

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Filing Requirement Rules for)
Electric Utilities.)
)
Electrical Corporation Vegetation Management)
Standards and Reporting Requirements.)

Case No. EX-2007-0214

**STAFF’S COMMENTS TO THE COMMISSION’S
PROPOSED ELECTRICAL CORPORATION VEGETATION
MANAGEMENT STANDARDS AND REPORTING REQUIREMENTS**

COMES NOW the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”) and for its Comments to the Commission’s Proposed Electrical Corporation Vegetation Management Standards and Reporting Requirements Rule, 4 CSR 240-23.030, states:

1. The Staff suggests for Commission consideration the changes shown by redline/strikeout in the attached draft proposed rule and those that follow in this pleading.

2. The Staff suggests that explicit criteria for managing vegetation focus on distribution systems, since transmission systems are subject, in particular, to North American Electric Reliability Corporation (NERC) and Federal Energy Regulatory Commission (FERC) review. The Staff suggests requiring Missouri state jurisdictional investor owned electric utilities to contemporaneously file with the Commission transmission reliability reports they file with NERC, any independent transmission system organization, or FERC, and notices of investigations initiated or remedial actions taken by NERC, any independent transmission system organization, or FERC, respecting transmission matters.

3. If, as suggested by the Staff, the rule is limited to vegetation management criteria for distribution systems and contemporaneous reporting to the Commission of transmission

management matters submitted to NERC, any independent transmission system organization, or FERC, the “purpose” section of the rule should be revised to clearly reflect the more limited scope of the rule .

4. If the rule is limited to vegetation management criteria for distribution systems, the following words no longer are used in the rule and do not need to be defined: “agricultural crop” (4 CSR 240-23.030(1)(B)); “border zone” (4 CSR 240-23.030(1)(C)); “grass” (4 CSR 240-23.030(1)(I)); “right-of-way” (4 CSR 240-23.030(1)(M)); and “wire zone” (4 CSR 240-23.030(1)(S)).

5. If the rule is limited to vegetation management criteria for distribution systems, the definition of “energized conductor” found at 4 CSR 240-23.030(1)(F) should be revised to “energized distribution conductor” and the words “transmission or” should be stricken from the definition.

6. Regardless of whether the scope of the rule is limited to distribution systems, the Staff suggests deletion of the second sentence of the “purpose” section as redundant of the first sentence. The second sentence is: *The requirements in this rule provide the minimum standards for conductor clearances from vegetation to provide safety for the public and utility workers, reasonable service continuity, and fire prevention.* The first sentence is: *This rule sets forth requirements that electrical corporations shall follow in managing vegetation in proximity to an energized conductor in order to ensure public safety and the efficient and reliable supply of electric power.*

7. The Staff suggests the first definition of major event found in 4 CSR 240-23.030 (1)(J)(1) be revised to incorporate by reference the Institute of Electrical and Electronics Engineers (IEEE) major event day threshold defined in section 4.5, major event day

classification, of IEEE Standard 1366-2003, IEEE Guide for Electric Power Distribution Reliability Indices, published May 14, 2004, rather than affecting ten percent of customers in an operating area. The current proposed definition relies on an undefined “control area” and requires quantification of affected customers. The Staff proposed use of the IEEE major event day threshold relies on SAIDI which, according to the IEEE, leads to consistent results regardless of utility size and SAIDI is a good indicator of operational and design stress. A copy of section 4.5, major event day classification, of IEEE Standard 1366-2003, IEEE Guide for Electric Power Distribution Reliability Indices, published May 14, 2004, is attached.

8. The Staff suggests eliminating the annual vegetation management activities reporting at the operating area level found in 4 CSR 240-23.030(6)(D) since reporting them at the circuit level provides more detail which can be aggregated to the operating area level.

9. If the Staff’s suggestion to eliminate annual reporting at the operating level set out in the preceding paragraph [4 CSR 240-23.030 (1)(J)(1)] and the Staff’s suggestion of using the IEEE standard for major event day threshold set out in the second preceding paragraph are both adopted, then the term “operating area” will no longer be used in this rule and the definition of “operating area” found at 4 CSR 240-23.030(1)(K) may also be deleted.

10. The Staff suggests the definition of tree found at 4 CSR 240-23.030 (1)(O) should use a height criteria of eight feet rather than the three feet in the proposed rule.

11. The Staff suggests changes in the wording of the proposed rule to make it clear the vegetation management related requirements found in 4 CSR 240-23.030(2) apply to electrical corporations and their personnel as well as to contractors.

12. The Staff proposes that 4 CSR 240-23.030(4)(A) be modified to indicate that the publications that are listed are incorporated in the rule by reference and on file with the Data Center of the Commission.¹

14. It appears to the Staff that 4 CSR 240-23.030(4)(B) may be problematic in that it permits the electrical corporation to establish its own standards, guidelines and procedures. It is difficult to see how the Commission could sanction an electrical corporation for failing to comply with standards, guidelines and procedures set by the electrical corporation. The Staff suggests that to rectify this issue the Commission must establish the standards, guidelines or procedures, not the electrical corporations. The Staff suggests that a way to do this is to specify that where the vegetation manager believes multiple standards, guidelines and procedures listed would apply or conflict, the vegetation manager, or his or her designee, shall select the standard, guideline or procedure with which the electrical corporation may most readily comply and make a filing with the Commission, providing notice of the decision and the basis for it. Hopefully, in

¹ The Secretary of State's rulemaking manual includes the following guidance regarding materials referenced in a rule:

Incorporated by Reference and Included Herein

There has been confusion about the policy as to the use of the term "incorporated by reference." The following is the policy adopted by the Administrative Rules Division, Office of Secretary of State Robin Carnahan:

When we **do not** include a form or other material, or **do not** publish the form or other material, **but** it is considered a part of the rule, and is referred to in the rule, we will use the term "incorporated by reference." This will meet the requirements of sections 536.021.2(3) and 536.031.4, to make this material available at the office of the adopting state agency. The reference in the rule has to identify the incorporated material by publisher, address and date specifying how a copy of the material may be obtained. The rule has to state that it does not include any later amendments or additions.

When the form or other material **is** included, and **is** considered a part of the rule and **we do publish** the form or other material, we will state that the form or other material is "included herein."

Finally, the text of the rule should **not** be divided by other language that is not a part of the rule. Therefore, whether we are utilizing "included herein" and publishing the forms or other material as a part of the rule, or, we are using "incorporated by reference" (not publishing the forms or other material), this is considered part of the rule and should appear **before** the authority section.
(Emphasis in original.)

this manner the Commission can track this phenomenon and determine whether the rule is adequate or if some change in the rule is necessary.

15. The Staff is unsure of the Commission's intent with the following language found in 4 CSR 240-23.030(9)(B): "Upon receipt of the written notice of violation, the electrical corporation shall have five (5) business days to correct the violation(s)." If it is the Commission's intent that correcting a violation within five (5) business days is a mitigating factor with respect to penalties, fines, sanctions and/or ratemaking disallowances in accordance with the commission's statutory authority, then the Staff suggests adding a sentence that states: "If the violation is corrected within five (5) business days of when the electrical corporation receives written notice of the violation, the Commission shall consider that fact when considering penalties, fines, sanctions and/or ratemaking disallowances in accordance with the commission's statutory authority." Alternatively, the Commission may wish to delete the noted sentence.

WHEREFORE, the Staff of the Missouri Public Service Commission submits these comments to the Commission's Proposed Electrical Corporation Vegetation Management Standards and Reporting Requirements Rule, 4 CSR 240-23.030.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 15th day of August 2007.

/s/ Nathan Williams