

Charlene Rundo**1922 Mears Avenue • Cincinnati, Ohio 45250** **RECEIVED-DOCKETING DIV (513) 232-1794**

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PUCO

Reply**Re: Case number: 06-940-GE-CSS****Concerning the property at 949 Shayler Road, Cincinnati, Ohio 45245*****In Response to Duke's Brief Filed July 9, 2007***

My formal complaint with the PUCO was my way of saying, "I think Duke makes too many mistakes!" I listed examples, limiting myself to eight in the interest of keeping the complaint simple. I wrote the complaint on a ninth grade reading level, but Duke still doesn't seem to understand it.

On page 4 of its July 2007 brief, Duke stated, "Although, Complainant owns the Property, it is not her primary residence. In fact, according to the Complainant, neither the Complainant nor anyone else lived at the property during the events alleged in her complaint." The last time I heard, a person is allowed to own more than one property. But I'm able to claim only one primary residence! The property is *not* abandoned! Besides, how is Duke's statement relevant?

On page 18 of its July 2007 brief, Duke continued, "The area ... is shielded from the road by a dense wooded area." Once more, what is the relevance?

Also on page 18, Duke stated, "The area is only used as a utility corridor." Duke has made ruts (see page 17 of the July 2007 brief), piled debris (see page 19 of the July 2007 brief), and maimed and killed my trees (see Complainant's Exhibits 9, 10, and 29). *I'd like to use the easement area and the adjoining area as wetland meadow and forest, but I cannot do so because of ruts, debris and other damage caused by Duke.*

On pages 11 and 12 of its July 2007 brief, Duke stated that its trimming is performed in accordance to the following standards:

1. National Electric Safety Code (NESC) standards
2. Occupational Safety and Health Association Guidelines (OSHA) guidelines
[Remember that in February 2007, Duke's contractor sent a man up into an icy tree that the contractor feared would fall into the transmission lines (transcript page 135, lines 22-23, and Exhibit JDM-7).]
3. North American Reliability Corporation (NERC) standards
4. Federal Energy Regulatory Commission (FERC) standards
5. American National Standards Institute (ANSI) Z-133 standard
6. National Arborist Standards [Remember that the trees in Complainant's Exhibit 9 are not cut to National Arborist Association Standards (transcript page 128, lines 3-5).]

[The Environmental Protection Agency (EPA) is conspicuously missing from the list.]

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But Duke cannot even keep track of the number of lines in its corridor. In DE-1 (page 3, line 13), Mr. Kline stated that there are four circuits. In his hearing testimony (transcript page 99, lines 7-16), he changed his testimony to two circuits. In DE-3 (page 8, lines 17-18), Mr. Milam stated, "...four circuits..." At the hearing (transcript page 140, lines 1-3), he changed his testimony to two circuits. In DE-3 (page 9, lines 21-24), Mr. Milam named five circuits: **3881, 5483, 5487, 6984, and 9482**" If Duke cannot get its basic facts straight, can it keep track of six complicated codes?

On page 28 of its July 2007 brief, Duke asserted an obligation to its ratepayers. As a ratepayer, I agree that Duke has an obligation. Mistakes cost money! My formal complaint expressed concern about Duke's competence. Unfortunately, the complaint process has done nothing to change my mind.

The Spaghetti Principle

Duke seems to subscribe to the "spaghetti principle." Some people believe that you can tell if spaghetti is ready to eat by throwing it at the wall. If it sticks, it's ready to eat. Similarly, Duke throws excuses until one of them sticks. Following are three examples.

TRIMMING

My complaint stated: "Cinergy sometimes 'trimmed' all the branches and leaves off trees, leaving only trunks. This is not an acceptable tree-trimming practice."

- a. In its defense dated August 15, 2006, Duke stated on page 2: "2. DE-Ohio is without sufficient knowledge to either admit or deny that it 'sometimes "trimmed' all the branches and leaves off some trees, leaving only trunks...." *However, Duke not only trimmed all branches and leaves off some trees but also knew that it had done so (see page 4 of Complainant's Exhibit 28, an e-mail dated May 26, 2005). Duke's attorneys should have ascertained the facts before filing Duke's defense!*
- b. In prefiled testimony, Duke emphasized that it uses a "licensed and certified arborist" (DE-3, page 1, line 16) and described its cuts as "trimmed by removing branches to branch bark collars and live limbs" (DE-3, page 6, lines 13-19). *The trees in Complainant's Exhibit 9 are not trimmed by removing branches to branch bark collars and live limbs (transcript page 128, lines 3-5).*
- c. When faced with the evidence at the hearing, Duke changed its standard to FERC protocol (transcript page 128, lines 1-8). *I have endeavored to look up the referenced FERC protocol. I found no specific trimming protocols in the FERC materials. I did, however, find a reference to the American Nation Standards Institute (ASNI) Tree Care Standard (A300). This standard considers the welfare of trees and recommends against trimming more than 25 percent of the crown of a tree during any given year! Duke frequently removed 50 to 100 percent of the crown when it trimmed my trees (Complainant's Exhibits 9 and 10).*

If an FERC standard is applicable, why didn't Duke say so in its August 2006 defense? Why did Duke deny knowledge in the first place? Why did Duke refer to National Arborist Association Standards in its prefiled testimony if National Arborist Association Standards do not apply? Why didn't Duke supply a copy of the FERC protocol it referenced in its hearing testimony? (Remember that it supplied copies of its easement for the transmission lines and of its tariff for the distribution lines.)

GAS LINE DRILLING

My complaint stated, "The permit stipulated that the gas line was to run in the road right of way; however, when Cinergy drilled, the line was outside the road right of way—that is in my yard."

- a. In its defense dated August 15, 2006, Duke stated on page 2: "5. DE-Ohio admits that the gas main is installed in the road right of way."
- b. On transcript page 7 (lines 13-23), Duke stipulated that it did drill outside the road right of way on its first attempt. *Why didn't Duke say so in its August 2006 brief?*

DISTRIBUTION LINES

In December 2005, *Duke installed* a utility pole outside the road right of way. This is an issue for me because the lines attached to that pole are in my yard, not the right of way. Duke asserted that it is impossible to move the distribution and other utility lines into the right of way without moving the pole. Hence I complained about the pole.

- a. First, Duke told me that the road right of way is 50 feet. *It isn't; it's 40 feet (transcript page 7, lines 10-13).*
- b. Duke told me it had prescriptive rights for the pole position. *But the new pole was farther back than the old pole (Complainant's Exhibit 20, bottom).*
- c. Duke then told me that Agnes Taylor signed an easement granting the utility right of way on the north side of the road. *Agnes Taylor never owned my property. And my property is on the south side of the road (see MAK-1).*
- d. Duke said a Grant of Easement on Highway for Cincinnati Bell (Complainant's Exhibit 21) gave it the right to run its lines wherever it wished. *But it's a **Grant of Easement on Highway!***
- e. Duke said PUCO Electric Tariff No. 19, page 3 of 5, item 7 (DE-2) gave it the right to run its lines wherever it wished. *But the tariff references the Grant (of Easement on Highway).*
- f. Duke said the position of the pole didn't matter because it wasn't on my property. *The pole isn't on my property, but utility lines attached to it are in my yard (Complainant's Exhibit 24).*
- g. Duke said that the lines aren't covered in the easement. *But the easement covers lines (Complainant's Exhibit 21).*

What I Want

Following is the relief I am requesting. The items are numbered according to the numbering in my complaint.

1. For the transmission lines, Duke's easement grants the utility "**a right of way and easement** one hundred (100) feet in width" (see Complainant's Exhibit 5 or MAK-2). Duke's *easement* (interest, or right, in the land) ends at 100 feet! To claim that an easement gives you an easement outside the easement (DE-1, page 7, lines 6-8) is to talk doubletalk.

I want Duke to stop exceeding its authority under the easement. After more than fifty (50) years, how can a utility claim either a right or a duty to cut more aggressively (Complainant's Exhibit 4) than it has in the past? Especially if the utility has been doing its job properly for the last fifty years!

I ask Duke to mark its designated right of way. (See Complainant's Exhibit 5 for the right of way description.) Unless Duke marks its right of way, it cannot know whether trees are inside or outside its right of way. Unless it marks its right of way, it cannot determine whether branches are "overhanging" or not. The easement gives the utility the right to cut, trim, or remove only **obstructions** (blockages in the form of trees or other) and "**overhanging branches**" (**encroachments**). If, however, the easement is not a valid document, then Duke has no right to cut, trim, or remove anything!

If Duke insists it has a right to cut extensively *outside the utility's designated right of way* (DE-1, page 7, lines 6-9), then I claim **prescriptive rights** to grow my trees. Duke testified

that the trees are mature (DE-3, page 8, lines 20-23). Thus, they must have been growing there for twenty years or more. Some have been growing for the last forty years!

I also expect Duke to string the correct number of transmission lines for the corridor so that its lines do not jeopardize my property adjoining the right of way.

2. I want certified arborists to cut according to National Arborist Association standards and the Nation Standards Institute (ANSI) Tree Care Standard (A300). I consider cuts that do not conform to these standards to be wanton destruction of my property. This is particularly important because the area in question is wetland (DE-1, page 4, line 15, and DE-3, page 12, line 6) and therefore fragile!
3. I want Duke to live up to its previous agreements (see Complainant's Exhibits 14 and 15). That is, I want Duke to replace the fence it removed (replacing the fence should restrict accessibility—see DE-1, page 4, line 9), repair the rough spots it made with its equipment, and clean up the woody debris that resulted from its cutting.

With only one exception, my neighbors on the southeastern part of my property have replaced my fence with their own. There are remnants of my original fence on the southwestern side of my property. I want Duke to confine its entry to my property to its already established route and thus to do no more damage to my fence.

The broken wooden platform referred to (DE-1, page 4, line 7) is on my southwestern property line at Duke's entryway. Duke supplied the access for the dumping of this material. The last time I saw the tire, it was on my neighbor's property. I do dump on my property (transcript page 106, lines 15-17), and I pick up paper and trash small enough to carry when I see it (transcript page 107, lines 1-8).

The ATV and motorcycle track that Duke mentioned is mostly on my neighbor's property, though a small portion of the track extends onto my property. The track is outside Duke's designated right of way (this conflicts with Mark Kline's testimony, but the evidence is there for anyone to see). According to Mark Kline's testimony, I did *not* ask him to repair those tracks (transcript page 106, lines 22-24). The tracks do not imperil the transmission lines. They are none of Duke's business!

Mark Kline testified (DE-1, page 4, lines 12-13), "The *grading* is not smooth and flat, but in fact is very bumpy." Only Duke has entered the corridor with equipment large enough to change the grading! ATVs and motorcycles are not large enough to impact grading. Mr. Kline further testified (DE-1, page 4, lines 1-2), "The corridor itself, behind Ms. Rundo's home, is overgrown with thick thorny brush and weeds well above waist high." He added (DE-1, page 4, lines 3-4), "By walking through the corridor it is obvious that it has not been maintained for some time." *That's exactly my complaint. Since Duke's incursions in 2004 and 2005, the ground has been too rough to mow. There has been so much debris that I could not have mowed the area even if it were smooth. The area had been grassy (Complainant's Exhibit 12, top), but Duke's "restoration" not only disturbed the ground (providing a bed for weeds to germinate and grow) but also scraped away much of the grass (Complainant's Exhibit 13).*

I have not seen the remains of a campfire, and Mr. Kline was unable to give me an exact location for the campfire. I believe the campfire to be on my neighbor's property, outside Duke's right of way and outside Duke's interests.

Duke testified that my property is wetland. It also testified that the neighboring property on the west is wooded. My use of the land is consistent with acceptable wetland use and the manner in which my western neighbors use their land (see MAK-1).

In the corridor, I want Duke to leave my blackberries and pink roses (which Mark Kline characterized as "thick thorny brush"—DE-1, page 4, line 2). These plants provide habitat and food for animals. I also want Duke to leave my wildflowers, including—but not limited to—daisies, black-eyed Susans, and mayapples. These plants provide no threat to Duke's transmission lines.

I want Duke to stop using large equipment in my wetland. Equipment weighing several tons compacts the soil and will most likely cause further damage. (See DE-3, page 12, lines 8-10 for John Milam's testimony about ruts.) Ruts tend to collect water and create a breeding ground for mosquitoes.).

- 4.-6. The rudeness and the three tries to install 191.41 feet of gas line are noted for the record. I am not requesting further action. However, *the issues are not moot when you consider the additional expense that Duke incurred as a result of its mistakes.*
7. I want Duke and the other utilities using the distribution pole to move their lines out of my yard and into the right of way. I expect no cost to me.
8. The tracks in my yard are noted for the record. I am not requesting further action.

Fallen Tree

I am not a certified arborist, but I have a 51-year history with this property. I have seen old trees die, and I've seen saplings develop into mature trees. I grew up in the country. I'm *not* a city slicker with more book learning than practical experience.

The tree that fell in the February 2007 ice storm (see JDM-2 as well as Complainant's Exhibits 29 and 30) fell because of Duke's *excessive and improper* trimming. The damage is even more evident in person than it is in photographs.

The leaves of a normal tree cover 50 percent or more of the height of the tree. The tree in question had only 15-20 percent of its height in leaves. The three main branches (which would normally be covered with side branches and leaves) are almost bare. This tree was taller than the surrounding trees. Thus, it would grow side branches and leaves at the expense of the surrounding trees. It might shade out branches of smaller trees, but the smaller trees would not shade out its branches.

Trees in a dense thicket grow straight. Note the angularity of the fallen tree. Both the trunk and main branches change angles where the side branches were cut. Compare the angularity of the leftmost tree in Complainant's Exhibit 9 (it shows similar angularity). The tree in Complainant's Exhibit 9 is at the edge of the clearing; its branches were *not* shaded out!

Also compare the wounds in Complainant's Exhibit 30 (bottom picture) and Complainant's Exhibit 9 (fourth arrow from the top at the left of the picture). Mr. Milam expressed the opinion that the wound on the tree in Complainant's Exhibit 30 was caused by falling branches (transcript page 133, lines 23-24—transcript page 134, line 1). The tree in Complainant's Exhibit 9 has a similar wound on the clearing side, where it was relatively safe from falling branches.

Notice the strange arch of the tree in Complainant's Exhibit 29. Duke removed the tops of the trees between this tree and the clearing. As a result, the top of this tree grew toward the light. The resulting uneven growth destabilized the tree. Duke's experts "trimmed" so that this tree had no choice but fall into the right of way.

Excessive and improper trimming of a tree deprives roots of the nourishment needed to grow healthy and strong so that they can support the tree. The damage in February 2007 was a direct result of Duke's failure to trim according to the National Arborist Association standards and the Nation Standards Institute (ANSI) Tree Care Standard (A300).

I believe that Duke's trimming methods do more to endanger its lines than to protect them. But don't take my word for it. See *Taylor's Guides: Trees* by Susan A. Roth, Boston: Houghton Mifflin Company, 2001, page 34 for another opinion.

PRUNING BROAD-LEAVED TREES

storm. When this is the case, the tree's crown may be thinned to reduce the density of the canopy.

To thin a tree, cut back small branches (less than 1 inch in diameter) throughout the tree. Each of these branches must be cut back to where it forks with a larger branch so that no stub is left behind. This kind of pruning does not stimulate growth and creates a more open-branched tree.

If the tree has grown too tall—for instance, if it is growing into utility lines—the crown can be reduced by thinning out more major branches from the center. Again, each of these must be cut where it meets a larger branch so that the cut does not leave a stub and thus stimulate more branching.

The overall height can be lowered without destroying the tree's natural shape by using a method called *drop crotching*. This means that a large branch is removed all the way down to a crotch, or fork, where it meets another major branch. The terminal leader is usually removed, but the pruning cuts are made so that a new leader—the tallest upright branch—becomes the main leader.

It is much better to prune a tree by using these methods than to simply limb it up—cut off the lower branches—because doing so causes the tree to lose its natural shape, and it ends up looking like a lollipop. The worst thing that you can do to a tree is to top it.

Topping Trees

Pruning trees severely by cutting back all the branches to stubs is called *topping* or *heading*. This is a fashionable, but misguided, practice in some parts of the country when a property owner thinks that a tree is too tall or prone to storm damage. Topping disfigures and injures the tree and actually encourages fast, weak growth that is even more susceptible to storm damage. A tree can add 20 feet of new growth in response to topping, and then, ironically, it requires pruning again.

Topping can remove up to half of a tree's leaves, which it needs to manufacture food. This will severely weaken the tree. The wounds left by these indiscriminate cuts do not heal properly and provide easy access for insects and diseases. The many new shoots that are stimulated are weakly attached and do not develop like normal branches that grow from a socket of strong wood, so they break easily during storms.

If a tree's size or density must be controlled, prune it by thinning, reducing the crown, or drop crotching. Do not top it.

Summary

We all make mistakes, but I think Duke makes too many mistakes.

If I were defending myself, I would claim the “perfect storm.” Something along the lines of “I think we do a pretty good job in general, but your experience is entirely out of the ordinary. Let us make things right.”

Duke, on the other hand, positioned itself as expert. ***Experts are held to a higher standard than the rest of us mere mortals.***



Duke Energy has received large rate increases the last few years. I’m sure that it can justify those increases by its expenditures. But mistakes waste money! And the money comes from innocent homeowners (transferred “for the greater good,” but invisible to regulatory agencies) and from Duke’s customers.

I would like to see Duke improve its performance. If you agree, then please take measures to see that homeowners in Duke’s service area are treated fairly and that Duke’s customers receive the gas and electric utilities they deserve at reasonable rates.

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Duke's Defense (August 2006) (page 2): Denials

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2. DE-Ohio is without sufficient knowledge to either admit or deny that it "sometimes 'trimmed' all the branches and leaves off trees, leaving only trunks." DE-Ohio performs all tree trimming and vegetation management necessary to maintain the reliability of its distribution and transmission system and out of general safety concerns.
 3. DE-Ohio admits that while cleaning up debris from tree trimming, its vehicle made ruts in the utility corridor. DE-Ohio denies the remainder of the allegations contained in paragraph 3 of the Complaint. DE-Ohio reasonably repaired the ruts caused by the company in the utility corridor. The repairs to the corridor were delayed due to weather conditions and to repair work on the water line performed by another utility.
 4. DE-Ohio admits that it created test holes along the right-of-way. DE-Ohio properly followed the practice of piling extra dirt over the test holes to allow for settling. DE-Ohio restored the Complainant's yard with topsoil, seed and straw. When informed by the Complainant that DE-Ohio left rocks in her yard, DE-Ohio returned and cleaned the area that day. DE-Ohio is without sufficient knowledge to either admit or deny the remaining allegations contained in paragraph four (4) of the complaint.
 5. DE-Ohio admits that the gas main is installed in the road right of way.
 6. DE-Ohio admits receiving a call about a sewer being damaged by directional drilling. DE-Ohio worked with Midwestern Plumbing and Clermont County Sewer to repair the sewer lateral. DE-Ohio received an invoice for damages, processed a reimbursement check on September 28, 2005 in the amount of \$2000

Complainant's Exhibit 4: E-Mail from Mark Kline

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Subj: RE: Dan Frazier
Date: 5/27/2005 8:54:25 A.M. Eastern Daylight Time
From: Mark.Kline@Cinergy.COM
To: CSRundo@aol.com

I will forward what you sent me to Dan....I was not aware of another dfrazier.
Great pictures...I will allow Dan and Tim Shephard to respond to the restoration. Dan may have a comment about the way some of the trees were trimmed. I will handle marking the property line.

Having said that I want to clarify the easement. We are trimming in a different manner these days. [REDACTED] but the [REDACTED] with regard to reliability in this new de-regulated world dictate the way we now clear our rights of way. If you recall the huge blackout a year ago or so that was experienced in the northern part of Ohio and resulting in outages clear to the east coast. ALL utilities are re-thinking the way they trim not only for outage concerns but also safety. I still support that we are maintaining our line on your property totally within the spirit of our easement. Agree or not...we are using our easement authority in the spirit it was intended (with the exception of the restoration concerns you have).

I'm sure someone from vegetation mgt. will contact regarding the property and I will talk with you next week about staking the property line.

Mark A. Kline

From: CSRundo@aol.com [mailto:CSRundo@aol.com]
Sent: Thursday, May 26, 2005 11:34 PM
To: Kline, Mark
Subject: Dan Frazier

Dear Mr. Kline:

I sent a copy of this morning's e-mail to dfrazier@cinergy.com. This afternoon, I received an e-mail from dennis.frazier@cinergy.com, who says he's in training and development.

Charlene Rundo

Thursday, May 11, 2006 America Online: CSRundo

Complainant's Exhibit 5: Transmission Line Easement (or see MAK-2)


David C. & Evangelya Ferris #27

GRANT OF EASEMENT

FOR AND IN CONSIDERATION OF One Dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged, we hereby grant unto The Cincinnati Gas & Electric Company, its successors and assigns, a right of way and easement one hundred (100) feet in width, to construct, erect, operate, maintain, repair, replace and remove towers, poles, necessary and incidental wires, cables, cross-arms, grounding systems, counterpoises, fixtures and equipment for the transmission and distribution of electrical energy, also to lay, operate, maintain, replace and remove pipe lines and all necessary and incidental fixtures and equipment for the transportation of gas, in, on, over, through and under the following described real estate situate in Parish M.S. 1134, Union Township, Clermont County, Ohio, and being the same property as described in a deed dated June 9, 1948 from Walter & Hazel Abner to the grantors herein, said deed recorded in Deed Book 268, page 282 Clermont County Recorder's Office.

The center line of a 100 foot right of way and easement is described as follows:

Beginning at a point in the south boundary line of the grantor's property, said point is 45.9 feet west of an old stone marking the southeast corner of the grantor's property, said distance of 45.9 feet being measured along the south boundary line; thence from said beginning point northeastwardly 447.17 feet or less to a point in the east boundary line of the grantor's property, said point is 144.8 feet north of the aforesaid southeast property corner along the south boundary line.



Grantors hereby warrant that they will not erect or remove any tower, 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 grantor's engineers may endanger the safety of or interfere with the construction, maintenance or operation of said system, the right to pile dirt, material and equipment on the surface during periods of construction and maintenance, and the right to use the surface for the purpose of exercising the rights herein granted.

Grantors hereby warrant and agree over the above described property for the purpose of exercising the rights herein granted, to successors and assigns, shall pay all damages to growing crops, buildings and fences, caused by its employees, agents, licensees, independent contractors or other structures shall be erected within the limits of the above described right of way and easement by the grantor, their heirs or assigns, shall have the right to cultivate the land within the limits of the above described right of way and easement in any manner not inconsistent with the rights herein conveyed to the grantee.

If the above described easement is not used, at least in part, within twenty-five years from the date of this instrument the same shall become void and the grantors shall have the right to convey said right of way and easement and warrant and will defend the same against all claims of all persons.

WITNESSES OUR HANDS, this 25th day of July, 1950

Known to us personally
David C. Ferris
Evangelya D. Ferris

AUG - 9 1950

REG. FOR RECORD NO. 1957 AT 11:55 A.M.

EDGAR C. MOSBACHER, RECORDER, CLERMONT COUNTY, OHIO

Edgar C. Mosbacher Notary Public in and for said County

Witness my hand and seal for the uses and purposes therein set forth, this 25th day of July, 1950

John W. Strumple
Clermont County, Ohio

Notary Public.

My Comm. Expires 4/30/50

Complainant's Exhibit 9: Cuts, Angularity of Trunk, Wound



Saplings

**Complainant's Exhibit 10: Cuts Removing More Than
25 Percent of the Tree Crowns**



Topless trees



Fallen, dead tree trunk

Complainant's Exhibit 12: Grass in May 2005 (top)

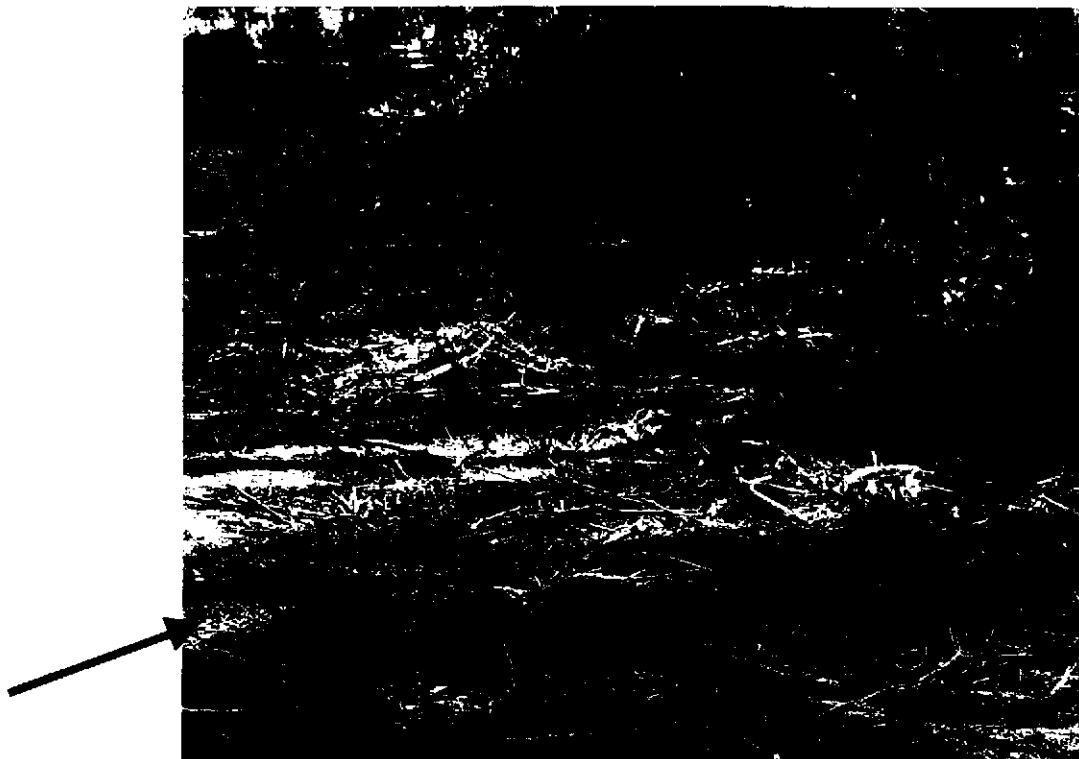


Ruts



Debris

Complainant's Exhibit 13: Grass Scraped Away (August 2005, after "restoration")



Roughness and debris

OCT 63



Complainant's Exhibit 14: Fence Agreement

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Subj: RE: 949 Shayler Road
Date: 7/6/2005 1:23:36 P.M. Eastern Daylight Time
From: Mark.Kline@Cinergy.COM
To: CSRundo@aol.com

Charlene: I forwarded this to Dan and asked him to meet with me to discuss. The easement, as you stated, says "cut, trim or remove....both within or and without....which in the opinion of the grantee's engineers may endanger the safety of or interfere with...." Tall trees outside the easement are indeed an issue if in the opinion of the experts (Dan Frazier) determine they are safety or maintenance related, and therefore shall be "cut, trimmed or removed." I'm an advocate of yours with regard to the condition the property was left, and also agree with you that [REDACTED] are

[REDACTED] The easement allows for damages to crops and fences. [REDACTED] [REDACTED] I'll meet with Dan to discuss the condition of the property and hopefully be able to provide you with a better understanding of what was trimmed and why. This is a utility corridor that is maintained as such and I believe is consistent with both the language in the easement and other like corridors. I'll follow up with you next week regarding these issues.

Mark A. Kline
Sr. Right of Way Specialist
Project Team Lead

From: CSRundo@aol.com [mailto:CSRundo@aol.com]
Sent: Wednesday, July 06, 2005 10:31 AM
To: Kline, Mark
Subject: 949 Shayler Road

To: Mark Kline
From: Charlene Rundo
Subject: 949 Shayler Road
Date: July 6, 2005

Dear Mr. Kline:

This past week I met with Dan Frazier and Tim Sheppard about restoring my field. I was disappointed that negotiations had to begin again and that Dan Frazier did not seem to recognize the agreement you made. That said, there are a couple of further easement issues.

First, Cinergy's easement covers the southernmost 444 feet of the property. Dan Frazier pointed out a tree 600-700 feet north of the property line and ordered the tree trimmed. That tree is outside the easement. This is not a question of easement width, nor is it a question of a few feet.

I am willing as a one-time permission to have Cinergy trim that tree at its expense under my supervision merely because I've wanted to have the tree trimmed anyway. However, this one-time permission (with restrictions) does not constitute an easement.

Second, Dan Frazier picked out a locust tree behind the tree line at the edge of the easement (farther away from the wires) and ordered it trimmed. Dan Frazier gave cutting guidelines similar to the ones

Thursday, May 11, 2006 America Online: CSRundo

Complainant's Exhibit 14: Fence Agreement (continued)

Page 2 of 2

you provided when you saw the property: *a right to clear a 100-foot width and a right to trim trees outside the 100 feet if they threaten your lines*. In common understanding, the word *trim* implies that the work will not destroy the viability of the trees. As you know, some of Cinergy's "trimming" has killed trees left standing.

Further, the easement actually says, "cut, trim or remove any trees, overhanging branches, or *other obstructions* both within or without the limits of the above described right of way" Tall trees outside the right of way are not obstructions. I still believe that many of Cinergy's cuts exceed both the letter and the spirit of the easement, and I am willing to refer the issue (with pictures) to the Public Utilities Commission if necessary.

Thursday, May 11, 2006 America Online: CSRundo

E-mail from Mark Kline, page 2

Complainant's Exhibit 15: Repairing Ruts and Removing Debris

Page 1 of 1

Subj: Shaylar Rd
Date: 7/20/2005 11:16:22 A.M. Eastern Daylight Time
From: Mark.Kline@Cinergy.COM
To: CSRundo@aol.com

Charlene: I just got back in town yesterday and got your message from last Thursday (I've been on Vacation). I've tried calling 232-1794 a few times but have only received busy signals (no voicemail?). I touched base with Dan Frazier yesterday and he said they are planning on ~~finishing up the driveway and backhoeing out the area~~ as soon as the weather allows. I looked at the property this morning and there is still water standing in the ruts. I'm sure Nelson's will be out to finish when it dries up (I'll keep reminding him). I know many of our crews went south to help with Hurricane Dennis so they may be short-handed at the moment.

I also noticed that the property corners had been staked. Last week I had asked our surveyor's to do that but I don't think we did it...you must have beat them to it. ~~at 287-4006. As we agreed I will pay for a new fence portion along the southerly boundary line to help keep people off the property. When I get the fax I'll send you a check, or deliver it in person if that's easier.~~

Mark

Thursday, May 11, 2006 America Online: CSRundo

E-mail from Mark Kline

Complainant's Exhibit 20: Utility Poles for Distribution Lines



Here's the survey stake on December 26, 2005



Two poles together

Complainant's Exhibit 21: Grant of Easement on Highway

My commission expires JULY 14, 1934
 Received Dec 29, 1933 9 A.M.
 Recorded Dec 29, 1933

Estimate No. 3925
 BURTON G HODGES (seal)
 Recorder

Walter Farrow
 TO
 Cin and Sub Bell Telephone Co.

**GRANT OF EASEMENT
 ON HIGHWAY**

Know All Men By These Presents, That Walter Farrow, the grantor, for Himself his heirs and assigns, for and in consideration of One Dollar (\$1.00) and other valuable consideration paid to Walter Farrow by Cin and Sub Bell Telephone Company, the grantee, receipt of which is hereby acknowledged, does hereby grant to said grantee, its successors and assigns, the right and privilege of constructing, maintaining and operating a telephone line consisting of such poles, wires, cables, conduits and other fixtures and equipment as the grantor may require from time to time upon and along

Schleser Road, Union Township, Clermont County, State of Ohio,

adjoining my property, or any part of said road as it now exists or may be hereafter widened, extended or otherwise improved and in which said grantor has or may have a right of property, said grant including the right to trim from time to time any trees along said lines so as to keep the wires and cables free and clear for a distance of at least thirty-six inches and the right and privilege of permitting the attachment of and/or carrying in conduits, wires and cables of any other Company, and grant for Walter Farrow his heirs, executors, administrators and assigns, hereby covenant that no wire line will be erected or permitted on said property which in the judgment of the grantee, its successors or assigns, would interfere with its service or endanger its lines.

The grantor covenants that he has full power and authority to make the aforesaid grant and will defend the same against claims of all persons whomsoever.

In Witness Whereof, the grantor has executed this deed of grant this 11 day of Dec., 1933

Signed and acknowledged in the presence of:
 Harry Vaught
 Clemon Miller

Walter Farrow

STATE OF Ohio, COUNTY OF Clermont, ss:
 Before me, a Notary Public, in and for said County and State, personally appeared Walter Farrow, who acknowledged the signing of the foregoing instrument to be his voluntary act and deed for the uses and purposes therein set forth.

In Testimony Whereof, I have hereunto set my hand and affixed my notarial seal this 11th day of Dec., 1933

Notary Public Harry Vaught Harry Vaught Clermont County.
 My commission expires May 23, 1935 Estimate No. 4059

Received Dec 29, 1933 9 A.M.
 Recorded Dec 29, 1933

BURTON G HODGES (seal)
 Recorder

Complainant's Exhibit 24: Lines Outside Road Right of Way

Complainant's Exhibit 24: Lines Outside Road Right of Way



Cinergy survey stake in 2005



Road right of way



Road right of way



Road right of way

Complainant's Exhibit 28: E-Mail to Mark Kline (May 26, 2005)

Page 1 of 4

Subj: 949 Shayler Road
Date: 5/26/2005 12:45:49 P.M. Eastern Daylight Time
From: CSRundo
To: mkline@cinergy.com

Dear Mr. Kline:

Thank you for meeting with me on Friday. I am putting in writing our agreements as I understand them.

First, Cinergy will be responsible for chipping the woody debris from its cutting and trimming and for broadcasting the chips smoothly.

Second, Cinergy will be responsible for removing the ruts and smoothing the work area. As I told you, my father used to cut the area with a Gravely, which is similar to the current lawn service mowers. The Gravely was stronger than most lawn tractors but smaller than a bush hog.

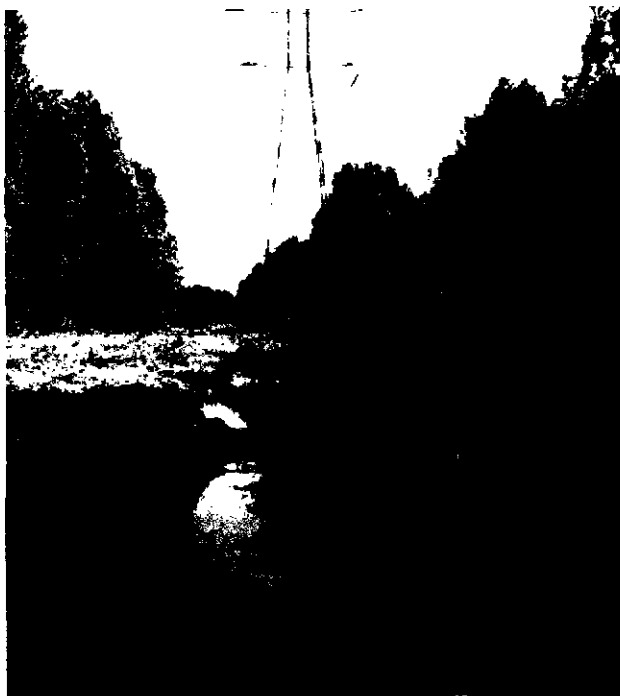
Third, Cinergy will be responsible for placing at least two posts (not stakes) to identify the property line at the back of my property.

Finally, we agreed to disagree on the cutting/easement question. As I understand your explanation, Cinergy has the right to clear the area within the easement; it also has the right to trim outside the easement if trees endanger the power lines. However, I still believe that Cinergy exceeded its easement rights. The cutting at the back of my property is more extensive than the historical cuts. It also is wider than the cuts both north and south of the area in question.



This is debris after it was cut up (you should have seen it before!). We agreed that the remaining debris would be chipped and broadcast smoothly on the area.

Thursday, May 11, 2006 America Online: CSRundo



Looking south. Note the ruts in the foreground. Also, note how the trees on my lot are cut back severely, while the trees on the lots farther south look more natural.

Thursday, May 11, 2006 America Online: CSRundo

E-mail page 2



Looking north. Note how the trees in the foreground are cut back severely, while the trees farther north look more natural.

Thursday, May 11, 2006 America Online: CSRundo

E-mail page 3



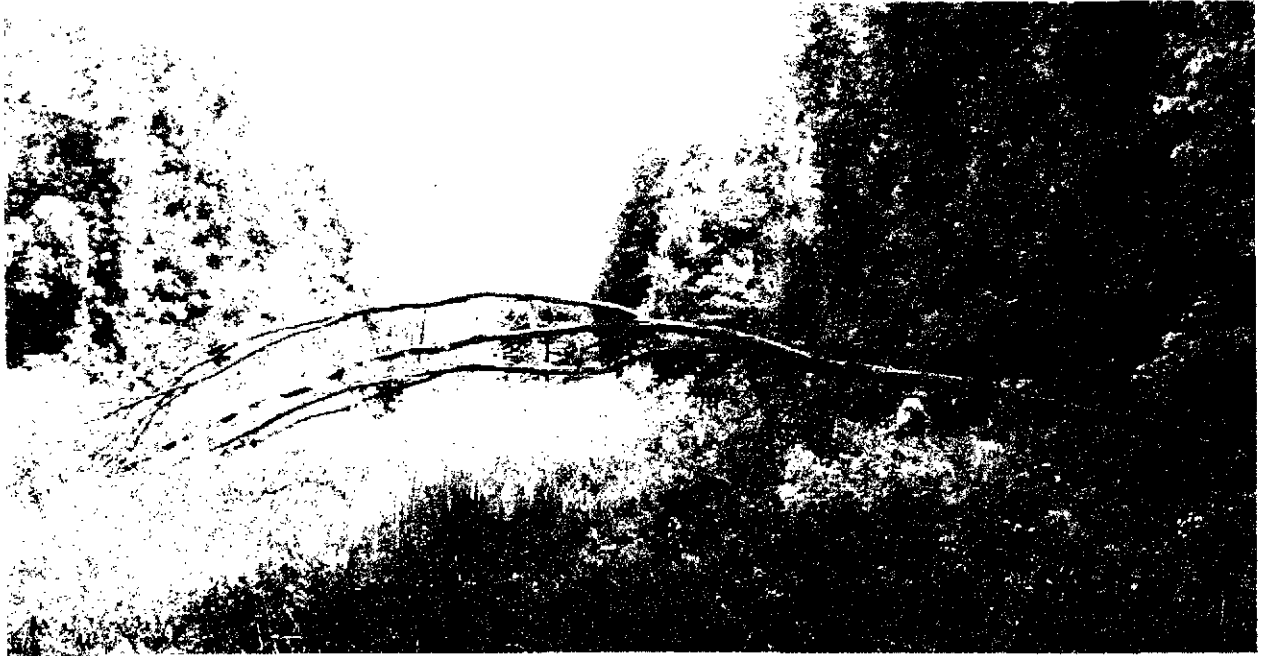
Note how the trees on the left were cut off below the branches. These trees cannot survive such "trimming." In my opinion, such work is unprofessional. Also note how small the "trimmed" trees are. I find it hard to believe they would have endangered the power lines.

[I took the copy from a Word document, so I hope all the characters e-mailed properly.]

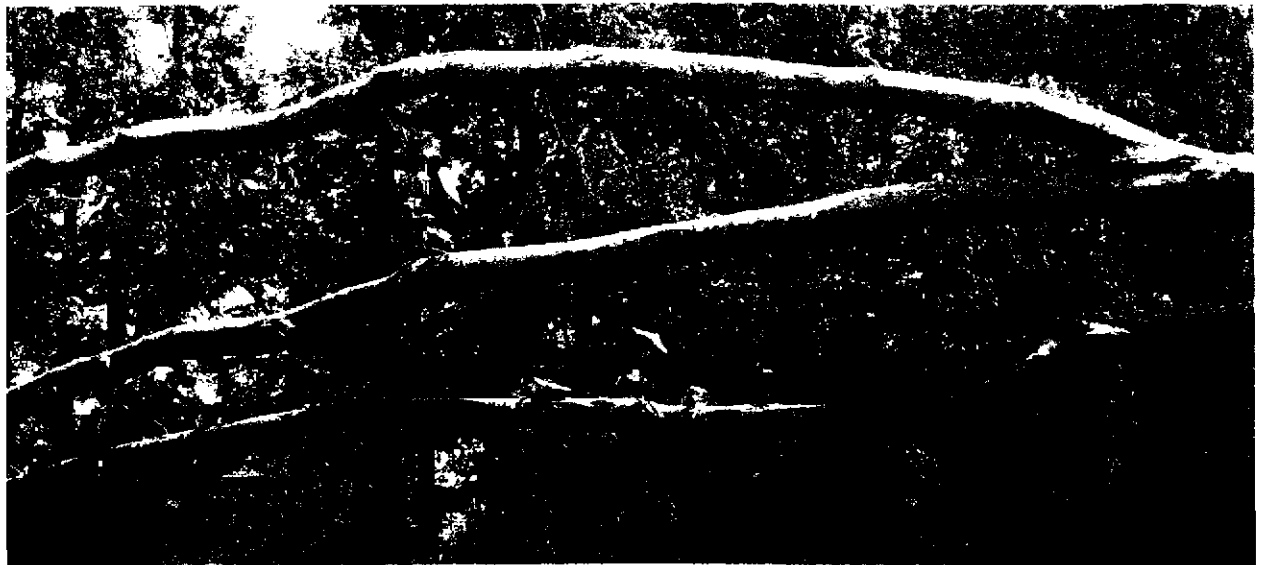
Thursday, May 11, 2006 America Online: CSRundo

E-mail page 4

Complainant's Exhibit 29: Fallen Tree

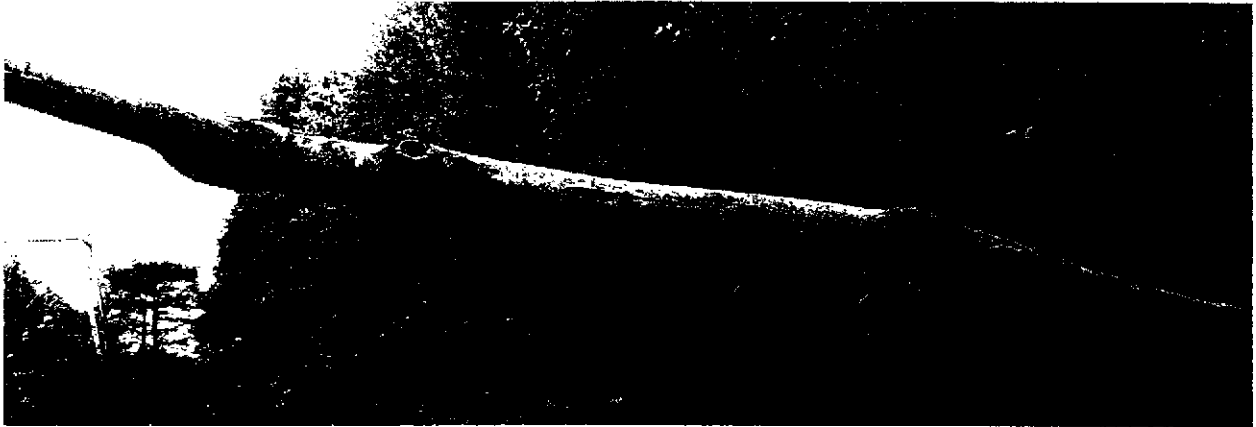


Fallen tree

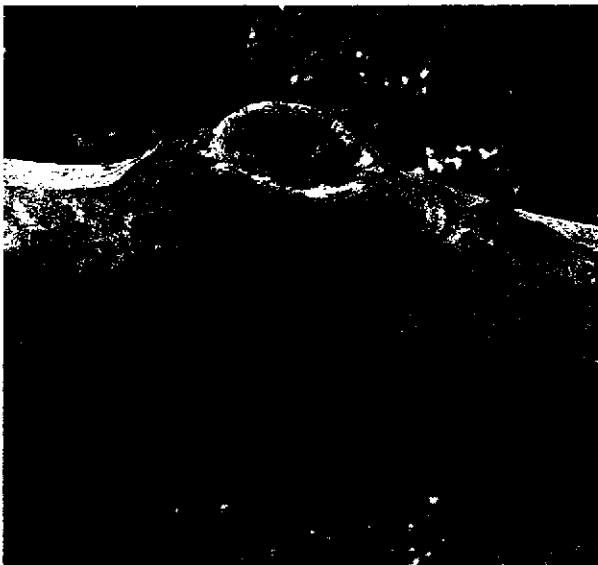


Fallen tree, closer view

Complainant's Exhibit 30: Wounds on Fallen Tree



Fallen tree, closer view



Wound on fallen tree

DE-1 (page 3): Mark Kline—Prefiled Testimony About Circuits

1 to a transmission corridor that in part crosses the back of Ms. Rundo's property and the
2 company's ability to maintain its easement as well as the reliability of its transmission
3 lines. The second issue involves the location of a gas line in Ms. Rundo's property. Ms.
4 Rundo discusses this issue in paragraph numbers five (5) and (6) of her complaint. The
5 third and final right of way issue involves the location of a utility pole along the road.
6 Ms. Rundo discusses this in paragraph number seven (7) of her complaint.

7 **Q. PLEASE BRIEFLY DESCRIBE THE UTILITY CORRIDOR RUNNING**
8 **THROUGH MS. RUNDO'S PROPERTY.**

9 **A.** The Transmission utility corridor runs through the rear of Ms. Rundo's property as can be
10 seen by attachment MAK-1 to my testimony. The transmission facilities located along
11 this corridor are known as the Company's Beckford to Port Union Transmission 138 kV
12 line. The equipment located along this corridor and on and along Ms. Rundo's property
13 includes towers and high-voltage wires, consisting of four circuits that provide
14 transmission service directly from its Beckford generating station, feeding approximately
15 a dozen of the Company's substations, and provides power throughout Clermont and
16 Eastern Hamilton Counties.

17 I have personally walked along this corridor at the rear of Ms. Rundo's property
18 several times, the most recent was in November 2006. There are no towers situated
19 directly on Ms. Rundo's property. The portion of the utility corridor that crosses the rear
20 of her property only contains the 138 kV transmission wires. The property along the
21 utility corridor is un-kept. Along the western side of the corridor, there is a dense and
22 thick line of very tall and mature trees that divides the southern portion of Ms. Rundo's
23 property and separates the transmission corridor from view from Shayler Road. To the
24 eastern side of the corridor, there are back yards to residential homes. The tree line on

MARK A. KLINE DIRECT TESTIMONY

- 3 -

DE-1 (page 4): Mark Kline—Trash, Wetland

1 the eastern side of the corridor is not nearly as dense. The corridor itself, behind Ms.
2 Rundo's home, is overgrown with thick thorny brush and weeds well above waist high.
3 By walking through the corridor it is obvious that it has not been maintained for some
4 time.

5 When I last walked through the corridor in November 2006, there was trash
6 thrown about both within the corridor and in the wooded areas beyond the corridor.
7 Specifically, I saw bottles, papers, a vehicle tire, and even a broken wooden platform. I
8 also saw remains of a campfire in the woods. All of this indicates that access to the
9 corridor has been unrestricted and unmonitored by the property owners along the
10 corridor. It is obvious that the wooded area all along the corridor and even beyond Ms.
11 Rundo's property has been used as a dumping ground. The ground itself all along the
12 corridor is extremely moist and soft. The grading is not smooth and flat, but in fact is
13 very bumpy. My understanding after discussing the area with one of the Company's
14 environmental scientists, who also walked the property, is that the land along this
15 corridor now qualifies as a wetland. This is likely due to construction that has occurred
16 in the area over the last couple of decades changing the contours of the surrounding land
17 from a farm like area to a residential community.

18 Q. DOES DUKE ENERGY OHIO HAVE AN EASEMENT FOR THE
19 TRANSMISSION LINE CROSSING THE BACK OF MS. RUNDO'S
20 PROPERTY?

21 A. Yes.

22 Q. PLEASE BRIEFLY DESCRIBE THE EASEMENT.

23 A. Ms. Rundo's Complaint, among other things, disputes the Company's ability to protect
24 and maintain its Transmission lines and towers that are located in an easement across the

MARK A. KLINE DIRECT TESTIMONY

- 4 -

DE-1 (page 7): Mark Kline—Claim for Cutting

2 area are much taller than 50 feet. If a 65 foot tall tree with extremely large and long
3 branches, and with a trunk that sits 55 feet from the centerline of the of the easement
4 were to fall, the tree would strike the company's equipment and cause extensive outages.
5 Utility wires are not tightly strung between the towers. They have slack and can sag,
6 stretch or contract with the change of weather and the amount of electricity flowing
7 across them. These wires also can sway in conditions of high winds. That is why the
8 language permitting the utility to cut, remove and trim trees and over hanging branches
9 both within and without the easement, as well as the ability to remove other obstructions,
10 such as tall sheds or barns is imperative. The Company's foresters and engineers are
11 highly trained in maintaining transmission facilities, and need the ability and flexibility to
12 trim, cut and remove those trees that pose a danger to the system, in order to protect the
13 integrity of the service provided to all consumers.

13 **Q. TO THE BEST OF YOUR KNOWLEDGE, HAS SUCH AN EVENT OCCURRED**
14 **WHEN A VERY TALL TREE OUTSIDE OF THE EASEMENT FELL INTO THE**
15 **TRANSMISSION LINE?**

16 **A. Yes.**

17 **Q. PLEASE EXPLAIN.**

18 **A.** The exact nature of the event is described in the testimony of DE-Ohio Witness John
19 Milam. My understanding is that there was a very tall tree located along this utility
20 corridor and on Ms. Rundo's property that fell in during a severe winter storm in
21 February 2007, which caused an outage. My further understanding is that this tree was
22 located outside of the easement and several feet back into the existing tree line. The tree
23 was uprooted and collapsed due to the high winds and severe ice that occurred and fell

MARK A. KLINE DIRECT TESTIMONY

- 7 -

DE-2 (page 3 of 5): Tariff Right-of-Way Provision

Duke Energy Ohio
130 East Fourth Street
Cincinnati, Ohio 45202

P.U.C.D. Electric No. 19
Sheet No. 21.3
Cancels and Supersedes
Sheet No. 21.2
Page 3 of 5

SECTION II - SUPPLYING AND TAKING OF SERVICE (Contd.)

In case of unauthorized sale, extension or other disposition of service, the Company may discontinue the supplying of service to the customer until such unauthorized act is discontinued and full payment is made for all service supplied or used, billed on proper classification and rate schedule, and reimbursement in full made to the Company for all extra expenses incurred, including expenses for clerical work, testing and inspections. Failure of the Company to exercise its right to discontinue the supplying of service in the above situations does not affect its right to resort thereafter to such remedy for the same or any future default or breach by the customer.

No other electric light or power service shall, except under a contract for auxiliary or supplementary service, be used by the customer on the same installation in conjunction with the Company's service, either by means of a "throwover" switch or any other connection.

No emergency power supply of an "on premises" or similar basis shall be connected to the customer's wiring installation, either by means of a "throwover" switch or any other means, without advance notification and written approval from the Company and without provisions to prevent feedback into the Company's equipment which could be a safety hazard to the Company's personnel.


All cogeneration and/or small power production customers shall, in addition to the requirements contained in these ELECTRIC SERVICE REGULATIONS, the latest edition of the National Electrical Code and the latest edition of the Company's "Information & Requirements for Electric Service," be required to meet the requirements contained in the Company's "Guideline Technical Requirements for Parallel Operation of Customer Generation." A separate written contract is required between the owners of all such facilities and the Company.

6. Customer's Responsibility

The Customer assumes all responsibility on the customer's side of the point of delivery (the end of the Company's service drop or where the Company's wires are joined to the customer's wires or apparatus) for the service supplied or taken, as well as for the electrical installation and maintenance, appliances, and apparatus used in conjunction therewith, and will save the Company harmless from and against all claims for injury or damage to persons or property occasioned by or in any way resulting from such service or the use thereof on the customer's side of the point of delivery.

7. Right-of-Way

The customer, without reimbursement, will make or procure conveyance to the Company of right-of-way satisfactory to it across the property owned or controlled by the customer for the Company's lines or extensions thereof necessary or incidental to the supplying of service to the customer, or customers beyond the customer's property when such rights are limited to installations along dedicated streets and roads in the form of Grant or instrument customarily used by the Company for these facilities.



Filed pursuant to an Order dated March 29, 2006 in Case No. 06-407-GE-ATA before the Public Utilities Commission of Ohio.

Issued: March 31, 2008

Effective: April 3, 2006

Issued by Sandra P. Meyer, President

DE-3 (page 1): John Milam—Licensed Arborist

DIRECT TESTIMONY OF JOHN D. MILAM

I. INTRODUCTION

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is John D. Milam. My business address is 139 East 4th Street, EF304,
3 Cincinnati, Ohio 45202.

4 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

5 A. I am employed by Duke Energy Ohio, Inc (DE-Ohio) and the Duke Energy Corporation
6 (Duke) as a Transmission Forester in the Vegetation Management Department.

7 Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL BACKGROUND.

8 A. I received an Associates Degree of Accounting in 1981. Over the course of my twenty-
9 six years in the utility line clearing industry I received training, both on the job and
10 seminars. I tested and passed the Utility Specialist exam which is accredited by the
11 International Society of Arboriculture. I attend seminars and have 36 credit hours of
12 instruction every 3 years to maintain certification. I became certified in 1990 and have
13 kept up my certification since then.

14 Q. PLEASE LIST AND DESCRIBE ANY CERTIFICATIONS, LICENSURES OR
15 PROFESSIONAL MEMBERSHIPS YOU HAVE OBTAINED.

16 A. I am a licensed and certified arborist, a Utility specialist, member of the National Arborist
17 Association, Member of the Ohio Chapter of the International Arborist Association,
18 Member of the Utility Arborist Association and a member of the Ohio Urban Forestry
19 Advisory Committee.

20 Q. PLEASE SUMMARIZE YOUR PROFESSIONAL BACKGROUND.

21 A. I have over twenty-six years experience in the utility line clearance industry for both
22 distribution and transmission lines. I began my utility line clearing career as a ground

JOHN D. MILAM DIRECT TESTIMONY

- 1 -

DE-3 (page 6): John Milam—Branch Bark Collars

PLEASE EXPLAIN HOW THE COMPANY DETERMINES WHICH TREES
NEED TO BE TRIMMED.

3 A. Typically we trimmed back to the established tree line, however over the years, trees that ✓
4 are along these corridors and behind the established tree line tend to get taller and we try
5 to reduce the height of these trees in an attempt to reduce the likelihood of storms causing
6 them to fall and causing outages. Duke Energy and its contractors consider weather
7 direction, (the direction we tend to get prevailing winds from), to make the determination
8 of which trees need to be storm proofed. Tree species, ground conditions and growing
9 characteristics are considerations that are also considered when making these decisions.
10 Normally 100 foot is the easement on a 138 KV line.

11 A danger tree is a tree that that has a cavity, dead limbs, washed out root system looks
12 diseased or has a bad lean to it and could fail and cause an outage.

13 Q. HOW ARE TREES ALONG TRANSMISSION CORRIDORS TRIMMED?

14 A. Trees along any Right of Way (R/W) are trimmed by removing branches to branch bark ✓
15 collars and live limbs. There are cases where we have stubbed trees to make them safe
16 from the lines.

17 Q. IS THIS METHOD CONSISTENT WITH INDUSTRY STANDARDS FOR
18 TRIMMING ALONG TRANSMISSION LINES?

19 A. Yes.

20 Q. PLEASE DESCRIBE THE TYPES OF EQUIPMENT USED TO TRIM TREES
21 ALONG TRANSMISSION CORRIDORS?

22 A. There are several types of equipment that is used to maintain transmission R/W's. Duke
23 Energy uses mowers, (big machines with tires 4-5 feet in diameter and 20 inches wide ✓
24 that cut trees up to 4-6 inches in diameter), garffs (a machine with a saw blade and a

JOHN D. MILAM DIRECT TESTIMONY

DE-3 (page 8): John Milam—Prefiled Testimony About Circuits

1 Q. ARE YOU FAMILIAR WITH THE ALLEGATIONS RAISED IN MS. RUNDO'S
2 COMPLAINT THAT INVOLVE THE COMPANY'S VEGETATION
3 MANAGEMENT PRACTICES ALONG HER PROPERTY?

4 A. Yes. I have reviewed Ms. Rundo's Complaint as well as the Company's files on Ms.
5 Rundo. Additionally, I spoke to the persons who were directly involved with Ms. Rundo
6 in 2005 when her concerns with the Company's vegetation management practices first
7 came to light. The previous individual who had my position and who dealt directly with
8 Ms. Rundo in this matter has recently retired and I have taken his place. Accordingly, I
9 am very familiar with Ms. Rundo and the issues regarding her property. I have personally
10 walked along the transmission corridor many times, including the rear of Ms. Rundo's
11 property.

12 Q. PLEASE BRIEFLY DESCRIBE THE TRANSMISSION CORRIDOR RUNNING
13 THROUGH THE REAR OF MS. RUNDO'S PROPERTY LOCATED IN
14 CLERMONT COUNTY, AT 949 SHAYLER ROAD, CINCINNATI, OHIO.

15 A. As more fully described in the direct testimony of Mr. Kline, the transmission equipment
16 located along this corridor and on and along Ms. Rundo's property includes towers and
17 high-voltage wires, consisting of four circuits that provide transmission service directly
18 from its Beckjord Generating Station, feeding approximately a dozen of the Company's
19 substations, and provides power for all of Clermont County.

20 Ms. Rundo's property itself along the utility corridor is un-kept. Along the western side
21 of the corridor, there is a dense and thick line of very tall and mature trees that divides the
22 southern portion of Ms. Rundo's property and separates the transmission corridor from
23 view from Shayler Road. Most of those trees are in excess of 50 feet and consist mostly
24 of Silver Maple. To the eastern side of the corridor, there are back yards to residential

JOHN D. MILAM DIRECT TESTIMONY

- 8 -

DE-3 (page 9): John Milam—Names Five Circuits

1 homes. The tree line on the eastern side of the corridor is not nearly as dense. The
2 corridor itself, behind Ms. Rundo's home, is overgrown with thick thorny brush and
3 weeds well above waist high.

4 Q. DOES DUKE ENERGY OHIO HAVE AN EASEMENT FOR THE
5 TRANSMISSION LINE CROSSING THE BACK OF MS. RUNDO'S
6 PROPERTY?

7 A. Yes.

8 Q. PLEASE BRIEFLY DESCRIBE THE EASEMENT AND THE ISSUES
9 REGARDING THE TRANSMISSION CORRIDOR RAISED BY MS. RUNDO.

10 A. A copy of the easement is attached to the testimony of Mark Kline as MAK-1. This
11 Easement was granted to the Company on or about July 25, 1950. The Easement grants a
12 company a 100 foot easement "together with the right to cut, trim or remove any trees,
13 overhanging branches or other obstructions both within and without the limits of the
14 above described right of way and easement which in the opinion of the grantee's
15 engineers may endanger the safety of or interfere with the construction operation or....."

16 Q. WHEN WAS THE TRANSMISSION CORRIDOR ALONG MS. RUNDO'S
17 PROPERTY TRIMMED BY DE-OHIO?

18 A. Nelson Tree Service performed scheduled maintenance work on this line at the Rundo
19 property around February 1, 2005. There was follow up work with the mower on or about
20 May 5 2005.

21 Q. HOW WERE TREES IDENTIFIED FOR TRIMMING ALONG THE
22 TRANSMISSION CORRIDOR?

23 A. This work was performed on the scheduled maintenance of circuits 3881, 5483, 5487,
24 6984, and 9482. The trees were identified and trimmed according to DE-Ohio's

JOHN D. MILAM DIRECT TESTIMONY

DE-3 (page 12): John Milam—Wetland and Ruts

necessary to protect DE-Ohio's transmission system and was performed in accordance with industry standards.

4 Q. DID THE LARGE VEHICLES YOU DESCRIBED LEAVE RUTS ALONG THE
UTILITY CORRIDOR?

5 A. Yes. The land along this corridor is extremely moist and soft. My understanding is that
6 the corridor along Ms. Rundo's property is considered to be a wetland under EPA
7 standards. The spring and summer of 2005 when the trimming occurred, was very wet
8 and the ground is extremely moist. The equipment trucks left ruts along the corridor.
9 This is unavoidable, and will likely occur again if the Company needs to perform
10 comprehensive tree trimming.

11 Q. DID THE COMPANY REPAIR THE RUTS IT CAUSED ALONG THE
12 CORRIDOR?

13 A. Yes. The Company did repair the ruts it made along the corridor. Unfortunately, given
14 the condition of the land, making those repairs took time because we could not go back
15 on the property with any equipment to make the repairs otherwise we would have caused
16 further damage to the land. We had to wait a period of time for the land to dry before we
17 could make the repairs. An initial repair occurred in the mid-summer of 2005. Ms. x
18 Rundo was not satisfied with the repair and accordingly, we returned in August 2005 and
19 performed additional repairs. The Company in August 2005 repaired the ruts and x
20 restored the land to a condition similar to what it was before the company performed its
21 trimming. The land is only used as a utility corridor. 7.

22 As I described previously, the property along this corridor was overgrown with weeds
23 and the contour of the property was not smooth to begin with. Access to the property
24 was unrestricted and it was obvious that 3rd parties had been using the corridor for driving

JOHN D. MILAM DIRECT TESTIMONY

Exhibit JDM-2: Fallen Tree

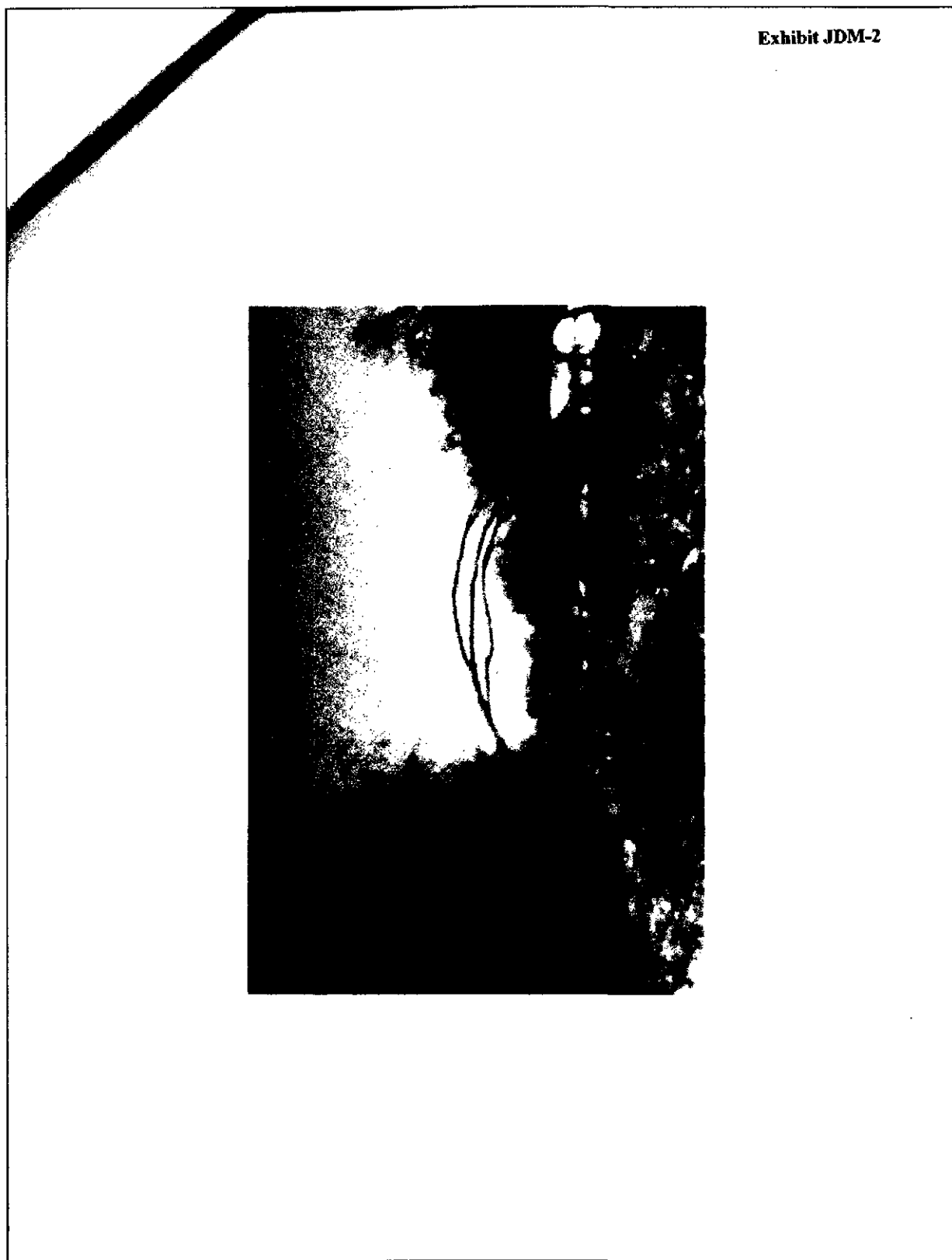


Exhibit JDM-7: Man in Icy Tree

Exhibit JDM-7



Transcript (page 7): Stipulating Right of Way & Original Bore

Case No. 06-940-6B-CSS

7

1 certain facts that are not in dispute, but would be
2 helpful in the presentation of evidence, so that we
3 don't needlessly go through certain issues that just
4 aren't in dispute, but would be helpful for the
5 determination here.

6 HEARING OFFICER STONEKING: That's fine.

7 MR. D'ASCENZO: The first fact that we've
8 agreed to stipulate to is that Miss Rundo is the owner
9 of the property located at 949 Shayler Road,
10 Cincinnati, Ohio 45245. We have also agreed to
11 stipulate that the right-of-way along Shayler Road in
12 Clermont County and in front of Miss Rundo's property
13 is 40 feet from the center of the road. The company is
14 also willing to stipulate that the initial directional
15 bore for the gas main extension that occurred in May
16 2005 was initially installed outside of the
17 right-of-way and on Miss Rundo's property, and the
18 parties have also agreed to stipulate that, upon
19 discovery, that the directional bore had deviated from
20 the right-of-way, that the company redrilled and
21 installed the gas main that is currently installed
22 within the road right-of-way, and Miss Rundo has agreed
23 subject to check.

24 HEARING OFFICER STONEKING: Okay. Is that

Armstrong & Okey, Inc. Columbus, Ohio (614) 224-9481

Transcript (page 99): Mark Kline—Change in Number of Circuits

Case No. 06-940-6E-CSS

99

1 Q. Do you have any corrections,
2 clarifications, changes, or amendments to that
3 document?

4 A. I have two clarifications.

5 Q. Would you please explain those
6 clarifications?

7 A. On Page 3, Line 13, it reads, "...includes
8 towers and high-voltage wires consisting of" -- and
9 then inserted here it should say two parallel 138 KV
10 circuits.

11 HEARING OFFICER STONEKING: I'm sorry, are
12 you deleting words or are you adding them?

13 THE WITNESS: I'm not sure how you want me
14 to say this. It should say -- instead of four
15 circuits, it should say two parallel 138 KV circuits.

16 HEARING OFFICER STONEKING: If you were
17 to -- read that Line 13 as it should read in its
18 entirety for the record, just so we're clear we've
19 corrected it.

20 THE WITNESS: Okay. Beginning at Line 13,
21 "...includes towers and high voltage wires consisting
22 of" two parallel 138 KV circuits that provide --

23 HEARING OFFICER STONEKING: Thank you.

24 THE WITNESS: And there was an additional

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Transcript (page 106): Mark Kline—Dumping and ATV Tracks

Case No. 06-940-6B-CSS

106

1 A. Yes.

2 Q. Were they in the right-of-way?

3 A. Some were.

4 Q. And some were not?

5 A. Correct.

6 Q. Where was the ATV motorcycle tracks? Were

7 they in your right-of-way or out of your right-of-way?

8 A. Both.

9 Q. That's a shock.

10 MR. D'ASCENZO: Objection. Move to

11 strike.

12 HEARING OFFICER STONEKING: Sustained.

13 MS. RUMDO: Okay.

14 By Ms. Rumdo:

15 Q. Are you saying that I dumped the trash on

16 my property?

17 A. No.

18 Q. When you and I walked the property in May

19 2005, did you see any ATV tracks or motorcycle tracks

20 in the right-of-way?

21 A. No.

22 Q. Did I ask you to repair any ATV or

23 motorcycle tracks?

24 A. No.

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Transcript (page 107): Mark Kline—Trash

Case No. 06-940-6B-CSS

107

1 Q. When you and I walked the property in May
2 2005, we found some trash in the right-of-way. On the
3 way back to the house I picked up an armload. I was
4 struggling to carry it, so you offered to help me, and
5 we walked the trash almost a quarter of a mile back to
6 my trash bin, where I disposed of it. Do you remember
7 that?

8 A. Yes.

9 Q. Is this the behavior of a person who has
10 abandoned her property?

11 MR. D'ASCENZO: Objection, Your Honor.
12 Argumentative. Beyond the scope of the witness'
13 testimony.

14 HEARING OFFICER STONEKING: Miss Rundo,
15 are you -- is it your feeling that there's something in
16 Mr. Kline's testimony that discredits you as a property
17 owner? Is that why you're asking this line of
18 questioning?

19 MS. RUNDO: Yes, that is why I'm asking.

20 HEARING OFFICER STONEKING: I'll let you
21 ask this question, and then we need to move on.

22 THE WITNESS: I'm unclear about what the
23 question is.

24 HEARING OFFICER STONEKING: Reread the

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Transcript (page 128): John Milam—Cutting Standards

Case No. 06-940-6E-CSS

128

1 THE WITNESS: To clear the corridor,
2 they're trimmed according to how we had to trim them.
3 Are they trimmed to National Arborist standards, no,
4 they are not. National Arborist standards would mean
5 they were out to a branch bark collar.

6 HEARING OFFICER STONEKING: But they're
7 cleared according to FERC protocol?

8 THE WITNESS: Yes.

9 HEARING OFFICER STONEKING: Thank you.
10 By Ms. Rundo:

11 Q. I'm just confused, because you say in
12 Line -- Page 6, Line 11, the trees "are trimmed by
13 removing branches to branch bark collars and live
14 limbs," so that sounds as if that's one of your
15 protocols.

16 HEARING OFFICER STONEKING: Is there a
17 question?

18 MS. RUNDO: I was just confused by his
19 answer. I'm sorry. I'm thinking out loud.

20 By Ms. Rundo:

21 Q. On Page 11 of your testimony, Line 8, you
22 say, "Trees that pose a serious threat" -- skips some
23 wording -- and "lie just outside of the actual
24 easement." What do you mean by "just outside"?

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Transcript (page 133): Storm Damage

Case No. 06-940-6E-CSE

133

1 at Exhibit 30, and you can see that there have been
2 additional cuts made down the trunk of that tree. Do
3 you think that the cuts in any way affected the
4 viability of that tree in a storm?

5 A. Where is -- which is Exhibit 30?

6 Q. Page 39 of 41.

7 A. I'm sorry, but I don't see any cuts.

8 Q. You don't see where any branches have been
9 trimmed off?

10 A. No, ma'am.

11 Q. What are the bumps?

12 A. That's where tree limbs used to be.

13 Q. And how do you think they -- why do you
14 think they used to be there and they're not there
15 anymore?

16 A. If you're asking my professional opinion,
17 that tree was approximately ten feet inside the
18 established wood line. Trees could have been -- the
19 limbs on that side of the tree -- I'm assuming you're
20 talking about the top limb, the highest limb that's
21 parallel with the ground.

22 Q. Uh-huh.

23 A. They could have potentially been shaded
24 out and fallen off in the canopy, being shaded from the

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Transcript (page 134): Storm Damage

Case No. 06-940-6E-C98

134

1 other trees.

2 Q. If that happens, do you have a distinct
3 mark or --

4 A. Sure.

5 Q. You don't -- the tree isn't just smooth?
6 It doesn't smooth itself out, then?

7 A. You can tell where the limbs fell. You
8 can tell where the limbs once were originated from.

9 Q. What is your professional opinion as far
10 as the wound on that tree is? The picture on the top
11 of Page 39 shows the tree from a distance and then you
12 see this wound.

13 HEARING OFFICER STONERKING: Are you
14 referring to the second photo there?

15 MS. RUNDO: Yes.

16 THE WITNESS: Page 39 of 41?

17 HEARING OFFICER STONERKING: Yes.

18 THE WITNESS: I investigated that tree.
19 That tree is approximately five to ten feet. It's the
20 same tree as in the other exhibit.

21 MS. RUNDO: Yes.

22 THE WITNESS: It is approximately 25 feet
23 off the ground, and if that tree was standing, it would
24 have extended backwards into the tree -- into the

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Transcript (page 135): Storm Damage

Case No. 06-940-6X-CSS

135

1 woods. I think that tree limb was shaded out, quite
2 possibly another limb fell out of another tree and
3 broke that off. That's the tree's natural defenses
4 callusing and sealing the wound.

5 By Ms. Rundo:

6 Q. On Page 13 of your testimony, Line 22, you
7 observed that several other trees were bent out and
8 leaning toward the line. Your exhibit JDM-8 shows
9 branches bowed under the weight of ice, but the trees
10 themselves do not seem to be leaning. Were the trees
11 themselves leaning or just branches bowed?

12 A. Both. I see a tree leaning right here in
13 my picture.

14 Q. The trunk?

15 A. Yes, ma'am.

16 Q. Could you please show me where?

17 A. About -- you can see the guy in the tree,
18 and it would be to his -- or toward the right side of
19 the photo as you look at it.

20 Q. That's a branch leaning.

21 A. To me it looks like a whole tree.

22 Q. And you sent a guy up in a leaning tree?

23 A. Yes.

24 Q. It must have been pretty dangerous.

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Transcript (page 140): John Milam—Change in Number of Circuits

Case No. 06-940-6R-CS8

140

1 question, Page 8 of your testimony, Line 17, you say
2 there are four circuits. How many circuits are there?

3 A. There's two circuits.

4 Q. Okay. I think that's my questions.

5 HEARING OFFICER STONEKING: Do you have
6 any redirect, Mr. D'Ascenzo?

7 MR. D'ASCENZO: No, Your Honor.

8 HEARING OFFICER STONEKING: Then you may
9 be excused. Thank you.

10 (Witness excused.)

11 HEARING OFFICER STONEKING: At this time,
12 I have three exhibits for DEO-Ohio?

13 MR. D'ASCENZO: Yes, Your Honor. We move
14 Duke Energy Ohio's 1, 2, and 3 be moved into evidence.

15 HEARING OFFICER STONEKING: Do you have
16 any objections to Duke Energy --

17 MS. RUMDO: I've lost track. DE-1 is
18 what?

19 HEARING OFFICER STONEKING: DE-Ohio
20 Exhibit 1 is the direct testimony of Mark Kline and the
21 attached exhibits.

22 MS. RUMDO: Okay.

23 HEARING OFFICER STONEKING: DE-Ohio
24 Exhibit 2 is the PUOD Electric Tariff No. 19. That was

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Duke Brief (July 2007) (page 4): Primary Residence

main along Shayler Road at the front of the Property.³ DE-Ohio also maintains a Transmission utility corridor, which in part, runs through the rear of the Property.⁴ The transmission facilities located along this corridor are known as the Company's Beckjord to Port Union Transmission 138 kV line ("Transmission Line").⁵ The equipment located along this corridor and on and along the Property includes towers and high-voltage wires, consisting of two parallel 138 Kv circuits that provide transmission service directly from its Beckjord generating station, feeding approximately a dozen of the Company's substations, and provides power throughout Clermont and Eastern Hamilton Counties.⁶ Although, Complainant owns the Property, it is not her primary residence.⁷ In fact, according to Complainant, neither Complainant nor anyone else lived at the property during the events alleged in her Complaint.

Complainant's claims can be summarized into three issues. First, Complainant disputes DE-Ohio's management of the vegetative growth along its Transmission Line that intersects the rear portion of Complainant's property.⁸ Specifically, Complainant alleges that DE-Ohio has exceeded the scope of its easement and has improperly performed its trimming.⁹ Complainant also alleges that DE-Ohio has not repaired damage to the corridor

³ *In re Complaint of Charlene Rundo*, Case No. 06-940-GE-CSS, (DE-Ohio Exhibit 1 at 3-4) (June 5, 2007).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *In re Complaint of Charlene Rundo*, Case No. 06-940-GE-CSS, (TR at 75-76) (June 5, 2007).


⁸ *In re Complaint of Charlene Rundo*, Case No. 06-940-GE-CSS, (Complaint at paragraphs 1-3) (July 25, 2006).

⁹ *Id.*

Duke Brief (July 2007) (page 11): Trimming Standards

and arborists to perform the necessary vegetation management and inspections.³⁵ In his direct testimony, DE-Ohio's Transmission Forester, John D. Milam, explained DE-Ohio's trimming protocols and how DE-Ohio's trimming along the Transmission Line was performed within those established protocols.³⁶ Witness Milam also described how protocols change over time, and in particular, how the recent August 2003 blackout across the northeastern part of the Country changed vegetation management practices across transmission grids.³⁷

DE-Ohio's vegetation management program pertaining to its transmission lines consists of a comprehensive trimming occurring approximately every five to six years.³⁸ DE-Ohio also conducts aerial patrols of its corridors twice per year.³⁹ The purpose of the air patrol is to identify vegetation issues that may affect reliability such as erosion, danger trees, and wind damage.⁴⁰ If DE-Ohio's foresters and certified arborists discover a reliability concern through the air patrols, DE-Ohio addresses it immediately, even if it is outside of the trim cycle.⁴¹



DE-Ohio's trimming is performed in accordance with National Electric Safety Code ("NESC") standards, Occupational Safety and Health Association ("OSHA") guidelines, North American Reliability Corporation ("NERC")

³⁵ *In re Complaint of Charlene Rando*, Case No. 06-240-GE-CSS, (DE-Ohio Exhibit 3 at 3-6) (June 5, 2007).

³⁶ *Id.* at 4-13.

³⁷ *Id.* at 7.


³⁸ *Id.* at 4-13.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

Duke Brief (July 2007) (page 12): Trimming Standards, cont.



standards, Federal Energy Regulatory Commission ("FERC") standards, and where applicable, American Nations Standards Institute's ("ANSI") Z-133 standard, and National Arborist's Standards.⁴² DE-Ohio typically trims trees and branches back to the established tree line.⁴³ However, as trees mature and grow, it becomes necessary to reduce the height of the trees beyond the tree line to reduce the likelihood that storms would cause the trees to fall into DE-Ohio's lines and cause outages.⁴⁴

DE-Ohio's vegetation management personnel consider many factors in determining where to trim and the method used to trim trees. These factors include weather direction, tree species, ground conditions and growing conditions.⁴⁵ When possible, trees along a right of way are trimmed by removing branches to branch bark collars and live limbs.⁴⁶ As explained by Witness Milam on cross-examination, branch bark collars are "where the collars originate from the trunk of a tree or from a limb... [i]t would be the starting point where it comes out of the trunk of the tree or where another limb— the V of another limb."⁴⁷ In some situations, it is necessary to stub trees to make them safe.⁴⁸ In all instances, however, these cuts are performed

⁴² *Id.* at 10; TR at 123.

⁴³ *Id.* at 6.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *In re Complaint of Charlene Rundo*, Case No. 06-940-GE-CSS, (TR at 125)(June 5, 2007).

⁴⁸ *In re Complaint of Charlene Rundo*, Case No. 06-940-GE-CSS, (DE-Ohio Exhibit 3 at 6) (June 6, 2007); TR at 124, "Stubbing would be cutting a tree to a scenario where it cannot fall and hit our power lines."

Duke Brief (July 2007) (page 17): Ruts

of wooden platforms and other trash observed along the corridor.⁷¹ The Property clearly shows evidence of third parties accessing the corridor and causing tire ruts with all terrain vehicles, and motorcycles.⁷²

In her direct testimony, Complainant describes the Property along the Transmission Line as a wetland.⁷³ Because the Property is a wetland, any vehicles or equipment brought into the corridor will make ruts. DE-Ohio's practice is to use its best efforts to make as little impact to the land as is feasible and possible. However, DE-Ohio carefully balances the impact to the land with the need to provide for the safety of work crews and economics.⁷⁴ Accordingly, in many instances, it is necessary to bring heavy equipment into the corridor and rutting is unavoidable.⁷⁵

In his Prefiled Direct Testimony, Mr. Milam describes the vehicles used to trim trees along Complainant's Property as very large and making deep wide tracks.⁷⁶ Due to size, these vehicles caused identifiable rutting in the moist land.⁷⁷ Because of the weather conditions, DE-Ohio could not repair the damage immediately, but had to wait until the soil hardened.⁷⁸ DE-Ohio's crews made an initial repair in the mid summer of 2005 and returned to the

⁷¹ *Id.*

⁷² *In re Complaint of Charlene Rundo*, Case No. 06-940-GE-CSS, (DE-Ohio Exhibit 3 at 12-13) (June 5, 2007).

⁷³ *In re Complaint of Charlene Rundo*, Case No. 06-940-GE-CSS, (TR at 30-32) (June 5, 2007).

⁷⁴ *Id.* at 139.

⁷⁵ *Id.*

⁷⁶ *In re Complaint of Charlene Rundo*, Case No. 06-940-GE-CSS, (DE-Ohio Exhibit 3 at 6-7) (June 5, 2007).

⁷⁷ *Id.* at 12-13.

⁷⁸ *Id.*

Duke Brief (July 2007) (page 18): Utility Corridor, Wooded Area

property in August 2005 at Complainant's request to make additional repairs.⁷⁹ Ruts were repaired by pushing the high sides of the ruts into the deep tire tracks with a bobcat.⁸⁰

Complainant presented no evidence that ruts DE-Ohio created in the corridor in 2005 have not been repaired. Complainant did present two photographs; one, which she alleges, was taken in May 2005, showing the ruts and the second in August 2005.⁸¹ However, there is no testimony or evidence that the second photograph was taken after DE-Ohio made the August repair to the ruts.⁸² There is no evidence that ruts caused by DE-Ohio exist along the corridor today. In fact, the evidence presented at the hearing is to the contrary. DE-Ohio's witness Milam testified that based upon his examination of the property on several occasions including as recently as January 2007, as well as his experience, knowledge and training, DE-Ohio's contractors did repair the ruts they created along the corridor and restored the land to a similar condition than prior to the trimming.⁸³

Further, even if there are ruts remaining along the corridor that were caused by DE-Ohio, which DE-Ohio denies, there is no evidence that this has in any way affected Complainant's use of the property. The area is only used as a utility corridor. It is shielded from the road by a dense wooded area. The

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *In re Complaint of Charlene Rundo*, Case No. 06-940-GE-CSS, (Complainant's Exhibit 12)(June 5, 2005).

⁸² *In re Complaint of Charlene Rundo*, Case No. 06-940-GE-CSS, (TR at 29-30)(June 5, 2005).

⁸³ *In re Complaint of Charlene Rundo*, Case No. 06-940-GE-CSS, (DE-Ohio Exhibit 3 at 12-13) (June 5, 2007).

Duke Brief (July 2007) (page 19): Stacked Cutting Debris

area is overgrown with thick brush and weeds. It is not mowed. The property was in this condition prior to DE-Ohio's trimming in 2005, and before the Company entered the corridor with its vehicles. Other parties have accessed the corridor along the Property with all terrain vehicles. Accordingly, DE-Ohio's presence in the corridor has not affected Complainant's use of the property.

In response to Complainant's allegations regarding the piling of debris along the corridor, in his Prefiled Direct Testimony, Witness Milam explained that this is a standard procedure. If the trimming occurs along a road, a chipper is used, and debris is chipped into the back of the truck.⁶⁴ However, if the chipping equipment cannot get into the right-of-way, for any reason, the debris is stacked along the corridor and left to create habitat for wildlife.⁶⁵ This practice, called windrowing, is industry standard, and is what occurred along Complainant's property and shown in Complainant's Exhibits 6, 12, and 13.⁶⁶

In 2005, when Complainant contacted DE-Ohio and expressed her disagreement with his procedure, DE-Ohio returned to the corridor to clean up the debris.⁶⁷ When Complainant was not satisfied with the clean-up efforts, she contacted DE-Ohio again. DE-Ohio's contractors returned a second time to clean up debris. Whether Complainant agrees with it or not, windrowing is an industry accepted and standard practice. DE-Ohio's stacking of the debris

⁶⁴ In re Complaint of Charlene Rundo, Case No. 06-940-GE-CSS, (DE-Ohio Exhibit 3 at 7) (June 5, 2007).

⁶⁵ Id.

⁶⁶ In re Complaint of Charlene Rundo, Case No. 06-940-GE-CSS, (Complainant's Exhibits 6, 12, and 13)(June 5, 2007).

⁶⁷ In re Complaint of Charlene Rundo, Case No. 06-940-GE-CSS, (DE-Ohio Exhibit 3 at 12)(June 5, 2007).

Duke Brief (July 2007) (page 28): Ratepayers

"the customer, without reimbursement, will make or procure conveyance to the Company of right or way satisfactory to it across the property owned or controlled by the customer for the Company's lines or extensions thereof necessary or incidental to the supplying of service to the customer or customers beyond the customer's property ..."¹²⁶

Therefore, customers must permit DE-Ohio's distribution facilities to cross their property without reimbursement so that the utility can provide service. Such a requirement is reasonable and in the public interest. Ratepayers would be directly impacted if DE-Ohio were required to seek an individual easement or grant from each property owner along a roadway when the distribution lines incidentally cross their property to provide electric service. DE-Ohio would have to negotiate and pay for tens of thousands of easements just so that consumers could receive service. Property owners could potentially refuse to grant DE-Ohio permission for distribution lines to cross property to serve their neighbors requiring DE-Ohio to instigate condemnation proceedings. Such a result is an inefficient use of utility resources and an unnecessary increase in DE-Ohio's costs to serve consumers, which would ultimately be reflected in DE-Ohio's rates.

The Commission should uphold DE-Ohio's current tariffs that require, as a condition of service, that Consumers allow distribution lines to cross their property to serve their property and other consumers in the area. The Commission should find in favor of DE-Ohio and dismiss the Complaint with prejudice.

¹²⁶ *Id.*