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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Meredith Yox and Scott Yox,

Complainants,

vs.

Pacific Gas and Electric Company (U39E),

Defendant.

C.11-04-014

(Filed April 20, 2011)

**PACIFIC GAS AND ELECTRIC COMPANY
ANSWER TO COMPLAINT
(RULE 4.4)**

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Dated: June 9, 2011

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Pursuant to the Instructions to Answer Notice, filed May 10, 2011, Pacific Gas and Electric Company (hereinafter referred to as “PG&E”), hereby responds to the Complaint of Meredith and Scott Yox (hereinafter jointly referred to as “Complainants”) filed with the Commission on April 20, 2011 (“Complaint.”)

I. INTRODUCTION

Complainants seek an Order from the CPUC which:

- (1) Prohibits PG&E from cutting down *any* trees on their property; and
- (2) Prohibits PG&E from trimming *any* trees on their property to provide more than 21 feet of clearance from the 230 kV transmission line at issue (Complaint, page 3, ¶H.)

Complainants are not entitled to the relief sought because:

- (1) Applicable mandatory rules and regulations require a greater vegetation clearance from transmission lines than the Complainants propose; and

- (2) PG&E has land rights which allow it to undertake the necessary vegetation management on Complainants' property.

II. FACTUAL BACKGROUND

A. The 230 kV San Ramon-Moraga Line

Complainants' property is located at 43 Ivy Drive, Orinda, California ("the Property"). Traversing Ivy Drive are two North American Electric Reliability Corporation ("NERC") regulated 230kV transmission lines – the San Ramon-Moraga 230kV line and the Moraga-Castro Valley 230kV line. These two transmission lines provide power to a majority of the East Bay. The line at issue is the San Ramon-Moraga line. This 230kV transmission line brings power to the Moraga substation from San Ramon.

A vegetation-caused outage on this transmission line could result in a loss of power to the entire town of Moraga, the city of Orinda and also cut power to substations providing power to Oakland, Lafayette, parts of Walnut Creek, Alameda, San Leandro and Hayward. Furthermore, possible cascading events could result in the loss of power in areas east of San Ramon (Antioch, Brentwood, Pittsburgh and beyond.) In theory, a cascading power outage event could result in the loss of power to a large part of the western grid.

This is not idle speculation. The 2003 East Coast blackout, which affected portions of the Northeastern and Midwestern United States and Ontario Canada, was determined by a joint federal task force to have been principally caused by vegetation coming into contact with transmission line. Indeed, the Federal Energy Regulatory Commission ("FERC") concluded that ineffective vegetation management was a major cause of the August 14, 2003 blackout and a contributing factor to other large-scale blackouts. (*See, e.g., Federal Energy Regulatory Commission, Utility Vegetation Management and Bulk Electric Reliability Report From The Federal Energy Regulatory Commission* (September 7, 2004) attached hereto as Exhibit "A.")

The 2003 East Coast blackout lasted as long as a week, a number of deaths were attributed to it and losses were calculated in the billions. ¹

B. Applicable Regulatory Standards

1. Overview of Federal and State Standards

Federal and state laws and regulations govern the operation and maintenance of the bulk power system to ensure the safe and reliable operation of these facilities and to prevent vegetation outages that could lead to widespread cascading failures. These include:

1. NERC Reliability Standards for Vegetation Management, FAC-003-1;
2. California Independent System Operator (“CAISO”) approved and enforced Transmission Owner Maintenance Practices, which include vegetation management requirements;
3. CPUC General Order 95, Rules 35 and 37, and Appendix E.

Where there are differences in the requirements, PG&E must follow the most stringent standard to be in complete compliance. When the varying requirements of each of these regulations are synthesized, it becomes evident that PG&E is required to remove the two birch trees at issue to ensure full compliance.

2. NERC Reliability Standard FAC-003-1

a. FERC Regulates and Oversees Transmission Facilities

After the 2003 electric power blackout in large portions of the Northeast and Midwest United States, FERC required all transmission owners to file reports with FERC. (*Federal Energy Regulatory Commission, Utility Vegetation Management and Bulk Electric Reliability Report From The Federal Energy Regulatory Commission (September 7, 2004)*, attached as

¹ In 1996, before the 2003 East Coast blackout, there were two major vegetation-related grid failures on the West Coast that affected California. Also, in 2004, there was a tree-related transmission outage on a 230kV transmission line in Linden, California; in 2005 there was one in Modesto/Turlock. And, as evidenced by the multiple NERC enforcement actions for violations with its standards, there have been a number of incidents involving tree-related outages or near misses all over the United States.

Exhibit “A”, p. 1.) FERC analyzed the reports to determine “potential problems in the vegetation management practices of the electric industry” (*Id.* at 1) and thereafter made a number of recommendations to Congress (*Id.* at pp. 3-4). Specifically, FERC recommended, *inter alia*, that Congress enact legislation providing for mandatory, enforceable reliability rules under federal oversight; that state and federal regulators coordinate so that jurisdictional considerations do not impede effective vegetation management; that state and federal regulators allow reasonable recovery for the costs of vegetation management expenses; and that transmission owners fully exercise easement rights for vegetation management. (*Id.* at pp. 3-4.)

Congress responded to FERC, enacting the Energy Policy Act of 2005. Congress granted FERC the authority to oversee mandatory reliability standards governing the nation’s electricity grid. (16 U.S.C. §824o; see also www.ferc.gov.) FERC was empowered to certify an Electric Reliability Organization to establish and enforce reliability standards for the electric energy transmission network. (16 U.S.C. §824o.) All users, owners and operators of facilities needed to maintain and operate the transmission system are required to comply with the reliability standards. (See 16 U.S.C. §824o (b)(1).) State action may not be inconsistent with the reliability standards, and the penalties may be imposed for violations of reliability standards. (16 U.S.C. §824o (e)(1), §(i)(3).)

b. NERC Developed and Enforces the Federal Reliability Standards Which Became Mandatory in 2007

The North American Electric Reliability Corporation (“NERC”) was certified by FERC as the Electric Reliability Organization to develop and enforce the reliability standards, monitor the bulk power system, and evaluate users, owners and operators for preparedness. (See www.nerc.com.) NERC submits proposed reliability standards to FERC for approval, and on approval, the reliability standards become binding on owners, operators and users of the bulk power system. (*Mandatory Reliability Standards for the Bulk-Power System* (March 16, 2007) Order No. 693, 118 FERC 61,218, 18 CFR Part 40; Docket No. RM06-16-000, ¶733.) (Applicable portions are attached hereto as Exhibit “B.”) The Reliability Standards generally

apply to the bulk power system, defined as 100kV facilities and greater as well as critical facilities below the 100kV threshold. (*Id.*, ¶¶ 75, 77.)

In 2006, NERC submitted a petition to FERC, seeking approval of 107 proposed reliability standards. FERC staff assessed the proposed standards; comments were invited; the proposed standards were discussed; and 83 of the 107 proposed standards were approved. The CPUC participated in the discussion:

In regard to California PUC’s concern about its ability to impose stricter requirements on vegetation clearances, the [Federal Energy Regulatory] Commission notes that section 215(i)(3) of the FPA [Federal Power Act] states that nothing in section 215 shall be construed to preempt the authority of a state to take action to ensure the reliability of electric service within that state, ***as long as the action is not inconsistent with any Reliability Standard.***

(*Id.*, ¶733 (emphasis supplied).)

PG&E is subject to the Reliability Standards. Among these standards is NERC Reliability Standard FAC-003-1: *Transmission Vegetation Management Program*, which became mandatory in 2007 (attached hereto as Exhibit “C”.) The standard applies to transmission lines operated at 200kV and above and to lower voltages that are designated as critical to the reliability of the system in the region. FAC 003-1 prohibits sustained vegetation-related outages on FERC-regulated lines and is enforced under a zero tolerance standard.

Standard FAC-003-1 requires Transmission Owners to prepare and keep current a formal Transmission Vegetation Management Program (“TVMP.”) (Reliability Standard FAC-003-1.) (*Ibid.*) It also requires that a Transmission Owner determine and document the minimum clearance distances to be maintained for the separation between a transmission conductor and vegetation. As a transmission owner, PG&E is in violation of this standard and subject to penalties if: (a) if any vegetation-related sustained outages occur; (b) if the “no-grow” minimum

clearance zone is violated at any time; or (c) if PG&E fails to comply with its own required TVMP.²

Although FAC-003-1 does not set forth a particular method of vegetation management, it does endorse American National Standards Institute (ANSI) standard A300 (Part 7) as “an industry best practice.” (FAC-003-1, Footnote 1) (See ANSI A300 attached hereto as Exhibit “E.”) ANSI A300 contemplates that vegetation will be cleared using the Wire Zone/Border Zone method. The Wire Zone/Border Zone graphic used by ANSI and shown herein, clearly shows the expectation for transmission corridors.

- The wire zone is the “area considered most likely to contain vegetation that could potentially grow into contact with energized conductors.”
- Non-selective vegetation management (clearing) may take place in the wire zone.
- Selective management of incompatible species may be implemented in the border zone.

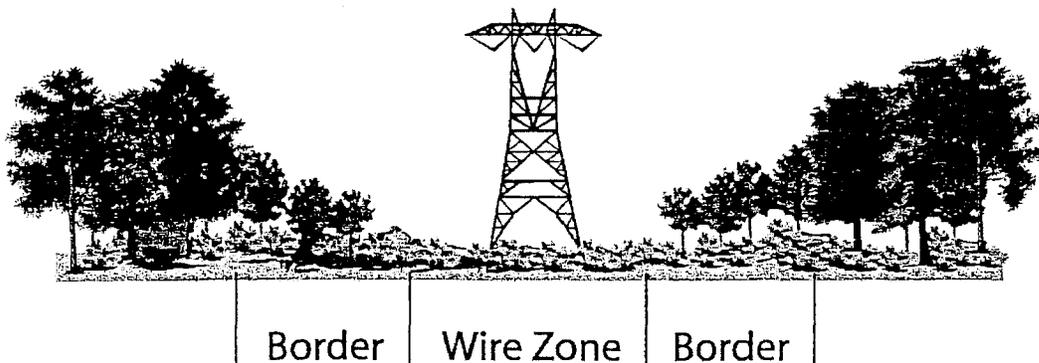


Figure 1: Wire Zone – Border Zone

² See, e.g. Baltimore Gas and Electric Company (BGE), FERC Docket No. NP08-1-000 (June 4, 2008) (attached hereto as Exhibit “D.”) In a case very similar to the matter at hand, BGE was assessed a penalty of \$180,000 for failure to maintain appropriate clearance between a **29 foot** tree and a 230kV interconnected transmission line at maximum emergency sag in accordance with the BGE Annual Plan. The tree was temporarily allowed to remain by the utility because of resistance, by an adjacent property owner, to complete removal of the tree from the site based on **aesthetic concerns**. The tree was scheduled for removal on the next routine maintenance cycle in early 2008. However, before that time, the tree caused an arc and fault with the conductor, resulting in an outage lasting over 16 hours. Although a penalty of \$180,000 was assessed, NERC noted that the possible penalty range was \$4,000 – 1,000,000.

c. PG&E Has Developed its TVMP to Comply with all Applicable Regulatory Standards

PG&E has designed and implemented its TVMP to ensure the safe and reliable operation of bulk transmission facilities and to prevent outages that could lead to widespread cascading failures. In addition, the TVMP is designed to ensure that PG&E meets or exceeds state and federal law and regulations including (1) FAC-003-1; (2) California Independent System Operator (“CAISO”) approved and enforced Transmission Owner Maintenance Practices, which include vegetation management requirements; and (3) CPUC General Order 95, Rules 35 and 37, and Appendix E.

As federally mandated, PG&E’s TVMP designates clearances to be achieved at the time of vegetation management work (Clearance 1) and clearances to prevent flashover between vegetation and overhead conductors (Clearance 2).

With respect to the minimum distance clearance between a transmission conductor and vegetation to be achieved at the time of vegetation management work, PG&E’s TVMP requires a minimum of ten (10) feet “no grow” zone, plus maximum sag plus maximum sway, plus 4 years of growth for the species or 40 feet (whichever is greater). Removal is the preferred treatment for trees less than 24” DBH [diameter at breast height] (Clearance 1).

With respect to specific radial clearances to be maintained between vegetation and conductors under all rated electrical operating conditions, PG&E has established a minimum radial clearance requirement of ten (10) feet (Clearance 2). In other words, this is the “no-grow” zone.

d. The Western Electricity Coordinating Council (WECC) Monitors Compliance With Reliability Standards Through a Combination of Audits, Investigations, Self-Reporting and a Complaint Process

Regional Entities have delegated authorities and responsibilities, as approved by FERC, to enforce NERC and regional reliability standards, and perform other standards-related functions assigned by NERC. The Western Electricity Coordinating Council (WECC) enforces the Reliability Standards in the western region of the United States that includes California. (See

www.wecc.biz.) WECC uses a number of processes to collect information about the entities it monitors for compliance with the NERC and WECC reliability standards. The processes include: 1) compliance audits (both scheduled and unscheduled) conducted in accordance with a plan developed in conjunction with NERC; 2) self-certification by entities of their compliance with the standards; 3) spot checking by WECC (random or in response to events); 4) compliance violation investigations conducted in response to a complaint or possible violation of a reliability standard; 5) self-reporting of violations; 6) periodic data submittals required by the reliability standards; 7) exception reporting; and 8) complaints, which may be made by anyone and on an anonymous basis.

As a Compliance Enforcement Authority, WECC is authorized to assess whether the reliability standards have been violated. WECC may impose remedial actions, sanctions, and penalties on organizations subject to the standards, and violating entities must also mitigate violations. NERC has the authority to approve or reject any settlements with “registered entities” such as PG&E, and the details of approved settlements are posted for public review. Settlements or penalties must ultimately be approved by FERC. The most recent audit of PG&E by WECC (in 2009) concluded that PG&E was in compliance with FAC-003-1; specifically, WECC concluded that the PG&E’s TVMP (discussed above) was compliant with FAC-003-1.

3. The California Independent System Operator Corporation (CAISO) Manages Transmission Facilities Owned by Transmission Operators

The California Independent System Operator Corporation (CAISO) is registered with NERC as the transmission operator of the bulk power system in which PG&E owns transmission lines. CAISO is a nonprofit, public benefit corporation charged with ensuring the “efficient use and reliable operation of the transmission grid consistent with ...criteria no less stringent than those established by” WECC and NERC. (Pub. Util. Code §§345, 345.5; see also www.caiso.com.) CAISO is required to adopt “inspection, maintenance, repair, and replacement standards for the transmission facilities under its control”, which take into account cost, local geography, weather, applicable codes, national electric industry practices, sound engineering

judgment, and experience. (Pub. Util. Code §348.) These standards are incorporated into a Transmission Control Agreement with Participating Transmission Owners, which is approved by FERC. (California Independent System Operator Corporation, Transmission Control Agreement, Appendix C, ISO Transmission Maintenance Standards (October 11, 2006).) (Attached hereto as Exhibit “F.”) PG&E’s transmission facilities are under the operational control of CAISO.

In recognition of the “diverse environmental and climatic conditions, terrain, equipment, and design practices” throughout California, the standards require Participating Transmission Owners such as PG&E to develop and submit to CAISO written maintenance practices, including vegetation management practices. The objective of the standards is to provide for a high quality, safe, and reliable transmission grid in California by ensuring that the grid’s facilities are available for use as required by the standards. PG&E’s Transmission Maintenance Practices have been reviewed and accepted by CAISO, which includes PG&E’s TVMP.³

4. CPUC General Order 95, Rule 35

General Order (GO) 95, Rules 35 and 37 (attached hereto as Exhibit “G”) mandate minimum clearance distances between conductors and vegetation which should be maintained at all times. GO 95, Appendix E sets forth minimum clearance guidelines which may be obtained at the time of trimming. Appendix E specifically states that “[r]easonable vegetation management practices may make it advantageous to obtain greater clearances” than those listed in the appendix. With respect to the 230 kV line at issue, the guideline is a minimum clearance of 10 feet at the time of trimming, with the explicit recognition that further clearances may be necessary. Indeed, the Commission has clearly recognized that it does not set maximum standards. (*See, e.g. Morgan v. PG&E* (1987) 25 C.P.U.C.2d 393 *2 (“There is no statute or regulation which sets maximum separations. GO95 requires a tree trimming program but

³ PG&E uses the same TVMP to ensure compliance with both NERC Standard FAC-003-1 and CAISO’s requirements.

specifies the objectives to be achieved, not specific clearances.”) (Attached hereto as Exhibit “H.”)

C. PG&E’s Land Rights

PG&E was granted the applicable easement and right of way in 1930. The Grant of Right of Way for Electric Transmission Lines includes the following rights:

the right and easement of erecting, constructing, reconstructing, replacing, repairing, ***maintaining and using***, from time to time, as said party of the second part, its successors or assigns, ***may see fit***, for the transmission and distribution of electricity, ***and for all purposes connected therewith***, in, upon, across, over and under the lands hereinafter described; lines of poles, and towers or either, and wires suspended thereon and supported thereby, conduits and wires for telephone and telegraph purposes, and all necessary and proper crossarms, braces, connections, fastenings and other appliances and fixtures for use in connection therewith, and also rights of way and easements for the said structures and purposes in, over, across, upon and under strips of land of uniform widths of One Hundred (100.0) feet and One Hundred Ten (110.0) feet, respectively, the center lines of which are hereinafter described...

The party of the first part also grants to the party of the second part the right of patrolling said lines of poles or towers, wires and conduits, and of erecting, maintaining and using gates in all fences which cross or hereafter shall cross said right of way, and also of using such right of way for all purposes connected with the construction, maintenance and use of said line of poles or towers, wires and conduits, ***including the right to make and maintain the necessary clearance for the same.***

The Grantor and its successors in estate shall not erect or construct, or permit to be erected or constructed, any building or structure, ***or do anything which may interfere with the full enjoyment by the Grantee of the rights hereby granted.***

In short, PG&E has been granted the right, and has continuously exercised its right, to maintain the transmission lines ***as it sees fit*** and further has the right both to ***“make”*** and ***“maintain”*** the necessary clearance for same. In addition, the easement explicitly states that the property owner may not interfere with the full enjoyment of the easement rights.

D. Vegetation Management on Complainants' Property

As part of its TVMP, PG&E regularly patrols the area in and around Complainants' Property. The birch trees at issue are of either the Paper Birch or European Birch species. These species can reach 50 to 70 feet at maturity and are clearly an incompatible growth within the wire zone of a 230kV transmission line. They are currently growing within PG&E's right of way, growing in the wire zone of the San Ramon-Moraga line and have reached heights of thirty (30) and thirty-four (34) feet respectively. (*See*, photographs attached hereto as Exhibit "I" and Tract 2420 Map attached hereto as Exhibit "J.") Yet Complainants have refused to allow their removal.

Records confirm that these trees were trimmed in 2001 and 2004 to 20 feet of clearance. Thereafter, following the 2003 East Coast Blackout, the adoption of FAC-003-1 by FERC, other vegetation-related of grid outages,⁴ and the implementation to PG&E's TVMP, PG&E notified Complainants in 2009 that, pursuant to stricter vegetation management standards and practices, the trees needed to be removed. The Complainants refused. PG&E performed a minimal trim at that time with the goal of continued negotiations with the Complainants regarding removal.

This year, PG&E again informed Complainants that the birch trees needed to be removed. Complainants again refused to allow PG&E to remove the trees. PG&E also offered to work with Complainants on the replacement of the trees, by deferring the actual removal to allow time for Complainants to plant compatible species to replace the birch trees. Complainants refused to cooperate with that proposal as well.

III. RESPONSE TO FACTUAL ALLEGATIONS

PG&E denies each and every material allegation made in the Complaint, except as expressly admitted below. Complainant has not identified its factual allegations by paragraph number but instead sets forth its factual position in "Attachment F". PG&E hereby responds to "Attachment F" in the same order as the allegations are set forth therein. PG&E is continuing to

⁴ See Footnote 1.

investigate the Complaint and reserves the right to amend and/or modify in whole or in part its responses to the material allegations in the Complaint. PG&E incorporates by reference into this Section III all of the material facts alleged in Section II of the Answer.

Fact No. 1:

This dispute concerns two Birch trees in complainants' front yard, which PG&E wishes to cut down.

Response:

PG&E admits that it wishes to cut down two birch trees but on information and belief denies that the trees are in Complainants' "front yard."

Fact No. 2:

Such trees are presently approximately 30-32 feet tall.

Response:

PG&E denies that the maximum height of the trees at this time is 32 feet; moreover, the height of the trees will continue to increase since this species of tree can reach 50 to 70 feet at maturity.

Fact No. 3:

There is what is apparently a 230kV transmission line that passes near to, but not over, claimant's property.

Response:

PG&E admits that a 230kV transmission lines run along Ivy Drive in Orinda in front of the claimant's property. Without a survey PG&E does not know if the lines pass directly "over" Complainants' property. However, PG&E does know that a significant portion of the PG&E transmission right-of-way goes across the front yard of the Yox property and the portion of Complainants' property where the birch trees at issue are growing is within the "wire zone" of the 230 kV transmission line at issue. On those grounds, PG&E denies that the transmission line does not pass "over" claimant's property.

Fact No. 4:

Such line is approximately 50 feet from the ground.

Response:

PG& E denies that the height of the transmission line is 50 feet tall at all times and at all locations. Although the line complies with all vertical height requirements, the height of the line can vary significantly depending upon temperature and load conditions.

Fact No. 5:

The trees are not directly under the line in question, but to the side of the line.

Response:

PG&E denies that the birch trees at issue are “to the side of the line” based on the location and growth pattern of the trees. Some portions of the trees at issue are directly under the line; additionally, the line can sway significant distance laterally depending on such factors as local weather conditions.

Fact No. 6:

PG&E contends (see Exhibit A attached hereto) that under General Order 95, Rule 35 Appendix E, at the time for trimming there should be 10 feet of clearance between the line and the trees.

Response:

PG&E denies.

Fact No. 7:

PG&E also contends that this line could sag up to 11 feet due to heat or load, so that the tree should be no more than 29 feet in height at the time of trimming.

Response:

PG&E admits that the line can sag due to heat or load, but denies that the tree should be no more than 29 feet in height at the time of trimming.

Fact No. 8:

This fails to take into account that the trees are not under the line, but to the side of the line.

Response:

PG&E denies that it has “fail[ed] to take into account” the location of the trees and further denies that the trees are “to the side of the line.”

Fact No. 9:

Complainants, however, do not object to trimming the trees to such height, and note that PG&E has trimmed these trees on prior occasions with no objections from complainants.

Response:

PG&E admits that Complainants do not object to PG&E trimming the trees at issue to 29 feet but denies that Complainants have not objected to PG&E’s efforts to enforce its TVMP.

Fact No. 10:

The problem at this point is PG&E's effort to cut the trees down entirely.

Response:

PG&E denies; the “problem” is Complainants’ refusal to allow PG&E to enforce its TVMP.

Fact No. 11:

Fifty feet of clearance far exceeds the clearance required by General Order 95.

Response:

PG&E denies.

Fact No. 12:

It appears that it is PG&E's position that any tree that could possibly grow within 21 feet of an overhead line such as the one in question (that is, any tree that might ever require trimming) must be entirely removed.

Response:

PG&E objects to this contention on the grounds that it is argument rather than fact. PG&E admits that it is its position that the birch trees at issue must be removed in order to comply with applicable regulatory standards and its TVMP. Except as so admitted, PG&E denies the allegations set forth herein.

Fact No. 13:

Yet PG&E's own published tree maintenance program information (see Exhibit "B" attached hereto) specifies that trees will be trimmed to provide 12 to 20 feet of clearance.

Response:

PG&E denies; and further objects to Exhibit "B" as irrelevant since it addresses lower voltage distribution lines and not the high voltage NERC transmission lines at issue herein.

Fact No. 14:

Such clearance can and would be achieved here by trimming the trees in question at approximately 29 feet.

Response:

PG&E denies.

Fact No. 15:

These trees are on private property, and can only be cut down by coming onto complainants' property.

Response:

PG&E denies; on information and belief, the trees are located within PG&E's easement and right of way and are subject to PG&E's property rights.

Fact No. 16:

It appears that the only legal authority for coming onto complainants' property to perform maintenance, or for performing any trimming or cutting, may be an easement recorded in 1930.

Response:

PG&E denies.

Fact No. 17:

Having not had the property surveyed, it is not certain that this easement burdens complainants' property at all, or if it does, whether the trees are within such easement.

Response:

On information and belief, the Complainants' property is burdened by the easement and right of way granted to PG&E and the trees are within PG&E's easement and right of way. (*See* Tract 2420 Map attached hereto as Exhibit "J" and by this reference incorporated herein.)

Fact No. 18:

Setting that question aside for the moment, the easement provides that the owner of the easement may access the property to maintain "the necessary clearance" for the poles, towers, and wires.

Response:

PG&E objects to this allegation on the grounds that the Grant of Right of Way speaks for itself; PG&E also denies that the rights afforded to PG&E under the easement and right-of-way are limited to maintaining "the necessary clearance."

Fact No. 19:

It is complainants' position that this only authorizes PG&E to maintain 10 feet of clearance, at the time of trimming, per General Order 95, Rule 35 Appendix E.

Response:

PG&E denies on the grounds that General Order 95 does not set any maximum clearance distances.

Fact No. 20:

No greater clearance, and certainly no removal of the trees in their entirety, is "necessary".

Response:

PG&E denies.

Fact No. 21:

Complainants understand that PG&E may find it more convenient, or more cost effective, to remove the trees entirely.

Response:

PG&E objects to this allegation on the grounds that it is argument alleged as fact; PG&E further denies same.

Fact No. 22:

Obviously a tree that is removed entirely will never again have to be trimmed, saving PG&E effort and expense.

Response:

PG&E objects to this allegation on the grounds that it is argument alleged as fact; PG&E further denies same.

Fact No. 23:

Yet the easement does not provide that complainants' property may be accessed to do what PG&E may find convenient or cost effective.

Response:

PG&E objects to this allegation on the grounds that it is argument alleged as fact; PG&E further objects on the grounds that the easement speaks for itself; PG&E further denies same.

Fact No. 24:

It only provides for what is “necessary”.

Response:

PG&E further objects on the grounds that the easement speaks for itself; PG&E further denies same.

Fact No. 25:

This is articularly [sic] true where what PG&E proposes goes beyond mere access, and involves the destruction of trees that are an integral part of complainants' front yard landscaping.

Response:

PG&E objects to this allegation on the grounds that it is argument alleged as fact; PG&E further denies same.

Fact No. 26:

Again, Complainants have no problems with PG&E trimming the trees to achieve the required 10 feet of clearance, as has been done before.

Response:

PG&E denies that the required clearance is 10 feet.

Fact No. 27:

But the total destruction of such trees on Complainants' property is not mandated or authorized by law, and not authorized by my clients or by the easement that may (or may not) encompass the trees in question.

Response:

PG&E objects to this allegation on the grounds that it is argument alleged as fact; PG&E further objects on the grounds that the easement speaks for itself; PG&E further denies same.

IV. AFFIRMATIVE DEFENSES

A. Failure to State a Cause of Action

Complainants have failed to alleged facts sufficient to support a claim for injunctive relief, or a claim for any relief whatsoever.

B. Failure to Allege Violation of Any Law or Rule Pursuant to Public Utilities Code §1702

Complainants have failed to set forth an actionable claim under Public Utilities Code §1702.

C. The Relief Sought Is Barred by Applicable Regulation

The relief sought by Complainants is barred by applicable federal and state regulations including, but not limited to, NERC Reliability Standard FAC-003-1, CAISO transmission maintenance practices, and Commission rules or decisions.

D. Complainants' Failure to Mitigate

Complainants have failed to mitigate in that they have refused to replace the incompatible vegetation growing in or into the wire zone of a NERC regulated 230 kV transmission line with compatible vegetation or to take advantage of PG&E's offer to allow a transition period before removal to allow for the planting of compatible species.

E. Jurisdiction

The transmission lines involved in this matter are subject to federal, CAISO and Commission rules and regulations. FERC has recommended that state and federal regulators coordinate so that jurisdictional considerations do not impede effective vegetation management and that transmission owners fully exercise easement rights for vegetation management. State action may not be inconsistent with the NERC Reliability Standards and may not allow less stringent action than that required by those standards. Further, CAISO requirements must be reconciled and enforced.

F. Standing

Complainants lack standing as PG&E is informed and believes that the two birch trees at issue herein may not be located within Complainants' property line.

V. DEFECTS IN THE COMPLAINT

Commission Rule 4.4 requires a defendant to identify "any defects in the complaint which require amendment or clarification." In addition to the factual and legal issues raised in Sections II – III above, the Complaint is defective with regard to Exhibit "B" thereto. Said exhibit is excerpted from PG&E's on-line information but it refers to vegetation management relating to distribution lines, not NERC regulated 230kV lines. It is therefore irrelevant to the proceedings herein.

VI. COMMENTS/OBJECTIONS TO COMPLAINANTS' PROCEDURAL REQUESTS

PG&E agrees with Complainants that the Complaint should be categorized as an adjudicatory proceeding.

PG&E disagrees with Complainants' proposed schedule. Since PG&E was instructed by the Commission to Answer by June 9, 2011, Complainant's proposed schedule (Prehearing Conference on May 24, 2011 and Hearing by June 24, 2011) is no longer feasible.

PG&E believes that a Prehearing Conference scheduled for 30 days following the filing of PG&E's Answer will be helpful in order to identify the issues to be addressed, propose a schedule for briefing those issues and set a hearing date for resolution. PG&E specifically reserves its right for an evidentiary hearing.

In this action, Complainants are asking the Commission to exempt Complainants' trees from NERC, CAISO and even Commission vegetation management requirements. PG&E anticipates that the issues will be complex since the matter in dispute has far-reaching implications. The action is therefore deserving of an appropriate briefing schedule which allows the issues to be thoroughly briefed and presented to the Commission.

VII. DEFENDANT'S NAME AND ADDRESS

PG&E's business address is 77 Beale Street, San Francisco, California, 94105. The address and telephone number for PG&E's attorneys are set forth below:

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Attorneys for
Pacific Gas and Electric Company

VERIFICATION

I, the undersigned, say:

I am an officer of PACIFIC GAS AND ELECTRIC COMPANY, a corporation, and am authorized to make this verification for and on behalf of said corporation, and I make this verification for that reason. I have read the foregoing ANSWER OF PACIFIC GAS AND ELECTRIC COMPANY and I am informed and believe that the matters therein are true and on that ground I allege that the matters stated therein are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California, this **9th day of June, 2011**.

/s/
PLACIDO J. MARTINEZ
Vice President, Electric Distribution Planning
and Engineering
Pacific Gas and Electric Company