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August 20, 2014

VIA ELECTRONIC MAIL & FEDERAL EXPRESS
Mr. David Ballengee
Senior Engineer Utilities
Division of Energy
New Jersey Board of Public Utilities
44 South Clinton Avenue – 9th Floor
P. O. Box 350
Trenton, New Jersey 08625-0350

Re: In the Matter of the Board's Review of N.J.A.C. 14:5-9 Vegetation Management Rules
BPU Docket No. EX14010104

Dear Mr. Ballengee:

The undersigned New Jersey Electric Distribution Companies, Public Service Electric and Gas Company ("***PSE&G***"), Atlantic City Electric Company ("***ACE***"), Jersey Central Power & Light Company ("***JCP&L***") and Rockland Electric Company ("***RECO***") (hereinafter collectively referred to as the "***EDCs***") jointly provide these comments in the above-referenced matter. These joint comments are provided in response to your request at the last stakeholder meeting held at the New Jersey Board of Public Utilities (the "***Board***") offices in Trenton, New Jersey on July 24, 2014. At that time, you requested final comments to the Board Staff's latest draft version of proposed changes to the Board's vegetation management rules at N.J.A.C. 14:5-9 *et seq.* dated July 18, 2014 (the "***Proposed VM Rules***"), which, as further revised, will be eventually considered by the Board for possible amendment and re-adoption as part of the above-referenced rulemaking proceeding.

In prior letters dated April 24, 2014 and June 6, 2014, the EDCs provided a set of preliminary substantive and procedural comments regarding prior draft versions of the Proposed VM Rules (the "***April 24 Joint Comments***" and the "***June 6 Joint Comments***" or, collectively, the "***EDCs' Prior Joint Comments***"). As indicated in the EDCs Prior Joint Comments, the EDCs continue to appreciate the opportunity to participate in the stakeholder process. The EDCs continue to appreciate that Board Staff has seriously considered the comments, suggestions and

overall approach suggested and/or recommended in the EDCs Prior Joint Comments, which are reflected in Board Staff's July 18 draft version of the Proposed VM Rules. The EDCs are hopeful that Board Staff will similarly consider these additional comments as part of the stakeholder process regarding Board Staff's Proposed VM Rules. As requested at the July 24, 2014 stakeholder meeting, these comments will address substantive issues as well as grammatical, punctuation and stylistic matters. The EDCs understand that the submission of final comments in the stakeholder process will not preclude the filing of additional comments in the Board's eventual rulemaking process. Nevertheless, the EDCs continue to note that they have reserved their rights to provide further additional comments as well as to supplement and/or modify these and the EDCs' Prior Joint Comments as the rulemaking proceeding unfolds.[1]

As in the EDCs' Prior Joint Comments, the EDCs continue to reiterate that the existing VM Rules, as adopted in 2008 (with discrete amendments made in 2010), resulted from very extensive stakeholder and rulemaking processes in which the respective interests of the many and varied stakeholder interests were fairly balanced to produce a set of reasonable and workable rules addressing the vegetation management of electric utility lines. Since 2008, and as amended in 2010, the VM Rules have been effective in promoting the use of integrated vegetation management techniques and processes in a manner that has effectively and efficiently served not only the EDCs and their respective customers' interests but also the broader general public interests of the citizens of New Jersey. Accordingly, the EDCs' perspective as expressed in the EDCs' Prior Joint Comments, that the existing VM Rules have been working well and, overall, do not need any significant change, has still not changed and the EDCs continue to believe that the Board's eventual re-adoption of the VM Rules with amendments should reflect limited, discrete and selective changes that strengthen the regulations in terms of, and without detriment to, their overall and demonstrated efficiency and effectiveness.

Consistent with the approach taken in the EDCs' Prior Joint Comments, once again, the EDCs provide two attachments (one clean and one marked to show changes) containing the EDCs recommendations for modifying Board Staff's Proposed VM Rules. These attachments are for Board Staff's consideration in its efforts to produce a draft of the Proposed VM Rules that will be presented for Board review. The following comments explain the changes proposed in the attachments and should be read together with the attachments.

1) **N.J.A.C. 14:5-9.1 Purpose and Scope**

The EDCs have no further comments to provide on this section of the Proposed VM Rules at this time.

2) **N.J.A.C. 14:5-9.2 Definitions**

[1] Please also note that each of the EDCs adopts these comments as its own, except for specific EDC references, which apply only to the specific EDC as noted.

The EDCs continue to recommend several, mainly technical, changes to the definitions section of the Proposed VM Rules as follows:

a. Danger Tree - The EDCs appreciate that Board Staff has adopted the EDCs recommended clarification of the definition of a danger tree consistent with applicable ANSI 300 standards and in order to clarify the distinction between a danger tree and a hazard tree.

   In response to the discussion at the July 24 stakeholder meeting regarding the use of this terminology in the Proposed VM Rules and the suggestion by one commenter that the definition should be removed, the EDCs note that at the outset of the stakeholder process it was very clear that there is confusion among laypersons with respect to the distinctions between danger trees and hazard trees and the adoption of clarifying definitions should aid in promoting a clearer understanding of the regulations related to dealing with hazard trees.

b. Electric utility arborist – The EDCs appreciate that Board Staff accepted the EDCs' recommended stylistic changes related to the use of capitalization in this definition. More importantly, however, the EDCs continue to recommend, as they did in the April 24 Joint Comments, that the requirement that the Electric utility arborist be certified as a Tree Expert be removed because the qualification "NJ Certified Tree Expert" has been superseded by the New Jersey Tree Expert and Tree Care Operators Licensing Act ("Tree Expert Law") P.L. 2009, Chapter 237, approved January 16, 2010 (N.J.S.A. 45:15C-11 *et seq.*) and the Tree Expert Law exempts utility vegetation management from its requirements. While Board Staff has asked if the Board should continue to require the qualification, notwithstanding the Tree Expert Law, the EDCs believe that the better course is to follow the wisdom of the legislature and to avoid the now unnecessary qualification. To do otherwise, would be to potentially create confusion and undue administrative burden since in order to be certified as a Tree Expert, the electric utility arborist would need to be licensed under the Tree Expert Law from

which utilities have been exempted.[2]

At the beginning of this stakeholder process, Board Staff stated, and requested participants to remember, that the purpose of the process was to continue to assure that the regulations were in line with industry standards and best management practices for electric utility vegetation management. The definition of Electric Utility Arborist provided by the EDCs is consistent with the ANSI A300 part 7 definition of a vegetation manager when used in the context of the Proposed VM Rules. The ANSI Standards are recognized nationally for utility vegetation maintenance as are the International Society of Arboriculture certifications.

c. Hazard Tree – The EDCs appreciate that Board Staff has adopted the EDCs recommended clarification of the definition of a hazard tree consistent with applicable ANSI 300 standards and in order to clarify the distinction between a hazard tree and a danger tree. As discussed above, the EDCs believe that the adoption of clarifying definitions should aid in promoting a better understanding of the regulations related to dealing with hazard trees.

d. Grass – The EDCs have no comment on or objection to the alphabetically correct reordering of the definition of "grass" in the definitions section of the Proposed VM Rules.

e. Lock out zone – The EDCs support the Board Staff's proposed definition with the following suggested changes. The EDCs think that the term "line" should more appropriately be "circuit" and the term "utility's" should be "EDC's." The EDCs also suggest that, for certain lower voltage circuits, which for a variety of reasons,

[2] The EDCs note that during discussion at the July 24 stakeholder meeting regarding the EDCs' proposed change to this definition, one commenter indicated that the EDCs' reliance on the Tree Expert Law was misplaced because the statute was not effective until regulations were adopted and, according to the commenter, regulations had not yet been adopted. Research regarding these assertions indicates that they are incorrect insofar as the specific language of Section 24 of the Tree Expert Law says that, as approved January 16, 2010, the Tree Expert Law took effect immediately, except for section 23, which takes effect upon the final promulgation of initial regulations necessary to carry out the provisions of the Tree Expert Law. Section 23 is the repealer section of the Tree Expert Law, indicating that the Tree Expert Law repeals P.L.1940, c.100 (C.45:15C-1 et seq.); and Sections 7 and 8 of P.L.1996, c.20 (C.45:15C-2.1 and -7.1). Thus, as discussed in the April 24 Joint Comments, section 21 of the Tree Expert Law (*i.e.*, N.J.S.A. 45:15C-31) exempts New Jersey public utilities from compliance with the Tree Expert Law. That exemption has been in effect since January 16, 2010 as the statute so states:

> 24. This act shall take effect immediately, except for section 23, which shall take effect upon the final promulgation of initial regulations by the board necessary to carry out the provisions of this act. Approved January 16, 2010.

do not run from, or through, a substation or switching station and do not have a first protective device, the definition should not apply. Accordingly, the proposed definition, as revised, would read as follows:

> "Lock out zone" refers to the portion of the EDC's distribution circuits, which begin at the substation or switching station and continue to the first protective device. As used herein, this definition does not apply to those EDC lower voltage distribution and subtransmission circuits that do not run from, or through, a substation or switching station and do not have a first protective device on the line (*e.g.*, circuits such as radial distribution and subtransmission circuits).

f. Mitigate - The EDCs appreciate that Board Staff adopted, with certain changes, the addition of the defined term "Mitigate" in order to provide an explanatory reference for the use of the term later in N.J.A.C. 14:5-9.5, and to allow for alternative approaches to the removal of hazard trees where appropriate; for instance, allowing for topping of a dead/dying tree, or an alternative engineering solution. The use of the term "mitigate" as set forth in the Proposed VM Rules, provides additional flexibility to the Vegetation Manager to address customer requests, where possible and practical, in a manner that will adequately address the hazard without total removal.

g. Wire zone - In their June 6 Joint Comments, the EDCs recommended that the Proposed VM Rules use the applicable ANSI 300 definition, which is the applicable industry standard. The EDCs suggested that the use of this definition would eliminate the need to refer to the NERC standards for minimum safe distance.

The EDCs note that Board Staff rejected this proposal without comment. At the July 24 stakeholder meeting, the EDCs requested that this issue be revisited. After further review, the EDCs recommend that the following sentence be added to the end of the existing definition of "wire zone:"

> "Notwithstanding the foregoing, if the EDC has adopted the ANSI 300 definition of "Wire zone," the EDC may rely on the ANSI 300 definition in carrying out the requirements of this subchapter."

This approach preserves the Board's existing definition as the minimum acceptable standard, but recognizes and clarifies that the use of the ANSI 300 definition, which is an industry standard, is acceptable practice under the Board's regulations. The use of the ANSI 300 definition as set forth in the EDCs' prior suggested revision, does not otherwise conflict with the Board's regulations but serves to avoid any conflict or confusion regarding the application of the Board's regulations and an applicable industry standard. The EDCs hope that Board Staff

will appreciate this approach as a more acceptable approach than the EDCs' prior suggestion, which Board Staff rejected. The EDCs encourage Board Staff to include this revised definition in the Proposed VM Rules.

h. Board Staff's changes to the definitions of "Transmission line," and "Vegetation Manager" are acceptable to the EDCs.

i. Electric Overhead Transmission Corridor. Finally, the EDCs recommend that the definition of an Electric Overhead Transmission Corridor be added in order to add clarity with respect to certain reporting obligations. As proposed by the EDCs, the new definition would read as follows:

> "Electric Overhead Transmission Corridor" refers to the expanse of land over which electric transmission lines are located. The corridor may be comprised of multiple electric utility rights-of-way and/or circuits. The EDC may own the land in fee, own an easement, or have certain franchise, prescription, or license rights to construct and maintain the lines with respect to such land.

3) **N.J.A.C. 14:5-9.3 General Provisions**

The EDCs appreciate that Board Staff has adopted many of the changes recommended by the EDCs' to subsections (f) and (g). However, as presented, the two subsections are not separated and appear as if they are a single subsection. This typographical error should be corrected. In addition, in subsection "(g)" a verb such as "commences" should be reinserted in, and the extra "a" removed from, the first sentence of the subsection as follows:

> (g) In addition to the vegetation management work required under this subchapter, an EDC, at the sole discretion of the EDC's VM, may perform additional vegetation management work, on the EDC's distribution system, which is requested to meet the aesthetic desires of a municipality or a private property owner and which is brought to the attention of the EDC's VM before the EDC's vegetation management **commences** in a municipality or on a ~~a~~ private property owner's property, provided that the additional work requested will not (1) impair the EDC's ability to meet the reliability and safety objectives of these regulations, (2) negatively impact the EDC's schedule of vegetation management work, and (3) require incremental costs.

The EDCs also understand that Board Staff meant to change the word "shall" to "may" in the second sentence of the subparagraph. While the EDCs preferred the word "shall" in order to avoid uncertainty and promote the use of this subsection for targeted special circumstances, the EDCs understand Board Staff's concerns and are willing to support the proposed change so that the rest of subsection (g) would read as follows:

> An EDC that performs vegetation management on the EDC's distribution system at the request of a municipality, government agency or private property owner, other than the vegetation management work required under this subchapter, **may** require the requesting party to pay any incremental cost above the EDC's cost to perform the vegetation management required by this subchapter. This work shall not apply to transmission line vegetation management required under N.J.A.C. 14: 5-9.7.

As modified, subsections (f) and (g) are now appropriately linked with the main purpose and scope provision of this subchapter and otherwise clarify the applicability of these subsections. The discussion at the July 24 stakeholder meeting has not changed the EDCs' collective thinking regarding the importance of the clarifying changes to provide a proper foundation regarding the nature and scope of vegetation management discussions between EDCs and municipalities.[3]

4) **N.J.A.C. 14:5-9.4 Maintenance Cycle**

The EDCs have no further comments with respect to this section of the Proposed VM Rules.

5) **N.J.A.C. 14:5-9.5 Hazard Trees**

The EDCs appreciate that Board Staff has adopted changes previously recommended in the EDCs' Prior Joint Comments. The EDCs only note that the tense of the word "posed" in subsection (b) should be changed to the present tense "poses" to match the tense of the rest of the subsection.

6) **N.J.A.C. 14:5-9.6 Technical Standards for Vegetation Management**

The EDCs appreciate that Board Staff has adopted changes recommended by the EDCs in their earlier written comments and have no further comments on this section at this time, except to recommend:

(i) the addition of the word "(Pruning)" to subsection 9.6(a)1 at the end of the referenced manual title in order to comport with the actual title of the reference manual;

(ii) the addition of a new industry best management standard reference that is a companion to the Part 7 IVM standard, as follows:

> 9.6(a) 5. Best Management Practices, Integrated Vegetation Second Edition 2014. This title is published by the International Society of Arboriculture and may be obtained at http://www.isaarbor.com/store/product.aspx?ProductID=101

[3] Please note that the EDCs have also recommended a proposed addition to subsection 9.3(i), which is discussed later under Item 8 of this letter.

(iii) a resulting change to the numbering of the existing subsections from 5., 6., 7., 8., and 9 to subsections 6., 7., 8., 9., and 10; and

(iv) to correct the punctuation in subsection (c) so that a semi-colon appears after each of the first two clauses of the subsection, and, in the third clause, so that the semi-colon appears before the word "and" at the end of the clause.

7) **N.J.A.C. 14:5-9.7 Transmission Line Vegetation Management**

The EDCs have no further comments on this section of the Proposed VM Rules except to note that the present tense word "incorporate" in subsection "(b)" should be past tense as in "incorporated." In subsection (f) 3, a period should be added at the end thereof. The EDCs appreciate Board Staff's consideration of the EDCs' Prior Joint Comments regarding the few changes proposed in this subsection.

8) **N.J.A.C. 14:5-9.8 Distribution Line Vegetation Management**

The EDCs appreciate that Board Staff seriously considered the EDCs' operational and cost concerns regarding the prior Board Staff proposal with respect to changes in this proposed new subsection. The EDCs note that the reference in subsection (b) to N.J.A.C. 14:5-9.5 should be changed to N.J.A.C. 14:5-9.6. Section 9.5 is the new "Hazard Tree" section of the Proposed VM Rules. Section 9.6 is the "Technical Standards for Vegetation Management."

With respect to "overhang," the EDCs recognize and appreciate Board Staff's attempt to achieve a balancing of interests in Board Staff's proposed alternative approach. In reviewing the alternative proposal, the EDCs refer Board Staff to the EDCs' proposed revision to the definition of "Lock out zone." Consistent with that proposal, the EDCs suggest that the word "line" be changed to "circuit." In addition, the EDCs recommend that subsection "c" use the defined term "Lock out zone" as opposed to repeating it so that the subsection would read as follows:

> (c) After January 1, 2016, all overhanging vegetation shall be removed on main line and un-fused lines in the Lock out zone on the distribution circuit. For circuits that do not have a Lock out zone, overhanging vegetation shall be removed as appropriate.
>
> (d) Mature trees may be exempt from the requirements of subsection (c) above at the reasonable discretion of the EDC's VM (or the VM's qualified designee) as it pertains to the Lock out zone.

As discussed at the July 24 stakeholder meeting, the EDCs also seek a coordinated effective date for these subsections of proposed Section 9.8 in order to accommodate the manner and timing of the EDCs' vegetation management contractor bidding process, which is already underway for work to be performed in 2015. Accordingly, the EDCs recommend that subsections (c) and (d) not become effective prior to January 1, 2016.

Finally, with respect to subsections (c) and (d), Board Staff has requested that the EDCs provide a cost perspective regarding the implementation of this alternative approach. In this regard, the EDCs note that in their June 6 Joint Comments they had outlined a concern regarding the unnecessary introduction of a "no overhang" approach to the tree canopy in the absence of a satisfactory cost-recovery mechanism that would be necessary to implement a new standard, which the EDCs anticipated and projected would impose significant cost increases on them. In addition, the EDCs expressed concern for the potentially dramatic aesthetic and scenic impact of the proposal on the communities served by the EDCs. As modified, subsections (c) and (d) will have a much more manageable cost impact on the EDCs in the implementation of their annual vegetation management programs.

However, the EDCs must also be clear that, although more manageable, these additional costs are nonetheless significant. Three of the EDCs (*i.e.*, ACE, JCP&L, and PSE&G) collectively estimate that implementing even the modified overhang requirements will, on average, increase programmatic vegetation management costs by approximately $2.5 million to $6 million for each EDC in each year of a four-year cycle, depending on the prudent application of the mature tree exemption.[4] These costs, which are associated with changes in the mechanical and operational vegetation management approach to the canopy in the Lock out zone, including use of different equipment to reach new clearance height requirements, the resulting increased growth rates associated with trimming the canopy, and resulting increases in the number of hazard trees to be addressed, among other things, can be expected to be on-going.

The EDCs have consistently raised a concern about the need for interim cost recovery caused by the imposition of significant new costs between rate cases. In their April 24 Joint Comments, the EDCs stated that:

> Changes to an EDC's existing clearances that would result in increased clearances will lead to increased tree trimming costs, which will need to be addressed through an interim recovery mechanism until an EDC can address it in its next rate case, and certainly negative reactions from municipalities and their residents.

In addition, in their June 6 Joint Comments, the EDCs, again, addressed the need for cost recovery, stating that:

> an appropriate cost recovery mechanism for contemporaneous recovery of these operating costs should be established to address such an extensive change in scope.

[4] RECO, with its much smaller service territory, has estimated that it will incur costs of approximately $.5 million per year over the course of the four year cycle following implementation of the new standards and anticipates increased on-going costs.

Indeed, in the June 6 Joint Comments, the EDCs suggested eliminating Board Staff's prior proposal altogether so that it could be considered at a later time in conjunction with cost recovery, because "Board Staff has taken the position in the stakeholder process that contemporaneous cost-recovery mechanisms for the EDCs would not be entertained as part of this rulemaking proceeding...."

So, although the EDCs appreciate Board Staff's efforts with respect to proposing a more manageable overhang standard, the EDCs must continue to stress the need for cost recovery until these additional costs can be addressed in an EDC's subsequent rate proceeding. In this regard, the EDCs propose adding an additional provision to section 9.3(i) to address these special circumstances as follows:

(i) An EDC 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. Notwithstanding the foregoing, the EDCs may seek contemporaneous recovery of incremental costs incurred as a result of the Board's modification of N.J.A.C. 14:5-9.8 (c), effective January 1, 2016, as follows:

1. By August 31, 2015, each EDC seeking such contemporaneous recovery shall submit (i) its estimated annual incremental costs of compliance with N.J.A.C. 14:5-9.8 (c), (ii) a proposed cost recovery mechanism ("Enhanced Vegetation Management Recovery Mechanism") and associated charges ("Enhanced Vegetation Management Charge") for recovery of the estimated incremental costs, and (iii) an appropriate form of notice. The Board shall, upon public notice, conduct an expedited hearing to approve the proposed Enhanced Vegetation Management Recovery Mechanism and Enhanced Vegetation Management Charge, prior to January 1, 2016. Thereafter, until the filing of the EDC's next base rate case following the Board's adoption of N.J.A.C. 14:5-9.8 (c), each EDC shall file with the Board an annual true-up accounting that identifies the actual incremental costs incurred by the EDC as a result of implementing the enhanced vegetation management standards set forth in N.J.A.C. 14:5-9.8 (c) and the resulting proposed changes to the Enhanced Vegetation Management Charge for the next subsequent year.

9) N.J.A.C. 14:5-9.9 Training, Record Keeping and Report

With respect to this section of the Proposed VM Rules, the discussion at the July 24 stakeholder meeting revealed several EDC concerns arising as a result of Board Staff's most recent proposals for reporting requirements. Some of those concerns pertained to duplication,

terminology related to transmission circuit length as opposed to "Electric Overhead Transmission Corridor mileage,"[5] the unnecessary inclusion of reporting regarding hazard trees along transmission corridors and levels of detail that did not appear to add value or which would be administratively burdensome to provide. As a result of the discussion on July 24, the EDCs understood (and appreciate) that Board Staff intended to remove the proposed requirement to include the applicable county in the listing required by subsection (c)1., and (d) 1. The EDCs believe that the discussion on July 24 also engendered a mutual understanding that reporting to the Board related to hazard trees should be limited to hazard trees along distribution circuits since transmission-related hazard trees are addressed through NERC requirements. In addition, the EDCs recommend the changes shown in the attached to subsections (d) and (e), which are intended to address the difficulty of distinguishing between inspection and trimming, which includes the use of herbicides and IVR-related judgments about tree species, rates of growth and removal versus trimming, with respect to the structure of the proposed reporting requirements. Accordingly, the EDCs recommend the following changes to subsections (d) and (e) for inclusion in the Proposed VM Rules:

(d) Each EDC 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 the Annual System Performance Report to be filed with the Board by May 31 of each year. The information provided under this requirement shall:

1) Include, at a minimum, the name of each municipality in which the EDC conducted vegetation management during the reporting year, and all circuits subject to such vegetation management~~;~~ and

2) Include a listing of **distribution circuits by** ~~that shall include a line for each county and~~ municipality **indicating** ~~that hazard trees were observed and columns for the number of hazard trees observed, the number of hazard trees removed and~~ the number of hazard trees **for which** ~~that~~ permission to remove was denied.

[5] The EDCs propose to insert the use of the concept of "corridors" for reporting purposes related to transmission because the use of that concept in that context is more consistent with transmission vegetation management operations than the concept of transmission circuit length, since vegetation management is carried out along transmission corridors which may contain multiple circuits. Thus, reporting on the percentage of circuit length would be inconsistent with the implementation of vegetation management work along transmission corridor miles and/or would be administratively burdensome (and effectively meaningless) to recalculate transmission corridors into circuit miles. For these vegetation management purposes, a transmission corridor is an area expressed in miles through which transmission circuits run and along which vegetation management occurs on a four year cycle. Consistent with this comment, the EDCs have proposed, as discussed above, the inclusion of a definition of "Electric Overhead Transmission Corridor" to add clarity to these requirements. In the case of distribution, circuit length expressed in miles is an appropriate measure.

(e) To track the completion of each vegetation management cycle for inspection and trimming required by these regulations, each EDC shall include the following tables in the Annual System Performance Report to be filed with the Board by May 31 of each year:

1. A table that includes the following columns:
   a.) percentage of **Electric Overhead Transmission Corridor mileage** ~~transmission circuit length~~ inspected **(and trimmed as necessary)** for each of the three years prior to the reporting to the reporting year of the Annual System Performance Report (3 columns)**;**

   b.) ~~percentage of transmission circuit length that required trimming for each of the three years prior to the reporting to the reporting year of the Annual System Performance Report (3 columns)~~

   ~~c.)~~ percentage of **Electric Overhead Transmission Corridor mileage** ~~transmission circuit length~~ inspected **(and trimmed as necessary)** for the reporting year of the Annual System Performance Report (1 column)**; and**

   ~~c~~d.) ~~percentage of transmission circuit length that required trimming for the reporting to the reporting year of the Annual System Performance Report (1 column)~~

   ~~e.)~~ projected percentage of **Electric Overhead Transmission Corridor mileage** ~~transmission circuit length~~ to be inspected **(and trimmed as necessary)** for each of the three years beyond the reporting to the reporting year of the Annual System Performance Report (3 columns).

   ~~f.) projected percentage of transmission circuit length that will require trimming for each of the three years beyond the reporting to the reporting year of the Annual System Performance Report (3 columns)~~

2. A table that includes the following columns:
   a.) percentage of distribution circuit length inspected **(and trimmed as necessary)** for each of the three years prior to the reporting to the reporting year of the Annual System Performance Report (3 columns)**;**

   b.) ~~percentage of distribution circuit length that required trimming for each of the three years prior to the reporting to the reporting year of the Annual System Performance Report (3 columns)~~

~~e.)~~ percentage of distribution circuit length inspected **(and trimmed as necessary)** for the reporting year of the Annual System Performance Report (1 column)**; and**

c~~d~~.) ~~percentage of distribution circuit length that required trimming for the reporting to the reporting year of the Annual System Performance Report (1 column)~~

~~e.)~~ projected percentage of distribution circuit length to be inspected **(and trimmed as necessary)** for each of the three years beyond the reporting to the reporting year of the Annual System Performance Report (3 columns).

~~f.) projected percentage of distribution circuit length that will require trimming for each of the three years beyond the reporting to the reporting year of the Annual System Performance Report (3 columns)~~

10) **N.J.A.C. 14:5-9.10 Public Notice of Planned Vegetation Management Activity**

At the July 24 stakeholder meeting, Board Staff proposed a change in subsection (f) in which the term "town clerk" would be changed to "municipal clerk." The EDCs have no objection to this proposed change and have no further comments regarding this section of the Proposed VM Rules at this time.

11) **N.J.A.C. 14:5-9.11 Outreach Programs**

The EDCs have no further comments regarding this section of the Proposed VM Rules at this time.

12) **N.J.A.C. 14:5-9.12 Penalties**

At the July 24 stakeholder meeting, Board Staff proposed to change the last sentence of subsection (b) to read as follows:

> "Any failure to correct the violation shall subject the EDC to penalties as determined by the Board consistent with the Board's Statutory authority."

Except for suggesting that the word "Statutory" need not be capitalized and should be replaced by "statutory," the EDCs do not object to this proposed change. With respect to additional discussion that took place during that meeting, the EDCs continue to hold the position that no further changes to this section are necessary or warranted.

****

These comments represent the EDC's comments as of this date in connection with the, presumably, last meeting in the stakeholder process with respect to the Proposed VM Rules. The EDCs have appreciated the opportunity to participate in the stakeholder process and the Board Staff's objectivity in considering various perspectives with respect to proposals for changing the existing VM Rules. The EDCs believe that the Proposed VM Rules, if presented to the Board with the additional clarifications and modifications recommended by the EDCs herein, will represent prudent modifications of an already strong and effective set of Board regulations. However, as stated at the outset, the EDCs have reserved their rights to provide further additional comments as well as to supplement and/or modify these and the EDCs' Prior Joint Comments as the rulemaking proceeding unfolds, including any continuation of the stakeholder process. If Board Staff has any questions, please let us know.

Respectfully submitted,

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TITLE 14. PUBLIC UTILITIES
CHAPTER 5. ELECTRIC SERVICE
SUBCHAPTER 9. ELECTRIC UTILITY LINE VEGETATION MANAGEMENT

N.J.A.C. 14:5-9 (2014)

§ 14:5-9.1 Purpose and scope

This subchapter sets forth requirements that EDCs 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.

§ 14:5-9.2 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 plant that is grown in significant quantities to be harvested as food, livestock fodder or for another economic purpose. This term includes, but is not limited to, landscape nursery stock and Christmas tree plantation stock.

"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.

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

"Danger Tree" is any tree on or off the right of way that could contact electric supply lines if it were to fall.

"Distribution line" means a primary electric voltage line, wire or cable operating at greater than 600 volts including supporting structures and appurtenant facilities that would not be considered a transmission line as set forth in this section.

"Electric Overhead Transmission Corridor" refers to the expanse of land over which electric transmission lines are located. The corridor may be comprised of multiple electric utility rights-of-way and/or circuits. The EDC may own the land in fee, own an easement, or have certain franchise, prescription, or license rights to construct and maintain the lines with respect to such land.

"Electric utility arborist" means a person engaged in the profession of electric utility vegetation management who, through appropriate certifications, experience, education and related training, possesses the competence to provide for or supervise, an EDCs integrated vegetation management program.~~,~~ The person, at a minimum, must be certified as a Utility Specialist by the International Society of Arboriculture.

"Energized conductor" means an electric circuit or piece of equipment through which electricity is flowing or usually flows. This term includes both distribution and transmission circuits and equipment.

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

"Hazard Tree" is a structurally unsound tree on or off the right of way that could strike electric supply lines when it fails. Please note that structural unsoundness distinguishes a hazard tree from a danger tree, such that while all hazard trees are danger trees, not all danger trees are hazard trees.

"Inactive transmission line corridor" means that unused part of the right of way that does not have transmission towers or transmission lines overhead.

"Integrated Vegetation Management" or "IVM" means a system of managing plant communities whereby vegetation managers set objectives, identify compatible and incompatible vegetation, consider action thresholds, and evaluate, select and implement the most appropriate vegetation control method(s) to achieve those objectives, based on the methods' environmental impact and anticipated effectiveness, along with site characteristics, security, economics, current land use and other factors.

"Lock out zone" refers to the portion of the EDC's~~utility's~~ distribution circuits, ~~line~~ which begins at the substation or switching station and continues to the first protective device. As used herein, this definition does not apply to those EDC lower voltage distribution and subtransmission circuits that do not run from, or through, a substation or switching station and do not have a first protective device on the line (*e.g.*, circuits such as radial distribution and subtransmission circuits).

"Major event" has the same meaning as is ascribed to this term in N.J.A.C. 14:5-1.2.

"Mitigate" means the process of diminishing risk associated with hazard trees through application of prudent IVM techniques, which include tree removal or pruning, and practical engineering solutions used in the judgment of the Vegetation manager to make safe and eliminate or adequately reduce the risks of the hazard tree to the distribution system.

"NERC" means the North American Electric Reliability Corporation.

"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 substations or switching stations. An electric transmission line usually has a rating exceeding 69 kilovolts.

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

"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.

"Vegetation Manager" or "VM" means an electric utility arborist, who is employed by an EDC to supervise and ensure the EDC's compliance with this subchapter.

"Wire zone" means the land located directly under the widest portion of a transmission line. For a horizontal transmission line, the wire zone is bounded on each side by a location on the ground that is directly under the outermost transmission wire or the transmission tower, whichever is wider. For a vertical transmission array, the width of the wire zone shall be determined using the minimum safe distance specified in the North American Electric Reliability Corporation (NERC) FAC-003 which is incorporated herein by reference and available at www.nerc.com. Notwithstanding the foregoing, if the EDC has adopted the ANSI 300 definition of "Wire zone," the EDC may rely on the ANSI 300 definition in carrying out the requirements of this subchapter.

"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.

§ 14:5-9.3 General provisions

(a) An EDC 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 EDC shall obtain, and shall ensure that its contractors obtain, all required permits and licenses prior to commencement of vegetation management.

(c) An EDC 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 EDC shall employ a Vegetation Manager, who is an electric utility arborist, as defined at N.J.A.C. 14:5-9.2. 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. 14:5-9.10.

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

(f) As provided by section 9.1 of this subchapter (N.J.A.C. 14:5-9.1- Purpose and scope), these regulations are intended to ensure public safety and efficient and reliable supply of electric power by requiring the EDC's use of integrated vegetation management and sound arboricultural practices to maintain or improve the safety and reliability of the EDCs electric delivery systems consistent with the EDC's obligations under the Board's Electric Distribution Service Reliability and Quality Standards as set forth in N.J.A.C. 14:5-8.9.

(g) In addition to the vegetation management work required under this subchapter, an EDC, at the sole discretion of the EDC's VM, may perform additional vegetation management work, on the EDC's distribution system, which is requested to meet the aesthetic desires of a municipality or a private property owner and which is brought to the attention of the EDC's VM before the EDC's vegetation management commences in a municipality or on a a private property owner's property, provided that the additional work requested will not (1) impair the EDC's ability to meet the reliability and safety objectives of these regulations (2) negatively impact the EDC's schedule of vegetation management work, and 3) require incremental costs. An EDC that performs vegetation management on the EDC's distribution system at the request of a municipality, government agency or private property owner, other than the vegetation management work required under this subchapter, may ~~shall~~ require the requesting party to pay any incremental cost above the EDC's cost to perform the vegetation management required by this subchapter. This work shall not apply to transmission line vegetation management required under N.J.A.C. 14:5-9.7.

(h) Upon a written request from a municipality, an EDC 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 transmission line vegetation management required under N.J.A.C. 14:5-9.6;

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 EDC 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 EDC due to lack of tree trimming or other vegetation management, the municipality shall reimburse the EDC for additional costs.

(i) An EDC 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. Notwithstanding the foregoing, the EDCs may seek contemporaneous recovery of incremental costs incurred as a result of the Board's modification of N.J.A.C. 14:5-9.8 (c), effective January 1, 2016, as follows:

1. By August 31, 2015, each EDC seeking such contemporaneous recovery shall submit (i) its estimated annual incremental costs of compliance with N.J.A.C. 14:5-9.8 (c), (ii) a proposed cost recovery mechanism ("Enhanced Vegetation Management Recovery Mechanism") and associated charges ("Enhanced Vegetation Management Charge") for recovery of the estimated incremental costs, and (iii) an appropriate form of notice. The Board shall, upon public notice, conduct an expedited hearing to approve the proposed Enhanced Vegetation Management Recovery Mechanism and Enhanced Vegetation Management Charge, prior to January 1, 2016. Thereafter, until the filing of the EDC's next base rate case following the Board's adoption of N.J.A.C. 14:5-9.8 (c), each EDC shall file with the Board an annual true-up accounting that identifies the actual incremental costs incurred by the EDC as a result of implementing the enhanced vegetation management standards set forth in N.J.A.C. 14:5-9.8 (c) and the resulting proposed changes to the Enhanced Vegetation Management Charge for the next subsequent year.

(j) Each EDC shall perform vegetation management on a pro rata basis over the four-year cycle identified in N.J.A.C. 14:5-9.4(b).

§ 14:5-9.4 Maintenance cycle

(a) An EDC shall perform an annual visual inspection of all energized conductors that are associated with a transmission line, 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 EDC 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 EDC 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 EDC becomes aware of (1) any vegetation close enough to its energized conductors to affect reliability or safety prior to the next required vegetation management activity, or (2) the presence of hazard trees, the electric utility shall ensure that necessary vegetation management is promptly performed as required under N.J.A.C. 14:5-9.5 and 9.6.

(d) If the EDC determines that vegetation described under (c) above poses an immediate safety hazard, the EDC shall not be subject to the notice requirements at N.J.A.C. 14:5-9.10. However, the EDC shall, to the extent practicable, make a reasonable effort to notify the customers and property owners described at N.J.A.C. 14:5-9.10(b) 1 and 2 prior to performing the vegetation management.

§ 14:5-9.5 Hazard Trees

(a) If the EDC's VM determines that a tree meets the definition of a hazard tree, the EDC shall determine if it is permitted (e.g. by easement, tariff, or law) to remove or mitigate the hazard tree. If the EDC determines that it is not permitted to remove or mitigate the hazard tree, the EDC shall attempt to obtain permission to remove or mitigate the hazard tree.

(b) If permission is granted or it is determined that permission is not necessary, the EDC shall arrange to remove or mitigate the hazard tree as part of the scheduled vegetation management work to be performed during the current year, unless the VM determines that the condition of the hazard tree poses~~d~~ an imminent risk of failure, in which case, the EDC shall remove or mitigate the hazard tree promptly.

(c) The EDC is required to comply with the recording and reporting requirements of this subchapter as set forth at N.J.A.C. 14:5-9.9(d)2.

§ 14:5-9.6 Technical standards for vegetation management

(a) Each EDC 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. Part 1 of the document entitled for Tree Care Operations - Tree, Shrub, and Other Woody Plant Maintenance-Standard Practices (Pruning). This document, also known as ANSI A300, is published by the American National Standards Institute, and may be obtained at www.ansi.org;

2. Part 7 of the document entitled for Tree Care Operations - Tree, Shrub, And Other Woody Plant Maintenance - Standard Practices (Integrated Vegetation Management A. Utility Rights-Of-Way). This document, also known as ANSI A300, is published by the American National Standards Institute, and may be obtained at www.ansi.org;

3. Part 9 of the document entitled for Tree Care Operations - Tree, Shrub, And Other Woody Plant Maintenance - Standard Practices (Tree Risk Assessment). This document, also known as ANSI A300, is published by the American National Standards Institute, and may be obtained at www.ansi.org;

4. Best Management Practices, Utility Pruning of Trees, 2004. This title is published by the International Society of Arboriculture and may be obtained athttp://www.isaarbor.com/store/product.aspx?ProductID=65;

5. Best Management Practices, Integrated Vegetation, Second Edition 2014. This title is published by the International Society of Arboriculture and may be obtained at http://www.isaarbor.com/store/product.aspx?ProductID=101.

6. Pruning, Trimming, Repairing, Maintaining, and Removing Trees, and Cutting Brush -- Safety Requirements, 2012. This document, also known as ANSI Z133.1, is published by the American National Standards Institute, and may be obtained at www.ansi.org;

~~7~~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 from various resellers.

~~7~~8. Manual of woody landscape plants 5th Ed., by Michael A. Dirr. Stipes Publishing, LLC; 5th edition (August, 1998), and may be obtained from various resellers.

98. Hortus Third: A concise dictionary of plants cultivated in the United States and Canada, by L.H. Bailey Hortorium, 1976, and may be obtained from various resellers and;

109. National Electric Safety Code C2-2007. ISBN: Z2-RES69-07 is published by the Institute of Electrical and Electronics Engineers, Inc. and may be purchased at www.ieee.org.

(b) Where multiple standards or methods listed at (a) above would apply or conflict, the VM or his or her designee shall select the most appropriate standard or method under the circumstances.

(c) Each EDC shall develop its own vegetation management standards and guidelines, which shall be consistent with this subchapter. In developing these standards and guidelines, an EDC 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;

3. The relative importance of the affected energized conductor in maintaining safety and reliability; and;

4. The presence and condition of any hazard trees.

(d) Each EDC shall provide a copy of its vegetation management standards and guidelines to the Board as a chapter in the Annual System Performance Report. If an EDC 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 EDC's vegetation management standards and guidelines shall cover, at a minimum, all of the following activities:

1. Tree pruning and removal;

2. The procedures for handling the removal of hazard trees;

3. Vegetation control around poles, substations and other energized conductors;

4. Manual, mechanical, or chemical control of vegetation along rights of way;

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

6. Research and development of improved vegetation management activities and practices; and

7. Public education.

(f) Among the factors the EDC 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's legal rights to access the area.

(g) The EDC 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 the EDC obtains consent to leave the trimmings or cut vegetation, from the owner of the property upon which the trimmings or cut vegetation are located.

§ 14:5-9.7 Transmission line vegetation management

(a) In addition to the other requirements of this subchapter, transmission lines, as defined at N.J.A.C. 14:5-9.2, are subject to the requirements in this section.

(b) At a minimum, each EDC shall meet the requirements for minimum clearances between any transmission line and the closest vegetation, which are set forth in the currently applicable version of North American Electric Reliability Corporation (NERC) FAC-003 which is incorporated herein by reference and available at www.nerc.com.

(c) Except as provided at (f) below, the following shall apply in the wire zone:

1. An EDC shall allow woody plants that are agricultural crops that naturally mature at 12 feet or less;

2. Other than as provided at (c)1 above, the EDC shall not allow woody plants that mature above three feet tall to grow in the wire zone, and the preferred growth shall be grasses or a low-growing, compatible, scrub-shrub plant community to obtain a meadow effect where possible.

(d) Except as provided at (f) below, the EDC shall apply integrated vegetation management (IVM) in the border zone. IVM is a best management practice conveyed in the American National Standard for Tree Care Operations, Part 7 (ANSI 2006) and the International Society of Arboriculture's *Best Management Practices: Integrated Vegetation Management* (Miller 2007).

(e) In addition to meeting the other requirements in this section, each EDC shall ensure that the following requirements for transmission lines are met, except for those instances set forth in (f) below:

1. Clearing under transmission lines shall be wide enough within the EDC's right of way so that no vegetation or parts of vegetation will grow or fall into the transmission lines;

2. Only grass vegetation shall be permitted to grow within three feet of any structure;

3. Where an EDC has cleared a right of way of vegetation and bare soil is exposed, the EDC 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 www.state.nj.us/agriculture/divisions/anr/nrc/conservdistricts.html;

4. To the extent that any plant species identified as invasive and non-indigenous to New Jersey poses a threat to the maintenance of the right of way or a hazard to electrical transmission conductors, the EDC shall not plant that species in the right of way, and shall make reasonable efforts to actively eliminate from the entire right of way the species identified as invasive and non-indigenous, see Snyder, David and Sylvan R. Kaufman, 2004. 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 EDC shall use the best integrated vegetation management practices available and practical; and

5. 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 EDC shall advise customers of the requirements in this subsection, through a direct notification.

(f) Notwithstanding (d) and (e) above, an EDC may leave trees and other woody vegetation within the transmission right of way under any of the following conditions:

1. The right-of-way document, easement, indenture, deed or other written land rights, executed before Jan 1, 2007, expressly permit vegetation to be located within the transmission right of way;

2. The slope of the topography exceeds 30 degrees and the transmission right of way is such that the tree or other vegetation at mature height will allow a space of more than 150 percent of the clearance requirements for an electrical path to ground, as set forth in the National Electric Safety Code, § 232 to § 235; or

3. Trees are located within an inactive transmission corridor.

(g) For the purposes of this section, the mature height of all vegetation, including agricultural crops, shall be determined in accordance with the publications listed in N.J.A.C. 14:5-9.5(a), or equivalent publications. Each EDC shall provide lists of acceptable species on its website or in a publication provided free of charge upon request by a ratepayer.

(h) Each year, by May 31, the EDC shall develop a schedule for transmission line vegetation management, which shall be included in the EDC's annual system performance report as required by N.J.A.C. 14:5-8. 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. 14:5-9.4(b));
2. Ensure that vegetation management on transmission lines is performed prior to vegetation becoming a threat to safety or service reliability; and

3. List the municipalities and the year when vegetation management work is anticipated to be done in each municipality.

(i) The EDC shall post the transmission line vegetation management schedule required under (h) above on its website and distribute it to affected municipalities and public authorities in accordance with N.J.A.C. 14:5-9.10.

§ 14:5-9.8 Distribution line vegetation management

(a) In addition to the other requirements of this subchapter, distribution lines, as defined at N.J.A.C. 14:5-9.2, are subject to the requirements in this section.

(b) Distribution lines shall be inspected and trimmed to maintain the horizontal clearance distance appropriate for the operating voltage and other factors as specified by the EDCs vegetation management standards as required by N.J.A.C. 14:5-9.5.

(c) After January 1, 2016, a ~~All~~ overhanging vegetation shall be removed on main line and un-fused lines in the ~~from distribution line segment from the substation~~

~~/switching station to the first protective device (~~Llock out zone~~)~~ on the distribution circuit~~line.~~ For circuits that do not have a Lock out zone, overhanging vegetation shall be removed as appropriate.

(d) Mature trees may be exempt from the ~~above~~ requirements of subsection (c) above at the ~~utility VM's~~ reasonable discretion of the EDC's VM (or the VM's qualified designee) as it pertains to the Llock out zone.

§ 14:5-9.9 Training, recordkeeping and reporting

(a) Each EDC shall ensure that:

1. Qualified OSHA and ANSI Z133 line clearance employees or contractors perform vegetation management for the EDC;

2. All such employees or contractors are trained in the proper care of trees and other woody plants in order to provide safe, reliable electric service; and

3. All such employees or contractors are knowledgeable regarding safety practices and line clearance techniques.

(b) Each EDC shall ensure that records are kept of all persons used by a contractor or the EDC to perform vegetation management on behalf of the EDC, including the dates and the types of training that each such person has received.

(c) The EDC shall monitor and document all vegetation management and related activities. Documentation shall be retained for five years and 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 EDC 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 the Annual System Performance Report to be filed with the Board by May 31 of each year.

The information provided under this requirement shall:

1) Include, at a minimum, the name of each ~~municipality~~ in which the EDC conducted vegetation management during the reporting year, and all circuits subject to such vegetation management; and

2) Include a listing of distribution circuits by ~~that shall include a line for each county and~~ municipality indicating ~~that hazard trees were observed and columns for~~ the number of hazard trees ~~observed, the number of hazard trees removed and the number of hazard trees~~ for which ~~that~~ permission to remove was denied.

(e) To track the completion of each ~~vegetation management~~ cycle for inspection and trimming required by these regulations, each EDC shall include the following tables in the Annual System Performance Report to be filed with the Board by May 31 of each year:

1. A table that includes the following columns:
   a.) percentage of Electric Overhead Transmission Corridor mileage ~~transmission circuit length~~ inspected (and trimmed as necessary) for each of the three years prior to the reporting to the reporting year of the Annual System Performance Report (3 columns);
   b.) ~~percentage of transmission circuit length that required trimming for each of the three years prior to the reporting to the reporting year of the Annual System Performance Report (3 columns)~~
   ~~c.)~~ percentage of Electric Overhead Transmission Corridor mileage ~~transmission circuit length~~ inspected (and trimmed as necessary) for the reporting year of the Annual System Performance Report (1 column); and
   cd.) ~~percentage of transmission circuit length that required trimming for the reporting to the reporting year of the Annual System Performance Report (1 column)~~
   ~~e.)~~ projected percentage of Electric Overhead Transmission Corridor mileage ~~transmission circuit length~~ to be inspected (and trimmed as necessary) for each of the three years beyond the reporting to the reporting year of the Annual System Performance Report (3 columns).

~~f.) projected percentage of transmission circuit length that will require trimming for each of the three years beyond the reporting to the reporting year of the Annual System Performance Report (3 columns)~~

2. A table that includes the following columns:

a.) percentage of distribution circuit length inspected (and trimmed as necessary) for each of the three years prior to the reporting to the reporting year of the Annual System Performance Report (3 columns);

b.) ~~percentage of distribution circuit length that required trimming for each of the three years prior to the reporting to the reporting year of the Annual System Performance Report (3 columns)~~

~~c.)~~ percentage of distribution circuit length inspected (and trimmed as necessary) for the reporting year of the Annual System Performance Report (1 column); and

cd.) ~~percentage of distribution circuit length that required trimming for the reporting to the reporting year of the Annual System Performance Report (1 column)~~

~~e.)~~ projected percentage of distribution circuit length to be inspected (and trimmed as necessary) for each of the three years beyond the reporting to the reporting year of the Annual System Performance Report (3 columns).

~~f.) projected percentage of distribution circuit length that will require trimming for each of the three years beyond the reporting to the reporting year of the Annual System Performance Report (3 columns)~~

§ 14:5-9.10 Public notice of planned vegetation management activity

(a) Unless specifically stated elsewhere in this subchapter, each EDC shall make a diligent attempt to notify all municipal governments, customers, and property owners that may be affected by planned vegetation management activity on the EDC's distribution or transmission system. This requirement will be satisfied if the EDC provides written notice to customers and property owners in accordance with (b) and (c) below at least seven days, but not more than 45 days, prior to performing any vegetation management activity; and provides notice to municipal governments in accordance with (f) and (g) below.

(b) For distribution circuits, notice shall be provided to the following customers and property owners by separate direct mailing, door hanger, or any other Board-approved method:

1. All customers upon whose property runs any portion of the right of way or easement that will be maintained; and

2. Any owner of a property that meets both of the following:

   i. The property is not served by the EDC, that is, there is no customer located on the property; and

   ii. The property includes a portion of the right of way or easement that will be maintained.

(c) For transmission circuits, notice shall be provided through both of the following:

1. The EDC shall notify the persons described at (b)1 and 2 above through a direct mailing by certified mail, return receipt requested, or by another Board-approved method; and

2. The EDC shall publish a notice in two newspapers that serve the area, within the timeframe set forth in (a) above.

(d) For the purposes of (c)1 above, the United States Post Office (USPS) receipt of mailing (usually printed on white paper), which the USPS provides upon the mailing of an item certified mail return receipt requested, shall constitute proof of compliance.

(e) Each EDC shall maintain a record of the dates, locations and activities contained in the notices, which were provided to the municipal government under this section, for a period of five years after notices are sent.

(f) For municipal governments, each EDC 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 shall be the primary contact. For other government entities and for public authorities, the primary contact shall be selected by mutual agreement between the EDC and the entity or authority.

(g) An EDC 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 (f) 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 manner sufficient to explain each EDC's procedures and easement rights. The

EDC shall provide a telephone number of the vegetation manager to enable questions to be answered.

(h) If any notice required under this section is provided by the EDC through a contractor or agent, the notice shall bear the name and logo of the EDC only, and not of the contractor or agent.

§ 14:5-9.11 Outreach programs

(a) Each EDC shall conduct an annual public education program to inform its customers, as well as the municipalities and public agencies in the EDC's service territory, of the importance of vegetation management, and of the EDC'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 EDC shall post its public education materials on its website.

(d) As part of its education program under this section, the EDC shall provide on its website illustrations of typical configurations of transmission lines and easements, as necessary to comply with the requirement in (a) above to inform the public regarding the EDC's responsibilities in performing vegetation management under this subchapter.

§ 14:5-9.12 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.

(b) An EDC that violates this subchapter may be subject to monetary penalties for each day the violation occurs. The Board shall notify the EDC of the violation(s) in writing. Upon receipt of the written notice of violation, the EDC shall have five business days to correct the violation(s). Any failure to correct the violation shall subject the EDC to penalties as determined by the Board ~~per day for each violation, calculated from the day such written notice was received by the EDC~~, consistent with the Board's ~~s~~Statutory authority~~.~~

(c) Penalties 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.

(d) 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 penalty to the size of the company charged;

5. Events judged to be beyond the violator's control; and

6. Good faith efforts on the part of the EDC to resolve any violations of the requirements contained in this subchapter.

TITLE 14. PUBLIC UTILITIES
CHAPTER 5. ELECTRIC SERVICE
SUBCHAPTER 9. ELECTRIC UTILITY LINE VEGETATION MANAGEMENT

N.J.A.C. 14:5-9 (2014)

§ 14:5-9.1 Purpose and scope

This subchapter sets forth requirements that EDCs 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.

§ 14:5-9.2 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 plant that is grown in significant quantities to be harvested as food, livestock fodder or for another economic purpose. This term includes, but is not limited to, landscape nursery stock and Christmas tree plantation stock.

"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.

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

"Danger Tree" is any tree on or off the right of way that could contact electric supply lines if it were to fall.

"Distribution line" means a primary electric voltage line, wire or cable operating at greater than 600 volts including supporting structures and appurtenant facilities that would not be considered a transmission line as set forth in this section.

"Electric Overhead Transmission Corridor" refers to the expanse of land over which electric transmission lines are located. The corridor may be comprised of multiple electric utility rights-of-way and/or circuits. The EDC may own the land in fee, own an easement, or have certain franchise, prescription, or license rights to construct and maintain the lines with respect to such land.

"Electric utility arborist" means a person engaged in the profession of electric utility vegetation management who, through appropriate certifications, experience, education and related training, possesses the competence to provide for or supervise, an EDCs integrated vegetation management program. The person, at a minimum, must be certified as a Utility Specialist by the International Society of Arboriculture.

"Energized conductor" means an electric circuit or piece of equipment through which electricity is flowing or usually flows. This term includes both distribution and transmission circuits and equipment.

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

"Hazard Tree" is a structurally unsound tree on or off the right of way that could strike electric supply lines when it fails. Please note that structural unsoundness distinguishes a hazard tree from a danger tree, such that while all hazard trees are danger trees, not all danger trees are hazard trees.

"Inactive transmission line corridor" means that unused part of the right of way that does not have transmission towers or transmission lines overhead.

"Integrated Vegetation Management" or "IVM" means a system of managing plant communities whereby vegetation managers set objectives, identify compatible and incompatible vegetation, consider action thresholds, and evaluate, select and implement the most appropriate vegetation control method(s) to achieve those objectives, based on the methods' environmental impact and anticipated effectiveness, along with site characteristics, security, economics, current land use and other factors.

"Lock out zone" refers to the portion of the EDC's distribution circuits, which begin at the substation or switching station and continue to the first protective device. As used herein, this definition does not apply to those EDC lower voltage distribution and subtransmission circuits that do not run from, or through, a substation or switching station and do not have a first protective device on the line (*e.g.*, circuits such as radial distribution and subtransmission circuits).

"Major event" has the same meaning as is ascribed to this term in N.J.A.C. 14:5-1.2.

"Mitigate" means the process of diminishing risk associated with hazard trees through application of prudent IVM techniques, which include tree removal or pruning, and practical engineering solutions used in the judgment of the Vegetation manager to make safe and eliminate or adequately reduce the risks of the hazard tree to the distribution system.

"NERC" means the North American Electric Reliability Corporation.

"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 substations or switching stations. An electric transmission line usually has a rating exceeding 69 kilovolts.

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

"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.

"Vegetation Manager" or "VM" means an electric utility arborist, who is employed by an EDC to supervise and ensure the EDC's compliance with this subchapter.

"Wire zone" means the land located directly under the widest portion of a transmission line. For a horizontal transmission line, the wire zone is bounded on each side by a location on the ground that is directly under the outermost transmission wire or the transmission tower, whichever is wider. For a vertical transmission array, the width of the wire zone shall be determined using the minimum safe distance specified in the North American Electric Reliability Corporation (NERC) FAC-003 which is incorporated herein by reference and available at www.nerc.com. Notwithstanding the foregoing, if the EDC has adopted the ANSI 300 definition of "Wire zone," the EDC may rely on the ANSI 300 definition in carrying out the requirements of this subchapter.

"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.

§ 14:5-9.3 General provisions

(a) An EDC 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 EDC shall obtain, and shall ensure that its contractors obtain, all required permits and licenses prior to commencement of vegetation management.

(c) An EDC 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 EDC shall employ a Vegetation Manager, who is an electric utility arborist, as defined at N.J.A.C. 14:5-9.2. 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. 14:5-9.10.

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

(f) As provided by section 9.1 of this subchapter(N.J.A.C. 14:5-9.1-Purpose and scope), these regulations are intended to ensure public safety and efficient and reliable supply of electric power by requiring the EDC's use of integrated vegetation management and sound arboricultural practices to maintain or improve the safety and reliability of the EDCs electric delivery systems consistent with the EDC's obligations under the Board's Electric Distribution Service Reliability and Quality Standards as set forth in N.J.A.C. 14:5-8.9.

(g) In addition to the vegetation management work required under this subchapter, an EDC, at the sole discretion of the EDC's VM, may perform additional vegetation management work, on the EDC's distribution system, which is requested to meet the aesthetic desires of a municipality or a private property owner and which is brought to the attention of the EDC's VM before the EDC's vegetation management commences in a municipality or on a a private property owner's property, provided that the additional work requested will not (1) impair the EDC's ability to meet the reliability and safety objectives of these regulations (2) negatively impact the EDC's schedule of vegetation management work, and 3) require incremental costs. An EDC that performs vegetation management on the EDC's distribution system at the request of a municipality, government agency or private property owner, other than the vegetation management work required under this subchapter, may require the requesting party to pay any incremental cost above the EDC's cost to perform the vegetation management required by this subchapter. This work shall not apply to transmission line vegetation management required under N.J.A.C. 14:5-9.7.

(h) Upon a written request from a municipality, an EDC 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 transmission line vegetation management required under N.J.A.C. 14:5-9.6;

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 EDC 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 EDC due to lack of tree trimming or other vegetation management, the municipality shall reimburse the EDC for additional costs.

(i) An EDC 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. Notwithstanding the foregoing, the EDCs may seek contemporaneous recovery of incremental costs incurred as a result of the Board's modification of N.J.A.C. 14:5-9.8 (c), effective January 1, 2016, as follows:

1. By August 31, 2015, each EDC seeking such contemporaneous recovery shall submit (i) its estimated annual incremental costs of compliance with N.J.A.C. 14:5-9.8 (c), (ii) a proposed cost recovery mechanism ("Enhanced Vegetation Management Recovery Mechanism") and associated charges ("Enhanced Vegetation Management Charge") for recovery of the estimated incremental costs, and (iii) an appropriate form of notice. The Board shall, upon public notice, conduct an expedited hearing to approve the proposed Enhanced Vegetation Management Recovery Mechanism and Enhanced Vegetation Management Charge, prior to January 1, 2016. Thereafter, until the filing of the EDC's next base rate case following the Board's adoption of N.J.A.C. 14:5-9.8 (c), each EDC shall file with the Board an annual true-up accounting that identifies the actual incremental costs incurred by the EDC as a result of implementing the enhanced vegetation management standards set forth in N.J.A.C. 14:5-9.8 (c) and the resulting proposed changes to the Enhanced Vegetation Management Charge for the next subsequent year.

(j) Each EDC shall perform vegetation management on a pro rata basis over the four-year cycle identified in N.J.A.C. 14:5-9.4(b).

§ 14:5-9.4 Maintenance cycle

(a) An EDC shall perform an annual visual inspection of all energized conductors that are associated with a transmission line, 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 EDC 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 EDC 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 EDC becomes aware of (1) any vegetation close enough to its energized conductors to affect reliability or safety prior to the next required vegetation management activity, or (2) the presence of hazard trees, the electric utility shall ensure that necessary vegetation management is promptly performed as required under N.J.A.C. 14:5-9.5 and 9.6.

(d) If the EDC determines that vegetation described under (c) above poses an immediate safety hazard, the EDC shall not be subject to the notice requirements at N.J.A.C. 14:5-9.10. However, the EDC shall, to the extent practicable, make a reasonable effort to notify the customers and property owners described at N.J.A.C. 14:5-9.10(b) 1 and 2 prior to performing the vegetation management.

§ 14:5-9.5 Hazard Trees

(a) If the EDC's VM determines that a tree meets the definition of a hazard tree, the EDC shall determine if it is permitted (e.g. by easement, tariff, or law) to remove or mitigate the hazard tree. If the EDC determines that it is not permitted to remove or mitigate the hazard tree, the EDC shall attempt to obtain permission to remove or mitigate the hazard tree.

(b) If permission is granted or it is determined that permission is not necessary, the EDC shall arrange to remove or mitigate the hazard tree as part of the scheduled vegetation management work to be performed during the current year, unless the VM determines that the condition of the hazard tree poses an imminent risk of failure, in which case, the EDC shall remove or mitigate the hazard tree promptly.

(c) The EDC is required to comply with the recording and reporting requirements of this subchapter as set forth at N.J.A.C. 14:5-9.9(d)2.

§ 14:5-9.6 Technical standards for vegetation management

(a) Each EDC 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. Part 1 of the document entitled for Tree Care Operations - Tree, Shrub, and Other Woody Plant Maintenance-Standard Practices (Pruning). This document, also known as ANSI A300, is published by the American National Standards Institute, and may be obtained at www.ansi.org;

2. Part 7 of the document entitled for Tree Care Operations - Tree, Shrub, And Other Woody Plant Maintenance - Standard Practices (Integrated Vegetation Management A. Utility Rights-Of-Way). This document, also known as ANSI A300, is published by the American National Standards Institute, and may be obtained at www.ansi.org;

3. Part 9 of the document entitled for Tree Care Operations - Tree, Shrub, And Other Woody Plant Maintenance - Standard Practices (Tree Risk Assessment). This document, also known as ANSI A300, is published by the American National Standards Institute, and may be obtained at www.ansi.org;

4. Best Management Practices, Utility Pruning of Trees, 2004. This title is published by the International Society of Arboriculture and may be obtained athttp://www.isaarbor.com/store/product.aspx?ProductID=65;

5. Best Management Practices, Integrated Vegetation, Second Edition 2014. This title is published by the International Society of Arboriculture and may be obtained at http://www.isaarbor.com/store/product.aspx?ProductID=101.

6. Pruning, Trimming, Repairing, Maintaining, and Removing Trees, and Cutting Brush -- Safety Requirements, 2012. This document, also known as ANSI Z133.1, is published by the American National Standards Institute, and may be obtained at www.ansi.org;

7. 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 from various resellers.

8. Manual of woody landscape plants 5th Ed., by Michael A. Dirr. Stipes Publishing, LLC; 5th edition (August, 1998), and may be obtained from various resellers.

9. Hortus Third: A concise dictionary of plants cultivated in the United States and Canada, by L.H. Bailey Hortorium, 1976, and may be obtained from various resellers and;

10. National Electric Safety Code C2-2007. ISBN: Z2-RES69-07 is published by the Institute of Electrical and Electronics Engineers, Inc. and may be purchased at www.ieee.org.

(b) Where multiple standards or methods listed at (a) above would apply or conflict, the VM or his or her designee shall select the most appropriate standard or method under the circumstances.

(c) Each EDC shall develop its own vegetation management standards and guidelines, which shall be consistent with this subchapter. In developing these standards and guidelines, an EDC 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;

3. The relative importance of the affected energized conductor in maintaining safety and reliability; and

4. The presence and condition of any hazard trees.

(d) Each EDC shall provide a copy of its vegetation management standards and guidelines to the Board as a chapter in the Annual System Performance Report. If an EDC 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 EDC's vegetation management standards and guidelines shall cover, at a minimum, all of the following activities:

1. Tree pruning and removal;

2. The procedures for handling the removal of hazard trees;

3. Vegetation control around poles, substations and other energized conductors;

4. Manual, mechanical, or chemical control of vegetation along rights of way;

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

6. Research and development of improved vegetation management activities and practices; and

7. Public education.

(f) Among the factors the EDC 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's legal rights to access the area.

(g) The EDC 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 the EDC obtains consent to leave the trimmings or cut vegetation, from the owner of the property upon which the trimmings or cut vegetation are located.

§ 14:5-9.7 Transmission line vegetation management

(a) In addition to the other requirements of this subchapter, transmission lines, as defined at N.J.A.C. 14:5-9.2, are subject to the requirements in this section.

(b) At a minimum, each EDC shall meet the requirements for minimum clearances between any transmission line and the closest vegetation, which are set forth in the currently applicable version of North American Electric Reliability Corporation (NERC) FAC-003 which is incorporated herein by reference and available at www.nerc.com.

(c) Except as provided at (f) below, the following shall apply in the wire zone:

1. An EDC shall allow woody plants that are agricultural crops that naturally mature at 12 feet or less;

2. Other than as provided at (c)1 above, the EDC shall not allow woody plants that mature above three feet tall to grow in the wire zone, and the preferred growth shall be grasses or a low-growing, compatible, scrub-shrub plant community to obtain a meadow effect where possible.

(d) Except as provided at (f) below, the EDC shall apply integrated vegetation management (IVM) in the border zone. IVM is a best management practice conveyed

in the American National Standard for Tree Care Operations, Part 7 (ANSI 2006) and the International Society of Arboriculture's *Best Management Practices: Integrated Vegetation Management* (Miller 2007).

(e) In addition to meeting the other requirements in this section, each EDC shall ensure that the following requirements for transmission lines are met, except for those instances set forth in (f) below:

1. Clearing under transmission lines shall be wide enough within the EDC's right of way so that no vegetation or parts of vegetation will grow or fall into the transmission lines;

2. Only grass vegetation shall be permitted to grow within three feet of any structure;

3. Where an EDC has cleared a right of way of vegetation and bare soil is exposed, the EDC 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 www.state.nj.us/agriculture/divisions/anr/nrc/conservdistricts.html;

4. To the extent that any plant species identified as invasive and non-indigenous to New Jersey poses a threat to the maintenance of the right of way or a hazard to electrical transmission conductors, the EDC shall not plant that species in the right of way, and shall make reasonable efforts to actively eliminate from the entire right of way the species identified as invasive and non-indigenous, see Snyder, David and Sylvan R. Kaufman, 2004. 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 EDC shall use the best integrated vegetation management practices available and practical; and

5. 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 EDC shall advise customers of the requirements in this subsection, through a direct notification.

(f) Notwithstanding (d) and (e) above, an EDC may leave trees and other woody vegetation within the transmission right of way under any of the following conditions:

1. The right-of-way document, easement, indenture, deed or other written land rights, executed before Jan 1, 2007, expressly permit vegetation to be located within the transmission right of way;

2. The slope of the topography exceeds 30 degrees and the transmission right of way is such that the tree or other vegetation at mature height will allow a space of more than 150 percent of the clearance requirements for an electrical path to ground, as set forth in the National Electric Safety Code, § 232 to § 235; or

3. Trees are located within an inactive transmission corridor.

(g) For the purposes of this section, the mature height of all vegetation, including agricultural crops, shall be determined in accordance with the publications listed in N.J.A.C. 14:5-9.5(a), or equivalent publications. Each EDC shall provide lists of acceptable species on its website or in a publication provided free of charge upon request by a ratepayer.

(h) Each year, by May 31, the EDC shall develop a schedule for transmission line vegetation management, which shall be included in the EDC's annual system performance report as required by N.J.A.C. 14:5-8. 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. 14:5-9.4(b));
2. Ensure that vegetation management on transmission lines is performed prior to vegetation becoming a threat to safety or service reliability; and

3. List the municipalities and the year when vegetation management work is anticipated to be done in each municipality.

(i) The EDC shall post the transmission line vegetation management schedule required under (h) above on its website and distribute it to affected municipalities and public authorities in accordance with N.J.A.C. 14:5-9.10.

§ 14:5-9.8 Distribution line vegetation management

(a) In addition to the other requirements of this subchapter, distribution lines, as defined at N.J.A.C. 14:5-9.2, are subject to the requirements in this section.

(b) Distribution lines shall be inspected and trimmed to maintain the horizontal clearance distance appropriate for the operating voltage and other factors as specified by the EDCs vegetation management standards as required by N.J.A.C. 14:5-9.5.

(c) After January 1, 2016, all overhanging vegetation shall be removed on main line and un-fused lines in the Lock out zone on the distribution circuit. For circuits that do not have a Lock out zone, overhanging vegetation shall be removed as appropriate.

(d) Mature trees may be exempt from the requirements of subsection (c) above at the reasonable discretion of the EDC's VM (or the VM's qualified designee) as it pertains to the Lock out zone.

§ 14:5-9.9 Training, recordkeeping and reporting

(a) Each EDC shall ensure that:

1. Qualified OSHA and ANSI Z133 line clearance employees or contractors perform vegetation management for the EDC;

2. All such employees or contractors are trained in the proper care of trees and other woody plants in order to provide safe, reliable electric service; and

3. All such employees or contractors are knowledgeable regarding safety practices and line clearance techniques.

(b) Each EDC shall ensure that records are kept of all persons used by a contractor or the EDC to perform vegetation management on behalf of the EDC, including the dates and the types of training that each such person has received.

(c) The EDC shall monitor and document all vegetation management and related activities. Documentation shall be retained for five years and 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 EDC 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 the Annual System Performance Report to be filed with the Board by May 31 of each year. The information provided under this requirement shall:

1) Include, at a minimum, the name of each municipality in which the EDC conducted vegetation management during the reporting year, and all circuits subject to such vegetation management: and

2) Include a listing of distribution circuits by ~~that shall include a line for each~~ municipality indicating the number of hazard trees for which permission to remove was denied.

(e) To track the completion of each vegetation management cycle for inspection and trimming required by these regulations, each EDC shall include the following tables in the Annual System Performance Report to be filed with the Board by May 31 of each year:

1. A table that includes the following columns:
   a.) percentage of Electric Overhead Transmission Corridor mileage inspected (and trimmed as necessary) for each of the three years prior to the reporting to the reporting year of the Annual System Performance Report (3 columns);
   b.) percentage of Electric Overhead Transmission Corridor mileage inspected (and trimmed as necessary) for the reporting year of the Annual System Performance Report (1 column); and
   c) projected percentage of Electric Overhead Transmission Corridor mileage to be inspected (and trimmed as necessary) for each of the three years beyond the reporting to the reporting year of the Annual System Performance Report (3 columns).

2. A table that includes the following columns:

   a.) percentage of distribution circuit length inspected (and trimmed as necessary) for each of the three years prior to the reporting to the reporting year of the Annual System Performance Report (3 columns);

   b.) percentage of distribution circuit length inspected (and trimmed as necessary) for the reporting year of the Annual System Performance Report (1 column); and

c.) projected percentage of distribution circuit length to be inspected (and trimmed as necessary) for each of the three years beyond the reporting to the reporting year of the Annual System Performance Report (3 columns).

§ 14:5-9.10 Public notice of planned vegetation management activity

(a) Unless specifically stated elsewhere in this subchapter, each EDC shall make a diligent attempt to notify all municipal governments, customers, and property owners that may be affected by planned vegetation management activity on the EDC's distribution or transmission system. This requirement will be satisfied if the EDC provides written notice to customers and property owners in accordance with (b) and (c) below at least seven days, but not more than 45 days, prior to performing any vegetation management activity; and provides notice to municipal governments in accordance with (f) and (g) below.

(b) For distribution circuits, notice shall be provided to the following customers and property owners by separate direct mailing, door hanger, or any other Board-approved method:

1. All customers upon whose property runs any portion of the right of way or easement that will be maintained; and

2. Any owner of a property that meets both of the following:

i. The property is not served by the EDC, that is, there is no customer located on the property; and

ii. The property includes a portion of the right of way or easement that will be maintained.

(c) For transmission circuits, notice shall be provided through both of the following:

1. The EDC shall notify the persons described at (b)1 and 2 above through a direct mailing by certified mail, return receipt requested, or by another Board-approved method; and

2. The EDC shall publish a notice in two newspapers that serve the area, within the timeframe set forth in (a) above.

(d) For the purposes of (c)1 above, the United States Post Office (USPS) receipt of mailing (usually printed on white paper), which the USPS provides upon the mailing of an item certified mail return receipt requested, shall constitute proof of compliance.

(e) Each EDC shall maintain a record of the dates, locations and activities contained in the notices, which were provided to the municipal government under this section, for a period of five years after notices are sent.

(f) For municipal governments, each EDC 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 shall be the primary contact. For other government entities and for public authorities, the primary contact shall be selected by mutual agreement between the EDC and the entity or authority.

(g) An EDC 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 (f) 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 manner sufficient to explain each EDC's procedures and easement rights. The EDC shall provide a telephone number of the vegetation manager to enable questions to be answered.

(h) If any notice required under this section is provided by the EDC through a contractor or agent, the notice shall bear the name and logo of the EDC only, and not of the contractor or agent.

§ 14:5-9.11 Outreach programs

(a) Each EDC shall conduct an annual public education program to inform its customers, as well as the municipalities and public agencies in the EDC's service territory, of the importance of vegetation management, and of the EDC'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 EDC shall post its public education materials on its website.

(d) As part of its education program under this section, the EDC shall provide on its website illustrations of typical configurations of transmission lines and easements, as necessary to comply with the requirement in (a) above to inform the public regarding the EDC's responsibilities in performing vegetation management under this subchapter.

§ 14:5-9.12 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.

(b) An EDC that violates this subchapter may be subject to monetary penalties for each day the violation occurs. The Board shall notify the EDC of the violation(s) in writing. Upon receipt of the written notice of violation, the EDC shall have five business days to correct the violation(s). Any failure to correct the violation shall subject the EDC to penalties as determined by the Board, consistent with the Board's statutory authority.

(c) Penalties 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.

(d) 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 penalty to the size of the company charged;

5. Events judged to be beyond the violator's control; and

6. Good faith efforts on the part of the EDC to resolve any violations of the requirements contained in this subchapter.