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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

Notice of Proposed Rulemaking

IURC RM #10-04
LSA #12-42

The Indiana Utility Regulatory Commission (the "Commission"), pursuant to IC 8-1-1-3(g), IC 8-1-2-4, and IC 8-1.5-3-8, hereby proposes to add 170 IAC 4-9- regarding vegetation management. The Commission shall hear public comments on the attached proposed rule at a date and time to be determined, in Suite 220, of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana.

The Secretary of the Commission is hereby directed to maintain five (5) copies of the proposed rule continuously on file in the Commission Offices for public inspection, and forward copies of the attached proposed rule to the Indiana Legislative Services Agency for publication in the Indiana Register.

IT IS SO ORDERED.

ATTERHOLT, LANDIS, AND ZIEGNER CONCUR; BENNETT AND MAYS ABSENT:

APPROVED: APR 04 2012

**I hereby certify that the above is a true
and correct copy of the Rule as approved.**

Brenda A. Howe

**Brenda A. Howe
Secretary to the Commission**

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Proposed Rule LSA Document #12-42

DIGEST

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

170 IAC 4-9

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

Rule 9. Vegetation Management Standards

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

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

Affected: IC 8-1-2

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

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

170 IAC 4-9-2 Definitions

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

Affected: IC 8-1-2

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

- (1) "Brush" means vegetation with stems less than six (6) inches diameter at breast height.**
- (2) "Business days" means days other than:**
 - (A) Saturday;**
 - (B) Sunday; or**
 - (C) a legal holiday observed by the state of Indiana.**
- (3) "Commission" means the Indiana utility regulatory commission.**
- (4) "Customer" means the following:**

(A) For purposes of notice, “customer” has the meaning set forth in 170 IAC 16-1-2(3) or may include the occupant of the property.

(B) For purposes of the disputes, “customer” has the meaning set forth in 170 IAC 16-1-2(3) but also includes the property owner.

(5) “Emergency or storm event”:

(A) means:

(i) a condition dangerous or hazardous to:

(AA) health;

(BB) life;

(CC) physical safety; or

(DD) property

exists or is imminent;

(ii) an interruption of utility service; or

(iii) the need to immediately repair or clear utility facilities; and

(B) includes:

(i) circumstances that exist that make it impractical or impossible for a utility to comply with the provisions of the rule, including, but not limited to:

(AA) floods;

(BB) ice;

(CC) snow;

(DD) storms;

(EE) tornadoes;

(FF) winds; and

(GG) other acts of God;

(ii) falling trees;

(iii) trees causing outages; and

(iv) trees showing evidence of:

(AA) burning; or

(BB) otherwise having been in direct contact with electric conductors.

(6) “Implied consent” means the property owner or customer has not contacted the utility to deny consent within two (2) weeks after receiving notice that tree trimming will occur.

(7) “In person” means:

(A) person to person delivery of verbal or written notice by an authorized utility representative to a customer, or

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

(8) “Power line compatible vegetation” means, at a minimum, a plant that at maturity will not reach a height greater than twelve (12) feet.

(9) “Public safety situation” means the following:

(A) The existence of a vegetation condition that could reasonably be expected to cause imminent physical harm to electrical equipment necessary for the provision of electric service, including the following:

(i) Trees that are unstable to the point of representing a danger to utility equipment, facilities, or personnel in the course of repairs to said equipment or facilities due to disease, damage, or soil erosion. Personnel may include, but is not limited to safety workers such as fire, police, emergency medical personnel, utility line and repair crews.

(ii) Trees that lean to a degree that they can touch power lines.

(iii) Trees that have burn marks or other indicators that they have previously touched a power line.

(B) A condition in vegetation unrelated to normal growth that would result in contact with power lines or high voltage equipment and cause imminent physical harm to the public if not immediately mitigated.

(10) “Telephone call” means:

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

(i) making verbal telephone contact; or

(ii) leaving a message on

(AA) voicemail;

(BB) an answering machine; or

(CC) an answering service,

if available.

(C) If an attempt is unsuccessful in either making verbal telephone contact with the customer or leaving a telephonic message as described in clause (A), a second attempt must be made.

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

(12) “Vegetation management” means the cutting or removal of vegetation or the prevention of vegetative growth to accomplish one (1) of the following:

(A) The maintenance of safe conditions around utility facilities.

(B) Ensuring reliable electric service.

(C) Preventing hazards caused by the encroachment of vegetation on utility facilities and to provide utility access to facilities.

(13) “Written notice” means notice sent from the utility to the customer in one (1) of the following manners:

(A) By electronic mail.

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

(C) By in person delivery of written notice to the customer’s premises, including, but not limited to, a door hanger. (*Indiana Utility*

Regulatory Commission; 170 IAC 4-9-2)

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

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

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

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

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

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

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

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

- (1) There is no residence on a particular property.**
- (2) The utility has:**
 - (A) a written easement;**
 - (B) government permit;**
 - (C) contractual agreement; or**
 - (D) court order;**

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

- (3) An emergency or storm event occurs.**

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

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

- (i) in person; or
- (ii) via telephone call.
- (2) At least one (1) attempt to contact must include written notice.
- (c) Notice shall include, at minimum, the following information:
 - (1) The fact that vegetation management is scheduled to occur.
 - (2) An explanation of
 - (A) what vegetation management is; and
 - (B) why it is necessary for safe and reliable electric service.
 - (3) The fact that nonproperty owners living or working on the property who receive the notice are strongly encouraged to notify the property owner as soon as possible that vegetation management is scheduled to occur.
 - (4) The fact that receipt of this notice by the occupant initiates the two (2) week window for calculating implied consent by the property owner or customer.
 - (5) The estimated date that vegetation management is scheduled to occur.
 - (6) Contact information, including, at a minimum, a telephone number for an authorized utility representative who is able to answer customer inquiries related to vegetation management.
 - (7) For written notice only the following:
 - (A) The heading, "TREE TRIMMING NOTICE".
 - (B) The date the written notice was hand delivered or mailed.
 - (C) The website address of the commission's vegetation management administrative rule, this rule.
 - (D) The commission's website at <http://www.in.gov/iurc>.
 - (E) The utility's vegetation management website address.
 - (F) A reference to an educational resource for planting around electrical facilities, like the Arbor Day Foundation's right tree, right place program and the website address, if available.
 - (G) A website address and telephone number for customers to obtain the name of the contractor, if used by the utility, that will deliver the in person notice or conduct vegetation management.
 - (H) A statement that the utility's representative shall carry identification when delivering the in person notice or conducting vegetation management.
- (d) The customer may, within three (3) calendar days of receiving 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.(a) At least sixty (60) calendar days prior to a utility changing a distribution or transmission line to a higher voltage level, the utility must give notice to the affected customer if the change in the line will change the area in which vegetation management will be necessary as a result of safe clearance requirements.

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

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

(1) The fact that line upgrades are scheduled to occur.

(2) An explanation of what line upgrades are.

(3) An explanation as to why line upgrades are necessary for safe and reliable electric service.

(4) The fact that nonproperty owners living or working on the property and receiving the notice are strongly encouraged to notify the property owner as soon as possible that line upgrades are scheduled to occur.

(5) The estimated date that line upgrades are scheduled to occur.

(6) The estimated length of time construction will continue.

(7) New vegetation restrictions on the property as a result of the line upgrades.

(8) Changes to the property owner's easement or right of way as a result of the line upgrades.

(9) Contact information, including, at a minimum, a telephone number for an authorized utility representative who is able to answer customer inquiries related to line upgrades. (*Indiana Utility Regulatory Commission; 170 IAC 4-9-5*)

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

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

Affected: IC 8-1-2

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

170 IAC 4-9-7 Vegetation management standards

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

Affected: IC 8-1-2

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

(1) American National Standards Institute ANSI A300;

(2) the National Electric Safety Code;

(3) the Shigo Guide; and

(4) the International Society of Arboriculture Best Management Practices.

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

(1) characteristics of the locality;

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

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

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

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

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

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

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

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

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

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

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

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

Affected: IC 8-1-2

Sec. 8. (a) To temporarily stay the proposed vegetation management on the customer's property or rental property, a customer must notify the utility of the customer's objection to the proposed vegetation management within five (5) business days of the customer's receipt of the notice required under section 4 of this rule. Questions or requests for information are not customer objections.

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

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

within three (3) business days.

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

(1) The website location of the commission's vegetation management administrative rule, this rule.

(2) Contact information, including, at minimum, a telephone number, for the commission's consumer affairs division.

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

(1) An emergency, storm event, or public safety situation exists.

(2) The customer has withdrawn the objection or approved conditions under which cutting may resume, either in writing or during a recorded call.

(3) More than seven (7) calendar days have passed since the utility provided the proposed resolution referenced in the complaint process under 170 IAC 16-1-4(c)(5) and the customer failed to file an informal complaint to the commission as required by 170 IAC 16-1-5(a).

(4) A final disposition on an informal complaint has been rendered by the commission. (*Indiana Utility Regulatory Commission; 170 IAC 4-9-8*)

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

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

Affected: IC 8-1-2

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

(1) The utility failed to provide the notice required under section 4 of this rule.

(2) The utility is engaging in vegetation management outside the scope of a written or recorded agreement between the customer and the utility.

(3) The utility did not have a legal right to enter the customer's property.

(4) The utility did not exercise due diligence to secure an easement or right of way document in accordance with section 3(b)(2).

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

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

(1) an emergency exists;

(2) the customer has withdrawn the objection or approved conditions under which cutting may resume, either in writing or during a recorded call;

- (3) more than seven (7) calendar days have passed since the utility provided the proposed resolution referenced in the complaint process under 170 IAC 16-1-4(c)(5) and the customer failed to file an informal complaint to the commission as required by 170 IAC 16-1-5(a);
- (4) the customer failed to take timely action to seek further review of a decision of the commission's consumer affairs division or its director under 170 IAC 16-1-5(d) or 170 IAC 16-1-6(a); or
- (5) a final disposition on an informal complaint has been rendered by the commission. (*Indiana Utility Regulatory Commission; 170 IAC 4-9-9*)

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

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

Affected: IC 8-1-2

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

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

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

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

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

170 IAC 4-9-11 Customer education process

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

Affected: IC 8-1-2

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

- (1) Tree and vegetation selection and placement around electric facilities.
- (2) The public importance of vegetation management to avoid:
 - (A) electric interruptions;

(B) injuries; and

(C) fatalities.

(3) The need for, and benefit of, preventing tree contact with power lines.

(4) The importance of cooperation between customers and their utility in accomplishing the essential public task of power line maintenance.

(5) The critical importance of the public service of vegetation management to:

(A) protect electric service reliability; and

(B) avoid injuries and fatalities from electrocution.

(6) Trimming cycles a utility chooses to implement, including how the chosen trim cycle impacts clearance distance and the extent to which a tree's appearance will be impacted based upon that chosen cycle. (*Indiana Utility Regulatory Commission; 170 IAC 4-9-11*)

170 IAC 4-9-12 Tree replacement program

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

Affected: IC 8-1-2

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

(1) a power line compatible vegetation;

(2) other replacement plant; or

(3) monetary compensation or credit at an amount agreed to by the parties;

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

170 IAC 4-9-13 Utility representative identification

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

Affected: IC 8-1-2

Sec. 13. Employees or contractors performing:

(1) vegetation management; or

(2) in person notification for vegetation management;

on behalf of the utility shall carry identification and provide it for inspection by the customer upon request. (*Indiana Utility Regulatory Commission; 170 IAC 4-9-13*)