The Garden Club of New Haven

Promoting the preservation of natural resources is one of the primary missions of The Garden Club of New Haven (GCNH), and of the organizations with which is affiliated, the Federated Garden Club of Connecticut and the Garden Club of America. Since 2011, GCNH has actively participated in educating the public about issues involving trees and power and advocating for a balanced approach to preserving the benefits of trees and protecting public safety, including power reliability. GCNH therefore supported legislation that resulted in the current text of Section 16-234 of the Connecticut General Statutes.

February 3, 2020
Melissa Paslick Gillett, Chairman
John W. Betkoski III, Vice-Chairman
Michael Caron, Commissioner
Public Utilities Regulatory Authority
Ten Franklin Square
New Britain, CT  06051

Filed electronically and by U.S. first class mail

Re: Docket No. 18-25-12 PURA Review of Electric Companies’ and Electric Distribution Companies’ Plans for Transmission and Distribution Overhead and Underground Lines

Dear Chairman Gillett, Vice-Chairman Betkowski and Commissioner Caron:

The Garden Club of New Haven (“GCNH”) submits this second comment to Docket No. 18-25-12 in order to respond to the Notice of Request for Written Comments, dated January 8, 2020. Its first comment was submitted on December 28, 2019, and some portions of that comment are repeated in this second comment as needed.

In this second comment, GCNH proposes modifications to the Maintenance Plan for Transmission and Distribution Overhead and Underground Lines (Maintenance Plan) of United Illuminating (UI), including its Attachment 2 Vegetation Management Specifications (VM). We address two interrelated topics: Direct Contact pruning and removal and the Targeted Risk Management (TRM) program. These modifications address GCNH’s concerns that:

(1) The direct contact exception is not clearly described in the VM of either EDC in a way that ensures that it will be used only as authorized by Section 16-234(e) of the Connecticut General Statutes (C.G.S.)
(2) UI’s reliance on the direct contact exception for its TRM program, as it has been described by UI, indicates that UI relies on an erroneous interpretation of the exception in order to prune and remove trees in violation of the tree warden permit requirements of Subsection 23-65(f), C.G.S. and notice to abutting property owners requirements of Subsection 16-234(c), C.G.S.
We will discuss UI’s descriptions of direct contact and of its TRM program, explain our concerns, and suggest modifications to the Management Plan and VM. Our comments are limited to UI because Eversource does not use the term direct contact with regard to trees in its Management Plan or attached VM, and has not indicated that it proposes to adopt a TRM or similar program. However, modifications suggested regarding the definition of direct contact and direct contact pruning should be added to the Eversource Management Plan and VM in the future.

I. Existing UI Descriptions of Direct Contact and the TRM Program:

The UI Maintenance Plan references direct contact twice in connection with trees. On page 7, it states: “Direct Contacts - the removal of trees and limbs in direct contact with primary conductors.” On page 46 of the VM Specification (Attachment 2 to the Line Maintenance document) direct contact is defined in the Glossary as “Any part of a tree that is in direct contact with an energized conductor or has visible signs of burning.”

Neither the Maintenance Plan nor the VM submitted in this docket reference TRM. In Docket No. 19-12-32, UI's 2020 Maintenance Plan describes TRM on page 8 as “the scheduling of entire circuits for the pruning and removal of trees that are in direct contact with the conductors or have visible signs of burning.”

In this docket, UI’s representative, David Goodson, referenced the TRM program as follows:

(1) In a response to Interrogatory EN-14, asking about changes made to the Company’s vegetation management plans since June 2015 and the reason for each change, Mr. Goodson stated:

“In January of 2019, the Company implemented a Targeted Risk Management program where it schedules entire circuits for the pruning and removal of trees that are in direct contact with the conductors or have visible signs of burning. This was done to mitigate the effects of an extended cycle on safety, visual and physical access to the lines, equipment damage and reliability.”

(2) In a PURA hearing on May 17, 2019, Mr. Goodson, as witness for UI, described the TRM process as follows (page 36 of transcript):

“We inspect the entire circuit. We break our circuits up into single phase or three phase and schedule those for an inspection by a work planner and then identify those trees that are in contact and send a crew out to prune them to what we call a four-year clearance of 8 feet to the side, 10 feet below, 6 and 15 feet overhead.” [Emphasis added.] He also said: “Those trees that we’re pruning that way should be good for four years, on average . . . .” [Emphasis added.]

1. Pages 34-38 of transcript refer to TRM, and can be read at: http://www.dpuc.state.ct.us/DPUCTran.nsf/828fbd7bfa05e78585257134005bcb9e/6085e52d10a32276852584020053 [Note: The link provided in GCNH’s first comment did not work on some browsers; this link does.]
There was no statement made by Mr. Goodson that UI would obtain a permit from the tree warden or give prior notice to an abutting property owner before beginning to prune for the “four year clearance.”

II. GCNH Concerns with UI’s Description of Direct Contact and the TRM Program:

The Management Plan and the accompanying VM Specifications do not accurately state the meaning of the direct contact provision, Subsection (e) of Section 16-234, C.G.S., nor is the limitation on pruning and removal pursuant to this subsection recognized. Subsection (e) provides: "No utility shall be required to obtain a permit pursuant to subsection (f) of section 23-65 [tree warden permit] or provide notice under subsection (c) of this section [to abutting property owners] to prune or remove a tree, as necessary, if any part of a tree is in direct contact with an energized electrical conductor or has visible signs of burning. Nothing in this subsection shall be construed to require a utility to prune or remove a tree."[Emphasis added.]

The Glossary definition on page 46 defines "direct contact" as "direct contact," a circular definition. The page 7 "Direct Contacts" is similarly circular, and references tree pruning and removal without stating that the pruning or removal must be necessary to eliminate the direct contact. It is only in UI’s description of TRM that UI’s interpretation of Subsection (e) is made clear. Neither in Mr. Goodson’s description of TRM and its reliance on Subsection (e), nor in the 2020 Maintenance Plan description of TRM, can the statutory words "as necessary" be found.

UI clearly misreads Subsection (e) to claim authorization to bypass notice and permit requirements and prune to a fixed clearance ("8 feet to the side, 10 feet below, 6 and 15 feet overhead") far beyond what is reasonably required to eliminate the direct contact or fire, simply because any part of a tree is in direct contact. With TRM, it extends that misunderstanding of the direct contact exception to allow it to plan whole circuits for extensive pruning and removal of trees without obtaining a tree warden permit or notifying abutting property owners, thus misusing the exception to avoid compliance with Subsection 23-65(f) and Subsection 16-234(c). It is unclear from the transcript of Mr. Goodson’s testimony whether TRM is a substitute for normal vegetation management on circuits pruned pursuant to TRM. If it is, other trees in the circuit will not be pruned in order to ensure their health and structural integrity, and risks to the reliability and safety of the circuit will be increased.

UI’s interpretation of the direct contact exception undermines the legislature’s intent in adopting Section 16-234 and is contrary to well established statutory rules of construction. The following rules of statutory construction apply: Section 1-1(a), C.G.S., provides: "In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly." Section 1-2z, C.G.S., provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."
The words "direct" and "necessary" are not ambiguous, are commonly understood and need not have been defined in the legislation. Merriam-Webster online (https://www.merriam-webster.com) defines "direct," used as an adjective, as "proceeding from one point to another in time or space without deviation or interruption." “Contact” is defined as a “union or junction of surfaces,” and more particularly, as “the junction of two electrical conductors through which a current passes.” The wood in trees is an electrical conductor, even if a poor one. “Necessary” is defined as “absolutely needed” or “required.” Thus, the pruning or removal must be only that which is required to eliminate the contact or fire. It certainly doesn’t authorize any pruning and removal beyond that without property owner and tree warden involvement.

In the context of all of the Subsection 16-234(c) notification procedures regarding abutting property owners, and the long established primary authority of tree wardens over trees in the public right-of-way, there can be no doubt that the legislature intended to provide a limited, not expansive, exception to the normal permit and notice requirements when it adopted Subsection 16-234(e). The notice and permit procedures ensure that pruning will be performed in compliance with the statutory definition of pruning, which requires that it be done "according to professional tree care standards and in a manner that retains the structural integrity and health of the vegetation." In addition, the statute explicitly states, in Subsection 16-234(c)(5) that "Nothing in this chapter [chapter 16] shall be construed to limit the power and authority of a tree warden as set forth in subsection (f) of section 23-65." An expansive interpretation of the Subsection 16-234(e) direct contact exception would be such a construction.

The exception can only be understood as a recognition that, in certain circumstances, immediate action would be necessary, such as in the case of a fire, when there would not be time to follow the notice procedures or even to seek a permit from the tree warden. This interpretation is buttressed by the fact that a tree warden permit is required for removal of a hazardous tree, which is defined in Subsection16-234(a)(3) as "any tree or part of a tree that is (A) dead, (B) extensively decayed, or (C) structurally weak, which, if it falls, would endanger utility infrastructure, facilities or equipment." In his response to EN-14, Mr. Goodson justified UI's TRM program as being "done to mitigate the effects of an extended cycle on safety, visual and physical access to the lines, equipment damage and reliability." He did not state that there was an immediate need to do the pruning, making it unwise to delay in order to obtain a tree warden permit and notify abutting property owners, nor could he for such extensive, planned pruning.

2. Section 23-59, C.G.S. provides that the "tree warden shall have the care and control of all trees and shrubs in whole or in part within the limits of any public road or grounds." Section 23-59a, C.G.S.(Public Act 13-203), adopted in the same legislature as most of the provisions of Section 16-234, C.G.S. (Public Act 13-298), required that tree wardens "complete coursework, as approved by the Commissioner of Energy and Environmental Protection. The minimum requirements for such coursework shall include: Tree biology, tree maintenance and pruning, urban forest management and tree laws." These undergird the requirement for a tree warden permit in Section 23-65(f).

3. Section 16-234 (a)(5), C.G.S.: “Pruning” means the selective removal of plant parts to meet specific utility infrastructure reliability goals and objectives, when performed according to current professional tree care standards and in a manner that retains the structural integrity and health of the vegetation

4. Subsection 16-234 (d): "Subsection (c) of this section [notification to abutting property owners] shall not apply if the tree warden of the municipality or the Commissioner of Transportation, as appropriate, authorizes, in writing, pruning or removal by the utility of a hazardous tree within the utility protection zone or on or overhanging any public highway or public ground. If the hazardous tree is outside of the public right-of-way, the utility shall make a reasonable effort to notify the property owner of the proposed pruning or removal at least three days prior to performing such pruning or removal. Nothing in this subsection shall be construed to require a utility to prune or remove a tree."
As described by UI, its interpretation of the direct contact exception and the use of that interpretation as the justification for the TRM program is in clear violation of the law on its face, and its illegality does not require any evidence that it has already been used in any town. UI misinterprets the direct contact exception to avoid tree warden permit and abutting property owner notice requirements for normal vegetation management, free to prune or remove trees at will without tree warden or abutting property owner involvement. Its misinterpretation fails to respect abutting property owner notice requirements, and violates the still primary rights of tree wardens for care and control of trees within their public rights-of-way.

III. Recommended Modifications to the Maintenance Plan and VM:

It is clear that a full non-circular definition of direct contact is required in the Maintenance Plan and VM, as well as a description of the limitations on the pruning or removal that can be done under this exception, to ensure that UI’s vegetation management practices comply with the law. This should also be done by Eversource to govern its use of Subsection 16-234(e).

**Direct Contact should be defined as**: "The uninterrupted junction of an electrical conductor and a part of a tree that permits electricity to pass between them."

**Direct Contact and Visible Fire Pruning should be defined and conducted as follows**: "Pruning to eliminate direct contact or visible signs of burning shall be limited to removal of the part of the tree in direct contact with the electrical conductor or the area of visible burning. Prior to such pruning, a photograph of the area of contact or visible signs of burning shall be taken. The tree warden shall be notified of the pruning within 48 hours of the pruning, by e-mail, with a copy of the photograph attached. If e-mail communication is not possible, notification shall be by first class, certified mail, including a copy of the photograph. A copy of the photograph shall be delivered to an abutting property owner promptly upon request by the property owner." Photographic documentation of the contact is imperative to ensure that EDC subcontractors are pruning in accordance with the law and to maintain trust by tree wardens and abutting property owners in EDC pruning practices. Such trust is essential to successful vegetation management.

As previously noted, TRM has not been included in UI's 2019 Maintenance Plan or VM. The reference to TRM should be deleted from UI's 2020 Maintenance Plan, and PURA should issue a clear ruling that TRM, as described by UI in this docket, is not authorized by law.

Thank you for your consideration. In the event that a hearing will be held on these issues, I would welcome an opportunity to participate and respond to any questions you might have. Please contact me at gcnhtreesandpower@gmail.com.

Respectfully submitted,
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