

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

MOTION TO AMEND THE SECOND AMENDED COMPLAINT

Pursuant to Ohio Adm. Code 4901-1-6 and 4901-1-12 and Public Utilities Commission of Ohio (Commission) precedent,¹ Complainants in the above-captioned matter (collectively, Citizens Against Clear Cutting (CACC) or Complainants), hereby move to amend the Second Amended Complaint filed against Duke Energy Ohio, Inc. (Duke) on January 5, 2018,² which was accepted by Entry on January 25, 2018,³ for good cause shown. A Third Amended Complaint, which would replace the Amended Complaint, is attached to this Motion.

As set forth herein and more fully in the accompanying memorandum in support, good cause exists to permit Complainants to amend the Second Amended Complaint in light of the Commission's Entry issued on March 8, 2018, dismissing certain claims and

¹ See *In the Matter of the Complaint of Jeffrey Pitzer v. Duke Energy Ohio, Inc.*, Case No. 15-298-GE-CSS, Opinion and Order at ¶ 61(August 31, 2017) (citing *In re Complaint of Northeast Ohio Public Energy Council v. Green Mountain Energy Co.*, Case No. 06-453-EL-CSS, et al., Finding and Order at 9 (August 9, 2006).

² See Motion to Amend Amended Complaint and Expedited Request to Extend Stay (January 5, 2018).

³ See Entry (January 25, 2018).

Complainants. Given that the Commission held that homeowners who do not own property within the 100-foot right-of-way under three transmission lines upon which Duke has easements to conduct vegetation management lack standing to participate in the Second Amended Complaint, it is necessary to amend the Second Amended Complaint to remove such homeowners. Additionally, since the filing of the Second Amended Complaint and the Commission's Entry, counsel for Complainants has been notified that two homeowners no longer own their property; therefore, it is necessary to remove those Complainants from the Complaint. Since the filing of the Second Amended Complaint, one Complainant has also notified counsel that she no longer wishes to pursue her claims as a member of CACC; therefore, it is necessary to remove that Complainant. Accordingly, 20 Complainants have been removed from the attached Third Amended Complaint.⁴

Given that the Commission held that it did not have jurisdiction to hear claims related to the impact of Duke's unjust and unreasonable vegetation management policies and practices on Complainants' property values or aesthetic enjoyment of their property, it is necessary to amend the Second Amended Complaint to remove such claims.

In light of the Commission's March 8, 2018 Entry, it is also necessary to clarify certain claims and facts to better frame the issues for hearing and to more accurately reflect information that has become known through the discovery process.⁵ More

⁴ The 20 Complainants removed from the Third Amended Complaint are: Amanda Sachs, David Siff, Carrie and Dan Gause, Susan Falich, Jerry and Lou Ullrich, Darrelle Reese, Julie Carnes, Todd and Michelle Bacon, Patricia Lohse, Robb and Kathleen Olsen, John and Barbara Collins, Valerie Van Iden, Joe Zukor, Fu Wong and Peony Lo, John and Sally Riester, Sandra Nunn, and Mark and Calissa Thompson, who each had their claims dismissed in the Commission's March 8 Entry, Anne Wymore and Dan and Michelle Reece, who no longer own property under Duke's transmission wires, and Anita Deye, who requested that her claims against Duke be dropped.

⁵ See Application for Rehearing and Motion for Clarification (April 9, 2018).

specifically, the Third Amended Complaint specifies that there are five transmission lines (not three) that are the subject of the dispute where Duke is engaging in unjust and unreasonable vegetation management policies and practices. The Third Amended Complaint further clarifies that Complainants are not asking the Commission to consider any claim that extends beyond the Commission's statutorily-granted authority.

For the reasons stated above and described more fully in the Memorandum in Support attached hereto, CACC respectfully requests that the Commission grant this motion to amend the Second Amended Complaint for good cause shown and accept the attached Third Amended Complaint, which will replace the Second Amended Complaint.

Respectfully submitted,

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Counsel for Citizens Against Clear Cutting

April 9, 2018

**BEFORE
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Citizens Against Clear Cutting, et al.)	
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Respondent)	

MEMORANDUM IN SUPPORT

As this matter proceeds towards hearing, all parties will benefit from a clear statement of the facts, the claims asserted, and the Complainants asserting them. Acceptance of a Third Amended Complaint is appropriate to clarify the claims and issues involved in this case and to memorialize a proper set of Complainants who have standing and desire to pursue claims against Duke. The Commission, Duke, and Complainants will all benefit from the clear delineation of the parties and issues that the attached Third Amended Complaint provides.

I. PROCEDURAL HISTORY

CACC filed its Complaint on November 14, 2017.⁶ In the Complaint, Complainants raised several issues concerning the reasonableness and lawfulness of Duke's vegetation management policies, practices, and plan, and the implementation of Duke's vegetation management policies, practices, and plan. Specifically, Complainants alleged issues related to: the adequacy and lawfulness of Duke's vegetation management

⁶ See Complaint (November 14, 2017).

plan; the unjust and unreasonable vegetation management practices and policies of Duke; the unjust, unreasonable, and unlawful implementation of Duke's vegetation management practices, policies, and plan, which includes the clear cutting of trees and vegetation on Customers' properties and the use of dangerous herbicides to remove or destroy trees and vegetation; and defects in how Duke's vegetation management plan was modified, including deceptive and misleading statements and filings by Duke. On November 16, 2017, the Attorney Examiner granted CACC's request to stay Duke's implementation of its vegetation management plan and to stay clear cutting and removal of Complainants' trees and other vegetation on their properties during the pendency of the Complaint.⁷ On November 22, 2017, CACC moved to amend the Complaint to include additional Complainants and allegations and asked the Commission to extend the stay to all Complainants added to the Amended Complaint.⁸ That motion was granted and the Amended Complaint was accepted on November 28, 2017.⁹

On January 5, 2018, Complainants filed a Motion to Amend the Amended Complaint to add additional Complainants and clarify claims.¹⁰ In that Motion, Complainants also requested that the stay in this case be extended to include the Complainants being added to the case. On January 25, 2018, the Commission granted Complainants' Motion to Amend and Extend the Stay.¹¹

On March 8, 2018, the Commission addressed a number of outstanding issues in this case. The Commission denied Duke's interlocutory appeal of the stay of its

⁷ See Entry at 2 (November 16, 2017).

⁸ See Motion to Amend Complaint and Expedited Request to Extend Stay (November 22, 2017).

⁹ See Entry (November 28, 2017).

¹⁰ See Motion to Amend Amended Complaint and Expedited Request to Extend Stay (January 5, 2018).

¹¹ Entry (January 25, 2018).

vegetation management activities granted on November 16, 2017 and as extended on November 28, 2017 and January 25, 2018.¹² The Commission also denied a motion to dismiss all Complainants filed by Duke.¹³ The Commission, however, dismissed those Complainants that did not own property in the 100-foot right-of-way under three transmission lines upon which Duke intends to conduct vegetation management activities.¹⁴

In that same Entry, the Commission, sua sponte, considered the propriety of certain allegations brought by Complainants in this case.¹⁵ These allegations included Duke's proposed use of herbicides as part of its vegetation management plan, policies, and practices to clear cut, remove, or destroy all trees and other vegetation from Duke's 100-foot right-of-way.¹⁶ The allegations also included the unjust and unreasonable nature of Duke's clear cutting policies and practices (mass removal of trees and vegetation) that could result in soil erosion on Complainants' properties.¹⁷ The Commission found that these claims lie outside the Commission's administrative expertise, and, thus, under *Allstate Ins. Co. v. Cleveland Elec. Illum. Co.*, 119 Ohio. St.3d 301, 2008-Ohio-3917, 893 N.E.2d 824 ¶¶ 12-13, it did not have authority to consider the allegations, concluding that they were more properly considered by a Court of Common Pleas.¹⁸

Complainants have, concurrently with this Motion, filed an Application for Rehearing regarding the Commission's decision to limit Complainants' claims to three

¹² See Entry at ¶ 5 (March 8, 2018).

¹³ Id. at ¶ 42.

¹⁴ Id. at ¶ 57.

¹⁵ Id. at ¶ 44.

¹⁶ Id. at ¶ 48; see also Second Amended Complaint at ¶¶ 127-28.

¹⁷ Id. at ¶ 48; see also Second Amended Complaint at ¶¶ 127-28.

¹⁸ Entry at ¶ 48 (March 8, 2018)

transmission lines previously identified by Duke (which has now been corrected)¹⁹ and its sua sponte decision to dismiss certain allegations from the Second Amended Complaint. The Third Amended Complaint corrects these factual issues and limits the scope of certain issues such that they remain within the Commission's jurisdiction. More specifically, the Third Amended Complaint specifies that there are five transmission lines that are the subject of the dispute. It also addresses the Commission's concerns by clarifying that Complainants are not seeking recovery for harm caused by soil erosion or the use of toxic herbicides. Rather, the allegations directly demonstrate the unjust and unreasonable nature of Duke's vegetation management practices and policies and that Duke's implementation of its vegetation management plan is unjust, unreasonable, and in violation of the Commission's rules and the Complainants' easements.

Moreover, the Third Amended Complaint removes the homeowners who do not own property within the 100-foot right-of-way under the **five** transmission lines upon which Duke has an easement to conduct vegetation management. Additionally, since the filing of the Second Amended Complaint, Complainant Anita Deye has expressed a desire to no longer participate in the Complaint and Complainants Anne Wymore and Dan and Michelle Reece have sold their properties and, thus, no longer own properties at issue in this case. Accordingly, good cause exists to amend the Complaint as set forth herein.

II. DISCUSSION

Both the Ohio Administrative Code and the Ohio Rules of Civil Procedure provide for a liberal approach to amendment. Ohio Adm. Code 4901-1-06 authorizes

¹⁹ See Respondent Duke Energy Ohio Inc.'s Motion to Amend Stay of Vegetation Management at 3 (Duke Motion to Amend) (March 30, 2018); Exhibit F to the Third Amended Complaint.

amendments to complaints and other filings “for good cause shown.” And, as recognized by the Commission,²⁰ the Rules of Civil Procedure mandate that courts “freely give leave 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.²¹

Since the Second Amended Complaint was filed, the Commission held that certain Complainants did not have standing to bring claims regarding Duke’s vegetation management policies and practices because those Complainants did not own property that was in the 100-foot right-of-way under three transmission lines that Duke was actively engaged or about to be engaged in clear cutting, removal, or destruction of trees and other vegetation. The Commission also held that it does not have jurisdiction to consider certain claims contained in the Second Amended Complaint.²² The Commission was unclear, however, as to whether it believed that it lacked jurisdiction over claims related to soil erosion and the use of herbicides as those claims related to the Complainants who the Commission was dismissing from the Second Amended Complaint or as they relate to even those Complainants who are still a part of this case. By its findings, the Commission also appeared to misunderstand or misinterpret the allegations and intent of the Second Amended Complaint. Thus, the Third Amended Complaint is necessary to clarify the allegations and issues contained in the complaint and to more clearly explain and demonstrate how the claims are sufficiently cabined to not require the Commission to

²⁰ See Entry (November 28, 2017); see also *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).

²¹ See, e.g., *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). See also Entry at ¶4 (November 28, 2017).

²² See Entry (March 8, 2018).

step outside its jurisdiction to resolve them. Further, Complainants have asked for rehearing to address the ambiguity and lack of clarity in the Second Amended Complaint.

Additionally, clarification of the above-discussed allegations in the Complaint itself is necessary to allow Complainants to pursue these issues at hearing. The Commission has held that violations not specifically raised in the filed complaint cannot be considered in a complaint proceeding before the Commission.²³ Thus, if Complainants do not amend the Second Amended Complaint to clarify the concerns the Commission raised in its March 8, 2018 Entry, Complainants will be precluded from advancing those allegations at hearing on this matter. Therefore, amendment of the Second Amended Complaint is appropriate at this stage of the proceeding and necessary given the Commission's apparent narrowing of the Second Amended Complaint without due process.

Additionally, throughout this litigation, Duke has made inconsistent statements with regard to the nature of the vegetation management work at issue in this case. Specifically, in a December 4, 2017 pleading, Duke represented that the only circuits at issue in this proceeding were Transmission Circuits 3881, 5483, and 5487.²⁴ Then, in a subsequent discovery response, on February 14, 2018, Duke contradicted its own representation when it stated that there were actually five different Transmission Circuits at issue: Circuits 3881 and 5483 between Dimmick and Montgomery Substations, Circuits 3881 and 5487 between Montgomery and Remington Substations, Circuit 6984

²³ See *In the Matter of the Complaint of Jeffrey Pitzer v. Duke Energy Ohio, Inc.*, Case No. 15-298-GE-CSS, Opinion and Order at ¶ 61 (August 31, 2017) (citing *In re Complaint of Northeast Ohio Public Energy Council v. Green Mountain Energy Co.*, Case No. 06-453-EL-CSS, et al., Finding and Order at 9 (August 9, 2006).

²⁴ See Motion to Dismiss of Respondent Duke Energy Ohio, Inc. at 5 (December 4, 2017).

between Summerside and Clermont Substations, and Circuit 9482 between Feldman and Clermont Substations.²⁵ Duke also corrected its statement in its Motion to Amend the Stay filed on March 30, 2018 where it referenced five transmission circuits.²⁶ As Complainants now believe that the parties have agreed on which circuits are at issue in this case, amendment would allow the parties and the Commission to proceed with a clear statement of the parameters of this case.

Finally, three Complainants—Anita Deye, Dan and Michelle Reece, and Anne Wymore—are being removed from the Complaint voluntarily. Therefore, a Third Amended Complaint is necessary not only to provide a clear statement of Complainants' claims against Duke, but also to establish an accurate list of the Complainants involved in this matter.

As explained herein, in light of the Commission's March 8, 2018 Entry, good cause exists to amend the Second Amended Complaint to clarify certain claims and facts to better frame the issues for hearing and to more accurately reflect information that has become known through the discovery process. In summary, the Third Amended Complaint specifies that there are five transmission lines (not three) that are the subject of the dispute where Duke is engaging in unjust and unreasonable vegetation management policies and practices. The Third Amended Complaint also removes dismissed Complainants and related claims, and clarifies that Complainants are not asking the Commission to consider any claim that extends beyond the Commission's statutorily-granted authority. Amendment at this stage would not prejudice Duke or any other party. The amendments clarify and narrow certain issues raised in this proceeding, thus

²⁵ See Exhibit F to the Third Amended Complaint.

²⁶ Duke Motion to Amend at 3.

enabling all parties to more effectively and efficiently prepare for hearing. Therefore, no party's preparation for hearing would be impacted by the acceptance of a Third Amended Complaint.

III. CONCLUSION

For good cause shown, and pursuant to Ohio Adm. Code 4901-1-06 and 4901-1-12, Complainants respectfully request that the Commission grant this motion for good cause shown and accept the attached Third Amended Complaint

Respectfully submitted,

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Counsel for Citizens Against Clear Cutting

April 9, 2018

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served on April 9, 2018 by electronic mail upon all parties of record.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

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**THIRD AMENDED COMPLAINT, REQUEST FOR RELIEF,
REQUEST TO CONTINUE STAY DURING PENDENCY OF THIRD AMENDED
COMPLAINT FOR COMPLAINANTS, AND
REQUEST FOR EXPEDITED RULING OF STAY**

(APRIL 9, 2018)

Duke Energy Ohio, Inc. (Duke) is attempting to indiscriminately clear cut, remove, or destroy its customers' trees and other vegetation on a 100-foot right-of-way under five transmission lines across several communities, including, but not limited to, Hamilton County, Symmes Township, Deerfield Township, and Montgomery, Ohio, leaving a desolate path in its wake equivalent to an eight-lane highway running through Complainants' properties. Pursuant to R.C. 4905.26, Ohio Adm. Code 4901-9-01 and 4901-1-06, and Commission precedent.¹ Kim Wiethorn, Karen and Majed Dabdoub, Jeff and Linda Sims, Fred Vonderhaar, Donald and Nancy Jacob, James Johnson, Majid Qureshi, Keith Donovan, Julie Reynolds, John Lu, Robert Schneider, John Hasselbeck, Lawrence Hug, Dennis Mitman and Susan B. Shorr, Nicole Hiciu, Jason Mayhall, James

¹ See *In the Matter of the Complaint of Jeffrey Pitzer v. Duke Energy Ohio, Inc.*, Case No. 15-298-GE-CSS, Opinion and Order at ¶ 61(August 31, 2017) (citing *In re Complaint of Northeast Ohio Public Energy Council v. Green Mountain Energy Co.*, Case No. 06-453-EL-CSS, et al., Finding and Order at 9 (August 9, 2006).

and Shelley Hoyer, Theresa Reis, Gary Balser, Phyllis Wahl, Dan and Vicki Kemmeter, Kim Carrier, Deloris Reese, Dennis Baker, Jenny and Charlie Gast, Nancy Steinbrink, Jonathan Mackey, Scott Carson, Joseph Grossi, Melissa and Peter Broome, Melisa Kuhne, Jim and Laura Haid, Olga Staio, Shana Berge, Gregory Hoeting, Richard and Carol Tenenholtz, R. Allen Pancoast, Paul and Karen Smith, Jason Dimaculangan, John D. Gump, Brian and Melissa Weiss, Evelyn and Tom King, Philip Griggs, Sharon M. Felman, Clifford W. Fauber, Nicole Menkhaus, James Wulker, Timothy Wilson, Sanford T. and Barbara L. Casper, Mike Preissler, Patricia L. McGill, Dana and Joy Steller, Marc Wahlquist, Gary Pauly, Steve and Nanci Schmidt, Kathleen Danner, Randall J. Fick, Greg Chtelmakh, Wayne and Bertha Davis, Eric Hatfield, John Kilgore, Rob and Karen Ripp, Shuku Nishihata, Mark Lykins, and the Symmes Township Trustees (collectively, Citizens Against Clear Cutting (CACC) or Complainants) bring this Third Amended Complaint before the Public Utilities Commission of Ohio (Commission or PUCO) in order to ensure that trees and other vegetation, which are located on Complainants' properties, are not improperly and unnecessarily cut down, removed, or destroyed by Duke in violation of Ohio law, the Commission's rules, and the applicable easements.

On November 16, 2017, the Attorney Examiner recognized the urgent nature of the threat Duke poses to the property owners and granted Complainants' expedited request for a stay of Duke's implementation of its vegetation management plan and stay of clear cutting, removal, or destruction of trees and other vegetation on Complainants' properties during the pendency of the Complaint.² On November 28, 2017 and January 25, 2018, the Attorney Examiner again recognized this threat and extended the stay to

² Entry at ¶ 6 (November 16, 2017).

additional Complainants added to the Amended and Second Amended Complaints.³ The Commission affirmed the Attorney Examiner's decisions to grant the stay for the Complainants during the pendency of the complaint proceeding.⁴ The Attorney Examiner subsequently modified the stay on April 5, 2018.⁵

Given that the same imminent threat remains for those Complainants filing the Third Amended Complaint and out of an abundance of caution, Complainants hereby request that the stay of Duke's implementation of its vegetation management plan previously granted, as modified, be explicitly continued or extended for all Complainants during the pendency of the Third Amended Complaint in order to prevent Duke from clear cutting, removing, or destroying trees and other vegetation on Complainants' properties while the proceeding is ongoing. As set forth more fully below, good cause exists to grant such stay during the pendency of this Third 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. 17-2126-EL-CSS, Entry at 1 (October 31, 2017);⁶ see also Entry at ¶ 17 (January 25, 2018). Furthermore, because Duke stated its intention to take legal action against some of the Complainants if they did not consent to allow Duke to enter their property to cut, remove, or destroy trees and other vegetation,⁷

³ Entry at ¶ 8 (November 28, 2017).

⁴ Entry at ¶ 27 (March 8, 2018).

⁵ Entry at ¶ 12 (April 5, 2018).

⁶ 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).

⁷ See Exhibit D to the Third Amended Complaint, a sample letter sent from Duke to one of the Complainants in this case. Other Complainants have similar or identical letters. The Exhibit is

an immediate ruling is necessary. Therefore, Complainants hereby request that the Commission issue an expedited ruling on its renewed request for a stay during the pendency of the Third Amended Complaint under Ohio Adm. Code 4901-1-12(C).⁸

As to the Third 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 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

provided as an example of the letter that is indicative of, if not identical to, the Complainants' letters from Duke.

⁸ Complainants cannot certify that Duke does not object to such request.

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

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

14. Complainants Dennis Mitman and Susan B. Shorr reside and own property at 8531 Windy Hollow, Cincinnati, Ohio 45249, which is served by Duke.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29. Complainant Joseph Grossi resides and owns property at 11982 Paulmeadows Drive, Cincinnati, Ohio 45249, which is served by Duke.

30. Complainants Melissa and Peter Broome reside and own property at 9533

Falcon Lane, Mason, Ohio 45040, which is served by Duke.

31. Complainant Melisa Kuhne resides and owns property at 12002 Paulmeadows Drive, Cincinnati, Ohio 45249, which is served by Duke.

32. Complainants Jim and Laura Haid reside and own property at 11994 Paulmeadows Drive, Cincinnati, Ohio 45249, which is served by Duke.

33. Complainant Olga Staios resides and owns property at 11974 Paulmeadows Drive, Cincinnati, Ohio 45249, which is served by Duke.

34. Complainant Shana Berge resides and owns property at 10442 Shadyside Lane, Cincinnati, Ohio 45249, which is served by Duke.

35. Complainant Gregory Hoeting resides and owns property at 5828 Fawn Run Drive, Mason, Ohio 45040, which is served by Duke.

36. Complainants Richard and Carol Tenenholtz reside and own property at 10410 Shadyside Lane, Cincinnati, Ohio 45249, which is served by Duke.

37. Complainant R. Allen Pancoast resides and owns property at 11936 Paulmeadows Drive, Cincinnati, Ohio 45249, which is served by Duke.

38. Complainants Paul and Karen Smith reside and own property at 12070 Paulmeadows Drive, Cincinnati, Ohio 45249, which is served by Duke.

39. Complainant Jason Dimaculangan resides and owns property at 12031 Timberlake Drive, Cincinnati, Ohio 45249, which is served by Duke.

40. Complainant John D. Gump resides and owns property at 12026 Paulmeadows Drive, Cincinnati, Ohio 45249, which is served by Duke.

41. Complainants Brian and Melissa Weiss reside and own property at 11218 Terwilligers Run Drive, Cincinnati, Ohio 45249, which is served by Duke.

42. Complainants Evelyn and Tom King reside and own property at 11978 Paulmeadows Drive, Cincinnati, Ohio 45249, which is served by Duke.

43. Complainant Philip Griggs resides and owns property at 10497 Hopewellhills Drive, Cincinnati, Ohio 45249, which is served by Duke.

44. Complainant Sharon M. Felman resides and owns property at 8720 Birchbark Drive, Cincinnati, Ohio 45249, which is served by Duke.

45. Complainant Clifford W. Fauber resides and owns property at 8984 Terwilligers View Court, Cincinnati, Ohio 45249, which is served by Duke.

46. Complainant Nicole Menkhaus resides and owns property at 8939 Terwilligers Trail, Cincinnati, Ohio 45249, which is served by Duke.

47. Complainant James Wulker resides and owns property at 9493 Stonecrest Court, Cincinnati, Ohio 45249, which is served by Duke.

48. Complainant Timothy Wilson resides and owns property at 10437 Hopewellhills Drive, Cincinnati, Ohio 45249, which is served by Duke.

49. Complainants Stanford T. and Barbara L. Casper reside and own property at 9011 Old Creek Trail, Cincinnati, Ohio 45249, which is served by Duke.

50. Complainant Mark Preissler resides and owns property at 12054 Paulmeadows Drive, Cincinnati, Ohio 45249, which is served by Duke.

51. Complainant Patricia McGill resides and owns property at 8951 Terwilligers Trail, Cincinnati, Ohio 45249, which is served by Duke.

52. Complainants Dana and Joy Steller reside and own property at 10402 Shadyside Lane, Cincinnati, Ohio 45249, which is served by Duke.

53. Complainant Marc Wahlquist resides and owns property at 9429 East

Kemper Lane, Loveland, Ohio 45140, which is served by Duke.

54. Complainant Gary Pauly resides and owns property at 10526 Hopewellhills Court, Cincinnati, Ohio 45249, which is served by Duke.

55. Complainants Steve and Nancy Schmidt reside and own property at 11224 Terwilligers Trail, Cincinnati, Ohio, 45249, which is served by Duke.

56. Complainant Kathleen Danner resides and owns property at 10461 Hopewellhills Drive, Cincinnati, Ohio 45249, which is served by Duke.

57. Complainant Randall J. Fick resides and owns property at 9336 Butler-Warren Line Road, Cincinnati, Ohio 45241, which is served by Duke.

58. Complainant Greg Chtelmakh resides and owns property at 8683 Totempole Drive, Cincinnati, Ohio 45249, which is served by Duke.

59. Complainants Wayne and Betty Davis reside and own property at 12039 Timberlake Drive, Cincinnati, Ohio 45249, which is served by Duke.

60. Complainant Eric Hatfield resides and owns property at 8650 Totempole Drive, Cincinnati, Ohio 45249, which is served by Duke.

61. Complainant John Kilgore resides and owns property at 10406 Shadyside Lane, Cincinnati, Ohio 45249, which is served by Duke.

62. Complainants Rob and Karen Ripp own property at 11355 Pomo Court, Cincinnati, Ohio 45249, which is served by Duke.

63. Complainant Shuku Nishihata resides and owns property at 8726 Birchbark Drive, Cincinnati, Ohio 45249, which is served by Duke.

64. Complainant Mark Lykins resides and owns property at 5816 Timber Rail Drive, Mason, Ohio 45040, which is served by Duke.

65. 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.

66. 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

67. The allegations set forth in paragraphs 1 through 66 of this Third Amended Complaint are re-alleged and incorporated as if fully set forth herein.

68. 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.⁹ 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.¹⁰

69. 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

⁹ Id.

¹⁰ Id.

whether “any . . . service, . . . charge, . . . 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, practices, and charges offered or collected by Duke. It also has jurisdiction to resolve any controversy that arises with respect to those services, practices, or charges, including issues that deal with Duke’s vegetation management plan, policies, and practices. Ohio Adm. Code 4901:1-10-27.

70. 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. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.”

71. R.C. 4928.16 provides that the Commission has jurisdiction under R.C. 4905.26 to determine whether an electric utility has violated and/or failed to comply with provisions of R.C. 4928.01 through 4928.15 or if an electric utility has violated and/or failed to comply with any rules that the Commission has adopted under R.C. 4928.01 through 4928.15. The Commission adopted its rules for vegetation management in Ohio Adm. Code 4901:1-10-27 pursuant to its authority granted by R.C. 4928.11. Thus, the

Commission has jurisdiction over this Third Amended Complaint against Duke for any violations of Ohio Adm. Code 4901:1-10-27.

72. 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 act complained of constitutes a practice normally undertaken by the utility.¹¹ 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.

73. 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.¹²

74. The Supreme Court of Ohio sets out a two-part test for whether PUCO jurisdiction is appropriate.¹³ This case meets both parts of that test.

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

¹¹ *Corrigan v. Cleveland Electric Illum. Co.*, 122 Ohio St.2d 265, 2009-Ohio-2524, 910 N.E.2d 1009, ¶ 21.

¹² *Corrigan v. Cleveland Electric Illum. Co.*, 122 Ohio St.2d 265, 2009-Ohio-2524, 910 N.E.2d 1009, ¶ 21.

¹³ 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?").

76. Second, the PUCO authorizes the vegetation management activities covered by this Third Amended Complaint.¹⁴

STATEMENT OF FACTS

77. The allegations set forth in paragraphs 1 through 76 of this Third Amended Complaint are re-alleged and incorporated as if fully set forth herein.

78. 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.

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

80. The Complainants' properties are directly impacted by Duke's vegetation management plan, policies, and practices, and Duke's implementation of such plan, policies, and practices.

81. All of the Complainants have trees or other vegetation on their properties that are located under or near five transmission lines owned by Duke that are the subject of this dispute.¹⁵

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

83. 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

¹⁴ See Ohio Adm. Code 4901:1-10-27(E)(2).

¹⁵ See Exhibit F, Duke's Response to Complainants' Interrogatory CACC-INT-01-004 (February 14, 2018).

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 . . .”¹⁶

84. Without objection, each of the Complainants who owns property that contains trees and other vegetation that Duke now seeks to cut down, remove, or destroy 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 and other vegetation as necessary to ensure the safe and reliable provision of electric service.

85. On information and belief, the past vegetation management practices of Duke of pruning and trimming trees and other vegetation sufficiently ensured reliable and safe electric service and prevented or limited vegetation-related outages such that Complainants and other Duke customers had access to safe and reliable electric service.

86. 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).¹⁷

87. 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.”¹⁸

¹⁶ See, e.g., Exhibit A to the Third Amended 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.

¹⁷ 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).

¹⁸ Id.

88. 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.”¹⁹

89. 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,” and that, underneath the primary, “Duke Energy Ohio shall maintain at least a ten foot clearance from the lowest conductor to the nearest vegetation.”²⁰

90. 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 approval from the property owner or agent to remove such trees.”²¹ It repeated that proposition at three different points throughout the terms of the vegetation management plan.²²

91. 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-

¹⁹ Application at 7.

²⁰ Id.

²¹ Id. at 9.

²² See id. at 8-9.

established hardwood trees with structurally sound overhanging limbs or branches greater than six inches in diameter may remain.²³ Duke also revised the allowable clearance height of trees allowed underneath the primary.²⁴

92. 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 deemed to be 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.²⁵

93. 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, or destroying all trees and other vegetation within the range of its easements using door hangers and brochures.²⁶

94. In letters to affected property owners, Duke has asserted its rights to engage in clear cutting and tree and other vegetation removal or destruction under state and regulatory laws 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

²³ See *id.* at 5-7.

²⁴ *Id.* at 9.

²⁵ See Rule 4901:1-10-27(E)(3), O.A.C.

²⁶ 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.

enter the property and remove or destroy the property owners' trees and other vegetation.²⁷

COUNT I

95. The allegations set forth in paragraphs 1 through 94 of this Third Amended Complaint are re-alleged and incorporated as if fully set forth herein.

96. 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 or complete tree and other vegetation removal or destruction that is unrelated to and unnecessary for the provision of safe or reliable service.

97. Similarly, Duke's easements grant it the right to remove trees and other vegetation only if the trees or vegetation "may endanger the safety of or interfere with the construction, operation or maintenance of" the system.²⁸

98. The door hangers provided to many Complainants and, on information and belief, others, outlining Duke's intent to remove trees and other vegetation on each Complainant's property, do not contain specific justifications for the removal of the trees and other vegetation removed or destroyed 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 all trees and other vegetation within their easement in violation of Ohio Adm. Code 4901:1-10-27(E)(1)(f), (E)(2), and (F)(1) and the terms of the easement.²⁹

²⁷ 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.

²⁸ See Exhibit A.

²⁹ See *id.*

99. Upon information and belief, past vegetation management practices by Duke consisting of selectively trimming and pruning trees and other vegetation have been successful without requiring the obliteration of all trees and other vegetation near its power lines. Duke failed to explain why its prior practices were insufficient and why those practices 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).

100. Duke has failed to demonstrate that it is authorized to remove or destroy the trees and other vegetation under its vegetation management plan and its easements because it has not made a determination that the trees and other vegetation actually pose a risk and that complete removal is necessary as required by Ohio law. See Ohio Adm. Code 4901:1-10-27; see also Exhibit A. Instead, Duke has sent identical generic notices to property owners and/or customers across its service territory. Without tying its attempts for complete removal or destruction of trees and other vegetation to the reliability or safety of its service, Duke has no authority to engage in these practices.

COUNT II

101. The allegations set forth in paragraphs 1 through 100 of this Second Amended Complaint are re-alleged and incorporated as if fully set forth herein.

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

103. 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. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.”

104. Duke’s implementation of its recently modified vegetation plan to indiscriminately remove or destroy its customers’ trees and other vegetation by clear cutting and the use of herbicides is unjust and unreasonable. Further, such widespread clear cutting or leveling to the ground of trees and other vegetation has not been shown to be necessary for the provision of safe and reliable electric service.

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

106. Duke’s plan to engage in mass removal and/or leveling to the ground of trees and other vegetation on Complainants’ properties through the use of clear cutting or herbicides is also unjust and unreasonable because Complainants will have their trees and vegetation unnecessarily destroyed without seeing any measurable improvements in the safety and reliability of their electric service.³⁰

107. Duke’s implementation of its modified vegetation management policies, practices, and plan is unjust and unreasonable as it will not make Duke’s electric system more reliable or safer as required by Ohio Adm. Code 4901:1-10-27 in violation of R.C. 4905.22.

³⁰ See Exhibit E, which is a valuation report on the benefits of trees on a Complainants’ property that Duke seeks to cut down.

108. Upon information and belief, many of the trees and other vegetation that Duke seeks to remove or destroy 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 or removing these trees and other vegetation is unjust and unreasonable under R.C. 4905.22 because Duke proposes to completely remove, level to the ground, or destroy trees and other vegetation on Complainants' properties even though doing so is not necessary, will not improve the safety or reliability of its service, and has not been justified, as required by Ohio Adm. Code 4901:1-10-27.

109. Duke's implementation of its modified vegetation management plan with regard to the widespread use of herbicides on Complainants' properties is unjust and unreasonable as the use of toxic herbicides will completely destroy the trees and other vegetation where it is applied. The use of herbicides is also unjust and unreasonable as it is dangerous to other vegetation on the property, children, animals, and the environment. It will also pollute the ponds and streams directly located on Complainants' properties. Duke is unjustly and unreasonably using these toxic herbicides on Complainants' properties 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.

110. Duke's plan to engage in mass removal and/or leveling to the ground of trees and other vegetation on Complainants' properties through the use of clear cutting or herbicides is also unjust and unreasonable because of the risk to Complainants' property of soil erosion without demonstrating that such action is necessary to maintain or improve the safety or reliability of the electric system as required by Ohio Adm. Code 4901:1-10-27 in violation of R.C. 4905.22, and without demonstrating that Duke's unjust

and unreasonable policies and practices will not itself 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

111. The allegations set forth in paragraphs 1 through 110 of this Third Amended Complaint are re-alleged and incorporated as if fully set forth herein.

112. 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."

113. 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."

114. 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."

115. Ohio Adm. Code 4901:1-10-24(D) provides that "[n]o electric utility shall commit an unfair or deceptive act or practice in connection with the promotion or provision of service, including an omission of material information."

116. 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).

117. Duke misrepresented its Application, making misleading statements in violation of Ohio Adm. Code 4901:1-10-24(D). 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 and other vegetation and to protect certain trees and other vegetation from removal, and removing language that required Duke to work with property owners and obtain permission before clear cutting, removing, or destroying trees and other vegetation.

118. 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 other vegetation and that protected certain trees and other vegetation from removal in violation of Ohio Adm. Code 4901:1-10-27(E)(2).

119. Duke did not explain how modifying its previous vegetation management plan from trimming and pruning and working with property owners to mass tree removal, leveling to ground, and/or destroying all trees and other vegetation within its 100-foot right-of-way by the use of clear cutting or spraying herbicides would impact the costs that it collects from its customers, including Complainants, for implementation of its vegetation and management plan, practices, and policies.³¹

³¹ Duke collects costs associated with vegetation management through its Base Transmission Rider (Rider BTR). See Exhibit G, Duke’s Response to Complainants’ Interrogatory CACC-INT-01-057. See Duke Tariff Sheet No. 89.06.

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

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

122. 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

123. The allegations set forth in paragraphs 1 through 122 of this Third Amended Complaint are re-alleged and incorporated as if fully set forth herein.

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

125. 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," including just and reasonable charges for services rendered.

126. 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.

127. Duke's modified vegetation and management plan, policies, and practices unreasonably and unjustly removes customer input from the decision to completely remove or destroy trees and other vegetation through the use of clear cutting or spraying herbicides, thereby unreasonably stripping customers of their rights to work with Duke to come to an equitable resolution of issues concerning trees and other vegetation on their property as required by their easements and the previous vegetation management plan.

128. Duke's modified plan unreasonably gives the company unbridled discretion as to when and how it will remove trees and other vegetation without providing any sort of check against the unnecessary removal of trees and vegetation, without any clear benefits to service reliability or safety as required by Ohio Adm. Code 4901:1-10-27, and without fulfilling the requirements and intent of the PUCO's rules in violation of R.C. 4905.22.

PRAYER FOR RELIEF

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

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

130. Find that Duke has violated Ohio Adm. Code 4901:1-10-27 by threatening to clear cut, remove, or destroy trees and other vegetation without determining that

complete removal, leveling to the ground, or destruction is necessary for the maintenance and operation of its electric transmission and distribution system;

131. Find that Duke lacks the authority to engage in the complete removal or destruction of trees and other vegetation by clear cutting or the use of herbicides on Complainants' properties;

132. Find that Duke's modification to its vegetation management plan was unjust, unreasonable, and improper given the misleading statements and lack of justification provided to the PUCO in violation of Ohio Adm. Code 4901:1-10-27 and R.C. 4905.22;

133. 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;

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

135. Find that Duke's policies, practices, and implementation of its modified vegetation management plan is unjust and unreasonable in violation of R.C. 4905.26 and fails to comply with the provisions of Ohio Adm. Code 4901:1-10-27.

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

137. Order Duke to revert back to its prior vegetation management plan until it properly applies to modify its plan and that application is heard, and approved by the Commission after due process;

138. Order Duke to not clear cut, destroy, or otherwise engage in mass tree and vegetation removal (e.g., by the use of herbicides) unless that removal is actually

necessary for the maintenance and operation of its electric transmission and distribution system and Duke has provided such justification; and

139. Order Duke to stay the implementation of its vegetation management plan and stay the clear cutting, use of herbicides, and removal or destruction of trees and other vegetation on the properties of the Complainants during the pendency of this Third 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
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(Will accept service via email)

Counsel for Complainants

GRANT OF EASEMENT

FOR AND IN CONSIDERATION OF One Dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged, 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, ~~and to lay, erect, maintain, repair, replace and remove gas lines and appurtenant and incidental fixtures and equipment for the transportation of gas~~, in, on, over, through and across the following described real estate situate in Section 31, T 4, E.R. 2, Synmes Township, Hamilton County State of Ohio and being a tract of 45.11 acres, more or less, being Lot 1 of Samuel Arbuckle's Estate and being the same property conveyed to the grantor by deed dated April 27, 1899 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 grantee'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, teams or trucks in exercising 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. ~~her~~ heirs or assigns. Grantor. ~~her~~ 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 ~~has~~ full power to convey said right of way and easement and warrant ~~the~~ and will defend the same against all claims of all persons.

BOOK 2455 PAGE 504

WITNESS my hand this 12 day of October, 1950

signed and acknowledged in the presence of:

Chas. J. Wallace
Harry Kasfir

Ella M. Rempler

STATE OF *Ohio* COUNTY, ss: *Hamilton*
Personally appeared before me, a Notary Public in and for said County, *Ella M. Rempler*

who acknowledged the signing of the foregoing instrument to be *her* 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 *12th* day of *October*, 1950.

Notary Seal
FOR RECORD. DEC 14 1950 AT 2:14 PM
Notary Public, *Hamilton* County, *Ohio*
My Com. Exp. Oct. 4, 1953
GILBERT J. SHAVER, RECORDER, HAMILTON COUNTY, OHIO

☐ 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
1610-301-1300 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 866.385.3675. For information about our Integrated Vegetation Management program please visit us online at duke-energy.com/safety/right-of-way-management.asp.

Job number: 3081

Date: _____

Time: _____



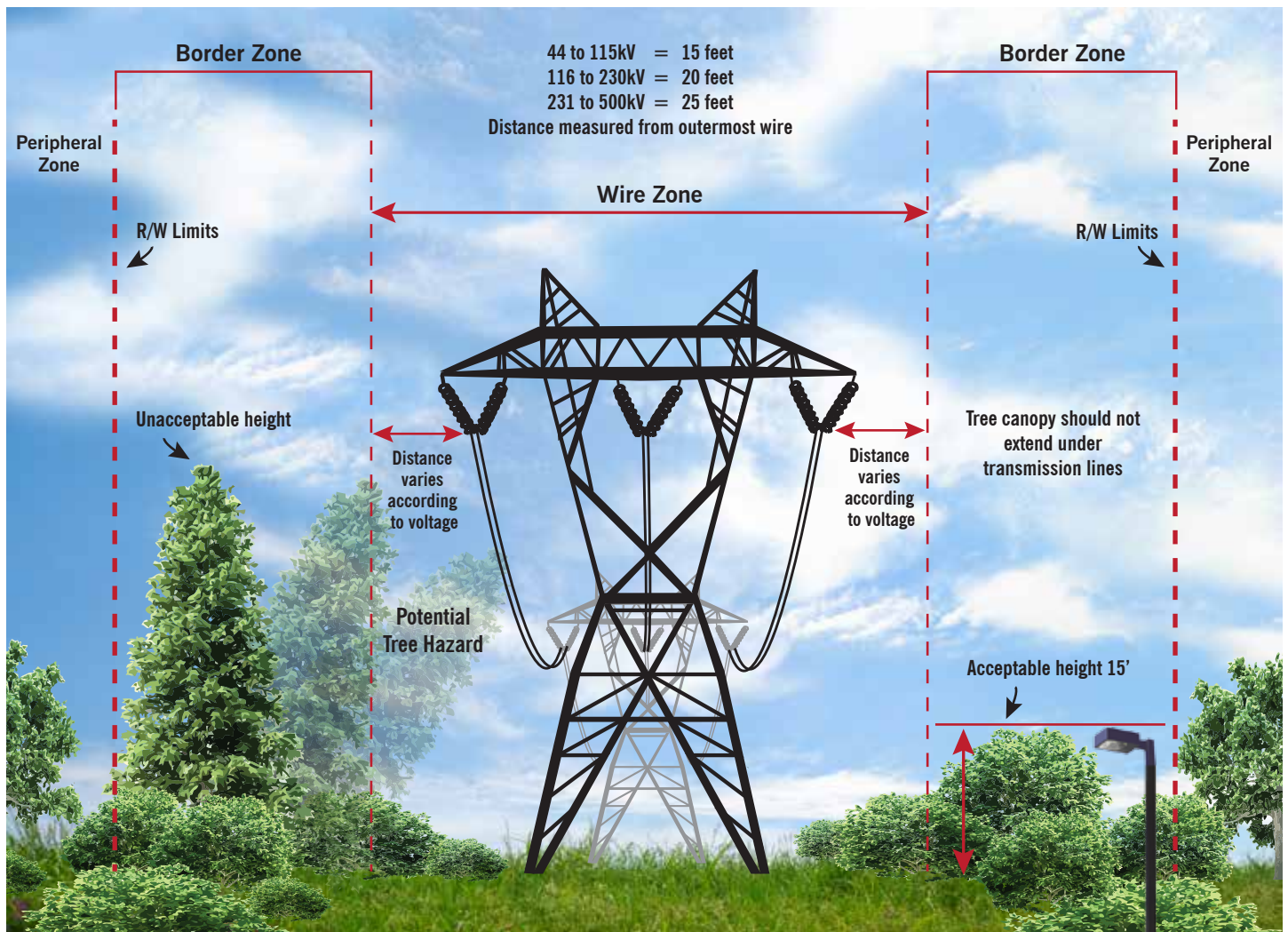
ELECTRIC TRANSMISSION RIGHT-OF-WAY GUIDELINES/RESTRICTIONS VALID FOR OHIO, INDIANA AND KENTUCKY (Revised 11/20/14)

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, wells, 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.osu.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).

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.

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

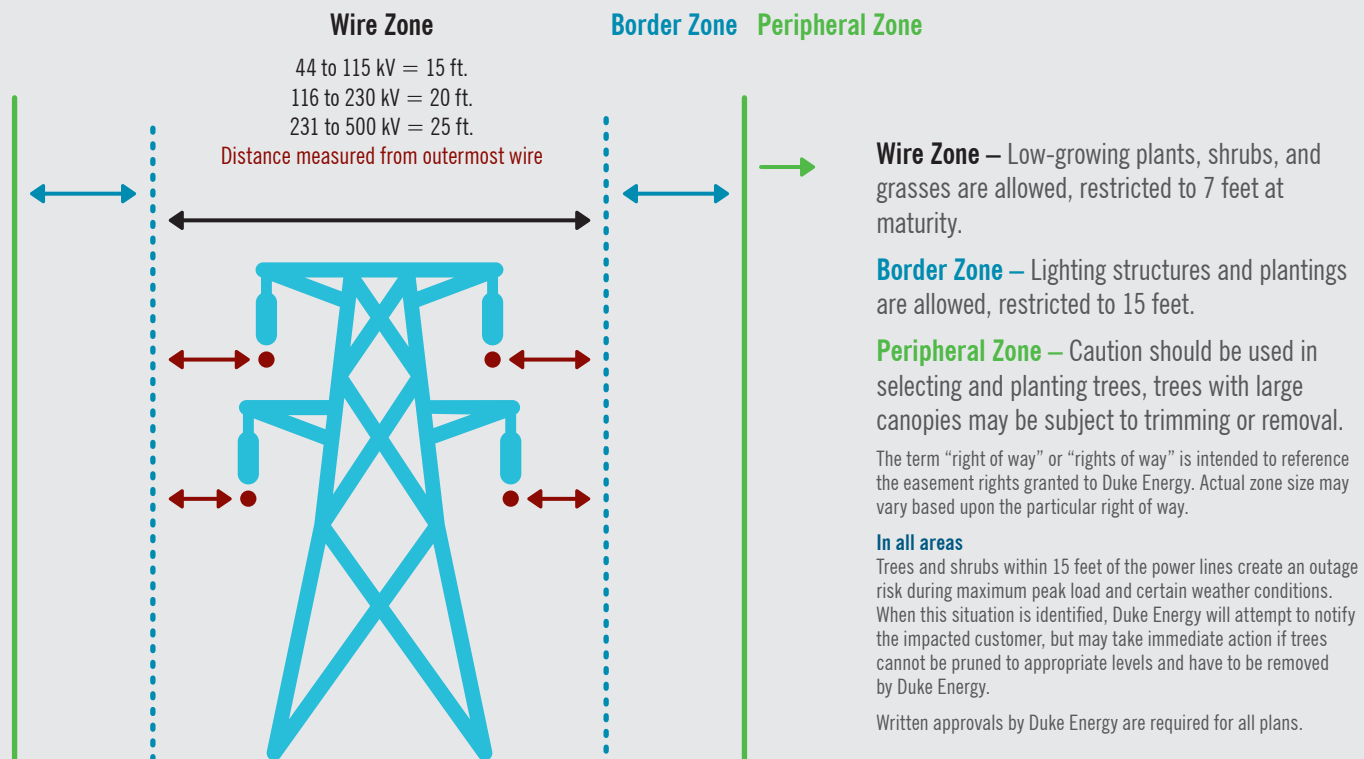
We're often asked why we remove some trees instead of trimming them. Trimming is not always healthy for the trees.

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:





119 East Fourth Street, M/C 1212-Main
Cincinnati, OH 45202
Telephone: (513) 287-4362
Facsimile: (513) 287-4386

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". The signature is written in dark ink and is positioned above the printed name.

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 %:	70%
	Site %:	80%
	Contribution %:	80%
	Placement %:	80%

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

5.	Species Rating:	30%
6.	Replacement Tree Size:	4.00 in/cm
	(Trunk Area) in^2/cm^2 TA_R	12.56
7.	Replacement Tree Cost:	585.00
Nursery 1:		585.00
Nursery 2:		600.00
Nursery 3:		570.00
8.	Installation Cost:	\$ 1,316.25
9.	Installed Tree Cost:	\$ 1,901.25
10.	Unit Tree Cost:	\$ 46.58 per in^2/cm^2

Calculations by Appraiser using Field and Regional Information

11.	Appraised Trunk Area:	38.47 in^2/cm^2
12.	Appraised Tree Trunk Increase:	25.91 in^2/cm^2
	TA_A OR ATA_A	38.47 in^2/cm^2
	<LESS> TA_R	12.56 in^2/cm^2
13.	Basic Tree Cost:	3,107.81
	Tree Trunk Increase (TA_{INCR})	25.91 in^2/cm^2
	Unit Tree Cost:	46.58
	Installed Tree Cost:	1,901.25
14.	Appraised Value:	326.32
	Basic Tree Cost:	3,107.81
	Species Rating:	30%
	Condition %:	50%
	Location %:	70%

Appraised Value: 326.32

Represents list options only

Represents a hard keyed figure

Represents a formula

Represents an on-page reference

VONDERHAAR APPRAISAL						
Number	Species	Species Rating	Diameter	Condition	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

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

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.

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

CACC-INT-01-004

REQUEST:

Which specific transmission lines (identified by circuit number, location, and affected Complainant) are owned by Duke and located on any part of the property owned by any Complainant in this case?

RESPONSE:

Objection. This Interrogatory is vague and ambiguous as to the definition and meaning of the phrase “and located on any part of the property owned by any Complainant.” With the exception of equipment such as a transmission tower, Duke Energy Ohio’s transmission lines typically are not “located on any” property. Without waiving said objection, to the extent discoverable, and in the spirit of discovery, All affected complainants reside on the circuits and between the locations listed below:

Circuits 3881 and 5483 between Dimmick and Montgomery Substations.
Circuits 3881 and 5487 between Montgomery and Remington Substations.
Circuit 6984 between Summerside and Clermont Substations.
Circuit 9482 between Feldman and Clermont Substations.

PERSON RESPONSIBLE:

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

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

CACC-INT-01-057

REQUEST:

If the answer CACC-INT-055 is affirmative, what is the cost recovery mechanism for which cost recovery is obtained for Duke's implementation of its vegetation management plan?

RESPONSE:

Objection. This Interrogatory seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Objecting further, the Interrogatory is vague, ambiguous, overly broad and unduly burdensome because it is not limited to the transmission lines at issue in this case. Without waiving said objections, Rider BTR.

PERSON RESPONSIBLE: Legal

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in

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

Summary: Motion To Amend The Second Amended Complaint electronically filed by Mrs. Kimberly W. Bojko on behalf of Complainants