

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of Citizens	)	
Against Clear Cutting, <i>et al.</i> ,	)	
	)	
Complainants,	)	
v.	)	Case No. 17-2344-EL-CSS
	)	
Duke Energy Ohio, Inc.,	)	
	)	
Respondent.	)	

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**STIPULATION AND RECOMMENDATION**

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Rule 4901-1-30, Ohio Administrative Code provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties that have signed below (Signatory Parties) and to recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation and Recommendation (Stipulation), which resolves the issues raised by the Signatory Parties in these cases relative to the vegetation management program for electric transmission lines of Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) and related matters. This Stipulation is supported by adequate data and information.

The Stipulation represents a just and reasonable resolution of the issues raised in these proceedings, violates no regulatory principle or precedent, and is the product of bargaining among knowledgeable and capable parties in a cooperative process, encouraged by this

Commission and undertaken by the Signatory Parties representing a wide range of interests, to resolve the aforementioned issues. Although this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission. For purposes of resolving all issues raised by this proceeding, the Signatory Parties stipulate, agree and recommend as set forth below.

Except for purposes of enforcement of the terms of this Stipulation, neither this Stipulation, nor the information and data contained therein or attached, shall be cited as precedent in any future proceeding for or against any Signatory Party or the Commission itself. This Stipulation is a reasonable compromise involving a balancing of competing positions and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken if these issues had been fully litigated.

This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification.<sup>1</sup> If the Commission rejects or materially modifies all or any part of this Stipulation, each and every Signatory Party shall have the right, within thirty days of issuance of the Commission's Order, to file an application for rehearing or to terminate and withdraw from the Stipulation by filing a notice with the Commission. The Signatory Parties agree they will not oppose or argue against any other Signatory Party's notice of termination or application for rehearing that seeks to uphold the original, unmodified Stipulation. If, upon rehearing, the Commission does not adopt the Stipulation in its entirety and without material modification, any Signatory Party may terminate and withdraw from the Stipulation. Termination and withdrawal from the Stipulation shall be accomplished by filing a notice with the Commission, including service to all Signatory Parties in this proceeding, within thirty days

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<sup>1</sup> Each Signatory Party has the right, at its sole discretion, to determine what constitutes a "material" change for the purposes of that Party terminating and withdrawing from the Stipulation.

of the Commission's Order or ruling on rehearing that does not adopt the Stipulation in its entirety and without material modification. In that event, other Signatory Parties to this Stipulation agree to not oppose the termination and withdrawal from the Stipulation by any other Signatory Party. Upon the filing of a notice of withdrawal, the Stipulation shall immediately become null and void.

Prior to the filing of such a notice, the Party wishing to withdraw agrees to work in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes the Signatory Party wishing to withdraw, then the new agreement shall be filed for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement that includes all Signatory Parties to the present Stipulation, the Commission will convene an evidentiary hearing such that the Signatory Parties will be afforded the opportunity to present evidence through witnesses and cross-examination, present rebuttal testimony, and brief all issues that the Commission shall decide based upon the record and briefs as if this Stipulation had never been executed. The Signatory Parties may submit a new agreement to the Commission for approval if the discussions achieve an outcome they believe substantially satisfies the intent of the present Stipulation.

The Signatory Parties fully support this Stipulation in its entirety and urge the Commission to accept and approve the terms herein.

This Stipulation is the product of an open process in which all Parties were represented by able counsel and technical experts. The Stipulation represents a comprehensive compromise of issues raised by the Signatory Parties with diverse interests. All Signatory Parties to the proceeding have signed the Stipulation and adopted it as a reasonable resolution of all issues.

The Signatory Parties believe that the Stipulation they are recommending for Commission adoption presents a fair and reasonable result.

The Signatory Parties agree that the settlement, as a package, benefits consumers and is in the public interest. The Signatory Parties agree that the settlement does not violate any important regulatory principle or practice.

WHEREAS, all of the related issues and concerns raised by the Signatory Parties have been addressed in the substantive provisions of this Stipulation, and reflect, as a result of such discussions and compromises by the Signatory Parties, an overall reasonable resolution of all such issues;

WHEREAS, this Stipulation is the product of the discussions and negotiations of the Parties and is not intended to reflect the views or proposals that any individual Signatory Party may have advanced acting unilaterally;

WHEREAS, this Stipulation represents an accommodation of the diverse interests represented by the Signatory Parties and is entitled to careful consideration by the Commission;

WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and

NOW, THEREFORE, the Signatory Parties stipulate, agree and recommend that the Commission make the following findings and issue its Opinion and Order in these proceedings approving this Stipulation in accordance with the following provisions that must be incorporated into Duke's Vegetation Management Program:

A. **Specific Provisions that must be incorporated into Duke's Vegetation Management Program:**

1. **Term of Agreement for Non-NERC Transmission Voltages**

The term of the settlement agreement shall be for a period of 12 years which includes two transmission clearing cycles (two cycles incorporates initial cycle (2019-2020 – Phase 1) and cycle two at the six-year increment (2025-2026 – Phase 2)). This agreement is applicable to the vegetation management practices of Duke Energy Ohio regarding the transmission line rights of way or corridors (Transmission Right of Way) in this case, to the Complainants who are property owners on the transmission line corridors 3881, 5483, 5487, 6984 and 9482, and who are represented by counsel in this proceeding; and to those who have previously filed complaints against Duke Energy Ohio with the Public Utilities Commission of Ohio (Commission) regarding Duke Energy Ohio's vegetation management practices and who reached settlements with Duke Energy Ohio stating that their properties will be treated consistent with the terms of this agreement.

Additionally, portions of the vegetation management approach adopted herein, in Sections A (1) through (10), will be reflected in Duke Energy Ohio's new vegetation management plan, which will be filed with the PUCO and be applicable to all properties in Duke Energy Ohio's service territory.

## **2. Duke Energy Ohio Transmission Vegetation Management Changes for Maintained/Landscaped Areas**

Duke Energy Ohio will move to a threat and condition-based strategy for its vegetation management program and it will be applicable for all properties of Duke Energy Ohio customers and is subject to the easement rights granted to Duke Energy Ohio. Unless agreed upon otherwise, a maintained/landscaped area is defined as an area where cut brush cannot be left on-site and include yards and landscaped areas.

The threat and condition-based strategy defines "compatible" and "incompatible" vegetation within and outside the Transmission Right of Way and de-emphasizes the Wire Zone/Border Zone/Peripheral Zone hard rules to allow a more flexible approach. This approach establishes threat trigger thresholds to determine incompatible vegetation within and outside the Transmission Right of Way (this is inclusive of the Wire Zone, Border Zone and Peripheral Zone) and is consistent with the easement rights granted to Duke Energy Ohio. The Signatory Parties believe this approach can be successfully implemented to balance the needs of the public and worker safety as well as the reliable operation of the Transmission system in conjunction with addressing most of the concerns raised by the impacted property owners.

### 3. Future State Duke Energy Ohio (Maintained/Landscaped Areas)

<i>Maintenance Practices</i>	<p>Threat and condition-based strategy:</p> <p>Duke Energy Ohio will utilize condition measurements, currently LiDAR (Light Detection and Ranging) technology, to identify vegetation threats of incompatible vegetation within or outside the Transmission Right of Way.</p> <p>For routine work, Duke Energy Ohio Transmission Vegetation Management threat trigger distances are used to identify vegetation threats that do not allow for safe operation of the transmission facilities, under all operating conditions (designed blowout and designed maximum operating sag). These threat triggers are radial distances based on engineering design criteria for the conductor sag and blowout operating locations and are voltage dependent.</p> <ul style="list-style-type: none"> <li>• For 138kV system, clearance distances following action in areas targeted for arboricultural management at the completion of utility vegetation management cycle work will be in the range of 20 feet to 30 feet under all operating conditions (designed maximum operating sag and designed blowout) to allow flexibility to utilize arboricultural expertise to assess varying species and growth rates.</li> </ul>
<i>Compatible Vegetation</i>	<p>Compatible vegetation within the Transmission Right of Way shall include:</p> <ul style="list-style-type: none"> <li>• Ornamental and landscaped vegetation that matures taller than 15 feet and does not present a grow-in or fall-in threat.</li> <li>• Generally, vegetation with a maximum mature height of 15 feet.</li> <li>• From an access perspective, vegetation no closer horizontally on the ground than 25 feet from any Duke Energy Ohio ground mounted structures (towers, poles, guy wires, guy anchors, etc.).</li> </ul>
<i>Incompatible Vegetation</i>	<p>Incompatible vegetation within or outside the Transmission Right of Way that will mature to a height or size that will pose a grow-in, fall-in, or blowing-together threat within 6 years to the transmission conductor, or that will limit or block access, or the safe and reliable operation, emergency restoration, or maintenance activity, which is typically within 25 feet from any Duke Energy Ohio ground-mounted structures (towers, poles, guy wires, guy anchors, etc.).</p> <ul style="list-style-type: none"> <li>• Using a threat and condition-based approach, all incompatible vegetation per Duke Energy Ohio trained personnel's assessment that does not limit/block access and can be safely managed through the proper arboricultural pruning guideline of pruning less than 33% of the vegetation canopy to obtain necessary clearance over a 6-year cycle will be pruned accordingly and allowed to remain until re-evaluation on the next cycle.</li> <li>• Using a threat and condition-based approach, all incompatible vegetation per Duke Energy Ohio trained personnel's assessment that limits/blocks access or cannot be safely managed through the proper arboricultural pruning guideline because of greater than 33% of the vegetation canopy would be pruned to obtain necessary clearance over a 6-year cycle will be targeted for removal based on a priority removal protocol and subject to the easement rights granted to Duke Energy Ohio.</li> </ul>
<i>Targeted Removal Criteria</i>	<p>Priority removal protocol will focus on removing incompatible vegetation that will be a threat over the next 6 years based on average growth rates for vegetation that cannot be managed through proper arboricultural pruning.</p>

**4. Non-NERC Priority Removal Protocol:** Over a 12-year period from 2020 to 2032, Duke Energy Ohio will perform vegetation management work along its Transmission Rights of Way as set forth above.

- Phase 1 will focus on removing non-manageable incompatible vegetation that are grow-in and blowing together threats (Category 1 & 4 threats) along the Transmission Rights of Way for maintained/landscaped areas.
- Phase 2 will focus on removing healthy incompatible vegetation that are fall-in threats (Category 2 threats) within the Transmission Right of Way for maintained/landscaped areas.
- After the 12-year period, the focus will be on maintaining the Transmission Right of Way by removing incompatible vegetation consistent with the Duke Energy Ohio Transmission Vegetation Management program on file with the PUCO at that time.

**5. Definition of Terms**

- Category 1 – Any incompatible vegetation *inside and/or outside* the Right of Way that presents a Grow-In Threat
- Category 2 – Any incompatible vegetation *within* the Right of Way that presents a Fall-In Threat
- Category 3 – Any incompatible vegetation *outside* the Right of Way that presents a Fall-In Threat
- Category 4 – Any incompatible vegetation *within* the Right of Way that presents a Blowing-Together Threat

The above definitions are in alignment with the NERC Reliability Standard FAC-003-4 Transmission Vegetation Management.

**6. Refusal Process for Vegetation Herbicides**

- Duke Energy Ohio shall not use herbicides on any owner's properties without first notifying the affected property owner.
- All property owners may opt out of herbicide application by contacting Duke Energy Ohio via the designated contact set forth in the information provided at time of notice to the property owner.

**7. Remediation**

Duke Energy Ohio agrees to provide guidance and recommendations via a brochure or literature and references for compatible vegetation and acceptable planting locations. A designated contact will be identified to review or discuss questions regarding compatible vegetation plantings.

## **8. Amended Vegetation Management Program Application**

Duke Energy Ohio will file an Application containing an amended vegetation management program with the PUCO that is based on a modified Integrated Vegetation Management (IVM) strategy consistent with the terms delineated in this Settlement Agreement and with the following program clarifications:

- **Non-NERC Reclamation Program:** Over a 12-year period from 2020 to 2032, Duke Energy Ohio will perform reclamation work. The initial phase of the reclamation program will be focused on removing non-manageable grow-in and blowing together threats within and along the Transmission Right of Way for maintained/landscaped areas. The second phase of the reclamation will be focused on removing fall-in threats within and along the Transmission Right of Way for maintained/landscaped areas. At this point, conversion of the Transmission Right of Way for maintained/landscaped areas to the intended site use will be complete and will transition to steady state focused on pruning of the manageable incompatible vegetation rather than removal of non-manageable incompatible vegetation.
- Duke Energy Ohio's transmission vegetation management program is based on an IVM strategy that targets removals of incompatible vegetation to minimize potential outages to the transmission system and ensure necessary access within all transmission line Transmission Rights of Way. The reason for IVM is to create, promote, and conserve sustainable plant communities that are compatible with the intended use of the site, and manage or target for removal incompatible plants that may conflict with the intended use of the site. This approach is recognized as an industry best management practice and is in alignment with utility industry standards.

## **9. Easement Rights**

The Signatory Parties agree that the terms of this Settlement Agreement will not be construed to mean that any party is relinquishing any legal right with respect to existing easements.

## **10. Change in Law**

- In the event any federal law or state law (Ohio) relating to vegetation management is amended or changed subsequent to execution of this Settlement Agreement, and such change would render performance under this Settlement Agreement a regulatory compliance violation, such changed federal law or rule shall control.
- Duke Energy Ohio may not, however, take any actions that violate the terms of the Settlement Agreement if such actions are not taken to comply with changes to the existing federal or state laws or regulations that were the basis of developing this



Agreement.

- Notwithstanding the above and subject to the easement rights granted to Duke Energy Ohio, in an emergency situation that puts the public health and safety or transmission system safety or reliability at risk, Duke Energy Ohio may do whatever is reasonably necessary to mitigate the immediate threat.

The Signatory Parties reserve the right to oppose any portion of Duke Energy Ohio's Amended Vegetation Management Program Application that, in their judgment, is not consistent with the vegetation management program described above in Sections A (1) through (10) above.

Duke Energy Ohio shall offer all Complainants who filed complaints related to vegetation management on or prior to the effective date of this agreement the same settlement benefits offered to the complainants herein under the same terms agreed upon in this case. Settlement benefits offered to the complainants who filed complaints related to vegetation management on or prior to the effective date of this agreement, and the agreed upon terms and conditions of settlement, can be confirmed by contacting the Office of the Ohio Consumers' Counsel.

The undersigned hereby stipulate and agree and each represents that he or she is authorized to enter into this Stipulation and Recommendation this 17<sup>th</sup> day of December 2019.

On behalf of:

DUKE ENERGY OHIO, INC.

By: Elizabeth H. Watts  
Elizabeth H. Watts, Associate General Counsel

On behalf of:

THE COMPLAINANTS

By: Kimberly W. Bojko / SHW  
Kimberly W. Bojko, Counsel of Record

On behalf of:

OFFICE OF THE OHIO CONSUMERS' COUNSEL

By: Terry L. Etter / EHW  
Terry L. Etter, Assistant Consumers' Counsel

**This foregoing document was electronically filed with the Public Utilities**

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Summary: Stipulation and Recommendation electronically filed by Carys Cochern on behalf of Duke Energy