



# Albany Court Reporting

518-557-5180

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CASE

CITIZENS AGAINST CLEAR CUTTING V DUKE ENERGY

HELD

November 2, 2018

WITNESS

KEVIN MCLOUGHLIN



BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO  
-----:

In the Matter of the Complaint of:

CITIZENS AGAINST CLEAR CUTTING, et al.,

Complainants,

v.

Case No:  
17-2344-EL-CSS

DUKE ENERGY OHIO, INC.,

Respondent.

-----:

DEPOSITION OF DUKE ENERGY OHIO, INC., the  
Respondent herein, by and through its Agent,

KEVIN McLOUGHLIN

HELD: FRIDAY, NOVEMBER 2, 2018

10 a.m. - 12:09 p.m.

1  
2 This is the Deposition of DUKE ENERGY OHIO, INC.,  
3 the Defendant herein, by and through its Agent,  
4 KEVIN McLOUGHLIN, taken pursuant to Notice, held  
5 at:

6  
7 ALBANY COURT REPORTING

8 125 WOLF ROAD

9 ALBANY, NY 12205  
10

11 Said Witness being duly sworn, and record  
12 reported via machine shorthand by Diana M.  
13 Russell, Court Reporter and Notary Public within  
14 and for the State of New York.  
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**I N D E X**  
**TO TESTIMONY**

<b>WITNESS</b>	<b>EXAM BY</b>	<b>PAGE</b>
KEVIN McLOUGHLIN	MR. ETTER	7
	MS. BOJKO	28

## STIPULATIONS

IT IS HEREBY STIPULATED, by and between the attorneys for the respective parties hereto, that: this Deposition may be signed and sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this examination was begun with the same force and effect as if signed and sworn to before the officer before whom said deposition is taken.

\* \* \* \* \*

**K. McLOUGHLIN**

THIS IS THE ORAL DEPOSITION OF KEVIN McLOUGHLIN,  
called as a Witness on behalf of the Respondent  
herein, DUKE ENERGY OHIO, INC., produced pursuant  
to NOTICE, on FRIDAY, NOVEMBER 2, 2018, before  
DIANA M. RUSSELL, a Court Reporter and Notary  
Public in and for the State of New York.

\* \* \* \* \*

KEVIN McLOUGHLIN

called as the witness, hereinbefore named,  
being first duly cautioned and sworn or affirmed  
by DIANA M. RUSSELL, the Court Reporter and Notary  
Public herein, to tell the truth, the whole truth,  
and nothing but the truth, was examined and  
testified as follows:

**EXAMINATION**

BY MR. ETTER:

Q Good morning, Mr. McLoughlin.

A Good morning.

Q My name is Terry Etter. I'm an  
attorney with the Office of the Ohio Consumers'  
Counsel, and we are deposing you for the case  
entitled Citizens Against Clear Cutting, et al,



**K. McLOUGHLIN**

versus Duke Energy before Public Commissions  
Utility Ohio.

I would like to go through a few  
things. First of all, please turn off your  
cell phone and any other electronic  
communication devices, so you don't communicate  
electronically with anyone not in the room with  
you.

A (Witness complies.)

Very good.

Q Is there anyone in the room with you,  
besides the Court Reporter?

A No, there is not.

Q Okay. I will be asking you questions  
about your testimony in this case. If you  
don't understand a question, please feel free  
to ask me or the Court Reporter to repeat it,  
or I will rephrase it, you know, for clarity,  
if necessary.

A Okay.

Q Please provide oral answers so they  
can be included in the record. I don't think

**K. McLOUGHLIN**

the Court Reporter can take nods or head-shakes, or anything like that.

A Understand.

Q If you reference a document when answering, please let us know and identify the document you're referencing.

Have you brought documents with you today?

A Just my testimony.

Q Oh, just your testimony; and the attachments that went with the testimony?

A No, just the 20 pages of my testimony.

Q Okay. If you need to take a break, feel free to let us know.

Do you have any questions about any of this?

A Not at this time; thank you.

Q Okay. Thank you.

First of all, in our Notice of Deposition, we had asked that you provide other documents, just other than your testimony.

**K. McLOUGHLIN**

So I don't know if Ms. Bojko will have any questions regarding any of the other documents, but I guess, possibly, we can work around that.

So please state your name and business address?

A My name is Kevin T. McLoughlin, and my business address is 520 Business Park Circle, Stoughton, Wisconsin, 53589.

Q Okay. And even though your business address is in Wisconsin, you live in New York State; is that correct?

A That is correct.

Q And did you submit written testimony that was filed on behalf of Duke Energy Ohio in this case on October 26, 2018?

A Yes.

Q And did you prepare the testimony yourself, or did someone assist you in preparing the testimony?

A I prepared the testimony myself and had other people review it, and made a few

**K. McLOUGHLIN**

changes, and then submitted -- or rewrote it myself and submitted it.

Q Who assisted you in preparing the testimony?

A Other people involved with the case; Elizabeth was one.

Q That is Elizabeth Watts?

A Yes.

Q Okay. Now, according to your testimony, you have never testified before the Public Utility Commission of Ohio; is that correct?

A That's correct.

Q And have you ever testified in any other case involving vegetation management?

A Yes.

Q And what cases were those?

A Those were cases in West Virginia, Pennsylvania, New York, Michigan.

Q Do you remember the utility -- or do you remember who you testified on behalf of in those cases?

**K. McLOUGHLIN**

A It was for a new transmission line being prepared to be built in, both, Pennsylvania and West Virginia, and that was American Electric Power. In New York State, I testified on behalf of the New York Power Pool and/or the New York Power Authority and/or the Empire State Electrical Research Corporation. In Michigan, it was the International Transmission Company, ITC.

Q Do you remember what years those cases were?

A Anywhere from the 1970s up through just a couple of years ago, 2015.

Q And was it just like three cases, or were these three or four cases that you mentioned here, or were they --

A They were multiple cases for ITC. The American Electric Power testimony was held in, both, West Virginia and Pennsylvania. And with the Power Pool, the ESERC and Power Authority, numerous cases throughout the 1970s, '80s, '90s.

**K. McLOUGHLIN**

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Q Do you remember any case numbers?

A No.

Q Now, have you ever been deposed before?

A Yes.

Q And which cases were you deposed in?

A I have been deposed in a couple of other cases that weren't transmission oriented, but the ones at Michigan, I have been deposed a couple of times out in Michigan, and ones in New York State, but I have been deposed on other issues.

Q On other issues, besides vegetation management?

A Yes.

Q What were those?

A Manufactured gas plant sites and coal ash utilization. My previous jobs, I was involved with industrial waste for the electrical utility industry.

Q And do you remember when those depositions occurred?

**K. McLOUGHLIN**

1  
2           A       The '90s, and the one on MGP Waste  
3 was in the early 2000s.

4           Q       Okay. Thank you.

5                    So you're a Senior Consultant with  
6 Environmental Consultants, Incorporated; is  
7 that correct?

8           A       Yes, that's correct.

9           Q       And I believe your resume that we  
10 received stated that you have been with  
11 Environmental Consultants since 2004?

12          A       That's correct.

13          Q       It's listed on your resume as part  
14 time. Has it always -- have you always worked  
15 part time for Environmental Consultants --

16          A       That's correct.

17          Q       -- or did you have full-time  
18 positions with them?

19          A       It has always been part time.

20          Q       Okay.

21          A       Case-by-case, situation-by-situation.

22          Q       Oh, okay. And have you had any other  
23 positions with Environmental Consultants?

**K. McLOUGHLIN**

A No.

Q Now, if you turn to page 1 of your testimony, and lines 18 and 19, you state that you base your beliefs, the beliefs that are expressed in your testimony, on your experience and personnel observations of Duke's work; do you see that?

A Yes, I do.

Q What pertinent observations of Duke's work did you make?

A We visited the line in question and viewed all of the property and the trees that Duke desires to remove from the right-of-way.

Q And when did that occur?

A Last March, I believe.

Q And did you review any of the work orders concerning the property involved in the case?

A I viewed -- I believe I viewed some of them.

Q Do you remember which ones?

A No.



**K. McLOUGHLIN**

Q Now, if you turn to page 4 of your testimony, lines 7 through 9, you state that, NERC has defined a ROW, which is right-of-way I presume, as a segment of land used for the route of a transmission line. A ROW should be devoid of vegetation that can interfere with transmission lines.

Do you see that?

A That's correct.

Q And which NERC standard are you referring to here?

A The NERC standard is the TVM, the transmission vegetation management standard, but that is the current standard, the FAC-003-4, I believe it is.

Q I'm sorry, can you repeat that?

A FAC-003-4, the current vegetation management standard by NERC.

Q Does that standard require that all vegetation be removed from the right-of-way?

A No, not all vegetation, but all vegetation that could interfere with the

**K. McLOUGHLIN**

conductors, overhead conductors, at any point in time.

Q So, by any point in time, do you know whether that means like 5, 10, 15 years down the road?

A It means the maturity, the height of maturity, of the species of the tree in question. So if you have a 5-foot Sugar Maple underneath a conductor, that should go; a 5-foot shrub, like a Viburnum or Dogwood, that could remain. So you have to look at it by species and the compatible height of that species.

Q Thank you.

Now, on page 5 of your testimony, and starting, I guess, on about line 14, you discuss a NERC/FERC study concerning a 2011 snowstorm.

Do you see that?

A Yes, that's correct, I see it.

Q Now, the snowstorm in question there was in the northeastern United States, and not

**K. McLOUGHLIN**

Duke Ohio territory; is that correct?

A That's correct.

Q Now, if you turn to page 5 -- well, we are on page 5.

A Yes, we are.

Q Okay. Lines -- let's see, maybe I have the wrong page number.

Okay. Yes, actually it's page 5, line 20. There is a FERC/NERC staff recommendation that, where possible and practical, utilities implement the industry best practices of ensuring that endangered trees are not present in the rights-of-way.

Do you see that?

A Yes, I do.

Q Okay. And I think you believe that a utility should follow the where possible and practical language of the NERC recommendation by reclaiming the full right-of-way where it has the legal right to do so; is that correct? That is on page 6, lines 6 and 7 of your testimony.

**K. McLOUGHLIN**

1  
2           A       Yes, that is on page 6, lines 6 and  
3       7, yes.

4           Q       Okay.

5           A       That's a reiteration of lines 1 and  
6       2, above which were from the staff report.

7           Q       And what is that opinion based on?

8           A       Based on 40-plus years of experience  
9       and looking at and evaluating various  
10       regulatory documents like this, and how they  
11       are implemented. So reclaiming a right-of-way  
12       is removing all of the trees that could -- that  
13       are or could grow up into the conductor from  
14       the right-of-way. That is what reclaiming  
15       means.

16          Q       And on page 6, lines 15 through 19 of  
17       your testimony, you state that Duke has the  
18       legal right to cut, trim or remove any trees,  
19       overhanging branches or other obstructions,  
20       both, within and without the limits of the  
21       right-of-way.

22                   Do you see that?

23          A       Yes.

**K. McLOUGHLIN**

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Q Are you an attorney?

A No, I'm not.

Q So you're not providing a legal opinion there as to whether they have the legal right to do so?

A No, I'm just reading the language of their easements.

Q Now, have you looked at any of the easements of the properties at issue in this case?

A Looked at the easements, yes; some of them. Yes, I saw a few of them and they say -- the ones I saw had the same language in them over and over again.

Q Now, if you turn to page 8 of your testimony --

A (Witness complies.)

Okay. I'm here.

Q Starting on line 15, you discuss a flash-over event involving a large tree that had been topped.

Did you see that?

**K. McLOUGHLIN**

A Yes, that's correct.

Q Which power company are you referring to?

A New York Power Authority.

Q I'm sorry?

A The New York Power Authority.

Q And do you know when that incident occurred?

A It occurred in the mid-'90s, 1990s.

Q Do you have firsthand knowledge of the event or did you just read about it?

A I talked to the landowner, who had requested the tree be trimmed, and it was trimmed in front of his house year-after-year; and lo and behold, one year, a flash-over occurred, went through the tree into the ground, into the sewer pipe up, into the bathroom, and actually blew a hole in the wall and exploded the bathroom. Fortunately, no one was home at that time. I heard it from the company people and I heard it from the landowner; and the landowner in question would

**K. McLOUGHLIN**

then assist me with other landowners in the area to convince them to have their trees removed instead of trimmed. He would relate the story to them of what happened with him and that was very convincing to many of the other neighbors, so we were able to remove quite a number of trees from the right-of-way at that point in time after that event.

Q Now, on page 9, line 6 of your testimony, you state a flash-over event can occur on any high voltage transmission line; is that correct?

A That's correct.

Q And how many such incidents are you aware of?

A Well, I'm aware of many dozens and dozens of incidents; hundreds probably aware of. I have only witnessed three.

Q So would you consider flash-over events to be common or rare?

A They were once much more common than they are today because of the NERC requirements

**K. McLOUGHLIN**

and million-dollar-a-day fines. NERC has said, even an instantaneous flash-over that doesn't cause the line to go out of service, is an event to be prosecuted for in a sense. That is a violation of the standards. It will invoke investigations, monetary penalties, sanctions, and mitigation measures. So the companies now are very strict on removing vegetation from their power lines, and the number of these events has fallen considerably since the NERC standards went into effect in 2007.

Q Now, if you turn to page 10 of your testimony.

A (Witness complies.)

Q In the question and answer beginning on 10, and following through on page 11, you discussed desirable and undesirable plans.

Do you see that?

A Yes, I do.

Q What do you consider to be desirable plans?

A All herbaceous material, those of the



**K. McLOUGHLIN**

perennial herbs and grasses, sedges, many woody vines, many woody shrubs, ferns, mosses, lichen; all of the low-growing vegetation with a dramatic exception of tall-growing trees. There are only a few trees that remain short enough that would be compatible with places on the right-of-way.

Q And do you recommend removing all desirable plants from a transmission right-of-way?

A Not at all. In fact, I advocate the retention and the efforts be made to promote all of the low-growing vegetation on the right-of-way when removing the trees.

Q Why is that?

A Removing the trees, you want to minimize your impact on the lower-growing vegetation that is there so it continues to grow and spread and cover the right-of-way, and the low-growing vegetation will then become an impediment for the high-growing trees on the right-of-way. So there is compatible

**K. McLOUGHLIN**

vegetation that is very desirable on the right-of-way, and incompatible vegetation that is undesirable on the right-of-way because its growth characteristics make it capable of growing up towards the wire security zones.

Q And what would you consider to be undesirable plants?

A Tall-growing trees.

Q Just tall-growing trees?

A All of your tall-growing trees, and perhaps some very tall-growing shrubs in some locations, that would be classified as shrubs, multiple stems don't have one major bow, but some can get up over 20 feet. So those have to be carefully watched, one, of course is Willows. There is a shrubby willow and tall-growing Willow, and sometimes they hybridize and it's sometimes hard to tell apart.

Q And I was going to ask you to give us examples of undesirable plants.

A Maple, Hickory, Birch, Pine, Fir,

**K. McLOUGHLIN**

Hemlock, Basswood, Beach, Cherry; you want some more?

Q No, that's fine. Now, if you turn to page 21 of your testimony.

A (Witness complies.)

Q And there are no line numbers for these questions and answers, so...

A I noticed that myself. Okay.

Q Okay. You state in that unnumbered question -- or that answer, there were no line numbers, that you have discussed Duke's integrated vegetation management policies with Duke's engineers and other professionals.

Do you see that?

A Yes, that's correct.

Q Okay. And what are the names -- do you know the names of the persons that you had these discussions with?

A That is one of my -- I'm bad with names. As I get older, I forget names; faces, no problem.

Q When did the discussions take place?

**K. McLOUGHLIN**

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2           A       Back in March, when we were out in  
3 the field.

4           Q       Okay.

5           A       But I also worked for Duke before,  
6 and some of the same individuals were involved;  
7 and in my job, also, I get to go out and visit  
8 companies, in a non-adversarial manner, such as  
9 this, and talk to them about their practices  
10 and programs, and I have been out with Duke in  
11 previous years. So I'm fairly familiar with  
12 their -- what they are trying to do in this  
13 case.

14          Q       Now, were the persons that you spoke  
15 with Duke employees?

16          A       Yes. Yes, for the most part, I think  
17 I spoke to one individual who was a contractor,  
18 and he subsequently became a Duke employee.

19          Q       Okay. And do you remember his name?

20          A       No, I don't.

21          Q       Okay.

22                 MR. ETTER: Mr. McLoughlin, that's  
23 all of the questions I have; thank you.

**K. McLOUGHLIN**

THE WITNESS: Thank you. Very good  
job.

EXAMINATION

BY MS. BOJKO:

Q Hi, Mr. McLoughlin. I represent the  
Complainant in this case, and I have some  
additional questions for you.

A Certainly.

Q In your role as Senior Consultant,  
can you explain -- or in your position as  
Senior Consultant for Environmental  
Consultants, Inc., can you explain a little  
more about what your role is in that position?

A Over the years, after I retired in  
2004, ECI would come to me with various  
projects and ask if I was willing and able to  
work on them, and if I had time and I thought  
the project was of particular interest, I would  
do so. So I have worked, you know, writing  
transmission vegetation management plans for  
companies under the auspices of ECI, I worked  
on a couple of Electrical Power Institute

**K. McLOUGHLIN**

reports and projects working with ECI, I worked on new transmission line routing issues, the clearing and use of herbicides for ECI, and worked on cases like this. The irony is, I worked on many cases going to court, have been deposed, but none of the cases ended up in court; they all ended up being worked out prior to the court case.

Q And for ECI, your acronym, that stands for Environmental Consultants, Inc.; is that correct?

A That's correct.

Q So for -- well, can you tell me -- I don't want your customer list, but can you tell me the typical clients you work on behalf of ECI; are those utility companies?

A Utility companies, or work on behalf of utility companies. Like I said, I worked on a couple of major Electric Power Institute projects, those were funded by the utilities, and they were about transmission vegetation management matters. So either for utilities or

**K. McLOUGHLIN**

on behalf of utilities, that is what I have been working on solely for ECI.

Q And you're not an engineer, are you?

A No, I'm a Forester by training.

Q Okay. And are you a certified Arborist?

A No, I'm not. I worked only in transmission distribution. Electrical distribution is where the certified Arborist comes in, where they do a lot of tree trimming, vegetation management --

Q And so -- I'm sorry.

A What's that?

Q Go ahead.

A Vegetation management on transmission lines includes the administration of integrated pest management, which doesn't have much to do with tree trimming.

Q Okay. And have you ever worked in the design or construction of electrical transmission lines?

A Yes.

**K. McLOUGHLIN**

Q Were you involved in the creation of the NERC standards involving vegetation management?

A Not at all.

Q Have you ever consulted with -- I think you did mention that you worked with AEP. Have you ever consulted with the Ohio utilities, AEP Ohio?

A No, they were in other states, but I also worked for Duke down in Kentucky on a job, and up in Michigan on quite a number of cases for ITC.

Q And you have never worked for First Energy or Dayton Power & Light in Ohio?

A No.

Q You state on page 1 of your testimony, lines 8 through 10, you received a BS in Natural Resource Management from the State College of New York, College of Environmental Science and Forestry.

What course work was involved in obtaining that degree?



**K. McLOUGHLIN**

A A lot of forestry, one was dendrology, which is the science of trees, tree identification, a lot of terrestrial ecology courses, limb knowledge, wildlife management, water shed management, hydrology, you know, and silviculture courses. So that's about it from, you know, a generalization standpoint.

Q And what professional certifications do you hold? We talked about the Arborist certifications, but are there others that you do hold?

A I was a certified pesticide applicator. I held that until I got out of the direct business of, you know, overseeing pesticides being applied.

Q Any others?

A No.

Q In your field, is there, like, an ongoing professional training requirement, ongoing continuing education classes, that you must take?

A For the certified pesticide

**K. McLOUGHLIN**

applicator, there is, but for my field, what I have done after retirement, it's simply taking numerous different jobs on different subject matter dealing with transmission lines, and that way, I have always kept up with what's going on.

Q And on page 3, line 2, you talk about existing NERC standards, and those standards that you're referencing apply to 200 kv; is that correct?

A 200 kv and up is the bright line for the NERC TVM standards. There are exceptions.

Q And also on page 3, lines 10 through 13, you talk about, that you believe there is a strong likelihood that the NERC standard will apply to the lower voltages.

Do you see that?

A I do see that.

Q What knowledge or belief are you basing your belief on?

A One of the jobs that I had to do was to evaluate those NERC standards and see what

**K. McLOUGHLIN**

the chances were for future of the 200 kv standard going down to 100 kv. Basically, all other NERC standards are 100 kv, with exceptions down to 69 kv. The NERC bulk electric system definition has a bright line for 100 kv. The only outlying standard, that I'm aware of at this time, that has 200 kv as their threshold, is the TVM standard; and for what reason, I'm not 100 percent fully aware. I have never received a reason as to why, except that the industry feels that it would be very expensive to bring the standard down to 100 kv. That is the only reason I have ever heard of them not going there, but I see no reason why, in the future, with all of the other standards having a threshold of 100 kv, with exception down to 69 kv, and the BES standard, which was just completed a few years ago, the rule making that, by FERC and NERC, having 100 kv as its definition of what the bulk electric system is, I would think that it would go down to 100 kv; and if you read

**K. McLOUGHLIN**

thoroughly the blackout report, you will see that not only did four 345 kv lines go out, one early in the day and three later on in the day, but sixteen 138s went out simultaneously. All of the emphasis on the NERC evaluation was on the 345 lines. It was said that all sixteen of the 138 lines faulted the ground, sixteen 138s faulted the ground. No way it could fault the ground without hitting vegetation first. So all of the 138s went out as well, so not just the 345 that went down. It was the 138 that helped to cause the huge blackout.

So for all of those reasons, I feel impending in the future, is the standard going to 100 kv.

Q And that blackout you're referring to is the 2003-2004 blackout?

A The 2003 northeast blackout; that's correct.

Q Okay.

A Which originated in Ohio.

Q Okay. And the standard that you're

**K. McLOUGHLIN**

referencing on page 3 went into effect in 2007,  
did you say?

A Yes, the first one went into effect.

Q It went into effect after the  
blackout?

A Yes. It was the final straw that  
caused the standard that the Federal government  
passed by the 2005 Energy Act, which set the  
stage for creation of NERC as the ERO, the  
Electrical Reliability Organization.

Q And also, you haven't had -- I'm  
still referring to your statement.

Based on your knowledge and  
experience, on lines 10 and 11, you haven't had  
discussions with NERC and FERC about the change  
of roles, have you?

A I have asked a few people over the  
years, why is it 200 kv, and I have not  
received, what I felt was, a really good  
answer; it just is.

Q And are you aware of any pending  
cases to change the NERC rules?

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A Yes, there are -- well, not pending cases, but people who feel it should be -- the standard, not the rule, but the standard should be 100 kv for the TVM, just like it is for all other NERC standards. There are now hundreds of them.

Q But is there a pending of current rule in the making?

A No, not that I know of or am aware of.

Q I'm trying not to repeat questions from Mr. Etter, so give me a second to go around a little bit.

I'm not sure if I asked you: Are you an engineer?

A No.

Q Okay. When you told Mr. Etter that you visited the property back in March, you said last March, are you referring to March of 2018?

A Yes, that's correct.

Q And that was after the complaints

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were filed in this case?

A I believe so.

Q And how long was your visit?

A A full day in the field and a day in the offices.

Q And you stated that you walked the circuit?

A We walked, partially, the circuit. Went in from nearby roads and access routes, looked at some of the trees in question, but I did not walk the entire circuit end-to-end.

Q Do you know which circuit you reviewed?

A Not off the top of my head. The circuit in question.

Q Was it your understanding that there is one circuit in question?

A A 138 line that we saw.

Q And did you state that you evaluated each tree on that circuit, or no?

A No, we saw probably all of them at least from a distance, but, again, my testimony

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goes to the species and the capability of that species of growing into the conductors. So it's relatively fairly easy to determine; almost black and white.

Q So you didn't walk the line, but you did an overview and were able to tell the species of each tree in the right-of-way?

A Pretty much, yes, by the size and form. We could see different trees and they were pointed out to us. We did not want to go on every individual property, so we looked at a distance, sometimes through binoculars, and like I said, we did not walk road-to-road, you know, the entire line, but we went to every road crossing and down access routes so we could see the line in question very close-up.

Q And that was your only time in Ohio walking this line --

A Yes.

Q -- with regard to the complaint?

A That's correct, last March.

Q And you weren't involved before March



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in implementing the vegetation management plan of Duke, were you?

A No.

Q Are you aware of any events occurring in Duke's territory similar to the 2003 blackout?

A Nothing has been similar to the 2003 blackout that I'm aware of.

Q On the top of page 3, line 1, you talk about existing NERC regulations.

Is that the one you were talking about identified as NERC, FAC-003-04?

A That's correct. All of the existing -- there has been FAC-003-00, 1, 2, 3 and now 4, and all of them had that 200 kv as their bright line, with certain exceptions. And those exceptions, the language for the exceptions, has changed over time.

Q And is there a certain NERC standard that only applies to 345 kv lines?

A No. The standards apply to all lines 200 kv and above, with certain lower voltage

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exceptions that might be included, as well.

Q On line 4 -- or, I'm sorry, page 4, line 1, you talk about maintaining clearance between transmission lines and vegetation.

Do you see that?

A Yes.

Q And can you explain to me what you mean by maintaining clearances?

A Well, basically, the utility has to maintain certain clearances between the vegetation and lines at all times. So, maintaining that is something that the utilities do through vegetation management, and the most appropriate vegetation management is IVM, and IVM calls for the removal of all incompatible vegetation.

Q Does the IVM call for maintaining clearances?

A It does that by removing the vegetation that could be causing a problem with clearances. If the vegetation isn't there, there is no clearance problem.

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Q I apologize, I don't mean to talk over you. It's hard for me to know when you're done speaking, so I apologize.

What are the minimum clearances set forth in the NERC standards?

A Those are clearances that must be kept, at all times, under all conditions; and there is a table in NERC that specifies the clearances at different elevation levels. So as you get higher in elevation, the mountainous terrain, the air gets thinner and, therefore, the flash-over can be greater distance. So the distances between any growing vegetation of the conductors increases with the elevation.

So in that table, for all of the different voltages, are the distances set in the standards, themselves.

Q And which distances applied to the line -- the circuit that is in question?

A That would be 138 kv, and most likely there in Ohio, probably under 500 feet; or if it's in a hilly area -- well, it would be under

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500 feet, and that would be the table. That would be where you would find it in the table, under 500 feet and 138 kv.

Q And do you know that clearance listed in the table?

A Off the top of my head, I think it's only a few feet.

Q Is that table in the NERC standard FAC-003-01 that is on line 4, page 4 of your testimony, or is that table in the NERC standard FAC-003-04?

A That would be in 4, that new table.

Q And was that table attached to your testimony?

A I'm not sure which one -- I believe somebody else was referring to that, and I don't know if it was attached to mine or not.

Q Okay. It looks like it's titled -- there is a table called Minimum Vegetation Clearance Distances MVCD?

A MVCD, that's correct, and that would be the table, both, in feet and meters.

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Q Okay. And just for the clarity of the record, I'm looking at attachment 2 to your testimony, page 16 of 31.

A I don't have that.

Q Okay. And so, am I understanding your testimony correctly, that if a tree doesn't interfere -- if it doesn't interfere with the transmission line and it's compatible, then it is -- then you believe it's allowed to stay in the right-of-way, regardless of the species and type of vegetation?

A No. Again, depending on the species and its height/growth potential, that is what you have to look at. So if a tree is in the right-of-way and it doesn't pose a current threat, it might and will pose a future threat. So you don't let the tree continue to grow and pose that threat, you remove it early on when it's actually less expensive and less dangerous to remove. The taller that tree gets, it's more dangerous to take down, the more threat it is to the conductors. So why have that threat;

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remove the tree early on, based on its species, height/growth characteristics.

Q You would agree that there is a distinction in the right-of-way between incompatible and compatible; is that what I'm hearing you say?

A Very big distinction.

Q Okay. And you would agree, I think I heard you explain to me earlier, and in the examples to Mr. Etter, you would agree that there are certain trees or vegetation that could be short enough? You keep staying tall enough, so could they be short enough that they would not interfere with the transmission lines and could remain in the right-of-way?

A Those species we saw are typically shrubby species that would not grow more than 7 feet, in some cases, 10 feet in others. So depending if they are in the wire zone or border zone, they could be retained on the right-of-way, but, again, it's not if it's short enough right now, it's if they are going

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to remain short throughout their life cycle.

So, again, you have to go by species. Does it have the potential to grow up into a wire security zone.

Q And you would agree, from your forestry experience, there are different hybrids of tree species and tree species that are called ornamental trees, and those trees would never get taller than -- some of them are 7 to 20 feet. Would you agree with that?

A Yes. There are certain cultivar hybrids, exotically developed landscape trees, that would meet the height growth requirements, but you have to be careful on some of those. I have seen where some short-stature trees, their growth was supposed to be 20 feet, went to 25 and 30, and they had to be removed. I have seen this repeatedly. The problem with a tree is, as long as it's alive, it grows. It may only grow incrementally a couple of inches, but it grows. If it doesn't grow, it dies. So you have to have plants that are going to stay put,

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so to speak, from their height characteristic, and I know some species are -- they are exhibited out there that they won't grow more than 20 feet or 25 feet. Well, there are always exceptions to the rules, and many of these trees will get a little taller, and that's the problem. You have to be very careful about choosing a tree under a power line based upon a height recommendation. If it's close to the power line in its maturity, it probably is a tree that is unfit to be put in that location.

Q But you would agree with me that if there is a tree that is 7 to 15 feet at maturity, that you would consider that compatible because it's not going to come anywhere near the power lines?

A That is certainly compatible in the border zone. Under 7 feet wouldn't be quite compatible in the wire zone.

Q So if the transmission wires are 50 feet in the air and there is a tree that is 20



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feet at maturity, that 20-foot tree at maturity is still 30 feet away from transmission line, in my example, and that would be compatible in the transmission right-of-way?

A Again, 50 feet of the transmission line, it depends on where you took the measurement from and what time of year, the loading of that line, et cetera. These lines sag, and if you are out in that mid-section of the line, it sags the greatest.

So you would have to look at the design parameters of what they call the near worst case which the line is designed for at that location, not just look at it on a given day, you know, in the middle the day or on a weekend, or something where the load might be light and temperature would be high and the line high in the air. So you have to look at these conditions, as well.

Q Thank you for that. I appreciate that.

So under that circumstance, let's use

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your example, say that the design characteristics are such that the high load of that transmission wire could sag down to, instead of in my 50-foot example, it went to 40 feet. In that 40 feet, if there is still 20 feet difference from my 20-foot tree and transmission line at 40 feet, you would believe that would be compatible in the transmission right-of-way?

A Yes. If you could guarantee that tree wasn't going to grow more than 20 feet, because trees grow and lines sag, and even the designed sag can be compromised under very abnormal conditions. One is emergency loading, another is when the wind doesn't blow at 2 miles an hour or greater. When you have low winds, the lines heat up higher, so during the summer, with a high ambient temperature with high loadings, all of a sudden you have a dead calm, lines can sink lower than their design.

Now, 20-foot trees, as I mentioned don't always stay at 20 feet, they may go to

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25, they may go to 30. So, again, your playing with the odds here. The goal of Duke is zero outages caused by trees. Here, you're asking them to take an odd; it's low, it's a low odd, but it still can happen. So therefore, they are conservative in their estimates, as I am.

Q Could you look at page 4 of your testimony, line 14?

A (Witness complies.)

Q You use the mandatory NERC standards, and I want to make sure I understand your testimony.

You are, again, talking about the 200 kv transmission vegetation management standard, which is in the FAC-003-04?

A Right.

Q Okay.

A That's correct. That is a mandatory. The NERC standards, prior to them being declared the ERO, were voluntary. Now, NERC standards are mandatory and enforceable.

Q Up above, you referenced the

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FAC-003-01.

Just so I understand, I think you explained this to me, it is 003-01, then went to 2, and then 3, and now 4. That is an update of the same transmission vegetation management standard?

A Yes, that's correct.

Q Okay.; thanks.

Can you go to page 5 of your testimony, please?

A (Witness complies.)

Q Line 9, starting -- the sentence starts on line 9. You say, the ROW in this case contains specific language.

When you reference ROW, are you referring to an easement?

A The right-of-way. I'm referring to the right-of-way.

Q But when you say the right-of-way contained specific language, what document are you referring to that would have that specific language in it?

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A It would be their easement documents.

Q Okay. And so, you state that you have reviewed some of the easement language, and I think if I understood the response to Mr. Etter, page 6, line 15 through 22, this is the easement language that you are talking about; is that right?

A I believe so. That was the generic language that I took notes on.

Q Okay. Do you know if it's quoted from the easement or this is a summary of it?

A Being that it doesn't have quotation mark around it, I believe it's a summary.

Q Okay.

A My interpretation.

Q Okay. But you believe that this language -- or your interpretation of the language is what is applicable to the right-of-way at issue in this case?

A That's correct.

Q Okay. So you understand that the easement language talks about the companies,

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engineers or other professionals evaluating the right-of-way, and the trees and making the decision as to the safety and reliability of the lines in making that decision, what to do with the vegetation?

A That's correct.

Q If you could turn to page 5.

A (Witness complies.)

Q There is a quote that you do on lines 16 through 20.

Do you see that?

A Yes.

Q Do you know which trees fell into the transmission lines; what types of trees?

A I believe the report gets into a little detail on that, but I don't recall offhand, but the quotes are from that report, that roughly 25 percent of the confirmed vegetation-related transmission line outages during the October event were caused by trees that fell into transmission lines from inside the utility's full right-of-way. These

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right-of-way trees were all located outside of the utility's maintained right-of-way.

Q And were you involved in the staff report --

A No, I was not.

Q -- when they came to that conclusion?

A No, not at all.

Q And have you ever worked at FERC?

A No.

Q And I'm assuming you have never worked at NERC, either?

A No.

Q Okay. If you could look at page 7 of your testimony.

A (Witness complies.)

Q First, when you reference a flash-over, is a flash-over the same as arching?

A Yes.

Q And let's look at line 12. I think this gets to what we were talking about earlier, so let's connect the dots.

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We were talking about the minimal clearances and whether Ohio was 50 -- 50 feet above sea level, this is -- the 2.3 feet is what you were referring to when you said the minimum clearance distance was a few feet; is that correct?

A Yes.

Q Okay. On line 3, you reference TVM best management practices. What -- is that a document somewhere?

A TVM best management practices -- well, there are IVM standards that have come out and ANSI 300 or something, and BMP document for implementing these IVM standards that the -- I believe the Utility Arborist Association has put out, so there is some TVM best management practices, but often listed in their vegetation management plans, best management practices are found there, as well.

Q So let's talk about ANSI 300. What is ANSI?

A American National Standards



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Institute. They have an IVM standard.

Q Is that State-agency run -- or what is ANSI?

A The American National Standards Institute. I have never been involved in it, but they do all kinds of standards for all sorts of industries. I'm not a member and didn't have anything to do with the IVM standard or its best management practices or documents.

Q So it's fair to say that you weren't involved in the creation of any ANSI standards?

A That's correct.

Q On line 4 of page 7, you talk about close proximity to one another, and you're talking about the trees and power lines. What does close proximity mean?

A Just what it says; fairly close proximity. Because of the dynamic nature of trees and power lines, the two just can't co-exist anywhere near each other and have safety and reliability confirmed.

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Q Can you put close proximity in feet for me?

A Well, some lines have what are called wire security zones, which are measured at, like I said, the designed low capacity of the line -- excuse me, at the designed near worst case, which is 100 percent line loading at certain ambient temperatures and certain ambient pressure with certain wind speed, those lines will sag to that point given those conditions. From there, there is what is called a wire security zone. Each company is a little difficult, but for 138 line, anywhere from 5 to 10 feet, where they cannot have vegetation enter that zone, period, or something needs to be done immediately.

So it's based on the low sagging line, the height of the trees currently, and even in the future, next couple of growing seasons. So if a right-of-way vegetation management were to go out and look at a tree that was a certain height, and he looks at that

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point, that the low sag of the line would be, say, 28 feet off the ground, and the tree was 18 feet tall, well, that's 10 feet away from a 138 line. It's kind of right outside of the wire security zone at that point in time. However, they are not going to be out there for a couple of years on the routine maintenance, and hence, that tree might have to go now.

So they don't want to take the risk of that tree growing taller or that line sagging a little bit more beyond the design capacity of the line. So it's a relative thing. Basically, tall-growing trees, by species, can't exist with power lines and you want to take them out early before they become big and expensive, and more dangerous to remove.

Q Okay. I'm trying to make sure I cover everything, but don't repeat any of the questions that have been asked. So give me one minute.

A No problem; take your time.

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Q Let's turn to page 8 of your testimony.

A (Witness complies.)

Q I think we talked about the one event that you referenced on line 15, that happened in New York in the mid-1990s; is that correct?

A The two flash-overs on a 115 line were, yes, in the early '90s.

Q Okay.

A The 230 kv line, I believe, was in the '70s.

Q And in both of these instances, you believe that vegetation was 5 feet of clearance; is that correct?

A Exceeded 5 feet. It was more in the order of probably 8 or 9 feet at the time. These were -- the 115 lines were a study area for research project, looking at different management techniques for tall vegetation that had been allowed to get too tall in the right-of-way. So we were doing a cost analysis of what it -- the additional cost of handling

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and managing tall vegetation, and those trees were getting fairly tall. The research had not progressed to the point of taking them down yet, I went out to actually check to make sure that the trees in question were still outside of the wire security zone. So for a 115 line, the wire security zone had been set at about 5 feet. Again, the height of the vegetation was well outside of that 5 foot zone, and that is at minimum clearance, and I just happened to be out there looking at it at the time when two different flash-overs occurred within minutes of one another. And that is when I really began wondering, how could a flash-over occur when I just measured the vegetation and didn't get -- wasn't anywhere near the line at the time. How did it occur?

Q So you mentioned that you were aware of hundreds of flash-over events, but only witnessed three. The hundreds you're aware of, do you know what voltages those occurred on?

A When I worked at New York Power Pool

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for 20 years, we had, you know, realtime management of those transmission lines, all of the transmission lines in New York State, basically, 115 and above, and they happened on all sorts of lines; 115, 138, 230, 345, 500, and 765, and these were instantaneous trips, many of them. Some did shut the line off on a rare occasion.

Q On page 8, line 15, you talk about another flash-over event that was on a 345 kv line.

Do you see that?

A Yes.

Q Do you know what the clearance was between the power line and the tree for this event?

A Well, again, it's a dynamic situation. The tree was being trimmed almost annually because it was out in front of the house of the landowner and it had never had a problem. They trimmed it what they thought -- the crews thought was low enough, but, you

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know, every year, the trees grow, and some years, they grow a little more than others, and as I mentioned about the power line, sometimes they sag more than they should. So something happened, because it was, again, a power line that was outside of the wire zone, as far as the company was concerned, and it still flashed-over.

So, again, what happened; did the tree grow a little more, did the line sag a little more, or did the flash-over occur over a greater distance than one could predict by any of the equations or studies that had been done to-date, who knows, but it happened.

Q Do you know what the clearance was when the event happened?

A No, just that it was, again, adequate insofar as the company felt, at that time, when they did the maintenance, and they had been doing it for years, topping that tree with a new growth year-after-year.

Q Was this incident in New York?

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A Yes, that's correct.

Q Okay. And this was -- you were at the New York Power Authority at the time?

A I was not there at the time of the incident. I was there afterwards.

Q And you were consulting with the New York Power Authority?

A At that time, I was working for the New York Power Authority when I came in to review the situation.

Q And that situation was in the mid-'90s?

A It happened in the mid-'90s, before I arrived. I was there 1998 to 2004.

Q And did you participate in any kind of court proceeding or Administrative Agents Commission proceeding, or anything, about this incident?

A No, none, zero.

Q And you wouldn't have offered testimony about this event?

A No, I would not.



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Q Are you familiar with the term  
clear-cutting?

A Yes, I am.

Q And what does it mean to you?

A Well, in forestry, removing all of  
the merchantable timber off of a site. In  
right-of-way work, I would imagine removing all  
of the vegetation off the site.

Q And would that include even  
compatible vegetation, as we have been  
discussing it?

A Well, in some cases, it might. For  
instance, if you are using a mowing machine to  
mow the right-of-way, then, all of the  
vegetation gets mowed. Everything is left flat  
on the right of way. So in a sense, that would  
include the lower-growing vegetation, although,  
mowing lower-growing vegetation often will come  
back very, very quickly; and ironically, the  
trees will, too. Most hardwood trees sprout  
very rapidly from their root collar zones and  
from many dormant buds on the stump remaining

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after the machine has mowed it; or in some instances, trees will root sucker. In other words, anywhere their roots are, like Aspens, you will get new stems up. So when you mow or cut an Aspen tree, you will get sprouts from the root collar, dormant buds and from the root. So you cut one stem and you may get a hundred back.

Does that answer your question about clear-cutting?

Q Yes. Thank you.

You talked about cost earlier and doing research about cost. In your experience -- in the research you have conducted, is it cheaper for utilities to do clear-cutting, from a cost perspective, than selective removal of targeted incompatible vegetation?

A Well, I always recommend selective removal of targeting incompatible vegetation. The irony is, if all you have on a site is trees, what you have left over at the end of it is, in effect, a clear-cut, even though you

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hand-cut every tree, stem, say with a chain saw, and applied a herbicide to the stump so it won't sprout. You may end up with trees lying on the ground and no vegetation because the trees occupied a hundred percent of the site. They had crowded out all of the desirable vegetation, shaded it out, and now all you had were trees to treat.

In other areas, where the trees aren't as dense, there may be lower-growing vegetation surrounding the tree, and hence, when you cut the tree and apply some herbicide to the stump, all of the vegetation is freed up and will grow in absence of the tree, and will help promote vegetative cover that is compatible with the right-of-way objectives. So, it all depends on the density of the trees, the height of the trees. Even during normal maintenance, if you wait too long, the trees get too tall, they begin to shade out the undergrowth, and when you go back to cut them, it may end up with what looks like a clear-cut.

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If you don't use a herbicide to thwart the clear-cut of the tree, it will grow enormously more than a tree left uncut. So you can cut a tree down on a right-of-way and it might grow 5 to 15 feet that first year. So what you want to do is selectively remove all of the tall-growing trees, selectively apply herbicide and promote all of the low-growing vegetation that will help thwart the recovery of the trees. In other words, it will be such thick vegetation out there, and just through pure physics alone, two things can't occupy the same place at the same time. Trees will be excluded through the physical ability of the low-growing plants. They also suck up nutrients and they have shade effects. They also will suck up moisture, so it makes it difficult for the tree seedlings to get a hold on the right-of-way. Once you have a nice, compatible, vegetative cover established, that is your ultimate goal for wildland right-of-way with IVM.

Q Okay. I appreciate that discussion,

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but I'm talking in general.

Do you have an opinion, if you have a piece of land that has both mixed compatible and incompatible vegetation, as you have described here very thoroughly, thank you, if you have the two things, and the utility goes in and clear-cuts versus selectively removing just the incompatible vegetation, which one would cost less?

A Well, sometimes, again, it all depends on the density and height of the incompatible vegetation removing, those are your two most expensive items. If you have to dispose of all of the debris, all of the woody material that you cut, that doubles or triples the cost of what you have to do. If it's a wildland situation, and the area is predominantly trees, what some people do is mow, and then, as the trees re-sprout, the following year, you selectively spray the re-sprouting trees so as to remove them from the right-of-way at that point in time.

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So in the mean time, everything is mowed, everything has been cut, but the only thing being treated with herbicides are the tall-growing trees. So the cost depends on the height of the trees, the density of the trees.

I helped one company bid their right-of-ways based on height and density, and it went from over \$1,000 an acre for high density, tall trees to be thoroughly removed from the site and all of the debris to be removed, to under \$30 an acre for low density trees of low height, and those low density were less than 50 stems per acre and over 3,000 stems per acre for the high density, and they were all well-over 6 feet. So those are your cost ranges.

Q And is it fair to say you would not consider clear-cutting a part of an integrated vegetation management plan?

A Again, it all depends on the density of the trees. If you have only trees in the right-of-way, in effect, you're going to be

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clear-cutting; if that is all that's out there, are trees. So if you have desirable vegetation in any abundance at all, there is a good chance you could save it through selective removal of the trees. If you have patches of herbaceous plants or a lot of shrubbery growing in a section, you could avoid mowing it and just cutting the trees around it. But again, it depends on the overall height and density of the trees what technique is the most viable to get the right-of-way into a condition that is more conducive to true IVM.

Q Would you consider herbicide application in a general widespread manner a form of clear-cutting?

A Yes. If you are using high volume foliar application over the entire right-of-way, sort of indiscriminately trying on to uniformly clear the right-of-way, that would be clear-cutting. It would depend on the height. I have seen helicopter spraying, which I don't advocate at all, that is appropriate

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with high density, and that way you get rid of all of the trees at once, and you do some hot spotting to get trees that were skipped or missed, and hopefully next time, around more desirable vegetation has arrived in the absence of the trees, and the next cycle, you're more selective. So it all depends on what you have on the right-of-way, which technique works and, unfortunately, past management has just cut and cut and cut, and the trees have sprouted and sprouted and sprouted. All you have on the right-of-way is tall-growing trees, growing very quickly from their undisturbed root systems, as I mentioned. You know, a tree seedling might grow a few inches, but a tree that has been cut without any and herbicide application can sprout 5 to 15 feet in the first year, 5 to 10 feet the second year, and 5 feet or more the third year. It instigates a wounding hormone in the plant, it wants to recapture its height. Multiple sprouts will grow this tall. So again, where you cut one



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tree and didn't put herbicide down, you can have 3 or 4 sprouts from the wound collar; or they could sprout like an Aspen or Cherry, they will have hundreds of stems coming up from the undisturbed root system. So it depends on what your past management programs have been, and what is out there now will dictate what the most favorable treatment will be.

Q And would you -- you would agree with me that the cutting technique that can be used to minimize the regrowth of a tree is when you are grooming a tree by pruning or trimming?

A If you are pruning and trimming a tree, yes. If you use the shy goat method of going back to the main stem and doing a very specific cut, not too close to the tree stem or not too far out, the tree will be able to heal itself and sprout less, but that is a very dramatic form of trimming. It's sometimes done on danger trees next to the right-of-way, growing out of the right-of-ways, where most of the limbs coming towards the conductor are

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removed by this method so only the bow is left standing there and the other half of the tree has limbs on it and one half does not have limbs. So this type of technique can be used for outside threat. I don't recommend it for trees inside the right-of-way.

Q And have you conducted trimming and pruning previously?

A Yes. On trees outside of the right-of-way, just as I explained, trees have been trimmed, and along roadways in New York State, we used to -- by Public Service Commission mandate, we had to leave roadside screens, and these were often topped. In other words, had trimming done to them over time, and to keep them well-away from the conductors, but after the blackout in 2005, the Public Service Commission here in New York came out with an order requiring enhanced transmission line vegetation management. The enhancement was all of the tree screens, all of the buffer zones, that had been left with full-grown trees that

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were topped on the right-of-way, were to be removed; and over the ensuing cycle since then, all of the tree screens and buffer zones of tall-growing trees on the right-of-way mandated by the regulatory agency when the lines were built, have been removed because of the danger they pose to the overhead conductors.

Q I'm sorry, either I wasn't very articulate or you misunderstood my question.

I guess I'm asking if you have physically conducted tree trimming and pruning?

A I have done it myself on my trees around the house, and I had crews under my direction do it to over right-of-way trees, and in some instances, we did it, like I said, for topping of trees under lines, topping them, removing the crown well-below the conductor, but keeping the trees alive; but that is no longer done in New York because the Public Service Commission ordered that all tall-growing trees that were left purposely, to be removed from the right-of-way due to the

**K. McLOUGHLIN**

danger they pose. So no one does that. New York, they don't do that topping anymore. There are no trees to top.

Q Okay. Could you look at page 17 of your testimony, please?

A (Witness complies.)

Q You have a picture there. You have never done this type of work, have you?

A What page was that?

Q 17?

A 17. I have never done that, but I have --

Q I'm trying to figure out what you have done?

A Yes, I have seen it done, though.

Q Have you -- did you take this picture?

A No, I did not.

Q Where was this picture taken?

A It was a picture that I found on the internet of tree trimming and wanted to show what it can entail at times to get these

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individual branches away from the conductors.

Q Do you know what website it's from?

A No, I don't. It's simply an illustrative example.

Q It would be fair to say it's probably not a picture from the Complainant?

A That's correct.

Q Okay. And then, what about the picture on page 16; did you take this picture of the flash-over event?

A No, I didn't. Again, I was able to pick it off of the internet, and it does show what I have seen occurring, a flash-over from the line over the tree down to the ground, perfectly timed.

Q Do you know where this was taken?

A No, I don't.

Q And is it fair to say that this was not on the circuit of one of the Complainant's properties?

A Very fair to say; it was not.

Q Okay. For the flash-over event, is

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it true that the voltage of the transmission line effects the distance that a flash-over can occur?

A That is correct.

Q And did you say -- were you involved in drafting Duke's vegetation management plan?

A No, I was not.

Q When you talk about Duke's IVM, is there a document containing that IVM?

A I saw it referenced in their transmission vegetation management standards or plan, but I read their discourse on what they refer as to IVM.

Q So, I mean, is there an IVM document that outlines how they are going to proceed?

A No, they refer to the concept. Basically, IVM is removing all of the tall-growing trees and promoting lower-growing compatible vegetation. It's sort of a 2-way street. You are actually very active in removing all trees by species and then letting all of the low-growing species -- you foster

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them or promote them through your vegetation management technique that will selectively remove the trees with the least amount of harm to the lower-growing species. So therefore, over time, over a number of treatment cycles, your right-of-way is mostly filled with low-growing species, and you get down to a very low density of trees growing very slowly.

Q And you said they refer to the concept; where is it referenced? The IVM you're speaking of, where is that referenced?

A I simply read it in some of the documents I perused for this job. Exactly where, I wouldn't be able to tell you right now.

Q What document contains the wire zone and border zone that you referenced on page 10?

A That is, again, one of the documents that I looked at. That is a common -- very common wire zone/border zone concept used by many companies over the course of the United States, and is a common accompaniment to IVM, a

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use of the wire zone/border zone.

Q So from what I'm hearing, is it fair to say that, in your mind, Duke's IVM is a collection of different documents?

A It might be found in different documents. The IVM terminology and IVM concepts permeate their documents. They adhere to the concept on, you know, particularly wildlands. On landscaped properties, the use of IVM is limited, in a sense, that the homeowner will choose if he wants a lawn or if he wants shrubbery, or he wants to put landscaping brick down, or whatever he wants to do on his property. It's up to the landowner. So long as he doesn't plant tall-growing trees in the right-of-way, everything else is pretty much fine. So IVM fostering of low-growing desirable vegetation on landscaped area is limited.

We are talking about wildland where no one is doing landscaping and vegetation will breed through normal succession, from grasses



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to herbaceous to shrub to trees. Here is where you can interject IVM.

Q Okay. I want to focus on Duke right now, okay.

Where are all of these items discussed with regard to Duke? Did you get Duke's vegetation management plan to review to make your conclusion?

A That's correct. I reviewed their management plan.

Q So you reviewed a document called their management plan or a collective of documents called their management plan?

A I believe there was one that said it was -- it was required under the earlier versions of the NERC standard, the TVM standard, to have a document called the transmission vegetation management plan, and actually, program is what they wanted, program, and that also included annual plans. And then, NERC went to -- it simply had to be -- your work had to be documented. And so, I believe I

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saw a plan and other documentation that referred to IVM.

Q Okay. And you weren't involved in the creation of any of those documents or that Duke plan; is that correct?

A That's correct.

Q And do you know what factors Duke considered in making its determination of the wire zone versus border zone?

A They chose the standard practice of using the wire zone as the area under the wires and a little bit to the left and right. And then, what is left over on the right-of-way becomes the border zone. That is very common throughout the utility industry to make that determination. So it's the area under the wires and a little bit adjacent to the wires. So it might be about over half of the right-of-way to 60 percent of the right-of-way. It might be in the wire zone and on the edges. The next 20 to 25 percent of the right-of-way on the other side might be in the border zone.

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Q Is there a standard or common practice for the distance contained within the wire zone?

A You know, no, there isn't. There isn't any particular standard for the distance of a wire zone.

Q Okay.

A The area underneath the wires and little to the left and right, and people make that determination based on voltage. So the higher the voltage line, the larger the distance to the left and right; and lower the voltage, the smaller the distance is.

Q People make that decision based on voltage. Do you know how Duke made that decision when they created their plan?

A No, I don't, but what I saw was typical of the utility industry standard practices; nothing jumped out at me there.

Q And you don't know which Duke employees or contractors were involved in making that decision, do you?

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A No; no, I don't.

Q Could you sit here today and tell me the border zone and wire zone footage for each utility that you have worked with?

A Yes and no. I measured some myself for, like, a 765 line. The outside conductors were 50 feet apart and so, they wanted another 25 feet on each side, so that is 150-foot of wire zone, and the right-of-way was 250 feet wide, so that left 50 feet on each side. So that is typical of the wire zone/border zone type situation. They usually take the distance of the conductors apart -- that are apart, how far they are, and sometimes take half of that and apply it to the outside of the conductor. And so, again, with the 765 standard that I recall, the conductors are 50 feet apart, so 3 conductors. So the wires are -- outside wires are 100 feet apart, you add another 25 feet to the outside. So now, you have a wire zone of 150 feet. So border zone of 50. So that is how they determined it. The conductors

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themselves, how far spaced they were, and took a distance from that and applied it to the outside.

Q Okay. And this would be done on the right-of-way by utility based on the actual transmission wires and the voltage, and how they are structured?

A That's correct.

Q Let's turn to on page 10, line 2.

A (Witness complies.)

Q You say, Duke Energy has determined, talking about the wire zone.

Are you just saying you have learned that determination from the documents that you reviewed?

A Page 10; hold on. You have me going backwards here, where was that again?

Q On page 10, line 2.

A Okay. Line 2.

Yes, they are looking at 7 feet and, therefore, woody shrubs, not taller than 7 feet and all herbaceous plants could be tolerated.

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Q And that determination by Duke, that is not a determination that is found in the NERC standards; is that fair?

A Oh, yes; yes.

Q Okay. And that is not in the ANSI standards; is that correct?

A Not specifically. I don't believe -- not specifically. They actually -- the ANSI standards call for 4 feet -- or excuse me, 3 feet in the wire zone, 1 meter in the wire zone, and Duke is going to 7 feet in the wire zone. So they are well-outside of the ANSI standards that I'm familiar with.

Q Turn to page 11.

A (Witness complies.)

Q You talk to an old field condition. Are you talking about in a field where there are no houses and just an open field, is that the concept you're talking about here?

A Basically, that's right. You know, where you are, again, vegetation conducts its normal succession of one plant following

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another; ecological succession uninterrupted by man. A right-of-way is an old field minus the trees with all of the other associated vegetation, all of the early successional species.

Q And from your comments on lines 15 and 17, on that same page, 11, is it fair to say that you would agree that removal of trees on a slope could cause erosion?

A It all depends on how you remove them; and if you remove them with a tractor and large mowing machine that disturbs the earth and removes all of the vegetation, yes; and if you are going on that slope and cutting them with a chain saw and lopping them up and leaving the debris there, no; virtually, no chance for erosion.

Q So if you remove the debris --

A So the amount of disturbance is the main factor in soil erosion, and if the material you're cutting is large and you have to remove it with large equipment, like a

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logging operation, then you could have problems with the site with erosion, but normal vegetation on a transmission line, you are not dealing with huge trees, you're dealing with smaller ones, and cutting them up and lopping them on-site would prevent any soil erosion.

Q And lopping to you means leaving the stumps?

A Yes, leaving a short stump, less than 2 inches; and lopping is, you know -- say a stem is 10 feet tall, cutting it in a couple of pieces so it lays on the ground and doesn't -- your trees don't jack-straw and lay on each other, you know. So this way you get all of the biomass close to the ground, where it can then decay naturally and quickly.

Q So you would have to leave the tree debris on the ground to prevent the soil erosion?

A In most cases, but then it depends on how you remove the trees. If you pick them up by hand and move them off-site, you would cause



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very little soil disturbance and no erosion.  
If you are using large equipment to pick up a  
tree bow and move it, you're going to have a  
problem with soil erosion.

Q If you look at line 22 on page 11,  
talks about the type of land used along the  
right-of-way can impact the manner in which the  
TVM is implemented.

Do you see that?

A Yes.

Q And would you agree if there are  
slopes, large slopes in the land, that could  
effect how close the trees could grow to the  
wires?

A Well, if you have a valley situation,  
a gorge, oftentimes, the conductors then are  
well off the ground, and if the distances are  
exceedingly large, then many other trees could  
be left down in the valley. It all depends on  
the conductor height at that location and the  
height growth of the potential tree. It's the  
same equation, but now you have a much greater

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height difference, then you might be able to leave stuff. I have seen where --

Q Meaning that those trees that were once incompatible, could become compatible in that situation?

A In that situation, that's correct. If you have tremendous height growth on a Sugar Maple, but the conductor is 150 feet off the ground, the chances of it getting there are very low, but if you look for White Pine and Yellow Poplars, which do grow to 150 feet, you possibly could leave them for years and take them out as they got taller because you have so many years between the time the tree could grow to 150 feet. We are talking decades in this case, many decades, but then again, you have to watch the conductor. I have seen where people string conductors very tight over a gorge and the distances are hundreds of feet, and I have seen where the conductors follow the slope of the land and go down and back up the gorge and the height distances from the trees aren't that

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great. Again, in some cases they are less than near a tower. So you have to look at the area of the line, the plane and profile drawings, how low is that line going to go and how tall are the trees going to grow, so same factors, but on a different scale.

Q Okay. Thank you for that.

On page 14, lines 9 and 10, are you stating that Duke's prior vegetation management plan previously implemented was ineffective?

A Yes. Some of the areas we looked at, they hadn't used herbicides, they cut some trees and were re-sprouting, they were getting more dense and getting tall. So the previous vegetation management was not optimum from an IVM prospective. You were promoting trees by cutting and not using herbicide.

Q Can you turn to page 18 of your testimony, please?

A (Witness complies.)

Sure.

Q We have another photograph here. Did

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you take this photograph?

A No, I didn't.

Q Okay. And is this one, similarly,  
that you found off the internet?

A Yes, it was a perfect one of topping.

Q Do you know where it was taken?

A No. Again, great illustration for  
what a tree looks like that was repeatedly  
topped, and this is what happens when you are  
directly under a power line, you have no option  
of selective.

Q Do you know what time of year this  
picture was taken?

A It looks like it was in the winter.  
All of the trees in the background are dormant.

Q Okay. Could you go to page 19,  
please?

A (Witness complies.)

Q Line 3, you use the term, defined  
wire clearance zone.

Are you referring to Duke's defined  
wire clearance zone in one of the documents

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that you reviewed?

A No. A generic way of expressing it, that a flash-over could occur, you know, well-outside of the defined clearance zone due to additional sag or by the lines heating up from insufficient air flow to dissipate the heat of the line. So, just general, you think you're safe.

This is what happened to me out on that line with the 115 kv line, that I saw two flash-overs. I looked at that line, I thought it was adequate. I thought it was safe, and before I walked out of there, there were two flash-overs. So how did that happen; something happened, and I don't know. Was it the line sagged lower because of insufficient air flow, it was a very hot afternoon before a thunderstorm, and, you know, the air was dead calm, so did that occur; did the line have extra loading on it at the time. I don't know. Did the tree setup some type of conduit with the tip of the tree and the wire that exceeded

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the normal ability for a flash-over to occur by forming a plasma; I don't know. These are all things that I examined, how did I see that and how can I explain what I saw. Here I was, the guy leaving the tree under the line thinking it was safe for now and that we could conduct our research in a couple of weeks, and we had the flash-overs.

Q On page 18, line 5, you refer to a longer than expected flash-over.

Do you see that?

A Yes. That is what I was just referring to, longer than expected flash-over, the studies that were done.

Q Longer in duration?

A No, the duration are all the same. The distances are longer.

Q Okay. So that is referring to distance between the tree and the wire?

A Yes, that's correct.

Q Okay. Thank you.

Do you know what the line sag

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equations are that you refer to on page 18,  
line 8?

A No. They are all different for  
different lines. I have looked at line  
equations that call for 1.7 mile an hour winds,  
some are 2 miles an hour, some are 3.  
Basically, all of the equations call for some  
type of air movement to help dissipate the heat  
of the conductor. When it goes to dead calm,  
the rare distances that occur, a major sag  
would actually happen, I'm told by engineering,  
and, to our knowledge, a dead calm over many  
spans has never occurred because no one has  
ever seen this major sag, which would actually  
heat the line up so much. I'm told that the  
line would not bounce back after the sagging.  
No one has referenced experience for this, but  
it could occur, but the wind speed and heavy  
loading could cause it to sag lower, and those  
conditions were probably present. It was in  
the afternoon, when the temperature was ambient  
and the wind was low, to me, almost a dead

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calm.

Q Do you know what the line sag equation is for Duke for the circuit at issue in this case?

A No.

Q Let's talk about Corona tip burn. Did you study any trees that have tip burn?

A Anything that has a point to it, the tip of the bud, the tip of the Spruce tree, that area seems to attract electrons off the conductor, and they do so at such a rate that it actually burns the tip of the tree; and this will occur well-outside of any wire security zone, but it's sort of evidence that the tree is getting a little too close. This is another -- ends up another of my theories of why I saw the greater than normal, longer than normal, flash-over, because what happens when the electrons are peeling off that line, hitting the tree, which is evidenced by the fact that the tip has burned ends, called Corona tip burn, the electrons are creating a plasma, and



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plasma is another state of matter. Air is an insulator and plasma is a conductor. If the electrons are moving more rapidly, it's setting it up for an easy flash-over of a much greater distance, the problems being that trees and conductors, once allowed to be there, are there under all sorts of conditions, and the conditions might get right at any given time for this longer path to occur. The studies that are done are done under realtime conditions. The conductors are lower, close to the line, energized, and see if there is a flash-over. So there is no chance for something like this to setup and to expire. So, again, the prudent side of it is to keep the trees and conductors well-away from each other, so this even --

Q You conducted a study that you referenced?

A No, I have looked up information trying to explain this phenomena.

Q Did the phenomena occur; have you

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seen it?

A That is what I'm trying to explain, how did I see a flash-over 7 or 8 feet on a 115 line; how did that happen. So I actually started studying it myself, trying to evaluate the different factors.

Q So do you believe that that incident that occurred was a Corona tip burn phenomenon?

A I don't know.

Q But you don't know?

A It could have. I know Corona tip burn exists and I know that flash-over happens, and we had a helicopter patrol the lines and ground patrolled, and all of a sudden, we have an instantaneous flash-over.

Q Do any of the circuits at issue in this case have Corona tip burn?

A I don't know. I didn't witness any myself out there.

Q Okay. I'm almost done. Let's look at page 21 on lines 9 through 11.

A (Witness complies.)

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Q You stated the attachments were prepared at your direction or under your control.

You are not suggesting that you wrote the Northeast Snowstorm or had that prepared under your direction, did you?

A No, I actually submitted them as information.

Q So you just mean that the attachments, collecting them and preparing them to attach to your testimony, was done by you?

A Yes, that's correct.

Q Not the reports, themselves?

A Not the reports, themselves. I use the reports as part of my testimony, therefore, handed them in.

Q Okay. And your answer would be the same for Attachment 2, which is the NERC standard?

A That's correct.

Q Okay.

MS. BOJKO: If we could go off the

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record for a couple of minutes to look through my notes, I think I might be done, or close to done. Let's take a 5-minute recess.

(At which time, 12:01 p.m., a brief recess is taken until 12:07 p.m.)

MS. BOJKO: I have no further questions for you. Thank you for your time, sir.

THE WITNESS: No problem at all. Good set of questions.

MR. ETTER: I don't think we have anyone else involved in the case, so I think that's it.

MS. WATTS: We would like to read and sign, and we would like overnight delivery of the transcript, if possible.

MR. ETTER: We will e-mail.

\* \* \* \* \*

(At which time, 12:09 p.m., the examination of KEVIN McLOUGHLIN concluded.)

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This is the Deposition of  
KEVIN McLOUGHLIN  
taken in the matter, on the date, and at the  
time and place set out on the title page  
hereof.

It was requested that the deposition be taken  
by the reporter and that same be reduced to  
typewritten form.

It was agreed by and between counsel and the  
parties that the Deponent will read and sign  
the transcript of said deposition.

## REPORTER'S CERTIFICATION

I, DIANA M. RUSSELL, a Court Reporter and Notary Public certified in and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand.



DIANA M. RUSSELL

## DEPONENT'S CERTIFICATE

STATE OF \_\_\_\_\_:

COUNTY/CITY OF \_\_\_\_\_:

Before me, this day, personally appeared  
KEVIN McLOUGHLIN, who, being duly sworn, states  
that the foregoing transcript of his/her  
Deposition, taken in the matter, on the date, and  
at the time and place set out on the title page  
hereof, constitutes a true and accurate transcript  
of said deposition.

\_\_\_\_\_  
KEVIN McLOUGHLIN

Signed and subscribed to before me  
this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF NEW YORK

## DEPOSITION ERRATA SHEET

Our Assignment No.: 18-1102DMR\_AM

RE: CITIZENS AGAINST CLEAR CUTTING v.

DUKE ENERGY OHIO, INC.

## DECLARATION UNDER PENALTY OF PERJURY

I, KEVIN McLOUGHLIN declare, under penalty of perjury, that I have read the entire transcript of my Deposition taken in the above-captioned matter, or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath. I would like the following changes made, and have indicated the reason for such changes: For example, "to correct stenographic error" or "to clarify the record" or "to conform with the facts."

Signed on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

-----  
KEVIN McLOUGHLIN

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KEVIN McLOUGHLIN

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KEVIN McLOUGHLIN

**In Re: Citizens Aainst Clear Cutting v. Duke Energy Ohio, Inc.**  
**Depositor of Kevin McLaughlin** **Held November 2, 2018**

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**Deposition of Kevin McLaughlin** **Held November 2, 2018**

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**Deposition of Kevin McLaughlin** **Held November 2, 2018**

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**Depositor of Kevin McLaughlin** **Held November 2, 2018**

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when [35] where [29] WHEREOF [1] 101/11	WOLF [1] 2/8 won't [2] 47/4 66/4					
whether [3] 17/5 20/5 55/3 which [30]						

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