



STATE OF CONNECTICUT

**PUBLIC UTILITIES REGULATORY AUTHORITY
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051**

**DOCKET NO. 18-12-25 PURA REVIEW OF ELECTRIC COMPANIES' AND
ELECTRIC DISTRIBUTION COMPANIES' PLANS FOR
MAINTENANCE OF TRANSMISSION AND DISTRIBUTION
OVERHEAD AND UNDERGROUND LINES**

January 13, 2021

By the following Commissioners:

Marissa P. Gillett
John W. Betkoski, III
Michael A. Caron

DECISION

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DECISION

I. INTRODUCTION

A. SUMMARY

Pursuant to Section 16-32g of the General Statutes of Connecticut (Conn. Gen. Stat.), the Public Utilities Regulatory Authority (PURA or Authority) issues orders for the modification of certain vegetation management maintenance practices of the electric distribution companies.

B. BACKGROUND OF THE PROCEEDING

On December 17, 2018, The United Illuminating Company (UI) submitted its 2019 plans for maintenance of transmission and distribution overhead and underground lines (2019 Maintenance Plan) pursuant to Conn. Gen. Stat. § 16-32g and section 16-32g-1 of the Regulations of Connecticut State Agencies (Conn. Agencies Regs.).

On December 31, 2018, The Connecticut Light and Power Company d/b/a Eversource Energy (Eversource) submitted plans for maintenance of transmission and distribution overhead and underground lines pursuant to §16-32g of the General Statutes of Connecticut (Conn. Gen. Stat.) and §16-32g-1 of the Regulations of Connecticut State Agencies.

C. CONDUCT OF THE PROCEEDING

By Notice of Hearing dated June 8, 2020, the Authority scheduled a hearing for Tuesday, June 23, 2020. That hearing was held via remote access.

The Authority issued a proposed final Decision in this matter on December 14, 2020. All Participants were provided the opportunity to submit Written Exceptions to and present Oral Argument on the proposed final Decision.

D. PARTICIPANTS

The Authority recognized the following as Participants to the proceeding: The Connecticut Light and Power Company d/b/a Eversource Energy, 108 Selden Street, Berlin, CT 06037; The United Illuminating Company, 180 Marsh Hill Road, Orange, CT 06477; the Commissioner of the Department of Energy and Environmental Protection, 79 Elm Street, Hartford, CT 06106; and the Office of Consumer Counsel, 10 Franklin Square, New Britain, CT 06051.

E. PUBLIC COMMENT

In December 2019, the Authority began receiving a significant number of correspondence from customers expressing concern and disapproval with respect to UI's new vegetation management program, the Targeted Risk Management (TRM) program.¹

II. AUTHORITY ANALYSIS

A. REVIEW OF UI'S TARGETED RISK MANAGEMENT PROGRAM

Conn. Gen. Stat. §16-234 governs utility vegetation management practices. Vegetation management is defined as “the retention of trees and shrubs that are compatible with the utility infrastructure and the pruning and removal of trees, shrubs or other vegetation that pose a risk to the reliability of the utility infrastructure.” Conn. Gen. Stat. §16-234(a)(4). In general, a utility may not prune or remove any tree without delivering notice of the proposed vegetation management to an abutting property owner. Conn. Gen. Stat. §16-234(c)(1). The utility must also receive a permit prior to commencing vegetation management. Conn. Gen. Stat. §16-234(c)(5). There is, however, an exception to the requirement to provide notice and obtain a permit: as set forth in Conn. Gen. Stat. §16-234(e), the exception is applicable if any part of a tree is in direct contact with an energized electrical conductor or has visible signs of burning.

Relying on Conn. Gen. Stat. §16-234(e), UI internally approved its TRM program at the end of 2018 and commenced utilizing the program in January of 2019. Tr. 6/23/2020, p. 45. According to UI, TRM was implemented because many trees were in direct contact with its utility lines. *Id.*, p. 47. UI stated that TRM work is only performed on trees that are in direct contact with an electrical conductor or show visible signs of burning. *Id.*, p. 70. The company further asserted that it attempts to provide abutting property owners with notification of TRM work by visiting them in person; however, if the property owner is not home, UI simply leaves a door hanger notification. *Id.*, p. 87. UI does not employ the property owner consent, objection or request for modification provisions set forth in Conn. Gen. Stat. §16-234 prior to commencing TRM pruning. *Id.*, pp. 90 and 91.

Generally, the standard clearance zone for trimming in the TRM program is 8 feet to the side, 10 feet below and 15 feet above the conductor. *Id.*, p. 47. This clearance zone represents the long-term maintenance specification, applied in Connecticut for some time. *Id.* UI's position is that once a direct contact or visible sign of burning has occurred, Conn. Gen. Stat. §16-234(e) authorizes pruning under the TRM program “as needed to create reliability and safety and maintain some clearance.” *Id.* at 99.

As stated above, members of the public have taken issue with UI's interpretation of Conn. Gen. Stat. §16-234(e). The Garden Club of New Haven, for example, claims that the TRM program goes “far beyond what is necessary to immediately eliminate the fire

¹ See e.g. letters dated December 10, 2019 from Christine Melchinger and Phil Cronan; letter dated December 11, 2019 from Douglas Welch; letter dated December 16 from Susan Kulis; and various letters from December 19, 2019 through December 31, 2019 from many Connecticut residents.

hazard or other safety risk from direct contact between a tree part and energized electrical conductors.” Correspondence dated 12/28/2019, p. 3 (Emphasis original). Similarly, the Division of Forestry of the Bureau of Natural Resources of the Department of Energy and Environmental Protection (DEEP Forestry) argues that the plain language of Conn. Gen. Stat. 16-234(e) reflects that the exception was only intended to apply to the extent needed to address the direct contact and/or burning. Brief of Forestry, p. 3.

Given these significant disputes, the Authority determines herein whether UI’s TRM program is permissible pursuant to Conn. Gen. Stat. §16-234(e). Such determination is guided by the well-settled rules of statutory construction. Conn. Gen. Stat. §1-2z sets forth the plain meaning rule and 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 text of Conn. Gen. Stat. §16-234(e) is clear with respect to the applicability of the subsection. The brief and comprehensive subsection provides:

No utility shall be required to obtain a permit pursuant to subsection (f) of section 23-65 or provide notice under subsection (c) of this section 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.

The Authority finds that the language of the subsection is clear and unambiguous with respect to its applicability. The exception applies when any part of a tree “is in direct contact with an energized electrical conductor or has visible signs of burning.” We need not look beyond the text of the subsection itself to ascertain its applicability.

Nonetheless, this does not conclude the inquiry. Importantly, an examination of the text of the subsection is insufficient to allow the Authority to determine the *extent* to which a tree may be pruned pursuant to subsection (e) of Conn. Gen. Stat. §16-234. The subsection itself does not contain a functional definition of the phrase “as necessary”. Moreover, there is no definition of the phrase found in the statutes governing vegetation management. Thus, as directed by Conn. Gen. Stat. §1-2z, the Authority must ascertain whether the “as necessary” language is plain and unambiguous after considering the provision in the context of its relationship to other statutes.

Notably, Conn. Gen. Stat. §16-234(b) also utilizes the phrase “as necessary”. Specifically, subsection (b) provides, “[a] utility may perform vegetation management within the utility protection zone, **as necessary, to secure the reliability of utility services.**” (Emphasis added). Under the general provision, a utility may prune to the extent necessary to secure the reliability of utility services. The fact that the General Assembly did not include the language “to secure the reliability of utility services” in

subsection (e) of §16-234 is significant. “It is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions. . . . Because [e]very word and phrase [of a statute] is presumed to have meaning. . . . [a statute] must be construed, if possible, such that no clause, sentence or word is superfluous, void or insignificant. *Neighborhood Assn., Inc. v. Limberger*, 321 Conn. 29, 38-39, 136 A.3d 581 (2016). Reading subsection (e) as authorizing pruning “to secure the reliability of utility service” as UI posits would render the phrase superfluous in Conn. Gen. Stat. §16-234(b).

The Authority concludes that when read in the context of its relationship to subsection (b), the “as necessary” language of Conn. Gen. Stat. §16-234(e) is plain and unambiguous. Further, the Authority concludes that when read in context, Conn. Gen. Stat. §16-234(e) permits pruning only to the extent necessary to eliminate direct contact and/or visible signs of burning. Any contrary conclusion would render the phrase “to secure the reliability of utility service” in subsection (b) superfluous and would undermine the protections and objectives of Conn. Gen. Stat §16-234.

Given the aforementioned conclusion, the Authority must also consider whether UI’s implementation of TRM inappropriately circumvents the notification requirements of Conn. Gen. Stat. §16-234. This requires an assessment of the company’s overall vegetation management program to understand the underlying driver of the TRM program. The existence of so many trees that are either in direct contact with an energized conductor or that are showing signs of burning is evidence of a deficiency in the company’s main vegetation management program, its utility protection zone (UPZ) trimming program.

The UPZ program began for UI in 2014 with the intent that all three-phase circuits would be addressed in four years and that all single-phase circuits would be addressed once in eight years. 2019 Maintenance Plan, p. 24. The original UPZ maintenance plan was modified by the Authority in UI’s last rate case. *Id.* The program modification granted a six- and 12-year cycle for trimming three-phase and single-phase circuits, respectively. 2019 Maintenance Plan, p. 24; Tr. 6/23/20, p. 72. Since its inception, the UPZ program was designed to satisfy the notification and permitting requirements enumerated in Conn. Gen. Stat. §16-234(c). 2019 Maintenance Plan, Attachment 2.

Based on a six-year cycle, all three-phase circuits should have been addressed by UPZ within six years, or by the conclusion of 2019. 2019 Maintenance Plan, p. 24. UI has shown, however, that many three-phase circuits have yet to be addressed by its UPZ trimming program, with some three-phase circuits or circuit-segments not receiving any programmatic UPZ work since 2010 or 2011. Response to Interrogatory EL-3, Attachment 1.

In 2019 and 2020, UI scheduled many of these overdue three-phase circuits for its TRM program. Late Filed Exhibit No. 3. UI justified this lack of completion of its six-year, three-phase portion of its UPZ program with a twofold explanation, by stating that: (1) other three-phase circuits had taken priority for reliability or safety reasons; and (2) the UPZ notification requirements, traffic control costs and higher-than-expected tree density caused unforeseen delays. Tr. 6/23/20, pp. 72-73; 2019 Maintenance Report, pp. 22, 23, and 79. According to UI, if the company schedules a circuit or circuit segment for TRM,

then it does not perform UPZ trimming on those circuits in a given year. Response to Interrogatory EL-6; Tr. 6/23/20, pp. 74 and 75.

One of the reasons UI cited for undertaking the TRM program was that the consent process and roadside tree density have made the work involved for UPZ more time consuming. Tr. 6/23/20, p. 79. UI also stated that its initial plan for performing UPZ contemplated the need for a four- and eight-year cycle on three-phase and single phase circuits, not a 6-/12-year cycle. Id., p. 54; 2019 Maintenance Plan, p. 24. The Authority extended the UPZ cycle to 6/12 years in its Decision dated December 14, 2016 in Docket No. 16-06-04, Application of The United Illuminating Company to Increase Its Rates and Charges (Rate Case Decision). 2019 Maintenance Plan, p. 24. According to UI, extending the UPZ cycle resulted in more vegetation growth and more direct contacts that need to be addressed.

UI has had, and still maintains, a program to address direct tree contacts: the Direct Contact program. Similar to TRM, the Direct Contact program addresses tree contacts or locations showing signs of burning, but is done on an impromptu basis and is not performed systematically along circuits. Tr. 6/23/20, pp. 55 and 56; Response to Interrogatory EL-8. The number of instances where the Direct Contact program is used are quite rare and the work is identified and scheduled after customers, company personnel or town officials make the company aware of the direct tree contacts or signs of burning. Tr. 6/23/20, p.50.

For TRM, UI performed 285 miles in 2019 and scheduled 360 miles for 2020. Tr. 6/23/20, p. 46. For UPZ, UI performed 213 miles in 2019 and scheduled 170 miles for 2020. Id. While certainly more trees are addressed per mile in the UPZ program than in the TRM program, UI nevertheless stated that TRM trims more trees than not along a roadside circuit due to the sheer number of trees that are in direct contact. Id., p. 47.

As stated above, UI generally performs TRM to its 8 feet to the side, 10 feet below and 15 feet above maintenance clearance standard,² which has been in place since 1985. Tr. 6/23/20, pp. 47 and 48. UI uses this standard for TRM program work because it does not intend to revisit the circuits for another four or five years. Tr. 6/23/20, p. 47.

The extent to which UI relies on TRM to eliminate tree contacts, coupled with the extensive reliance on TRM as a programmatic effort undertaken for entire circuits, reveals the failure of the UPZ program to adequately meet the company's vegetation management needs. As shown above, UI's use of TRM has effectively begun to supplant its standard UPZ program.

Based on the entirety of this analysis, the Authority concludes that the TRM program as currently designed and implemented does not comport with applicable statutes. While the Authority agrees that the notice provisions enumerated in Conn. Gen. Stat. § 16-234(c) do not mandate their applicability in emergency situations, the Authority concludes that subsections (d) and (e) are nevertheless intended as limited exceptions and should be treated as such. Thus, UI's overall, day-to-day vegetation management

² 8/10/15 specifies trimming around a conductor in a window that measures 8 feet to the side of, 10 feet below, and 15 feet above a conductor. 2019 Maintenance Plan, p. 8.

planning and implementation processes must be designed to satisfy subsections (b) and (c) of Conn. Gen. Stat. §16-234 as standard practice.

Therefore, the Authority directs that the TRM program shall not be used as an alternative or replacement to UPZ to achieve tree line clearance for 4 to 5 years. In summary, the Authority concludes that subsection (e) of Conn. Gen. Stat. 16-234 only authorizes an electric distribution company to perform vegetation management where there is direct contact and visible signs of burning *and* that only the minimum level of pruning be done to resolve the offense.

Accordingly, the Authority will direct UI to make the following changes to its TRM program and to incorporate them into its 2021 Maintenance Plan:

1. Specify that the TRM and Direct Contact programs may address instances of direct contacts or signs of burning, but that only the minimum level of trimming/maintenance is to be undertaken to resolve the direct contact.³ As such, UI is not to perform its standard 8/10/15 for TRM work unless: (1) that is the minimum level of trimming necessary to resolve the direct contact or the cause of potential burning; or (2) the company has complied with the notice provisions articulated in Conn. Gen. Stat. § 16-234(c).
2. Limit the application of TRM to instances in which the conditions articulated in Conn. Gen. Stat. § 16-234(e) are present.
3. Cease using TRM as a substitute for the company's approved UPZ maintenance work.
4. Document all instances where the company performs TRM work, with photographs taken before and after the maintenance. These photographs are to be kept for the duration of the TRM program and made available to the Authority upon request.

B. REVIEW OF OTHER VEGETATION MANAGEMENT PRACTICES

During the course of its investigation into TRM, as well as through its general review of the maintenance plans of UI and Eversource (collectively, Companies or EDCs), the Authority identified other issues related to the Companies' vegetation management practices for which the Authority will require improvements. The Authority addresses these deficiencies individually below.

1. Customer Notification Improvements

Specific to UI, the Authority finds that the company's notification process for the TRM program is deficient. The company itself acknowledged that although Conn. Gen. Stat. 16-234(e) does not *require* prior notification to abutting property owners as a prerequisite to addressing direct contact or visible signs of burning, UI still determined that the provision of some level of prior notice to abutting property owners is a prudent approach. Tr. 6/23/2, p. 76; Response to Interrogatory EL-1. Currently, prior to performing TRM work, UI's contractors go door-to-door to provide verbal notice to

³ Used here, "trimming/maintenance" may include up to the removal of a tree if that *is necessary* to resolve the direct contact or burning.

abutting property owners if someone is home. Response to Interrogatory EL-1. If no one answers, a notification door hanger is left at the property, which reflects limited information about the planned TRM work. Id. This notification happens at least three days before the work begins. Id.

The Authority received complaints from the public about the confusing nature of the door hangers. Tr. 6/23/20, p. 17, 145 and 146. Specifically, the TRM door hangers provided on behalf of UI are not dated or signed. Id., p. 76. Moreover, the TRM door hangers do not have a property address on them. Id. The door hanger contains an email and phone number for customer inquiries. Late Filed Exhibit No. 4, Attachment 1. While the email is re-directed to UI's vegetation management team, the phone number supplied on the door hanger appears to be the generic customer care line. Id.; Tr. 06/23/20, p. 76.

The Authority has reviewed the door hangers used by UI for its TRM program and concurs with the public sentiments shared in this proceeding. As such, the Authority will direct UI to enhance the information included on the door hangers, to include at a minimum: an address of the abutting property to which the notice is directed, the date on which the notification was attempted, the earliest date on which the planned work will be performed, and appropriate contact information (*i.e.* email and phone number).

Upon further consideration of the matter, the Authority also finds that the public interest supports maintaining a direct phone line to a customer care representative familiar with the respective EDC's vegetation management programs, which should be made available to abutting property owners affected by vegetation management work that is either of an emergent nature or otherwise requires a quick turn-around. The need for such a means of direct, two-way communication is evidenced by UI's TRM program, where the door hanger may only be placed a mere three days before the work is to be performed, but is also relevant to customers within the Eversource service territory as well. Therefore, with respect to all vegetation management work performed outside of the standard UPZ process and where the EDCs employ a door hanger or similar type of notice, the Authority will direct the EDCs to include in such a notice a direct phone number to reach a live customer service representative familiar with said vegetation management work. The EDCs are directed to develop a plan to incorporate this process, along with a detailed implementation timeline and budget, for Authority review and approval no later than February 12, 2021.

2. Tracking of Vegetation Management Complaints

During the course of the instant proceeding it was revealed that neither Eversource nor UI track customer complaints related to vegetation management programs. Tr. 6/23/20, p. 124; Response to Interrogatory EL-5. Based on the volume and tenor of public comments filed in this proceeding, however, the Authority deems it necessary for the Companies to begin tracking such complaints and to include the information as part of their annual maintenance reports.⁴ The Companies currently report various vegetation management metrics in their annual maintenance plans. The Authority will direct the Companies to include in future vegetation management reports the following information related to customer complaints:

⁴ For purposes of this section, a "complaint" does not include routine requests for information.

1. Number of vegetation management-related complaints received during the prior calendar year, broken down by month, town, and program;
2. A summary statement for each complaint, including its disposition, if any;
3. Average duration of complaint tickets; and
4. Description of active complaints at year-end.

3. DEEP Forestry Working Group Request

DEEP's Division of Forestry recommends that the Authority establish a standing working group to address the EDCs' vegetation management programs with an eye toward programmatic improvements and addressing emerging issues. Forestry Written Comments dated February 7, 2020, pp. 14 and 15. In particular, DEEP Forestry identified topics such as rising costs related to traffic control and municipal permitting that could be addressed through a collaborative working group process. Id. DEEP Forestry further suggested that a standing working group could best address customer complaints related to the EDCs' vegetation management programs. Id.

The Authority sees much value in the establishment of a standing working group. The Authority notes that it initiated Docket No. 17-12-03RE08, PURA Investigation into Distribution System Planning of the Electric Distribution Companies – Resilience and Reliability Standards and Programs to establish specific reliability and resilience targets and metrics that will enable the EDCs to proceed with reliability and resilience programs more effectively. Since the EDCs' vegetation management programs have historically been a key component to reliability and resilience initiatives, the Authority will incorporate DEEP Forestry's suggestions into that docket. Specifically, in Docket No. 17-12-03RE08, the Authority will consider the establishment of a working group to assist in the Authority generally in its oversight of future iterations of the EDCs' vegetation management programs.

III. CONCLUSION AND ORDERS

A. CONCLUSION

Pursuant to Conn. Gen. Stat §16-32g, the Authority directs UI to modify its Targeted Risk Management program such that it is limited in scope, as set forth in detail herein. The Authority further directs both UI and Eversource to make certain other changes to their vegetation management practices related to customer relations, as discussed herein.

B. ORDERS

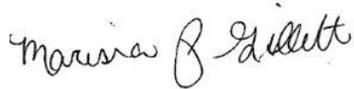
For the following Orders, the Company shall file an electronic version through the Authority's website at www.ct.gov/pura. Submissions filed in compliance with the Authority's Orders must be identified by all three of the following: Docket Number, Title and Order Number. Compliance with orders shall commence and continue as indicated

in each specific Order or until the Company requests and the Authority approves that the Company's compliance is no longer required after a certain date.

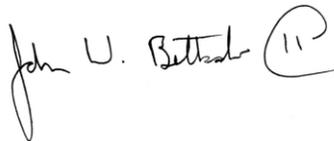
1. UI shall make the following changes to its TRM program and incorporate these changes into its 2021 Maintenance Plan filing. UI shall provide an update to its 2021 Maintenance Plan filing in Docket No. 20-12-44, PURA Review of Electric Companies' and Electric Distribution Companies' Plans for Maintenance of Transmission and Distribution Overhead and Underground Lines that includes these changes no later than January 27, 2021.
 - a. Specify that the TRM and Direct Contact programs may address instances of direct contacts or signs of burning, but that only the minimum level of trimming/maintenance is to be undertaken to resolve the direct contact. As such, UI is not to perform its standard 8 feet to the side, 10 feet below and 15 feet above for TRM work unless: (1) that is the minimum level of trimming necessary to resolve the direct contact or the cause of potential burning; or (2) the company has complied with the notice provisions articulated in Conn. Gen. Stat. § 16-234(c).
 - b. Limit the application of TRM to instances in which the conditions articulated in Conn. Gen. Stat. § 16-234(e) are present.
 - c. Cease using TRM as a substitute for the company's approved UPZ maintenance work.
 - d. Document all instances where the company performs TRM work with photographs taken before and after the maintenance. These photographs are to be kept for the duration of the TRM program and made available to the Authority upon request.
2. UI shall incorporate into its 2021 Maintenance Plan filing an exhibit showing its TRM door hanger that is updated to include the minimum requirements as described in Section II.B.1. Customer Notification Improvements. UI shall provide an update to its 2021 Maintenance Plan filing in Docket No. 20-12-44, PURA Review of Electric Companies' and Electric Distribution Companies' Plans for Maintenance of Transmission and Distribution Overhead and Underground Lines that includes these changes no later than January 27, 2021.
3. No later than February 12, 2021, UI and Eversource shall separately submit a plan for Authority approval that addresses a detailed process, implementation timeline and budget for provisioning a direct phone number to a live customer service representative, available Monday through Friday during normal business hours, familiar with each company's vegetation management work as described in Section II.B.1. Customer Notification Improvements.
4. UI and Eversource shall incorporate into their annual Vegetation Management Plans information and data concerning vegetation management-related customer complaints as described in Section II.B.2 Tracking of Vegetation Management Complaints. A complaint does not include routine requests for information.

**DOCKET NO. 18-12-25 REVIEW OF ELECTRIC COMPANIES' AND ELECTRIC
DISTRIBUTION COMPANIES' PLANS FOR
MAINTENANCE OF TRANSMISSION AND DISTRIBUTION
OVERHEAD AND UNDERGROUND LINES**

This Decision is adopted by the following Commissioners:



Marissa P. Gillett



John W. Betkoski, III



Michael A. Caron

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Public Utilities Regulatory Authority, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.



Jeffrey R. Gaudiosi, Esq.
Executive Secretary
Public Utilities Regulatory Authority

January 13, 2021

Date