

Morgan, Lewis & Bockius LLP
89 Headquarters Plaza North
Suite 1453
Morristown, NJ 07960
Fax: 877.432.9652
www.morganlewis.com

Morgan Lewis

C O U N S E L O R S A T L A W

A Pennsylvania Limited Liability Partnership

RANDALL B. SUNBERG
Partner-in-Charge

Michael J. Connolly
Of Counsel
973.993.3132
michael.connolly@MorganLewis.com

June 6, 2014

VIA ELECTRONIC MAIL & FEDERAL EXPRESS

Ms. Rosalie Serapiglia
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 Ms. Serapiglia:

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 May 12, 2014. At that time, you requested that the EDCs provide, to the extent possible, a set of joint comments regarding Board Staff's then latest draft version of proposed changes to the Board's vegetation management rules at N.J.A.C. 14:5-9 et seq. (the "**VM Rules**"), which will be eventually considered by the Board for possible amendment and re-adoption as part of the above-referenced rulemaking proceeding.

In a letter dated April 24, 2014, the EDCs provided a set of preliminary substantive and procedural comments regarding a prior draft version of proposed changes to the VM Rules (the "**April 24 Joint Comments**"). As indicated in the April 24 Joint Comments, the EDCs continue to appreciate the opportunity to participate in the stakeholder process. The EDCs also appreciate that Board Staff seriously considered the comments, suggestions and overall approach suggested and/or recommended in the April 24 Joint Comments since Board Staff's latest draft version of the proposed changes to the VM Rules reflect the EDCs' input. The EDCs are hopeful that

Board Staff will similarly consider these additional comments regarding the latest draft version of Board Staff's proposed changes to the VM Rules. At the May 12, 2014 stakeholder meeting Board Staff indicated that the stakeholder process will soon be brought to a conclusion and requested these EDC comments in that context. Notwithstanding that objective, please be advised that the EDCs reserve their rights to provide further additional comments as well as to supplement and/or modify these and their prior comments as the rulemaking proceeding unfolds.¹

The EDCs believe that it is important to reiterate, again, that the VM Rules, as adopted in 2008 (with discrete amendments made in 2010), resulted from a very extensive stakeholder and rulemaking process 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, 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 April 24 Joint Comments, that the VM Rules have been working well and, overall, do not need any significant change, has not changed. Therefore, the EDCs continue to believe that the focus of the Board's review in this proceeding, in which the Board will consider the re-adoption of the VM Rules, should be on strengthening them through limited, discrete and selective changes.

As set forth herein, the EDCs provide two attachments (one clean and one marked to show changes) containing the EDCs recommendations for modifying Board Staff's latest draft version of proposed changes to the VM Rules. These attachments are for Board Staff's consideration in its efforts to produce a draft of the 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 comments to provide on this section of the VM Rules at this time.

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

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

¹ Please also note that each of the EDCs adopts these comments as its own except with respect to certain select aspects of N.J.A.C. 14:5-9.8(b) regarding Distribution Line Vegetation Management, wherein (i) PSE&G and JCP&L have provided certain estimated cost information that is specific to each of them, and, therefore, not adopted by any other EDC, and (ii) ACE has proposed (in a separate comment letter) alternative language to that proposed by Board Staff. As is clear from the comments contained herein, the other EDCs do not support either Board Staff's or ACE's proposals regarding N.J.A.C. 14:5-9.8(b).

- a. Danger Tree - The EDCs recommend 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.
- b. Electric utility arborist – The EDCs recommend two stylistic changes related to the use of capitalization.
- c. Hazard Tree – The EDCs recommend changes to this definition in order to clarify the difference between a danger tree and a hazard tree, including through the use of the specific ANSI 300 definition.
- d. Mitigate - The EDCs recommend the addition of the defined term “Mitigate” in order to provide an explanatory reference for the use of the term as suggested later in N.J.A.C. 14:5-9.5, so as to allow for alternative approaches to the removal of hazard trees where appropriate; for instance, allowing for topping of dead/dying tree, or an alternative engineering solution. The use of the term “mitigate” 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.
- e. Wire zone - The EDCs recommend that the VM Rules use the applicable ANSI 300 definition, which is the applicable industry standard. The use of this definition also eliminates the need to refer to the NERC standards for minimum safe distance.

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

The EDCs recommend several changes to subsections (f) and (g). These changes are a combination of stylistic changes coupled with the recognition that these regulations already have a purpose and scope provision (*i.e.*, N.J.A.C. 14:5-9.1 Purpose and scope), which the proposed Board Staff changes could be interpreted to overlook, change or supplement. Such changes without reference to the already existing purpose and scope provision could create confusion or internal conflict within the VM Rules. The EDCs’ recommended changes create appropriate linkage with the main purpose and scope provision of this subchapter. The recommended changes to subsection (g) also require the necessity of payment of incremental costs for additional work done for private property owners, and otherwise clarify the applicability of this subsection.

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

The EDCs recommend two small stylistic changes to clarify subsection (c).

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

The EDCs recommend changes to:

- (i) subsection (a) to clarify the provision by recognizing more explicitly, rather than by mere implication, the distinct circumstances of having or not having rights with respect to the removal or mitigation of hazard trees (utilizing the added defined term “mitigate” as discussed above);
- (ii) subsection (b) to conform this section to the changes made in subsection (a), and also to better reflect the manner in which vegetation management work is conducted through the use of the concept of “imminence” as a determining factor in the timing of mitigation or removal. For instance, where there is not an imminent danger of a tree falling into a line, the Hazard Tree will be mitigated or removed as part of the normal VM work for the area in which the cycle VM work is being performed, when it is being performed; and
- (iii) subsection (c) to clarify the provision without substantive change by referring to the actual reporting requirements set forth elsewhere in the VM Rules.

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

The EDCs recommend:

- (i) technical changes to subsection (a) 2., and (a) 3., consistent with the April 24 Joint Comments, and as discussed at the stakeholder meeting on May 12, 2014;
- (ii) stylistic suggestions to clarify subsection (b); and
- (iii) changes made to subsection (c) for the purpose of consistency with other suggested changes and to correct punctuation.

7) **N.J.A.C. 14:5-9.7 Transmission line Vegetation management**

The EDCs recommend changes reflecting that the various parts of the NERC requirements may not be applicable in every instance or set of circumstances and that the intention of the VM Rules is to apply or require the application of the NERC requirements when and as they apply to relevant facts and circumstances. The modification to subsection (b) will allow the currently applicable version of the NERC requirements to be applied without further amendment of the VM Rules. In addition, in subsection (e) 2., the EDCs have recommended deleting the reference to permissible height of grass relative to protecting transmission lines as there is no practical need for such a degree of specification.

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

With respect to subsection (b) as proposed for amendment by Board Staff, the EDCs have not reached complete unanimity in their respective positions. The EDCs continue to believe that it is unnecessary to introduce the “no overhang” approach to the tree canopy (as Board Staff has done) in the absence of a satisfactory cost-recovery mechanism that would be necessary to implement this new standard. The EDCs also share the view that the proposed mandate would impose significant cost increases on them in order to implement the “no overhang” mandate. For instance, PSE&G reports that its current four-year cycle Distribution Vegetation Management program budget is \$68M. According to PSE&G, implementation of the proposal to remove all vegetation above the elevation of the energized conductors (no overhanging vegetation) would significantly increase the cost of the four-year cycle Distribution Vegetation Management program. PSE&G estimates the cost would increase to an estimated \$412M for the trim cycle plus an estimated additional \$126M for tree removals. This would involve removing trees that would require 25% or more of the tree canopy removed to provide the necessary clearance. Hence the total four year cycle cost is estimated to be \$538M, an increase of \$470M. In the case of JCP&L, which has the most tree dense service territory in New Jersey, the magnitude of the cost impact is estimated to be significantly greater. According to JCP&L, based on current estimates, including contractor estimates, implementation of the proposal to remove all vegetation above the elevation of the energized conductors (no overhanging vegetation) would significantly increase the cost of the four-year cycle Distribution Vegetation Management program. JCP&L estimates the cost would increase to between \$164M and \$189M per year and, over the four-year cycle, total to between \$656M to \$756M. As these examples illustrate, an appropriate cost recovery mechanism for contemporaneous recovery of these operating costs should be established to address such an extensive change in scope.

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, the EDCs share the view that the dramatic and costly change proposed by Board Staff should be eliminated from this particular rulemaking proceeding, to be considered at a later time in conjunction with cost recovery. Besides costs, the Board Staff proposal does not appear to consider the dramatic aesthetic and scenic impact of the proposal on the communities served by the EDCs, which is a further reason to place this proposal in its own separate proceeding where all the relevant issues can be addressed without unduly complicating and possibly delaying the overall review process related to the re-adoption of the rest of the VM Rules.

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

The EDCs recommend changes to remove the proposed requirement to include the applicable county in the listing required by subsection (c)1. and (d) 1., because it adds no value to the required report and having to provide it will merely create an undue administrative burden. In addition, the EDCS recommend the changes shown in the attachment to subsections (d) and (e), which are intended to add clarity, and consistency with earlier changes. Moreover, in

subsection (d) 2., the EDCs believe that the need for reporting regarding hazard trees should be more clearly delineated as limited to those hazard trees observed along distribution circuits (as opposed to transmission circuits, which are subject to different requirements). In addition, the changes suggested to subsections (d) and (e) seek to avoid the implication that vegetation management or the requirements of this subchapter are strictly limited to trimming. The EDCs' recommended changes attempt to create stronger linkage between these subsections and other provisions of this subchapter, including those related to the use of herbicides and IVR-related judgments about tree species, rates of growth and removal versus trimming.

10) **N.J.A.C. 14:5-9.10 Public notice of planned Vegetation Management activity**

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

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

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

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


The EDCs recommend changes consistent with those modifications discussed at the May 12, 2014 stakeholder meeting.

If Board Staff has any questions, please let us know. In the meantime, the EDCs look forward to continuing to work within and through the stakeholder process with respect to this matter.

Respectfully submitted,

Jersey Central Power & Light Company

By:


Michael J. Connolly, Esq.
Morgan, Lewis & Bockius LLP

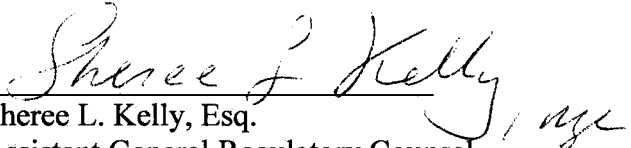
Atlantic City Electric Company

By:

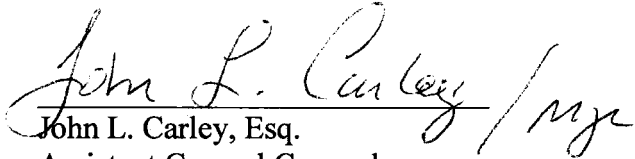

Philip J. Passanante, Esq.

Associate General Counsel

Public Service Electric and Gas Company

By: 
Sheree L. Kelly, Esq.
Assistant General Regulatory Counsel
PSEG Services Corporation

Rockland Electric Company

By: 
John L. Carley, Esq.
Assistant General Counsel

- C Jerome May, Director, BPU Division of Energy
- Geoffrey R. Gersten, Deputy Attorney General, Dept. of Law & Public Safety, Div. of
Law - Public Utilities
- Donald W. Weyant, PSE&G
- Roger Pedersen, PHI Regulatory Services for ACE
- Kevin F. Connelly, JCP&L
- Angelo Regan, RECO

ATTACHMENT No. 1
(EDC Joint Marked Version - June 6, 2014)

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 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~~]**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.

"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.**

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

"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.

"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, practical engineering solutions, and/or appropriate monitoring of the hazard, 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 003-01, 02, 03 which is incorporated herein by reference and available at-][www.nerc.com][:-]~~**section of a utility transmission right-of-way directly under the wires extending outward about 10 feet on each side. The wire zone is typically managed to sustain a community of low-growing forbs, grass, herbs and shrubs (under 3 feet in height at maturity), as set forth in 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.**

"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) ~~[The purpose of these regulations is to maintain or increase]~~**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 the efficient and reliable supply of electric power by requiring the EDCs' use of integrated vegetation management and sound arboricultural practices to maintain or improve the safety and** reliability ~~[and safety of the EDCs electric delivery system. Any vegetation management work in addition to that required to achieve these goals]~~**of the EDCs' electric delivery systems consistent with the EDCs' obligations under the Board's Electric Distribution Service Reliability and Quality Standards as set forth at 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 [owners should be]owner and which is brought to the attention of the EDC's VM before the EDC's vegetation management work commences[. The VM will consider if the extra] in a municipality or on a private property owner's property, provided that the additional work requested will not (1) impair the [vegetation management]EDC's ability to meet the reliability and safety objectives of these regulations, (2) negatively impact the [schedule of the work, or incur significant cost for the additional work. If the VM determines that the accommodation to this request is de minimis to the work scheduled, the VM may include it in the work plan, at his sole discretion. (g) —]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~~[-or]~~, government agency **or private property owner**, other than 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. **However, 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 ~~[electric public utility]~~ **EDC** for ~~[these]~~ **all 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.
- (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) ₂.

§ 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 at any time 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 [~~Electric Distribution Company~~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 **if** it is determined [~~to be not required~~]**that permission is not necessary**, the EDC shall [~~promptly remove the hazard~~]**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) [~~Refer to N.J.A.C. 14:5-9.9(d)2 for requirements for the recording the results of the Hazard Tree elimination effort in the annual system reliability report.~~]**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 I of the document entitled for Tree Care Operations - Tree, Shrub, and Other Woody Plant Maintenance-Standard Practices. This document, also known as ANSI A300, is published by the American National Standards Institute, and may be obtained at www.ansi.org;
 2. Part [~~7~~]**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;
 3. Part [~~9~~]**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;
 4. Best Management Practices, Utility Pruning of Trees, 2004. This title is published by the International Society of Arboriculture and may be obtained at

<http://secure.isa-arbor.com/store/Best-Management-Practices-pUtility-Pruning-of-Trees-P23060.aspx>;

5. Pruning, Trimming, Repairing, Maintaining, and Removing Trees, and Cutting Brush -- Safety Requirements, 1994. This document, also known as ANSI Z133.1, is published by the American National Standards Institute, and may be obtained at www.ansi.org;
 6. Native Trees, Shrubs And Vines For Urban And Rural America: A Planting Design Manual for Environmental Designers, by Hightshoe, G.L., 1987, is published by John Wiley and Sons and may be obtained from various resellers.
 7. 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.
 8. Hortus Third: A concise dictionary of plants cultivated in the United States and Canada, by L.H. Bailey Hortorium, 1976, and may be obtained from various resellers and;
 9. 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, ~~[a utility]~~ 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[7]
 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-~~[003-01, 02 & 03-]~~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 [~~not exceeding a height of 18 inches~~] 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~~]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 as necessary, to maintain the horizontal clearance distance appropriate for the operating voltage and other factors as specified by the

~~[EDCs]~~EDC's vegetation management standards and guidelines as required by N.J.A.C. 14:5-~~9.5 and all vegetation removed above the elevation of the energized conductors (no overhanging vegetation):~~9.6.

§ 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 ~~county and~~ 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. [~~±~~ ~~_____This~~] **The information provided under this requirement shall :**

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

2) include a listing [~~that shall include a line for~~] of each [~~county and~~] municipality [~~that~~], the location of hazard trees that were observed [~~and columns for~~] along distribution circuits, providing, as to each municipality, the number of hazard trees observed, the number of hazard trees removed or mitigated and the number of hazard trees [~~that~~] for which permission to remove or mitigate was denied.

(e) To track the completion of each year of the four year vegetation management cycle for inspection, and trimming [~~eyes~~] as necessary, 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 listing [~~that reports~~] **(i) the percentage of circuit length of the transmission line [~~trimmed~~] inspected, and IVM implemented as necessary, for each of the three years prior to the reporting year of the [~~annual system performance report~~], Annual System Performance Report, (ii) the percentage [~~trimmed~~] of circuits inspected, and IVM implemented as necessary, during the reporting year [~~of the report~~] and **(iii) the projected percentage of circuit length [~~trimmed~~] to be inspected, and IVM implemented as necessary, for each of the three years beyond the reporting year calculated as a percentage of the EDC's total transmission circuit length.****

2. A table listing that reports the percentage of circuit length of the distribution line inspected, and trimmed as necessary, for each of the three years prior to the reporting year of the [~~annual system performance report~~] Annual System Performance Report, the percentage inspected, and trimmed as necessary, during the year of the report and the projected percentage of circuit length inspected, and trimmed as necessary, for each of the three years beyond the reporting year calculated as a percentage of the EDC's total distribution circuit length.

§ 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 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.

ATTACHMENT No. 2
(EDC Joint Clean Version – June 6, 2014)

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 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.

"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.

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

"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.

"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, practical engineering solutions, and/or appropriate monitoring of the hazard, 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 section of a utility transmission right-of-way directly under the wires extending outward about 10 feet on each side. The wire zone is typically managed to sustain a community of low-growing forbs, grass, herbs and shrubs (under 3 feet in height at maturity), as set forth in 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.

"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 the efficient and reliable supply of electric power by requiring the EDCs' 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 EDCs' obligations under the Board's Electric Distribution Service Reliability and Quality Standards as set forth at 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 work commences in a municipality or on 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 vegetation management work required under this subchapter, shall require the requesting party to pay any incremental cost above the EDC's cost to perform the vegetation management required by this subchapter. However, 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 all 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.
- (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 at any time 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 if 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. 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 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;
 3. 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;
 4. Best Management Practices, Utility Pruning of Trees, 2004. This title is published by the International Society of Arboriculture and may be obtained at <http://secure.isa-arbor.com/store/Best-Management-Practices-pUtility-Pruning-of-Trees-P23060.aspx>;
 5. Pruning, Trimming, Repairing, Maintaining, and Removing Trees, and Cutting Brush -- Safety Requirements, 1994. This document, also known as ANSI Z133.1, is published by the American National Standards Institute, and may be obtained at www.ansi.org;
 6. Native Trees, Shrubs And Vines For Urban And Rural America: A Planting Design Manual for Environmental Designers, by Hightshoe, G.L., 1987, is published by John Wiley and Sons and may be obtained from various resellers.
 7. 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.
 8. Hortus Third: A concise dictionary of plants cultivated in the United States and Canada, by L.H. Bailey Hortorium, 1976, and may be obtained from various resellers and;

9. 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 as necessary, to maintain the horizontal clearance distance appropriate for the operating voltage and other factors as specified by the EDC's vegetation management standards and guidelines as required by N.J.A.C. 14:5-9.6.

§ 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 each municipality, the location of hazard trees that were observed along distribution circuits, providing, as to each municipality, the number of hazard trees observed, the number of hazard trees removed or mitigated and the number of hazard trees for which permission to remove or mitigate was denied.

- (e) To track the completion of each year of the four year vegetation management cycle for inspection, and trimming as necessary, 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 listing (i) the percentage of circuit length of the transmission line inspected, and IVM implemented as necessary, for each of the three years prior to the reporting year of the Annual System Performance Report, (ii) the percentage of circuits inspected, and IVM implemented as necessary, during the reporting year and (iii) the projected percentage of circuit length to be inspected, and IVM implemented as necessary, for each of the three years beyond the reporting year calculated as a percentage of the EDC's total transmission circuit length.
 2. A table listing that reports the percentage of circuit length of the distribution line inspected, and trimmed as necessary, for each of the three years prior to the reporting year of the Annual System Performance Report, the percentage inspected, and trimmed as necessary, during the year of the report and the projected percentage of circuit length inspected, and trimmed as necessary, for each of the three years beyond the reporting year calculated as a percentage of the EDC's total distribution circuit length.

§ 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 per day for each violation, calculated from the day such written notice was received by the EDC, 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.