

**From:** [MARYANN STEVENS](#)  
**To:** [Poon, DeAnna](#)  
**Subject:** Electric Utilities Tree Trimming Proposed Rule Comment  
**Date:** Wednesday, June 13, 2012 6:10:46 PM

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Dear Judge Poon:

I have commented throughout the process leading to this rulemaking starting with the outcry against IPL's illegal conduct in my Traders Point Neighborhood in 2005, through the senate subcommittee meetings and hearings, the IURC 2009 statewide hearings, and this rulemaking process. My comments remain unchanged regarding the fact that the proposed rule conflicts with the IURC's 2010 Order in which the findings state that utilities must have easement sufficient to access any tree the utility wishes to trim or remove or the utility must have property owner permission to trim or remove trees. Failing to abide by this finding of the Commission's Order puts the rule in violation of both state and federal constitutional guarantees against the taking of property without just compensation. Every place in the proposed rule needs to be eliminated if it says a utility can go onto private property without notice, for emergency or public safety reasons, or whatever else, and trim or remove vegetation in contradiction to the Commission's Order or state and federal constitutions. The rule needs to be legally defensible and, in its current condition, it is not.

In total, I support the comments of the Indiana Tree Alliance (ITA). In addition to the ITA comments and my own comments at the May 24th hearing, I would like to reiterate my opposition to the rule's allowance for utilities to remove "brush" without notice to property owners. Actually, if the rule is correctly constructed and does not violate the Commission's Order and state and federal constitutions, then the rule would not contain any allowance for removal or trimming of any vegetation, "brush" or otherwise, that is not within the utility's own easement or without having property owner permission so the part about removing brush would not be in the rule. As learned at the August 2011 rulemaking stakeholder meeting, the rule language about brush removal was put into the rule at the behest of IPL's Tom Walker. Once again, IPL is catered to by IURC rather than writing a legally defensible rule that does not violate the Commission's Order and private property protections of state and federal constitutions.

As an example of how onerous the rule provision for the removal of 'brush under or near a utility's power line' is, consider the following of my own experience: The term "brush" is defined as vegetation that is less than 6 inches in diameter at breast height. There is no description of whose breast height or how tall that might be. There is no definition of "near" and, as we know from IPL conduct, near can be 30 and more feet from the line. The term "brush" as used in the rule can describe sizable and valuable trees not just seasonal, herbaceous growth as I contend is meant by the word "brush". A six inch diameter trunk at breast height can be a big tree. In May of 2005, I hired Eagle Creek Nursery to plant a bur oak tree in my front yard. It was then about a 3 inch diameter trunk and about 6 feet tall. I contacted the state forestry department and discussed my tree. They said a bur oak of that dimension was at least six years old at that time. (The most valuable hard wood trees like oaks and hickory are slow growing and do not get big trunks for years while they may grow tall more quickly.) Now, it is 7 years later so my tree is at least 13 years old. It is now about 20 feet tall and still not six inches in diameter anywhere along its trunk. That tree cost me around \$500 to plant in 2005. How much greater its value is today; yet, under this rule, it would be called "brush" and chopped down by IPL if IPL contends the tree is "under or near"

their lines. As it is, the bur oak's location is 50+ feet from the lines, but who knows but what IPL will say that is "near".

Not only is the proposed rule legally indefensible, it is also sloppy in the use of imprecise words like "near" that are open for abusive interpretation by the utilities.

I do hope you and the Commission will take seriously the comments ITA and I have presented and fix the rule so it is not in violation of the Commission's Order and state and federal constitutional guarantees against the taking of property without just compensation.

Sincerely,  
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