

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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PROCEEDINGS

before Ms. Megan Addison and Ms. Anna Sanyal,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 10:12 a.m. on Tuesday,
November 6, 2018.

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On behalf of Ohio's Residential Utility
Consumers.

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Tuesday Morning Session,
November 6, 2018.

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EXAMINER ADDISON: Let's go ahead and go
on the record.

The Public Utilities Commission of Ohio
has called for hearing, at this time and place, Case
No. 17-2344-EL-CSS, being In the Matter of the
Citizens Against Clear Cutting versus Duke Energy
Ohio Incorporated.

My name is Megan Addison, and with me is
Anna Sanyal, and we are the Attorney Examiners
assigned by the Commission to hear this case.

We'll begin this morning by taking
appearance of the parties.

On behalf of the Complainants.

MS. BOJKO: Thank you, Your Honor. On
behalf of the Complainants, there are numerous
Complainants, I will not list them all, but they have
called themselves the "Citizens Against Clear
Cutting," I am Kimberly W. Bojko, with me is Brian W.
Dressel, with the law firm Carpenter Lipps & Leeland,
280 North High Street, Suite 1300, Columbus, Ohio
43215.

EXAMINER ADDISON: Thank you.

1 Mr. Etter.

2 MR. ETTER: Good morning, Your Honors.

3 On behalf of Ohio's residential utility consumers,
4 Intervenor the Office of the Ohio Consumers' Counsel,
5 Bruce Weston, Consumers' Counsel, Terry L. Etter,
6 Assistant Consumers' Counsel. We are at 65 East
7 State Street, 7th Floor, Columbus, Ohio 43215.

8 EXAMINER ADDISON: Thank you.

9 MR. McMAHON: Good morning, Your Honor.
10 On behalf of Respondent, Duke Energy Ohio, Inc.,
11 Robert A. McMahon of Eberly McMahon Copetas, LLC,
12 2321 Kemper Lane, Cincinnati, Ohio; along with
13 Elizabeth H. Watts of Duke Energy Ohio, 139 East
14 Fourth Street, Cincinnati, Ohio. Thank you.

15 EXAMINER ADDISON: Thank you.

16 Ms. Bojko, it's my understanding that the
17 parties have agreed to stipulate to certain
18 Complainants' testimony this morning; is that
19 correct?

20 MS. BOJKO: Yes, Your Honor. Before
21 moving forward, I would like to announce one
22 procedural matter. It is my understanding that Gary
23 Balser and Joyce Steller would like to note their
24 withdrawal from the Complaint as Ms. Steller no
25 longer resides at the property.

1 EXAMINER SANYAL: Could you please give
2 us their last names, just so --

3 MS. BOJKO: Yes. Gary Balser,
4 B-a-l-s-e-r. And Joyce Steller, S-t-e-l-l-e-r.

5 EXAMINER ADDISON: Thank you.

6 MS. BOJKO: Your Honor, with regard to
7 the Stipulation that you just mentioned, yes,
8 Citizens Against Clear Cutting, the Complainants, and
9 Duke Energy Ohio, have entered into a Stipulation
10 that would allow certain Complainants' testimony to
11 be fully admitted without objection and admitted in
12 its entirety, alleviating the need for those
13 Complainants to appear at the hearing today and
14 testify.

15 At this time, I would like to mark each
16 one of these testimonies and then we can move them
17 into -- move to admit them into the record.

18 EXAMINER ADDISON: Please proceed.

19 MS. BOJKO: Thank you, Your Honor.

20 And, Your Honor, in the spirit of saving
21 trees, I am assuming that you have copies of these
22 Complainants' testimonies that were filed on the
23 docket on August 26th, 2018. We did bring copies for
24 the court reporter and have a couple extra if anybody
25 needs them.

1 EXAMINER ADDISON: Thank you. And we do
2 have copies.

3 MS. BOJKO: So, Your Honor, at this time,
4 I would like to mark the Direct Testimony of Kim
5 Carrier on behalf of the Complainants, which was
6 filed on October 26th, 2018, as Complainants
7 Exhibit 2. I'm going to reserve 1 for our Complaint,
8 Your Honor.

9 EXAMINER ADDISON: Thank you.

10 MS. BOJKO: At this time, Your Honor, we
11 would like to mark as Complainants Exhibit 2, the
12 Direct Testimony of Karen Dabdoub on behalf of the
13 Complainants, filed on October 26th, 2018.

14 EXAMINER ADDISON: Ms. Bojko, just to
15 clarify, you're reserving Complainant Exhibit No. 1
16 for your Complaint. I think you just said 2 twice.

17 MS. BOJKO: Sorry.

18 EXAMINER ADDISON: You're fine.

19 MS. BOJKO: Yes, Your Honor. Ms. Dabdoub
20 would be Complainants Exhibit 3.

21 EXAMINER ADDISON: Thank you.

22 MS. BOJKO: Thank you.

23 At this time, we would like to mark as
24 Complainants Exhibit 4, the Direct Testimony of
25 Dr. Randall Fick on behalf of the Complainants, filed

1 on October 26th, 2018.

2 Your Honor, at this time, we would like
3 to mark as Complainants Exhibit 5, the Direct
4 Testimony of Joseph Grossi on behalf of the
5 Complainants, filed on October 26th, 2018.

6 At this time, we would like to mark as
7 Complainants Exhibit 6, the Direct Testimony of John
8 Gump on behalf of Complainants, filed on October
9 26th, 2018.

10 At this time, we would like to mark as
11 Complainants Exhibit 7, the Direct Testimony of Jim
12 Haid on behalf of the Complainants, filed on
13 October 26th, 2018.

14 At this time, we would like to mark as
15 Complainants Exhibit 8, the Direct Testimony of
16 Nicole Hiciu on behalf of Complainants, filed on
17 October 26th, 2018.

18 At this time, we would like to mark as
19 Complainants Exhibit 9, the Direct Testimony of
20 Jonathan Mackey on behalf of Complainants, filed on
21 October 26th, 2018.

22 At this time, we would like to mark as
23 Complainants Exhibit 10, the Direct Testimony of
24 Nicole Menkhaus on behalf of the Complainants, which
25 was filed on October 26th, 2018.

At this time, we would like to mark as Complainants Exhibit 11, the Direct Testimony of Mike Preissler, filed on behalf of Complainants on October 26th, 2018.

At this time, we would like to mark as Complainants Exhibit 12, the Direct Testimony of Steve Schmidt, filed on behalf of Complainants on October 26th, 2018.

At this time, we would like to mark as Complainants Exhibit 13, the Direct Testimony of Olga Staios on behalf of the Complainants, filed on October 26th, 2018.

And finally, Your Honor, we would like to mark as Complainants Exhibit 14, the Direct Testimony of Kim Wiethorn on behalf of the Complainants, filed on October 26th, 2018.

EXAMINER ADDISON: Thank you.

Complainants Exhibits No. 2 through 14 will be marked accordingly.

(EXHIBITS MARKED FOR IDENTIFICATION.)

MS. BOJKO: May I approach?

EXAMINER ADDISON: You may.

MS. BOJKO: Your Honor, at this time, we would like to mark as Joint Exhibit 1, a Partial Stipulation that was filed in this case on May 2nd,

2018. And this is a Joint Partial Stipulation entered into between the Complainants and Duke Energy Ohio which basically allows some of the Complainants to become non-named Complainants and withdraw from testifying at the hearing, but still allows them to be subject to whatever the result of this proceeding is by the Commission.

EXAMINER ADDISON: Thank you, Ms. Bojko. It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. BOJKO: May I approach?

EXAMINER ADDISON: You may.

And, Ms. Bojko, did you --

MS. BOJKO: Did you need a copy?

EXAMINER ADDISON: I'm sorry. Yes. Thank you very much.

MS. BOJKO: May I approach?

EXAMINER ADDISON: You may.

MS. BOJKO: Your Honor, at this time, the Complainants would call Mr. Ken Bryant to the stand.

THE WITNESS: Shall I be seated or stand?

EXAMINER ADDISON: I'll swear you in real quick and then you can have a seat.

THE WITNESS: Okay.

(Witness sworn.)

1 EXAMINER ADDISON: Thank you.

2 Mr. Bryant, if you could turn on your
3 mic.

4 THE WITNESS: Right there?

5 EXAMINER ADDISON: Yeah. Perfect. Thank
6 you.

7 Please proceed, Ms. Bojko.

8 - - -

9 KENNETH BRYANT

10 being first duly sworn, as prescribed by law, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 By Ms. Bojko:

14 Q. Mr. Bryant, could you please state your
15 name and address.

16 A. Kenneth, middle initial N., Bryant,
17 B-r-y-a-n-t. 8690 Calumet Way, Cincinnati, Ohio
18 45249.

19 Q. Mr. Bryant, on whose behalf are you
20 testifying today?

21 A. I'm testifying on behalf of the Citizens
22 Against Clear Cutting of which Symmes Township is a
23 member.

24 Q. And, sir, in what capacity are you
25 representing Symmes Township today?

1 A. I'm an elected official, I'm the Symmes
2 Township Trustee, and I'm here on behalf of the
3 Township.

4 Q. Did you file or cause to be filed Direct
5 Testimony regarding the Complaint of Citizens Against
6 Clear Cutting against Duke Energy Ohio in this case?

7 A. I did.

8 MS. BOJKO: Your Honors, I would like to
9 mark, for identification purposes, as Complainants
10 Exhibit 15, the Direct Testimony of Kenneth Bryant,
11 filed on behalf of the Complainants on October 26th,
12 2018.

13 EXAMINER ADDISON: It will be so marked.
14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MS. BOJKO: May I approach?

16 EXAMINER ADDISON: You may.

17 Q. Mr. Bryant, do you have in front of you
18 what has been marked as Complainants Exhibit 15?

19 A. I do.

20 Q. Do you recognize this document as your
21 Direct Testimony filed in this case?

22 A. I do.

23 Q. Was this Direct Testimony prepared by you
24 or under your direction?

25 A. It was.

1 Q. Since the filing of your Direct
2 Testimony, do you have any changes to the testimony?

3 A. No.

4 Q. If I were to ask you the same questions
5 today as they appear in your Direct Testimony, would
6 your answers be the same?

7 A. I think they would be, yes.

8 MS. BOJKO: Your Honor, at this time, I
9 would also like to mark as Complainants Exhibit 1,
10 the Complaint filed in this case, captioned "The
11 Second Amended Complaint, Request for Relief, Request
12 for an Immediate Stay During Pendency of Second
13 Amended Complaint for New Complainants, and Request
14 for Expedited Ruling of Stay" which was filed with
15 the Commission on January 25th -- January 5th, 2018.

16 EXAMINER ADDISON: Thank you. So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MS. BOJKO: May I approach, Your Honor?

19 EXAMINER ADDISON: You may.

20 Q. Mr. Bryant, do you have in front of you
21 what's been marked as Complainants Exhibit 1, which
22 is the Second Amended Complaint filed in this
23 proceeding?

24 A. I do.

25 Q. Do you recognize this document as being

1 the Complaint, filed by a group of 65 Complainants,
2 titled "Citizens Against Clear Cutting versus Duke
3 Energy Ohio"?

4 A. I do.

5 Q. And, sir, you are a named Complainant on
6 behalf -- well, Symmes Township is a named
7 Complainant of whom you are representing; is that
8 correct?

9 A. That is correct. It's the last one on
10 the front page.

11 Q. And do you believe the Complaint to be
12 true and accurate to the best of your knowledge?

13 A. It is.

14 MS. BOJKO: Your Honor, at this time, the
15 witness is available for cross-examination.

16 EXAMINER ADDISON: Thank you very much,
17 Ms. Bojko.

18 Mr. Etter.

19 MR. ETTER: No questions.

20 EXAMINER ADDISON: Thank you.

21 Mr. McMahon.

22 MR. McMAHON: Thank you, Your Honor.

23 At this time, Duke Energy Ohio would move
24 to strike Attachment C from Mr. Bryant's testimony
25 because the PowerPoint presentation is inadmissible

1 hearsay. And that document is referenced on page 6,
2 lines 8 through 11, which we would also move to
3 strike.

4 EXAMINER ADDISON: And just to clarify,
5 Mr. McMahon, your motion to strike, does it apply to
6 the first sentence on line 8?

7 MR. McMAHON: No. Thank you, Your Honor.
8 It would start at the end of line 8, the "The
9 Township compiled," and then through line 11.

10 EXAMINER ADDISON: Thank you very much.
11 Ms. Bojko.

12 MS. BOJKO: Thank you, Your Honor.

13 Ohio Rule of Evidence 801(c) defines
14 "Hearsay" as "a 'statement', other than one made by
15 the declarant while testifying at the trial or
16 hearing, offered to prove the truth of the matter
17 asserted."

18 Lines 8 through 11 on page 6 of
19 Mr. Bryant's testimony only discusses his involvement
20 leading up to the October 12th, 2017 meeting, and it
21 does not contain any out-of-court statements.
22 Therefore, lines 8 through 11 on page 6 do not
23 constitute hearsay.

24 As for Attachment C, Your Honor, the
25 statement is an exception to the hearsay rule under

1 the business records exception of Ohio Rule of
2 Evidence 803(6). In creating this PowerPoint, which
3 is a data compilation of events and acts kept in the
4 course of a regularly-conducted business activity in
5 Mr. Bryant's capacity as a Trustee, Mr. Bryant was
6 carrying out his regular business activities which,
7 as Trustee, includes compiling information to share
8 with his constituents.

9 Additionally, the PowerPoint is an
10 exception under 803(8) as it is a public record, a
11 data compilation setting forth matters observed in
12 the Trustee's capacity as a Trustee compiling
13 information for residents.

14 His role is to serve the public in either
15 an advocacy or an advisory role, and this was one
16 such event where Mr. Bryant believed that he could
17 assist his residents and, in doing so, he facilitated
18 a meeting, he compiled data on behalf of
19 knowledgeable residents and people that had knowledge
20 of the information, and put those in the form of a
21 PowerPoint. This is something typical of a Trustee,
22 so it falls under the hearsay exceptions as it was
23 done in the regular course of a Trustee's business
24 activities.

25 EXAMINER ADDISON: Thank you.

1 Mr. McMahon.

2 MR. McMAHON: Your Honor, I would agree
3 with Ms. Bojko that the first part of the end of
4 line 1, through halfway through line 10, is not an
5 out-of-court statement, but it's part of the process
6 for introducing Attachment C into the record which is
7 why we included it in our motion to strike.

8 Attachment C, however, is a textbook case
9 of a hearsay exception -- of hearsay, unless they are
10 not offering it to prove the truth of the matters
11 asserted in that document. There is no evidence in
12 the record to suggest that Mr. Bryant had any
13 involvement in the preparation of this document, how
14 it was prepared, or whether it was prepared by him or
15 in his official capacity as a member of the Board of
16 Trustees, or that this is a public document of any
17 kind.

18 If they're not offering it to prove the
19 truth of the matter asserted, then, you know, the
20 Bench can give it whatever weight you desire. But
21 there are particular pages in there entitled "What
22 does Duke plan to do underneath the wire/border zone"
23 and then on the next page that have more information
24 that essentially, you know, makes the document a
25 witness in this case by suggesting what the Company

1 plans to do with respect to its vegetation management
2 policy. There's no evidence in the record to suggest
3 that this is a business record of any kind.

4 EXAMINER ADDISON: Thank you.

5 Mr. Bryant.

6 THE WITNESS: Yes, ma'am.

7 EXAMINER ADDISON: How was this document
8 prepared?

9 THE WITNESS: The role of the Trustee, as
10 I see it, is to advise and advocate for our residents
11 upon request.

12 We were requested, by a group of
13 residents, to get information out to all of the
14 Township as to what Duke was proposing to do in their
15 particular neighborhood and, as a result, our intent
16 was to make sure that everyone under that particular
17 power line through our Township would at least be
18 advised as to what was coming.

19 So this necessitated -- we collected this
20 information, compiled it, to basically coordinate a
21 meeting and keep it on track so that we could be in
22 an information-sharing, a neighborhood-type meeting,
23 so people would be aware of what was coming and they
24 would have an opportunity to speak to that subject in
25 this neighborhood meeting.

1 EXAMINER ADDISON: And when you say we
2 collected and gathered this information, you were
3 responsible for --

4 THE WITNESS: Yes, it was under my
5 direction. The Township Administrator did collect
6 the information that was sent in by residents and
7 pulled it together and tried to put it into a form
8 that was cohesive that we could flow and actually
9 negotiate the meeting.

10 EXAMINER ADDISON: Was this presentation
11 only available at that October 12th meeting or were
12 there other means to obtain this presentation?

13 THE WITNESS: It was put together to hold
14 the meeting on the 12th of October and then it was
15 made available to anyone, upon request, after that
16 fact.

17 EXAMINER ADDISON: Was it posted on the
18 Township website?

19 THE WITNESS: I cannot speak accurately
20 to that. I think the intent would have been yes, but
21 I don't know that that was actually done.

22 EXAMINER ADDISON: Thank you.

23 Ms. Bojko, I'll allow you to have the
24 last word.

25 MS. BOJKO: Thank you, Your Honor.

As indicated by Trustee Bryant, this is something that he did in the regular course of his business, it was done at the Township offices by the Township Administrator, and it was done as a regular course of business to assist residents, which is the role of a Trustee, and to assist in holding public meetings. The meeting was also held at the Symmes Township Trustee Building. So it was done, in the normal course of business, to share and compile information with his constituents

EXAMINER ADDISON: Thank you.

At this time, we will be denying the motion to strike. While I don't know if I would consider this a business record drafted in the regular course of business, Mr. Bryant certainly was involved in the drafting and creation of this document. He is available for cross-examination today. And the Commission can certainly afford the weight that this information deserves in their consideration of this matter.

MS. BOJKO: Thank you, Your Honor.

EXAMINER ADDISON: Mr. McMahon.

MR. McMAHON: Yes, Your Honor. At this time, Duke Energy Ohio would move to strike Attachments D and E to Mr. Bryant's testimony because

1 both are letters from third parties who are not
2 present in court and are, therefore, hearsay and
3 inadmissible, Your Honor.

4 EXAMINER ADDISON: Were there any
5 corresponding portions of Mr. Bryant's testimony that
6 you're also moving to strike or is it just
7 Attachments D and E?

8 MR. McMAHON: Just the attachments, Your
9 Honor.

10 EXAMINER ADDISON: Thank you.

11 Ms. Bojko.

12 MS. BOJKO: Thank you, Your Honor.

13 I will take them attachment by
14 attachment.

15 Attachment D is a letter from Senator
16 Wilson. It is an exception to hearsay as it is a
17 public record under Rule 803(8). This letter has
18 already been filed in the Commission's public docket
19 in this proceeding. This is a statement from Senator
20 Wilson in his official capacity, setting out the
21 activities of his office. The letter should be
22 considered an official statement by his office as it
23 is a statement by a public officer, setting forth his
24 office's views on a matter of public concern.

25 Additionally, this record is an exception

1 under Rule 803(6) as it was created in the course of
2 a regularly-conducted business activity. Senators
3 typically issue statements and file letters on behalf
4 of their constituents in their capacity as State
5 officials, and this is what Senator Wilson did in
6 this case, and he intended for it to be such a public
7 statement as he filed it on the public record at the
8 Public Utilities Commission in this case

9 EXAMINER ADDISON: Thank you.

10 Mr. McMahon.

11 MR. McMAHON: Your Honor, I don't believe
12 Ms. Bojko can testify as to what the Senator's intent
13 was, but if it's filed in the docket, then it's filed
14 in the docket and it's part of the proceeding, but it
15 does not need to be evidence attached to Mr. Bryant's
16 written testimony.

17 To the extent he's trying to use the
18 Senator's letter in support of his testimony, it is a
19 textbook, out-of court statement, presumably offered
20 to prove the truth of the matters asserted in there
21 about Senator Wilson's opinions about what may or may
22 not be happening in this case with regard to the
23 Company's vegetation management policies.

24 Just because he signed it as his title,
25 there's no evidence before the Bench that this is an

1 official statement of some kind from his office. If
 2 It's just Senator Wilson sending a letter to the
 3 Commission and filing it, that's fine. There's no
 4 evidence that this was sent certainly to Mr. Bryant
 5 in support of any type of policies or procedures.

6 EXAMINER ADDISON: Thank you very much.

7 At this time, we will be granting the
 8 motion to strike. These are certainly -- it's
 9 certainly of the Commission's concern to hear what
 10 our Senators and Townships are interested in in this
 11 proceeding, but we feel that these letters are more
 12 appropriate to be filed in the Public Comments of the
 13 docket for the Commission's consideration, and not
 14 necessarily considered as attachments to Mr. Bryant's
 15 testimony.

16 MS. BOJKO: Thank you, Your Honor.

17 EXAMINER ADDISON: Thank you.

18 MS. BOJKO: Would you like me to address
 19 Attachment E now?

20 EXAMINER ADDISON: You certainly can.

21 MS. BOJKO: Thank you, Your Honor.

22 The letter from Deerfield Township is a
 23 little different with regard to your ruling, as the
 24 letter from Deerfield Township is directly addressed
 25 to Symmes Township and the Township Trustees. It is

on Deerfield Township letterhead and it talks about "Dear Elected Official" and it's signed by another elected official, another Township Trustee. Thus, it is an exception to hearsay under Rules 803(6) and (8).

It is a statement of a public official, setting forth the office's views on a matter of public concern and was created in the course of that Trustee's regularly-conducted business activity by the Trustee in its capacity as a Trustee.

Again -- additionally, Your Honor, the letter from Deerfield Township is not hearsay because it's not being offered for the truth of the matter asserted therein, but, rather, that the subsequent action of the recipient, Mr. Bryant, what he did following up on that.

Mr. Bryant's testimony describes his efforts to learn more about the issue and what he and Symmes Township Trustees did upon collecting information from surrounding townships. The Deerfield Township Trustee's statements are not being offered for any truth value that they may have, but, rather, to illustrate Mr. Bryant's process and what he did in the surrounding communities.

EXAMINER ADDISON: Thank you.

1 MS. BOJKO: Thank you.

2 EXAMINER ADDISON: Mr. McMahon.

3 MR. McMAHON: With that qualifier toward
4 the end of Ms. Bojko's comments, if that is the only
5 reason that Attachment E is being offered as evidence
6 attached to Mr. Bryant's testimony, then we don't
7 object for that limited purpose. If it's just being
8 offered to show how Mr. Bryant responded and then
9 took action, we don't object to that.

10 But if it is, as I thought she started
11 off arguing that it's being offered for other
12 reasons, there is no evidence in the record, A,
13 that this -- this letter, first of all, is not even
14 signed by anyone and there's no evidence that this is
15 part of these Trustees' regular course, you know,
16 activities, business responsibilities on behalf of
17 Deerfield Township, or about the information set
18 forth in the letter.

19 So I guess it depends. If Ms. Bojko's
20 offering it to prove the information that's contained
21 in the letter, then we object because there's no
22 evidence to support a hearsay exception; but, if it's
23 just for the limited purpose, as we talked about,
24 then we have no objection.

25 EXAMINER ADDISON: Thank you.

1 Ms. Bojko, last word.

2 MS. BOJKO: Your Honor, it is signed by
3 three trustees, so I think it is a fair
4 representation of what the Board of Trustees of
5 Deerfield Township does believe their office and
6 their trustees' role and what their belief is.

7 Do I have evidence today, as Mr. McMahon
8 suggests, that it was actually done at a Trustee
9 meeting? No. I could probably maybe find some in
10 about an hour, but I cannot sit here today to do
11 that. So I think it is an exception to hearsay
12 because it is an official act. It's even more so
13 than if just one Trustee signed it, because they all
14 had to collectively get together and agree to sign it
15 as a body, which makes it a Board document of
16 Deerfield Township. And my guess, attending many
17 Township Trustee meetings, is that they had to have
18 done that in the context of a Deerfield Township
19 meeting.

20 However, if you would like to withhold
21 and allow me to look into that issue, I could do that
22 as well.

23 EXAMINER ADDISON: Thank you.

24 At this time, we will be denying the
25 motion to strike, simply for the limited -- and allow

1 this attachment to remain as part of Mr. Bryant's
2 testimony for the limited purpose of showing his
3 process and what he did to -- or, the efforts he made
4 to learn about how other communities and residents
5 felt about Duke's activities alleged in this
6 proceeding.

7 We do, however, suggest, like Senator
8 Wilson's letter, that this letter also be filed in
9 the Public Comments in the event that Deerfield
10 Township would like the Commission to evaluate it in
11 their consideration of this case

12 MS. BOJKO: Thank you, Your Honor.

13 EXAMINER ADDISON: Thank you.

14 Mr. McMahon.

15 MR. McMAHON: We have no further
16 objections and otherwise waive our cross-examination
17 of Mr. Bryant, Your Honor.

18 EXAMINER ADDISON: Thank you.

19 We have no additional questions for you,
20 Mr. Bryant. You are excused.

21 THE WITNESS: Thank you.

22 EXAMINER ADDISON: Thank you very much.

23 Ms. Bojko.

24 MS. BOJKO: Thank you, Your Honor. At
25 this time, I would move for the admission of

1 Complainants Exhibit 1, the Second Amended Complaint,
2 and 15, Mr. Bryant's testimony.

3 EXAMINER ADDISON: Any objections to the
4 admission of Complainants Exhibit No. 1 and 15,
5 provided the motion to strike that has been granted
6 is acknowledged?

7 MR. McMAHON: None with respect to
8 Exhibit 15, Your Honor.

9 The only comment I have on Exhibit 1 is
10 that the Complaint is -- it's in the record, it's a
11 procedural, it's a pleading, but if the Bench would
12 like to take it as an exhibit, that's fine.

13 EXAMINER ADDISON: Thank you.

14 Mr. Etter?

15 MR. ETTER: No objections.

16 EXAMINER ADDISON: Thank you.

17 They will be admitted.

18 MS. BOJKO: Thank you, Your Honor.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 MR. ETTER: Your Honors, before we
21 proceed, can we go off the record?

22 EXAMINER ADDISON: Let's go off the
23 record a moment.

24 (Discussion off the record.)

25 EXAMINER ADDISON: Let's go back on the

1 record.

2 EXAMINER SANYAL: Are we ready to call
3 the next Complainant?

4 MS. BOJKO: Yes, Your Honor. On behalf
5 of the Complainant, Citizens Against Clear Cutting
6 against Duke Energy Ohio, Complainants would like to
7 call Fred Vonderhaar to the stand.

8 EXAMINER SANYAL: I'm going to stand up,
9 since I'm kind of short, so you can see me.

10 THE WITNESS: All right.

11 EXAMINER SANYAL: Will you raise your
12 right hand.

13 (Witness sworn.)

14 EXAMINER SANYAL: Please be seated.
15 You may proceed, Ms. Bojko.

16 - - -

17 FRED VONDERHAAR
18 being first duly sworn, as prescribed by law, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 By Ms. Bojko:

22 Q. Please state your name and address for
23 the record.

24 A. Fred Vonderhaar. 9617 Fox Run Drive,
25 Mason, Ohio.

1 Q. And on whose behalf are you testifying
2 today?

3 A. Citizens Against Clear Cutting.

4 Q. Did you file or cause to be filed Direct
5 Testimony regarding the Complaint of Citizens Against
6 Clear Cutting in this proceeding?

7 A. I did.

8 Q. And was that testimony filed on October
9 26th, 2018?

10 A. It was.

11 Q. And were amendments to the attachments
12 filed yesterday on November --

13 A. 5th.

14 Q. -- 5th?

15 A. Yes, they were.

16 MS. BOJKO: Thank you.

17 Your Honors, I would just note on the
18 record that the attachments were not clear, due to
19 some scanning errors and problems, and there was a
20 page missing on one of the attachments, so we did
21 file clean copies in the record.

22 And I should have pointed out, the same
23 happened with Mr. Bryant's. He had a page 4 missing
24 and we filed a new copy. We apologize for those
25 errors. When you're filing 17 pieces of testimony on

1 one day, things like that happen, so we apologize.

2 Your Honors, at this time, I would like
3 to mark as Complainants Exhibit 16, the Direct
4 Testimony of Fred Vonderhaar on behalf of
5 Complainants. May I approach?

6 EXAMINER SANYAL: You may, and feel free
7 to do so during the examination of this witness.

8 MS. BOJKO: Your Honors, I recommend you
9 take a new copy because these are in color.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MS. BOJKO: Your Honors, we have all
12 colored testimony here today, so if you would like a
13 set, before we leave today, please let me know.

14 EXAMINER SANYAL: We may for some of
15 them.

16 Q. (By Ms. Bojko) Mr. Vonderhaar, do you
17 have in front of you what's been marked as
18 Complainants Exhibit 16?

19 A. I do.

20 Q. And do you recognize this document as
21 your Direct Testimony?

22 A. I do.

23 Q. And was this Direct Testimony prepared by
24 you or under your direction?

25 A. Yes, it was.

1 Q. And since the filing of your Direct
2 Testimony, do you have any changes to it?

3 A. I do not.

4 Q. And do you have any changes to the
5 attachments, given the newly-filed attachments
6 yesterday?

7 A. I do not, no.

8 Q. And if I were to ask you the same
9 questions today, as they appear in your Direct
10 Testimony, would your answers be the same?

11 A. Yes, they would.

12 MS. BOJKO: At this time, Your Honor, the
13 witness is available for cross-examination.

14 EXAMINER SANYAL: You may proceed,
15 Mr. McMahon.

16 MR. McMAHON: Thank you, Your Honor.

17 Duke Energy Ohio objects to and moves to
18 strike testimony on page 6 of Mr. Vonderhaar's
19 written testimony, line 9, beginning "I cannot
20 speak," through line 11, as well as Attachment H
21 which is an outside third-party arborist's report.

22 The arborist's report is textbook
23 hearsay, and Mr. Vonderhaar's reference to
24 information contained in that report is also hearsay.
25 These are out-of-court statements prepared by a

1 third-party arborist who is not here to offer any
2 testimony and to say anything about what the report
3 means and any of the information contained in that
4 report and, therefore, it is inadmissible, Your
5 Honor.

6 EXAMINER SANYAL: Ms. Bojko.

7 MS. BOJKO: Thank you, Your Honor.

8 Lines 9 through 11 of the testimony
9 merely state that he is not adopting any financial
10 figures of the arborist, I believe that's consistent
11 with the Commission's ruling, and he is stating that
12 he is affirming the descriptions and locations of the
13 various trees which he is adopting as his own.

14 With that adoption of that testimony as
15 his own, these are not out-of-court statements. He's
16 offering these statements only to establish the types
17 and locations of the trees around his property, not
18 for any other purpose, and he does not seek to have
19 the Commission consider other evidence in Attachment
20 H.

21 Hearsay Rule 801 is an out-of-court
22 statement offered for the truth of the matter
23 asserted. Here, Mr. Vonderhaar is not offering it
24 for that purpose. He is merely adopting the
25 statements for the limited purpose of establishing

1 the locations on the property as his own.

2 As witnessed by the document itself, it's
3 quite extensive the number of trees he has on the
4 property. Instead of taking the time to relist those
5 or cut and paste those into his testimony, he thought
6 the most efficient way was to produce them as stated
7 in the attachment and that is what he is doing.

8 To the extent that the statements are
9 adopted today under oath, they are no longer
10 out-of-court statements. Mr. Vonderhaar is willing
11 to testify about the locations and the types of
12 trees.

13 And, Your Honor, if it would ease Duke's
14 concerns about any reference to the financial
15 figures, we are happy to redact the financial
16 figures. Again, we believe that's outside the scope
17 of the testimony here today, as ruled by the
18 Commission, and we're more than happy to produce
19 revised Attachment H with the value figures redacted.
20 As stated, very clearly in Mr. Vonderhaar's
21 testimony, that was not the point of Attachment H.

22 EXAMINER SANYAL: Mr. McMahon, what is
23 your response now that we have a clarification that
24 Attachment H is only being offered for a limited
25 purpose as to descriptions of -- descriptions and

1 locations of the various trees?

2 MR. McMAHON: The report does identify
3 the types of trees and, for that purpose, we don't
4 object. Certainly, Mr. Vonderhaar could adopt the
5 species of trees that are located in his yard.

6 But later, on page 6, Mr. Vonderhaar
7 already testifies, at line 22, "These trees are in
8 both the wire zone and the border zone."

9 The report itself does not identify
10 anything about location. There is a title of a
11 column that says "Location" with numbers in it, but
12 the author of this report is not present in court to
13 testify about what that column means, what any of the
14 numbers mean.

15 The names of the species of the trees are
16 fine, but all of the rest of the information in the
17 report is hearsay, including the letter that is the
18 first page of Attachment H. It would not be
19 sufficient just to redact the financial number; there
20 is other information in that letter that is
21 inadmissible hearsay.

22 EXAMINER SANYAL: Ms. Bojko, I'll allow
23 you a very brief response.

24 MS. BOJKO: Sure, Your Honor.

25 Again, the witness is adopting the

1 species, the type of tree, and the location. He's
2 here to testify today and he can say as to what he
3 means and what he is adopting and what the location
4 numbers mean. He's here to testify and he can be
5 cross-examined on that information if deemed
6 necessary, but he is able to testify to the location
7 of trees on his property; that is something that is
8 within his knowledge and expertise and he can testify
9 to that today.

10 EXAMINER SANYAL: I will be denying the
11 motion to strike for -- because it's being used for
12 the limited purpose, as Ms. Bojko suggested, for the
13 descriptions and locations of the trees. And the
14 witness is available for cross-examination to kind
15 of -- so Duke can further figure out about his
16 understanding of those matters.

17 So at this point, Mr. McMahon, if you
18 would like to ask him further questions, just so we
19 have it on the record, I leave it up to you on how
20 you would like to proceed on that.

21 MR. McMAHON: There's no need, Your
22 Honor. Mr. Vonderhaar already testified that the
23 trees are in the wire zone and the border zone. That
24 suffices.

25 EXAMINER SANYAL: Okay. So just for

1 clarification, we're allowing in Attachment H just
2 for the limited purpose for the description and
3 location of the trees.

4 MS. BOJKO: Thank you, Your Honor.

5 EXAMINER SANYAL: And I believe you have
6 another objection, correct, Mr. McMahon?

7 MR. McMAHON: Yes, Your Honor.

8 Starting on page 7, line 15, through
9 page 9, line 10, and along with Attachment I, Duke
10 Energy Ohio would move to strike that testimony and
11 Attachment I, because the attachment itself is
12 hearsay, and Mr. Vonderhaar's attempts to interpret
13 or ascertain intent from a document that he didn't
14 prepare, that was prepared by someone else that he
15 has no knowledge of, is inappropriate; all of which
16 constitutes inadmissible hearsay, Your Honor.

17 EXAMINER SANYAL: Ms. Bojko.

18 MS. BOJKO: Thank you, Your Honor.

19 The statement is not hearsay under Ohio
20 Rule of Evidence 801(D)(2). This log is an admission
21 by a party-opponent. This statement is Duke's own
22 statement, either in its individual or representative
23 capacity; or, it is a statement by a person
24 authorized by Duke to make a statement; or, it is a
25 statement by Duke's agent or servant concerning a

1 matter within the scope of the agency or employment,
2 made during the existence of the relationship. The
3 log was maintained by Duke, as evidenced by the fact
4 that Duke produced the document in discovery. It was
5 produced in response to CACC-POD-01-010.

6 The Eighth Circuit District Court of
7 Appeals has held that documents received in discovery
8 can be considered admissions by a party-opponent;
9 Mowery versus City of Columbus, 2006-Ohio-1153.

10 These logs were kept by Duke employees
11 and/or contractors as a record of their vegetation
12 management activities on the circuits at issue in
13 this case. And when the Commission compelled Duke to
14 produce documents in its possession in this case,
15 Duke produced this log. It plainly qualifies as an
16 admission of a party-opponent and, thus, it is not
17 hearsay.

18 EXAMINER SANYAL: Mr. McMahon.

19 MR. McMAHON: Your Honor, while I
20 acknowledge that the document was produced by Duke
21 Energy Ohio in discovery, there is no other evidence
22 in the record, especially offered by Mr. Vonderhaar,
23 that anything contained in Attachment I is a
24 statement that is adverse to the Company's interests.

25 There's no evidence in the record about

1 who prepared this, the context of why it was
2 prepared, what it was used for. Mr. Vonderhaar
3 certainly does not have any personal knowledge of any
4 of those facts, nor has he offered it into the record
5 in his testimony.

6 Yes, there are ways, perhaps, for
7 Complainants to get Attachment I into the record, but
8 it's not through Mr. Vonderhaar. And it would take
9 additional evidence, offered by Complainants, to
10 establish anything remotely to support the use of
11 Rule 801(D) (2) to consider this log to be an
12 admission of some kind against the party's -- against
13 the Company's interests.

14 MS. BOJKO: Your Honor, I have two
15 responses. Actually, if you look at CAC Attachment
16 D -- CACC-POD-01-010, we asked Duke to produce all
17 copies of "written communications, including emails
18 and physical communications, between Duke employees
19 or between Duke employees and third parties related
20 to Duke's decision to implement, or actual
21 implementation of, its plan to clear cut trees and
22 other vegetation on or near properties owned by
23 Complainants."

24 This document is directly responsive. If
25 you look at the log itself, it says "Property Not

Ready for Production Work" and says "Current Crew Location." This is clearly a document produced to demonstrate Duke's vegetation management practices and implementation of its vegetation management plan, Rule 801(D)(2)(d), a statement of a party-opponent's agent or servant, such as contractors, concerning a matter within the scope of that agency or employment, made during the existence of the relationship, are included in Rule 801(D)(2)'s scope and are, thus, not hearsay.

In Ball versus Consolidated Rail Corporation, 142 Ohio App.3d 748, the Eighth District Court of Appeals held that Rule 801(D)(2) has a liberal policy of admitting evidence in that the contents of the contested statement can be considered in determining whether an agency relationship actually exists, pursuant to Mowery versus City of Columbus.

And if you also -- if the question is authenticity, Your Honor, the Courts have spoken to that as well. Ohio versus Craycraft, 2010-Ohio-596. Under Ohio Rule of Evidence 901(B)(1), the bar for authenticity in this situation is very low. You only need sufficient evidence for the trier-of-fact to conclude that the item is what the proponent claims

1 it to be. I think Duke's discovery response, which
2 is supposed to be deemed as to be true, clearly says
3 that this is work about its vegetation management
4 practices and plans, how it was implemented, and it
5 was done by crews, which is contractors or agents
6 under Duke's control at the time.

7 EXAMINER ADDISON: Briefly.

8 MR. McMAHON: The only thing I can say is
9 there's nothing in the record to support anything
10 that Ms. Bojko just said. Might there be a way to
11 get Attachment I into evidence? Yes. Using
12 Mr. Vonderhaar's testimony is not the proper way to
13 do so.

14 EXAMINER SANYAL: I will deny the motion
15 to strike. This is an admission of a party-opponent,
16 and the Commission can give it the weight it
17 deserves. I would also like to note that
18 authenticity was not raised initially. So that is
19 ruling on that matter.

20 MS. BOJKO: Thank you, Your Honor.

21 EXAMINER SANYAL: Do we have any other
22 motions to strike with regard to Mr. Vonderhaar's
23 testimony?

24 MR. McMAHON: No, Your Honor. And the
25 Company otherwise waives cross-examination.

1 EXAMINER SANYAL: Okay.

2 Mr. Etter?

3 MR. ETTER: No questions, Your Honor.

4 EXAMINER SANYAL: Thank you.

5 You're free to step down.

6 MS. BOJKO: Your Honor, at this time,
7 Complainants move Complainants Exhibit 16, the
8 testimony of Fred Vonderhaar into the record.

9 EXAMINER SANYAL: Any objections?

10 MR. McMAHON: No, Your Honor.

11 EXAMINER SANYAL: It is so moved and
12 admitted.

13 MS. BOJKO: Thank you, Your Honor.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 MS. BOJKO: Your Honor, at this time, the
16 Complainants would like to call Melisa Kuhne to the
17 stand. Actually, Mr. Dressel is going to call
18 Ms. Kuhne to the stand.

19 EXAMINER ADDISON: Thank you.

20 Good morning.

21 MR. McMAHON: Your Honor, if I may real
22 quick? The Company actually no longer has any
23 objections to Ms. Kuhne's testimony, so we would be
24 willing to include her testimony into the Stipulation
25 with respect to the other, sorry, 13 or 14

1 Complainants.

2 EXAMINER ADDISON: Thank you.

3 Ms. Bojko.

4 MS. BOJKO: Let Mr. Dressel put her on
5 the stand.

6 (Laughter.)

7 MS. WATTS: Is there a fort in the woods
8 somewhere?

9 (Laughter.)

10 EXAMINER ADDISON: Thank you,
11 Mr. McMahon. We'll have Ms. Kuhne take the stand.

12 Raise your right hand.

13 (Witness sworn.)

14 EXAMINER ADDISON: Thank you. Please be
15 seated.

16 Mr. Dressel.

17 - - -

18 MELISA KUHNE

19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Dressel:

23 Q. Ms. Kuhne, can you please state your name
24 and address.

25 A. Melisa Kuhne. 12002 Paulmeadows Drive,

1 Cincinnati, Ohio 45249.

2 Q. And on whose behalf are you testifying
3 today?

4 A. Citizens Against Clear Cutting.

5 Q. Did you file or cause to be filed Direct
6 Testimony regarding the Complaint of Citizens Against
7 Clear Cutting against Duke Energy Ohio, Incorporated?

8 A. Yes.

9 MR. DRESSEL: Your Honors, I would like
10 to mark as Complainants Exhibit 17, titled "Direct
11 Testimony of Melisa Kuhne," filed on October 26th,
12 2018, in this proceeding.

13 EXAMINER ADDISON: It will be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. DRESSEL: May I approach?

16 EXAMINER ADDISON: You may.

17 MR. DRESSEL: We would also note, similar
18 to Mr. Vonderhaar, revised attachments were filed to
19 clarify issues with scanning that occurred with the
20 originally-filed testimony.

21 EXAMINER ADDISON: Thank you,
22 Mr. Dressel.

23 Q. (By Mr. Dressel) Ms. Kuhne, do you have
24 in front of you what has been marked as Complainants
25 Exhibit 17?

1 A. Yes.

2 Q. And do you recognize this document as
3 your Direct Testimony?

4 A. Yes, I do.

5 Q. Was this Direct Testimony prepared by you
6 or under your direction?

7 A. Yes.

8 Q. Since the filing of that Direct
9 Testimony, do you have any changes to the testimony?

10 A. No.

11 Q. And if I were to ask you the same
12 questions contained in that testimony here today,
13 would your answers to those questions be the same as
14 they are in what has been marked as Complainants
15 Exhibit 17?

16 A. Yes, they would.

17 MR. DRESSEL: At this time, Ms. Kuhne is
18 available for cross-examination.

19 EXAMINER ADDISON: Thank you very much,
20 Mr. Dressel.

21 Mr. Etter.

22 MR. ETTER: No questions.

23 EXAMINER ADDISON: Mr. McMahon.

24 MR. McMAHON: Thank you, Your Honor. The
25 Company waives cross-examination and does not object

1 to the admission of her testimony.

2 EXAMINER ADDISON: Thank you very much.

3 We do not have any additional questions,
4 Ms. Kuhne. Thank you so much for your time.

5 THE WITNESS: Sure.

6 MR. DRESSEL: Your Honors, we would just
7 move for the admission of Exhibit 17.

8 EXAMINER ADDISON: Any objection to the
9 admission of Complainants Exhibit No. 17?

10 MR. McMAHON: No, Your Honor.

11 EXAMINER ADDISON: It will be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 MS. BOJKO: Your Honor, at this time,
14 Complainants would like to call Dennis Mitman to the
15 stand.

16 EXAMINER SANYAL: Mr. Mitman, would you
17 please raise your right hand.

18 (Witness sworn.)

19 EXAMINER SANYAL: You may be seated.

20 - - -

21 DENNIS MITMAN

22 being first duly sworn, as prescribed by law, was
23 examined and testified as follows:

24 DIRECT EXAMINATION

25 By Ms. Bojko:

1 Q. Please state your name and address for
2 the record, sir.

3 A. Dennis Mitman. 8531 Windy Hollow,
4 Cincinnati, Ohio 45249.

5 Q. And on whose behalf are you testifying
6 here today?

7 A. Citizens Against Clear Cutting.

8 Q. And did you file or cause to be filed
9 Direct Testimony regarding the Complaint of Citizens
10 Against Clear Cutting in this case?

11 A. Yes.

12 MS. BOJKO: Your Honors, at this time, I
13 would like to mark as Complainants Exhibit 18, the
14 Direct Testimony of Dennis Mitman, filed on behalf of
15 of the Complainants, on October 26th, 2018.

16 EXAMINER SANYAL: It is so marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MS. BOJKO: May I approach, Your Honor?

19 EXAMINER SANYAL: Yes, you may.

20 Q. Mr. Mitman, do you have in front of you
21 what has been marked as Complainants Exhibit 18?

22 A. Yes.

23 Q. Do you recognize this document as your
24 Direct Testimony?

25 A. Yes, I do.

1 Q. And was this Direct Testimony prepared by
2 you or under your direction?

3 A. Yes, it was.

4 Q. And since the filing of your Direct
5 Testimony, do you have any changes to the testimony?

6 A. No, I don't.

7 Q. And if I were to ask you the same
8 questions today, as they appear in your Direct
9 Testimony, would your answers be the same?

10 A. Yes.

11 MS. BOJKO: Your Honor, at this time, the
12 witness is available for cross-examination.

13 EXAMINER SANYAL: Whenever you're ready,
14 Mr. McMahon.

15 MR. McMAHON: Thank you, Your Honor.

16 Yes, Your Honor, starting on the bottom
17 of page 5, line 24, that last word, "His," and then
18 proceeding on to page 6, through line 2, and then
19 Attachment F. Duke Energy Ohio would move to strike
20 that testimony and Attachment F, the e-mail from an
21 arborist, excuse me, which is an out-of-court
22 statement offered to prove the truth of the matters
23 asserted therein. It's textbook hearsay and,
24 therefore, is inadmissible, Your Honor.

25 EXAMINER SANYAL: Attachment F, just for

1 clarification, is an e-mail?

2 MR. McMAHON: It is, yes. It is a --

3 EXAMINER SANYAL: From Ronald E.
4 Rothhaas, Jr.?

5 MR. McMAHON: Yes, Your Honor.

6 EXAMINER SANYAL: Okay.

7 MR. McMAHON: Along with, I guess it's --
8 yes, it's that three-page document, along with some
9 photographs and other attachments.

10 EXAMINER SANYAL: Ms. Bojko.

11 MS. BOJKO: Thank you, Your Honor.

12 The testimony at the bottom of page 5,
13 onto page 6, does not constitute an out-of-court
14 statement. There's -- in Mr. Mitman's testimony,
15 there are no out-of-court statements, so there's no
16 testimony that could possibly be alleged to be an
17 out-of-court statement and, thus, be hearsay.

18 As far as the reference to Attachment F,
19 this statement is similar to the report discussed by
20 Mr. Vonderhaar earlier. Complainants are not
21 offering the statements contained in the arborist's
22 report, attached to Mr. Mitman's testimony, for the
23 truth of the matter asserted as Complainants are not
24 contending that the Commission should even consider
25 the statements regarding environmental benefits or

1 monetary value of the trees. As the Commission
2 ruled, on March 8th, 2018, those two items are beyond
3 the scope of this Complaint.

4 Rather, the report is being offered for
5 the limited purpose of allowing Mr. Mitman to adopt
6 those statements to identify the types of trees
7 described in the report that are indeed contained on
8 his property.

9 Similar to Mr. Vonderhaar, we are willing
10 to revise Attachment F, to redact the unapplicable
11 portions of the report, if that is the desire of the
12 Bench.

13 EXAMINER SANYAL: Ms. Bojko, can you show
14 me where in that e-mail you're identifying the
15 location of the trees, if that's what you are --
16 identifying the trees, so we have the relevant
17 sections.

18 MS. BOJKO: So if we look at Attachment
19 F, it's the third paragraph, second full paragraph,
20 third paragraph, that talks about the width of the
21 area and the zones where these trees are located, and
22 the measurements of those trees. So it talks about
23 the trees and where they are located along the
24 100-foot-long right-of-way corridor is what the
25 reference to the 100 feet is. It talks about the

1 different species. It talks about the height of the
2 species.

3 EXAMINER SANYAL: Mr. McMahon.

4 MR. McMAHON: Just to make sure I'm
5 following correctly. Is the first paragraph that
6 you're referring to, it starts out "While the
7 area...."?

8 MS. BOJKO: Yes, thank you.

9 MR. McMAHON: Okay.

10 Your Honor, if Attachment F is offered
11 only for the purpose of identifying the trees set
12 forth in that paragraph, "While the area with tree
13 canopy is somewhat irregular," and then continuing on
14 in the next paragraph about the dimensions of the
15 trees, we have no objections to those two paragraphs.

16 Otherwise, the rest of the e-mail is
17 talking about irrelevant matters that have nothing to
18 do with the case before the Commission, as Ms. Bojko
19 acknowledged, and that would also apply to all the
20 other attachments to the e-mail about, you know, tree
21 canopies and National Tree Benefit Calculator, and so
22 on and so forth.

23 MS. BOJKO: Your Honor, for clarity's
24 sake, there are a couple other additional pages that
25 do discuss the location. If you look at the Google

1 maps, that's showing the location of the transmission
2 wires and a marking as to the property and the trees
3 in question on the two Google maps.

4 And then if you look at the -- best, I
5 guess, to describe it as what starts Figure 3 which
6 goes on to the next page, Figure 4, Figure 5, Figure
7 6, these are describing the types of trees, 12-inch
8 Northern Red Oak, 8-inch Sugar Maple. These are the
9 descriptions of the trees that Mr. Mitman is adopting
10 as his own.

11 The value and the benefits of trees, and
12 the gallons of water utilized, I agree, is beyond the
13 scope, and we're willing to narrow it to the tree
14 types, tree locations, tree descriptions that are
15 contained on Mr. Mitman's property.

16 EXAMINER SANYAL: Just for clarification,
17 these figures are only identifying trees; they're not
18 identifying locations, correct?

19 MS. BOJKO: Well, the locations, Your
20 Honor, is in that paragraph 3 or the first full
21 second paragraph, but you're right, the diagrams are
22 identifying the types of trees and the width, girth,
23 of the trees.

24 EXAMINER SANYAL: Mr. McMahon, based on
25 these additional clarifications, do you have any

1 further --

2 MR. McMAHON: Nothing further. We
3 certainly do not object to the Google maps, Your
4 Honor, Figures 1 and 2, for that reason.

5 EXAMINER SANYAL: So I will deny Duke's
6 motion to strike, as Attachment F is being used for
7 the limited purpose of identifying the trees and
8 their locations, so that is the only purpose for
9 which the Commission will review this attachment.
10 And, as AE Addison pointed out, this will be
11 consistent with our previous rulings on similar
12 issues.

13 Do we have any other hearsay objections?

14 MR. McMAHON: No, Your Honor. The
15 Company otherwise waives cross-examination of
16 Mr. Mitman.

17 MS. BOJKO: Your Honor, at this time, we
18 move to admit Complainants Exhibit 18 into the
19 record, Mr. Mitman's Direct Testimony.

20 EXAMINER SANYAL: I believe I, again,
21 forgot to give Mr. Etter an opportunity to cross.
22 Did you have any questions?

23 MR. ETTER: No questions and no
24 objections, Your Honor.

25 EXAMINER SANYAL: My apologies.

1 Any objections to admitting Exhibit 18,
2 Mr. McMahon?

3 MR. McMAHON: No, Your Honor. Thank you.

4 EXAMINER SANYAL: It will be so admitted.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 EXAMINER SANYAL: You may step down, sir.

7 THE WITNESS: Thank you.

8 MS. BOJKO: Thank you, Your Honor. At
9 this time, for administrative efficiency, if it
10 pleases the Bench, I would like to move the admission
11 of all the other Complainants' testimony that have
12 been previously marked, so it would be Complainants
13 Exhibits 2 through 14, into the record.

14 EXAMINER ADDISON: Any objections?

15 MR. McMAHON: No, Your Honor.

16 MR. ETTER: No objections.

17 EXAMINER ADDISON: Hearing none,
18 Complainants Exhibits Nos. 2 through 14 will be
19 admitted into the record.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER SANYAL: And just for
22 administrative purposes, did we admit the Joint
23 Exhibit which is Joint Exhibit 1?

24 MS. WATTS: I think we did.

25 EXAMINER SANYAL: I'm sorry?

1 MS. WATTS: I think it was admitted.

2 EXAMINER ADDISON: Let's go off the
3 record.

4 (Discussion off the record.)

5 EXAMINER ADDISON: Let's go back on the
6 record.

7 Ms. Bojko.

8 MS. BOJKO: Thank you, Your Honor. At
9 this time, we move to admit Joint Exhibit 1, the
10 Partial Stipulation entered into by Citizens Against
11 Clear Cutting and Duke Energy Ohio.

12 EXAMINER ADDISON: Thank you very much.
13 Any objections?

14 MR. McMAHON: No, Your Honor.

15 MR. ETTER: No objection.

16 EXAMINER ADDISON: Thank you. It will be
17 admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 EXAMINER ADDISON: Let's go ahead and go
20 off the record again.

21 (Discussion off the record.)

22 (Recess taken.)

23 EXAMINER ADDISON: Let's go ahead and go
24 back on the record.

25 Ms. Bojko.

1 MS. BOJKO: Thank you, Your Honor. At
2 this time, the Complainants and the Office of the
3 Ohio Consumers' Counsel would like to call Mr. James
4 D. Williams to the stand.

5 EXAMINER ADDISON: Mr. Williams, please
6 raise your right hand.

7 (Witness sworn.)

8 EXAMINER ADDISON: Thank you. Please be
9 seated.

10 THE WITNESS: Thank you.

11 - - -

12 JAMES D. WILLIAMS

13 being first duly sworn, as prescribed by law, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Ms. Bojko:

17 Q. Mr. Williams, could you please state your
18 name and address for the record.

19 A. Yes. My name is James D. Williams, and
20 my address is 65 East State Street, 7th Floor,
21 Columbus, 43215.

22 Q. And on whose behalf are you testifying
23 here today?

24 A. Today, I'm testifying on behalf of the
25 Office of the Ohio Consumers' Counsel and the

1 Complainants.

2 Q. Did you file or cause to be filed Direct
3 Testimony regarding the Complaint of Citizens Against
4 Clear Cutting against Duke Energy Ohio in this case?

5 A. Yes, I did.

6 MS. BOJKO: Your Honors, at this time, I
7 would like to mark as OCC-Complainants Joint
8 Exhibit 1, the Direct Testimony of James D. Williams,
9 filed on October 26th, 2018.

10 EXAMINER ADDISON: It will be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MS. BOJKO: May I approach?

13 EXAMINER ADDISON: You may.

14 Q. Mr. Williams, do you have in front of you
15 what has been marked as OCC-Complainants Joint
16 Exhibit 1?

17 A. Yes, I do.

18 Q. Do you recognize this document as your
19 testimony filed in this proceeding?

20 A. I do.

21 Q. And was this Direct Testimony prepared by
22 you or under your direction?

23 A. Yes, it was.

24 Q. And since --

25 MS. BOJKO: Actually, Your Honor, at this

1 time, I would like to have marked as OCC-Complainants
2 Joint Exhibit 2, a Duke Energy filing on November
3 2nd, 2018, with the Commission in Case No.
4 18-999-EL-ESS and Case No. 17-999-EL-ESS.

5 EXAMINER ADDISON: I'm sorry, Ms. Bojko.
6 Just to clarify, there are two filings that you
7 are --

8 MS. BOJKO: No, Your Honor. It's one
9 letter that was filed in two dockets.

10 EXAMINER ADDISON: Okay. Thank you for
11 that. It will be so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MS. BOJKO: May I approach, Your Honor?

14 EXAMINER ADDISON: You may.

15 Q. (By Ms. Bojko) Mr. Williams, do you have
16 in front of you what's been marked as
17 OCC-Complainants Joint Exhibit 2?

18 A. I do.

19 Q. And could you explain, to the Court, what
20 this filing is and how this impacts your testimony?

21 A. Yes. This filing corrects, according to
22 Duke, corrects data that was filed back in March,
23 around March 30th, 2017, involving its alleged costs
24 from 2016. It also corrects data that was filed by
25 Duke, on approximately March 30th of 2018, concerning

1 its alleged costs from 2017.

2 The impact of this filing on my testimony
3 is that I relied upon both of the reports that were
4 filed by Duke in 17-999-EL-ESS, as well as
5 18-999-EL-ESS, as I was preparing my report, my
6 testimony.

7 Q. And when was this revised actual dollar
8 figures in the memorandum, when was this filed with
9 the Commission?

10 A. This was filed on November 2nd.
11 Actually, the data became known to OCC, yesterday
12 afternoon, when we noticed it both on the daily
13 docketing report from Friday as well as a
14 correspondence from Duke.

15 Q. So given that this was filed on
16 November 2nd, 2018, after your testimony that was
17 filed on October 26th, 2018, is it fair to say that
18 Duke's updated numbers are not included in your
19 testimony?

20 A. That would be correct.

21 Q. So with this new filing, do you now have
22 changes to your testimony that was filed in this
23 proceeding, 17-2344-EL-CSS, on October 26, 2018?

24 A. I do. I have summarized those changes on
25 a couple of the different -- in one of the exhibits,

1 as well as a number within my testimony.

2 I have not went back to calculate
3 percentage changes and things like that until I'm
4 able to do a more comprehensive -- until I'm able to
5 complete that work and then hopefully be able to file
6 something that reflects that.

7 MS. BOJKO: Your Honor, at this time, the
8 Office of Ohio Consumers' Counsel and the
9 Complainants request that for the efficiency of the
10 hearing, that Mr. Williams be allowed to explain the
11 summary revisions that will need to occur to his
12 testimony, and then that Mr. Williams go back and do
13 those calculations and file Supplemental Testimony at
14 a later time.

15 EXAMINER ADDISON: Ms. Watts.

16 MS. WATTS: Your Honor, the errors that
17 are corrected by virtue of the filing that was
18 provided to the Commission on Friday and to
19 Mr. Williams and his counsel on Monday, we noticed
20 them actually as a result of reading Mr. Williams'
21 testimony. If he wants to correct the numbers in his
22 testimony, we don't have any objection to that, but
23 if he's going to change any ultimate conclusions with
24 additional testimony, then we would reserve the right
25 to recross him on that.

1 EXAMINER ADDISON: Thank you.

2 We will allow Mr. Williams the
3 opportunity to revise the mathematical calculations.

4 As to any substantive conclusions, if
5 Mr. Williams files Supplemental Testimony that
6 results in a different conclusion, as Duke
7 determines, we will certainly be able to address that
8 issue if it arises.

9 MS. BOJKO: Thank you, Your Honor.

10 I mean, I would note that neither party
11 was notified of the realization of the changes during
12 their evaluation of Mr. Williams' testimony, even
13 though it's been filed since August 26th, and it's
14 now November 6th.

15 EXAMINER ADDISON: Thank you. And that's
16 precisely why we're going to allow him to amend his
17 testimony.

18 MS. BOJKO: Thank you, Your Honor.

19 MR. ETTER: Your Honor, how soon would
20 you like to have the Supplemental Testimony?

21 EXAMINER ADDISON: Mr. Williams, how soon
22 can you have your Supplemental Testimony drafted?

23 THE WITNESS: I think I can do this very
24 quickly, Your Honor. Whenever you need this.

25 EXAMINER ADDISON: Thank you. Would it

1 be possible to have it by the end of the week?

2 THE WITNESS: Yes, it would.

3 EXAMINER ADDISON: Thank you.

4 Q. (By Ms. Bojko) Mr. Williams, with that,
5 would you like to address the summary changes that
6 you believe affect your testimony?

7 A. I would.

8 On page 11, in the table marked "Table
9 2," the 2016 Spending O&M level was changed from
10 \$1,426,730 to \$3,379,242, and that impacts the
11 calculations that I did throughout the rest of the
12 numbers.

13 On JDW-10 on page 16, and this addressed
14 "Transmission maintenance expenditures - Reliability
15 specific." The Inspection and Maintenance Program,
16 2018 budget, was changed from \$6,731,948 to
17 \$2,014,669. The Project O&M was changed from
18 \$9,572,834 to \$3,164,802. And importantly in this
19 testimony, the Vegetation Management was changed from
20 21,835,000 -- \$21,835,484 to \$2,673,500.

21 EXAMINER ADDISON: Mr. Williams, would
22 you mind just restating that last number one more
23 time.

24 THE WITNESS: Yes.

25 EXAMINER ADDISON: Thank you.

1 THE WITNESS: The Vegetation Management
2 number was changed from -- for the 2018 budget, was
3 changed from \$21,835,484 to \$2,673,500.

4 EXAMINER ADDISON: Thank you very much.

5 MS. BOJKO: Your Honor, may we go off the
6 record for a minute?

7 EXAMINER ADDISON: Let's go off the
8 record.

9 (Discussion off the record.)

10 EXAMINER ADDISON: Let's go back on the
11 record.

12 Q. (By Ms. Bojko) Mr. Williams, with those
13 changes and the supplement that you've agreed to
14 produce to revise your testimony accordingly, due to
15 the significant changes in actual dollars or
16 projected dollars spent or to be spent by Duke on its
17 vegetation management programs, do you have any other
18 changes with your testimony?

19 A. I do not.

20 MS. BOJKO: Your Honor, my suggestion is
21 to not move the admission of this exhibit and to have
22 it pending until we receive a supplemental amended
23 version of his testimony, if that's okay with the
24 Bench.

25 EXAMINER ADDISON: Certainly. We can

1 address it at a later point.

2 MS. BOJKO: Thank you.

3 EXAMINER ADDISON: Thank you.

4 Q. Mr. Williams, if I were to ask you the
5 same questions today as they appear in your Direct
6 Testimony, except for the corrections you've made
7 here today, would your answers be the same?

8 A. Yes, they would.

9 MS. BOJKO: At this time, Your Honor, the
10 witness is available for cross-examination.

11 EXAMINER ADDISON: Thank you very much,
12 Ms. Bojko.

13 Ms. Watts.

14 MS. WATTS: Thank you, Your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Ms. Watts:

18 Q. Good morning, Mr. Williams.

19 A. Good morning.

20 Q. How are you today?

21 A. I'm well. Thank you.

22 Q. Good. We meet again.

23 Based upon your 22 years of work with
24 OCC, is it fair to say that you have a good
25 understanding of the Commission's regulations?

1 A. Yes, I do.

2 Q. And with regard to this particular case,
3 in your testimony you provide cites to some of the
4 Commission's rules, do you not?

5 A. I do.

6 Q. And you've reviewed those rules prior to
7 writing your testimony?

8 A. Yes, I have.

9 Q. In fact, you've testified in more than a
10 few Duke Energy cases, correct?

11 A. That would be correct.

12 Q. And you've testified starting as far back
13 as 1995, correct?

14 A. It was a 1995 case. I probably testified
15 in '96 or '97.

16 Q. Okay. Thank you for that clarification.
17 And you've testified in cases that
18 involve gas, electric, and water utility matters,
19 correct?

20 A. That is correct.

21 Q. And your testimony covers such things as
22 line extensions, storm damage recovery, grid
23 modernization, accelerated gas line replacement,
24 disconnection policy, energy efficiency; those are
25 just a few of the topics you've covered, correct?

1 A. That's correct.

2 Q. With regard to the attachment to your
3 testimony, JDW-1, would you turn to that, please?

4 A. I will.

5 Q. You've listed, I believe, most, if not
6 all, of the cases in which you've testified, correct?

7 A. Yes.

8 Q. And are any of those cases related to or
9 do any of them involve customer complaints or
10 vegetation management of transmission right-of-way?

11 A. Not of transmission right-of-way.

12 Q. Okay. And, sir, you are not a forester,
13 correct?

14 A. I am not.

15 Q. And you've never worked for a utility
16 company.

17 A. I have not.

18 Q. And you've never had responsibility for a
19 transmission right-of-way for a utility company.

20 A. I have not.

21 Q. Have you personally visited any of the
22 properties on which the Complainants in this case
23 reside?

24 A. No, I have not.

25 Q. Have you walked any portion of the

1 transmission line right-of-way involved in this case?

2 A. At these customers' properties?

3 Q. Yes.

4 A. No, I have not.

5 Q. Do you have any understanding of the
6 terms "compatible" versus "incompatible" as that
7 relates to utility right-of-way?

8 A. Just in terms of tree growth rates and
9 things like that. I'm familiar with seeing these
10 terms in vegetation management plans.

11 Q. Are you able to describe what is deemed,
12 by Duke Energy, to be compatible versus incompatible
13 in the right-of-way?

14 A. Not specifically.

15 Q. And, sir, you would agree that Duke
16 Energy Ohio has a responsibility to provide safe and
17 reliable utility service, correct?

18 A. That would be correct.

19 Q. And can we agree that vegetation that
20 interferes with providing safe and reliable utility
21 service should be removed?

22 A. I don't know about "removed." I believe
23 that there's appropriate ways to trim trees, prune
24 trees, do other things, short of removal. I believe
25 that the right to provide safe and reliable service

1 is also balanced against property owners and their
2 interests in that property, easements, and other
3 matters.

4 Q. Now, you're aware, are you not, that Duke
5 Energy submitted an Application, in April of 2016, to
6 clarify wording in its programs, and that Application
7 describes transmission and distribution vegetation
8 management, correct?

9 A. I believe that vegetation management plan
10 went much further than just clarifying some wording,
11 but yes, there was an Application filed.

12 Q. And you have that actually attached to
13 your testimony as JDW-3, correct?

14 A. I do.

15 Q. And do we agree that the portion of the
16 programs described in that Application, actually
17 there's a specific paragraph and it's paragraph (f)
18 that was amended, correct?

19 A. I believe that's all that was changed.

20 Q. Okay. And that paragraph is entitled
21 "Overhead Electric Line Vegetation Management,"
22 correct?

23 A. That is correct.

24 Q. Looking at the new language for that
25 paragraph, and we both understand that the new

1 language is that which is underlined in the text,
2 correct?

3 A. Yes.

4 Q. So looking at the new language, do you
5 see headings that specify transmission versus
6 distribution?

7 A. Yes. The first paragraph doesn't specify
8 specifically transmission or distribution, it's just
9 overhead electric line vegetation management, but
10 subsequent paragraphs appear to specify whether it's
11 transmission or distribution.

12 Q. And now I call your attention to the
13 section or the paragraph (f) that is actually
14 stricken in the text; so it represents what was
15 amended, correct?

16 A. Yes.

17 Q. And in that old version is it possible,
18 in all cases, to make a determination as to whether
19 it's addressing transmission versus distribution?

20 A. In some paragraphs it probably can be
21 done; not in all. I would use it as an example, the
22 last paragraph that concerns working with customers,
23 removal under emergency situations. It's the part of
24 the vegetation management plan that involved some
25 level of collaboration between Duke and its

1 customers.

2 Q. Okay. We'll --

3 A. It's not clear, to me, that this would be
4 applicable just to transmission or distribution.

5 Q. Okay. And thank you. We'll get to that
6 paragraph; we're just not there yet.

7 And, sir, in your testimony you're
8 expressing an opinion that Duke Energy should provide
9 safe and reliable utility service while also
10 balancing the interests of property owners, correct?

11 A. Can you direct me to where you're -- I
12 want to make sure I'm on the same section you're at,
13 if you don't mind.

14 Q. Yeah, I actually wasn't referring
15 specifically to any line in your testimony, but I
16 believe you stated yourself, on the record a minute
17 ago, that you believe the Company should provide safe
18 and reliable service while also balancing the
19 interests of customers.

20 A. Yes, that is my testimony, and that is a
21 requirement of Duke.

22 Q. Okay. Are you taking a firm position,
23 either way, with respect to any of the individual
24 property owners in this case?

25 MS. BOJKO: Objection as to form.

1 "Firm"?

2 EXAMINER ADDISON: Do -- I'm sorry,
3 Mr. Williams. Do you understand the question that is
4 proposed?

5 THE WITNESS: Not really.

6 Q. Do you have any opinions specifically
7 with respect to individual facts related to each of
8 the Complainants' cases, each of the Complainants'
9 allegations in this case?

10 A. I believe each of the Complainants speak
11 for themselves and their facts are specific to their
12 complaint. In looking at those complaints, I haven't
13 taken a position, one way or the other, other than to
14 just note for the Commission that there appear to be
15 substantive changes made to Duke's vegetation
16 management plan that caused most of these complaints.

17 Q. Would you turn to page 7 of your
18 testimony, please.

19 MS. BOJKO: I'm sorry, which page?

20 MS. WATTS: 7.

21 A. I'm there.

22 Q. Beginning at line 3, you state, "However,
23 the vegetation management program was modified to
24 include the explicit practice of cutting down and
25 removing vegetation away from electric facilities if

1 Duke has the legal right to do so." Do you see that?

2 A. Yes, I do.

3 Q. And in the next paragraph on page 7, at
4 lines 8 through 12, you state that "Duke's previous
5 program required coordination with customers before
6 removing trees unless Duke had a legal right to
7 remove a tree and there was an emergency." Do you
8 see that?

9 A. That is correct.

10 Q. And in respect of that assertion, are you
11 referring to the paragraph, the stricken paragraph
12 (f) that you pointed to a moment ago which is the
13 last paragraph in that portion of (f) in JDW-3?

14 A. Yes. I read in this paragraph that there
15 was more of a requirement for collaboration between
16 Duke and its customers, and I think that was also
17 supported in discovery responses too; there's no
18 question.

19 Q. Do you see the beginning of that
20 paragraph begins with "Leaning, weakened, or dead
21 trees outside of the clearance requirements...."?

22 MS. BOJKO: Objection, Your Honor. I
23 don't -- the beginning of the paragraph, that I
24 thought we were referring to, starts with "When
25 performing...."

1 MS. WATTS: This is the stricken portion
2 of paragraph (f). It's the second-to-the-last
3 paragraph.

4 EXAMINER ADDISON: Thank you for that
5 clarification.

6 A. I see the paragraph you're referring to.

7 Q. And what is your understanding of the
8 term "outside of the clearance requirements"?

9 A. I would take this to mean it could be
10 outside of the easement. It could be outside of a
11 15-foot tree-trimming area. It's not uncommon, these
12 days, for utilities to trim danger trees or things
13 like that for trees that are outside of the
14 right-of-way that could be causing outages, and
15 utilities would tend to work with their customers to
16 try to coordinate that work and perhaps try to avoid
17 some type of reliability problem.

18 Q. So you just used the term "danger tree."
19 Could you tell me what you understand that term to
20 be?

21 A. I believe and, again, I'm referring to
22 kind of the practice of other utilities that I'm
23 familiar with, where trees that are outside of the
24 right-of-way that could pose a damage later, either
25 because of the type of tree, the species, or just the

1 nature of the tree itself could pose some type of a
2 safety problem or reliability problem, could be
3 coordinated where a utility might trim that or remove
4 that tree.

5 Q. Okay. And in your answer you refer to
6 your understanding of other utilities. Do you
7 believe that applies to Duke Energy as well?

8 A. I believe it could.

9 Q. Do you know?

10 A. I don't know what Duke's danger tree
11 policy is, outside of this paragraph that's been
12 stricken now as part of the modified vegetation
13 management plan that was represented to be where
14 there was no substantive changes being made. It
15 seems to me that's exactly part of the substantive
16 changes that were made.

17 Q. And do you understand -- have you ever
18 heard the term "hazard tree"?

19 A. I have.

20 Q. And what does that term mean to you?

21 A. For myself, I tend to think of hazard
22 tree and danger tree as the same type of vegetation;
23 same type of a tree.

24 Q. So do you believe that those terms are
25 interchangeable?

1 A. I think they could be. There could be
2 unique differences for each in terms of the costs
3 associated with tree trimming or what costs are
4 capitalized, those types of things; there could be
5 those differences. But, for my purposes, I'm merely
6 addressing it from the standpoint of they represent
7 vegetation that could cause a reliability issue.

8 Q. Okay. In looking at that paragraph, it
9 begins with "Leaning, weakened, or dead trees outside
10 of the clearance requirements...." Do you believe
11 that phrase refers to either danger trees or hazard
12 trees?

13 MS. BOJKO: Objection, Your Honor. I'd
14 like to note for the record that we're talking about
15 a paragraph that's struck. I think there's a little
16 confusion with the transcript that may occur if we
17 keep referring to the paragraph as if it exists in
18 the vegetation management plan, because it does not.

19 EXAMINER ADDISON: Thank you. And he's
20 testified to the differences between the existing
21 plan and the now-current plan, so I think it's a fair
22 question. I'll allow the question.

23 THE WITNESS: Could I ask for the
24 question again, please?

25 EXAMINER ADDISON: Thank you, Carolyn.

1 (Record read.)

2 A. In some situations, it could.

3 Q. In what particular situations would you
4 envision that it would apply?

5 A. You're asking if these could be danger or
6 hazard trees. I mean, if it's that type of
7 vegetation, I don't know that that's all-inclusive,
8 but for danger and hazard trees, I suspect it could.

9 Q. So is it your understanding, then, that
10 the language of that paragraph applies to vegetation
11 management along the transmission right-of-way that
12 does not involve leaning, weakened, or dead trees
13 outside of the clearance requirements?

14 A. I think, in terms of my testimony, I'm
15 really addressing the next paragraph and that's what
16 I was using as part of my basis in the conclusion I
17 reached. I wasn't particularly addressing issues
18 outside of the right-of-way as much as, more
19 importantly, changes that Duke made to its vegetation
20 management plan that it represented to the Commission
21 were not substantive, when they sure appear to be
22 substantive.

23 Q. Okay. Turning to that last paragraph,
24 please. Which particular element of that paragraph
25 are you relying upon for your testimony?

1 A. Like, for example, here in the first
2 sentence: "When performing routine circuit line
3 clearing, all unsuitable trees twelve inches diameter
4 breast height...or less with the trunk within
5 ten feet of the conductor shall be removed where
6 permissible by the property owner or Township, but in
7 the absence of a legal right to remove, and excluding
8 an emergency situation, no removal may take place
9 until the Contractor has contracted and received
10 approval from the property owner or agent to remove
11 such trees."

12 MS. BOJKO: Your Honor, if I may
13 interrupt a quick second? Could you pull your mic
14 closer. People are having trouble hearing you.

15 EXAMINER ADDISON: My mic?

16 MS. BOJKO: Yes.

17 EXAMINER ADDISON: Thank you, Ms. Bojko.

18 A. That sentence, to me, indicated that this
19 is part of the collaboration that occurred at one
20 time between Duke and its customers, and it's that
21 level of collaboration is what, based upon my reading
22 of the complaints, seems to no longer exist.

23 Q. And, sir, is it your understanding that
24 paragraph refers to distribution management or
25 transmission management along vegetation --

1 vegetation management along the right-of-way?

2 A. I believe, as I testified earlier, in not
3 all cases am I able to tell if a specific item within
4 the vegetation management plan is specific to
5 transmission or distribution.

6 Q. Sir, referring to the Company's
7 Application to change its programs that you have
8 attached as JDW-3. In your testimony, on page 8, you
9 state that the Commission did not act upon that
10 program Application so far as you are aware, correct?

11 A. Yeah, I don't believe there was a
12 specific Finding and Order, anything like that,
13 related to this.

14 Q. But you've also testified that you have
15 familiarity with the Commission's rules. Do we agree
16 that an Application, such as that which was submitted
17 by Duke Energy and which you have attached as JDW-3,
18 is an Application that allows for automatic approval
19 after 45 days?

20 A. That is my understanding of the rule, and
21 I believe that's why it's critically important that
22 for an Application that would be automatically
23 approved, that it be clearly represented if there
24 were substantive changes or impacts of a program
25 change that would impact customers the way that this

1 Application impacted customers, that it should be
2 properly disclosed. In this case, I don't believe it
3 was properly disclosed.

4 Q. And, sir, you've reviewed old paragraph
5 (f) and new paragraph (f), correct?

6 A. Yes, I have.

7 Q. And you believe that there are
8 substantive changes, demonstrated by the language in
9 those two paragraphs, that were not called out when
10 the Application was submitted, correct?

11 A. I believe so.

12 Q. But OCC did not intervene in that case,
13 correct?

14 A. OCC typically doesn't intervene in cases
15 when a utility files an Application claiming that
16 there's no substantive changes. I reviewed the
17 Application, but the Office didn't intervene because,
18 frankly, Duke had represented this as being something
19 totally different than what it was.

20 Q. So, at the time you reviewed it, you did
21 not look at those two paragraphs to determine for
22 yourself whether there was substantive changes.

23 A. I didn't look at it from that standpoint,
24 no.

25 Q. And did you --

1 A. I mean, I was -- it seemed to me as
2 though -- I always look -- I review these types of
3 Applications for all the utilities and it's common to
4 see, in these types of Applications, items where, you
5 know, I'll use like AEP, for example, where they'll
6 work with customers to try to come up with some type
7 of an amicable resolution to any kind of a dispute
8 that would come up as part of vegetation management.

9 I would have noticed that that -- that
10 that didn't seem to exist here. Everything tended to
11 be very legalistic. It was Duke asserting if it had
12 a right to do something, it could do whatever it
13 wanted to do within that right-of-way. That was my
14 original impression of it. It was much later that it
15 played itself out and we started to actually
16 understand how this impacted customers.

17 Q. And, sir, when you reviewed that
18 Application, did you have occasion to speak with the
19 Commission Staff to determine whether they were also
20 reviewing it?

21 A. I don't recall talking to Commission
22 Staff.

23 Q. Do you have any knowledge, any specific
24 knowledge as to what the Commission Staff may have
25 looked at or not looked at with respect to that

1 Application?

2 A. No, I don't.

3 Q. Could you explain to me, please, your
4 understanding of what the term "integrated vegetation
5 management" means?

6 A. The -- well, first off, the term
7 "integrated vegetation management" doesn't exist in
8 Duke's most -- the most-recent vegetation management
9 plan.

10 This is a term that came about more as
11 part of discovery responses when the Complainants
12 started asking questions about why Duke was doing the
13 practices that they were doing. The integrated
14 vegetation management showed up at that time.

15 I'm familiar with integrated vegetation
16 management with some other utilities where, you know,
17 I think what it's looking at is programs that are
18 looking at trying to, you know, both maintain and
19 manage vegetation over an entire tree-trimming cycle,
20 and it can use different methods from pruning, to,
21 you know, removal of vegetation, to use of
22 herbicides. There's a lot of different practices
23 that could be part of that.

24 For Duke's, I didn't see that at all to
25 begin with. It seems like that came about much later

1 when Duke started to try to explain, to the
2 Complainants, what it was doing and why it was doing
3 it.

4 Q. Sir, do you have any specific knowledge
5 as to whether Duke Energy Ohio applies herbicides in
6 its transmission right-of-way?

7 A. I believe I've seen, in some of the
8 discovery responses, that Duke does.

9 Q. Do you know what type?

10 A. No, I don't.

11 Q. Do you know how those herbicides are
12 applied?

13 A. No, I don't.

14 Q. Looking at page 8 of your testimony,
15 please, specifically line 19, you use the term
16 "indiscriminate vegetation management and control."
17 Do you see that?

18 A. Yes, I do.

19 Q. Could you explain to me what you mean by
20 that phrase?

21 A. Yes.

22 One of the -- in addition to the
23 complaints that were filed in this docket or in the
24 Complaint case, I also was keeping an eye on public
25 comments that were being filed, as I do with all

1 utility companies, and those public comments were
2 indicating concern as well with these changes in
3 vegetation management practice. So the purpose of my
4 testimony in here was to kind of express what other,
5 perhaps, non-complainants were saying about these
6 practices.

7 And the "indiscriminate vegetation
8 management" was just -- it was, again, that
9 heavy-handed approach towards doing vegetation
10 management. It was that -- it was that no longer
11 working with customers to kind of explain,
12 collaborate with, but just to go in and trim, do
13 whatever Duke felt it needed to do or wanted to do
14 within that right-of-way.

15 Q. So your use of that phrase was a
16 summation of your reading of the complaints that were
17 filed in the public docket, correct?

18 A. Yeah, it seemed to kind of fit into that
19 category.

20 Q. And with respect to whether Duke Energy
21 did or did not consider any particular customer's
22 wishes or desires, you don't have any independent
23 knowledge of any of those facts, correct?

24 A. For the eight or so public comments in --
25 in that particular case, no. I hope they worked with

1 these customers. I mean, this sounded pretty bad.

2 Q. Sir, do you have any knowledge of any
3 differences among the four Ohio investor-owned
4 utilities with respect to transmission vegetation
5 management?

6 A. I have not prepared, like, a summary of
7 that. I review the maintenance repair, inspection
8 repair plans as they're filed, and that certainly
9 involves both the distribution and transmission
10 right-of-way plans. I'm generally familiar with
11 those, but I did not testify specifically to changes
12 or differences between one EDU and another.

13 What I did notice was several of the EDUs
14 no longer provide transmission; it may be much more
15 limited. Some of the EDUs, it seems to me, I think I
16 mentioned earlier one of them, I think that AEP, you
17 know, specifically even has -- calls out a section
18 within its vegetation management plan where, you
19 know, it tries to avoid just the situation that the
20 Commission is dealing with today. It calls for some
21 type of working with customers for an amicable
22 resolution to disputes that might arise over
23 vegetation management.

24 Q. And --

25 A. And I do recall seeing that, I believe,

1 in at least AEP's vegetation management plan.

2 Q. And is it your testimony, then, that
3 there are certain Ohio electric distribution
4 utilities that do not own transmission lines?

5 A. My understanding, and I don't know
6 exactly where the ownership resides, but yes, is that
7 not everybody necessarily owns vegetation --
8 transmission.

9 Q. Can you tell me what you're using as a
10 delineation between transmission and distribution?

11 A. I believe that it's generally accepted
12 69 kV and above. I believe you might find, with some
13 of the vegetation management plans of other EDUs, it
14 could be 200 kV and above.

15 Q. Do you know, sir, with respect to the
16 transmission lines involved in these proceedings, if
17 any of these lines were to go out of service, how
18 many customers would be affected?

19 A. No, I don't.

20 Q. And do you have any understanding of what
21 engineering impact would occur if any of the lines
22 involved in these cases had an outage?

23 A. No, I do not.

24 Q. Sir, would you believe it would be
25 prudent of Duke Energy to wait until outage numbers

1 increase, in some respect, before addressing
2 transmission vegetation management?

3 MS. BOJKO: Objection. Calls for
4 speculation and facts not in evidence.

5 EXAMINER ADDISON: Ms. Watts?

6 MS. WATTS: It's a straightforward
7 question. There's no speculation, Your Honor.

8 MS. BOJKO: It assumes facts not in
9 evidence that the rates would actually increase,
10 which has not been demonstrated.

11 EXAMINER ADDISON: Thank you, Ms. Bojko.

12 I will allow the question, and I will
13 afford Mr. Williams quite a bit of latitude in his
14 answer.

15 THE WITNESS: Thank you, Your Honor.

16 A. First off, I would note that Duke has
17 missed its distribution reliability standards for the
18 last two years. And I believe that Duke ought to be
19 putting attention on its distribution system and
20 meeting the Commission's current standards for
21 distribution, in addition to operating and
22 maintaining the transmission system.

23 No, I absolutely believe that Duke needs
24 to do what it needs to do to provide safe and
25 reliable service for customers. I believe that Duke

1 ought to do well by its customers and try to avoid
2 outages, but I do believe that Duke also ought to be
3 working with its customers to try to avoid situations
4 like this. There's a balance that has to be achieved
5 between the vegetation management practices that the
6 Company is doing and the interests of these
7 Complainants. That's what I believe is lacking.

8 Q. So going back to the beginning of your
9 answer, sir, you mentioned that the Company has been
10 out of compliance for its reliability standards. Are
11 you referring to the SAIFI and CAIDI standards?

12 A. I'm referring to the two distribution
13 reliability standards that the Commission has imposed
14 on Duke, and that would be the SAIFI and the CAIDI.

15 Q. Okay. And is it your understanding that
16 attention to transmission distribution -- I'm
17 sorry -- to transmission right-of-way has no impact
18 on SAIFI and CAIDI?

19 A. I believe, for purposes of the
20 reliability standards, transmission generation and
21 major events are excluded from consideration of the
22 distribution standards. And I believe that's in your
23 Rule 10 Report, filed every March 31st; crystal
24 clear.

25 Q. And, sir, you did not do an analysis of

1 the Company's transmission outages, by year, to
2 determine whether that number has gone up or gone
3 down, correct?

4 A. I did not do an analysis.

5 MS. WATTS: I have no further questions.
6 Thank you, Your Honor.

7 EXAMINER ADDISON: Thank you, Ms. Watts.
8 Ms. Bojko, redirect?

9 MS. BOJKO: May we have a few minutes,
10 Your Honor?

11 EXAMINER ADDISON: You may.

12 MS. BOJKO: Thank you.

13 EXAMINER ADDISON: Let's go off the
14 record.

15 (Off the record.)

16 EXAMINER ADDISON: Let's go back on the
17 record.

18 Ms. Bojko.

19 MS. BOJKO: We have no redirect for this
20 witness, Your Honor.

21 EXAMINER ADDISON: Thank you very much.

22 I do have a few questions for you,
23 Mr. Williams.

24 You stated that you did review the filing
25 in Case No. 16-915-EL-ESS; is that correct?

1 THE WITNESS: Yes.

2 EXAMINER ADDISON: At the time of that
3 review, did you agree with Duke that they were not
4 proposing any substantive changes to the program, the
5 vegetation management program?

6 THE WITNESS: I didn't form an opinion at
7 all, Your Honor. At that time, I just took Duke at
8 its word, that it wasn't making substantive changes.

9 Later, when we started seeing the
10 complaints and then examined the data in more detail,
11 it became pretty clear there were substantive
12 changes, and that Duke had, at a minimum,
13 misrepresented this Application to the Commission.

14 EXAMINER ADDISON: Thank you.

15 If you would turn to page 8 of your
16 testimony. I believe you used the phrase quite a few
17 times throughout your testimony but specifically I'm
18 looking at line 18, where you use the phrase "clear
19 cutting." What do you mean when you say "clear
20 cutting" in your testimony?

21 THE WITNESS: The context of "clear
22 cutting" in my testimony is the complete removal of
23 vegetation. The eradication of vegetation within
24 either a clearance area or within an easement.

25 EXAMINER ADDISON: Thank you. And with

1 that understanding in mind, do you believe the
2 vegetation management program, that was in place
3 prior to the filing in Case No. 16-915-EL-ESS,
4 provided Duke with the ability to clear cut?

5 THE WITNESS: I don't know.

6 EXAMINER ADDISON: Okay. We have no
7 additional questions, Mr. Williams. You're excused.

8 THE WITNESS: Thank you, Your Honor.

9 EXAMINER ADDISON: Thank you very much,
10 again, for adjusting your schedule for the day.

11 MS. BOJKO: Your Honor, at this time,
12 we'll just hold in abeyance the removal of
13 Mr. Williams' testimony and admission into the
14 record, but we would like to move OCC-Complainants
15 Joint Exhibit 2 at this time.

16 EXAMINER ADDISON: Thank you.

17 Any objections to the admission of
18 OCC-Complainants Joint Exhibit No. 2?

19 MS. WATTS: No objections, Your Honor.

20 EXAMINER ADDISON: It will be admitted.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 EXAMINER ADDISON: As we stated before,
23 and given the review of the numbers provided in
24 OCC-Complainants Joint Exhibit No. 2, we will allow
25 Mr. Williams to supplement his testimony. And any

1 additional cross-examination of that supplemental
2 testimony, we can certainly determine at a later
3 date. I believe Mr. Williams has stated that he will
4 have those revised numbers and testimony to us by
5 Friday. Is that correct, Mr. Williams?

6 THE WITNESS: That is correct, Your
7 Honor.

8 EXAMINER ADDISON: Thank you.

9 And I would be happy to issue a
10 procedural entry indicating what day, if necessary,
11 we will have to have an additional hearing date, to
12 afford the property owners an opportunity to read
13 that entry as well.

14 This may be -- I'm sorry, let's go off
15 the record.

16 (Discussion off the record.)

17 (At 12:45 p.m. a lunch recess was taken
18 until 1:50 p.m.)

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1 Tuesday Afternoon Session,
2 November 6, 2018.

3 - - -

4 EXAMINER SANYAL: Let's go on the record.
5 While we were off the record, we
6 discussed that Duke Witnesses Fletcher and Adams will
7 be going forward. I just wanted to make it clear on
8 the record that everyone has been advised that Duke's
9 witnesses are going before Complainants', and I just
10 wanted to make sure that there were no issues,
11 especially later on for briefing purposes.

12 Okay. No issues are noted.

13 Mr. McMahon, you may proceed, or
14 Ms. Watts

15 MS. WATTS: Thank you, Your Honor. Duke
16 Energy Ohio calls Scott T. Fletcher, please. And,
17 Your Honor, may we have Mr. Fletcher's testimony
18 marked as Duke Energy Ohio Exhibit 1?

19 EXAMINER SANYAL: Yes. It is so marked.
20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MS. WATTS: May we approach?

22 EXAMINER SANYAL: Yes, you may, and you
23 may freely do so during the pendency of this
24 examination.

25 Will you please raise your right hand.

1 (Witness sworn.)

2 EXAMINER SANYAL: You may be seated.

3 THE WITNESS: Thank you.

4 EXAMINER SANYAL: You may proceed,
5 Ms. Watts.

6 MS. WATTS: Thank you, Your Honor.

7 - - -

8 SCOTT T. FLETCHER

9 being first duly sworn, as prescribed by law, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 By Ms. Watts:

13 Q. Good afternoon, sir.

14 A. Good afternoon.

15 Q. Would you state your name for the record,
16 please.

17 A. Scott Thomas Fletcher.

18 Q. And, Mr. Fletcher, do you have before you
19 what's just now been marked as Duke Energy Ohio
20 Exhibit 1?

21 A. I do.

22 Q. And is that the testimony that you
23 prepared and was filed in this proceeding?

24 A. Yes, it is.

25 Q. If I were to ask you the questions

1 contained therein again today, would your answers be
2 the same?

3 A. They would, yes.

4 Q. Are they true and accurate to the best of
5 your knowledge?

6 A. They are, yes.

7 MS. WATTS: Mr. Fletcher is available for
8 cross-examination.

9 MR. DRESSEL: Your Honor, before we begin
10 with the cross-examination, we have motions to strike
11 a few portions of Mr. Fletcher's testimony.

12 Specifically, looking at page 3, line 3,
13 beginning with "Duke Energy," through line 5, ending
14 with "things."

15 Additionally, page 3, line 6.

16 EXAMINER SANYAL: Okay. Just hold one
17 minute. So on page 3, it's beginning on line 3,
18 starting with "The purpose"?

19 MR. DRESSEL: Yes, Your Honor, that's
20 correct.

21 EXAMINER SANYAL: Okay. And ending
22 where?

23 MR. DRESSEL: Ending with "among other
24 things."

25 EXAMINER SANYAL: So the end of that

1 sentence or just until "Among other things"?

2 MR. DRESSEL: Until "Among other things."
3 It's not the entirety of that sentence. I apologize.

4 MS. WATTS: Okay. So just the first
5 sentence.

6 MR. DRESSEL: So maybe it would be easier
7 to read from. Starting with "Duke Energy's
8 environmental compliance and stewardship as it
9 relates to Rights of Way vegetation management.
10 Among other things...." That's the scope of this
11 portion of the testimony.

12 EXAMINER SANYAL: Okay. What is your --
13 would you like to discuss these one by one or just --

14 MR. DRESSEL: The arguments will be
15 similar. It will probably be more efficient to do it
16 in its entirety.

17 EXAMINER SANYAL: Okay.

18 MR. DRESSEL: The next portion is in that
19 same paragraph, line 6, just the words "spill
20 prevention, wildlife compliance and protection."

21 EXAMINER SANYAL: Okay.

22 MR. DRESSEL: The next portion is page 3,
23 line 8, beginning with the start of that line,
24 through page 6, line 21. So that would -- strike
25 that, Your Honor. I apologize.

1 MS. WATTS: Page 6, line 21?

2 MR. DRESSEL: Yes, that's correct.

3 EXAMINER SANYAL: So it starts on page 3,
4 line 8, and goes all the way over to page 6, line 21?

5 MR. DRESSEL: Yes.

6 EXAMINER SANYAL: Okay.

7 MR. DRESSEL: Finally, two more short
8 portions. Page 7, line 2, just the words
9 "environmentally-sound."

10 EXAMINER SANYAL: Give me one moment.

11 Okay. I have "environmentally-sound"
12 marked.

13 MR. DRESSEL: And then lastly, Your
14 Honor, page 7, line 5, through page 8, line 5.

15 EXAMINER SANYAL: Okay. And whenever
16 you're ready, please let us know your reasons for the
17 motions.

18 MR. DRESSEL: Thank you, Your Honor.

19 Complainants make this motion to strike
20 under Rules 401, 402, and 403 of the Ohio Rules of
21 Evidence.

22 Rule 401 provides that evidence is only
23 relevant when it has a tendency to make a fact of
24 consequence at issue in the case more or less
25 probable.

1 These portions of Mr. Fletcher's
2 testimony discuss Duke's environmental stewardship
3 and efforts to comply with environmental regulations
4 and standards in performing its vegetation
5 management. For instance, Mr. Fletcher discusses
6 protection of birds and endangered species, streams
7 and water bodies, attempts to avoid accidents that
8 may harm endangered species, and other
9 environmentally-related issues.

10 In the Second Amended Complaint,
11 Complainants attempted to put issues similar to these
12 before the Commission, and the Commission
13 emphatically said that the Complainants could not do
14 so. The Commission determined that those issues are
15 not of consequence in this matter and that its
16 expertise is not necessary to resolve those issues
17 and it would not be appropriate for the Commission to
18 do so.

19 In its March 8, 2018, Opinion and Order,
20 the Commission granted Duke's Motion to Dismiss, in
21 part, finding it did not have jurisdiction over
22 claims relating to the environmental effects of
23 Duke's clear cutting activities. In that decision,
24 the Commission applied the Supreme Court of Ohio's
25 test in Allstate Insurance Company versus Cleveland

1 Electric Illuminating Company, 119 Ohio St.3d 301,
2 2008-Ohio-3917.

3 The Commission stated that it is not
4 capable of evaluating the environmental impacts of
5 toxic herbicides on local waterways or the
6 environmental impact that soil erosion or the loss of
7 trees may have on streams and waterways or on
8 property values. As such, it determined that those
9 questions are not manifestly service related, as the
10 Allstate test requires, in order for the Commission
11 to have jurisdiction over a complaint.

12 The Commission stated that its
13 administrative expertise lies, among other things, in
14 evaluating whether rates and tariffs are unjust or
15 unreasonable, in evaluating utility programs to
16 promote reliability.

17 Similarly, the Supreme Court of Ohio, in
18 Corrigan versus Electric -- versus Illuminating
19 Company, 122 Ohio St.3d 265, 2009-Ohio-2524, found
20 that administrative expertise is required to resolve
21 disputes relating to whether vegetation management
22 activities are just and reasonable.

23 As such, issues relating to the
24 environmental impact of Duke's vegetation management
25 fall outside the scope of this case, as determined by

1 the Commission, and should be excluded under Rule 402
2 which provides that evidence deemed not relevant
3 under Rule 401 is inadmissible.

4 Moreover, allowing this testimony into
5 the record would violate Rule 403 of the Ohio Rules
6 of Evidence. That rule provides that exclusion of
7 evidence is mandatory if the probative value of that
8 evidence is substantially outweighed by the danger of
9 unfair prejudice.

10 Here, for the reasons discussed above,
11 any probative value that this testimony may have is
12 incredibly low because the Commission has already
13 stated that it will not be resolving this case on the
14 merits of environmental effects, good or bad, of
15 Duke's vegetation management activities.

16 Conversely, the danger of unfair
17 prejudice to Complainants for this evidence is high.
18 After the Commission's March 8th, 2018, Order,
19 Complainants did not pursue additional discovery on
20 the environmental impact of Duke's plans, did not
21 seek out witnesses to offer testimony on those
22 effects, and did not focus on such effects in
23 testimony filed in this proceeding

24 To the extent that Complainants even
25 requested discovery related to herbicide use at all,

1 after that Order was issued, Duke objected to those
2 discovery requests, saying that they are beyond the
3 scope of this proceeding and did not provide a
4 response to those requests.

5 For Duke to now present evidence of
6 purported and positive environmental impacts of its
7 vegetation management implementation, after
8 Complainants had already forgone the opportunity to
9 present similar evidence that Duke's actions are not
10 environmentally sound, due to the Commission's Order,
11 unfairly prejudices Complainants.

12 Had this been an issue in this case that
13 the Commission had allowed to remain, Complainants
14 would have presented evidence, testimony, or
15 witnesses to counter the issues discussed in
16 Mr. Fletcher's testimony. But the Commission removed
17 environmental issues from the case, so Duke should
18 not be permitted to put on evidence that Complainants
19 had explicitly been told not to proceed with, as
20 doing so places the parties on uneven footing with
21 regard to Mr. Fletcher's testimony.

22 Thus, this evidence should be excluded
23 not only under Rule 402 but also under Rule 403.

24 Thank you.

25 EXAMINER SANYAL: Ms. Watts.

1 MR. ETTER: Your Honors --

2 EXAMINER SANYAL: Oh.

3 MR. ETTER: -- I just wanted to state
4 that OCC joins in the motion to strike. Since the
5 Complainants were not allowed to present
6 environmental issues in their Complaint; out of
7 fundamental fairness, Duke should not be allowed to
8 present environmental -- raise environmental issues
9 in their testimony.

10 EXAMINER SANYAL: Thank you.

11 Ms. Watts.

12 MS. WATTS: Thank you, Your Honor.

13 We are mindful, Duke Energy is mindful of
14 the Commission's Order that was issued in March of
15 2018, wherein the Commission specifically stated that
16 issues pertaining to toxic herbicides, soil erosion,
17 decreases in property value, decreases in aesthetic
18 value, and diminution of enjoyment of property would
19 not be addressed in this proceeding. And we are not
20 attempting to do so.

21 In many of the Complainants' allegations,
22 and consistently throughout the testimony that we've
23 heard this morning already, there are terms used such
24 as "clear cutting" and "integrated vegetation
25 management" and those are terms of art which are

1 significant and very central to the case. And
 2 Mr. Fletcher's testimony explains a great deal with
 3 regard to how the Company does integrated vegetation
 4 management and how it does not, in fact, clear cut.
 5 And if we are not permitted to present that
 6 testimony, the record will be missing a great deal of
 7 information for the Company's case.

8 And it is not offered in any respect to
 9 deal with particular claims of erosion or
 10 inappropriate herbicide usage on a particular
 11 property. It's offered to provide information with
 12 respect to the Company's overall transmission
 13 vegetation management program which, likewise, is at
 14 issue with respect to the words that were included in
 15 the Application in April of 2016.

16 So it's integral to the Company. It's
 17 not offered in any respect to respond to particular
 18 issues with property -- diminution of property value
 19 or decrease in aesthetic value, any of those things.
 20 It's actually quite different in nature

21 MR. DRESSEL: Your Honor, may I respond
 22 to that?

23 EXAMINER SANYAL: Of course.

24 MR. DRESSEL: Initially, we would note
 25 that on page 3, line 1 of Mr. Fletcher's testimony,

1 he's asked to describe what is the purpose of his
2 testimony in these proceedings. He says, "The
3 purpose of my testimony is to discuss Duke Energy's
4 environmental compliance and stewardship as it
5 relates to Rights of Way vegetation management."

6 When Complainants attempted to put issues
7 related to the environmental effects of that -- of
8 Duke's vegetation management before the Commission,
9 the Commission ruled that those issues were not
10 appropriate.

11 We're not objecting to Mr. Fletcher's
12 testimony because it relates to property values; it's
13 because it relates to the environmental issues that
14 the Commission said would not be part of this case.

15 Additionally, Your Honors excluded
16 testimony this morning, from Complainants, related to
17 property values, based on the Commission's March 8th
18 Order that those -- that those issues were not before
19 the Commission. The fact that the Commission didn't
20 explicitly state every single subject matter that
21 Mr. Fletcher notes in his testimony, does not mean
22 that his testimony doesn't relate to environmental
23 issues or that it relates to anything within the
24 Commission's expertise as required by the Allstate
25 test that the Commission cited in that Order.

1 For those reasons, we maintain that this
2 testimony should be stricken from the record. Thank
3 you.

4 EXAMINER SANYAL: I'll allow you a brief
5 response.

6 MS. WATTS: Thank you, Your Honor.

7 I guess we read the purpose of
8 Mr. Fletcher's testimony differently, because I would
9 point to the same exact language on page 3, wherein
10 he describes the purpose of his testimony and, in
11 fact, he is describing the way in which the Company
12 manages its transmission right-of-way. And that
13 testimony is offered as part of an overall program
14 description and has nothing to do with individual
15 customer property claims or anything with respect to
16 individual claims of soil erosion or herbicide
17 application or anything. It's part of a more
18 holistic and global discussion related to the
19 Company's management of its transmission
20 right-of-way.

21 EXAMINER SANYAL: I'm going to deny the
22 motion to strike. We agree with Duke that the sum
23 total of Mr. Fletcher's testimony represents the
24 Company's approach to vegetation management in
25 general and does not -- does not address particular

1 homeowners' concerns as it relates to particular
2 property values. So you may --

3 MR. DRESSEL: Your Honor, in light of
4 that ruling, Complainants would ask for permission to
5 file rebuttal testimony related to Duke's testimony
6 presented by Mr. Fletcher, given that the Commission
7 had previously indicated to Complainants that
8 environmental issues were not before the Commission
9 in this case. And to the extent that they are, in
10 the holistic sense that Your Honor just noted,
11 Complainants would request the option to file
12 rebuttal testimony.

13 EXAMINER SANYAL: I don't think that is
14 what I made clear. I think what I said was that the
15 sum total of Mr. Fletcher's testimony addresses the
16 Company's -- thank you -- the Company's global
17 perspective to vegetation management in general. So
18 can you clarify what this rebuttal testimony would
19 cover?

20 MR. DRESSEL: Your Honor, specifically
21 we're noting that Mr. Fletcher talked about Duke's
22 environmental stewardship efforts as part of its
23 holistic approach to vegetation management.

24 Complainants did not present evidence
25 contesting specific instances where those stewardship

1 policies may not have been followed. In the event
2 that Duke wasn't actually following the policies
3 indicated in Mr. Fletcher's testimony, Complainants
4 would request the ability to file testimony on that
5 limited purpose, to indicate that although Duke may
6 take this approach holistically throughout its
7 company, it may not have been taking those same
8 approaches in this case.

9 And specifically, Your Honor, that Duke
10 says -- Mr. Fletcher, I'm sorry, says that Duke takes
11 great care to ensure that its vegetation management
12 activities do not adversely impact the environment;
13 that would be another issue that Complainants would
14 wish to offer rebuttal testimony on, after potential
15 further investigation.

16 EXAMINER SANYAL: I think, at this time,
17 I'm inclined -- I would advise you to go ahead and
18 cross-examine the witness, and then after that is
19 done and any redirect is done, at that point we can
20 make a decision with regard to this issue of rebuttal
21 testimony.

22 MR. DRESSEL: Thank you, Your Honor.

23 EXAMINER SANYAL: Go ahead.

24 - - -

CROSS-EXAMINATION

By Mr. Dressel:

Q. Mr. Fletcher, thank you for being here today.

A. You're welcome.

Q. Do you have your testimony in front of you?

A. I do.

Q. Can you please turn to page 6 of that testimony?

A. Yes, sir.

Q. I'm looking at starting on line 22. There, you were asked the question "What is Integrated Vegetation Management?" Do you see that?

A. I do.

Q. You say that "Integrated Vegetation Management is defined as the practice of promoting desirable, stable, low-growing plant communities that will resist invasion by tall-growing tree species through the use of appropriate, environmentally-sound, and cost-effective control methods, thereby avoiding interference with the security and reliability of the electric grid." Did I read that correctly?

A. You did, yes.

1 Q. You go on to -- Mr. Fletcher, are you an
2 electrical engineer?

3 A. I am not.

4 Q. Are you an arborist?

5 A. I am not.

6 Q. Are you involved in the creation of
7 Duke's vegetation management policies?

8 A. I am not, no.

9 Q. So you cannot offer testimony as to how
10 138-kilovolt power lines interact with surrounding
11 vegetation.

12 A. I cannot.

13 Q. You cannot offer testimony as to how --
14 as to the likelihood of trees or other vegetation
15 causing arcing with 138 kV lines.

16 A. I do know, as a professional, that those
17 types of trees do cause those. Both the danger --
18 the danger trees, within the right-of-way, can cause
19 arcing and reliability issues.

20 Q. But as you're not an electrical engineer,
21 you wouldn't be able to offer testimony as to the
22 distance at which that could occur, right?

23 A. That's correct.

24 Q. Or the height at which a tree could be
25 that would cause problems.

1 A. I do know that we manage our
2 right-of-ways in that if a tree of a -- a woody stem,
3 vegetation of a certain height within that
4 right-of-way is indeed a reliability problem,
5 typically anything over 12 feet, can cause
6 reliability issues in the future.

7 Q. But again, Mr. Fletcher, you aren't
8 involved in making those determinations on behalf of
9 Duke Energy, right?

10 A. No, I'm not.

11 Q. And you're not an arborist, so you can't
12 testify as to the growth rates of different sorts of
13 species of trees, right?

14 A. Nope, I cannot.

15 Q. You also say, in that response that we
16 discussed earlier, that Duke's methods of integrated
17 vegetation management are cost-effective, right?

18 A. Correct.

19 Q. Now, Mr. Fletcher, you're not involved in
20 determining the costs that go into Duke's vegetation
21 management programs, are you?

22 A. I am not, no.

23 Q. You're not an accountant?

24 A. No.

25 Q. You wouldn't be involved in determining

1 how much Duke chooses to spend on its vegetation
2 management.

3 A. I do not.

4 Q. And you wouldn't be involved in comparing
5 the cost of Duke's vegetation -- of one mode of
6 vegetation management with another mode of vegetation
7 management.

8 A. I would not, no.

9 Q. Now, you also -- given that you're not an
10 arborist, you can't offer any testimony about
11 different methods for pruning trees or other
12 vegetation, right?

13 A. Not as an arborist.

14 Q. You can't offer any method -- I'm
15 sorry -- any testimony about what sorts of pruning
16 methods would be safe or healthy for a tree, can you?

17 A. No.

18 Q. Now, in the course of your employment for
19 Duke, you don't actually prune any trees, right?

20 A. I do not, no.

21 Q. You don't conduct vegetation management?

22 A. Not the actual activity of vegetation
23 management.

24 Q. You don't go to -- I'm sorry, were you
25 finished with your answer?

1 A. Go ahead.

2 Q. You don't go to customers' residences and
3 make assessments as to what sorts of vegetation can
4 stay on the property and what sorts of vegetation
5 need to be addressed, do you?

6 A. No. No, sir.

7 Q. You don't keep up with industry standards
8 for the safe and reliable pruning of vegetation?

9 A. I do keep up with it; yes, I do.

10 Q. But in your official capacity with Duke
11 Energy, you're not required to keep up with that,
12 right?

13 A. I'm required to keep up with it as they
14 relate to other environmental compliance issues such
15 as the use of those trees for, say, endangered
16 species.

17 Q. In the course of your employment with
18 Duke Energy, you're not responsible for reviewing
19 easements that Duke Energy might have on properties
20 of its customers.

21 A. No, I'm not.

22 Q. Or what requirements Duke Energy would be
23 required to meet under those easements before it
24 conducts vegetation management, right?

25 A. I am not.

1 Q. So your work for Duke, if I'm correct, is
2 that you conduct biological surveys and ecological
3 assessments for Duke's facilities, right?

4 A. In part. We also support the
5 Transmission Vegetation Management Group with
6 compliance of regulatory rules.

7 Q. Mr. Fletcher, to be clear, the regulatory
8 rules that you're referring to are rules relating to
9 the environmental impact of those activities, right?

10 A. Correct.

11 Q. Not the regulatory rules for clearance
12 distances, or the standards for what trees can remain
13 and need to go.

14 A. You are correct.

15 Q. And you're also not involved in assessing
16 Duke Energy Ohio's compliance with standards put in
17 place by the Public Utilities Commission of Ohio,
18 right?

19 A. You're correct, yes.

20 Q. Now, throughout your testimony,
21 Mr. Fletcher, you describe Duke's policies for
22 environmental stewardship, right?

23 A. Yes.

24 Q. You talk about Duke's work with
25 endangered species?

1 A. Yes.

2 Q. Compliance with -- I'm sorry, was that a
3 "yes"?

4 A. Yes.

5 Q. Compliance with environmental
6 regulations?

7 A. Yes.

8 Q. And the efforts that Duke makes to ensure
9 that its vegetation management activities have a
10 positive environmental impact, right?

11 A. That is correct, yes.

12 Q. Now, these policies that you discuss,
13 these are company-wide policies, right?

14 A. They are holistic, company-wide, that
15 cover all of our service territories including Ohio.

16 Q. So, Mr. Fletcher, you're employed in
17 North Carolina, correct?

18 A. That's correct, yes.

19 Q. But the policies you discuss apply just
20 for Duke Energy Ohio just as they would for Duke
21 Energy Carolinas, right?

22 A. Correct. There may be some minor
23 differences between states, but as a general
24 statement, that's a correct statement.

25 Q. Mr. Fletcher, did you visit the area

1 involved in this case at any point?

2 A. I did not, no.

3 Q. Have you spoken with any property owners
4 who are Complainants in this case?

5 A. No, sir.

6 Q. Have you spoken with any property owners
7 in Duke Energy Ohio's service territory at all?

8 A. I have not, no.

9 Q. Have you spoken with any of the
10 contractors who perform Duke Energy's vegetation
11 management activities in its Ohio territory?

12 A. No. No, sir.

13 Q. So you didn't personally review whether
14 those employees or contractors were complying with
15 the standards that you discuss in your testimony, did
16 you?

17 A. So I know from working -- communication
18 and working with our vegetation management folks in
19 Ohio, through training and awareness that we provide
20 them, that they indeed follow our requirements for
21 environmental compliance.

22 Q. So the basis -- to be clear, the basis of
23 your assessment that the contractors and Duke Energy
24 Ohio follow these standards is that they're trained
25 to follow the standards, right?

1 A. They are trained, yes. And their
2 managers are trained also, and the vegetation
3 management specialists are trained also, to ensure
4 that we are in compliance with our environmental
5 regulations.

6 Q. But as you said, Mr. Fletcher, you've not
7 discussed these issues specifically with the
8 contractors who are doing the work in this case,
9 right?

10 A. That is correct.

11 Q. And you've not had the chance to listen
12 to any concerns related to the environmental impact
13 of Duke Energy's work that may be brought by its
14 customers, right?

15 A. I have not.

16 Q. So when we're looking at your testimony
17 regarding environmental stewardship, what you're
18 really talking about is the policies that Duke Energy
19 expects its employees and contractors to follow,
20 right?

21 A. That is correct, yes.

22 Q. You're not discussing policies that you
23 have actually observed Duke Energy's employees and
24 contractors following in conducting transmission
25 vegetation management in this case, correct?

1 A. So I have observed, through our
2 communications and our all-hands meetings and
3 face-to-face meetings, that they are adequately
4 trained for environmental compliance and that they
5 indeed act on that environmental compliance in the
6 field as they do their work.

7 And part of that verification is that we
8 have frequent meetings with the agencies to ensure
9 that we are meeting our environmental requirements.
10 And they have told us, through face-to-face meetings,
11 personally with me, that we do a very good job in
12 working through our environmental compliance and
13 making sure we meet the conditions and requirements
14 of our permits that have to do with environmental
15 regulations and the actual conditions that the
16 agencies lay out for us.

17 MR. DRESSEL: Your Honor, we would move
18 to strike Mr. Fletcher's testimony, to the extent
19 that he discusses statements made by people that he's
20 talked to about Duke Energy's compliance with
21 environmental standards, as hearsay under Rule 801,
22 as this is an out-of-court statement being offered
23 for the truth of the matter asserted, specifically
24 that Duke Energy does comply with the environmental
25 training that Mr. Fletcher has discussed already.

1 EXAMINER SANYAL: Ms. Watts, I'll let you
2 briefly address it.

3 MS. WATTS: Thank you. Thank you, Your
4 Honor.

5 Mr. Dressel asked the witness
6 specifically how does he know that these policies are
7 being followed, and the witness answered the question
8 the best way he knew how; so I think it should be
9 admissible.

10 EXAMINER SANYAL: Mr. Dressel, your
11 objection is overruled.

12 MR. DRESSEL: Thank you, Your Honor.

13 Q. (By Mr. Dressel) To be clear,
14 Mr. Fletcher, having not visited Duke Energy Ohio's
15 service territory, to personally assess Duke Energy's
16 compliance with these environmental stewardship
17 standards, you have not personally observed whether
18 or not Duke Energy's employees and contractors on the
19 ground are complying with those standards, correct?

20 A. You're correct, I have not personally
21 observed those, yes.

22 MR. DRESSEL: Thank you, Mr. Fletcher.

23 I have no further questions at this time.

24 EXAMINER SANYAL: Redirect, Ms. Watts?

25 MS. WATTS: May we have a few moments,

1 Your Honor?

2 EXAMINER SANYAL: Of course.

3 Can we go off the record, please.

4 (Off the record.)

5 EXAMINER SANYAL: Let's go back on the
6 record.

7 Ms. Watts, you may proceed with redirect

8 MS. WATTS: Thank you, Your Honor. We
9 just have a couple questions.

10 - - -

11 REDIRECT EXAMINATION

12 By Ms. Watts:

13 Q. Mr. Fletcher, there's been some
14 testimony, here this morning, with respect to the
15 Company's program for vegetation management of
16 transmission right-of-way. How is it that you're
17 familiar with the Company's program for vegetation
18 management of transmission right-of-way?

19 A. So I am familiar with --

20 MR. DRESSEL: Objection, Your Honor.
21 Beyond the scope of the cross-examination.

22 EXAMINER SANYAL: I'm going to allow it.
23 Ms. Watts.

24 MS. WATTS: Thank you.

25 A. So, Ms. Watts, I am familiar with the

1 Company's vegetation management program because we,
2 as environmental services and natural resources, and
3 myself, interact with the Vegetation -- Transmission
4 Vegetation Management Group on elements of
5 environmental policy, environmental regulations, and
6 environmental compliance. And we do that at a very
7 continuous -- a continuous effort, both between every
8 leadership, all the way down to and including staff,
9 vegetation management specialists, and the
10 contractors.

11 We do that through updates on changes in
12 regulations and they are very -- it's a very dynamic
13 world right now, as you know; additional company
14 compliance items that Duke, as a corporation, has
15 enacted, including everything from spill prevention,
16 to erosion control, to endangered species.

17 And we also provide awareness fact sheets
18 on those kind of issues, on those types of issues to
19 the Vegetation Management Group. And that also
20 includes one-on-one phone calls and communications to
21 ask them questions on certain management -- on
22 practices and how they affect resources on our
23 right-of-ways. So it's a very entailed and detailed
24 communication that we have between the two teams. We
25 view ourselves as a team and a partnership.

1 Q. Thank you.

2 Mr. Dressel asked you how you know that
3 the environmental policies that you are responsible
4 for implementing, how you know those are followed in
5 the field, and I wondered if you could explain more
6 about how you know that.

7 A. So one element of that is we do have,
8 again, frequent communication with them to make sure
9 that they are indeed working through those policies
10 and doing it in the right way, that they're not
11 taking shortcuts, and that they're following all of
12 our procedures that have been laid out, either by the
13 government -- governments or the corporation itself.

14 Directly, we would know if we're not in
15 compliance with those items because we would have --
16 we would get notices of violations from the State or
17 the Federal agencies as far as damage to the
18 right-of-ways, takes of endangered species. "Take"
19 basically is killing or disturbing an endangered
20 species.

21 Or, we actually also get complaints. We
22 have an environmental concern hotline that also comes
23 in and the public can point out those kind of issues.
24 And, you know, we have a lot of eyes on us from
25 agencies, through the public, to make sure we are

1 doing that, and we have been notified on those kind
2 of situations.

3 So the bottom line is, you know, we avoid
4 those notices of violations and those reports by the
5 way we apply environmental compliance and adhere to
6 the regulations on our right-of-ways.

7 MS. WATTS: Thank you.

8 I have no further questions.

9 EXAMINER SANYAL: Mr. Dressel, it appears
10 you may have some questions.

11 MR. DRESSEL: One moment, Your Honor.

12 EXAMINER SANYAL: Okay.

13 (Pause in proceedings.)

14 MR. DRESSEL: May I proceed, Your Honor?

15 EXAMINER SANYAL: You may.

16 - - -

17 RECROSS-EXAMINATION

18 By Mr. Dressel:

19 Q. Mr. Fletcher, you just told us that one
20 way that you would be aware of whether Duke was
21 complying with the standards discussed in your
22 testimony is if property owners raised complaints
23 about a lack of compliance with those standards,
24 right?

25 A. That's correct.

1 Q. Are you aware that the Complainants in
2 this proceeding raised issues related to the
3 environmental impact resulting from herbicide runoff
4 into a nearby creek?

5 A. So, I was not aware of that, no.

6 Q. Are you aware that the Complainants in
7 this proceeding have raised issues regarding the
8 environmental impact as it relates to soil erosion
9 caused by the removal of trees and other vegetation
10 in Duke Energy's service territory?

11 A. So, I was not aware of that. But there
12 is also, there's a gradient as far as what -- the
13 extent of the tree removal and the cause of erosion
14 and sedimentation. For instance, the key to erosion
15 control, the vegetation, is through to remain -- to
16 keep the root mat, and that's the key to our
17 compliance with right-of-way disturbance is to avoid
18 impacts to the root mat, soil root mat, based on the
19 vegetation coverage, so.

20 Q. So to answer the question, you're not
21 aware that complaints have been raised about soil
22 erosion resulting from Duke Energy's transmission
23 vegetation management activities.

24 A. I am not, no.

25 Q. Mr. Fletcher, are you aware -- or, I take

1 it you're not aware, then, that one Complainant in
2 this case, Dennis Mitman, complained about soil
3 erosion on a slope on his property, and that upon
4 receiving that complaint, Duke Energy actually sent
5 someone to go evaluate the property and discuss the
6 issue with Mr. Mitman.

7 A. I am not aware of all of the details of
8 that, no.

9 Q. Now, you told us earlier that you have
10 not spoken with any property owners in Duke Energy's
11 service territory, right?

12 A. That is correct.

13 Q. So you're not aware, then, of any
14 complaints about Duke Energy's policies or the affect
15 of its policies on nearby wildlife, right?

16 A. I am not aware of any of that, no.

17 Q. You're not aware of any complaints
18 regarding Duke Energy's policies regarding spill
19 prevention.

20 A. Not specific to this case, no.

21 Q. You also just told us, a moment ago, that
22 Duke Energy is responsible for following
23 environmental regulations, right?

24 A. That's correct, yes.

25 Q. And it's in that area that you said that

1 you work with the Transmission Vegetation Management
2 Team, right?

3 A. That's correct.

4 Q. Mr. Fletcher, does the Public Utilities
5 Commission of Ohio have jurisdiction over the
6 enforcement of those environmental regulations?

7 A. I don't believe they do. That is
8 typically and I know in Ohio's case that falls under
9 the departments of Environmental Protection and the
10 Natural Resource agencies.

11 Q. And you also mentioned compliance with
12 Duke's environmental stewardship programs, right?

13 A. So, "compliance" may be a bit of a
14 stretch word, but support of their environmental
15 stewardship, yes.

16 Q. And do you know if the Public Utilities
17 Commission of Ohio has jurisdiction over those
18 stewardship programs?

19 A. I do not know.

20 MR. DRESSEL: Thank you, Mr. Fletcher. I
21 have no further questions.

22 EXAMINER SANYAL: Mr. Etter, I don't want
23 to forget you. Do you have any questions?

24 MR. ETTER: No. No questions, Your
25 Honor.

1 EXAMINER SANYAL: And then did you have
2 any brief follow-up, Ms. Watts, at this point?

3 MS. WATTS: Just one second, Your Honor.
4 (Pause in proceedings.)

5 MS. WATTS: No, Your Honor, we do not.

6 EXAMINER SANYAL: Okay.

7 At this point, if there are no other
8 questions of this witness, I know we are already --
9 we have another witness who is providing us revised
10 testimony, so why don't we take the matter of
11 rebuttal testimony at the end of the hearing, and
12 then we can appropriately discuss timelines related
13 to that, if needed, and that will also give us a
14 chance to think about whether we need rebuttal
15 testimony for this witness.

16 MR. DRESSEL: Thank you, Your Honor.

17 EXAMINER SANYAL: Are there any other
18 questions for this witness?

19 MS. WATTS: Two things. Well, one thing
20 actually. If we're going to have a debate about
21 whether rebuttal is appropriate or not, it might be
22 better to do it now while his testimony is fresh in
23 our minds. I don't know. I guess we can do it
24 later.

25 EXAMINER SANYAL: We just discussed, if

1 you wish to present arguments about rebuttal, we
2 could do so now. We will still reserve our
3 determination on that probably until the end of this
4 hearing.

5 MS. WATTS: Okay.

6 EXAMINER SANYAL: Just so we, ourselves,
7 have some time to marinate over that decision.

8 MS. WATTS: Well, with that
9 understanding, we would move his testimony into
10 evidence with the understanding that you are not
11 planning to rule on that at the moment.

12 EXAMINER SANYAL: Any objections to that?

13 MR. DRESSEL: Your Honor, other than
14 maintaining the objections and the motion to strike,
15 we have no other objections to the admission of the
16 testimony.

17 MR. ETTER: The same for OCC, Your Honor.

18 EXAMINER SANYAL: Okay. Well, we will
19 then rule on the admission of this, of Mr. Fletcher's
20 testimony, at the end of the hearing. We will hold
21 that under advisement, including all the objections
22 raised by Complainants.

23 You may step down.

24 THE WITNESS: Thank you very much.

25 EXAMINER ADDISON: Duke may call its next

1 witness, whenever it's ready.

2 MS. WATTS: Thank you, Your Honor. Duke
3 calls Ron A. Adams.

4 EXAMINER ADDISON: Good afternoon,
5 Mr. Adams. Raise your right hand.

6 (Witness sworn.)

7 EXAMINER ADDISON: Thank you. Please be
8 seated.

9 Please proceed, Ms. Watts.

10 - - -

11 RON A. ADAMS

12 being first duly sworn, as prescribed by law, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 By Ms. Watts:

16 Q. Good afternoon, Mr. Adams.

17 A. Good afternoon.

18 Q. Is that your water or is that
19 Mr. Fletcher's water?

20 A. That is my water.

21 Q. Okay. I just wanted --

22 A. Thank you.

23 Q. -- I just wanted to make sure.

24 MS. WATTS: Your Honor, may we have
25 marked as Mr. -- as Duke Energy Exhibit 2, Mr. Adam's

1 testimony?

2 EXAMINER ADDISON: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MS. WATTS: And may we approach?

5 EXAMINER ADDISON: You may.

6 Q. Sir, do you have before you what's just
7 now been marked as Duke Energy Ohio Exhibit 2? Yes?

8 A. That is correct, yes.

9 Q. And is that the testimony that you caused
10 to be prepared for this proceeding?

11 A. It is.

12 Q. And is it true and accurate to the best
13 of your knowledge?

14 A. It is.

15 Q. And if I were to ask you the questions
16 contained therein again today, would your answers be
17 the same?

18 A. They would.

19 Q. Do you have any additions or corrections?

20 A. I do not.

21 MS. WATTS: Mr. Adams is available for
22 cross-examination.

23 EXAMINER ADDISON: Mr. Etter, any
24 questions?

25 MR. ETTER: I thought Complainants would

1 go first.

2 MS. BOJKO: I agreed to go first, Your
3 Honor.

4 EXAMINER ADDISON: Oh. Perfect. Thank
5 you.

6 MS. BOJKO: May we go off the record?

7 EXAMINER ADDISON: Let's go off the
8 record.

9 (Discussion off the record.)

10 (Recess taken.)

11 EXAMINER ADDISON: Let's go ahead and go
12 back on the record.

13 Ms. Bojko.

14 MS. BOJKO: Thank you, Your Honor.

15 Before we get started, I do have a few
16 motions to strike, if now would be the appropriate
17 time?

18 EXAMINER ADDISON: Absolutely. Please
19 proceed.

20 MS. BOJKO: If we turn to page 10 of
21 Mr. Adams' testimony, lines 17 through 20, that whole
22 entire sentence. I'd like to move to strike these
23 lines of the text as well as the -- excuse me -- two
24 sentences on lines 17 through 20. We'd like to move
25 to strike the text as well as the footnote and the

1 reference to an Arbor Day publication.

2 First of all, this first statement is
3 pure speculation. Duke Energy, or Mr. Adams
4 specifically, has no idea what may or may not happen
5 in the next 20 years and has no foundation or
6 knowledge of what may or may not be in the best
7 interest of parties and communities at that time
8 during the next 20 years.

9 Secondly, Mr. Adams cannot speculate on
10 what is the right thing to do or what is in the best
11 interest, as I said, in the future.

12 Finally, the discussion of the Arbor Day
13 Foundation's practices and corresponding link in
14 footnote 1 is inappropriate and it should be stricken
15 as hearsay.

16 Under Rule of Evidence 801, the
17 statements of the Arbor Day Foundation, who are not
18 present here today to testify, nor are the authors of
19 the article here to testify today, these are purely
20 hearsay. They are out-of-court statements that are
21 offered for the truth of the matter asserted.

22 Specifically, that the contents of the Arbor Day
23 Foundation's website reflect the best practices for
24 choosing which vegetation is appropriate and for whom
25 and in what location.

1 I have no ability to cross-examine that
2 author. Mr. Adams is not the author of that
3 publication and, therefore, it is pure hearsay and
4 should be stricken.

5 EXAMINER ADDISON: Thank you.

6 Do you have additional motions to strike
7 along the same grounds?

8 MS. BOJKO: No, Your Honor. All of mine
9 are different.

10 EXAMINER ADDISON: Perfect. Thank you.

11 Ms. Watts.

12 MS. WATTS: Your Honor, with respect to
13 the first sentence which states "Duke Energy
14 recognizes this is initially stressful to the
15 community and property owners," frankly, that's
16 exactly what we're dealing with here. It's something
17 that Mr. Adams deals with daily in his
18 responsibilities as a Vegetation Manager for Duke
19 Energy and it's directly applicable to this case. So
20 how that would not be relevant or not appropriate for
21 testimony in this particular proceeding, I can't
22 imagine.

23 With respect to the Arbor Day video for
24 which there's a link, it's not offered to prove the
25 truth of the matter asserted here. It's offered for

1 illustrative purposes only. And to the extent
2 Ms. Bojko wishes to cross-examine Mr. Adams on that
3 video, she's welcome to do so. But, again, it's not
4 offered for the truth of the matter asserted therein.
5 It's offered as just background and education.

6 EXAMINER ADDISON: Thank you.

7 Ms. Bojko.

8 MS. BOJKO: Yeah. I would only respond
9 that Ms. Watts chose to read one portion of the
10 entire sentence into the record that I'm moving to
11 strike. The important part is Mr. Adams is
12 speculating or opining on what may or may not happen
13 in the next 20 years, and what may or may not be in
14 the best interest of parties and communities. He's
15 not here today to represent communities. He
16 represents one party. He doesn't represent all
17 parties. So it is pure speculation and he cannot
18 opine on what may or may not happen in the future.

19 The Arbor Day Foundation, we have no
20 ability to access the video. He did not -- we can
21 ask him some foundation questions, but this video has
22 not been authenticated. He is not the author of the
23 video, he did not produce the video to my knowledge,
24 unless he tells me differently and, thus, I cannot
25 cross him on the contents or the people in the video.

1 He has no knowledge of those and it would be pure
2 speculation and hearsay of what those people said in
3 that video.

4 EXAMINER ADDISON: Thank you.

5 MR. ETTER: And, Your Honor, it is
6 presented for the truth of the matter asserted
7 because he makes a statement that it is the right
8 thing to do and aligns with the Arbor Day
9 Foundation's program, and so it is presented for the
10 truth of the matter asserted.

11 EXAMINER ADDISON: Thank you very much,
12 Mr. Etter.

13 Just briefly, Mr. Adams, did you produce
14 this video on the website listed here?

15 THE WITNESS: It's not a video. It's an
16 education document.

17 EXAMINER SANYAL: Thank you.

18 THE WITNESS: I did not produce it, but
19 I'm very well aware of it.

20 EXAMINER ADDISON: Thank you.

21 Thank you.

22 I'm going to grant, in part, the motion
23 to strike as it pertains to line 19, starting with
24 "It is the right thing" and ending on line 20 with
25 reference to "Right Tree, Right Place," as well as

1 the Footnote No. 1. It is consistent with prior
2 hearings before the Commission, articles or
3 publications referenced, without anyone to
4 authenticate or discuss the contents of such
5 publications, is hearsay, and consistent with those
6 rulings, we will grant the motion to strike as to
7 that sentence.

8 I do believe Mr. Adams can answer any
9 questions pertaining to his opinion, as the General
10 Manager of Transmission Vegetation Management for
11 Duke Energy Ohio, if he believes this program is in
12 the best interest of parties and communities
13 involved, and I will certainly allow you, Ms. Bojko,
14 to ask as many questions as you like to that, so

15 MS. BOJKO: Thank you, Your Honor.

16 My second motion to strike is on page 17.
17 It is -- Your Honor, in light of your decision to
18 deny our motion to strike with Mr. Fletcher, I will
19 not request. I will just note on the record that we
20 do believe that this section of the testimony, 4
21 through 11, is inconsistent with the Commission's
22 March 8th, 2018, Opinion and Order. But I don't want
23 to reargue the arguments we made previously, Your
24 Honor

25 EXAMINER ADDISON: Thank you. And your

1 objection is noted.

2 MS. BOJKO: On page 9, line 17, beginning
3 with the word "rights" -- "Rights of way" and ending
4 with the quote on line 23, the "herbicides."

5 Your Honor, this is a quote -- well, this
6 appears to be a quote. This is a quote without a
7 citation, so I am speculating a little bit about what
8 I believe this is a quote of, but it appears to be a
9 quote from a voluntary ANSI standard and is not cited
10 and it was not produced in discovery. Complainants
11 even asked for supplemental discovery, twice, after
12 the filing of Mr. Adams' testimony, and this ANSI
13 standard, A300, was no produced.

14 This quote is hearsay under Ohio Rule of
15 Evidence 801. It's an out-of-court statement by an
16 association. It's important to note, ANSI is not a
17 public agency; it's not a public figure. It is not,
18 therefore, a public record and, therefore, does not
19 fall under the hearsay exception.

20 It is being offered for the truth of the
21 matter asserted. It's being quoted as if it is true.
22 It's being treated and suggested to be a mandatory
23 standard which is it not. This document that's
24 referenced is not in any way a hearsay exception.
25 It's not a public record, as I said. And, in fact,

1 it's a subscription-based service. And Complainants
2 had no access to the standards themselves, even
3 though Complainants requested the standards multiple
4 times from Duke.

5 The standards were not provided, and
6 since it's not a public document put forth by a
7 public agency or office, it does not meet any
8 exception to the hearsay doctrine. Thank you.

9 EXAMINER ADDISON: Thank you.

10 Ms. Watts.

11 MS. WATTS: Well, first of all, Your
12 Honor, we've had a couple of e-mails, back and forth,
13 where Counsel has requested the standards, and we
14 have the e-mail where we actually did provide the
15 standards. So the fact that it's being alleged that
16 we didn't provide it, I'm having trouble
17 understanding that; so that's apparently an ongoing
18 problem. These are the documents that we copied and
19 sent to Counsel and these are the ANSI standards that
20 they should have. There may have been a
21 communication problem, but I'm unaware of what that
22 might have been.

23 The reference to the ANSI standard itself
24 is the footnote. So it is actually cited -- I'm
25 sorry, not the footnote, but where it says "as

1 defined by" the "(ANSI) A300" that is, in fact, the
2 reference. There isn't any better reference to that.
3 And again, it was provided to Counsel. And there's
4 certainly an opportunity to cross-examine the
5 witnesses on that matter.

6 MS. BOJKO: Your Honor, if I may be
7 heard?

8 EXAMINER ADDISON: Yes, you may.

9 MS. BOJKO: We received a package from
10 Duke in this envelope that we were told was quite
11 thick. It is called a "Tree Risk Assessment." It's
12 a companion publication to the ANSI A300. And then a
13 second one -- which that's Part 9 -- a second one
14 which is a companion publication, ANSI A300 Part 7.
15 Because we have companion publications, I asked
16 twice, in addition to receiving these, and stating
17 that we did not receive the ANSI standards. We do
18 not have those that Ms. Watts has in front of her and
19 we were not provided those. I have the only
20 documents that we had.

21 MS. WATTS: Those are copies of these.

22 MS. BOJKO: They're not. They're
23 different. That is the actual standard. This is a
24 companion document. They are different things.

25 EXAMINER ADDISON: Mr. Adams, what is the

1 -- is there anything significant difference between?

2 THE WITNESS: Can I -- I can address? I
3 think -- can I look at the documents that --

4 EXAMINER ADDISON: Absolutely.

5 THE WITNESS: -- they have? If I'm --

6 EXAMINER ADDISON: Can we have copies of
7 what you have, Ms. Watts, and what you have
8 Ms. Bojko? Thank you.

9 MS. BOJKO: Your Honor, the quote on the
10 page of Mr. Adams' testimony is nowhere in these
11 documents that I could find.

12 THE WITNESS: It will be in this document
13 right here.

14 MS. BOJKO: It's different.

15 THE WITNESS: This is the actual
16 standard. ANSI A300 is a package of standards, and
17 there's Part 1 through Part 9, and these are the
18 official standards. Now, these are the companion
19 documents. These are the best management practices.
20 These are put more in layman's terms for
21 implementation for field application.

22 So this document here is IVM,
23 "Integration Vegetation Management," 2nd Edition, and
24 it is a companion document to ANSI A300 Part 7. The
25 definition that I'm quoting is directly out of ANSI

1 A300 Part 7, for reclamation.

2 This risk assessment, this is in
3 Mr. Goodfellow's testimony. He mentions this. We
4 worked very diligently and went and purchased these
5 and sent them to the other attorneys there for their
6 information. I'm not sure what happened to the
7 actual standard itself, but these were ordered and
8 sent to them. You don't have to be an ISA member to
9 get them, but they're on the ISA, International
10 Society of Arborists' website, and you can purchase
11 them through the store. Does that help?

12 EXAMINER ADDISON: Yes. Thank you.

13 THE WITNESS: Thank you.

14 EXAMINER ADDISON: So you could go on to
15 that website and purchase the standards; is that
16 correct?

17 THE WITNESS: That is correct. They're
18 public documents. You do not have to be an ISA
19 member. You get a ISA member discount to purchase
20 those.

21 EXAMINER ADDISON: Thank you.

22 MS. BOJKO: Your Honor, it's a
23 subscription. There was no ability. It said
24 "Subscribe Now." It did not let me merely pick and
25 choose and purchase. I tried, and it would not let

1 me do that.

2 I would also point out that
3 CACC-POD-02-002 was supplemented after the testimony
4 was filed on October 26th, and the supplemental
5 response for "Provide documents related to testimony
6 of Mr. Adams" was "None." So we also were told, in
7 this supplemental discovery request, that they had no
8 responsive documents and they did not produce the
9 A300 standard to us.

10 MS. WATTS: We're certain we provided
11 them, Your Honor. We think we can come up with an
12 e-mail that shows that they were provided.

13 EXAMINER ADDISON: Thank you. And
14 perhaps that would be the best way.

15 MS. BOJKO: They weren't provided in a
16 e-mail. You told me they were books. And I asked,
17 and I told you what we had, and I said we got, in
18 this packet, those two documents that I just handed
19 to you.

20 MS. WATTS: And then the other ones were
21 provided via e-mail.

22 EXAMINER ADDISON: Thank you.

23 Why don't we go ahead and table the
24 motion to strike as to this. We'll move on to your
25 additional motions to strike, Ms. Bojko, while Duke

1 is looking for that e-mail. Thank you.

2 MS. BOJKO: Your Honor, before my last
3 motion, it would be helpful, I believe, to try to lay
4 some foundation, if I could ask some clarifying
5 questions of the witness?

6 EXAMINER ADDISON: Certainly.

7 - - -

8 CROSS-EXAMINATION

9 By Ms. Bojko:

10 Q. Mr. Adams, I'd like to direct your
11 attention to page 20 of your testimony.

12 A. Okay.

13 Q. On page 20 of your testimony, you include
14 before and after pictures that you say demonstrate
15 Duke's site reclamation. Do you see that?

16 A. I do.

17 Q. Did you take these pictures yourself?

18 A. I did not.

19 Q. Have you --

20 A. But they were taken at my direction.

21 Q. Have you, sir, ever been to this location
22 where the pictures were taken?

23 A. I have not been to that physical address.

24 Q. And had you visited the site previously
25 and then after the work was done?

1 A. I visited several sites on the 3881.
2 Whether we particularly visited this one, I cannot
3 recall that, but I had requested these documents to
4 give me validation that we were doing what we said we
5 would do in the restoration process, after we
6 maintained -- cleared the vegetation that was
7 incompatible in the right-of-way. This is just an
8 example of many pictures.

9 Q. Sir, you didn't perform the reclamation
10 work yourself, did you?

11 A. Physically?

12 Q. Yes.

13 A. No.

14 Q. And you didn't observe the work on this
15 particular property, Creekstone, before and after,
16 did you?

17 A. I did not personally.

18 MS. BOJKO: Your Honor, at this time, we
19 would move to strike the photographs, as Mr. Adams
20 has not established sufficient foundation for their
21 inclusion in his testimony. He did not take the
22 pictures. He has not visited this particular site or
23 does not recall whether he visited this particular
24 site. He did not perform the work that these
25 pictures demonstrate and purport to show. They are

1 offered for the truth of the matter asserted therein.

2 Under Rule of Evidence 602, he has not
3 established the proper foundation for the photographs
4 or his personal knowledge of the work performed.

5 Mr. Adams has not testified as to who took the
6 pictures, when they were taken, or how much of the
7 work reflected in those pictures was performed by
8 Duke at all, or as opposed to performed by other
9 property owners.

10 EXAMINER ADDISON: Thank you, Ms. Bojko.
11 Ms. Watts.

12 MS. WATTS: Your Honor, many of the
13 points that Counsel raises, establishing that
14 Mr. Adams didn't do this, didn't do this, didn't do
15 this, because she didn't ask that question of him.
16 And if we're permitted to ask additional questions,
17 I'm actually sure he can create a foundation for
18 these pictures.

19 EXAMINER ADDISON: Please proceed.

20 - - -

21 REDIRECT EXAMINATION

22 By Ms. Watts:

23 Q. Mr. Adams, were these pictures taken at
24 your direction?

25 A. Yes, they were.

1 Q. And were they done by people that report
2 to you as employees of Duke Energy Ohio?

3 A. Yes, that is correct.

4 Q. And were they done specifically to
5 prepare for your testimony?

6 A. Not specifically to prepare for my
7 testimony. When the customer complaints first
8 started coming in, I requested that they take
9 pictures and send me pictures of what they had with
10 regard to what they were doing to take care of the
11 property owners.

12 Q. And in -- is this a picture actually of
13 the 3881 line that's at question in this case?

14 A. This is one of the lines that's part of
15 this case.

16 Q. And are you familiar generally with the
17 neighborhood where that line is established?

18 A. In general. I did visit it the latter
19 part of March of this year for several days.

20 MS. WATTS: Thanks. No further
21 questions.

22 EXAMINER ADDISON: Thank you very much,
23 Ms. Watts.

24 At this time, I'm going to deny the
25 motion to strike.

1 MS. BOJKO: Your Honor, except for the
2 ANSI standard discussion, those are the only motions
3 that I have.

4 EXAMINER ADDISON: Thank you, Ms. Bojko.
5 Let's go ahead and go off the record for
6 a moment.

7 (Discussion off the record.)

8 EXAMINER ADDISON: Let's go ahead and
9 going back on the record.

10 Ms. Bojko.

11 MS. BOJKO: Thank you.

12 - - -

13 CROSS-EXAMINATION (CONTINUED)

14 By Ms. Bojko:

15 Q. Mr. Adams, let's just stick with those
16 pictures and finish up a couple more with regard to
17 those on page 20 of your testimony. Do you know what
18 time period these were taken, what day they were
19 taken?

20 A. I do not know what day they were taken.
21 They were taken during the work that was done
22 during -- well, it would have been the latter part of
23 2016, early part of 2017, for the lines in question.

24 Q. And, Mr. Adams, you stated earlier that
25 you believe those pictures were taken after

1 complaints came in. Do you know when complaints were
2 filed at the Commission?

3 A. I'd have to go back and recall, but I
4 think they initially started rolling in in the late
5 fall, early winter of 2016. I can't remember the
6 exact date, time frame.

7 Q. So you believe that these pictures were
8 taken in --

9 A. '17. I'm sorry. 2017. I apologize.
10 I'm a --

11 Q. You believe these --

12 A. -- calendar year off.

13 Q. I'm sorry, I didn't mean to interrupt.

14 You believe these pictures were taken
15 after the complaints started rolling in; so in the
16 fall to winter time period?

17 A. Probably more in the early fall with
18 the -- well, the initial one is before. You can
19 begin to see leaves turn slightly there, so I think
20 that started the fall, in the after picture.

21 Q. In these photographs you show the removal
22 of some trees in the area below the transmission
23 wire, but there are still some trees remaining; is
24 that correct?

25 A. Well, the ones that are remaining, I

1 don't know that they would be defined as "trees" by
2 our specs, and it depends on if they're in the wire
3 zone or border zone because we do allow low-growing
4 shrubs, up to 7 feet, inside the wire zone. 15-foot
5 trees are allowed in the border zone.

6 Q. So you believe that the vegetation that
7 would have been left are not trees?

8 A. From the picture, I cannot tell.

9 Q. And it's -- are you saying that Duke
10 performed the work reflected in these pictures?

11 A. Yes.

12 Q. And it can be seen in these photographs
13 -- excuse me, strike that.

14 Would it be fair to say that Duke had
15 people -- excuse me.

16 Would it be fair to say that had the
17 people been instructed to remove all vegetation,
18 50 feet from center, on either side of the line, that
19 the vegetation in this picture would not remain?

20 A. If they had been instructed? If they had
21 been instructed, they would have been misinstructed
22 in that case.

23 Q. Well, my question is: There's still
24 vegetation that's remaining in these photographs, 50
25 feet of center; is that correct?

1 A. There is. Based on -- it's hard to tell
2 from the picture. Pictures can be deceiving, but it
3 appears there is toward the front.

4 Q. Now, let's step back, Mr. Adams. Let's
5 talk a little bit about your background if we may.

6 A. Sure.

7 Q. In your testimony, on page 1, you state
8 you graduated from Clemson University in 1985; is
9 that correct?

10 A. That is correct.

11 Q. That same year, you joined Duke Energy as
12 a substation engineer, correct?

13 A. That is correct.

14 Q. And which Duke Energy company were you
15 employed by?

16 A. At that point in time, it was Duke Power.

17 Q. Duke Power. And since 1985, you've
18 continued to work for Duke Power or Duke Energy as an
19 engineer?

20 A. That is correct.

21 Q. So you've not held any other positions
22 with any of the Duke operating companies since your
23 employment?

24 A. Well, with Duke operating companies, it
25 has varied. In 2010, December of 2010, I was named

1 General Manager of Central Operations, Vegetation
2 Management, which I manage both the Midwest and
3 Carolinas T&D programs, and that was a shared
4 services organization.

5 Q. Have you been employed by Duke Energy
6 Ohio?

7 A. I have never been employed directly by
8 Duke Energy Ohio.

9 Q. Since you started your career directly
10 with Duke Energy, out of school, is it fair to say
11 that you have not held any other positions with any
12 other companies or utilities since you graduated?

13 A. That is correct.

14 Q. And currently you're employed by Duke
15 Energy Carolinas; is that correct?

16 A. That is correct. They are an affiliate
17 of Duke Energy Ohio.

18 Q. And as the Manager of Transmission
19 Vegetation Management for the Carolina utilities; is
20 that correct?

21 A. No.

22 Q. You are the --

23 A. I cover the enterprise. I cover Florida,
24 North and South Carolina, Kentucky, Ohio, and
25 Indiana.

1 Q. Currently, your position is General
2 Manager of Transmission Vegetation Management and
3 you're employed by Duke Energy Carolinas, LLC; is
4 that correct?

5 A. That is correct.

6 Q. Have you -- excuse me, strike that.

7 On page 2 of your testimony, you mention
8 that you're a manager and you have two managers that
9 report to you; is that correct?

10 A. I've got two managers and four directors.

11 Q. And who are the two managers that report
12 to you?

13 A. I've got a gentleman, Jack Gardner, who
14 is the Manager of Strategy and Support. I've got a
15 Manager of Asset Protection who is Mark Farrell.

16 Q. Are either of those managers responsible
17 for Ohio?

18 A. They -- Jack has responsibility for
19 strategy and maintenance planning for all
20 jurisdictions, Mark has responsibilities for asset
21 protection work in all jurisdiction, so yes.

22 Q. Are either of them employed by Duke
23 Energy Ohio?

24 A. No.

25 Q. Do either of them work out of the Ohio

1 office?

2 A. No.

3 Q. And you're not an arborist; is that
4 correct?

5 A. I am not a certified arborist, that is
6 correct.

7 Q. Have you ever been a lineman?

8 A. I have worked on a line crew when I was
9 in college, working my way through, so yes, I have.

10 Q. Since graduation, have you been a lineman
11 as an engineer?

12 A. I have not.

13 Q. And since --

14 A. I have managed linemen though.

15 Q. And since graduation, have you ever
16 conducted vegetation management along the
17 right-of-way, actually trimmed and pruned the
18 vegetation?

19 A. Physically myself?

20 Q. Yes.

21 A. No.

22 Q. Mr. Adams, which circuits are involved in
23 this complaint case?

24 A. Well, if you will, if you don't mind, I
25 will go back to the map here, it's easier. But you

1 got the -- it's a little hard to read, but you got
2 the 3881, 5883, and 5887. And I'm thinking there
3 were -- I don't have them all listed here. 3881,
4 5883. I mean, 5483 and 5487 are the primary ones
5 because that's where the Complainants live. If you
6 look on page 18, if you look at the blue and yellow,
7 the pending work, that is the work that is still
8 pending to be done and that is where the Complainants
9 live.

10 Q. So it's your understanding that there are
11 three primary circuits involved in this case?

12 A. There are two other circuits and I cannot
13 recall the exact circuit numbers. I believe there's
14 a total of five circuits.

15 Q. And isn't it true that all five circuits
16 in question are 138 kV lines?

17 A. That is correct.

18 Q. And how many miles for the circuits are
19 at issue?

20 A. How many miles?

21 Q. Yes, sir.

22 A. We currently have 5.92 miles left. The
23 initial project was 27.37. Today, we completed
24 21.45. It's about 80 percent of the work. And to my
25 knowledge, all of the work that's been done, we've

1 got no complainants here as part of this case.
 2 Everybody has -- all that work has been completed to
 3 the satisfaction of the property owner.

4 MS. BOJKO: Objection, Your Honor. I
 5 move to strike his comment. I didn't ask him -- I
 6 asked him how many miles were at issue in this case.

7 And I would beg to differ, if I brought
 8 those property owners here, just because they don't
 9 have a pending case doesn't mean that it was
 10 necessarily a satisfactory job that Duke did. And I
 11 would also argue that once your trees are cut,
 12 they're gone, and they cannot reclaim those trees.
 13 So I think that his statement should be stricken.

14 EXAMINER ADDISON: Thank you. I'll grant
 15 the motion the strike.

16 And, Mr. Adams, I'll instruct you just to
 17 listen to Ms. Bojko's question as posed and answer it
 18 to the best of your ability. Anything that you want
 19 to bring up on redirect, Ms. Watts will have the
 20 opportunity to do that.

21 THE WITNESS: Thank you, Your Honor.

22 EXAMINER ADDISON: Thank you.

23 MS. WATTS: Your Honor, just a general
 24 matter, it feels to me like Mr. Adams is not being
 25 permitted to generally provide full answers because

1 we're moving so quick. So if we could just be
2 careful of that, I'd appreciate it.

3 EXAMINER ADDISON: Certainly.

4 If, at any time, Mr. Adams, you feel that
5 you've not completed your answer, please inform the
6 Bench and we will take a step back.

7 THE WITNESS: Will do.

8 EXAMINER ADDISON: Thank you.

9 THE WITNESS: Thank you.

10 Q. (By Ms. Bojko) Mr. Adams, have you walked
11 the five circuits?

12 A. I have not. All the complete five
13 circuits.

14 Q. Let's turn to page 3 of your testimony,
15 lines 10 to 12. You state that Duke must comply with
16 FERC and PUCO requirements. Do you see that?

17 A. What line are you on, please?

18 Q. Page 3, lines 10 through 12.

19 A. Yes, I see that, and that is correct.

20 Q. Which requirements are you referring to?

21 A. Both, for our facilities.

22 Here, you got FERC which is FAC-003-4,
23 which is a NERC standard that applies to our
24 higher-voltage transmission. Then we have the PUCO
25 standards that apply to our transmission, of 69137,

1 that are requiring us a six-year cycle to maintain
2 those facilities.

3 Q. I'm sorry, Mr. Adams. Are you implying
4 that the Commission ordered you to create six-year
5 cycles?

6 A. No, I didn't imply that. That is what we
7 have on file with them and that's -- when it comes to
8 regulatory compliance, you share what you do, you
9 tell what you do, then you prove you do what you do.

10 Q. Okay. My question is, you alluded that
11 the Commission required you to do six-year cycles.
12 Isn't it true that Duke proposed a six-year cycle?

13 A. I don't recall using the statement they
14 required a six-year. That is the requirement that
15 we're obligated to meet. We committed to a six-year
16 cycle.

17 Q. Thank you.

18 Let's turn to page 3 of your testimony,
19 sir, line 18.

20 A. Okay, I'm with you.

21 Q. Here you state that Duke's vegetation
22 management program development is coordinated and
23 maintained by the Transmission System Forester, and
24 that's not you; is that correct?

25 A. That is correct.

1 Q. So the Transmission System Forester that
2 you reference, coordinates and maintains the
3 transmission vegetation management; is that correct?

4 A. He maintains the documentation associated
5 with the program, that is correct.

6 Q. He only maintains the documentation for
7 the program?

8 A. He helps set strategy. I'm the final
9 decision-maker on that, but he develops the program,
10 he coordinates and facilitates the joint discussions
11 with key stakeholders in the overall development of
12 that program, and he develops the documentation and
13 actually is the owner of the documents. I think we
14 provided several of these documents to you and
15 they're signed off with their signatures.

16 Q. What documents do you think the forester
17 provided that are signed off with signatures?

18 A. Well, I think during discovery there was
19 several things, e-mails and stuff, our program
20 documents, our specs, things of that nature. My
21 understanding is you have those.

22 Q. And as you state on page -- I'm sorry.
23 Did you participate in discovery?

24 A. Did I participate in it? Yes, I did.

25 Q. Did you participate in providing physical

1 documents? You keep saying "us." I'm not sure who
2 you're talking about. Are you talking about
3 providing documents to counsel or to Complainants?
4 I'm not sure what you're talking about.

5 A. To you. Based on direction from our
6 counsel, we responded to your interrogatory
7 questions.

8 Now, the documents that I'm referring to
9 was in the e-mail discovery that we provided. There
10 were several e-mails and communications that had our
11 program documents, our specifications, our general
12 specs, and all of that information was in there.

13 Q. Okay. Thank you.

14 There were several documents provided to
15 Complainants during the course of your vegetation
16 management as well; is that correct?

17 A. That is correct.

18 Q. And you were talking about discovery
19 documents, not those documents.

20 A. That is correct.

21 Q. Okay. Thank you for that clarification.

22 So on page 2 of your testimony, you state
23 you are responsible for managing the vegetation along
24 the transmission corridor; is that correct?

25 A. That is correct.

1 Q. And as you state on page 4, lines 1 and
2 2, it's the forester that ensures accuracy and
3 regulatory compliance, not you, correct?

4 A. As the words read on the paper but, at
5 the end of the day, I'm the one that owns compliance.

6 Q. So are you saying that your testimony on
7 page 4, lines 1 and 2, is inaccurate?

8 A. No. The forester is accountable. We all
9 are accountable.

10 Q. Who is the forester?

11 A. The system forester currently is
12 Johnathan McQuaide.

13 Q. Which Duke company does McQuaide work
14 for?

15 A. Actually, he is part of the Midwest
16 business unit and he's located in Lafayette, Indiana.

17 Q. Let's turn to page 4 of your testimony,
18 line 1. You said that the forester reviews the
19 program with key stakeholders. Who are the key
20 stakeholders for whom you are referencing there?

21 A. The key stakeholders are on the previous
22 page if you look, but we've got Engineering,
23 Compliance, Land Services, Legal, Field Operations,
24 but we also have a Regulatory Compliance Group, we
25 have a NERC Compliance Group, we would review it with

1 our legal counsel at the State levels, State
2 regulatory groups within Duke Energy.

3 Q. So, to you, "stakeholders" in this
4 context meant Duke employees?

5 A. Internal stakeholders, that is correct.

6 Q. Could you turn to page 3 of your
7 testimony, please, lines 19 through 20.

8 A. Yes.

9 Q. There you state that Duke's vegetation
10 management program has developed over the years and
11 is in alignment with industry best practices; is that
12 correct?

13 A. That is correct.

14 Q. And as you explained to me earlier, you
15 have not worked with any other transmission utilities
16 besides Duke Energy, correct?

17 A. That is correct.

18 Q. And specifically none in Ohio, correct?

19 A. That is correct.

20 Q. So would it be fair to say to the extent
21 you are discussing the practices of other utilities
22 in the industry, you're not speaking from personal
23 experience working for those utilities.

24 A. Not for working for those utilities, that
25 is correct.

1 Q. To your knowledge, sir, do you know
2 whether other transmission utilities in Ohio make
3 exceptions for individual property owners, or trees
4 that have been standing for a long period of time?

5 A. I do not.

6 Q. You do not know, sir?

7 A. I don't work for them, so I don't know
8 what they do, so I don't know what their practices
9 are.

10 Q. Well, specifically, sir, do you interact
11 with Johnathan McQuaide, the forester?

12 A. I do.

13 Q. On a regular basis?

14 A. I do.

15 Q. To your knowledge, does FirstEnergy
16 manage its transmission work on a
17 location-by-location and tree-by-tree basis?

18 A. Johnathan sent me -- can I get a copy --
19 I think you're referring to an e-mail. I asked him
20 to touch base with various utilities, AEP and
21 FirstEnergy. I think you're referring to an e-mail
22 that Johnathan sent. Could I actually see that
23 e-mail?

24 Q. So, sir, are you telling me that you are
25 familiar with FirstEnergy managing its transmission

1 work on a location-by-location, tree-by-tree basis?

2 A. No, I'm not because I don't have that
3 e-mail in front of me. I can't remember what it
4 said.

5 Q. Sure.

6 A. I remember that with FirstEnergy, when we
7 talked to them, their practice, they do apply a wire
8 zone/border zone. If you go to their documentation
9 and their program documents, their wire zone
10 requirements are 5 feet in the wire zone. They allow
11 15 feet in the border zone.

12 But one thing different with FirstEnergy
13 is their policy if the easement is less than
14 100 feet, they do not offer a border zone option.
15 And that's basically -- then there was some document
16 about every -- I can't remember the e-mail but that's
17 been a while back. I'd have to see the e-mail.

18 Q. Maybe I can help refresh your
19 recollection.

20 MS. BOJKO: Your Honor, at this time, I'd
21 like to have marked as Complainants Exhibit 19, this
22 is Duke's discovery response to CACC-POD-01-003. May
23 I approach, Your Honor?

24 EXAMINER ADDISON: You may, and it will
25 be so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Mr. Adams, have you had an opportunity to
3 review what's been referred to and identified as
4 Complainants Exhibit 19?

5 A. I have not. I was just beginning to read
6 it here.

7 Okay. Yes, I recall this.

8 Q. That was my question; does it refresh
9 your recollection.

10 This is an e-mail regarding FirstEnergy's
11 vegetation management, stating that FirstEnergy does,
12 in fact, manage vegetation per location, based on
13 site-specific factors, and leaves brush or small
14 trees that have been there for years, depending on
15 the line construction, if they determine the
16 vegetation to be compatible; is that correct?

17 A. Yes, that's what it states, but it
18 doesn't given any specificity around the brush, the
19 small trees. And the sentence before that, "He did
20 say as unformal number they look for nothing to
21 mature taller than 3 to 5 feet within their wire
22 zone." So I cannot speak to their operational
23 practices, so.

24 Q. And didn't Mr. McQuaide, who is a Duke
25 Energy employee, also explain to you that

1 FirstEnergy's approach has not caused issues with
2 property owners?

3 A. That's in his e-mail here, yes.

4 Q. Let's turn to page 19, lines 7 to 9 of
5 your testimony, please, sir.

6 A. 7 to 9.

7 Q. On this line -- are you there, sir?

8 A. Yes, I am.

9 Q. On this line, you state it's not
10 reasonable to manage the work execution on a
11 property-by-property or tree-by-tree basis; is that
12 correct?

13 A. That is correct.

14 MS. WATTS: I'm sorry to interrupt. Kim,
15 what page are we on?

16 MS. BOJKO: 19.

17 MS. WATTS: Thank you.

18 MS. BOJKO: Lines 7 to 9.

19 Q. So despite what you learned from Duke's
20 research on FirstEnergy's practices, you say it's
21 important that a utility has a standard specification
22 that it executes in the same manner on every property
23 upon which it performs; is that correct?

24 A. That is correct.

25 Q. And could you also turn to page 3, sir.

1 Page 3, lines 19 to 20, you state here that Duke's
2 program is in alignment with recognized industry best
3 practices; is that correct?

4 A. That is correct.

5 Q. And you're referencing practices by other
6 utilities, sir?

7 A. I'm recognizing this practice right here,
8 ANSI A300, and in particular Part 7, IVM, which is
9 referenced in FAC-003-4 as an industry best practice
10 by NERC and FERC, and recognized by the Utility
11 Arborist Association as an industry best practice
12 through the supplemental document.

13 Q. I'm sorry. Did you just state that FERC
14 and NERC have adopted the ANSI voluntary standard?

15 A. If you look at the footnote in the actual
16 standard, it references ANSI A300 as a best
17 management practice.

18 Q. Right. But FERC and NERC did not adopt
19 ANSI A300; is that correct?

20 A. They did not adopt it. They reference it
21 as a best management practice.

22 Q. And ANSI A300 is voluntary; is that
23 correct?

24 A. That is correct.

25 Q. And it's put on by an arborist

1 association; is that correct?

2 A. That is not -- not ANSI. ANSI is a
3 volunteer organization of multiple groups that come
4 together, UAA and ISA. The International Society of
5 Arborists is the ones that recognize the standards.
6 But ANSI is a volunteer group of multiple
7 stakeholders that come together to develop standards.

8 Q. Let's see, the trade association is TCIA,
9 Tree Care Industry Association; is that correct?

10 A. That is one association, TCIA, yes.

11 Q. Well, TCIA was established as the
12 arborist association that you're referencing; is that
13 correct?

14 A. Let me just say I'm not fully aware of
15 the alignment of ISA and TCIA. TCIA is involved in
16 industry standards. ANSI is separate; it's the
17 American National Standards Institute.

18 Let's look here.

19 The Tree Care Industry Association --
20 this is just right out of the standard. Let me
21 just -- the Tree Care Industry oversees Accredited
22 Standards Committee, ASC, on trees, shrubs, and other
23 plant-management standard practices, ANSI A300 which
24 means ANSI A300. So it is under the purview of TCIA,
25 the Tree Care Industry Association.

1 Q. I'm sorry, it is under review?

2 A. No. It is under the purview.

3 Q. Purview. Thank you.

4 A. In reading this in the way it's set up.

5 Q. Right. So ANSI is developed by TCIA
6 which is the Tree Care Industry Association, correct?

7 A. That is correct. And --

8 Q. And it's not --

9 A. -- it's an association of multiple
10 arborists, utility arborists, municipal arborists,
11 private tree arborists, things of that nature.

12 Q. I just want to be clear because you
13 linked it to FERC and NERC. It is not an association
14 under the Federal Energy Regulatory Commission or the
15 National Energy Regulatory Commission.

16 A. Let me be clear on my statement. The
17 NERC and FERC standard has a footnote that references
18 ANSI A300 as a best management practice.

19 Q. As a voluntary --

20 A. As a voluntary standard, that is correct.

21 Q. Thank you.

22 You also state on page 25, lines 16 and
23 17, that the work Duke has done to date is consistent
24 with industry practices; is that correct?

25 A. Can you point me to page 25? 14, 15, 16?

1 Q. Yes.

2 A. Yes, that is correct.

3 Q. Let's turn to page 8 and 9. On line 22,
4 going over to page 9, line 5, you state that
5 previously --

6 A. Can you -- I'm sorry, you're moving way
7 too fast for me. What lines did you say?

8 Q. Page 8 at the bottom, line 22, going over
9 to page 9, line 5.

10 A. Okay.

11 Q. You state that previously, in some areas
12 in Ohio, the right-of-way were maintained such that
13 property owner desires were accommodated but that was
14 not industry-accepted practice; is that correct?

15 A. That is correct.

16 Q. And again, on page 9, line 12, you
17 discuss aligning Duke's vegetation management program
18 with industry practices; is that correct?

19 A. That is correct.

20 MS. BOJKO: Your Honor, at this time, I
21 would like to mark the vegetation management plans
22 and practices of Ohio Power Company as Complainants
23 Exhibit 20.

24 EXAMINER ADDISON: It will be so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MS. BOJKO: May I approach?

2 EXAMINER ADDISON: You may.

3 Q. Do you have in front of you what's been
4 identified as Complainants Exhibit 20, sir?

5 A. I do.

6 Q. And this is titled the "Revised
7 Vegetation Management Program" of Ohio Power Company?

8 A. Yes, I see that.

9 Q. And just for shorthand, do you recognize
10 Ohio Power Company to mean AEP?

11 A. I see that in quotes, yes.

12 Q. Can you turn to page 8 of Attachment F to
13 the document, please.

14 A. Okay, I'm on page 8.

15 Q. At the top of this page it states
16 "Transmission: Right-of-Way Vegetation Control"; is
17 that correct?

18 A. That is correct.

19 Q. And you would believe that this would be
20 similar to the Attachment F that Duke filed as part
21 of its vegetation management plan?

22 A. It would be similar, yeah, because this
23 is only transmission. What Duke had filed covered
24 both transmission and distribution.

25 Q. In this case we're focusing on

1 transmission; is that correct?

2 A. That is correct.

3 Q. And would you agree with me that below
4 the title, Ohio Power Company proceeds to discuss its
5 transmission vegetation management plan"?

6 A. You're on page 8?

7 Q. Yes, sir. This is the section about its
8 transmission vegetation management plan?

9 A. Yeah. "Program Details." I'm with you,
10 okay.

11 Q. Okay. And on page 9 of this Attachment F
12 to AEP's vegetation management plan, the third
13 paragraph under "General Discussion," starting with
14 "As succession occurs within the plant communities
15 along the rights-of-way, these work prescriptions
16 will change based on the sizes and types of
17 vegetation present. Prescriptions, therefore, may
18 include several activities such as tree trimming,
19 tree removal, mechanical clearing, and ground and
20 aerial herbicide applications"; is that correct?

21 A. That is correct.

22 Q. Then the next paragraph down, the plan
23 says that "Contract work is designated and inspected
24 by AEP foresters to ensure that the work is complete,
25 performed in a timely manner, to AEP and industry

1 standards, at reasonable cost, and with courtesy to
2 property owners and the public"; is that correct?

3 A. That is correct.

4 Q. And if you look at page 9 of this plan,
5 under "Annual Work Plan," the Ohio Power Company plan
6 discusses "manually or mechanically removing and/or
7 trimming trees on and off the rights-of-way"; is that
8 right?

9 A. You lost -- down at -- I see the "Annual
10 Work Plan" at the bottom on page 9.

11 Q. There's an "Annual Work Plan" heading in
12 the middle of page 10.

13 A. Oh, 10. Okay, okay.

14 Q. You see how it talks about "manually or
15 mechanically removing and/or trimming trees"?

16 A. Yes.

17 Q. And this paragraph also discusses the use
18 of tree growth regulators; is that correct?

19 A. I do see that.

20 MS. BOJKO: Your Honor, at this time, I'd
21 like to have marked as Complainants Exhibit 21, the
22 vegetation management plan of Dayton Power & Light
23 Company, filed in Case 14-1771-EL-ESS. May I
24 approach?

25 EXAMINER ADDISON: You may, and it will

1 be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.).

3 Q. Do you have in front of you, sir, what's
4 been marked as Complainants Exhibit 21?

5 A. I do.

6 Q. Does this appear to be the vegetation
7 management program filed by DP&L at the Commission?

8 A. It does.

9 Q. And this document appears to be similar
10 to Duke's plan in regard that it was filed as an
11 application to amend its prior plan with the
12 Commission; is that correct?

13 A. That is correct.

14 Q. And it states that this plan is with
15 regard to DP&L's transmission and distribution
16 vegetation management programs?

17 A. I see that at the top, yes.

18 Q. If you could turn to page 24 of this
19 plan, please. Are you at 24, sir?

20 A. I am.

21 Q. It's entitled "Transmission Right of Way
22 (Vegetation Management)." Do you see that?

23 A. I do.

24 Q. And under Item 2, "Overview of
25 procedures," do you see the task name "Line

1 Clearance"?

2 A. I do. Section a.

3 Q. Do you see that the plan states that the
4 frequency varies based on line location, clearance
5 requirements, and species of vegetation present?

6 A. I do.

7 Q. Then for the description of this plan, it
8 says "Trim or remove trees and brush as needed.
9 Clearance will vary based on the species of tree and
10 voltage class of the line."

11 A. I do.

12 MS. BOJKO: Your Honor, may I approach?

13 EXAMINER ADDISON: You may.

14 MS. BOJKO: Your Honor, may we go off the
15 record for a minute?

16 EXAMINER ADDISON: Let's go off the
17 record.

18 (Discussion off the record.)

19 EXAMINER ADDISON: Let's go ahead and go
20 back on the record.

21 Ms. Bojko.

22 MS. BOJKO: Thank you, Your Honor. May I
23 approach the witness, please?

24 EXAMINER ADDISON: You may.

25 MS. BOJKO: Your Honor, let the record

1 reflect that I'm handing the witness what has been
2 previously marked as Attachment D to Complainants
3 Witness Melisa Kuhne's testimony, Exhibit 17. I will
4 give you a copy for simplicity.

5 Q. (By Ms. Bojko) Sir, do you have what's
6 been previously marked as Attachment D to
7 Complainants Exhibit 17?

8 A. I do.

9 Q. Does this appear to be a discovery
10 response from Duke, titled CACC-POD-01-010?

11 A. It does.

12 Q. Is this a vegetation management log that
13 is maintained by Duke?

14 A. This is not a log maintained by Duke.
15 This is a ledger that is maintained by the contractor
16 working for Duke Energy.

17 Q. So Duke hired a contractor to perform
18 vegetation management work, and this is the log kept
19 by that contractor of Duke's.

20 A. That is correct.

21 Q. And this vegetation management log
22 contains a list of properties; is that correct?

23 A. It does.

24 Q. And you would agree with me that the log
25 kept by Duke's agent, on the right-most column of the

1 log, it's entitled "Special Conditions"; is that
2 correct?

3 A. I see that.

4 Q. And for many of the properties on this
5 log, the log notes special instructions or conditions
6 such as clear brush and trees within 50 feet of
7 center right; is that correct?

8 A. Yes, I see that.

9 Q. But, for other properties, there are
10 actually conditions noted; is that correct? If you
11 turn to page 2.

12 A. I do see that.

13 Q. For instance, if we turn to page 3 and
14 look on I'll call it line 58. Really the column
15 identifier is "MapID." Do you see that?

16 A. I see line 58 coming across. I don't
17 see -- oh, MapID. Yes, I'm with you. Thank you.

18 Q. So you assumed, as I did, that these were
19 line numbers not map numbers. So with that
20 assumption, I'll refer to those as line numbers and
21 we can go from there. Is that fair, sir?

22 A. That is fair.

23 Q. Okay. On line 58, the Special Conditions
24 note that the worker should "Keep an eye out for
25 manhole covers. Area is wet." Is that correct?

1 A. That is what it says.

2 Q. And then if we turn to line 68, the log
3 says "Remove all wood. No stump grinding. Must give
4 one day notice before work begins. Leave message if
5 no answer." Is that correct?

6 A. That's what it says, yes.

7 Q. So for notes like these, the log gives
8 Duke's contractors and Duke information about a
9 specific property; is that correct?

10 A. That is correct.

11 Q. And you would agree with me that in order
12 for Duke or a contractor to be aware that he or she
13 needs to watch out for manhole covers or to grind
14 stumps, he would either need to read it on this log
15 or be told about it in some other fashion; is that
16 correct?

17 A. I would assume that.

18 MS. BOJKO: Your Honor, at this time, may
19 I approach the witness?

20 EXAMINER ADDISON: You may.

21 MS. BOJKO: I would like the record to
22 reflect that I'm handing the witness what has been
23 previously marked as Attachment E to Complainants
24 Witness Melisa Kuhne's testimony, Complainants
25 Exhibit 17. And maybe to further clarify the record,

1 Your Honor, I'll state this is a discovery response
2 from Duke in response to CACC-INT-05-033.

3 Q. Sir, do you have the discovery response
4 CACC-INT-05-033 in front of you?

5 A. I do.

6 Q. And you are listed as the responsible
7 party on this, is that correct?

8 A. That is correct.

9 Q. This appears to be a discovery response
10 by Duke?

11 A. Yes, it is.

12 Q. In the response you say that
13 site-specific concerns led Duke to prune rather than
14 remove trees that Duke deems to be incompatible on
15 one person's property; is that correct?

16 A. That is correct.

17 Q. So on this property, Duke's contractors
18 would have been instructed to perform their work
19 differently than the standard specifications that you
20 reference in your testimony.

21 A. That is correct. They did have approval
22 for the exception.

23 Q. Now, Mr. Adams, is it fair to say that,
24 contrary to this discovery response, Duke has
25 actually made other exceptions for individual

1 property owners when it comes to implementing its
2 transmission vegetation management plan as discussed
3 in the log?

4 A. Not that I'm aware of.

5 Q. There are not exceptions noted on the log
6 that we just discussed in response to
7 CACC-POD-01-010?

8 A. Those notes in that log are notes from
9 the notifier. My understanding is that is discussed
10 with our vegetation management specialist and those
11 issues are turned over to them for resolution and
12 that those resolutions -- and based on the
13 information that I've been given and everything on
14 that line, this is the only exception that we had and
15 it was a special situation.

16 Actually, we have worked with this
17 property owner and are bringing it in compliance.
18 But their driveway was a steep sheer, right down to a
19 ravine. They had a small row of trees and that was
20 the only thing that was holding that soil. It had
21 all been backfilled. So it was a very steep slope
22 and, in order not to disturb that, we did prune those
23 trees. Now I understand there's a new property owner
24 there, we've approached them, and we are working with
25 them to get compatible vegetation in at that

1 location.

2 Q. So in the log when it says "Special
3 Conditions," are you stating that Duke does not honor
4 the Special Conditions that the contractor put forth
5 in its log?

6 A. Special Conditions on this log may be
7 stacking wood, things of that nature. But when it
8 comes to our spec, I have to really applaud the
9 efforts that our folks have taken in vegetation
10 management. They have been very disciplined to
11 adhere to the specs.

12 Q. So let's look at line 72 of the log then.
13 In this line 72, it says "Remove trees and brush in
14 easement. Trim ash tree as little as possible to
15 remove only what will grow to the line. Only remove
16 vegetation that has ribbon on it. Do not cut
17 anything without a ribbon on it." Do you see that?

18 A. Can you point me to that location?

19 Q. That's line 72 of the log.

20 A. MapID 72?

21 Q. Yes, sir.

22 A. Okay. I see "Remove trees and brush in
23 easement. Use care to not damage lawn. Trim ash
24 tree as little as possible to remove only what will
25 grow to the line. Only remove vegetation that has

1 ribbon on it. Do not cut anything without a ribbon
2 on it." All I know is what I can read here, so I
3 don't know what happened after the notification took
4 place on this property.

5 Q. So you don't know whether an exception
6 was or was not made for that property owner; is that
7 correct?

8 A. I'm not aware of any.

9 Q. Okay. And you are aware that it is the
10 practice of the Duke contractors to go out and place
11 pink ribbons on the trees that are going to be
12 removed; is that correct?

13 A. Yes, we do mark all our trees, yes.

14 Q. And --

15 A. That is in our technical specs and is a
16 requirement.

17 Q. If you look at 180 of this log. Line 180
18 in the special notifications it states "Do not cut
19 the hedge row. Landowner will trim them down to
20 7 feet. All other trees within 50 feet of center
21 will come out." Do you see that?

22 A. I do.

23 Q. So that is another notation of a special
24 condition to not trim a row of hedges; is that
25 correct?

1 A. My discussion and understanding is this
2 was the notification notes and that the actions taken
3 on the actual property were in compliance with our
4 specification.

5 Q. So let's look at line 492, please. So in
6 line 492, this special condition says "Leave the
7 Magnolia (near the back corner of yard on south
8 side), everything else goes within the right-of-way.
9 Grind stumps." Is that correct?

10 A. I do see that.

11 Q. Do you know how tall a Magnolia grows?

12 A. I can't tell you. There are various
13 varieties. I don't know. And I'm not an arborist
14 but I've got several folks that work with me that
15 can, if we know the exact species.

16 Q. And if you would know the exact species
17 and it was not to grow over 7 feet, then it would be
18 allowed in the wire zone?

19 A. Do we know that that Magnolia is in the
20 wire zone?

21 Q. I don't know.

22 A. That's an assumption. I don't know.

23 Q. If it was.

24 A. I would -- based on a Magnolia? I'm just
25 going based on my knowledge.

1 Q. Sure.

2 A. It would be a tree that would mature over
3 a height of 7-foot, so it would be incompatible.

4 Q. But if it was a tree of 7-foot, then it
5 would be compatible.

6 A. No. It would be incompatible in the wire
7 zone if it was over 7-foot.

8 But if it was a tree species -- and this
9 is the thing with various species, there's all kind
10 of hybrid trees and everything, and that's one of the
11 reasons we don't want trees in the wire zone. One
12 key thing is access into our facilities. When you
13 have these trees in those wire zones, that's impeding
14 our ability to get in, so those are -- I don't know
15 where the tree is, I don't know the size of it.

16 Q. Okay.

17 A. Is it inside the wire zone, is it in the
18 border zone, is it in the peripheral zone which is
19 outside the easement, I don't know.

20 Q. But a hedge of bushes that are cut to
21 7 feet would be compatible; is that correct?

22 A. If it is a hedge or a shrub that matures
23 over 7 feet, it would be incompatible based on our
24 specs.

25 Q. But if it was under 7 feet, it would be

1 compatible.

2 A. If it matures under 7 feet, based on our
3 spec, it would be compatible.

4 Q. And we'll talk about that. The spec
5 you're referencing is the IVM and the guidelines that
6 Duke set forth; is that correct?

7 A. Yeah. And those are outlined, I think,
8 on the door hangers that we provided to all the
9 property owners.

10 Q. Right. We'll talk about that in a
11 minute.

12 Let's turn to page 18 of your testimony.

13 A. Okay.

14 Q. At the bottom of 18, you say that the
15 majority of the pending customer concerns were
16 resolved. Do you see that?

17 A. Let me catch up with you, please.

18 Yes, I do see that.

19 Q. So that is a VMS -- a dedicated resource
20 is a VMS specialist; is that --

21 A. That's a vegetation management
22 specialist.

23 Q. Thank you, sir.

24 And that reference to the specialist,
25 that is the dedicated resource that would resolve the

1 customer concerns individually; is that correct?

2 A. That is correct.

3 Q. If you continue -- and do you think that
4 some of those concerns resolved individually, were
5 those that were noted on the log that we've been
6 discussing?

7 A. I do not know if they're directly related
8 to that log, I'm not sure the location of those, but
9 this would have been the work that had been completed
10 prior to being stopped by the Commission Order.

11 Q. But similar concessions that would be
12 made on the previous lines would be as noted in the
13 log; is that correct?

14 MS. WATTS: Objection with respect to the
15 term "concession."

16 A. My --

17 MS. BOJKO: I'll rephrase.

18 EXAMINER ADDISON: Excuse me.

19 THE WITNESS: Go ahead, Your Honor.

20 EXAMINER ADDISON: She's going to
21 rephrase.

22 THE WITNESS: Okay.

23 Q. The special conditions would be the same
24 that would be the -- the majority of the pending
25 customers concerns which were resolved, the special

1 conditions to resolve those concerns would be similar
2 to those that are set forth in the Special Conditions
3 section of the log.

4 MS. WATTS: Your Honor, could I have that
5 question read back, please?

6 MS. BOJKO: I'll try again.

7 EXAMINER ADDISON: Thank you.

8 Q. On line 11 on page 18, you state that
9 there was a dedicated management specialist that
10 resolved customer concerns, and we established that
11 those were resolved individually, and I'm asking if
12 those resolutions, on an individual-by-individual
13 customer basis, would have been of the sort that
14 appear in the Special Conditions section of the log.

15 MS. WATTS: And I object as to form
16 because I don't believe Ms. Bojko's characterization
17 of Mr. Adams' testimony is accurate.

18 EXAMINER ADDISON: Thank you. I'll
19 provide Mr. Adams quite a bit of latitude to answer
20 this question.

21 THE WITNESS: Thank you, Your Honor.

22 My understanding of the process that we
23 used with this contract service provider was their
24 notifier would go and they would evaluate the sites.
25 They would identify what vegetation was compatible,

1 what vegetation was incompatible, they would document
2 that, and then they would document any special
3 requests from the property owners.

4 If there were any unusual circumstances
5 or requests, they were to get with our vegetation
6 management specialist, who then would go meet with
7 the property owners and work to resolve those. So
8 that's what's in my testimony. And those were
9 resolved to our specifications with the one exception
10 of that location on Hickory Hill.

11 Q. (By Ms. Bojko) I'm asking, you said they
12 were resolved. They would go to the customer's
13 property and they would resolve them. These are
14 special requests by the customers that were
15 resolved; is that right?

16 A. Yes.

17 Q. Okay. So I'm asking if the types of
18 resolutions to those concerns would mirror the types
19 of resolutions or conditions specified in the log.

20 MS. WATTS: Could we have that question
21 read back, please?

22 EXAMINER ADDISON: You may.

23 (Record read.)

24 MS. WATTS: Your Honor, I object as to
25 the form because Counsel has referred to the items in

1 the log as "resolutions," which the witness has
2 specifically stated, a number of times, they are not
3 resolutions. They are a recording of conditions on
4 the property.

5 EXAMINER ADDISON: Thank you. I'll allow
6 him to answer the question. He can make that
7 clarification.

8 THE WITNESS: And if you don't mind, Your
9 Honor, I'd appreciate the latitude.

10 It's my understanding that these are not
11 resolutions; that these were documented
12 communications that were turned over to our internal
13 employees for resolution at that point. I was not
14 there and part of those discussions of those
15 resolutions, so I can't answer your question
16 directly.

17 Q. (By Ms. Bojko) That wasn't my question.
18 I wasn't trying to say that the special conditions
19 are the actual resolutions. I'm saying the
20 resolutions which you've told me may be different
21 circuits, may have been prior work done. Were the
22 resolutions that you reference in your testimony,
23 would they be of the nature of the items listed in
24 the Special Conditions column?

25 A. Some may, some may not. It just depends

1 on if it's in compliance with our specification.

2 Q. Okay. And I think you just stated you
3 did not personally resolve the customer concerns that
4 you mentioned in your testimony, correct?

5 A. That is correct.

6 Q. You go on, on page 19, lines 1 through 5,
7 you state that Duke relies on open communication and
8 education of property owners to address tree felling
9 for the project; is that correct?

10 A. That is correct.

11 Q. Isn't it true that Symmes Township
12 requested a meeting with Duke, for community
13 education and outreach, and Duke declined to take the
14 meeting and openly communicate with the Township and
15 its residents?

16 MS. WATTS: Objection to the extent an
17 answer requires attorney-client communication.

18 EXAMINER ADDISON: Thank you, Ms. Watts.

19 I would caution the witness, do not
20 disclose any conversations that you may have had with
21 counsel and any sort of privileged information you
22 may have obtained from counsel, but you may answer
23 the question to the extent you do not disclose that
24 information.

25 THE WITNESS: Thank you, Your Honor.

1 EXAMINER ADDISON: Thank you.

2 A. Yes, we were asked, but we had been
3 advised by counsel, we were advised not to meet.

4 Q. So, in this instance, there was no open
5 communication; is that correct?

6 MS. WATTS: Objection.

7 EXAMINER ADDISON: Mr. Adams, sorry,
8 there is another objection.

9 MS. BOJKO: Well, I don't know the
10 grounds.

11 EXAMINER ADDISON: I'm waiting for the
12 grounds.

13 MS. WATTS: Well, Mr. Adams answered that
14 he was advised not to attend on advice of counsel.
15 For Ms. Bojko to suggest that that -- she's
16 insinuating that that means there's no open
17 communication. I think that's improper.

18 EXAMINER ADDISON: Thank you.

19 Ms. Bojko.

20 MS. BOJKO: I don't think that's what he
21 said. I'm asking him if, in this instance, there was
22 open communication and education of the property
23 owners. It's a yes or no question. It's to his
24 knowledge.

25 EXAMINER ADDISON: I'll allow him to

1 answer the question.

2 However, you can provide your opinion if
3 there were any other opportunities to provide open
4 communication as you have determined in your
5 testimony.

6 A. I need clarification on the question.
7 Were you talking about private property owners or are
8 you talking about communications with Symmes
9 Township?

10 Q. I'm talking about on line 2 of your
11 testimony, page 19. You state that Duke "has
12 continually relied on open communication and
13 education of property owners....." And I'm asking, in
14 the situation of Symmes Township, did you have open
15 communication and education of the property owners?

16 MS. WATTS: And again, same objection,
17 Your Honor.

18 MS. BOJKO: Your Honor, I'm allowed to
19 challenge the --

20 EXAMINER ADDISON: Thank you. I'm going
21 to allow the question. You've won. I'll allow the
22 question.

23 However, Mr. Adams, you can refer to
24 other instances, as you see fit, to examples of where
25 you believe open communication was provided.

1 THE WITNESS: Well, thank you, Your
2 Honor. And I will just go back to the map and just
3 point in the map, on page 18, if you'll look at the
4 top, the 21.45 miles that have been completed,
5 80 percent of the circuit, probably several hundred,
6 maybe thousands of property owners, all that work had
7 been completed and that communication has taken
8 place. I'm not exactly sure where Symmes Township is
9 on this map, but that would be what I'm referring to.

10 (Multiple audience members speaking.)

11 MS. BOJKO: I can't -- I'm sorry, I
12 didn't hear what he said. Can I have his response
13 read back?

14 EXAMINER ADDISON: Yes, you may.

15 And I will ask everyone in the hearing
16 room to please keep your voices down so we can
17 proceed accordingly.

18 (Record read.)

19 Q. (By Ms. Bojko) The open communication
20 that you're referencing, is that placing door hangers
21 on property owners' doors?

22 A. It's more than just placing the door
23 hangers. The door hangers is the initial
24 communication. But in talking with the vegetation
25 management specialists that work with us, they have

1 went out early in the morning, met property owners
2 before they went to work, they went out late in the
3 evening, met property owners after they got off of
4 work.

5 Typically, when the individual was at the
6 property, I'd ask them how long were they there, it
7 was anywhere, if they were at the property, on
8 average 45 minutes to an hour and a half, visiting
9 with those property owners, and that is what I'm
10 referring to about the communication and education.

11 Q. So you're talking about meeting solely
12 with property owners on a one-on-one basis?

13 A. That is correct.

14 Q. So it's not open public communication
15 that you were referring to on line 2.

16 MS. WATTS: Objection.

17 MS. BOJKO: I'm asking him, Your Honor.

18 EXAMINER ADDISON: I'm going to sustain
19 on that. Just rephrase. I think you are
20 mischaracterizing what he just said.

21 MS. BOJKO: I did not mean to. I
22 misunderstood his testimony.

23 Q. Your open communication and education of
24 property owners is really open communication and
25 education to individual property owners; is that

1 correct?

2 A. That is correct.

3 Q. Okay. And are you also familiar -- are
4 you aware, sir, that individual Complainants
5 requested meetings with Duke and other neighbors, and
6 they were declined that meeting?

7 A. In group meetings, I may be aware of
8 some, but the specifics of them, no.

9 Q. So the only type of meetings that Duke
10 was willing to have with property owners was on a
11 one-on-one basis; is that correct?

12 A. That is typically how we manage
13 individually with property owners. But we have met,
14 in the past, with communities and others, and it
15 varies on the situation.

16 Q. So it's not the policy of Duke to meet
17 with communities to inform them of work that's going
18 to happen?

19 A. We send out notifications to communities.
20 We have community-relation folks that work with the
21 Companies and we communicate to them and they talk to
22 the leadership of those townships and everything.

23 MS. BOJKO: Your Honor, at this time, I'd
24 like to mark as Complainants Exhibit 22, a Public
25 Notice, a public document produced by the Village of

1 Glendale.

2 EXAMINER ADDISON: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Do you have in front of you, sir, what's
5 been marked as Complainants Exhibit 22?

6 A. I do.

7 Q. Does this appear to be a Public Notice
8 from the Village of Glendale?

9 A. It appears to be that.

10 Q. And, sir, have you had a chance to read
11 this?

12 A. No.

13 Q. Please take your time.

14 (Witness reviewing the document.)

15 A. Okay, I've read it.

16 Q. Isn't it fair to assume, from this Public
17 Notice put forth, that Glendale believed that it was
18 not notified by Duke of the work to be conducted, and
19 they believe that they needed to establish an
20 improved working relationship with Duke to cure that
21 lack of communication?

22 MS. WATTS: And, Your Honor, I object to
23 this line of questioning with respect to this
24 document because there is no indication on the
25 document as to whether the work that was done in the

1 Village of Glendale was distribution or transmission.
2 We think, actually, that this was distribution work
3 and is entirely unrelated to the lines in question in
4 this case.

5 EXAMINER ADDISON: Thank you.

6 Ms. Bojko.

7 MS. BOJKO: Sure, Your Honor. He just
8 made a statement, and I am trying to impeach his
9 statement, that Duke regularly meets with communities
10 before performing work and that they have
11 communications with those communities. This is an
12 instance where they did not and there was fallout
13 from the lack of communication from Duke, so I am
14 disputing and impeaching his statement that he just
15 made on the stand. He opened the door when he made
16 the comment that he regularly meets with communities,
17 and they have an open and good relationship, and they
18 have a relationship manager. He opened the door.

19 EXAMINER ADDISON: Thank you.

20 Ms. Watts.

21 MS. WATTS: Counsel is seeking to impeach
22 with a document that has no foundation, first of all,
23 and which Mr. Adams has never seen before.

24 Ms. Bojko argues that it's a public
25 document, but we have no way of knowing that. More

1 importantly, it likely relates to distribution work
2 which has an entirely different process and which is
3 completely irrelevant to this case.

4 EXAMINER ADDISON: Thank you, Ms. Watts.
5 Mr. Adams, have you ever seen this
6 document before?

7 THE WITNESS: I have not.

8 EXAMINER ADDISON: Thank you.

9 The objection will be sustained on
10 foundational grounds.

11 Q. (By Ms. Bojko) Mr. Adams, you made the
12 global statement, and actually it's in your
13 testimony, that your process is successful. Isn't it
14 fair to say that not every property owner or
15 community believes that Duke's process is successful
16 or fair?

17 A. I don't get calls often from folks,
18 thanking us for what we do, but, when I do, I save
19 them. And I do have a voice mail that I got from a
20 city mayor that was very appreciative.

21 What we do is very challenging and it's
22 intrusive into a private property and that's just
23 part of the challenge that we're faced with. So it
24 is a challenging line of the business to work in and
25 there's several dynamics with that.

1 So can you restate your question to make
2 sure I answer it appropriately?

3 Q. You did not. Thank you, sir.

4 MS. BOJKO: Your Honor, I'm going to move
5 to strike the entirety of his answer. He just
6 clearly admitted that he didn't answer it and then he
7 wanted to hear the question over. He did not respond
8 to it whatsoever.

9 EXAMINER ADDISON: I think he was asking
10 if -- he was asking to rehear the question to make
11 sure that he did respond fully to your question.

12 So let's have the question back, please.

13 (Record read.)

14 THE WITNESS: Okay. Thank you, Your
15 Honor, for repeating that.

16 When you look at the objective of our
17 program, it's safety, reliability, and access.
18 That's the core goals of our integrated vegetation
19 management program.

20 When we go out and try to maintain our
21 transmission lines and protect that grid, it's
22 difficult with the public accepting what we have to
23 do in order to maintain and mitigate those risks
24 associated with the vegetation along those
25 rights-of-way, so.

1 Q. So the answer to my question is, it's
2 fair to assume that not every property owner and not
3 every community believes that your process is
4 successful and/or fair.

5 A. There's different perspectives, I would
6 say.

7 Q. So that's a fair statement that I'm
8 making then. It's fair to assume that not everybody
9 is happy with your work; is that correct?

10 A. I think that's a fair statement or we
11 wouldn't have these people in the room today.

12 MS. BOJKO: Your Honor, I'm at a breaking
13 point in subject matter. I don't know if the -- if
14 you desire a break or I can keep pushing forward.

15 (Discussion off the record.)

16 (Recess taken.)

17 EXAMINER ADDISON: Let's go back on the
18 record.

19 Q. (By Ms. Bojko) Mr. Adams, before the
20 break we were talking about not everybody being
21 satisfied with Duke's work and how you believe it's a
22 hard job. It's true, on this vegetation management
23 program that you have been implementing over the last
24 year, that Duke has, in fact, heard a lot of
25 feedback, mostly negative, from a variety of

1 stakeholders; is that correct?

2 MS. WATTS: Objection as to the
3 characterization and the use of the term "mostly."

4 EXAMINER ADDISON: I'll allow him to
5 elaborate.

6 A. There's been complaints.

7 Q. And you would dispute a recordation by
8 one of the Duke employees that that complaint or that
9 feedback has been mostly negative?

10 A. Repeat your statement.

11 Q. Would you dispute a recordation or a
12 reporting from one of your employees that the
13 feedback has been mostly negative?

14 MS. WATTS: Objection, Your Honor. If
15 there's a document, we should be referring to the
16 document.

17 A. If there is a document, I'd like -- are
18 you referring to a specific document? I'd like to
19 see it.

20 MS. BOJKO: Your Honor, I'm not
21 expediting this process. If I would -- let the
22 record reflect -- if I may approach, Your Honor?

23 EXAMINER ADDISON: You may.

24 MS. BOJKO: I'll let the record reflect
25 that I am handing the witness what's been previously

1 marked as Complainants Exhibit 17, which is
2 Ms. Kuhne's testimony, Attachment I.

3 I think everyone has Ms. Kuhne's
4 testimony, Attachment I, Complainants Exhibit 17.

5 And for the record, Your Honor, this is
6 Duke's discovery response to CACC-POD-01-003

7 EXAMINER ADDISON: Thank you.

8 THE WITNESS: Thank you.

9 Q. (By Ms. Bojko) Do you have in front of
10 you what's been marked as Complainants Exhibit 17,
11 and are you looking at Attachment I to that exhibit,
12 sir?

13 A. I am.

14 Q. And in that Exhibit I, Mr. Broadhurst
15 explains that he believes that there has been mostly
16 negative feedback in Ohio from the implementation of
17 Duke's vegetation management plan; is that correct?

18 A. I don't see that. I do recall this
19 e-mail. And if you look, this e-mail was sent by
20 Sally Thelen who is -- that is what she's asking
21 Mr. Broadhurst to talk to. So I don't know that
22 that's Mr. Broadhurst's opinion. That was authored
23 by Sally.

24 Q. Okay. Is Sally a Duke employee?

25 A. She is.

1 Q. And doesn't Sally say, "I know we
2 continue to make a lot of changes when it comes to
3 Transmission Vegetation Management - especially in
4 Ohio"?

5 A. She does.

6 Q. "And we're hearing a lot of feedback -
7 mostly negative - from a variety of stakeholders."

8 A. Yes.

9 Q. And she also asks these questions: "What
10 are we doing differently? Why are we making these
11 changes? How are we mitigating/responding to
12 community and customer concerns about our new
13 policies/direction?" and stating that Mr. Broadhurst
14 "will need to address the public complaints before
15 PUCO here and recent media attention." Is that
16 correct?

17 A. That's correct.

18 MS. BOJKO: May I approach, Your Honor?

19 EXAMINER ADDISON: You may.

20 MS. BOJKO: I'm done. Thank you.

21 MS. WATTS: Your Honor, if I may, it's
22 unclear to me -- okay, never mind, I'm sorry. I take
23 back my comments, sorry.

24 EXAMINER ADDISON: Thank you, Ms. Watts.

25 Q. (By Ms. Bojko) Mr. Adams, I'd like to

1 direct you to page 10, please, of your testimony,
2 lines 21 through 23.

3 A. Okay.

4 Q. Here you discuss the Northeast Blackout
5 of 2003; is that correct?

6 A. That is correct.

7 Q. And this blackout occurred about 15 years
8 ago on August 14th, 2003; is that correct?

9 A. That is correct.

10 Q. And it was not caused by any of the
11 transmission circuits in Duke Ohio's territory; is
12 that correct?

13 A. Not caused. But on FirstEnergy's
14 transmission system was the initiating outage.

15 Q. Right. And you would agree with me that
16 there are many causes of the 2003 blackout; is that
17 correct?

18 A. There were multiple indicators, but the
19 initiating cause was the contact with vegetation and
20 then you had operator error responding to it, they
21 found training issues, but the initiating cause was
22 the vegetation management and the lack of sufficient
23 vegetation management activities on the transmission
24 right-of-way, which led to the NERC standards.

25 Q. But the cascading blackout was caused by

1 a variety of reasons; is that correct?

2 A. Yes. And there was a group that did an
3 investigation into that. There were multiple
4 outages, multiple tree contacts, and actually some of
5 the Duke Energy transmission lines were one of the
6 lines that overloaded and sagged into some vegetation
7 and tripped out during that.

8 Q. But not the transmission circuits at
9 issue in this case; is that correct?

10 A. It wasn't the circuit that initiated the
11 cause; that was on FirstEnergy.

12 Q. As you explain on page 8, line 18 of your
13 testimony, the probability of an event like that
14 happening on a 138-kV line in question is highly
15 unlikely; is that correct?

16 A. Causing a cascading outage, spreading all
17 the way from New York to Canada, yes, it's highly
18 unlikely on a 138. But as I also explained, you
19 could put the whole City of Cincinnati in the dark,
20 and that's very possible.

21 Q. A cascading outage on a 138-kV is highly
22 unlikely, per your testimony on page 8; is that
23 correct?

24 A. A cascading outage that leads to a
25 blackout like we had in 2003.

1 Q. Yes.

2 A. A major, multiregional blackout. I want
3 to be very specific. So this would not hit
4 necessarily NERC or FERC's radar but, Your Honors,
5 you would be -- it would be on yours because it would
6 be a major outage in that region. You could lose our
7 grid in covering Cincinnati.

8 If you think about it, it's like an
9 interstate highway and you got the bypass loop around
10 Cincinnati. The 345-kV is the major interstates and
11 highways that are coming. This 138 is a loop system
12 that circles Cincinnati. And we have to plan for
13 contingencies. So if we lose one segment of that
14 line, and if the loading is right, the conditions are
15 right, and we happen to lose another segment of that
16 line, then basically we've lost that whole loop
17 system. And then you have all of that power trying
18 to get in to serve those loads which could overload
19 those circuits and trip. So you could have a
20 regional blackout that would be a national event in
21 my opinion.

22 MS. BOJKO: Your Honor, I move to strike
23 everything after I think he said "Yes" to me. I'm
24 trying to refer to a part of his testimony about the
25 138-kV lines, and he's expanded it to include I don't

1 know what. I'm asking a specific question that's on
2 page 8, lines 16 through 19.

3 EXAMINER ADDISON: Ms. Watts.

4 MS. WATTS: Your Honor, with respect to
5 the testimony that Mr. Adams offered on those lines,
6 Ms. Bojko's clearly asking him to affirm the
7 unlikelihood of a regional blackout, and he responded
8 with the risk that's associated with an outage in the
9 Cincinnati area which was directly responsive to her
10 question. He was illustrating that risk for the
11 Bench, so I think there's no reason to strike it.

12 EXAMINER ADDISON: Thank you.

13 While I think he was just attempting to
14 qualify what he had meant as a "cascading outage" as
15 referenced in his testimony; at any rate, I usually
16 allow the witness a "One Bite of the Apple" rule and
17 I will allow Mr. Adams to invoke that at this time.

18 However, going forward, Mr. Adams, if you
19 could just listen to Ms. Bojko's question and respond
20 to only that question.

21 THE WITNESS: Sure, Your Honor.

22 EXAMINER ADDISON: Like I said before,
23 Ms. Watts can bring up any additional information on
24 redirect.

25 THE WITNESS: Okay.

1 EXAMINER ADDISON: Thank you.

2 MS. BOJKO: Thank you, Your Honor.

3 Q. (By Ms. Bojko) I think you mentioned
4 previously but you said after the Northeast Blackout
5 in 2003, the Federal Energy Regulatory Commission, or
6 FERC, positioned the North American Electric
7 Reliability Corporation, or NERC, as the regulatory
8 authority to ensure the safety and reliability of the
9 bulk power system in North America; is that correct?

10 A. That is correct.

11 Q. And after NERC was given authority to
12 regulate, it used regulations to do so; is that
13 correct?

14 A. That is correct.

15 Q. For instance, NERC issued FAC-003-1; is
16 that correct?

17 A. That is correct.

18 Q. And that was issued 11 years ago in 2007,
19 correct?

20 A. That is correct.

21 MS. BOJKO: Your Honor, at this time, I'd
22 like to mark as Complainants Exhibit 23, I believe, a
23 document titled NERC Standard FAC-003-1.

24 EXAMINER ADDISON: It will be so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MS. BOJKO: May I approach?

2 EXAMINER ADDISON: You may.

3 Q. Mr. Adams, do you recognize what has been
4 marked as Complainants Exhibit 23 as the NERC
5 standard you referred to earlier, FAC-003-1?

6 A. I do.

7 Q. This appears to be a fair and accurate
8 copy of that standard?

9 A. That is correct.

10 Q. And just so we're clear, this is a
11 mandatory standard; is that correct?

12 A. That is correct.

13 Q. And that's different than the ANSI A300
14 standard; is that correct?

15 A. That is correct.

16 Q. And this standard concerns transmission
17 vegetation management, correct?

18 A. That is correct.

19 Q. And it applies to transmission lines of
20 200 kV and greater, correct?

21 A. That is correct. And in that time, there
22 have been four changes to this standard since then.

23 Q. Of course, and it still applies to 200 kV
24 and greater, correct?

25 A. That is correct. But, in the second

1 standard, we had interconnection reliability
 2 operating limits which are critical lines like main
 3 arteries that -- this is more in the West -- you have
 4 some 69-kV lines, you have some 115-kV lines, you
 5 have some 138-kV lines that are transporting bulk
 6 power from one location to another, across large
 7 jurisdictional areas. And due to the WECC, which is
 8 the Western Electric Coordinating Council, due to
 9 their concerns of the risk to the transmission grid,
 10 they were included.

11 Q. So are you disputing that NERC FAC-003-1
 12 at Section A.4.3 says "This standard shall apply to
 13 all transmission lines operated at 200 kV and
 14 above...."?

15 A. I agree. Then you can continue: "...and
 16 to any lower voltage lines designated by the RRO as
 17 critical to the reliability of the electric system in
 18 the region." That's where we clarify that, in
 19 Version 2, with the IROLs.

20 Q. Okay. You don't recognize or reference
 21 Version 2 in your testimony, do you, sir?

22 A. I didn't reference Version 2. I think I
 23 reference Version 4.

24 Q. Yes, you did, sir, on page 7, lines 14
 25 and 15. Let's talk about that.

1 A. Sure.

2 Q. That is also a NERC standard; is that
3 correct?

4 A. That is correct. That is the current
5 NERC standard. It's been through four iterations.

6 Q. And that current NERC standard also
7 applies to lines 200 kV and greater, unless the line
8 is identified as an element of a major WECC transfer
9 path which is a bulk electric system by WECC; is that
10 correct?

11 A. That is correct.

12 Q. And it does not apply to 138-kV lines
13 unless that exception exists, correct?

14 A. That is correct.

15 MS. BOJKO: Your Honor, at this time, may
16 I have marked as Complainants Exhibit 24, the
17 FAC-003-4 which happens to be attached to a discovery
18 response, CACC-POD-02-002? May I approach?

19 EXAMINER ADDISON: You may, and it will
20 be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Sir, does this appear to be a data
23 response from Duke Energy Ohio in this case?

24 A. It does.

25 Q. And, sir, look under supplemental --

1 first, let's look at the request. Does it say
2 produce and attach each and every document reviewed
3 or relied upon by the expert witnesses listed in
4 response to a previous interrogatory?

5 A. It does.

6 Q. And are you a witness, expert witness in
7 this case, sir?

8 A. I am.

9 Q. Under "Supplemental Response" does your
10 name appear?

11 A. Yes.

12 Q. And beside your name, does it say there
13 are no responsive documents relied upon by you?

14 A. That is correct.

15 Q. Sir, you've stated that the lines at
16 issue in this case are 138 kV; is that correct?

17 A. That is correct.

18 Q. And are you aware of any of those 138-kV
19 lines being designated as an element of a major WECC
20 transfer path by WECC?

21 A. Not on our system.

22 Q. So it would not fall under the exception
23 provided for in NERC Standard FAC-003-4; is that
24 correct?

25 A. That is correct.

1 Q. So that means that NERC Standard
2 FAC-003-4 is not mandatory for the 138-kV lines at
3 issue in this case; is that correct?

4 A. You are correct.

5 Q. And those are the only two NERC standards
6 you reference in your testimony; is that correct?

7 A. I believe that is correct. Can I --

8 Q. And as you -- sorry.

9 A. I answered your question. I can tell you
10 why I didn't include them if you want me to.

11 Q. No, thank you.

12 As you explained, NERC FAC-003-1 is
13 merely a prior version of FAC-003-4; is that correct?

14 A. That is correct.

15 Q. Now, let's turn to page 12 of your
16 testimony, sir. Let's talk about some of the charts
17 that you have in your testimony. Are you there?

18 A. I am.

19 Q. On this page on page 12, you include a
20 chart that compares the vegetation-related outages
21 for three sets of 100- to 199-kV lines, from 2010 to
22 2017; is that correct?

23 A. That is correct.

24 Q. So the lines at issue in this case would
25 fall within the 100- to 199-kV transmission lines; is

1 that correct?

2 A. Yes.

3 Q. And the green line in your chart tracks
4 vegetation-related outages of 100- to 199-kV lines
5 for Duke Energy Ohio and Kentucky; is that correct?

6 A. That is correct.

7 Q. And so, the labeling of the green line is
8 "DEOH/KY" meaning it applies to both; is that
9 correct?

10 A. That is correct.

11 Q. So in your paragraph on page 11, when you
12 describe the chart, you are referencing the green
13 line that refers to DE Ohio and DE Kentucky; is that
14 correct?

15 A. That is correct.

16 Q. The purple line in this chart tracks
17 vegetation-related outages of 100- to 199-kV lines
18 for Duke Energy Midwest; is that correct?

19 A. That is correct.

20 Q. And the orange line tracks the
21 performance of 100- to 199-kV lines for Duke Energy
22 excluding Duke Energy Midwest, correct?

23 A. That is correct.

24 Q. And this chart measures performance in
25 terms of "Outages per Hundred Mile Year" which is

1 "OHMY."

2 A. "OHMY."

3 (Laughter all around.)

4 Q. Is that correct?

5 A. That is correct. That's the first I've
6 heard that.

7 (Laughter all around.)

8 Q. Now, this chart shows that in seven of
9 the eight years that were measured, there were fewer
10 vegetation-related Outages per Hundred Mile Year on
11 the 100- to 199-kV lines in Duke Energy Ohio's
12 territory than on all other 100- to 199-kV lines for
13 all of Duke's other territories excluding the
14 Midwest; is that correct?

15 A. Yes. Well, if you take an average and
16 what you have to do is you really have to just kind
17 of intercalate between the two. They're basically
18 performing about the same. I would say that it's
19 performed comparable to the rest of the system.

20 Q. Well, the green line, sir, is below the
21 orange line in every year except for one; is that
22 correct?

23 A. That is correct. But where it is above
24 it, it's above it a good bit, so you'd have to take
25 the average.

1 Q. Sure.

2 A. But I'd say they're comparable and it's
3 performing well compared to the other voltages of
4 that -- of that system voltage across the enterprise.

5 Q. Are you aware of the event that happened
6 in 2014, in Ohio, that may have caused that spike in
7 that one year?

8 A. I'm trying to think. I cannot recall a
9 specific event in '14. No, I can't.

10 Q. DE Midwest, which states does Midwest
11 include, sir?

12 A. It includes Ohio, Kentucky, Indiana.

13 Q. So it's just one additional state than
14 the DE Ohio/Kentucky line.

15 A. Yes.

16 Q. Then let's turn to -- oh, wait.

17 So you would agree that the number of
18 vegetation-related outages on 100- to 199-kV lines in
19 Ohio and Kentucky was lower than the number for all
20 100- to 199-kV lines in Duke Energy Midwest in each
21 of the eight years that this chart shows, correct?

22 A. Yes.

23 Q. So Kentucky and Ohio beat out Indiana.

24 A. Yes.

25 Q. Not an unusual circumstance, is it?

1 (Laughter.)

2 A. Well, it depends on who you ask in the
3 back of the room. Kidding.

4 (Laughter.)

5 Q. And, sir, on this chart -- let's turn to
6 chart 13 -- the chart on 13. Do you see that chart?

7 A. I do.

8 Q. Okay. That chart on page 13 compares the
9 performances of 100- to 199-kV lines versus 200- to
10 299-kV lines; is that correct?

11 A. That is correct.

12 Q. Just so we're clear, the NERC standard
13 would apply to part of -- no. It would apply to all
14 of the 200- to 299-kV lines; is that correct?

15 A. That is correct.

16 Q. And even though this chart -- this chart
17 is comparing different voltages; is that fair?

18 A. It is. And the reason I did that is for
19 the explanation I had below about the criticality of
20 the 138. We do not have a 230-kV. That's unusual
21 compared to our other jurisdictions. You usually
22 have a 500, 230, then either a 138 or 115, and then
23 69 or some other sub-transmission. In Ohio and
24 Kentucky, we only have 345, 138 and 69. So
25 operationally, when you look to compare the systems,

1 this is a fair -- because of the hierarchy of how
2 that 138 operates as a loop network around
3 Cincinnati.

4 Q. And not only are you comparing lines of
5 different voltages, you're comparing DE Ohio/Kentucky
6 to DE's entire system; is that right?

7 A. That is correct.

8 Q. Okay. Let's look at page 14, please,
9 sir. On 14, there's a third chart and that third
10 chart compares vegetation-related outages on the
11 69-kV lines; is that correct?

12 A. That is correct.

13 Q. And just so we're clear, this entire
14 graph is about 0- to 99-kV lines.

15 A. Yes, it is.

16 Q. So none of the Complainants' transmission
17 circuits or none of the transmission circuits at
18 issue in this case would fall in this graph; is that
19 correct?

20 A. That is my understanding, yes.

21 MS. BOJKO: Your Honor, at this time, I
22 would like to mark as Complainants Exhibit 25, Duke's
23 response to CACC-INT-01-004.

24 EXAMINER ADDISON: So marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MS. BOJKO: May I approach?

2 EXAMINER ADDISON: You may.

3 Q. Sir, do you have in front of you what's
4 been marked as Complainants Exhibit 25?

5 A. I do.

6 Q. Does this appear to be a discovery
7 response from Duke, titled CACC-INT-01-004?

8 A. It does.

9 Q. You're responsible for preparing this
10 discovery response; is that correct?

11 A. That is correct.

12 Q. And it appears to be a true and accurate
13 copy?

14 A. It is a true and accurate copy of what we
15 produced.

16 Q. In this response, you identify the five
17 transmission circuits that are at issue in this case
18 on the Complainants' properties, correct?

19 A. Correct. And this is where I couldn't
20 remember the other two. And the 69 does appear to be
21 part on the Summerside to Clermont piece of this.

22 Q. And each of these lines listed on this
23 interrogatory response are 138-kV lines?

24 A. I would have to go back and verify. You
25 may have one of these small tap lines that were

1 69 kV. The 3881, 5483, and 5487 are absolutely; I'm
2 100-percent confident. The 6984 and 9482, I cannot
3 recall the voltage.

4 Q. But they would be either 138 or 69?

5 A. I'm thinking they're 138s, but I'm not
6 100-percent confident.

7 Q. You wouldn't be surprised if Duke said
8 they were all 138 in a discovery response, would you?

9 A. No. And I couldn't remember the last two
10 lines and I apologize.

11 Q. And if they are all 138 kV, it would be
12 fair to say that no work done on the Complainants'
13 properties would make any of Duke's 69-kV lines less
14 susceptible to vegetation-related outages, would it?

15 A. Can you repeat that question?

16 Q. Sure. Sorry.

17 If Duke is performing vegetation
18 management on a 138 circuit, that work done on the
19 Complainants' properties would not make any of Duke's
20 69-kV lines less susceptible to vegetation-related
21 outages, would it?

22 A. Not unless it's parallel or right in the
23 same corridor. Sometimes some of these lines are
24 located in the same corridor. So if we're performing
25 work on a line that is in the same corridor, it would

1 improve the reliability of that line.

2 Q. On page 14, lines 1 through 4 of your
3 testimony, you say to the extent that some lines have
4 higher levels of outages, the largest contributing
5 factor is the volume of incompatible trees in the
6 wire zone and border zone of rights-of-way, and
7 trying to manage the impact of these incompatible
8 trees through the maintenance program. Do you see
9 that?

10 A. I see that.

11 Q. Mr. Adams, you do not cite to any source
12 for this conclusion that you make in your testimony,
13 do you?

14 A. That source is me. That's my opinion.

15 Q. Okay. And you didn't bring any
16 documentation with you today, documenting this
17 conclusion, did you?

18 A. No. It's just my operational experience
19 and my experience in working with
20 multi-jurisdictions. As I view that line, those
21 lines have been maintained as more of a
22 distribution-type-maintenance strategy, rather than a
23 transmission.

24 Q. Isn't it true that without being witness
25 to an outage, it is impossible to tell what caused

1 the outage, sir?

2 A. No. There's investigations we do, outage
3 follow-up, we document and we do that.

4 Now, some outages in certain cases in
5 major events there may be so many that the
6 documentation is not as robust as it needs to be and
7 we can't confirm because you may have several things
8 like a major ice storm, a hurricane, that would be
9 caused by weather or vegetation, stuff like that, but
10 typically we investigate all the outages and document
11 them to the best of our abilities.

12 MS. BOJKO: Your Honor, at this time, may
13 I have marked as Complainants Exhibit 26, a Duke
14 response to discovery in this case, Duke's response
15 to CACC-INT-05-004 (sic)?

16 EXAMINER ADDISON: It will be so marked.
17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MS. BOJKO: May I approach?

19 EXAMINER ADDISON: You may.

20 Q. Sir, do you have in front of you what's
21 been marked as Complainants Exhibit 26?

22 A. I do.

23 Q. Does this appear to be a discovery
24 response from Duke to CACC-INT-04-27?

25 A. That is correct.

1 Q. And in the response, after a legal
2 objection, doesn't Duke state that "without being an
3 actual witness to the outage event, it is impossible
4 to say exactly how such an outage is initiated"?

5 MS. WATTS: Your Honor, I object to
6 questioning with respect to this particular document
7 because there's no connection between this document
8 and Mr. Adams.

9 EXAMINER ADDISON: Ms. Bojko, would you
10 care to lay some foundation?

11 MS. BOJKO: Yes, Your Honor. It's a Duke
12 discovery response and it is contradicting an
13 inconsistent statement made by Mr. Adams here on the
14 stand today. I asked him if he could tell, and he
15 said he could, and this document, which is an
16 admission of a party-opponent, by Duke, a discovery
17 response, directly contradicts the statement that
18 Mr. Adams made on the stand. So it's --

19 EXAMINER ADDISON: I'm not sure that it's
20 a hearsay objection that we're speaking to. It's a
21 foundational issue.

22 Mr. Adams, have you ever seen this
23 interrogatory?

24 THE WITNESS: I have seen this
25 interrogatory.

1 EXAMINER ADDISON: And were you -- and
2 did you assist in the response to this interrogatory?

3 THE WITNESS: I did. Actually, folks
4 that work with me assisted our Legal Department in
5 the response.

6 EXAMINER ADDISON: Thank you.
7 Please proceed, Ms. Bojko.

8 MS. BOJKO: Thank you. I think I have a
9 question pending, Your Honor. May I have it read
10 back?

11 EXAMINER ADDISON: You may.

12 (Record read.)

13 A. That is in this response here. But I'll
14 go back, we actually have an outage follow-up
15 process. And it's misstated here; you don't actually
16 have to be a witness. But we do after-event analysis
17 and we do assessments, forensics, things of that
18 nature. It's an outage investigation process. And
19 on this case, when we went into our outage management
20 database, we didn't have any information, any
21 details, any specifics on this event.

22 So to say -- this was misstated. When it
23 says "without being an actual witness," you can infer
24 there may be some degree but, for the most part, we
25 can determine was it tree-related, was it a fall-in,

1 grow-in type of stuff if we have enough evidence if
2 the evidence hasn't been moved after an event.

3 Q. So you would state that this response by
4 Duke was a misstatement? Is that what I heard you
5 say?

6 A. Based on my opinion. I didn't write the
7 formal response. It has Legal's response and that
8 would be a better question for Legal.

9 Q. Mr. Adams, isn't it also true that Duke
10 does not keep detailed records of vegetation-related
11 outages?

12 A. Can you repeat that, please?

13 Q. Isn't it true that Duke does not keep
14 detailed records of every vegetation-related outage?

15 A. When you -- I think the word "detailed"
16 is one that's broad. We have outage management
17 databases that we do keep and that's where this data
18 comes from. This is vegetation-related outages that
19 we track. What level of detail is in there is
20 dependent on who responded and who collected that
21 information and what got put into the system.

22 MS. BOJKO: Your Honor, at this time, may
23 I have marked as Complainants Exhibit 27, a Duke
24 discovery response to CACC-INT-5-004?

25 EXAMINER ADDISON: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MS. BOJKO: May I approach?

3 EXAMINER ADDISON: You may.

4 Q. Mr. Adams, do you recognize what I've
5 handed you as Complainants Exhibit 27 to be a
6 discovery response from Duke to CACC-INT-05-004?

7 A. I do.

8 Q. And isn't it fair to assume that you were
9 involved in responding to this discovery response?

10 A. Similar to the previous one, correct.

11 Q. And in response to the question of an
12 outage event on Circuit 5487 that occurred on
13 November 17, 2014, that Duke identified in response
14 to a previous discovery request, CACC-INT-03-042,
15 when asked what caused that specific vegetation
16 outage, the response is that the outage was listed as
17 being caused by vegetation; however, no further
18 details are available.

19 A. That is correct. I did question the
20 individual that went into the outage database. The
21 only other information that they had was it was an
22 8-hour outage. And I asked him about that, that
23 seemed very long, but we didn't have any details
24 explaining why it was 8 hours. But when you get
25 something that long, it concerns me, what were the

1 issues out there, access, getting to the incident and
2 what all surrounded it, but we didn't have any
3 details in the database other than the length of the
4 outage.

5 Q. And in response, there's nothing listed
6 about the length. It just said that the outage was
7 listed and there are no further details; is that
8 correct?

9 A. That is correct. And I did some
10 follow-up and that was after we filed this, because
11 typically we have more information.

12 Q. Let's talk about that outage that was
13 referenced in CACC-INT-03-042.

14 MS. BOJKO: Your Honor, at this time, I'd
15 like the record to reflect that I will show the
16 witness what's been previously marked as Attachment F
17 to Mr. Preissler's testimony which was marked as
18 Complainants Exhibit 11.

19 EXAMINER ADDISON: Thank you. And before
20 we move on, Ms. Bojko, I just want to make sure that
21 the record is clear. I think the wrong interrogatory
22 was referenced when we marked Complainants Exhibit
23 No. 26. I had CACC Interrogatory No. 05-004 cited in
24 both Exhibit 26 and 27. I would just like the record
25 to reflect that what you handed us and what has been

1 marked as Complainants Exhibit 26 is a response to
2 CACC Interrogatory 04-027.

3 MS. BOJKO: Thank you, Your Honor. I
4 apologize.

5 Q. (By Ms. Bojko) Actually, let's go back to
6 CACC-INT-04-27 which was Complainants Exhibit 26. Do
7 you have that in front of you, sir?

8 A. I do.

9 Q. This is asking Duke to identify all the
10 instances within the past -- well, let's start over.

11 CACC-INT-03-042 asked Duke to identify
12 all instances within the past 10 years where arcing
13 has occurred between transmission lines identified
14 and any trees or vegetation. In response, Duke said
15 that there was a single outage on November 17, 2014;
16 is that correct?

17 A. That is correct.

18 Q. Okay. And so, when we look at
19 Complainants Exhibit 27 which is a response to
20 CACC-INT-05-004, the outage referenced in that
21 response was referring to that signal outage on
22 November 17, 2014; is that correct?

23 A. That is correct.

24 MS. BOJKO: Now may I approach, Your
25 Honor?

1 EXAMINER ADDISON: You may.

2 MS. BOJKO: So this, again, is
3 Preissler's testimony, Complainants Exhibit 11,
4 Attachment F. It is Duke's responses to two
5 interrogatories, CACC-INT-03-041 and -42.

6 Q. Sir, do you recognize what I've handed
7 you as CACC-INT-03-041 as a discovery response from
8 Duke?

9 A. I do.

10 Q. And you are listed as the responsible
11 party, sir, correct?

12 A. As one of them, yes.

13 Q. As to the response, sir?

14 A. As to the response, yes.

15 Q. In the first interrogatory,
16 CACC-INT-03-041, Complainants ask Duke if it was
17 aware of any incidences of arcing that occurred on
18 the transmission lines at issue in this case; is that
19 correct?

20 A. That is correct.

21 Q. And this is the discovery response that
22 states that you were, in fact, aware of an instance;
23 is that correct?

24 A. That is correct.

25 Q. And then the second interrogatory,

1 Interrogatory 03-042, is a follow-up to that
2 interrogatory and it asks Duke to please identify all
3 of the instances that Duke is aware of, within the
4 past 10 years, where arcing occurred between the
5 trees or vegetation and the transmission lines; is
6 that correct?

7 A. That is correct.

8 Q. And here is where the November 17, 2014
9 instance on one of the circuits is listed; is that
10 correct?

11 A. That is correct.

12 Q. And based on these inquiries and
13 responses, is it fair to say that you believe this
14 outage occurred due to arcing?

15 A. Again, we didn't have any detail. All we
16 know is it's vegetation. Did the tree fall into it,
17 tear the line down, mechanical failure, did the tree
18 grow into it? I really don't know. Or was it a line
19 sagging into it? I doubt, in November, that would be
20 the case. But we didn't have any details, so I can't
21 answer it. I don't know.

22 Q. So there was one vegetation-related
23 outage. Whether it was due to arcing or some other
24 vegetation cause, you're just stating that there was
25 one.

1 A. Yes. That's all we could confirm.

2 How -- we had no information in the database.

3 Q. Okay. And, sir, you weren't a witness to
4 this particular outage, were you?

5 A. No.

6 MS. BOJKO: Do you want to go off the
7 record?

8 EXAMINER ADDISON: Let's go off the
9 record.

10 (Discussion off the record.)

11 EXAMINER ADDISON: Let's go ahead and go
12 back on the record.

13 Q. (By Ms. Bojko) Mr. Adams, could you turn
14 to page 19, lines 10 to 12 of your testimony.

15 A. Yes.

16 Okay. What lines again?

17 Q. 10 to 12.

18 A. Okay.

19 Q. Here you're talking about the cost of a
20 reclamation project; is that correct?

21 A. That is correct.

22 Q. Sir, what's "reclamation" to you mean?

23 A. "Reclamation" is basically a situation
24 when -- and it's by definition. You pointed it out
25 with what you objected to. But go to part -- page 9,

1 line 17.

2 "Rights of way reclamation is defined by
3 the American National Standard Institute...as
4 'reestablishing IVM on a right of way that is not
5 currently managed to the full extent of its easement
6 or ownership rights and intended purposes.'"

7 Q. Okay.

8 A. "'Conditions on a right of way in need of
9 reclaiming include tall, dense amounts of undesirable
10 vegetation, and utility facilities that are
11 inaccessible. Reclamation usually involves
12 non-selective methods of mechanical mowing or
13 clearing, hand-cutting or broadcast application of
14 herbicides.'"

15 Q. You're adopting the ANSI standard
16 definition in A300 with regard to reclamation? Am I
17 saying that correctly?

18 A. That is correct.

19 Q. You're adopting that standard or that
20 definition as your own when you're using the word
21 throughout your testimony; is that fair?

22 A. That is correct. We're trying to convert
23 that right-of-way because of the large amount of
24 mature incompatible vegetation that's in there.

25 Q. Okay. So when words are used,

1 "non-selective methods of mechanical mowing or
2 clearing," to me this is the clear cutting that we've
3 been referring to in this case, indiscriminate clear
4 cutting, "non-selective methods."

5 A. "Non-selective" typically refers to more
6 of a mowing operation and that's where you're just
7 going in and mowing everything down. And we're not
8 doing that. We're going in and selectively doing
9 removals.

10 Q. This says "non-selective methods"
11 including "mowing or clearing." So that is or isn't
12 what you're doing? I'm trying to understand.

13 A. Let me go back to page 9. We're doing
14 more removals. We're doing some mowing and -- but
15 it's a variation. It says "usually involves".
16 Mainly what we're doing is removals.

17 And in some of the more rural areas,
18 we're probably, if the vegetation in the floor is
19 very tall and dense, we're mowing it, and that would
20 be more non-selective, and we will put that in our
21 herbicide program. We'll do low-volume foliar
22 application which is a very selective process.

23 Q. This term that the ANSI standard uses, it
24 says "non-selective methods" which includes the
25 "broadcast application of herbicides." Is that

1 correct?

2 A. That is. And that's talking more about
3 high-volume applications of herbicide where it's just
4 spraying high volumes across the entire right-of-way,
5 rather than the low-volume, selective-type
6 application.

7 Q. Right. Which would be a form of clear
8 cutting, correct?

9 A. Clear cutting, to me, is a different
10 definition. And actually I don't know if the
11 standard defines "clear cutting." I don't think it
12 does.

13 (Witness reviewing the document.)

14 No.

15 Clear cutting, to me, is typically going
16 through more of the timber-type projects where you
17 completely remove all timber off of a large tract of
18 land.

19 Q. And you think that this "Conditions on a
20 right of way in need of reclaiming include tall,
21 dense amounts of undesirable vegetation" and
22 "Reclamation usually involves non-selective
23 methods of mechanical mowing or clearing,
24 hand-cutting or broad database application of
25 herbicides" is different? Is that correct?

1 A. Yes, than clear cutting.

2 Q. So you're not following the ANSI
3 standard; is that correct?

4 A. No. I said we weren't -- I wasn't saying
5 we're clear cutting.

6 Q. Well, "reclamation," the definition in
7 ANSI A300 includes "non-selective methods of
8 mechanical mowing or clearing, hand-cutting or
9 broadcast application of herbicides" on a
10 non-selective basis, correct?

11 A. It says "usually involves." And it can
12 and cannot.

13 We're trying -- what we're doing in this
14 case is we've got a large density of -- and I'll go
15 back to the "Conditions on a right of way in need of
16 reclaiming include tall, dense amounts undesirable
17 vegetation, and utility facilities that are
18 inaccessible." And what we're doing is ending up
19 removing a lot of trees and we're doing that through
20 mechanical removals of the trees and that's what
21 we've been doing on these lines.

22 Q. And that's what the door hangers that the
23 Complainants are receiving that say remove all
24 vegetation 50-foot of center would do, it would
25 remove everything 50-foot of center, correct?

1 A. I've seen some of the door hangers that
2 said 50-foot. And based on not knowing the
3 individual property, you may have a situation that
4 there wasn't anything that was compatible on that
5 property. That, I don't know.

6 Q. Well, let's go back to the cost-recovery
7 discussion that you have on page 19 of your
8 testimony, sir. You state that since this is a
9 right-of-way reclamation project, the cost per mile
10 is in excess of \$36,000 per mile; is that correct?

11 A. That is correct.

12 Q. And what would be the cost of the project
13 if Duke were to trim instead of this more broad
14 application of reclamation project?

15 A. It could run anywhere from probably in
16 the range of 7,000 to 12,000 dollars. That's a
17 ballpark figure.

18 Q. Per mile, sir?

19 A. Per mile.

20 Q. And isn't it true that Duke has not
21 actually conducted any review that compares the
22 monetary cost of engaging in clear cutting of trees
23 or broad removal with the monetary cost of continuing
24 its prior practice of trimming and pruning trees and
25 other vegetation?

1 A. We haven't done any studies around clear
2 cutting, no.

3 Q. And, sir, you haven't done any studies
4 with regard to reclamation versus trimming and
5 pruning, which was your prior practice, correct?

6 A. We haven't done any formal studies. We
7 know what the cost is and we're strategically -- and
8 it goes back to what you objected to in my testimony
9 before, the 20 years. We're looking, we're doing
10 100, 150 miles a year. We're selectively taking the
11 worst lines and we're trying to convert them over
12 time. So it's very targeted, condition-based lines
13 that we're doing the reclamation on. At this cost,
14 you can't afford to do it. And it's going -- it
15 didn't get this way overnight. We're not going to
16 change it overnight. It took many years for it to
17 get this way. It's going to take several years for
18 us to convert it.

19 Q. And "convert it," you're implying that
20 there's a change in philosophy and a method used by
21 Duke that's now going to go from the \$7,000 to
22 \$12,000, to the \$36,000 per mile, correct?

23 A. On those, no. It's on those targeted
24 circuits. But when you look at IVM in the long term,
25 it's a strategy that we're looking at. We're trying

1 to -- there's a -- utility vegetation managers manage
2 ecosystem; they don't manage trees. And that's in my
3 testimony. I talk about the diverse ecosystems that
4 we've got from Florida to the Carolinas to the
5 Midwest, and what we're trying to do is convert that
6 right-of-way to a compatible vegetation environment
7 that is conducive for the people, the trees, and the
8 power lines.

9 Q. And this is a change in philosophy, as I
10 think you state on page 9 of your testimony, sir?

11 A. The philosophy --

12 Q. Lines 16 to 17.

13 A. The reclamation is, that is correct.

14 Q. Let's go back to cost recovery.

15 Duke receives cost recovery, for its
16 vegetation-management activities, from customers; is
17 that correct?

18 A. That is correct.

19 Q. And it's your understanding that Duke
20 receives cost recovery from customers, for its
21 transmission vegetation-management activities,
22 through what's called Rider BTR; is that correct?

23 A. I've heard that term and I'm not an
24 expert in riders. That would be more of a question
25 of Legal.

1 Q. It's your understanding that there is a
2 rider to collect vegetation-management costs from
3 customers, correct?

4 MS. WATTS: Your Honor, just as a point
5 of clarification, cost recovery is different for
6 distribution versus transmission; so if we're going
7 to ask questions around this, it would be helpful if
8 we knew which we were talking about.

9 EXAMINER ADDISON: Thank you, Ms. Watts.

10 MS. BOJKO: I thought we were talking
11 about transmission vegetation management, but I'll
12 clarify, Your Honor.

13 EXAMINER ADDISON: Thank you.

14 Q. Let's try this again.

15 It's true that Duke receives cost
16 recovery from customers for its transmission
17 vegetation-management activities; is that correct?

18 A. That is correct.

19 Q. And that cost recovery that it receives
20 from customers for its transmission vegetation
21 management practices is through a rider on customers'
22 bills; is that correct?

23 A. That is my understanding.

24 Q. And you just, here today, don't know if
25 it's BTCR -- BTR or not; is that correct?

1 A. I'm not that close to the riders and
2 everything.

3 MS. BOJKO: Your Honor, may I mark as
4 Complainants Exhibit 28, a discovery response to
5 CACC-INT-01-057?

6 EXAMINER ADDISON: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MS. BOJKO: May I approach?

9 EXAMINER ADDISON: You may.

10 Q. Sir, do you have in front of you what's
11 been marked as Complainants Exhibit 28?

12 A. I do.

13 Q. Is this a discovery response from Duke?

14 A. Yes, it is.

15 Q. Do you recognize this to be a discovery
16 response issued in this case?

17 A. I do.

18 Q. You're familiar with the discovery that
19 was issued in this case?

20 A. I am.

21 Q. Does this refresh your recollection that
22 the recovery mechanism from customers for
23 transmission vegetation-management practices,
24 policies, and programs is through Rider BTR?

25 A. Yes, it does. And the person responsible

1 was "Legal."

2 Q. Thank you.

3 A. Thank you.

4 MS. BOJKO: Your Honor, I'm at a stopping
5 point.

6 EXAMINER ADDISON: Okay. I think now
7 would be a good time for us to break for the day.

8 Let's go off the record.

9 (Discussion off the record.)

10 EXAMINER ADDISON: Let's go back on the
11 record.

12 We will adjourn today and reconvene
13 tomorrow at 9:00 a.m. Thank you, all.

14 (Thereupon, the proceedings concluded at
15 5:16 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, November 6, 2018, and carefully compared with my original stenographic notes.

Carolyn M. Burke
Carolyn M. Burke, Registered
Professional Reporter, and
Notary Public in and for the
State of Ohio.

My commission expires July 17, 2023.

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Summary: Transcript Citizens Against Clear Cutting, et al. vs. Duke Energy Ohio, Inc. - Volume I, hearing held on November 6th, 2018. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn