

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Kim Wiethorn, Karen Dabdoub, Jeff and Linda)	
Sims, Fred Vonderhaar, Donald and Nancy)	
Jacob, James Johnson, Majid Qureshi, Keith)	
Donovan, Julie Reynolds, John Lu, Robert)	
Schneider, Amanda Sachs, John Hasselbeck,)	
Lawrence Hug, Dennis Mitman, Nicole Hiciu,)	
Jason Mayhall, James and Shelley Hoyer,)	
Theresa Reis, Gary Balser, David Siff, and the)	
Symmes Township Trustees)	
)	
Complainants,)	
)	
v.)	Case No. 17-2344-EL-CSS
)	
Duke Energy Ohio, Inc.,)	
)	
Respondent.)	

**MOTION TO AMEND COMPLAINT AND EXPEDITED REQUEST TO
EXTEND STAY**

Pursuant to Ohio Adm. Code 4901-1-6 and 4901-1-12, Complainants Kim Wiethorn, Karen Dabdoub, Jeff and Linda Sims, Fred Vonderhaar, Donald and Nancy Jacob, James Johnson, Majid Qureshi, Keith Donovan, Julie Reynolds, John Lu, Robert Schneider, Amanda Sachs, John Hasselbeck, Lawrence Hug, Dennis Mitman and Susan Shorr, Nicole Hiciu, Jason Mayhall, James and Shelley Hoyer, Theresa Reis, and Gary Balser (collectively, Citizens Against Clear Cutting (CACC) or Complainants), hereby request permission to amend the Complaint filed against Duke Energy Ohio, Inc. (Duke) on November 14, 2017 for good cause shown as attached hereto.

As set forth below in the accompanying memorandum in support, good cause exists to permit Complainants to amend the Complaint only eight days after the original

Complaint was filed. First, upon receiving notices from Duke regarding its intent to commence clear cutting on their properties and/or learning about Duke's planned vegetation management policies and practices, additional residents from affected communities in this matter have emerged, expressing similar concerns and legal claims, as well as additional facts. These additional residents have expressed a desire to join the Complaint in order to protect their properties and the communities where they reside. Joinder of additional complainants with like or similar issues and legal claims will facilitate resolution of the issues and create efficiencies.¹ Second, amending the Complaint is necessary to incorporate additional facts and issues that have been discovered since the filing of the Complaint.

Furthermore, Complainants ask that the stay granted in this case² be extended to include a stay of Duke's implementation of its vegetation management plan, policies and practices with regard to the properties of the additional complainants included in the proposed amended complaint. As these additional complainants face the imminent threat of the removal of their trees and other vegetation, Complainants ask that the request to extend the stay to additional complainants be expedited pursuant to Ohio Adm. Code 4901-1-12(C).³

¹ The Ohio Rules of Civil Procedure provide for permissive joinder when persons "assert any right to relief . . . arising out of the same transaction, occurrence, or succession or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action." See Ohio Civ. R. 20(A).

² See Entry at 2 (November 16, 2017)

³ Complainants cannot certify that Duke does not object to this request.

For the reasons stated above and described more fully in the Memorandum in Support attached hereto, Complainants respectfully request that the Commission grant this motion to amend the Complaint for good cause shown.

Respectfully submitted,

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Counsel for Complainants

November 22, 2017

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Kim Wiethorn, Karen Dabdoub, Jeff and Linda)	
Sims, Fred Vonderhaar, Donald and Nancy)	
Jacob, James Johnson, Majid Qureshi, Keith)	
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v.)	Case No. 17-2344-EL-CSS
)	
Duke Energy Ohio, Inc.,)	
)	
Respondent.)	

MEMORANDUM IN SUPPORT

Duke's proposal to engage in mass clear cutting of valuable trees and other vegetation without demonstrating need presents a host of negative effects that will be felt across the communities involved in this Complaint. As additional Duke customers and property owners learn of Duke's vegetation and management plans and discover threats to their properties and communities from Duke's clear cutting activities, amendment of the Complaint is necessary to incorporate additional facts and issues that have been discovered since the filing of the Complaint. Amendment of the Complaint is also appropriate to permit additional complainants to join the Complaint to allow their complaints to be heard while minimizing the resources needed to bring these concerns, legal violations, and demonstration of irreparable harm from Duke's actions to the

Commission's attention without the need to file individual complaints and hire individual counsel, as Duke has already demonstrated a desire to bury individual complainants in a mound of legal paperwork.⁴

I. PROCEDURAL HISTORY

Complainants filed the Complaint in this case on November 14, 2017.⁵ In the Complaint, they raised issues concerning the reasonableness and lawfulness of Duke's vegetation management policies, practices, and plan, including its adequacy, defects in how it was approved, and Duke's implementation of it, which includes clear cutting of trees and vegetation on customers' properties and the use of dangerous herbicides. On November 16, 2017, the Attorney Examiner granted Complainants' request to stay Duke's implementation of its vegetation management plan and stay of clear cutting and removal of Complainants' trees and vegetation on their properties during the pendency of this Complaint.⁶

II. DISCUSSION

Both the Ohio Administrative Code and the Ohio Rules of Civil Procedure provide for a liberal approach to amendment. Ohio Adm. Code 4901-1-6 authorizes amendments to complaints and other filings "for good cause shown." And, as recognized by the Commission,⁷ the Rules of Civil Procedure mandate that courts "freely give leave

⁴ Ohio Civ. R. 20(A) (allowing permissive joinder of claims); also see numerous pleadings that Duke has filed in the multiple cases. Duke has also begun to issue numerous interrogatories and requests for admissions on individual complainants, including the Complainants in the original Complaint a mere eight days after the filing of the Complaint and prior to Duke even filing an answer to the Complaint.

⁵ See Complaint (November 14, 2017).

⁶ See Entry at 2 (November 16, 2017).

⁷ *In the Matter of the Complaint of Cynthia Wingo v. Nationwide Energy Partners*, Case No. 16-2401-EL-CSS, Entry at ¶9 (September 11, 2017).

when justice so requires.” Ohio Civ. R. 15(A). Previously, the Commission has faithfully allowed amendments to complaints consistent with the spirit of these provisions.⁸

Since this Complaint was filed, other Duke customers and property owners who have received notices from Duke regarding its intent to commence clear cutting on their properties and/or learned about Duke’s planned vegetation management policies and practices and who are affected by this matter have emerged, expressing similar concerns and legal claims, as well as additional facts. These additional residents share Complainants’ interest in preserving their trees against unnecessary destruction at the hands of Duke.

Joinder of additional complainants with like or similar issues and legal claims will facilitate resolution of the issues and create efficiencies.⁹ Second, amending the Complaint is necessary to incorporate additional facts and issues that have been discovered since the filing of the Complaint. These additional facts and issues further underscore the severe problems that exist with Duke’s proposed indiscriminate clear cutting policies and practices. Allowing the Complainants to amend the Complaint to reflect these additional facts and issues will afford the Commission an opportunity to consider the full effect of Duke’s proposals and make an assessment of whether the service it is providing is just and reasonable under R.C. 4905.26 and 4905.06, and in compliance with Ohio Adm. Code 4901:1-10-27.

⁸ See, e.g., *id.*

⁹ Ohio Civ. R. 20(A).

Furthermore, there remains a threat that Duke could commence clear cutting on other properties, including the properties of Duke customers who Complainants now seek to add to the Complaint. Therefore, Complainants also request that the Attorney Examiner extend the stay granted on November 16, 2017¹⁰ to the additional parties Complainants now move to add to this Complaint. Complainants also ask that the request to extend the stay to additional complainants be expedited pursuant to Ohio Adm. Code 4901-1-12(C)¹¹ because Duke has stated its intention to take legal action against customers who do not allow Duke to enter their properties to clear cut trees and vegetation. The Commission has already granted similar expedited requests in a number of cases concerning Duke's vegetation management practices.¹²

Complainants have not previously asked to amend the Complaint and doing so now will not prejudice Duke. As seen in the attached proposed amended complaint, the additional complainants and refined discussion of the issues presented by Duke's plan do not change the overall tenor of the litigation or issues raised. Rather, the additional complainants and facts will allow for a more complete consideration of the legal issues presented and do so in an efficient manner. At this stage of the proceeding, which is only eight days after the original complaint was filed, prior to the filing of an answer, and prior to the establishment of a procedural schedule, there is no prejudice.

¹⁰ See Entry at 2 (November 16, 2017).

¹¹ Complainants cannot certify that Duke does not object to this request.

¹² See Entry at 2 (November 16, 2017); See also *In the Matter of the Complaints of Fu Wong an Peony Lo, Patricia McGill, Sanford and Barbara Casper, Amber and Chris Francosky, Melanie Maughlin, Sandra Nunn, Timothy Wilson, Clifford W. Fauber, Anita Deye, Carlyle Reid, Anne Wymore, Evelyn and Tim King, Chris Hendriksen, Melissa and Brian Weiss, John Gump, Jason Dimaculangan, Shana Berge, Jim and Laura Haid, Melisa Kuhne, Melissa and Peter Broome, and Bob Schmeling, v. Duke Energy Ohio Inc.*, Case Nos. 17-2170, et al., Entry at 3 (November 17, 2017); *In the Matter of the Complaint of Joseph Grossi v. Duke Energy*, Case No. 17-2126-EL-CSS, Entry at 1 (October 31, 2017).

III. CONCLUSION

For good cause shown, and pursuant to Ohio Adm. Code 4901-1-6 and 4901-1-12, Complainants respectfully request to amend the Complaint to include the additional complainants and facts and issues reflected in the attached proposed amended complaint.

Respectfully submitted,

/s/ Kimberly W. Bojko
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Stephen E. Dutton (0096064)
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(Will accept service via email)

Counsel for Complainants

November 22, 2017

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served on November 22, 2017 by electronic mail upon all parties of record.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Kim Wiethorn, Karen and Majeb Dabdoub,)
Jeff and Linda Sims, Fred Vonderhaar, Donald)
and Nancy Jacob, James Johnson, Majid)
Qureshi, Keith Donovan, Julie Reynolds, John)
Lu, Robert Schneider, Amanda Sachs, John)
Hasselbeck, Lawrence Hug, Dennis Mitman)
and Susan Shorr, Nicole Hiciu, Jason Mayhall,)
James and Shelley Hoyer, Theresa Reis, Gary)
Balser, David Siff, Carrie and Dan Gause,)
Phyllis Wahl, Susan Falick, Jerry and Lou)
Ullrich, Dan and Vicki Kemmeter, Kim)
Carrier, Anthony and Mary Beth Andrews,)
Dan and Michele Reece, Deloris Reese,)
Darrelle Reese, Richelle Schimpf, Julie Carnes,)
Todd and Michelle Bacon, Patricia Lohse,)
Dennis Baker, Jenny and Charlie Gast, Robb)
and Kathleen Olsen, Nancy Steinbrink, John)
and Barbara Collins, Jonathan Mackey, Valerie)
Van Iden, and the Symmes Township Trustees)

Complainants,)

v.)

Duke Energy Ohio, Inc.,)

Respondent.)

Case No. 17-2344-EL-CSS

**AMENDED COMPLAINT, REQUEST FOR RELIEF,
REQUEST FOR AN IMMEDIATE STAY DURING PENDENCY OF AMENDED
COMPLAINT FOR NEW COMPLAINANTS, AND
REQUEST FOR EXPEDITED RULING OF STAY**

Duke Energy Ohio, Inc. (Duke) is attempting to indiscriminately clear cut its customers' trees across several communities, including, but not limited to, Hamilton County, Symmes Township, Deerfield Township, and Montgomery, Ohio. Pursuant to R.C. 4905.26 and Ohio Adm. Code 4901-9-01 and 4901-1-06, Kim Wiethorn, Karen

Dabdoub, Jeff and Linda Sims, Fred Vonderhaar, Donald and Nancy Jacob, James Johnson, Majid Qureshi, Keith Donovan, Julie Reynolds, John Lu, Robert Schneider, Amanda Sachs, John Hasselbeck, Lawrence Hug, Dennis Mitman and Susan B. Shorr, Nicole Hiciu, Jason Mayhall, James and Shelley Hoyer, Theresa Reis, and Gary Balser (collectively, Citizens Against Clear Cutting (CACC) or Complainants) bring this Amended Complaint before the Public Utilities Commission of Ohio (Commission or PUCO) in order to ensure that trees, which are located on Complainants' properties, are not improperly and unnecessarily cut down by Duke in violation of the Commission's rules and easements.

On November 16, 2017, the Attorney Examiner recognized the urgent nature of the threat Duke poses to its customers and property owners and granted Complainants' expedited request for a stay of Duke's implementation of its vegetation management plan and stay of clear cutting and removal of Complainants' trees and vegetation on their properties during the pendency of the Complaint.¹ Given that the same threat remains imminent for those now being added to the Amended Complaint, Complainants now request that the stay of Duke's implementation of its vegetation management plan be extended to all new Complainants in order to prevent Duke from clear cutting and removing vegetation on Complainants' properties during the pendency of the Amended Complaint. As set forth more fully below, good cause exists to grant such stay during the pendency of the Amended Complaint. Ohio Adm. Code 4901-1-12 and 4901-9-01(E); see *In the Matter of the Complaint of Joseph Grossi v. Duke Energy Ohio, Inc.*, Case No.

¹ See Entry at 2 (November 16, 2017).

17-2126-EL-CSS, Entry at 1 (October 31, 2017).² Furthermore, because Duke has stated its intention to take legal action against Complainants if they do not consent to allow Duke to enter their property to remove trees as early as November 15, 2017,³ time is of the essence and an immediate ruling is necessary. Therefore, Complainants hereby request that the Commission issue an expedited ruling on this request for a stay under Ohio Adm. Code 4901-1-12(C).⁴

As to the Amended Complaint against Duke, Complainants allege and aver as follows:

PARTIES

1. Complainant Kim Wiethorn resides and owns property at 8656 Birchbark Drive, Cincinnati, Ohio 45249, which is served by Duke.
2. Complainants Karen and Majeb Dabdoub reside and own property at 8912 Terwilligers Trail, Cincinnati, Ohio 45249, which is served by Duke.
3. Complainants Jeff and Linda Sims reside and own property at 10207 Hightower Court, Cincinnati Ohio, 45249, which is served by Duke.
4. Complainant Fred Vonderhaar resides and owns property at 9617 Fox Run Drive, Mason, Ohio 45040, which is served by Duke. Complainant Vonderhaar also

² See also *In the Matter of the Complaints of Fu Wong an Peony Lo, Patricia McGill, Sanford and Barbara Casper, Amber and Chris Francosky, Melanie Maughlin, Sandra Nunn, Timothy Wilson, Clifford W. Fauber, Anita Deye, Carlyle Reid, Anne Wymore, Evelyn and Tim King, Chris Hendriksen, Melissa and Brian Weiss, John Gump, Jason Dimaculangan, Shana Berge, Jim and Laura Haid, Melisa Kuhne, Melissa and Peter Broome, and Bob Schmeling, v. Duke Energy Ohio Inc.*, Case Nos. 17-2170, et al., Entry at 3 (November 17, 2017).

³ See Exhibit D to the Amended Complaint, a sample letter sent from Duke to one of the Complainants in this case. Many Complainants have similar or identical letters. The Exhibit is provided as an example of the letter that is indicative of, if not identical to, the Complainants' letters from Duke.

⁴ Complainants cannot certify that Duke does not object to such request.

owns property at 9594 Snider Road, Mason, Ohio 45040 and 9576 Snider Road, Mason, Ohio 45040, with both pieces of property being served by Duke.

5. Complainants Donald and Nancy Jacob reside and own property at 10595 Swanson Court, Cincinnati, Ohio 45249, which is served by Duke.

6. Complainant James Johnson resides and owns property at 11966 Paulmeadows Drive, Cincinnati, Ohio 45249, which is served by Duke.

7. Complainant Majid Qureshi resides and owns property at 8413 Preakness Lane, Cincinnati, Ohio 45249, which is served by Duke.

8. Complainant Keith Donovan resides and owns property at 12087 Timberlake Drive, Cincinnati, Ohio 45249, which is served by Duke.

9. Complainant Julie Reynolds resides and owns property at 10485 Hopewell Hills Drive, Cincinnati, Ohio 45249, which is served by Duke.

10. Complainant John Lu resides and owns property at 8407 Heritage Drive, Cincinnati, Ohio 45249, which is served by Duke.

11. Complainant Robert Schneider resides and owns property at 10469 Hopewell Hills Drive, Cincinnati, Ohio 45249, which is served by Duke.

12. Complainant Amanda Sachs resides and owns property at 9433 E. Kemper Road, Loveland, Ohio 45140, which is served by Duke.

13. Complainant John Hasselbeck resides and owns property at 8690 Birchbark Drive, Cincinnati, Ohio 45249, which is served by Duke.

14. Complainant Lawrence Hug resides and owns property at 8738 Birchbark Drive, Cincinnati, Ohio 45249, which is served by Duke.

15. Complainants Dennis Mitman and Susan B. Shorr reside and own property

at 8531 Windy Hollow, Cincinnati, Ohio 45249, which is served by Duke.

16. Complainant Nicole Hiciu resides and owns property at 8714 Birchbark Drive, Cincinnati, Ohio 45249, which is served by Duke.

17. Complainant Jason Mayhall resides and owns property at 11368 Pomo Court, Cincinnati, Ohio 45249, which is served by Duke.

18. Complainants James and Shelley Hoyer reside and own property at 11986 Paulmeadows Drive, Cincinnati, Ohio 45249, which is served by Duke.

19. Complainant Theresa Reis resides and owns property at 10558 Tanagerhills Drive, Cincinnati, Ohio 45249, which is served by Duke.

20. Complainant Gary Balser resides and owns property at 11920 Paulmeadows Drive, Cincinnati, Ohio 45249, which is served by Duke.

21. Complainant David Siff resides and owns property at 11931 Timberlake Drive, Cincinnati, Ohio 45249, which is served by Duke.

22. Complainants Carrie and Dan Gause reside and own property at 8362 Cypresswood Drive, Cincinnati, Ohio 45249, which is served by Duke.

23. Complainant Phyllis Wahl resides and owns property at 11520 Symmes Gate Lane, Cincinnati, Ohio 45249, which is served by Duke.

24. Complainant Susan Falick resides and owns property at 11999 Timberlake Drive, Cincinnati, Ohio 45249, which is served by Duke.

25. Complainants Jerry and Lou Ullrich reside and own property at 9 Coventry Court, Loveland, Ohio 45140, which is served by Duke.

26. Complainants Dan and Vicki Kemmeter reside and own property at 8651 Totempole Drive, Cincinnati, Ohio 45249, which is served by Duke.

27. Complainant Kim Carrier resides and owns property at 4045 Ponder Drive, Cincinnati Ohio 45245, which is served by Duke.

28. Complainants Anthony and Mary Beth Andrews reside and own property at 8696 Birchbark Drive, Cincinnati, Ohio 45249, which is served by Duke.

29. Complainants Dan and Michele Reece reside and own property at 12075 Timberlake Drive, Cincinnati, Ohio 45249, which is served by Duke.

30. Complainant Deloris Reese resides and owns property at 10236 Hightower Court, Montgomery, Ohio 45249, which is served by Duke.

31. Complainant Darrelle Reese resides and owns property at 10240 Hightower Court, Montgomery, Ohio 45249, which is served by Duke.

32. Complainant Richelle Schimpf resides and owns property at 9511 Falcon Lane, Mason, Ohio 45040, which is served by Duke.

33. Complainant Julie Carnes resides and owns property at 11988 Timberlake Drive, Cincinnati, Ohio 45249, which is served by Duke.

34. Complainants Todd and Michelle Bacon reside and own property at 12040 Timberlake Drive, Cincinnati, Ohio 45249, which is served by Duke.

35. Complainant Patricia Lohse resides and owns property at 12026 Timberlake Drive, Cincinnati, Ohio 45249, which is served by Duke.

36. Complainant Dennis Baker resides and owns property at 11214 Terwilligers Run Drive, Cincinnati, Ohio 45249, which is served by Duke.

37. Complainants Jenny and Charlie Gast reside and own property at 5815 Timber Rail Lane, Mason, Ohio 45040, which is served by Duke.

38. Complainants Robb and Kathleen Olsen reside and own property at 12138

Heathertree Court, Cincinnati Ohio 45249, which is served by Duke.

39. Complainant Nancy Steinbrink resides and owns property at 8774 Birchbark Drive, Cincinnati, Ohio 45249, which is served by Duke.

40. Complainants John and Barbara Collins reside and own property at 12012 Timberlake Drive, Cincinnati, Ohio 45249, which is served by Duke.

41. Complainant Jonathan Mackey resides and owns property at 8945 Terwilligers Trail, Cincinnati, Ohio 45429, which is served by Duke.

42. Complainant Valerie Van Iden resides and owns property at 11919 Paulmeadows Drive, Cincinnati, Ohio 45249, which is served by Duke.

43. Complainant Scott Carson resides and owns property at 9534 Sparrow Place, Mason, Ohio 45040, which is served by Duke.

44. Complainant Joe Zukor resides and owns property at 11578 Plumhill Drive, Cincinnati, Ohio 45249, which is served by Duke.

45. Complainant Symmes Township Trustees represent the Township and its property in Duke's service territory, as well as the interests of the residents of Symmes Township. The Township owns a parcel of land at 10468 Blong Road, Cincinnati, Ohio 45249, which is served by Duke. The Township's offices are located at 9323 Union Cemetery Road, Loveland, Ohio 45140.

46. Duke is a public utility, an electric light company, and a natural gas company, as those terms are defined by R.C. 4905.02 and R.C. 4905.03. It is subject to the jurisdiction of the PUCO under R.C. Chapters 4905 and 4933. Duke is a corporation organized under the laws of the state of Ohio and is authorized to conduct business in Ohio. Duke is a public utility in the business of, inter alia, distributing and selling

electricity and natural gas to Ohio residential consumers.

JURISDICTION

47. The allegations set forth in paragraphs 1 through 46 of this Amended Complaint are re-alleged and incorporated as if fully set forth herein.

48. Under R.C. 4905.06, the PUCO has general supervision over all public utilities within its jurisdiction. This allows the PUCO to examine public utilities as to the manner in which their properties are leased, operated, managed, and conducted.⁵ In this regard, the PUCO may examine the adequacy or accommodation afforded by their service, the safety and security of the public and their employees, and their compliance with all laws.⁶

49. R.C. 4905.26 provides that “upon complaint in writing against any public utility by any person, firm, or corporation,” the PUCO is authorized to investigate whether “any . . . service . . . is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law.” Additionally, under R.C. 4905.26, the PUCO may investigate any “regulation, measurement, or practice affecting or relating to any service furnished by the public utility.” Therefore, the PUCO is authorized to hear complaints regarding the reasonableness and lawfulness of the services and practices offered by Duke. It also has jurisdiction to resolve any controversy that arises with respect to those services or practices, including the vegetation management plan and practices. Ohio Adm. Code 4901:1-10-27.

50. Under Ohio law, the Commission has exclusive jurisdiction over matters where its administrative expertise is required to resolve the issue in dispute and where the

⁵ Id.

⁶ Id.

act complained of constitutes a practice normally undertaken by the utility.⁷ The PUCO has exclusive jurisdiction over this matter because its administrative expertise is required to determine whether Duke's services and practices comply with provisions in the Revised Code. The PUCO also has jurisdiction over enforcing its own rules and regulations.

51. The Supreme Court of Ohio has determined that questions regarding the extent to which utilities can remove trees under their vegetation management plans are "manifestly service-related" and, therefore, are within the exclusive jurisdiction of the PUCO.⁸

52. The Supreme Court of Ohio sets out a two-part test for whether PUCO jurisdiction is appropriate.⁹ This case meets both parts of that test.

53. First, the PUCO's administrative expertise is necessary to resolve the case because the case presents issues of whether tree removal is necessary for the maintenance or operation of Duke's electric transmission and distribution infrastructure.

54. Second, the PUCO authorizes the vegetation management activities covered by this Amended Complaint.¹⁰

STATEMENT OF FACTS

55. The allegations set forth in paragraphs 1 through 55 of this Amended Complaint are re-alleged and incorporated as if fully set forth herein.

⁷ *Corrigan v. Cleveland Electric Illum. Co.*, 122 Ohio St.2d 265, 2009-Ohio-2524, 910 N.E.2d 1009, ¶ 21.

⁸ *Corrigan v. Cleveland Electric Illum. Co.*, 122 Ohio St.2d 265, 2009-Ohio-2524, 910 N.E.2d 1009, ¶ 21.

⁹ See *Allstate Ins. Co. v. Cleveland Elec. Illum. Co.*, 119 Ohio St.3d 301, 2008-Ohio-3917, 893 N.E.2d 824, ¶ 12-13 ("First, is PUCO's administrative expertise required to resolve the issue in dispute? Second, does the act complained of constitute a practice normally authorized by the utility?").

¹⁰ See Ohio Adm. Code 4901:1-10-27(E)(2).

56. Duke maintains towers, wires, cables, anchors, grounding systems, counterpoises, fixtures, and equipment (collectively, power lines) necessary for the transmission and distribution of electric service throughout its Ohio territory.

57. Portions of Duke's power lines are on, or near, the various parcels of property owned by the Complainants in this case.

58. Each of the Complainants has one or more trees or other vegetation on their property that is located near Duke's power lines and that are the subject of this dispute.

59. Duke holds Grants of Easement (easements) that are 100 feet in width surrounding the power lines on Complainants' properties.

60. These easements grant Duke the right to "construct, erect, operate, maintain, repair, replace, and remove" all necessary components to its power lines, as well as the right to "cut, trim, or remove any trees, overhanging branches or other obstructions both within and without the limits of the . . . easement" and which "may endanger the safety of or interfere with the construction, operation or maintenance of said system . . ."¹¹

61. Without objection, each of the Complainants has routinely allowed, or would allow if asked, Duke or its contractors to enter onto his or her property and conduct pruning or trimming of trees as necessary to ensure the safe and reliable provision of electric service.

62. On information and belief, the past vegetation management practices of Duke of pruning and trimming the vegetation sufficiently ensured reliable and safe

¹¹ See, e.g., Exhibit A to the Complaint. This exhibit is one easement held by Duke. Many Complainants have similar or identical easements. This Exhibit is provided as an example of an easement that is indicative of, if not identical to, all of the Complainants' easements.

electric service and prevented or limited vegetation-related outages such that Complainants and other Duke customers had access to safe and reliable electric service.

63. On April 28, 2016, under Ohio Adm. Code 4901:1-10-27(E)(2), Duke filed an application to revise its programs for inspection, maintenance, repair, and replacement of its power lines (Application).¹²

64. In the Application, Duke asserted that any changes to the plan “were simply made to clarify and make the terms more coherent” and that “[t]here are no substantive changes to the program.”¹³

65. Under the vegetation management plan that the Application sought to modify, Duke provided that it would “remove unsuitable overhanging/encroaching limbs/branches above the conductor” and that such limbs and branches included “limbs that are smaller diameter, weak, diseased, or decaying, or are positioned in a horizontal manner.”¹⁴

66. The previous vegetation management plan also provided that “[m]ature, well-established hardwood trees with structurally sound overhanging branches greater than six inches in diameter may remain.”¹⁵

67. Regarding the removal of trees, the previous vegetation management plan provided that “in the absence of a legal right to remove, and excluding an emergency situation, no removal may take place until Contractor has contracted and received

¹² 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 at 1 (April 28, 2016) (Application).

¹³ Id.

¹⁴ Application at 7.

¹⁵ Id.

approval from the property owner or agent to remove such trees.”¹⁶ It repeated that proposition at three different points throughout the terms of the vegetation management plan.¹⁷

68. Contrary to Duke’s representations in its Application, the revised vegetation management plan substantively modified the prior vegetation management plan. The substantive modifications included removal of all references to obtaining permission from property owners to remove trees and removed the provision that well-established hardwood trees with structurally sound overhanging limbs or branches greater than six inches in diameter may remain.¹⁸

69. Without notice of material modification to its vegetation management plan and without notice to affected customers of the material modification to its policies and practices, the Application was automatically approved on June 13, 2016 because the PUCO did not act on it within forty-five days of the date upon which Duke filed it.¹⁹

70. Upon information and belief, under the revised vegetation management plan, Duke began notifying Complainants, and others, of its intent to immediately begin clear cutting, removing all trees within the range of its easements using door hangers and brochures.²⁰

¹⁶ Id. at 9.

¹⁷ See id. at 8-9.

¹⁸ See id. at 5-7.

¹⁹ See Rule 4901:1-10-27(E)(3), O.A.C.

²⁰ See, e.g. Exhibit B, which is a door hanger left by Duke with the Complainants and is offered as an example that is indicative of, if not identical to, the door hangers left with Complainants. Exhibit C, which is a brochure left by Duke with Complainants that outlines Duke’s vegetation management activities is also an example that is indicative of, if not identical to, the brochures left with Complainants.

71. In letters to affected property owners, Duke has asserted its rights to engage in clear cutting and tree removal under state and regulatory law and its claimed rights contained in its easements. Duke also asserted its intent to take legal action against property owners who refused to authorize Duke to enter the property and remove the property owners' trees and vegetation.²¹

COUNT I

72. The allegations set forth in paragraphs 1 through 71 of this Amended Complaint are re-alleged and incorporated as if fully set forth herein.

73. Ohio Adm. Code 4901:1-10-27(E)(1)(f) authorizes Duke to conduct "right-of-way vegetation control" in order to "maintain safe and reliable service," but it does not authorize Duke to conduct indiscriminate vegetation control and tree removal that is unrelated to and unnecessary for the provision of safe or reliable service.

74. Similarly, Duke's easements grant it the right to remove trees and vegetation only if the trees or vegetation "may endanger the safety of or interfere with the construction, operation or maintenance of" the system.²²

75. The door hangers provided to Complainants and, on information and belief, others, outlining Duke's intent to remove trees on the Complainant's property do not contain specific justifications for the removal of the trees that Duke desires to remove in violation of Ohio Adm. Code 4901:1-10-27(E)(1)(f). They do not contain an explanation of why Duke has chosen to remove these trees in violation of Ohio Adm. Code 4901:1-10-27(E)(1)(f), (E)(2), and (F)(1).

²¹ See Exhibit D, which is a letter sent by Duke to one Complainant in this case that is offered as an example that is indicative of, if not identical to, letters sent to other Complainants.

²² See Exhibit A.

76. Upon information and belief, past vegetation management practices by Duke has been successful without requiring the obliteration of all trees and vegetation near its power lines. Duke failed to explain why its prior practice was insufficient and why that practice must change in violation of Ohio Adm. Code 4901:1-10-27(C)(1)(b). See also Ohio Adm. Code 4901:1-10-27(E)(2) and (F)(1).

77. Duke has failed to demonstrate that it is authorized to remove the trees under its vegetation management plan and its easements because it has not made a determination that these trees actually pose a risk and that complete removal is necessary. See Ohio Adm. Code 4901:1-10-27. Instead, Duke has sent identical generic notices to property owners and/or customers across its service territory. Without tying its attempts to remove trees to the reliability or safety of its service, Duke has no authority to engage in the practice.

COUNT II

78. The allegations set forth in paragraphs 1 through 77 of this Amended Complaint are re-alleged and incorporated as if fully set forth herein.

79. Duke's policies, practices, and implementation of its vegetation management plan are unjust and unreasonable in violation of R.C. 4905.22.

80. R.C. 4905.22 provides that "[e]very public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable."

81. Duke's implementation of its recently modified vegetation plan to indiscriminately remove Complainants' and its customers' trees and vegetation by clear

cutting is unjust and unreasonable. Further, such widespread clear cutting has not been shown to be necessary for the safe and reliable distribution of electric services by Duke.

82. Upon information and belief, Duke has not made any findings that the removal of each individual tree it seeks to clear cut is necessary to carry out its vegetation management plan.

83. Duke's plan to engage in mass tree cutting is also unjust and unreasonable because Complainants, other property owners, and customers will have their trees unnecessarily cut down, thus decreasing property values, without seeing any improvements in the safety and reliability of their electric service.²³

84. Tree and vegetation removal will also negatively impact the Complainants' enjoyment of property by decreasing the aesthetic value of the property where Complainants' reside, surrounding property, and their communities. Diminishing this enjoyment of property is unjust and unreasonable because the proposed vegetation management policies, practices, and plan do not make Duke's electric distribution system more reliable or safer as required by Ohio Adm. Code 4901:1-10-27 in violation of R.C. 4905.22.

85. Upon information and belief, many of the trees that Duke seeks to cut have reached full maturity and will not grow any taller and are not now tall enough or close enough to Duke's infrastructure to pose a threat to Duke's power lines. Cutting these trees down is unjust and unreasonable under R.C. 4905.22 because Duke is proposing to cut down trees on customers' properties even though doing so will not

²³ See Exhibit E, which is a valuation report on a tree that Duke seeks to cut down that was commissioned by Complainant Vonderhaar in order to assess the deleterious financial impact Duke's proposed practices would have on customers who have their trees removed.

improve the safety or reliability of its service as required by Ohio Adm. Code 4901:1-10-27.

86. Duke's implementation of its vegetation management plan further harms Complainants and others in the Duke service territory because herbicides being sprayed by Duke throughout the Township could have negative impacts to the Polk Run Creek that carries water to the Little Miami River. The negative effects of this pollution of Polk Run Creek will be felt by all of Duke's customers in the area, not just those directly positioned on Duke's easement. Duke is unjustly and unreasonably using these herbicides even though doing so is not necessary to improve safety or reliability as required by Ohio Adm. Code 4901:1-10-27 in violation of R.C. 4905.22.

87. Duke's proposed removal of trees and vegetation will contribute to soil erosion, which will decrease property values and endanger portions of property that include hills and uneven terrain by creating the risk that homes, decks, and other parts of Complainants' properties will lose their base of support. It is both unjust and unreasonable for Duke to create this risk without any clear benefits to service reliability or safety as required by Ohio Adm. Code 4901:1-10-27 in violation of R.C. 4905.22. Further, Duke's unjust and unreasonable policies and practices could enhance the problem of soil erosion, which itself could impact the safety and reliability of Duke's electric distribution service in violation of Ohio Adm. Code 4901:1-10-27 and R.C. 4905.22.

COUNT III

88. The allegations set forth in paragraphs 1 through 87 of this Amended Complaint are re-alleged and incorporated as if fully set forth herein.

89. Ohio Adm. Code 4901:1-10-27(E)(2) provides that any utility, including Duke, “shall file its inspection, maintenance, repair, and replacement programs . . . with the commission” and that “the filing shall include supporting justification and rationale based upon generally accepted industry practices and procedures.”

90. Ohio Adm. Code 4901:1-10-27(F)(1) provides that “[a]ll revisions or amendments (including modification to a current program, addition of a new program, or elimination of an existing program) requested by an electric utility shall be filed with the commission as outlined in paragraph (E)(2) of this rule.”

91. Ohio Adm. Code 4901:1-10-27(E)(2) provides that a utility that seeks to modify any of its maintenance programs make a filing that includes “supporting justification and rationale based upon generally accepted industry practices and procedures.”

92. Duke failed to properly disclose its intent to make a material modification to its vegetation management plan, policies, and practices and to provide supporting justification and rationale based upon generally accepted industry practice and procedures in violation of Ohio Adm. Code 4901:1-10-27(E)(2) and (F)(1).

93. Duke misrepresented its Application, making misleading statements. Duke stated that the modified plan did not make major changes, and instead was only filed to “clarify” or “make more coherent” the plan. In reality, the modifications sought by Duke explicitly changed Duke’s policies and procedures, removing language regarding trimming and pruning trees to protect certain trees from removal and language that required Duke to work with property owners and obtain permission before clear cutting trees.

94. Because Duke disguised its substantive changes to its vegetation management plan as simple clarifications, it did not provide any justification for modifying the elements of its plan that required it to work with customers before removing trees and that protected certain trees from removal.

95. Duke's misrepresentation of its revised vegetation management plan Application was improper, failing to provide the requisite notice to the Commission and affected customers. Given the fact that these substantive changes were cloaked in the claim of being mere clarifications, no parties intervened, and the plan was automatically approved by rule when the PUCO did not act on it.

96. Duke's Application and modification of its vegetation management plan were unjust and unreasonable in violation of R.C. 4905.22.

97. Duke's misleading approach to the modification of its vegetation management plan is now what Duke claims to be the authority for it to take the extreme actions with regard to Complainants' trees and vegetation that are the subject of this case.

COUNT IV

98. The allegations set forth in paragraphs 1 through 97 of this Amended Complaint are re-alleged and incorporated as if fully set forth herein.

99. Duke's modified vegetation management plan is unjust and unreasonable in violation of R.C. 4905.22.

100. R.C. 4905.22 provides that "[e]very public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable."

101. Ohio Adm. Code 4901:1-10-27 applies for the inspection, maintenance, repair, and replacement of transmission and distribution facilities and the rebuttable presumption of adequate service set forth in Ohio Adm. Code 4901:1-10-02 does not apply to the provisions of Ohio Adm. Code 4901:1-10-27.

102. Duke's modified vegetation and management plan unreasonably and unjustly removes customer input from the decision to clear cut trees, thereby unreasonably robbing customers of the ability to work with Duke to come to an equitable resolution of issues concerning trees and other vegetation on their property.

103. Duke's modified plan unreasonably gives the company unbridled discretion as to when and how it will remove vegetation and trees without providing any sort of check against the unnecessary removal of vegetation and fulfilling the requirements and intent of the PUCO's rules.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated herein and to ensure that Duke does not indiscriminately clear cut and remove trees and other vegetation without said removal being necessary to Duke's provision of electric service, Complainants respectfully request that the PUCO grant the following relief:

104. Find that Complainants have stated reasonable grounds for its Amended Complaint pursuant to R.C. 4905.26;

105. Find that Duke has violated Ohio Adm. Code 4901:1-10-27 by threatening to clear cut and remove trees that are not necessary for the maintenance and operation of its electric transmission and distribution system;

106. Find that Duke lacks the authority to engage in the removal of Complainants' trees and vegetation;

107. Find that Duke's policies, practices, and implementation of its modified vegetation management plan is unjust and unreasonable in violation of R.C. 4905.22;

108. Find that Duke's modification to its vegetation management plan was unjust, unreasonable, and improper given the misleading statements that it made to the PUCO in violation of R.C. 4905.22;

109. Find that Duke's modified vegetation and management plan is unjust and unreasonable in violation of R.C. 4905.22;

110. Find that Complainants' requests for a stay and expedited ruling are just and reasonable;

111. Order Duke to revert back to its prior vegetation management plan until it properly applies to modify its plan and that application is approved;

112. Order Duke to not clear cut or otherwise engage in mass tree and vegetation removal unless that removal is actually necessary for the maintenance and operation of its electric transmission and distribution system; and

113. Order Duke to stay the implementation of its vegetation management plan and stay the clear cutting and removal of Complainants' trees and vegetation on the properties of the additional Complainants during the pendency of this Amended Complaint for good cause shown pursuant to Ohio Adm. Code 4901-1-12 and 4901-9-01(E).

Respectfully submitted,

/s/ Kimberly W. Bojko
Kimberly W. Bojko (0069402)
Stephen E. Dutton (0096064)
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Telephone: 614.365.4100
bojko@carpenterlipps.com
dutton@carpenterlipps.com
(Will accept service via email)

Counsel for Complainants

Vol. 100. 8th Ser. No. 9-90A

DEC-14-50

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GRANT OF EASEMENT

FOR AND IN CONSIDERATION OF One Dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged, I, the undersigned, 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 and all necessary and incidental wires, cables, anchors, grounding systems, counterpoises, fixtures and equipment for the transmission and distribution of electrical energy, above, on, across, under, over, under and across the following described real estate situate in Section 31, T. 4, E. R. 2, Symmes Township, Hamilton County, State of Ohio, and being a tract of 45.11 acres, more or less, being Lot 1 of [redacted] Estate and being the same property conveyed to the grantor by deed dated April 27, 1947 and recorded in Deed Book 832, page 191, Hamilton County Recorder's Office.

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

Beginning at a point in the southeast corner of the above described property; thence in a westerly direction along the south boundary line of said property 203.0 feet to a point and the real place of beginning of the easement herein conveyed; thence from said real place of beginning in a northerly direction turning an angle of 90 degrees 36 minutes to the right 479.25 feet to a point; thence continuing in a northerly direction turning an angle of 3 degrees 17 minutes to the right 705.49 feet to a point; thence continuing in a northerly direction turning an angle of 2 degrees 6 minutes to the left 195.10 feet to a point in the center line of Fields-Ertel Road said point being 155.7 feet west of the northeast corner of said property measured along the center line of Fields-Ertel Road.

together with 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 grantor's engineers may endanger the safety of or interfere with the construction, operation or maintenance of said system, the right to pile dirt, material and equipment on the surface during periods of construction and maintenance, and the right of ingress and egress over the above described property for the purpose of exercising the rights herein granted.

Said Company, its successors and assigns, shall pay all damages to growing crops, buildings and fences, caused by its employees, agents, licensees, or invitees in the exercise of the rights herein granted.

No buildings or other structures shall be erected within the limits of the above described right of way and easement by the grantor, his heirs or assigns. Grantor, his heirs or assigns, shall have the right to cultivate the land within the limits of said right of way and easement in any manner not inconsistent with the rights herein conveyed to the grantee.

If the rights herein granted are not used, at least in part, within twenty-five years from the date of this instrument the same shall become void and shall revert to the then owners of the above described property.

Grantor hereby gives full power to convey said right of way and easement and warrant title and will defend the same against all claims of all persons.

WITNESSES: 1000

PAGE 504

this

12

day of

October

1950

at

Cincinnati

Ohio

County

Hamilton

County

Ohio

County

Hamilton

County

Ohio

County

Hamilton

County

Ohio

County

Signed and acknowledged in the presence of:

Charles J. Chappelle
Harry Kasfi

Ellen M. Benfield

Notary Public in and for said County, Hamilton County, Ohio

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal this 12th day of October, 1950.

My Com. Exp. Oct. 4, 1953

☐ Distribution☒ Transmission**Dear Customer and/or Property Owner:**

At Duke Energy, we're committed to the proper maintenance of trees and vegetation to help provide safe and reliable electricity for you and your neighbors. We were here today to notify you of the following:

☒ See Information letter enclosed.

☒ A Duke Energy contract tree crew will soon be performing power line vegetation management in your area.

☒ To prevent an electrical outage or hazardous situation, trees in the right of way on your property need to be pruned or taken down. Duke Energy will perform this work at no cost to you.

☐ The trees that you reported were inspected. Since no immediate danger is present, this work will be performed during our regularly scheduled vegetation management. Duke Energy will perform this work at no cost to you.

☐ Duke Energy does not need to perform the work you requested because the trees do not cause safety or reliability concerns.

☐ Hazard tree(s) marked with paint or ribbon should be taken down. Should any of these tree(s) fall and come in contact with the power line, a safety hazard could be created or your electric service interrupted.

☐ Duke Energy has performed emergency outage restoration work caused by an act of nature. This work required trees to be trimmed or cut down. Duke Energy is not responsible for cleanup of wood and debris when this occurs.

☐ Duke Energy has identified vegetation that needs to be controlled by herbicide. Duke Energy's contract crews will be in the area in the near future applying approved herbicides.

☐ To ensure safe and reliable electric and gas service for you and your neighbors, a Duke Energy contract mowing crew will soon be mowing right-of-way corridors in your area.

☒ Other:

*We are removing all trees
50ft. of center on each side
Call 301-1300 ext. 180*

Thank you.

If you have specific questions, your primary contact is the person identified on the attached business card. For additional questions please call Duke Energy Vegetation Management at 888.385.3675. For information about our Integrated Vegetation Management program please visit us online at duke-energy.com/safety/right-of-way-management.asp.

Job number:

3881

Date:

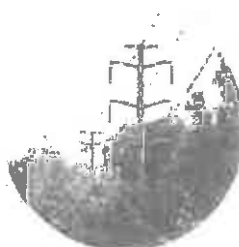
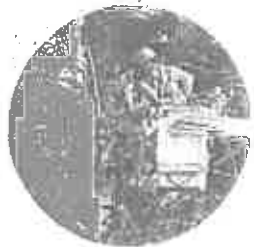
Time:





Why must Duke Energy remove trees?

Reliable electricity is important to our customers



Trees are part of the natural beauty of the Midwest. Duke Energy recognizes the important role trees play in enhancing the beauty of communities and contributing to the quality of life for our customers in Indiana, Ohio and Kentucky. While the trees that thrive throughout the 26,054 square miles of our service area are a tremendous source of pride, trees and limbs that fall into power lines also are the number one cause of power outages.

Our customers want reliable power – in both good and bad weather. It's our responsibility to ensure power lines that transmit electricity are free from trees, overgrown shrubbery and other obstructions that can prevent continuous, safe and reliable electric service to the more than 1.6 million Midwest customers who depend on us 24 hours a day. Trees that are close to power lines must be trimmed or removed so they don't disrupt electric service to households, businesses, schools and hospitals.

Our crews use a variety of methods to manage vegetation growth along distribution and transmission power line rights of way, including vegetation pruning, tree removal and herbicides. These approaches are based on widely accepted standards developed by the tree care industry for maintenance and operations and approved by the American National Standards Institute (ANSI).

Transmission rights of way

High-voltage transmission lines provide large amounts of electricity over long distances. The transmission lines in your community are part of the larger, interconnected grid system that powers an entire region, not just the community through which the lines run. Federal rules are more stringent for some transmission lines, depending on the voltage, and may include fines up to \$1 million per day for tree-related outages. We manage our grid to provide reliable operation of transmission facilities while adhering to regulations and easement rights.

Distribution rights of way

Distribution lines carry power from local substations to homes and businesses. An electric distribution right of way may also contain other utilities (electric, telephone, cable, water and/or gas) that must be maintained as well. Duke Energy manages rights of way to provide reliable delivery of electricity.

Vegetation Management methods

We use an Integrated Vegetation Management approach, which includes careful pruning, selective herbicidal application and tree removal. This allows us to proactively evaluate power line areas and determine the best method for maintaining reliable service. The objective of an Integrated Vegetation Management program is to maintain the lines – before the trees and brush are close enough to cause outages – in a manner that's consistent with good arboricultural practices.

Maintaining rights of way

Well-maintained rights of way help prevent power outages and allow our vehicles and personnel to safely access our electrical equipment for operations, maintenance and storm response. By maintaining vegetation around our equipment, we can get our customers' power restored more efficiently and safely.

Maintaining easements

Easements allow us access to mow, prune or cut down vegetation that may interfere with our transmission equipment and the ability to deliver safe reliable power. They also give us the space we need to build new equipment to meet the future energy demands of our customers.

Sometimes public and private entities plant trees in the easements that impede our ability to operate and maintain these critical assets. Trees planted outside of a right of way also can grow into our easement and endanger our equipment. We recommend that you only plant grass in an electric transmission rights of way or easement.

Why trimming doesn't always work

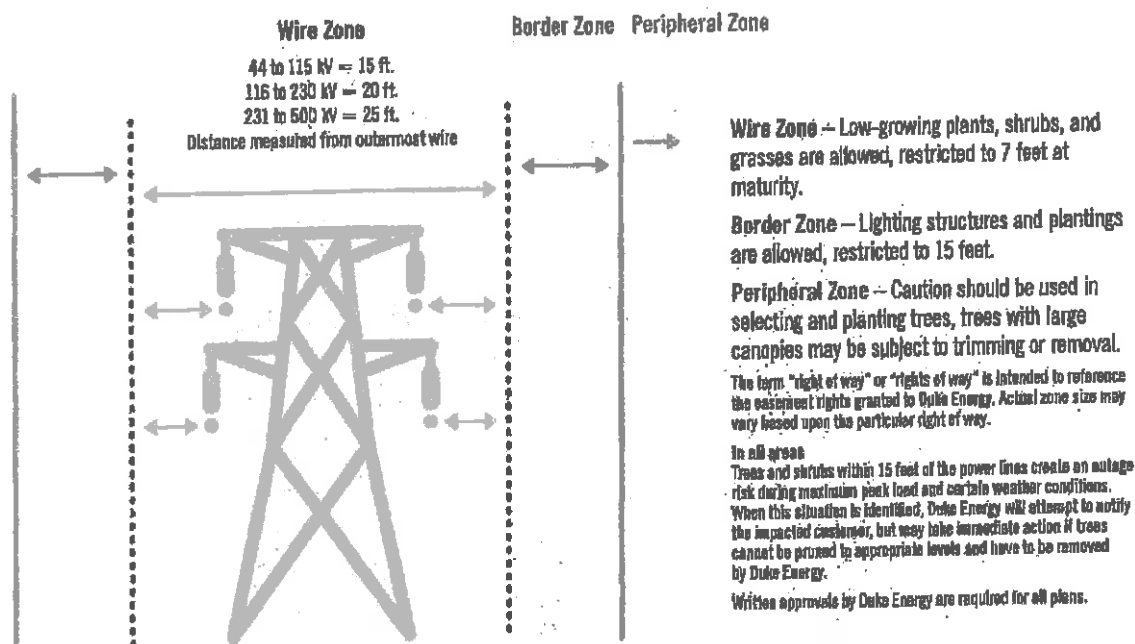
We're often asked why we remove some trees instead of trimming them. Trimming is not always healthy for the trees.

Duke Energy has thousands of miles of right of way to maintain; even with the latest technology, some fast-growing tree species can outpace our ability to keep them in check. When we have to cut down trees, we take care to leave the area in the same condition as we found it.

Before planting, visit our right-of-way website at duke-energy.com/safety/right-of-way-management.asp. To report trees growing into power lines, visit duke-energy.com/indiana/outages/tree-trimming.asp and fill out the online form.

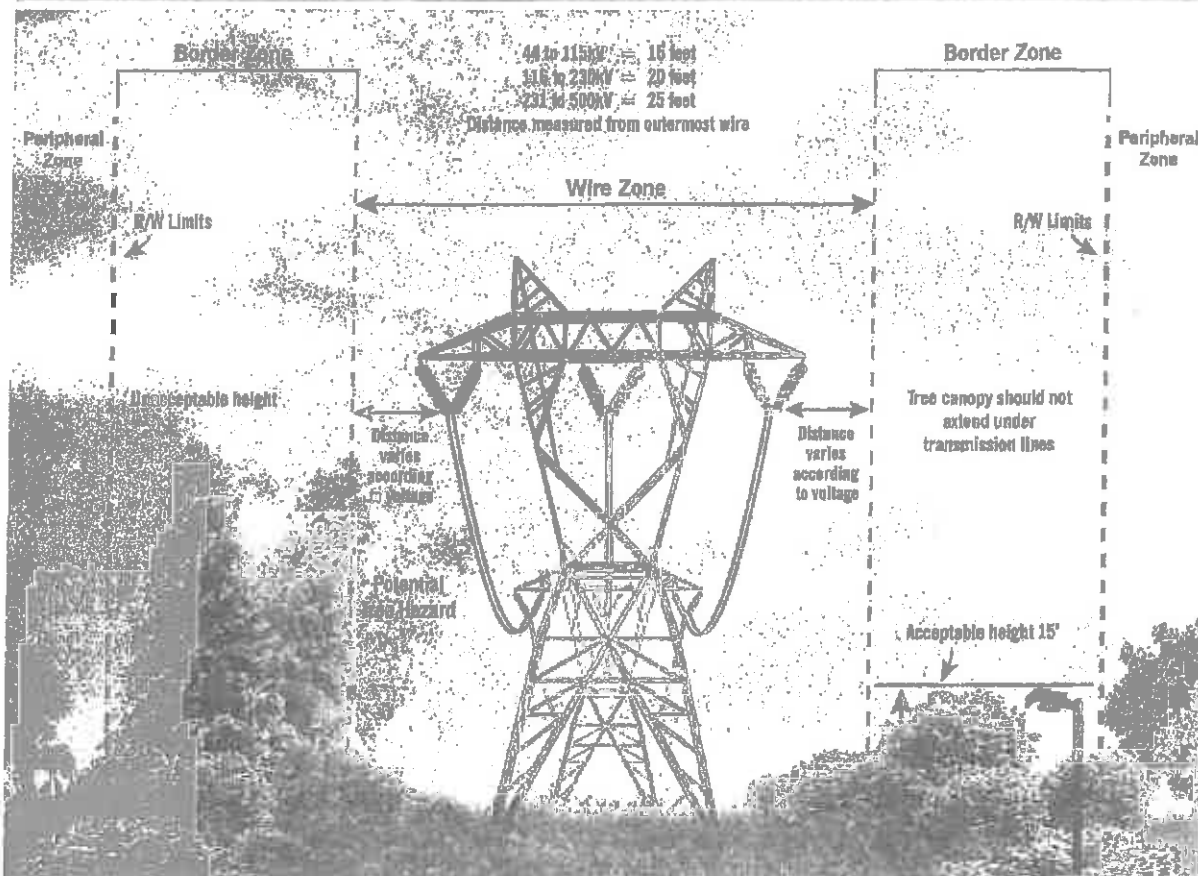
Questions? Please call 866.385.3675 to ask for a Duke Energy transmission forester to contact you.

Transmission Right-of-Way Zones:





Transmission Right-of-way Zones - Midwest



Wire Zone: Extends beyond the outermost conductor on both sides.
(See diagram above.)

Permitted within the Wire Zone: Low-growing plants, shrubs and grasses.
Not permitted within the Wire Zone: Tree species of any kind.

Border Zone: Extends from the edge of the Wire Zone to the outside edge of the Right of Way.

Permitted within the Border Zone: Lighting structures and plantings within the Right of Way that do not exceed a vertical height of 15 feet. For compliant mature height species, refer to plantfacts.osu.edu/plantlist/index.html.

Not permitted within the Border Zone: Any object that exceeds vertical height restrictions. These restrictions are based on flat ground elevations. If the ground elevations differ, no object at any time may exceed the outermost conductor's ground elevation.

Peripheral Zone: Outside the Right of Way and adjacent to Border Zones.

Permitted within the Peripheral Zone: Trees may be planted in the Peripheral Zone. Duke Energy recommends customers exercise caution selecting and planning trees in this zone.

Not permitted in the Peripheral Zone: Trees with canopies are subject to routine trimming and possible removal.

In all zones:

When an outage risk is identified, Duke Energy will attempt to notify the affected customer. However, the company may need to take immediate action if trees cannot be pruned to appropriate levels. This may include trees and shrubs that are within 20 feet of the power line at the maximum peak load or during weather conditions that create line sag and sway.

Written approvals by Duke Energy are required for all plans.

We hope this is useful information. If you have additional questions on line voltages or plan any activity not mentioned above, please contact the Asset Protection Specialist for your area. (See Map)

*Right of Way is intended to reference the easement rights granted to Duke Energy. Actual zone size may vary based upon the particular Right of Way.



ELECTRIC TRANSMISSION RIGHT-OF-WAY GUIDELINES/RESTRICTIONS VALID FOR OHIO, INDIANA AND KENTUCKY (Revised 11/20/14)

This list of right-of-way restrictions has been developed to answer the most frequently asked questions about property owner use of Duke Energy's electric transmission rights of way. This list does not cover all restrictions or all possible situations. You should contact the Asset Protection right-of-way specialist if you have additional concerns about the rights of way. This list of restrictions is subject to change at any time and without notice. Duke Energy reserves all rights conveyed to it by the right-of-way agreement applicable to the subject property. All activity within the rights of way shall be reviewed by an Asset Protection right-of-way specialist to obtain prior written approval. Engineering plans may be required. Compliance with the Duke Energy Right-of-Way Guidelines/Restrictions or approval of any plans by Duke Energy does not mean that the requirements of any local, county, state or federal government or other applicable agency with governing authority have been satisfied.

1. Structures, buildings, manufactured/mobile homes, satellite systems, swimming pools (and any associated equipment and decking), graves, billboards, dumpsters, signs, walls, deer stands, retaining walls, septic systems or tanks (whether above or below ground), debris of any type, flammable material, building material, wrecked or disabled vehicles and all other objects (whether above or below ground) which in Duke Energy's opinion interfere with the electric transmission right of way are not allowed within the right-of-way limits. Transformers, telephone/cable pedestals (and associated equipment) and fire hydrants are not allowed. Manholes, water valves, water meters, backflow preventers and irrigation heads are not permitted. Attachments to Duke Energy structures are prohibited.
2. Fences and gates shall not exceed 10 feet in height and shall be installed greater than 25 feet from poles, towers and guy anchors. Fences shall not parallel the centerline within the rights of way but may cross from one side to the other at any angle not less than 30 degrees with the centerline. If a fence crosses the right of way, a gate (16 feet wide at each crossing) shall be installed by the property owner, per Duke Energy's specifications. The property owner is required to install a Duke Energy lock on the gate to ensure access. Duke Energy will supply a lock.
3. Grading (cuts or fill) shall be no closer than 25 feet from poles, towers, guys and anchors (except for parking areas; see paragraph 7) and the slope shall not exceed 4:1. Grading or filling near Duke Energy facilities which will prevent free equipment access or create ground-to-conductor clearance violations will not be permitted. Storage or stockpiling of dirt or any construction material is prohibited. Sedimentation control, including re-vegetation, is required per state regulations.
4. Streets, roads, driveways, sewer/water lines, other utility lines or any underground facilities shall not parallel the centerline within the right of way but may cross, from one side to the other, at any angle not less than 30 degrees with the centerline. No portion of such facility or corresponding easement shall be located within 25 feet of Duke Energy's facilities. Roundabouts, cul-de-sacs and intersections (such as roads, driveways and alleyways) are not permitted.
5. Any drainage feature that allows water to pond, causes erosion, directs stormwater toward the right of way or limits access to or around Duke Energy facilities is prohibited.
6. Contact Duke Energy prior to the construction of lakes, ponds, retention or detention facilities, etc.
7. Parking may be permitted within the right of way, provided that:
 - a. Prior to grading, concrete barriers shall be installed at a minimum of 9 feet from the Duke Energy facilities. During construction, grading shall be no closer than 10 feet to any Duke Energy facility.
 - b. After grading/paving activity is complete, Duke Energy-approved barrier sufficient to withstand a 15-mph vehicular impact shall be erected 9 feet from any Duke Energy facility.
 - c. Any access areas, entrances or exits shall cross (from one side to the other) the right of way at any angle not less than 30 degrees with the centerline and shall not pass within 25 feet of any structure. Parking lot entrances/exits cannot create an intersection within the right of way.
 - d. Lighting within the right-of-way limits must be approved by Duke Energy before installing. Due to engineering design standards, lighting is not allowed in the "Wire Zone." Where lighting is approved ("Border Zone"), the total height may not exceed 15 feet. Contact your Asset Protection right-of-way specialist as the "Wire Zone" varies for the different voltage lines.
8. Duke Energy will not object to certain vegetation plantings as long as:
 - a. They do not interfere with the access to or the safe, reliable operation and maintenance of Duke Energy facilities.
 - b. With prior written approval, Duke Energy does not object to low-growing shrubs and grasses within the "Wire Zone." Tree species are not allowed within the "Wire Zone." Trees that are approved in the "Border Zone" may not exceed, at maturity, 15 feet in height. Contact the Asset Protection right-of-way specialist for "Wire Zone"/"Border Zone" definitions.
 - c. For compliant mature height species, refer to plantfacts.csu.edu/plantlist/index.html for reference.
 - d. Engineering drawings must indicate the outermost conductors.
 - e. Vegetation that is not in compliance is subject to removal without notice.
 - f. Duke Energy may exercise the right to cut "danger trees" outside the right-of-way limits as required to properly maintain and operate the transmission line.

We hope this is useful information. If you have additional questions or plan any activity not mentioned above, please contact the Asset Protection right-of-way specialist for your area (see map).



200 East Fifth Street, 4th Fl., 1212-Haus
Cincinnati, OH 45202
Telephone: (513) 287-4162
For details: (513) 287-4166

Janice L. Walker, Esq.

Associate General Counsel

E-mail: janice.walker@duke-energy.com

October 25, 2017

VIA OVERNIGHT DELIVERY

Mr. Fredrick Vonderhaar
9617 Fox Run Road
Mason, OH 45040

**RE: DUKE ENERGY VEGETATION MANAGEMENT REFUSAL
FINAL WRITTEN NOTICE**

Dear Mr. Vonderhaar:

Duke Energy is attempting to complete vegetation maintenance on its transmission line in your community. Duke Energy is authorized by state and regulatory law to remove any obstruction that may come into contact with power lines, and pursuant to rights set forth in a **Grant of Easement** to access your property to perform our vegetation management work.

As you are also aware, Duke Energy identified a number of trees on your property that Duke Energy seeks to have removed. Duke Energy representatives have contacted you and discussed this matter with you on multiple occasions. Notwithstanding these efforts to discuss our rights with you to proceed with our work, you still have not permitted Duke Energy to enter the property and remove trees Duke Energy has deemed may endanger the safety of or interfere with Duke Energy's operation or maintenance of its transmission line in violation of Duke Energy's easement rights.

This letter is our final effort to contact you seeking your cooperation for access to the premises. At this time Duke Energy is asking you to contact our designated representative for the area, Bryce Burton at 513-560-5861 so that we can obtain your approval to enter your property no later than November 15, 2017. Once we can gain access to the property we will schedule our work pursuant to our easement rights. If we fail to obtain your cooperation for Duke Energy to exercise its rights, we will have no additional options other than to proceed with seeking a court order permitting Duke Energy to remove the trees. We must stress that Duke Energy values its relationship with its neighboring landowners and prefers to resolve this dispute between the landowners and the designated representatives for the area. Based upon the information provided herein, if you have decided to cooperate and agree to the tree removal, please contact Bryce Burton by November 15, 2017, with your approval to access your property for Duke Energy's vegetation management purposes. If we cannot obtain your cooperation by the above date, Duke Energy will proceed with filing the necessary Complaint to exercise its rights. As stated above, this is a serious safety hazard that must be remedied. Would you contact Bryce Burton with the approval by November 15, 2017. If Bryce has not heard from you on or before November 15th, we will proceed with filing the requisite lawsuit.

Thank you in advance for your assistance and immediate attention to this matter.

Madison Tree Care & Landscaping, Inc.
636 Round Bottom Road
Milford, Ohio 45150-9568



Phone: 513-576-6391 Fax: 513-576-6394
www.MadisonTreeCare.com
Email: info@madisonTreeCare.com

November 9, 2017

Mr. Fred Vonderhaar
9617 Fox Run Dr.
Mason, Ohio 45040

Mr. Vonderhaar,

We met at your residence on Fox Run Drive on November 6, 2017. According to our conversation, the energy company is planning to remove your trees below and near the power lines. Some trees and shrubs have already been girdled and killed in this area. Other trees have been heavily cut back for power line clearance. The trees on your property offer aesthetic beauty, privacy, wildlife habitat, erosion control and many of the other benefits that trees provide to the world. We agreed that my assignment was to take an inventory of all trees within the potential range of the proposed removal area and provide a value for those trees.

The trees were marked and numbered when I arrived on site using cattle tags. I walked the property with you and your father up to each tree of concern. I measured each tree for trunk diameter at 54 inches above ground level. This is the standard height to measure trees for the purposes of plant appraisal. Several of the trees marked A, B, or C on the attached spreadsheet were added on at the time of the appraisal and did not have tags on the trunk at the time of the appraisal.

In my opinion the "Trunk Formula" method from the Guide for Plant Appraisal, 9th Edition, authored by the Council of Tree and Landscape Appraisers, would be the most appropriate method to value the trees. This method is best to use when trees are larger than what can physically be replaced. I am also using the Guide to Appraisal of Trees and Other Plants in Ohio, 7th Edition, a publication of The Ohio Chapter International Society of Arboriculture to provide local species ratings.

Each tree was individually appraised based on its condition, trunk diameter, location and species (see attached spreadsheet). A sample Trunk Formula Method form is included in this report. All forms are available upon request. A summary of all the appraised trees are on the attached spreadsheet. The total appraised value for all the trees of concern is \$206,415.18.

In addition to the above trees several honeysuckle bushes (*Lonicera maackii*) were girdled and killed that screened the tower directly behind the house. These bushes ranged from 10-12 feet tall. To plant one new bush of comparable size would cost between \$400-\$450. This cost reflects a retail cost of approximately \$300 for a shrub this large and between 3-4 labor hours to install the plant.



Thank you for the opportunity to be of service. If you have any questions, or if I may be of further assistance, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jon Butcher".

Jon Butcher
ASCA Registered Consulting Arborist #486
ISA Certified Arborist, #OH 0914A
ISA Tree Risk Assessment Qualification
ONLA Master Ohio Certified Nursery Technician #249

Date: 11/10/2017

Property:

Appraiser: Jon Butcher

SAMPLE WORKSHEET

Field Observations:

1. Species: Y89-B

2. Condition %: 50%

3. Trunk Diameter: 7 in/cm

4. Location %: 100%

Site #: 80%

Contribution #: 100%

Placement #: 80%

Regional Plant Appraisal Committee and/or Appraisal-Developed-or-Modified Information:

5. Species Rating: 30%

6. Replacement Tree Size: 2100 in/cm
(Trunk Area) in^2/cm^2 TA_R

7. Replacement Tree Cost: 100

Nursery 1:

Nursery 2:

Nursery 3:

8. Installation Cost: 100

9. Installed Tree Cost: 100

10. Unit Tree Cost: 100 per in^2/cm^2

Calculations by Appraiser using Field and Regional Information

11. Appraised Trunk Area: in^2/cm^2

12. Appraised Tree Trunk Increase: in^2/cm^2
 TA_A OR ATA_A in^2/cm^2
 <LESS> TA_B in^2/cm^2

13. Basic Tree Cost: in^2/cm^2
 Tree Trunk Increase (TA_{net}) in^2/cm^2
 Unit Tree Cost:
 Installed Tree Cost:

14. Appraised Value:
 Basic Tree Cost:
 Species Rating:
 Condition %:
 Location %:

Appraised Value: 1000

Represents list options only

Represents a hard keyed figure

Represents a formula

Represents an on-page reference

VONDERHAAR APPRAISAL						
Yr	Species	Species Code	DBH	Height	Location	Value
Y1	Hybrid Poplar	50	19.5	80	80	\$ 4,870.13
Y2	Silver Maple	75	17	60	80	\$ 4,277.81
Y3	Callery Pear	50	12.5	50	80	\$ 1,405.83
Y4	Callery Pear	50	15	60	80	\$ 2,290.28
Y5	Callery Pear	50	13	60	80	\$ 1,798.88
Y6	Norway Spruce	70	12	80	80	\$ 2,948.40
Y7	Hybrid Poplar	50	14.5	50	80	\$ 1,800.70
Y8	Hybrid Poplar	50	28	70	80	\$ 8,394.75
Y9	White Pine	80	12	80	70	\$ 2,948.40
Y10	White Pine	80	15	50	70	\$ 2,671.99
Y11	White Pine	80	18	60	70	\$ 4,422.60
Y12	White Pine	80	14	20	70	\$ 950.04
Y13	Black Locust	40	2.5	80	50	\$ 247.16
Y14	White Ash	20	1	40	50	\$ 54.11
Y15	Black Locust	40	5	70	50	\$ 312.24
Y16	Red Maple	70	11	20	50	\$ 401.82
Y17	Red Maple	70	16	20	50	\$ 747.34
Y18	Black Locust	40	12.5	30	50	\$ 421.75
Y19	Black Locust	40	9	30	50	\$ 256.67
Y20	Black Locust	40	9	30	50	\$ 256.67
Y21	Black Locust	40	8	30	50	\$ 219.38
Y22	Black Locust	40	7.5	30	50	\$ 202.37
Y23	Black Locust	40	17.5	30	50	\$ 750.81
Y24	Black Locust	40	6	30	50	\$ 157.95
Y25	Black Locust	40	6	30	50	\$ 157.95
Y26	Black Locust	40	11.5	30	50	\$ 369.10
Y27	Pin Oak	80	13	50	80	\$ 2,398.50
Y28	White Pine	80	15	70	80	\$ 4,275.18
Y29	White Pine	80	16	70	80	\$ 4,782.96
Y30	White Pine	80	14.5	70	80	\$ 4,033.58
Y31	White Pine	80	9	70	80	\$ 1,916.46
Y32	White Pine	80	8	70	80	\$ 1,638.00
Y33	White Pine	80	7	50	80	\$ 994.50
Y40	White Pine	80	19.5	10	50	\$ 608.77
Y41	Sassafras	60	3	40	50	\$ 197.44
Y42	Pin Oak	80	4	30	50	\$ 228.15
Y43	White Ash	20	1	10	50	\$ 13.53
Y44	Shingle Oak	80	25.5	80	80	\$ 12,846.60
Y45	Black Cherry	40	8.5	30	50	\$ 237.47
Y46	Red Maple	70	2	30	50	\$ 153.56
Y47	Sassafras	60	11	80	70	\$ 1,928.75
Y48	Red Maple	70	8	50	50	\$ 639.84
Y49	Red Maple	70	16	50	80	\$ 2,989.35
Y50	Honey Locust	70	12	50	50	\$ 1,151.72

Exhibit E

Y51	Black Cherry	40	9	50	50	\$ 427.78
Y52	Red Maple	70	6.5	40	50	\$ 400.54
Y53	Red Maple	70	12	40	50	\$ 921.38
Y54	Red Maple	70	15.5	70	70	\$ 3,464.43
Y55	American Elm	55	6	60	70	\$ 608.11
Y56	Red Maple	70	34	50	70	\$ 10,677.71
Y57	Red Maple	70	13	30	70	\$ 1,101.81
Y58	Red Maple	70	18	30	70	\$ 1,934.89
Y59	Red Maple	70	21	30	70	\$ 2,563.73
Y60	Red Maple	70	10	30	70	\$ 730.96
Y61	Red Maple	70	6.5	30	70	\$ 420.57
Y62	Red Maple	70	12.5	50	70	\$ 1,722.14
Y63	Red Maple	70	11	40	70	\$ 1,125.10
Y64	Red Maple	70	11	30	70	\$ 843.83
Y65	Red Maple	70	13	40	70	\$ 1,469.08
Y66	Red Maple	70	18.5	70	80	\$ 5,421.27
Y67	Red Maple	70	17	60	80	\$ 3,992.63
Y68	White Ash	20	3.5	30	60	\$ 63.51
Y69	Walnut	60	9	60	80	\$ 1,232.01
Y70	Silver Maple	75	28.5	40	50	\$ 4,652.12
Y71	Red Maple	70	12.5	30	70	\$ 1,033.28
Y72	Willow	55	2	50	70	\$ 281.53
Y73	Walnut	60	8	40	70	\$ 614.25
Y74	Mulberry	50	5	40	50	\$ 223.03
Y75	Red Maple	70	27	40	70	\$ 5,482.18
Y76	Walnut	60	5	30	70	\$ 281.02
Y77	White Ash	20	5	70	70	\$ 218.57
Y78	Walnut	60	2	40	50	\$ 175.50
Y79	American Elm	55	3	40	50	\$ 180.98
Y80	Walnut	60	7	40	50	\$ 372.94
Y81	Walnut	60	5.5	50	70	\$ 508.68
Y82	Walnut	60	6	60	70	\$ 663.39
Y83	Black Cherry	40	8	40	70	\$ 409.50
Y84	Black Cherry	40	9	20	30	\$ 102.67
Y85	Shingle Oak	80	12	80	70	\$ 2,948.40
Y86	Pin Oak	80	13.5	60	70	\$ 2,681.20
Y87	Shingle Oak	80	9.5	40	70	\$ 1,033.99
Y88	Hackberry	70	7	50	70	\$ 761.41
Y89	Mulberry	50	7.5	40	70	\$ 472.20
Y89-A	American Elm	55	19	60	70	\$ 3,353.04
Y89-B	Boxelder	30	7	50	70	\$ 326.32
Y89-C	Honey Locust	70	10	30	70	\$ 730.96
Y90	American Elm	55	4	60	60	\$ 376.45
Y91	Sassafras	60	2.5	60	60	\$ 333.67
Y92	American Elm	55	7.5	50	70	\$ 649.28
Y93	Willow	55	4	40	70	\$ 292.79
Y94	Walnut	60	7	40	70	\$ 522.11

Exhibit E

Y95	American Elm	55	5.5	50	70	\$ 466.29
Y96	Dead					
Y97	American Elm	55	5	50	70	\$ 429.34
G1	Pin Oak	80	8	60	60	\$ 1,053.00
G2	Eastern Red Cedar	60	4	60	60	\$ 410.67
G3	Red Maple	70	8.5	70	60	\$ 1,163.62
G4	White Pine	80	5.5	50	50	\$ 484.45
G5	Red Maple	70	29	50	60	\$ 6,733.72
G5-A	Red Maple	70	16	50	60	\$ 2,242.01
G5-B	Red Maple	70	20.5	40	60	\$ 2,802.52
G6	Shingle Oak	80	11.5	40	60	\$ 1,181.12
G7	Red Maple	70	2.5	20	20	\$ 43.25
G8	Red Maple	70	5	30	60	\$ 281.02
G9	Eastern Red Cedar	60	5.5	30	30	\$ 130.80
G10	Eastern Red Cedar	60	9	60	70	\$ 1,078.01
G11	Eastern Red Cedar	60	4	40	60	\$ 273.78
G12	Red Maple	70	2.5	60	60	\$ 389.28
G12-A	Eastern Red Cedar	60	8	50	50	\$ 548.44
G12-B	Eastern Red Cedar	60	6	50	50	\$ 394.88
G12-C	Eastern Red Cedar	60	10	50	50	\$ 745.88
G13	Red Maple	70	6.5	50	60	\$ 600.81
G14	Red Maple	70	8	40	60	\$ 614.25
G15	Red Maple	70	7	40	60	\$ 522.11
G16	Red Maple - Dead					
G17	Red Maple	70	10	30	60	\$ 626.54
G18	Dogwood	75	1	30	50	\$ 152.19
G19	Red Maple	70	16	40	60	\$ 1,793.61
G20	Red Maple	70	11	60	60	\$ 1,446.56
G21	Sassafras	60	1.5	60	50	\$ 251.73
G22	Ash - Dead					
G23	Red Maple	70	15	50	60	\$ 2,003.99
G24	Red Maple	70	8	30	60	\$ 460.69
G25	Red Maple	70	16	50	60	\$ 2,242.01
G26	American Elm	55	4.5	40	40	\$ 180.98
G27	Red Maple	70	22	60	70	\$ 5,589.68
G28	Red Maple	70	27.5	70	70	\$ 9,935.56
G29	Red Maple	70	15	70	70	\$ 3,273.18
G30	Nannyberry Viburnum	80	2	70	70	\$ 573.30
G31	Mulberry	50	10	30	70	\$ 522.11
G32	American Elm	55	4.5	50	70	\$ 395.90
G33	Walnut	60	3	50	70	\$ 345.52
G34	Walnut	60	3	30	70	\$ 207.31
G35	Walnut	60	7	50	70	\$ 652.64
						\$206,415.18

Assumptions and Limiting Conditions

This report and any values expressed herein represent the opinion of the consultant and the consultant's fee is in no way contingent upon the reporting of a specified value, a stipulated result, the occurrence of a subsequent event, nor upon any finding to be reported.

The consultant has no personal interest in or bias with respect to the subject matter of this report or the parties involved. The consultant has inspected the subject trees or tree remains and to the best of the consultant's knowledge and belief, all statements and information in this report are true and correct.

The consultant shall not be required to give testimony or to attend court by any reason of this report unless subsequent contractual arrangements are made, including payment of charges to cover time and expense involved.

Sketches in this report, being intended as visual aids, are not necessarily to scale and should not be construed as engineering or architectural reports or surveys.

Possession of this report or a copy thereof does not imply right of publication or use for any purpose by any other than to the person to whom it is addressed, without prior written consent of the consultant.

Unless expressed otherwise 1) information contained in this report covers only those items that were examined and reflects the condition of those items at the time of inspection; 2) the inspection is limited to visual examination of accessible items without dissection, excavation, probing, or coring. There is no warranty or guarantee, expressed or implied, that problems or deficiencies of the plants or property in question may not arise in the future.

This foregoing document was electronically filed with the Public Utilities

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in

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

Summary: Motion To Amend Complaint And Expedited Request To Extend Stay electronically filed by Mrs. Kimberly W. Bojko on behalf of Complainants