

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

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) "Property owner" means the following:

(A) The owner or the owners agent of record of real property as reflected in each county's tax assessor computer's system as of the date of the proposed utility vegetation management work

(B) For purposes of notice, "Utility customer" has the meaning set forth in 170 IAC 16-1-2(3)

(B) For purposes of the disputes, "property owner" has the meaning set forth in 170 IAC 4-9-2, Sec.(4)

(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* has not contacted the utility to deny consent within two (2) weeks after receiving 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 the *owner or record of said property*, or

(B) hand delivery of a door hanger or similar document accompanied by an attempt by the authorized utility representative to speak with the *owner of record* through actions including knocking on the door or ringing the door bell, with delivery documented in writing or computerized entry by the authorized utility representative making the hand delivery.

(8) "Power line compatible vegetation" means, at a minimum, *vegetation under all weather conditions that at maturity cannot encroach upon the minimum vegetation clearances distances (MVCD) as follows:*

(A) *For line voltage from 0 to 69,000 volts (69kv) The MVCD is one foot.*

(B) *For line voltage above 69,000 (69kv), The MVCD can be found in the Federal Reliability Standards FAC-003-002*

A utility may choose to increase the MVCD on all line voltages up to 200kv by a factor of three and may choose to decrease the MVCD on all distribution lines from 0 to 15kv through the use of line insulators to prevent grounding through abrasion from nearby vegetation. The use of line insulators is also encouraged when appropriate on all service drops to prevent grounding through abrasion from nearby vegetation.

Additional clearances based upon the utilities chosen cutting cycle, growth rate of the specific vegetation the condition of the vegetation, the topography and condition of the land, and the additional distance necessary to comply with ANSI standards are in addition to the MVCD.

(9) *Prescriptive Easements:*

A prescriptive easement is a right of way over land claimed by way of adverse possession without title. A person or in this case a utility does not need to produce any legal documentation of their right to use the property. Instead they must show a history for a minimum of twenty years that they have used the property owners land as if they already had a utility easement .

While prescriptive easements are generally not favored by the courts, if a utility meets the court's stringent requirements as redefined by the Indiana Supreme Court in 2005 in two separate cases " Fraley v. Minger " and "Wilfong v. Cessna" and the court is satisfied that the utility has meet the burden of proof for each element:

1. Control: 2. Intent: 3. Notice : and 4. Duration :

A prescriptive easement becomes as permanent as an easement conveyed by an express grant. A property owner , however, can stop the granting of a prescriptive easement by the courts by granting in writing permission to cross their property subject to the utility vegetation management rules and orders of the Indiana Utility Regulatory Commission as found in cause # 43663

(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 property owner via the telephone number the utility has on file; and

(i) making verbal telephone contact; or

(ii) leaving a message on the property owners:

(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 property owner 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) *Utility easement and right of way easement:*

These terms are often used interchangeably to describe land set aside for the use by utilities to install above and below ground their respective facilities

(A) *"Utility easement" also often refers to land set aside by the developers of urban home sites, commercial developments, retail and business parks for the exclusive use by utilities.*

(B) *"Right of way" is a term most often used to describe land on either side of roads, highways, and interstates intended for the expansion of said roads and the placement/location of utilities. It is also a term used to describe large and often quite long tracts of land used by the Transmission operators in both Electrical and Gas Industry. These transmission right of ways will often cross over many states as a part of the national delivery of energy.*

(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 *property owner* 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 *property owner of record as defined in 170IAC 4-9-2. Sec 2(4)*, including, but not limited to, a door hanger *if records confirm the occupant is also the property owner the utilities (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* prior to trimming vegetation.

(b) Upon request by the *property owner* within five (5) business days of the *property owners* 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 property owner'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

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

(1) There is no residence on a particular property. (this must be deleted)

(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 *the property owner*. 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. (delete this entire section)

(4) Receipt of this notice by *the property owner* initiates the two (2) week window for calculating implied consent by *the property owner*

(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

(I) Included with at least one tree trimming notice must be a uniform OUCC approved pamphlet describing the rights and obligations of all partiesthis educational pamphlet could easily be combined with (F) above by providing a single source of information.

(d) The *property owner* may, within three (3) calendar days of receiving 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*)

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. While a utility is strongly encouraged to contact local elected officials and all local affected neighborhood associations in the early planning stages of planned upgrades, they are required at least sixty (60) calendar days prior to a utility changing a distribution or transmission line to a higher voltage level, to give notice to the affected *property owners* 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. (delete)
- (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*)
- (10) Confirmation that all necessary easements have been legally acquired.
- (11) A Commission approved O'UCC pamphlet advising the property owners of his or her rights and obligations

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.
- (5) *The Federal Energy Regulatory Commission National and Mandatory Compliance Standards FAC-003-002*

(b) Line clearances should take into consideration the following: (Corrected)

- (1) characteristics of the locality;
- (2) electrical facility; and
- (3) health of the tree.
- (4) *Minimum vegetation clearances distances as outlined in section 2, # 8*

- (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 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 each complaint 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 *property owner's property*, a *property owner's* must notify the utility of the *property owners* objection to the proposed vegetation management within five (5) business days of the *property owners* receipt of the notice required under section 4 of this rule. Questions or requests for information are not objections, *however the Utility's inability to provide answers shall be considered an objection*

(b) A utility must respond to *the property owners* 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 *property owner* 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 *property owner* 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 The O'UCC shall represent all property owners whose complaint has been forward to the IURC.*)

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 *property owner*, 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 to enter *onto the private property of the property owner*.
- (4) The utility did not exercise due diligence to secure an easement or right of way document in accordance with section 3(b)(2).

(b) At least one (1) member of the work crew must have the authority from the utility to discuss and attempt to resolve the *property owner's* objections and must respond to the *property owner's* inquiry or complaint. If the work crew cannot resolve the *property owner'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 *property owner* the information required in 170 IAC 16-1-4(c)(5).

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

- (1) an emergency exists;
- (2) the *property owner* 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 *property owner* 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*)

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 *property owner* may contact the utility regarding vegetation management on the property owner'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 to enter the *property owner'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 provided the utilities policies do not conflict the UVM policies establish by the IURC
- (5) Another reason permitted by law.

(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 *property owner'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 *property owner* 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)

170 IAC 4-9-14

Sec.14 the utilities shall in conjunction with the Tax assessor in each county, the IURC and the OIUC develop a uniform computerize system which will allow each utility to quickly and easily identify the property owner of each parcel of land within the The state . The computerize records of the tax assessor's of each county are public records and shall be made available to facilitate the integration of these two systems.

No
Σ+ explanation of
RIGHTS OF CUSTOMER
Same as Received
in July 2011

RECEIVED JUL 01 2011

Received
May 22, 2012
2 DAYS Ago
C.A.G.

5/22

475 A

FIRST NOTIFICATION

Indianapolis Power & Light Company (IPL) will be in your neighborhood performing line-clearing maintenance within the next few weeks to help provide you with the safest and most reliable electric service possible.

- Trees and tree limbs growing too closely to electric power lines pose a serious threat to public safety and service reliability. When trees and branches make contact with power lines, flickering lights and power outages occur. These outages can be lengthy, costly to repair and inconvenient.
- Our visit today was to explain the upcoming line clearance work scheduled on your property. On the back of this card is information pertaining to the work scheduled to be performed. The work will be completed by a professional tree service company. Trees will be trimmed in accordance with nationally recognized tree-trimming standards unless otherwise indicated on the back of this notification.
- Debris associated with the line-clearing work will be removed within 48 hours of being completed. *You will not be charged for this work or for the removal of the debris.*
- Please contact the IPL representative listed on the back of this notification if you:
 - o have special circumstances like a dog in the yard or there is an accessibility issue due to a locked gate;
 - o would like to discuss the upcoming work, seek alternative solutions to the proposed tree trimming or do not want this work to take place; or
 - o have additional questions or concerns.

Unless we hear from you indicating that you object to the line-clearing work, we will assume you consent to the upcoming work.

Line clearance work scheduled on your property include:

- Tree trimming - *JUNE*
- Tree removal
- Tree removal on Right-of-Way adjacent to your property

Tree trimming may not be done according to ANSI A300 standards. For example, more than 25% of a tree's canopy may be trimmed. Please contact the representative below for more information or to seek an alternative solution

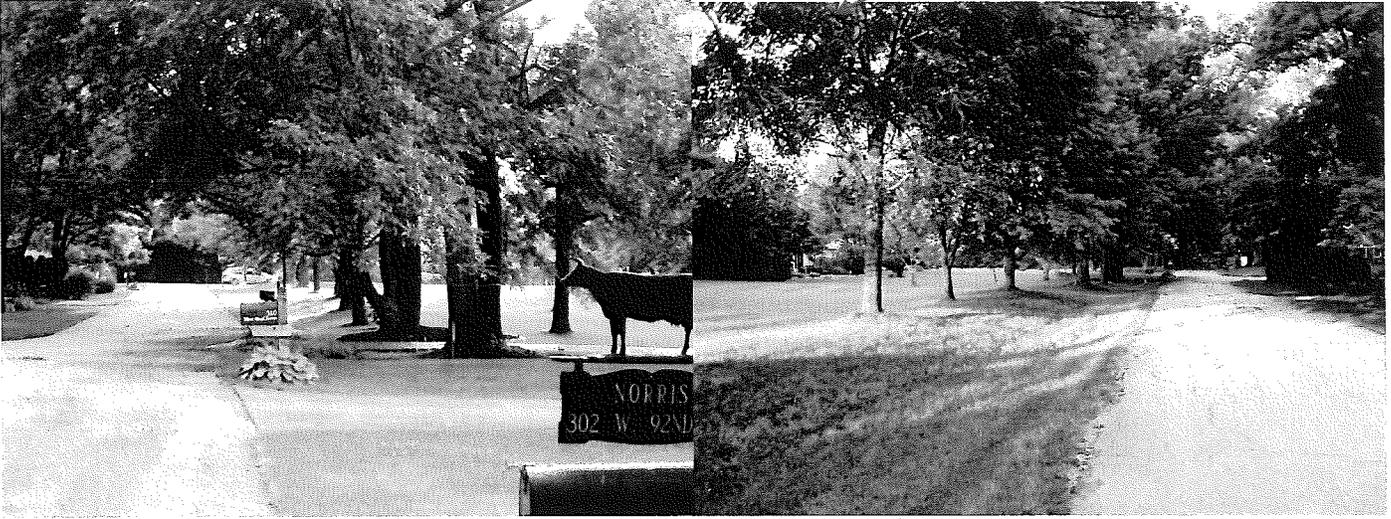
During our visit, IPL line-clearing crews identified tree limbs that were dangerously close to or touching power lines on your property. These limbs were removed because they presented an immediate risk to you, your neighbors, our crews and IPL electrical equipment.

IPL *does not* trim trees that are near or touching the wires coming from the house to the utility pole, commonly referred to as the service drop. That work is the responsibility of the homeowner and should be done by a professional tree trimmer. Homeowners are encouraged to contact IPL to make arrangements to have the wires disconnected so that the work can be performed safely.

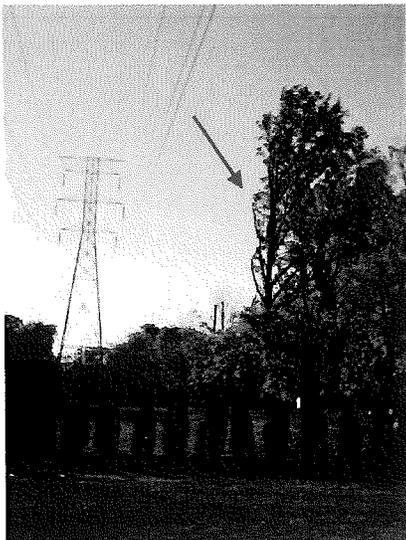
Amy Perdue
 IPL Line Clearing Representative
317-522-6170
 Contact Number



Before



After













EXHIBITS:

- 1. Current status, position, perceptions of the Indiana Tree Alliance**
- 2. Federal Reliability Standards: FAC-003-002, Table 2, (MVCD) Minimum Vegetation clearance distances. This is clear proof that uniform safety standards created by consensus exist and apply to all line voltages in all states. While the "MVCD" is only a small component of the necessary clearance requirement it clearly proves that IPL's 138KV minimum clearance as shown in exhibit 4 is ten times larger than the required National safety standard...Allowing each utility to establish their own clearance standards and cutting cycles promotes abuse "vs" curbing abuse. Nationally, 3-4 years for urban areas and 5-6 years for rural areas is the norm. For these proposed rules to deny even the existence of these Federal Safety standards seems incredible, quite unreal !!!! Accepting these Standards then acknowledges that uniform clearance Standards do exist... another major correction to our proposed rules. Think.....there is nothing in these rules to prevent a utility from increasing their cutting cycles to cut costs which results in substantially deeper trimming or even the removal of trees or other vegetation. These Federal standards are mandatory on all lines over 200,000 volts But they also demonstrate the necessary clearances below 200kv**
- 3. Biographic information on the key group who help draft FAC-003-002**
- 4. IPL's exhibit TFW-7 submitted into the record of this investigation**
- 5. An article from the L.A. Times confirming that Human error not just Trees cause outages. This confirms former Chairman David Hardy Comments before House and Senate sub-committee on utilities.**
- 6. Indianapolis newspaper story of the Pike Hearings.**

Current status of the IURC Tree Trimming Investigation

The second phase of the Indiana Senate-ordered investigation is nearly finished. A formal "Rule" governing some aspects of electric utility tree trimming which will affect 90% of Indiana electric customers is still being formed. Below is a summary of judgements from the IURC's official "Order", with our comments, and a listing of the issues still being considered for the "Rule". Our comments here suggest ways in which we believe customers and property owners will be better served.

Note: This has been a long and complex process-three years and counting. The investigation was filed 4/1/2009.

Certainly a lot of positive change has resulted; we strongly commend the IURC and the OUCC - Office of Utility Consumer Counselor - for their efforts. Still, attempting to call attention to all pertinent points which we would still like to see improved is in order.—Our comments follow in red.

This Rule will affect 90% of the utility customers in the State. It is very important! Please attend and contribute.

We will likely never have this opportunity again. Your informed input matters!

A - Significant Achievements as a result of the IURC "Order" of 11/30/2010 (Cause #43660):

1. Permanent removal from IPL's Tariff of language disguising their overriding of private property rights.
 - this affects only IPL directly but sends a powerful message recognizing private property rights. Possibly our biggest accomplishment. A big win.
2. Stated recognition of the fact that the IURC does not have the statutory authority to override property rights.
 - Shows that the IURC now has full awareness of the implications of tariff language and their statutory rights. Another important win.
3. Stated recognition that utilities must have easements or legal rights to enter private property, or obtain the owner's permission.
 - A very important statement by a state commission.
4. Required adherence to certain industry standards (ANSI A300, NESC, Shigo guide and ISA Best management Practices) and that if a tree must be topped or if more than 25% of

the crown must be removed that they must get owner permission. If agreement cannot be reached, the utility can consider removal of the tree at the utilities' expense.

- Finally at least some recognition of the existence of cutting limitations.
5. In the case of line voltage upgrades, the utility is required to notify the property owner prior to construction, and make the owner aware of changes in vegetation management requirements. Again, an easement or property owner permission is required for access.
 - This is a step in the right direction, but notice must be early enough to allow home owners and their associations to weigh in on line routing. (See C-1. Below)
 6. The utilities are required to report to the IURC annually, on March 31st, outlining the utility's vegetation management budget and actual expenditures for the prior calendar year; the number of customer complaints related to tree trimming and the manner in which those complaints were addressed or resolved; and the tree-related outages as a percentage of total outages. They are also required to provide their Vegetation Management Plan.
 - This will contribute to the "transparency" we want. If it is observed, there will be much to learn about true causes and costs of line maintenance.
 7. A "Rule Making" process was ordered to further develop certain aspects of Utility Vegetation Management programs. (See D below)

B - Areas where desired changes were not achieved.

1. No mandate was issued to explore or establish standardized clearances or cutting distances.

Utilities are still allowed to set their own standards independently and for their own reasons.

2. No mandate was issued to explore the potential of line burying retroactively.
 - We have hoped that exposing all the true, real costs of maintaining above ground lines, including all the easements they should rightfully have to obtain, that retroactive line-burying would present a viable alternative. No interest in even exploring this issue has been shown.

3. Customer self trimming was disallowed with the responsibility for trimming remaining with the utilities.

- We believe that property owners should be allowed to hire qualified trimming companies which will exercise greater care in achieving proper clearances.

Cause. It is still pending.

4. As before, debris created by emergency trimming is not the responsibility of the utility.
5. There was no finding on issues addressed in our original complaint petition (Cause #43650), including the determination of damages, and potential compensation due to Constitutional Takings. It was found that these were outside of the Commission's jurisdiction to address. The appropriate venue for these issues is the trial court. This issue is appropriately left to the trial court, and the Commission will order be considered by separate order under that

C - Notable Matters addressed in the "Modified Order on Clarification, Rehearing and Reconsideration" of 7/7/2011:

These additions were made At the utilities' request:

1. The notice of line upgrades was set -“ at least 60 days required prior to construction”.

- Sixty days before beginning construction is too late. Neighborhood associations must be notified during the planning phase so that alternate line routes can be considered. Avoiding unnecessary conflicts with established vegetation should be a priority.
2. In clarification: “To the extent a utility holds the property in fee or has otherwise obtained property rights that allow the utility to conduct vegetative management contrary to either the standards the utilities themselves agree are appropriate or the limitations on vegetative management practices addressed in the Order, such property rights may serve as evidence to show customer consent to nonstandard practices”.
- What does this really mean and what are its’ implications?
3. In clarification: “concerning the applicability of the restriction on trimming more than 25% of a tree without customer consent, or trimming beyond existing easement or right-of-way boundaries required in emergencies, in the interest of safety, or for system reliability”. The Commission found that “in cases of emergency or *public safety*, utilities may, without customer consent, remove more than 25% of a tree or trim beyond existing easement or right-of-way boundaries in order to remedy the emergency or public safety situation. This is consistent with the utility requirement to provide adequate service under Indiana Code §§ 8-1-2-4 and 113”.

Note: We believed that the term “Public Safety” was wholly inadequate to assure that true imminent danger to the public was required to trigger this exception. After much outcry, arm waving and foot stomping, the Commission responded by clarifying the term. That clarification is found in the Proposed Order - attached - beginning on page 2 of 11 and continuing on to page 3.

D - A process of “rule making” was declared by the 11/30/2010 Order to explore and refine the following topics.

This section is still open and ongoing, and is where you can still participate by questioning or challenging the language of the “Proposed Rule”.

1. Applicability

- We would prefer that All utilities in the State were bound by this rule. But...the “Big 5” cover 90% of the population and all the the large urban areas.

2. Definitions

- Does a tree with a 6” diameter seem like “brush”? This is intentional understating to minimize perceived impact..
- Read (6)-“Implied Consent”. All customers need to pay attention to the notices given by utilities!

-- (8) No fixed tree height limit in City ROW can address all the variables to be found. A judgement based on individual situations and established industry standards - see A-4 above.

3. Easements and Right of Way

- This is mostly a big win for property owners. But...threatening “Prescriptive Easements”, 3-(b)-(5), is intimidation. That right is still unclear.
- 4. Notice to customers of routine vegetation management**
- There is a lot of good in this section, and in the others, but:
 - Time limits for response must be made very clear on all notifications. No “fine print” when “Implied Consent” overrules your rights.
 - Notice is only required to the “customer” which includes renters. Actual property owners must be included.
- 5. Notice requirements for line upgrades**
- As stated, 60 days from beginning construction is inadequate for consideration of line route impact and consideration of alternate routes. Input from the affected public is necessary.
- 6. Emergency or public safety trimming**
- 7. Vegetation management standards**
- Missing here is any definition of how a customer/property owner can be assured that fair monetary or other compensation is available, and how it will be determined.
- 8-9-10. Dispute resolution before, during and after trimming**
- Here we can mention the lack of evidence of accountability by the utility. What recourse is there if the utility does not follow through on it’s obligations?
- 11. Customer education process**
- All the education mentioned here is utilities’ rights. What about requiring that the customers’ rights be as clearly explained?
- 12 Tree replacement program**
- This item could be very helpful. IPL has had it in “Project Cooperation” but has rarely-in our awareness-used it. What will trigger it?
- 13 Utility representative identification**
- Quite appropriate for those reluctant to open their door to strangers. Must be followed through.

FAC-003 — TABLE 2 — Minimum Vegetation Clearance Distances (MVCD)⁷
For Alternating Current Voltages (feet)

(AC) Nominal System Voltage (KV)	(AC) Maximum System Voltage (kV) ⁸	MVCD (feet)	MVCD (feet)	MVCD (feet)	MVCD (feet)	MVCD (feet)	MVCD (feet)	MVCD (feet)	MVCD (feet)	MVCD (feet)	MVCD (feet)	MVCD (feet)	MVCD (feet)	MVCD (feet)
		Over sea level up to 500 ft	Over 500 ft up to 1000 ft	Over 1000 ft up to 2000 ft	Over 2000 ft up to 3000 ft	Over 3000 ft up to 4000 ft	Over 4000 ft up to 5000 ft	Over 5000 ft up to 6000 ft	Over 6000 ft up to 7000 ft	Over 7000 ft up to 8000 ft	Over 8000 ft up to 9000 ft	Over 9000 ft up to 10000 ft	Over 10000 ft up to 11000 ft	
765	800	8.2ft	8.33ft	8.61ft	8.89ft	9.17ft	9.45ft	9.73ft	10.01ft	10.29ft	10.57ft	10.85ft	11.13ft	
500	550	5.15ft	5.25ft	5.45ft	5.66ft	5.86ft	6.07ft	6.28ft	6.49ft	6.7ft	6.92ft	7.13ft	7.35ft	
345	362	3.19ft	3.26ft	3.39ft	3.53ft	3.67ft	3.82ft	3.97ft	4.12ft	4.27ft	4.43ft	4.58ft	4.74ft	
287	302	3.88ft	3.96ft	4.12ft	4.29ft	4.45ft	4.62ft	4.79ft	4.97ft	5.14ft	5.32ft	5.50ft	5.68ft	
230	242	3.03ft	3.09ft	3.22ft	3.36ft	3.49ft	3.63ft	3.78ft	3.92ft	4.07ft	4.22ft	4.37ft	4.53ft	
161*	169	2.05ft	2.09ft	2.19ft	2.28ft	2.38ft	2.48ft	2.58ft	2.69ft	2.8ft	2.91ft	3.03ft	3.14ft	
138*	145	1.74ft	1.78ft	1.86ft	1.94ft	2.03ft	2.12ft	2.21ft	2.3ft	2.4ft	2.49ft	2.59ft	2.7ft	
115*	121	1.44ft	1.47ft	1.54ft	1.61ft	1.68ft	1.75ft	1.83ft	1.91ft	1.99ft	2.07ft	2.16ft	2.25ft	
88*	100	1.18ft	1.21ft	1.26ft	1.32ft	1.38ft	1.44ft	1.5ft	1.57ft	1.64ft	1.71ft	1.78ft	1.86ft	
69*	72	0.84ft	0.86ft	0.90ft	0.94ft	0.99ft	1.03ft	1.08ft	1.13ft	1.18ft	1.23ft	1.28ft	1.34ft	

* Such lines are applicable to this standard only if PC has determined such per FAC-014 (refer to the Applicability Section above)

all lines Below 69KV are less than one foot

⁷ The distances in this Table are the minimums required to prevent Flash-over; however prudent vegetation maintenance practices dictate that substantially greater distances will be achieved at time of vegetation maintenance.

⁸ Where applicable lines are operated at nominal voltages other than those listed, The Transmission Owner should use the maximum system voltage to determine the appropriate clearance for that line.

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

Transmission Vegetation Management

Standard FAC-003-2 Technical Reference

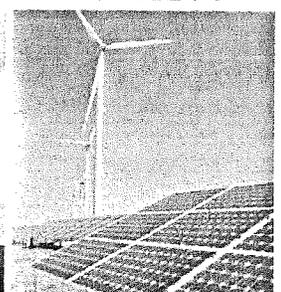
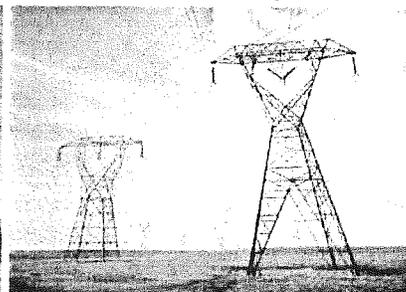
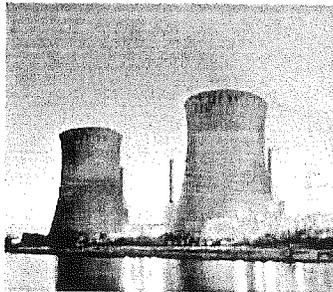
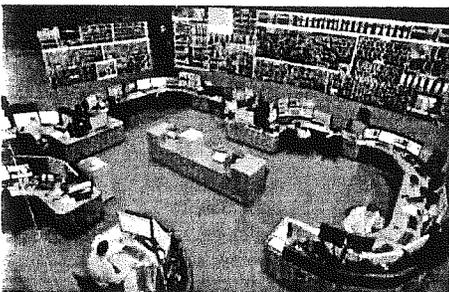
Prepared by the

North American Electric Reliability Corporation

Vegetation Management Standard Drafting Team for NERC
Project 2007-07

September 30, 2011

RELIABILITY | ACCOUNTABILITY



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December 21, 2011

VIA ELECTRONIC FILING

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

**Re: North American Electric Reliability Corporation
Docket No. _____**

Dear Ms. Bose:

The North American Electric Reliability Corporation (“NERC”) hereby submits this petition in accordance with Section 215(d)(1) of the Federal Power Act (“FPA”) and Part 39.5 of the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) regulations seeking:

- approval of Reliability Standard FAC-003-2 — Transmission Vegetation Management (FAC-003-2) and the associated Violation Risk Factors (“VRFs”) and Violation Severity Levels (“VSLs”), included in **Exhibit A** to the petition, effective the first day of the first calendar quarter one year following the effective date of a Final Rule in this docket;¹
- approval of three proposed definitions to be added to the NERC Glossary of Terms used in the NERC Reliability Standards effective the first day of the first calendar quarter one year following the effective date of a Final Rule in this docket:
 - Right-of-Way
 - Vegetation Inspection
 - Minimum Vegetation Clearance Distance (“MVCD”)

¹ Because the proposed FAC-003-2 standard has been substantially revised, a redlined version of FAC-003-2 is not included in this filing, as it would be difficult to read and of limited value.

- approval of the implementation plan for Reliability Standard FAC-003-2 — Transmission Vegetation Management which is included in **Exhibit B** to the petition; and
- approval of the retirement of Reliability Standard FAC-003-1 — Transmission Vegetation Management Program (FAC-003-1) and the currently effective NERC Definitions for “Right-of-Way” and “Vegetation Inspection” effective midnight immediately prior to the first day of the first calendar quarter that is a year following the effective date of a Final Rule in this docket:

The proposed FAC-003-2 standard addresses the important goal of managing vegetation to maintain a reliable electric transmission system and presents three themes that all help to improve reliability. First, reliability will be improved with implementation of the new standard. Second, enforceability of FAC-003-2, as compared to FAC-003-1, will be improved and cleaner for NERC and the Regional Entities. And third, NERC registered entities will have greater flexibility to address local vegetation management conditions.

Ineffective vegetation management was identified as a major cause of the August 14, 2003, blackout, and has also been a causal factor in other large-scale North American outages such as those that occurred in the summer of 1996 in the western United States.² Recommendation 16 of the Blackout Report³ suggests the establishment of enforceable standards for maintenance of electrical clearances in right-of-way areas. NERC “raised the bar” with the development of the FAC-003-1 Reliability Standard, and the

² See, *Final Report on the August 14, 2003 Blackout in the United States and Canada: causes and Recommendations*, U.S.-Canada Power System Outage Task Force, April 5, 2004, at p. 154 (“Blackout Report”).

³ Blackout Report, Recommendation 16.

enhancements to the standard included with this filing represents another “raising of the bar.” Unlike the previous standard, which is primarily focused on the “Transmission Vegetation Management Program,” the new version of FAC-003 has a broader focus on “Transmission Vegetation Management,” which is reflected both in the title of the standard and the fact that there are now results-based performance requirements that require specific actions, rather than just documentation.

The general improvements compared to the previous version of the standard are shown in the table below:

Requirement in Existing FAC-003-1 Standard	Improvements in Proposed FAC-003-2 Standard
Requires a document that includes vegetation management objectives, approved procedures, and work specifications. (R1)	Requires documented vegetation management maintenance strategies, procedures, processes, or specifications that will prevent encroachment into the Minimum Vegetation Clearance Distance (MVCD) (R3)
Requires a document schedule for ROW vegetation inspections. (R1.1)	Requires vegetation inspection of 100% of applicable transmission lines at least once per calendar year. (R6)
Requires documentation of a “Clearance 1” value based on TO assessment of situation and risk. (R1.2 and R1.2.1)	Requires vegetation be managed such that no encroachments into the MVCD (as established by the Gallet Equation) occur, regardless of whether or not they result in a sustained outage. (R3, parts 3.1 and 3.2)
Requires documentation of a “Clearance 2” value based on IEEE standard. (R1.2.2, R1.2.2.1, and R1.2.2.2)	Requires vegetation be managed such that no encroachments into the MVCD (as established by the Gallet Equation) occur, regardless of whether or not they result in a sustained outage. (R1 and R2)
Requires documentation of mitigation	Requires corrective action to be taken in cases

measures to address locations on the on the ROW where the TO is restricted from attaining specified clearances. (R1.4)	where a TO is constrained from performing vegetation work. (R5)
Requires documentation of a process for communicating imminent threats where vegetation conditions could lead to a transmission line outage. (R1.5)	Requires TOs, without any intentional time delay, to notify the control center holding switching authority for the associated applicable line when the TO has confirmed the existence of a vegetation condition that is likely to cause a Fault at any moment. (R4)
Requires the creation and implementation of an annual vegetation management plan, as well as a process for documenting and tracking the execution of the plan. (R2)	Requires the TOs annual vegetation management plan be executed such that no vegetation encroachments occur within the MVCD. (R7)

Accordingly, the proposed FAC-003-2 standard should be approved because it serves the important reliability goal of providing clear, unambiguous standards pertaining to maintenance of safe clearances of transmission lines from obstructions in the lines' right-of-way areas – in this case, specifically with regard to vegetation management.

The proposed FAC-003-2 standard was approved by the NERC Board of Trustees on November 3, 2011.

This petition consists of the following:

- This transmittal letter;
- A table of contents for the entire petition;
- A narrative description explaining how the proposed Reliability Standard FAC-003-2 — Transmission Vegetation Management meets FERC's requirements;
- Reliability Standard FAC-003-2 — Transmission Vegetation Management submitted for approval (**Exhibit A**);
- Implementation Plan for Reliability Standard FAC-003-2 — Transmission Vegetation Management submitted for Approval (**Exhibit B**);

- Proposed Definitions to be Added to the NERC Glossary of Terms Used in NERC Reliability Standards (**Exhibit C**)
- FAC-003-1 Mapping to Proposed NERC Reliability Standard FAC-003-2 summarizing the transition of requirements and related information from FAC-003-1 to FAC-003-2 (“Mapping Document”) (**Exhibit D**)
- Consideration of Comments Reports created during the development of Reliability Standard FAC-003-2 — Transmission Vegetation Management (**Exhibit E**);
- Analysis of how VRFs and VSLs Were Determined Using FERC Guidelines (**Exhibit F**);
- The complete development record of the proposed Reliability Standard (**Exhibit G**);
- The Standard Drafting Team Roster for NERC Standards Development Project 2007-07 Vegetation Management (**Exhibit H**); and
- Transmission Vegetation Management – FAC-003-2 Technical Reference Document (**Exhibit I**).

For the reasons stated above and in this petition, NERC respectfully requests that the Commission approve the standard presented herein for approval.

Respectfully submitted,

/s/ Holly A. Hawkins

Holly A. Hawkins

*Assistant General Counsel for North
American Electric Reliability
Corporation*

VMSDT Bios

Ron Adams is General Manager, Right of Way Management at Duke Energy in Charlotte, NC. His current responsibilities include operational management of both Transmission and Distribution Rights of Way, which consist of over 100,000 miles of overhead T&D facilities. He has held many positions in his 26 year career, such as Substation Engineer, Industrial Marketing Specialist, Power Quality Engineer, Technical Services Manager, Manager of Design Engineering, Manager Engineering, Transmission Construction Manager, Transmission Operations Manager, and previously Director Vegetation Management Carolinas.

Mr. Adams is a Senior Member of IEEE, a former EPRI Innovator Award recipient for his Power Quality work, and a former Chair of the Canadian Electricity Association Work Group for Substation Life Cycle Management. He holds a Bachelor of Science degree in Electrical Engineering from Clemson University, and is a registered professional engineer in the states of North and South Carolina.

Tom Anderson is presently Lead Forester of Lincoln Electric System's Vegetation Management Team. Tom has worked at Lincoln Electric System (LES) since 1974. He has been involved with or supervised the installation and maintenance of LES's overhead and underground facilities at all distribution and transmission line voltages, and coordinated and completed LES's first TVMP and annual work plans for compliance with FAC-003-1. Mr. Anderson has supervised Locating and Troubleshooting Technicians and Thermography Technicians, and has also served as Trainer of Apprentice Line Technicians, 1st Class Line Technicians, and T&D Dispatchers.

Mr. Anderson has served as President of the International Brotherhood of Electrical Workers (IBEW) Local 1536 for 12 years. He has competed in the IBEW International Lineman Rodeo, and as a part of the LES team, has been awarded First Place for Underground Splicing. He has also been judge of the "Hurt Man Rescue" for several years in the American Public Power Association Line Technician Rodeo.

Mr. Anderson has served on the Board of Advisors for the Northeast Community College in Norfolk, Nebraska. During this period, Tom attempted to develop an Associate Degree program for Line Clearance Arborists, recognizing that the industry needs better trained and qualified personnel in this area.

Mr. Anderson has Bachelor of Arts degrees in Human Resources and in Industrial Management from Doane College. He also has an Associate of Arts degree in Computer Programming from Southeast Community College System, and is a NERC Certified Operator for LES transmission system.

Paul S. Beaulieu is a Professional Engineer with Finley Engineering Company. He has been involved in the electric utility industry for the past 28 years. Prior to joining Finley, he worked with Kansas City Power & Light (Great Plains Energy), a Midwest investor owned utility.

Mr. Beaulieu's has significant experience with design and construction of transmission, substation, and distribution projects ranging from 12 kV to 345kV, to managing transmission,

(69kV and above) construction and maintenance resources over 47 counties across two states. His broad range of design experience for 34kV through 345kV transmission system projects includes: route selection, right of way descriptions, implementation and usage of transmission line design software, NESC code compliance determination, transmission line strength and loading profiles, structure and foundation design, bill of material and construction contracts and specifications. Additionally, he has provided the mechanical/civil design for 34 kV through 345kV substations including plans for grading and drainage, roadways, manholes and duct banks, foundations, apparatus layout, structure specifications, yard and interior lighting, lightning protection, station grounding, fencing design, control house development including foundation design, electrical layout, HVAC, plumbing, and house material specifications.

Mr. Beaulieu has also provided leadership to an efficiently run construction and maintenance organization. He had oversight responsibility for C&M activities, GIS integration, and Transmission Vegetation Management for 3,400 miles of transmission lines. Ultimately, he was responsible for new transmission construction and maintenance projects including ongoing asset management programs of the systems with an estimated plant value of \$700 Million, assuring proper Project Scope and Cost Development and Project Management and Closeout.

Mr. Beaulieu earned his Master of Science in Mechanical and Aerospace Engineering from the University of Missouri Columbia (Emphasis Material Science, Fatigue and Fracture Mechanics) and his Bachelor of Science in Mechanical Engineering from the University of Missouri Kansas City. Additionally he earned an Associates of Science in Drafting Technology from Longview Community College.

Stephen Cieslewicz is President and Chief Consultant at CN Utility Consulting Inc. With more than 30 years of industry experience, Mr. Cieslewicz has established himself as a leading expert in utility vegetation management (UVM). This includes designing and running one of the nation's largest UVM programs (PG&E), managing large scale UVM related research projects, performing the industry's largest UVM benchmarking, and researching laws and regulations applicable to UVM. In working with utilities, regulators and service providers around the world, Mr. Cieslewicz has been directly involved in the bulk of tree and power line issues of note. He was a principal UVM investigator for the Joint U.S./Canada Power Systems Outage Task Force, a principal author of all UVM related reports following the August 14, 2003 blackout, and has been directly involved with the crafting or interpretation of UVM standards, best practices, and laws and regulations throughout the US and abroad.

An ISA Certified Arborist and Utility Specialist, Mr. Cieslewicz has testified as an expert at many significant legal, regulatory and legislative hearings. He is a past president of the Utility Arborist Association (UAA) and a recipient of numerous awards, including the UAA Utility Arborist Award, UAA President's Award, and certificates of appreciation from the U.S. and Canadian governments. Mr. Cieslewicz is also a well known speaker and author on UVM issues, and was recently selected by Green Media (publisher of Arbor Age, Landscape and Irrigation, Outdoor Power Equipment and Sports Turf) as one of eight most influential people in the green industry.

Orville Cocking is currently the Section Manager of the Transmission Line Maintenance Group at Consolidated Edison of New York, overseeing Transmission Line Maintenance and the Transmission Vegetation Management Program (TVMP). He has spent the last six years working in positions of increasing responsibilities in Central Engineering and Transmission Operations. He spent the 9 years prior to joining Consolidated Edison performing structural analysis of transmission and other unique structures as an engineering consultant.

Mr. Cocking has a Bachelor of Science degree in Civil Engineering, and is a licensed professional engineer in the states of New York, Delaware, and New Jersey.

Richard Dearman is a Senior Advisor on NERC Compliance at the Tennessee Valley Authority. Mr. Dearman has held numerous positions in engineering, maintenance and management within transmission and distribution since 1971. He has supported FEMA with investigations of disaster recovery claims on three occasions in Minnesota, Illinois, and Tennessee. In 1997, Mr. Dearman led a team within TVA that resulted in the reorganization and centralization of the TVA right-of-way maintenance program. He was assigned the management responsibility for the program at that time, and held that position until April 2010. The interruption rate due to vegetation related outages declined to record low levels under Mr. Dearman's management. His 17 years management experience in transmission line right of way maintenance culminated in responsibility for TVA's full program oversight for over 17,000 miles of transmission lines with annual expenditures in excess of \$19M in FY 2009.

Mr. Dearman served on the NERC Outage Investigation Team as a transmission industry expert/representative to perform field investigations of tree related interruptions that were associated with the August 14, 2003 blackout. He was the first Chairman of the SERC Vegetation Management Subcommittee in 2004, and held that position for 5 years.

Mr. Dearman has participated in two industry peer reviews of transmission system vegetation maintenance programs sponsored by the North American Transmission Forum, and has led an EPRI project to reduce Human Errors in Switching Safety and Reliability. He has also led numerous safety and human performance improvement initiatives, projects, and investigations at TVA. He is well known within TVA for his investigative abilities to determine causes for transmission system interruptions, including (but not limited to) suspected and actual vegetation related outages.

Mr. Dearman holds a Bachelor of Science degree in Electrical Engineering, as well as an Master in Business Administration degree, and is a Registered Professional Engineer

Randall F. Gann

Randall Gann is the Manager of Power Delivery Contract Services for Alabama Power Company. He has held this position for the past 10 years. Part of Mr. Gann's responsibilities while holding this position has included vegetation management for 70,000 miles of distribution voltage lines and over 10,000 miles of transmission voltage lines. Prior to this, Mr. Gann held positions as Manager of Transmission Line Design and Transmission Line Construction for 8 years. He has worked the remainder of his career in various supervisory and engineering positions for Alabama Power Company in distribution and transmission operations and

maintenance; and also Nuclear Generation Construction. Mr. Gann has over 40 years experience with the Southern Company, and is a member of the Vegetation Management Sub-Committee reporting to the SERC Operating Committee.

Mr. Gann holds a Bachelor of Science degree from Auburn University in Electrical Engineering and is a registered Professional Engineer in the State of Alabama.

Jeff Hackman is Manager – Transmission Operations for Ameren. In this role, he has responsibility for Transmission and Balancing Authority Operations, EMS support for Operations, Transmission Construction and Maintenance, Transmission Vegetation Management, Transmission Design, and Transmission Project Management. Mr. Hackman has been with Ameren or its predecessor companies since 1980. He has held many positions with increasing responsibility in transmission planning, design, and operations. Mr. Hackman has also held supervisory or management positions in distribution line design and distribution operations, including overhead and underground maintenance and construction activities. He has also performed studies to support power plant operation, and was responsible for engineering and design for distribution gas service in one of Ameren's divisions.

Mr. Hackman has conducted research and published/presented papers on insulation degradation and insulator design to prevent flashover in contaminated environments. He was the Missouri Society of Professional Engineers – St Louis Chapter “Young Engineer of the Year,” and is currently a Senior Member of the IEEE. Hackman received earned his Bachelor of Science degree in Electrical Engineering from the University of Missouri – Rolla (now Missouri University of Science & Technology), and a Master of Arts degree in Business Administration from Webster University. He is a registered professional engineer in Missouri.

David Morrell is a Utility Environmental Analyst with the New York State Department of Public Service (the Department). He holds an Associate of Applied Science degree in Land Management and a Bachelor of Science in Forestry degree, with a specialization in Forest Resource Management.

Mr. Morrell has been with the NYS Department of Public Service for 21 years. Much of this time has been spent overseeing NY's Investor Owned Utilities ROW vegetation management programs pursuant to the Departments regulations. Mr. Morrell served on the first NERC vegetation standard drafting team, has written a number of the Departments recent regulations pertaining to ROW management, sits on ROW management training committees, and has authored a number of peer reviewed papers regarding issues in ROW management. Mr. Morell worked in the utility industry in the areas of T&D vegetation management and inspection for 5 years prior to joining the Department.

Mr. Morrell is a Certified ROW Pesticide Applicator and has received Departmental awards and recognitions for outstanding performance.

John Pinney is currently the Lead Transmission Forester for Progress Energy Florida, and been involved in utility vegetation management for the past 16 years. He is in charge of Progress Energy Florida's transmission vegetation management program and responsible the associated

compliance program and documentation. Additionally, Mr. Pinney has worked for two utilities in the past in supervisory and management roles related to vegetation management for transmission and distribution.

A certified arborist, Mr. Pinney also holds membership in the International Society of Arboriculture and the Utility Arborists Association, and holds a pesticide applicators license in the state of Florida.

John Schechter is Manager of American Electric Power's Protection & Control Engineering office in Columbus, Ohio. Mr. Schechter has been with American Electric Power (AEP) or its operating companies since 1980. He has held many positions with increasing responsibility over the past thirty years, in areas of substation operation, construction, maintenance, and engineering. Mr. Schechter has also held supervisory or managerial positions in distribution line design, distribution service dispatching, and overhead and underground distribution maintenance and construction. For five years, he was responsible for the asset condition and forestry program for AEP's 35,000-mile transmission system, including over 8,000 miles of line operating above 200kV, and was accountable to state regulatory commission staff for the performance and compliance of AEP's transmission line assets.

Mr. Schechter served on the ECAR VM task force and has conducted presentations to promote vegetation standards at compliance workshops conducted by ERCOT, Southwest Power Pool and ReliabilityFirst. Mr. Schechter received his Bachelor of Science degree in electrical engineering from the University of Cincinnati, his Master of Science degree in electric power systems engineering from The Ohio State University, and his Master of Business Administration degree from the University of Notre Dame. He is a registered professional engineer in the states of Indiana and Ohio.

John Tamsberg is currently Manager of Transmission Vegetation Management for Florida Power and Light (FPL), where he manages the vegetation on 6,700 miles of Transmission in Florida and at 950 miles for NextEra Energy at sites across the US and Canada. Prior to his 25 years at FPL, Mr. Tamsberg spent 15 years working in state government, managing timber for the South Carolina Commission of Forestry and working for the Florida Division of Forestry in forest management, urban forestry and fire suppression.

With over 40 year's total experience in forestry and vegetation management, Mr. Tamsberg has served on a number of Urban Forestry and Landscape Advisory Boards. He served the International Society of Arboriculture on the Certification Test Committee, is past president of the Florida Urban Forestry Council, and is currently a member of the Arborist Certification Ethics Committee.

Mr. Tamsberg has a Bachelor of Science degree in Forestry from Clemson University, and is a Certified Arborist.

Stephen Tankersley is Operations Manager of Pacific Gas and Electric Company's (PG&E) Vegetation Management Department. He has been with PG&E for 34 years, holding a variety of positions of increasing responsibility in Engineering & Construction, Project Management,

Financial and Business Systems Process Engineering, and most recently Vegetation Management, where he has served in his current position since 1999.

Mr. Tankersley has significant previous expertise in formal project/program management; process engineering; utility construction productivity; and computer systems design, development and implementation; and has used this expertise building PG&E's UVM program.

PG&E has one of the largest UVM programs in the nation, covering 70,000 sq. miles with 114,000 miles of overhead distribution and 20,000 miles of transmission, and operates under the strictest UVM regulatory environment in the country. Mr. Tankersley is a frequent speaker on topics related to UVM business operations, operating UVM programs in California's regulatory environment, and building effective UVM programs, and frequently contributes to UVM industry publications. Most recently, the Utility Arborist Association published an article by Mr. Tankersley discussing "Best Management Practices for Project Management Applied to Utility Vegetation Management."

Ron Turley is currently a Special Programs Manager for the Western Area Power Administration. He has 30 years experience in the electrical utility industry with the U.S. Department of Energy. Turley has over 28 years of management experience overseeing various combinations of engineering, construction and maintenance functions for high voltage transmission and substation facilities interconnecting Federal hydroelectric generation facilities such as Hoover, Glen Canyon and Flaming Gorge Dams in the Colorado River drainage basin. One of his current responsibilities involves the development and management of a vegetation management program for Western's Rocky Mountain Region which involves over 5000 miles of high voltage transmission across seven western states.

Mr. Turley was appointed by former Colorado Governor Ritter and retained by current Governor Hickenlooper on the Colorado Governor's Forest Health Advisory Council. He has frequently served as a technical industry expert to the Department of the Agriculture, U.S. Forest Service and Department of the Interior, Bureau of Land Management. Turley also serves on a number of other public organizations involved with the management of declining forest health and wildland fire issues affecting forested landscapes across the western United States and Canada. Mr. Turley holds a Bachelor of Science degree in Biological Science from the State University of New York at Binghamton and a Master of Science degree in Civil Engineering from Colorado State University.

Gary White is a Vegetation Management Program Manager – Forester for Oncor Electric Delivery LLC. Oncor's T&D system consists of approximately 113,000 miles of distribution facilities and 15,000 miles of transmission. For the last six years, Mr. White has been in the Asset Management – Maintenance Strategy and Planning workgroup responsible for VM strategy and planning. Prior to this position, Mr. White held various positions within Oncor's Vegetation Management workgroup for 24 years. He worked for a national line clearance company for 4 years prior to joining Oncor.

Mr. White holds a Bachelor of Science-Forestry degree from Stephen F. Austin State University. He holds a Texas Department of Agriculture Non Commercial Applicators license. He is a

member of the International Society of Arboriculture (ISA) and a Certified Arborist and Utility Specialist through the ISA. He is a member of the Utility Arborists Association and a charter member and past president of the International Society of Arboriculture -Texas Chapter.

Phil Whitmer is the Transmission Compliance Manager for Georgia Power Company. He joined Georgia Power in 1980. During his career, he served ten years in Distribution Engineering, seven years in Industrial Marketing, six years in Transmission Line and Substation Maintenance, eight years in Transmission System Operations, and one year in Compliance.

Mr. Whitmer holds a Bachelor of Science degree in Electrical Engineering from the Georgia Institute of Technology and a Master in Business Administration degree from Augusta State University. He also obtained his Certified Energy Manager certification in 1996.

Ken Wright is Lead Superintendent, Transmission Maintenance at Tucson Electric Power Company (TEP) in Tucson, AZ. His current responsibilities include Transmission Line Maintenance in Arizona and New Mexico and Distribution Line Vegetation Management in Arizona. He has held several positions in his 35 year career at TEP, including Substation Civil Engineer, Gas Engineer, Transmission Engineer, Superintendent-Transmission Line C&M, Civil & Transmission Engineering Manager and T & D Construction & Maintenance Manager.

Taking an early retirement in 1996, Mr. Wright opened and managed the Tucson Office for Engineering Consultants, Inc. and returned to TEP in 2002 to head up the Transmission Line Design, Maintenance and Construction Department. Mr. Wright is a member of the American Society of Civil Engineers. He is a Registered Civil Engineer and Registered Land Surveyor in Arizona, sits on two Boards of Director for non-profit organizations, and holds a Bachelor of Science degree in Civil Engineering from The University of Arizona.

The proposed rule, which would add new language to the Indiana Administrative Code, is available for review on the OUCC's Website at www.in.gov/oucc/2555.htm.

The IURC's 2010 order and pending rulemaking apply only to the state's **5 investor-owned electric utilities** (Duke Energy, Indiana Michigan Power, Indianapolis Power & Light, Northern Indiana Public Service Co., and Vectren). They do not apply to municipal electric utilities or rural electric membership cooperatives (REMCs).

Consumers who would like to submit written comments may send them to the OUCC online at www.in.gov/oucc/2361.htm, or by mail, email, or fax:

- **Mail:** Consumer Services Staff
Indiana Office of Utility Consumer Counselor
115 W. Washington St., Suite 1500 South
Indianapolis, IN 46204
- **email:** uccinfo@oucc.IN.gov
- **Fax:** (317) 232-5923

Written comments should include the consumer's **name, mailing address**, and a reference to "**IURC Rulemaking No. 10-04.**"

The OUCC must receive all comments no later than Noon, Indianapolis time, on Thursday, June 14, 2012.

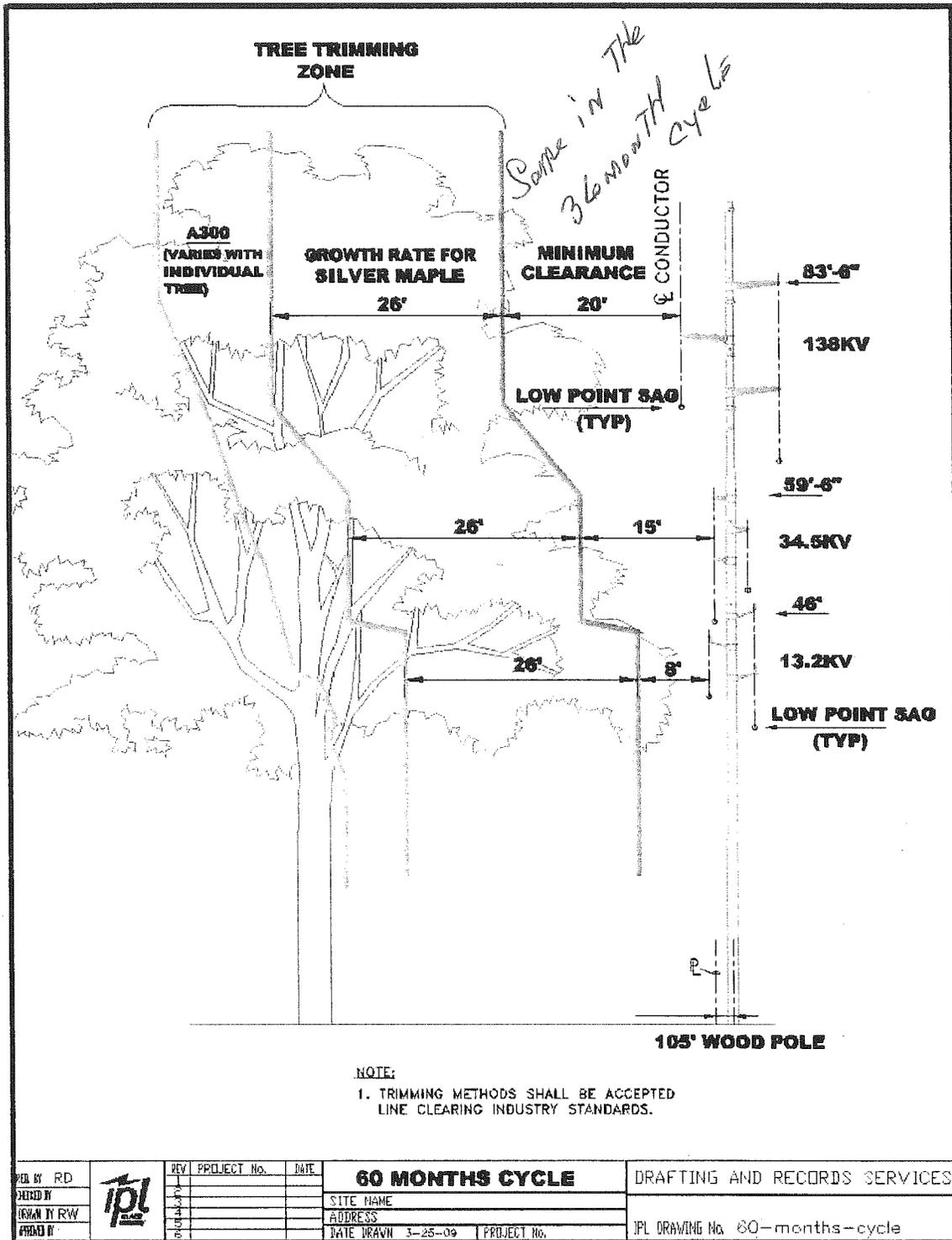
###

(IURC Rulemaking No. 10-04)

The Indiana Office of Utility Consumer Counselor (OUCC) represents Indiana consumer interests before state and federal bodies that regulate utilities. As a state agency, the OUCC's mission is to represent all Indiana consumers to ensure quality, reliable utility services at the most reasonable prices possible through dedicated advocacy, consumer education, and creative problem solving.

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Report on massive Southwestern blackout faults human element

Energy agencies call for sweeping changes in providers' information-sharing to prevent future incidents like September's outage that left 2.7 million without power.

By Tony Perry, Los Angeles Times

6:54 PM PDT, May 1, 2012

SAN DIEGO — Poor planning, failure to share critical information and a series of human errors led to the massive blackout in September that plunged a swath of Southern California, Arizona and Baja California into darkness, according to a report issued Tuesday by two energy agencies.

The 150-page report, produced after an eight-month study by the Federal Energy Regulatory Commission and the North American Electric Reliability Corp., portrays the complex electrical grid as vulnerable to a single small-sized failure — in this case, a transmission line in Arizona that went down and triggered a "cascading and uncontrolled" blackout that left 2.7 million customers in the dark.

The report calls for sweeping improvement in how utility companies, regulators and coordinating agencies share real-time information and how they plan for emergencies so that a "single point of failure" cannot result in massive failure.

"There is no limit to how much improvement in communication and coordination should be made," Dave Nevius, senior vice president of the North American Electric Reliability Corp., said at a Washington news conference.

The outage hit on the afternoon of Sept. 8 and lasted in many areas until early morning Sept. 9. In Southern California, customers in Imperial, San Diego and parts of Orange and Riverside counties were affected.

When the Hassayampa-North Gila transmission line, operated by Arizona Public Service, failed during maintenance and a day of heavy usage, it overloaded adjacent systems, starting with those operated by the Imperial Irrigation District, over the

California border. A worker at Arizona Public Service skipped a critical step in the safety procedure that would have stopped the spread.

Instead, the overload spread west within minutes, including to the San Onofre nuclear plant, which stopped providing power to more than 1 million customers in San Diego County. Without information from neighboring agencies about what was happening, some utility companies were clueless as residential and business customers called in to register surprise, panic and anger.

The companies lacked "situational awareness" as events unfolded, according to the report.

"I think FERC is on the right track, in terms of forcing communication," Mike Niggli, president and chief operating officer of San Diego Gas & Electric Co., told reporters in San Diego. "You can never guarantee that a system will work perfectly, but I think the FERC recommendations will go a long way."

Niggli said the California Independent Systems Operator, which manages the flow of electricity along high-voltage and long-distance lines, has agreed to coordinate the changes suggested by the report. Cal-ISO is also reviewing the blackout and ways to prevent future outages.

Heather Polzin, lead staff investigator on the report for FERC, declined to say whether there is an investigation into possible fines or other punishments, possibly for violating federal regulations requiring that emergency systems be kept up to date. Such probes are confidential, she said.

The failure of the Arizona line should not have caused a massive blackout, investigators said. "The bulk electric system is required to be operated so that the loss of a single line, or the occurrence of any other single contingency, such as loss of a generator or a transformer, does not result in instability, uncontrolled separation or cascading," Polzin said.

Some of the harshest criticism in the report was aimed at the Salt Lake City-based Western Electricity Coordinating Council, whose role is to coordinate the Western electrical grid among various states and utilities.

When the Arizona line went down, the council's reliability coordinator was quickly notified but did not make sure protection systems already in place were put into effect, according to the report.

A spokeswoman for the council, which works for the North American Electric Reliability Corp., said the council would have no comment on the criticism. "We are uncomfortable commenting until we can review the report," Kathi VanderZanden said.

As a matter of practice, some agencies did not consider the situation of neighboring agencies in making their "day ahead"

planning, according to the report. Among other things, some did not realize that transmission lines in northern Mexico were under repair and could affect power availability in the United States.

tony.perry@latimes.com

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TAKING TREE TRIMMING TOO FAR?

Frustration is clear as landowners urge limiting the utilities' freedom to cut trees

By Diana Penner
diana.penner@indystar.com

For more than three decades, Henry Junkersfeld had no problems with utility tree trimming at his Northwestside home.

That changed in the summer of 2005, he said, when an Indianapolis Power & Light Co. contractor cut down 200 feet of trees along his property line in the 8100 block of Fishback Road. When he informed an IPL supervisor he planned to file a com-

plaint, he was told, "If I did that, he (the supervisor) would clear-cut the rest of it."

Junkersfeld was among about 100 people who attended a public hearing Wednesday on utility company tree-trimming practices. The hearing at the Pike Performing Arts Center was the second of six that the Indiana Utility Regulatory Commission has scheduled statewide on the issue.

Several speakers, like Junkersfeld, told tales of drastic tree cut-

ting and rude encounters with those working for IPL. The testimony, in what's called an "investigation" by the IURC, is run much like a trial, with witnesses sworn in and no questions answered by the commission. The IURC will make no decision until after all hearings have been held.

One speaker urged the commissioners not to drastically amend utility companies' tree-

» See Trees, Page A15



ROB GOEBEL / The Star

FRUSTRATED: Pat Easterday testified that she was handcuffed and spent time in a police car after she tried to persuade tree trimmers to stop cutting trees on her property. "They came through and cut everything. I don't think it's fair. And I don't think they care."

Trees

» Some say right to trim trees freely is necessary.

From A13

trimming rights.

Mike Gahimer, energy manager of Duke Realty Co., said uninterrupted electrical service is paramount for business and industry. When there is a close call, he said, the decision should go on the side of maintaining energy flow.

"I ask the commission not to throw the baby out with the bath water," he said.

More than 20 people signed up to speak, but it was not clear whether all would take a turn. Charles Goodman, an Eastside resident whose summer 2005 dispute with IPL led to the IURC case, attended the hearing but was not permitted to speak.

He could not agree with IPL on compensation to replace a damaged tree, so Goodman explored a civil lawsuit and ended up initiating the case now being heard by the IURC.

"I opened a can of worms," Goodman said. "They can go on private property to remove trees without consent or compensation."

The Indiana Tree Alliance, a new organization formed by homeowners who have had unsatisfactory dealings with utilities over trees, is among the passion-

ate advocates of reining in the power of utilities.

The alliance supports establishing statewide rules for utilities, which now determine tree-trimming policies independently, and supports the long-term goal of moving utility lines underground.

IPL spokeswoman Crystal Livers-Powers said at the hearing that she couldn't comment on specific cases raised by residents.

However, she said IPL understands the emotion that can be triggered when trees are removed or trimmed and strives to contact residents in their electric bills months before trimming and in other notices posted near the date.

"Because safety and reliability are so important (requiring tree removal near power lines), we understand that sometimes people are going to be angry."

Pat Easterday, who lives in the 7900 block of Lafayette Road, told the commission that in September 2005 she tried to stop a crew from cutting her trees but that an off-duty Indianapolis police officer working security for IPL handcuffed her. She was detained in the squad car for about an hour.

"Of course, all this time they're cutting my trees. They didn't stop," Easterday said.

"They came through and cut everything. I don't think it's fair. And I don't think they care."

* Call Star reporter Diana Penner at (317) 444-6249.



ROB GOEBEL / The Star



ALAN PETERSHIME / The Star

A TOUCHY SUBJECT: Above, residents voiced their complaints about IPL tree-trimming practices during a field hearing of the Indiana Utility Regulatory Commission at Pike High School. Left, a tree trimmer contracted by IPL works to clear an overhanging limb. The IURC is holding public hearings on utility tree-trimming practices. Several speakers at Wednesday's hearing shared tales of drastic tree cutting.

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Electric utilities face annual reporting requirements.

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A tree trimmer works to cut down trees and branches blocking power lines on East Cornell Avenue on Wednesday. / Ashley L. Conti / The Star Press

MUNCIE -- Trees were responsible for 21 percent of the power outages experienced by customers of Indiana Michigan Power in 2011, the company reported recently to the Indiana Utility Regulatory Commission.

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The reports also include information on utility company spending on tree trimming and

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I&M reported spending \$21.4 million and receiving only 10 customer complaints related to tree trimming in 2011.

"I&M is very successful with its advance notification pro its customer solution center in avoiding the escalation contacts into actual complaints," the company report

Most tree-related calls were inquiries seeking info clarification, the company said. If follow-up by I&M successful in addressing or answering inquiries into a customer complaint database. Of the 10 database, only one h IURC.

Written by **SETH SLABAUGH**

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How to weigh in on the state's proposed new rules for electric utility tree trimming:

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John Mickle

Instead of spending money wiping out all of the trees power companies should be burying lines. This is yet another example of an untethered entity that can do as they please.

Reply · 4 · Like · 6 hours ago



Gary Thomas · President at Thomas Office Machines LLC

agree

Reply · Like · 5 hours ago



Mary McFalls · Top commenter

I don't have a problem with trimming trees in the proper manner. The company I&M uses to trim trees in this area often butchers the tree instead of simply trimming it. I believe they should be held accountable to a standard to trim trees properly without damaging the tree or causing it to be aesthetically displeasing.

Reply · 2 · Like · 2 hours ago



Jayne Ellen · Muncie, Indiana

As the tree trimmers have tore through our neighborhood chopping down trees that have been here longer than the power lines, I'm shocked that in this day in age we still have above ground lines. I feel like I'm going to have to tie myself to my own trees soon.

Reply · 2 · Like · 2 hours ago



Marcus Myers · Muncie, Indiana

Amen to that! One of my favorite trees in my front yard is gone!

Reply · Like · 2 hours ago



Kyle Jaracz · Pendleton, Indiana

They trimmed ours to death... But are we ready for the rate increase that comes with below ground lines? Or would it be offset by not having to call linemen out from surrounding states, paying overtime, to repair them after storms? Just rambling here. . .

Reply · Like · 2 hours ago



Amanda Strahan · 31 years old

I don't mind trimming if that is going to help our neighborhood keep power, but when they came to our yard two years ago, they left a bad impression. They told me they were going to trim one tree and completely remove two because they were "dead and extremely dangerous because of their proximity to the power lines." They spray painted the trees to be removed and left the empty spray can in our yard, and then one was never removed or trimmed (and still has spray paint on it). The other tree was cut down, but the massive stump that cannot be moved by a person without equipment is still in our yard! They were in our backyard for four days and each day they left, there were remnants of their lunch trash left in our yard. They moved our lawn chairs around so they could sit and eat together (no big deal), but they didn't put the stuff back where they found it. I feel they didn't respect my property, they didn't finish the job, and they were in the yard for an excessive amount of time for what they did do. Most the time there were five to eight men in my yard and only two or three would be up working.....the whole situation just didn't set well with me.

Reply · Like · 24 minutes ago



Shelly Gage · Top commenter · Muncie, Indiana

I'm very grateful that we have underground lines in our neighborhood, but we still lose power from time to time because of issues elsewhere. I wish they would bury all the lines too. It would save trees and reduce outages. I also don't understand why people would plant trees near power lines. Sure, the sapling isn't in the way but you know it's going to grow larger and become a problem so why put it there? People can also make

----- Original Message -----

Subject: IURC 43663
Date: Thu, 24 May 2012 14:52:18 -0400
From: Denise Giddens <dmgiddens@indy.rr.com>
To: <chfgoodman@gmail.com>

Mr. Goodman,

Until this morning, I was unaware that an organization and a person such as yourself was taking up the cause of saving our trees.

I find it interesting that Keep Indianapolis Beautiful always gives away trees, plants trees, but is nowhere to be found with the utility companies (unless it's for money) for saving the trees. Some of our most stately beings are the old trees. */Perhaps I have missed their advocacy.
/*

At any rate, I live just south of 38th and Kessler and have become vigilant about watching for those tree trimming trucks, asking what they are going to cut and why. Most unfortunately, we lost more than 50 trees on N Kessler Drive recently and it looks like a bomb went off. The boulevard gave way to mud, muck, and ugliness.

The citizens were given little if any notice and inadequate time to respond. Many of the residents on N Kessler were not even notified to "vote" close the road or cut down the trees.

In my neighborhood a few weeks ago, the Wright Tree Truck parked along the 3600 block and proceeded to stomp through the woods. I stopped and inquired about their "trimming" and warned them not to take any trees in the woods as we have an owl and yes, as amazing as it might seem, two pileated woodpeckers living in our neighbor "woods". What a gift! So, my story then was *don't snap a branch* before I am able to contact the DNR. /They left, thank goodness.

/I realize that it was not my property to protect; it is my neighborhood to protect.

Thank you for your commitment,

Denise Giddens
3220 Highwoods Court
Indianapolis, IN 46222-1822
317-727-9374



MERIDIAN : KESSLER
NEIGHBORHOOD ASSOCIATION
EST. 1965

May 24, 2012

Judge Deanna Poon and the Indiana Utility Regulatory Commission,

Meridian-Kessler Neighborhood Association has been, from the outset, been in strong support of having corrective measures and constructive procedures imposed by the Indiana Utility Regulatory Commission to moderate abusive tree trimming practices and related issues.

MKNA has addressed in this topic before the House of Representatives, public hearings, submitted both organizational and residential comment in our newsletter and on our web site criticizing excessive, intrusive, damaging tree cuts; suggesting minimum state regulation proposals, appropriate tree replacement programs; recommending notice be given to property owners; proposing the submission of dispute resolution procedures; and supporting the standardization of utility regulations for all utilities state wide, standing with The Indiana Tree Alliance's findings.

In this country measures have been taken to respect and protect our natural resources with regulations to insure best practices. Our state needs to do no less. Trees have roots in our hearts, our land, our industry and our health. We need to be sensible in our stewardship. Moderation is the greatest word in any language. Let's commit to employ moderation here, fortified with prudent choices in the establishment of programs listed above and those further discussed by The Indiana Tree Alliance.

With respect and adamant conviction,

Judy Goldstein – President



Nick Colby – President Elect



Meridian-Kessler Neighborhood Association

**Note: As the President and President Elect of the Meridian-Kessler Neighborhood Association, the information herein represents not only the 16,000 people in our community, but large numbers who have called into our offices or been active participants in public actions on these issues from MidTown, Beech Grove, Lake County and other parts of this state.*

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Written by **SETH SLABAUGH**

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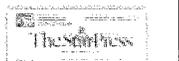
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» To watch the hearing live, visit www.in.gov/iurc/2624.htm

» Send your comments, no later than June 14, to the Indiana Office of Utility Consumer Counselor online at www.in.gov/oucc/2361.htm; or by mail to Consumer Services Staff, Indiana Office of Utility Consumer Counselor, 115 W. Washington St., Suite 1500 South, Indianapolis, IN 46204-1500.

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Most of the complaints against I&M were from customers who objected to tree-trimming procedures or did not want trees trimmed.

Trees caused 31 percent of the power outages at Vectren, 19 percent of the outages at Indianapolis Power & Light and 23 percent of the outages at Northern Indiana Public Service Co. last year. Duke Energy's report was written in using different language and was not able to be compared.

Duke spent \$19 million, NIPSCO \$11.5 million, Vectren \$4.2 million and IPL \$5.7 million on tree trimming last year.

Vectren reported 26 "customer concerns" about tree trimming that were not quickly resolved, one resulting in a formal complaint to the IURC. IPL reported 18 complaints, seven of which were sent to the IURC and all seven of which were determined to be unjustified. Duke reported 15 complaints, seven of which were referred to the IURC. And NIPSCO reported 429 "calls of concern," all of which were resolved without action being required by the IURC.

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Apr. 24, 2012



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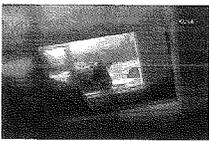
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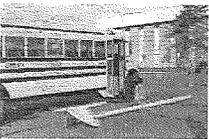
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Comment



John Mickle

Instead of spending money wiping out all of the trees power companies should be burying lines. This is yet another example of an untethered entity that can do as they please.

Reply · 4 · Like · 6 hours ago



Gary Thomas · President at Thomas Office Machines LLC

agree

Reply · Like · 5 hours ago



Mary McFalls · Top commenter

I don't have a problem with trimming trees in the proper manner. The company I&M uses to trim trees in this area often butchers the tree instead of simply trimming it. I believe they should be held accountable to a standard to trim trees properly without damaging the tree or causing it to be aesthetically displeasing.

Reply · 2 · Like · 2 hours ago



Jayne Ellen · Muncie, Indiana

As the tree trimmers have tore through our neighborhood chopping down trees that have been here longer than the power lines, I'm shocked that in this day in age we still have above ground lines. I feel like I'm going to have to tie myself to my own trees soon.

Reply · 2 · Like · 2 hours ago



Marcus Myers · Muncie, Indiana

Amen to that! One of my favorite trees in my front yard is gone!

Reply · Like · 2 hours ago



Kyle Jaracz · Pendleton, Indiana

They trimmed ours to death... But are we ready for the rate increase that comes with below ground lines? Or would it be offset by not having to call linemen out from surrounding states, paying overtime, to repair them after storms? Just rambling here. . .

Reply · Like · 2 hours ago



Amanda Strahan · 31 years old

I don't mind trimming if that is going to help our neighborhood keep power, but when they came to our yard two years ago, they left a bad impression. They told me they were going to trim one tree and completely remove two because they were "dead and extremely dangerous because of their proximity to the power lines." They spray painted the trees to be removed and left the empty spray can in our yard, and then one was never removed or trimmed (and still has spray paint on it). The other tree was cut down, but the massive stump that cannot be moved by a person without equipment is still in our yard! They were in our backyard for four days and each day they left, there were remnants of their lunch trash left in our yard. They moved our lawn chairs around so they could sit and eat together (no big deal), but they didn't put the stuff back where they found it. I feel they didn't respect my property, they didn't finish the job, and they were in the yard for an excessive amount of time for what they did do. Most the time there were five to eight men in my yard and only two or three would be up working.....the whole situation just didn't set well with me.

Reply · Like · 24 minutes ago



Shelly Gage · Top commenter · Muncie, Indiana

I'm very grateful that we have underground lines in our neighborhood, but we still lose power from time to time because of issues elsewhere. I wish they would bury all the lines too. It would save trees and reduce outages. I also don't understand why people would plant trees near power lines. Sure, the sapling isn't in the way but you know it's going to grow larger and become a problem so why put it there? People can also make

From: [Charlie Goodman](#)
To: [Atterholt, Jim](#); [Poon, DeAnna](#); [Webber, Doug](#); [Krohn, Karol](#); [Jerry Baker](#)
Subject: Fwd: Early, continuous outreach with environmental groups key for transmission development
Date: Monday, June 04, 2012 9:23:02 AM

Re section five of proposed rules early notification the best approach this applies to all lines 34kv and up ...much more critical as the voltage increases...charlie

----- Original Message -----

Subject: Early, continuous outreach with environmental groups key for transmission development
Date: Mon, 04 Jun 2012 04:00:00 -0600
From: TransmissionHub <service@transmissionhub.com>
To: Charles H. Goodman <c-goodman@att.net>



June 04, 2012

[See Web Version](#)

Daily intelligence on the North American Transmission Market

Today's Intelligence

Early, continuous outreach with environmental groups key for transmission development



June 1, 2012 By [Corina Rivera-Linares](#)

Having the best available information on sensitive areas from the outset facilitates avoidance of environmental conflicts, according to the National Audubon Society.

Q&A: Joe Kelliher, NextEra Energy's EVP, federal regulatory affairs on Order 1000 - Part 2



June 1, 2012 By [Rosy Lum](#) Joe Kelliher, NextEra Energy's executive vice president for federal regulatory affairs, spoke with TransmissionHub about FERC's decision on May 17 to deny rehearing of Order 1000.

Damage to transmission system played minor role in 2011 Northeast blackout - FERC/NERC report



June 1, 2012 By [Carl Dombek](#) The report on the causes of the blackout that left more than 3.2 million homes and businesses without power in the wake of a massive snowstorm in the Northeast last October says damage to portions of the bulk power system accounted for less than



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5% of customer outages.

Evidentiary hearings for Interstate Reliability Project to begin in Connecticut June 4



June 1, 2012 By [Corina Rivera-Linares](#)

Northeast Utilities' Connecticut Light and Power has filed an application for a certificate of environmental compatibility and public need for the Connecticut portion of the project with the council.

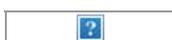
SCE: Lack of transmission, lengthy approval process, inhibiting renewable integration



June 1, 2012 By [Carl Dombek](#)

Southern California Edison says the lack of sufficient transmission infrastructure and the prolonged process for permitting and approval of new transmission lines continues to be the most significant impediment to reaching California's renewable portfolio standard goals.

Appeal court not likely to hear Heartland case before fall



June 1, 2012 By [Carl Dombek](#)

The Alberta Court of Appeal has not yet booked the hearing for the appeal accepted over the Heartland transmission project. With summer break looming, the court isn't likely to take up the appeal project until at least September.

ERCOT studies analyze resource adequacy, investment



June 1, 2012 By [Wayne Barber](#)

A May study issued by ERCOT foresees shrinking reserve margins and possible power shortages within the decade as Texas demand continues to grow - while a June 1 consultant's report considers ways to increase generation investment.

MISO transmission planning update highlights progress on Order 1000 compliance



June 1, 2012 By [Rosy Lum](#)

The Midwest ISO also highlighted its progress on several studies, including the Northern Area and market efficiency planning studies.

Public hearings start Monday on power line project that would go through Mansfield

High Desert Power Authority's joint transmission line project focuses on expanding connectivity for regional renewable energy projects

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From: [Charlie Goodman](#)
To: [Poon, DeAnna](#)
Cc: [Jerry Baker](#); [Atterholt, Jim](#); [Webber, Doug](#)
Subject: Final submission.....from the Indiana tree alliance
Date: Thursday, June 14, 2012 2:26:16 PM
Attachments: [Indiana Tree Alliance.6-14-2012.doc](#)
[Indiana Tree Alliance.docx](#)
[LSA No. 12-42 - Proposed Rule \(tree trimming\) - 04-04-12.doc](#)

**Adm. Law Judge
DeAnna Poon**

**cc To all Commissioners
and General Counsel Doug Webber**

**The attached Pdf's are our final response in Cause
#43663**

**Would you kindly have your staff create a hard copy
for all**

**parties . Color copies are needed for the actual
proposed text only**

**This was done in this fashion to try and make it
much easier to follow**

**the evolution of changes. I will cover all cost of
these copies but I know
that an actual hard copy side by side with the
detailed explanation may
make it a lot easier to follow.**

Their are three Pdf's

- 1. A cover letter**
- 2. an ITA detailed
explanation document**
- 3. the revised text.**

Lastly:

DeAnna.... I again want to thank you, each of the

Commissioners

**Doug Webber and the entire staff for your patience,
kindness, and help**

**as we have all struggled through a difficult yet
history making change**

**here in Indiana.....the journey has been long,
quite hard, but in the**

**end I hope well appreciatedeach
change recommended**

**has been based upon thousands of hours of
research, countless**

**conversations with hundreds of people over the
last seven years,**

**While I have been leading this fight with the able
guidance of many**

**particularly Jerry Baker we have and will always
strive for the truth and**

**fairness to all parties I have listened to the
concerns of countless**

**Hoosier property owners.....the responses
herein are the voices,**

**the feelings, of thousands I have spoken to for the
last seven years**

**I wish this was the end but there remains cause
#43650, the courts,**

**and the legislature and even a possible trip back to
Washington D.C.**

**But all of us can smile as our baby is about to be
born. I hope a big**

**strong and healthy child will emerge that all of us
can nurture as time**

**marches on.....I hope the labor pains to finish all of
this will not be too**

**bad.....but know in your heart your efforts are
well appreciated
Thank you and God Bless to all.....Charlie**

Indiana Tree Alliance.....Charles H. Goodman

Chairman Jim Atterholt
Indiana Utility Regulatory Commission
Commissioners Bennett, Landis, Mays, Ziegner
CC. Adm. Law Judge DeAnna Poon
General counsel Doug Webber

June 14,2012
Cause # 43663

Ladies---Gentleman:

Every journey has an end and I for one could use a short break, yet your job is quite far from over with as the final response in this cause has open up additional areas that deserve your close attention. Because of public feedback and prior and current comments from the legal community, it became apparent that the proposed rules and continued problems plaguing many property owners required several new sections. As a result the approval and input of the full commission is required as several of these areas were not covered in whole or in part in the previous orders and are therefore above the authority of the Adm. Law Judge.

I have tried to make your job easier by color coding our responses...red represented changes prior to the May 24th public hearing, blue represents changes and additions made since that hearing based upon feedback not only from that hearing itself but from the public since that hearing. In addition out of courtesy and to help you believe and understand that each change was done quite carefully, researched as thoroughly as possible, an attached document entitled Indiana Tree Alliance , Dated 6-14-2012. Is included which tries to explain in great detail the reasons behind each change. To suggest everything is 100% perfect such as spelling, punctuation, grammar etc would be very foolish especially as my computer likes to capitalize on its own. DeAnna could easily describe my computer skills as a re-showing of a three stooges movie...well we can't all be perfect. My primary concern has been to be an excellent advocate for the rights of the property owners while trying to earn the respect of of the utilities, the IURC, and the OUCC as well as the legal community and the legislature who most likely will be needed to plug the gaps in the IURC's lack of needed statutory authority. I hope I will be judged by all as being a person who has been fair to all sides of these issues and who did his homework exceptionally well. It seems foolish, unfair, to the rest of the utilities to make all suffer for the actions of one utility when such issues can be resolved separately in the pending cause # 43650.....again my deepest thanks to all parties for allowing an ordinary homeowner to try and represent as best as possible the legitimate rights of all property owners.....Sincerely, Charlie Goodman...(sorry I don't know how to sign this electronically)0

Indiana Tree Alliance (ITA)June 14, 2012

To All Commissioners, Judge Poon, General Counsel Doug Webber

Re: Cause 43663, Tree Trimming Policies and Practicesan Historical change

The following information responds to questions by the Commission during the Final Hearing and provides useful data and the sources of information used to form the responses by the Indiana Tree Alliance as well as a more detailed explanation of each section we feel needs further modifications to improve the final rule.

1. Currently the proposed rules will apply only to the five major utilities IPL, Duke, Vectren, I&M ,& Nipsco..... Legislation is needed to include all property owners.
2. Approx. number of Hoosier Property owners affected: Well in excess of 5 million
3. Source of Research used by ITA:
 - (A) Input from property owners and neighborhood association statewide both From letters, e-mails, neighborhood meetings, and IURC Public Hearings
 - (B) Legal research came from comments by various property law attorneys, on Line publications covering prescriptive easements & from numerous law schools, e.g. Harvard, Yale, and Columbia .Publications on Indiana’s current law on Prescriptive easements from Indiana attorney’s and relevant case law research Some help came from responses when seeking pro-bona (?) help local attorneys.
 - (C) Help came from Hundreds of hours of extensive research of Utility Vegetation laws and Policies from many states. (Reason: why try to reinvent the wheel)
 - (D) Knowledge came from my personal interaction with the elected officials of the Legislature, staffs of the OUCC and The IURC and even from utility responses. I am not hesitant to ask questions, to probe, to learn, and to grow in knowledge
 - (E) Extensive knowledge of Federal rules came from personnel of the Federal Energy Regulatory Commission and my participation as one of two properties owners representing all U.S. property owners in a UVM conference in Oct, 2010 in Washington D.C,
 - (F) U.S.Census data
 - (G) Dave Scott, Mgr. Office of State Chemist, Pesticide Program Administration Whose help was very invaluable in providing 100% accuracy

Summary & explanation of Key modifications of the IURC’s proposed UVM laws.

1. Notification to the Property owner of Record

Changing the emphasis from notification to the utility customer to the notification of the property owner forces a reexamination of the entire set of rules and a major overhaul of nearly every page.

Reasons:

- (1) Under property law the current draft is fundamentally flawed as not all utility customers are property owners. Liability problems for damages against the utilities will continue to exist if the notification process itself is flawed. Improper notification to the actual property owner undermines the intent of these new UVM rules. Current notification procedures are so fundamentally flawed as to void the intent of the Commission's proposed UVM rules.
- (2) Without verifiable notification to the property owner and the receipt of his or her permission such as an easement conveyed by a grant duly recorded, the utility can not assume they have the authority to trim or remove vegetation on private property without the express permission of the property owner. Accepting this basic concept of property rights, the IURC can not include the idea of implied consent to allow the utility to trespass onto private property for the purpose of trimming or the removal of vegetation without the property owner's permission. The use implied consent has so many built in problems that it should be completely removed from these proposed UVM rules. The potential for Abuse is so great that the IURC would be unintentionally aiding and abetting the taking of private property in violation of its own rules that states: " This rule does not modify property rights"

There are dozens of reasons a person could not respond to a utility's Notice of proposed tree trimming such as: an illness, being hospitalized a wedding out of state, a funeral out of state, a vacation, a temporary work assignment, an elected official in session who uses temporary housingetc....etc. **Plus never getting the notice at all** . An absence that prevents a timely respond should not provide the excuse for a utility to circumvent the need to secure a legally acquired easement which would then provide the necessary permission to trim.

Implied consent is an unlawful attempt to circumvent the IURC's clear

mandate that a utility needs a legally acquired easement. The use of implied consent provides the grounds to challenge the IURC's rules in court, with the Attorney General, The Governor, and the legislature all of which all of us really hope can be avoided. The anger felt by the community on this point is quite substantial as they feel the utilities are being allowed to bypass the law. My only response has been I will try to get it removed.

- (3) This anger is fueled by contradictory language regarding removal of more than 25% of a tree's canopy. On one hand the rules read a utility cannot remove more than 25% of the tree's canopy without the property owners consent while the following section says unless we inform the property owner that we feel we need more to provide clearance. IPL has already inserted into their door hanger a section that indicates they may removed more than 25%. in Feb,2011 Five months prior to the July 2011 order on reconsideration. The order or these rules that provide conflicting language needs to be corrected This pattern of creating language that allows the utility a way around UVM or property rights laws via contradictory language within the rules is wrong, confusing and adds fuel to legal challenges and further embarrass the IURC. It has been clear for a long time that IPL, in particular, feels that they are above the law and the IURC as their pattern of behavior demonstrates. The IURC cannot allow language in one section of these rules to be off Set or nullified by language in another area. A position I believe most agree with. The folks at the IURC and the OUCC and the Tree Alliance have all worked too hard to not catch these mistakes today vs later.

Current cases exist where the utility had to pay for improper notification Procedures e.g. Amy Rees vs Richmond Power and light Company.....
April, 2012

Securing the identification of property owners in today's computerized World is a much easier task than the utilities chooses to admit. If someone Like me can go into computerized records of the tax assessor and identify A property owner by address or parcel number Than I know for sure anyone

Can do so.....because I am not a computer genius by any stretch of one's Imagination.

2. Power line Compatible Vegetation:

- (A) Establishing a fixed height undermines the utility arborist's ability to make individual decisions based upon the condition, location, and height of the tree in relationship to the surrounding topography of the land. In essence there are too many variables to tie the arborist's decisions to a fix height. Proof lies in the application of this provision by Indiana 's own utilities where one has a 12 foot ceiling height (which is ridiculous) while others have 15 to 25 feet. A fixed height requirement is currently being challenged by several states and two Federal lawsuits. It creates many more problems than it solves and does an injustice to the actual utility arborist
- (B) When the IURC accepts the existence of the Federal Reliability Standards which was created over several years by the country's leading experts by consensus , then it follows that there are in fact Minimum Vegetation Clearance Distances aka "MVCD" Once the IURC crosses that bridge, then the proposed changes by the ITA will make clear sense to all. In fact ITA's proposed changes are far more generous as it suggests that such MVCD can be increase by a factor of three in order to ease our utilities into creating more uniform clearance distances. **On the other hand should the IURC choose to ignore these standards in order to allow each utility to create their own rules. we would then become the country's first State to fail to even acknowledge the purpose and existence of these federal standards...a fact that seem unbelievable. Remember: the MVCD federal standards are but one component of The total clearances necessary when a utility performs their routine Vegetation management on a person's property.**

3. Prescriptive Easements:

The issue and use of prescriptive easements is a very difficult challenge For The commission to deal with as each utility under current statutory law has a legal right to pursue such easements.

If, however, it is used to circumvent years of illegal actions by a utility

where in the case of IPL we have the largest theft of private property by a public utility in our state's History..... then we will have a very serious clash in the courts. To date, IPL, has not attempted to contact anyone to my knowledge to pursue easements where they were once ignored At a very minimum we have an obligation to all Indiana property owners to try and clearly define what is a "Prescriptive Easement" both in the UVM rules and within a uniform Pamphlet that describes the rights and obligations of all parties. I am Quite confident that 99% of the public including attorney's do not have A clear understanding of this legal term nor its correct application, Especially since the Indiana Supreme Court redefined the elements Necessary to secure a prescriptive easement in 2005

ITA's definition of a prescriptive easement was borrow from the work of a Bloomington, Indiana Attorney, Jacob Atz and from both Harvard, Yale, and Columbia schools of law whose writings suggest such an Easement can be blocked by the correct use of "permission "in writing from the property owner. I urge the IURC to check our definition & our language with great care for completeness and accuracy so together Hoosiers will be as well informed as best as possible. I chose not to define Each specific element necessary to secure a prescriptive easement but only to list them in order to remain as brief as possible.

Furthermore, I would urge the IURC to require notification to the IURC whenever this step is taken to ensure the property owner has the necessary resources to be properly represented. Allowing a utility to Use this process **as a threat to secure permission to trim or remove Vegetation** knowing nearly all property owners do not have the resources nor the slightest knowledge of what prescriptive easements are is beyond outrageous. While the use will be hopefully very rare by a utility Intervention by the appropriate State agency in such cases is an option the IURC can now take and place into law otherwise we are allowing a travesty of immense proportion to be created. Discuss this and consider all options.

4. Need for a uniform Pamphlet:

Throughout this entire investigation the one fact that has stood out Like a sore thumb was the lack of effective communications between

the utilities, the property owner, and the actual tree trimmers. How will the property owners know in detail what their rights are if their isn't some kind of uniform pamphlet in both Spanish and English. We must remember many folks do not have computers. Millions of families, particularly the less affluent property owners, the blue collar workers, The minority from all races, the elderly who are struggling on just their social security checks, the thousands of unemployed and so many more who cannot afford to hire an attorney are left to the whims of the utility company whose record of providing information leaves much to be desired.....let's look at the record at how well they kept just their own customers well informed about this investigation: (cause #43663)

- A. They refused to inform their own customers at the beginning of this investigation...read the record, the proof is there.
- B. Notification of the public hearings was better yet far from sufficient To meet the needs of the public.....just look at the size of the print one encounters in the legal notices in the paper.....besides who would look there if they were unaware of any investigation.
- C. Did they try to help inform their own customer of this final public Hearing? Not to my knowledge.
- D. Now closely examine the Door Hangers in the packet given to Each of you at the Final Hearing....just how is the ordinary Property owner expected to know:
 - (1) about implied consent if the details are not clearly spelled out (Implied consent needs to be completely thrown out)
 - (2) about the rules governing dispute procedures
 - (3) about their inability to collect damages except through the Courts
 - (4) about the specific time requirements that must be followed
 - (5) about the roles of the OUCC and the IURC...etc...etc...etc.
- E. Examine carefully the “Customer Education Process” why was the Rights of the customer left out...an oversight I hope.

(5) Notice requirements for line upgrades:

During the final Hearing Thursday, May 24th, a question was asked I

Believe by Commissioner David Ziegler to Jerry Baker when Jerry tried to Explain that 60 days prior to construction was inadequate as a notice. Prior to expanding on that answer let me give all the Commission some actual Historical information.

A. The length of time to plan and install new lines can vary substantially and is greatly impacted by the Voltage of the lines and the topography of the land over which the lines will cross. In urban areas if the planning is done where easements are legally obtained..... the planning process where there are a lot of necessary easements will be much longer.

On average the planning process for distribution lines can vary from 18 months to 3 years. Even small residential lines can take several weeks to several months.

On average High Voltage transmission lines (69kv to 150kv) can take from 2-3 years and those higher Transmission lines (200kv to 750 kV) can take 4-6 years. There are too many variables to provide a fixed answer.

Utility Industry experts / analysts are forecasting expenditures up to \$100 Billion dollars through 2025 on upgrading transmission lines to meet the National grid's demand growth and demand growth within each state. Many new lines within Indiana are sure to follow this increasing demand. As this Demand continues to rise the need for even closer cooperation Between communities, elected officials and all neighborhood associations will take on even greater significance/role. Due to the Commission's lack of "siting authority "(at present), I modified ITA's response to simply encourage voluntary community notification vs. creating a mandate in the early planning stages in order to help minimize utility costs and the impact on the environment and the community as a whole. We will have to wait until we are successful in securing "siting" authority until then the need to have effective communications is greater than ever. The current 60 days in the proposed rules is clearly and substantially inadequate and nearly useless as Mr. Baker correctly pointed out. As we all move forward we need to communicate much better not less thus Section Five must be changed if we are serious about a community working together. THE FEEDBACK I continue

to receive is for me to push for a mandate on early notification when constructive feedback can be useful to all parties.

Are their examples where early notification proved beneficial to all parties?

The answer is yes.....**Responding to Commissioners Landis question**

- (A) In early summer of 2011, Duke was planning on installing new lines near Sheridan Indiana. Many in the community were unaware of these new plans. A gentleman by the name of Alan Houser whose property was substantially impacted learned about Dukes Plans early enough to persuade Duke to relocate their lines. The fact the parties worked together voluntary allowed changes to be made that benefited community and allowed Duke to move forward with much less opposition and produced a happier group of property owners. Voluntary cooperation can produce miracles. If Indiana had some kind of “siting” authority this conflict could have been avoided as early communication aides planning and reduces community opposition. Commissioner Atterholt, David Stippler, Duke, and the folks at MISO all Became involved. The ability of all parties to work together , to communicate led to a resolution satisfactory to all parties. Section five of the rules prevents early notification and the ability to communicate early enough to make changes without creating a financial hardship on the utilities
- (B) Prior to IPL being brought out by AES, IPL worked extensively with folks in Franklin township when a substation and related over head high voltage lines were being planned. Because of community involvement the original site was moved to a more compatible location. All parties benefited because folks worked together from the early planning stages, Early notification was the key to this successful venture proving working together does pay off.

(6) Brush Removal:

The testimony of Ms, Mary Ann Stevens was right on target as the taking of private property large or small is still a taking and violates both the state’s constitution and the U.S. Bill of rights as well as the stated intent of these rules in which it states “this rule does not modify property rights.”

Since the Commission does not have the statutory authority to modify Property rights nor does it wish to do so the section on Brush removal Was clarified to comply with the Commission's stated intentions. We need to remember that throughout this state and this country low growth vegetation is being intentionally planted to control erosion. Here in Indpls low growth vegetation known as "rain gardens" is encouraged to help control drainage, consequentially, the removal of vegetation without consulting with the property owner besides often being illegal can do more damage than the intended good a utility tree trimming crew envisions as they usually have little or no training in such matters.

(7) On site Vegetation Management Standards:

The need for this new section is simply the obvious lack of common sense as once again illustrated by the latest testimony of Tammy Stevens, IPL's latest victim.....these problems are not confined to IPL' as others already have similar standards in place as well as similar problems thus its impact on most will be quite negligible if senior management also believes in the use of common sense

The need for this section is due to the inability to speak with others who speak a different language. The person in charge must be able to communicate effectively in order to control the work that is needed.

(8) Utility Easements and Right of Ways

Since these terms are frequently used, it makes sense to try and define Them, please check the definitions carefully.

(9) The relationship between cutting cycles and cutting distances

Each of the Commissioners, Judge Poon, Doug Webber, and the OUCC were each provided with a yellow packet. Within that Packet were several items: The chart from the Federal rules which confirms the minimum vegetation clearance distances for all line voltages, the core group of national experts who by consensus created these National standards and an exhibit from IPL which reflects their minimum standards of 20 feet for a 138,000 volt line.

IPL's exhibit for a 138KV line shows 20 feet as their minimum clearance Distance. This substantially conflicts with the Federal standards which shows a distance slightly less than two feet (1.86 feet to be exact for an elevation of 1000 to 2000 feet).

IPL'S standard is ten times larger. What this reflects is the actual clearance distance of a six year cutting cycle (based upon IPL's use of a silver maple tree which grows under perfect weather conditions of 5.6 feet per year used in their own exhibit) while IPL can claim they are only cutting based upon using a three cutting cycle or five cutting cycle however, by inflating MVCD to their own standards they have added in an additional 3 years or 18 feet where they can cut costs by not trimming as often without the IURC or the public really picking up on what they have done.....Reasons enough for this state as all as others to recognize the importance and need of these Federal safety and reliability standards.

Cutting costs has been and remains the driving force behind most Utility actions.... (Clearly IPL's policies).....by delaying needed maintenance such as in IPL's problems behind the manhole explosions and the expanded minimum clearances as shown in their own exhibit or by stretch out cutting cycles a utility can stretch out their maintenance expenses and thereby reduce costs. One of IPL's largest cost cutting policies has been their repeated practice of ignoring the acquisition of legally acquired easements .These policies often come at a cost to the public's safety or the property owners basic property rights.

NOTE WELL: When the question was asked of property owners within a city "when was the last time the utility came by to trim these trees? "too often we are hearing the answer of five (5) to six (6) years Exceptions (?) possibly but a warning signal that the IURC is again being mis-led when told urban cutting cycles are Three (3) years and rural cutting cycles are five (5) to six (6) years

Clearly, it is in the best interest of all parties that the rules contain clear definitions and uniform applications of cutting cycles. The root cause of many excessive cutting complaints is how much is being trimmed. If cutting

cycles for an urban area is stretch out to five or more years much more is cut off initially sometimes causing irreparable damage to the tree. Just like in the manhole explosions when routine maintenance is ignored to cut costs, there are serious consequences....in the case of stretching out cutting cycles it is the property owner and his/her rights which are the victims.

Since these proposed rules have ignored the creation of uniform cutting cycles and uniform minimum vegetation clearance distances there is nothing to prevent a utility from deciding to increase their cutting cycle from 3 years to five years or as shown in IPL's exhibit by increasing the minimum clearance distance the amount trimmed includes an extra 3-4 years of tree growth. IPL's own exhibit which shows for a five year tree trimming cutting cycle shows approx 60 feet where it should only be 32 feet...all this was taken from a homeowner's private property without any easements being first being secured. There is clear cut proof that cutting costs regardless if their actions are legal or not drives the policies and practices of some utilities. These policies are the real challenges facing the IURC!

The lack of uniform tree trimming cycles and the IURC's failure to recognized the Federal MVCD standards allows each utility to set their own rules.....which is where we started and will remain unless we find the courage to establish reasonable rules. Until recently proof that the utilities are cutting based upon five years in an urban environment was difficult to prove and still is but several cases where the homeowners kept track confirms the use of five years within urban/city environment which sheds some light on the complaints of excessive trimming. Five years in a city environment is quite excessive and even violates the public/written comments by the utilities where they have stated 3 years is the norm.....so why do we not simply state in the rules that "3" years is the allowable cutting cycles for urban areas and remove this uncertainly.

Since the utilities have already stated that 3 years is their practice their should not be any conflict by anyone when confirming this in the UVM rules.

(10) Property law:

As the commission considers their actions keep in mind one of the core principles from property law: "That which is reasonable and necessary for the Enjoyment and use of their easement" This basic principle should guide the

commission in all its decisions.

(11)The use of pesticides (herbicides, insecticides, or plant growth regulators) to control or prevent vegetation by a public utility.

- (A) The use of pesticides (herbicides, insecticides or plant growth regulators, etc) in UVM (utility vegetation management) to control or prevent Vegetation is regulated by rules and policies established by the Indiana Pesticide Review Board (IC 15-16-4-50) and administered and enforced by the office of the Indiana State Chemist (IC 15-16-4-51 and IC 15-16-5-39)
- (B) Any person applying any pesticide as a part of a (UVM) Vegetation management activity for any public Utility is required to be licensed by the state chemist under IC-15-16-5 and is subject to all of the pesticide use requirements there under
- (C) Fines & civil penalties for violations of pesticide Use in (UVM) utility Vegetation Management activities is governed by the office of the state chemist under IC 15-16-5-66
- (D) The IURC shall require the posting of a 1-800 number in all Educational pamphlets where the property owner can report concerns and/or Violations of suspected pesticide misuse or off target damage directly to the office of the state chemist
- (E) A property owner can refuse the application of any pesticide on his or her private property and shall report any concerns and/or suspicions of potential damage to his or her property due to run off or any other cause from an adjacent property directly to the office of the Indiana State Chemist where the appropriate corrective action shall be taken when warranted.

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

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: A dense growth of bushes or shrubs and/or low growth vegetation
(compliments of Daniel Webster)
- (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) "Property owner" means the following:
 - (A) *The owner or the owners agent of record of real property as reflected in each county's tax assessor computer's system as of the date of the proposed utility vegetation management work*
 - (B) For purposes of notice, "Utility customer" has the meaning set forth in 170 IAC 16-1-2(3) (*DeAnna...not sure if this should or should not be deleted or changed as the emphasis must be placed on " property owner" for notification and dispute purposes*)
 - (B) For purposes of the disputes, "*property owner*" has the meaning set forth in 170 IAC 4-9-2, Sec.(4) (**reference code sites should be doubled checked carefully**)

(5) “Affected property owner”

(A) means:

(1) an adjacent or an adjoining property owner to a “Buffer Zone” also known as a “Green Belt” usually consisting of tall growth vegetation required by local planning agencies or local zoning decisions to separate two distinct types of property developments such as a single family development and a commercial development. Buffer zones of dense vegetation are also found adjacent to various road/highway developments as a sound absorbing component of the design of that development.

(2) A party who has a recorded interest in said buffer zones or green belt areas

(6) “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.

(7) “Implied consent” ~~removed...see attached notes~~

(8) “In person” means:

(A) person to person delivery of verbal or written notice by an authorized utility representative to the *owner or record of said property*, or

(B) hand delivery of a door hanger or similar document accompanied by an attempt by the authorized utility representative to speak with the *owner of record* through actions including knocking on the door or ringing the door bell, with delivery documented in writing or computerized entry by the authorized utility representative making the hand delivery.

(9) “Power line compatible vegetation” means, at a minimum, *vegetation under all weather conditions that at maturity cannot encroach upon the minimum vegetation clearances distances (MVCD) as follows:*

- (A) For line voltage from 0 to 69,000 volts (69kV) The MVCD is one foot.
- (B) For line voltage above 69,000 (69kV), The MVCD can be found in the Federal Reliability Standards FAC-003-002

A utility may choose to increase the MVCD on all line voltages up to 200kV by a factor of three and may choose to decrease the MVCD on all distribution lines from 0 to 15kV through the use of line insulators to prevent grounding through abrasion from nearby vegetation. The use of line insulators is also encouraged when appropriate on all service drops to prevent grounding through abrasion from nearby vegetation.

Additional clearances based upon the utilities chosen cutting cycle, growth rate of the specific vegetation, the height of the tree in relation to the height of the utilities lines, condition of the vegetation, the topography and condition of the land, and the additional distance necessary to comply with ANSI standards are in addition to the MVCD. While uniform national standards regarding minimum clearances do exist, the utility arborist must have the freedom to make decisions based upon the specific tree, their cutting cycle and additional factors not a fixed height nor the right to create excessive clearances, but rather reasonable policies and practices to implement the MVCD standards.

(10) Prescriptive Easements:

A prescriptive easement is a right of way over land claimed by way of adverse possession without title. A person or in this case a utility does not need to produce any legal documentation of their right to use the property. Instead they must show a history for a minimum of twenty years that they have used the property owners land as if they already had a utility easement.

While prescriptive easements are generally not favored by the courts, if a utility meets the court's stringent requirements as redefined by the Indiana Supreme Court in 2005 in two separate cases "Fraleley v. Minger" and "Wilfong v. Cessna" and the court is satisfied that the utility has meet the burden of proof for each element: Each time a utility wishes to seek a prescriptive it shall do so one property at a time.

- 1. Control:
- 2. Intent:
- 3. Notice :
- and
- 4. Duration :

A prescriptive easement becomes as permanent as an easement conveyed by an express grant. A property owner, however, can stop the granting of a prescriptive easement by the courts by granting in writing permission to the utilities the right to cross their property subject to the utility vegetation management rules and orders of the Indiana Utility Regulatory Commission as found in cause #43663 and any other conditions agreed upon by both parties.

(11) "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.

(12) "Telephone call" means:

(A) making an attempt to contact the *property owner* via the telephone number the utility has on file; and

(i) making verbal telephone contact; or

(ii) leaving a message on *the property owners*:

(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 *property owner* or leaving a telephonic message as described in clause (A), a second attempt must be made **by registered mail**

(13) "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.

(14) Utility easement and right of way easement:

These terms are often used interchangeably to describe land set aside for the use by utilities to install above and below ground their respective facilities

(A) "Utility easement" also often refers to land set aside by the developers of urban home sites, commercial developments, retail and business parks for the exclusive use by utilities.

(B) "Right of way" is a term most often used to describe land on either side of roads, highways, and interstates intended for the expansion of said roads and the placement/location of utilities. It is also a term used to describe large and often quite long tracts of land used by the Transmission operators in both Electrical and Gas Industry. These transmission right of ways will often cross over many states as a part of the national delivery of energy.

(15) "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.

(16) "Written notice" means notice sent from the utility to the *property owner* in one (1) of the following manners **which must include a uniform Commission approved pamphlet describing the rights and obligations of all parties including all necessary 800 numbers and web-site addresses, etc.**

(A) By electronic mail.

(B) By U.S. mail or another mail delivery system, including inside utility bills **if the utility knows the utility customer is the same as the property owner**

(C) By in person delivery of written notice to the *property owner of record as defined in 170IAC 4-9-2.Sec 2(4)*, including, but not limited to, a door hanger *if records confirm the occupant is also the property owner (Indiana Utility Regulatory Commission; 170 IAC 4-9-2)*

(D) The language on door hangers requires prior Commission approval and a copy of the above commission approved pamphlet

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):

Note well:

The courts, case law, the legislature have all required the use of an independent third party appraiser in establishing the value of land that is being taken or sold whenever there is a dispute between the parties such as in the application of Eminent domain procedures. Such a requirement must be built into the acquisition of easements or the value of vegetation (trees) and loss of one's enjoyment of his or her own property by Indiana utilities versus the current application where a utility may offer you \$1.00 or some other ridiculously low figure with the attitude of take it leave it (I know this on a personal basis as this attitude is what sparked my fight against IPL)

This current utility practice which is wide spread has been strengthened by the language on prescriptive easements where if you fail to agree to their low ball offer, they can and some like IPL will try to take it for nothing. I realize the IURC can not ban the use of such prescriptive easements but they can mandate the use of an independent third party appraiser which will give the property owner, the IURC and the OUCC some legitimate grounds to fight such tactic's in court by those Utilities that choose not to deal fairly with the property owners. We are being forced to change some very stubborn attitudes regarding the legitimate costs of doing business ethically.

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

This item "implied consent" should be completely removed as it violates a person's property rights....see attached notes!

(b) Upon request by the *property owner* within five (5) business days of the *property owners* 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 property owner's* property to perform vegetation management. *(Indiana Utility Regulatory Commission; 170 IAC 4-9-3) DeAnna..... Commissioners Many have asked me what authority....give us an example....many have asked me to spell this out in much greater detail. Yes, I agree that this needs to be spelled out to prevent problems...errorsand possible abusesBUT HOW?? In the absence of a court order or a public safety emergency and since the proposed UVM rules require legally acquired easements.....what is left.... please do not leave such an open loophole that will lead to conflicts and confusion.*

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- 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 *the property owner* whose vegetation will be subject to **trimming or removal**

except under the following circumstances:

- (1) There is no residence on a particular property. (**this must be deleted**)
- (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 *the property owner*. 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. (**delete this entire section**)
- (4) Receipt of this notice by *the property owner* initiates the two (2) week window for calculating implied consent by *the property owner*
- (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

*(I) Included with the final trimming notice prior to the actual trimming their must be a uniform OUCC approved pamphlet describing the rights and obligations of all partiesthis educational pamphlet could easily be combined with (F) above by providing a single source of information. **This is very critical***

(d) The *property owner* may, within three (3) calendar days of receiving 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*)

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. **While a utility is strongly encouraged to contact local elected officials and all local affected neighborhood associations in the early planning stages of planned upgrades, they are required at least sixty (60) calendar days prior to a utility changing a distribution or transmission line to a higher voltage level, to give notice to the affected *property owners* 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. (delete)

(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*)

(10) *Confirmation that all necessary easements have been legally acquired prior to any construction*

(11) *A Commission approved OUCC pamphlet advising the property owners of his or her rights and obligations*

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) On site utility management prior to trimming, during trimming, and following trimming:

Prior to trimming:

The utility arborist shall inspect each property prior to trimming and shall instruct the English speaking supervisor of the tree trimming crew assigned to that property which tree is to be trimmed, how and where on the tree the trimming shall occur . When requested by the property owner this information shall be provided to the property owner and if he or she objects to the planned trimming the dispute provisions of the UVM rules shall apply. A written record of the pre-trimming instructions shall be created and compared to completed work and shall be available for audit inspections

During Trimming:

The English speaking supervisor shall at all times remain on site during trimming to ensure his Instructions as to which tree is to be trimmed, how and where are closely followed. This English speaking supervisor shall hold a pre-trimming meeting with his crew to relay the arborist instructions. A set of hand signals accompanied by a whistle to assist the on site supervisor on the

ground shall be developed to ensure crews in the trees can receive instructions while working. Signals such as stop, wrong tree limb, storm warning, line is hot or dead, etc. During trimming if the property owner has an objection the supervisor shall instruct his crew to stop. At this point the rules on disputes procedures shall commence. Every effort to work out disputes then shall be made by the on site English speaking supervisor.

Following trimming:

The utility arborist shall inspect each property to insure trimming was done according to his instructions and shall record his evaluations on the pre-trimming document. These records shall be retained for a minimum of three years and shall be made available to the commission upon request

(b) 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.

(5) The Federal Energy Regulatory Commission National and Mandatory Compliance Standards FAC-003-002

(c) Line clearances should take into consideration the following: (**Corrected**)

(1) The utility's chosen cutting cycle which is govern by the following standards:

a. In urban areas the cutting cycle shall be 3 years

b. In rural areas the cutting cycle shall be from 5-6 years. However, this extended cutting cycle can not be used in rural areas nor in smaller rural towns or cities or in areas where there is a cluster of rural homes spaced reasonably close together. In such cases the urban standard shall apply to prevent excessive trimming around these homes.

(2) characteristics of the locality including the topography of the land

(3) electrical facility; and

(4) health and condition of the tree including the height of the tree and degree of leaning

(5) Minimum vegetation clearances distances as outlined in section 2, #9 (Federal Standards FAC-003-002)

(The following may be better located in section 6 above)

(d) 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 to allow its personnel onto the owner's property **and has reached a Mutually acceptable financial agreement**

(B) Inform the customer that it will need to make non-ANSI standards cuts in order to provide clearance. **The utility must explain that the customer has rights and choices if these non-standards cuts are unacceptable to the property owner these rights include the use of the Commissions dispute provisions and tree replacement provisions that are a part of the IURC's UVM .**

(e) Conditions under which Brush that is under or near a utility's electrical facilities may or may not be removed :

- (1) By the utility without the consent of the customer only when its removal is considered a public safety issue and an emergency that is necessary for safe and reliable service as determined by the utility, However, even in such emergencies consultation with the property owner is strongly encouraged if at all possible even if a utility had previously secured a legally obtained easement due to its negative impact on adjacent land. Caution in brush removal shall be observed at all times to prevent erosion and damage to adjacent properties
 - (2) With the permission of the property owner
 - (3) In the absence of a legally acquired easement or the Permission of the property owner a utility can not remove such brush that is on "private property" until such time that the utility has negotiated in good faith, secured an easement and paid just compensation,
 - (4) The impact of soil erosion must be taken into consideration prior to any brush removal and the likely hood of its Negative Impact is sufficient reason to stop or substantially reduce such brush removal even if an easement exists. Total removal must be tempered by the damage that can be caused to surrounding properties.
- (f) 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.
- (g) Utilities and their agents and contractors are not required to clear debris caused by storms and other natural occurrences like tree failures.
- (h) 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 each complaint 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 *property owner's property*, a *property owner* must notify the utility of the *property owner's* objection to the proposed vegetation management within five (5) business days of the *property owner's* receipt of the notice required under section 4 of this rule. Questions or requests for information are not objections, *however the Utility's inability to provide reasonable answers shall be considered an objection Halting said work until a resolution of the property owners objections are met as defined within the dispute provisions of these rules.*

(b) A utility must respond to *the property owners* 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 *property owner* 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 *property owner* 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 The OUCC shall represent all property owners whose complaint has been forwarded to the IURC as an issue that the two parties have been unable to resolve by themselves. Such disputes are separate and apart from routine complaints received by the commission who routinely refer such complaint back to the utilities to try and resolve.*

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 *property owner*, 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 to enter *onto the private property of the property owner*.
- (4) The utility did not exercise due diligence to secure an easement or right of way document in accordance with section 3(b)(2).

(b) At least one (1) member of the work crew must have the authority from the utility to discuss and attempt to resolve the *property owner's* objections and must respond to the *property owner's* inquiry or complaint. If the work crew cannot resolve the *property owner'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 *property owner* the information required in 170 IAC 16-1-4(c)(5).

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

- (1) an emergency exists;
- (2) the *property owner* 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 *property owner* 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 ?) The OUCC shall represent the interests of any party whose dispute has been forwarded to the IURC as an issue which cannot and has not been resolved between the parties and one or both parties have invoked the dispute provisions of these UVM laws. Such disputes are separate and apart from routine inquires or complaints. A third party arborist shall be selected by both sides to advise the commission and shall visit the site of the dispute and secure the reasons from the customer for his or her objections prior to rendering his recommendations.*

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

Sec. 10. (a) A *property owner* may contact the utility regarding vegetation management on the property owner'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 to enter the *property owner'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 **provided such policies do not conflict with the UVM policies establish by the IURC.**
- (5) Another reason permitted by law.

(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 *property owner'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 *property owner* shall be provided the information required in 170 IAC 16-1-5. *(Indiana Utility Regulatory Commission; 170 IAC 4-9-10) This section should spell out that damages caused by a Utility must be referred to a civil court if the property owner and the utility can not reach a resolution even with mediation assistance by the OUCC or the IURC. This step is necessary until legislation allows the IURC the ability to award Damages and fine a utility for violations of the IURC's UVM rules.*

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. **The utility industry in conjunction with the OUCC shall develop and implement a uniform educational pamphlet 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. preventing tree contact with power
- (3) **The need for tree insulators where appropriate, and benefit of preventing tree contact with energized electrical 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, **the anticipated growth rate of the tree(s) in question** 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 ?)*
- (7) *This industry/OUCC pamphlet approved by the IURC shall clearly spell out the rights and obligations of the property owner and the utilities as reflected in the IURC UVM rules and shall include the appropriate 800 numbers of the OUCC, IURC, the Utility, and the state chemist. This pamphlet shall Accompany the utilities final notice. If the final notice is by a door hanger to the known property owner Said pamphlet shall in delivered in a plastic waterproof bag along with the door hanger.*

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 shall offer to provide the customer with:

(Note under property law the taking of private property is subject to due process and just Compensation therefore the word may must be “shall”)

(1) a power line compatible vegetation;

(2) other replacement plant; or

(3) monetary compensation or a credit at fair market that is agreed to by the parties; provided that the property owner 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 at the property owners expense if a tree is planted that endangers the safety and reliability of the utilities facilities as confirmed by a third party independent arborist. The utility shall assist the customer is selecting the right tree and recommend the right place to prevent such a future encroachment Fair market value can best be achieved by an independent third party appraiser (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 property owner upon request. (Indiana Utility Regulatory Commission; 170 IAC 4-9-13)

170IAC 4-9-14

Sec.14 The use of pesticides(herbicides, insecticides, or plant growth regulators) to control or prevent vegetation By a public utility:

(1) The use of pesticides(herbicides, insecticides, or plant growth regulators, etc) in Utility Vegetation Management (UVM) to control or prevent vegetation is regulated by the rules and policies established by the Indiana Pesticide Review board whose members are appointed by the Governor (IC 15-16-4-51) and administered and enforced by the office of the Indiana State Chemist (IC 15-16-4-51 and IC 15-16-5-39)

(2) Any person applying any pesticide as a part of a Vegetation Management activity for any public utility is required to be licensed by the state chemist under IC 15-16-5 and is subject to all of the pesticide use requirements there under.

(3) Fines and civil penalties for violations of pesticide use in utility vegetation management (UVM) activities is governed by the office of the State Chemist under IC 15-16-5-66.

(4) The IURC shall require the posting of a 1-800 number in all educational pamphlets where the property owner can report concerns and/or violations of suspected pesticide misuse or off target damage directly to the office of the State Chemist.

(5) A property owner can refuse the application of any pesticide on his or her private property and shall report any concerns and/or suspicions of potential damage to his or her property due to run off or any other cause from an adjacent property directly to the office of the Chemist where the appropriate corrective action shall be taken when warranted.

170IAC 4-9-15 Use of Buffer Zones and/or Green belt areas by a utility :

Sec.15 The utilities may install overhead lines "only" if such an installation shall not alter nor damage any vegetation by routine UVM whose primary purpose is to function as a visual screen between two distinct properties. Burying of Utilities on the outer edge of such buffer zones shall be considered as the best alternative in such cases.

170 IAC 4-9-16

Sec.16 The utilities shall in conjunction with the Tax assessor in each county, the IURC and the OUCC develop a uniform computerize system which will allow each utility to quickly and easily identify the property owner of each parcel of land within the The state . The computerize records of the tax assessor's of each county are public records and shall be made available to facilitate the integration of these two systems.

170IAC 4-9-17

Sec.17, The IURC shall create ad hoc committee whose primary function is to continuously review the commission's UVM policies and practices to recommend improvements, monitor complainance by the state's utilities , study the causes of all property owner objections, the effectiveness of all public educational material and any other related issues as the Commission's Chairman deems relevant.

Members of this committee shall be appointed by it's Chairman and shall each serve for a minimum of four years. Terms to be staggered. Compensation shall be determined by the Chairman, Funding shall come from the same source that funds the OUCC and The IURC. The committee shall consist of one member from the staffs of the IURC and OUCC and one utility arborist selected from a list presented by the utility industry, a second utility arborist or a member of the legal staffs recommended by the utility industry and two property owners from the general public chosen by the Chairman of the IURC who have shown an interest in and some expertise in utility UVM policies and practices.. Current elected officials are ineligible and must not have been an elected official for at least one year prior to being selected

The committee shall meet quarterly or sooner if requested by the Chairman of the IURC.