

Introduction

MEMORANDUM

April 13, 2012

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *AMihill*
MF Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 16-12, Trees – Utility Vegetation Management

Bill 16-12, Trees – Utility Vegetation Management, sponsored by Council President Berliner and Councilmember Elrich, is scheduled to be introduced on April 17, 2012. A public hearing is tentatively scheduled for June 12, 2012 at 7:30 p.m.

Bill 16-12 would:

- (1) require certain utilities to submit a vegetation management plan to the County;
- (2) require certain utilities to provide notice to certain property owners before conducting vegetation management activities;
- (3) require certain utilities to obtain consent from certain property owners before conducting vegetation management activities;
- (4) require the County Executive to issue implementing regulations;
- (5) require the County Executive to set a fee for certain purposes; and
- (6) generally amend County law regarding utility vegetation management.

The Maryland Public Service Commission (PSC), as required by State law, is in the process of developing service quality and reliability standards for the delivery of electricity to customers. Draft regulations were published in the February 24, 2012 issue of the Maryland Register (see excerpts on ©8). These regulations provide, in part, that the PSC standards apply to the extent not limited by law or regulation of any unit of local government.

This packet contains:

	<u>Circle #</u>
Bill 16-12	1
Legislative Request Report	7
Proposed PSC Regulation Excerpts	8

Bill No. 16-12
Concerning: Trees – Utility Vegetation Management
Revised: 4/11/2012 Draft No. 8
Introduced: April 17, 2012
Expires: October 17, 2013
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President Berliner and Councilmember Elrich

AN ACT to:

- (1) require certain utilities to submit a vegetation management plan to the County;
- (2) require certain utilities to provide notice to certain property owners before conducting vegetation management activities;
- (3) require certain utilities to obtain consent from certain property owners before conducting vegetation management activities;
- (4) require the County Executive to issue implementing regulations;
- (5) require the County Executive to set a fee for certain purposes; and
- (6) generally amend County law regarding utility vegetation management.

By adding

Montgomery County Code
Chapter 55A, Trees
Article I, Utility Vegetation Management
Sections 55A-1 to 55A-8

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Article I of Chapter 55A is added as follows:**

2 **Chapter 55A. [Reserved] Trees.**

3 **ARTICLE I. Utility Vegetation Management.**

4 **55A-1. Definitions.**

5 In this Section the following words have the meanings indicated:

6 ANSI standards means the vegetation management standards described in
7 ANSI A300, developed by the American National Standards Institute, or any
8 successor standard.

9 Department means the Department of Transportation.

10 Director means the Director of the Department or the Director's designee.

11 Tree means a plant that has woody stem or trunk that is at least 6 inches in
12 diameter at breast height.

13 Hazardous tree means a tree that poses an imminent hazard to any utility's
14 system reliability.

15 Utility means a utility company doing business in the County, and includes a
16 contractor or other person directed or controlled by that utility.

17 **55A-2. Applicability.**

18 Except in Section 55A-6(b) or with respect to any tree located in a County
19 right-of-way, this Article does not apply to any tree located in a utility's deeded right-
20 of-way or public utility easement where the utility is authorized to perform
21 vegetation management activities.

22 **55A-3. Vegetation management plan required.**

23 (a) Each utility must give the Chief of Tree Maintenance in the Department
24 a copy of any vegetation management plan, and any amendment to that
25 plan, submitted to the Maryland Public Service Commission within 30
26 days after the plan or amendment is submitted to the Commission, but
27 before starting vegetation management activities. If a utility does

28 regularly scheduled and planned vegetation management but is not
 29 required to submit a vegetation management plan to the Commission,
 30 the utility must submit a plan to the Department.

31 (b) The vegetation management plan sent to the County, to the extent not
 32 otherwise required under state law, must describe the following
 33 activities conducted by that utility:

34 (1) tree pruning and removal, identified by street name;

35 (2) vegetation management around poles, substations, and energized
 36 overhead electric plant;

37 (3) manual, mechanical, or chemical vegetation management along
 38 rights-of-way;

39 (4) inspection of each area where vegetation management is
 40 performed after the vegetation management;

41 (5) cultural control practices;

42 (6) public education regarding vegetation management practices;

43 (7) public and customer notice of planned vegetation management
 44 activities;

45 (8) debris management during routine vegetation management and
 46 outage restoration efforts; and

47 (9) independent quality assurance measures.

48 **55A-4. Vegetation management practices.**

49 (a) Each utility must conduct vegetation management in accordance with:

50 (1) its vegetation management plan; and

51 (2) either the most current ANSI standards or alternative vegetation
 52 management standards that the Director finds are equivalent to
 53 the ANSI standards.

- 54 (b) Each utility that removes a tree must grind the stump of the removed
55 tree and fill in any resulting hole.
- 56 (c) Each utility must remove any debris from a vegetation management
57 activity, such as branches, leaves, chips, vines, and logs from the right-
58 of-way.

59 **55A-5. Public notice of vegetation management; consent.**

- 60 (a) Before performing any vegetation management, each utility must make
61 a reasonable attempt to notify the owner or occupant of any property on
62 where vegetation management will be performed.
- 63 (b) The notice required by this subsection must include a “customer bill of
64 rights”, approved by the Office of Consumer Protection, that specifies
65 the rights and obligations of the property owner and the utility regarding
66 vegetation management.
- 67 (c) The utility must deliver this notice by direct mail, door hanger, or
68 another written method approved by the Department. A utility may use
69 more than one method to deliver this notice. This notice must not be
70 delivered only by a bill insert.
- 71 (d) Before performing any vegetation management activity on a property,
72 the utility must obtain the written consent of the owner or occupant of
73 that property.

74 **55A-6. Specific Circumstances.**

- 75 (a) *Hazardous trees.*
- 76 (1) If a utility finds that a tree poses an imminent hazard to its system
77 reliability, before removing the tree or performing any other
78 vegetation management activity on that tree the utility must make
79 reasonable attempts to obtain the consent of the owner or
80 occupant of the property where the tree is located.

81 (2) If the utility cannot obtain the consent of the property owner or
 82 occupant, the utility may ask the Chief of Tree Maintenance in
 83 the Department to inspect the tree. If the Chief of Tree
 84 Maintenance finds, after inspecting the tree, that the tree poses an
 85 imminent hazard to the utility's system reliability, the Chief may
 86 direct the utility to remove the tree without obtaining the consent
 87 of the owner or occupant.

88 (b) Trees along rural and rustic roads.

89 (1) Except as provided in paragraph (2), a utility must not remove
 90 any tree along a rural and rustic road that is:

91 (A) in the public right of way; or

92 (B) within 35 feet of the center line, even if the tree is on
 93 private property.

94 (2) A utility may remove a tree along a rural and rustic road if the
 95 utility submits an application to the County Chief of Tree
 96 Maintenance and the Chief approves the application. If the Chief
 97 does not respond to the application within 45 days, the
 98 application is approved.

99 (c) Trees in a historic district.

100 (1) Except as provided in paragraph (2), a utility must not remove a
 101 tree in a historic district if the tree is identified as a character-
 102 defining feature in the district and is:

103 (A) in the public right of way; or

104 (B) within 35 feet of the center line, even if the tree is on
 105 private property.

106 (2) A utility may remove a tree that is described as a character-
 107 defining feature in a historic district if the utility submits an

108 application to the County Chief of Tree Maintenance and the
109 Chief approves the application. If the Chief does not respond to
110 the application within 45 days, the application is approved.

111 **55A-7. Violations**

112 (a) Complaint. If a person believes a utility has violated or is about to
113 violate this Section, the person may file a complaint with the
114 Department in writing, in person, or electronically. The Department
115 must investigate the complaint within a reasonable time and notify the
116 complainant and the utility in writing or electronically whether a
117 violation has occurred and, if so, what action the Department will take
118 or the utility must take.

119 (b) Violation. A violation of this Article is a Class A violation.

120 **55A-8. Regulations and fees.**

121 (a) Regulations. The County Executive must adopt regulations under
122 method (2) to apply this Article. Those regulations must include a
123 process for the Department to review the utility's vegetation
124 management activities to assure quality control and adherence to each
125 applicable plan.

126 (b) Fee. The Executive, by regulation adopted under method (3), must set
127 one or more fees to cover the costs of administering this Article.

128 *Approved:*

129

Roger Berliner, President, County Council

Date

130 *Approved:*

131

Isiah Leggett, County Executive

Date

LEGISLATIVE REQUEST REPORT

Bill 16-12

Trees – Utility Vegetation Management

DESCRIPTION:	Bill 16-12 would require certain utilities to submit a vegetation management plan to the County; require certain utilities to provide notice to certain property owners before conducting vegetation management activities; and require certain utilities to obtain consent from certain property owners before conducting vegetation management activities.
PROBLEM:	Vegetation management has been a serious concern for many County residents. The Council has received numerous complaints that trees have been too aggressively trimmed. Additionally, Pepco has stated that there are instances where they need to work on private property but homeowners are preventing them from doing so thus endangering the vitality of the electrical system.
GOALS AND OBJECTIVES:	To provide protection for the County's tree canopy while providing an opportunity for utilities to perform necessary vegetation management activities.
COORDINATION:	Department of Permitting Services
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Amanda Mihill, Legislative Attorney, 240-777-7815
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Class A.

regulations are effective until and including December 31 of that year for reporting purposes only.

F. Reporting. Each utility shall report its year-ending performance in its annual performance report.

G. Except as otherwise set forth in §D of this regulation, the standards in this regulation shall apply to customer calls offered to or received by a utility's call overflow system or a third-party vendor retained by the utility.

H. Corrective Action Plan. If a utility fails to satisfy the standard in §A, B or C, of this regulation, it shall provide a corrective action plan, preferably in its annual performance report but by no later than April 1.

.09 Vegetation Management Requirements.

A. Intent and Scope.

(1) It is the intent of the Commission that a utility engage in vegetation management programs that are necessary and appropriate to maintain safety and electric system reliability.

(2) The standards set forth in this regulation shall constitute minimum vegetation management requirements applicable to utilities in the State, and are not intended to supersede or prohibit a utility's implementation of more aggressive vegetation management standards and practices.

(3) The vegetation management requirements in this chapter apply to the extent not limited by contract rights, property rights, or any controlling law or regulation of any unit of State or local government.

(4) This regulation applies to any electric transmission plant not regulated by the Federal Energy Regulatory Commission.

B. Technical Standards for Vegetation Management.

(1) Each utility shall ensure that vegetation management conducted on its energized plant is performed in accordance with the standards applicable to Maryland Licensed Tree Experts, which are incorporated by reference under COMAR 08.07.07.02.

(2) Each utility's vegetation management program shall address, at a minimum, all of the following activities:

- (a) Tree pruning and removal;
- (b) Vegetation management around poles, substations, and energized overhead electric plant;
- (c) Manual, mechanical, or chemical vegetation management along rights-of-way;
- (d) Inspection of areas where vegetation management is performed after the vegetation management;
- (e) Cultural control practices;
- (f) Public education regarding vegetation management practices;

(g) Public and customer notice of planned vegetation management activities; and

(h) Debris management during routine vegetation management and during outage restoration efforts.

(3) Each utility shall develop its own vegetation management program, which shall be consistent with this regulation. In developing the program, a utility shall conduct its vegetation management and determine the extent and priority of vegetation management to be performed at a particular site based on these factors:

- (a) The extent of the potential for vegetation to interfere with poles, substations, and energized overhead electric plant;
- (b) The voltage of the affected energized conductor, with higher voltages requiring larger clearances;
- (c) The relative importance of the affected energized conductor in maintaining safety and reliability;
- (d) The type of conductors and type of overhead construction;
- (e) The likely regrowth rate for each species of vegetation at the site;
- (f) The potential movement of energized conductors and vegetation during various weather conditions;

(g) The utility's legal rights to access the area where vegetation management is to be performed;

(h) The maturity of the vegetation;

(i) The identification of the structural condition of the vegetation, including the characteristics of a species as one having a high probability of causing a service interruption during weather events;

(j) State and local statutes, regulations, or ordinances affecting utility performance of vegetation management;

(k) Customer acceptance of the proposed vegetation management where the utility does not have legal rights to perform vegetation management; and

(l) Any other appropriate factor approved by the Commission.

(4) Each utility shall file a copy of its vegetation management program with the Commission within 90 days of the effective date of this regulation. If a utility makes a change in its vegetation management program, the utility shall file a copy of the change with the Commission no later than 30 days prior to implementing the change, unless exigent circumstances warrant implementation without prior notice, in which case the change shall be filed by no later than 30 days after implementation.

C. Training, Record Keeping, and Reporting.

(1) Each utility shall adopt standards, to the extent not covered by other existing law, to be used by all persons who perform vegetation management for the utility, whether employees or contractors, for the proper care of trees and other woody plants, including safety practices and line clearance techniques.

(2) The utility shall monitor and document scheduled vegetation management and related activities the utility or its contractor performs. Documentation shall include, but is not limited to:

- (a) Identification of each circuit or substation or, if applicable, both circuit and substation where vegetation management was performed;
- (b) The type of vegetation management performed including removal, trimming, and spraying and methods used;
- (c) The name of the Maryland Licensed Tree Expert responsible for oversight of vegetation management at the circuit or substation level;
- (d) The approximate date of activity;
- (e) Any occurrence resulting in serious injury to a person as a result of vegetation management activities; and
- (f) When a utility seeks to remove a tree or limb, but is unable to do so because permission or cooperation is not obtained.

(3) Each utility shall include a summary of the information required under §C(2) of this regulation about its vegetation management during the preceding calendar year, and shall describe vegetation management planned for the current calendar year, as part of the annual performance report required to be filed with the Commission under Regulation .11 of this chapter. The annual performance report also shall include:

- (a) Expenditures for vegetation management in the preceding calendar year;
- (b) Vegetation management budget for the current calendar year;
- (c) Circuits or substations, completion dates, and the estimated number of overhead circuit miles trimmed in the preceding calendar year in compliance with the cyclical vegetation management requirements set forth under §F of this regulation;
- (d) Circuits or substations and the estimated number of overhead circuit miles scheduled for the current calendar year in compliance with the cyclical vegetation management requirements set forth under §F of this regulation;
- (e) Total overhead circuit miles for the system; and



(f) If applicable, a corrective action plan, preferably in its annual performance report or, if necessary, in the supplemental annual performance report.

(4) Each utility shall report its own violation of this chapter to the Commission within 60 days of discovery and include its plan for correcting each violation.

D. Public Notice of Planned Vegetation Management.

(1) Each utility shall make a reasonable attempt to notify an owner or occupant of all properties upon which cyclical, planned vegetation management is to be performed. This requirement will be satisfied if the utility provides notice to affected property owners or occupants at least 7 days, but not more than 120 days, prior to performing cyclical, planned vegetation management activity. Notice shall be provided by direct mailing, door hanger, postcard, personal contact, or a different method if approved by the Commission, but may not be made solely by bill insert. Nothing in this regulation prohibits a utility from using more than one of these methods.

(2) Each utility or its contractor shall provide written notice of any cyclical, planned vegetation management activities to a primary contact for each county and municipality affected at least 2 months before commencing the activities unless the county or municipality notifies the utility that written notification is not required.

E. Outreach Programs.

(1) Each utility shall conduct an annual public education program to inform its customers, as well as a primary contact for each county and municipality in the utility's service territory, of the importance of vegetation management, and of the utility's role and responsibility in managing vegetation near electric lines, poles, and substations.

(2) The public education program required under this section shall be implemented by direct mail, bill inserts, or a different method if approved by the Commission.

(3) Each utility shall post its vegetation management public education materials on its website.

F. Specific Requirements. Each utility shall perform vegetation management based on the following schedule:

(1) Initially beginning on January 1 of the year immediately following the effective date of this regulation, a utility on a 4-year trim cycle shall within:

- (a) 12 months perform vegetation management on not less than 15 percent of its total distribution miles;
- (b) 24 months perform vegetation management on not less than 40 percent of its total distribution miles;
- (c) 36 months perform vegetation management on not less than 70 percent of its total distribution miles; and
- (d) 4 years perform vegetation management on not less than 100 percent of its total distribution miles.

(2) Initially beginning on January 1 of the year immediately following the effective date of this regulation, a utility on a 5-year trim cycle shall within:

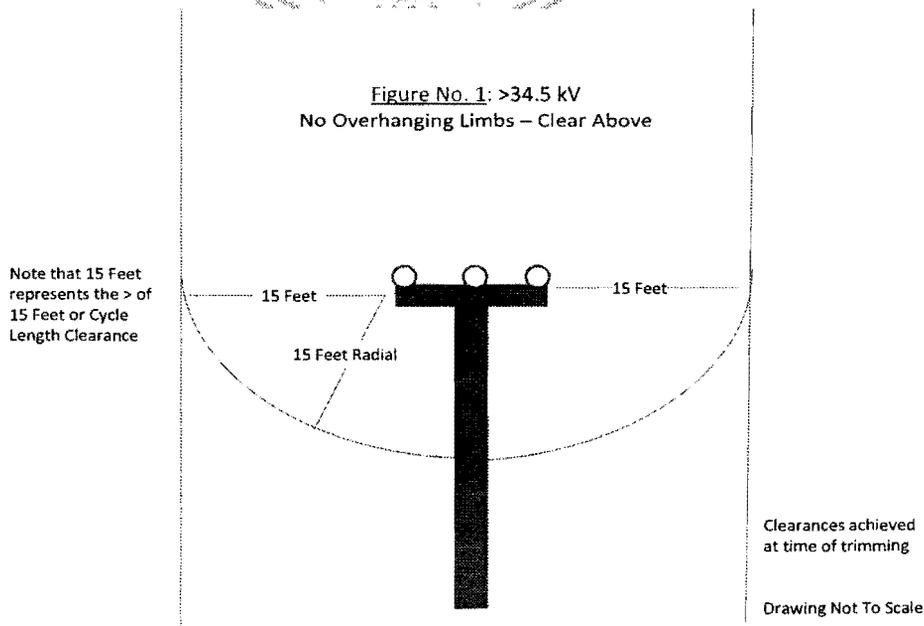
- (a) 12 months perform vegetation management on not less than 12 percent of its total distribution miles;
- (b) 24 months perform vegetation management on not less than 32 percent of its total distribution miles;
- (c) 36 months perform vegetation management on not less than 56 percent of its total distribution miles;
- (d) 48 months perform vegetation management on not less than 75 percent of its total distribution miles; and
- (e) 5 years perform vegetation management on not less than 100 percent of its total distribution miles.

(3) Each utility shall follow the vegetation management performance requirement under §F(1) or (2) of this regulation for each subsequent trim cycle.

G. Vegetation management shall be performed based on the factors set forth under §B(3) of this regulation. The following minimum clearances shall be obtained at the time vegetation management is conducted to the extent not limited by contract rights, property rights or other controlling legal authority:

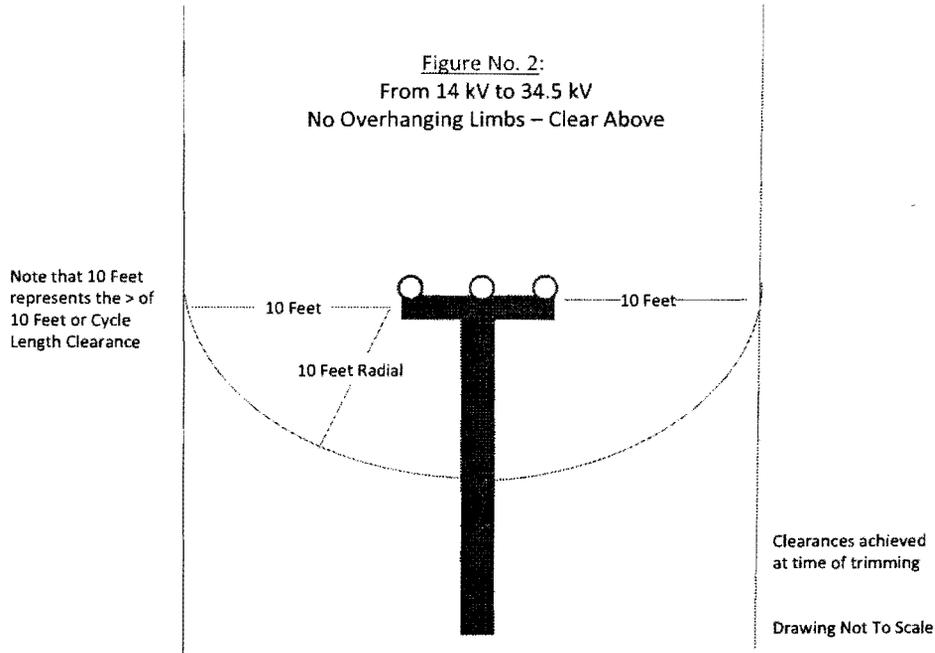
(1) Horizontal clearances:

(a) Greater than 34.5 kV: The clearance from the conductors shall be the greater of 15 feet or 4 years' growth if using a 4-year trim cycle (or 5 years' growth if using a 5-year trim cycle). Horizontal clearance beneath the conductors shall be measured radially.

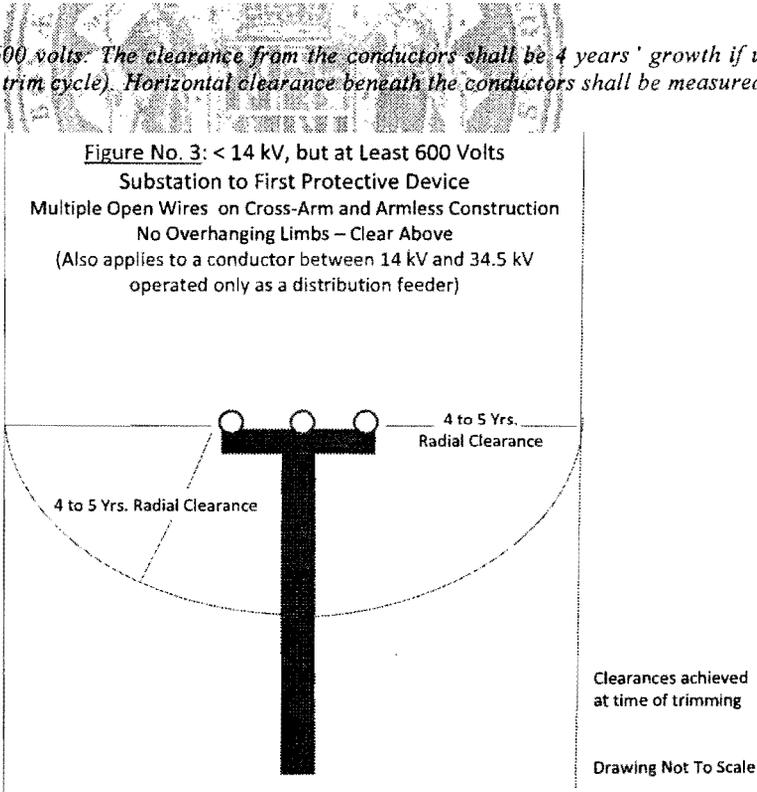


PROPOSED ACTION ON REGULATIONS

(b) From 14 kV to 34.5 kV: The clearance from the conductors shall be the greater of 10 feet or 4 years' growth if using a 4-year trim cycle (or 5 years' growth if using a 5-year trim cycle). Horizontal clearance beneath the conductors shall be measured radially.



(c) Less than 14 kV but at least 600 volts: The clearance from the conductors shall be 4 years' growth if using a 4-year trim cycle (or 5 years' growth if using a 5-year trim cycle). Horizontal clearance beneath the conductors shall be measured radially.



(d) For a conductor with a voltage from 14 kV to 34.5 kV which is operated only as a distribution feeder, the horizontal clearance shall be as set forth under §G(1)(c) of this regulation as if its voltage were less than 14 kV but at least 600 volts.

(10)

(e) The horizontal clearances are the minimum clearances the utility shall establish during each cyclical planned vegetation management trim cycle.

(2) Vertical clearances:

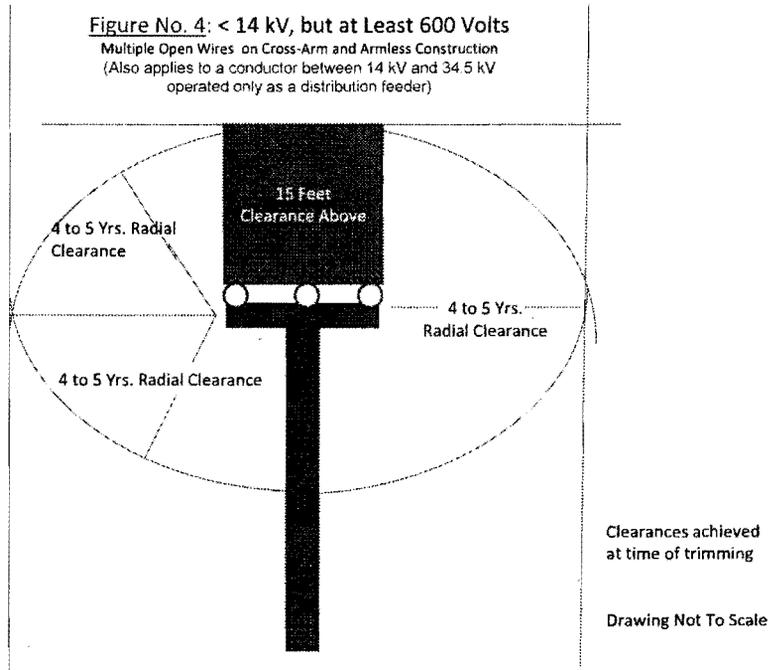
(a) Greater than 34.5 kV: The vertical clearance above the conductors shall be established by removing all overhanging limbs within the maximum horizontal clearance zone specified under §G(1)(a) of this regulation. The vertical clearance below the conductors shall be the greater of 15 feet or 4 years' growth (or 5 years' growth if using a 5-year trim cycle). The vertical clearance below the conductors shall be measured radially. See Figure No. 1

(b) From 14 kV to 34.5 kV: The vertical clearance above the conductors shall be established by removing all overhanging limbs above the conductors within the horizontal clearance zone specified under §G(1)(b) of this Regulation. The vertical clearance below the conductors shall be the greater of 10 feet or 4 years' growth (or 5 years' growth if using a 5-year trim cycle). The vertical clearance below the conductors shall be measured radially. See Figure No. 2.

(c) Less than 14 kV but at least 600 volts:

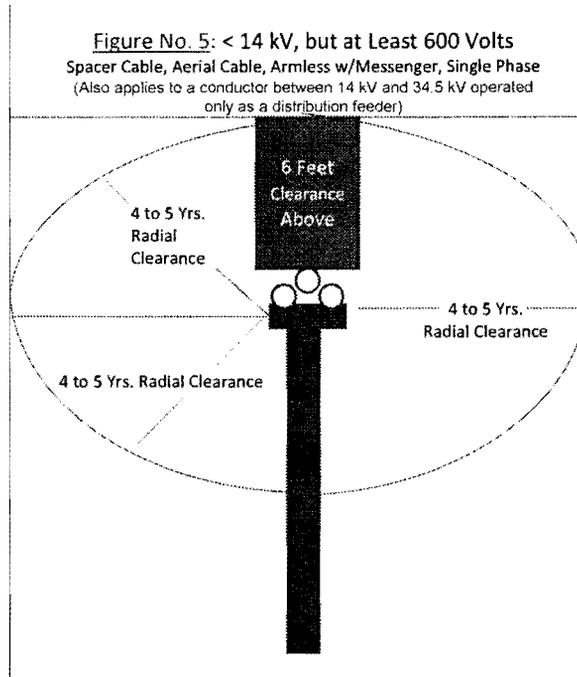
(i) Multiple open wires on a cross-arm or armless construction from the substation to the first protective device: The vertical clearance above the conductors shall be established by removing all overhanging limbs above the conductors within the horizontal clearance zone specified under §G(1)(c) of this regulation. The vertical clearance below the conductors shall be 4 years' growth (or 5 years' growth if using a 5-year trim cycle). The vertical clearance below the conductors shall be measured radially.

(ii) Except as provided in §G(2)(c)(i) for multiple open wires on a cross-arm or armless construction, the vertical clearance above the conductors is 15 feet. The vertical clearance below the conductors is 4 years' growth (or 5 years' growth if using a 5-year trim cycle). The vertical clearances above and below the conductor shall be measured radially.



(iii) Spacer cable, tree wire with messenger cable above, aerial cable, and single-phase: The vertical clearance above the conductors is 6 feet. The vertical clearance below the conductors is 4 years' growth (or 5 years' growth if using a 5-year trim cycle). The vertical clearance above and beneath the conductors shall be measured radially.

PROPOSED ACTION ON REGULATIONS



(d) For a conductor with a voltage from 14 kV to 34.5 kV which is operated only as a distribution feeder, the vertical clearance shall be as set forth in the corresponding standard contained in §G(2)(c) of this regulation as if its voltage were less than 14 kV but at least 600 volts.

(e) The vertical clearances are the minimum clearances the utility shall establish during each cyclical planned vegetation management trim cycle.

(3) Mature trees may be exempt from the minimum clearance requirements specified above at the utility's reasonable discretion for voltage levels at 34.5 kV and below

H. Federal Energy Regulatory Commission Jurisdictional Transmission Plant. Each utility shall file with the Commission's Engineering Division a copy of all vegetation management related filings associated with a transmission line in Maryland to the Federal Energy Regulatory Commission or an entity approved by the Federal Energy Regulatory Commission. If the information is confidential or critical energy infrastructure information, the utility shall advise the Commission's Engineering Division in writing and make the information available for review at a mutually agreeable time and location.

.10 Periodic Equipment Inspections.

A. Each utility shall adopt and follow written operation and maintenance procedures for its electric plant in order to maintain safe and reliable service. The operation and maintenance programs shall account for the utility's experience, good engineering practices, and judgment, and manufacturer's recommendations.

B. Each electric utility shall file its written operation and maintenance programs required under §A of this regulation with the Commission within 60 days from the effective date of these regulations and the programs shall be designed to achieve, at a minimum, the level of reliability established by the Commission's regulations.

C. If the electric utility makes a material change to its written operation and maintenance programs required under §B of this regulation, the utility shall file the change with the Commission not less than 60 days prior to implementing the change, unless exigent circumstances warrant implementation without prior notice, in which case the change shall be filed by no later than 30 days after implementation. The filing shall describe each change and the reason for the change.

D. The operation and maintenance programs required by §B of this regulation shall:

- (1) Include the frequency or triggers for performing an inspection;
- (2) Identify the electric plant inspections to be performed including, but not limited to:
 - (a) Poles;
 - (b) Overhead and underground conductors and cables;
 - (c) Transformers;
 - (d) Switching and protective devices;
 - (e) Substations;
 - (f) Regulators; and
 - (g) Capacitors; and
- (3) Identify acceptance criteria for the inspections.

E. Except as provided under §D of this regulation and Regulation .09 of this chapter, the operation and maintenance programs required by §B of this regulation need not include detailed procedures.

F. Each utility shall maintain sufficient records to give evidence of compliance with its operation and maintenance programs and shall demonstrate compliance with its program in its annual performance report.