

MEMORANDUM

TO: Colleen M. Dale, Secretary

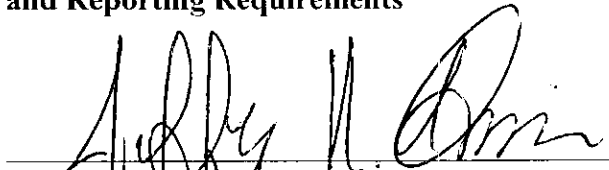
DATE: October 2, 2007

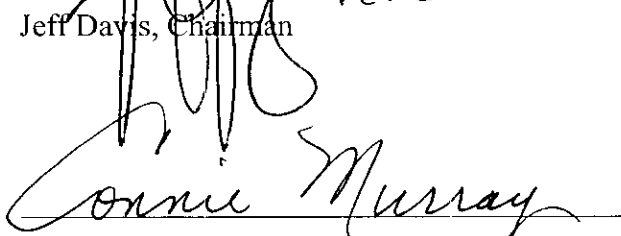
RE: Authorization to File Proposed Rulemaking with the Office of Secretary of State


CASE NO: EX-2007-0214

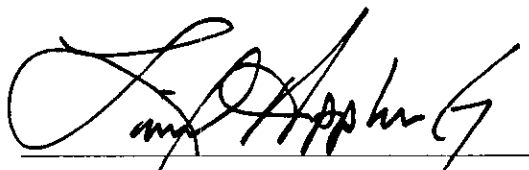
The undersigned Commissioners hereby find necessity to propose the rules as attached and authorize the Secretary of the Missouri Public Service Commission to file the following Proposed Rulemaking with the Office of the Secretary of State:


Amendment to 4 CSR 240-23.030 -- Electrical Corporation Vegetation Management Standards and Reporting Requirements


Jeff Davis, Chairman


Connie Murray, Commissioner


Robert M. Clayton III, Commissioner


Linward "Lin" Appling, Commissioner


Terry Jarrett, Commissioner

Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-23.030

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Cully Dale Phone 573-751-4255 FAX

Email address cully.dale@psc.mo.gov

Data Entry same Phone FAX

Email address

Interagency mailing address Public Service Commission, 9th Floor, Governor Office Bldg

TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☐ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☒ Order of Rulemaking

Effective Date for the Order

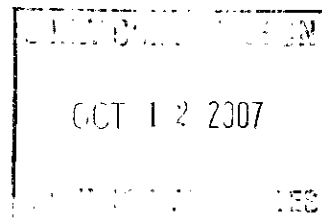
☒ Statutory 30 days OR Specific date

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☒ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:
all except (8)

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp





Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

TERRY JARRETT

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration

ROBERT SCHALLENBERG
Director, Utility Services

NATELE DIETRICH
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

November 15, 2007

Honorable Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Dear Secretary Carnahan:

Re: 4 CSR 240-23.030 Electrical Corporation Vegetation Management Standards

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission for filing on this 15th day of November, 2007.

Statutory Authority: Sections 386.250(6) RSMo 2000

If there are any questions regarding the content of this order of rulemaking, please contact:

Colleen M. Dale, Secretary
Missouri Public Service Commission
200 Madison Street, P.O. Box 360
Jefferson City, MO 65102
(573) 751-4255
cully.dale@psc.mo.gov

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Colleen M. Dale", is written over a circular embossed seal of the Missouri Public Service Commission.

Colleen M. Dale
Secretary
Missouri Public Service Commission

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service commission
Chapter 23 – Electric Utility Operational Standards**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.250(6), RSMo 2000, the commission amends a rule as follows:

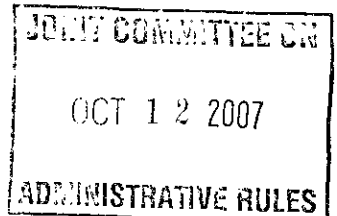
4 CSR 240-23.030 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 16, 2007 (32 MoReg 1104). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held August 15, 2007, and the public comment period ended that day. Five sets of written comments were received and an additional person commented at the hearing. Written comments were received from Union Electric Company, dba AmerenUE; the Empire District Electric Company; Kansas City Power and Light; Missouri Industrial Energy Consumers; Ford Motor Company; the Staff of the Missouri Public Service Commission; Missouri Department of Conservation; and the City of Webb City. Each of those companies or groups and the Missouri Public Counsel commented at the hearing, except Conservation and Webb City, in addition to which several witnesses testified on behalf of the various commenters. The commenters suggested changes to every section except (8) and (11).

COMMENT: Commenters noted that there was a need for a vegetation management rule, but it should be tailored to make it enhance reliability to a greater extent than it does as drafted and so that it will cost less than is estimated with the published draft. The language of the Purpose section overstates the efficacy of the proposed rule in that it states the rule is designed to “ensure” public safety and the efficient and reliable supply of electricity. No amount of vegetation management could ensure such a result. Further, the purpose section reflects the proposed rules’ rigid determination of clearances, which are unreasonable and unworkable. Finally, the rule should focus on distribution facilities, as transmission facilities are already regulated by the Federal Energy Regulatory Commission (“FERC”) and overseen by the North American Electric Reliability Council (“NERC”).

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the Purpose section of the rule should be changed so that it no longer seeks to ensure, but to promote safety, efficiency and reliability. References to specific clearances will also be removed, to comport more closely with the spirit of the rule as finally promulgated. The section will also be clarified to specify its application to distribution facilities.



COMMENT: Subsections (1)(B), (1)(C), (1)(I), (1)(K), (1)(L) and (1)(S) are no longer needed, in light of the other changes to the rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the definitions of "agricultural crop," "border zone," "grass," "operating area," "readily climbable" and "wire zone" are no longer required and will be deleted.

COMMENT: The definition of "Distribution line" in subsection(1)(E) should be changed to clarify that transmission lines subject to FERC or NERC oversight are not subject to this rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the rule shall be changed to clarify the definition of distribution lines and shall be modified accordingly, as more fully set out below.

COMMENT: The phrase "transmission or" should be deleted from subsection (1)(F) and the word distribution be inserted so that "energized conductor" should be changed to "energized distribution conductor."

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that, as the rule does not apply to transmission lines, the phrase "transmission or" will be deleted, but "distribution" will not be inserted as that would be redundant.

COMMENT: The definition of "electric utility arborist" in subsection (1)(H) should be removed in its entirety, as the only use of the phrase is in subsection (2)(D) and the requirement to employ an electric utility arborist is to be removed.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the definition of "electric utility arborist" is unnecessary and will be deleted.

COMMENT: There are various problems with the definition of "major event," which should be clarified.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the definition of "major event" is no longer necessary in light of other changes to the requirements of the rule and shall be deleted.

COMMENT: There are various problems with the definition of "right-of-way," which should be clarified, although Staff disagrees.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the definition of "right-of-way" in subsection (1)(M) is useful, but will modify it by deleting the last sentence.

COMMENT: The definition of "tree" in subsection (1)(O) should be changed to a higher height criteria of at least eight feet and should refer to the height at maturity.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the definition of "tree" is insufficient, and will change it to twelve feet at maturity, as more fully set out below.

COMMENT: In response to comments that the trimming cycles specified in subsection (3)(A) are too short, especially when applied to the utility's entire system, the commission will establish longer cycles for rural than for urban areas.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that definitions of rural and urban areas, for purposes of determining compliance with this rule shall be added, as more fully set out below.

COMMENT: It would be preferable to change the wording throughout section (2) to make it clear requirements apply to electrical corporations and their personnel as well as to contractors.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that it would be more appropriate to specify more clearly which requirements apply to which entities in the sections that contain the requirements, as more fully set out below.

COMMENT: Subsection (2)(A) contains requirements pertaining to transmission lines, which, as discussed more fully above, are already regulated by FERC and supervised by NERC.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the references to transmission lines shall be removed, as more fully set out below.

COMMENT: In subsections (2)(B) and (E), the word "ensure" should be replaced with "contractually require," as such a requirement is less vague and is a more enforceable requirement. In both subsections (2)(B) and (C), lines already regulated or overseen by other agencies should be excluded.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the suggested changes are reasonable and will amend the section, as more fully set out below.

COMMENT: The requirement in subsection (2)(D) that the vegetation manager be an arborist is unreasonable and limits the flexibility of utilities to have overall management vested in a business manager with the input, where necessary, of a certified arborist.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the requirement that the vegetation manager be a certified arborist is unreasonable and will amend the section, as more fully set out below.

COMMENT: Subsection (2)(F) should be clarified so that the municipality cannot require the utility to do additional, non-standard vegetation management work.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the suggested change is reasonable and will amend the section, as more fully set out below.

COMMENT: Subsection (2)(G) requires the utility to trim at the request of a municipality, permitting the utility to charge in some instances. In subsection (2)(H), there appears to be a mechanism through which the utility may have unrecovered costs considered in the utility's next rate case. The language is unclear and insufficient, and opens the door for numerous disparate programs that start and end at municipal boundaries. Further, the wording creates confusion about compliance with portions of suspended rules. Municipal reimbursement may promote an adversarial relationship with

municipalities as to which costs may be reimbursed as well as whether costs were incurred due to "lack of tree trimming." The excessively high cost to comply with this proposed rule necessarily requires recovery of prudently incurred costs through electric rates. Subsection (2)(H) does not provide sufficient assurance that cost of compliance will be recoverable through electric rates.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the requirements in these sections are unreasonable and will delete both sections.

COMMENT: In subsection (2)(I), the use of the word "diseased" is too broad and vague, "all reasonable efforts" is an unreasonably high standard and the section is insufficiently specific concerning access to property. The central concern with the breadth of this language is that it puts the utility in the position of removing trees that do not pose a realistic, imminent and probable threat to electric reliability, which will make it substantially more difficult for the utility to convince customers to cooperate respecting the vegetation management activities that achieve the greatest benefits to reliability. The language should be modified so that it limits any requirement that trees be removed to situations where there is a more imminent likelihood of the vegetation falling into an energized conductor or guy. Absent permission from the landowner, there is no additional "reasonable step" that can be taken.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the suggested changes are reasonable and will amend the section, as more fully set out below.

COMMENT: Subsection (3)(A) creates an obligation to not only inspect the entire system every other year, but based on the inspection, to "perform vegetation management" where vegetation is close enough to pose "a threat" to conductors. A narrow reading suggests that the obligation only exists when public or utility worker safety is about to be unreasonably compromised, when service continuity is about to be interrupted, or a fire is about to occur. The resulting work would be done immediately, and not work normally considered "preventive" maintenance. Maintenance of trees that may become a threat would not be included in a narrow reading, but if the rule as broadly read means that any tree that could become a threat within the next two years should be maintained, then the provision is too broad and compliance is not attainable. This "no contact" standard is not reasonable or attainable.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the suggested changes are reasonable and will amend the section, as more fully set out below.

COMMENT: A reasonable reading of subsection (3)(B) indicates that "threat" should be interpreted as "likely to affect reliability or safety prior to the next required vegetation management." Currently, a utility arborist makes these sorts of judgments in response to inquiries made by customers about the need for tree maintenance on their property, so this provision could be interpreted as merely a reflection of current practices.

RESPONSE AND EXPLANATION OF CHANGE: No change is suggested, although "of this rule" will be added at the end to clarify the limited applicability of the section.

COMMENT: It was noted that subsection (4)(A) should indicate that the listed publications are incorporated by reference and on file with the commission's Data

Center. Commenters also suggested that the Commission limit the adoption of outside standards, guidelines and procedures to the following three items, all of which are already followed by all Missouri investor-owned electric utilities: ANSI A300 (Section (4)(A)(2)), which contains standards for vegetation management; ANSI Z133.1 (Section (4)(A)(5)), which contains guidelines for personnel safety; and the National Electric Safety Code (Section (4)(A)(9)), which contains standards for public safety.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the suggested changes are reasonable and will amend the section, as more fully set out below.

COMMENT: Subsection (4)(B) is problematic for a company to establish its own standards, guidelines and procedures when the authorities conflict. Companies should make a filing with the Commission, providing notice of the company's resolution of the conflict and the basis for it.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the limitation of the authorities to the three mentioned above will render this section unnecessary and will delete it.

COMMENT: The provision in subsection (4)(C) directing each utility to develop its own vegetation management standards, guidelines and procedures that prioritized the potential for vegetation to "interfere" with energized conductors is not consistent with the other requirements in this proposed rule to avoid threats to energized conductors or to ensure public safety and the efficient and reliable supply of electric power.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that, in light of changes elsewhere in the rule, the wording is now consistent and will not be changed. However, the requirement to develop such a plan by January 1 is unreasonable and will be extended to April 1.

COMMENT: In the course of the hearing and comments, it was noted that some utilities use biological methods to control vegetation in rights-of-way, but that was not listed among the methods set forth in subsection (4)(D).

RESPONSE AND EXPLANATION OF CHANGE: The word "biological" will be inserted in paragraph (4)(D)3.

COMMENT: As noted above, a "no contact" standard is unattainable.

RESPONSE AND EXPLANATION OF CHANGE: Consistent with the removal of the "no contact" standard elsewhere in the rule, certain language will be removed from subsection (4)(E), as more fully set forth below.

COMMENT: The requirement in subsection (4)(G) to remove vegetation cuttings is impractical in remote areas where utilities need to retain the ability to windrow the brush along the side of the right-of-ways. Requiring removal of debris within five business days, if the property owner requires removal, is reasonable. However, either obtaining permission from every property owner to leave debris on site or removing all debris places additional constraints on operation, severely limits debris disposal options and will increase maintenance costs significantly. To provide a tree debris pickup and disposal service following storms is prohibitively costly. Moreover, in some instances, it may not

be practicable to either get equipment in to grind or to remove brush after it is trimmed. A third exception should be added to subsection (4)(G) to provide for these types of situations.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the suggested changes concerning storm cleanup are reasonable and will amend the section, as more fully set out below. The commission finds that the five-day requirement to remove trimmings from regular maintenance unless the landowner consents to leaving the trimmings is reasonable and will not alter it at this time.

COMMENT: The substantive requirements in section (5) are not reasonable. In many cases, utilities do not have the legal ability to remove off right-of-way trees. Extreme action is not necessary to ensure the reliability of its transmission lines. NERC has established requirements for vegetation management on transmission rights-of-way that have been approved by FERC and which were developed with broad constituency input. These standards and practices are working, as evidenced by the lack of transmission line outages from preventable causes in the State of Missouri. Development of state regulations, as currently proposed would result in conflicting requirements and adds regulation (and ratepayer costs) for which no demonstrable need has been established. For example, there are areas on utility transmission systems where lines traverse deep valleys with mature trees that top out many feet below the lines (but in excess of 15 feet) and that will never pose a reliability concern.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the suggested changes are reasonable and will delete the substantive requirements from the section, but will require utilities to submit a copy to the commission of vegetation management reports sent to the FERC, a regional reliability organization, or the NERC, as more fully set out below.

COMMENT: Section (6) requires a level of recordkeeping detail that will add administrative burden without providing benefits to electric corporation customers. Utility contractors will incur extra costs for providing these records to utilities. It makes sense to know what contractor was performing certain work, but detail beyond that point does not add value to the oversight process. New reporting tools would need to be developed to record municipality names for all locations in which a crew may work on a given day. Utilities track vegetation management by circuit. Documentation of "all vegetation management and related activities" is nearly impossible to accomplish, but yet required by this subsection. Eliminate reporting at the operating area level since circuit level detail can be aggregated.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the requirements should pertain to scheduled maintenance only, need not require reporting by municipality or operating area and need not require a listing of all contractor personnel, as more fully set out below.

COMMENT: Section (6) requires work to be performed by workers trained in the proper care of trees. Workers are trained in specific job functions that support maintenance activities, such as ground workers who chip bush, haul logs, clean up work sites, etc. but are not trained in the proper care of trees.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that it is unreasonable to require all personnel to be trained in the proper care of trees, but will require only that they be adequately trained to perform their job duties, as more fully set out below.

COMMENT: Modify the standard in subsection (7)(A) to allow for notification "...at least seven days, but not more than 90 days..." Forty-five days is insufficient time because trimming on some circuits can take many months and would require multiple notifications under the rule as drafted. In some cases circumstances could require multiple notifications. Notification of municipal jurisdictions is somewhat stringent and will require additional record keeping and staff time.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that it is reasonable to expand the forty-five (45)-day notice to ninety (90) days, clarify that the notice requirements apply only to planned activities and clarify that notice must be given to municipalities and counties, rather than "political subdivisions," as more fully set out below. The commission finds that notifying both a city and a county concerning planned activities is not unreasonable and will be retained.

COMMENT: The Commission has no authority to impose penalties or sanctions. The proposed penalty structure is severe. The requirements, as proposed, could result in millions of dollars in fines for compliance violations that are unavoidable. Labor supply, unrealistic tree removal requirements, excessive clearance requirements and legal constraints alone would impede compliance. The proposed penalties could quickly detract from the utility's ability to provide safe, reliable, least-cost service to customers by financially crippling a utility.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the proposed section (9) penalties and sanctions are beyond the scope of the commission's authority and will delete the section.

COMMENT: The rule, as drafted, cannot be implemented within two years, as required in section (10). Neither the State of Missouri nor surrounding areas have a sufficiently-sized vegetation management workforce to enable Missouri utilities to ramp up their vegetation management practices to meet the requirements of the rule within two years. Even if the electric utility could procure the personnel necessary to meet these requirements within two years, it would require it to hire and train a workforce that it would no longer be able to support once the initial compliance phase was finished. No utility wants to cause such an extreme bubble in employment, where it is forced to hire many individuals only to have to release them shortly thereafter. Four years for implementation would be more appropriate: 15% completion in the first year, 40% in second, 70% in third, and 100% completion by the fourth year.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the suggested changes are reasonable and will amend the section, as more fully set out below.

COMMENT: Merely picking a distance as the minimum distance for all distribution clearance is an overly simplistic approach that should be rejected. The language of the proposed rule would require electric utilities to go beyond current easement widths – and

beyond their legal rights -- and would require the utility to obtain additional easements or otherwise obtain access to clear at least 25 feet for conductors energized about 50,000 volts and ten feet for conductors energized at 600 through 50,000 volts. This requirement substantially increases the amount of clearance required without an associated reliability benefit. Further, this work would require the acquisition of additional easements throughout utility systems. The amount of vegetation that should be trimmed depends entirely upon the easement or right-of-way rights held by the utility, the voltage of the line, the tree location, the tree species characteristics and growth rate, the natural tree structure, the overall tree health and local environmental conditions.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the proposal of a set clearance is not reasonable and will amend the section to lower the minimum clearance, consider the right-of-way as a limitation on trimming and add language that allows for exemption from the minimum clearance for certain mature trees near certain lines, as more fully set out below. The commission will delete paragraph (10)(B)3 concerning minimum clearance of small branches and new tree growth.

COMMENT: The excessively high cost to comply with this proposed rule necessarily requires recovery of prudently incurred costs through electric rates. The proposed rule, as currently drafted, would impose a significant financial burden on electric utilities and ultimately their customers. Compliance with clearances to be maintained at all times that are well beyond the design and historic maintenance practices of Missouri utilities could also lead to claims by property owners whose trees would be affected by the drastic change in standards. The potentially adverse impact on customer relations should not be underestimated. KCPL anticipates significant litigation directed against utilities and their contractors. Taken as a whole, the proposed rule will require electric corporations to accomplish an unprecedented level of inspection, tree pruning and tree removal work, and do so over a short timeframe. The cost of compliance is estimated to be over \$364 million in the first year and nearly \$288.5 million per year, thereafter. The proposed rules, if put into effect, will have a serious financial impact on the utilities and their customers. Absent a funding or deferral mechanism within the rules, it will make it financially impossible for utilities to comply and to continue our current operations.

RESPONSE AND EXPLANATION OF CHANGE: Although the commission has altered this rule to lower the cost of compliance, it is reasonable to provide a mechanism through which utilities may record the costs associated with compliance with this rule and eventually recover those costs in rates. Such a mechanism is set forth in section (10).

COMMENT: Programs should be tailored to meet specific system needs, as well as provide flexibility to allow adaptation. Instead of mandating cyclical vegetation management cycles, as contemplated in the proposed rule, KCPL suggests that the Commission use reliability indices based on historical trend analysis. KCPL further suggests using a systematic preventive maintenance approach focused on maintaining high reliability while controlling costs. The long-term preventive maintenance strategy should be based on outage risk and customer impact. Reliability-based trimming means that work is planned based on risk and importance of specific lines, rather than using the same cycle for trees on all lines. Identifying and using industry 'best practices' is also important.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the alternative of using a reliability-based trimming plan is reasonable under certain circumstances and adds language to section (11) to clarify that utilities may propose such a plan in lieu of a plan that adheres to the rule.

4 CSR 240-23.030 Electrical Corporation Vegetation Management Standards and Reporting Requirements.

PURPOSE: This rule sets forth requirements that electrical corporations shall follow in managing vegetation in proximity to an energized distribution conductor and sets reporting requirements for transmission line vegetation management in order to [ensure] promote a safe, public safety and the efficient and reliable supply of electric power. The requirements in this rule provide the minimum standards for the vegetation management programs of electrical corporations [conductor clearances from vegetation to provide safety for the public and utility workers, reasonable service continuity, and fire prevention]. Each electrical corporation must have a vegetation management plan and keep appropriate records to ensure that timely [trimming] vegetation management is accomplished [to keep the designated minimum clearances]. These records must be made available to the Missouri Public Service Commission ("commission") upon request.

(1) Definitions. The following words and terms, when used in this rule, shall have the following meaning unless the context clearly indicates otherwise.

(A) Arboriculture means the cultivation of trees, shrubs and other woody plants.

~~[(B) Agricultural crop means a cash crop which is sold for money.]~~

~~[(C) Border zone means the space from the edge of the wire zone, as defined herein, to the outer boundary of the right-of-way.]~~

(B) [(D)] Contractor means a person or entity, other than the commission, with which electrical corporation contracts to perform work, furnish information and/or material. This term includes all subcontractors engaged by a contractor to perform any of the obligations required by a contract.

(C) [(E)] Distribution line means a primary electric voltage line, wire or cable, energized at less than two hundred thousand (200,000) volts. [including supporting structures and appurtenant facilities, which deliver electricity from transformation points on the transmission system to points of connection at a customer's premises that would not be considered a transmission line as set forth in this definition section.] However, any distribution line subject to this rule shall thereafter be exempt from this rule at such time the electric corporation provides the Commission written proof that such distribution line has been deemed "critical to the reliability of the region" by the Federal Energy Regulatory Commission ("FERC"), a regional reliability organization or the North American Electric Reliability Council ("NERC").

(D) [(F)] Energized conductor means an electric circuit or equipment through which electricity is flowing or usually flows within the transmission or distribution system.

(E) [(G)] Electrical corporation means electrical corporation as defined in section 386.020(15), RSMo Cum. Supp. 2006.

~~[(H) Electric utility arborist means a person that has been certified as a Utility Specialist by the International Society of Arboriculture.]~~

~~[(I) Grass means a type of plant with jointed stems, slender flat leaves and spike-like flowers.]~~

~~[(J) Major event means any of the following:~~

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

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

~~A. Taken by an electrical corporation under the direction of an independent system operator or regional transmission organization;~~

~~B. Taken by the electrical corporation to prevent an uncontrolled or cascading interruption of electric service; or~~

~~C. Taken by the electrical corporation to maintain the adequacy and security of the electric system, including emergency load control, emergency switching and energy conservation procedures, which affects one (1) or more customers;~~

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

~~{(K) Operating area means a geographical subdivision of each electrical corporation's franchise territory as defined by the electrical corporation. These areas may also be referred to as regions, divisions or districts.}~~

~~{(L) Readily climbable means vegetation having both of the following characteristics:~~

~~1. Low limbs, accessible from the ground and sufficiently close together so that the vegetation can be climbed by a child or average person without using a ladder or other special equipment; and~~

~~2. A main stem or major branch that would support a child or average person either within arms' reach of an uninsulated energized electric line or within such proximity to the electric line that the climber could be injured by direct or indirect contact with the line.}~~

~~(F) {(M)} 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.]~~

~~**(G) Rural means those areas in which there are fewer than thirty-five (35) customers per circuit mile.**~~

~~(H) (N) Transmission line means an electrical line, wire or cable (including the supporting structures), and appurtenant facilities which transmits electricity from a generating plant to electric distribution lines, **and is operated at or above two hundred thousand (200,000) volts.** [An electric transmission line usually has a rating exceeding sixty-nine (69) kilovolts.]~~

(I) ~~{(O)}~~ Tree means a perennial woody plant at least twelve (12) feet tall at maturity with one [a] main stem [trunk] and having a distinct head in most cases [~~branches forming a distinct elevated crown at a height exceeding three feet (3') at maturity~~].

(J) Urban means those areas in which there are thirty-five (35) or more customers per circuit mile.

(K) ~~{(P)}~~ Vegetation means trees, shrubs and other woody plants.

(L) ~~{(Q)}~~ 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.

(M) ~~{(R)}~~ Volts means nominal voltage levels, measured phase-to-phase.

~~{(S)}~~ Wire zone means the land located directly under the widest portion of a transmission line. The wire zone is bounded on each side by a location on the ground that is directly under the outermost transmission wire.

(N) ~~{(T)}~~ 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.

(2) General Provisions.

(A) An electrical corporation shall ensure that vegetation management is conducted in accordance with this rule along [on] energized distribution line conductors of six hundred (600) volts and higher, [~~whether for distribution or transmission,~~] that the electrical corporation owns, in whole or in part.

(B) Each electrical corporation shall obtain for its own employees, and shall contractually require [ensure] that its contractors obtain, all required permits and licenses prior to commencement of vegetation management.

(C) Each [An] electrical corporation and its contractors using [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 electrical corporation shall employ a vegetation manager~~, who is an electric utility arborist, as defined in section (1). The vegetation manager shall be an employee of the electrical corporation, not a contractor~~. The [electrical corporation shall provide the] vegetation manager shall supervise [with the authority and the resources to administer] all aspects of the electrical corporation's vegetation management program, and [the vegetation manager] shall ensure that the electrical corporation complies with this rule. The vegetation manager's name and contact information shall be posted on the electrical corporation's website and shall be included on all notifications provided pursuant to the notice requirements of section (7) of this rule ~~{(6)}~~.

(E) Each electrical corporation and its [~~shall ensure that all~~] contractors shall inform workers hired to perform vegetation management [~~inform its workers~~] of all applicable federal, state, county, and municipal laws, rules or regulations that apply to the work performed under this rule. The electrical corporation shall also ensure that all contractors comply with each applicable requirement of this rule.

(F) An electrical corporation that agrees to perform[s] vegetation management at the request of a municipality or government agency, other than vegetation management required under this rule, may require the requesting party to pay any cost above the electrical corporation's cost to perform the vegetation management required by this rule. An electrical corporation shall not perform such additional vegetation management if the additional vegetation management would decrease the reliability or safety of an energized conductor.

~~{(G) Upon a written request from a municipality, the commission may authorize an electrical corporation to temporarily suspend compliance with one (1) or more of the vegetation management requirements of this rule, within the following limits:~~

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

~~2. The suspension of compliance shall apply only to those portions of a distribution system that are located within the municipality, and that do not affect service to any adjacent municipality;~~

~~3. The electrical corporation 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 electrical corporation due to lack of tree trimming, the municipality shall reimburse the electrical corporation for these costs.]~~

~~{(H) An electrical corporation may seek recovery in rates of the distribution and transmission portion of vegetation management program costs required under this rule in future rate proceedings. However, the commission may deny recovery in future rate proceedings of costs an electrical corporation incurs due to a delay in implementing a tree trimming program or costs associated with meeting compliance standards after failure to achieve the standards. Upon a showing of good cause by the electrical corporation for the delay or the failure to meet the compliance standards, the commission may allow such recovery.]~~

{(G) [(H)] Upon an electrical corporation's receiving notice of, or having actual knowledge of, **vegetation conditions that pose an imminent threat to the reliable or safe function of electrical facilities** [any dead, rotten, or diseased vegetation which overhangs, leans toward, or may fall into an energized conductor or guy], the electrical corporation shall promptly remove or remedy the potential **threat** [safety concern]. If, **pursuant to the first sentence of this section**, removal of the vegetation requires the electrical corporation to access or cross property for which it does not hold an easement or other legal authorization, the electrical corporation shall **make** [take all] reasonable **efforts** [steps] to obtain any necessary permission from the property owner and remove or remedy the potential safety concern as promptly as possible. ~~[In response to a major event, the electrical corporation will only be required to remedy the potentially dangerous condition.]~~

(3) Maintenance Cycle.

(A) An electrical corporation shall perform a visual inspection at least once every two (2) years of all **urban** energized **distribution** conductors **and at least once every three (3) years of all rural energized distribution conductors**, to determine whether vegetation management is needed. Where **needed**, ~~[vegetation is close enough to pose a~~

threat to its energized conductors;] the electrical corporation shall perform vegetation management in a timely manner. [The visual inspection may be performed from the ground except in cases where the conductor is not visible from the ground. The electrical corporation 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.] Vegetation management performed along a circuit in compliance with this rule shall meet this two (2) or three (3) -year visual inspection requirement, accordingly.

(B) In addition to the maintenance required in subsection (A) above, if an electrical corporation becomes aware either through notification or during the inspections required under subsection (A) above or at any other time, of any vegetation close enough to pose a threat to its energized conductor, which is likely to affect reliability or safety prior to the next required vegetation management, the electrical corporation shall ensure that necessary vegetation management is promptly performed as required under section (4) of this rule.

(4) Technical Standards for Vegetation Management.

(A) Each electrical corporation shall ensure that vegetation management conducted on its energized distribution conductors is performed in accordance with the following applicable standards, which are hereby incorporated by reference, include no later amendments or additions, are on file with the commission's data center and available for inspection: [the standards, guidelines and procedures set forth in this rule, which includes to the extent not otherwise inconsistent with this rule, the following publications:]

1. "Pruning, Trimming, Repairing, Maintaining, and Removing Trees, and Cutting Brush – Safety Requirements, 2006." This document, also known as ANSI Z133.1-2006, is published by the American National Standards Institute, 1819 L Street, N.W., Suite 600, Washington, DC 20036; [Pruning Trees Near Electric Utility Lines, by Dr. Alex L. Shigo. This publication may be available from Shigo and Tree Associates, PO Box 769, Durham, New Hampshire 03824;]

2. Part 1 of the document entitled Tree, Shrub, and Other Woody Plant Maintenance-Standard Practices, 2001. This document, also known as ANSI A300-2001, is published by the American National Standards Institute, 1819 L Street, N.W., Suite 600, Washington, DC 20036; and

[3. Best Management Practices, Utility Pruning of Trees, 2004. This title is published by the International Society of Arboriculture;]

[4. Environmental Stewardship Strategy for Electric Utility Rights of Way, (2002). This title is published by the Edison Electric Institute Vegetation Management Task Force;]

[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;]

[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;]

~~[7. Manual of Woody Landscape Plants 5th Ed., by Michael A. Dirr, Stipes Publishing, LLC; 5th edition (August 1998);]~~

~~[8. Hortus Third: A Concise Dictionary of Plants Cultivated in the United States and Canada, by L.H. Bailey Hortorium, 1976; and]~~

3. ~~[9.]~~ *National Electric Safety Code* as referred to in 4 CSR 240-18.

~~[(B) Where multiple standards, guidelines and procedures listed at subsection (A) above would apply or conflict, the vegetation manager, or his or her designee, shall select the most appropriate standard, guideline or procedure.]~~

(B) ~~[(C)]~~ Each electrical corporation shall develop its own vegetation management standards, guidelines and procedures, which shall be consistent with this rule. In developing these standards, guidelines and procedures, an electrical corporation shall prioritize its vegetation management based upon:

1. The extent of the potential for vegetation to interfere with the energized conductor; ~~and]~~

2. The voltage of the affected energized conductor; and

3. ~~T~~~~he~~ relative importance of the affected energized conductor in maintaining safety and reliability.

(C) ~~[(D)]~~ Each electrical corporation shall file a copy of its vegetation management standards, guidelines and procedures at the commission by April ~~[January]~~ 1, 2008, with verification by affidavit of an officer who has knowledge of the matters stated therein. If an electrical corporation makes a change in its vegetation management standards, guidelines or procedures, it shall file a copy of the change at the commission no later than thirty (30) days prior to implementing the change, with verification by affidavit of an officer who has knowledge of the matters stated therein.

(D) ~~[(E)]~~ Each electrical corporation's vegetation management standards, guidelines and procedures shall cover, at a minimum, all of the following activities:

1. Tree pruning and removal;

2. Vegetation management around poles, substations and energized conductors;

3. Manual, mechanical, **biological** or chemical vegetation management along rights-of-way;

4. Inspection of areas where vegetation management is performed, both before and after the vegetation management;

5. Research and development of improved vegetation management; and

6. Public education.

(E) ~~[(F)]~~ Among the factors the electrical corporation 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; ~~including but not limited to:~~

~~A. Location;~~

~~B. Configuration; and~~

~~C.]~~ 3. Sag of conductors at elevated temperatures and under wind and ice loading, and growth habit, strength, and health of vegetation growing adjacent to the conductor with the combined displacement of the

vegetation, supporting structures, and conductors under adverse weather or routine wind conditions; **and**

~~[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]~~

~~4. [5.] The electrical corporation's legal rights to access the area where vegetation management is to be performed.~~

(F) [(G)] The electrical corporation shall remove all trimmings and cut vegetation resulting from vegetation management that are part of the electrical corporation's regular maintenance cycle, within five (5) business days after the vegetation was cut, except if:

1. The electrical corporation obtains consent from the owner of the property upon which the trimmings or cut vegetation are located to leave the trimmings or cut vegetation; or

2. The vegetation management is performed as a direct result of **an outage caused by a storm as described in the electric corporation's standard procedures.** ~~[major event, in which case the electrical corporation shall remove the trimmings and cut vegetation that was cut or trimmed as part of its vegetation management activities after the conclusion of the major event.]~~ **The electric corporation shall include a copy of its standard procedures regarding removal of trimmings or cut vegetation during outages caused by a storm in its annual vegetation management filing. If the electric corporation proposes to change its standard procedures regarding removal of trimmings or cut vegetation during outages caused by a storm, the electric corporation shall file the proposed changes with the commission, and other parties shall have thirty (30) days to comment on the proposed changes.**

(5) Transmission Line Vegetation Management. **Every electrical corporation shall send the commission's energy department a copy of every filing it makes on vegetation management of its transmission lines with the FERC, a regional reliability organization, or the NERC.**

~~[(A) In addition to the other requirements of this rule, transmission lines, as defined at section (1), are subject to the requirements in this section.~~

~~(B) In addition to meeting the other requirements in this section, each electrical corporation shall ensure that the following requirements for transmission lines are met:~~

~~1. Clearing under and over transmission lines shall be wide enough so that no vegetation or parts of vegetation will grow or fall into the transmission lines prior to the next scheduled vegetation management cycle;~~

~~2. An electrical corporation shall not allow any vegetation that grows taller than fifteen feet (15') at maturity to grow anywhere within a transmission line right-of-way;~~

~~3. Landowners and political subdivisions may request the right to allow woody plants that naturally mature above three feet (3') tall to grow in the wire zone and/or border zone. The electrical corporation's vegetation manager or~~

his/her designee will be responsible for determining if these woody plants are permissible:

4. ~~The electrical corporation shall not allow any woody plant species that naturally matures above fifteen feet (15') to grow in the border zone;~~

5. ~~Grass vegetation and non-woody agricultural crops, not exceeding twelve feet (12') in height at maturity, shall be permitted to grow anywhere in the right-of-way;~~

6. ~~Where an electrical corporation has cleared a right-of-way of vegetation and bare soil is exposed, the electrical corporation shall comply with the soil erosion requirements of the applicable soil conservation district in order to prevent soil erosion;~~

7. ~~To the extent that any plant species identified by the Missouri Department of Conservation as invasive and non-indigenous to Missouri poses a hazard to electrical transmission conductors, the electrical corporation shall make reasonable efforts to eliminate the species from the entire right-of-way. To do so, the electrical corporation shall use the best integrated vegetation management practices available and practical; and~~

8. ~~In each electrical corporation's March billing cycle for customers in which vegetation management is scheduled that year, or two (2) months prior to the commencement of vegetation management on a particular property, whichever is earlier, each electrical corporation shall notify owners of land upon which the electrical corporation holds a right-of-way of the requirements in this subsection, through a separate direct mailing.~~

(C) ~~For the purposes of this section, the mature height of woody and non-woody agricultural crops shall be determined in accordance with the publications incorporated in this rule in subsection (4)(A).~~

(D) ~~Each year, before June 1, each electrical corporation shall develop a schedule for transmission line vegetation management. The schedule shall:~~

1. ~~List the transmission lines planned for vegetation management for the next four (4) years;~~

2. ~~Ensure that transmission line vegetation management is performed prior to vegetation becoming a threat to safety or service reliability; and~~

3. ~~Be distributed to municipalities served by, or whose residents are served by, or through, transmission lines of the electrical corporation or those with such lines located within the boundaries of the municipality.]~~

(6) Training, Record Keeping and Reporting.

(A) Each electrical corporation shall **adopt standards to be used by** [ensure that] all persons who perform vegetation management for the electrical corporation, whether employees or contractors, **for** [are trained in] the proper care of trees and other woody plants, **including** [are knowledgeable regarding] safety practices and line clearance techniques [-and have demonstrated the ability to perform vegetation management safely].

[(B) Each electrical corporation shall keep a record of all personnel used by a contractor or the electrical corporation to perform vegetation management for the electrical corporation, and the dates and types of training that each has received.]

(B) ~~((C))~~ The electrical corporation shall monitor and document all scheduled vegetation management and related activities it or its contractors performs. Documentation shall include, but shall not be limited to:

~~[1. The municipality in which the work was performed;]~~

1. ~~[2.]~~ Identification of each circuit and substation where vegetation management was performed;

2. ~~[3.]~~ The type of vegetation management performed including removal, trimming and spraying and methods used;

3. ~~[4.]~~ The crew size and supervisor's name;

4. ~~[5.]~~ The date of activity;

5. ~~[6.]~~ Any safety hazards encountered; **and**

6. ~~[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 planned for the following year.]~~

(C) ~~((D))~~ Each electrical corporation shall include a summary of the information required in subsection (B) ~~((C))~~ above about its vegetation management during the past year, and vegetation management planned for the following year in an annual report to be filed with the commission by **April 1** ~~[May 31]~~ each year, with verification by affidavit of an officer who has knowledge of the matters stated therein. ~~[This information shall include, at a minimum, the name of each municipality in which the electrical corporation conducted vegetation management during the preceding year, and all circuits and operating areas affected.]~~ **The report shall also include:**

1. Expenditures for vegetation management in the preceding year;

2. Vegetation management budget for the current year;

3. Circuits, completion dates and miles trimmed in the preceding year;

4. Circuits, completion dates and miles scheduled for the current year;
and

5. Total distribution miles for the system and corresponding classification between rural and urban.

(D) ~~((E))~~ Each electrical corporation shall report its own violations of this rule to the commission within thirty (30) days of discovery and include its plan for correcting the violation.

(E) ~~((F))~~ The staff of the commission shall review each electrical corporation's vegetation management annual report for compliance with the provisions of this rule. The staff shall identify any deficiencies in the annual report of each electrical corporation and file its analysis and recommendations for each electrical corporation complying with the provisions of this rule.

(7) Public Notice of Planned Vegetation Management.

(A) Each electrical corporation shall make a diligent attempt to notify all property owners or occupants that may be affected by planned vegetation management. This requirement will be satisfied if the electrical corporation provides notice to affected property owners or occupants at least seven (7) days, but not more than **ninety (90)** ~~[forty-five-(45)]~~ days, prior to performing **planned** ~~[any]~~ vegetation management

activity. Notice shall be provided by direct mailing, door hanger, postcard, bill insert, personal contact or any other commission-approved method.

(B) Each electrical corporation shall maintain a record of the dates, content, and addresses to which all notices provided under subsection (A) were given until the subsequent vegetation management cycle has occurred for each affected property owner or occupant.

(C) Each electrical corporation or its contractor shall provide written notice of any pending vegetation management activities to a primary contact for each county and municipality [political-subdivision] affected. The primary contact shall be selected by mutual agreement between the electrical corporation and the highest elected official, or if no elected official, then the highest appointed official, of the county and municipality [political-subdivision].

(D) An electrical corporation shall notify counties and municipalities [all political-subdivision] that may be affected by vegetation management activities. The notice shall be made in writing to the primary contact designated under subsection (C) above, at least two (2) months in advance of the planned vegetation management. This notice shall include the planned dates and locations of the vegetation management. In addition, the notice of vegetation management shall be in a form appropriate to each electrical corporation's procedures and easement rights.

(8) Outreach Programs.

(A) Each electrical corporation shall conduct an annual public education program to inform its customers, as well as the political subdivisions in the electric public utility's service territory, of the importance of vegetation management, and of the electrical corporation'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 commission.

(C) Each electrical corporation shall post its public education materials on its website.

~~[(9) Penalties, Fines, Sanctions and/or Ratemaking Disallowances.~~

~~(A) Failure to comply with any provision of this rule may subject the violator to penalties, fines, sanctions and/or ratemaking disallowances in accordance with the commission's statutory authority. No penalties, fines, sanctions and/or ratemaking disallowances shall be imposed for violations of this rule for a period of six (6) months from the effective date of this rule.~~

~~(B) An electrical corporation that violates this rule may be subject to a penalty of not less than one hundred dollars (\$100) and not more than two thousand dollars (\$2,000) per day per violation, for each day the violation occurs as permitted under Missouri statutes. The commission shall notify the electrical corporation of the violation(s) in writing. Upon receipt of the written notice of violation, the electrical corporation shall have five (5) business days to correct the violation(s). Any failure to correct the violation may subject the electrical corporation to a penalty of not less than one hundred dollars (\$100) per day for each violation, calculated from the day such written notice was received by the electrical corporation.~~

(C) ~~The commission may consider violations of this rule as a relevant factor in setting rates for the electrical corporation in a case where the commission is examining the propriety of the electrical corporation's rates.~~

(D) ~~Penalties, fines, sanctions and/or ratemaking disallowances imposed for violations of this rule are in addition to, not a replacement for, other penalties, fines and/or sanctions that apply under other state laws and regulations and under federal laws and regulations.~~

(E) ~~In determining the appropriate penalties, fines, sanctions and/or ratemaking disallowances for violation of this rule, the commission shall consider the following criteria, and any other factors deemed appropriate and material to the electrical corporation's delay or failure to comply:~~

- ~~1. The good faith efforts, if any, of the electrical corporation in attempting to comply with this rule;~~
- ~~2. The gravity of the violation;~~
- ~~3. The number of past violations by the electrical corporation, including violations of this rule, as well as of other standards, guidelines and procedures adopted by the commission;~~
- ~~4. The appropriateness of the sanction(s) in light of the size of the electrical corporation;~~
- ~~5. Events judged by the commission to be beyond the control of the electrical corporation; and~~
- ~~6. Mitigating factors.]~~

(9) [(10)] Specific Requirements.

(A) Each electrical corporation shall **perform vegetation management in accordance with this rule as follows:** ~~[comply with the tree-trimming standards of this rule by trimming to the extent of:]~~

1. **On no less than fifteen percent (15%) of its total urban distribution miles by the twelve (12) -month anniversary of the effective date of this rule, and on no less than fifteen percent (15%) of its total rural distribution miles by the eighteen (18) -month anniversary of the effective date of this rule;** ~~[Thirty-three and one-third percent (33 1/3%) of total number of trees required trimming by the twelve (12) -month anniversary of the adoption of this rule;]~~

2. **On no less than forty percent (40%) of its total urban distribution miles by the twenty-four (24) -month anniversary of the effective date of this rule, and on no less than forty percent (40%) of its total rural distribution miles by the thirty-six (36) -month anniversary of the effective date of this rule;** ~~[Sixty-six and two-thirds percent (66 2/3%) of the total number of trees requiring trimming by the eighteen (18) -month anniversary of the adoption of this rule; and]~~

3. **On no less than seventy percent (70%) of its total urban distribution miles by the thirty-six (36) -month anniversary of the effective date of this rule, and on no less than seventy percent (70%) of its total rural distribution miles by the fifty-four (54) -month anniversary of the effective date of this rule;** ~~[One hundred percent (100%) compliance by the two (2) -year anniversary of the adoption of this rule.]~~

4. On no less than one hundred percent (100%) of its total urban distribution miles by the four (4) -year anniversary of the effective date of this rule, and on no less than one hundred percent (100%) of its total rural distribution miles by the six (6) -year anniversary of the effective date of this rule; and

5. Thereafter, on no less than twenty-five percent (25%) of its total urban distribution miles each year, and on no less than twenty-five percent (25%) of its total rural distribution miles each eighteen (18) months.

(B) To the extent permitted by current easements or other authority, e[E]ach electrical corporation must maintain the following minimum clearances of vegetation from conductors at the time vegetation management is conducted:

1. ~~[Twenty-five feet (25')] F[f]or~~ conductors energized above fifty thousand (50,000) volts, fifteen feet (15') or the edge of the right of way, whichever is less;

2. ~~[Ten feet (10')] F[f]or~~ conductors energized at six hundred (600) through fifty thousand (50,000) volts, ten feet (10') or the edge of the right of way, whichever is less [except clearances may be reduced to three feet (3') if the vegetation is not readily climbable];

~~[3. Intrusion of limited small branches and new tree growth into the minimum clearance areas of paragraphs (B)1. and 2. above is acceptable provided the vegetation does not come closer than six inches (6") from the conductor;]~~

3. [4.] Subtransmission lines and three (3)-phase distribution feeders/backbone circuits (portion of distribution system directly interconnected with distribution substation and prior to the first protective device) shall be trimmed vertically to remove overhanging limbs to the widths prescribed in paragraphs (B)1. and 2. above; [and 3. above; and]

4. Notwithstanding any provision to the contrary in this section (9), for conductors energized at or below thirty-five thousand (35,000) volts, mature trees whose trunks or limbs have sufficient strength and rigidity to prevent the trunk or limbs from damaging the conductor under reasonably foreseeable wind and weather conditions are exempt from the minimum clearance requirements in this section (9); and

5. The radial clearances in subsection (9)[(10)](B) are minimum clearances that should be established between the vegetation and the energized conductors and associated live parts where practicable. Vegetation management practices may make it advantageous to obtain greater clearances than those listed. In the event that the specific trimming conflicts with any other materials within this chapter the strictest rules shall apply.

(10) In the event an electrical corporation incurs expenses as a result of this rule in excess of the costs included in current rates, the corporation may submit a request to the commission for accounting authorization to defer recognition and possible recovery of these excess expenses until the effective date of rates resulting from its next general rate case, filed after the effective date of this rule, using a tracking mechanism to record the difference between the actually incurred expenses as a result of this rule and the amount included in the corporation's rates, or if there is

no identifiable amount included in the corporation's rates, the amount reflected in the appropriate Uniform System of Accounts account for vegetation management on the corporation's books for the test year (as updated) from the corporation's last rate case will be used to determine the amount included in current rates. In the event that such authorization is granted, the next general rate case must be filed no later than five (5) years after the effective date of this rule. Parties to any electrical corporation request for accounting authorization pursuant to this rule may ask the commission to require the electrical corporation to collect and maintain data (such as actual revenues and actual vegetation management expenses) until such time as the commission addresses ratemaking for the deferrals. The commission will address the ratemaking of any costs deferred under these accounting authorizations at the time the electrical corporation seeks ratemaking in a general rate case.

(11) Variances. A variance from a provision of this rule may be granted only for good cause shown. Nothing in this rule shall prevent an electrical corporation from proposing and the commission from approving an alternative vegetation management plan in variance of paragraphs (9)(B)(1) and (2), if the electrical corporation can establish that the alternative vegetation management plan has previously produced greater reliability performance than would be produced under this rule or that the alternative vegetation management plan shall produce greater reliability performance in the future than would be produced under this rule.

AUTHORITY: sections 386.040, 386.250, 386.310 and 393.140, RSMo 2000, and 393.130, RSMo Cum. Supp. 2006. Original rule filed June 15, 2007; effective January 30, 2008.

REVISED PRIVATE COST: The revised rule will cost significantly less than the originally proposed rule. Depending on whether the electric corporation already has a process in place for compliance or whether new systems must be created the cost will range from less than \$500 to \$2,000,000 in implementation costs. Annual compliance costs will be divergent as well. However, the revised rule includes a cost recovery mechanism that, when used properly, will allow the electric companies to recover all prudently incurred costs of complying with this rule.