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

Richard G. Wilbur as Trustee for the  
Richard G. Wilbur Revocable Trust,

Complainants,

v.

Pacific Gas and Electric Company (U39E),

Defendant.

Case No. C.11-05-014  
(Filed May 11, 2011)

**PACIFIC GAS AND ELECTRIC COMPANY'S REPLY BRIEF**

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Dated: July 10, 2012

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**PACIFIC GAS AND ELECTRIC COMPANY'S REPLY BRIEF**

**I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS<sup>1</sup>**

The dispute in this matter is straightforward. “The scope of this proceeding is to decide whether to grant or deny the Complainant’s request to prohibit PG&E from trimming the walnut trees in question to a height of less than 12 feet.”<sup>2</sup> The request should be denied. As Complainant’s own testimony confirms, the walnut trees in his orchard will exceed thirty feet in height unless trimmed. PG&E’s 115kV lines may permissibly sag to 27 feet from the ground. The two are incompatible. Complainant wants to continue to farm incompatible trees in PG&E’s granted transmission right-of-way at a trim level that poses an unacceptable risk to the public safety and the reliability of the transmission lines.

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<sup>1</sup> PG&E incorporates herein by reference the Summary of Recommendations set forth in its Opening Brief.

<sup>2</sup> *Assigned Commissioner’s Ruling and Scoping Memo* (Scoping Memo), at p. 2. Note: While preparing this Reply Brief and reviewing the Scoping Memo, PG&E realized that it was supposed to have arranged a call for the parties to develop and agree on a common outline for the Opening and Reply Briefs. Once PG&E realized this, it contacted Complainant who had also apparently overlooked this request. Since both parties were at this point finalizing their Reply Briefs, it was not practical to agree on a common outline at that late date. PG&E apologizes for this oversight and hopes that the lack of a common outline does not pose too much of an inconvenience to the Administrative Law Judge or the Assigned Commissioner. PG&E would be happy to work with Complainant to develop a high level summary of arguments in the next week or so if that would be helpful.

PG&E has the explicit granted right to “cut and remove” these trees<sup>3</sup> and would prefer to do so. However, PG&E has been attempting to accommodate Complainant (and other walnut growers) by allowing some farming of these incompatible trees, provided their growth is restricted to a height PG&E knows must be maintained in order to ensure system safety and reliability. Complainant objects to the amount of trimming PG&E has to do in order to ensure this goal.

Complainant’s insurmountable hurdle is that his submitted evidence does not support the allegations made in his Complaint and his request to limit the trimming of the walnut trees. On the other hand, although the burden in this proceeding rests with Complainant, PG&E has submitted overwhelming evidence into the record to refute Complainant’s allegations and to establish that:

(a) Walnut trees are incompatible growth beneath high voltage transmission lines because they can grow aggressively and unpredictably, and are genetically capable of growing tall enough to grow into or otherwise interfere with the transmission lines<sup>4</sup>;

(b) All trimming at the Wilbur orchard was done pursuant to PG&E’s granted easement rights to “cut or remove” trees<sup>5</sup>;

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<sup>3</sup> The applicable easement grants PG&E the authority to “cut or remove” trees. (Transmission line easement at p. 3, Exhibit PG&E-3, Sub-Exhibit 28.)

<sup>4</sup> *Prepared Direct Testimony of David Kelley on Behalf of Pacific Gas and Electric Company* (Kelley Testimony), A16 at p. 11 and A23 at p. 13, PG&E Exhibit PG&E-5; *Prepared Direct Testimony of Robert Fratini on Behalf of Pacific Gas and Electric Company* (Fratini Testimony), A23 at pp. 13-14, PG&E Exhibit PG&E-3. *Direct Testimony of Complainant Richard G. Wilbur as Trustee for the Richard G. Wilbur Revocable Trust* (Wilbur Testimony), Attachment A at p. 5, Complainant’s Exhibit Wilbur-1.

<sup>5</sup> Transmission line easement at p. 3, Exhibit PG&E-3, Sub-Exhibit 28.

(c) There have been documented instances of trees (and specifically walnut trees) actually growing into or otherwise interfering with transmission lines and/or posing a risk of interfering with transmission lines in California and the country<sup>6</sup>;

(d) There is documentation that trimming orchard trees at various levels above 7 feet at time of trim (11 feet, 12 feet, and 19 feet)<sup>7</sup> demonstrably increases the risk of walnut tree interference with transmission lines<sup>8</sup>;

(e) PG&E's Transmission Vegetation Management Program ("TVMP")<sup>9</sup> is fully compliant with and does not violate any applicable rules, regulations, orders or decisions (state or federal), including General Order 95<sup>10</sup>, conforms to utility industry accepted best vegetation management practices and reflects industry experience.<sup>11</sup>

PG&E has a non-delegable duty to ensure the safety and reliability of the 115 kV transmission lines that traverse the Wilbur orchard.<sup>12</sup> These lines provide electricity to the Honcut, Pease, East Marysville, Olivehurst, Bogue and East Nicolaus substations, which serve thousands of customers.<sup>13</sup>

The specter of a significant transmission outage is not idle speculation or needless fear mongering – it could happen and has happened in California, on the West Coast and elsewhere in

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<sup>6</sup> PG&E's Opening Brief, at p. 17.

<sup>7</sup> PG&E's Opening Brief, at pp. 19-20.

<sup>8</sup> *Prepared Direct Testimony of Stephen Tankersley on Behalf of Pacific Gas and Electric Company – Public Version* (Tankersley Testimony), A19 at pp. 17-19, PG&E Exhibit PG&E-1-P.

<sup>9</sup> The Commission has admitted the TVMP and other confidential records into evidence under seal.

<sup>10</sup> Fratini Testimony, A14 at p. 8, PG&E Exhibit PG&E-3; Tankersley Testimony, A23 at pp. 23-24, PG&E Exhibit PG&E-1-P.

<sup>11</sup> See Section IV.D. of PG&E's Opening Brief.

<sup>12</sup> Pub. Util. Code § 768.

<sup>13</sup> *Prepared Direct Testimony of Charles Filmer on Behalf of Pacific Gas and Electric Company - Confidential Version* (Confidential Filmer Testimony), A18 at pp. 9-10, Confidential PG&E Exhibit PG&E-2-C.

the United States (most spectacularly during the East Coast blackout in 2003).<sup>14</sup> What society wants, and has demanded after the 2003 East Coast blackout, is system safety and reliability. PG&E has responded to that demand. PG&E has done everything right as it tightened and improved its vegetation management practices for transmission lines, including its orchard program. It developed its program and clearances to comply with all applicable rules and regulations (including worker safety rules), to conform to best industry practices, and to reflect industry experience (including considering the recommendations at the federal level for more aggressive vegetation management practices following the 2003 East Coast blackout).

In short, PG&E's vegetation management program is designed to ensure service reliability and to protect the public safety, including the safety of workers who must work in the vicinity of the power lines. It is not reasonable to characterize this carefully developed vegetation management program as unreasonable or "excessive." It would be unreasonable for PG&E to acquiesce to the opinion of one grower and expose its facilities (as well as many nearby cities and tens of thousands of customers) to the *known risk* that an incompatible walnut tree may grow into or otherwise interfere with the power lines.

## **II. AREAS OF AGREEMENT AND DISAGREEMENT**

### **A. On Several Key Issues, PG&E and Complainant are in Agreement**

It is important to note that the parties are in agreement on most of the key issues.

Complainant admits and PG&E agrees:

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<sup>14</sup> PG&E's Opening Brief, Section III.C.1, at p. 13 (2003 East Coast outage) and Section III.D, at p. 17 (where PG&E lists a number of vegetation-related grid and other transmission outages that have occurred on the West Coast and in PG&E service territory).

1. That the Chandler walnut trees in his orchards will grow in excess of 30 feet if not trimmed.<sup>15</sup>
2. That a high voltage power line may permissibly sag to 27 feet and that it is appropriate to measure vegetation clearance distances from that point.<sup>16</sup>
3. That the Commission has consistently declined to set maximum clearance distances at time of trim.<sup>17</sup>
4. That GO 95 does not recommend or mandate maximum clearances.<sup>18</sup>
5. That he does not challenge trimming by PG&E that complies with the minimum distances the Commission established in GO 95, Rule 35.<sup>19</sup>
6. That “the Commission has never articulated to PG&E when it must stop trimming.”<sup>20</sup>
7. That the 10 feet set forth in Appendix E is a “minimum” and that PG&E may permissibly obtain greater clearances than this.<sup>21</sup>
8. That both historically and currently, he has successfully farmed, and is successfully farming, compatible fruit trees (plums) in PG&E’s easement and right-of-way.<sup>22</sup>

**B. Complainant Bases His Case on A Number of Incorrect and Inaccurate Factual Assertions**

PG&E disagrees with many of the factual assertions made by Complainant in his Opening Brief.

Complainant’s Assertion <sup>23</sup>	PG&E’s Reply and Supporting Evidence
1. PG&E “agreed” that Complainant could keep his trees at 12 feet. <sup>24</sup>	PG&E disputes this assertion as follows:  1. PG&E has no record of a 2000/2001

<sup>15</sup> Complainant’s Opening Brief, at p. 22.

<sup>16</sup> Complainant’s Opening Brief, at pp. 1, 2, 13, 19.

<sup>17</sup> Complainant’s Opening Brief, at pp. 17-18.

<sup>18</sup> Complainant’s Opening Brief, at pp. 17-18.

<sup>19</sup> Complainant’s Opening Brief, at p. 2.

<sup>20</sup> Complainant’s Opening Brief, at pp. 17-18.

<sup>21</sup> Complainant’s Opening Brief, at p. 18.

<sup>22</sup> Complainant’s Opening Brief, at pp. 5, 6.

<sup>23</sup> PG&E notes that Complainant makes his factual assertions in his Opening Brief without citation to the record.

<sup>24</sup> Complainant’s Opening Brief, at p. 8.

Complainant's Assertion <sup>23</sup>	PG&E's Reply and Supporting Evidence
	<p>“agreement” or any other historical agreement with Complainant limiting tree trimming to 12 feet.<sup>25</sup></p> <p>2. While litigation is pending, PG&amp;E has <b><i>unilaterally and voluntarily</i></b> limited trimming of the trees in the belly zone of the Wilbur Orchard to 12 feet, which required additional trimming and additional cost, essentially maintaining the restriction put in place by the civil court preliminary injunction (which level had been vacated once the case was dismissed for lack of jurisdiction.)<sup>26</sup></p> <p>3. Even if there was an early informal arrangement that PG&amp;E would limit its trimming in the Wilbur orchards, PG&amp;E could not continue such an arrangement given the later industry experience with vegetation-related transmission outages, such as:</p> <p>(a) The later 2003 East Coast blackout and the sea change which occurred nationwide at the governmental and utility level in vegetation management following that event.<sup>27</sup></p> <p>(b) The later 2004 Bellota outage where PG&amp;E learned that the clearances it was achieving in walnut orchards were insufficient to ensure system safety and reliability.<sup>28</sup></p>

<sup>25</sup> Reply Testimony of Robert J. Fratini on Behalf of Pacific Gas and Electric Company (Fratini Reply Testimony), A4 at p. 3, PG&E Exhibit PG&E-6; Prepared Direct Testimony of Jeffrey A. Mussell on Behalf of Pacific Gas and Electric Company (Mussell Testimony), A6 at p. 4, PG&E Exhibit PG&E-7.

<sup>26</sup> Fratini Testimony, A37 at pp. 21-24, PG&E Exhibit PG&E-3; Mussell Testimony, A7 at pp. 4-6, PG&E Exhibit PG&E-7. Maintaining the trees at this higher level has required repeated extra trips to the orchards. Fratini Reply Testimony, A2 at pp. 1-2, PG&E Exhibit PG&E-6.

<sup>27</sup> Tankersley Testimony, A12 at pp. 10-12; Prepared Direct Testimony of Stephen Cieslewicz on Behalf of Pacific Gas and Electric Company (Cieslewicz Testimony), A8 at p. 6, PG&E Exhibit PG&E-4.

<sup>28</sup> Tankersley Testimony, A17 at p. 16, PG&E Exhibit PG&E-1.

Complainant's Assertion <sup>23</sup>	PG&E's Reply and Supporting Evidence
<p>2. PG&amp;E's April 15, 2004 letter to Wilbur (a) set the standard for reasonableness; and (b) established a 15 foot maximum time of trim clearance.<sup>29</sup></p>	<p>PG&amp;E disputes this assertion as follows:</p> <ol style="list-style-type: none"> <li>1. The April 2004 letter does not set a 15-foot maximum <i>time of trim</i> clearance. It states that it is necessary to "<i>maintain a clearance</i> of 15 feet between the tops of the trees and the conductors...measured at maximum conductor sag".<sup>30</sup></li> <li>2. Any "standard for reasonableness" is determined by state and federal rules and regulations as well as utility industry practice and experience, which would supersede any statements in the 2004 letter.<sup>31</sup></li> </ol>
<p>3. The Commission has determined that a 10 foot clearance at time of trim is "safe".<sup>32</sup></p>	<p>PG&amp;E disputes this assertion as follows:</p> <ol style="list-style-type: none"> <li>1. Assuming the Complainant is referring Appendix E time-of-trim guidelines, these are recommended minimum clearances only. Appendix E also states that "reasonable vegetation management practices may make it advantageous to obtain greater clearances than listed".<sup>33</sup></li> </ol>
<p>4. The Commission has never spoken on maximum clearances.<sup>34</sup></p>	<p>PG&amp;E disputes this assertion as follows:</p> <ol style="list-style-type: none"> <li>1. The Commission has spoken on this issue and has consistently and specifically <i>declined to set</i> maximum levels of trim.<sup>35</sup></li> </ol>
<p>5. Not a single incident is known where a mature walnut tree properly trimmed</p>	<p>PG&amp;E disputes (1) that there have been no known walnut grow-in incidents; and (2) that (even if true),</p>

<sup>29</sup> Complainants' Opening Brief, at p. 8.

<sup>30</sup> Fratini Reply Testimony, A4 at p. 3, PG&E Exhibit PG&E-6.

<sup>31</sup> Tankersley Testimony, A19 at pp. 17-19, PG&E-1-P.

<sup>32</sup> Complainant's Opening Brief, at p. 12.

<sup>33</sup> PG&E's Opening Brief, Section IV.B.2; Reply Brief, Section V.B.

<sup>34</sup> Complainant's Opening Brief, at p. 20.

<sup>35</sup> Complainant concedes this point on pages 17- 18 of his Opening Brief; see also, PG&E's Opening Brief, Section IV.B.2. and PG&E's Reply Brief, Section V.D., which discuss the Commission's decisions on the subject.

Complainant's Assertion <sup>23</sup>	PG&E's Reply and Supporting Evidence
<p>under General Order 95 grew into a transmission line<sup>36</sup>; since PG&amp;E allegedly was historically trimming to only a 10 foot clearance, the absence of any incidents demonstrates that additional clearances are not necessary.<sup>37</sup></p>	<p>such a fact would be relevant to current industry best vegetation management practices:<sup>38</sup></p> <ol style="list-style-type: none"> <li>1. There have been instances of walnut trees growing into, or growing too close to high voltage power lines, including: <ol style="list-style-type: none"> <li>(a) The 2003 East Coast blackout.<sup>39</sup></li> <li>(b) The 2004 Bellota outage (tree was trimmed back at least 15 feet –greater than the Appendix E guideline of 10 feet – and still grew into a line causing an outage.)<sup>40</sup></li> <li>(c) Prior to instituting the minimum ground-to-line clearance approach, PG&amp;E observed “burners” in walnut orchards. This was at a time when PG&amp;E’s vegetation management practices required 25 foot of clearance from the line – 15 feet in excess of the recommended minimum clearance of 10 feet set forth in Appendix E. Since instituting minimum ground-to-line clearance, PG&amp;E has not seen burners in orchards.<sup>41</sup></li> <li>(d) In August 2008, PG&amp;E discovered during a routine inspection 4 walnut trees in an orchard that had grown within PG&amp;E’s minimum clearance distances. The trees had been trimmed in December 2007 with an estimated 25 feet of clearance from the conductor at the time of trim. Between December 2007 and August 2008, the</li> </ol> </li> </ol>

<sup>36</sup> Complainant's Opening Brief, at p. 13.

<sup>37</sup> Complainant's Opening Brief, at p. 13.

<sup>38</sup> PG&E notes that Complainant states as a fact that PG&E's lines were historically trimmed to a 10 foot clearance “over the last century”. (Complainant's Opening Brief, at p. 13.) This is pure speculation and a fact not in evidence, and neither Complainant nor PG&E can state with any authority what the trimming has been “over the last century”. PG&E can and has provided evidence about the more recent trimming at the Wilbur orchard – which has generally exceeded a 10 foot clearance. See, Mussell Testimony, A7 at pp. 4-6, PG&E Exhibit PG&E-7.

<sup>39</sup> Cieslewicz Testimony, A8 at p. 6; PG&E Exhibit PG&E-4.

<sup>40</sup> Tankersley Testimony, A17 at p. 16, PG&E Exhibit PG&E-1-P.

<sup>41</sup> Fratini Testimony, A19 at pp. 11-12, PG&E Exhibit PG&E-3.

Complainant's Assertion <sup>23</sup>	PG&E's Reply and Supporting Evidence
	<p>trees grew approximately 12 feet and the line sagged approximately 6 feet, resulting in an <b>18 feet net swing</b>. PG&amp;E took immediate steps to correct the hazard.<sup>42</sup> <b><i>Had PG&amp;E trimmed only to 15 feet from the line at time of trim, the trees would have been <u>3 feet above the line</u>; trimming to 10 feet at time of trim as set forth in Appendix E, would have resulted in tree growth <u>8 feet above the line</u>.</i></b></p> <p>2. Historical trimming practices are irrelevant to determining how to currently manage incompatible vegetation in a utility easement and right-of-way.<sup>43</sup> The walnut tree that contacted the transmission line in 2003 (and precipitated in part the worst power outage in U.S. history) had been inspected by qualified linemen within 6 months prior to the blackout, and still the blackout occurred.<sup>44</sup></p> <p>3. One of the Wilbur orchards at issue was <b><i>not farmed with walnut trees until 1996</i></b>. Since it was, according to Complainant, being farmed with compatible fruit trees, it is not surprising that such trees did not contact the line.<sup>45</sup></p> <p>4. The low number of incidents in walnut orchards in PG&amp;E's service territory should be attributed to PG&amp;E's diligence, not a speculative 10-foot clearance level. In the Wilbur orchard, for example, PG&amp;E has had to perform additional non-routine inspections and trimming to <b><i>prevent</i></b> such an occurrence.<sup>46</sup></p>
6. Prior to 2008, Complainant is not aware of a single instance of "emergency	PG&E disputes this assertion as follows:

<sup>42</sup> Tankersley Testimony, A18 at p. 17, PG&E Exhibit PG&E-1-P.

<sup>43</sup> *Reply Testimony of Stephen Cieslewicz on Behalf of Pacific Gas and Electric Company* (Cieslewicz Reply Testimony), A4 at pp. 2-3, PG&E Exhibit PG&E-8.

<sup>44</sup> Cieslewicz Reply Testimony, A3 at p. 2, PG&E Exhibit PG&E-8.

<sup>45</sup> Wilbur Testimony, Attachment A at p. 6, Complainant's Exhibit Wilbur-1.

<sup>46</sup> Fratini Reply Testimony, A2 at pp. 1-2, PG&E Exhibit PG&E-6.

Complainant's Assertion <sup>23</sup>	PG&E's Reply and Supporting Evidence
<p>pruning” undertaken or required to prevent contact between the walnut trees and the conductors.<sup>47</sup></p>	<p>1. Complainant states that the northern orchard was completely removed in 2001 and replanted in 2003, while the southern orchard was replanted from fruit trees to walnuts in 1996, removed in 2004 and replanted in 2006. Given this chronology, no non-routine trimming was necessary in the Wilbur orchards during the 1996 – 2008 time period since the orchards were young enough that an annual routine trimming was sufficient to protect the lines.<sup>48</sup></p> <p>2. Since 2008, when PG&amp;E has trimmed to just 12 feet in the belly zone in the Wilbur orchards, it has had to return to the orchards <b>2 – 3 times a year</b> to trim the trees to ensure that they did not grow into or otherwise interfere with the lines. These additional trims are considered “non-routine.”<sup>49</sup> Had PG&amp;E not been extremely diligent in its monitoring of the Wilbur orchards, the trims would have progressed to “emergency pruning” within weeks.</p>
<p>7. When a mature Chandler tree is pruned under the power lines, it will grow back an average of 6 feet per year<sup>50</sup> and if no longer pruned on top it will stop growing higher.<sup>51</sup></p>	<p>PG&amp;E disputes this assertion as follows:</p> <p>1. Walnut trees, due to their height (30 – 50 plus feet) cannot be allowed to ever reach full height <b>maturity</b> under a 115 kV transmission power line that can permissibly sag to 27 feet (GO 95).<sup>52</sup></p>

<sup>47</sup> Complainant's Opening Brief, at p. 6.

<sup>48</sup> Fratini Reply Testimony, A2 at p. 2, PG&E Exhibit PG&E-6.

<sup>49</sup> Fratini Testimony, A37 at pp. 21-24; A38 at p. 24, PG&E Exhibit PG&E-3.

<sup>50</sup> Complainant's Opening Brief, at pp. 21-22, 29.

<sup>51</sup> Complainants' Opening Brief, at p. 7, 29.

<sup>52</sup> Tankersley Testimony, A27 at p. 27, PG&E Exhibit PG&E-1-P; Fratini Testimony A20 at p. 12, PG&E Exhibit PG&E-3.

Complainant's Assertion <sup>23</sup>	PG&E's Reply and Supporting Evidence
	<p>2. Complainant himself acknowledges that he trims and maintains his mature walnut trees not to exceed <i>a height of 30 feet</i>.<sup>53</sup></p> <p>3. All varieties of walnut trees can continue to grow taller through their lifespan, though growth rates may decrease as the trees mature and with environmental or pest and disease pressure, depending on variety.<sup>54</sup></p> <p>4. Since the walnut trees under the transmission lines cannot attain the 30 feet mature height of the rest of the orchard, they must be utility clearance pruned (as opposed to production pruned). Utility clearance pruned trees can grow in excess of 6 feet per year.<sup>55</sup> PG&amp;E has documented walnut trees growing in the Wilbur orchards beneath the power lines growing as much as 7 feet <i>over a 6 week period</i>.<sup>56</sup> PG&amp;E must address maximum re-growth from utility pruned trees, not average growth rates from commercial orchard pruning.</p> <p>5. PG&amp;E offered to test the annual growth rate of the walnut trees in Complainant's orchard but he refused.<sup>57</sup></p>
<p>8. PG&amp;E "backed off" its vegetation management "after a showdown with the Yuba County sheriff."<sup>58</sup></p>	<p>PG&amp;E disputes this assertion as follows:</p> <p>1. After being denied access to its easement and right of way in early March 2008, PG&amp;E agreed to defer trimming for 30 days to allow Complainant to attempt to get a Temporary Restraining Order</p>

<sup>53</sup> Wilbur Testimony, Attachment A at p. 7, Complainant's Exhibit Wilbur-1.

<sup>54</sup> *Reply Testimony of David E. Kelley on Behalf of Pacific Gas and Electric Company* (Kelley Reply Testimony), A2 at p. 1.

<sup>55</sup> Kelley Testimony, A14 at p. 10, PG&E Exhibit PG&E-5.

<sup>56</sup> Fratini Reply Testimony, A3 at p. 3, PG&E Exhibit PG&E-6.

<sup>57</sup> Fratini Testimony, A43 at p. 27, PG&E Exhibit PG&E-3.

<sup>58</sup> Complainant's Opening Brief, at p. 11

Complainant's Assertion <sup>23</sup>	PG&E's Reply and Supporting Evidence
	<p>stopping PG&amp;E from performing the tree trimming.<sup>59</sup></p> <p>2. The walnut trees that PG&amp;E patrols had identified as needing immediate trimming were “self-trimmed” by Wilbur personnel.<sup>60</sup></p> <p>3. Complainant initiated suit in Yuba County Superior Court and an immediate TRO was issued limiting trimming to 12 feet in the belly zone. The TRO has since been vacated and PG&amp;E has been <i>unilaterally and voluntarily</i> adhering to this height limitation pending resolution of litigation. This has necessitated PG&amp;E returning to the orchard 2-3 times a year in order to conduct more frequent trimming and has resulted in an additional cost expenditure of approximately \$90,000.<sup>61</sup></p>
<p>9. Complainant claims that “just a few years ago...in open view to PG&amp;E, [he] tore out and replanted its walnut orchard”. Now after seeing complainant’s investment grow”, PG&amp;E threatens to cut down these maturing trees.”<sup>62</sup></p>	<p>PG&amp;E disputes this assertion as follows:</p> <p>1. Before Complainant re-planted the incompatible walnut trees in 2006, he has been advised in 2004 by PG&amp;E that it considered walnut trees a “future potential hazard” that PG&amp;E could remove “as an unreasonable interference to its easement rights.”<sup>63</sup></p> <p>2. Since 2005, PG&amp;E has taken many steps to educate the grower community that walnut trees are incompatible growth and that PG&amp;E was trimming to 7 feet in the belly zone or removing such trees. These include using various media outlets to notify the Central Valley grower community at large of</p>

<sup>59</sup> Mussell Testimony, A6 at p. 6, PG&E Exhibit PG&E-7.

<sup>60</sup> Mussell Testimony, A7 at p. 5, PG&E Exhibit PG&E-7.

<sup>61</sup> Mussell Testimony, A6 at p. 6, PG&E Exhibit PG&E-7; Fratini Testimony, A38 at p. 24, PG&E Exhibit PG&E-3.

<sup>62</sup> Complainant’s Opening Brief, at p. 15.

<sup>63</sup> Mussell Testimony, A5 at pp. 2-3, PG&E Exhibit PG&E-7; PG&E-3, Sub-Exhibit 33B; Fratini Testimony, A44 at p. 26, PG&E Exhibit PG&E-3.

Complainant's Assertion <sup>23</sup>	PG&E's Reply and Supporting Evidence
	<p>PG&amp;E's necessary vegetation management practices in orchards<sup>64</sup> and to notify growers of PG&amp;E's Orchard Removal Program. Since its inception in 2005, 53 walnut growers, representing 65% of orchards growing beneath transmission lines, have participated.<sup>65</sup></p> <p>3. Despite being in litigation on this issue for over four years, despite being now fully informed on the hazards of farming incompatible walnut trees beneath high voltage power lines, and despite now fully understanding that the PG&amp;E TVMP requires trimming to seven feet (and possible removal) of walnut trees in the belly of a transmission line, Complainant continues to re-plant his orchards with incompatible walnut trees under PG&amp;E's transmission lines – as evidenced by a recent planting of a new walnut orchard beneath PG&amp;E's transmission lines in Sutter County.<sup>66</sup></p>
<p>10. PG&amp;E could have eliminated any future need to trim the walnut trees under the new orchard by raising the lines as little as 5 to 6 feet, but it did not agree to a higher height.<sup>67</sup></p>	<p>PG&amp;E disputes this assertion as follows:</p> <p>1. While raising the lines may be technically possible, such an action would be constructing special facilities at the request of the customer, the cost of which must be borne by the customer.<sup>68</sup></p> <p>2. Raising the lines does not obviate the need to trim the walnut trees (which can grow as tall as 30-50 feet); they are still incompatible growth beneath high voltage power lines. All that raising the lines</p>

<sup>64</sup> Fratini Testimony, A36 at p. 21, PG&E Exhibit PG&E-3.

<sup>65</sup> Fratini Testimony, A26 at p. 19, A27 at p. 21, PG&E Exhibit PG&E-3. The orchard removal program was designed for mature orchards, not newly planted orchards, so the Wilbur newly planted orchards would not normally qualify.

<sup>66</sup> Fratini Testimony, A44 at p. 27, PG&E Exhibit PG&E-3.

<sup>67</sup> Complainant's Opening Brief, at pp. 14, 23 and 29.

<sup>68</sup> See, CPUC PG&E Tariffs, Rule (2)(I) ("PG&E normally installs only those standard facilities which it deems necessary to provide regular service in accordance with the tariff schedules. Where the applicants requests PG&E to install special facilities and PG&E agrees to make such an installation, the additional costs thereof shall be borne by the applicant...").

Complainant's Assertion <sup>23</sup>	PG&E's Reply and Supporting Evidence
	<p>accomplishes is that the incompatible trees will be taller before impacting system reliability; it does not eliminate either the concern or the potential of incompatible trees growing into the power lines.<sup>69</sup></p> <p>3. In 2008, Complainant filed for his temporary restraining order in civil court. However, PG&amp;E did not become aware of any request by Complainant to raise the lines, or any effort to even voice the issue of raising any lines until after the CPUC had issued the Final MND/IS in connection with the Palermo Project. PG&amp;E has moved into evidence documents confirming that: (a) as early as 2009, Complainant was given appropriate notice of the Palermo Project pursuant to GO 131-D; (b) no protests were filed to the Palermo Project; (c) the Commission issued a NOI which was mailed to all interested parties, circulated the draft MND and made it available at four libraries in the Palermo Project area and on the Commission website; (d) the Commission held a public information meeting at the Yuba County Library in Marysville; five attendees showed up and none raised any concerns about vegetation management at the Wilbur orchard; (e) on September 10, 2010 the public comment period on the draft MND ended and the Commission received no comments relating to vegetation management or pole heights at the Wilbur orchard. PG&amp;E could not consider raising the lines at such a late date without imperiling the entire project.<sup>70</sup></p>
<p>11. The belly zone of the reconducted Palermo-East Nicolaus line is as low as 47.1 feet.<sup>71</sup></p>	<p>PG&amp;E disputes this assertion as follows:</p> <p>1. The ground clearance belly zone of the reconducted Palermo-East Nicolaus line can be as</p>

<sup>69</sup> Complainant provides no evidence to support his statement that raising the lines “5 to 6” feet would have eliminated the need to trim the trees, and PG&E’s engineers disagree with this assessment. Fratini Reply Testimony, A5 at p. 4, PG&E Exhibit PG&E-6.

<sup>70</sup> See PG&E Items 7-12, of which official notice was taken on June 25, 2012.

<sup>71</sup> Complainant’s Opening Brief, at pp. 14, 19, 23.

Complainant's Assertion <sup>23</sup>	PG&E's Reply and Supporting Evidence
	<p>low as 31 feet.<sup>72</sup> Mr. Hanlin's calculations are a "snapshot" in time and do not show the location of the conductor at its maximum sag under maximum operating conditions.<sup>73</sup></p>
<p>12. The belly zone of the Pease-Rio Oso line is 31.2 feet.<sup>74</sup></p>	<p>PG&amp;E disputes this assertion as follows:</p> <ol style="list-style-type: none"> <li>1. The ground clearance belly zone of the Pease-Rio Oso line can be as low as 27.7 feet.<sup>75</sup> Mr. Hanlin's calculations are a "snapshot" in time and do not show the location of the conductor at its maximum sag under maximum operating conditions.<sup>76</sup></li> </ol>
<p>13. PG&amp;E's vegetation management practices are not about safety and reliability, but are about money. PG&amp;E's strategy is to make walnut farmers forfeit and give up growing walnut trees within an established easement.<sup>77</sup></p>	<p>PG&amp;E disputes this assertion as follows:</p> <ol style="list-style-type: none"> <li>1. Complainant has cited no evidence to support this statement. The admitted evidence establishes: <ul style="list-style-type: none"> <li>(a) Complainant's land is burdened by an easement and he does not have the unfettered right to grow incompatible vegetation beneath high voltage power lines.<sup>78</sup></li> <li>(b) PG&amp;E incurs the same cost to trim whether a tree is trimmed to 7 feet, 11 feet or 19 feet.<sup>79</sup></li> <li>(c) PG&amp;E's vegetation management practices are based on state and federal rules and regulations, industry best practices (e.g. ANSI A300, Part 7) and recommendations issued at the federal level following investigations in the 2003 blackout that</li> </ul> </li> </ol>

<sup>72</sup> Prepared Direct Testimony of Khaled Abdin on Behalf of Pacific Gas and Electric Company – Public Version (Abdin Testimony), A7 at p. 3, PG&E Exhibit PG&E-10-P.

<sup>73</sup> Abdin Testimony, A9 at p. 4, PG&E Exhibit PG&E-10-P.

<sup>74</sup> Complainant's Opening Brief, at p. 19.

<sup>75</sup> Abdin Testimony, A8 at p. 3, PG&E Exhibit PG&E-10-P.

<sup>76</sup> Abdin Testimony, A9 at p. 4, PG&E Exhibit PG&E-10-P.

<sup>77</sup> Complainant's Opening Brief, at pp. 18-20.

<sup>78</sup> Transmission line easement, PG&E Exhibit PG&E-3, Sub-Exhibit 28.

<sup>79</sup> Tankersley Testimony, A26 at pp. 26-27, PG&E Exhibit PG&E-1-P.

Complainant's Assertion <sup>23</sup>	PG&E's Reply and Supporting Evidence
	informed utilities nationwide how their programs could be improved upon in order to ensure grid safety and reliability. <sup>80</sup>
14. PG&E testimony on the growth rates of walnut trees in San Joaquin county is irrelevant. <sup>81</sup>	<p>PG&amp;E disputes this assertion as follows:</p> <ol style="list-style-type: none"> <li>1. The growth rates of walnut trees throughout PG&amp;E's territory are relevant as PG&amp;E must develop a vegetation management program suitable to its entire service territory – not individualized customers.<sup>82</sup></li> <li>2. The documented growth rates show equally vigorous growth in the Wilbur orchard – as much as 7 feet in a 6 week period.<sup>83</sup></li> <li>3. Since 2008, PG&amp;E has had to return to the Wilbur orchard 2-3 times a year for additional trimming.<sup>84</sup></li> </ol>
15. There are ways to control the growth of a walnut tree without severely curtailing its productivity and risking contact with power lines. <sup>85</sup>	<p>PG&amp;E disputes this assertion as follows:</p> <ol style="list-style-type: none"> <li>1. Complainant has cited no evidence to support this assertion. Moreover, if true, why hasn't Complainant done so?</li> <li>2. In 2008, Complainant was offered participation in a Memorandum of Understanding ("MOU") to test the aggressiveness of the regrowth rate of the walnut trees to show that the "no grow" zone would be breached. He declined participation in the MOU.<sup>86</sup></li> </ol>

<sup>80</sup> Tankersley Testimony, A19 at pp. 17-19, PG&E Exhibit PG&E-1-P; Cieslewicz Testimony a17 at p. 12, PG&E Exhibit PG&E-4.

<sup>81</sup> Complainant's Opening Brief, at p. 22.

<sup>82</sup> Cieslewicz Testimony, A37 at p. 29, PG&E Exhibit PG&E-4.

<sup>83</sup> Fratini Reply Testimony, A3 at p. 3, PG&E Exhibit PG&E-6.

<sup>84</sup> Fratini Reply Testimony, A2 at pp. 1-2, PG&E Exhibit PG&E-6.

<sup>85</sup> Complainant's Opening Brief, at p. 21.

<sup>86</sup> Fratini Testimony, A43 at p. 46, PG&E Exhibit PG&E-3.

Complainant's Assertion <sup>23</sup>	PG&E's Reply and Supporting Evidence
	<p>3. Also in 2008, PG&amp;E at its own expense, commissioned a study with UC Davis to determine whether it was possible to develop a commercial fruit-bearing walnut tree which did not exceed 17 feet at natural maturity. Certain orchard growers agreed to act collectively to participate in the study. To date, two orchards test sites have failed – trees grew above 17 feet. It will take a few more years of testing before definitive conclusions can be drawn from the study.<sup>87</sup></p>
<p>16. PG&amp;E's trimming of trees below 12 feet or removal of trees violates the term of the easement<sup>88</sup> and PG&amp;E "never bargained or paid for property rights beyond those specified in the easement including the right to completely remove or destroy vegetation."<sup>89</sup></p>	<p>PG&amp;E disputes this assertion as follows:</p> <ol style="list-style-type: none"> <li>1. The terms of the easement clearly grant PG&amp;E the right to "cut or remove" trees growing in its easement and right of way.<sup>90</sup></li> <li>2. Complainant is judicially estopped from arguing that there are any measure distance limitations in the easement.<sup>91</sup></li> </ol>
<p>17. Complainant's orchards "cannot accommodate any trees other than walnut trees."<sup>92</sup></p>	<p>PG&amp;E disputes this assertion as follows:</p> <ol style="list-style-type: none"> <li>1. The area in which the Wilbur orchards are located support other agricultural growth<sup>93</sup>, and other growers are successfully growing vegetation other than walnuts in those parts of their walnut orchards in PG&amp;E's easements and rights-of-way.<sup>94</sup></li> </ol>

<sup>87</sup> Fratini Testimony, A31 at p. 18, PG&E Exhibit PG&E-3.

<sup>88</sup> Complainant's Opening Brief, at p. 10.

<sup>89</sup> Complainant's Opening Brief, at p. 20.

<sup>90</sup> Transmission line easement at p. 3, Exhibit PG&E-3, Sub-Exhibit 28; PG&E's Opening Brief Section IV.E.

<sup>91</sup> See, Reply Brief, Section IV.B.

<sup>92</sup> Complainant's Opening Brief, at pp. 11-12.

<sup>93</sup> Kelley Testimony, A24 at p. 13, PG&E Exhibit PG&E-5.

<sup>94</sup> Fratini Testimony, A29 at pp. 17-18, PG&E Exhibit PG&E-3; PG&E-3, Sub-Exhibit 26.

Complainant's Assertion <sup>23</sup>	PG&E's Reply and Supporting Evidence
	<p>2. Complainant himself currently farms compatible fruit trees (plum) in PG&amp;E's transmission easement and right-of-way.<sup>95</sup></p> <p>3. It was Complainant's decision to tear out a compatible growth orchard (plum trees) and replant with an incompatible growth (walnut trees) orchard.<sup>96</sup></p> <p>4. Before Complainant re-planted with the incompatible walnut trees in 2006, he was advised by PG&amp;E that it considered walnut trees a "future potential hazard" that PG&amp;E could remove "as an unreasonable interference to its easement rights."<sup>97</sup></p> <p>5. Knowing that his trees would require some level of trimming, Complainant could have aligned his orchard layout and irrigation system differently to isolate the sections under the transmission line so they could either be handled differently (water and fertilizer) or converted easily.</p> <p>6. Since 2005, PG&amp;E has taken many steps to educate the grower community that walnut trees are incompatible growth and that PG&amp;E was trimming to 7 feet in the belly zone or removing such trees.<sup>98</sup></p>

<sup>95</sup> Wilbur Testimony, Attachment A at p. 4, Complainant's Exhibit Wilbur-1.

<sup>96</sup> Wilbur Testimony, Attachment A at p. 6, Complainant's Exhibit Wilbur-1.

<sup>97</sup> Mussell Testimony, A5 at pp. 2-3, PG&E Exhibit PG&E-7; PG&E-3, Sub-Exhibit 33B.

<sup>98</sup> Fratini Testimony, A36 at p. 21, PG&E Exhibit PG&E-3.

### III. PG&E’S EASEMENT HAS BROAD LANGUAGE ALLOWING PG&E TO UNDERTAKE APPROPRIATE MAINTENANCE TO PROTECT ITS FACILITIES

#### A. PG&E Has Been Granted the Right to “Cut and Remove” Trees

As discussed more fully in PG&E’s Opening Brief, the pertinent portion of the easement is as follows:

The party of the second part, its successors and assigns, shall have the full right and liberty of using such right-of-way for all purposes connected with the construction, maintenance and use of said line of poles or towers, wires, conduits and other structures, provided however, *that all trees which the party of the second part is hereby authorized to cut and remove* shall, if valuable for either timber or wood, continue to be the property of the party of the first part, but all tops, lops brush and refuse wood or timber shall be burned by the party of the second part.

Complainant has totally ignored this granting language in his Opening Brief, which language directly contradicts his assertion that PG&E does not have the easement rights to remove vegetation growing in its right-of-way.<sup>99</sup> The easement also further provides that PG&E “in the enjoyment of the rights hereby granted shall avoid, *so far as it reasonably can,* interfering with the use by [Complainant] of such lands for mining, agricultural and other purposes.”<sup>100</sup>

This easement language makes it clear that the salient point is not, as Complainant posits, whether his farming practices are reasonable.<sup>101</sup> To the contrary, the language of the easement is

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<sup>99</sup> Complainant’s Opening Brief, at p. 10.

<sup>100</sup> Transmission line easement at p. 3, Exhibit PG&E-3, Sub-Exhibit 28.

<sup>101</sup> In so noting, PG&E disagrees that the farming of walnut trees (which have the admitted known genetic capability of reaching 30-50 feet) beneath transmission lines (which can sag to 27 feet) can be considered at any time a reasonable activity.

focused on the rights granted to PG&E. The issue, therefore, is whether PG&E's TVMP is reasonable in its trimming of incompatible walnut trees that threaten the safety and reliability of the transmission lines in the Wilbur right-of-way. The answer, of course, as set forth more fully here and in PG&E's Opening Brief, is: "Yes."

**B. Complainant Is Judicially Estopped From Taking the Position That the Easement Limits the Extent to Which PG&E Can Cut and Remove Trees**

PG&E does not take the position that the Commission cannot construe utility easements where appropriate.<sup>102</sup> Indeed, such action by the Commission has been judicially upheld.<sup>103</sup>

However, the procedural posture of this case is such that Complainant is judicially estopped from asserting that any language in the easement limits PG&E in its vegetation management, up to and

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<sup>102</sup> Nor does PG&E take the position that the Commission cannot issue injunctive relief where appropriate. In its Opening Brief, PG&E cited to *MCI Telecommunications Corporation v. Pacific Bell* 1995 Cal. PUC LEXIS 458 at \*25 wherein the Commission notes that its rule is "apparently more restrictive than the general rule set out in CCP §526 (a)(authorizing an injunction if any one of seven grounds is satisfied, including the threat of multiplicity of suits." (Attached hereto as Exhibit 10 to Reply Appendix A.) Complainant's Opening Brief (at page 4) cites to the Commission's Amicus Brief in the *Sarale* action wherein the Commission had stated that "it uses the same standard as California courts to decide if a TRO should be granted." This apparent distinction makes no difference to the analysis however, since the Commission confirmed that it examines the same four factors discussed in the MCI decision namely (1) irreparable injury to the moving party without the TRO; (2) no harm to the public interest; (3) no substantial harm to other interest parties; and (4) a likelihood of prevailing on the merits. As discussed in PG&E's Opening Brief in Section F, Complainant cannot satisfy these conditions precedent.

<sup>103</sup> See, e.g. *Camp Meeker Water System, Inc. v. Public Utilities Commission* (1990) 51 Cal.3d 845 (California Supreme Court upheld the Commission's finding that language in a 1951 transferring deed regarding water rights permitted the grantee to use any water sources necessary to replace springs no longer adequate and to develop water sources new water sources not in existence at the time of the original grant. Regarding the Commission's authority to interpret an easement grant, the Court held, "Further, a public utility may not dispose of any property necessary and useful in the performance of its duties without authorization by the commission. (§ 851.) While this section is most often applied to outright transfers of property, read together with the above sections which authorize the commission to require that a utility ensure its ability to provide adequate service, it unquestionably permits the commission to prevent disposal of such property by indirection, as by failure to exercise or safeguard rights possessed by the utility. [citation]Therefore, construction of the November 26, 1951, deed in reference to the transfer of the appurtenant Chenoweth parcel in order to determine CMWSI's rights to sources of water on the Chenoweth parcel was a necessary incident to the commission's consideration of CMWSI's application for an increase in its charges. The commission was obligated to determine if the claimed expense for leasing wells on the Chenoweth parcel was justified, and to ensure that CMWSI did not abandon or otherwise dispose of property in the form of easement rights necessary and useful to meet the present and future needs of its customers." (Attached hereto as Exhibit 4 to Reply Appendix A.)

including tree removal. As Complainant represented to the Court of Appeal, his sole issue is whether PG&E's trimming is permissible pursuant to Commission rules and regulations.

The Court in *Sarale et al. v. PG&E* (2010) 189 Cal.App.4th 225, 242 made clear that it had jurisdiction to adjudicate (1) whether a utility has an easement on a particular piece of property; and (2) whether the grant creating the easement specifies any unit measure distance limit on tree trimming. However, the Court also noted that:

***“[n]one of the plaintiffs in these cases base their claims on an allegation that PG&E trimmed trees beyond a distance measure set forth in a grant creating the utility easement... Wilbur conceded that he does not seek to challenge any trimming by PG&E that is mandated by the commission. Indeed Wilbur admitted that he could not bring such a suit. Instead, he seeks to challenge trimming by PG&E that is beyond the minimum clearances established by the commission, as well as beyond PG&E's historical tree trimming practices on his property.”***

(italics only (not emphasis) in original).<sup>104</sup>

Based on Complainant's acknowledgement that PG&E had not exceeded the grant of its easement, the Court deferred the dispute to the Commission as ***“[t]he question of whether trimming must exceed the minimum standards on any particular section of an overhead power line is a factual issue that is within the exclusive jurisdiction of the commission to decide.”***<sup>105</sup>

Since Complainant did not contest the scope of PG&E's easement rights in Court, and further

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<sup>104</sup> *Sarale et al. v. PG&E* (Sarale), (2010) 189 Cal.App.4th 225, 242. (Attached hereto as Exhibit 15 to Reply Appendix A.) Note that PG&E is not limited to “historical tree trimming practices” as Complainant claims. (See, e.g. *Faus v. Los Angeles* (1967) 67 Cal.2d 350 (right to substitute modern mechanisms of transportation for old ones under the deeds should be viewed in the light of its public effect; because the grantors primarily intended to provide public transportation service across their land, regular bus transportation along the roads which encompassed the rights of way effectuated the purpose of public service and permitted survival of the easements originally designated for rail use.)

<sup>105</sup> *Sarale*, at 242. (Emphasis supplied.) (Attached hereto as Exhibit 15 to Reply Appendix A.)

acknowledged that the sole issue is whether PG&E has exceeded Commission regulation, he is judicially estopped from taking a different position now.<sup>106</sup>

#### **IV. THE COMPLAINT SHOULD BE DISMISSED BECAUSE PG&E HAS VIOLATED NO STATUTE, RULE, REGULATION, ORDER OR DECISION**

##### **A. Complainant Concedes that PG&E Has Not Violated a Statute, Rule, Regulation or Order or Decision.**

This is a complaint proceeding. “In order to state a cognizable cause of action, a complaint must specify some law or regulation that the defendant has allegedly violated.”<sup>107</sup> <sup>108</sup> Complainant has failed to meet his burden. Not only has he not identified even one statute, rule or Commission order that PG&E has violated, he concedes the critical point by admitting that (1) “the Commission has never articulated to PG&E when it must stop trimming”; and (2) that “GO 95 does not recommend or mandate maximum clearances.”<sup>109</sup>

Since Complainant concedes and the facts prove that PG&E has not violated a statute, rule, regulation, order or decision, there is nothing to adjudicate. PG&E respectfully suggests that the Complaint against PG&E should be dismissed.<sup>110</sup>

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<sup>106</sup> Judicial estoppel applies when: “(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.” (*Aguilar v. Lerner* (2004) 32 Cal.4th 974, 986–987; see *Scripps Clinic v. Superior Court* (2003) 108 Cal.App.4th 917, 943; *Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 183.) (Attached hereto as Exhibits 1, 17, and 7 to Reply Appendix A.)

<sup>107</sup> *Yox v. PG&E*, 2012 Cal. PUC LEXIS 4 (Yox) \*6 (removal of trees that can grow tall enough to touch the power lines does not violate any state or federal law or regulation). (Attached hereto as Exhibit 21 to Reply Appendix A.)

<sup>108</sup> In a complaint proceeding, “a complainant must prove an alleged violation of a statute, rule or Commission order” and “[t]he complainant must meet his burden by a preponderance of the evidence.” *The Highway 68 Coalition v. California-American Water Co.*, 2011 Cal.PUC LEXIS 409 \*9, citing *Pacific Bell Telephone Co. dba AT&T California v. CBeyond Communications, Inc.*, 2008 Cal.PUC LEXIS 414 \*15. (Attached hereto as Exhibits 18 and 12 to Reply Appendix A). Pub. Util. Code § 1702.

<sup>109</sup> Complainant’s Opening Brief, at p. 18.

<sup>110</sup> Complainant asserts that the Commission must herein decide (a) whether PG&E’s vegetation management is within the scope of its easement (Complainant’s Opening Brief, at pp. 2, 20, 23); (b) set maximum time of trim

**B. Complainant Concedes that PG&E May Appropriately Achieve Clearances Greater than the Minimum Set Forth in Rule 35, Appendix E**

Complainant posits that “[i]f PG&E were to follow the letter of the law, they would trim the walnut trees to a 10 foot radial clearance “at time of trimming.”<sup>111</sup> Complainant further claims that PG&E is ignoring GO 95 and “seeks to trim beyond that which is allowed under [GO] 95.”<sup>112</sup> At the same time, Complainant concedes that (a) Appendix E provides that reasonable “vegetation management practices may make it advantageous to obtain greater clearance” than 10 feet;<sup>113</sup> and (b) that clearances at time of trim in excess of 10 feet “meets the CPUC Standard in both letter and spirit.”<sup>114</sup>

In short, Complainant does not dispute that PG&E may obtain more than the Appendix E guideline of a 10-foot clearance between vegetation and a 115 kV transmission line at time of trim. In fact, he argues that a 15-foot clearance at time of trim (*which itself exceeds the Appendix E guidelines*) would be appropriate.

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clearances (Complainant’s Opening Brief, at p. 18); and (c) define excessive trimming (Complainant’s Opening Brief, at p. 18). The scope of the easement is not properly before the Commission (*see* Section II.B. herein.) Nor is a Complaint proceeding the appropriate forum to set maximum clearances (*see* Section IV herein.) As to “excessive trimming”, the Commission has already held that “[e]xcessive trimming, if proven, would not violate any Commission order.” *Morgan v. PG&E* (Morgan), 1987 Cal. PUC LEXIS 239 \* 8. (Attached hereto as Exhibit 11 to Reply Appendix A.) Accordingly, all that is properly before the Commission is whether PG&E has violated any Commission rules or regulations.

<sup>111</sup> Complainant’s Opening Brief, at p. 19. PG&E notes that this position is inconsistent with Complainant’s admission that the Commission has never articulated any maximum limits on vegetation clearances.

<sup>112</sup> Complainant’s Opening Brief, at p. 18.

<sup>113</sup> Complainant’s Opening Brief, at p. 13.

<sup>114</sup> Complainant’s Opening Brief, at p. 13.

### C. Complainant Concedes that the Commission Has Declined to Set Maximum Time-of-Trim Clearances

The Commission has consistently declined, for a variety of reasons, to set a maximum time-of-trim clearance.<sup>115</sup> Rather, the guidance has been that utilities should use their best judgment in establishing appropriate clearances.<sup>116</sup> The Commission's past decisions not to set maximum time of trim clearances is consistent with other regulatory agencies such as FERC and CAISO, who similarly defer to the utility to use its best judgment, based on applicable regulation, industry best practices and utility experience to determine appropriate clearances at time of trim.<sup>117</sup> Complainant explicitly concedes that the "Commission's regulatory action with respect to vegetation management around power lines has always been limited to setting minimum clearances"<sup>118</sup> and that "General Order 95 does not recommend or mandate any maximum clearances".<sup>119</sup>

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<sup>115</sup> *Investigation on the Commission's own motion and Order to Show Cause to determine if San Diego Gas & Electric Company should be held in violation of the Commission's General Order 95 for failure to have exercised reasonable tree trimming practices and procedures*, 1997 Cal. PUC LEXIS 44, D.97-01-044 (January 23, 1997) (D.97-01-044, Tree Trimming OII), at \*22; *Bereczky v. Southern California Edison Company* (Bereczky), 1996 Cal. PUC LEXIS 246 at \*4-5 "Rule 35 as it is presently drafted, does not fix a maximum limit on the amount of trimming which a utility is permitted to do on easements under its power lines. The intent of the rule is to "insure adequate service and to secure safety to persons engaged in the construction, maintenance, operation or use of overhead electrical lines and to the public in general." GO 95, Rule 11. It must therefore be construed to fix a minimum, rather than a maximum, standard to effectuate the general safety and reliability purposes of GO 95. We disagree that the reasonableness language in Rule 35 should be construed as a safeguard for the individual property owner."; Morgan, at \*4 ("There is no statute or regulation which sets maximum separations. GO 95 requires a tree-trimming program but specifies the objectives to be achieved, not specific clearances." (Attached hereto as Exhibits 25, 3, and 11 to Reply Appendix A.)

<sup>116</sup> GO 95, Appendix E (2012); Decision Adopting Regulations to Reduce Fire Hazards Associated With Overhead Power Lines and Communication Facilities, D.12-01-032 (January 12, 2012) (D.12-01-032, Fire Safety OIR), Section 6.11.3. Discussion, at p. 105 "The proposed factors [to be considered by a utility] include line sag, vegetation trimming cycles, vegetation growth rates, and fire risk.. All of the factors are directly related to our public-safety goal of keeping high voltage conductors clear of vegetation." (Attached hereto as Exhibits 28 and 24 to Reply Appendix A.)

<sup>117</sup> See a fuller discussion of this in PG&E's Opening Brief at Section IV.B.4.

<sup>118</sup> Complainant's Opening Brief, at pp. 17-18.

<sup>119</sup> Complainant's Opening Brief, at p. 18.

Since Complainant concedes that: 1) PG&E has not violated a statute, rule, regulation, order or decision; 2) PG&E may obtain greater clearances than the Appendix E guidelines; and 3) the Commission has declined to state maximum clearances -- there is nothing further to adjudicate. PG&E respectfully suggests that the discussion can stop right here. The Complaint against PG&E should be dismissed because PG&E has violated no statute, rule, regulation, order or Commission decision.<sup>120</sup>

**V. THE COMPLAINT SHOULD BE DISMISSED BECAUSE PG&E'S TVMP REASONABLY REFLECTS UTILITY INDUSTRY ACCEPTED GOOD VEGETATION MANAGEMENT PRACTICE AND INDUSTRY EXPERIENCE**

**A. PG&E's TVMP Reasonably Reflects Industry Standards and Accepted Good Practice<sup>121</sup>**

Rule 31.1 of GO 95 states in pertinent part:

For all particulars not specified in these rules, design, construction and maintenance should be done in accordance with accepted good practice for the given local conditions known at the time by those responsible for the design, construction, or maintenance of [power] lines and equipment.

NOTE: The standard of accepted good practice should be applied on a case by case basis. For example, the application of "accepted good practice" may be aided by reference to any of the practices, methods, and acts engage in or approved by a significant portion of the relevant industry, or which may be expected to accomplish the desired result with regard to safety and reliability at a reasonable costs.

To establish that PG&E's TVMP is unreasonable, Complainant must establish that PG&E is not considering or following accepted good vegetation management practices in

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<sup>120</sup> Yox, at \*6 (removal of trees that can grow tall enough to touch the power lines does not violate any state or federal law or regulation). (Attached hereto as Exhibit 21 to Reply Appendix A.)

<sup>121</sup> See a fuller discussion of industry best practices in PG&E's Opening Brief at Section IV.D.

the electric utility industry.<sup>122</sup> *However, Complainant does not even mention utility industry standards and best practices.* He presents no testimony concerning utility vegetation management practices in California or any other location. He does not talk about American National Standards Institute (ANSI) Standard A300 (Part 7), a basic utility industry guidelines for vegetation management in transmission rights-of-way. He does not talk about the lessons that were learned by the utility industry from the East Coast blackout. He does not discuss recommendations coming from federal investigations into that blackout or the subsequent adoption of more aggressive transmission reliability standards. In addition, he ignores testimony about California's experiences with vegetation-related outages. In short, he offers no testimony about utility industry accepted good vegetation management practices at all.

On the other hand, PG&E has put into evidence pages of testimony concerning its vegetation management program and how it conforms to utility industry accepted good vegetation management practices.<sup>123</sup> Specifically and among other evidence presented, PG&E (as the entity responsible for the maintenance of the power lines) has considered the local conditions it knows to exist in walnut orchards – especially the aggressive growth of the walnut trees. Its studies, both formal and informal, have helped it determine the potential growth of walnut shoots as well as whether walnut trees can be pruned to stay under 17 feet.<sup>124</sup>

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<sup>122</sup> Complainant's expertise and experience as a *commercial grower* of walnut trees is simply not relevant to a discussion of utility industry vegetation management best practices.

<sup>123</sup> See PG&E's Opening Brief, Section IV.D. for a complete description of how PG&E meets accepted industry practice.

<sup>124</sup> Fratini Testimony, A31 at p. 18, PG&E Exhibit PG&E-3.

PG&E’s vegetation management program is considered to have numerous “best in class” attributes and is currently regarded as one of the best vegetation management programs in the nation.<sup>125</sup> Complainant has not established, and cannot, establish that PG&E’s TVMP does not conform to utility industry vegetation management accepted good practice.<sup>126</sup>

**B. PG&E’s TVMP Also Reasonably Considers the Factors Articulated by GO 95, Rule 35, Appendix E**

The Commission has recently explicitly stated that “[e]lectric utilities have *wide latitude* under Appendix E of GO 95 to exceed the minimum time-of-trim guidelines for fire-safety and service reliability purposes.”<sup>127</sup> Appendix E makes it clear that: “[*r*]easonable *vegetation management practices* may make it advantageous for the purposes of public safety or service reliability to obtain greater clearances than those listed below to ensure compliance until the next scheduled maintenance”.

Appendix E also states: “Each utility may determine and apply additional appropriate clearances beyond clearances listed below, which take into consideration various factors.”

Among the factors listed to be considered by the utility are:

- line operating voltage
- line sag
- planned maintenance cycles

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<sup>125</sup> Cieslewicz Testimony, A24 at p. 18, A38 at p. 30, PG&E Exhibit PG&E-4.

<sup>126</sup> Recall that the Commission has already ruled that *removal* of trees that can grow tall enough to reach the power lines is a reasonable method of vegetation management and is an industry best practice. (Yox, at \*5-6.) (Attached hereto as Exhibit 21 to Reply Appendix A.)

<sup>127</sup> D.12-01-032, Fire Safety OIR, Conclusion of Law 14 at p. 171. (Attached hereto as Exhibit 24 to Reply Appendix A.)

- location of vegetation within the span
- experience with particular species
- vegetation growth rate and characteristics
- vegetation management standards and best practices.<sup>128</sup>

In developing its TVMP for its orchard program, PG&E looked at all these factors and determined that a 20-foot clearance (measured from the conductor at maximum sag) at time of trim on an incompatible species growing in the belly zone of a 115 kV transmission line is a reasonable vegetation management practice to ensure system safety and reliability.<sup>129</sup>

For example, the *line operating voltage* here is a transmission voltage. If there was an outage on this line, a number of cities and a substantial number of customers would be affected. Also, PG&E has incorporated *line sag* into its program. Since 2005, it has used GO 95 minimum ground-to-line conductor clearances as a starting point for its orchard trimming program. PG&E has considered its *planned maintenance cycles* and, because it reduced its trim cycle from 4 to 1 year for orchards, it is able to prune the trees instead of removing them (assuming the trees do not encroach into minimum clearance distances with an annual trim).

PG&E has also considered its *experience with the particular species* involved here (walnut) and the *vegetation growth rate and characteristics* of walnut trees. Walnut trees are incompatible growth beneath transmission lines because they can grow as tall as 50-60 feet or more (versus the transmission line that may sag as low as 27 feet under GO 95) – unless they are restricted in their height. Once trimmed to restrict their height (and even if not trimmed to

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<sup>128</sup> GO 95, Appendix E (2012) and D.12-01-032, Fire Safety OIR, Section 6.11.3. Discussion, at p. 105. (Attached hereto as Exhibits 28 and 24 to Appendix A.)

<sup>129</sup> If the trees encroach into PG&E's 10 foot buffer "healthy safety margin" zone, PG&E's TVMP requires their removal.

restrict height), walnut trees can throw up shoots than can grow tall very quickly. There is no way to predict when and where such shoots will grow, nor in which tree or trees.<sup>130</sup> Finally, PG&E's own experiences in the orchards in its own service territory has demonstrated that walnut trees have and will grow into or otherwise pose a hazard to the transmission lines and that leaving trees taller at time of trim only increases that risk.<sup>131</sup>

There is nothing that Complainant has pointed to, or can point to, that establishes that PG&E's consideration and application of these factors was in any way unreasonable.

## **VI. THERE IS NO LEGAL OR FACTUAL BASIS FOR ASSERTING THAT CALIFORNIA RATEPAYERS SHOULD PAY FOR SPECIAL TREATMENT OF COMMERCIAL ORCHARDS**

Complainant asserts that PG&E and the California ratepayers should share the cost of his commercial activity by funding additional or "more frequent trimming".<sup>132</sup> While making this assertion, Complainant completely ignores the fact that his property is burdened by an easement that explicitly grants PG&E the right to "cut and remove" trees - a fact that renders the cited case, *Paterno v. State of California* (2003) 113 Cal.App.4<sup>th</sup> 998<sup>133</sup>, inapposite. *Paterno* is an inverse condemnation case, dealing with levee flooding. There was no easement of any kind on the property or involved in the dispute. The case is entirely irrelevant to a dispute where the land is burdened by a utility easement.

Further, Complainant ignores that fact that he has *chosen* to grow these incompatible trees in PG&E's right-of-way, in full view of high voltage power lines, for his own commercial

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<sup>130</sup> Kelley Testimony, A13 at pp. 9-10, A14 at p. 10.

<sup>131</sup> Fratini Testimony, A20 at p. 12, A23 at pp. 14-15, A24 at pp. 15-16.

<sup>132</sup> Complainant's Opening Brief, at p. 24. PG&E has provided testimony explaining that more frequent pruning poses additional risks. (Tankersley Testimony, A27 at pp. 27-28, PG&E Exhibit PG&E-1-P.)

<sup>133</sup> Attached hereto as Exhibit 14 to Reply Appendix A.

gain. He knows his property is burdened with the transmission line right-of-way that grants PG&E the right to “cut or remove” trees. He knows that the walnut trees he has planted will grow at least as tall as 30 feet tall – higher than the lowest sag of the power lines. He knows that the trees will have to be pruned at some level to protect the transmission lines. He knows that he could plant other types of compatible orchard trees under the transmission lines, which would not have to be utility pruned. In fact, Complainant was growing compatible plums on some portions of the transmission right-of-way; and he chose to re-plant his orchard with incompatible walnut trees at that location. In other orchard locations, he continues re-plant with incompatible walnut trees. With all this, he then expects that PG&E and its ratepayers should pay for additional and more frequent trimming of his incompatible trees.<sup>134</sup>

As to orchards generally, the inquiry cannot be focused on the commercial viability of the vegetation growing in a utility right-of-way. Although there can be and is an impact on growers like Mr. Wilbur, it must also be recognized that the Commission’s rules are not intended to be a safeguard for private interests.<sup>135</sup> Moreover, a commercial tree poses the same hazard to system safety and reliability as an ornamental tree.<sup>136</sup> Instead, the appropriate inquiry is whether PG&E’s development of its vegetation management program was reasonable, including its decision that a 20-foot clearance (measured from the conductor at maximum sag) at time of trim

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<sup>134</sup> Complainant’s Opening Brief p. 24.

<sup>135</sup> “We disagree that the reasonableness language in Rule 35 should be construed as a safeguard for the individual property owner.” Bereczky at \*4-5. (Attached hereto as Exhibit 3 to Reply Appendix A). Further, that is the reason why transmission operators negotiate and obtain explicit grants of easements and rights-of-way for their transmission facilities.

<sup>136</sup> Cieslewicz Testimony, A35 at p. 27, PG&E Exhibit PG&E-4.

provides a healthy safety margin and is more effective than a 10-foot clearance at time of trim in order to ensure the *safety and reliability of the grid*.<sup>137</sup>

There is no legal or equitable reason why PG&E and California ratepayers should have to incur additional costs to support Complainant's commercial activity -- particularly where, as here, the land can be and historically has been, commercially productive with other crops (as Complainant himself has been doing with plum trees under the transmission line.) Complainant's request for financial contribution from PG&E and California ratepayers, towards his commercial activity of choice, should be denied.

## **VII. THE COMMISSION NEED NOT, AND SHOULD NOT, DEFINE A MAXIMUM LIMIT TO VEGETATION MANAGEMENT**

The Commission has been very clear in every one of its applicable decisions that it intends to set *only* minimums for vegetation trimming. It has noted that "the question of appropriate tree-trimming standards has a broad reach" and that the issues involved are "complex and interrelated".<sup>138</sup> It has cited a number of very good reasons for setting only minimums, as fully discussed in PG&E's Opening Brief in Section IV.B. It has further recently stated that utilities should have "wide latitude" to exceed the minimums to ensure the safety and reliability of the power lines.<sup>139</sup>

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<sup>137</sup> "The intent of [Rule 35] is to 'insure adequate service and secure safety to persons engaged in the construction, maintenance, operation or use of overhead electrical conductors and to the public in general.' (GO 95, Rule 11.) It must therefore be construed to fix a minimum, rather than a maximum, standard to effectuate the general safety and reliability purposes of GO 95." *Bereczky* at \*4-5. (Emphasis supplied.) (Attached hereto as Exhibit 3 to Reply Appendix A).

<sup>138</sup> *Bereczky*, at \*7. (Attached hereto as Exhibit 3 to Reply Appendix A.)

<sup>139</sup> D.12-01-032, Fire Safety OIR, Conclusion of Law 14 at p. 171. (Attached hereto as Exhibit 24 to Reply Appendix A.)

However, Complainant here insists that the Commission “must now address the issue of where trimming should stop”.<sup>140</sup> Complainant claims (*without factual support*) that a fifteen foot clearance at time of trim is reasonable and further claims (*also without factual support*) that any clearances beyond that are “excessive”.<sup>141</sup> His claims are belied by the evidence found in his very own orchards. PG&E has been voluntarily trimming to a fifteen foot clearance from maximum sag (resulting in a 12 foot belly zone tree) for the four years that litigation has been pending. This level of trim simply does not work. PG&E has had to return to the orchards to do additional trims *two to three times a year* and has expended approximately \$90,000 in additional costs to do so.<sup>142</sup> It is not reasonable to expect PG&E to continue to do this (either in the Wilbur orchard, or in any other walnut orchard.)<sup>143</sup> The most reasonable approach, from a system safety and reliability standpoint, is the carefully crafted approach set forth in PG&E’s TVMP and PG&E should be allowed to continue to follow it.<sup>144</sup>

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<sup>140</sup> Complainant’s Opening Brief, at p. 18.

<sup>141</sup> Additionally, Mr. Wilbur seems to have changed the scope of relief sought. As set forth in his Complaint (¶H) and as confirmed in the Scoping Memo (¶3), Mr. Wilbur asked the Commission to enjoin PG&E from trimming walnut trees in PG&E’s easement and right-of-way to a height less than 12 feet. Now, Mr. Wilbur purports to change the relief sought to enjoining PG&E “from trimming claimant’s trees *beyond a 15 foot radius from the 115 kV lines*. (Complainant’s Opening Brief, p. 25) It is unclear if Wilbur means 15 feet from maximum sag or 15 feet radial clearance from the line at time of trim. As set forth more fully in PG&E’s Opening Brief, a radial clearance distance from the line is imprecise and poses substantial risks (due to line sag and sway), and is demonstrably inadequate to prevent outages (the walnut tree in the Bellota outage, for example, was radially trimmed to 15 feet and this proved to be insufficient.) As to 15 feet from maximum sag, PG&E has been trimming to this distance in the Wilbur orchard since 2008 and it has been insufficient to ensure system safety and reliability as PG&E has to return 2-3 times a year for additional trims.

<sup>142</sup> Fratini Testimony, A38 at p. 24, PG&E Exhibit PG&E-3.

<sup>143</sup>The Commission has made clear that the intent of Rule 35 is “to ensure adequate service and to secure safety” and that it therefore “*disagree[d] that the reasonableness language in Rule 35 should be construed as a safeguard for the individual property owner.*” Bereczky, at \*4-5. (Emphasis supplied.) (Attached hereto as Exhibit 3 to Reply Appendix A.)

<sup>144</sup> As noted in PG&E’s Response No. 1 in Appendix A to its Opening Brief and to be very clear, if PG&E is not successful in its attempts to accommodate the walnut growers and cannot maintain the 10-foot margin of safety clearance zone in the orchards by keeping trees no taller than 17 feet, the TVMP requires the removal of the orchard trees. The Commission has already ruled that removal of trees that can grow tall enough to reach the power lines is a reasonable method of vegetation management. (*Yox v. PG&E*, 2012 Cal. PUC LEXIS 4. (Attached hereto as Exhibit 21 to Reply Appendix A.)

PG&E respectfully suggests that the Commission need not, and should not, go down the path that Complainant suggests. Setting a maximum vegetation clearance would be inconsistent with its existing and well-established decisional authority and rules, contrary to federal regulatory policy and recommendations, in conflict with CAISO-adopted maintenance practices, disregarding the hard lessons learned in the East Coast blackout and other outages in California and elsewhere in the country, ignoring accepted good utility industry vegetation management practices, limiting the land rights PG&E has been granted to “cut and remove” trees on the Wilbur easements, second-guessing PG&E’s best professional judgment, determination and experience, and inappropriate for a complaint case ruling.

The scope of this proceeding is to decide whether to grant or deny Complainants’ request to prohibit PG&E from trimming the walnut trees in question to a height less than 12 feet. Before the Commission has to reach the question of how much trimming is too much, the Commission should first determine whether PG&E has violated an applicable statute, rule, regulation, order or Commission decision. As a second level of inquiry, the Commission could consider whether PG&E’s TVMP violates good utility vegetation management practice in the utility industry in light the national utility industry experience with vegetation-related outages. Complainant has provided no evidence to support either finding, and his Complaint should be dismissed.

#### **VIII. GOOD PUBLIC POLICY REQUIRES PRO-ACTIVE AND ROBUST VEGETATION MANAGEMENT PRACTICES FOR TRANSMISSION LINES**

As set forth herein, and in more detail in PG&E’s Opening Brief, there is a complex, intertwined structure of laws and regulations associated with transmission line vegetation management. There are the Commission’s own rules, regulations and decisions. There are

worker safety considerations and associated rules and regulations. There is CAISO's statutory responsibility to ensure that California's transmission grid operates efficiently and reliability, and the structure that was set up in the California codes and by CAISO (and approved by FERC) to accomplish this.<sup>145</sup> There is the fact that ratemaking for transmission lines (and hence the funding for any additional requirements that might be imposed on PG&E by the Commission) is performed by FERC, not the Commission.

There are the facts of the vegetation-related catastrophic 2003 East Coast blackout, the lessons learned and the recommendations coming out of that event, and the vegetation management reliability standards adopted at the federal level.<sup>146</sup> There is the activity of utilities all over the country, which are reviewing their transmission right-of-ways and acting to eliminate the risk to the transmission lines posed by incompatible vegetation. There are the numerous decisions being made by sister states supporting such activity.<sup>147</sup>

All of this information has informed PG&E's transmission vegetation management program. PG&E respectfully suggests that the Commission, likewise, should look to and consider this information and the complex overlap of vegetation management oversight before it makes any decision to curtail or weaken PG&E's vegetation management program.

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<sup>145</sup> As stated earlier, CAISO has expressed concern about Commission action that would conflict with the Transmission Control Agreement and the ISO's currently adopted inspection and maintenance standards that govern electric transmission facilities under the ISO's operational control. *Comments of the California Independent Operator System on the Phase 2 proposed decision of Commissioner Simon in Rulemaking 08-11-005* (R.08-11-005, CAISO Comments II), at p. 2. (PG&E Item 3 of which official notice was taken on June 25, 2012, attached hereto as Exhibit 27 to Reply Appendix A.)

<sup>146</sup> FERC has recommended that state and federal regulators coordinate "so that jurisdictional considerations do not impede effective vegetation management". FERC, *Utility Vegetation Management and Bulk Electric Reliability Report from the Federal Energy Regulatory Commission* (FERC Report) (September 7, 2004), at pp. 3-4, PG&E Exhibit PG&E-1-P, Sub-Exhibit 12.

<sup>147</sup> *Wimmer v. Ohio Edison*, Public Utilities Commission of Ohio, Case No. 09-777-EL-CSS. (PG&E Item 1 of which official notice was taken on June 25, 2012, attached hereto as Exhibit 20 to Reply Appendix A.)

Here, Complainant is asking the Commission to do just that – to *weaken* PG&E’s proven and responsible program that is currently in place to protect California’s electric grid. This request is inconsistent with the Commission’s mandate to ensure the safe, reliable and affordable transmission of electric power to California, it is inconsistent with the Commission’s oft-confirmed position that it will not set maximums for levels of tree trimming, and it is inconsistent with the Commission’s statement that utilities have “wide latitude” to exceed the time-of- trim guidelines in GO 95 Appendix E.<sup>148</sup>

That being said, there are several key public policy issues that should be part of the consideration before any change is even contemplated in the very clear Commission policy of *not* setting maximums and of allowing utilities “wide latitude” to exceed clearance guidelines:

1. Is an adjudicatory proceeding the appropriate place to make changes in existing rules and regulations?<sup>149</sup>
2. Since all applicable rules and regulations dictate only *minimum* vegetation clearances, what is the *specific* level of trim/clearance that PG&E must obtain at time of annual trim in walnut orchards like the Wilbur orchard?
3. If the Commission mandates a specific level of trim/clearance for trimming in walnut orchards, who would be responsible if an encroachment associated with that mandated (*decreased*) clearance between orchard trees and conductors leads to an outage/grid failure or worker injury?<sup>150</sup>

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<sup>148</sup> D.12-01-032, Fire Safety OIR, Conclusion of Law 14 at p. 171. (Attached hereto as Exhibit 24 to Reply Appendix A.)

<sup>149</sup> Bereczky, at \*7-8 (“The question of appropriate tree-trimming standards and practices has a broad reach, encompassing issues of worker safety, public safety, fire suppression, and environmental consequences, as well as those relating to individual property owners’ aesthetic values and property rights. These issues are complex and interrelated.” (Attached hereto as Exhibit 3 to Reply Appendix A.)

<sup>150</sup> As to utility responsibility, see, *Krongos v. Pacific Gas & Electric Company* (1992) 7 Cal.App.4th 387, 395-6 (where a utility constructs and maintains its lines in conformance with CPUC regulations and good engineering practices, there is no breach of duty of care as a matter of law). As to property owners’ responsibility, the Commission has stated that “if a property owner obstructs vegetation management, and there is a vegetation-related fire or other harm, we encourage the electric utilities...to seek compensation for any costs or liabilities they incur from the property owner.”); Fire Safety OIR, D.12-01-032, at p. 98. (Attached hereto as Exhibits 9 and 24 to Appendix A.)

4. If the Commission mandates changes in PG&E's program (which will require PG&E to maintain a "constant vigil"<sup>151</sup> over the 68,000 orchard trees in PG&E's service territory to ensure the trees do not encroach into the lines), how will those additional patrols, inspections and trims be funded?<sup>152</sup>

PG&E respectfully suggests that, after considering these thorny public policy issues, the prudent course is to affirm existing Commission rules, decisions and policy and to dismiss the Complaint. Further, affirming current policy also allows the Commission to act in concert and consistently with authorities at both the state and federal level that have considered and addressed this issue of utility vegetation management in transmission rights of way and supported more pro-active and robust industry practices. No matter how sympathetically one may regard the commercial interests of an individual grower, those commercial interests cannot take precedence over the most important responsibility that both utilities and the Commission have – which is to ensure the safety and service reliability of the transmission grid.

## **IX. CONCLUSION**

Complainant has requested the Commission to prohibit PG&E from trimming his walnut trees to a height of less than 12 feet. Complainant has the burden of proof in this adjudicatory proceeding, and he has failed to meet that burden. His request should be denied for two reasons.

First, Complainant has not shown, and cannot show, that PG&E violated any applicable rules, regulations, orders or decisions – which should be the primary inquiry of an adjudicatory proceeding. Rather, the evidence shows that PG&E's TVMP was developed specifically to comply with all existing rules and regulations (both state and federal) and that Commission

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<sup>151</sup> *Schauf v. Southern California Edison Co.* (1966) 243 Cal.App.2d 450, 463. (“[I]t is not reasonable to require a utility company to maintain a constant vigil to determine whether a public agency has placed a stop sign in a position which might later be claimed to be in such a position as to be obscured by a preexisting utility pole.”) (Attached hereto as Exhibit 16 to Appendix A.)

<sup>152</sup> It is FERC, not the Commission, that approves funding for transmission vegetation management activities. (Tankersley Testimony, A11 at pp. 9-10, PG&E Exhibit PG&E-1-P.)

decisional precedent specifically dictates that the Commission *not* set any maximum level of trimming.

Second, Complainant has not shown, and cannot show, that PG&E's TVMP is an unreasonable utility industry vegetation management practice. Rather, the evidence establishes that PG&E's TVMP incorporates utility best management practices and reflects industry vegetation management experience (including specific and continuing recommendations for more aggressive vegetation management at the federal level derivative of the nation's experience with the 2003 East Coast Blackout as well as PG&E's and California's own experience with vegetation related outages).

The Commission has made clear both in its rule-making procedures and its adjudicatory decisions that "reasonable vegetation practices may make it advantageous for the purpose of public safety or service reliability to obtain greater clearances" than the minimum guidelines provided by the Commission<sup>153</sup> and has further confirmed that a utility has "wide latitude" to exceed the minimum guidelines<sup>154</sup>. Since the Commission has expressly made provision for utilities to exceed the minimum, and since PG&E's program is based on applicable regulations and industry best standards, Complainant has not shown and cannot show that PG&E's development of its program to manage walnut trees (an incompatible species) growing in PG&E's rights-of-way in orchards like the Wilbur orchards is or was unreasonable.

It cannot be forgotten that just one non-compliant walnut tree in the Wilbur orchard has the potential to cause an outage that would adversely impact a number of cities and many

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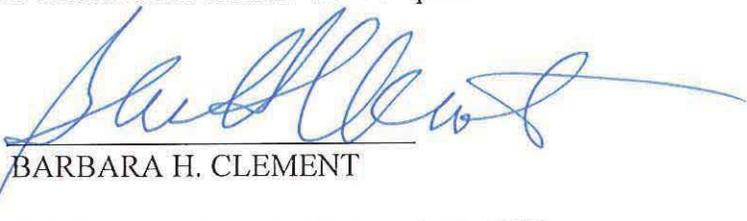
<sup>153</sup> GO 95, Rule 35, Appendix E, Guidelines. (Attached hereto as Exhibit 28 to Reply Appendix A.)

<sup>154</sup> D.12-01-032, Fire Safety OIR, Conclusion of Law 14 at p. 171. (Attached hereto as Exhibit 24 to Reply Appendix A.)

thousands of PG&E customers and/or pose a safety hazard to both orchard and vegetation management workers. PG&E respectfully requests that the Commission end this four-year legal odyssey and find (1) that PG&E has not violated any Commission rule, regulation, order or decision in connection with its vegetation management at the Wilbur orchard; and (2) that PG&E's TVMP is a reasonable program that is designed to ensure the safety and reliability of PG&E's transmission lines.

PG&E respectfully requests that the Commission dismiss the Complaint.<sup>155</sup>

Dated: July 10, 2012

By:   
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<sup>155</sup> Even if the Commission should make even a partial determination here in Complainants' favor, such determination should be applied only to future vegetation management activity. Commission decisions are generally not applied retroactively. Given PG&E's thoughtful development of its program and its conformance with all applicable rules and regulations, there would be and could be no basis for applying this decision retroactively. *See, e.g. Yucaipa Mobilehome Residents' Association v. Knollwood Mobilehome Estates*, Case No. 01-06-008, Decision No. 04-10-040, "Commission decisions generally apply on a prospective basis" and "any contemplated retroactive application of a proposed Commission decision would have been made explicit and would have been the subject of comments and briefing by the parties." (Attached hereto as Exhibit 22 to Reply Appendix A.)

*Wilbur v. Pacific Gas and Electric Company* (Case No. C.11-05-014)

Reply Appendix A (Exhibits 1-28)

Compendium of Authority (Including those cases cited in PG&E's  
Opening Brief)

Title of Case	Exhibit No.
<i>Aguilar v. Lerner</i> , (2004) 32 Cal.4th 974	1
<i>AT&amp;T Communications of California, Inc. et al., v. Verizon California, Inc.</i> , 2004 Cal. PUC LEXIS 478	2
<i>Berezky v. Southern California Edison Company</i> , 1996 Cal. PUC LEXIS 246	3
<i>Camp Meeker Water System, Inc. v. Public Utilities Commission</i> , (1990) 51 Cal.3d 845	4
<i>Corrigan et al v. Illuminating Co.</i> , (2009) 122 Ohio St.3d 265	5
<i>Faus v. Los Angeles</i> , (1967) 67 Cal.2d 350	6
<i>Jackson v. County of Los Angeles</i> , (1997) 60 Cal.App.4th 171	7
<i>Kerr Land &amp; Timber Co. v. R.H. Emmerson</i> (1965) 233 Cal.App.2d 200	8
<i>Krongos v. Pacific Gas &amp; Electric Company</i> (1992) 7 Cal.App.4th 387	9
<i>MCI Telecommunications Corporation v. Pacific Bell (MCI)</i> , 1995 Cal. PUC LEXIS 458	10
<i>Morgan v. PG&amp;E</i> , 1987 Cal. PUC LEXIS 239	11

Title of Case	Exhibit No.
<i>Pacific Bell Telephone Co. dba AT&amp;T California v. CBeyond Communications, Inc.</i> , 2008 Cal. PUC LEXIS 414	12
<i>Parsons v. Bristol Development Co.</i> , (1965) 62 Cal.2d 861	13
<i>Paterno v. State of California</i> , (2003) 113 Cal.App.4th 998	14
<i>Sarale et al v. Pacific Gas and Electric Company</i> (2010) 189 Cal.App.4th 225	15
<i>Schauf v. Southern California Edison Co.</i> (1966) 243 Cal. App. 2d 450	16
<i>Scripps Clinic v. Superior Court</i> , (2003) 108 Cal.App.4th 917	17
<i>The Highway 68 Coalition v. California-American Water Co.</i> , 2011 Cal. PUC LEXIS 409	18
<i>Westcom Long Distance, Inc. v. Pacific Bell</i> , 1994 Cal. PUC LEXIS 339	19
<i>Wimmer v. Ohio Edison</i> , Public Utilities Commission of Ohio, Case No. 09-777-EL-CSS <sup>156</sup>	20
<i>Yox v. PG&amp;E</i> , 2012 Cal. PUC LEXIS 4 <sup>157</sup>	21
<i>Yucaipa Mobilehome Residents' Association v. Knollwood Mobilehome Estates</i> , Case No. 01-06-008, Decision No. 04-10-040	22
<i>Order Instituting Investigation Into Southern California Edison Company's Electric Line Construction, Operation, and Maintenance Practices</i> , 2004 Cal. PUC LEXIS 207 (D.04-04-065, SCE OII)	23
<i>Decision Adopting Regulations to Reduce Fire Hazards Associated With Overhead Power Lines and Communication Facilities</i> , D.12-01-032 (January 12, 2012) <sup>158</sup>	24

<sup>156</sup> PG&E Item 1, of which official notice was taken on June 25, 2012.

<sup>157</sup> PG&E Item 5, of which official notice was taken on June 25, 2012.

<sup>158</sup> PG&E Item 4, of which official notice was taken on June 25, 2012.

Title of Case	Exhibit No.
<i>Investigation on the Commission's Own Motion and Order to Show Cause to determine if San Diego Gas &amp; Electric Company Should be Held in Violation of the Commission's General Order 95 for Failure to Have Exercised Reasonable Tree Trimming Practices and Procedures, 1997 Cal. PUC LEXIS 44, D.97-01-044 (Tree Trimming OII)</i>	25
<i>Reply Comments of the California Independent System Operator Corporation on CPSD's Proposed Rules in Phase I of Rulemaking 08-11-005, Specifically CPSD Proposal 2.A<sup>159</sup></i>	26
<i>Comments of the California Independent Operator System on the Phase 2 proposed decision of Commissioner Simon in Rulemaking 08-11-005<sup>160</sup></i>	27
<b>GO 95, Appendix E (2012)</b>	28

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<sup>159</sup> PG&E Item 2, of which official notice was taken on June 25, 2012.

<sup>160</sup> PG&E Item 3, of which official notice was taken on June 25, 2012.