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RULE ADOPTIONS

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

38 N.J.R. 5396(a)

Adopted Amendment: N.J.A.C. 14:5-6.1

Adopted New Rules: N.J.A.C. 14:5-8

Vegetation Management (Tree Trimming Standards)

Proposed: November 21, 2005 at 37 N.J.R. 4385(a).

Adopted: September 27, 2006 by the New Jersey Board of Public Utilities, Jeanne M. Fox, President, Frederick F. Butler, Connie O. Hughes, Joseph Fiordaliso and Christine V. Bator, Commissioners.

Filed: November 20, 2006 as R.2006 d.434, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:2-12, 48:2-13, 48:3-49 and 48:3-96a.

BPU Docket Number: EX03040251.

Effective Date: December 18, 2006.

Expiration Date: August 21, 2007.

The New Jersey Board of Public Utilities (Board or BPU) is herein adopting amendments and new rules, to be found at N.J.A.C. 14:5-6.1 and 8, respectively, which set forth requirements that all electric public utilities must meet when they or a contractor conduct vegetation management on vegetation that is in close proximity to the utility's energized conductors. The Board proposed these rules to ensure the continued reliability of the electric transmission and distribution system and to provide consistent safety standards to protect vegetation management workers and the public. In addition, the Board proposed to amend its existing vegetation management rules to make them consistent with the new rules.

The rules adopted herein were published as a proposal in the New Jersey Register on November 21, 2005 and comments were accepted through January 20, 2006.

Six persons submitted timely comments, which are summarized below, with the Board's responses.

1. John L. Carley, Esq., Rockland Electric Company (RECO)
2. Ernest C. Cerino, Jr., New Jersey Utilities Association (NJUA)
3. Michael J. Phillipone, Jersey Central Power & Light (JCP&L)
4. William Gausmen, Atlantic City Electric Company (ACE)
5. Stacey P. Roth, Esq., New Jersey Pinelands Commission (NJPC)
6. Thomas P. Thackston, Esq., Public Service Electric and Gas (PSE&G)

1. COMMENT (ACE, JCP&L, PSE&G & RECO): The commenters are concerned about the additional costs associated with the more stringent vegetation management rule. They estimate site inspections could cost as much as \$ 400,000 per utility. Additionally, they allege that maintenance and administration could cost an additional \$ 100,000 per utility. The commenters assume that, to the extent they incur increased costs as a result of compliance with the proposed rule provisions, these costs will be addressed in future regulatory proceedings.

RESPONSE: Regular periodic vegetation management is not only in complete accord with the statutory obligation of each utility to provide safe, adequate and proper service, but is also crucial to maintaining the reliability of the State's electric grid. The Board's existing rules permit the utilities to seek recovery of appropriate regulatory costs.

2. COMMENT (ACE, JCP&L, PSE&G & RECO): The definition of "certified tree expert" should be redefined for clarification. A New Jersey Certified Tree Expert is a designation which only applies, pursuant to N.J.S.A. 45:15C-1 et seq., to those individuals who successfully pass the examination given by the New Jersey Board of Certified Tree Experts. The current definition should be revised as follows:

"Electric Utility Arborist" means a person that has been certified as a Utility Specialist by the International Society of Arboriculture and, in addition, meets one of the following: 1. The person is certified as a tree expert by the New Jersey Department of Environmental Protection's Board of Tree Experts; or 2. The person is certified as a Certified Arborist by the International Society of Arboriculture.

RESPONSE: The Board agrees and has changed the term to "electric utility arborist" and clarified the definition upon adoption to ensure its consistency with N.J.S.A. 45:15C-1 et seq.

3. COMMENT (ACE, JCP&L, PSE&G and RECO): Electric distribution lines are not defined. The following definition should be added for distribution lines: "Distribution line means a primary voltage electric line, wire or cable, including supporting structures and appurtenant facilities, that would not be considered a transmission line as set forth in N.J.A.C. 14:5-8.2."

RESPONSE: The Board has added a definition upon adoption to address the commenters' concerns. The definition is carefully crafted to be consistent with the existing definition of "electric distribution system" at N.J.A.C. 14:4-1.2.

4. COMMENT (ACE, JCP&L, PSE&G and RECO): In addition, the definition for the term "right of way" should be amended in order to apply to those instances where the utility owns all or part of a right of way. The definition should be revised as follows: "A corridor of land over which electric lines are located. The utility may own the land in fee, own an easement, or have certain franchise, prescription, or license rights to construct and maintain lines."

RESPONSE: The legal term "right of way" does not include land owned in fee simple. However, the commenter has identified an important problem in the rules, in that the rules sometimes refer to a "right of way" to indicate land over which the utility has an easement, as well as to indicate merely the space underneath a utility line. Therefore, each

provision that includes the term "right of way" has been clarified upon adoption to more precisely set forth its meaning.

5. COMMENT (ACE, JCP&L, PSE&G and RECO): The definition for "transmission line" does not include the towers and appurtenant facilities. The revised definition should read: "Transmission Line means an electric line, wire, or cable, including the supporting structures and appurtenant facilities, which transmits electricity from a generating plant to electric distribution lines. In most cases, an electric transmission line has a rating exceeding 69kV."

RESPONSE: The Board has clarified the definition in question upon adoption to address the commenters' concerns. The clarifications will further the Board's vital objectives with this rulemaking to ensure continued reliability of the electric transmission and distribution system by affording the regulated community greater certainty as to essential elements of these rules. Further, the change in the definition for transmission line will ensure that the supporting structures and appurtenant facilities are also protected from encroaching vegetation that may damage these facilities and endanger the reliability of the electric system.

6. COMMENT (ACE, JCP&L, PSE&G and RECO): The utilities will face difficulty in meeting the requirements of N.J.A.C. 14:5-8.3(i) because they do not have the right to enter private property. N.J.A.C. 14:5-8.3(i) requires that utilities having been noticed of, or having actual knowledge of, a dead, rotten, or diseased tree that is leaning toward or may fall into an energized conductor must promptly remove the vegetation. However, this rule provision fails to recognize that in some cases the vegetation that is "leaning toward" or "may fall into" a conductor may be located on private property outside the boundaries of a right of way. Additionally, we estimate a cost of \$ 550,000 per year to comply with this provision.

RESPONSE: It is well-established that a utility may legally enter property to assure safe and reliable service where the utility has a right of way. The regulated utilities are entitled to make regulatory filings with the Board to seek recovery of appropriate expenses associated with the provision of utility service. In accordance with well-established Board procedure, the Board will review costs sought to be recovered by a regulated utility in the context of an appropriate filing. In the event that a dangerous condition occurs on private property, consistent with providing safe, adequate and proper service, the utility should take all reasonable steps to remedy the perceived danger. This obviously includes contacting the owner of the property and requesting admission onto the property for the sake of removing the dangerous condition. That being said, the Board recognizes that the promptness with which the utility remedies safety concerns resulting from vegetation on private property may be delayed while it works to coordinate its efforts with the private property owner. The Board does not intend these rules to expand the rights of utilities to enter upon private property. Further, the Board is amending the proposed rule to remove the term "right of way" from N.J.A.C. 14:5-8.3(i). Instead, the Board has added language which will require the utility to potential safety concerns as promptly as possible. In addition, the utilities are directed to take reasonable steps to obtain any necessary permission to enter the property of another in order to address any potential safety concerns. Accordingly, the rules have been clarified to require the electric public utilities to take all reasonable steps necessary to as promptly as possible remedy the perceived danger caused by overhanging vegetation located on private property.

7. COMMENT (ACE, JCP&L, PSE&G and RECO): N.J.A.C. 14:5-8.3(d), requiring the utilities to employ a vegetation manager, exceeds the Board's authority. A Board requirement directing an electric public utility to employ a vegetation manager conflicts with the Board's precedent, which provides that the Board does not as a general rule intrude itself into matters which have been usually considered management's prerogative. Accordingly, this provision should be removed.

RESPONSE: The Board does not intend to unduly intrude into utility personnel decisions. However, the Board must strike an appropriate balance between the right of each utility to exercise management discretion and the statutory obligation of the Board to ensure safe, adequate and proper service. As the Board stated in the Summary of the rule proposal, vegetation management is a crucial component of each electric utility's effort to provide safe and reliable service to their customers. Moreover, the Board remains committed to implementation of a uniform set of requirements governing the performance of vegetation management, and the hiring of a Vegetation Manager within each regulated

entity is a rational step towards that end. Thus, the Board has retained N.J.A.C. 14:5-8.3(d) upon adoption to ensure that the Board's vegetation management requirements are complied with in a manner that both respects the independence of the regulated entity while ensuring the necessary knowledge and oversight exist.

8. COMMENT (ACE, JCP&L, PSE&G and RECO): The current rules would require the utility to supervise a contractor. This implies a doctrine of co-employment. We urge the Board to modify the proposed rules so as to provide that electric utilities need only require, in their contracts for vegetation management work, that the contractor comply with all applicable Federal, State, county and municipal rules and regulations. In order to avoid this potential consequence, the electric public utilities propose the following changes to N.J.A.C. 14:5-8.3(e): "The electric public utility shall require that all contractors hired to perform vegetation management comply with all applicable Federal, State, County and Municipal laws, rules or regulations that apply to the contractors' work."

RESPONSE: Each electric public utility is ultimately responsible for providing safe and reliable service. That being said, the rule provision and well-established law does not preclude an electric public utility from seeking indemnification for the improper actions of a contractor. Moreover, the rule provision does not preclude each electric public utility from drafting whatever prophylactic contract language they deem necessary to protect themselves from the improper acts of a contractor. Accordingly, the Board continues to believe that the provision as proposed is both appropriate and serves the critical safety and reliability interests at issue herein. Therefore, the suggested change has not been made.

9. COMMENT (ACE, JCP&L, PSE&G and RECO): The commenters object to the requirement in proposed N.J.A.C. 14:5-8.4(a) that each electric public utility shall perform an annual vegetation inspection of distribution facilities. They believe this to be both excessive and unnecessary. Such a requirement would necessitate several new employees and significantly increase the cost of the electric utilities' vegetation management program. Therefore, the electric utilities recommend that the words "energized conductor" in the proposed regulations be changed to "overhead transmission circuits." Furthermore, the rule should clearly state that all "Overhead Distribution Circuits will be inspected and maintained once every four years."

RESPONSE: The Board believes that it is crucial for all electric utilities to conduct an annual inspection of the vegetation near its distribution facilities in order to maintain the reliability of the electric grid. Although the cost to conduct these annual inspections may be prohibitive to some, this cost must be weighed against the potential cost of a major disruption to the electric grid that could interrupt service not only to New Jersey customers but region-wide. Accordingly, the Board has not relaxed the rules' requirements.

10. COMMENT (ACE, JCP&L, PSE&G and RECO): The requirement that the vegetation manager be required to select the most appropriate method for vegetation management and document it is unreasonable. We suggest N.J.A.C. 14:5-8.5(b) be modified to allow the vegetation manager **or his designee** to select the most appropriate method of vegetation management based upon field evaluation. Most of the time the selection of the type of method is done in the field and at the time of the removal. The administrative cost to document what method is used does not achieve the Board's goals of increasing safety and reliability. Therefore, we recommend the following change: "Where multiple standards listed at (a) above would apply or conflict, the Vegetation Manager or its designee shall select the most appropriate method.

RESPONSE: The Board agrees that flexibility is important, and that direct decision making by the VM for all situations would be impossible for the large utilities that operate in New Jersey. Therefore, the Board has modified the rules upon adoption to address the commenters' concerns. This change should address the commenters' concern about cost, because the utilities will no longer be required to abide by the original documentation requirement, which the commenters believed was burdensome and would not increase reliability.

11. COMMENT (ACE, JCP&L, PSE&G and RECO): The commenters oppose the requirement that each electric public utility shall develop its own vegetation management standards and guidelines which shall be consistent with

N.J.A.C. 14:5-8.5(c) and (d). The commenters claim that developing utility specific standards and guidelines is duplicative and possibly contrary to the proposed regulations since the regulation codifies the Board's position on standards. Additionally, the manner in which an electric public utility satisfies its vegetation management obligation is outside the Board's purview as long as those obligations are satisfactorily met. The requirement for an electric public utility to prioritize its vegetation management activities based upon conditions imposed by the Board infringes upon a utility's inherent authority to manage its own business using its own judgment to act in the best interest of its stockholders and customers.

RESPONSE: The Board believes that requiring each utility to develop their own standards based upon the requirements in the rule is necessary to ensure that each utility addresses the specific vegetation management challenges that apply to their system and service area. In addition, such standards will be needed to guide contractors in how they should handle vegetation management for that utility.

12. COMMENT (ACE, JCP&L, PSE&G and RECO): The electric utilities do not plant or transplant trees on the right of way. As was discussed previously, only the owners of the property have the right to plant vegetation on the right of way. Therefore, the electric utilities suggest that N.J.A.C. 14:5-8.5(e)5 be deleted in its entirety. Further, the electric utilities seek clarification on and further explanation regarding what would be required by paragraph (e)8.

RESPONSE: The Board is receptive to the commenter's concerns and will delete paragraphs (e)5 and 8 upon adoption in response to the commenter's concerns. The Board will make these changes upon adoption because tree planting and transplanting is not a normal business activity which the utilities are required to conduct and these activities may be more effectively conducted by the actual property owners. Further, paragraph (e)8 will be deleted because maintaining a tree inventory is not a normal business activity of a utility and incorporating work management systems and related computer functions into the utilities vegetation management standards is confusing and nonessential. Accordingly, paragraphs (e)5 and 8 will be deleted upon adoption.

13. COMMENT (ACE, JCP&L, PSE&G and RECO): N.J.A.C. 14:5-8.5(g) would require utilities to remove trimmings and cut vegetation resulting from vegetation management activities. Electric utilities currently do not remove cuttings or cut vegetation in connection with storm related activities. This would involve an unreasonable expense, estimated at \$ 5.2 million. In addition, the requirement to remove all trimmings and cut vegetation may not be feasibly possible. This rule would be particularly burdensome in the event of a storm. The utility neither owns the trees downed due to a major event nor caused them to fall. This is not normal maintenance but emergency work made necessary by the event. Currently, if a tree falls into a utility's lines, the utility is responsible for clearing the trees off of its facilities, but the property owner is responsible for the removal of the tree, which makes sense because the property owner is the owner of the tree as well. To the extent that electric utilities are required to remove trimmings and cut vegetation, removal within five business days is impractical given the large amount of right of ways that are maintained. Therefore, we propose the following revisions: Where feasible, the electric public utility shall dispose of all vegetation debris resulting only from **normal** vegetation management work in a manner that is acceptable to the property owner within 15 business days after the vegetation was cut.

RESPONSE: The Board agrees that the removal of storm-related vegetative debris has never been the responsibility of the electric utilities. The Board has clarified subsection (g) to that effect. The requirement for removal of trimmings due to vegetation management activities caused by a major event is limited only to the specific branches or vegetation that the utility must cut or trim for its purposes. The remainder of vegetation that is downed by a storm is not the responsibility of the utility. However, even with this clarification, vegetation removal after a storm may in some cases represent a hardship for the utilities, which were of course in no way responsible for the major event. Accordingly, the rule provision has been modified upon adoption to remove the deadline within which vegetation related to major events must be removed.

14. COMMENT (ACE, JCP&L, PSE&G and RECO): The Board should defer regulation of transmission lines to the jurisdiction of the Federal Energy Regulatory Commission (FERC). We recommend that the Board allow FERC,

Congress and the North American Electric Reliability Council (NERC) time to address the issues and to allow NERC to finalize national standards. Once completed, the Board will have an opportunity to review and consider regulations that will coordinate, rather than conflict with, FERC and NERC's efforts. We suggest, therefore, that the Board delete any reference to transmission systems from the proposed rules, at least pending Congress' review of the September 7th Report.

RESPONSE: The Board is aware that FERC is developing rules to govern transmission line vegetation management. However, the Board does not wish to leave this crucial area without rules which would mandate transmission line vegetation management until FERC has finalized its own rules in this area. Transmission lines are a crucial component of an electric utility's energy delivery system. Without adequate vegetation management, unmanaged vegetation may encroach upon transmission lines and impair the utility's ability to deliver vital electric service to its customers. At such time as FERC finalizes its transmission line vegetation management rules, the Board will consider reevaluating its rules pertaining to transmission line vegetation management.

15. COMMENT (ACE, JCP&L, PSE&G, RECO and NJPC): Transmission right of way clearing in restricted areas such as the wetlands could conflict with the Pinelands and other environmentally sensitive areas. The Pinelands Commission notes that one apparent inconsistency between the proposed new rules and the standards of the Pinelands Comprehensive Management Plan (CMP) is N.J.A.C. 14:5-8.6(e)6, which only permits grass vegetation within three feet of any structure, while the Pinelands CMP at N.J.A.C. 7.50-6.24(c) limits permanent lawn areas to areas specifically intended for active human use. In addition, the proposed rules require the clearing of existing vegetation, in particular the removal of woody vegetation, and the planting of other types of vegetation, including grasses within the right of way, while the Pineland Commission's Ecologically Based Right-of-Way Maintenance Plan aims to maximize native vegetation and minimize planting. It is not clear how the vegetation management procedures will satisfy the best integrated vegetation management practices standard contained at N.J.A.C. 14:5-8.6(e)8. Accordingly, the rule should be amended upon adoption to provide a definition for the term "best integrated vegetation management practices available and practical" in a manner that is consistent with all applicable Federal, State or local laws.

RESPONSE: The Board is aware that certain areas of the State are protected by specific environmental regulations, such as the Pinelands Comprehensive Management Plan. In order to ensure that the Board's vegetation management rules do not conflict with the Pinelands regulations, the Board's rules already require at N.J.A.C. 14:5-8.3(f) that electric public utilities make sure that their contractors are aware of and comply with all applicable Federal, State, county and municipal laws, rules or regulations that apply to vegetation management work. The Board believes that this requirement is sufficient to meet the concerns raised by the commenter because this provision requires that vegetation management work undertaken on behalf of an electric utility is done in a manner which is consistent with all applicable laws, rules and regulations. Accordingly, the Board believes that it is not necessary to make the commenter's suggested change as the utilities will be required to comply with the Board's vegetation management rules in conjunction with all other applicable regulations, rules and laws.

16. COMMENT (ACE, JCP&L, NJUA, PSE&G and RECO): The proposed rules fail to justify the need for a distinction between the "wire zone" and the "border zone." To make such a distinction in the field would be inefficient and cost prohibitive. The electric utilities maintain their rights of way uniformly from one side to the other and this process should continue. The standard set forth in N.J.A.C. 14:5-8.6(e)2 should apply to the entire right of way. Therefore, we recommend deleting paragraphs (e)3 and 4 in their entirety. Further, the requirement in paragraph (e)2 precluding any vegetation on the right of way that grows taller than 15 feet should be replaced by a requirement that any such vegetation should comply with the clearance dictated by the National Electric Safety Code (NESC) requirements. The NESC requirements state that "trees that may interfere with ungrounded supply conductors should be trimmed or removed. Normal tree growth, the combined movement of trees and conductors under adverse weather conditions, voltage, and sagging of conductors at elevated temperatures are among the factors to be considered in determining the extent of trimming required."

RESPONSE: The Board believes that the commenter's suggested changes would dilute the vegetation management

requirements contained in the rule. The Board has instituted these requirements in order to ensure that utilities remove all vegetation within the right of way which may pose a threat to the reliability of the electric system. The commenter's proposed changes would allow a significant amount of vegetation to remain on the right of way, which could pose a problem. Accordingly, the Board has not made the suggested changes upon adoption.

17. COMMENT (ACE, JCP&L, NJUA, PSE&G and RECO): We oppose N.J.A.C. 14:5-8.6(e)8 because it is cost prohibitive, may conflict with the landowner's property rights, and does not add to the safety and reliability of the transmission. Therefore, the following revision is proposed to the first sentence of N.J.A.C. 14:5-8.6(e)(8): "To the extent that they pose a damage or hazard to the electrical transmission conductors, the electric public utility shall attempt to eliminate from the entire right of way any plant species identified as invasive and non-indigenous to New Jersey in: Snyder, David and Sylvan R. Kaufman, 2004."

RESPONSE: The Board has modified N.J.A.C. 14:5-8.6(e)8 upon adoption to clarify that the requirement for removal of invasive species is triggered only when the species poses a hazard to an energized conductor.

18. COMMENT (ACE, JCP&L, PSE&G and RECO): We object to the notification procedures in N.J.A.C. 14:5-8.8(a) because the proposed rule does not comport with the requirements of N.J.S.A. 48:3-17.9, which provides that a public utility may not enter a utility easement or right of way to perform vegetation management without having first provided at least five days notice to the landowner, either personally or via certified or registered mail. Further, we suggest subsection (b) be modified to replace the word "recipients" with "addresses to which" to avoid tripling the notification costs. Finally, we suggest subsection (c) be modified to reduce potential duplication of efforts where DEP permits are also required. (ACE, JCP&L, PSE&G & RECO)

RESPONSE: The procedures in subsection (a) are reasonable and are not inconsistent with the notice required under N.J.S.A. 48:3-17.9. The commenters' suggested clarification of subsection (b) has been made upon adoption. N.J.A.C. 14:5-8.8(c) has been modified upon adoption in order to reduce the burden on the utility while ensuring that the municipality will receive adequate notice. Specifically, N.J.A.C. 14:5-8.8(c) is changed to require a utility's contractor to provide written notice of pending vegetation management to a town clerk or other mutually agreed upon person, in addition to or in lieu of the mayor. Further, the phrase the "highest management authority or a person" is deleted, in order to allow the parties to agree upon the primary contact person.

19. COMMENT (ACE, JCP&L, PSE&G and RECO): We object to penalties being assessed in N.J.A.C. 14:5-8.10(a) starting day one of adoption of the regulations and, therefore, request a grace period of one year. In addition, we object to penalties being assessed in N.J.A.C. 14:5-8.10(b) before the utility has a chance to cure the problem. We suggest a 10-day period to resolve differences.

RESPONSE: The Board agrees in part and believes that a compromise in subsection (a) would be appropriate and is adding upon adoption a six-month grace period before the implementation of the provision for fines. The Board never intended to penalize a utility without providing them with the opportunity to cure the problem. Further, the Board agrees with the utilities' suggested change in subsection (b) and that change has been made upon adoption in order to clarify this provision. Specifically, the Board will provide utilities with five days business days to correct any violations, instead of the 10 days which was requested by the commenters, because the Board believes that five days is a sufficient period of time for the utilities to undertake corrective action. Finally, this section is clarified to state that the time period for calculating any penalties will begin on the day that the utilities received notice of the violation.

20. COMMENT (NJPC): We are concerned about work proceeding before approval to remove trees and vegetation in the Pinelands has been granted. Even if State and local permits have been properly obtained, a development application should be submitted to the NJPC prior to work commencing in the Pinelands.

RESPONSE: The rules require all vegetation management work to be done in compliance with these rules, as well as any applicable State or Federal rules, laws or regulations. Accordingly, the utility is responsible for obtaining any

necessary permits before commencing vegetation management work. Therefore, to the extent that any work subject to these rules occurs in the Pinelands, any permits that are required by the Pinelands Commission must be obtained prior to the commencement of the work.

21. COMMENT (NJPC): The application of any herbicide to any road or public utility right-of-way within the Pinelands area is prohibited. Accordingly, the rules should be amended to make clear that herbicides may not be used for vegetation management within the Pinelands Area.

RESPONSE: The rules already require utilities to abide by all State or Federal rules and regulations concerning vegetation management. To this extent, the utilities would be required to comply with any prohibitions instituted by the Pinelands Commission.

22. COMMENT (NJPC): We are concerned that the publications which are incorporated by reference in the rules may contain provisions which are inconsistent with the requirements of the Pinelands CMP, N.J.A.C. 7:50. Accordingly, we suggest that N.J.A.C. 14:5-8.5(a) be amended to include the following language: "Each electric public utility shall ensure that vegetation management conducted on its energized conductors is performed, to the extent consistent with and permitted by all applicable laws, including but not limited to the regulations of the Pinelands CMP, in accordance with these standards".

RESPONSE: The Board notes that the rule already has a provision, at N.J.A.C. 14:5-8.3(e), which requires utilities to comply with all other applicable laws or rules and does not believe that it is necessary to include additional language which specifically singles out the Pinelands regulations. Accordingly, the requested change has not been made upon adoption.

Summary of Agency-Initiated Change:

The Board has modified N.J.A.C. 14:5-8.8(a) upon adoption in order to limit how long before any pending vegetation management utilities may provide notice to property owners. This change has been made to address instances where a utility may begin vegetation management work and then have to resume the vegetation management work at a later date.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. The adopted amendment and new rules are not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis for the adopted amendment and new rules.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

14:5-6.1 Requirements for electric transmission lines

(a) Whenever an electric public utility constructs an overhead transmission line, it shall:

1. (No change.)

2. Locate towers whenever practicable and feasible in accordance with the topography so as to minimize their

appearance; and

3. Establish a program of painting towers initially and periodically in order to camouflage their appearance as much as possible and to the extent consistent with the need for protection.

(b) An entity that conducts vegetation management under an overhead transmission line shall comply with the standards for vegetation management set forth in N.J.A.C. 14:5-8.

SUBCHAPTER 8. VEGETATION MANAGEMENT (TREE TRIMMING) STANDARDS

14:5-8.1 Purpose and scope

This subchapter sets forth requirements that electric public utilities shall follow in managing vegetation in proximity to an energized conductor in order to ensure public safety and the efficient and reliable supply of electric power.

14:5-8.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1:

"Arboriculture" means the cultivation of trees, shrubs and other woody plants.

"Agricultural crop" means a cash crop which is sold for money.

"Border zone" means the space from the edge of the transmission line wire zone, as defined herein, to the outer boundary of the right of way.

*["Certified tree expert" means a person that has been certified as a Utility Specialist by the International Society of Arboriculture and in addition meets one of the following:

1. The person is certified as a tree expert by the New Jersey Department of Environmental Protection's Board of Tree Experts; or
2. The person is certified as a Certified Arborist by the International Society of Arboriculture.]*

"Contractor" means a person or entity, other than the Board, with which a utility contracts to perform work, furnish information and/or material. This term includes all subcontractors engaged by a contractor to perform any of the obligations required by a contract.

"Distribution line" means a primary electric voltage line, wire or cable including supporting structures and appurtenant facilities which delivers electricity from transformation points on the transmission system to points of connection at a customer's premises, that would not be considered a transmission line as set forth in N.J.A.C. 14:5-8.2.

"Electric public utility" means a public utility, as that term is defined in N.J.S.A. 48:2-13, that transmits and distributes electricity to end users within New Jersey.

***"Electric utility arborist" means a person that has been certified as a Utility Specialist by the International Society of Arboriculture and, in addition, meets one or more of the following:**

1. The person is certified as a Tree Expert by the New Jersey Department of Environmental Protection's Board of Tree Experts; or

2. The person is certified as a Certified Arborist by the International Society of Arboriculture.*

"Energized conductor" means an electric circuit or piece of equipment through which electricity is flowing or usually flows.

"Grass" means a type of plant with jointed stems, slender flat leaves and spike like flowers.

"Major event" means any of the following:

1. A sustained interruption of electric service resulting from conditions beyond the control of the electric distribution company (EDC), which may include, but is not limited to, thunderstorms, tornadoes, hurricanes, heat waves or snow and ice storms, which affect at least 10 percent of the customers in an operating area. Due to an EDC's documentable need to allocate field resources to restore service to affected areas(s) when one operating area experiences a major event, the major event shall be deemed to extend to those other operating areas of that EDC which are providing assistance to the affected area(s). The Board retains authority to examine the characterization of a major event;

2. An unscheduled interruption of electric service resulting from an action:

i. Taken by an EDC under the direction of an independent system operator;

ii. Taken by the EDC to prevent an uncontrolled or cascading interruption of electric service; or

iii. Taken by the EDC to maintain the adequacy and security of the electric system, including emergency load control, emergency switching and energy conservation procedures, which affects one or more customers;

3. A sustained interruption occurring during an event which is outside the control of the EDC and is of sufficient intensity to give rise to a state of emergency or disaster being declared by State government; or

4. When mutual aid is provided to another EDC or utility, the assisting EDC may apply to the Board for permission to exclude its sustained interruptions from its Customer Average Interruption Duration Index (CAIDI) and System Average Interruption Frequency Index (SAIFI), as defined under N.J.A.C. 14:5-7.2, Calculations. Interruptions occurring during a major event in one or more operating areas shall not be included in the EDC's CAIDI and SAIFI calculations of those affected operating area(s). However, interruption data for major events shall be collected, according to the reporting requirements outlined in N.J.A.C. 14:5-7.9.

"Right of way" means less than fee interest in property, which gives a public utility a limited right to use land owned by another person or entity for the purpose of transmitting or distributing electricity. This right is typically memorialized in an easement. This term also includes the parcel of land for which a public utility holds a right of way or easement.

"Transmission line" means an electrical line, wire or cable*, (*including the supporting structures*) **and appurtenant facilities*** which transmits electricity from a generating plant to electric distribution lines. An electric transmission line ***usually*** has a rating exceeding 69 kilovolts.

"Vegetation" means trees and other plants.

"Vegetation management" means the removal of vegetation or the prevention of vegetative growth, to maintain safe conditions around energized conductor(s) and ensure reliable electric service. Vegetation management consists of

biological, chemical, cultural, manual and mechanical methods to control vegetation in order to prevent hazards caused by the encroachment of vegetation on energized conductor(s), and to provide utility access to the conductor.

"Tree" means a tall perennial woody plant with a main trunk and branches forming a distinct elevated crown.

"Wire zone" means the *[portion of a transmission line right of way that is]* ***land*** located directly under the widest portion of a transmission line. The wire zone is bounded on each side by a location on the ground that is directly under the outermost transmission wire.

"Woody plant" means any vascular plant that has a perennial woody stem and supports continued vegetative growth above ground from year to year and includes trees.

14:5-8.3 General provisions

(a) An electric public utility shall ensure that vegetation management is conducted in accordance with this subchapter on any energized conductors of 600 volts and higher, whether for distribution or transmission, that the electric public utility owns, in whole or in part.

(b) Each electric public utility shall obtain, and shall ensure that its contractors obtain, all required permits and licenses prior to commencement of vegetation management.

(c) An electric public utility that utilizes chemical or biological agents in vegetation management shall comply with any laws or regulations governing the use of those biological and chemical agents.

(d) Each electric public utility shall employ a vegetation manager (VM), who is *[a certified tree expert]* ***an electric utility arborist***, as defined at N.J.A.C. 14:5-8.2. The VM shall be a utility employee, not a contractor. The electric public utility shall provide the VM with the authority and the resources to administer all aspects of the utility's vegetation management program, and the VM shall ensure that the electric public utility complies with this subchapter. The VM's name and contact information shall be posted on the electric utility's web site and shall be included on all notifications provided pursuant to the notice requirements of N.J.A.C. 14:5-8.7.

(e) Each electric public utility shall ensure that all contractors hired to perform vegetation management inform their workers of all applicable Federal, State, county, and municipal laws, rules or regulations that apply to the work performed under this subchapter. The electric utility shall also ensure that all contractors comply with each applicable requirement of this subchapter and all other applicable law.

(f) An electric public utility that performs vegetation management at the request of a municipality or government agency, other than vegetation management required under this subchapter, may require the requesting party to pay any cost above the electric public utility's cost to perform the vegetation management required by this subchapter. An electric public utility shall not perform such additional vegetation management if the additional vegetation management would decrease the reliability or safety of an energized conductor.

(g) Upon a written request from a municipality, an electric public utility may, but is not required to, temporarily suspend compliance with one or more of the vegetation management requirements of this subchapter, within the following limits:

1. The suspension of compliance shall apply only to the distribution system, and shall not apply to vegetation management under transmission lines;

2. The suspension of compliance shall apply only to those portions of a distribution system that are located within the

municipality, and that do not affect service to any adjacent municipality;

3. The electric public utility shall not suspend compliance with any requirement if the suspension would result in danger to the public; and

4. If the suspension results in additional costs to the electric public utility due to lack of tree trimming, the municipality shall reimburse the electric public utility for these costs.

(h) An electric public utility may petition the Board for recovery of the distribution and transmission portion of vegetation management program costs required under this subchapter in future base rate proceedings.

(i) Upon a utility's receiving notice of, or having actual knowledge of, any dead, rotten, or diseased vegetation which overhangs, leans toward, or may fall into an energized conductor *[within a utility right of way]*, the electric public utility shall promptly remove ***or remedy*** the *[vegetation]* ***potential safety concern as promptly as possible***. ***If removal of the vegetation requires the electric public utility to access or cross property for which it does not hold an easement or other legal authorization, the electric public utility shall take all reasonable steps to obtain any necessary permission from the property owner and remove or remedy the potential safety concern as promptly as possible. In response to a major event, the utility will only be required to remedy the potentially dangerous condition.***

14:5-8.4 Maintenance cycle

(a) An electric public utility shall perform an annual visual inspection of all energized conductors, to determine whether vegetation management is needed. The visual inspection may be performed from the ground except in cases where the conductor is not visible from the ground. The electric public utility shall take into account the height of the vegetation and the distance of the vegetation from the energized conductor, in determining whether vegetation management is needed.

(b) An electric public utility shall perform vegetation management on vegetation that is close enough to pose a threat to its energized conductors at least once every four years.

(c) In addition to the maintenance required in (b) above, if an electric public utility becomes aware either through notification or during the inspections required under (a) above or at any other time, of any vegetation close enough to pose a threat to its energized conductor, which is likely to affect reliability or safety prior to the next required vegetation management, the electric utility shall ensure that necessary vegetation management is promptly performed as required under N.J.A.C. 14:5-8.5.

14:5-8.5 Technical standards for vegetation management

(a) Each electric public utility shall ensure that vegetation management conducted on its energized conductors is performed in accordance with the standards and accepted procedures set forth in the following publications, which are incorporated herein by reference including amendments and supplements thereto:

1. Pruning Trees Near Electric Utility Lines, by Dr. Alex L. Shigo. This publication may be obtained from Shigo and Tree Associates, P.O. Box 769, Durham, New Hampshire 03824;

2. Part 1 of the document entitled Tree, Shrub, and Other Woody Plant Maintenance-Standard Practices. This document, also known as ANSI A300, is published by the American National Standards Institute, and may be obtained at www.ansi.org;

3. Best Management Practices, Utility Pruning of Trees, 2004. This title is published by the International Society of Arboriculture and may be obtained at <http://secure.isa-arbor.com/store/Best-Management-Practices-pUtility-Pruning-of-Trees-P23060.aspx>;
4. Environmental Stewardship Strategy for Electric Utility Rights-of-Way, (2002). This title is published by the Edison Electric Institute Vegetation Management Task Force, which may be obtained at www.eei.org;
5. Pruning, Trimming, Repairing, Maintaining, and Removing Trees, and Cutting Brush - Safety Requirements, 1994. This document, also known as ANSI Z133.1, is published by the American National Standards Institute, and may be obtained at www.ansi.org;
6. Native Trees, Shrubs And Vines For Urban And Rural America: A Planting Design Manual for Environmental Designers, by Hightshoe, G.L., 1987, is published by John Wiley and Sons and may be obtained at <http://www.wiley.com/WileyCDA/WileyTitle/productCd-0471288799.html>;
7. Manual of woody landscape plants 5th Ed., by Michael A. Dirr. Stipes Publishing, LLC; 5th edition (August, 1998), and may be obtained at <http://www.amazon.com/exec/obidos/tg/detail/-/0875637957/103-3217696-1920611?v=glance>;
8. Hortus Third: A concise dictionary of plants cultivated in the United States and Canada, by L.H. Bailey Hortorium, 1976, and may be obtained at <http://www.wiley.com/WileyCDA/WileyTitle/productCd-0025054708.html>; and
9. National Electric Safety Code C2-2002. ISBN: Z2-RES69-02 is published by the Institute of Electrical and Electronics Engineers, Inc and may be purchased at www.ieee.org.

(b) Where multiple standards listed at (a) above would apply or conflict, the VM ***or his or her designee*** shall select the most appropriate method ***[and shall document the reasons for the selection]***.

(c) Each electric public utility shall develop its own vegetation management standards and guidelines, which shall be consistent with this subchapter. In developing these standards and guidelines, a utility shall prioritize work based upon:

1. The extent of the potential for vegetation to interfere with the energized conductor;
2. The voltage of the affected energized conductor; and
3. The relative importance of the affected energized conductor in maintaining safety and reliability.

(d) Each electric public utility shall provide a copy of their vegetation management standards and guidelines to the Board ***[within 30 days after (the effective date of this rule)]* ***by January 17, 2007*****. If an electric public utility makes a change in its vegetation management standards and guidelines, the utility shall provide Board staff with a copy of the change no later than 30 days prior to implementing the change.

(e) Each electric public utility's vegetation management standards and guidelines shall cover, at a minimum, all of the following activities:

1. Tree pruning and removal;
2. Vegetation control around poles, substations and other energized conductors;
3. Manual, mechanical, or chemical control of vegetation along rights of way;

4. Inspection of vegetation management both before and after the work is performed;

[5. Vegetation planting and transplanting;]

[6.] ***5.*** Research and development of improved vegetation management activities and practices; ***and***

[7.] ***6.*** Public education*[*; and]* ***.***

[8. Tree inventories, work management systems and related computerized functions.]

(f) Among the factors the electric utility shall consider in determining the extent of vegetation management to be performed at a particular site are:

1. The rate at which each species of vegetation is likely to grow back;
2. The voltage of the energized conductor, with higher voltages requiring larger clearances;
3. The potential movement of the energized conductor during various weather conditions;
4. The potential movement of trees or other vegetation during various weather conditions; and
5. The ***[utility right of way]* *utility's legal rights to access the area****.

(g) The electric public utility shall remove all trimmings and cut vegetation resulting from vegetation management activities ***that are part of the utility's regular maintenance cycle***, within five business days after the vegetation was cut, except if:

1. The electric public utility obtains written consent to leave the trimmings or cut vegetation^{*,*} from the owner of the property upon which the trimmings or cut vegetation are located; or
2. The vegetation management activities are performed as a direct result of a major event, in which case the electric public utility shall remove the trimmings and cut vegetation ***[within 30 days]* *that was cut or trimmed as part of its vegetation management activities****, after the conclusion of the major event.

14:5-8.6 Transmission line vegetation management

(a) In addition to the other requirements of this subchapter, transmission lines, as defined at N.J.A.C. 14:5-8.2, are subject to the requirements in this section.

(b) An electric public utility shall meet the requirements of the National Electric Safety Code (C-2 2002) for minimum clearances between any transmission line and the closest vegetation beneath it.

(c) If a transmission line is upgraded or newly constructed after ***[(effective date of this rule)]* *December 18, 2006****, the width of the ***[right of way]* *clearing under the transmission line**** shall meet the minimum requirements of the National Electrical Safety Code (C-2 2002).

(d) An electric public utility may request an exemption from (b) and (c) above based upon exigent circumstances.

(e) In addition to meeting the other requirements in this section, each electric public utility shall ensure that the following requirements for transmission lines are met:

1. Clearing under transmission lines shall be wide enough so that no vegetation or parts of vegetation will grow or fall into the transmission lines;
2. An electric public utility shall not allow any vegetation that grows taller than 15 feet at maturity to grow anywhere within a transmission line right of way;
3. An electric public utility shall not allow woody plants that naturally mature above three feet tall to grow in the wire zone without prior notice and inspection by the electric public utility's vegetation manager;
4. The electric public utility shall not allow any woody plant species that naturally matures above 15 feet to grow in the border zone. Mature height may be determined from a reliable text authorities either listed in, or equivalent to those listed in N.J.A.C. 14:5-8.5(a);
5. Non-woody agricultural crops, not exceeding 12 feet in height at maturity, may be grown anywhere in the right of way;
6. Only grass vegetation not exceeding a height of 18 inches shall be permitted to grow within three feet of any structure;
7. Where an electric public utility has cleared a right of way of vegetation and bare soil is exposed, the utility shall comply with the soil erosion requirements of the applicable soil conservation district in order to prevent soil erosion. A list of the soil conservation districts in New Jersey may be found at <http://www.state.nj.us/agriculture/rural/natrsrsc.htm>;
8. *[The electric public utility shall actively eliminate from the entire right of way any plant species identified as invasive and non-indigenous to New Jersey in:]* ***To the extent that any plant species identified as invasive and non-indigenous to New Jersey poses a hazard to electrical transmission conductors, the electric public utility shall make reasonable efforts to eliminate the species identified as invasive and non-indigenous in*** Snyder, David and Sylvan R. Kaufman, 2004*, **from the entire right of way***. An overview of non-indigenous plant species in New Jersey. New Jersey Department of Environmental Protection, Division of Parks and Forestry, Office of Natural Lands Management, Natural Heritage Program, Trenton, NJ (available at <http://www.nj.gov/dep/parksandforests/natural/heritage/InvasiveReport.pdf>, and incorporated by reference herein, including any supplements and amendments thereto). To do so, the electric public utility shall use the best integrated vegetation management practices available and practical; and
9. Each year in the March billing cycle, or two months prior to the commencement of vegetation management work on a particular property, whichever is earlier, each electric public utility shall notify owners of land upon which the utility holds a right of way of the requirements in this subsection, through a separate direct mailing.
 - (e) For the purposes of this section, the mature height of woody and non-woody agricultural crops shall be determined in accordance with the publications listed in N.J.A.C. 14:5-8.5(a), or equivalent publications.
 - (f) Each year, before June 1, the electric public utility shall develop a schedule for transmission line vegetation management, which shall be included in the electric public utility's annual system performance report as required by N.J.A.C. 14:5-7. The schedule shall:
 1. List the transmission lines planned for vegetation management for the next four years in advance (one of the four-year cycles required at N.J.A.C. 14:5-8.4(b));
 2. Ensure that vegetation management on transmission lines is performed prior to vegetation becoming a threat to safety

or service reliability; and

3. Be distributed to affected municipalities by the electric public utility.

14:5-8.7 Training, recordkeeping and reporting

(a) Each electric public utility shall ensure that all persons who perform vegetation management for the utility, whether employees or contractors, are trained in the proper care of trees and other woody plants in order to provide safe, reliable electric service, are knowledgeable regarding safety practices and line clearance techniques, and have demonstrated the ability to perform the work safely.

(b) Each electric public utility shall keep a record of all personnel used by a contractor or the utility to perform vegetation management for the electric public utility, and the dates and types of training that each has received.

(c) The electric public utility shall monitor and document all vegetation management and related activities. Documentation shall include, but shall not be limited to:

1. The municipality in which the work was performed;
2. Identification of the circuit and substation where vegetation management activities were performed;
3. The type of vegetation management performed including removal, trimming and spraying and methods used;
4. The crew size and supervisor's name;
5. The date of activity;
6. Any safety hazards encountered;
7. Any unexpected occurrence or accident resulting in death, life-threatening or serious injury to a person assigned to perform vegetation management activities or the public; and
8. Vegetation management activities planned for the following year.

(d) Each electric public utility shall include a summary of the information required in (c) above about its vegetation management work during the past year, and planned activities for the following year in an annual report to be filed with the Board by May 31st each year. This information shall include, at a minimum, the name of each municipality in which the electric public utility conducted vegetation management during the preceding year, and all circuits affected.

14:5-8.8 Public notice of planned vegetation management

(a) Each electric public utility shall make a diligent attempt to notify all property owners that may be affected by planned vegetation management. This requirement will be satisfied if the electric public utility provides written notice to affected property owners at least seven days*, **but not more than 45 days***, prior to performing any vegetation management activity. Notice shall be provided by separate direct mailing or any other Board-approved method.

(b) Each electric public utility shall maintain a record of the dates, content, and *[recipients of]* ***addresses to which*** all notices provided under (a) above for a period of five years after notices are sent.

(c) Each electric public utility ***or its contractor*** shall provide written notice of any pending vegetation management

activities to a primary contact. For a municipality, the mayor*, **town clerk*** or other ***person or position*** mutually agreed upon ***[person]*** shall be the primary contact. For other government entities and for public authorities, the primary contact shall be ***[the person with the highest management authority or a person]*** selected by mutual agreement between the electric utility and the entity or authority.

(d) An electric public utility shall notify all municipalities and public authorities that may be affected by vegetation management activities. The notice shall be made in writing to the primary contact designated under (c) above, at least two months in advance of the planned vegetation management. This notice shall include the planned dates and locations of the vegetation management. In addition, the notice of vegetation management shall be in a form appropriate to each electric public utility's procedures and easement rights.

14:5-8.9 Outreach programs

(a) Each electric public utility shall conduct an annual public education program to inform its customers, as well as the municipalities and public agencies in the electric public utility's service territory, of the importance of vegetation management, and of the electric public utility's role and responsibility in managing vegetation near electric lines.

(b) The public education program required under this section shall be implemented by direct mail or another method approved by the Board.

(c) Each electric public utility shall post its public education materials on its website.

14:5-8.10 Penalties

(a) Failure to comply with any provision of this subchapter shall subject the violator to penalties in accordance with the Board's regulatory and statutory authority. ***No penalties would be imposed for violations of the subchapter for a period of six months from the initial date of enactment.***

(b) An electric public utility that violates this subchapter may be subject to fines of up to \$ 100.00 per day per violation, for each day the violation occurs. ***The Board shall notify the utility of the violation(s) in writing. Upon receipt of the written notice of violation, the utility shall have five business days to correct the violation(s). Any failure to correct the violation shall subject the utility to fines of \$ 100.00 per day for each violation, calculated from the day such written notice was received by the electric public utility.***

(c) An electric public utility that violates this subchapter shall be liable for mitigating all costs incurred as the result of the violation.

(d) Fines and costs imposed under this subchapter are in addition to, not a replacement for, other fines and/or penalties that apply under Federal and State laws and regulations.

(e) In determining the appropriate sanction for a violation of this subchapter, the Board shall consider the following criteria, and any other factors deemed appropriate and material to the electric public utility's failure to comply:

1. The good faith efforts, if any, of the entity charged in attempting to achieve compliance;
2. The gravity of the violation or the failure to comply;
3. The number of past violations by the entity charged, including violations of this subchapter as well as of other standards adopted by the Board;

4. The appropriateness of the sanction or fine to the size of the company charged; and
5. Events judged to be beyond the violator's control.