

**From:** [Angela Gidley](#)  
**To:** [Poon, DeAnna](#)  
**Cc:** [Chuck Ritz](#); [Matt Randall](#)  
**Subject:** LSA No 12-42 - Proposed Rule (tree trimming)  
**Date:** Thursday, June 14, 2012 3:57:05 PM  
**Attachments:** [INDIANA STATEWIDE - 6.14.12 Cover Letter to IURC Re Tree Trimming.PDF](#)  
[ISW - Comments to LSA No 12-42 - Proposed Rule \(tree trimming\) \(3\).DOC](#)  
[LSA No 12-42 - Proposed Rule \(tree trimming\) - ISW Proposed Redlines \(3\).DOCX](#)

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Ms. Poon,

On behalf of the Indiana Statewide Association of Rural Electric Cooperatives ("Indiana Statewide") on behalf of its member rural electric membership corporations, please find the following attached documents:

1. Cover letter regarding Proposed Rule: LSA Document #12-42 (Vegetation Management Standards)
2. Indiana Statewide comments to proposed rule
3. Indiana Statewide redline changes to proposed rule

Indiana Statewide would like to thank the Commission for allowing such comments to be submitted and appreciates the opportunity to respond to the positions presented by interested parties although its member systems are not being directly regulated under the proposed rule. If you have any difficulties with the attachments to this email, please let me know.

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June 14, 2012

DeAnna Poon, Assistant General Counsel  
Indiana Utility Regulatory Commission  
VIA EMAIL (DPoon@urc.IN.gov)

RE: *Proposed Rule: LSA Document #12-42 (Vegetation Management Standards)*

Dear Ms. Poon:

Attached please find comments and proposed redline changes to the Commission's Proposed Rule: LSA Document #12-42 (Vegetation Management Standards) on behalf of Indiana Statewide Association of Rural Electric Cooperatives ("Indiana Statewide") on behalf of its member Rural Electric Membership Corporations.

Indiana Statewide would like to thank the Commission for allowing such public comments to be submitted in response to the proposed rule and hopes that the feedback provided will be helpful to the Commission. In particular, while Indiana Statewide recognizes that its REMC members are not being regulated under the proposed rule, the organization appreciates the opportunity to comment and respond to positions presented by other interested parties.

Feel free to contact me if you have any questions.

Sincerely,

PARR RICHEY OBREMSKEY FRANDSEN  
& PATTERSON LLP

By   
Angela L. Gidley

Enclosures

cc: Indiana Statewide Association of Rural Electric Cooperatives  
436008

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. **This rule shall not apply to an electric public utility subject to the jurisdiction of the commission that is organized as a rural electric membership corporation under IC 8-1-13 or a nonprofit corporation organized under IC 23-1-17.**

(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, **is reasonably foreseeable** or is imminent;
- (ii) an interruption of utility service; or
- (iii) the need to immediately repair or clear utility facilities **or road or highway right of ways**; 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 **or right of ways** and to provide **the utility unfettered** 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 or facts 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 and is not independent~~ sufficient 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 or description of facts and 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 ~~delivery receipt~~ of this notice, **pursuant to the aforementioned requirements, to by the occupant, property owner or customer** 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 **or authorized agent**, 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

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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 for transmission lines or thirty (30) calendar days for distribution lines operated at a voltage less than 69 kV prior to a utility rebuilding, relocating or upgrading ~~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 increase ~~change~~ the area in which vegetation management will be necessary as a result of safe clearance or regulatory (such as NERC) 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

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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 or meet applicable regulatory reliability requirements (such as NERC requirements for transmission lines), 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 or written permissions 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 the necessary 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 or disposed of in a manner agreed to in writing by the owner within five three (53) working 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 substantive 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*)

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**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.**

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(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 **be able to** 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 **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) 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 **five** ~~three (53)~~ 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

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representative must attempt to resolve the dispute **within thirty (30) calendar days**. 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; ~~and~~;
  - (D) **utility fines or sanctions from regulatory authorities**
- (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 critical infrastructure**; 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 **or required cleared right of way (such as a NERC transmission clearance requirement using LIDAR)** 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*)

## **Indiana Statewide Association of Rural Electric Cooperatives Comments to the Commission's Proposed Rule: LSA Document #12-42 (Vegetation Management Standards)**

### Rule 9: Vegetation Management Standards

#### *Section 1: Applicability; incorporation by reference of commission order*

The current proposed language of 170 IAC 4-9-1 states that it “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.” Although the intent appears to be to exclude non-jurisdictional electric utilities such as REMCs and certain municipal utilities from the rule, the financing of some non-jurisdictional electric utilities that are subject to limited Commission jurisdiction may create a question as to the applicability of the rule. Therefore, additional language has been suggested in the attached redlined document to specifically indicate that “[t]his rule shall not apply to an electric public utility subject to the jurisdiction of the commission that is organized as a rural electric membership corporation under IC 8-1-13 or a nonprofit corporation organized under IC 23-1-17.”

#### *Section 2: Definitions*

Minor redlined changes have been suggested with respect to the definitions of “Emergency or storm event” and “Vegetation management” to include “reasonably foreseeable” dangerous or hazardous conditions and the need to repair or clear road or highway right of ways to access facilities.

#### *Section 3: Easements and right of way*

As currently proposed, 170 IAC 4-9-3 provides that documentation of the utility’s legal right to enter the customer’s property to perform vegetation management or, if a such document is not available, a copy of authority for the utility’s legal right to enter the customer’s property to perform vegetation management must be provided within five business days of a customer’s written request. As written, the rule applies not only to rights of way or easements that arise from a recorded document but also from a prescriptive easement. In many instances, a utility may have a prescriptive easement without having litigated the easement (Ind. Code §32-23-1). As such, there may be no documentation establishing or determining that the prescriptive easement exists. The suggested redlined language provides for the ability to provide documentation or facts and authority for an easement or public right of way, including information regarding the utility’s ability to secure a prescriptive easement.

#### *Section 4: Notice requirements for routine vegetation management*

Minor redlined changes have been suggested regarding delivery of notice and information regarding a contractor or authorized agent of a utility.

During the May 24, 2012 hearing, it was suggested that landowners, and even non-landowners with interests in the land or trees of a particular property, be given notice rather than customers at the address where the vegetation maintenance is to occur. Finding the record owner(s) of a particular property can be difficult, time consuming, and expensive, often requiring title searches. In addition, finding individuals that have non-ownership interests in land or trees may, in fact, be impossible. Indiana Statewide supports maintaining the “notice to customer” language currently found in the proposed rule to ensure that utilities are able to efficiently maintain the safety and reliability of utility lines serving customers. Individual landowners that rent their property, or those entering into arrangements of non-ownership interests in trees or land, can address the notice issue by including a requirement to provide such notice, when received, into their agreements with tenants or landowners.

#### *Section 5: Notice requirements for line upgrades*

As currently proposed, 170 IAC 4-9-5 requires a utility to provide a minimum of sixty days notice of a change in a distribution or transmission line to a higher voltage level if the area in which vegetation management will be necessary will change. Suggested redlined language has been added to require sixty days of notice for transmission lines or thirty days notice for distribution lines operated at less than 69 kV where an increase in the area where vegetation management will be necessary. In addition, the suggested redlined changes include notice where vegetation management is increased as a necessary result of regulatory, as well as safe clearance, requirements. These suggested changes reflect that regulatory requirements other than safe clearance may impact vegetation management and provide for earlier notice for increased vegetation management based upon changes to transmission lines than for smaller distribution lines.

#### *Section 7: Vegetation management standards*

Several minor redlined changes have been proposed in Section 7. First, additional language has been suggested regarding a utility’s need to not only provide sufficient clearance to maintain reliable electric safety but to also meet applicable regulatory requirements. In addition, language has been suggested to allow a utility to either secure required easements or obtain written permission and to provide “necessary” clearance. The proposed rule currently provides utilities three calendar days remove or debris following routine maintenance. It has been suggested that the utilities be provided five working days to remove such debris or dispose of it in a manner agreed to in writing by the owner. In some instances, property owners request that utility leave larger portions of trees that have been trimmed that may have value to the owner as firewood. Many utilities wish to comply with such customer requests and would seek the ability to leave such “debris” if agreed to in writing. In addition, redlined language has been provided to suggest that a utility must file a separate report regarding tree-related outages by March 31 annually and whenever a utility makes a “substantive” change to its vegetation management plan. This would allow a utility to make minor changes without filing such a report (e.g. contact information changes, wording changes where confusion has resulted, etc.).

#### *Section 9: Dispute resolution process during vegetation management*

Minor redlined changes have been suggested to indicate a utility be able to respond to a customer's inquiry or complaint. In addition, redlined language has been added that would allow a utility to proceed with vegetation management where an emergency "or public safety situation" exists. It has also been suggested that utilities be given five business days to respond to a customer's inquiry or dispute and that an attempt to resolve such disputes must occur within thirty calendar days.

*Section 11: Customer education process*

Redlined language was added to suggest an additional piece of information be provided to customers regarding the public importance of vegetation management, namely fines or sanctions that may be applied by regulatory authorities. In addition, redlined language was added to indicate that vegetation management is of critical importance not only to protect electrical service reliability but also to protect critical infrastructure.

*Section 12: Tree replacement program*

Additional language has been suggested with respect to a customer's agreement not to plant a tree that will encroach into a utility's facilities "or required cleared right of way" based upon transmission clearance requirements.