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To: [Poon, DeAnna](#)
Cc: [UCC Consumer Info](#)
Subject: Indiana Energy Association Vegetation Management Rulemaking Comments
Date: Thursday, June 14, 2012 2:27:33 PM
Attachments: [IEA VM Final Version.pdf](#)
[Indiana Energy Association Exhibit A.DOC](#)

Judge Poon,

Attached, please find comments submitted by the Indiana Energy Association on the IURC's proposed Vegetation Management Rule and the associated Exhibit A to those comments. In addition to submitting our comments, I want to take this opportunity to request that I be copied on any comments submitted by other parties with respect to this matter.

Thank you for this opportunity.

Stan Pinegar
Indiana Energy Association

Stan Pinegar, President and CEO

Ed Simcox, President Emeritus

Boonville Natural Gas Corp.

Citizens Energy Group

Community Natural Gas Co., Inc.

Duke Energy

Fountaintown Gas Co., Inc.

Indiana Michigan Power

Indiana Natural Gas Corp.

Indianapolis Power & Light Company

Midwest Natural Gas Corp.

Northern Indiana Public Service Co.

Ohio Valley Gas Corp.

South Eastern Indiana Natural Gas Co., Inc.

Sycamore Gas Co.

Vectren Energy Delivery of Indiana, Inc.

**VEGETATION MANAGEMENT STANDARDS
IURC RM #10-04/LSA #12-42
RULEMAKING COMMENTS OF
THE INDIANA ENERGY ASSOCIATION
JUNE 14, 2012**

The following comments are respectfully submitted by the Indiana Energy Association on behalf of its investor-owned electric utility members, including Duke Energy Indiana, Inc., Indiana Michigan Power Company, Indianapolis Power & Light Company, Northern Indiana Public Service Company, and Southern Indiana Gas Electric Company. This group is referred to collectively herein as "Utilities".

A. INTRODUCTION

The rulemaking process in which the Commission is now engaged stems from the Commission's investigation docketed as Cause No. 43663 and a pre-rulemaking workshop conducted subsequent to the completion of Cause No. 43663. The Commission's November 30, 2010 Order in that Cause represented the results of extensive investigation. In reaching its decisions in that proceeding, the Commission reiterated the statutory standard found in Ind. Code § 8-1-2-4 that safety, reliability and efficiency are essential components of reasonably adequate electric service and facilities which public utilities are required to provide. Applying that standard, the Commission found that vegetation management is inextricably linked to the provision of safe, reliable and efficient service. *See* November 30, 2010 Order in Cause No. 43663 at 3.

The Commission was cognizant of the concerns regarding emergencies or situations involving public safety and found that “as with trimming guidelines, property concerns or aesthetic interests must be secondary to the primary mission of electric utilities, namely the provision of reasonably adequate electric service.” *See* July 7, 2011 Order on Reconsideration in Cause No. 43663, at 3-4.

The Commission’s Orders in Cause No. 43663 provide guidance regarding utility vegetation management frameworks. This investigation was extensive and explored many issues, including all of the matters raised during the public hearing on the proposed Rule. In its Orders, the Commission balanced the interests of the various stakeholders and specifically delineated five findings to be formally promulgated via a rulemaking so as to carry the force and effect of law -- namely: (a) notice; (b) dispute resolution; (c) notice where vegetation management may be impacted by line voltage upgrades; (d) education; and (e) tree replacement program to the extent tree removal is required.¹

The pre-rulemaking workshop process was also quite extensive. The comments provided during the workshop process explored many issues, including those raised during the public hearing on the proposed Rule. The proposed Rule reflects a balancing of the substantial input received during the pre-rulemaking workshop process. The proposed Rule reflects the requirement to: i) minimize costs imposed on entities required to comply with the rule (a requirement which in turn recognizes that the cost of providing service must necessarily be reflected in the price charged for the service); ii) achieve the regulatory goal in the least restrictive manner; iii) avoid duplicating standards;

¹ See November 30, 2010 Order, at 100, 102-104, and 107.

iv) write rules for ease of comprehension; and v) have practicable enforcement. Ind. Code §4-22-2-19.5.

As noted at the public hearing, the Utilities have specific comments on specific rule language. The slight language changes are suggested for purposes of consistency of drafting and clarification. These comments concern Sections 2(6), 4, 7, 8, 9 and 10 and are reflected and described more fully in the redlined copy of the proposed Rule attached hereto as Exhibit A.

In addition to the need to preserve reliable service, the cost of implementation of the Rule remains a constant concern. Throughout the workshop and rule writing process, the Utilities have expressed concerns about costs associated with various proposals. Effective vegetation management is expensive and impacts all customers of a particular utility. The Rule will require significant and difficult procedural changes for the Utilities, both in the field and in the offices coordinating the work. The Utilities are certain additional costs associated with implementation will be incurred, the Utilities just won't know how much until we begin to work within the parameters of the Rule.

Herein, the Utilities focus on responding to comments received on the proposed Rule from other participants. These other participants seek to re-hash matters that have already been the subject of extensive investigation and comment. This is not necessary. While others may prefer the Commission to proceed as if the investigative record and work product from the pre-rulemaking workshops do not exist, administrative efficiency, fairness and sound regulatory policy all weigh in favor of rejecting the invitation to dismiss the massive amount of work already completed. To this end, the Utilities incorporate by

reference their previous comments submitted on December 30, October 17, August 11 and March 18, 2011, including the cost analysis therein, and note that further support regarding these matters was provided by the Utilities in Cause No. 43663, including the sworn testimony and exhibits, and post hearing filings and affidavits.

The Commission has received emotionally charged rhetoric from certain participants throughout this long process, much of which has unfortunately reflected one-sided remarks that have at times resulted in gross exaggeration and even mischaracterizations and misstatement of facts. Such emotionally charged comments re-enforce the need for the Commission's rules to be limited in scope and to the issues designated by the Commission at the outset, to recognize the importance of vegetation management, and to protect the ability of the utility to undertake this important work on both a routine and emergency basis. Utilities must be able to respond quickly to vegetation issues before they turn into reliability problems or risks to public safety and must not be unreasonably delayed in performing vegetation management work by burdensome regulations or a lack of access to their facilities.

It is important to recognize that the vast majority of customers have not complained about utility vegetation management practices. This level of customer acceptance of utility practices arises because presumably customers recognize that it is reasonable and necessary for Utilities to anticipate and take actions to avoid serious safety and operational problems by protecting electric lines from current and future dangers caused by encroaching vegetation. Additionally, it also is reasonable to assume that the low complaint rate results from customers believing they have experienced appropriate vegetation

management practices from their respective utility.² The Utilities have a strong interest in continuing this aspect of good customer relations.

The Utilities urge the Commission to establish a fair, reasonable and cost effective process whereby customers are provided clear and timely notice of routine vegetation management and an opportunity for their concerns to be heard by the utility, and if necessary, by the Commission's existing consumer complaint process or in an appropriate judicial forum. Balancing the need for safe and reliable service to be provided in a cost effective manner with the need for customers to be informed and legitimate concerns heard can benefit all customers and the community at large. Loss of service for numerous customers, and larger highly publicized blackouts, frequently occur due to vegetation damage to facilities. The greater good in terms of reliable service must always be carefully considered when undertaking to regulate vegetation management.

The Utilities appreciate the opportunity to submit these comments. The Utilities remain concerned about the fiscal impact of the proposed Rule as currently drafted. The rule revisions proposed by Mr. Goodman and others providing comment, if adopted, would create an unduly burdensome and impractical framework, jeopardize the safe, reliable and efficient provision of electric service and impose an excessive fiscal impact that is not necessary.

² During the public hearing individual customers argued that it is "patriotic" for the Commission to ignore the vast majority and to focus instead on the few customers who oppose vegetation management. These allegations rest on a false legal premise that a wrong has been committed and ignore the extensive briefing of the constitutional and other legal issues provided to the Commission during the investigation. *E.g.* Utility Group Proposed Order, filed March 19, 2010 at 104-108; Indianapolis Power & Light Company Submission of Additional Proposed Findings, filed March 19, 2010, at 5-7, 8-10; Utility Group Joint Reply To Proposed Orders of Other Parties, Cause No. 43663 filed June 16, 2010, at 24, 37; Indianapolis Power & Light Company's Submission of Additional Reply, filed June 16, 2010, at 19-23.

**B. UTILITIES RESPONSE TO SPECIFIC CONCERNS RAISED BY
THOSE COMMENTING DURING THE IURC'S MAY 24, 2012 PUBLIC
HEARING ON THE PROPOSED RULE**

As indicated above, the Utilities wish to take this opportunity to respond to several of the points raised by other participants in opposition to various Sections of the proposed Rule during the public hearing. Specifically, these comments will address the following assertions:

1. The Rules should require Utilities to identify and notify property owners rather than customers or occupants.
2. Section 3 of the proposed Rule is too broad, too vague and does not provide enough protection for the property owner, customer or occupant.
3. Flexibility provided the Utilities in Section 6 of the proposed Rule in cases of emergency events or for the benefit of public safety will be abused by the Utilities.
4. Section 2(8) of the proposed Rule establishing power line compatibility standards is too lenient for utilities with respect to line clearance requirements and must contain "minimum vegetation clearances distances."
5. The 60 day notification requirement for line upgrades provided in Section 5(a) of the proposed Rule is not sufficient.

1. **The proposals that would require utilities to identify property owners are unnecessary and if adopted would impose an excessive cost**

In a redlined draft of the proposed rule submitted by Mr. Goodman at the public hearing as well as through public comment by other participants testifying at the public hearing, arguments were made that the Rule should be revised to require notice to be given to the property owner, not the customer. This is not a new issue; it is just a replay of arguments already explored in detail and taken into consideration in the proposed Rule.

The Utilities that will be subject to the proposed Rule provide service to hundreds of thousands of customers. In the ordinary course of business the Utilities maintain business records regarding customers who purchase service. Customers are not always the property owner but in many cases are. The Utilities do not usually maintain records that distinguish customers from “property owners” and generally have had no business reason to do so.

If the proposed Rule is revised to insert the term “Property owner” as urged in Mr. Goodman’s comments, that change would materially change the proposed mechanics of the rule and impose an impractical and costly burden on the Utilities. In particular, such a change would require Utilities to undertake the significant burden and incur the significant cost of determining who owns all the parcels of land within their respective service areas. The Utilities often have no cost effective way to identify property owners, much less changes in property ownership over time.

Compliance with such a requirement would require the utility to undertake a detailed search of local property records each time a notice will be issued. Because property ownership can change, this work would need to be done repeatedly. Because the cost of complying with the Commission's Rule will ultimately be borne by all customers through the ratemaking process, it is important to ensure the requirements can be implemented in a cost effective manner.

Property records may generally be searched by address, owner name or parcel number. Because the Utilities do not usually have business records that provide the "owner" name or parcel number, any searches would be limited to address. In order to demonstrate compliance with the proposed Rule, the local property record information would need to be copied, or where available, downloaded electronically. As explained in the August 11, 2011 comments submitted by the Utilities during the pre-rulemaking workshops, even in the limited situations where data is available this process could cost millions of dollars and many times more in those counties where data must be obtained manually. Mr. Goodman's redline and verbal comments suggested the Rule be revised to require Utilities and the numerous local government offices responsible for maintaining property records to establish joint interactive databases so that property records could be obtained electronically statewide. *See Goodman Comments May 24, 2012, Proposed Section 14.* This notion is farfetched; it exceeds the authority of the Commission and, if adopted, would impose a huge cost that outweighs the benefit and unreasonably shifts responsibilities belonging to property owners to Utilities (and ultimately other

customers who will bear the cost of compliance with the rule via the ratemaking process).

If a property owner rents or leases property the terms of the rental agreement or lease dictate the renter or lessee responsibilities. If a property owner is interested in vegetation management or other activities that may affect the property owners' property (such as lawn care, home maintenance and cleaning, notices delivered to the household by neighborhood associations, etc.), the property owner can and should address that with the renter or lessee via the terms of the agreement. This is a cost of the rental or leasing business and it should not be shifted to, or subsidized by, Utilities and the large number of customers who do not rent or lease space. Additionally, the current proposed Rule provides that the Notice will expressly encourage the recipient to notify the property owner. This adequately balances the interests of the landlord with the need for safe, reliable and efficient electric service.

2. **Section 3 of the proposed Rule reflects the Commission's previous findings and established legal authority with respect to property rights and vegetation management and should be maintained**

During the public hearing, the Commission heard criticism of Section 3(a) of the proposed Rule which sets out the options available to Utilities to document the utility's ability to conduct vegetation management on the property. These options include not only the array of legal rights the utility may have, but also the availability of expressed or implied consent of the property owner or customer to conduct the necessary work. The criticisms included

arguments that Section 3 is too broad, too vague, and does not provide enough protection for the property owner or customer. Section 3 of the proposed Rule should be maintained for the benefit of all parties.

As properly indicated in the Commission's Order in Cause No. 43663, the Order on Reconsideration in the same matter, as well as in the proposed Rule, the Commission is not attempting to modify property rights of any party. Dictating property rights of any party is outside the jurisdiction of the Commission. Property rights are dictated as a matter of law and may be in the form of an easement, use of a right of way, a license, a prescriptive easement, or other legal authority any party may assert. The Commission has rightly indicated in its findings that the *manner* in which vegetation management is conducted is its focus, not the *legal rights* of the parties. The fact of the matter is that the Utilities must have either expressed or implied consent from the property owner or customer, a property right or other legal authority upon which the utility can rely to enter land in order to conduct proper vegetation management. Section 3(a) of the proposed Rule simply indicates, for the benefit of the property owner or customer, the form in which those legal rights may be presented.

When the totality of the proposed Rule is considered, ample protections are in place to protect property owners or customers. In particular, Sections 3(a) and 3(b), the Notice provisions of Section 4 and the Dispute Resolution Sections 8 and 9 of the proposed Rule not only require the Utilities to notify a property owner or customer up front of the utility's intent, but also ensure a right to be notified of the authority relied upon by the utility and to object if the customer

or property owner believes his or her rights are not being adhered to by the utility.

An ancillary criticism of Section 3(a) centered upon the reference of a prescriptive easement as an option available to the Utilities. Those opposed to the term seem to believe the Commission has the authority to render legal prescriptive easements “invalid” in the context of vegetation management activities. In fact, Mr. Goodman’s redline of the proposed rule presented at the public hearing, attempts to lay out the statutory and common law criteria for establishing a prescriptive easement, which is totally inappropriate for the construction of administrative rules. *See Goodman Comments May 24, 2012, Proposed Section 2(9)*. Prescriptive easements are provided for in Indiana law (IC 32-23-1) and have been recognized and interpreted by Indiana courts. The use of prescriptive easements is a recognized legal right and should be maintained as an option in the listing provided in Section 3(a) of the proposed rule, without criteria, references to court citations or limits, all of which is outside the Commission’s jurisdiction.

Finally, with respect to Section 3, some argued at the public hearing that the burden rests with the Utilities to, in essence, provide legal counsel to property owners or customers regarding their own individual property rights. This suggestion, if implemented, would lead to disastrous results. While the Utilities recognize their burden to comply with requisite property law and all parameters of whatever rule is ultimately promulgated by the Commission, it is completely inappropriate to create an obligation to counsel property owners or customers on their rights. Not only is this contrary to general principles of legal representation, but the subsequent confusion, disagreement and claims of

conflict certain to be generated by such a scenario would be detrimental to all parties and serve only to increase costs and delay further necessary vegetation management work. This suggestion should be rejected by the Commission.

3. **Flexibility provided utilities in emergencies and for the benefit of public safety should be preserved**

Objections have been raised regarding Section 6 of the proposed Rule which allows Utilities flexibility to respond to those situations in which there is an emergency or for the benefit of public safety. Those commenting at the public hearing indicated their belief that Utilities will take advantage of these events to engage in overly-aggressive trimming. First, both terms and the scenarios in which they come into play are rigidly defined in the definition section of the proposed rule. “Emergency or storm event” is defined in Section 2(5) and “public safety situation” is defined in Section 2(9) of the proposed rule. The Utilities challenge those objecting to point out any scenario within those definitions upon which the general public would not want the utility to undertake immediate action. Utilities have worked under similar parameters for years, with little complaint. Recent storm and vegetation-related outage events across the country have highlighted the need for more flexibility under these circumstances, not less. We would submit that the worst-case scenario for all stakeholders is the creation of obstacles or deterrents to necessary trimming in the course of an emergency or threat to public safety, particularly as defined in the proposed rule.

4. Standard Clearance Distances

In his redline submission to the Commission at the public hearing, Mr. Goodman proposed to slip a rule establishing minimum vegetation clearance distances within the definition of “Power line compatible vegetation”. See Goodman Comments May 24, 2012, Proposed Section 2(8). This proposed change directly contradicts the Commission’s Order in Cause No. 43663 and Order on Reconsideration in which the Commission explicitly declined to adopt uniform clearance distances. After careful consideration of a voluminous evidentiary record, the Commission held: “[W]e do not adopt a uniform clearance requirement. Line clearances should continue to take into consideration the characteristics of the locality, the electric facility and the health of the tree, along with the other pertinent factors identified by Respondents.” Order in Cause No. 43663 at 99. The Commission specifically found that “‘a one-size-fits-all’ approach is not appropriate”, and the Commission noted that there are already nationally recognized industry standards and best practices pertaining to line clearance distances. Order in Cause No. 43663 at 99. The Commission also found that “the adoption of a uniform statewide minimum clearance distance would increase costs and threaten reliability.” *Id.*

Given the Commission’s unambiguous decision not to adopt a uniform clearance requirement, the Commission did not include it in the list of issues to be addressed in this rulemaking. Order in Cause No. 43663 at 110 (“[T]he Commission finds that customer education, notification, tree replacement, and dispute resolution are all issues that would benefit from a Commission

rulemaking.”). Furthermore, the Commission informed parties during the rulemaking workshops that the rulemaking would not revisit issues that had been decided in the Order. The Commission should reject Mr. Goodman’s proposed changes to Section 2(8) of the Rule because it addressed the topic of line clearance distances explicitly and thoroughly in the Order in Cause No. 43663.

5. Notification requirements for line upgrades

At the public hearing, a participant complained that the sixty-day notice process for line upgrades should be increased, that notice needed to be provided to the customer and the property owner and that more communication between the utility and the affected property owners must be required. The individual commenting referenced a project that Duke Energy Indiana performed as an example. Although this was not a line upgrade project, the individual conceded that it had all worked out and that he no longer had concerns with that project. It is notable that others commenting at the hearing did not include a request that there should be more than 60 days for notification of a line upgrade.

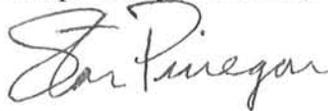
Notice to property owners, as opposed to customers, is discussed previously in this document and will not be addressed here. As to additional time for notification, there is no compelling reason that customers need to have more than 60 days. As was conceded at the public hearing, the process worked well and the issue was resolved. Sixty days is adequate time to inform customers and work through issues related to line upgrades. An indefinite time frame may impair a utility’s ability to adequately and reliably serve its

customers. The Utilities respectfully request that the Commission make no changes to the timing of notice of a line upgrade in Section 5.

C. CONCLUSION

The Indiana Energy Association appreciates the opportunity to submit these comments and the attached Exhibit A regarding the Commission's proposed Vegetation Management Rule. We respectfully request the Commission's consideration of suggestions provided in Exhibit A, which seek to clarify certain provisions of the rule and provide for a more transparent and efficient program for all stakeholders. We also request the Commission reject the changes suggested by Mr. Goodman and other participants for the reasons stated above. The proposed rules, with adoption of the IEA's clarifying amendments, will strike the appropriate balance of protecting rights of customers, occupants and property owners while encouraging necessary and proper vegetation management to ensure safe, reliable and affordable service to all our customers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stan Pinegar". The signature is written in a cursive, flowing style.

Stan Pinegar

Indiana Energy Association
Exhibit A
June 14, 2012

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Proposed Rule
LSA Document #12-42

DIGEST

Adds 170 IAC 4-9 regarding vegetation management standards for electric utilities to implement the commission's order in cause number 43663, approved on November 30, 2010, and the commission's order on reconsideration in the cause, approved July 7, 2011. Effective 30 days after filing with the Publisher.

170 IAC 4-9

SECTION 1. 170 IAC 4-9 IS ADDED TO READ AS FOLLOWS:

Rule 9. Vegetation Management Standards

170 IAC 4-9-1 Applicability; incorporation by reference of commission order

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1.5-3-8

Affected: IC 8-1-2

Sec. 1. (a) This rule applies to an electrical public utility subject to the jurisdiction of the commission pursuant to the provisions of the Public Service Commission Act, IC 8-1-2, that is financed by the sale of securities and whose business operations are overseen by a board representing their shareholders.

(b) The commission through this rule implements the commission's order number 43663, approved on November 30, 2010, and the commission's order on reconsideration in the cause, approved July 7, 2011. Copies of the orders are available for review and copying at the Indiana Utility Regulatory Commission, 101 West Washington Street, Suite 1500E, Indianapolis, Indiana 46204. (*Indiana Utility Regulatory Commission; 170 IAC 4-9-1*)

170 IAC 4-9-2 Definitions

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1.5-3-8

Affected: IC 8-1-2

Sec. 2. The following definitions apply throughout this rule:

(1) "Brush" means vegetation with stems less than six (6) inches diameter at breast height.

(2) "Business days" means days other than:

(A) Saturday;

- (B) Sunday; or
- (C) a legal holiday observed by the state of Indiana.
- (3) “Commission” means the Indiana utility regulatory commission.
- (4) “Customer” means the following:
 - (A) For purposes of notice, “customer” has the meaning set forth in 170 IAC 16-1-2(3) or may include the occupant of the property.
 - (B) For purposes of the disputes, “customer” has the meaning set forth in 170 IAC 16-1-2(3) but also includes the property owner.
- (5) “Emergency or storm event”:
 - (A) means:
 - (i) a condition dangerous or hazardous to:
 - (AA) health;
 - (BB) life;
 - (CC) physical safety; or
 - (DD) property exists or is imminent;
 - (ii) an interruption of utility service; or
 - (iii) the need to immediately repair or clear utility facilities; and
 - (B) includes:
 - (i) circumstances that exist that make it impractical or impossible for a utility to comply with the provisions of the rule, including, but not limited to:
 - (AA) floods;
 - (BB) ice;
 - (CC) snow;
 - (DD) storms;
 - (EE) tornadoes;
 - (FF) winds; and
 - (GG) other acts of God;
 - (ii) falling trees;
 - (iii) trees causing outages; and
 - (iv) trees showing evidence of:
 - (AA) burning; or
 - (BB) otherwise having been in direct contact with electric conductors.
- (6) “Implied consent” means the property owner or customer has not contacted the utility to deny consent within two (2) weeks after **receiving delivery of notice that tree trimming will occur.**
- (7) “In person” means:
 - (A) person to person delivery of verbal or written notice by an authorized utility representative to a customer, or
 - (B) hand delivery of a door hanger or similar document accompanied by an attempt by the authorized utility representative to speak with the resident through actions including knocking on the door or ringing the door bell, with delivery documented in writing or

Comment [A1]: Because of the difficulty of a utility proving receipt of notice when a customer denies receiving notice, it is recommended that the time for determining implied consent be tied to delivery of notice. “In person” and “written notice” are defined terms that are readily provable and already include the term “delivery.” In person requires documentation of delivery. Written notice can be determined by date of mailing or date of in person delivery of written material. If notice is mailed an additional 3 days can be added to date of mailing to determine delivery date as in the Trial Rules. Proof will be incumbent upon utility record keeping and not verbal representations of receipt.

- computerized entry by the authorized utility representative making the hand delivery.
- (8) “Power line compatible vegetation” means, at a minimum, a plant that at maturity will not reach a height greater than twelve (12) feet.
- (9) “Public safety situation” means the following:
- (A) The existence of a vegetation condition that could reasonably be expected to cause imminent physical harm to electrical equipment necessary for the provision of electric service, including the following:
 - (i) Trees that are unstable to the point of representing a danger to utility equipment, facilities, or personnel in the course of repairs to said equipment or facilities due to disease, damage, or soil erosion. Personnel may include, but is not limited to safety workers such as fire, police, emergency medical personnel, utility line and repair crews.
 - (ii) Trees that lean to a degree that they can touch power lines.
 - (iii) Trees that have burn marks or other indicators that they have previously touched a power line.
 - (B) A condition in vegetation unrelated to normal growth that would result in contact with power lines or high voltage equipment and cause imminent physical harm to the public if not immediately mitigated.
- (10) “Telephone call” means:
- (A) making an attempt to contact the customer via the telephone number the utility has on file; and
 - (i) making verbal telephone contact; or
 - (ii) leaving a message on
 - (AA) voicemail;
 - (BB) an answering machine; or
 - (CC) an answering service,if available.
 - (C) If an attempt is unsuccessful in either making verbal telephone contact with the customer or leaving a telephonic message as described in clause (A), a second attempt must be made.
- (11) “Utility” means an electrical public utility subject to the jurisdiction of the commission pursuant to the provisions of the Public Service Commission Act, IC 8-1-2, that is financed by the sale of securities and whose business operations are overseen by a board representing their shareholders.
- (12) “Vegetation management” means the cutting or removal of vegetation or the prevention of vegetative growth to accomplish one (1) of the following:
- (A) The maintenance of safe conditions around utility facilities.
 - (B) Ensuring reliable electric service.
 - (C) Preventing hazards caused by the encroachment of vegetation on utility facilities and to provide utility access to facilities.
- (13) “Written notice” means notice sent from the utility to the customer in one (1) of the following manners:
- (A) By electronic mail.

(B) By U.S. mail or another mail delivery system, including inside utility bills.

(C) By in person delivery of written notice to the customer's premises, including, but not limited to, a door hanger. (*Indiana Utility Regulatory Commission; 170 IAC 4-9-2*)

170 IAC 4-9-3 Easements and right of way
Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1.5-3-8
Affected: IC 8-1-2

Sec. 3. (a) This rule does not modify property rights. Utilities must have or obtain the following legal authority and must provide documentation in accordance with subsection (b):

- (1) easements;**
- (2) rights of way;**
- (3) statutory authority;**
- (4) other legal authority; or**
- (5) the express or implied consent of the property owner or customer;**

prior to trimming vegetation. The utility's ability to secure a prescriptive easement may be presented to the customer to obtain consent, but is not independent legal authority.

(b) Upon request by the customer within five (5) business days of the customer's receipt of the notice required under section 4 of this rule, the utility will provide one (1) of the following prior to vegetation management:

(1) A copy of the easement or public right of way document that gives the utility the legal right to enter the customer's property to perform vegetation management.

(2) If an easement or public right of way document is not reasonably available, a copy of the authority that gives the utility the legal right to enter the customer's property to perform vegetation management. (*Indiana Utility Regulatory Commission; 170 IAC 4-9-3*)

170 IAC 4-9-4 Notice requirements for routine vegetation management
Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1.5-3-8
Affected: IC 8-1-2

Sec. 4.(a) At least two (2) calendar weeks prior to engaging in routine vegetation management, the utility must provide notice to customers whose vegetation will be subject to the vegetation management except under the following circumstances:

(1) There is no residence on a particular property.

(2) The utility has:

- (A) a written easement;**
- (B) government permit;**
- (C) contractual agreement; or**
- (D) court order;**

that expressly gives the utility the right to conduct vegetation management activities.

(3) An emergency or storm event occurs.

(b) A utility must provide notice to a customer. Notice is provided in the following manner:

(1) At least one (1) attempt to contact must be:

- (i) in person; or
- (ii) via telephone call.

(2) At least one (1) attempt to contact must include written notice.

(c) Notice shall include, at minimum, the following information:

(1) The fact that vegetation management is scheduled to occur.

(2) An explanation of

- (A) what vegetation management is; and
- (B) why it is necessary for safe and reliable electric service.

(3) The fact that nonproperty owners living or working on the property who receive the notice are strongly encouraged to notify the property owner as soon as possible that vegetation management is scheduled to occur.

(4) The fact that ~~receipt-delivery~~ of this notice ~~by-to~~ the occupant initiates the two (2) week window for calculating implied consent by the property owner or customer.

Comment [A2]: See Comment 1.

(5) The estimated date that vegetation management is scheduled to occur.

(6) Contact information, including, at a minimum, a telephone number for an authorized utility representative who is able to answer customer inquiries related to vegetation management.

(7) For written notice only the following:

- (A) The heading, "TREE TRIMMING NOTICE".
- (B) The date the written notice was hand delivered or mailed.
- (C) The website address of the commission's vegetation management administrative rule, this rule.
- (D) The commission's website at <http://www.in.gov/iurc>.
- (E) The utility's vegetation management website address.
- (F) A reference to an educational resource for planting around electrical facilities, like the Arbor Day Foundation's right tree, right place program and the website address, if available.
- (G) A website address and telephone number for customers to obtain the name of the contractor, if used by the utility, that will deliver the in person notice or conduct vegetation management.
- (H) A statement that the utility's representative shall carry identification when delivering the in person notice or conducting vegetation management.

(d) The customer may, within three (3) calendar days of ~~receiving-delivery~~ of the notice in subsection (a), request the utility provide the estimated day that vegetation management is expected to occur. The utility will then provide the estimated day at least three (3) business days prior to engaging in vegetation management. If the customer requests a more specific time, the supervisor shall endeavor to work with the customer to give a precise time. (*Indiana Utility Regulatory Commission; 170 IAC 4-9-4*)

Comment [A3]: See Comment 1.

170 IAC 4-9-5 Notice requirements for line upgrades

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1.5-3-8

Affected: IC 8-1-2

Sec. 5.(a) At least sixty (60) calendar days prior to a utility changing a distribution or transmission line to a higher voltage level, the utility must give notice to the affected customer if the change in the line will change the area in which vegetation management will be necessary as a result of safe clearance requirements.

(b) Notice shall be provided in the same manner as in section 4(b) of this rule.

(c) Notice shall include, at minimum, the following information:

- (1) The fact that line upgrades are scheduled to occur.
- (2) An explanation of what line upgrades are.
- (3) An explanation as to why line upgrades are necessary for safe and reliable electric service.
- (4) The fact that nonproperty owners living or working on the property and receiving the notice are strongly encouraged to notify the property owner as soon as possible that line upgrades are scheduled to occur.
- (5) The estimated date that line upgrades are scheduled to occur.
- (6) The estimated length of time construction will continue.
- (7) New vegetation restrictions on the property as a result of the line upgrades.
- (8) Changes to the property owner's easement or right of way as a result of the line upgrades.
- (9) Contact information, including, at a minimum, a telephone number for an authorized utility representative who is able to answer customer inquiries related to line upgrades. *(Indiana Utility Regulatory Commission; 170 IAC 4-9-5)*

170 IAC 4-9-6 Emergency or public safety trimming

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1.5-3-8

Affected: IC 8-1-2

Sec. 6. In cases of emergency or public safety, utilities may, without customer consent, remove more than twenty-five percent (25%) of a tree or trim beyond existing easement or right-of-way boundaries in order to remedy the emergency or public safety situation. *(Indiana Utility Regulatory Commission; 170 IAC 4-9-6)*

170 IAC 4-9-7 Vegetation management standards

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1.5-3-8

Affected: IC 8-1-2

Sec. 7. (a) Utilities, their agents, and contractors shall apply and adhere to the guidelines of:

- (1) American National Standards Institute ANSI A300;
- (2) the National Electric Safety Code;

- (3) the Shigo Guide; and
- (4) the International Society of Arboriculture Best Management Practices.

(b) There is not a uniform clearance requirement, but line clearances should take into consideration the:

- (1) characteristics of the locality;
- (2) electrical facility; and
- (3) health of the tree.

(c) Except in situations of emergency or public safety, if a tree would have more than twenty-five percent (25%) of its canopy removed, the utility or its agent or contractor shall do one (1) of the following actions:

- (1) Obtain consent from the property owner.
- (2) If the property owner and utility or its agent or contractor cannot mutually agree on how the tree can be trimmed to provide sufficient clearance in order to maintain reliable electric service, the utility or its agent or contractor shall take one (1) of the following actions:

(A) Consider removing the tree, at the utility's expense, as long as the utility has secured the requisite **easements authority** to allow its personnel onto the owner's property.

(B) Inform the customer that it will need to make non-ANSI standards cuts in order to provide clearance.

(d) Brush that is under or near a utility's electrical facilities may be removed by the utility without the consent of the customer only when its removal is necessary for safe and reliable service.

(e) Debris associated with routine maintenance, in a maintained area, absent intervening inclement weather that may pull crews from maintenance activities, shall be removed within three (3) calendar days.

(f) Utilities and their agents and contractors are not required to clear debris caused by storms and other natural occurrences like tree failures.

(g) A utility shall file a separate report regarding tree-related outages by March 31 annually and whenever the utility makes a change to its vegetation management plan. The report shall include the following information:

- (1) The utility's vegetation management budget.
- (2) Actual expenditures for the prior calendar year.
- (3) The number of customer complaints related to tree trimming.
- (4) The manner in which complaints were addressed or resolved.
- (5) Tree-related outages as a percentage of total outages. (*Indiana Utility Regulatory Commission; 170 IAC 4-9-7*)

170 IAC 4-9-8 Dispute resolution process prior to vegetation management

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1.5-3-8

Affected: IC 8-1-2

Sec. 8. (a) To temporarily stay the proposed vegetation management on the customer's property or rental property, a customer must notify the utility of the customer's objection to the proposed vegetation management within five (5) business days of the

Comment [A4]: Section 3 provides that utilities must have legal authority prior to trimming vegetation. Easements are one of many types of legal authority allowed by Section 3. This subsection should not be restricted to requiring utilities to obtaining easements in this specific situation.

~~customer's receipt delivery~~ of the notice required under section 4 of this rule. Questions or requests for information are not customer objections.

Comment [A5]: See Comment 1.

(b) A utility must respond to a customer's objection:

- (1) in person;
- (2) via telephone call; or
- (3) in writing;

within three (3) business days.

(c) If the initial utility representative cannot resolve the customer's objection regarding proposed vegetation management, at least one (1) additional authorized utility representative must attempt to resolve the objection. If the utility is unsuccessful in resolving the objection, the customer shall be provided with the following:

- (1) The website location of the commission's vegetation management administrative rule, this rule.
- (2) Contact information, including, at minimum, a telephone number, for the commission's consumer affairs division.

(d) No temporary stay of vegetation management shall be available when one (1) of the following occurs:

- (1) An emergency, storm event, or public safety situation exists.
- (2) The customer has withdrawn the objection or approved conditions under which cutting may resume, either in writing or during a recorded call.
- (3) More than seven (7) calendar days have passed since the utility provided the proposed resolution referenced in the complaint process under 170 IAC 16-1-4(c)(5) and the customer failed to file an informal complaint to the commission as required by 170 IAC 16-1-5(a).
- (4) A final disposition on an informal complaint has been rendered by the commission. (*Indiana Utility Regulatory Commission; 170 IAC 4-9-8*)

~~(e) The Commission shall notify the utility within three (3) business days of any informal complaint filed by the customer under this section.~~

Comment [A6]: The Utilities do not intend to alter the substance or content of the Rule. Rather this suggested subsection is offered as a procedural tool to assist in determining when a temporary stay needs to be addressed or has expired.

170 IAC 4-9-9 Dispute resolution process during vegetation management

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1.5-3-8

Affected: IC 8-1-2

Sec. 9. (a) Upon request of the customer, the utility shall temporarily stay vegetation management on the customer's premises during the vegetation management only if one (1) of the following occurs or is disputed:

- (1) The utility failed to provide the notice required under section 4 of this rule.
- (2) The utility is engaging in vegetation management outside the scope of a written or recorded agreement between the customer and the utility.
- (3) The utility did not have ~~a legal right authority~~ to enter the customer's property.
- (4) The utility did not exercise due diligence to secure an easement or right of way document in accordance with section 3(b)(2).

Comment [A7]: Recommended to maintain consistency with Sections 3 and 7(c)(2)(A).

(b) At least one (1) member of the work crew must have the authority from the utility to discuss and attempt to resolve customer objections and must respond to the customer's inquiry or complaint. If the work crew cannot resolve the customer's objection regarding vegetation management, at least one (1) additional authorized utility representative must attempt to resolve the objection. If the utility is unsuccessful in resolving the objection, the utility shall provide to the customer the information required in 170 IAC 16-1-4(c)(5).

(c) A utility may proceed with the vegetation management where:

- (1) an emergency, **storm event or public safety situation** exists;
- (2) the customer has withdrawn the objection or approved conditions under which cutting may resume, either in writing or during a recorded call;
- (3) more than seven (7) calendar days have passed since the utility provided the proposed resolution referenced in the complaint process under 170 IAC 16-1-4(c)(5) and the customer failed to file an informal complaint to the commission as required by 170 IAC 16-1-5(a);
- (4) the customer failed to take timely action to seek further review of a decision of the commission's consumer affairs division or its director under 170 IAC 16-1-5(d) or 170 IAC 16-1-6(a); or
- (5) a final disposition on an informal complaint has been rendered by the commission. (*Indiana Utility Regulatory Commission; 170 IAC 4-9-9*)

Comment [A8]: The addition of this language is recommended to maintain consistency with Section 8(d)(1). Furthermore, these are defined terms.

(d) The Commission shall notify the utility within three (3) business days of any informal complaint filed by the customer under this section.

Comment [A9]: See Comment 6.

170 IAC 4-9-10 Dispute resolution process after vegetation management

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1.5-3-8

Affected: IC 8-1-2

Sec. 10. (a) A customer may contact the utility regarding vegetation management on the customer's premises after the vegetation management occurred if one (1) of the following occurs:

- (1) The utility failed to provide the notice required under section 4 of this rule.
- (2) The utility engaged in vegetation management outside the scope of an agreement between the customer and the utility.
- (3) The utility did not have **a legal right authority** to enter the customer's property.
- (4) The utility failed to follow the vegetation management pruning standards required by the commission or by the utility's own vegetation management policy.
- (5) Another reason permitted by law.

Comment [A10]: See Comment 6.

(b) A utility must respond within three (3) business days of receiving a customer's inquiry or dispute:

- (1) in person;
- (2) via telephone call; or
- (3) in writing.

(c) If the initial utility representative cannot resolve the customer's dispute regarding vegetation management, at least one (1) additional authorized utility representative must attempt to resolve the dispute. If the utility is unsuccessful in resolving the dispute, the customer shall be provided the information required in 170 IAC 16-1-5. *(Indiana Utility Regulatory Commission; 170 IAC 4-9-10)*

170 IAC 4-9-11 Customer education process
Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1.5-3-8
Affected: IC 8-1-2

Sec. 11. A utility shall develop and implement an education plan to inform and educate customers on the following:

- (1) Tree and vegetation selection and placement around electric facilities.**
- (2) The public importance of vegetation management to avoid:**
 - (A) electric interruptions;**
 - (B) injuries; and**
 - (C) fatalities.**
- (3) The need for, and benefit of, preventing tree contact with power lines.**
- (4) The importance of cooperation between customers and their utility in accomplishing the essential public task of power line maintenance.**
- (5) The critical importance of the public service of vegetation management to:**
 - (A) protect electric service reliability; and**
 - (B) avoid injuries and fatalities from electrocution.**
- (6) Trimming cycles a utility chooses to implement, including how the chosen trim cycle impacts clearance distance and the extent to which a tree's appearance will be impacted based upon that chosen cycle. *(Indiana Utility Regulatory Commission; 170 IAC 4-9-11)***

170 IAC 4-9-12 Tree replacement program
Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1.5-3-8
Affected: IC 8-1-2

Sec. 12. Where a tree will be removed, a utility may offer to provide the customer with:

- (1) a power line compatible vegetation;**
- (2) other replacement plant; or**
- (3) monetary compensation or credit at an amount agreed to by the parties;**

provided that the customer agrees not to plant a tree that will encroach into the utility's facilities at a future date and consents to the removal by the utility if that kind of a tree is planted. *(Indiana Utility Regulatory Commission; 170 IAC 4-9-12)*

170 IAC 4-9-13 Utility representative identification
Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1.5-3-8
Affected: IC 8-1-2

Sec. 13. Employees or contractors performing:
(1) vegetation management; or
(2) in person notification for vegetation management;
on behalf of the utility shall carry identification and provide it for inspection by the
customer upon request. (*Indiana Utility Regulatory Commission; 170 IAC 4-9-13*)