

## PUBLIC UTILITIES

### BOARD OF PUBLIC UTILITIES

#### NOTICE OF SOLICITATION OF INFORMAL PUBLIC INPUT

#### REVIEW OF THE REGULATORY STANDARDS AT N.J.A.C. 14:5-9 APPLICABLE TO VEGETATION MANAGEMENT WITHIN WIRE AND BORDER ZONES OF A TRANSMISSION LINE RIGHT OF WAY AND NOTICE OF INTERIM VEGETATION MANAGEMENT PRACTICES DURING FURTHER BOARD REVIEW

**Take notice** that, at its regularly scheduled meeting on May 8, 2008, the New Jersey Board of Public Utilities (“Board”) announced its intention to undertake a review of N.J.A.C. 14:5-9, the rules governing the performance of vegetation management by Electric Distribution Companies (“EDCs”). Specifically, the standards being reviewed apply to wire and border zones of a Transmission Line Right of Way (“ROW”), and related vegetation management issues. The Board anticipates that the review will culminate in adoption of revised rules within 10 months.

During this period, and until the Board adopts revised rules, the Board has determined in accordance with N.J.A.C. 14:1-1.2(b)2, that it is in the public interest to relax certain procedural requirements of N.J.A.C. 14:5-9.4(b) regarding transmission line vegetation management pursuant to N.J.A.C. 14:5-9.6 as set forth more fully below.

New Jersey’s electric service rules, N.J.A.C. 14:5, pertain to the delivery of safe and reliable electric service. The Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. (“EDECA”), required the Board to adopt appropriate standards to assure the continued provision of “high quality, safe and reliable service” to electric utility customers. The Board undertook an extensive stakeholder process which resulted in electric power reliability standards entitled, “Interim Electric Distribution Service Reliability and Quality Standards,” N.J.A.C. 14:5-7, effective January 2001. These rules were included to ensure proper maintenance of EDCs’ ROW to allow them to continue to provide safe and reliable electric service.

The reliability of an electric system depends upon an effective vegetation management program. This is because the most common cause of electric utility outages is a tree branch contacting a wire or causing a fault to ground on a circuit. In August 2003, a massive electric power outage was caused by a transmission conductor in Ohio contacting a tree, leaving over 50 million people in the northeast United States and southeastern Canada without electric power for several days.

After the 2003 blackout, the United States Department of Energy (“DOE”) issued a report which instructed the states to begin working on vegetation management rules. Board staff immediately began working on vegetation management standards for New Jersey EDCs. Staff observed that EDCs each had different standards for vegetation management. The Board was concerned that reliability might suffer if transmission and distribution lines were at risk of failure due to trees or tree limbs that had not been properly maintained. The Board proceeded with a rulemaking to review the adequacy of its rules.

Interested stakeholders participated in the development of these rules. These stakeholders included electric utilities, municipal shade tree officials, Rutgers University forestry professionals, and interested citizens representing environmental and arboricultural interests. The proposed rule

addressed general tree trimming standards and was included in a separate subchapter of N.J.A.C. 14:5 devoted to vegetation management. An extensive stakeholder process ensued over the next two years, and the rule was finally adopted on December 18, 2006 as Subchapter 8 of the Electric Service rules.

The resulting rules ensure the safe operation of the electric transmission conductors and provide for sufficient space between wires and potential ground faults, as well as for large utility maintenance vehicles during normal and emergency utility operations. These rules require that all trees within an EDC's ROW are to be inspected and trimmed as necessary on a four year cycle. A four year cycle means that within four years, all vegetation in the service territory will be inspected and appropriate cutting or trimming will occur as needed. The rules require EDCs to schedule trimming and cutting activities on a pro rata basis to assure that one quarter of their service territory is maintained each year. This ensures that problem areas will not be ignored.

On April 7, 2006, in a separate proceeding, the DOE, through the National Electric Reliability Council ("NERC"), adopted transmission line vegetation management standards for lines that were rated above 200kV. These generic standards were directed at EDCs and set requirements for ROW inspections as well as addressing clearances between transmission lines and potential ground faults. The Institute of Electrical and Electronics Engineers, Inc. ("IEEE") Standard 516-2003, titled "Guide for Maintenance Methods on Energized Transmission Lines" was adopted by reference. Electric transmission line owners were required to develop annual plans for managing vegetation properly. The federal rule allowed each utility to devise its own set of vegetation management standards. Fines could be assessed if, due to improper maintenance, a utility experienced a tree related fault in the future.

In 2008, the Board's Chapter 5, "Electric Service" came up for re-adoption. At that time, all sections of the rule, including the vegetation management standards, were reviewed and public comments were solicited. On February 8, 2008, the Board readopted Chapter 5 and the revised vegetation management rule was readopted as Subchapter 9 (N.J.A.C. 14:5-9).

During the stakeholder process, EDCs expressed concern with notice requirements. They also suggested that the tree height limit in the border zone be increased. They did not take issue with removal of trees in the wire zone. In the border zone the utilities requested that the tree height limit be increased from 15 feet to 18 feet to allow ornamental trees such as dogwood, flowering pear and cherry blossom varieties to remain in the border zone ROW. The utilities also suggested that the NERC standard FAC 003-1 be adopted by reference in the Board's rules in place of the National Electric Safety Code. They suggested that in certain circumstances under the current rules, these two standards may conflict.

Additionally, citizens and communities have expressed concern over the vegetation management practices required by the rules. The primary concerns included: clearing of vegetation in the border zone, and not providing proper and sufficient notice to the homeowner of vegetation management work. It should be noted that transmission line ROW clearing resulted in only a single complaint in 2006. In 2007 there were no complaints on the distribution side but the public and elected officials began to question the vegetation management practices within the transmission border zones which had resulted in trees being cut down.

As utilities began clearing the ROWs in 2006, the New Jersey Pinelands Commission argued that habitats should be maintained in as natural a condition as possible within any ROW located in

the Pinelands Area . The Board, in the 2008 readoption, authorized the EDCs to work out vegetation management procedures for the Pinelands Area with the Pinelands Commission. To date this has not been completed.

Pursuant to N.J.A.C. 14:5-9.3(d), the Board requires each EDC to employ a Vegetation Manager (“VM”), who is a certified “electric utility arborist,” as defined at N.J.A.C. 14:5-9. The VM is to be given authority and resources to administer the EDC’s vegetation management plan. The VM is to use his/her professional judgment in determining the necessity and appropriateness of vegetation management practices, within the framework set forth in N.J.A.C. 14:5-9.

The Board recognizes that significant public concerns continue to exist regarding vegetation management within the wire and border zones of the transmission line ROW. Concerns have been raised that the rules may in some cases require tree removal , even if, in the professional judgment of the VM, the trees would not pose a threat to energized conductors or affect reliability and/or safety. The Board has therefore determined to further evaluate the vegetation management rule’s requirements in transmission line ROWs.

### **Solicitation of Input**

In an effort to assist in this important assessment function, the Board will afford the opportunity for public input from interested persons, through the Board’s website as described below. The issues to be reviewed by the Board will include:

- A. The treatment of trees within the border zone in transmission rights of way;
- B. The requirements for notice to customers and property owners;
- C. A consideration for commercial agricultural interests with low-growing cultivated trees in an accessible right of way;
- D. Treatment of invasive and non-indigenous species;
- E. Environmental issues that may involve the New Jersey Department of Environmental protection, such as the application of herbicides;
- F. Resolution of concerns raised regarding vegetation management in the Pinelands Area;
- G. A review of differences between the State standards and federal NERC FAC 003-1; and
- H. Certification requirements for vegetation managers in New Jersey.

All relevant dates for the submission of comments and participation in the stakeholder process will be obtainable through a link from the Board’s website, <http://www.bpu.state.nj.us>, to a designated page. Until such time as the Board establishes a ListServ (email group) or other similar mechanism, interested stakeholders can submit contact information through this designated page, requesting participation in the stakeholder process.

Once the Board has established a ListServ or similar mechanism, the Board will post a notice on the designated page described above, and shall accept comments for a two week period after the notice. The Board will then accept rebuttal comments for two weeks after the original comment period. An informal stakeholder conference will then be held. The date of the conference will be announced on the designated page of the Board’s website. Following this opportunity for input, the Board will determine whether to initiate a formal rulemaking process, which will include publication of any proposed rule changes in the New Jersey Register, a public comment period and final adoption of any amended rules.

Any changes or amendments to this schedule will be posted on the Board's website, <http://www.bpu.state.nj.us>.

### **Interim Requirements**

During the Board's further review of this matter, and until such time as N.J.A.C. 14:5-9 is amended or the Board issues a further notice, EDCs shall implement their June 1, 2008 schedules for transmission line vegetation management, developed in accordance with N.J.A.C. 14:5-9.6(h), to ensure that their Vegetation Management practices are consistent with the following:

- 1) Use of the utility industry's best practices, such as integrated vegetation management;
- 2) Allowance of commercial woody agricultural crops in the ROW wire zone, such as fruit trees, nursery stock, and Christmas trees; and use of discretion by the VM in assessing the compatibility of such vegetation in the ROW; and
- 3) Use of discretion by the VM to trim, cut or remove vegetation in a manner that will not compromise safety and reliability, and in assessing the compatibility of such vegetation in the ROW.

Notwithstanding the above, EDCs shall continue to take all necessary steps to ensure the safety and reliability of transmission lines. At all times during the pendency of this matter, VMs must use their professional judgment to determine what vegetation management is appropriate to ensure safe and reliable service. This procedural relaxation relates to the scheduling of certain vegetation management practices as well as giving due consideration for cutting, removal or partial trimming during the interim period. In no event shall EDCs cease vegetation management practices entirely during this period, nor are they relieved from all other responsibilities pursuant to N.J.A.C. 14:5-9, including ensuring that necessary vegetation management is performed and that vegetation poses no threat to energized conductors or the reliability and/or safety of transmission lines. Additionally, the adjustment of vegetation management plans as described herein does not affect EDCs' obligations pursuant to Federal Vegetation Management standards, including, but not limited to the Federal Energy Policy Act of 2005 (Pub. L. 109-58) and the Standard FAC-003-1 Transmission Vegetation Management Program.