BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Citizens Against Clear Cutting, *et al*.,	)	
Complainants,	)	
v.	)	Case No. 17-2344-EL-CSS
Duke Energy Ohio, Inc.,	)	
Respondent.	)	

REPLY BRIEF OF DUKE ENERGY OHIO, INC.

I. INTRODUCTION

As one of Duke Energy Ohio, Inc.'s (Duke Energy Ohio or the Company) experts testified at the hearing: "Transmission systems are exquisitely intolerant and it only takes one tree to take down a system or it may cascade beyond the system."[1] That is precisely what happened in the Northeast blackout of 2003: the "trigger"[2] was contact between trees and high-voltage transmission lines in First Energy's territory in northeast Ohio, and the cascading outage ultimately spread across multiple states and into Canada, leaving tens of millions of customers without power. And, as Duke Energy Ohio's witnesses testified at the hearing, that is precisely what could happen in Greater Cincinnati if proper transmission vegetation management strategies and policies are not implemented along the Company's transmission lines.

Duke Energy Ohio and others in the electric utility industry, including FERC and NERC, learned valuable lessons from the Northeast blackout of 2003. As standards were developed through the involvement of industry experts (including Duke Energy Ohio's expert witnesses in this case), Duke Energy Ohio and its affiliates in the Midwest started applying those standards to the transmission lines governed by NERC (200 kV and above) in 2012 under the Company's transmission vegetation management program in effect at that time. The Company later expanded the application of these standards to other high-voltage transmission lines (69 kV and 138 kV) that serve as the backbone of the Company's transmission system in Ohio. Those standards included Integrated Vegetation Management (IVM). NERC, FERC and other authorities recognize IVM as

[1] Tr. Vol. III at 727.
[2] Tr. Vol. III at 528; Duke Energy Ohio Ex. 3, Direct Testimony of Kevin McLoughlin, at 2, citing *U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations* (April 2004), https://midwestreliability.org/MRODocuments/2003%20Blackout%20Report.pdf

an industry best practice for transmission vegetation management because it promotes the core principles of safety, reliability and access.

As Duke Energy Ohio's witnesses testified, the Company may not have been *required* to implement IVM along the non-NERC transmission lines like the 138 kV lines at issue in this case, but it made the reasonable and rational decision to apply the relevant NERC IVM strategy and operational concepts on all its transmission lines. Not only is IVM an industry best practice, but adopting that strategy would eliminate the Company's need to continue managing certain operational risks. Those risks resulted from the prior practice of *maintaining* vegetation along transmission lines through excessive pruning rather than *managing* the vegetation through IVM. After all, what may have been acceptable in the past—essentially treating transmission lines like distribution lines for vegetation management purposes—was no longer considered an industry best practice as transmission vegetation management standards evolved after the 2003 blackout.

Having already implemented the IVM strategy along its 345 kV transmission lines in Ohio without objection by any customers, Commission Staff or third-parties such as the Office of the Ohio Consumers' Counsel (OCC), it is undeniable that IVM had *nothing* to do with the modification of Duke Energy Ohio's transmission vegetation management program, as filed in April 2016 and approved by rule in June 2016. Notwithstanding Complainants' rhetoric, the actual evidence demonstrates that Duke Energy Ohio modified the vegetation management program for the sole purpose of more clearly specifying which provisions applied to transmission versus distribution lines. No substantive changes were made to the program, nor was there anything nefarious or fraudulent about the Company's application. Moreover, the Company's

implementation of IVM along its transmission lines has been consistent with both the prior and modified vegetation management programs on file with the Commission.

The evidentiary record confirms that Duke Energy Ohio's transmission vegetation strategies and policies, including the implementation of IVM along the 138 kV transmission lines at issue in this case, are reasonable, lawful, and consistent with both industry best practices and the Company's approved transmission vegetation management program. As such, this case is *not* about "clear cutting"—which as defined by Complainants, is *not* happening anywhere—nor is this case about the Company's "indiscriminate" removal of trees in a manner that is "unjust, unreasonable, unlawful, and . . . unnecessary."[3] In reality, this case is about Complainants' and OCC's[4] improper and belated attempt to challenge or overturn the Company's approved transmission vegetation management program, as filed in and approved by rule in Case No. 16-0915-EL-CSS. This case also constitutes Complainants' attempt to force Duke Energy Ohio to revert to the Company's past vegetation management practices that, while reasonable and appropriate at the time, are no longer viewed as industry best practices for transmission vegetation management and are no longer consistent with expert and informed decisions made by the Company as to what is necessary for providing safety and reliability of, and access to, the transmission grid. Having failed to satisfy their burden of proof in this case, the Commission should deny Complainants' complaint against Duke Energy Ohio in its entirety.

[3] Complainants' brief, at 1.
[4] While OCC supports Complainants' case against Duke Energy Ohio, OCC has not filed its own complaint against the Company, nor does OCC seek any relief from the Company in this case.

II. PROCEDURAL HISTORY

A. The Commission correctly excluded matters related to environmental enforcement and property values.

In Complainants' recitation of the procedural history, Complainants raise two arguments that have already been addressed during the conduct of the proceeding. In each of these two arguments, the Commission should deny the relief requested.

Complainants reassert an argument made in the very beginning of the case that matters related to environmental enforcement should be dealt with in this proceeding. This argument was made in a previous motion and was thoroughly addressed by the Commission in its Entry.[5] In its Entry, the Commission explicitly noted that "its administrative expertise lies, among other things, in evaluating whether rates and tariffs are unjust and unreasonable in evaluating utility programs to promote reliability. [Its] administrative expertise is not necessary in evaluating the impact of toxic herbicides in Ohio's waterways or the dangers or soil erosion stemming from tree and vegetation removal."[6] The Commission further explained that "such an evaluation is not a service-related matter that is within the Commission's exclusive jurisdiction."[7] The Commission correctly decided this question and there is no reason to alter that decision.

Complainants urge the Commission to reconsider its ruling by arguing that they were precluded from presenting evidence regarding the use of herbicides and soil erosion. This is wrong. Indeed, the Attorney Examiners held the hearing record open specifically to allow the Complainants to file testimony related to environmental issues. The Complainants declined to do so.[8] It is disingenuous for Complainants to now assert that they were given no such option.

[5] Entry, March 8, 2018.
[6] *Id*. at p.19.
[7] *Id*.
[8] Entry, November 16, 2018 at p.2.

B. There is no justification for sanctions resulting from a reasonably contested discovery dispute.

As an additionally contested matter explained in Complainants' recitation of the procedural history of this case, Complainants describe a highly self-serving set of facts with respect to the conduct of discovery and argue that the Commission should award sanctions. Complainants claim that the Company exhibited "brazen disregard" for the Commission and its order. This too is a very one-sided and biased view of the process.

While the time taken to complete discovery was indeed long, this is because Complainants insisted on being given access to documents that were unlikely to yield any value and yet resulted in the Company spending tens of thousands of dollars to produce. It is worth noting that at one point in the process, the Company produced the privileged documents instead of a privilege log due to the apparently mistaken belief that having the documents was a better result than having just a privileged log. Having then been ordered to produce a privilege log, the Company produced one that was 269 pages long with 1,334 documents, most of which were protected by attorney-client privilege or attorney-work product. Ninety-four percent of these documents were created at Duke Energy Ohio after the Complainants had initiated their case at the Commission. Thus, they were created in anticipation of litigation. Thereafter, the Attorney Examiners themselves undertook an *in camera* review and determined what they deemed to be responsive. While the Attorney Examiners ordered the production of certain documents over Duke Energy Ohio's objections, which itself was a sanction of sorts, ultimately many of the Company's objections were sustained.

Now Complainants rehash this argument, even though there are no longer additional documents to be reviewed. Nor would additional discovery provide any value to the case at this juncture. Moreover, Complainants' request for sanctions is not properly requested. Rule 4901-1-23(F), O.A.C. provides for options when any party disobeys an order of the Commission compelling

discovery. Under such circumstances, the Commission may take certain specified actions. Although there exists broad discretion to impose sanctions for the failure to comply with a discovery order, sanctions such as dismissal of an action or the preclusion of evidence are "harsh" and should only be invoked to enforce willful noncompliance or to prevent unfair surprise or where there is bad faith.[9] But Complainants cannot successfully argue that the Company disobeyed a Commission order compelling discovery. Rather, Complainants simply don't like the outcome of the discovery process. In this case, Duke Energy Ohio has not willfully refused to respond, attempted to avoid its responsibility to respond to discovery requests, or acted in bad faith. The Company would not ever intentionally disregard an order of the Commission, nor is that what Complainants allege here. Sanctions are not appropriate when one party simply disagrees with the outcome of a discovery dispute. Complainants' motions for sanctions should be denied.

III. APPLICABLE LAW

Duke Energy Ohio does not dispute Complainants' references to the statutory and regulatory authority pursuant to which the Commission has jurisdiction to consider Complainants' claims against the Company.

However, Complainants wrongfully assert that Duke Energy Ohio's "vegetation management plan on file with the Commission" is at issue in this case.[10] That is not true. Duke Energy Ohio's transmission vegetation management program is set forth in the modified Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as filed in Case No. 16-0915-EL-CSS. In that proceeding the Company modified Section (f) to more clearly distinguish between vegetation management along transmission and

[9] See *Nickey v. Brown*, 7 Ohio App.3d 32 (1982), *Lloyd v. Scott Molders, Inc*., 62 Ohio App.3d 888 (1990); *Sedgwick v. Kawasaki Cycleworks, Inc*., 24 Ohio App.3d 109 (1985).
[10] Complainants' brief, at 12.

distribution lines and to eliminate confusion as to which provisions applied to which lines.[11] The modified program was approved by rule under O.A.C. Rule 4901:1-10-27(E), as Complainants cannot dispute. Complainants, OCC and others had an opportunity to intervene in that proceeding but failed to do so. Accordingly, based on Commission precedent, this complaint case "is not the proper forum for a review of" Duke Energy Ohio's transmission vegetation management program.[12]

IV. STATEMENT OF FACTS

The statement of facts in Complainants' brief does not provide a detailed explanation of evidence in the record which supports Complainants' claims, as one might expect. Instead, Complainants merely explain in this section what facts supposedly prompted them to file their Complaint against Duke Energy Ohio and how they reacted to notice of the Company's planned vegetation management activities. Even then, however, Complainants omitted pertinent facts established in the evidentiary record.

The Company's transmission grid in Ohio

Although ignored by Complainants, the Commission surely appreciates that one must understand the scope and nature of Duke Energy Ohio's transmission grid in order to understand its transmission vegetation management program. As the Company explained in its post-hearing brief, Duke Energy Ohio has thousands of customers and property owners along 1,607 miles of transmission lines at various voltage levels: 402 miles of 345 kV; 734 miles of 138 kV; and 471 miles of 69 kV.[13] The transmission lines at issue in this case are 138 kV.[14] The Company's 138 kV

[11] Tr. Vol. II at 406-409.
[12] *In the Matter of the Complaint of Kurt Wimmer/Wimmer Family Trust v. Ohio Edison Company*, Case No. 09-777-EL-CSS, 2011 Ohio PUC LEXIS 100 at *21.
[13] Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 4.
[14] Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 6; Duke Energy Ohio Ex. 3, Direct Testimony of Kevin McLoughlin, at 13; Tr. Vol. III at 527, 536.

system operates as a loop network system surrounding the Ohio/Kentucky service territory and serves as the main conduit from the 345 kV system to the 69 kV system and distribution system. Although it is a lower voltage, due to the system design the 138 kV transmission lines serve a similar function as the 230-kV system which Duke Energy Ohio's affiliated entities own and operate in other jurisdictions.[15]

Duke Energy Ohio's easement rights

Also ignored by Complaints are the Company's easement rights, which are not in dispute.[16] Dating back to the early 1950s, Duke Energy Ohio obtained certain rights and interests superior to those enjoyed by the property owners and all successive owners, including Complainants today.[17] Complainants introduced various versions of easements into the record, all of which granted to Duke Energy Ohio, in some form or fashion, "the right to cut, trim or remove any trees, overhanging branches or other obstructions both within and without the limits of the above described right of way and easement which in the opinion of the grantee's engineers may endanger the safety of or interfere with the construction, operation or maintenance of said system."

The Company's vegetation management program

Duke Energy Ohio's transmission vegetation management program is set forth in the modified Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as filed in Case No. 16-0915-EL-CSS. The Company modified Section (f) to more clearly distinguish between vegetation management along transmission v. distribution lines. The changes resulted in a clear separation between distribution and transmission

[15] Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 7-8; Tr. Vol. I at 155, 206, 218.
[16] See, Complainants' Ex. 1, Second Amended Complaint at ¶100; Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams at 3-4.
[17] See, e.g., *Roll v. Bacon* (Ohio Misc., Clermont Cty.), 2010-Ohio-5540, ¶41.

specifications to eliminate confusion as to which provisions applied to which lines.[18] The modified program was approved by rule under O.A.C. Rule 4901:1-10-27(E), as Complainants cannot dispute.

Duke Energy Ohio implemented the transmission vegetation management program through the IVM strategy, among other policies and practices. To the extent Complainants take issue with operational details (i.e. IVM, wire zone/border zone parameters, incompatible trees and other vegetation, etc.) not found in the Company's transmission vegetation management program, the Commission should soundly reject that argument. First, Complainants do not cite to any regulatory or legal authority which requires that all operational details must be included in the written program filed with the Commission under Ohio Adm. Code 4901:1-10-27(E). Second, this argument represents nothing more than an improper attempt by Complainants to challenge the Company's program that already was approved by the Commission. If the Company's vegetation management program somehow lacked requisite detail, surely Commission Staff would have objected accordingly. But no such objections were raised by Staff, Complainants, OCC or anyone else, thereby precluding Complainants from using this complaint case to do so.[19]

Here, the operational details and methods implementing Duke Energy Ohio's approved transmission vegetation management program are found in, among other things, the Company's "vegetation management materials"[20] distributed to Complainants and other property owners, information available on the Company's web site, and various technical specifications.[21]

[18] Tr. Vol. II at 406-409.
[19] See, *Wimmer*, supra.
[20] Complainants' brief, at 14.
[21] See, Complainants' Ex. 31 and 33; See, e.g., Complainants' Ex. 2, Direct Testimony of Kim Carrier, Attachment B; Complainants' Ex. 3, Direct Testimony of Karen Dabdoub, Attachment D; Complainants' Ex. 5, Direct Testimony of Joseph Grossi, Attachment E; Complainants' Ex. 6, Direct Testimony of John Gump, Attachment E; Complainants' Ex. 8, Direct Testimony of Nicole Hiciu, Attachment C; Complainants' Ex. 9, Direct Testimony of Jonathan Mackey, Attachment B and I; Complainants' Ex. 11, Direct Testimony of Mike Preissler, Attachment K; Complainants' Ex. 12, Direct Testimony of Steve Schmidt, Attachment A; Complainants' Ex. 13, Direct Testimony of Olga Staios, Attachment B; Complainants' Ex. 14, Direct Testimony of Kim Wiethorn, Attachment C;

Accordingly, Complainants' unfounded accusations about confusion and inconsistency should be rejected.

Integrated Vegetation Management (IVM)

Complainants fail to appreciate the time and effort required to develop and implement changes to transmission vegetation management policies and practices along more than 1,600 miles of transmission lines. Complainants also fail to understand the scope of the Company's undertaking to educate thousands of customers and property owners about its transmission vegetation management policies.

Complainants cannot dispute the fact that Duke Energy Ohio previously managed its transmission lines like distribution lines, thereby increasing operational risks which the Company had to manage. The Company's evidence on these issues, including the testimony of Duke Energy Ohio witnesses Ron Adams and John Goodfellow, is uncontested.[22] The change in the Company's strategy regarding reclamation and IVM was intended to alleviate the need to continually manage those risks on an ongoing basis.[23]

The vegetation management work to be performed at or near Complainants' properties was part of a company-wide process to follow industry best practices that had developed since the 2003 blackout.[24] Duke Energy first started implementing the IVM strategy during approximately 2010-2011.[25] As Duke Energy Ohio's witnesses explained at the hearing, IVM is recognized by NERC,

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Complainants' Ex. 16, Direct Testimony of Fred Vonderhaar, Attachment G; Complainants' Ex. 18, Direct Testimony of Dennis Mitman, Attachment G; Complainants' Ex. 35, Direct Testimony of Tim Back, Attachment J.

[22] Tr. Vol. II at 253-255, 262; Duke Energy Ohio Ex. 5, Direct Testimony of John W. Goodfellow, at 10-11.

[23] Considering that both the Commission and Ohio Supreme Court have found that "continuous pruning and trimming [is] not a viable option" along high-voltage transmission lines, the Company's strategy is reasonable on its face. See, *Wimmer v. PUC*, 2012-Ohio-757, ¶9, 131 Ohio St. 3d 283, 285; *In the Matter of the Complaint of Leo and Cindy Jeffers et al. v. Toledo Edison Company*, Case No. 10-430-EL-CSS, 2013 Ohio PUC LEXIS 13 (finding that trimming is not a viable option); *Corrigan v. Illum. Co.*, 2009-Ohio-2524, ¶¶13-14.

[24] Duke Energy Ohio Ex. 3, Direct Testimony of Kevin McLoughlin, at 2-5.

[25] Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 4, 5-6.

FERC, the Utility Arborist Association and industry experts as an industry best practice for vegetation management along transmission lines.[26] In the Midwest, Duke Energy Ohio and its affiliates started with the transmission lines governed by NERC (those lines at or above 200 kV) in late 2012 by reclaiming its easement rights and moving those lines into the IVM program strategy. Once those lines were completed, the Company turned its attention to the 138-kV transmission system in Ohio, which includes the transmission lines at issue in this case. Regardless of whether the 138 kV lines are subject to regulation and oversight by NERC, Duke Energy Ohio applies the relevant NERC IVM strategy and operational concepts on all transmission lines because these management practices are viewed as industry best practices.[27]

Complainants seem to take issue with this practice and contend that Duke Energy Ohio should not be allowed to raise the bar by applying higher standards than required. While Complainants may want to save their trees at all costs, it is important to keep in mind that the goal is better management of vegetation for reliability, safety and access, not managing to absolute minimums.

Complainants admit that Duke Energy Ohio notified them of its planned vegetation management activities through various written and in-person communications.[28] Nonetheless, Complainants allege that some of them may have been given different explanations or contradictory positions regarding the Company's vegetation management strategy and that the Company somehow misrepresented its policies. However, the examples cited by Complainants do not support those contentions.

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[26] Duke Energy Ohio Ex. 5, Direct Testimony of John W. Goodfellow, at 6-7; *A300 -American National Standard for Tree Care Operations – Trees, Shrubs, and Other Woody Plant Management – Standard Practices,* American National Standards Institute; Tr. Vol. I at 167, 169.
[27] Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 10; Tr. Vol. II at 275.
[28] See, Complainants' brief, at 13-14.

In one instance, Complainants question why a customer was given a door hanger "that said all trees 50 feet on either side of the center of Duke's transmission lines would be removed completely."[29] Complainants fail to explain how that information was false or misleading in any way, either to that particular property owner or any other property owner. After all, depending on the particular property and number, location and species of trees, certain customers very well may have properties where both the wire zone and border zone are filled with incompatible trees, all of which needed to be removed. On the other hand, other customers may have incompatible trees only in the wire zone area of their properties, thereby obviating the need for Duke Energy Ohio to remove any trees in the border zone. Therefore, the fact that different customers received different information about vegetation management work to be done on their properties is hardly inconsistent or confusing. Moreover, the fact that the Company provides tailored notifications based upon a particular property absolutely rebuts Complainants' false narrative that Duke Energy Ohio does not inspect properties and make informed decisions about required vegetation management within the transmission corridor. The second example cited by Complainants—an alleged "willingness to compromise from Duke about which trees and other vegetation would be removed"[30]—is nothing more than a single Complainant's *perception* about the Company's vegetation management plans. There is no evidence that Duke Energy Ohio was deviating from its wire zone and border zone parameters with that Complainant or anyone else.

Finally, Complainants falsely contend that Duke Energy Ohio plans to remove all vegetation from the transmission rights-of-way and to "clear cut" all trees within the Company's easements. The most egregious example of this accusation is found in Complainants' reference to the so-called "eight-

[29] See, Complainants' brief, at 14.
[30] *Id*.

lane highway" that Duke Energy Ohio supposedly plans to cut through their properties.[31] There simply is no evidence in the record to support that contention, including within any of the "vegetation management materials" provided to Complainants and otherwise available online. Contrary to Complainants' mischaracterization, Duke Energy Ohio witness Kevin McLoughlin testified only that the process of removing *incompatible* vegetation from the transmission corridor "appears to leave a clear-cut condition," not that the Company is, in fact, removing all vegetation.[32] In fact, the testimony regarding Duke Energy Ohio's practice of selectively removing incompatible trees, while also mechanically mowing dense vegetation in more rural areas, and selectively applying herbicides, is uncontested.[33] The Company is neither "clear cutting" nor doing "mass removal of trees" as Complainants allege. As explained by Company witnesses McLoughlin and Fletcher, the goal is to have compatible vegetation growing in the right of way in order to create an environment that discourages the growth of non-compatible vegetation.[34] As opposed to Complainants' statement of irrelevant facts, these relevant facts are set forth in the evidentiary record.

V. ARGUMENT

The opening paragraph of Complainants' brief illustrates their fundamental misunderstanding of transmission vegetation management, industry best practices, Duke Energy Ohio, Inc.'s vegetation management program and policies implementing that program, and the Company's rights under its easements. The Commission should not be misled by Complainants' penchant for using inflammatory rhetoric to divert attention from the dearth of evidence supporting their claims and inability to carry the burden of proof.[35] At various times Complainants attempt

[31] See, Complainants' brief, at 1-2.
[32] Duke Energy Ohio Ex. 3, Direct Testimony of Kevin McLoughlin, at 14.
[33] Tr. Vol. I at 232-234; Tr. Vol. II at 412.
[34] Duke Energy Ohio Ex. 3, Direct Testimony of Kevin McLoughlin, at 9-12; Duke Energy Ohio Ex. 1, Direct Testimony of Scott T. Fletcher, at 6-7; Tr. Vol. II at 599.
[35] *Grossman v. Public Utilities Commission of Ohio*, (1966), 5 Ohio St.2d 189, 190, 214 N.E.2d 666. See also, *Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio*, (1984), 14 Ohio St.3d 49, 50, 471 N.E.2d 475 (reiterating

to shift their burden to Duke Energy Ohio by arguing that the Company failed to "justify" or "demonstrate" why the removal of incompatible trees was reasonable. While Duke Energy Ohio may have a responsibility to act reasonably, the burden remains on Complainants to demonstrate that the Company failed to do so.[36]

Throughout the remainder of their post-hearing brief, Complainants do not persuasively demonstrate how they met the burden of proof in this case.[37] That is hardly surprising considering that Complainants offered little more than their own lay testimony about their past experiences and what they think could be done with respect to their trees. Their testimony carries modest, if any, weight considering that none of the Complainants has any background or experience in transmission vegetation management, the design or maintenance of high-voltage transmission lines, actions necessary to provide safe and reliable service along transmission lines, and the safety and security of transmission lines. Notably Complainants did not offer relevant testimony from a single expert in any of those areas. The only "expert" offered by Complainants was an uninformed commercial arborist who does not conduct vegetation management along transmission lines and whose testimony as to what pruning and other steps *might* be considered was so illogical, unreasonable and inherently inconsistent with the Company's approved vegetation management program and the legal and regulatory duties imposed on an electric utility like Duke Energy Ohio that his testimony has no value whatsoever.

As to Complainants' unsupportable legal claims, the Commission is well-versed in the standards applicable to electric utilities such as Duke Energy Ohio. Both the Commission and

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that burden of proof upon the complainant in a complaint proceeding) and *Luntz Corporation v. Public Utilities Commission of Ohio*, (1997), 79 Ohio St.3d 509, 513, 684 N.E.2d 43, 1997-Ohio-342 (same).

[36] See, *In the Matter of the Complaint of Leo and Cindy Jeffers et al. v. Toledo Edison Company*, Case No. 10-430-EL-CSS, 2013 Ohio PUC LEXIS 13 (holding that the burden of proof remained on the complainants to prove that the utility failed to act reasonably)

[37] Complainants only twice claim in their brief that they met their burden. See, Complainants' brief at 13, 60.

Ohio Supreme Court have rejected arguments that an electric utility may not remove trees along transmission lines because pruning is feasible or that trees do not pose a threat to transmission lines.[38]

That is precisely what should happen in this case. Duke Energy Ohio's IVM strategy and use of the wire zone/border zone specifications are consistent with the Company's approved transmission vegetation management program and its legal rights under its easements. The Company's transmission vegetation strategy and policies also are consistent with industry best practices and evolving safety standards. When the Commission weighs the evidence adduced at the hearing—including the substantive and informed testimony of Duke Energy Ohio's expert witnesses in comparison to the lay and uninformed testimony of Complainants and their commercial arborist—the Commission must conclude that Complainants failed to prove that Duke Energy Ohio is acting unreasonably or unlawfully in implementing its transmission vegetation managements policies and procedures.

Finally, Duke Energy Ohio notes in advance that, to the extent its arguments below seem repetitive, that repetition was an unavoidable result of Complainants' tendency to make the same arguments in multiple sections of its post-hearing brief. As such, the Company is merely responding accordingly.

a. Duke Energy Ohio's IVM policy is consistent with its Commission-approved vegetation management program and industry best practices.

Contrary to Complainants' claim, this case does *not* turn on the "necessity" of Duke Energy Ohio's transmission vegetation management program—previously approved by rule—or the Company's policies and practices (including IVM) implementing that program. Duke Energy

[38] See, e.g., *Corrigan*, *Wimmer*, *Jeffers*, supra.

Ohio has developed and implemented transmission vegetation management policies consistent with its Commission-approved program, its legal rights under easements, and its regulatory authority. To the extent Complainants maintain that the Company's IVM strategy, including the use of wire zone and border zone concepts (much like other utilities) is not a "necessity" or somehow has not been justified, that "argument constitutes an unsuccessful attempt to shift the burden of proof" to Duke Energy Ohio.[39] Duke Energy Ohio is not required to *prove* anything in this case. The Company acknowledges its responsibility to act reasonably—which it has done—but it is incumbent upon Complainants to demonstrate that Duke Energy Ohio failed in that regard. Complainants undoubtedly failed to sustain their burden in this case.

i. Duke Energy Ohio's implementation of IVM along its transmission corridor is reasonable.

Complainants' first argument demonstrates Complainants' lack of expertise and understanding of transmission vegetation management and their fundamental misunderstanding of their burden of proof in this case.

As noted, Complainants did not offer testimony from any expert in transmission vegetation management, including both the development and implementation of a vegetation management program. Therefore, the Commission should reject Complainants' uncorroborated arguments about what they *believe* should or should not be done or considered by a utility when deciding how to address a tree or conducting transmission vegetation management. To be clear, there is no evidence in the record to support any of Complainants' purported "simple standards." In fact, evidence presented by Duke Energy Ohio, including uncontested expert testimony, demonstrates the fallacy of Complainants' uninformed position. Having failed to provide any credible testimony

[39] See, *Jeffers*, supra.

from an expert with knowledge of utility transmission right of way maintenance, Complainants are unable to support a claim that Duke Energy Ohio's existing policies are unreasonable.

Notwithstanding Complainants' argument otherwise, there is nothing remotely "simple" about vegetation management along Duke Energy Ohio's high-voltage transmission lines at issue in this case. Trees present unique hazards to high-voltage transmission lines, as compared to distribution lines. Complainants make passing reference to these risks by mentioning direct contact along with arcing and flashovers but then turn around and minimize those risks by incorrectly suggesting that it would be acceptable (or possible) for trees to be kept "only 2.3 feet" to avoid arcing and flashovers on the 138 kV lines at issue in this case. That simply is not true. While Duke Energy Ohio witness Kevin McLoughlin may have confirmed that measurement, more importantly he testified that NERC's minimum vegetation clearance distance "is not the goal—it is the very minimum distance as determined by both calculations and field measurements that trees should be kept from overhead conductors." Mr. McLoughlin further confirmed that the same NERC standards provide that "prudent vegetation maintenance practices dictate that substantially greater distances will be achieved at time of vegetation maintenance."[40] And he testified that those minimum distances do not guaranty the absence of damaging flashover events, as he personally has witnessed.[41] By ignoring the uncontested expert testimony and NERC standard, and mistakenly focusing once again only on the *minimum* that might be done—as opposed to industry best practice—Complainants further demonstrate their inexperience with transmission vegetation management, industry best practices, and applicable regulatory and safety standards.

[40] Duke Energy Ohio Ex. 3, Direct Testimony of Kevin McLoughlin, at 7.
[41] Duke Energy Ohio Ex. 3, Direct Testimony of Kevin McLoughlin, at 8.

According to Complainants, when deciding how to address a particular tree—which they conveniently fail to acknowledge would be one of *hundreds of thousands of trees* along the Company's transmission lines—a utility should consider only the height of a tree, its location relative to the conductor, and the height of the conductor.[42] In reality, there are a host of other relevant factors that can affect the proximity of transmission lines and trees, including ambient temperatures, the load on the line, wind speed, engineering and construction of the line, sag, tree species, size and shape of a tree, etc.[43] Additionally, when considering potential growth, it is necessary to recall that the Company's approved transmission vegetation management program provides for vegetation maintenance on a six year cycle. Given Complainants' arguments, it would be necessary to inventory and record, for each individual tree, how much it might potentially grow over a given period. Duke Energy Ohio, on the other hand, is implementing a transmission vegetation management strategy (IVM) that is a recognized industry best practice, consistent and fair to all customers and property owners, designed to promote safety and reliability of, and the Company's access to, its high-voltage transmission lines, and supported by experts in transmission vegetation management.[44] Complainants' uninformed efforts to dictate proper transmission vegetation management should be summarily disregarded.

Given the risks surrounding transmission vegetation management, it is not surprising that the development of Duke Energy Ohio's transmission vegetation management program involved multiple meetings and discussions between and among various subject matter experts, including those in vegetation management, engineering, compliance, land services, legal and field

[42] Complainants' brief, at 18.
[43] Tr. Vol. III at 530, 583; Duke Energy Ohio Ex. 3, Direct Testimony of Kevin McLoughlin, at 7; Duke Energy Ohio Ex. 5, Direct Testimony of John W. Goodfellow, at 11.
[44] Tr. Vol III 628-629, 722, 727, 738.

operations.[45] The Company's transmission vegetation management program is overseen by a Transmission System Forester who reports to the General Manager of Transmission Vegetation Management, a trained and professional engineer.[46] Duke Energy Ohio relied on the considerable knowledge and experience of its engineers and other subject matter experts in deciding to implement the IVM strategy along the Company's transmission corridor, thereby promoting its core values of safety, reliability and access.[47]

In comparison, without citing to relevant expert testimony or other evidence in the record, Complainants want to dictate the nature and contents of Duke Energy Ohio's transmission vegetation management policies. Complainants identify five "basic principles" which Duke Energy Ohio supposedly should consider when deciding which vegetation is compatible and incompatible, when there is no evidence in the record to support their validity or reasonableness.[48] These five principles appeared first in Complainants' initial brief. There is no testimony supporting these five principles. Presumably, we are now asked to accept counsel's recommendation for transmission vegetation management. Because the recommended "principles" are not supported anywhere in the record, they must be disregarded.

Complainants also claim that, based on the Company's answers to those questions/principles, Duke Energy Ohio simply could revert to past practices because the Company "has not complained about this process or argued that it would be an overly burdensome process."[49] Again, Complainants forget they maintain the obligation to carry the burden of proof that the Company's current transmission vegetation management policies are unreasonable.

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[45] Tr. Vol. I at 161-162; Tr. Vol. II at 386; Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 3-4.
[46] Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 1, 3.
[47] Tr. Vol I. at 199; Tr. Vol. II at 263-264; Tr. Vol. III at 600-601, 604-606.
[48] Complainants' brief, at 19.
[49] Complainants' brief, at 20. This is another effort to shift the burden in this case to Duke Energy Ohio, as if the Company must abandon its transmission vegetation management practices unless it can prove that prior practices were not overly burdensome.

Counsel's principles further establish Complainants' unfamiliarity with transmission vegetation management practices. After all, if trees are within minimum vegetation clearance distances (principle #3) along a transmission line, Duke Energy Ohio would be in violation of NERC standards and lose circuit reliability. Duke Energy Ohio's experts testified explicitly that the Company should *never* engage in pruning below transmission lines.[50] And Duke Energy Ohio witness Ron Adams explained the reasons why the Company implemented industry best practices like IVM to remove all incompatible vegetation from the transmission corridor and alleviate the need to continually manage those risks on an ongoing basis.[51] Complainants wish to question the expertise of NERC, FERC, Duke Energy Ohio's expert witnesses, and its employees who work in this area on a regular basis; Complainants provided no credible testimony or evidence to support their case.

ii. The application of Complainants' proposed "principles" to some of their trees does not supersede Duke Energy Ohio's right to remove trees within its right-of-way that affect the safety, reliability and security of, and access to, its transmission lines.

Complainants' brief is based on speculation and uninformed lay testimony regarding why Complainants *think* trees would not jeopardize the safety or reliability of Duke Energy Ohio's transmission system. The only other "evidence" comes from a commercial arborist who measured the trees once in March 2018 and did not offer any testimony about the temperatures, load on the transmission lines, wind speed, design and construction of the tower and lines, and other factors that may affect the movement and location of the transmission line.[52] The lack of relevant expertise of Complainants and their commercial arborist cannot supersede the well-versed

[50] Tr. Vol. III at 598, 628, 721.
[51] Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 9-11, 13-14.
[52] In comparison to Duke Energy Ohio's transmission vegetation management experts, Complainants' arborist clearly is not well-versed in the dynamic nature of a transmission line. See, e.g., Tr. Vol. III at 583.

judgment exercised by Duke Energy Ohio in developing and implementing its transmission vegetation management program and policies, including IVM.

Once again, Complainants rely upon counsel's unsupported "principles" for deciding just how close trees should be allowed to get to the Company's high-voltage transmission lines. Complainants repeatedly refer to the 15-foot minimum clearance set forth in Duke Energy Ohio's transmission vegetation program as if it were the Company's *goal* as opposed to minimally accepted clearance for compatible trees in the border zone, as the program and vegetation management materials clearly state.[53] Complainants fail to acknowledge that Duke Energy Ohio did not change the minimum transmission clearances when its modified version of Section (f) was filed with and approved by the Commission. Complainants also fail to understand that, were the Company to constantly prune incompatible trees contrary to the IVM strategy and recognized industry best practices, such trees would need to be pruned back far more than the minimum clearance to account for six years of growth during the transmission clearance cycle.[54] Similarly, in a misplaced effort to show that Duke Energy Ohio does not consistently follow its own specifications, Complainants argue that Duke Energy Ohio fails to designate certain trees located outside the right-of-way for removal simply because, according to two uninformed Complainants, those trees *possibly* could fall into the transmission lines. Again, Complainants lack of expertise in the area of transmission vegetation management is illuminated here. For example, Complainant witness Grossi discussed a healthy shagbark hickory that possibly could become unhealthy once pruned and then maybe hit the transmission line,[55] and Complainant witness Fick refers to

[53] Duke Energy Ohio witness Ron Adams unequivocally rejected Complainants' argument in that regard. Tr. Vol. II at 361.
[54] Considering that Complainants complained about Duke Energy Ohio's efforts to prune even to the 15-foot minimum clearances during the stay in effect in this case, it defies belief that they now act as if they are fully in favor of the minimum clearances and do not object to pruning at least six years of growth from their trees.
[55] Direct Testimony of Joseph Grossi at p.13.

unidentified trees in unidentified locations which he thinks are tall enough to hit the transmission lines.[56] Complainants' speculative and groundless testimony is offered as evidence that the Company's policies are arbitrary or unreasonable. However, neither Mr. Grossi nor Mr. Fick provided any measurements, information about the location of trees or their qualifications to offer the cited testimony, nor do they have any experience in managing a transmission right of way. Likewise, neither of the two complainants has experience with applying the Company's policies or procedures. While the Company recognizes that each Complainant is interested in saving particular trees in their properties, such anecdotal reports are not helpful or reliable in determining an overall right of way transmission vegetation management strategy. Nor can a utility be expected to manage transmission right of way on a tree by tree basis. The overarching goal is to make the right of way safe and accessible for a six-year period.

Although Complainants focus only on how close their trees can get to the transmission lines without touching, Duke Energy Ohio must provide safe and reliable service to hundreds of thousands of customers who are served by more than 1,600 miles of transmission lines in Ohio, and ensure access to its transmission lines and equipment. The Company readily acknowledges that it previously managed its transmission lines like distribution lines, tending to maintain trees and vegetation along the transmission line right-of-way through periodic pruning rather than actively managing the vegetation within the transmission line right-of-way in order to more effectively mitigate risks to the electric grid and worker safety. Duke Energy Ohio managed those operational risks, increased costs and hazardous conditions without compromising the safety and reliability of the transmission system.[57] That which was appropriate in the past is not necessarily

[56] Direct Testimony of Dr. Randall Fick at 6.
[57] Tr. Vol. II at 253, 262.

appropriate in the present. Complainants seemingly want the Commission to force Duke Energy Ohio to ignore current industry best practices and evolving safety standards by resuming its management of those increased risks, costs and hazardous conditions in perpetuity simply because the Company previously did so in the past. Duke Energy Ohio rejects that ill-conceived and risky proposition. Again, simply because the Company's past transmission vegetation practices were different does not support a conclusion that its current practices are unreasonable.

Instead, in order to provide safe and reliable service, ensure the Company's access to its transmission equipment and maintain fair and consistent policies applicable to all customers, Duke Energy Ohio exercised its regulatory authority and discretion in establishing the wire zone/border zone concepts, defining the compatible/incompatible vegetation allowed in each area, reclaiming the transmission corridor, and implementing IVM within the right-of-way. In other words, the Company reasonably assessed the risks and decided to implement industry best practices along the transmission corridor to reduce those risks to both system reliability and worker safety.[58] Complainants do not dispute that IVM—the standards for which are established by ANSI A300 Part 7—is recognized as a utility industry best practice for vegetation management along transmission lines.[59] Complainants also do not dispute that the core values of IVM are safety, reliability and access,[60] although they completely ignore the latter as if the Company should not be concerned about getting its equipment and workers to the transmission towers and lines in the event of an emergency or for purposes of conducting necessary and routine inspections and maintenance.[61]

[58] Duke Energy Ohio Ex. 5, Direct Testimony of John W. Goodfellow, at 7-11; Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 7-8, 14; Duke Energy Ohio Ex. 3, Direct Testimony of Kevin McLoughlin, at 9-11.
[59] Duke Energy Ohio Ex. 5, Direct Testimony of John W. Goodfellow, at 6-7; *A300 -American National Standard for Tree Care Operations – Trees, Shrubs, and Other Woody Plant Management – Standard Practices,* American National Standards Institute; Tr. Vol. I at 167, 169.
[60] Tr. Vol I. at 199; Tr. Vol. II at 263-264; Tr. Vol. III at 600-601, 604-606.
[61] Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 7-8, 15; Duke Energy Ohio Ex. 3, Direct Testimony of Kevin McLoughlin, at 12; Tr. Vol. I, at 184, 199, 227, 235; Tr. Vol. III, at 600-601, 604-607.

As such, not only is it nonsensical (and legally unsupportable under the negotiated easements) for Complainants to dispute the Company's right to remove specific trees from their properties, but it is legally impossible for Duke Energy Ohio's implementation of industry best practices to be unreasonable, unjust and unlawful under R.C. 4928.11 and Ohio Adm. Code 4901:1-10-27.

iii. Based upon industry best practices Duke Energy Ohio rejects Complainants' stated position that the Company must continue performing vegetation *maintenance* of trees below and near its transmission lines.

The impracticality of Complainants' argument is self-evident throughout this section of their brief. Complainants ask the Commission to disregard the testimony of three experts in transmission vegetation management—Duke Energy Ohio witnesses Adams, Goodfellow and McLoughlin—and documentary evidence regarding the growth rates of trees and industry best practices[62] in favor of irrelevant testimony by a commercial arborist with no knowledge of transmission vegetation management programs or costs, and little, if any, experience conducting vegetation management along high-voltage transmission lines. The Commission should reject Complainants' unsubstantiated arguments.

With respect to Complainants' "expert" certified arborist, his level of knowledge and experience is debatable, at best. For one, he has no experience with the construction or maintenance of a transmission system, nor has he ever prepared a transmission vegetation management program or any related policies, guidelines, etc.[63] That lack of experience and knowledge likely explains his uninformed conclusion as to how Duke Energy Ohio can and should conduct transmission vegetation management. According to Mr. Back, electric utilities like Duke Energy Ohio should rely on each customer to do the vegetation management required along high-

[62] See, Duke Energy Ohio Ex. 4 and 6; Complainants' Ex. 36; Tr. Vol. III at 628-630, 637-639, 648-650, 658, 680-684, 705, 709-711, 717-718, 721-722, 726, 730-732, 734, 737-739-741, 748.
[63] Tr. Vol. I at 427.

voltage transmission lines.[64] While that testimony alone may seem dubious, Mr. Back further testified that Duke Energy Ohio should be required to give notice to each customer and then act to remove trees only if each customer fails to do what is needed to prune or preserve their trees.[65]

Notably, Mr. Back does not explain how an electric utility company in Ohio could possibly comply with its regulatory obligations under R.C. 4928.11 or Ohio Adm. Code 4901:1-27-10 by delegating its transmission vegetation management responsibilities to the general public. Nor does he explain how it would be feasible for Duke Energy Ohio to implement a plan of that nature along more than 1,600 miles of transmission lines. Finally, Mr. Back fails to justify this opinion by explaining how it would be appropriate for the Commission to transfer the risks and liabilities associated with transmission vegetation management from a regulated utility company to the general public.

Even Mr. Back's reports and recommendations about the individual Complainants' trees contain inconsistencies and demonstrate his unfamiliarity with the Company's approved transmission vegetation management program. That program provides for Duke Energy Ohio to conduct vegetation management along its transmission lines on a six-year cycle.[66] Nonetheless, Mr. Back claims that Duke Energy Ohio should prune various trees on nine of the Complainants' properties every 2-3 years, other trees of the same species should be pruned every 3-5 years, and still other trees should be pruned without providing any specified time period. Without any explanation, Mr. Back further recommends removing 10%, 15%, 20%, or 25% of the canopies of various trees, stating only that an arborist would know what to do. He also testified that certain

[64] Tr. Vol. III at 435.
[65] Tr. Vol. II at 488.
[66] See, *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Revised Paragraph (f) of its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines,* Case No.16-915-EL-ESS, Application (April 4, 2016).

incompatible trees should be removed while others could stay, again with no explanation why, and that growth regulators could be used on some trees while other trees of the same species did not warrant that application.[67]

Again, neither Mr. Back nor Complainants ever explain how it would be feasible or appropriate for Duke Energy Ohio to implement any of these impossible recommendations along more than 1,600 miles of transmission lines. Nor do they explain why Mr. Back's uninformed opinions should be substituted for the experienced, knowledgeable and methodical industry best practices followed by Duke Energy Ohio and reaffirmed by the Company's experts during the hearing. Mr. Back's uninformed and ill-conceived testimony does not adequately support the Complainants' burden of proof. It does not explain how the Company's program for vegetation management along its transmission lines is "unreasonable or unlawful" and it pales in comparison to the testimony offered by Duke Energy Ohio's experienced transmission vegetation management experts. Although Mr. Back is likely a good service provider for purposes of a homeowner who wishes to maintain a particular tree, he was clearly not qualified for purposes of criticizing Duke Energy Ohio's approved transmission vegetation management program and related policies and practices, let alone supporting any of Complainants' claims against Duke Energy Ohio.

iv. Duke Energy Ohio reasonably determined that it no longer should manage transmission lines as if they are distribution lines.

Complainants essentially repeat the argument that Duke Energy Ohio should be required to revert to past transmission vegetation management practices simply because the Company was able in the past to manage operational risks without compromising safety and reliability. Again, Complainants misconstrue who has the burden of proof in this complaint proceeding. The question

[67] Tr. Vol II at 446, 453, 456, 458, 460-461, 466-467, 471; Complainants' Ex. 35, Direct Testimony of Tim Back, Appendix A to Attachments A-I.

is not whether past practices are (or were) reasonable, but rather, whether the Company's current Commission-approved practices are unlawful or unreasonable. Duke Energy Ohio is not required to prove anything in this case,[68] especially when IVM is a recognized industry best practice and is consistent with the Company's approved transmission vegetation management program.

Duke Energy Ohio explained, *supra*, why its regulatory authority and discretion in establishing the wire zone/border zone concepts, defining the compatible/incompatible vegetation allowed in each area, reclaiming the transmission corridor, and implementing IVM within the transmission right-of-way should not be overturned. Duke Energy Ohio further explained above how the Company rationally determined to adopt industry best practices like IVM to eliminate the continuous need to mitigate unnecessary risks, costs and hazards, and to avoid the inappropriate practice of continuously pruning below and near high-voltage transmission lines. Therefore, the Company need not repeat those arguments and evidence here.

Nonetheless, Complainants mischaracterize the evidentiary record and falsely accuse the Company of manipulating data to support its claims. First, contrary to Complainants' assertions, Duke Energy Ohio does not have any "claims" in this case. Second, Complainants misunderstand the purpose and nature of Duke Energy Ohio witness Ron Adams' testimony regarding charts which reflect vegetation related outages on the transmission system.[69]

As Mr. Adams testified, the Company is applying to all of its transmission grid NERC's philosophy for a zero tolerance toward an outage or encroachment into the minimum vegetation clearance distance, including the 138 kV lines at issue in this case.[70] Mr. Adams used the charts

[68] *In the Matter of the Complaint of Leo and Cindy Jeffers et al. v. Toledo Edison Company*, Case No. 10-430-EL-CSS, 2013 Ohio PUC LEXIS 13

[69] Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 10-13.
[70] Tr. Vol. II at 351.

to illustrate the outages on the Company's transmission system and to explain that the high volume of incompatible trees in the wire zone and border zone of the transmission rights of way is the largest contributing factor for the difference in performance among the various transmission lines. After all, Mr. Adams specifically noted in his testimony how a recent aerial inspection of one of the transmission lines in this case (the 3881 circuit) showed that the tree canopy had grown so tall and thick as to interfere with visual sight of the transmission line from the air, thereby putting that transmission line and the transmission grid at risk.[71] Based on the evidentiary record in this case, the Commission should not force Duke Energy Ohio to abandon industry best practices absent some very compelling reason to do so, which Complainants have not established.

v. The Company's implementation of IVM along the transmission corridor will benefit property owners such as Complainants and the safety and reliability of, and access to, the transmission lines.

Complainants distort and misrepresent the evidentiary record by falsely arguing that the Company and its witnesses made certain admissions about the need to remove particular trees from Complainants' properties.

Duke Energy Ohio did not object to the admissibility of Complainants' testimony because none of their testimony was particularly useful for purposes of proving their various claims against the Company. But the Company certainly challenged the weight and credibility of Complainants' uninformed testimony by submitting testimony of three experts in transmission vegetation management. The Company's evidence far outweighs the evidence presented by Complainants and necessarily prevents any ruling in their favor.

Contrary to Complainants' argument, at no point in time did Duke Energy Ohio and its witnesses "freely admit that the IVM, border-zone-wire-zone approach it proposes to use in

[71] Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 10.

addressing vegetation management on Complainants' properties will result in trees that may never threaten safety or reliability being removed." Nor did Duke Energy Ohio witness John Goodfellow concede that the wire zone/border zone concepts used by the Company results in the removal of "vegetation that has no practical ability to disrupt electric service."[72] Instead, Duke Energy Ohio witness John Goodfellow answered counsel's inapplicable hypothetical questions about whether particular trees might come into contact with the transmission lines and potentially be subject to removal under the IVM strategy and wire zone/border zone concepts applied by Duke Energy Ohio. Mr. Goodfellow *never* testified that any of the hypothetical trees that may possibly be removed did not threaten safety or reliability or were in an "arbitrary zone," as Complainants now contend. Those characterizations are flatly untrue.

Notably Complainants ignore other testimony by Duke Energy Ohio witness John Goodfellow to paint his opinions in a false light. Mr. Goodfellow testified about the elevated risks associated with the Company's prior practices of trying to maintain vegetation along the transmission line through pruning instead of managing the vegetation through IVM. He also personally witnessed conditions along the Company's transmission lines that caused him to be concerned with system reliability and public safety.[73] Mr. Goodfellow further rejected any notion that an electric utility such as Duke Energy Ohio should conduct transmission vegetation management along more than 1,600 miles of transmission lines on a tree-by-tree basis, especially when factoring in the growth study discussed by Duke Energy Ohio witness Kevin McLoughlin and excessive response growth patterns that result from excessive pruning of trees.[74] Finally, based on industry best practices and his expertise in various aspects of transmission vegetation

[72] Complainants' brief, at 32.
[73] Tr. Vol. III at 687-688.
[74] Tr. Vol. III at 721-722.

management,[75] Mr. Goodfellow testified unequivocally that IVM is industry best practice, Duke Energy Ohio's implementation of IVM is consistent with its Commission-approved transmission vegetation program, and that electric utilities absolutely should not engage in pruning beneath and along high-voltage transmission wires.[76]

Finally, Complainants' argument that Duke Energy Ohio has not assessed whether trees along its transmission lines present a threat to the safety and reliability of the transmission grid is absurd and misstates the facts. The discovery response cited by Complainants refers only to whether the Company had engineers assess individual trees. That is not the issue. Here, as noted above, Duke Energy Ohio's engineers, foresters and other experts methodically performed the very assessment that Complainants falsely claim is lacking—those experts analyzed the risks and determined the appropriate types and heights of vegetation that should be allowed within the wire zone and border zone areas of its transmission rights-of-way.[77] While the assessment may not be "tree specific" as Complainants want—but which is neither required nor practical along more than 1,600 miles of transmission lines—the Company conducted an assessment nonetheless. And, importantly, the Company implemented the IVM strategy, which both NERC and FERC recognize as an industry best practice for transmission vegetation management.

As such, Complainants' unsubstantiated allegations are devoid of merit.

vi. Duke Energy Ohio consistently follows its wire zone and border zone specifications, thereby balancing the interests of safety and reliability of its transmission lines with the interests of property owners.

As a preliminary matter, it is important to remember that, before Complainants filed their complaint and secured a stay, Duke Energy Ohio had successfully completed vegetation

[75] Tr. Vol. III at 674. Mr. Goodfellow's expertise is undisputed.
[76] Duke Energy Ohio Ex. 5, Direct Testimony of John W. Goodfellow, at 6-10; Tr. Vol. III at 721, 727, 737-738.
[77] Tr. Vol. I at 158-159, 161.

management work along 21.45 of the 27.37 miles (80%) of transmission lines at issue in this case without issue or incident.[78] Complainants now claim that, with respect to a few properties on the remaining 5.92 miles of transmission lines to be finished once this case is finally over, Duke Energy Ohio made some "concessions" or "side deals" which are inconsistent with the Company's practices and specifications. Complainants fall well short of proving this claim.

Complainants' initial "evidence" is a log that Duke Energy Ohio produced in discovery and which, based on testimony by a single Complainant (Fred Vonderhaar) without any foundation or relevant knowledge or information, purportedly "appears to contain instructions to Duke personnel and contractors regarding individual properties along the transmission lines."[79] In reality, Duke Energy Ohio witness Ron Adams testified that the subject document is not a document prepared or maintained by the Company; it is maintained by a third-party contractor.[80] Mr. Adams further testified that the log does not identify "exceptions" to the Company's policies, only issues to be addressed or discussed with the property owner, and that all work done by the Company complied with its vegetation management specifications. The only exception was a single customer that had unique circumstances.[81] Mr. Vonderhaar could not have any first-hand knowledge of the document in question. Mr. Adams obviously does.

Other questionable evidence cited by Complainants is also lacking, including: trees at King's Island which supposedly had not been removed, even though there is no evidence that the Company has been to that property or had a chance to identify appropriate vegetation management work at that site; Complainant Carrier's ability to keep ornamental trees on her property when there is no evidence as to their location within the right-of-way or their incompatibility; and a

[78] Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 18; Tr. Vol. I at 155.
[79] Complainants' brief at 34.
[80] Tr. Vol. I at 176.
[81] Tr. Vol. I at 180-188.

memorandum of understanding signed by Complainant Gump which indicates only that incompatible trees would be removed just as the Company's specifications provide.

Finally, Complainants fail to understand that the wire zone/border zone concepts which they criticize as arbitrary are consistent with standards used by other electric utilities in Ohio,[82] consistent with industry best practices,[83] and constitute a reasonable attempt by the Company to balance the safety and reliability of the transmission grid and the safety of its employees and contractors with the interests of property owners such as Complainants. After all, while the Company would be entitled under its easements to remove all trees within its transmission right-of-way, Duke Energy Ohio exercises its regulatory authority and judgment to allow trees that mature to a height of no more than fifteen feet in the border zone and only non-tree vegetation which matures at a height of no more than seven feet in the wire zone. These standards are consistent with both the Company's approved vegetation management program and industry best practices such as IVM, as confirmed by all of Duke Energy Ohio's expert witnesses and not refuted by any of Complainants' witnesses.

b. Duke Energy Ohio's implementation of IVM along the transmission corridor is consistent with its Commission-approved transmission vegetation management program.

Although this section of Complainants' brief appears to focus on the consistency between the Company's transmission vegetation management program and the policies implementing that program, in reality Complainants ignore Commission precedent and continue to challenge the contents of Duke Energy Ohio's transmission vegetation management program that was filed with the Commission and approved by rule in accordance with Commission regulations. As previously

[82] Tr. Vol. II at 345-346.
[83] Tr. Vol. II at 348-349.

noted, this complaint case "is not the proper forum for a review of" Duke Energy Ohio's transmission vegetation management program.[84]

Here, Complainants argue that Duke Energy Ohio's approved program lacks references to the wire zone/border zone concept and IVM which the Company uses to implement its Commission-approved transmission vegetation management program. Again, Complainants do not cite to any legal or regulatory authority for that proposition. Duke Energy Ohio witness Ron Adams, however, testified about the difficulty in having a transmission vegetation management program "document that clearly goes to Nth degree of everything" the Company does in that regard.[85] Perhaps Complainants believe that Commission Staff performed an inadequate review, but Complainants have no support for this argument and the fact remains that Staff did not object to the Company's modified transmission vegetation management program. If the Company's vegetation management program somehow lacked certain details or information, surely Commission Staff or the OCC (whose expert admitted having reviewed the Company's application and modified program without taking any action or even talking to Commission Staff) would have objected accordingly. But no such objections were raised by Staff or anyone else.[86]

Contrary to Complainants' accusations, there is nothing inconsistent between Duke Energy Ohio's approved vegetation management program and its use of IVM and the wire zone/border zone concepts for purposes of reclaiming and managing its transmission rights-of-way. The program expressly refers to the *minimum* clearances to be achieved along the transmission lines during the clearing cycles—that does not mean the goal or target as Complainants contend. In order to accomplish those minimum clearances, the Company's program details its right to cut

[84] See, *Wimmer*, supra.
[85] Tr. Vol. II at 380.
[86] Tr. Vol. I at 83-84.

down and remove all vegetation within the transmission corridor when Duke Energy Ohio has the legal right to do so (*i.e.* easements). "The goal shall be to help maintain and improve safe and reliable electric service by limiting or eliminating the possibility of contact by vegetation which has grown towards the overhead transmission lines." Consistent with the industry best practice IVM and the wire zone/border zone concepts use by Duke Energy Ohio and other utilities, removing incompatible trees and vegetation successfully eliminates the remote possibility of contact by such vegetation, and is authorized by the Company's easements. The consistency between the program and practices is self-evident.

Duke Energy Ohio witness Adams testified that the document was modified to clarify the areas that addressed distribution maintenance v. transmission maintenance.[87] Even OCC witness James Williams agreed that the modified document was easier to understand.[88]

As previously explained, Duke Energy Ohio does not have a "stated practice of clear cutting and removing nearly all trees from its right-of-way."[89] Complainants' continued repetition of this false accusation does not make it true. Trees are incompatible within the wire zone and, therefore, are not allowed. Duke Energy Ohio witnesses Adams, Goodfellow and McLoughlin testified to the reasonableness and propriety of that restriction in accordance with IVM and its core principles of safety, reliability and access.[90]

Finally, Complainants go to great lengths to divert the Commission's attention from that which is both factually and legally obvious: namely, that Duke Energy Ohio has the right to implement its transmission vegetation management program on Complainants' properties by

[87] Tr. Vol. II at 403-411.
[88] Tr. Vol. I at 72-73, 80-81.
[89] Complainants' brief at 38
[90] Duke Energy Ohio Ex. 5, Direct Testimony of John W. Goodfellow, at 6-10; Tr. Vol I. at 199; Tr. Vol. II at 263-264; Tr. Vol. III at 600-601, 604-606, 721, 727, 737-738.

following IVM and, where necessary, removing trees and pruning trees back to safe clearances from the transmission lines.[91] The language of the Company's easements cannot be disputed. And nothing in those easements requires the tree-specific assessment suggested by Complainants, especially when, as in this case, Duke Energy Ohio's engineers and other experts have assessed the risks created by trees along the transmission corridor and reasonably decided to implement IVM and the wire zone/border zone concepts to mitigate those risks.

Moreover, as OCC witness James Williams acknowledged, "Duke needs to do what it needs to do to provide safe and reliable service for customers."[92] Duke Energy Ohio's engineers and other subject matter experts reasonably made those decisions in accordance with the Company's approved transmission vegetation management program. None of Complainants' evidence presents any reason to overturn that sound and rational decision which follows industry best practices.

c. This Complaint proceeding is not the proper forum for Complainants to challenge Duke Energy Ohio's transmission vegetation management program, which the Commission approved in Case No. 16-0915-EL-CSS.

Again, not only is this complaint case not the proper forum for a review of Duke Energy Ohio's approved transmission vegetation management program, but Complainants offered nothing but strained argument in support of their baseless claim that the Company "deceptively modified its vegetation management program" in violation of Ohio Adm. Code 4901:1-1-27(E)(2) and (F)(1), and 4901:1-10-24(D), and R.C. 4095.22. Indeed, Complainants effectively argue that counsel for the Company intentionally mislead the Commission. This is a serious allegation that is abhorrent and completely unfounded.

[91] See, *Wimmer v. Public Utilities Commission of Ohio*, 2012-Ohio-757, ¶¶6-7; *Corrigan v. Illum. Co.*, 2009-Ohio-2524, ¶19.
[92] Tr. Vol. I at 89.

The only relevant and credible testimony on this issue was provided by Duke Energy Ohio witness Ron Adams. As Mr. Adams testified, the prior version of Section (f), entitled "Right of way vegetation management," went back and forth between provisions relating to distribution lines and provisions specific to transmission lines, without any clear delineation between the two. Despite his years of experience in transmission vegetation management, even Mr. Adams was confused by the prior version of Section (f). Accordingly, the Company modified Section (f) to eliminate the apparent confusion and to more clearly distinguish between vegetation management along transmission and distribution lines.[93] The modified program undoubtedly accomplished the desired clarity.

Complainants did not put forth any evidence to support their unfounded accusation that the Company modified its transmission vegetation program "as part of an overall strategy or justification for changing its vegetation management practices and policies and for implementing clear cutting."[94] For one, the Company did not implement clear cutting. Second, Duke Energy Ohio did not change its vegetation management practices and policies when its modified program was filed and approved.[95] The Company already had initiated the IVM strategy in Ohio several years previously, starting first with 345 kV transmission lines governed by NERC. Once it completed reclamation and the introduction of IVM along those lines, the Company turned its attention to the 138 kV transmission lines at issue in this case. That work started in 2015 before the modified program was filed and approved. And, as Duke Energy Ohio witness Ron Adams testified, 80% of the work along the 138-kV line was finished without issue before Complainants

[93] Tr. Vol. II at 406-409.
[94] Complainants' brief at 42
[95] There were no internal emails at Duke Energy Ohio regarding "a lot of changes" to transmission vegetation management, as Complainants claim. As Duke Energy Ohio witness Ron Adams testified, that exhibit to Complainant Kuhne's testimony is missing a page and consisted only of talking points regarding allegations raised by these Complainants and other property owners. Tr. Vol. II at 373-378.

filed their complaint in this case. While the work to be done in 2017 at or near Complainants' properties may have been the first occasion for these Complainants to encounter IVM, the Company had been implementing that strategy in accordance with its then-existing transmission vegetation management program for several years. The timing of these events is coincidental, and there is no evidence to support Complainants' accusations about a grand scheme or strategy, which are offensive and inappropriate.

d. Complainants improperly attempt to transfer their burden of proof to the Company by distorting the evidentiary record and falsely claiming that Duke Energy Ohio failed to justify its vegetation management policies and practices.

This last substantive section of Complainants' brief consists of a mixture of weak arguments, many of which are repetitive of prior arguments raised by Complainants. None of the arguments has any evidentiary support or warrant serious consideration by the Commission.

i. Complainants rely upon irrelevant "evidence" to cast the Company's vegetation management policies and practices in a false light.

The accusations about false information and poor communications by Duke Energy Ohio is misleading and designed to suggest some duplicitous scheme or plan. At most, Complainants take issue with information allegedly provided verbally by Duke Energy Ohio's employees. Complainants admittedly received and had access to printed and online "vegetation management materials" when they learned of the Company's planned activities along these transmission lines. Those vegetation management materials clearly explain, among other things, the wire zone/border zone concept, including the compatible vegetation allowed in each other and incompatible vegetation which is not allowed and, therefore, would be pruned or removed. Nonetheless, Complainants seem to think that allegedly incomplete verbal answers or unsatisfactory explanations provided by the Company's employees constitutes an actionable legal claim. They are wrong. The Company provides vegetation management materials in both paper and electronic

format to the public. Written information of that nature is less prone to false interpretations and explanations, which are not relevant in any event for any *legitimate* purpose (Complainants' incessant mud-slinging excluded). Complainants' miscellaneous allegations that constitute a sort of "telephone tag" game are unsupported and ultimately not of any value in the first place. A record consisting of "he said/she said" does not help the Commission understand what constitutes proper vegetation management in a transmission right of way. Nor does it support Complainants' burden of proof.

ii. Complainants clearly do not understand or appreciate the importance of the 2003 blackout in the transmission vegetation management industry.

Complainants may have the luxury of minimizing the causes and lessons of the 2003 blackout, but Duke Energy Ohio does not. These arguments fully display Complainants' complete inability to understand transmission vegetation management and industry best practices.

Without citing nay record evidence, Complainants falsely claim that Duke Energy Ohio witness Ron Adams used the blackout to *justify* the Company's implementation of IVM along the transmission corridor. However, Mr. Adams never offered any such testimony. Instead, both Mr. Adams and Duke Energy Ohio witness Kevin McLoughlin testified how the blackout lead to action by FERC in that NERC became the regulatory authority to assure the reliability and security of the bulk power system in North America, and NERC ultimately adopted FAC–003–1 Transmission Vegetation Management Reliability Standard in April 2007.[96] Mr. Adams further testified how the NERC standard prompted the Company to initiate work on its easement rights with respect to transmission lines governed by NERC (200 kV and above) in the Midwest operations, which was completed toward the end of 2012, and later turned its attention to the 138 kV lines in this case.[97]

[96] Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 7, 10-11.
[97] Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 11; Tr. Vol. II at 249-250, 286, 320.

Apparently, Duke Energy Ohio did not work quickly enough to satisfy Complainants, none of whom have any knowledge or experience regarding transmission vegetation management. In Complainants' minds, the time between the 2003 blackout and the Company's planned vegetation management activities on their properties in 2017 necessarily means that the 2003 blackout was not important or that the Company supposedly should have been able to initiate reclamation and IVM along 402 miles of 345 kV lines in Ohio in a more expeditious manner. In either case, Complainants are simply uninformed, whereas Mr. Adams' testimony is credible and uncontested.

While Duke Energy Ohio appreciates the public's unfamiliarity with transmission vegetation management, neither the Commission nor the Company should tolerate Complainants' continued misrepresentation of the evidentiary record. With respect to the blackout's relevancy to this case, Duke Energy Ohio witness Ron Adams testified only that a cascading blackout of that nature and extent (across state and national boundaries) was unlikely, not that a blackout of any kind was unlikely.[98] In fact, Mr. Adams expressly noted that, as a result of the design and configuration of the Company's 138 kV system, vegetation-initiated outage on the 138 kV system absolutely could cause a localized blackout within the Greater Cincinnati area.[99] Utilities do not have the ability to wait until a blackout occurs in order to take measures to avoid one.

Complainants may disagree with such testimony, but that does not make it any less credible, uncontested, well-informed and experienced. The testimony simply explains what brought Duke Energy Ohio to the process of initiating reclamation and IVM and the wire zone/border zone concepts along the transmission corridors throughout Ohio. Neither Mr. Adams nor any other Duke Energy Ohio witness tried to justify the "unreasonable, unambiguous removal

[98] Tr. Vol. I at 204-205.
[99] Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 8.

of all trees within the easement or within the wire zone" because, quite simply, the Company has never proposed or planned to do so.

iii. Duke Energy Ohio reasonably follows industry best practices for vegetation management along the 138 kV transmission lines at issue in this case.

Complainants argue that, simply because Duke Energy Ohio is not *required* to follow transmission vegetation management regulations on the 138 kV transmission lines at issue in this case—as opposed to those lines at 200 kV and above which are governed by NERC—the Company should disregard the prescribed NERC standards. This is a short-sighted, uninformed and unsound argument. In Complainants' minds, an electric utility may not impose higher standards on its vegetation management practices even if those practices (such as IVM) are recognized as industry best practice.[100] Whereas Complainants may want the Commission to lower the bar and accept a less rigorous approach (at the expense of safety, reliability and access), the Commission should support Duke Energy Ohio's practice in applying relevant vegetation management standards and operational discipline on all transmission lines because these management practices are viewed as industry best practices.[101]

iv. The environmental benefits of IVM further support the Company's transmission vegetation management policies.

As the Attorney Examiner recognized at the hearing, the testimony of Duke Energy Ohio witness Scott Fletcher was not intended to address any particular claims raised by Complainants and, therefore, it is hardly surprising that he was not aware of the details of their claims.[102] Instead, Mr. Fletcher's testimony represents part of the story of the Company's approach to vegetation

[100] One wonders if Complainants believe that state or federal regulators should have barred GM, Ford or Chrysler from installing seat belts and other safety improvements in their cars, at least until the regulators deemed it appropriate.
[101] Duke Energy Ohio Ex. 2, Direct Testimony of Ron A. Adams, at 10; Tr. Vol. II at 275.
[102] Complainants' brief at 53

management, in general. Notably Complainants did not file any testimony to rebut Mr. Fletcher. Mr. Fletcher's testimony about the environmental benefits of the Company's implementation of IVM within its transmission rights-of-way stands uncontested and further corroborates similar testimony from Duke Energy Ohio witness Kevin McLoughlin as to how IVM creates a biodiverse ecosystem within the transmission right-of-way,[103] enabling the corridor to become filled with low-growing plants, grasses, flowers, shrubs, insects and animals.[104] Duke Energy Ohio witness Fletcher explained that the Company does not "clear cut", but rather explained the concepts of environmental stewardship that the Company applies to maintain the right of way. This information was offered to demonstrate that contrary to Complainants' rhetoric, "clear cutting" is not a recognized practice in the industry.

v. The Company's application of IVM along more than 1,600 miles of its transmission corridor is more reasonable and appropriate than having Duke Energy Ohio conduct pruning contrary to industry best practices.

Duke Energy Ohio already rebutted Complainants' repetitive argument that, because the Company *can* perform transmission vegetation management exactly as it did in the past, its refusal to do so necessarily leads to the conclusion that its current vegetation management practices are unreasonable or unlawful. Accordingly, the Company will not repeat the fallacy of such argument or Complainants' inability to shift or sustain their burden of proof.

That said, Duke Energy Ohio notes that, much like the expert testimony in *Wimmer*,[105] the testimony of the Company's expert witnesses is not challenged successfully on any reasonable grounds by Complainants, whether on cross-examination or through argument, nor are their considerable qualifications as experts disputed. Instead, the expert testimony in support of Duke

[103] Rather than allow IVM to take hold and see its benefits develop over time, Complainants prefer to litigate and make unfounded accusations about "eight-lane highways."
[108] Duke Energy Ohio Ex. 1, Direct Testimony of Scott T. Fletcher, at 7.
[105] *Wimmer* at ¶10.

Energy Ohio's implementation of IVM and the wire zone/border zone concepts should be given substantial weight. Complainants simply fail to adequately establish any reason why the Company's transmission vegetation management policies and practices are "unreasonable or unlawful."

vi. Duke Energy Ohio is not required to "prove" anything in this case, but its evidence about its compliance with industry best practices stands uncontested.

With respect to industry best practices, Duke Energy Ohio offered expert testimony from three highly-qualified experts in transmission vegetation management, Messrs. Goodfellow, McLoughlin, and Adams, who collectively have decades of relevant knowledge and experience. In contrast, Complainants did not offer testimony or other evidence from a single expert witness on this subject. As such, the weight of evidence in the record clearly favors Duke Energy Ohio.

Also, the Company never claimed that its transmission vegetation management program is identical to that filed by other Ohio utilities. Therefore, Complainants can cite to obscure differences about, for example, AEP's plan to perform work in a timely manner. Those references do not change the fact that other utilities in Ohio have transmission vegetation management programs that use comparable wire zone/border zone constructs and allow for the removal of trees and other vegetation.

VI. OCC's POST-HEARING BRIEF

The points raised by OCC in its post-hearing brief are similar to and repetitive of the arguments asserted by Complainants. Therefore, Duke Energy Ohio will not address OCC's brief in detail and, instead, only highlights the misstatements of fact and law throughout OCC's brief.

OCC's first recommendation—namely, its false allegation that Duke Energy Ohio's filed a fraudulent application to modify its transmission vegetation management program—is based on

a misunderstanding of the nature of this proceeding and the issues properly before the Commission in connection with Complainants' Complaint. As previously noted, the OCC, customers such as Complainants, Commission Staff and others had public notice of the Company's application to modify its transmission vegetation management program and the opportunity to act accordingly.[106] Contrary to OCC's representation, Duke Energy Ohio did not acknowledge "that the application involved a substantive change in the vegetation management program."[107] In fact, Duke Energy Ohio witness Ron Adams expressly rejected that notion.[108]

OCC also mischaracterizes the evidentiary record regarding the Company's implementation of IVM in accordance with its approved transmission vegetation management program. Duke Energy Ohio does not plan or intend to remove all vegetation in the transmission corridor; nor does the Company seek to remove trees which do not pose a threat to the transmission lines. [109] OCC, like Complainants, also disregards a core principle of IVM (access) despite evidence in the record as to the importance of the Company's access to the transmission corridor and its transmission equipment.[110]

OCC's second recommendation—namely, its unsubstantiated claim that Duke Energy Ohio is conduct unlawful "clear-cutting"—also is based on either a misunderstanding or mischaracterization of the evidentiary record, including IVM, as well as a fundamental misunderstanding of the burden of proof that rests solely with Complainants. OCC believes in error that the testimony of Complainants' inexperienced arborist is remotely credible or of any significant weight. As explained above, not only are Mr. Back's recommendations implausible

[106] OCC expert witness James Williams acknowledged that he reviewed Duke Energy Ohio's application and proposed modified transmission vegetation management program when it was filed but took no action. Tr. Vol. I at 83-84.
[107] OCC brief, at 6.
[108] Tr. Vol. II at 321, 404.
[109] OCC brief, at 6-7.
[110] Tr. Vol. I at 184, 199, 227, 232, 235; Tr. Vol. II at 263-264, 290; Tr. Vol. III at 600-601, 604-607.

and illogical, but they directly contradict the Company's approved transmission vegetation management program by seemingly requiring Duke Energy Ohio to conduct unsafe pruning along its transmission lines every 2-3 years, 3-4 years or some other undefined period. In addition, OCC fails to appreciate that, simply because Mr. Back believes that Duke Energy could or might consider doing something else with respect to pruning and the use of growth inhibitors, his alternative recommendations (as questionable and uninformed as they are) do not support a conclusion that the Company's implementation of IVM and the wire zone/border zone concept is remotely unjust, unreasonable or unlawful. The evidentiary record before the Commission demonstrates that Complainants failed to sustain their burden of proof, notwithstanding OCC's unsound arguments otherwise.

VII. PRAYER FOR RELIEF

The breadth of the relief requested by Complainants is staggering. Complainants want the Commission to retroactively reject the Company's transmission vegetation management program that was filed and approved by rule under Ohio Adm. Code 4901:1-10-27(E). That relief, in and of itself, would be unprecedented and unjustified. But Complainants do not stop there. While listed in multiple iterations, Complainants also want the Commission essentially to substitute uninformed lay opinion for industry best practices recognized by FERC, NERC and industry experts, followed by the Company and other electric utilities, and implemented by Duke Energy Ohio in accordance with its approved transmission vegetation management program and easement rights after careful consideration by the Company's engineers and other subject matter experts in, among other areas, vegetation management, engineering, compliance, land services, legal and field operations. Based on the evidentiary record in this case, as well as applicable legal and regulatory authority, it would be inappropriate and unjustified for the Commission to grant Complainants

requests. Having failed to sustain their burden of proof in this proceeding, Complainants are not entitled to relief, and the Commission should deny their Complaint in its entirety.

Respectfully submitted,

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