

From: rosemary@rosemaryhuffman.com
To: [Poon, DeAnna](#); [Atterholt, Jim](#)
Cc: [Charles Goodman](#)
Subject: Cause 43663 - comments
Date: Thursday, June 14, 2012 12:54:29 PM
Attachments: [IPL Tree Trimming Letter to General Counsel- 3-5-04.pdf](#)

Judge Poon & Chairman Atterholt,

Chairman Atterholt, could you please see that this email is forwarded to the other IURC commissioners - thank you.

Here is the breakdown of our situation and some suggested options.

A greenbelt tree screen was established on the property east of us for our benefit as part of the zoning agreement for that property that was then developed into apartments. That greenbelt is a recorded covenant on that property for our benefit. Some quotes from it include:

"...it will create and keep in existence a greenbelt averaging 100 feet in width along the entire west boundary of the Lee Real Estate."

"This greenbelt shall be planted in such manner that it screens the Lee Real Estate from the Stewart Real Estate with both deciduous and evergreen planting."

This is a very common scenario in development and zoning - a vegetation screen on one property created for the purpose of screening or buffering one type of development from another and for the benefit of the other.

In our case, somewhere along the way power distribution lines ended up in the greenbelt. In 2004 IPL voiced intention to remove most of the trees in that greenbelt and had marked them for removal. Attached is our letter to the general counsel of IPL. Had we been unaware of their trimming in our area, we would not have been able to contest their proposed actions, and the greenbelt would be destroyed. We fear, that any day, IPL will decide to take unneeded actions in that greenbelt - the apartments owners do not seem to care - we are the only ones that can stop them, and we must be notified before they start chopping.

One option is to insist that not only "property owners" receive notice of trimming but "affected property owners" receive notice. We would define "affected property owner" as any party with a recorded interest in the real property including but not limited to encumbrances such as mortgages, liens, leases, covenants or restrictions on which a utility plans to perform vegetation management.

Reason:

There may be other interested parties to a property than the owners who have recorded property interest. An example would be a mortgage holder for whom the value of the property is of legal interest. Also, there may be recorded restrictive covenants on the affected property. These are legally created to benefit the recorded holder of the covenant on the property. For example, a greenbelt covenant may expressly create obligations of the subject property owner to plant and maintain trees as a screen for the adjacent property. The record holder of the covenant interest in the subject property will be affected by vegetation management

of these trees and should also receive notice. The recorded covenant holder has a clear legal interest in the trees and over the land they occupy.

See <http://en.wikipedia.org/wiki/Encumbrance>

A perhaps less desirable option, would be to mandate that the utilities adopt a system that would allow any interested party to "register" an interest in tree trimming for a given area. These interested parties would then receive notice of trimming in that area along with the property owners. This would have the added benefit of allowing neighborhood leaders/representatives/groups to receive notice if trimming were happening in their neighborhoods.

And an even less perfect option might be to notify both property owners and customers.

The options above are not mutually exclusive.

The mandate for "property owners" - not just "customers" to receive notice would be a revolutionary change. But it does not address all the people who have a financial stake in the property being destroyed. There might be other scenarios where power lines running through backyards, along property lines, where the easement - if it exists - might be on one property and not the other. But the destroyed trees would still affect the adjoining property. So again, "property owners" alone really does not cover all the people potentially affected.

Further, it is replete through the proposed rule that messages can be left with others or hung on doors on a property and be notice. This is just patently outside of any reasonable legal concept of notice - particularly affecting valuable property rights.

I would also like to address that it is important the rules encourage or demand that the utilities conduct responsible vegetation management on a regular schedule. The longer the growth occurs the more they have to take when they do their vegetation management which only creates more problems. Keeping to a regular schedule of vegetation management would also allow the property owners to have some reasonable expectation of when the vegetation management should occur. It would also limit scenarios where an ice storm would occur and "emergency" situations arise because the vegetation management had not happened within a reasonable time frame in the past.

In today's age of the utilities using contractors for all of their vegetation management, maybe there need to be rules and licensing covering the qualifications of the contractors their employees and their understanding of the rules? Many the people who do the actual tree work - not just the managers - need to be tested, like a drivers license test, on the rules that are created (and the other tree trimming standards in the rules like the ANSI standards)? There should be consequences to the license of any workman who does not follow the standards --ie probation, revocation. This might prevent a lot of the abusive tree trimming.

Most importantly, I feel that there are major overwhelming issues with the scheme of compensation of contractors - that there should be strong incentives built in for appropriate outcomes and proactive avoidance of incidents. There is obviously no control of the contractors. They have run away with the program. How did this happen?? It about the contract and compensation structure. One option-- A

modest base rate, but with a good bonus for achieving appropriate measurable outcomes without incidents with oversight ideally by a professional(s) who also represents the public as well as the IURC. And the compensation must be transparent and published on the web and now. To this day we have no way to know the structure by which these contractors are paid, but it is obvious that this one it is not one that it is the best interest of the utility or the public, or we would not have all these problems. That which gets paid for --gets done.

Lastly, we're not sure what the IURC can do about the prescriptive easement problem. The idea that the shareholders of the five (in some cases) multi-national utilities have stolen (by their own accounting) approximately \$1.5 billion from Indiana property owners is abhorrent. If the IURC has any power to prevent the utilities from taking their prescriptive easements without compensating the property owners, please see to this.

Thank you,
Rosemary Huffman

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March 5, 2004

Mr. Michael Woodard
General Counsel
Indianapolis Power and Light
P.O. Box 1595
Indianapolis, IN 46206

Dear Mr. Woodard:

Please be advised that my Fifty Six LLC is the owner of twenty one acres at the above address. In addition, we have a recorded restrictive greenbelt covenant over the first 100 feet along a full ½ mile running north and south to the east of our property line with the owner obligated specifically in regard to maintaining sufficient deciduous and evergreen trees to screen the 21 acres.

In the more than 30 years that I have nurtured this property we have always had a comfortable and cooperative relationship with IPL including the recent time IPL was here to trim along that line.

However, Rick Deer was here today representing that he had authority from the owner along my east line to “cut all the trees along that ½ mile line to the ground”. He then announced he would be back in 2 weeks from today to cut. I have contacted the representatives of Archon, the owner, and they to stand with me on this matter.

Our position regarding any trimming is that:

- I and an Archon representative be present for the trimming at a mutually agreeable time
- Careful and appropriate minimal cuts are to be made
- No damage be done collaterally

Sincerely,

Rosemary Adams Huffman

cc: Archon

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