

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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November 21, 2011

Agenda ID #10869
Adjudicatory

TO PARTIES OF RECORD IN CASE 11-04-014

This is the proposed decision of Administrative Law Judge (ALJ) Bemederfer. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Bemederfer at kjb@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:avs

Attachment

Decision PROPOSED DECISION OF ALJ BEMESDERFER (Mailed 11/21/2011)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Meredith Yox & Scott Yox,

Complainants,

vs.

Pacific Gas and Electric Company (U39E),

Defendant.

Case 11-04-014
(Filed April 20, 2011)

DECISION DISMISSING COMPLAINT

Summary

The basic issue for decision is whether, under the facts of this case, Defendant Pacific Gas and Electric Company (PG&E) has a legal obligation to trim rather than remove potentially dangerous trees from a transmission line easement on complainant's property. For the reasons given in the following discussion, the answer is "No." Accordingly this complaint fails to state a basis on which the requested relief may be granted and should be dismissed.

Discussion

Complainants are the owners of property in Orinda which is subject to an easement in favor of a 230 kilovolt (kV) transmission line operated by PG&E.¹ PG&E is legally responsible under both state and federal law for maintaining safe distances between the transmission line and vegetation on Complainant's property. Two birch trees are growing in the easement. PG&E proposes to remove them in order to eliminate the danger of contact between the trees and the transmission line. Such contact with vegetation has been responsible for serious fires and extended power failures in California and elsewhere in the United States in recent years.

Complainants contend that PG&E can provide an acceptably low risk of contact between the trees and the transmission line by trimming them. PG&E responds that the trees are an unacceptable fire hazard and removing them is the best way to ensure that they will not cause a fire.

PG&E's vegetation management practices are based on a matrix of federal and state standards including:

1. North American Electric Reliability Corporation (NERC) Reliability Standards for Vegetation Management, FAC-300-1.

¹ PG&E's Easement grants it the right "to use such right-of-way for all purposes connected with the construction, maintenance and use of said line, including the right to make and maintain the necessary clearance for the same."

The same document obligates the Grantor and its successors not to "do anything which may interfere with the full enjoyment by the Grantee of the rights hereby granted.

2. California Independent System Operator (CAISO) approved and enforced Transmission Owner Maintenance Practices, which included vegetation management requirements; and
3. CPUC General Order 95, Rules 35 and 37, and Appendix E.

The NERC Standards were adopted pursuant to a Congressional mandate in the 2005 Energy Policy Act (16 U.S.C. § 8240). That statute authorizes the Federal Energy Regulatory Commission (FERC) to certify an electric reliability organization to develop and enforce reliability standards for the electric energy transmission network. NERC is the agency certified by FERC to develop and enforce the transmission network reliability standards, which became mandatory in 2007.

Standard FAC-003-1 requires PG&E to prepare and keep current a formal Transmission Vegetation Management Program (TVMP). As a transmission owner, PG&E is in violation of this standard if: (a) any vegetation-related sustained outages occur; (b) if the “no-grow” minimum clearance zone is violated at any time; and (c) if PG&E fails to comply with its own required TVMP. Liability under these standards is absolute, that is to say, it is no defense to suit based on a vegetation-related sustained outage that PG&E trimmed trees to what it believed to be a reasonable distance from a transmission line. Penalties for violating the standard can run as high as \$1 million per day.

Although Standard FAC-300-1 does not contain an explicit statement of clearance distances from transmission lines, it endorses American National Standards Institute (ANSI) Standard A300 (Part 7) as an industry best practice. The ANSI Standard divides the area adjacent to a transmission line into a “Wire Zone” (effectively, the area where a power line could come in contact with vegetation either through upward growth of the vegetation or downward sag of

the power line or both) and a “Border Zone” in which such contact is not possible. The ANSI Standard specifies vegetation removal as an appropriate measure for the Wire Zone. PG&E’s TVMP adopts this best practice.

As shown on the photographs and drawings submitted by PG&E in its answer to the complaint, the birch trees in this case lie in the Wire Zone and are capable of growing to heights of 60-70 feet, well above the highest point of the existing transmission line. The line itself is subject to maximum sag of 11 feet from its normal height of 50 feet. Thus the trees need only reach a height of 39 feet (50 minus 11) to create a high likelihood of contact with the high voltage line. Nothing in the complaint contradicts the conclusion that, if left alone, the trees will grow tall enough to touch the transmission lines. Indeed, the complaint accepts that fact but seeks to have us mandate periodic tree trimming as opposed to tree removal as a way of dealing with it.

Neither CASIO regulations nor this Commission’s General Order (GO) 95 mandates tree trimming as an alternative to tree removal. For example, GO 95, while requiring a minimum distance of 10 feet from a 230 kV line at trim, does not set a maximum distance and recognizes that other measures may be necessary to ensure safety. As this Commission said in *Morgan v. PG&E* (1987) 25 CPUC 2d 393, “There is no statute or regulation which sets maximum separations. GO 95 requires a tree trimming program but specifies the object to be achieved, not specific clearances.” The “object to be achieved” is prevention of a fire caused by contact between the transmission line and the trees. By removing the trees, PG&E effectively ensures that object will be realized.

In short, removing trees from the Wire Zone that are capable of growing high enough to come in contact with the transmission line is a reasonable method

of vegetation management and fire prevention. Moreover, removal of trees under these circumstances does not violate any state or federal law or regulation.

In order to state a cognizable cause of action, a complaint must specify some law or regulation that the defendant has allegedly violated. No such violation has been alleged here because none exists. The property owners have an aesthetic preference for tree-trimming in place of tree removal. But that preference is not enough to support a claim of unlawful action by the utility.

Categorization and Need for Hearing

The Instruction to Answer filed on May 10, 2011 categorized this Complaint as adjudicatory as defined in Rule 1.3(a) and anticipated that this proceeding would require evidentiary hearings. Because the complaint fails to state a basis on which relief can be granted, this complaint must be dismissed. The evidentiary determination is changed to state that no evidentiary hearings are necessary.

Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Bemederfer in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Karl J. Bemederfer is the assigned ALJ in this proceeding.

Findings of Fact

1. The 230 kV transmission line is between 39 feet and 50 feet above the ground.

2. The birch trees lie in the Wire Zone of the transmission line.
3. The birch trees are capable of growing to heights of between 60 and 70 feet.
4. If left alone, the birch trees will touch the transmission line.

Conclusions of Law

1. Removal of trees in the Wire Zone that can grow tall enough to touch transmission lines is an industry best practice.
2. PG&E's Transmission Vegetation Management Plan incorporates this best practice.
3. No law or regulation requires PG&E to trim rather than remove such trees.
4. The complaint fails to state a basis on which relief may be granted and should be dismissed with prejudice.

O R D E R

Therefore, **IT IS ORDERED** that:

1. Case 11-04-014 is dismissed with prejudice.
2. The hearing determination is changed to no hearings necessary.
3. Case 11-04-014 is closed.

This order is effective today.

Dated _____, at San Francisco, California.