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July 22, 2009

Via Hand Delivery

Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

**Re: Proposed Amendments: N.J.A.C. 14:5-9.2 and 9.6
Vegetation Management for Electric Utility Lines
BPU Docket No. EX0804235**

Dear Secretary Izzo:

The New Jersey Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") submits the following comments in the referenced matter regarding vegetation management for electric utility lines. Rate Counsel appreciates the New Jersey Board of Public Utilities'¹ efforts at balancing the needs of reliability and cost and efficient management of natural growth along utility lines while respecting the rights and concerns of the residents directly affected. Rate Counsel submitted previous comments on July 21, 2008 (attached as Exhibit "A") with respect to the Board's consideration of this issue.

The most common cause of electric utility outages is a tree branch contacting a wire or causing a fault to ground on a circuit. The Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. provided the Board with authority to adopt appropriate standards to assure "high quality, safe and

¹ "Board" or "BPU".

reliable service” to electric utility customers. It is appropriate that the Board has undertaken this extensive effort, involving all stakeholders, to review and revise the vegetation management rules in an attempt to ensure proper maintenance of Electric Distribution Companies’ (“EDCs”) Transmission Line Right of Ways (“ROW”).

Mindful of the August 2003 electric power outage, caused in part by the failure to trim overgrown trees near electric utility lines, that left over 50 million people in the northeast United States and southeastern Canada without power for several days, the United States Department of Energy issued a report instructing states to begin working on vegetation management rules. Rate Counsel generally supports the Board’s proposal with the exceptions and additional comments, noted below.

Overall there are three principal areas of proposed change. First, the proposal replaces references to the National Electric Safety Code (“NESC”) with references to North American Electric Reliability Corporation (“NERC”) standard NERC FAC-003. Second, the proposal changes the requirements for vegetation management in the wire zone, which is the area directly under a transmission line. Third, the proposal changes the requirements for vegetation management in the border zone, which is the area on either side of the wire zone, out to the edge of the ROW.

Elimination of NESC References

Previously, the NESC was used to determine safe clearance distances between energized conductors and surrounding vegetation. However, NERC sets federally mandated standards that address various aspects of reliability, including transmission vegetation management. NERC standards address the setting of minimum vegetation clearance distances for transmissions lines, as well as the clearing distance that is to be achieved at the time that vegetation management work is performed. Considering the role that NERC plays in setting mandatory vegetation management requirements, standardizing the

references to NERC standards seems advisable and will work to reduce confusion.

Wire Zone Changes

Prior to these proposed changes, woody plants that mature above three feet tall were not permitted in the wire zone and only non-woody agricultural crops not exceeding twelve feet in height at maturity were permitted in the wire zone. The proposed amendment would change the existing three feet limitation on woody plants so that “nursery and Christmas tree” woody plants would be permitted to grow past three feet in the wire zone. The proposed regulation changes the definition of “agricultural crop” that is permitted to grow up to 12 feet from “a non-woody cash crop which can be used as food and is sold for money” to the following:

“a plant that is grown in significant quantities to be harvested as food, livestock fodder, or for another economic purpose. This term includes, but is not limited to, landscape nursery stock and Christmas tree plantation stock.” (emphasis added). See, Proposed Regulation Section 14:5-9.2.

The proposed changes would also remove the “non-woody” modifier from the agricultural crops permitted in the wire zone. Thus, under the proposed regulations, either woody or non-woody plants that qualify as agricultural crops and mature at twelve feet or less would be permitted in the wire zone. Woody and non-woody plants that are not sold for economic purposes will continue to be limited to 3 feet in the wire zone.

Rate Counsel is concerned that the inclusion of landscape nursery and Christmas tree plantation stock within the definition of “agricultural crops” allows these woody plants to exceed the three foot limitation that previously existed for all woody plants growing in the wire zone. Rate Counsel believes these changes may impact security and reliability.

One of the reasons for allowing only non-woody crops or woody plants smaller than 3 feet in rights of way is to ensure that no one can easily climb them and reduce the distance between themselves and the transmission conductors. This is an important safety measure and provides protection against security breeches and reliability problems. The limitations that are normally applied to the wire zone provide for no woody plants greater than three feet tall, with the preferred growth being grasses or low-growing, compatible, scrub-shrub plant community to obtain a meadow effect where possible³. The proposed wire zone allowance for woody plants that can grow as large as twelve feet or taller, as long as they are for landscaping or Christmas tree stock, is inconsistent with this limitation and raises the question as to whether these proposed exclusions can be safe. From a safety, reliability and security standpoint, there is no difference between woody plants sold for money and those that are not sold. If the proposed allowance for Christmas trees and landscape stock is safe, then the existing three foot limitation on woody plants in the wire zone would be unnecessary. On the other hand, if reliability concerns led to the 3 feet limitation then the Board should not grant categorical exceptions. If any exceptions are allowed, they should be based on careful consideration of the specific location and issues involved.

Further, in our previous comments⁴, Rate Counsel suggested that permitting easily removable woody crops below a certain height in a right of way might be reasonable, as long as an access route to nearby transmission facilities already exists, and removal of additional woody crops is permitted for emergency repairs or construction or if the woody crops later grow in excess of a safe limit. Therefore, if the Board decides to allow the proposed wire zone height allowance of 12 feet for landscape nursery stock and Christmas tree plantation stock it should be conditioned on: i) there being no effect on the

³ See, proposed 14:5-9.6 (c).

⁴ Comments Submitted On Behalf Of The Division Of Rate Counsel, New Jersey Department Of The Public Advocate, BPU Docket No. EX08040235, July 21, 2008 "Rate Counsel 2008 Comments" p. 1.

accessibility of access routes to transmission towers or other facilities; and ii) the potentially destructive removal of such stocks if needed to permit emergency repairs or construction or if the woody crops later grow in excess of a safe limit.

Border Zone Changes

Prior to these proposed amendments, vegetation that matures at 15 feet in height or less was permitted in the border zone, which is the area on either side of the wire zone, out to the edge of the ROW. All specific limitations on vegetation height in the border zone are replaced by a system of integrated vegetation management (“IVM”). IVM is described as a best management practice described in the American National Standard for Tree Care Operations, Part 7 (ANSI 2006) and the International Society of Arboriculture’s Best Management Practices: Integrated Vegetation Management (Miller 2007).

As noted above and in previous comments⁵, Rate Counsel suggested that permitting easily removable woody crops below a certain height in the Border Zone might be reasonable, provided that the conditions discussed above regarding an access route and destructive removal are imposed. The proposed application of IVM to the border zone encompasses the concerns expressed by Rate Counsel in previous comments and provides for a degree of variability in the degree of trimming that is enforced in the border zone. Rate Counsel would therefore support these changes if some measure of discretion is allowed through application of IVM in the Border Zone.

⁵ Rate Counsel 2008 Comments, p. 2.

Other Changes

A change is proposed to 14:5-9.6 (e) dealing with invasive and non-indigenous plant species in the ROW. The change provides that the EDC shall not plant such a species in the ROW. The regulations retain the requirement that the EDC make reasonable efforts to eliminate such plant species from the ROW. Rate Counsel has previously commented⁶ that the effect of such vegetation on reliability should be the primary concern, and that, while removal of such vegetation from the entire right of way should be guided by reliability considerations, removal cost, as well as the advice of NJDEP staff and the comments of local officials should also be considered. Rate Counsel supports the proposed prohibition on an EDC planting an invasive and non-indigenous plant species in the ROW.

A change is proposed requiring each EDC to provide lists of acceptable plant species for use in rights of way, either on its web site or in a publication provided free of charge upon request by a ratepayer. Rate Counsel suggests that both the web site access and the free publication upon request be required.

A change is proposed requiring the EDC to post its transmission line vegetation management schedule for each municipality to the EDC's website, distribute such notice to affected municipalities and public authorities, and list such municipalities along with the year of anticipated vegetation management in the EDC's annual system performance report. Previous Rate Counsel comments⁷ suggested that notice should also be sent to the Shade Tree Commission if the municipality has one, or otherwise to the municipal engineer. The notice provided to local officials and affected parties should include the name of and contact information for the utility Vegetation Manager as well as the name of and contact information for the contractor performing the vegetation management, if applicable. The

⁶ Id. at p. 2.

⁷ Id. at p. 2.

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utility should also provide an updated planned vegetation management schedule on its website at least 14 days in advance of the vegetation management activities.

Rate Counsel appreciates the opportunity to comment on this important issue before the Board.

Very truly yours,

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