not
3 Mr. Adams' perception of what is in the Complaint is
4 accurate or not.

5 MS. BOJKO: Thank you, Your Honor.

6 EXAMINER ADDISON: So let's move on.

7 Q. (By Ms. Watt) Mr. Adams, so your reading
8 of the revised paragraph (f) makes clarification such
9 that the reader can better understand the difference
10 between distribution and transmission, correct?

11 A. It did to me, yes.

12 Q. But this change in the language in
13 paragraph (f) that's filed with the Commission,
14 doesn't relate in any respect to the Company's change
15 in management of its right-of-way that you have been
16 discussing throughout the course of your testimony,
17 correct?

18 A. That is correct. The strategy, the
19 programs, that did not change as far as the IVM
20 strategy and everything.

21 Q. Mr. Adams, you were asked, by Ms. Bojko,
22 several questions with respect to the easements that
23 the Company holds on Complainants' properties. Do
24 you recall that?

25 A. I do.

1 Q. And the easements refer to engineers
2 having involvement with transmission vegetation
3 right-of-way, correct?

4 A. That is correct.

5 Q. Can you explain what is intended or what
6 engineers for the Company -- how engineers are
7 involved in that process?

8 MS. BOJKO: Objection, Your Honor. I
9 believe Ms. Watts is referring to a legal document,
10 "engineers" is contained therein, and I think she's
11 trying to ask the witness what "engineers" means with
12 regard to that easement, and he cannot answer that.
13 We already established he's not a lawyer. We already
14 established that he -- that he's not a lawyer and
15 that the easement language is in there and it says
16 what it says. So for him to state what he believes
17 the word "engineers" means is not appropriate.

18 EXAMINER ADDISON: Ms. Watts.

19 MS. WATTS: Your Honor, Counsel asked a
20 number of questions with respect to that very
21 specific line, attempting to draw the conclusion that
22 there are not engineers involved in the process that
23 goes on on the Complainants' properties, and I would
24 like the witness to have the opportunity to explain,
25 in his own words, how that's done.

1 MS. BOJKO: Your Honor, that actually
2 mischaracterizes my line of questioning. He quoted
3 what appeared to be a quote from the easements, and I
4 went through and merely asked him if the language he
5 appeared to quote was identical except for an
6 inserted phrase. That was the line of questioning.
7 So this goes beyond the scope of my questions if
8 that's what the intent is.

9 EXAMINER ADDISON: Thank you, Ms. Bojko.

10 I believe, in some of his answers to your
11 questions, he alluded to this fact. I think the
12 Commission would benefit from additional
13 clarification. It is something you can also bring
14 up, during recross, to make those specific points to
15 which I think you were objecting to.

16 THE WITNESS: Thank you, Your Honor. And
17 I'll try to keep it simple, but if you look at my
18 testimony on page 3, at the bottom, I talk about the
19 original development of the program included multiple
20 meetings, discussions, between subject matter
21 experts, engineering, compliance. We communicate
22 with our line engineering team, they're part of the
23 process, the stakeholders; so they're engaged in
24 those processes when we do our program reviews,
25 program developments.

1 MS. BOJKO: I'm sorry, which -- may I ask
2 which page he was referring to and line numbers?

3 THE WITNESS: Page 3, line 22.

4 MS. BOJKO: Okay. Thank you.

5 MS. WATTS: Your Honor, we have no more
6 redirect.

7 EXAMINER ADDISON: Thank you. Perfect
8 timing, because we do need to break for the
9 Commission meeting, but I believe this will allow
10 Ms. Bojko some additional time to review the
11 questions and answers that were posed during
12 redirect, and we can take up recross when we return
13 from the Commission meeting.

14 MS. BOJKO: Thank you, Your Honor.

15 EXAMINER ADDISON: Thank you.

16 Let's go off the record.

17 (Discussion off the record.)

18 (At 1:12 p.m. a lunch recess was taken
19 until 2:15 p.m.)

20 - - -

1 Wednesday Afternoon Session,
2 November 7, 2018.

3 - - -

4 EXAMINER ADDISON: Let's go ahead and go
5 back on the record.

6 Ms. Bojko.

7 MS. BOJKO: Thank you, Your Honor.

8 - - -

9 RE CROSS-EXAMINATION

10 By Ms. Bojko:

11 Q. Good afternoon, Mr. Adams.

12 A. Good afternoon.

13 Q. I have some follow-up questions on three
14 areas that your counsel discussed with you.

15 First of all, do you recall talking with
16 your counsel about the open communications that Duke
17 claims that it does prior to entering an area and
18 doing vegetation management control?

19 A. I do.

20 Q. And you talked about sharing with the
21 management team, and you kept using the word "them"
22 or "they," and I just want to make sure I'm clear.
23 Your interaction is with the Duke Energy management
24 team, not with the consumers.

25 A. You are correct.

1 Q. And not with the property owners, I
2 should say.

3 A. Yeah. We work internally with our
4 community relations folks.

5 Q. Okay. And do you typically follow up
6 with that management team, those community relation
7 folks, to ask if they actually have spoken to
8 property owners or the communities?

9 A. I can't say on every one. Some we do;
10 some we don't. There's some areas we may have more
11 concern about than others.

12 Q. So when you use the term "we" in there,
13 you're talking about your vegetation management group
14 versus the management team that deals with community
15 relations?

16 A. Yes. Correct.

17 Q. And you stated that the legal department
18 of Duke told you not to have a meeting; is that
19 correct?

20 A. With Symmes Township that is correct; not
21 to attend, yeah.

22 Q. And you said that was in relation to some
23 complaints that were filed; is that correct?

24 A. That is correct.

25 Q. Well, are you aware that the first

1 complaint filed against Duke, regarding these
2 transmission circuits, occurred on October 16th in
3 Case 17-2126?

4 A. That sounds about right. I knew it was
5 in the fall.

6 Q. And the request for the meeting was in
7 late September, early October; is that true?

8 A. I would have to go back to e-mails,
9 correspondence. I don't remember the dates and
10 times, I'm sorry.

11 Q. You are aware, I believe we discussed
12 yesterday that the Symmes Township meeting occurred
13 on October 12th which was prior to any complaint
14 being filed; is that correct?

15 MS. WATTS: Your Honor, just as a point
16 of clarification. When we talk about "complaints,"
17 are we talking about the complaints that were filed
18 in this proceeding or complaints in general?

19 EXAMINER ADDISON: If you could clarify
20 so the record is clear.

21 MS. BOJKO: Your Honor, I thought I was
22 crystal clear that the complaint was not filed in
23 this proceeding. It was filed in 17-2126. And I
24 asked the complainant (sic) if he knew that was the
25 first complaint filed with regard to these

1 transmission circuits, and I believe he answered yes.

2 Q. Is that correct, sir?

3 A. In reference to the numbers and
4 everything, I can't recall those. All I can recall,
5 there was a volume of complaints, there was a lot of
6 of activity going on, and there was communications
7 between our internal folks and our attorneys at that
8 time.

9 Q. But you would agree that October 16th was
10 when the first complaint was filed with the Public
11 Utilities Commission.

12 A. I don't have it in front of me. You
13 probably -- you've got the documents, you would know
14 the exact date. I think we -- at that point in time
15 it could have been pending. We knew there was a
16 pending complaint. I can't recall and -- I don't
17 recall, I'm sorry.

18 Q. Okay. When you say "pending complaint,"
19 do you mean pending at the Commission?

20 A. Or anticipated Commission complaint.

21 Q. Before you were requested -- before you
22 had a meeting request in early -- late September,
23 early October, did the team do community outreach
24 such that they had a meeting with a community, such
25 as Symmes Township, prior to that?

1 A. I do not recall.

2 Q. Let's turn your attention now to a
3 discussion you had with your counsel about the
4 tree-trimming cycle and what occurred during the Stay
5 in this case. Do you recall that discussion?

6 A. I do.

7 Q. Sir, Duke is and was, during the Stay, on
8 a six-year trimming cycle; is that correct?

9 A. That is correct.

10 Q. And I believe you referenced previously
11 that the last trimming cycle was 2011, so the six
12 years would mean that the trimming cycle needed to
13 occur in 2017; is that correct?

14 A. That is correct, and it had -- we had --
15 we did not complete that due to the Commission's
16 Order.

17 Q. Right. So the three field surveys that
18 you referenced, those field surveys occurred during
19 the pendency of the Complaint and that would have
20 been in spring and summer of 2018; is that correct?

21 A. That is correct.

22 Q. So that was seven years from the last
23 time. It was a year outside the trimming cycle of
24 Duke; is that correct?

25 A. That is correct.

1 Q. And how many lines -- miles were at issue
2 on these transmission circuits? I've heard a couple
3 different numbers.

4 A. Well, if you look at my testimony.

5 Q. Sure.

6 A. And I think if you go to the map, I can't
7 remember what page, but the section of lines that we
8 were concerned with was 5 miles.

9 Q. I'm sorry, I didn't hear you.

10 A. Let me just get to the map. 5.92 miles.

11 Q. So would I --

12 A. That --

13 Q. -- be -- oh, sorry.

14 A. That section of line is the one that we
15 were doing the surveys on and making sure that there
16 were no issues or concerns because we had not
17 completed those.

18 Q. Okay. And the total project -- is that
19 above that line on page 18? -- is that total mileage
20 27.37 miles?

21 A. 27.37 was assigned to Integrity. I'd
22 have to go back. There's two other circuits that I
23 couldn't recall the exact number on that was
24 included, those are different circuits. But this was
25 the work that was assigned to Integrity Tree that did

1 not get completed, so it's that section that did not
2 get completed.

3 Q. So your testimony is the -- I think I
4 just understood you to say that the field surveys
5 would have been conducted on the 5.92 miles; is that
6 correct?

7 A. Yes.

8 Q. And the first field survey was done on
9 April 3rd -- or actually, excuse me.

10 On April 3rd there was a Motion filed
11 that stated it reviewed the lines at issue in this
12 case and it identified only three of Complainants'
13 trees as being Priority 1 trees; is that correct?

14 A. I don't have that in front of me. The
15 information I was referring to was a summary document
16 that I requested that -- and I recall I think it was
17 late March we did a survey, end of May we did a
18 survey, and then the end of June we did a survey.

19 Q. Okay. So what is this summary document
20 that you just referenced? Is this a document that
21 Duke --

22 A. It was just an e-mail conversation that I
23 asked one of our vegetation managers to pull
24 together, just to help me get a broader picture and
25 perspective of what our findings were.

1 Q. And when was that done?

2 A. I did that probably about three, four
3 weeks ago, in preparation for the hearing.

4 Q. And do you know if that e-mail was
5 provided to your attorneys --

6 A. I do not.

7 Q. -- for production?

8 A. Was it provided to our attorneys?

9 Q. For production to the Complainants.

10 A. That I do not know.

11 Q. Okay. So let's go back to the
12 April 3rd Motion. You gave pretty specific numbers
13 when you talked about it in redirect. So you don't
14 know whether that Motion on April 3rd identified, out
15 of the 5.92 miles, only three trees of Complainants
16 that were categorized as Priority 1?

17 A. I'd have to go back and look at all that
18 data and information.

19 Q. Okay. The next Motion that was filed,
20 regarding the summer survey, was June 20th. There
21 was a Motion filed on June 20th that attached a
22 review of the lines in this case. Is it your
23 understanding or isn't it true that on that review,
24 out of the 5.92 miles, that only eight of
25 Complainants' trees were identified by Duke as being

1 Priority 1?

2 A. I don't recall that middle one. What I
3 was going off of was my recollection of where we
4 initially started and where we ended up in June.

5 Q. And isn't it also true, sir, that the
6 Motions filed with the Commission, regarding these
7 field surveys that you brought up, that there's
8 specific language in those Motions that was agreed
9 upon by the parties, by Duke and the Complainants,
10 that states -- that provided that this Amendment
11 shall not be construed or used against Duke Energy
12 Ohio or CACC in this proceeding --

13 MS. WATTS: Your Honor --

14 Q. -- is that correct?

15 MS. WATTS: -- I object to this line of
16 questioning because the witness is not an attorney.

17 EXAMINER ADDISON: I think he's already
18 made very clear he's not an attorney. He can answer
19 the question.

20 A. I'll let -- those responses, those are
21 the responsibilities of our attorneys, and I -- I
22 don't review all those filing documents, word for
23 word, so.

24 EXAMINER ADDISON: Do you need that
25 answer read back?

1 MS. BOJKO: I think I got the gist of it,
2 Your Honor.

3 Q. So are you telling me that you don't know
4 whether that language was explicitly included in the
5 Motion or not?

6 A. If you can provide me a document that
7 shows it, I can look at it and confirm it, but that
8 would be -- and I'll tell you, with everything we've
9 looked at and all the questions, it's difficult. But
10 if you've got the Motion there and it's in there,
11 that's the language in that. I don't have it in
12 front of me.

13 Q. All I'm asking is if you are aware, if
14 you know or don't know whether such language would
15 have or would not have been included in the Motion.
16 You brought up the Motions earlier, without having
17 them in front of you, so I assumed you had
18 recollection or knowledge of those. I'm just asking
19 if you recollect whether that language is included in
20 the Motion or not.

21 A. I do not recall.

22 Q. Thank you.

23 In your redirect with your counsel --
24 well, first of all, let me ask you: You drafted
25 testimony in this case, correct?

1 A. I did.

2 Q. And you included all relevant information
3 in that testimony pertaining to this case, correct?

4 A. Yes.

5 Q. And on redirect with your counsel you
6 stated that you were on a Version 2 standard drafting
7 committee, and I believe you were referring to NERC;
8 is that correct?

9 A. That is correct.

10 Q. And it's true that you were not on the
11 Version 1 standard committee; is that correct?

12 A. That is correct.

13 Q. So Version 1 is the standard that was
14 created after the blackout; is that correct?

15 A. That is correct.

16 Q. So you weren't involved in the initial
17 standard, correct?

18 A. Not in the initial.

19 Q. So you weren't involved until the second
20 standard which was issued ultimately in 2010; is that
21 correct?

22 A. Yeah. There were a lot of issues and
23 problems with Version 1 that we had to come back and
24 correct, and that was a three-year effort to develop
25 Version 2 to something that the industry could really

1 understand and apply operationally.

2 MS. BOJKO: Your Honor, may I have my
3 question read back?

4 (Record read.)

5 Q. Could you answer that question?

6 A. I was involved in the standard Version 2.

7 Q. And it was issued in 2010?

8 A. That sounds correct.

9 Q. So you were not on the initial team after
10 the blackout; is that correct?

11 A. Not on the initial team after the
12 blackout. It was shortly, like I said, it was
13 probably late 2007, 2008, when they initiated the
14 start of the Version 2 drafting team because of the
15 industry concerns with Version 1. So it took us
16 several years before we got Version 2 --

17 Q. Right.

18 A. -- approved.

19 Q. And I think you referenced both Version 1
20 and Version 4 in your testimony that we discussed
21 yesterday; is that correct?

22 A. I believe that is correct. Let me just
23 look.

24 I'm trying to remember what section it
25 was in.

Version 1, I think I mentioned that it initiated in 2007, and then working currently under Version 4.

Here it is. It's on page 7.

The exact wording is: "The North American Electric Reliability Corporation...Standard FAC-003-1 went into effect in 2007 as a result of the 2003 Northeast Blackout. The 345 kV system in Ohio is subject to the NERC Transmission Vegetation Management Reliability Standard FAC-003-4." So my purpose there was it was initiated and we're currently operating under Version 4.

Q. Neither Version 1 -- well, Version 1 and Version 4 both apply to 200 kV and above, correct?

A. That is correct.

Q. And also in your discussion with Ms. Watts, it's true that you listed off a couple other committees or associations that you've been involved in; is that correct?

A. That is correct.

Q. And in your testimony on page 1, it's true, isn't it, that you listed your background, is that correct, background and professional experience?

A. Yes, that was my background and professional experience, yes.

1 Q. Isn't it true you did not include
2 anything in this background with regard to the
3 standard committee that you just referenced or any
4 other associations?

5 A. Yes.

6 Q. And isn't it true that you not did -- you
7 do not have or did not produce a CV that includes
8 these items?

9 A. That is correct.

10 Q. And the NERC standards committee that you
11 claim that you worked on, it does not apply to the
12 138 kV lines at issue in this case; is that correct?

13 A. That is correct.

14 MS. BOJKO: Thank you, Your Honor. I
15 have no further questions.

16 EXAMINER ADDISON: Thank you very much,
17 Ms. Bojko.

18 Mr. Etter, anything to add?

19 MR. ETTER: Yes, actually, I have a few
20 questions.

21 EXAMINER ADDISON: Proceed.

22 - - -

23 RECROSS-EXAMINATION

24 By Mr. Etter:

25 Q. Good afternoon, Mr. Adams.

1 A. Good afternoon.

2 Q. If you recall, during redirect with your
3 counsel, you discussed the --

4 MS. WATTS: Your Honor, I'd like to
5 object because Mr. Etter didn't cross this witness,
6 so he should not be permitted redirect --

7 MR. McMAHON: Recross.

8 MS. WATTS: -- recross.

9 EXAMINER ADDISON: Thank you for that
10 clarification.

11 Mr. Etter.

12 MR. ETTER: Your Honor, I -- I still
13 think I have an opportunity -- should have an
14 opportunity to recross the witness on issues that
15 were brought up on redirect.

16 EXAMINER ADDISON: Ms. Watts.

17 MS. WATTS: I believe he's waived that
18 opportunity. I imagine he does think he should be
19 allowed, but he has waived that opportunity.

20 MR. ETTER: I did not waive the
21 opportunity, Your Honor.

22 EXAMINER ADDISON: Thank you.

23 I believe we have allowed counsel to
24 recross, even if in the event they had no initial
25 cross-examination, before in our proceedings. I will

1 allow Mr. Etter the opportunity to do so now.

2 Please proceed.

3 MR. ETTER: Thank you.

4 Q. (By Mr. Etter) I believe on redirect with
5 your counsel you discussed what is Attachment D to
6 Mr. Grossi's testimony which is the application that
7 was filed in Case No. 16-915-EL-ESS.

8 A. Yes, sir. I have that in front of me.

9 Q. Okay. And you discuss the changes that
10 were made in that document, the redline changes; is
11 that correct?

12 A. That is correct.

13 Q. Okay. And I believe that you
14 characterize those changes as just basically making
15 them more readable, making the provision in what was
16 paragraph (f) more readable; is that right? More
17 understandable.

18 A. To me, the stricken redlines, when you
19 read it, it jumps from distribution to transmission
20 and distribution. There's no order of context. And
21 if you're not familiar with subject matter, to me it
22 was difficult to follow. So that was -- that was my
23 point.

24 Q. Now, I believe you stated that it did not
25 change the substance of what was in paragraph (f); is

1 that correct?

2 A. I didn't see, in my opinion, a
3 substantive change.

4 Q. Okay. Now, if you look at former
5 paragraph (f) which is crossed out in this copy. The
6 paragraph at the very bottom of the page --

7 A. The first page or the very end of the
8 document?

9 Q. It's under what used to be paragraph (f).
10 "Right-of-way vegetation management."

11 A. Okay.

12 Q. It's crossed out in the Application. At
13 the bottom there's a paragraph that starts "For
14 transmission lines 69 kV and above...." Do you see
15 that?

16 A. I do. It's difficult to read. If yours
17 is more legible, if you could read the whole thing,
18 that would be helpful.

19 Q. I do have a copy of the actual
20 application if that would help you.

21 A. Either one, but I see where you're
22 talking about.

23 Q. Okay. And this was attached to
24 Mr. Williams' testimony as Attachment JDW-3 if you
25 have his testimony.

1 A. I don't have that up here, no, but I can
2 read it.

3 Q. Okay. So that sentence states: "For
4 transmission lines 69 kV and above, side clearances
5 should provide a minimum of fifteen feet clearance
6 from" -- I can't read the word -- "tree branches to
7 the nearest conductor"; is that right?

8 A. Yes. It appears to be. It's -- it's
9 challenging.

10 Q. And is that essentially the same sentence
11 or was that sentence moved to what's now the top of
12 that page where it says "Minimum Transmission Line
13 Clearances"?

14 A. Yes.

15 Q. So that first sentence in that paragraph
16 states: "For any transmission line (69 kV and above),
17 vegetation shall be no closer than fifteen feet to an
18 energized conductor when the clearing is completed";
19 is that correct?

20 A. That is correct.

21 Q. Okay. So the sentence at the bottom of
22 the paragraph states that side clearances should
23 provide a minimum of 15-foot clearance, while the new
24 sentence, the sentence in the new section states that
25 vegetation shall be no closer than 15 feet. So the

1 word "shall" replaced the word "should"; is that
2 correct?

3 A. Yes, it did.

4 Q. Now, if you turn to the next page, I
5 believe you stated that does not apply to
6 transmission because it deals with overbuilds, and
7 overbuilds are --

8 A. No.

9 Q. -- distribution only.

10 A. The first paragraph does apply --

11 Q. Oh, okay.

12 A. -- to transmission, and the bottom
13 paragraph applies.

14 But it's all in the middle where you pick
15 up for single-phase lines, that's distribution. For
16 open wire secondary. Then it keeps on going for open
17 wire or triplex, vine, special clearances. I'm
18 trying to make out the last piece. Poles with
19 switching mechanisms. That's all distribution.

20 The overbuild piece, and it's very
21 difficult to read this printed copy but I believe it
22 goes back to the section where you got minimal
23 transmission line overbuild clearances on the
24 previous, that's where it parallels to.

25 Q. Okay. Thank you. I was just trying to

1 clarify that because I thought you said that that
2 paragraph didn't apply to transmission.

3 A. That top and the bottom would --

4 Q. Okay.

5 A. -- on that page.

6 Q. Okay. Thank you.

7 A. The very last paragraph in the document
8 was distribution.

9 Q. Okay. Now, if you turn to the next page
10 to the last paragraph that's deleted on there that's
11 redlined.

12 A. Yes, sir.

13 Q. This is not specific to -- it doesn't
14 appear to be specific to distribution or
15 transmission, correct? It's difficult to discern.

16 A. I would agree, and that was --

17 Q. Okay.

18 A. -- when I read it, that was my take.

19 Q. So it could apply to distribution or it
20 could apply to transmission or both, correct?

21 A. It could, but I will tell you based on
22 that first sentence and my working knowledge of both
23 the transmission and distribution spec, it says "When
24 performing routine circuit line clearing...." That
25 first key word "circuit" is distribution terminology.

1 "...all unsuitable trees twelve inches DBH or less
2 with the trunk within ten feet...." That was
3 directly out of the spec of a distribution. Our
4 easements are 10-foot each side of the center line
5 for distribution. That's all in the distribution
6 specification. You won't find that language anywhere
7 in transmission.

8 Q. But I'm assuming it could have been read
9 to apply to transmission?

10 A. It could have been, to someone that's not
11 familiar with this. I can be empathetic that it
12 would confuse someone that's not knowledgeable.

13 Q. Or maybe even someone who is.

14 A. At first -- like I said, when I first
15 read it, it took me -- I had to stand back and say
16 okay. I was not -- I was not familiar with the
17 document --

18 Q. Okay.

19 A. -- and it took me a while to internalize
20 it. And that's where I'll go back in my testimony,
21 sir, that the revision was a better document, but the
22 document that your -- that Mr. Williams put in his
23 testimony, that's probably a better encompassing
24 document similar to what the Dayton and AEP documents
25 were. That's a much broader view of the program.

1 MR. ETTER: Your Honor, I move to strike
2 the last part of his response as being nonresponsive
3 to the question. I didn't ask if what was included
4 in Mr. Williams' testimony was a better version of
5 this. I just asked him whether or not someone who
6 even is knowledgeable could be confused about the
7 application of this paragraph.

8 EXAMINER ADDISON: Thank you.

9 Ms. Watts.

10 MS. WATTS: Your Honor, I believe he was
11 answering the question, but, beyond that, he's stated
12 this point a number of times.

13 EXAMINER ADDISON: Thank you.

14 I'm going to go ahead and deny the motion
15 to strike.

16 Q. (By Mr. Etter) At any rate, someone
17 who -- even someone who is knowledgeable could be
18 confused about the application of this paragraph.

19 A. Someone who is knowledgeable will be
20 asking a lot of questions. If they -- if they work
21 for Duke Energy in the Midwest on our system, yeah,
22 they could relate to it. If they were just in the
23 industry, the terminology, if they're familiar with
24 T&D terminology and nomenclature, they would quickly
25 pick up, but you have to know that terminology.

1 Q. Now, if you look in the first sentence of
2 this paragraph, it states that "When performing
3 routine circuit line clearing, all unsuitable trees
4 twelve inches in diameter breast height...or less
5 with the trunk within ten feet of the conductor shall
6 be removed where permissible by the property owner or
7 Township, but in the absence of a legal right to
8 remove, and excluding an emergency situation, no
9 removal may take place until Contractor has
10 contracted and received approval from the property
11 owner or agent to remove...trees." Is that what it
12 says? "Such trees." Sorry. Is that correct?

13 A. That is correct.

14 Q. And is that language in the new version
15 of the vegetation management program?

16 A. I don't think -- I don't think it is.

17 Q. Okay. So the new version of the
18 vegetation management program does not exclude
19 emergency situations?

20 A. No. No. I think it -- I'd have to go
21 back and read if there was any statement around
22 emergency situations or not in the new plan.

23 Q. And --

24 A. It would not have been the intent to
25 exclude that, no. Let's see. I do not see any

1 reference to emergency situations in the new draft --

2 Q. And --

3 A. -- in the new document.

4 Q. Sorry. Are you finished?

5 A. Yes, sir.

6 Q. Okay. And similarly, the new version of
7 the vegetation management program does not have the
8 qualifier that's listed above that where it says that
9 the trees "shall be removed where permissible by the
10 property owner or Township"; is that correct?

11 A. That is correct.

12 Q. And by the same token, if you go down
13 four lines underneath that, where there's the
14 underlined "in absence of legal right to remove, and
15 excluding a emergency situation...."

16 A. I see that.

17 Q. That exclusion of an emergency situation
18 is not in the new vegetation management program that
19 was filed in 2016; is that correct?

20 A. That is correct.

21 MR. ETTER: That's all the questions I
22 have, Your Honor.

23 Thank you, Mr. Adams.

24 THE WITNESS: Thank you.

25 EXAMINER ADDISON: Thank you very much,

1 Mr. Etter.

2 EXAMINER SANYAL: I just have one
3 clarification question on page 9. So I'm focusing on
4 lines 22 and 23, and the sentence says "Reclamation
5 usually involves non-selective methods of mechanical
6 mowing or clearing, hand-cutting or broadcast
7 application of herbicides." Just a quick question
8 there. Is mechanical mowing the same as clear
9 cutting? Is there a difference?

10 THE WITNESS: Mechanical mowing is not
11 clear cutting. Mechanical mowing is -- are you
12 familiar with a Bush Hog?

13 EXAMINER SANYAL: Okay. And then what is
14 mechanical clearing?

15 THE WITNESS: Mechanical clearing is like
16 a feller-buncher.

17 THE COURT REPORTER: A what? I'm sorry.

18 THE WITNESS: I'll spell it for you, that
19 will help you. F-e-l-l-e-r hyphen b-u-n-c-h-e-r.

20 THE COURT REPORTER: Thank you.

21 THE WITNESS: And that's a device that
22 will go up, it's got a blade at the bottom and it's
23 got grapnels on the side, and it will go up, cut the
24 tree and grab the tree and you've got positive
25 control. The reclamation is -- is -- it's really

1 referencing the tree removal.

2 EXAMINER SANYAL: Okay. That's all I
3 have. Thank you.

4 EXAMINER ADDISON: I have no additional
5 questions, Mr. Adams. You are excused.

6 THE WITNESS: Thank you.

7 EXAMINER ADDISON: Thank you so much.

8 MS. BOJKO: Your Honor, can I ask for the
9 spelling one more time?

10 EXAMINER ADDISON: Sure.

11 Mr. Adams.

12 THE WITNESS: Different manufacturers
13 manners may use different, but I know what I'm
14 accustomed to. Feller, f-e-l-l-e-r, hyphen, Buncher,
15 B-u-n-c-h-e-r. There's various industry brands and
16 stuff.

17 MS. BOJKO: Thank you.

18 EXAMINER ADDISON: Thank you. Now you
19 are excused.

20 And just as a quick housekeeping matter,
21 I know at the beginning of Mr. Adams' testimony,
22 Ms. Bojko you had raised a motion to strike regarding
23 page 9 and the ANSI A300 standard. I would just like
24 to clarify if that motion to strike is still pending
25 or if you would like to withdraw it at this time.

1 MS. BOJKO: Thank you, Your Honor. I had
2 a note to myself, but it's long overdue. Yes, I'll
3 withdraw that motion.

4 EXAMINER ADDISON: Thank you very much.
5 Ms. Watts.

6 MS. WATTS: Your Honor, we move
7 Mr. Adams' testimony for admission.

8 EXAMINER ADDISON: Any objections to the
9 admission?

10 MS. BOJKO: Only to the extent of the
11 motions to strike that were granted, Your Honor.

12 EXAMINER ADDISON: Absolutely.

13 Hearing no other objection, Duke Energy
14 Ohio Exhibit No. 2 will be admitted, subject to those
15 motions to strike.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER ADDISON: Ms. Bojko.

18 MS. BOJKO: Yes. Thank you, Your Honor.
19 At this time, we would like to move admission of
20 Complainants' Exhibits 19 through 21, and 23 through
21 34.

22 EXAMINER ADDISON: Any objections?

23 MS. WATTS: Your Honor, may we have,
24 like, till the end of the day or until maybe tomorrow
25 sometime to address those, because there's a lot of

1 them, and I would like to go back through them. Or
2 if you want to --

3 EXAMINER ADDISON: I will allow you a few
4 minutes to go through the exhibits; however, I would
5 like to get it done today before we take on the next
6 witness.

7 MS. WATTS: Okay. Thank you.

8 EXAMINER ADDISON: Let's go off the
9 record.

10 (Recess taken.)

11 EXAMINER ADDISON: Let's go ahead and go
12 back on the record.

13 Ms. Watts.

14 MS. WATTS: Your Honor, we have no
15 objections.

16 EXAMINER ADDISON: Wonderful.

17 Mr. Etter?

18 MR. ETTER: No objections.

19 EXAMINER ADDISON: Thank you.

20 Hearing no objections, Complainants
21 Exhibit Nos. 19, 20, 21, and 23 through 34 will be
22 admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 MS. BOJKO: Thank you, Your Honor.

25 EXAMINER ADDISON: Let's go off the

1 record.

2 (Discussion off the record.)

3 EXAMINER ADDISON: Let's go ahead and go
4 back on the record.

5 I recognize that we're doing this a
6 little out of order and I'd like to thank the
7 parties, again, for being willing to work with
8 witness availability in order to get through this
9 hearing as quickly as possible.

10 Ms. Bojko, are you prepared to call your
11 next witness?

12 MS. BOJKO: Yes, Your Honor. Thank you.
13 The Complainants call Mr. Tim Back to the stand.

14 EXAMINER ADDISON: Welcome, Mr. Back.

15 THE WITNESS: Thank you.

16 EXAMINER ADDISON: Please raise your
17 right hand.

18 (Witness sworn.)

19 EXAMINER ADDISON: Thank you. Please be
20 seated. If you could just turn on your mic.
21 Excellent, thank you.

22 MS. BOJKO: Thank you, Your Honor.

23 Mr. Back, I'll just remind you that if at
24 any time you do not hear me or opposing counsel or
25 the Bench, I know you had some difficulty hearing

1 this morning, so just let us know and we'll adjust

2 THE WITNESS: Thank you.

3 - - -

4 TIM L. BACK

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

7 DIRECT EXAMINATION

8 By Ms. Bojko:

9 Q. Could you please state your name and
10 address for the record.

11 A. Timothy Lee Back. 2220 Webb Road,
12 Brookville, Indiana.

13 Q. And, sir, on whose behalf are you
14 testifying today?

15 A. The Complainants.

16 Q. And did you file or cause to be filed
17 Direct Testimony regarding the complaint of Citizens
18 Against Clear Cutting against Duke Energy Ohio in
19 this proceeding?

20 A. Yes.

21 MS. BOJKO: Your Honors, at this time, I
22 would like to mark as Complainants Exhibit 35, the
23 Direct Testimony of Tim Back, filed on behalf of the
24 Complainants on October 26th, 2018.

25 EXAMINER ADDISON: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MS. BOJKO: May I approach?

3 EXAMINER ADDISON: You may.

4 Q. Sir, do you have in front of you what's
5 been marked as Complainants Exhibit 35 which is your
6 testimony?

7 A. Yes.

8 Q. And do you recognize this document as the
9 testimony that you filed with the Commission?

10 A. Yes.

11 Q. And was this Direct Testimony prepared by
12 you or under your direction?

13 A. Yes.

14 Q. And since the filing of your Direct
15 Testimony, do you have any changes, sir?

16 A. No.

17 Q. And if I were to ask you the same
18 questions today as they appear in your testimony,
19 would your answers be the same?

20 A. Yes.

21 MS. BOJKO: Your Honor, at this time, the
22 witness is available for cross-examination.

23 EXAMINER ADDISON: Thank you, Ms. Bojko.

24 Mr. Etter, any questions?

25 MR. ETTER: No questions, Your Honor.

1 EXAMINER ADDISON: Thank you.

2 Mr. McMahon.

3 MR. McMAHON: Thank you, Your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. McMahon:

7 Q. Good afternoon, Mr. Back.

8 A. Good afternoon.

9 Q. Nice to see you again.

10 You're here as an arborist in this case,
11 correct?

12 A. Yes.

13 Q. And if you look on page 4, lines 10
14 through 12 of your testimony, as an arborist, you
15 were specifically asked to assess a number of trees
16 and other vegetation that, at least in your
17 understanding, Duke Energy Ohio intends to remove,
18 correct?

19 A. Correct.

20 Q. And right below that, you also indicated
21 that the Complainants wanted you to look at the trees
22 and other vegetation, consider various factors about
23 the various species of vegetation, and then determine
24 whether it would be possible, as you stated, "for
25 Duke to control this vegetation by a method less

1 extreme than removing or clear cutting," correct?

2 A. Correct.

3 Q. Essentially, you were hired to figure out
4 a way for Complainants to preserve trees and other
5 vegetation, weren't you?

6 MS. BOJKO: Objection. Argumentative.

7 EXAMINER ADDISON: I'll allow the
8 question.

9 You may answer.

10 A. I don't need to have to figure out. I
11 know we can do it.

12 Q. Okay. So that was your goal and that's
13 the nature of your opinion in this case, correct?

14 A. My professional opinion, yes.

15 Q. And the reports that you attach to and
16 included in your written testimony were very "tree
17 specific," as you indicated on page 8, lines 6
18 through 7.

19 A. What lines, sir?

20 Q. 6 and 7.

21 A. 6 and 7, okay. So repeat the question.

22 Q. The reports that you attached to and
23 included in your written testimony were very "tree
24 specific," correct?

25 A. Correct.

1 Q. Essentially, in those reports you
2 document the trees and other vegetation that you saw
3 on those particular Complainants' properties,
4 including their species, height, growth rate, and
5 distance relative to the transmission lines, and then
6 your suggestions about what should happen with the
7 trees and vegetation, correct?

8 A. Correct.

9 Q. And you only did this work at properties
10 owned by nine of the Complainants?

11 A. Yes.

12 Q. You did not perform similar tree-specific
13 work on properties owned by any of the Complainants
14 in this case, correct?

15 A. Word that one more time, please.

16 Q. You did not perform similar tree-specific
17 assessments of trees on properties owned by other
18 Complainants in this case.

19 A. I was not hired to, no.

20 Q. Okay. In fact, you were told which
21 properties to assess, weren't you?

22 A. Yes.

23 Q. And a committee of the Complainants
24 selected the nine properties for your work; isn't
25 that true?

1 A. Yes.

2 Q. And all of the services that you rendered
3 in this case fall within the scope of your experience
4 as an arborist.

5 A. Yes.

6 Q. You're not an engineer of any kind,
7 correct?

8 A. Correct.

9 Q. You're not an attorney, correct?

10 A. Correct.

11 Q. You did not review any easements to
12 confirm whether the Company has the right to prune or
13 remove any trees within its rights-of-way, correct?

14 A. I missed your first --

15 Q. You did not review any easements to
16 confirm the Company's right to prune or remove trees
17 within the rights-of-way.

18 A. I'm just about getting that. If you
19 would, go two sentences at a time.

20 Q. Okay. Let me just ask you this way: You
21 did not review any easements in this case, correct?

22 A. My review is what was provided. The
23 easements, I can read about.

24 Q. But you weren't given any easements to
25 review, correct?

1 A. The easement established -- or, the
2 purchase of the easements, I read some documents
3 about that.

4 Q. You read some easements for the
5 properties owned by some of the Complainants in this
6 case?

7 A. No. I read the overall easement of the
8 utility transmission line.

9 Q. Are you referring, sir, to the vegetation
10 management program --

11 A. No.

12 Q. -- filed by the Company?

13 A. No. I'm referring to the origin of the
14 language of purchase when the lines -- when that
15 property transmission line was bought, I assume at
16 that time, from the residents or property owners.

17 Q. Let me ask you this question: You're not
18 offering any opinion today about the Company's right
19 to prune or remove trees as set forth in any
20 easements that you have read, correct?

21 A. Correct.

22 Q. You do not have any particular training,
23 education, or experience regarding tree-trimming
24 standards set by the North American Electric
25 Reliability Corporation, do you?

1 A. There's an overlapping standard that I do
2 have a handshake knowledge of.

3 Q. And was that the standard you became
4 familiar with when you obtained your Line Clearance
5 Arborist Certification, something like eight to ten
6 years ago?

7 A. That, and along with the International
8 Society of Arboricultural Association which I am
9 certified with, and what used to be National Arborist
10 Association, now called the Tree Care Industry
11 Association.

12 Q. And in that capacity you became familiar
13 with NERC standards?

14 A. Some.

15 Q. Okay. And did you also become familiar
16 with any standards established by the Federal Energy
17 Regulatory Commission?

18 A. They just overlap, sir. I don't -- I
19 can't say I know a lot about those. They just
20 overlap in the industry.

21 Q. And is it also true that you do not have
22 any particular training, education, or experience
23 regarding regulations approved or established by the
24 Public Utilities Commission of Ohio?

25 A. Try that one more time.

1 Q. Isn't it also true that you do not have
2 any particular training, education, or experience
3 regarding regulations approved or established by the
4 Public Utilities Commission of Ohio?

5 MS. BOJKO: Objection, Your Honor.
6 That's a multiple compound sentence. Even I was
7 having trouble following.

8 MR. McMAHON: I'll break it down.

9 MS. BOJKO: Thank you.

10 Q. Isn't it true you do not have any
11 particular training regarding regulations approved or
12 established by the Public Utilities Commission of
13 Ohio?

14 MS. BOJKO: Objection, Your Honor. I
15 also object to the word "particular." I'm not sure
16 what that means.

17 EXAMINER ADDISON: Just rephrase one more
18 time, Mr. McMahon. We'll move on.

19 Q. You don't have any training regarding
20 regulations approved or established by the Public
21 Utilities Commission of Ohio, correct?

22 A. I do.

23 Q. Which ones?

24 A. The experience is by the regulation. And
25 you can -- you can say it one more time and I'll stop

1 you right where I'm answering this question properly.
2 Please repeat the first question. "Regarding" you
3 said.

4 Q. So are you saying that you have
5 experience regarding regulations?

6 A. Yes, but not trained by that particular
7 entity.

8 Q. In which regulations, by the Public
9 Utilities Commission of Ohio, do you have experience?

10 A. There's an extreme amount of experience
11 that is within that I can't just answer one. There's
12 many. Just as there's ANSI standards.

13 Q. I'm asking about the Public Utilities
14 Commission of Ohio.

15 MS. BOJKO: Your Honor, I think he wasn't
16 finished with his response.

17 MR. McMAHON: Oh, I'm sorry.

18 EXAMINER ADDISON: Thank you.

19 A. I have not read those documents, but I do
20 know that we fall within regarding those regulations.
21 I have that experience to fall within the regulations
22 that are created. I'm not trained exactly from that
23 entity, but I have the experience.

24 Q. And to be clear, you're now referring to
25 experience regarding regulations established by the

1 Public Utilities Commission of Ohio?

2 A. Regarding, yes, sir.

3 Q. Okay. You have no experience or working
4 knowledge about cost-recovery issues relating to an
5 electric utility's vegetation management program, do
6 you?

7 MS. BOJKO: I'm going to object, Your
8 Honor.

9 A. No.

10 MS. BOJKO: Compound. There's two
11 questions in there. "Working knowledge" is
12 different.

13 EXAMINER ADDISON: I think he's -- he can
14 clarify, if you'd like to separate those out, just to
15 move things forward a little faster.

16 You may answer the question. I'll
17 provide you quite a bit of latitude.

18 A. Ask it one more time.

19 Q. You have no working knowledge about
20 cost-recovery issues relating to an electric
21 utility's vegetation management program, do you?

22 A. I cannot do any number crunching on the
23 expenses of the program, but I am limited to knowing
24 what it takes to estimate the expenses as I've been
25 in the business since 1987 professionally,

1 estimating, knowing proper treatments like growth
2 regulators and so forth. So there are pieces of
3 knowledge that I have that the utility companies
4 would have exercised.

5 Q. Are you familiar with the concept of
6 "cost recovery"?

7 A. No.

8 Q. You do not have any experience regarding
9 the construction and maintenance of electric
10 transmission lines, do you?

11 A. No maintenance experience.

12 Q. What about construction experience?

13 A. Working within the transmission lines or
14 working near?

15 Q. Do you have any experience with respect
16 to the construction of electric transmission lines?

17 A. No.

18 Q. Have you ever prepared a vegetation
19 management program for an electric utility company
20 like Duke Energy Ohio, Inc.?

21 A. No.

22 Q. Have you ever prepared any specific
23 policies, guidelines, or restrictions to implement a
24 vegetation management program --

25 A. No.

1 Q. -- for an electric utility?

2 A. No.

3 Q. Is it fair to say that you do not know
4 how Duke Energy Ohio's vegetation management program
5 compares to similar programs filed with the
6 Commission by other electric utilities in Ohio?

7 MS. BOJKO: Objection, Your Honor.

8 EXAMINER ADDISON: Grounds?

9 MS. BOJKO: First, it's a compound
10 question, and then I also seek clarification of what
11 "vegetation management" is. As you've heard for over
12 two weeks, and this might help expedite this process
13 as well, can Counsel explain what "vegetation
14 management." Are we talking about the one on file
15 with the Commission or the IVMS that we've been
16 discussing all week?

17 EXAMINER ADDISON: It may help the record
18 if you would clarify, Mr. McMahon.

19 MR. McMAHON: Okay.

20 EXAMINER ADDISON: Thank you.

21 Q. (By Mr. McMahon) Are you aware that
22 public utility companies, such as Duke Energy Ohio,
23 file their vegetation management programs with the
24 Public Utilities Commission of Ohio?

25 A. Yes.

1 Q. Okay. And do you have knowledge how Duke
2 Energy Ohio's filed vegetation management program
3 compares to programs filed by other utility companies
4 in Ohio?

5 A. No.

6 Q. Now, it's been quite a few years since
7 your company last performed any type of pruning along
8 a high-voltage transmission line, correct?

9 A. Correct.

10 Q. I believe it's been more than five
11 years; is that right?

12 A. That's correct.

13 Q. And that limited work that you did was
14 done for a residential or consumer customer, correct?

15 MS. BOJKO: Objection, Your Honor.
16 Assumes facts not in evidence. Nobody said the work
17 was limited.

18 EXAMINER ADDISON: Mr. McMahon?

19 MR. McMAHON: I'll ask it this way.

20 EXAMINER ADDISON: Thank you.

21 Q. The last time your company did any
22 pruning work along high-voltage transmission lines
23 was done for a residential or commercial customer,
24 correct?

25 A. If you call the railroad "commercial,"

1 yes.

2 Q. Okay. So it was work done for a railroad
3 company.

4 A. Yes.

5 Q. Okay. Not one of the electric utility
6 companies in Ohio.

7 A. The transmission line was in Ohio.

8 Q. Right, but the work you did was not for
9 one of the electric utility companies.

10 A. Correct.

11 Q. And you're not even sure of the voltage
12 of the transmission lines along which your company
13 last did that pruning work, correct?

14 MS. BOJKO: Objection, Your Honor. I
15 think he should ask the question, not assume facts
16 not in evidence.

17 EXAMINER ADDISON: Thank you.

18 Just rephrase, Mr. McMahon.

19 Q. Do you know the voltage of the
20 transmission lines along which your company last did
21 that pruning work?

22 A. It would be under 200 and it would be
23 near the 138.

24 Q. Okay. Do you know the voltage of Duke
25 Energy Ohio's high-voltage transmission lines in

1 Ohio?

2 A. The particular transmission of this case
3 is 138.

4 Q. But do you know the voltages of the
5 Company's other high-voltage transmission lines in
6 Ohio?

7 A. There are some, I think, over 200, or the
8 200, and there's some less.

9 Q. Is that the extent of your knowledge?

10 A. Yes.

11 Q. Do you know how many miles of
12 high-voltage transmission lines, Duke Energy Ohio has
13 in Ohio?

14 MS. BOJKO: Objection.

15 EXAMINER ADDISON: Grounds?

16 MS. BOJKO: We just identified the
17 witness knows of many high-voltage lines. I don't
18 know what the question is pertaining to. All of
19 them? 138?

20 EXAMINER ADDISON: The witness can
21 elaborate. I'll allow the question.

22 You may answer.

23 A. Since there are multiple lines, I know --
24 I'm -- I think I had read 262 miles, but I think
25 that's a little bit on the small side.

1 Q. And that's the extent of your knowledge?

2 A. Yes.

3 Q. Do you know the topography of the terrain
4 through which Duke Energy Ohio's transmission lines
5 run?

6 A. I know it's like Nevada. We have ups and
7 downs. We have valleys in this area. And the
8 direction, the maps that are laid out, I am not that
9 familiar, but I do -- I do know the areas, that they
10 are in the Greater Cincinnati area.

11 Q. Okay. Is that the extent of your
12 knowledge?

13 A. That's it.

14 Q. Could you turn to page 7, lines 17
15 through 20 of your testimony.

16 A. 7, 17, you say?

17 Q. Yes, sir.

18 As you indicated there in your testimony,
19 your "Ultimate objective" was to determine how close
20 trees could come to the transmission lines, but then
21 keep them from touching by controlling more growth,
22 correct?

23 A. I would need to read a sentence or two
24 prior to this --

25 Q. Feel free.

1 A. -- line 17.

2 Q. Okay.

3 A. 13 says "For each tree, I evaluated the
4 species of the tree and used my knowledge and
5 expertise to determine an approximate growth rate. I
6 used a measuring device called a Laser Distance Meter
7 to determine the height of each tree, as well as the
8 height of the transmission wires and the distance of
9 the tree from the transmission wires. My ultimate
10 objective was to determine how close each tree could
11 possibly come to the transmission" -- which you would
12 normally say "possibly grow to." Trees don't come
13 to; they grow to. I'm not trying to be sarcastic.

14 Q. I understand.

15 A. "...transmission wires through growth,
16 and, if it came too close, how, if at all, its growth
17 could be controlled...." Do you want me to keep
18 reading? Let me answer the question now, now that
19 I'm refreshing my memory here.

20 Q. I can move on. You just restated what
21 your testimony was.

22 A. Okay.

23 Q. In order to control --

24 MS. BOJKO: Your Honor, I would ask, we
25 gave Mr. Adams a lot of leeway to answer the

1 questions. The witness just said he could answer the
2 question now and he was going to provide an answer.

3 EXAMINER ADDISON: I think he did answer
4 the question by reading his testimony. I think
5 Mr. McMahon was just confirming what his ultimate
6 objective was.

7 MS. BOJKO: Oh, I thought he had more to
8 say.

9 EXAMINER ADDISON: Please continue,
10 Mr. McMahon.

11 MR. McMAHON: Thank you.

12 Q. (By Mr. McMahon) And, sir, in order to
13 control future growth, you think that two tools could
14 be used, and I'll go in order. First, you think that
15 tree trimming is possible and that it could be done
16 by either Duke Energy Ohio or property owners,
17 correct?

18 A. Correct.

19 Q. And you do not specify, in your testimony
20 or written reports, who should be responsible for
21 doing that trimming, do you?

22 A. I do not. And I also don't make the
23 judgment on what tree what resident should be able to
24 because it's not my recommendation that they do it,
25 but that they would only hire a certified arborist to

1 achieve that.

2 Q. And by the way, when you went back and
3 read lines 13 through 15 of your testimony there on
4 page 7 --

5 A. Yes.

6 Q. -- you referred to using your knowledge
7 and expertise to determine an approximate growth
8 rate. Did you consult any outside source for that
9 knowledge or information?

10 A. Those resources are mentioned in the
11 testimony, yes.

12 Q. About growth rate?

13 A. Yes.

14 Q. You mentioned a resource in your
15 testimony that you considered to determine a tree's
16 growth rate?

17 A. I did.

18 Q. Okay.

19 A. That is recorded.

20 Q. Okay.

21 A. Excuse me, if you don't mind.

22 Q. Sorry.

23 A. And on that note, growth rates that were
24 referred to had nothing to do with the epicormic
25 growth that Mr. Adams was referring to, the extreme

1 growth habit of -- he used the example of 16 feet
 2 within the last six years. That's due to improper
 3 pruning and that was done by the utility company and
 4 that's the practice across our great nation because
 5 utility companies practice it from the original day
 6 or I should say at least my lifetime and my dad's
 7 lifetime as he retired after 30 years working; he
 8 taught me trees. And the industry has improved to a
 9 point where ANSI standards have included the proper
 10 way, and the utility companies have been committed
 11 and supposed to be sticking to that in which they are
 12 not. I'm very confident in that and I witness that
 13 every day.

14 MR. McMAHON: Your Honor, I move to
 15 strike Mr. Back's comments there. There was no
 16 question pending and that soliloquy was not
 17 responsive to my last question.

18 EXAMINER ADDISON: Thank you.

19 Consistent with Mr. Adams' testimony, I
 20 will allow Mr. Back to invoke the one bite at the
 21 apple. However, going forward, Mr. Back, if you
 22 could just listen to Mr. McMahon's question and
 23 answer only his question. Ms. Bojko can surely bring
 24 up any additional information that she would like to
 25 during redirect.

1 THE WITNESS: Yes, thank you, Your Honor.

2 EXAMINER ADDISON: Thank you.

3 Q. (By Mr. McMahon) We just talked about the
4 first tool that you testified about, pruning or
5 trimming. On page 14, lines 6 through 13 --

6 A. 14, lines 6 through?

7 Q. 13.

8 A. 13.

9 Q. The other tool you referred to is a
10 growth regulator, correct?

11 A. It is not a tool. It is a method and a
12 formula for growth regulator -- growth regulating a
13 tree.

14 Q. Okay. And you believe that growth
15 regulators would be helpful in alleviating any
16 concerns that Duke may have that trees grow more than
17 expected before Duke returns to to these properties
18 during its next tree-trimming cycle.

19 A. It was a couple words that makes a
20 difference in the way you ask it, and the one was
21 "any." If you would go back and repeat the question
22 maybe two sentences at a time.

23 Q. If you look at page 14, lines 6 through
24 13.

25 A. Yes.

1 Q. The first sentence on line 6 says,
2 "Another method that can effectively control the size
3 of trees or other vegetation is the use of growth
4 regulators."

5 A. Yes.

6 Q. Do you see that?

7 A. Yes.

8 Q. And then you proceed to discuss how
9 these chemicals -- "These are chemicals that can be
10 injected into a tree or applied to the soil at the
11 base of the tree."

12 A. Correct.

13 Q. And then if you continue down to the end
14 of line 10 through line 13, you then say, "This would
15 be helpful in alleviating any concerns that Duke may
16 have that trees may grow more than expected before
17 Duke returns to these properties during its next tree
18 trimming cycle," correct?

19 A. I'm going to read it myself. "This would
20 be helpful in alleviating any concerns...." I think
21 "any" is a little bit bold on my behalf, but I can
22 justify. "...any concerns that Duke may have that
23 trees may grow more than expected...."

24 The intent of "any" is meaning to achieve
25 their goals as far as safety and clearances, and not

1 having to spend new money for the physical return of
2 trimming and causing a lot of unnecessary expenses.

3 Q. You don't say, in your written testimony,
4 who would be responsible for applying the growth
5 regulation -- regulators on various trees, do you?

6 A. I don't.

7 Q. You also do not say, in your written
8 testimony, which growth regulators should be used.

9 A. I don't.

10 Q. Or how much of a particular growth
11 regulator should be used.

12 A. That is on the chart. I don't need to
13 explain that. My main intent was to propose that
14 that be used as so many other utility lines across
15 the nation do use at the present time.

16 And if I may?

17 The prior statement that there was
18 discrepancies in the use, it wasn't clarified if that
19 was in the ANSI standard statement or in Duke
20 Energy's decision.

21 Discrepancies of using growth regulators
22 or not, it is a proven -- for over 30 years -- a
23 proven formula that does work. In fact, Cambistat is
24 a brand name that protects -- I should not say
25 Pro-Tech because that's an insecticide I use, it's a

1 common statement -- that regulates for three years.

2 So treatments twice in your six-year
3 management program is all it would take to slow a
4 tree down -- Do you want me to keep going? Am I
5 okay? -- to slow a tree down so you don't have to
6 return within that six-year period. Just treat it.

7 Q. So --

8 A. And -- I'm sorry.

9 Q. Go ahead.

10 A. And that's after pruning certain trees.

11 Certain trees you don't even need to
12 prune. Certain trees have a species that may get to
13 that point, as you're concerned of, trees can grow to
14 be 100, 200, 500 feet, but they won't and don't if
15 you apply proper pruning techniques and, in some
16 cases, only Cambistat, growth regulators.

17 And the whole point here is Cambistat is
18 a brand name of a growth regulator that's been used
19 many, many years. That product in this transmission
20 line, with these addresses, of all the trees that I
21 looked at, I can tell you which ones you need to
22 without having to prune, I can tell you which trees
23 you need to prune and apply. I could tell you which
24 ones need neither, that will never become within the
25 concerns of safety with the electrical hazard area.

1 So these trees can all be controlled by
2 those two methods: Pruning -- not topping -- pruning
3 and injecting, or soil drenching, applying growth
4 regulators.

5 Q. Are you finished?

6 A. Finished.

7 Q. And did you just say that the growth
8 regulator that you just mentioned by name, needs to
9 be applied every three years?

10 A. That is its -- it may not need to, but
11 that's how long it lasts. You may be able to get by
12 with one. It depends on the -- the health of the
13 tree.

14 Q. Okay. Let's talk about some of the
15 tree-specific analyses that you did in this case.

16 You visited these properties, what, back
17 on March 11, 2018; is that correct?

18 A. Yes.

19 Q. And I see on page 7, lines 20 through 22,
20 that you indicated that you went back a second time
21 to many of the properties to confirm that your
22 initial analyses were correct and to gather
23 additional information; is that accurate?

24 A. Very accurate. I went back several times
25 to do my own homework and making sure that even by

1 their own growth and other reasons for going back.

2 Q. I don't see anything, in the nine reports
3 that are attached to your testimony, regarding a
4 second visit to any of those Complainants'
5 properties. Do you?

6 A. The -- I don't know if I stated that or
7 not. I know that it is stated in my testimony. I
8 mean, in the documents, that I've been there twice.
9 What are you asking? In my testimony?

10 Q. It's in your testimony, I understand
11 that.

12 A. Yes.

13 Q. On page 7, lines 20 to 22.

14 A. Let me get that. What is it? 7?

15 Q. Page 7.

16 A. Page 7, what line?

17 Q. 20 through 22.

18 A. 20 through 22.

19 "For many of the properties, I returned a
20 second time to confirm that my initial analyses were
21 correct and to gather additional information." Yes,
22 I did.

23 Q. Okay. My question is: Is there anything
24 in the nine reports that are attached to your written
25 testimony that indicates that you went back a second

1 time to any of the properties and gathered any
2 additional information?

3 A. I can't recall any, but it took, in order
4 to achieve the total report, it took returns to
5 achieve that. But to make the statement that clearly
6 says I had to return to get new measurements, I
7 didn't state that.

8 Q. Okay. For example, look at Attachment A
9 to your testimony. The report that you did for
10 Mr. Grossi.

11 A. Okay.

12 Sorry, there's nine addresses.

13 Q. It's the first one at the end of your
14 written testimony, Attachment A.

15 A. As soon as I find Mr. Grossi.

16 These are not in the order of the
17 addresses that I had them in, I don't think.

18 MS. BOJKO: It has Attachment A in the
19 top right corner.

20 THE WITNESS: I found it.

21 A. Grossi?

22 Q. Yes, sir.

23 A. Attachment A. I'm looking at my cover
24 sheet.

25 Q. Okay. So turn two pages to where it

1 starts, it's marked page 1, it starts at the top, the
2 word "Summary."

3 A. Yes.

4 Q. Okay. I see there in the middle of the
5 page, there's a reference to your site visit on
6 March 11, 2018, correct?

7 A. Yes.

8 Q. Is there any reference in that report
9 regarding Mr. Grossi about a second site visit?

10 MS. BOJKO: Objection.

11 EXAMINER ADDISON: Grounds?

12 MS. BOJKO: Your Honor, he's
13 mischaracterizing the testimony. It doesn't say he
14 had a site visit on March 11th. It says on
15 March 11th, I met with Mr. Grossi. Those are two
16 different statements and he's implying that the
17 report is incorrect when it's not.

18 EXAMINER ADDISON: I'll allow the
19 question, and I'll also allow the witness to clarify
20 in the event you believe the question
21 mischaracterized your report.

22 A. I'm confused on the intent behind the
23 question.

24 Q. The intent was simply to find out the
25 date you went there.

1 A. The date. It states that it's March 11.

2 Q. Okay. That's what I thought. Is there
3 anything else in that report that states the second
4 date that you went back to Mr. Grossi's property?

5 A. No.

6 Q. Now, at the bottom of that first page
7 that you were just looking at there, under
8 "Recommendations," you write "I suggest maintaining
9 proper heights by trimming every 2 to 3 years." Do
10 you see that?

11 A. Yes.

12 Q. You're aware that is two to three times
13 more often than the six-year clearing cycle set forth
14 in Duke Energy Ohio's vegetation management program
15 filed with the Commission?

16 MS. BOJKO: Objection.

17 A. I do, but I also know that they can keep
18 their trees if someone -- and I'm not saying who does
19 it -- my opinion as far as it goes, the owner of the
20 property should have the right to hire a qualified
21 ISA-certified arborist to do just that because we
22 have a true asset here, the most valuable assets in
23 their yard, they should have a right to do that, and
24 that's why I suggest maintaining and that will keep
25 Duke off of your you-know-what. Do it, keep them.

1 EXAMINER ADDISON: Just very quickly,
2 Mr. McMahon.

3 Mr. Back, if your counsel objects to one
4 of Mr. McMahon's questions, just reserve any answer
5 until I rule on the objection.

6 THE WITNESS: Okay.

7 EXAMINER ADDISON: Thank you.

8 MS. BOJKO: I withdraw my objection.

9 EXAMINER ADDISON: Thank you.

10 Q. (By Mr. McMahon) Mr. Back, can you turn
11 the page to "Appendix A - Site Location," that chart.

12 A. Turn the page. Yes.

13 Q. Okay. In that chart you identify
14 specific suggestions about what should happen with
15 trees located in the wire zone and border zone on
16 Mr. Grossi's property, correct?

17 A. Correct.

18 Q. And at the bottom of that chart, you
19 refer to two White Pines that were only 14 feet from
20 the transmission line, based on your measurements.

21 A. Yes.

22 Q. And in your opinion, no initial reduction
23 in crown, or trimming, needs to be done on those
24 trees. All one needs to do is use a growth regulator
25 and that will be sufficient to keep the trees a safe

1 distance from the transmission line?

2 A. Let me do -- the chart has to be
3 followed. It's a little hard even though I designed
4 it.

5 The clearance of the tree to the nearest
6 conductor, the White Pine at the bottom, of 17 feet.
7 We have one that's 14 feet, one that's 14 feet.

8 Q. And those were the two I was asking you
9 about, sir.

10 A. These three trees are White Pines.

11 Q. The two 14-feet that you just referred
12 to.

13 A. Oh, the two 14's.

14 Q. Yes, sir.

15 A. So the growth regulator would only slow
16 that down but it would definitely -- oh, let's see,
17 13 to 24 inches will go to the right, down the
18 middle. A foot-and-a-half would be converted into
19 approximately around 10 inches a year; 60 inches. So
20 that, cut in half, would be 2-1/2 feet. So I don't
21 really see a reason why anybody would have to climb
22 up there and trim that tree.

23 Q. Okay.

24 A. It is a very close edge. A great
25 question. That's probably the closest of all species

1 trees on this particular case that I would say that's
2 a very close decision.

3 Q. Okay. And in your opinion, the use of
4 the growth regulator on those two trees would be
5 sufficient to keep the trees a safe distance from the
6 transmission line?

7 A. The clearance -- let me get this in my
8 own head here.

9 The clearance to the nearest conductor
10 being 14 feet. I -- you know, that's one reason one
11 of my other charts that I tried to use and then I
12 went to go to the same dimension findings that Duke
13 was using. So here I think what is going on here is
14 the elevation of the tree, not the horizontal limbs
15 that would continue to grow. If it's what I see
16 here, it was the elevation of the tree and -- shoot,
17 I don't want to take any more time on this. I
18 would -- I would have to revisit this White Pine
19 situation.

20 As I said, you would definitely be safe
21 to do the growth regulator if you get your pruning of
22 the 15-foot clearance first. So if we have a 14-foot
23 gap now and you want a minimum of 15-foot, we're
24 going to snip off 1 foot, we're going to do a growth
25 regulator, and you should be safe for the duration of

1 your six-year return.

2 Q. But, to be clear, in your chart there
3 with respect to those two trees, you do not make any
4 suggestions that either tree be pruned at all. Your
5 only suggestion is to use a growth regulator; is that
6 correct?

7 A. That is correct.

8 Q. Okay. Can you turn to Appendix B --
9 Attachment B, I'm sorry, your report for Kim
10 Wiethorn. I'm just going to go in order, so.

11 A. B is of Kim's?

12 Q. Kim Wiethorn. It should be the next
13 report.

14 A. Yes.

15 Q. Okay. In your opinion, none of the trees
16 in the wire zone and border zone on Ms. Wiethorn's
17 property should be removed "due to water retention,"
18 correct?

19 MS. BOJKO: Objection. Mischaracterizes
20 his testimony.

21 EXAMINER ADDISON: Mr. McMahon, maybe it
22 would help if you would point to the specific --

23 MR. McMAHON: Okay.

24 Q. You can look to the chart. If you turn
25 two pages to the chart, Appendix A to the Kim

1 Wiethorn report.

2 A. I have it.

3 Q. See under the far right column for
4 "Suggestions."

5 A. Uh-huh. Yes.

6 Q. And your first suggestion, it looks like
7 for every tree in that chart, is "Do not remove due
8 to water retention," correct?

9 A. Yes, that is correct.

10 Q. Were you hired by the Complainants to
11 render any opinion about water retention?

12 A. In the -- I was hired to note of my
13 findings' impact and that impact comes under impact.

14 Q. Okay. If you go back two pages.
15 Backwards two pages to the summary page of the Kim
16 Wiethorn report.

17 A. Yes.

18 Q. See where it says "Discussions" toward
19 the bottom?

20 A. Yes.

21 Q. Is there anything there where you noted
22 any discussions with Ms. Wiethorn about
23 water-retention benefits?

24 A. No, but that come in my second revisit to
25 take in all the facts that I could gather.

1 Q. Speaking of which, is there anything in
2 the Kim Wiethorn report indicating when you
3 supposedly made that second visit?

4 A. No. In fact, there was a few visits to
5 be thorough in my reports.

6 Q. There were a few visits to her property
7 or all properties?

8 A. All properties.

9 Q. Okay. So previously we talked about in
10 your testimony, on page 7, where you refer to a
11 second visit to these properties, but now you're
12 telling us you actually made multiple visits to these
13 properties?

14 A. Right. "A second" doesn't mean only two.
15 "A second." I could have said "a tenth" but I
16 didn't. I said "a second."

17 Q. Okay. So you chose to use the word
18 "second" when, in fact, you actually made multiple
19 visits to these properties.

20 A. Right. And if I -- I could have worded
21 it that way. But I did -- I did my homework, I had
22 several things I needed to confirm, and the retention
23 and possible erosion was very important to include in
24 my reports.

25 Q. Okay. Looking again at that chart, the

1 Appendix A to the Kim Wiethorn report. It looks
2 like, to me, the other suggestion that you made for
3 every tree referenced in that chart is that they
4 should be trimmed every three to five years, correct?

5 A. That's correct.

6 Q. So the report we just went over for
7 Mr. Grossi was that trees should be trimmed every two
8 to three years, but with respect to Ms. Wiethorn's
9 trees, they should be trimmed every three to five
10 years?

11 A. And there's two reasons behind that.

12 Q. What are they?

13 A. One is a Spruce tree will not grow near
14 as fast as a White Pine. The other reason is the --
15 the protection of the health of the tree and the
16 character, natural growth habits would also not be
17 affected.

18 So the three to five is with respect to
19 the tree decision and, again, these trees will take
20 so many years, I don't want to make the statement
21 incorrectly, but at least 10 to 15, 20 years before
22 they would even get close to your wires. They are
23 not the species that will grow -- the position in the
24 easement is what keeps these trees away from your
25 wires and especially trimming. But the intent here

1 is for the homeowner to see their trees protected
2 because of the character of their trees. These are
3 very, very valuable trees.

4 Q. Okay. Now, with respect to the trees in
5 the chart there in Ms. Wiethorn's report, you do not
6 recommend the use of growth regulators for these
7 trees, correct?

8 A. Let me find her.

9 Q. The page we were just on.

10 A. Oh, I thought we were talking about
11 somebody else.

12 Q. You do not suggest the use of growth
13 regulators, correct?

14 A. That's correct.

15 Q. Okay. So Mr. Grossi's trees where you
16 recommended the use of growth regulators, would grow
17 more quickly than Ms. Wiethorn's trees where you do
18 not recommend the use of growth regulators.

19 A. It's not based on that. It's based on
20 the position in the yard. But it does include that,
21 yes. The summary is if the tree -- a Spruce tree is
22 what we call excurrent. It has a singular single
23 leader and it points pyramidal. These trees, in most
24 cases, grow straight up. And their pyramidal habit,
25 we call it the apex of every tip, is a continuation.

1 The widest point is the bottom. The widest point at
2 the top is like your little finger. So the point is
3 it's a pyramidal shape and these trees and their
4 position on the easement will never come in contact
5 with your wires.

6 Q. Okay. Can you turn to the Staios report
7 which is Attachment C. So we're just going to the
8 next report.

9 A. Okay, I have her.

10 Q. Okay.

11 A. Attachment C?

12 Q. Yes. If you go to Appendix A, the chart,
13 please.

14 A. Okay.

15 Q. The second and third trees that are
16 identified there, a couple of Pear trees.

17 A. Yes.

18 Q. Those are two trees that are only, or
19 were at that time, only 19 feet from the nearest
20 transmission line, both of which could grow more than
21 2 feet per year, correct?

22 A. Correct.

23 Q. But your only suggestion is "Do not
24 remove" them, correct?

25 A. Yes.

1 Q. You do not make any suggestions about
2 trimming them or using growth regulators on them,
3 right?

4 A. That's correct.

5 Q. And then at the end of that chart -- turn
6 the page, please.

7 A. Okay.

8 Q. You identify a White Pine that is 23 feet
9 from the transmission line and can grow up to 2 feet
10 per year, correct?

11 A. Correct.

12 Q. And you suggest that it be trimmed every
13 three to five years, correct?

14 A. Correct.

15 Q. Again, you don't suggest using a growth
16 regulator on this tree either.

17 A. Again, my determinations are based on the
18 growth habits and direction of the -- the consistency
19 of the species, and that's where the tree is located,
20 the canopy character and size, and direction. So
21 it's natural habit in this White Pine did not need a
22 growth regulator. It just needs pruned.

23 Q. But the White Pines on Mr. Grossi's
24 property did require a growth regulator.

25 A. That's because of their position in the

1 easement and the canopy's present pattern of growth
2 where it's located.

3 Q. Okay. Can you turn, keep going to the
4 next report, Attachment D.

5 A. Excuse me if you don't mind.

6 Q. Sure.

7 A. You started, I thought you were going to
8 ask a question about the Pear tree. You said I did
9 not suggest anything but just don't remove it.

10 Q. We covered that.

11 A. We did?

12 Q. Yeah.

13 A. Okay.

14 Q. Going to Attachment D, please, the report
15 for Dennis Baker.

16 A. He's several back.

17 Q. It should be the next one. I'm just
18 going in order, sir.

19 A. Okay. There he is.

20 Q. Okay. I just want to make sure I
21 understand your recommendations. You recommend that
22 all of the Hackberries, Honey Locust, one Austrian
23 Pine and two Norway Spruce be removed, correct?

24 A. Correct.

25 Q. And if you turn the page to page 3 there.

1 With respect to the other trees that you list, you
2 suggest that their canopies should be reduced by
3 25 percent and then the owner should maintain them
4 going forward, correct?

5 A. Correct.

6 Q. There's no reference anywhere in your
7 report for Mr. Baker about how often tree-trimming
8 work should occur, is there?

9 A. I don't see it.

10 Q. Okay. So there's nothing like two to
11 five years, or three to five years, as we went over
12 with the other properties.

13 A. That's correct.

14 Q. Okay.

15 A. And let's keep in mind too, when I say
16 two to five or three to five, one dimension can refer
17 to one species when another can wait for five years.
18 So let's make sure that if I talk about an Austrian
19 Pine, you would only need to return every five years
20 for that particular species. If I'm talking about a
21 White Pine, you might need to return two to three
22 years. It depends on its positioning.

23 Q. And it also depends on who's doing the
24 work, correct?

25 A. Yes.

1 Q. And in your opinion, a utility like Duke
2 Energy Ohio is supposed to rely on a property owner,
3 like Mr. Baker, to hire a qualified private company
4 to conduct the necessary pruning?

5 MS. BOJKO: Objection.

6 EXAMINER ADDISON: Grounds?

7 MS. BOJKO: Mischaracterizes his
8 testimony.

9 EXAMINER ADDISON: I'll allow him to
10 clarify.

11 You may answer the question.

12 A. Ask it one more time.

13 Q. Is it your opinion that Duke Energy Ohio
14 is supposed to rely on a property owner, like Dennis
15 Baker, to hire a qualified private company to conduct
16 the necessary pruning?

17 A. There's two answers to that. I don't
18 think Duke will govern what they do, who they allow
19 do it. I think the homeowner is responsible to keep
20 the clearances. However, if they do not, then your
21 clearance work would be a forced issue. But my whole
22 intent and point here, the trees can remain and not
23 have to be removed.

24 Q. Okay. You want to turn to Attachment D,
25 the Casper report.

1 A. Okay.

2 Q. If you turn in a couple pages --
3 actually, just turn to the chart. The chart for that
4 property, sir.

5 A. Okay.

6 Q. The Bitternut Hickory there, the first
7 tree.

8 A. Yes.

9 Q. Your suggestion is to reduce the canopy
10 by 25 percent and to treat that tree with a growth
11 regulator.

12 A. Correct.

13 Q. So again, there's no mention of future
14 maintenance or trimming, either by whom or how often,
15 right?

16 A. Correct.

17 Q. And regarding the White Pine right below
18 there, you think only that the crown should be
19 reduced by 20 percent, but don't think that using a
20 growth regulator is needed for that tree.

21 A. That's correct. This particular
22 property, and again back to the Bitternut Hickory,
23 knowing your program of return every six years, this
24 Bitternut Hickory is so far off of the transmission
25 lines. As it grows vertically, it's so far off --

1 I'm trying to prove my point here. Because we know
2 that your six-year return, this tree would not have
3 to have a growth regulator -- excuse me -- would not
4 have to be trimmed every three years, every three to
5 five years.

6 The crown reduction, 25 percent, of the
7 White Pine is another example of position in this
8 easement where your wires are, and unnecessary for
9 the growth regulator with your expectation of
10 returning in six years.

11 Q. Okay. So --

12 A. It'd still be in the safe zone.

13 Q. Sorry, go ahead.

14 A. It'd still be in the safe zone of the
15 clearance you're referring to.

16 Q. Okay. So essentially someone doing this
17 work is supposed to know, based on the tree's
18 location within the right-of-way, which White Pine
19 needs a growth regulator and which White Pines do not
20 need growth regulators.

21 A. An arborist knows how a tree grows. And
22 we're in the -- we're almost in the year 2020. This
23 is not 1960. Arborists' knowledge today has far
24 exceeded the standards of the beginning of all of
25 this. The clearance is unnecessary. I mean it's --

1 I'm getting off the path here, but an arborist knows.
 2 There's thousands of arborists now. In the year
 3 1997, there was only 600 of us in the State of Ohio.
 4 So the point is the education for the arborists, and
 5 there are many, focus on the character and the habits
 6 and growth of the tree. What more do we need to
 7 know?

8 Q. Okay. Are you finished?

9 A. Yup.

10 Q. Great.

11 Can you move on to Attachment F, your
 12 report for John Gump.

13 A. Got it.

14 Q. And again turn to the chart, please,
 15 Appendix A. Actually, it doesn't say that on this
 16 one.

17 A. Okay.

18 Q. I see that some trees you've identified a
 19 canopy that needs to be reduced by 25 percent, but
 20 other trees where you say a 10-percent reduction is
 21 sufficient, correct?

22 A. Correct.

23 Q. And to the extent that you use numbers
 24 like 10 percent, 20 percent, 25 percent with respect
 25 to recommended reductions in canopies of various

1 trees, those are fairly specific numbers, correct?

2 A. The numbers -- you mean my percent
3 choices?

4 Q. Correct.

5 A. The percent choices are based on the
6 species, their location, and their growth habit after
7 the tree work has been performed.

8 Q. And are you saying that Duke Energy Ohio
9 is supposed to know what those numbers mean or how to
10 apply those numbers to comparable trees on properties
11 owned by other Complainants or the thousands of other
12 property owners along its high-voltage transmission
13 lines?

14 A. Utility companies have to look at ANSI
15 standards, A300, and that's in there, yes.

16 Q. The --

17 A. Yes, Duke, the utility companies should
18 know this.

19 Q. When you make recommendations about the
20 percentage of a canopy that should be reduced, you're
21 saying that information is in the ANSI standards and
22 utilities companies should know this?

23 A. Yes, they should.

24 Q. Okay. And do you know where, in the ANSI
25 standards, that information is?

1 A. That would be line -- he was in line 7.
2 It's going to be around 2 or 3. It's pruning
3 standards. The percent is a choice by the judgment
4 of the arborist but guided by the ISA standards and
5 it's still TCIA A300, as a handshake of their
6 understanding, and generalized, if you will,
7 25 percent being a very consistent number.

8 But you don't have to on a Pear tree. In
9 fact, the Pear trees on Mr. Gump's property will
10 never ever get close to your wires. Never. And
11 there is absolutely a disgusting effect and a right
12 by our public, if you will, to have to see something
13 go for the intent that was set by utility companies
14 to make things safe. It's safe now and it will be
15 safe in 20 years because it will never touch. Never
16 come close.

17 So the whole intent and argument of this
18 stretch, you've gone into a community of developed
19 and mature trees that on the most part, I won't say
20 all, can be handled and not that expensive. I'm
21 sorry to be -- I went a little further than you
22 asked.

23 Q. That's fine.

24 Can we move on now to the Melisa Kuhne
25 report, Attachment G.

1 A. You want the chart or -- where would you
2 like me?

3 Q. Let's start on page 1.

4 A. Okay.

5 Q. In the summary, the top there on page 1,
6 you indicate "I have concluded that these trees
7 should not be removed, but rather trimmed and
8 maintained," correct?

9 A. Correct.

10 Q. But again, unlike some other property
11 owners, you do not say how often that future trimming
12 work needs to be done.

13 A. So you're asking me why I did not state
14 in here a time suggestion for doing anything; I'm
15 just making the statement "Do not remove"?

16 Q. Correct. And you don't indicate how
17 often trimming needs to be done.

18 A. This property should never be -- excuse
19 me. This property in the natural area, these trees,
20 if removed, would convert a creek into a river
21 because they're holding up the bank. And these trees
22 would definitely fall into Duke's expertise for crown
23 reduction. It could be a professional commercial
24 company. But if you're going to exercise coming
25 through, I'm making the suggestion do not remove

1 them. You would just have to maintain them.

2 MR. McMAHON: Your Honor, I move to
3 strike Mr. Back's answer. My question was simply:
4 In his report, he does not indicate how often any
5 trimming needs to be done.

6 EXAMINER ADDISON: Ms. Bojko.

7 MS. BOJKO: Sure, Your Honor. He was
8 talking about the summary on page 1, and I think
9 Mr. Back, as has been the case with the other
10 reports, he went to the actual Appendix A and
11 explained why based on the location of the trees and
12 how they fall into the easement or right-of-way. So
13 I think it was very responsive to his question, Your
14 Honor.

15 EXAMINER ADDISON: Thank you.

16 I'll deny the motion to strike. We can
17 continue on.

18 Q. Mr. Back, if you look at that chart, you
19 identify a Silver Maple there that is 50-feet high
20 and can grow to 80 feet in height, correct?

21 A. Correct.

22 Q. And your only suggestion is that the tree
23 be treated with a growth regulator, correct?

24 A. Okay. I was looking at the second one
25 there. Treat with a growth regulator, yes.

1 There's -- the position of this on the property, just
2 slow it down and you have many, many years before you
3 would ever have to address this tree for trimming
4 so -- okay, go ahead.

5 Q. Then if you go down two trees to a White
6 Pine that is 75-feet tall that you refer to, in the
7 Suggestion column, as a "high risk," correct?

8 A. Correct.

9 Q. And even though this tree is a high risk
10 to the transmission line, rather than remove it, you
11 suggest only that its crown be reduced to 30 feet and
12 nothing further, correct?

13 A. Correct.

14 Q. Not even to use a growth regulator on
15 this tree?

16 A. No. 30-foot would be very efficient.
17 Basically you're buying a lot of time so you're not
18 having to return for many, many years.

19 Q. And again, Duke Energy Ohio is supposed
20 to know that it should trim a 75-foot tree down to
21 30-feet and then start using growth regulators?

22 A. You know, I'm -- I'm -- if I'm
23 knowledgeable, don't you think Duke would be? They
24 should know.

25 Q. Okay. And then turn to Mike Preissler,

1 Attachment H.

2 A. Got it.

3 Q. Go ahead and turn to the chart.

4 A. Okay.

5 Q. Here you've identified three Norway
6 Spruce trees, all of which are located in the border
7 zone and are more than 15 feet in height, correct?

8 A. Correct.

9 Q. And you indicate that all three of these
10 trees should be just trimmed and maintained at or
11 near 15 feet in height?

12 MS. BOJKO: Objection, Your Honor.
13 Mischaracterized his testimony.

14 A. I don't see where I suggested that.

15 Q. Turn the page to page 1.

16 A. Page 1. Okay, I'm on the chart.

17 Q. Okay.

18 A. Okay?

19 Q. The recommendation at the bottom.

20 A. Oh, okay. Based on the dimension
21 requirements, I suggest maintaining of near 15 feet
22 and do not remove.

23 Q. Okay.

24 A. So yes, I recommend maintaining that
25 dimension because of the species and how these serve

1 the customer and that's their choice. If they did
2 not even touch these trees, they would not fall into
3 the unsafe zone of your -- of your intent.

4 Q. So you're saying that three trees,
5 located in the border zone on Mr. Preissler's
6 property that you've identified there in the chart,
7 if no one touched these trees, they would pose no
8 risk of falling into the transmission lines?

9 A. Let me do some dimensions. I don't think
10 so because what I remember about this, this being on
11 the border zone and these being excurrent trees,
12 pyramidal, they are right now -- the 25-foot and if
13 -- if you start at the top, the 18- to 25-foot is
14 because these trees are planted along a slope, so the
15 top of these trees is just about level with each
16 other but each tree is longer because they're planted
17 downhill from each other.

18 So the clearance to the nearest wire is
19 36 feet. That clearance is the apex, the very tip,
20 the very top. For that to ever get into the zone of
21 the wires, any critical area at all, it would be
22 unrealistic to say it would. So they do not need any
23 growth regulator at all. My recommendation of just
24 to maintain is just for the interest of the customer
25 for how they perform.

1 Q. Go to the Mark Wahlquist report,
2 Attachment I.

3 A. Okay. What page, sir?

4 Q. I hadn't said that yet. Page 1 after
5 your cover letter and index.

6 A. Okay.

7 Q. You conclude that "a few of the trees
8 should be removed and some trimmed and maintained,"
9 correct?

10 A. Correct.

11 Q. And then if you turn to Appendix A, you
12 identify a 44-foot Eastern Red Cedar that's inside
13 the wire zone and which should be removed, correct?

14 A. Correct.

15 Q. But below that, you identify three White
16 Pines and two Norway Spruce, all of which are also
17 located in the wire zone, that do not have to be
18 removed, correct?

19 A. Correct.

20 Q. For these trees that don't have to be
21 removed, you claim -- actually, you do not recommend
22 any trimming at this point, correct?

23 A. Okay. We drop down from the Eastern, we
24 go to the Red Bud, and then are we referring to the
25 White Pine, the first one that's 43-foot in height?

1 Q. I'm referring to the three White Pines
2 and the two Norway Spruce that you indicate in your
3 report in your testimony that do not have to be
4 removed.

5 A. Right. So the first one I make the
6 recommendation of "Maintain proper clearances.
7 Suggest pruning (reduction) every 3 to 5 years."

8 Q. Okay. My question was: You don't
9 recommend any trimming at this point, do you?

10 A. I didn't make the recommendation, but I
11 could see that that would be a favor.

12 Q. You could see what?

13 A. I could see that to be a favor to the
14 clearances that you need, but we -- I think I have a
15 White Pine that is 10-foot away; so yes, it does need
16 pruned.

17 Q. Well, on that first page of the chart
18 there, you identified a white pine that's 10-feet
19 away, a Norway Spruce that's only 16-feet away,
20 another Norway Spruce that's 13-feet away, and a
21 second White Pine that's only 10-feet away from the
22 conductor, correct?

23 A. Yes.

24 Q. And you don't think any of those four
25 trees need to be trimmed?

1 MS. BOJKO: Objection, Your Honor.

2 Mischaracterizes --

3 A. No, I didn't say that.

4 THE WITNESS: Go ahead, I'm sorry. Go
5 ahead.

6 MS. BOJKO: No, no.

7 EXAMINER ADDISON: You can finish.

8 THE WITNESS: Finish?

9 EXAMINER ADDISON: Yeah.

10 THE WITNESS: Okay.

11 EXAMINER ADDISON: If you need additional
12 clarification, you can certainly --

13 THE WITNESS: When I'm reading my own
14 notes here, it sounds contradictory to what he's
15 saying. I'm saying on the White Pine, the 36-foot
16 White Pine that is only 10 feet from the nearest
17 conductor, I'm suggesting maintain proper clearances,
18 suggest pruning and reduction every 3 to 5 years.

19 Q. Okay. Are you saying that the phrase
20 "maintain proper clearances" means that some amount
21 of pruning should be done?

22 A. I think that's a no-brainer because it
23 falls within the restricted area of those voltages.
24 They, right now, need to be pruned, yes.

25 Q. I agree it's a no-brainer.

1 A. I'm sorry, that was not a very good
2 selection of words, I'm sorry.

3 Q. I wonder why you used that phrase
4 "maintain proper clearance" as opposed to "reduce
5 canopy a certain percentage" or "trim a certain
6 number of feet off" like you did relating to other
7 trees.

8 A. I understand.

9 The purpose behind this particular
10 residence, and I believe this might even be the one
11 with the swimming pool, these trees that are
12 positioned that close, in order to keep them they
13 will have to do something on a more regular basis to
14 keep them. Now, yes -- so the clearances -- these
15 are directly under and close to the low conductors
16 and so that's why I say "maintain" because they're
17 going to get close again very soon.

18 So this particular situation, I don't
19 want to exaggerate, but if it was my property, I
20 could keep them and keep them safe, but I will
21 maintain them, I might be out there every year.

22 Q. Okay. Anything more?

23 A. (Witness shakes head.)

24 Q. Could you turn the page, please. At the
25 top of that second page of the chart there for

1 Mr. Wahlquist, there's another White Pine that is
2 45-feet tall but only 2 feet from the conductor,
3 according to your chart; is that correct?

4 A. It must be a misprint. That is not
5 correct. Hold on, let me see. We may be in the
6 peripheral. That may be the dimension of peripheral.

7 Q. Look to the left. It says "2 feet inside
8 west wire zone."

9 A. Yes. That's 2-foot inside the border,
10 the easement border. That's the reference of this is
11 easement border. So it's --

12 Q. Are you saying that phrase "2 feet inside
13 west wire zone" means 2 feet inside the easement
14 border?

15 A. Yes.

16 Q. Okay. Are you now saying that tree is
17 not or was not, as of whenever you were on the
18 property, only 2 feet from conductor even though
19 that's what your chart says?

20 A. That's correct, that is not. That's a
21 misprint. It is not.

22 Q. Okay.

23 A. That is definitely not.

24 Q. And then right below that is another
25 White Pine that is inside the border zone and 60-feet

1 tall, correct?

2 A. Correct.

3 Q. And you, again, use the phrase "maintain
4 proper clearances." So you think some trimming work
5 should be done now and then trimming going forward
6 every three to five years?

7 A. It's 29 feet from the nearest conductor.
8 This tree is elevated to a point that that particular
9 tree does not have to be pruned at the present time
10 because of the clearance. But I do recommend,
11 because of the forecast of the growth of the tree,
12 maintain what we have and don't let it go to the
13 point of a radical reduction.

14 Q. So maintain what we have now at 29 feet
15 from the conductor, is that what you're saying?

16 A. That's logical.

17 Q. I'm just asking is that what you're
18 saying.

19 A. Every three to five years would be
20 maintaining -- actually, it would be there or even
21 further away from the wires and it's okay. The tree
22 doesn't need to be removed.

23 Q. To the extent you recommend that a
24 property owner should maintain trees near
25 high-voltage transmission lines, is it your opinion

1 that it would be both safe and practical for Duke
2 Energy Ohio to rely upon thousands of property owners
3 to get that work done in a competent and safe manner?

4 A. The homeowner should never. As I said
5 early on, certified arborists, ISA, International
6 Society of Arboriculture certified. And there's also
7 another association certification which I did achieve
8 several years ago -- actually, there's a couple
9 different ones: Tree worker certification and then
10 the line clearance certification.

11 The right for a homeowner to keep their
12 trees should be there because we now have an avenue,
13 we have an avenue in the 2020 age era of time. Back
14 25 years ago, we didn't even have these
15 certifications available; now we do. There's a lot
16 of -- there's hundreds of qualified arborists, tree
17 climbers, certified, and they can and the homeowners
18 should have the right to use them. And if you want
19 to set some regulations, regulate their performance,
20 which I think are established because that's why they
21 got the certifications.

22 Q. Sir, are you saying that it would be both
23 safe and practical for Duke Energy Ohio to rely upon
24 thousands of property owners to hire certified
25 arborists to get work done in a competent and safe

1 manner?

2 A. Today I can say relying on the resident
3 or the homeowner or the property owner to rely on
4 them is the same as giving them -- let me think this
5 out here because Mr. Adams -- or is that his first
6 name? -- that was here before, the witness before
7 made a statement that regulations and rules, if you
8 will, are set forth and changed years apart. They're
9 ready to change again most likely.

10 My thinking is because of the improvement
11 in the industry that the governing of distances that
12 you can do can be a governed system by Duke, saving
13 your tree trimmers when the hired commercial
14 companies can do it and maintain, is much easier than
15 governing and spending money on your own crews.

16 I see a very, very good system in relying
17 on homeowners. Otherwise, their trees are gone
18 because they did not do what we set forth to do. In
19 other words, if I have a tree and you tell me that if
20 you don't fix it, you have 30 days or you're taking
21 it down. Fine, take it down. But if I have the
22 right to maintain that, then I should have the right
23 because that tree has a very high value to a
24 customer. And if we can achieve the same goal to
25 keep it safe and keep the tree for the homeowner,

1 then why not?

2 I think the biggest problem we have here,
3 and I think it can still be proven that you can save
4 money rather than having all of the mechanical -- and
5 that's another thing. The helicopters, the
6 feed-coms, the big equipment, you can't -- you should
7 not use them in residential areas because the ANSI
8 standards are not met. You can't make a collar cut.
9 Shigo mentions CODIT. That right there, itself, is
10 for residential pruning, for pruning to save trees.
11 I'm getting off my subject, I think, a little. Give
12 me one more moment, please.

13 Your equipment going through corn fields,
14 miles and miles and miles. If I were to ask the
15 question how many miles are actually developed areas
16 where we have homeowners up against the property, I
17 bet it would be less than -- less than 2 percent.
18 That would be my guess. Anyway, you go many, many
19 miles across -- okay, you know, I'm going to wait
20 till -- I'm going to wait. I think I'll stop here,
21 unless I didn't answer your question.

22 Q. No, that's fine.

23 MR. McMAHON: I have nothing further.

24 EXAMINER ADDISON: Thank you,

25 Mr. McMahon.

1 Ms. Bojko, redirect?

2 MS. BOJKO: Yes. Could we have a few
3 minutes, please, Your Honor?

4 EXAMINER ADDISON: You may.

5 Let's go off the record.

6 (Recess taken.)

7 EXAMINER ADDISON: Let's go back on the
8 record at this time.

9 Ms. Bojko, redirect?

10 MS. BOJKO: Yes, we do have a few
11 questions, Your Honor.

12 - - -

13 REDIRECT EXAMINATION

14 By Ms. Bojko:

15 Q. Mr. Back, when Mr. McMahon was asking you
16 some questions, he was referring to Appendix A
17 attached to your reports. Do you recall that?

18 A. Yes.

19 Q. And Appendix A on each of the reports has
20 two columns in addition to the Suggestions column, to
21 the left of the Suggestions column, and one of those
22 columns is called "Location Relative to Outermost
23 Conductor." Do you see that?

24 A. Yes.

25 Q. Can you talk about what that means?

1 A. The location is a measurement from the
2 conductor to the base of the tree; not the canopy but
3 the base.

4 Q. So this column demonstrates where the
5 tree is located on the property of the Complainants
6 within the easement which is a 100-foot easement by
7 the way; is that correct?

8 A. That's correct.

9 Q. And outermost conductor is the outermost
10 wire; is that correct?

11 A. That's correct.

12 Q. Then the next column says "Clearance of
13 Tree to Nearest Conductor," and what is meant by
14 clearance to nearest conductor or wire?

15 A. That's not referring to the trunk of the
16 tree. That is the canopy of the tree.

17 Q. And would that be an angle measurement,
18 in many cases, if the tree is not located directly
19 under the wire?

20 A. Yes, it can be. The dimension was cited
21 for the very last twig closest to the nearest.

22 Q. So let's think of a Christmas tree or a
23 Spruce, I think you used in your example, and you
24 stated those types of trees have a point at the top.
25 I don't recall the name you used.

1 A. Yes. "Pyramidal."

2 Q. Okay.

3 A. Most everyone has a Christmas tree and
4 knows that shape. So that shape, yes.

5 Q. So in that example then, the bottom of
6 the branch would be what you would measure. The
7 bottom, you said, was the widest; is that correct?

8 A. The widest point of the canopy of that
9 particular tree.

10 Q. So you would measure from that widest
11 point at the very bottom and do an angle measurement
12 up to the outermost wire of the transmission line.

13 A. No, not quite.

14 The base of the tree is that one column
15 that you first asked.

16 Q. Uh-huh.

17 A. The clearance -- if the tree, the
18 dimension I gave, let's just exaggerate and say that
19 the Christmas tree leaned toward the wire. It's
20 still pyramidal, it's still the widest canopy at the
21 bottom, but it points or is leaning to, then I'm
22 going to look at the very last, the apex of any part
23 of that canopy and that dimension is the dimension I
24 chose for that column.

25 Q. Fair enough. So if the tree is not

1 leaning, it could be the base of the tree, the canopy
2 at the base of the tree.

3 A. If it's leaning the other way.

4 Q. Okay. Fair enough. Good point.

5 So there is a distinction between the
6 tree location, the trunk of the tree, and then the
7 clearance of a branch to the nearest wire.

8 A. Yes.

9 Q. And does one have to look at both of
10 these columns before looking at your suggestions in
11 the last column?

12 A. Yes.

13 Q. So when Mr. McMahon was trying to compare
14 the same tree species from two different charts on
15 two different Complainants' properties, was that a
16 proper comparison?

17 A. Without understanding it, yes, that was
18 misunderstood.

19 Q. So he didn't compare those trees
20 properly; is that correct?

21 A. That's correct.

22 Q. Can you explain what else would have to
23 be considered when comparing the tree species?

24 A. Okay. If I park a White Pine, that is
25 pyramidal in shape, under the conductor, it's going

1 to have a different recommendation than if it were on
2 the edge of the easement and growing pyramidal. It's
3 completely different. The proper clearances is what
4 we're looking for.

5 Q. And when you use the "easement" term -- I
6 know we used that a lot today to mean a legal
7 document -- in your terminology, sir, you're talking
8 about the right-of-way that was granted to the
9 utility?

10 A. Yes.

11 Q. The 100-foot right-of-way.

12 A. Yes.

13 Q. Let's take Mr. Wahlquist. You were asked
14 to look at his chart. At the bottom of the chart
15 there was a Cherry Tree and that Cherry Tree is only
16 15 -- excuse me -- that Cherry Tree is 13 feet in the
17 peripheral zone. Do you recall that?

18 A. Yes.

19 Q. So that tree would be outside the 50-foot
20 from center, border zone/wire zone, and then you
21 would add 13 feet to that. So that tree trunk is
22 63 feet away from the transmission tower; is that
23 correct? Or the outermost transmission -- it's
24 63 feet from the center of the transmission tower.

25 A. You know, that is, I think, very visual

1 and understood on page 6. It would be a picture and
 2 I can direct you right to it. It's -- the trees on
 3 the right are leaning. There's a more dense canopy.
 4 Not the first trees that you'll see, but a little
 5 further you'll see, on the right side of the
 6 conductors, the original -- the base of that tree is
 7 outside the property easement border. I guess do you
 8 want me to say borderline, border the property?

9 Q. No. "Outside the right-of-way."

10 A. Oh, okay, call it the "right-of-way."
 11 Outside the right-of-way we are that dimension. Now
 12 the canopy, as close as it is to the wires, that tree
 13 would be trimmed back, okay, because it has to.

14 But the White Pine on the other side over
 15 there, I don't know if I have any more pictures, you
 16 can see they're close. Let's see. But they're --
 17 they're growing pyramidal. There's no lean, nothing.
 18 Just because that White Pine is 2-foot in the
 19 right-of-way does not justify removing it. Within
 20 the rules, they want to. They want to remove --
 21 they're setting, in stone, dimensions when it's not
 22 necessary. They need to honor species and character,
 23 character growth and species of trees.

24 Q. And Mr. McMahon asked you if Duke was
 25 supposed to know about the right way to trim or

1 growth regulators to apply. To your knowledge, does
2 Duke have arborists or does Duke hire contractors
3 with arborists?

4 A. They do.

5 Q. And many trees on these Complainants'
6 properties have been growing for decades; is that
7 correct?

8 A. That's correct.

9 Q. And given the maturity of the trees, in
10 your opinion has Duke been maintaining these trees
11 without letting them grow into the wires?

12 A. They have.

13 Q. And in your expert opinion, you believe
14 these trees could be maintained going forward without
15 growing into the wires?

16 A. Absolutely.

17 Q. And just lastly, you talked a little bit
18 about, Mr. McMahon asked you when -- he asked you
19 whether Duke should rely on homeowners. Do you
20 recall that discussion?

21 A. Yes.

22 Q. You're not suggesting that Duke rely on
23 homeowners to meet its obligations or proper
24 clearances, are you?

25 A. I'm not suggesting the homeowner do the

1 job of the pruning. I'm suggesting that the
 2 homeowner has the right to hire the qualified,
 3 certified/qualified arborist/company, what have you,
 4 do the job and meet the standards set forth by Duke.
 5 The standards being a dimension, not a removal. I
 6 mean, let me clarify. They want to remove a 100-foot
 7 strip down to the soil. I want the homeowners to
 8 have a right to keep their trees and to meet the
 9 canopy dimensions, not give Duke the right to remove
 10 trees to the soil because they can. They shouldn't.

11 Q. But you're not suggesting Duke is somehow
 12 alleviated of its responsibility to maintain the
 13 clearance. You're just saying that the customers
 14 should be able to help do the pruning and trimming --

15 A. Yes.

16 Q. -- so that Duke wouldn't then have to
 17 remove the trees or do pruning.

18 MR. McMAHON: Objection, leading.

19 A. That's next to perfect.

20 MR. McMAHON: Of course.

21 (Laughter all around.)

22 EXAMINER ADDISON: Thank you.

23 MS. BOJKO: Thank you.

24 EXAMINER ADDISON: That is a leading
 25 question. Please rephrase, Ms. Bojko.

1 MS. BOJKO: I'm trying to hurry. Okay,
2 Your Honor, thank you.

3 Q. (By Ms. Bojko) I'm just trying to
4 understand your point. You're not saying that the
5 homeowners take on Duke's responsibility to somehow
6 maintain --

7 A. That's right.

8 Q. -- Duke's wires --

9 A. That's right.

10 Q. -- and maintain the proper clearances.

11 A. That's right.

12 Q. So explain what you're suggesting --

13 A. Okay.

14 Q. -- that the homeowners could do versus
15 Duke's role.

16 A. Okay. Thank you.

17 Trees are very hazardous in an urban
18 setting. For example, if you have a big dead tree at
19 the corner of an intersection and it's on your
20 property, not the easement of the right-of-way of the
21 city but the city wants to maintain safety. Safety
22 is our No. 1 priority. So the risk of the tree
23 failing falls into the responsibility of the
24 homeowner. The city gives the resident the right to
25 get that tree taken down. Their right to make safe,

1 to take away this problem and, if they don't, the
2 city will, but then they will charge and it will go
3 on their taxes, whatever. There's a system. That
4 system can be from Duke. They come in and say your
5 tree is too close to our wires, you have 30 days or
6 we're doing it.

7 If these nine addresses, for instance, or
8 all those involved in this case knew that they could
9 save their trees, and I'm speaking for them as an
10 opinion, they would hire somebody to get them done,
11 in most cases, and save the trees. Maybe they won't.
12 If Duke agrees to save them, they properly prune them
13 going by the ANSI standards.

14 My point is we're not trying to get
15 them -- we're not -- we want to take the chance to
16 save the trees and, yet, they're still governing if
17 they're safe or not. I think the right term is are
18 they compatible or incompatible. So once they're at
19 that dimension, they're compatible.

20 Q. So "dimension," you're saying once the
21 trees are -- if the trees are compatible, they should
22 remain, and only if they're incompatible, they
23 shouldn't.

24 A. The tree should remain if it's a healthy
25 tree. If it has a structural problem, it's a

1 no-brainer, it's got to go. Structural imperfections
2 is a hazard.

3 But when a tree, just because of
4 dimension, is inside that right-of-way, it should not
5 have to be removed when it can be maintained because
6 it's a very, very, very important asset and has been
7 for these people for decades. They've been
8 maintained and they can be maintained.

9 I'd like to add one more thing that I
10 don't think I've elaborated on; maybe I did. All of
11 the years of improper pruning has caused a lot of
12 math of cost to be way out the window because of
13 returning because of growth because of improper
14 pruning. When it's done right, you calm down your
15 expenses.

16 MS. BOJKO: Thank you. I have no further
17 questions.

18 EXAMINER ADDISON: Thank you, Ms. Bojko.
19 Mr. Etter?

20 MR. ETTER: No questions.

21 EXAMINER ADDISON: Thank you.

22 Mr. McMahon?

23 MR. McMAHON: No questions, Your Honor.

24 EXAMINER ADDISON: Thank you.

25 Mr. Back, I just had one clarifying

1 question, and I believe both Ms. Bojko and
2 Mr. McMahon went through all of your attachments to
3 the reports and your recommendations that you made in
4 those reports, correct?

5 THE WITNESS: Yes.

6 EXAMINER ADDISON: When making those
7 recommendations or suggestions, for instance in which
8 you suggest reducing the crown by almost 20 percent
9 or using growth regulators, were you making those
10 suggestions evaluating the risk of mature trees
11 falling into the wires or just the risk of trees
12 growing into the wires?

13 THE WITNESS: My suggestions are judging
14 the tree not from a hazard risk of -- my
15 suggestions -- removal is removal -- if I'm
16 suggesting to prune or use a growth regulator, it's
17 because the tree is worthy of that because it's
18 healthy, because it's very sensible that you would
19 not have to spend your money on removal. They should
20 stay. They're very, very important trees. There's
21 nothing unsafe about a tree going by my
22 recommendations.

23 EXAMINER ADDISON: So when you say
24 "there's nothing unsafe," you would agree that your
25 recommendations would alleviate any concern with the

1 tree growing into the line and also the concern of
2 the tree falling onto the line; is that correct?

3 THE WITNESS: The second part of that is
4 correct. It would not fall onto the line.

5 Growing into the wires -- let's
6 exaggerate. If a tree can grow 200 feet, it will
7 grow into the wires if my suggestions are not met.
8 Does that make sense? Because the suggestion is --
9 say I said 25 percent, okay? If it takes 50 years to
10 reach that conductor, then the answer is I'm not
11 making the suggestion so it never reaches. Never and
12 always and all these things that can't be used.

13 So if you ask me are you saving the tree
14 from risk of failure? I'm saying yes.

15 Am I saving it from growing into the
16 wires? I'm saying I'm allowing a long time because
17 we've, one, pruned or we have used the growth
18 regulator. Therefore, it's very sensible if it takes
19 10 years before it would ever get into the wires
20 because of this. Then it's a suggestion because you
21 can, you can save the tree.

22 Most of this is based on a six-year
23 period. For instance, the two treatments in six
24 years, that's on the bottle. That's not my -- that's
25 not Tim Back. Cambistat would do this for three

1 years and do it again.

2 But yeah, the pruning is a suggestion by
3 the percent, based on the species and location. It's
4 all considered.

5 EXAMINER ADDISON: I just want to make
6 sure I'm understanding. This is a little out of my
7 wheelhouse, so.

8 So you're saying if your suggestions, as
9 recommended in your reports, if the homeowners and
10 Duke abided by these suggestions, there would be no
11 risk of the tree falling into the wire and no risk of
12 the tree growing into the wire.

13 THE WITNESS: That is 100-percent
14 correct.

15 EXAMINER ADDISON: Okay. Thank you so
16 much. I appreciate it. That is the only question I
17 had, so you are excused, Mr. Back. Thank you very
18 much.

19 THE WITNESS: Thank you.

20 EXAMINER ADDISON: Ms. Bojko.

21 MS. BOJKO: Yes. Thank you, Your Honor.
22 At this time, we'd like to move for the admission of
23 Complainants Exhibit 35.

24 EXAMINER ADDISON: Any objection to the
25 admission of Complainants Exhibit No. 35?

1 MR. McMAHON: No, Your Honor.

2 EXAMINER ADDISON: Mr. Etter?

3 MR. ETTER: No, Your Honor.

4 EXAMINER ADDISON: Hearing none, it will
5 be admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 EXAMINER ADDISON: At this time, we will
8 adjourn for today. We'll reconvene tomorrow at
9 9:00 a.m.

10 (Thereupon, the proceedings concluded at
11 5:17 p.m.)

12 - - -

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, November 7, 2018, and carefully compared with my original stenographic notes.

Carolyn M. Burke
Carolyn M. Burke, Registered
Professional Reporter, and
Notary Public in and for the
State of Ohio.

My commission expires July 17, 2023.

- - -



This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/26/2018 9:57:31 AM

in

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

Summary: Transcript Citizens Against Clear Cutting, et al. vs. Duke Energy Ohio, Inc. - Volume II, hearing held on November 7th, 2018. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn