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Session I – Utility Session
The Future of the Regulatory Environment
Impacts of Standards at the State Level

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I. Introduction: State Regulation of Utility Vegetation Management ("UVM").

A. The topic we will cover today, within the subject of the "Future of the Regulatory Environment," is the "Impacts of Standards at the State Level."

B. Generally, states have jurisdiction of UVM over intrastate distribution lines, and federal agencies have jurisdiction over interstate transmission lines. Thus, coordination between state and federal jurisdictions is an important issue in most states. This discussion will cover state jurisdiction of the UVM regulatory environment.

C. We will first discuss how public utility or public service commissions view UVM and how it falls within the public utility regulatory scheme and framework.

D. We will then discuss the current status of state regulation over UVM, from the most common, but subjective, NESC Rule 218, which simply provides that if trees may get in the way, the trees should be trimmed or removed, to the more explicitly required UVM rules and requirements that, for example, provide for more specific and mandatory UVM activity reporting requirements, clearance requirements, trimming cycles, notification, and others.

E. Is the general and subjective NESC Rule 218 sufficient or are the more explicit UVM rules required?

F. If more explicit UVM rules are required, should the state UVM rules be uniformly adopted across the various states?

II. State Regulatory Policy Concerns and UVM.

A. Jurisdictional Issues and Coordination of Federal and State Regulatory Requirements.

1. Federal Jurisdiction Over Interstate Transmission Lines and State Jurisdiction Over Intrastate Distribution Lines.

It is generally understood that State public utility or service commissions have jurisdiction over lines with distribution voltages and federal or regional agencies or organizations have authority over lines with transmission voltages. *2006 Utility Vegetation Management Regulatory Requirements, A State by State Review*, CN Utility Consulting, Stephen R. Cieslewicz and Robert R. Novembri ("CN UVM Report 2006").

* Any views or opinions expressed are those of the individual and does not necessarily reflect the opinion or position of the Public Utilities Commission of the State of Hawaii or of the National Association of Regulatory Utility Commissioners.

2. NARUC Recognized Need for Inter-Jurisdictional Coordination in Resolution.

The National Association of Regulatory Utility Commissioners ("NARUC") adopted a Resolution to Support State, Federal and Local Agencies' Actions for Vegetation Management at its annual meeting on November 17, 2004, which states in pertinent part:

> WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) has worked closely with the Federal Energy Regulatory Commission (FERC) to analyze and investigate transmission vegetation management practices by reviewing reports in response to the Final Blackout Report; and
>
> …
>
> WHEREAS, With respect to any jurisdictional issues that may develop involving vegetation management, it is crucial that state and federal regulators coordinate so that jurisdictional considerations provide for timely efficient vegetation management and recognize the distinctions between distribution and transmission when appropriate; now therefore be it
>
> RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC) convened in its November 2004 Annual Convention in Nashville, Tennessee, recommends that State commissions engage Federal regulators in timely dialogue regarding any jurisdictional issues that may arise involving vegetation management; and be it further

This NARUC resolution was co-sponsored by the Ad Hoc Committee on Critical Infrastructure and the Committee on Electricity. The complete resolution may be viewed at www.naruc.org.

3. Federal Energy Regulatory Commission Also Recognized Need to Coordinate Federal and State UVM Regulatory Requirements.

The Utility Vegetation Management and Bulk Electric Reliability Report From The Federal Energy Regulatory Commission ("FERC"), dated September 7, 2004:

> With respect to any jurisdiction issues that may arise involving vegetation management, it is important that state and federal regulators continue to coordinate so that jurisdictional considerations do not impede effective vegetation management.
>
> The Commission believes that better coordination among federal agencies and between the federal and state governments to develop clear, consistent policies and procedures for timely and effective vegetation management by transmission owners could help to alleviate many real and perceived obstacles to proper vegetation management.

B. State Regulatory Principles.

1. Generally, state commissions are tasked with the oversight of electric utilities to see that utilities provide regulated services reliably and efficiently and at a reasonable cost, while providing regulated utilities with a reasonable opportunity to earn a fair rate of return.

2. UVM is one required activity of regulated utilities to ensure that reliability and quality of service is maintained.

3. Since Commissions are also tasked with seeing that regulated services are provided at rates that are just and reasonable, commissions should also undertake a cost-benefit analysis to determine whether the costs incurred for UVM are prudent and reasonable. Thus, Commissions not only should determine whether utilities are doing enough UVM,

but also need to consider whether the costs incurred for UVM are reasonable, especially because UVM costs can be quite high. *Utility Vegetation Management Final Report*, March 2004, CN Consulting, LLC, at 1 (UVM "programs represent one of the largest recurring maintenance expenses of electric utility companies in North America.").

C. *NRRI Regulatory Policies for Electrical Outages*, June 2007 (Advance Draft Copy), Robert Burns, Esq., Senior Research Specialist ("NRRI Report").

1. Regulatory Principles.

   a) Encourage Efficiency and Discourage Inefficiency

   b) Encourage Adoption of Technically Feasible Options

   c) Provide Reasonable Opportunity to Recover Prudently Incurred Costs.

2. Evaluation of Costs and Benefits.

   a) Value to Customers of Outage Avoidance.

   b) Cost to Utility of Outage Prevention and Mitigation.

   c) Cost-Benefit Tradeoffs and Balancing.

3. Utilities' Pre-Outage Obligations.

   a) Outage Performance Indices: Indicators of Frequency and Duration.

   b) ***Pre-Outage Preventative Activities: UVM***.

One component of utilities' pre-outage obligations prescribed by state commissions is pre-outage preventative UVM activities, which is the focus of today's topic.

Due to the fact-specific nature of the application of these regulatory principles and the cost-benefit analysis, applying these same principles in different states and jurisdictions could yield different results and UVM regulatory requirements:

> With knowledge of facts specific to customer categories, the regulator can shape the utility's outage obligations to customer characteristics, such as customer location, demand elasticity, and usage. Each of these characteristics could affect the value to the customer of outage avoidance and minimization; this value, in turn, would affect the cost-benefit tradeoff.

NRRI Report at 11. The complete NRRI Report will soon be available at http://www.nrri.ohio-state.edu/.

III. **State Regulations and Policies on UVM.**

A. NESC Rule 218.

State commissions historically and most commonly require utilities to comply with the National Electric Safety Code ("NESC") Rule 218. NRRI Report at 15; CN UVM Report 2006 at 4.

NESC Rule 218 provides:

1. **Trees that may interfere with ungrounded supply conductors should be trimmed or removed.** *Note*: Normal tree growth, the combined movement of trees and conductors under adverse weather conditions, voltage, and sagging of conductors at elevated temperatures are among the factors to be considered in determining the extent of trimming required.

2. Where trimming or removal is not practical, the conductor should be separated from the tree with suitable materials or devices to avoid conductor damage by abrasion and grounding of the circuit through the tree.

(Emphasis added.)

NESC Rule 218 is the most common UVM requirement, and may be sufficient in certain areas, especially if it is applied proactively. However, it is a very subjective requirement. It may be difficult to determine whether a utility has complied with the requirement that trees should be trimmed or removed where tress may interfere with ungrounded supply conductors.

B. Some States Have Imposed More Explicit UVM Requirements. CN UVM Report 2006, at 5:

1. UVM Reporting Requirements.

Connecticut requires an annual submission of UVM activities and progress.

2. Mandatory Clearance Requirements.

California GO 95, Rule 35 requires utilities to achieve and maintain specific clearances between vegetation and any energized primary or transmission lines. Generally, the higher the voltage of the line, the larger the clearance requirements imposed by the rule.

3. Mandatory Cycles.

Oklahoma requires utilities to develop a comprehensive plan of UVM activities and comply with a four-year or less cycle for UVM activities.

4. Mandatory Notification.

Wisconsin and Virginia require specific UVM notifications and procedures, and reporting requirements for UVM activities.

5. Commission Audits.

Wyoming performs annual audits of utility companies, which includes review of UVM performance and activities.

C. Should more explicit UVM rules than those established by NESC Rule 218 be imposed, and if so, should it be adopted uniformly among the States?

Regional and state flexibility required?

Consistent state regulations required?

D. Future of UVM Regulatory Environment?

Likely to see more explicit UVM rules, especially where experience shows utilities need more explicit oversight or guidance from regulators as to acceptable UVM performance standards.