

**Exhibit D to Utility Line Clearance Coalition Comments**  
**Docket No. OSHA-2008-0012**  
**December 17, 2008**

***UTILITY LINE CLEARANCE COALITION***

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January 11, 2006

**VIA MESSENGER**

OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION DOCKET OFFICE  
U.S. Department of Labor  
200 Constitution Avenue NW – Room N2625  
Washington, DC 20210

Re: Docket No. S-215: Electric Power Generation,  
Transmission & Distribution Standard  
Comment of *Utility Line Clearance Coalition*

Dear Ladies and Gentlemen:

In accordance with OSHA's request at 34 Fed Reg. 34822, et seq. (June 15, 2005), this constitutes the Comment of the Utility Line Clearance Coalition ("ULCC") with respect to the proposed rule promulgation.

The Utility Line Clearance Coalition is composed of: Asplundh Tree Expert Co., The Davey Tree Expert Co., Lewis Tree Service, Inc., Lucas Tree Experts, Inc., McCoy Tree Surgery, Inc., Nelson Tree Service, Inc., Tamarack Tree Service, Inc., Townsend Tree Service Inc., Trees, Inc., and Wright Tree Service, Inc. Each of these companies is engaged in vegetation management for their electric utility clients and municipal or residential/commercial customers. This work includes line clearance tree trimming, electric utility right of way clearance, and line

clearance tree trimming in or to create or maintain electric power line rights of way as specified by the electric utility or other customer. Our members use specialized techniques which allow this work to be done safely consistent with not inconveniencing the public through creation of unnecessary deenergization of electric supply to communities.

ULCC members alone comprise approximately ninety percent of all line clearance tree trimming work performed in the Nation. Hence, ULCC is the authoritative voice of the line clearance tree trimming industry with respect to this proposed promulgation. By specializing in such line clearance tree trimming work, ULCC members serve the Nation by maintaining reliable electric service to the public by controlling vegetation growth by use of specialized safe work practices which avoid unnecessary electric power deenergization, and as well, by providing emergency power restoration service to utilities by removing downed trees and tree branches to enable power restoration by utilities after major storms such as, recently, "Katrina" and "Rita".

All such work performed by ULCC members is performed by line clearance tree trimmers/trainees and is subject to and regulated by 29 CFR 1910.269 (especially, but not limited to 1910.269(r)). All such work is directly impacted by OSHA's subject proposed rule modification. Therefore, ULCC members are vitally affected by the proposed promulgation, and Comment concerning it as follows.

**EXECUTIVE SUMMARY OF COMMENT**

- The proposed dual revisions of the 1910.269 safety training and certification requirement – *to both eliminate the certification of training requirement for new*

*employees AND to add a new requirement of close initial supervision of experienced newly hired employees -- should not be adopted because it will decrease worker safety; the current provision should be maintained unchanged;*

- OSHA's proposed *exemption* of the proposed "host contractor" provision to the line clearance tree trimming industry, should be maintained;
- The proposed "fall protection" provision revision must be left unchanged for line clearance tree trimmers, or, alternatively, should be revised at "note 1" to proposed Sec. g(2)(iii)(c) to allow for the optional use by line clearance tree trimmers of either 1) a **three foot shock absorbing lanyard attached to a body belt** -- which would more safely provide for **less** arrest force to the body belt wearer than the standard two foot body belt lanyard which OSHA otherwise would permit; or, 2), alternatively, to allow use of a full body harness attached to a maximum six foot lanyard. (This is also the position of the "Tree Care Industry Association" ("TCIA".) as to this issue.)
- AED use, if adopted, should not be applied to the line clearance tree trimming industry;
- The definition of line clearance tree trimming must be updated to apply to all vegetation management work done within 10 feet of electric supply lines, or within the greater range specified by the applicable standard's tables, or to such work performed by line clearance tree trimmers within the utilities' rights of way. This also is intended to increase safety by assuring a predictable unitary source of safety regulation, through 1910.269, for tree work done by line clearance tree trimmers. This also is the position of the "Tree Care Industry Association" ("TCIA") as to this issue. (This is NOT intended to require all right of way work be done by line clearance tree trimmers, nor to deprive residential / commercial tree contractors (whose employees may not be line clearance tree trimmers), from the opportunity to perform tree work on utility rights of way, under otherwise applicable standards (where no electric hazard is presented to them.)
- The "CPR" phase-in requirement for newly hired field personnel should be retained as now in effect and should not be changed.

I. 1910.269(a)(2)(vii): The proposed relaxation of the current safety training and certification requirement will decrease worker safety and therefore should not be adopted; and, the OSHA-proposed addition of "note 2" to this section, to add a "closely supervised" proficiency check on all hires, is unacceptable.

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OSHA-proposed Section 1910.269(a)(2)(vii) proposes a material change in the way experienced line clearance tree trimmer professionals may be hired and allowed to start work at all: it proposes to delete the certification of training requirement, and to add a requirement that all newly hired albeit highly experienced personnel – be closely supervised as to all skills before any of them are allowed to work. Both proposed changes should be rejected.

Current 1910.269(a)(2)(vii)'s training section contains a specific requirement that the employer "shall certify that each employee has received the training" required by the regulation (emphasis added). The OSHA-proposed revision to this section, however, would delete this "certification of training" requirement by replacing it with a relaxed version of "shall determine" rather than "shall certify" that the employee has received the required training—thereby deleting the certification requirement..

The reasons for the need to retain the "shall certify" language are that, (1) the creation of the current and existing "shall certify" language *has raised* the level of safety in the line clearance tree trimming industry; that deletion of it therefore will decrease safety; and (2) allowing employment records ("certification" by another name) for current employees under the proposal's "note 1", while disallowing reliance upon it for newly hired albeit experienced employees under "note 2" and instead requiring under this note 2 all new hires including well-

experienced new hires to be "closely supervised" before they are allowed to start work, dysfunctionally will wreak havoc in staffing crews in the line clearance tree trimming industry. We address each of these points:

A. OSHA's Proposed Deletion of the Certification Requirement Will Decrease Safety:

Requiring "certification" of employees having received the required safety training has imposed internally within line clearance contractors' training procedures creation of failsafe mechanisms to unambiguously assure the employee individually has received the required safety training – as a condition to committing to issuance of certification – and thus has improved safety. This in contrast to the now-proposed substituted method of a more subjective, hence looser requirement, of simply allowing an employer to assert training was given, without any requirement to certify the training was done.

Returning—as we understand is now proposed by OSHA for revision, to a "shall demonstrate" instead of a "shall certify" standard, is a step backwards which will allow a lower threshold of safety in the line clearance tree trimming industry. More detrimentally, this proposed laxity will impact most greatly the smaller and newer line clearance tree trimming companies who may not have well-developed training programs adequate to the risk of performing tree work proximate to electrical supply lines. In contrast, established line clearance tree contractors, such as members of this Coalition, each have specific, detailed, and progressive training programs and do "certify" in writing each employee as having completed training to the level of his or her assignment. For instance, an inexperienced person will be hired to start work

as a “line clearance tree trimmer trainee.” Such a person will be instructed in the practice of safety, PPE use, the electrical hazards, job site set-up, aerial rescue, chipping brush, job briefing, emergency response, safe power saw use and fueling and, be introduced to the basics of safe line clearance. When proficiency is demonstrated, the employer will then certify on its training records – consistent with the current requirements of 1910.269 -- completion of the training and demonstration of proficiency to that level of assignment.

This existing certification requirement has desirably elevated the level of training and required demonstration of proficiency in this industry because it has forced the creation of a certification process which, in turn, has increased the thoroughness of topics trained as well as assured demonstration of proficiency in those topics before management will issue written certification of training and proficiency demonstration. The net outcome is increased professionalism, leading toward a safer work environment in the utility line clearance industry.

The OSHA-proposed *removal of that training certification requirement* will, therefore, be a step backwards from the increased level of training and certification desirably forced by the current certification standard. The proposed change would *decrease safety by* undesirably allowing for subjective characterization of training completion and proficiency demonstration. This would decrease the upgraded level of safety achieved by creation of the existing standard's certification requirement.

B. OSHA's proposed new "note 2" requirement to require "close supervision" of all new hires unacceptably will wastefully require "close scrutiny" of experienced and already-trained personnel:

The combination of *proposed* "note 1" and "note 2" to 1910.269(a)(2)(vii) is simultaneously to do away with the certification requirement for *inexperienced* hires, *and* to require "close supervision" for *experienced* line clearance hires. We addressed the first part of this dysfunctional proposal above. We address here the second part—the proposal to require "close supervision" of *experienced* hires before they can start work.

Different from utilities, there is constant employment change in the ranks of the line clearance tree trimming industry. The line clearance tree industry is highly competitive. Line clearance contractors frequently are replaced by other contractors in the bidding process. Not uncommonly, the staff of the displaced contractor will transfer to the newly awarded job bidder contractor. The replacement contractor can now (see "note" to *current* 1910.269(a)(2)(vii)) verify the predecessor's certification records and observe the demonstrated proficiency of the newly hired employee staff. Thus, the current standard desirably enables continuity of operations with trained personnel whose proficiency is determined by verification of training and observance of work. The current certification requirement, therefore, not only increases safety, but also facilitates service continuity in an industry characterized by a high degree of contractor turnover.

Coupled with its proposed deletion of the training certification requirement from 1910.269(a)(2)(vii), however, OSHA is proposing a new "Note 2" to same 1910.269(a)(2)(vii)

which would forbid any person to be hired and put to work – *irrespective of his or her experience and credentials* – until the employer “and (3) supervises the employee closely until that employee has demonstrated proficiency in all the work practices he or she will employ.”

This new “closely supervise” requirement to confirm proficiency of all experienced personnel in all subjects, is unacceptable to the line clearance tree contractor industry because it is unworkable.

As noted above, a core of experienced employees often change employers as tree trimming contracts are won and lost. It follows, therefore, as well that, the general foreman or managers (responsible for clusters of crews), change employment to the successful contractor in an area.

Owing to this uniqueness, to require a line clearance contractor to have to “closely supervise” every new hire irrespective of his or her work experience – is administratively unworkable: an employer who currently can lawfully rely upon confirmation of the new hire’s training and experience with the predecessor contractor coupled with observance of his or her work, not only loses the right to rely upon the “certification” through OSHA’s proposed deletion of the “certification” option of this section, but worse, cannot even field (start) an experienced crew unless and until every member of that crew is first not just observed, but also “*closely supervised*” in “all of the work practices he or she will employ” (Note 2, emphasis added). This is unworkable in the line clearance tree trimming industry, and is not required for employee safety: there is no evidence on the record that the ability of the contractor to verify from a predecessor contractor’s certification the skill, proficiency and experience of an experienced line

clearance crew member has compromised safety in this industry or that there is any need to change the current standard in this regard for this industry.

This is not to say that close supervision is never appropriate in the line clearance tree trimming industry. We agree that new hires, or people being promoted to a new level of hazard exposure need to be closely observed as to skill set (e.g. line clearance tree trimmer trainee to line clearance tree trimmer) formation and proficiency before being allowed to work semi-independently<sup>1</sup> -- that is already required by the existing standard -- but *experienced* personnel hired should not have to be closely supervised as to all skills he will employ as a condition of being allowed to start work in the field. The proposed revision to the existing standard's training / proficiency determination therefore should not be adopted.

- II. OSHA's proposed *exemption* of the proposed new "Host-Contractor" provisions to the line clearance tree trimming industry should be maintained (if the host contractor provision is adopted at all)
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In proposed new Section 1910.269(4), OSHA is proposing a "host-contractor" provision which OSHA proposes not be applied to line clearance tree trimming—namely, to not be among the limited parts of the 1910.269 "electric utility" industry standard made applicable to this industry in the "scope" section of the standard.

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<sup>1</sup> As a practical matter, compliance with the 1910.269(r)(1)(ii) requirement of a second employee being within voice communication when employee goes within ten feet of a electric supply line, or if use of ropes or over 750 volts is involved, effectively serves to preclude working independently in the line clearance tree trimming industry.

OSHA's policy decision to make "host contractor" *inapplicable* to the line clearance tree trimming industry, is a sound policy decision which is commended and should be maintained by OSHA if a host-contractor provision is adopted at all.

As a preliminary matter to place the issue in context, the exclusion from applicability of this proposal to line clearance tree trimming is supported by and is consistent with the regulatory structure adopted by OSHA in the original creation of 1910.269 in 1994. Thus, as OSHA explained in the original promulgation of 1910.269 (59 Fed. Reg. 4336), *only certain limited portions of the electric power industry 1910.269 standard were made applicable to line clearance work* – as is legislated into the "scope" section of 1910.269(a)(1)(i)(E)(2). That policy distinction was driven by OSHA's recognition that the work of utilities is fundamentally different from – indeed, mutually exclusive from that of the vegetation management industry, in that utility employees ("qualified" employees under the standard who may use "bare hand" work to work directly on electric supply lines), whereas line clearance tree trimmers ("unqualified" employees for purposes of 1910.269), cannot and do not work on or touch electric supply lines and, indeed, in all cases must maintain minimum separation distances from energized overhead electric supply lines. See 1910.269(r)(1)(iii).

More narrowly, as applied to OSHA's proposed *inapplicability* of "host-contractor" provisions to line clearance tree trimming contractors, the wisdom of the exclusion is manifest: for, the rationale of the proposed "host-contractor" provisions to electric utilities electric (rather than "tree") contractors, is to apply the utilities' expertise to utility contractors performing utilities' typical work – in effect, to force down utilities' safety expertise onto their *electric-work*

*contractors* in order to raise the safety experience rate of those contractors to the better safety rate of the utilities who employ them. Such policy-driver for applying “host-contractor” to utility contractors performing electric utility (i.e. lineman) “qualified” work, simply is inapplicable to line clearance work: for, the utilities hire line clearance contractors because line clearance contractors are arborists who are specialists in vegetation management – precisely skills which the utilities contract out because they typically do not have that expertise in tree growth, tree trimming techniques, tree rigging, tree removal, vegetation management, etc. In short, utilities simply do not have the institutional expertise of line clearance tree knowledge to develop and direct line clearance safety practices of line clearance contractors via “host-contractor” provisions. This is due to the fact that the utilities hire the line clearance contractors precisely due to the contractors' expertise which the utilities do not possess. So, the “force-down” premise of “host-contractor” simply does not apply to line clearance. Additionally, the tree contractors' experience under contracts requiring utilities' safety rules to be followed by tree contractors – which is the essence of the host contractor provisions – has been dysfunctional: because utilities are not knowledgeable in the application of the special safety considerations and techniques used by line clearance tree trimmers; utilities might – however well-intentioned – misapply lineman-type requirements to tree trimmers including under “host-contractor” precisely the sort of provisions which OSHA has legislated to be inapplicable to line clearance.<sup>2</sup>

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<sup>2</sup> For instance, some utilities have attempted to enforce flame retardant clothing requirements on line clearance tree trimmers even though OSHA does not apply such requirements in recognition of the fact that line clearance tree trimmers do not get close enough to energized conductors to be exposed to arcing, which animates that requirement for linemen.

Finally, were OSHA to consider improvidently reversing its proposed position and attempting to apply this “host contractor” provision to the line clearance industry, ULCC’s position is that such attempted application not only would be unsound from a policy perspective (institutional knowledge differences, above), but also, from a legal perspective, would be an unconstitutional promulgation beyond the Agency's legal authority.

From a legal perspective, the proposed “host contractor” provision effectively, albeit illegally, delegates to utilities OSHA's safety rule making power: for it authorizes utilities to create the basis for OSHA to cite tree trimmer contractors for standards not created by OSHA. OSHA, after all, can only create standards within the scope of Congress' delegation to the Agency in its statute—and even then, only after notice and comment; OSHA cannot delegate that power to private entities such as utilities and then assert the right to cite tree contractors for violation of rules enacted by utilities! This, in effect, would be an unconstitutional delegation of regulation making power, which Congress delegates to OSHA, by OSHA delegating citable-law making (regulatory) authority to utilities. Moreover, since the regulations of utilities for which OSHA would be able to cite contractors for violating, would be created without opportunity for notice and comment, they, further, also unlawfully would violate the notice and comment provisions of both the OSHA statute and the Administrative Procedure Act.

- III. The “Fall Protection” Revisions of Proposed 1910.269(g)(2) Should Be Amended to Allow for the Optional Use of a **Three-Foot Long Shock Absorbing Lanyard attached to a body belt** (Rather Than the Proposed Two Foot Lanyard *non-shock absorbing lanyard* Limitation), or alternatively, for use of body harnesses attached to six foot lanyards, for Line Clearance Tree Trimmers Working from Aerial Device Bucket Trucks.

#### A. INTRODUCTION AND SUMMARY

The existing fall protection standard in 1910.269 for line clearance tree trimmers working in aerial lift devices is a body belt and lanyard requirement in accordance with 1910.67(c). This standard does not specify or limit lanyard length. There is no data asserted by OSHA showing that there is any existing incidence of fall hazards of line clearance tree trimmers from aerial devices which requires change from current requirements. Hence, there is no demonstrated basis for change from the current standard. Indeed, OSHA is not directly seeking to change in this standard the 1910.67 body belt and lanyard requirement expressly adopted in 1910.269(g)(2)(v) (note 1). However, OSHA is *separately* proposing to revise 1910.67, the net effect of which would be to force line clearance tree trimmers working aloft in aerial lift devices to use either a body belt with lanyard which restrains falls to not more than two feet (i.e. a “2-foot lanyard length limitation”), *or* a full body harness (which typically has a six-foot long lanyard attached to it).

The two-foot lanyard attached to a body belt as an “alternative” means of fall protection from an aerial lift is, in reality, *no option at all for line clearance tree trimming* – because there is no standard aerial lift manufacturer’s mounting site for the lanyard anchor. This short lanyard length limitation will prohibit the operator’s movement necessary for a line clearance bucket

operator to safely get to get his/her job done; *and worse*, will serve to potentially eject the operator from the bucket as it articulates away from the anchor with insufficient slack owing to the 2-foot lanyard length limitation.

The net effect of the revision, therefore, effectively is to suddenly ban the use of belts and lanyards as fall protection option for line clearance tree trimmers working in aerial lifts aloft, and to force line clearance tree trimmers working from aerial lifts to exclusively use full-body harnesses with six-foot lanyards. This forced-alternative, however, is equally unacceptable, for it robs line clearance tree trimmers from their historical choice of using body belts with lanyards or full body harnesses to protect their workers aloft. If two possible options that satisfy OSHA's requirements can be established; such as the belt/lanyard and the harness/lanyard; this is a win-win situation for OSHA and worker safety. By effectively eliminating the choice and forcing the use of full body harnesses (by mandating as the only "option" two-foot lanyards which are unusable to line clearance) , OSHA is decreasing safety for line clearance tree trimmers through OSHA's failure to recognize the *substantially different and unique work modes of line clearance tree trimmers working aloft, as compared to linemen* who are the primary focus of 1910.269. Thus, linemen work at the height of lines, whereas many line clearance tree trimmers work from above the lines. *This distinction is substantial*, because while a *lineman* fall would deposit him below the line and *clear of the electrical hazard*, a *line clearance tree trimmer* fall from above the electric supply line(s) *will deposit the operator right on the electric supply line(s), risking the operator's electrocution*. Moreover, the linemen can work closer than minimum approach distance to the electric supply line, indeed can even work on the electric supply line, and,

therefore, does not need reach-maneuverability in his work position in the bucket. In contrast, the line clearance tree trimmer is required to maintain minimum separation distance from electric supply lines at all times, and must reach from the bucket to use tools such as pole primers or hydraulic saws. This “reach factor” for line clearance tree trimmers is essential for their work – requiring flexibility to reach from the bucket – which a two-foot lanyard will not allow – factors which are not applicable to linemens' very different work. Moreover, the straps on the full body harness have the potential of getting engaged in the tree trimmer's chipper, endangering the operator – a hazard not faced by linemen.

To be sure, the body belt with lanyard theoretically can produce unacceptable force to the waist of the operator (and deposit him in a bent-over position less conducive to rescue), but these detractions, while admittedly less than ideal, surely are better than the certain death of a line clearance tree trimmer being dumped, via a 6-foot full body harness lanyard, onto a high voltage wire a few feet below his work station.

It is thus apparent upon analysis that there is no “perfect” means of fall protection for line clearance tree trimmers working from aerial lifts aloft: the lack of uniform anchor mounting points and the articulation of the bucket on a short two-foot lanyard dysfunctionally serve to keep the operator from doing his job and expose him from potentially being yanked from the bucket; and the full body harness can drop him on the wire electric supply line but apply less pressure to his waist and in position him suspended in a better recovery position – “benefits” which are pyrrhic after being deposited by the harness on a wire!

The lack of a perfect solution is limited by current aerial device and platform technology: for example, but not limited anchors – which must meet 5, 000 pounds force cannot be mounted in the bucket (and hence require greater slack than the two-foot limitation now proposed by OSHA, in order to reach to do the job). Similarly, an anchor in the floor of the bucket to restrain the operator to remain in the bucket as a full restraint or work positioning device of which has not been developed or field tested., could defeat the dielectric capacity of the bucket's dielectric liner. Even self-locking retractable lanyards are unworkable options since, in order to work properly, they need to be suspended from above the operator – which simply is impossible in an aerial lift bucket.

As the foregoing demonstrates, linemen and line clearance tree trimmers are covered in the same standard because both are subject to electric hazards. But the way they work, the equipment they use, and the limitations imposed by their respective equipment, combine to make a “one size fits all” approach to apply a fall protection requirement which works for linemen, to at the same time be dysfunctional and unacceptable for line clearance tree trimmers because of the fundamentally different ways that they work from and position their aerial lifts.

With that said, and subject to the limitations imposed by the aerial lifts' anchor points and by the human factors of the different work positions and “reaching” needs of line clearance tree trimmers versus linemen, it is apparent that if any change is to be made regarding fall protection for line clearance tree trimmers, it must accommodate the line clearance tree trimmers' need for lanyard length to allow a minimum acceptable amount of maneuverability while allowing employers to elect to avoid the risk upon line clearance tree trimmers being ejected from short

lanyards (the proposed two foot limitation) or being dumped on wire-electric supply lines from forced use of longer lanyards (e.g. from forced use of full body harnesses). Any such change also must be done in a way that dramatically reduces the fall-force to the waist/spine/torso of the line clearance tree trimmer which is the principal object of full body harness use.

The solution which we propose which accommodates a) employers' needs to allow maneuverability from the buckets' various attachment points, b) to permit operator-reach from the bucket to do the job while not being yanked from the bucket, c) consistent with the choice to avoid forced use of full body harnesses which expose the operator to being deposited on a wire electric supply line, and d) to achieve OSHA's goal of limiting potentially unacceptable force to the waist/torso/spine of an operator who falls out of a bucket, is to allow, for line clearance tree trimmers the choice of **a three-foot shock absorbing lanyard with body belt** which will limit potential fall arrest force to the operator's waist/torso/spine to a g-force of less than that of a full body harness will distribute on the body. Our discussion of these issues follows.

#### B. The Unarticulated Revision in the Current Standard

OSHA's proposed 1910.269 standard revision *retains* the existing 1910.269(g)(2)(v) *Note 1's* incorporation by reference to the requirements of 1910.67's requirement of fall protection from aerial devices being the 1910.67(c) requirement of "body belts and lanyards". See 70 Fed. Reg. 34937. What *this proposed* standard critically ignores, however, is that OSHA *also, separately*, is proposing to amend this incorporated 1910.67(c) provision. The net effect would be to limit the length of lanyards allowed to be used with body belts for fall protection aloft in aerial

devices, to either a) lanyards limited in length to only two feet long attached to body belts and which limit maximum arrest force to 900 pounds, or to b) use body harnesses attached to lanyards of six feet length which limit maximum arrest force to 1800 pounds.

Thus, the net effect of the proposed standard to incorporate the *existing* 1910.67 as to fall protection from aerial devices *with the separately proposed revision* to 1910.67(c), is to require line clearance tree trimmers who wish to use body belts for fall protection (instead of harnesses), to use *only two foot lanyards* attached to such body belts. *THIS IS UNWORKABLE FOR LINE CLEARANCE TREE TRIMMERS!*

C. No need for change from current standard shown

Preliminarily, there is NO showing in the subject notice of rule making that the current 1910.67 standard allowing a body belt and lanyard for fall protection from aerial devices – which ostensibly is preserved in the proposed revised 1910.269(g)(2)(iii)(c) – creates a risk which merits modification of existing practice. It is our industry's experience that line clearance tree trimmers are *not* being injured by virtue of using body belts (OSHA cites no evidence, nor contrary evidence of any such bucket fall hazard or hazard from body belt lanyards over two feet long in line clearance tree trimming), and that lack of compliance with PPE use requirements is directly proportional to how hard or uncomfortable the PPE is to use. Between 1984 and 2002, there were 34 OSHA-recorded fatalities in Tree Trimming (SIC 0783) involving aerial device operators and falls. The details of these accidents illustrate where the greatest problems lie:

- **23 of 34** fatalities were caused by catastrophic mechanical failures of some part of the aerial device that slammed the victim to the ground from considerable height. Fall protection, or lack of it, was not a factor in these fatalities.
- **5 of 34** fatalities were caused by a tree or limb striking the aerial lift boom, again causing failure of the aerial device. Again, fall protection was not a factor.
- **6 of 34** fatalities were caused by *unsecured* falls from the aerial device, and probably would have been prevented by the use of *any* means of fall protection.

At a recent meeting of the Tree Care Industry Association Safety Committee (a tree care industry trade association), with the safety directors of 20 of the largest tree care companies representing well over 60,000 tree care employees present, a survey was taken as to whether these companies had any experience with aerial lift operators being injured from *secured* falls out of buckets. *None did.* For them, *the more profound problem was the operator who disobeyed company policy and failed to wear any fall protection.*

In any event, irrespective of lack of justification shown for any change, to begin with, *considerations attendant to selection of fall protection devices for line clearance tree trimmers are fundamentally different from those for utility workers compared to line clearance tree trimmers in that: a) the lanyard anchor points on aerial device trucks vary so widely in their placement that forced use of a two foot lanyard will either make the line clearance tree trimmers' work i) impossible to perform with a two foot lanyard, or, ii) life-threatening to the bucket operator; b) line clearance tree trimmers work from ABOVE wire-electric supply lines as compared to utility workers who work parallel to the wire electric supply lines, and c) line*

*clearance tree trimmers work with chippers to feed brush.* We show in "B" below that two-foot lanyards are infeasible for line clearance tree trimmers' work; and in "C" below that, worse, they are exposed downright life-threatening to brush chipping with potentially life threatening risk(s) associated as line clearance tree trimmers.

D. Two-Foot lanyards are infeasible for line clearance tree trimming work

Turning first to the potential infeasibility of the two foot lanyard and/or the body harness for line clearance tree trimmers compared to utility personnel, there are fundamental differences in the work requirements and exposures between line clearance tree trimmers and utility linemen, which account for infeasibility of such options for line clearance tree trimmers.

*First*, as to the *unworkability* of *two foot lanyards* attached to body belts for line clearance tree trimmers, this manifests in two different ways. 1) there is no industry standard for the placement of the lanyard anchors (which must withstand 5000 pounds of force and hence cannot be placed or relocated casually nor be placed so as to compromise the dielectric capacity of the bucket). Aerial device anchor points on aerial devices most commonly used in the line clearance tree trimming industry typically are located so far from the bucket as to preclude movement in the bucket if a two-foot lanyard is forced to be used. This, in part, is due to avoid compromising the dielectric capacity of the bucket. See pictures at attachment nos.1 through 11 hereto which demonstrate various anchor points on line clearance tree trimming trucks. Thus, a two foot lanyard limitation is inherently unworkable just given the distance of the anchor to the center of the bucket. And 2), even if the anchor allows connection to the body belt on the

operator in the bucket, the shortness of the maximum allowed two foot long lanyard serves to deprive the bucket operator of the moving and bending flexibility required of the line clearance tree trimmer -- different from that of a lineman -- to do his or her tree trimming work. See pictures at attachment nos. 1, 4, 5, 6, 8, 9, and 10. Thus, unlike utility workers who may work right up close to -- indeed, right on -- overhead conductors, line clearance tree trimmers must maintain minimum separation distances from electric supply lines and reach out from their elevated buckets, twisting and turning using pole pruners, hydraulic pole tools and chain saws to cut branches (See picture nos. at attachment nos1, 4, 5, 6, 8, 9, and 10). The two foot limitation on lanyards does not permit the torso bending, flexing, and safe reaching over edge of a bucket necessary routinely to perform line clearance tree trimming. See pictures at attachment nos. 1-11.

*Second*, line clearance tree trimmers typically work from *above* electric supply lines, as compared to linemen who work at the height of the electric supply line. As a result, a line clearance tree trimmer bucket operator tethered to a full body harness's typical six-foot lanyard can be dropped onto an electric supply line below him -- facing certain death -- a risk not faced by utility operators who work at the level of the wire electric supply lines, and a risk not faced by a tree worker tethered to a bucket with a three-foot shock absorbing lanyard attached to a body belt.

*And third*, line clearance tree trimmers work with a chipper which powerfully draws in and chips cut tree branches. The full body harness has appendages which can get caught up in the brush being fed and can pull the operator wearing the harness into the chipper in a split second, likely killing him or her. Wearing a harness while chipping would very likely be a violation of

an individual company's safety policy, but nevertheless, introduces an additional and unwarranted risk to the work site. For this reason, line clearance tree trimmer contractors may reasonably conclude that harnesses introduce unique hazards or that they do not want to require their constant donning and doffing for employees who go aloft and also feed chippers -- factors, again, not typical to utility workers who typically work only at, rather than above, electric supply lines. Thus, OSHA respectfully is required to appreciate that there are sound operational reasons in the interest of employee safety for line clearance tree trimmer contractors to not want to use full body harnesses, while other contractors may legitimately decide to adopt work practice rules which diffuse hazards to which harnesses may subject line clearance tree trimmers, which are different from and do not apply to linemen. Thus, ULCC promotes the right of line clearance tree trimmer contractors' historical and currently existing rights to choose the body belts with lanyards or full body harnesses, depending on their safety professionals' assessment of which method best effectuates safety given the contractors' safety practices and work rules.

It is for all these reasons that body belts with lanyards are the means of choice used by the vast majority of line clearance tree trimmer contractors to secure aerial lift operators while aloft. Indeed, according to a survey of 180 line clearance tree trimming contractors performed by the Tree Care Industry Association ("TCIA"), 75% of respondents reported that they used body belts and lanyards to secure line clearance aerial lift operators aloft. A radical departure from this accepted and proven practice should not be allowed absent compelling evidence of need for change, which simply does not exist with respect to line clearance tree trimming.

*ULCC'S POSITION IS THAT LINE CLEARANCE TREE TRIMMERS SHOULD NOT BE FORCED TO CHOOSE BETWEEN AN UNWORKABLE TWO-FOOT LANYARDS WITH A BODY BELT AND A FULL BODY HARNESS WITH A BODY BELT – EFFECTIVELY ELIMINATING A CHOICE ALTOGETHER AND REQUIRING HARNESSES ONLY. WE MUST BE ALLOWED TO HAVE A CHOICE BETWEEN TWO WORKABLE OPTIONS – THREE-FOOT SHOCK ABSORBING LANYARD WITH A BODY BELT OR A FULL BODY HARNESS WITH A SIX-FOOT LANYARD.*

E. A Mandatory Two Foot Lanyard Limitation Is Life-Threatening To Line Clearance Tree Trimmers

Even worse than the *unworkability* of the maximum two foot lanyard ("B" above) is the fact that a two foot lanyard is potentially life threatening to line clearance tree trimmers because, given the position of the anchor and the degree of bucket articulation and rotation encountered in routine line clearance tree trimming work, the two-foot lanyard limitation is actually so short that *it exposes the operator to potentially being yanked out of the bucket, because the distance between the anchor point and the belt can exceed two feet depending on the routine movement of the bucket from the boom to which it -- and the anchor -- may be attached!* See pictures at attachment nos. 3, 4, 5, and 8.

Therefore, as shown above, a change in body belt lanyard to a maximum two foot length would both prevent the performance of line clearance tree trimming work with body belt and lanyards, would subject bucket operators to life-threatening exposures, and would force line

clearance tree trimmers into using full body harnesses for fall protection, which raises a whole other set of potential safety hazards unique to line clearance tree trimmers but inapplicable to linemen.

F. OSHA's Interest In Regulating Lanyard Length Primarily Lies in Limiting the Fall Arrest Force On The Body Belt to Under 900 Pounds of Arrest Force; This Goal Can Met In The Interests of Both Operational Feasibility and Safety By Allowing the Use of **Three Foot Long Shock Absorber Lanyards** for Fall Protection For Line Clearance Tree Trimmers Working In Aerial Lifts.

The separately pending OSHA-proposed revision to 1910.67 to limit body belt lanyard length to two feet when connected to body belts, largely appears to be driven to achieve a limit on *fall arrest pressure to the body belt of under 900 pounds*, as proposed by OSHA in proposed 1910.129 which would modify 1910.67 which, in turn, is incorporated into subject "note 1" to subject-proposed 1910.269(g)(2)(iii)(C). See preamble to subject standard at 70 Fed Reg. 34850, and OSHA's prior discussions at 54 Fed Reg 31449-31450 and 59 Fed Reg 40703. For, the longer the *conventional* lanyard, the greater the fall arrest force to the wearer of the body belt. Thus, OSHA's policy judgment appears to be to limit the lanyard length as the means to the end of limiting the maximum fall arrest force to the wearer of the body belt to 900 pounds of arrest force. At the same time, OSHA has indicated a receptiveness to alternative fall arrest technologies to accommodate users' issues with its restrictive fall protection proposals (see 70 Fed Reg 34850/right column) and has, indeed, specifically invited comment as to "unique

situations" which "warrant different treatment" (id). Such unique situations as to which "different treatment" is warranted and appropriate for line clearance tree trimmers, is outlined above.

ULCC must be able to use three foot long lanyards in order to safely perform line clearance tree trimming. At the same time, however, ULCC appreciates OSHA's desire to limit the fall arrest force to body belts to a maximum 900 pounds. Following OSHA's suggestion of forcing new technologies to accommodate feasible solutions with the employee-protective goals of OSHA, ULCC has commissioned a test of the fall arrest force of a ***three foot shock absorbing lanyard*** by a leading lanyard manufacturer used by the line clearance tree trimming industry, Buckingham Manufacturing Company. These drop tests of lanyards were carried out in accordance with ANSI A10.14 specifications and are attached hereto at attachments nos. 13(a)-(d). They show that the fall arrest force to a body belt of a ***three foot shock absorbing lanyard*** to be only 687 pounds as compared to the fall arrest force of a commonly used ***three foot nylon rope lanyard*** to be ***3580 pounds***. Thus, a three foot shock absorbing lanyard used with a body belt for fall protection from in aerial devices will solve the industry's feasibility concerns and accommodate OSHA's fall arrest force concerns by limiting the fall arrest force to well below the 900 pounds otherwise acceptable to OSHA for two foot lanyards (in its proposed revision to 1910.67(c)) for body belt and lanyard fall protection. *ULCC would support the regulation of fall protection from aerial devices in the line clearance tree trimming industry by OSHA specifying in note 1 to proposed 1910.269(g)(2)(iii)(C) that fall protection from aerial devices may be by three foot long shock absorbing lanyards applying maximum force to a connected body belt not to exceed 900 pounds, coupled with the option of use of full body harness connected to a*

*lanyard not longer than six feet with a maximum arrest force to the harness of 1800 pounds.*

ULCC urges this accommodation be adopted by OSHA to achieve – indeed surpass – OSHA's safety objectives while, at the same time, preserving required operational feasibility with permitted use of three foot long lanyards applied to body belts, along with avoiding exposing line clearance tree trimmers to the potential exposures discussed above, uniquely applicable to them, from forced use of full body harnesses as a consequence of effectively eliminating body belt lanyards by OSHA's adoption of a forced two-foot lanyard limitation under the proposed standards. Finally, ULCC urges that such proposed requirement be phased in over a two year period to allow line clearance tree trimming contractor personnel to experiment with and assess whether the three foot shock absorbing lanyard / body belt option or the full body harness option, is more feasible for their equipment and their work.

#### G. Costs of Adoption of Forced Limitation to Two-Lanyards

Costs of forced use of full body harnesses alone – due to the infeasibility of the non-option of two foot lanyards attached to body belts -- would impose financial burdens on line clearance tree trimming employers while not necessarily improving safety. Using OSHA's estimate of \$100 per employee incremental cost for the line clearance tree trimming industry (Table V-17 of OSHA proposal at 70 Fed. Reg. 34917), the cost of a forced switch to full body harnesses is both prohibitive and underestimated by OSHA at Table V-17. OSHA estimates (*id*) only 50% of line clearance employees would be affected. However, far many more would be affected because many crews have multiple members who work from aerial devices, requiring

provision of harnesses for 100% of many crews. Similarly, OSHA's estimate of 25-50% of the industry already using full body harnesses simply is entirely unsupported and unsupportable in the experience of ULCC which represents 90% of line clearance work in the Nation. Assuming OSHA's cost factor of \$100 per employee going aloft and 50,000 line clearance tree trimmers working from 25,000 aerial devices, the projected cost, at a minimum, would be \$5,000,000 -- substantially higher than OSHA's Table V-17 estimate of \$216,578 for the line clearance tree trimming industry. This cost factor is exacerbated by the fact that the industry experiences 53% to 75% annual employee turnover rate, and is further exacerbated by the fact that one size harness does not fit all employees – requiring purchasing multiples of harnesses vs. employee population . This does not include the time-cost of business interruption to make the initial conversion. The business interruption costs will continue in the future owing to the ongoing rotation of harnesses as employees' transfer from crew to crew, often on a daily basis, or as a result of the turnover noted above, both of which are inherent to our industry. Most utility line clearance crews and many residential/commercial crews are mobile operations not reporting to a company establishment with equipment storehouses. If an appropriately sized harness is not immediately available to a crew it would have to shut down operations until a supervisor can deliver and exchange an alternatively sized harness. The result is lost productivity, lost revenue for the company and lost wages for the employees, with no increase in safety.

III. If “AED” Use Is Adopted, It Should Be Excluded from Application to the Line Clearance Tree Trimming Industry

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OSHA has requested Comment in this proposed promulgation regarding whether automatic external defibrillators (“AED’s”) should be required. If use is required under the standard for the electric utility industry – it should be excluded from application to line clearance tree trimmers – who are not allowed to work on electric lines but, in material contrast, must maintain minimum distances from electric lines. See 1910.269(r)(1)(iii).

This fundamental dichotomy is reflected in the very foundation of 1910.269 which recognizes that only limited portions of the standard apply to line clearance tree trimming – see 29 C.F.R. 1910.269(a)(1)(i)(E)(2) – because line clearance tree trimmers do not work on electric supply lines and are required to stay far enough away from them so as not to be subject to a shock or arcing hazard.

Thus, given prohibition of line clearance tree trimmers from working on or touching energized electric supply lines, and the requirement of their maintaining minimum distances from electric supply lines – when tragic electric contact accidents do, albeit rarely, occur with respect to line clearance tree trimmers, they tend to involve catastrophic accidental direct contact with high voltage electric supply lines which inherently pass massive amounts of electricity through the victim which irreversibly damages cardiac conductivity altogether – as to which AED’s cannot, nor even purport to, rectify. Indeed, a survey of Coalition members over the last two years of experience reveals no known incident involving a cardiac incident from electrical contact in the course of work in which an AED was successfully used or could have been successfully been used on a line clearance tree trimmer. It is, of course, a misnomer that AED’s can restart a heart which is stopped from electrical contact or any other reason. The

stoppage is known as “asystole” for which an AED is programmed to not shock the patient because AED’s cannot start a stopped heart – for instance, one whose stoppage is due to destruction of the heart’s electrical path, or due to irreversible brain damage, respiratory muscle paralysis, tissue burn, or due to electrical contact which serves to destroy the ability to breathe.

Rather, AED’s use is limited solely to cases of cardiac fibrillation – cases of the heart beating in quivering fashion so as to cease effective pumping capacity (and also to rarer situations of ventricular tachycardia where the heart beats very fast). But, as a trauma specialist physician has observed, ventricular fibrillation is a rare occurrence in high voltage electrical contacts, as to which rescue breathing and CPR (currently required) are remedial pending arrival of medical help.<sup>3</sup>

Given that the unfortunate nature of line clearance tree trimmers cardiac events due to electric contact tend to be catastrophic because of accidental non compliance with the OSHA minimum distance separation from electric supply lines separation requirement, the cardiac events which unfortunately have happened to line clearance tree trimmers have tended to catastrophic, tending to involve cardiac and brain damage of such severity that AED’s are not designed to, and cannot, perform a useful purpose.

When one applies the lack of utility of an AED to the kind of cardiac events experienced on the job by line clearance tree trimmers, to the low incidence of such events, times the high cost of units (at least \$2,000 each for units capable of withstanding the rigors of field use on a

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<sup>3</sup> Richard F. Edlic, MD, *Burns, Electrical*, [www.emedicine.com/plastic/topic491.htm](http://www.emedicine.com/plastic/topic491.htm) (7/12/05), at attachment no. 14 and incorporated by reference herein.

tree trimming truck), times the approximate 25,000 line clearance tree trimming trucks represented by Coalition members alone (\$50,000,000), and the very high ratio of AED units that would be required to serve each truck's typical two-man crew, the conclusions are that AED's: cannot resolve the kind of electric contact that causes cardiac injury to line clearance tree trimmers; whose work (the opposite of linemen) forbids contact with electric supply lines, forbids indirect contact with electric supply lines, and requires minimum separation from electric supply lines; and, in any event, requires an extremely high ratio of units to crew size trucks, and consequently, an extraordinary cost (\$50,000,000), for which no risk-benefit justification can be demonstrated.

Therefore, should OSHA decide to adopt an AED requirement for linemen under the proposed standard, it should continue to exclude such a requirement from application to line clearance tree trimmers – consistent with limited application of 1910.269 to line clearance tree trimmers due to the fundamentally different kind of work and exposures experienced by line clearance tree trimmers as compared to utility linemen as is fundamentally recognized in the structure and scope of 1910.269 and its scope of application.

IV. Proposed Revision to 1910.269(x): 1910.269 Should Be Clarified To Apply to All Vegetation Management Work Performed by Line Clearance Tree Trimmers for Electric Utilities

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At Federal Register p. 34833, OSHA asks whether 1910.269 should be applied to all work involving line clearance tree trimming – the Agency pointing out that it would apply 1910.269 to line clearance tree trimming work incident to construction of new power lines. The

real issue is much larger, since the present definition of "line clearance tree trimming" in 1910.269(x) is dated, is too narrow, and is internally contradictory within 1910.269.

We start with the text of the current definition of "line clearance tree trimming" in 1910.269(x), which states:

"Line-clearance tree trimming." The pruning, trimming, repairing, maintaining, removing, or clearing of trees or the cutting of brush that is within 10 feet (305 cm) of electric supply lines and equipment."

The application of 1910.269 to "right of way" clearance work – the example given by OSHA in its request for comment noted above – typically is done by line clearance tree trimmers for their electric utility customers, but does not necessarily fit within the current definition of line clearance tree trimming in 1910.269(x). Significantly, such "right of way" clearance work can be performed either for creation of a new line where there was none before; or the same work often is done proximate to a new right of way being made to replace an older existing line. While the new construction situation typically does not present an electric hazard (hence possibly not necessarily being subject to 1910.269), and the replacement right of way situation typically does present a potential electric hazard (therefore subject to 1910.269), it is important in the interest of safety that one uniform set of OSHA safety standards predictably apply to all work done by line clearance tree trimmers. For instance, just as OSHA recognizes in its cited request for comment that work done by line clearance tree trimmers should be subject to 1910.269 even in the new construction right of way situation notwithstanding that there might be no electric hazard present (or no "ten foot" electric hazard), there are, similarly, many

circumstances where work done by line clearance tree trimmers presents the electric hazard though does so intermittently nonetheless requiring the prophylactic application of 1910.269, for example, when:

- Work being done along an electric utility *right of way* necessarily includes trees within 10' of the power line, *as well as* trees more than ten feet away from the power line;
  - Some of which may be capable of falling on the power line;
  - Some of which need to be removed to maintain the utility's right of way within which trees may meander both within and without ten feet from the power line;
  - Some of which may be danger trees to the right of way and need to be removed to protect the utility's right of way even though they are more than 10' from the line;
- Work being done on a residential/commercial job (rather than for a utility), where a line clearance tree trimming-qualified crew must be brought in to do the job because the tree is within 10' of an electric power line.

In all of these cases, the factor of the tree being within or without ten feet from a power line is an intermittent and variable factor, as to which it makes no sense to limit 1910.269's application to that artificial trigger of standard's applicability upon whether the tree is within or without 10' from the power line. Indeed, 1910.269's minimum separation distance Tables R-6, R-9, and R-10 at 1910.269(l) [made applicable to line clearance tree trimming by 1910.269(r)(iv)-(v)] *already* regulate line clearance tree trimming, depending on voltages, at distances far in excess of ten feet, thereby rending the ten-foot rule anomalous and contradictory within the existing standard alone! Moreover, 1910.269 already contemplates its application to many other kinds of

work done *by line clearance tree trimmers* – virtually all occurring on utilities' rights of way -- without regard to whether the work is proximate to overhead electric supply lines – such work as stump grinding under 1910.269(r)(4), spraying under 1910.269(r)(3), and chipper use under 1910.269(r)(2). And, the entire thrust of ANSI industry consensus standard development pertaining to this industry is moving to the concept of regulating in integrated fashion all work done by line clearance tree trimmers in utilities' rights of way. See, Committee approval of amendment to ANSI Z-133.1 (the very foundation document for promulgation of 1910.269), *infra*, which is changing to define line clearance tree trimming to all work done by line clearance tree trimmers within the utility's right of way, rather than just within ten feet of an overhead supply line. To the same effect, see also the pending ANSI A300 draft for specification of utility vegetation management work which, at "Glossary" "Figure 1", defines right of way work inclusively to refer not only to the "Wire Zone" but also, more expansively, to the "Border Zones" of the right of way – the full right of way.

In contrast to such outmoded fixed 10' rule, there is a far more useful, reliable, and uniformly predictable means of determining the scope of application of 1910.269 in the interests of enhancing safe work practice of line clearance tree trimmers: The definition of line clearance tree trimming in 1910.269(x), which serves as the trigger for application of 1910.269 to line clearance work, **should be revised to apply to all vegetation management work done by line clearance tree trimmers/trainees in within ten feet of an electric supply line or an electric**

**utility right of way**, rather than just to work performed by such persons on trees strictly within 10' of a power an overhead electric supply line.

More specifically, towards that end, ULCC respectfully urges OSHA that 1910.269(x)'s definition of "line clearance tree trimming" be revised to the following proposal of ULCC:

PROPOSED 1910.269(x)

"Line-Clearance Tree Trimming" The pruning, trimming, repairing, maintaining, removing, treating or clearing of trees or the cutting of brush (vegetation management) that is within 10 feet (305 cm) of electric supply lines and equipment, or vegetation management work performed by line clearance tree trimmers/trainees for the construction or maintenance of electric supply lines and / or the electric utility right of way corridor.

For, the foundation of worker safety in line clearance tree trimming is adherence to a single predictable set of safety standards in which employees can be trained and repeatedly drilled. Revising 1910.269(x) *to include* to all work performed by line clearance tree trimmers in electric utilities' rights of way effectively and protectively solves the electric hazard issue which is at the heart of 1910.269's concern while, at the same time, recognizing that the electric hazard exists equally from trees in the right of way corridor which are more than 10' away from electric supply lines – and while also recognizing that the existence of the electric hazard varies from tree to tree and job to job irrespective of any arbitrary distance of the tree to the electric supply line, and that the uniformly protective application of 1910.269 is enhanced by applying it to all work done by line clearance tree trimmers in utilities' rights of way.

**Significantly, this proposed revision has been adopted by the ANSI Z133.1**

**Committee in its 2005 proposed revisions.** Hence our proposed revision would desirably bring 1910.269 into synchronization with the very ANSI standard which is the very source document for OSHA's promulgation of 1910.269 – as to line clearance tree trimming portions -- in the first place.

This proposed revision also will serve the salutary purpose of achieving regulatory harmony as well. Thus, Coalition members unfortunately have repeatedly been forced to deal with regulatory and enforcement anomalies attendant to perceived intermittent application/non-application of 1910.269 to line clearance tree trimming, including:

- Citations under the §5(a)(1) general duty clause for line clearance tree trimmers removing the stub of a tree that remains after they “topped” down the height of the tree that – before topping – was within 10’ of the electric supply electric supply line and hence started as a line clearance tree trimming job but assertedly lost coverage under 1910.269 when the “topping” made the stump more than 10’ from the power line, winding up being cited as a general duty violation;
- Citations under 1910.266 logging standard for removing a tree more than 10’ from the power line within a utility right of way, under a line clearance tree trimming contract let by a utility, even though the tree was capable of falling on the power line, and even though most other trees on the same right of way worked on were within 10’ feet of the power line (the job otherwise undisputedly subject to 1910.269). Indeed, since OSHA's (CPL) practice is to not cite line clearance

tree trimmers under the 1910.266 logging standard even though the tree may be more than 10 feet from an overhead electric supply line, the revision to 1910.269(x) proposed here by ULCC would remove the regulatory "no man's land" and hence achieve salutary predictability in administration and enforcement of OSHA regulations to the line clearance tree trimming industry.

This recurrent problem of citing work by line clearance tree trimmers under 1910.269, 1910.266,<sup>4</sup> 1910.333, or under §5(a)(1), undermines worker safety by creating compliance and training confusion for line clearance tree trimmer/trainees and their employers. This confusion which undermines safety by undermining training in a single set of predictable standards of uniform application – 1910.269 – should be resolved in the interest of regulatory harmony, by applying 1910.269 to all line clearance tree trimming work as defined in the proposed revision to 1910.269(x), above. Since applying the 1910.269 standard to all line clearance tree trimmer work performed for an electric utility serves to apply the highest level of protection – tree trimming plus electric hazard regulation – the proposed revision enhances rather than detracts safety for line clearance tree trimmers.

Further, within current 1910.269 there are "structural anomalies" which our proposal would correct. Thus, 1910.269(r)(1)(iii) requires the minimum separation distances of Tables R-

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<sup>4</sup> Note, for instance, that 1910.269(r)(5) adopts specific parts of the logging standard for line clearance tree trimming. This shows OSHA's intent to not apply logging standard to line clearance unless so-designated. This distinction has been eroded in the field, and OSHA respectfully, should to correct that regulatory problem now. See also final rule adopting 1910.269, 59 Fed. Reg. 4412 at n. 89 noting the distinction intended between 1910.269 and 1910.266 – a distinction which needs to be reinstated.

6, R-9, and R-10 to be followed. These tables require maintenance of up to 27 feet 4 inches by line clearance tree trimmers, thus regarding as line clearance work, work on trees which are more than 10' from an electric supply line and hence, anomalously, are not subject to line clearance tree trimming under 1910.269(x) but which, at the same time, are subject to 1910.269(r)(1)(iii). Similarly, the drafters of original 1910.269 obviously contemplated that line clearance tree trimming work regulated by 1910.269(r) plainly would include stump grinding and vegetation management spraying done by line clearance tree trimming contractors within the utilities' rights of way irrespective of the tree or spraying being within ten feet of the overhead electric supply line. The proposed revision to 1910.269(x) would harmonize these anomalies and desirably achieve regulatory harmony.

Moreover, we note that the concept of work being done within the utilities' right of way is within the framework of the ANSI A300 consensus standard, noted above, which was adopted after the adoption of 1910.269. The latter needs to be updated to conform to this new industry standard. Further, an ANSI Z-133.1 consensus standard committee currently has adopted a conforming revision towards this end as well. OSHA should come into synchronization with these actual and pending ANSI actions.

Therefore, in response to OSHA's request, the line clearance tree trimming standard should be revised to uniformly apply to vegetation management work performed by line

clearance tree trimmers/trainees for the construction or maintenance of electric supply lines and / or the electric utility right of way corridor.<sup>5</sup>

To be perfectly clear as to the scope of our proposal, our position is ONLY that tree work done by line clearance tree trimmers within electric utilities' rights of way should be regulated solely by 1910.269 in order to improve worker safety programs by enabling contractor safety programs to be built on a predictable single set of standards applicable to such work. It is NOT the intent or purpose of this proposal to require all work within utility rights of way to be performed by line clearance tree trimmers or by line clearance tree trimming contractors (assuming absence of a proximate electric hazard). And, it is NOT the intent or purpose of this proposal to in any way deprive residential / commercial tree trimming contractors of the opportunity to perform work on utility rights of way under applicable regulations other than 1910.269 (or under General Duty clause Sec. 5(a)(1) of the Act) assuming they are not exposed to an electric hazard in performing such work (non-electric-hazard work). Again, the sole and limited purpose of this proposal is to achieve regulatory predictability – to enhance safety for work done by line clearance tree trimmers under a single integrated standard – integration, after all, being the focus of the subject OSHA promulgation in the first place.

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<sup>5</sup> There is no conflict here with the 1910.266 “logging” standard. Line clearance tree trimmers do not engage in logging work. Virtually all line clearance contractor work is done under contract with electric utilities. Even where – to use OSHA’s example – they are clearing a new right of way for a utility to build a new power line, their work is geared to electric utility work, not to logging. The logging standard was never intended to apply to work performed by line clearance tree trimmers. *See* 59 Fed. Reg. 4412 at n. 89. OSHA needs to clarify that now in the interest of regulatory and enforcement harmony.

Lastly, we note that 1910.269 already contains the structural basis for inclusion of additional work practice rule requirements that might be required by this proposed modest expansion of the definition of line clearance tree trimming. Thus, 1910.269(a)(2)(i) already requires that (emphasis added):

"Employees shall be trained in and familiar with the safety-related work practices, safety procedures, and other safety requirements in this section that pertain to their respective job assignments. Employees shall also be trained in and familiar with any other safety practices, including applicable emergency procedures (such as pole top and manhole rescue), that are not specifically addressed by this section but that are related to their work and are necessary for their safety."

This provides the basis for the already-established regulatory obligation to train employees in such additional safe work practices in rights-of-way, including electrical hazard work as already is legislated specifically by 1910.269 and also for those additional tasks that may be performed by line clearance tree trimmers in the utility right of way which do not present an electrical hazard, such as manual land clearing of trees preparatory to a utility's construction of new overhead electric supply lines on its right of way. Indeed, for instance, ANSI Z133.1 – the source consensus standard for 1910.269, was amended in year 2000 to expressly legislate, for example, safe work practices for line clearance tree trimmers to follow in manual land clearing of trees on utilities' rights of way. See Z133.1 (2000) Sec. 9.5 which legislates detailed work practices for line clearance tree trimmers' removal of trees on rights of way, including requirements that such trees be notched. (Compare 1910.269 which requires additional practices such as notching of trees to control their fall direction, use of insulated tools, requirements of minimum separation

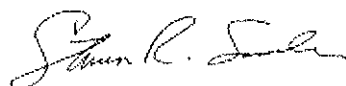
distances, roping, topping, or limbing of trees, etc. where there is an electric hazard present in a tree being *removed*; and also compare logging standard (1910.266)(h) which does *not* require use of notching trees being *felled* incident to "*tree harvesting*".) Finally, note that OSHA already has recognized in its CPL 2-1.38 Sec. XVI that Z-133.1 is an appropriate source of guidance to compliance officers in determining to issue citations under 1910.269. Thus, this CPL brings this issue full-circle: The CPL directs interpretation of 1910.269 requirements to Z133.1 which, in turn, is being modified to define line clearance tree trimming as work performed by line clearance tree trimmers within 10' of electric supply lines and/or within the utilities' right of way AND which already contains by reference the applicable work practices covering such work when performed by line clearance tree trimmers in utilities' rights of way.

#### V. The Current "CPR" provision should not be changed

Current 1910.269(b)(1)(i) allows a three month grace period in accomplishing CPR training for new field crew members. This carefully legislated provision was enacted in recognition of the extraordinary level of field crew member turnover in the line clearance tree trimming industry – then 81% per annum, now still 53% to 75% – serving to preclude the ability to field crews if new employees had to be trained in CPR before they could work; and similarly resulting in loss of employment of many short-term personnel who leave quickly after the employer was subjected to the cost of forced initial CPR training See 59 Fed Reg at 4346-4347. These considerations which are unique to line clearance tree trimming which drove the current provision are no different or less valid now than when initially adopted. Yet, OSHA now invites

comment, at 70 Fed Reg 34841, regarding whether this three month grace period for CPR training of new field crew members should be eliminated. The premise for this request for comment is OSHA's premise – self-initiated by the Agency without citation of factual support – that many field crew members are *seasonally employed for three month summer periods* and therefore – the reasoning continues -- regularly escape CPR training serving to leave their fellow crew members exposed to "no CPR". The "seasonal employee" premise of OSHA's request for comment, simply is wrong: ULCC has surveyed all of its members – who account for approximately 90% of line clearance tree trimming work in the Nation – and the results are that none hires line clearance tree trimmer crew members on a seasonal basis. Thus, the reasons for the current standard remain valid and the premise inherent in the requested proposal for comment on revision of the CPR grace period simply is unfounded. The current provision should be left alone.

Respectfully submitted,  
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