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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, Complainant, Vs. Pacific Gas and Electric Company (U39E), Defendant	Case No. C.11-05-014 Filed May 11, 2011

RICHARD G. WILBUR AS TRUSTEE FOR THE
RICHARD G. WILBUR REVOCABLE TRUST

OPPOSITION AND RESPONSE TO
PACIFIC GAS & ELECTRIC COMPANY'S MOTION TO FILE UNDER SEAL

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COMES NOW Complainant Richard G. Wilbur as Trustee for the Richard G. Wilbur Revocable Trust (hereinafter "Wilbur") and opposes and responds to Pacific Gas & Electric Company's (hereinafter "PG&E") Amended Motion To File Under Seal as follows:

1. The Documents Do Not Contain Confidential or Proprietary Information

PG&E agrees that the documents contained in Confidential Exhibits (CE) 2, 8 and 9 shall not be filed under seal and shall be made available to the public. Complainant notes that CE 2 was never confidential. In fact, CE 2 was submitted as a public document and was previously attached as an exhibit to the Declaration of Paul Maben submitted in the matter of Sarale et al. v. PG&E, Case No. C.11-06-024 on November 8, 2007. CE 2 is also included in the clerk's transcript (CT 458) in the Sarale matter. However, PG&E contends that certain documents responsive to requests made by ALJ Kenney at the July 8, 2011 Pre-Hearing Conference are confidential, and/or proprietary and/or contain critical infrastructure information. PG&E's contention is without merit. By the very definition of proprietary information, the documents cannot be characterized as such. Proprietary information is sensitive information that is owned by a company and which gives the company certain competitive advantages. When a regulatory public utility such as PG&E is a monopoly, it simply has no competitors. Therefore, there is no other entity that could use these documents for competitive advantage. Specifically, PG&E continues to assert that the following exhibits should be filed under seal:

Exhibit Number	Title
Exhibit CE 1	PG&E's Transmission Vegetation Management Program (TVPM)
Exhibit CE 3	PG&E's Transmission Owner Maintenance Practices
Exhibit CE 4	CAISO 2010 Maintenance Review
Exhibit CE 5	Compliance Audit Report, Confidential Non-Public Version, November 16-19, 2010
Exhibit CE 6	Engineering Drawings for Portion of Reconductoring Project Traversing Complainant's Property
Exhibit CE 7	Engineering Drawings for Single 115 kV Line Not Affected by Reconductoring Project

The documents are neither confidential nor proprietary. Rather, these two categories of documents deal with PG&E's overall vegetation management program, which directly affects and requires compliance by landowners such as Complainant, and energy infrastructure information. These documents do not place PG&E at any sort of competitive disadvantage.

Likewise, neither are PG&E's Transmission Owner Maintenance Practices (CE 3) and the 2010 CAISO Maintenance Review (CE 4) confidential and/or proprietary. PG&E's transmission maintenance practices which include its vegetation management program, which are approved and enforced by CAISO, directly affect landowners' rights to use of their property to the extent they are to comply with such practices. The TVMP has obvious and pronounced economic impact to landowners. Therefore, this information should be made known to landowners. There is nothing proprietary about this information that would place PG&E at a disadvantage vis-a-vis its "competitors" or the landowners with whose land use rights PG&E seeks to interfere.

Further, engineering drawings (CE 6 and 7) are not confidential and/or proprietary. The engineering drawings relate to the reconductoring project traversing Complainant's property. The drawings consist of a rendering of the written standards. There is nothing that is contained within these drawings which would place PG&E at a competitive disadvantage should they be disclosed.

The standards sought within these documents relate to practices conducted in public as to the trimming of vegetation. There is nothing "confidential" about them, nor are they "commercially sensitive." Considered in the light of public welfare, PG&E persistently argues vegetation management practices relate to public safety and grid reliability. The information is

not related to competition or trade secrets. Rather, it relates to the continued protection of the public and as such, the public has a right to the information.

2. Even if the Documents Requested Are Confidential and/or Proprietary and/or Critical Infrastructure Information, PG&E Has Waived This Privilege To the Extent It Has Already Disclosed These Documents

Even if the documents referenced are deemed confidential, PG&E has waived confidentiality on numerous occasions. PG&E's vegetation management program, which is approved by CAISO, requires citizen cooperation in compliance. In correspondence dated November 6, 2008 correspondence, published on CAISO's website and attached as Exhibit 18 to PG&E's written testimony, from CAISO to "All Californians," CAISO states that that transmission owners like PG&E must adhere to these standards and practices. (See Exhibit A to the Declaration of Lindsey E. Read) The letter further states,

> "This requires cooperation from affected landowners and governmental agencies to ensure that the transmission owners have access to the transmission facilities and nearby area to trim or remove vegetation, or perform other maintenance. CAISO requests all landowners and agencies to cooperate in allowing the performance of these maintenance standards and practices for the benefit of the CAISO transmission system and the entire State of California."

It would be implausible for a landowner to cooperate with such maintenance standards and practices of which it has no knowledge. Landowners have an interest in keeping apprised of such standards and practices which they are mandated to obey.

PG&E has published statements in letters and newspaper articles that their trimming practices are mandated by CAISO, and PG&E openly and publicly executes the exact vegetation management practices it claims are confidential. Any confidentiality was also waived because the very CAISO committee charged with approving the vegetation management practices consists of other TSO's. Therefore, there are no secrets. There can be no plausible way these practices can be confidential when other TSO committee members, the very individuals who

could be considered as competing, not only have access to, but read and approve PG&E's practices. In fact, committee members from Southern California Edison ("SCE") and San Diego Gas & Electric ("SDG&E") even suggested changes before the vegetation management practices were made final. (See Exhibit B to the Declaration of Lindsey E. Read) At the CAISO Transmission Maintenance Coordination Committee Meeting on April 15, 2004, PG&E's Manager of Vegetation Management Planning, Daran Santi, provided an overview of PG&E's TVMP performed in right-of-ways having transmission facilities that are operationally controlled by the CAISO. As committee meeting minutes indicate, "this was done to share program information and to possibly help share ideas to help mitigate the impacts of wild fires and their impact on major transmission corridors." Again, individuals from SCE and SDG&E were present. (See Exhibit B to the Declaration of Lindsey E. Read)

The lack of any trade secrets is also supported by the testimony of Stephen Cieslewicz, President and Chief Consultant of CN Utility Consulting ("CNUC"), submitted on behalf of PG&E. Mr. Cieslewicz testified in pertinent part:

> "A good portion of CNUC's work involves helping utility companies improve their vegetation management programs and activities. As part of this work we routinely direct our clients to specific utility companies that have demonstrated particular strength in developing and running a best-in-class vegetation management program. During the last decade we have most often suggested to our clients that they seek to emulate PG&E's program and activities. We based these recommendations on our understanding that PG&E has a history of continually improving upon industry practices and of generally meeting or exceeding the above-referenced program elements, and industry best practices."

By PG&E's own admission, it shares its vegetation maintenance practices for the specific purpose of being emulated by other utility companies. It is therefore completely untenable that PG&E can also claim such information is confidential and proprietary.

In addition to the above correspondence, PG&E has published statements in newspaper articles that the "excess and destructive trimming performed by it was mandated by CAISO." (See Exhibit C to the Declaration of Lindsey E. Read) PG&E claims that CAISO approved and required such "disastrous cuts," it is reasonable for the public including growers to see the rule which allows PG&E to cut and/or destroy walnut trees. PG&E has therefore, again waived any claim of confidentiality as to its vegetation management plan. PG&E further openly and publicly executes the practices it claims are confidential.

PG&E has further waived any claim it has that the documents requested are confidential and/or proprietary and/or critical infrastructure information through its own dissemination of some of these documents on its website. To the extent PG&E has already disclosed its transmission maintenance practices and vegetation management program, they have waived any privilege concerning the withholding of these documents.

Appendix A to PG&E's motion contains the titles of documents which comprise CE 1, specifically CE 1.1-1.30. Many of these documents are contained within this exhibit are already disclosed, in part, on PG&E's website. PG&E's Transmission Owner Maintenance Practices (CE 1.1) are published through "PG&E Transmission Owner Tariff FERC Electric Tariff Vol. 5." To the extent this information contains a description of methods used by a transmission owner and adopted by CAISO, this information has already been disclosed.

PG&E's website contains CE 1.2, CPUC General Order 95, Rule 35, Public Resource Code 4292 and 4293, which are part of CE 1.3. Next, the website contains information on pole marking and tagging, information that is also addressed in CE 1.10, CCMS and EPCM Tag Procedure; Description of Handheld Codes. The website also contains documents concerning CE 1.13 concerning palm procedures with a description entitled "Palm Trees Require Special

Consideration" and a diagram of "Palm and Power Lines." The website also contains documents regarding CE 1.16, Transmission Vegetation Outage Investigation Procedure. PG&E also publicizes information relating to CE 1.18 concerning migratory birds. Their website contains information on this subject including, but not limited to, their avian protection plan.

The website contains the North American Electric Reliability Council (NERC) standard FAC-003-1: Transmission Vegetation Management standard which requires utilities to take preventative action to reduce widespread outages caused by vegetation conflicts on transmission lines. The website also contains a document entitled "Transmission Rights of Way and Integrated Vegetation Management" and "High Voltage Transmission Power Lines and Orchards" concerning the topics contained in CE 1 and 1.22.

Documents concerning the Refusal Procedure as identified in CE 1.23 are also contained on the website in documents entitled "Your Rights and Responsibilities" and "Frequently Asked Questions" articulating a landowner's rights regarding tree pruning or pole clearing.

Additionally, the website contains documents regarding "Pole Clearing in Wilderness Areas", "Power Line Safety and Trees" and "Questions About Trees and Power Lines" which are on the topics of documents contained in CE 1.9 concerning transmission tree trimming and CE 1.28 concerning vegetation control work around poles and transmission towers. The website also addresses topics such as "Establishing Power: Line Construction and Vegetation" giving the public information on how to plant near a pole as well as "Pole Clearing Frequently Asked Questions." Finally, the website contained a natural resource guide entitled "How to Manage the Vegetation on Your Property" addressing the annual management and maintenance of vegetation, all which would be presumably encompassed within PG&E's vegetation management program and practices.

Finally, Complainant was already provided engineering drawings (CE 6-7) showing the location of the proposed new line as well as the tower heights. These were provided without any request for confidentiality at the time by Bender Rosenthal, Inc. or Mark Gibson. (See Exhibit D to the Declaration of Lindsey E. Read)

It is abundantly clear that a vast amount of information on the subjects identified in confidential exhibits have already been disclosed, at least in part, by PG&E to the public. To the extent that this disclosure has occurred, PG&E has waived any claim to a confidential and/or proprietary privilege.

3. <u>There is No Good Cause to Withhold the Documents Requested Under Seal</u>

PG&E cites Public Utilities Code § 583 and General Order 66-C as the governing law concerning the treatment of proprietary and confidential information. As to the applicability of Public Utilities Code § 583, the Commission in D.06-06-066, and as modified by D.07-05-032, held that this statute allows a public utility to initially submit documents under seal, but there is no statutory substantive right to confidential treatment. (D.06-06-066 as modified by D.07-05-032 at p. 26) The Commission stated,

> "[a] party has the right to submit relevant material under seal when it first submits it to the Commission. However, the material is not entitled to remain confidential forever based on the invocation of § 583. Rather, the affected party must accompany its records with a motion establishing the legal and factual basis for confidential treatment." (D.06-06-066 as modified by D.07-05-032 at p. 27).

The Commission further noted that,

> "[the] mere fact that a party invokes § 583 says nothing about whether a document contains trade secrets, is privileged, or is otherwise entitled to protection." (D.06-06-066 as modified by D.07-05-032 at p. 28) Moreover, as the Commission stated in its decision, "[N]othing in the statute addresses what types of records should and should not be confidential. . ." (D.06-06-066 as modified by D.07-05-032 at pp. 27-29).

The decisions provide further guidance in this area. The Commission placed the burden on the filing party, stating

> "[the] filing party shall bear the burden of proving that its information deserves [to be filed under seal]. Boilerplate assertions of a need for confidentiality are not appropriate. Rather, the producing party must cite the legal basis for confidential protection, along with the facts showing the consequences of release. It must show that aggregation, redaction, or other similar methods are inadequate to protect that data."

PG&E has not sustained its burden. Rather, their motion improperly insinuates that this burden rests with Complainant, stating numerous times throughout their motion that "Complainant has been unable to articulate any need for their disclosure to the public in general." (PG&E's Amended Motion to File Under Seal filed 04-04-12 at pp. 8 and 22)

The Commission's General Order 66-C implores a balancing test of the public's interest in withholding or disclosing such records. On balance, there is no public interest in withholding such disclosure. Conversely, there is a great public interest in the disclosure of documents that direct the vegetation management of landowners in this state.

Similarly, PG&E's reliance on California Evidence Code § 1040 for protection of its maintenance practices and TVMP is misplaced. Cal. Evid. Code § 1040 employs a balancing test giving the Commission the privilege to refuse to disclose official information where "it is against the public interest because there is a necessity for preserving the confidentiality that outweighs the necessity for disclosure in the interest of justice." Here, the public interest in PG&E's maintenance practices and TVMP is vast, warranting public disclosure.

The California Public Records Act ("CPRA"), codified in California Government Code § 6253, exemplifies legislative policy favoring public access. PG&E claims that it is exempt

from the CPRA and that it does not mandate disclosure of PG&E's maintenance practices or TVMP. In support of this, PG&E relies on Cal. Govt. Code § 6255 which states that:

> "the agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

Here, PG&E has not met this burden under the statute. PG&E has not justified, nor can they, that the documents in question are exempt from disclosure.

PG&E also cites Cal. Govt. Code § 5254(c) in support of withholding such documents. This contention is meritless. Cal. Govt. Code § 5254(c) exempts from disclosure "personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." The documents identified as having to do with an individual's personal privacy are those contained in CE 1.5, PG&E's qualification and training requirements. There is nothing invasive to personal privacy about mere qualifications or training requirements. PG&E has also not identified any individual whose personal privacy would be compromised with the disclosure of such records. Therefore, PG&E's reliance upon this statute is misplaced.

PG&E also claims it is exempt from disclosure under the CPRA pursuant to Cal. Govt. Code § 6254(k). This statute exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." As articulated above, PG&E's maintenance practices and TVMP are not protected under federal or state law. Rather, all landowners, not just Complainant, have a very specific interest in knowing their property rights and anything which may adversely impact those rights.

PG&E's reliance on federal law, specifically Federal Rule of Civil Procedure 26 (c)(1)(H) likewise does not support PG&E's claim that its maintenance practices, TVMP or WECC Audit Report are confidential. Federal Rule of Civil Procedure 26 (c)(1)(H) allows for the protection of "confidential research, development, or commercial information." PG&E provides no basis and fails to identify how, if even at all, its maintenance practices, TVMP or WECC Audit report consists of confidential research, development or commercial information. To the contrary, by its previous dissemination of such documents, PG&E has demonstrated a lack of confidentiality.

Landowners, such as Complainant, have a great interest in knowing what is expected of them concerning their orchards and in gaining a clear understanding of the measure by which PG&E proposes to affect their property rights. When PG&E's transmission lines are located on an individual landowner's property, that individual has an interest concerning the standards applicable to those transmission lines as they affect his or her property. It is inconceivable that PG&E can demand under color of law, cooperation by landowners and their compliance with maintenance practices while simultaneously denying those landowners copies of the rules it seeks to mandate they obey. When PG&E attempts to drastically change the methods in which trees have been trimmed for hundreds of years, a landowner has a great interest in keeping apprised of changes that will affect their land, orchards and land use rights. Moreover, by PG&E's own admission, it is not aware of any actual physical contact that has ever occurred between the transmission line conductors on the property and the walnut trees at the Wilbur orchard.

PG&E's transmission line practices as they relate to vegetation interference with electrical lines also directly affects landowners. As such, landowners have an interest in keeping

apprised of all standards which will govern tree trimming regulations. To the extent any reconductoring projects affect the scope of the existing easements as a byproduct of the clearance at time of trim and/or the voltage rating of the transmission line, that landowner also has an interest in keeping apprised of changes affecting their orchards and property.

PG&E, without any citation to the record, asks this Court to follow a decision made by ALJ Colbert in the matter of Sarale et al. v. PG&E pending before the Commission to accord protection of PG&E's maintenance practices and TVMP. It appears that this decision was made without any briefing. The specific circumstances of this case in relation to PG&E, the scope of the easement and application of PG&E's maintenance practices and TVMP require a detailed review of the particular documents in relation to the issues presented in this case.

Based on the foregoing, Complainant Wilbur respectfully requests PG&E's Amended Motion for Leave to File Confidential and Proprietary Materials Under Seal be denied in its entirety.

Dated: April 19, 2012

JONES & DYER

BY: /s/ Gregory F. Dyer
GREGORY F. DYER
Attorneys for Plaintiff Richard G. Wilbur as Trustee of the Richard G. Wilbur Revocable Trust