



## Tree-trimming and Utility Companies

### *What is a utility easement?*

An easement is the right to use part of another's property for a particular reason. Utility companies have easements across strips of land in order to construct and maintain overhead or underground power lines. The property owner owns the land, but the utility company has a right to enter the strip of land designated as a utility easement. Tree limbs can break during storms and take down power lines. The utility easement allows utility companies to trim trees and branches near power lines to avoid power outages. Xcel Energy, for example, spends more than \$20 million on its year-round tree-trimming program in the upper Midwest, trimming trees along more than 8,500 miles of power lines to assist in its efforts to provide reliable and safe electric service.<sup>1</sup>

### *What rights does a utility company have to trim trees in my yard or next to my property?*

Courts recognize the right of utility companies to trim or remove trees within their easement, as long as the work is reasonable and necessary to construct, use, operate, or maintain power lines in the easement area. The utility company tries to remove power-line obstructions in a way that minimizes damage to the property the power lines cross.

A common complaint is that utility-pruning can be unsightly. Tall trees are sometimes pruned to remove the inner branches that touch power lines, resulting in a deep v-shape in the tree's crown. The power line goes through the v-shaped area. Even if the result is not aesthetically pleasing, however, the pruning is balanced, and the tree can survive.

### *Can I object to the removal a tree in a utility easement?*

In a recent court case,<sup>2</sup> the Minnesota Supreme Court confirmed that property owners have an interest in the trees on city land in front of their property and standing to sue the utility company that removed a boulevard tree. So, you can object to the tree's removal. However, the Court also said that your right to object is subordinate to a utility company's right to trim or remove trees to keep power lines clear. The utility company can remove a tree "if the removal was reasonable and necessary to construct, use, operate, or maintain its power lines."<sup>3</sup>

### *What should I do if the tree on my property is touching a power line?*

An electrical power company will respond to emergency requests to trim trees or limbs that interfere with power lines or pose a safety hazard. However, electrical power companies will generally not trim trees along power lines from utility poles to houses, unless there is a safety hazard. The power company will de-energize power lines if their customers hire professional tree-service contractors to trim the tree limbs. Call Xcel Energy's 24-hour customer service line at 1-800-895-4999 to schedule an appointment for de-energizing the line to your house.

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<sup>1</sup> [www.xcelenergy.com](http://www.xcelenergy.com)

<sup>2</sup> *Miller-Lagro v. Northern States Power Company*, 582 N.W.2d 550 (Minn. 1998)

<sup>3</sup> *Id.* at 552.

*Can I plant a tree near power lines?*

Before planting a tree in your yard, look up. Are there utility lines overhead or close by? If so, select a variety of tree that will not grow so tall that it will touch utility lines, or the power company may insist on its removal. Or find a location in your yard without overhead utility lines. In either case, do a little research about the tree you want and find out how tall and wide the tree will be at its maturity. A good resource is “The Right Tree” brochure.<sup>4</sup> Also, remember to call Gopher State One (1-800-252-1166 or 651-454-0002) at least three working days before you dig, to find out where buried utility lines are located in your yard.

*My tree fell and took down a power line. Am I responsible for my neighbors’ losses as a result of the power outage? When is the utility company liable?*

You are not responsible for your neighbors’ losses unless you had a special relationship with them<sup>5</sup>. In law, this relationship is called a “duty.” A duty can be intentionally created, such as when you invite someone on to your property or agree to be the caretaker of another’s property. A duty can also be created by circumstances, like a duty to eliminate a danger, such as a rotten tree on your property that could fall onto an abutting busy city sidewalk. However, if there is no duty, there is no liability for negligence.

An example that illustrates this duty is a court case involving a power outage that resulted in the death of a number of pigs on a hog farm<sup>6</sup>. In that case, the limbs of a willow tree fell onto a power line and caused a power outage. The tree-owner’s neighbor operated a hog farm. The power outage left the hog farmer’s barn without ventilation, resulting in the death of many pigs. The hog farmer sued his neighbor and the power company. The court ruled that the tree-owner had no duty to protect the hog farmer, because there was no special relationship where the hog farmer had entrusted his safety to the tree-owner.

The court also ruled that the power company was not liable to the hog farmer. The power company had a Rate Tariff which provided that the company would not be responsible for any loss or damage caused by a power outage unless the company had committed gross negligence, which is defined as “very great negligence, or the absence of slight diligence, or the want of even scant care. It amounts to indifference to present legal duty, and to utter forgetfulness of legal obligations so far as other persons may be affected.”<sup>7</sup>

To avoid potential conflicts with neighbors or utility companies, manage your trees in a responsible way: plant the right tree in the right place, and hire an arborist to remove hazardous limbs before they cause liability issues.

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<sup>4</sup> *The Right Tree* is a free brochure available by calling Xcel Energy at 1-800-895-4999. It is also available online at [www.mnppower.com/treebook/](http://www.mnppower.com/treebook/).

<sup>5</sup> See, e.g., *Donaldson v. Young Women’s Christian Ass’n*, 539 N.W.2d 789, 792 (Minn. 1995). Examples of special relationships include trains or buses and their passengers; innkeepers and their lodgers, etc.

<sup>6</sup> *Timmerman v. Manguson v. Northern States Power Company*, an unpublished opinion of the Minnesota Court of Appeals, C6-95-2565, May 21, 1996.

<sup>7</sup> *State v. Bolsinger*, 221 Minn. 154, 159, 21 N.W.2d 480, 485 (1946), quoting *Altman v. Aronson*, 121 N.E. 505, 506 (1919).