

In the Matter of Filing Requirement)
Rules for Electric Utilities.) Case No. EX-2007-0214

COMES NOW Union Electric Company d/b/a AmerenUE (AmerenUE or Company), and for its *Comments on the Commission's Proposed Electrical Corporation Vegetation Management Standards and Reporting Requirements*, proposed to be codified at 4 CSR 240-23.030, states as follows:

1. On June 14, 2007, the Missouri Public Service Commission (Commission) voted to send proposed Electrical Corporation Vegetation Management Standards and Reporting Requirements to the Secretary of State for publication. The Notice of Proposed Rulemaking called for comments to be submitted in this case no later than August 15, 2007.

2. As this process evolves, it is important that the Commission recognize the varied and competing interests which must be balanced within a final rule. Reliable electric service is important and that importance was evidenced by the public testimony at the local public hearings that were held as part of AmerenUE's recently concluded rate case in areas impacted by the July 2006 and November/December 2006 storms.

3. In response to comments received at the public hearings, AmerenUE has already implemented a number of changes in its vegetation management procedures, and recognizes that additional hardening of its system needs to take place. The Company currently has two classifications for feeders – urban and rural. Urban feeders have 35 or more customers on a circuit and will be trimmed every four years. This classification will place 80% of AmerenUE’s customers on the four year cycle. Rural feeders, with less than 35 customers on the circuit, will be trimmed every six years. In addition to these defined cycle lengths, AmerenUE is diligently working cooperatively with our customers to target trees, both on and off of the right-of-way, for possible removal. This may include identifying situations where inappropriate trees are planted under or adjacent to the distribution system. The Company is meeting with municipalities to discuss local ordinances to prevent this type of problematic planting in the future, including implementation of a tree replacement program funded by the Company. The Company is also working on targeting on-going problematic circuits for inspection and is seeking long-term solutions for improving the reliability of service to these areas. In some areas, it has sought cooperation to broaden the amount of clearance around its lines, to remove entire trees and to add additional overhead protection as needed.

4. The goal of this rulemaking should be to produce a rule that balances the need for safe and adequate electric service with the real financial, aesthetic, and environmental costs associated with vegetation management strategies. For example, a rule that suggests that an electric utility seek to remove every tree on one side of a street merely because the electric line runs along that same side of the street will forever alter the character of that neighborhood. In a time of heightened awareness of the ecological

importance of vegetation, the removal of trees which do not pose a significant risk to electric system reliability will likely be viewed as excessive and unreasonable by customers and the public at large. In short, as written the proposed rules are likely to impose hundreds of millions of dollars of costs on ratepayers, both initially and on an ongoing basis, and are likely to cause a devastating impact on the environment while degrading the quality of the states' urban forestry, all without an engineering analysis to demonstrate that the requirements will result in a reliability improvement that justifies the cost.

5. Indeed, it is important to understand what a vegetation management rule can and cannot accomplish. The Purpose Section of the proposed rule uses the phrase “ensure public safety and the efficient and reliable supply of electric power.” The use of the word “ensure” in that phrase is problematic if it is meant to imply absolute reliability entirely free from service interruptions.¹ AmerenUE cautions against the belief that the implementation of vegetation management standards will prevent outages such as those suffered by AmerenUE customers in 2006. As the Commission Staff recognized in its report on the July 2006 storms, tree-trimming simply cannot prevent all storm related outages. EO-2007-0037, *Staff Report on AmerenUE's Storm Outage Planning and Restoration Effort Following the Storms on July 19 and 21, 2006*, p. 41. It is important that all stakeholders understand this reality. Severe weather conditions are going to cause damage to electric systems in the State of Missouri, regardless of the vegetation management standards adopted. AmerenUE hopes this process will provide valuable insight to the Commissioners and to all stakeholders respecting what vegetation management can, and cannot, do, and how the proposed rule would impact electric

¹ See Exhibit 1, discussed below, for suggested revisions to the purpose clause of the proposed rules.

utilities' current practices. AmerenUE supports bringing greater transparency to vegetation management practices because this would provide all stakeholders a greater understanding of utility operations, not just during normal weather conditions but also during times of severe storms or other events which negatively impact electric utility distribution systems within the State of Missouri. To that end, these Comments suggest that the Commission codify for all utilities the reporting requirements in place for and being followed by the Company. As these Comments express, however, the rule, as proposed, needs to be revised in several respects in order to bring greater assurance that the standards reflected in a rule can improve reliability, and to allow for a final rule that comports with the practical and legal realities inherent in any situation where the government mandates interference with private property rights – in this case trees owned by private landowners.

Comments on Specific Portions of the Proposed Rule²

Section 1 – Definitions.

6. AmerenUE proposes to change the definition in (1)(E) of “Distribution line” to the following: “Distribution line means a primary electric voltage line, wire or cable, less than 100 kV, including supporting structures and appurtenant facilities, which deliver electricity from the connection point at the first structure outside the substation to the point of connection at the customer’s premises.” This change should be made because the insertion of a specific, identifying voltage, “less than 100kV,” removes ambiguity from the definition as proposed making it less subject to possible varying interpretations. Similarly, consistent with the Company’s comments below relating to the

² Attached to these Comments as **Exhibit 1** is a marked-up version of the proposed rules showing the changes suggested by AmerenUE, which are discussed in detail in these Comments.

need to apply vegetation management rules to the distribution system only, the phrase “transmission or” should be deleted from Section (1)(F).

7. Section (1)(H) is the definition of electric utility arborist. This definition should be removed in its entirety, as the only use of the phrase is in Section (2)(D) and the requirement to employ an electric utility arborist should be removed, as discussed below.

8. The intent of the last sentence of Section (1)(M) reads, “This term [right-of-way] also includes the parcel of land for which a public utility holds a right-of-way or easement.” What is intended by this sentence is unclear, but its application would likely be contrary to law. A utility easement typically gives the utility the right to operate and maintain a utility line within a defined “strip” of land on, over or across a particular parcel of land (e.g., a 10 or 30 or 100 foot strip across a farm or lot). Sometimes, the utility has rights of ingress and egress over and across the farm or lot at issue. Franchise rights from municipalities or counties give no rights whatsoever outside the public road rights-of-way, and often the area of public road right-of-way between the road and adjacent land is very narrow. For easements on private land, sometimes ingress and egress is limited to the ends of the easement strip. Sometimes ingress and egress is limited to a defined road or path. In summary, easement rights (or franchise rights) vary a great deal, and it is not accurate as a matter of real property law to state that a “right-of-way” includes the parcel of land.

Moreover, the use of the definition as written in later parts of the proposed rule would create unintended results. For example, Section (5)(B)2, requires the removal of any vegetation with a mature height of greater than 15 feet “within the transmission line

right-of-way.” The likely intent of this section is to remove certain vegetation within the easement strip where the transmission line is built, but the definition of right-of-way includes the entire parcel of land. Accordingly, using the proposed definition, Section (5)(B)(2) would require clearing of trees with a mature height of over 15 feet on any piece of property on which the electric utility has a right-of-way, regardless of its proximity to the electric line. There are additional, similar examples. The definition creates the obligation to trim vegetation outside the area where the utility has the legal right to trim (e.g., outside the usually narrow strip of public right-of-way that the utility utilizes pursuant to many of its franchise rights). AmerenUE suspects this was not the intent of the definition. The last sentence of the definition is unnecessary and should be removed, in its entirety, from the definition.

Section 2 - General Provisions.

9. Section (2)(A) applies the standards within the proposed rule to all energized conductors of 600 volts or higher, whether the conductors are distribution or transmission facilities. As discussed below in connection with Section (5) (relating to transmission line vegetation management), applying these standards to transmission lines at voltages that are different than established transmission system reliability standards is duplicative of existing North American Electric Reliability Council (NERC) transmission standards (applicable to utilities as a matter of law under Federal Energy Regulatory Commission (FERC) requirements), which apply to all voltages above 200 kV and to those under 200 kV which are deemed critical. Moreover, there has been no demonstrated need whatsoever to apply additional standards to transmission facilities, for

which the FERC enforced, NERC standards and penalty provisions already exist, as compared to distribution facilities, for which standards do not presently exist.

10. Several sections of the proposed rule include requirements that the electric utility “ensure” all contractors do certain things. For example, Section (2)(B) requires the utility to ensure that contractors obtain all required permits; Section (2)(E) requires utilities to ensure that contractors inform workers of applicable laws and that contractors comply with this rule. The intent of “ensure” should be clarified to provide that utility contract requirements with all vegetation management contractors must include these contractual requirements and that the utility should have a system in place to audit contractor compliance with these contract terms. To require that the utility “ensure” these items creates an obligation beyond the utility’s control. For example, a contractor may, intentionally or unintentionally, fail to get a permit, or violate a law. A utility cannot guarantee this will never happen, but can require compliance as a matter of contract, audit contract performance, and take action to terminate contracts or impose other contractual remedies for non-compliance. To require more than this would essentially require the utility to become the manager of the contractor’s businesses, which is neither practical nor wise. To avoid this confusion, the word “ensure” should be replaced with “contractually require.”

11. Section (2)(D) requires all electric utilities to employ an electric utility arborist to manage its vegetation management program. AmerenUE already requires that the general foreman of all vegetation management contractors be a certified arborist. Additionally, the Company employs certified arborists as vegetation management superintendents and supervisors. The requirement that the utility only employ a utility

arborist as the head of all vegetation management efforts is an extremely inflexible requirement. It is important that the electric utility be able to employ a manager for this area who is familiar with *both* the electric utility business and with vegetation management issues. This manager must have the ability to be able to meld the knowledge of both areas. To restrict this position to an electric utility arborist is to restrict the utility's ability to hire the best person for the job. This section should be modified to remove the reference to an electric utility arborist, and to read as follows: "Each electrical corporation shall employ a vegetation manager. The vegetation manager shall be an employee of the electrical corporation, not a contractor. The electrical corporation shall provide the vegetation manager 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 web site and shall be included on all notifications provided pursuant to the notice requirements of section 6."

12. Section (2)(F) states that an electric utility may require a municipality or other agency to pay for requested vegetation work that is not required by this rule. AmerenUE supports this section, but would object if this section were read to require the electric utility to do additional vegetation management work whenever asked by a municipality. Scheduling requirements and crew unavailability may make it difficult to meet these requests beyond those necessary to comply with this rule. Certainly, the Company's first obligation must be to complete the vegetation management required to meet Commission standards. Consequently, the language should be clarified to read as

follows: “An electrical corporation that determines, in its discretion, to perform vegetation management at the request of a municipality or a government agency”

13. While the Company certainly agrees that that additional costs incurred because of the municipality’s request should be borne by the municipality, the language of Section (2)(G)4 is unclear and insufficient. The intent appears to be that the Commission would only agree to suspend compliance upon a municipality’s request if the municipality agreed to reimburse additional costs. A municipality, in general, can only bind itself via official action of its Board of Alderman or City Council. Consequently, this section should be clarified to read as follows: “The Commission shall only approve the suspension of compliance if, by official action of the municipality’s governing body, the municipality agrees to reimburse the electrical corporation for any costs incurred by the electrical corporation due to any lack of vegetation management caused by the requested suspension.”

14. The first line of Section (2)(H) refers to the “distribution and transmission” portion of vegetation program management costs. The Company does not believe there are any other portions and suggests striking “of the distribution and transmission³ portion of” from the proposed rule. Similarly, the fourth line refers to “tree trimming program,” but the rule discusses “vegetation management programs.” The latter term should be used for clarity in interpreting the rule.

15. Section (2)(H) may also be contrary to law to the extent it suggests that a prudently incurred cost might somehow not be recoverable in rates. The courts have been clear that a utility is entitled to have its rates set in a manner designed to recover its prudently incurred operating costs plus a return on its investment and associated

³ Indeed, as discussed in more detail below, the proposed rules should not apply to transmission lines at all.

depreciation and taxes. There is no reason to address ratemaking in this rule at all – noncompliance with a rule would certainly bear on a prudence determination. For these reasons, Section (2)(H) should be removed in its entirety.

16. AmerenUE has a severe concern with Section (2)(I). As written it appears to require either the removal of trees which not do pose a realistic threat to the distribution system or, at a minimum, it requires that permission be sought from landowners to cut down trees that do not pose a realistic threat to the distribution system. The specific language in question imposes upon the electric utility a duty to remove “...any dead, rotten or diseased vegetation which overhangs, leans toward, or may fall into an energized conductor or guy...” Virtually all trees within a strike zone⁴, at one time or another, are “diseased” and “may fall” into conductors. Many trees may “lean toward” an electric line and also have some level of “disease.” The phrase “may fall” requires far less than a certainty or even a strong likelihood that the tree will fall. Moreover, while the next sentence apparently limits this duty to instances where the utility either has the legal right to remove the tree or as a result of “all reasonable efforts” can obtain permission to do so, the language could be read as an absolute requirement, regardless of the utility’s rights. Consequently, the following language should be inserted into the first sentence of Section (2)(I) after the “guy,” and before the phrase “the electrical corporation”: “ and subject to the next sentence of this Section (2)(I).”

17. Just as importantly, the requirement fails to take into account varying conditions or the benefits versus the costs (financial, aesthetic, or otherwise). Whether a

⁴ The phrase “strike zone” includes any tree (or portion thereof) which in falling could contact the distribution or transmission facilities. In effect, for a typical distribution line with 30' of ground clearance, a 60' tree located 52' to the side of the line would be considered in the strike zone.

tree “may fall” depends on numerous factors beyond the utility’s control, such as whether a tree is disturbed by activities on the ground (farming, construction), or severe storms (extremely high winds, tornados, severe ice). Consequently, this portion of the proposed rule would apparently result in the requirement that the utility (at least if it has the legal right to do so) remove many trees unnecessarily and without good reason. Electric utility customers want reliable service, but they also want the mature trees on or adjacent to (e.g., in a public right of way in front of their house) their property to remain unless there is a very good reason to remove them; i.e., unless they pose an imminent and likely threat to the electric line. Customers may understand the need to sacrifice certain limbs from their trees, but customers will certainly want to feel any trimming is justified and will very likely object, strenuously, to the wholesale removal of any “diseased” tree or a tree with one rotten limb that might, but likely will not, fall onto an electric line.

18. 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. As an illustration, virtually every tree in the following picture, if it were diseased to some extent, which is possible if not likely, would either have to be removed or at a minimum the Company would have to take “all reasonable steps” to go door-to-door to obtain permission to remove all of these trees because each of them are within the strike zone and so “may fall” into conductors.



19. AmerenUE suggests that the language 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, as follows: “...any dead, rotten, or diseased vegetation which the electrical corporation believes is likely to affect reliability or safety⁵ by falling into or damaging an energized conductor or guy....” This change would reduce the likelihood of the utility being obligated to spend resources on removal of vegetation which does not pose a realistic risk to the reliability of the system, which makes sense economically and is more likely to be understood by utility customers and other stakeholders, including state, county, and municipal officials and others with an interest in the preservation of trees in the community.

20. With regard to the requirement that the utility “take all reasonable steps to obtain any necessary permission from the property owners...” where a tree needs to be removed because it is likely to affect reliability or safety, but where the utility lacks the legal right to remove it, it is certainly reasonable to expect that the utility to ask the property owner for permission to remove or trim the offending vegetation. However, if

⁵ This language is the same language employed in the proposed rule in Section (3)(B).

the language is intended to require something more aggressive, AmerenUE believes the language should be changed. Absent permission from the landowner, there is no additional “reasonable step” that can be taken short of attempting to initiate some kind of eminent domain action to acquire an easement to cut down the tree. There has simply been no demonstrated need for the Commission to adopt a rule that in effect could be interpreted to require the utility to sue its customers to obtain the right to remove a tree. Such a suit would likely be unprecedented and certainly quite unusual in Missouri. If the tree truly poses the kind of threat with which we are all concerned, it is AmerenUE’s experience that landowners will cooperate. AmerenUE respectfully suggests that encouraging that cooperation is better than a mandate from this Commission that may foster litigation with customers. Consequently, the language should be revised to read “make reasonable efforts to obtain the landowner’s permission.”

21. The last sentence of Section (2)(I) poses an additional concern because its meaning is unclear. Given the Company’s suggested change to Section (2)(I) outlined above, there appears to be no need for this last sentence, and it should be stricken.

Section (3) – Maintenance Cycle.

22. Section (3)(A) requires a visual inspection at least once every two years of all energized conductors to determine whether vegetation management is needed. “Where vegetation is close enough to pose a threat to its energized conductors, the electrical corporation shall perform vegetation management.” This language implies that the vegetation patrol should be used primarily to address normal incidental tree growth. Industry experience is that incidental tree growth does not generally create a safety or reliability concern. *Vegetation Management for Overhead Utility Lines: Part 1 –*

National Electric Safety Code Requirements and Practical Considerations, Clapp's DaNESC Update, Vol. 10, No. 2. A copy of this article is attached as **Exhibit 2**. Additionally, a study by Environmental Consultants, Inc. (ECI study) found that the probability of an outage from tree contact drops on distribution lines because of self-limitations on the amount of current that can flow through limbs. *Species-Specific Variation in Impedance as Related to Electrical Fault Potential*, ECI, dated June 25 2004.

23. The language in this section is overly broad. Virtually any tree within the strike zone has the potential to be “close enough to pose a threat,” a point which is clearly illustrated in the picture above. Substitution of the following language would resolve these concerns. “The electrical corporation shall perform a visual inspection halfway (plus or minus six months) between the normal tree trimming cycle dates. The inspection should note broken braches, dead trees and excessive tree growth. Each electrical corporation shall ensure that the necessary vegetation management found to be required by each patrol is performed in a timely manner.” This language does not have the every two year requirement, but using AmerenUE's tree trimming cycle as an example (which is four years for urban areas and six years for rural areas) the rule would result in an inspection every two years for urban areas and every three years for rural areas.

Section (4) – Technical Standards.

24. Section (4)(A) lists nine different publications containing standards, guidelines and procedures for vegetation management. The rule requires the utility to follow the publications, as long as they are not inconsistent with the rules. This approach is ripe for confusion, as different utilities interpret different aspects of the publications

and have no guidance as to what may be “inconsistent” with the rule. It does not appear necessary to adopt all nine of these publications. Rather, the Commission should 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 sets for standards for public safety. The adoption of any additional guidelines can only lead to confusion and uncertainty about what is required by the rule.

25. Section (4)(G) requires the utility to remove all trimmings and cut vegetation as part of its vegetation management practices. In general, this is consistent with AmerenUE’s current practice. However, in the remote areas of our system, removing vegetation cuttings is impractical and the Company needs to retain the ability to windrow the brush along the side of the right-of-ways. Moreover, in some instances, property owners desire that the brush be left (e.g., to provide wildlife habitat). Portions of some utility systems, including that of AmerenUE, have areas which are extremely remote and it would not be practical to either get equipment in to grind or to remove brush after it is trimmed. A third exception should be added to (4)(G) to provide for these types of situations. “(4)(G)3. The vegetation management is performed in an area where removal is not economically feasible or is otherwise restricted.”

26. Section (4)(G)(2) requires the utility to come back after the conclusion of a major event and remove vegetation that was cut or trimmed as part of the response to that event. This represents a major departure from the current utility practices and would

impose significant additional cost upon the electric utility (and its customers). Currently, the removal of trimmings after a major event, such as a major storm, is the responsibility of the property owner. The owner of the property, who is also the owner of the tree that fell or from which branches fell on lines, is responsible for disposal due to acts of nature. Additionally, it would be impossible to distinguish between trimming done by AmerenUE as part of its restoration efforts and that done by the property owner or even that which was brought down by the storm itself. In effect, this section of the rule makes the utility responsible for removing *all* vegetation on the ground after a storm, regardless of how it got there, and regardless of any fault or responsibility on the utility's part. The pictures below show areas damaged by the July 2006 storms which impacted portions of AmerenUE's service territory. The requirements of this section of the rule would, in effect, make the Company responsible for removing all of this debris (ultimately at customer expense).





Fulfilling this requirement will greatly increase the amount of time necessary for storm response work and actually harm the utility's ongoing vegetation management efforts because it would slow the Company's ability to get back to its normal vegetation management schedule. Beyond the time and workforce involved, removal of this debris is very expensive, and imposing this obligation on utilities effectively socializes the cost of debris removal from a major event to all utility customers in the state. Using conservative cost estimates, this requirement will increase vegetation related storm restoration costs by one to three times over cost levels expected under current practices relating to debris removal. For these reasons, the Commission should delete all language in Section (4)(G)(2) after the word 'event' in the first line so that it reads "The vegetation management is performed as a direct result of a major event."

Section (5) – Transmission Line Vegetation Management.

27. This entire section should be removed from the rule because it is made unnecessary by, and has the potential to conflict with, existing, mandated transmission reliability and maintenance standards enforced by NERC and it represents additional regulation (and ratepayer costs) for which no demonstrable need has been established.

28. The FERC has delegated its authority over the transmission system to NERC with the mandate to enforce reliability standards (which include vegetation management on transmission rights-of-way), and NERC has the power to impose fines for noncompliance with the standards. As stated on the NERC website,

Effective January 1, 2007, the North American Electric Reliability Council and the North American Electric Reliability Corporation merged, with NERC Corporation being the surviving entity. NERC Corporation was certified as the “electric reliability organization” by the Federal Energy Regulatory Commission on July 20, 2006. NERC’s mission is to improve the reliability and security of the bulk power system in North America. To achieve that, NERC develops and enforces reliability standards; monitors the bulk power system; assesses future adequacy; audits owners, operators, and users for preparedness; and educates and trains industry personnel.

29. Furthermore, there is no demonstrable need for additional standards and regulations in the transmission area. Transmission outages that could be made less severe or avoided through more aggressive vegetation management have never been an issue in Missouri. Indeed, utilities, including AmerenUE, already clear transmission lines much differently and more aggressively than distribution lines, in accordance with NERC requirements and established industry practices. These standards and practices are working, as evidenced by the lack of transmission line outages from preventable causes in the State of Missouri. The outages suffered by AmerenUE customers in July and

December of 2006 and in January of 2007 as the result of four major storms were all related to the distribution system, not the transmission system. The potential for conflicting rules and the absence of a compelling need make Commission regulations detailing vegetation management practices for transmission lines unnecessary at this time. Consequently, the Commission should remove this Section in its entirety.

30. Despite its belief that this entire section should be removed, AmerenUE offers the following specific concerns with this section as it is currently drafted including with Section (5)(B)(1). This section requires clearance of all vegetation under and over transmission lines, presumably so that no tree will fall into the line. This implies that any tree which could fall into the transmission line must be removed. In many cases, utilities do not have the legal ability to remove off right-of-way trees nor does it believe this extreme action is necessary to ensure the reliability of its transmission lines. At a minimum, this section must recognize that utilities are not obligated to remove vegetation that they have no legal right to remove.

31. Section (5)(B)(2) does not allow any vegetation that grows taller than 15 feet to grow within a transmission line right-of-way. While the simplicity of this requirement is, at first blush, appealing, 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. The picture below is an example of this situation on the AmerenUE transmission system.



The trees in these pictures do not pose a reliability concern, yet many would have to be removed in order to comply with this section of the proposed rules. The end result would be to spend utility resources (ultimately, at ratepayer expense) to remove trees which, in some cases, would have absolutely no positive impact on system reliability. If despite the concerns expressed in these Comments the Commission implements transmission line vegetation management rules, AmerenUE proposes the following language to substitute for that in the rules as proposed: “Each electrical corporation shall remove any tree within the right-of-way which, at maturity, would require frequent tree trimming. Each electrical corporation shall perform, at a minimum, one vegetation patrol annually on all lines rated 100kV or greater to ensure that all work is performed prior to vegetation becoming a threat to safety or reliability.”

32. Section (5)(D) requires each utility to develop and file a schedule for transmission line vegetation management. Subsection (3) of Section (5)(D) requires this schedule to be distributed to municipalities and residents served by or through the transmission line. Even if there were transmission related vegetation management rules, AmerenUE objects to subsection (3) as unnecessary and unduly burdensome. As noted

below, there are 91 municipalities and 9 unincorporated areas in St. Louis County *alone*. It is also important to keep in mind that these plans are likely to change due to the dynamic nature of vegetation management work especially during times of severe weather events both inside and outside of the electric utilities' service territory. For these reasons, subsection (3) should be stricken, and the following addition should be made to the first sentence of this section: "...it being recognized that the schedule is subject to change due to changes in circumstances throughout the period for which the schedule is developed."

Section (6) – Training, Recordkeeping and Reporting.

33. Section (6) contains recordkeeping requirements, including a requirement that the utility maintain a record of all personnel used by a contractor or by the utility to perform vegetation management work (*see* subsection (B)). There is no reason to require this level of detail as part of the recordkeeping requirements. Certainly, the utility has no idea who is employed by any contractor at any specific time, much less who was doing work on behalf of AmerenUE. It makes sense to know what contractor was performing certain work, but detail beyond that point does not add value to the utility's, or to the Commission's, oversight process.

34. Section (6)(C)(1) requires the utility to document its vegetation management work by municipality. This requirement would be very onerous for utilities that do not track vegetation by municipality, but rather, track it by circuit, as does AmerenUE. Tracking by circuit is more practical than tracking by municipality, and provides information that is more relevant and useful as well. For example, St. Louis County consists of 91 municipalities and 9 unincorporated areas (The Kansas City area

also has multiple municipalities). A particular circuit may run through multiple municipalities, making documentation by municipality difficult and time-consuming. Modifying Section (6)(C)(1) to read, “The circuit on which work was performed” resolves this concern and still allows the Commission to see what work is being performed.

35. In addition to the record keeping requirements in the proposed rule, the Company suggests that the Commission codify in its final rules the reporting format currently provided by AmerenUE, stemming from EW-2004-0583. This will allow for the Commission to receive relevant information related to the utility’s vegetation management practices.

Section (7) – Public Notice.

36. Section (7)(A) requires notification of all property owners at least seven days and not more than 45 days prior to performing any vegetation management activity. AmerenUE suggests the Commission to modify the standard 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.

Section (9) – Penalties, Fines, Sanctions and/or Ratemaking Disallowances.

37. Section (9) purports to set forth penalties, sanctions and/or ratemaking disallowances which may be imposed upon a utility that does not meet the requirements of the proposed rule. The Commission has no authority to impose penalties or sanctions. The only authority is found in the Commission’s enabling statutes, and then only the Circuit Court, at the instance of the Commission’s General Counsel (authorized to

proceed by the Commission) can impose penalties or determine the amount of penalties to be imposed. Consequently, no authority for Section (9) of the proposed rule exists and it should be stricken. This does not mean utilities cannot be penalized in an appropriate case for noncompliance with the rules. Existing statutes (e.g. Section 386.570.1, RSMo) provide a lawful mechanism for penalties, including for violation of a Commission “rule,” and would apply to a violation of these rules as well.

While the penalty provisions should not be included for the reasons outlined above, if there were penalty provisions in a final rule the requirement that violations be corrected within five business days would be impossible to meet in most cases. The very nature of additional vegetation management required to correct a “violation” would likely take several weeks to complete. Consequently, utilities should be given at least thirty days to correct violations, unless the violation presents an imminent safety-related threat.

Section (10) – Specific Requirements.

38. Section (10)(A) sets forth the timeframe for a utility to obtain full compliance with the rule. The rules, as drafted, cannot be implemented within two years. 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. Further, 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. This should be

recognized in the rule by requiring electric utilities to begin compliance efforts in 2008, but not to require a set date for 100% compliance, by modifying the language to provide as follows: “Each electrical corporation shall begin to comply with the vegetation management standards of this rule beginning with each circuit in which maintenance is started after January 2008. Full compliance with this rule will occur after the first completed trim cycle for urban and rural areas occurring after the effective date of the rules.”

39. Section (10)(B)(1) and (2) requires the electric utility to, at all times maintain certain minimum clearance distances for vegetation from conductors. Merely picking a distance as the minimum distance for all distribution clearance is an overly simplistic approach which should be rejected. In addition to the workforce availability concerns expressed in the preceding paragraph, 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. Typically, single phase distribution lines (those under 50,000 volts) in urban settings would be trimmed ten feet in total, meaning five feet on each side of the pole or the centerline of the right-of-way. Indeed, many easement and franchise rights are limited to these distances. This rule would more than double the clearance required. For example, a requirement to maintain a 10 foot clearance results in the utility trimming the 10 feet plus an amount necessary to ensure normal growth during a trim cycle will not violate the 10 foot clearance requirement. 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, all without any demonstration that it would significantly increase reliability. It is likely that additional right-of-way may, as a practical matter, not be available in any event. If a utility has erected its line along the edge of a road using its franchise rights, the width of those franchise rights may be limited to five feet on each side of the centerline, or perhaps even less at times. To obtain additional rights, the utility would have to obtain additional rights from a landowner from whom rights were never required before, and who is likely to question (perhaps justifiably so) why the utility, after perhaps maintaining the line without an easement for years, suddenly needs an easement, or a wider easement. This will foster disputes about necessity in condemnation actions, without any demonstration by the Commission that necessity requires these wider clearances.

40. Beyond the issue of whether or not the utility has the legal authority to trim vegetation ten feet away from the conductors, there are times when that clearance distance is unnecessary. As recognized in Section (4)(F), 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. This type of flexibility is very important to ensure the utility is not forced to trim areas which will not provide a benefit to system reliability. This section of proposed guidelines completely ignores the need for this flexibility. Sections (10(B)(1) and (2) should be deleted in their entirety. The guidelines adopted in Section (4) are sufficient.

41. Section (10)(B)(3) allows for the intrusion of small branches into the minimum clearances as long as they do not come within six inches of the conductor. Incidental tree growth, which is what is being described here, does not negatively impact reliability or cause customer outages. Requiring six inches of clearance will not improve reliability or reduce outages. As pointed out in a recent article by Clapp Research, Inc., “...most line contacts by tree growing into a line conductor will neither damage a conductor nor cause a fire. For example, when the top of a tree or sucker growth initially contacts an energized power line conductor with a leaf, the leaves on the end of the stem will generally wilt back without causing major arcing, damage to the conductor, or an interruption in service.” *Vegetation Management for Overhead Utility Lines: Part 1 – NESC Requirements and Practical Considerations*, Clapp’s DaNESC Update, Vol. 10, No. 2. p. 3. Consequently, the rule should not prohibit incidental tree growth, even if closer to the line than six inches and this section should be removed in its entirety.

42. Section (10)(B)(4) requires vertically trimming of distribution feeders and backbone circuits to remove overhanging limbs. The Commission should modify this requirement to allow more flexibility in the event where this type of trimming would cause a mature tree to die. In order to provide this flexibility, the following sentence should be added to the end of the Section: “This requirement shall not apply if the required trimming would likely cause a large, mature tree to die.”

Conclusion

43. AmerenUE believes the development of a vegetation management rule for utility distribution systems is very important and appreciates the opportunity to participate in this process. The development of a reasoned rule which balances all interests – including the desire for uninterrupted service and the aesthetic and environmental value of trees versus the higher costs associated with any increase in vegetation management – should be the goal of this proceeding. As history demonstrates, the public and even the Commissioners have different expectations about what level of vegetation management practices should be undertaken, and those expectations may vary at different points in time. These differences lead to confusion among the utility, the Commission Staff, the Commission and the public. To the extent that these rules provide a workable guideline for all electric utilities to follow, the resulting transparency will benefit everyone.

44. These Comments are all intended to achieve a balance between these interests, to substantially reduce confusion and foster greater understanding of vegetation management between the utility, the Commission Staff, the Commission and the public, and to provide the beneficial transparency referenced above. The Company appreciates the Commission's consideration of these Comments as it formulates a final, improved rule.

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