

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



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Order Instituting Rulemaking to Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities.

R.08-11-005
(Filed November 6, 2008)

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**REPLY BRIEF OF PACIFIC GAS AND ELECTRIC
COMPANY (U39E) RE PHASE 2 JOINT PARTIES'
WORKSHOP REPORT FOR WORKSHOPS HELD
JANUARY – JUNE 2010**

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SUMMARY OF RECOMMENDATIONS

Consensus Proposed Rules

Consensus Rule	App A Reference	Description of Proposed Change	PG&E's Comments
GO 95, Rule 18A Reporting of Safety Hazards	II.A, page A-2	The term “violation” is replaced with “nonconformance”.	Adopt
GO 95, Rule 18B Notification of Safety Hazards	II.B, page A-10	The rule (adopted in Phase 1 of the proceedings) is streamlined and clarified.	Adopt
GO 95, Rule 23.0 Definitions: Reconstruction	V, page A-27	“Reconstruction” includes a “change in grade of construction or class of circuit”.	Adopt
GO Rule 35, Paragraphs 1-3 Vegetation Management	III, page A-15	Rule applies to all lands, healthy trees or limbs that overhang lines need not be removed, and “strain” on a conductor is clarified.	Adopt
GO 95, Table 37, Table 1, Case 14 and footnotes (fff)-(jjj) Clearances in Extreme and Very High Fire Threat Zones in Southern California	IV, page A-20	Case 14 and footnotes (fff) - (jjj) no longer interim. Typos corrected.	Adopt
GO 95, Rules 44.1, 44.2, 44.3 Safety Factors	V, page A-27	Pole Loading Rules.	Adopt
GO 165, Sections I-IV Inspection Requirements for Electric Distribution and Transmission Facilities	VI, page A-34	The GO is streamlined and clarified.	Adopt

Multiple Alternative Proposals

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments
<u>MAP No. 1</u> GO 95, Rule 11 Purpose of Rules	II.A., page B-4	CPSD	Terms added and “electrical” deleted.	Adopt.
<u>MAP No. 1</u> GO 95, Rule 11 Purpose of Rules	II.B, page B-10	CIP Coalition	Does not delete “electrical”.	Do not adopt.
<u>AP No. 2</u> GO 95, Rule 12 Applicability of Rules	III.A, page B-16	CPSD	Apply to publicly-owned utility electric facilities.	Adopt.
<u>MAP No. 3</u> GO 95, Rule 18A Reporting and Resolution of Safety Hazards	IV.A., page B-23	CIP Coalition	Cleans up rule; keeps auditable maintenance programs and corrective actions.	Adopt.

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments
<u>MAP No. 3</u> GO 95, Rule 18A Reporting and Resolution of Safety Hazards	IV.B, page B-35	SDG&E	Same as CPSD, but correct within 12 months	Do not adopt.
<u>MAP No. 4</u> GO 95, Rule 18c Contingency Planning	V, A, page B-49	Mussey Grade	Contingency plans for high winds in high fire areas.	Do not adopt.
<u>MAP No. 5</u> GO 95, Rule 31.1 Design, Construction and Maintenance	VI.A, page B-58	Joint Electric Utilities	Utilities must comply with specific rules or "accepted good practice."	Adopt.
<u>MAP No. 6</u> GO 95, Rule 31.2 Inspection of Lines	VII.A, page B-67	CIP 1	CIP patrol/inspections in high fire areas.	Adopt, as 80.1
<u>MAP No. 6</u> GO 95, Rule 31.2 Inspection of Lines	VII.B., page B-76	CIP 2	CIP patrols (only) in high fire areas.	Do not adopt.
<u>MAP No. 6</u> GO 95, rules 31.2 and 80.1A Inspection of Lines; Inspection Requirements for Communications Lines	VII.C., page B-83	CPSD	All CIP lines patrolled and inspected	Neutral. Limit to Southern California and adopt as 80.1
<u>MAP No. 6</u> GO 95, rules 31.2 and 80.1 Inspection of Lines; Inspection Requirements for Communications Lines	VII.D, page B-94	SDG&E	Same as CPSD's proposal except CIP poles within three spans of electric poles and 5 years intervals in high fire areas in So California.	Neutral. Limit to Southern California and adopt as 80.1
<u>MAP No. 6</u> GO 95, Rule 80.1B Inspection Requirements for Communications Lines: Intrusive Inspections	VII.E, page B-103	CPSD	Intrusive inspections for CIP only poles close to electric power poles.	Adopt.
<u>MAP No. 7</u> GO 95, Rule 35 (paragraph 4) Vegetation Management	VII.A, page B-112	Joint Electric Utilities	OK to discontinue electric service for VM refusal.	Adopt.
<u>MAP No. 7</u> GO 95, Rule 35 (3 rd exception) Vegetation Management	VIII.B, page B-121	Joint Electric Utilities	Utility not responsible for consequences where VM refusal.	Adopt.
<u>MAP No. 8</u> GO 95, Rule 35, Appendix E (Table 1) Guidelines to Rule 35: Table: Voltage of Lines	IX.A, page B-132	Joint Electric Utilities	Increases clearance guidelines for high fire areas in So California.	Adopt.
<u>MAP No. 8</u> GO 95, Rule 35, Appendix E (Guidelines only) Guidelines to Rule 35	IX.B, page B-138	Joint Electric Utilities	Provides factors to be considered at time of VM trim.	Adopt.

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments
<u>MAP No. 8</u> GO 95, Rule 35, Appendix E (Guidelines only) Guidelines to Rule 35	IX.B, page B-144	Mussey Grade and Farm Bureau	Same except inappropriately adds “purposes” for guidelines and “tree crop production manuals” as a factor.	Do not adopt.
<u>MAP No. 9</u> GO 95, Rule 38 Footnote (aaa) Vertical Separation...	X.A., page B-151	Joint Electric Utilities	Footnote re vertical separation requirements.	Adopt.
<u>MAP No. 10</u> GO 95, Rule 44.4 Cooperation	XI.A., page B-158	CIP Coalition	Adds “cooperation” as rule.	Do not adopt.
<u>MAP No. 10</u> GO 95, Rule 44.4 and Appendix I Cooperation; Guidelines to Rule 44.4	XI.B, B-166	Joint Electric Utilities	Adds “cooperation” as guideline.	Adopt.
<u>MAP No. 11</u> GO 95, Rule 48 Ultimate Strength of Materials	XII.A., page B-175	Joint Electric Utilities	Removes “will not fail”.	Adopt.
<u>MAP No. 11</u> GO 95, Section IV Ordering Paragraph Strength Requirements for All Classes of Lines	XII.B., page B-181	CPSD	Technical review of GO 95, Section IV.	Adopt.
<u>MAP No. 12</u> GO 95, Rule 91.5 Marking	XIII.A, page B-187	SDG&E	Mark CIP facilities.	Do not adopt.
<u>MAP No. 13</u> GO 165, Section V Fire Incident Reporting and Data Collection Requirements	XIV.B, page B-194	Mussey Grade and CPSD	IOU collect fire incident data	Do not adopt.
<u>MAP No. 13</u> Ordering Paragraph Usefulness of Collection and Utilization of Fire-Related Data	XIV.A, page B-204	PG&E	Explore need for and usefulness of fire incident data collection.	Adopt.
<u>MAP No. 14</u> Ordering Paragraph Fire Maps	XV.A., page B-211	Mussey Grade and CPSD	Develop and review a statewide, utility-specific fire threat map.	Do not adopt.
<u>MAP No. 14</u> GO 95, Rule 31.2 Inspection of Lines: Fire Maps (CIP 1)	XV.B, page B-224	CIP Coalition 1	Use FRAP maps for So California and REAX maps for Central and Northern California	None.
<u>MAP No. 14</u> GO 95, Rule 31.2 Inspection of Lines: Fire Maps (CIP 2)	XV.C, page B-237	CIP Coalition 2	Use FRAP maps for Southern California and REAX maps for central and Northern California.	None.

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments
<u>MAP No. 15</u> Ordering Paragraph Cost Recovery	XVI.A, page B-246	TURN and DRA	Cost recovery in GRC.	Do not adopt.
<u>MAP No. 15</u> Ordering Paragraph Cost Recovery	XVI.B, page B-253	Joint Electric Utilities, PacifiCorp., Sierra Pacific and Small LECs	Costs recovery annually (Advice Letter or other process)	Adopt.

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JANUARY – JUNE 2010**

I. INTRODUCTION

Pacific Gas and Electric Company (PG&E) files this *Reply Brief* to issues raised in various parties' *Opening Briefs* re the *Phase 2 Joint Parties Workshop Report for Workshops Held January-June 2010* (Workshop Report) pursuant to Assigned Commissioner Timothy Simon's November 5, 2009 *Scoping Memo for Phase 2 of this Proceeding* (Scoping Memo) and Administrative Law Judge Kenney's May 7, 2010 *Ruling Granting Motion to Extend the Schedule for Phase 2*.

II. OVERARCHING PRINCIPLES AND ISSUES

A. The Standard for Adoption of a PRC is Whether the Justifications for the PRC Are Adequate, Not Whether There is "Record Evidence" to Support the PRC, as the CIPs Repeatedly Suggest

This is a quasi-legislative proceeding, not an adjudicative proceeding. The Communication Infrastructure Providers (CIPs) continue to focus on "record evidence" in the CIP Coalition *Opening Brief*, particularly in connection with the Exponent Report^{1/} and their oft-

^{1/} Larry W. Anderson, et al., Study to Assess Fire Risk Associated with Collocated Communications Equipment (Wired Telephone Lines and Wireless Equipment) with Utility Power Lines on Poles, Exponent

repeated point that there is no evidence “in the record” that establishes that CIP facilities pose a risk of fire.^{2/}

PG&E pointed out in its Opening Brief that the standard for adoption of a PRC is whether the justifications for the PRC were adequate, **not** whether there is “record evidence”.^{3/} This point is buttressed by ALJ Kenney’s September 1, 2010 e-mail ruling recognizing the existence and the contents of portions of the 2009 Victorian Bushfires Royal Commission Final Report offered by Mussey Grade Road Alliance (Mussey Grade) (but not the truth of all recitals therein). It is clear from that ruling that the Commission may and is inclined to consider anything that might inform the discussion and the proceeding.

The CIP Coalition’s position that “record evidence” is required is also inconsistent with the process used in the workshops for Phase 2 of this proceeding. No party requested an evidentiary hearing; rather, information was shared in the workshops in a spirit of cooperation and collaboration. The participants recognized that it was valuable to provide context for positions taken and to share information that might educate the participants and hopefully move them to a different perspective. The workshop participants informally agreed that there must be unanimous consent from the participants before any party could present information at the workshops. Invariably, there was no objection to a proposal to share information and a wide

Failure Analysis Associates, March 27, 2009 (Exponent Report), Attachment A to March 27, 2009 *Opening Comments of AT&T California and New Cingular Wireless PCS, LLC [on CPSP’s Propose Rules]*. Like other information that has been presented in workshops or as attachments to briefs, the Exponent Report was never the subject of an evidentiary hearing and was never tested through cross examination or other evidentiary rigor. Its information may be interesting and may inform in some ways the discussion, but it is not “evidence”.

^{2/} CIP Coalition *Opening Brief*, at pp. 17-19.

^{3/} PG&E *Opening Brief*, at p. 4-5.

variety of information was presented -- whether in the form of PowerPoint presentations, oral or written reports, photographs or simply discussions of procedures and practices.

There was one exception to that open, receptive and collaborative atmosphere at the workshops. Attempts by electric utilities to provide examples of problems with communications facilities (e.g., safety hazards caused by climbing space violations or vegetation straining the communications lines) were met with hostility from the CIPs. For example, on March 11, 2010, PG&E wanted to share a five-page PowerPoint presentation entitled, "Why Should CIPs Be Concerned about Trees?" This presentation provided information about and some photographs of vegetation impacting communications facilities, and provided support for the fact that vegetation getting into CIP facilities can create a fire risk. Some CIPs refused to allow the presentation at the workshop on the grounds that the presentation was "argumentative" and the information could not be cross-examined.

For the CIP Coalition to continue to argue at this late date that there is no "evidence in the record" that CIPs' facilities pose a fire risk is inconsistent with the fact that CIPs actually prevented PG&E from presenting or discussing information on that very subject in the workshops.^{4/}

The *Scoping Memo* required justifications and rationales for the adoption of PRCs, not "record evidence". There have been no evidentiary hearings in this proceeding, and there has been no "evidence" admitted in this proceeding. The CIPs insistence on "record evidence" should be disregarded.

^{4/} PG&E can provide a copy of the "Why Should CIPs Be Concerned about Trees?" presentation, if requested.

B. CPSD Should Not Get Automatic Approval of Its PRCs And Should Not Have A Veto Over Other Parties' Opinions or PRCs

The Commission's Consumer Protection and Safety Division (CPSD) made the argument that its PRCs and positions must be given "priority consideration". It has urged adoption of all of the proposals it sponsored or co-sponsored and the rejection of other PRCs as "detrimental to safety" and "merely designed to reduce the legal liability of the electric utilities and CIPs".^{5/}

"Priority consideration" should not mean that there is a blanket approval of CPSD's PRCs or that CPSD has a veto over the PRCs advanced by others. As to being given *priority* for its PRCs in the workshop discussions, that would have happened if priority was needed. The workshop participants and facilitators worked hard to ensure that all the PRCs were considered and voted on – whether rules proposed by CPSD or others. Had there been a situation where some PRCs could not be considered in the workshops, then certainly the CPSD proposals would have been given priority and would have been considered ahead of other proposals. That was not the case in these workshops; the participants managed to discuss and consider each and every proposal before them.

CPSD also makes the point that the adoption of any PRCs should not be based on "majority rules" voting by the workshop participants.^{6/} No party understood that the voting at the workshops (whether by majority rule or not) would determine the final outcome for the PRCs. In fact, the facilitators reminded the participants more than one time that it was the Commission who had the final say on the PRCs. However, the voting record is important and helpful in several ways. Most importantly, the voting determined whether there was consensus on a PRC. The fact that no party opposed a particular PRC should carry much weight and

^{5/} CPSD *Opening Brief*, at pp. 2-3.

^{6/} CPSD *Opening Brief*, at p. 5.

potentially even be determinative as to its ultimate public benefit and efficacy as a General Order or rule.

In addition, for PRCs where no consensus was achieved and which went to the Multiple Alternatives Process (MAP), the voting is useful for a number of reasons. It identifies: 1) the interests that were affected by the PRC (electrics, CIPs, municipalities, etc.); 2) how strongly certain participants feel about a PRC; 3) how many participants agreed with or opposed a PRC; and 4) in some cases, whether a participant or two were the only ones to support or oppose the PRC. The goal here should be to adopt workable and effective safety rules that can be efficiently implemented. While CPSD brings its public safety perspective to the table, and The Utility Reform Network (TURN) and Division of Ratepayer Advocates (DRA) bring their consumer and ratepayer advocacy to the table, the utilities bring their practical experience with implementing and operationalizing safety rules and procedures to the table – which is also very important.

All parties' perspectives are critical to adopting rules that achieve their goals and that can be successfully implemented. These perspectives should be considered.

III. THE CONSENSUS PRCS SHOULD BE ADOPTED TO IMPROVE FIRE SAFETY AND MITIGATE THE RISK OF CATASTROPHIC FIRES IN CALIFORNIA

PG&E endorses all of the consensus PRCs, and fervently hopes that they will be adopted. The parties worked hard to achieve consensus on these rules – rules they believe are fair, clear, implementable and, therefore, in the public interest. The consensus rules should be adopted.

IV. THE MAP PRCS SHOULD BE CAREFULLY SCRUTINIZED TO ENSURE THEY ARE HELPFUL, REALISTIC AND TAILORED TO ACHIEVE THE GOALS OF THIS FIRE SAFETY PROCEEDING

A. MAP NO. 5, GO 95, RULE 31.1 (DESIGN, CONSTRUCTION AND MAINTENANCE): The Proposed Changes Are Intended to Clarify the Commission's Expectations of Utilities and Entities Subject To Its Jurisdiction, Not Diminish Its Regulatory Authority

No party but CPSD opposes this PRC, which was proposed to address a problem being experienced by all the various regulated utilities (whether electric or CIP): the use by CPSD of the general safety mandates of GO 95, Rule 31.1 to find “violations”. CPSD as much as admits that its use of the rule is arbitrary when it states: “Rule 31.1 is used by the Commission’s enforcement staff to cite utilities for unsafe conditions *not covered* by the rules” (emphasis added).^{7/} CPSD’s arguments against this PRC are not persuasive and should be given no weight.

First, the fact that CPSD also uses other general rules in the same way to support arbitrary and capricious enforcement does not recommend the practice; rather, the Commission should use this opportunity to make it clear that it is most helpful if findings of “violations” are more specific and clear in all cases. Between the various General Orders and industry practices, there is sufficient authority to find a violation --- should the problem be significant.^{8/}

Second, CPSD is incorrect when it argues that this PRC falls outside the scope of this proceeding (fire safety mitigation). CPSD cited violations of Rule 31.1 in its investigations of the San Diego and Malibu fires; Rule 31.1 was clearly considered relevant to fire safety.

^{7/} CPSD *Opening Brief*, at p. 13.

^{8/} Often in audits, the CPSD will discuss a “concern” (which is not listed or viewed as a “violation”). PG&E suggests that this is the more appropriate way to bring a perceived but non-specific problem to the attention of a utility.

Third, this PRC has little to do with civil legal liability.^{9/} As noted above and in the rationale for this PRC in the Workshop Report, CPSD has cited violations of Rule 31.1 in audits as well as in incident investigations.^{10/} The PRC is addressing a regulatory problem, not one of civil liability.

Finally, adding some rigor to CPSD's enforcement activity indeed *does* have to do with improving safety. When it is not clear what standards utilities are being held to, it interferes with the effective allocation of resources to address the really significant problems. A utility may possibly unnecessarily "gold plate" a particular part of a system or add costly procedures trying to anticipate and avoid a condition that the CPSD *may* view as a violation of the general "make it safe" requirement of Rule 31.1. This means that such resources are being pulled away from perhaps more necessary and productive efforts that may have a much more positive effect on safety, such as additional maintenance of the system or improvement/replacement of existing infrastructure.

As discussed above, the Commission should carefully consider any rule that many parties endorse and no party (save one) opposes, before it refuses to adopt it.

B. MAP NO. 6, GO 95, RULE 31.2 (CIP INSPECTIONS): Inspections of CIP Facilities Are Necessary Because Those Facilities Can Pose a Risk of Fire

The CIP Coalition has repeatedly stated in their papers and at the workshops that communications facilities pose negligible fire risks. They argued against the need for any formalized inspection program in Phase 1, and now argue against the need for inspections outside of high fire hazard areas in this Phase. PG&E believes that communications facilities do

^{9/} PG&E understands the exclusion listed in the Scoping Memo of any PRC focused on reducing utilities legal liability to mean civil legal liability, not regulatory exposure (*Scoping Memo*, at p. 8.)

^{10/} *Workshop Report*, at p. B-6.

pose a risk of fire, and should be inspected. This proposition has support in at least a couple of ways.

First, CPSD has listed at least three ways in which communications facilities could pose a risk of fire when they share poles with electric power lines: 1) overloaded poles failing and bringing down electric lines; 2) sagging or low telecommunication conductors being snagged or hit and pulling on power lines or breaking electric power poles; and 3) pole top antennas falling into electric facilities.^{11/} All these scenarios could initiate an outage^{12/} or cause the electric lines to spark a fire.

Second, the CIPs' Exponent Report itself identified eight hazard scenarios involving collocated wired telephone lines that were ranked as high or moderate fire risks, and three hazard scenarios involving collocated wireless facilities that were ranked as moderate fire risks.^{13/} This information is consistent with the experience of electric utilities, which have seen outages and fire incidents associated with communications facilities.^{14/}

PG&E agrees with CPSD that CIP facilities should be regularly and thoroughly inspected using an auditable program involving both routine patrols and detailed inspections. PG&E has seen sufficient problems on those facilities to believe that such an inspection program is warranted. On the other hand, PG&E does not dispute that CIP facilities collocated with electric facilities (while posing a risk of fire) pose relatively less risk of fire than electric facilities, and

^{11/} CPSD *Opening Brief*, at p. 17.

^{12/} Outages are essentially "near misses" to a fire incident. PG&E attaches as **Exhibit A** a presentation that PG&E made to the OIR Workshop on March 10, 2010 entitled, "Outage Reduction = Fire Reduction".

^{13/} *Exponent Report*, at p. 30.

^{14/} As an example and focusing just on vegetation issues, PG&E has identified over 50 incidents just in the last 3 years where vegetation tangled with communications facilities (only). This contact with communications facilities then affected the adjacent electric power lines and caused both outages (which always have the potential for a fire) and three actual fires. PG&E can provide this information, if requested.

agrees with the CIP Coalition that the intervals for a CIP inspection program may not need to match exactly the inspection intervals used for electric facilities.^{15/}

What is important is to avoid as much as possible through an appropriate CIP facility inspection program the potential of a fire associated with problems with aerial communications facilities sharing space with electric power lines – problems that both electric power utilities and CIPs know can and do exist.

C. MAP NO. 7A, GO 95, RULE 35 PARAGRAPH 4 (VEGETATION MANAGMENT): PRC Re Discontinuance of Power to Enforce Regulatory Vegetation Management Clearances Should Be Adopted.

1. The Commission is the Appropriate Body to Determine The Reasonableness Of Vegetation Management Programs In California

In opposing the Joint Electric Utilities' Rule 35, Paragraph 4 PRC, the California Farm Bureau Federation (CFBF) makes an eloquent argument that the Commission would exceed its jurisdiction if this PRC were adopted. CFBF states that "the Commission has acknowledged it does not have jurisdiction to enforce rights conveyed by deeds to real property and must defer to the courts."^{16/} However, CFBF is not raising a property rights issue in its opposition -- CFBF actually acknowledges that landowners are subject to recorded easements for the power lines.^{17/}

^{15/} PG&E also notes the excellent point made by Los Angeles County (LA County) in support of intrusive testing of CIP poles about the safety aspects of poles that fail in high winds. LA County states: "Poles that fail during wind events can not only ignite fires, they can block egress and ingress of both evacuees and first responders, quickly turning a hazardous condition into a life threatening one." LA County *Revised Opening Brief*, at p. 6.

^{16/} CFBF *Opening Brief*, at pp.4-7.

^{17/} CFBF *Opening Brief*, at p.5. In power line easements, a utility's vegetation management rights are usually clearly spelled. A typical easement might grant PG&E: "...The full right and liberty of using such right of way for all purposes connected with the construction, maintenance and use of said lines of poles, or towers and wires, and shall also **have full right and liberty of cutting and clearing away all trees and brush** on either side of said center line whenever necessary or proper for the convenient use and enjoyment of the said line of towers and wires and right of way; provided, however, that all trees which [PG&E] is hereby authorized to cut and remove shall, if valuable for either timber or wood, continue to be the property of the first...(emphasis added).

Although the CFBF attempts to frame its opposition to the PRCs offered by the Joint Electric Utilities as a property rights dispute, its issue really has to do with the *reasonableness of the vegetation management program* that is being applied to the farm or orchard property pursuant to the utilities' documented land rights. The reasonableness of a vegetation management program is a matter over which the Commission has exclusive jurisdiction. As the Commission recently stated in an *Amicus Brief* to the Third Appellate District^{18/}, the Commission "has exclusive jurisdiction over public utilities, ...has established an identifiable broad and continuing supervisory and regulatory program to oversee utility vegetation management, [including] rules governing utility tree trimming practices"^{19/}, and "only the Commission can determine whether the trimming in question was reasonable within the spirit and intent of its own rules"^{20/}. In its *Amicus Brief*, the Commission also states: "While the Commission does not attempt to resolve property right disputes, the Commission will review easements as necessary to address issues within the Commission's jurisdiction."^{21/}

The CFBF is incorrect when it challenges the Commission's jurisdiction to adopt the proposed changes to Rule 35.^{22/}

^{18/} *Amicus Curiae Brief of the Public Utilities Commission of the State of California Upon Request of the Court of Appeal*, submitted May 17, 2010 in *Sarale v. PG&E* and *Wilbur v. PG&E* (Case No. C059873 consolidated with Case No. C060515) (Amicus Brief), attached to this Reply Brief as **Exhibit B**.

^{19/} *Amicus Brief*, at p. 4.

^{20/} *Amicus Brief*, at p. 18.

^{21/} *Amicus Brief*, footnote 4 at p. 4.

^{22/} Note that CPSD agrees that vegetation management decisions require a policy determination from the Commission. "Giving utilities the flexibility to obtain greater clearances than those listed in the table is a complicated, multifaceted issue which raises ratepayer, landowner, environmental, and global warming concerns, to name a few. This dispute between the utilities and property owners as to how much a utility may trim beyond the minimum clearances requires a policy determination from the Commission...", referring to MAP No. 8, GO 95, Rule 35 Appendix E proposed language changes. (*CPSD Opening Brief*, at p. 28.)

2. Some Parties Have Made Some Thoughtful Suggestions That PG&E is Willing To Consider Concerning Rule 35, Paragraph 4

While the CFBF was incorrect in its position challenging the Commission's jurisdiction over vegetation management programs, it did suggest a concept with which PG&E agrees. The CFBF supports a "speedy alternative to courts for resolution of disputes that arise between landowners and utilities over access to facilities for vegetation management".^{23/} The new vegetation management PRCs were advanced by the Joint Electric Utilities to address problems posed by the refusal customer. When a customer refuses appropriate vegetation management work, he/she puts the community at risk of outages, potential fires or even physical injury and exposes the utility to potential violations of the clearance requirements of the General Orders. The utilities need additional tools and support from the Commission to get this mandated work done and done responsibly.^{24/} It might be helpful to have some form of expedited process at the Commission for having those disputes heard and addressed quickly, perhaps via review by the CPSD staff.

In addition, TURN supported the adoption of Paragraph 4 "because it feels that vegetation management is important for the reduction of fire risk and that the actions of one customer may endanger the lives and property of their neighbors if they consistently prevent the electric utilities from performing their required vegetation management".^{25/} TURN then suggested that, if the Commission should adopt the PRC that allows utilities to discontinue power to a refusal customer, there should also be some additional changes made to electric tariff

^{23/} CFBF *Opening Brief*, at p. 9.

^{24/} Although sometimes local law enforcement or fire authorities will support the utilities in their vegetation management efforts with a refusal customer, there are instances when they are reluctant to do so without some written directive from a jurisdictional authority.

^{25/} TURN *Opening Brief*, at p. 3.

language to provide additional process that addresses notice, master meters and sensitive/vulnerable customers

PG&E believes that adding Paragraph 4 to Rule 35 should be sufficient. PG&E further thinks that the additional changes proposed by TURN as to notice, etc. are well-intentioned, but too prescriptive. However, PG&E has no problem with adding the specific Paragraph 4 language (that a utility can discontinue electric service at any location if it cannot inspect its facilities or there is an imminent threat of violation of required regulatory or statutory clearances) to its tariffs to ensure prompt and timely vegetation management at the refusal location.

D. MAP NO. 8, GO 95, RULE 35, APPENDIX E (Guidelines): A Listing of Factors That are Considered When Determining Appropriate Clearances At Time of Trim Will Be Helpful to Utilities

There are two PRCs that propose to supplement the Rule 35, Appendix E Guidelines with additional language that explains the factors that are considered when determining how much clearance to take at time of trim.^{26/} One PRC is proposed by Mussey Grade and CFBF^{27/}, and one PRC is proposed by the Joint Utilities^{28/}. PG&E has already listed the reasons why it opposes the Mussey Grade/CFBF PRC.^{29/} That PRC suggests additional phrases that create more problems than they solve.

When considering these two PRCs, there is one important point to remember. While there is disagreement between the two PRCs on the extent of the needed changes, both PRCs

^{26/} “Each utility may determine and apply additional appropriate clearances beyond clearances listed below, which take into consideration various factors, including: line operating voltage, length of span, line sag, planned maintenance cycles, location of vegetation within the span, species type, experience with particular species, vegetation growth rate and characteristics, vegetation management standards and best practices, local climate, elevation and fire risk.” Proposed new language for Rule 35, Appendix E by Joint Electric Utilities (*Workshop Report*, at p. B-18).

^{27/} *Workshop Report*, at pp. B-138-143.

^{28/} *Workshop Report*, at pp. B-144-149.

^{29/} *Workshop Report*, at p. 148 and PG&E *Opening Brief*, at pp. 12-14.

recognize the need to provide more information to explain the vegetation management practices of the utility. Further, both received either a neutral or “yes” from CPSD, DRA and TURN.^{30/}

Although the two PRCs are not that far apart, the Joint Electric Utilities’ version is preferable and should be adopted.^{31/}

E. MAP NO. 13, GENERAL ORDER 165, SECTION V (DATA COLLECTION): Mussey Grade/CPSD’s Data Collection Proposal Should Not be Adopted or, in the Alternative, CPSD Should be Ordered to Confer with the IOUs About the Usefulness of Such Data

PG&E has thoroughly addressed this PRC in the Workshop Report.^{32/} It would like to follow up on a point made by TURN about this request. TURN states that it “understands the value of having data for analytical and preventative purposes. At the same time, however, TURN shares the concerns voiced by opponents of this rule...about the cost to ratepayers, both due to data collection costs as well as litigation costs.”^{33/}

The simple point to be made is that it costs money to respond to requests from the Commission for information or data. It costs the Commission money – because it then has to do something with the information or data. It costs the utilities money because the utility must expend time and resources to provide the data and respond to questions about the data. PG&E recognizes and agrees that much of the information or data requested by the Commission is

^{30/} For additional information on the various factors considered when determining appropriate clearances, PG&E attaches as **Exhibit C** a presentation that PG&E made in Phase 1, entitled, “Required Minimum Clearances: Only a Starting Point for a Responsible and Reasonable VM Program”.

^{31/} At least three parties (CPSD, LA County and Mussey Grade) have mentioned “aesthetics” as a concern related to the amount of clearances obtained by utilities when doing vegetation management. Although PG&E arborists and foresters are extremely knowledgeable about trees and require that work be performed carefully on the vegetation near power lines, utility tree trimming is not about aesthetics. It is about keeping the trees and other vegetation away from power lines to prevent outages, fires and protect public and worker safety.

^{32/} *Workshop Report*, at pp. B-199-201.

^{33/} *TURN Opening Brief*, at p. 10.

important and required for the Commission to fulfill its responsibility as a regulator. However, it is in everyone's interest to make sure that this process of providing and using information is as efficient and productive as possible. PG&E believes TURN's concerns about costs are entirely justified.

CPSD has noted that it recently obtained funding to create and manage a database to help track safety audits and other safety-related incidents.^{34/} PG&E suggests that it might make good sense to get the database up and running for its original purposes (handling safety audits and incident data) and fully developing that data before expanding into additional data collection or uses.

As previously noted in its Workshop Report remarks^{35/} and in its *Opening Brief*^{36/}, PG&E used to report vegetation-related fire incidents to the Commission.^{37/} However, after a number of years of reporting this information, the Commission agreed with PG&E that those reports should be discontinued because no use was being made of the information being provided. The amount of data that CPSD now wants collected includes not only vegetation-related fires but also equipment-related fires (big or small), an amount of data that is admittedly at least twice the amount of data that was reported in the past for vegetation-related fires.^{38/}

Further, PG&E has just learned that Cal Fire is planning to improve its power line fire incident/information by developing a database that will identify root/contributory causes and

^{34/} CPSD *Opening Brief*, at p.32.

^{35/} *Workshop Report*, at p. B-200.

^{36/} PG&E *Opening Brief*, at p.16.

^{37/} PG&E reported an average of 75 vegetation-related fire incidents each year, big or small.

^{38/} CPSD *Opening Brief*, at p. 32.

record much more detail for all fires.^{39/} (This information is currently captured in Cal Fire investigations and reports but has not in the past been recorded in a database.) The detail to be captured would include the specific instrumentality of the fire, such as specific type of equipment involved, among other details. This database would cover all fires, not just power line fires, which will provide important context to such data.^{40/} If Cal Fire is working on a new database to add to its already significant fire data capability, it makes even less sense for the CPSD to start one from scratch.

Given the facts that: 1) the CPSD is just getting started on its new database; 2) it will take time to populate CPSD's new database with audits and incident report information; 3) there is a recent history of a unproductive similar data collection effort; and 4) Cal Fire seems to be poised to improve its fire data capability with a database very similar to what is being proposed in this PRC, PG&E is understandably opposed to expending anyone's resources on the work that this PRC would require at this time.

However, as an alternative to the Mussey Grade/CPSD MAP PRC, PG&E in its own MAP PRC as proposed an Ordering Paragraph that would continue this discussion about the collection of fire incident data.^{41/} If, down the road, it is determined that Cal Fire's new database will not be helpful and, alternatively, fire incident data collection by the CPSD will help improve

^{39/} Attached as **Exhibit D** to this *Reply Brief* are excerpted pages from a presentation given by Cal Fire on September 16, 2010 which mention this new database.

^{40/} The *Exponent Report* notes that fire caused by "power lines" are a small fraction (2%) of wildland fires in California, and that the number of power line wildland fires is trending down, having decreased from a 6% share in 1998. (*Exponent Report*, at p. 22.)

^{41/} *Workshop Report*, at p. B-204.

the public safety associated with fire incidents, then that is the time to request an Order – which request can be made through the Resolution process as was done with incident reporting.^{42/}

PG&E strongly opposes the adoption of the CPSD and Mussey Grade PRC on data collection.

F. MAP NO. 15, ORDERING PARAGRAPH (COST RECOVERY): The Commission Should Provide That Costs Associated With Any Changes In The Rules Be Recovered Through More Frequent Mechanisms Than General Rate Cases

1. Contrary to TURN and DRA’s Assertions, D.09-08-029 Does NOT Suggest or Require Costs to be Recovered in the General Rate Case.

Both DRA and TURN cite D.09-08-029 for the proposition that costs associated with implementing rules adopted in this proceeding should be recovered in the utilities’ GRC.^{43/} DRA goes even further to state that D.09-08-029 *requires* the GRC to be the forum for cost recovery.^{44/} However, nowhere in D.09-08-029 does the Commission refer to the GRC as the appropriate forum for recovering implementation costs. It specifically leaves open the question of where costs should be recovered for Phase 2. “We will decide the appropriate forum for seeking recovery of these costs in phase 2.”^{45/} It is difficult to understand how DRA determined from this language that D.09-08-029 contained a “requirement” that the GRC be the forum for recovery.^{46/}

^{42/} Further, it is inappropriate to order such data collection in the General Orders in general, and GO 165 in particular. GO 165 is entirely the wrong place to put such a rule -- since it covers electric maintenance patrols and inspections and the correction of non-conforming conditions. It has nothing whatsoever to do with the reporting of fire incidents. The correct model may be the use of a Resolution as was done for the incident reporting process, currently required by *Resolution* E-4184.

^{43/} TURN, Opening Brief, pp 12-13; DRA, Opening Brief, pp. 5-6.

^{44/} DRA, Opening Brief, p. 6.

^{45/} D.09-08-020, at, p. 43.

^{46/} DRA, Opening Brief, p. 6.

2. The GRC is The Least Appropriate Mechanism To Review The Reasonableness Of Costs Already Incurred

The general rate case is a large, complex proceeding that is focused on forecasting activities and costs that the utility expects to incur at least two years out into the future. To add a reasonableness review to this forward-looking case would only add to its complexity. More importantly, the GRC, which is only held every three or more years, is a long process that would substantially delay cost recovery. Considering the three year lag between the recorded base year and the forecast test year in GRCs, for PG&E fire hazard prevention costs incurred in 2010 and 2011 would not be recovered until 2014, costs incurred in 2012, 2013 and 2014 would not be recovered until 2017. Although DRA and TURN propose that cost recovery should take place in a GRC,^{47/} there are no operating and maintenance costs recovered in a GRC on a recorded basis, and no balancing accounts are reviewed as part of a GRC. As such, the GRC is not the most appropriate mechanism to review the reasonableness of costs. Indeed, it is probably the least appropriate given its scope and infrequency. PG&E urges the Commission to adopt a cost recovery mechanism that will timely return funds reasonably expended to implement the Phase 1 and 2 rule changes in this proceeding in an appropriate annual cost recovery vehicle as requested by the Joint Electric Utilities and the Small LECs.

3. The Commission Should Adopt an Annual Advice Letter Cost Recovery Mechanism for Costs under \$5 Million; For Costs Over \$5 Million, PG&E Will Seek Recovery Through an Application Process.

TURN's and DRA's primary objection to the Joint Electric Utilities' proposal is the use of an advice letter process to seek recovery of costs, rather than an application, claiming that an advice letter process does not allow adequate review of a utility's showing. While PG&E maintains that Tier 3 Advice Letters provide parties with ample opportunity to challenge the cost

^{47/} DRA, Opening Brief, at p. 3 and TURN, Opening Brief, p. 12.

recovery showing,^{48/} PG&E proposes a tiered approach to cost recovery that would address TURN and DRA's concerns for adequate review, and address the utilities' concern for timely resolution of cost recovery requests.^{49/}

PG&E recommends a recovery mechanism that is loosely modeled after the process adopted for the Commission's Public Utilities Code Section 851 Pilot Program.^{50/} Pursuant to that program, transactions valued at \$5 million or less may use an advice letter process for approval, while transactions valued at more than \$5 million must file a complete application for Commission approval of the transaction.^{51/}

The Commission should adopt a similar approach here for the electric utilities. Specifically, the annual advice letter process proposed by the regulated utilities would be used where the balance in the Fire Hazard Prevention Memorandum Account (FHPMA) is \$5 million or less; and where the utility seeks to recover a balance greater than \$5 million, it would do so through the Commission's formal application process. From a resource perspective, it makes sense to expend more resources evaluating recovery of larger costs than smaller costs. This reasoning underlies the Commission's 851 Pilot Program, and makes sense to apply here.

^{48/} Tier 3 Advice Letter filings provide for audit review by the Industry Division of the Commission, as well as protest opportunities by all parties. See General Order 96-B for a full description of the review process.

^{49/} PG&E believes that SCE will make a similar suggestion in its Reply Brief.

^{50/} This pilot program was adopted August 30, 2005 and has been working smoothly ever since to make CPUC actions on Section 851 filings more efficient and timely. See Resolution ALJ-186, renewed and superseded on August 23, 2007 by Resolution ALJ-202, and then on March 2, 2010 by Resolution ALJ-244. The CPUC is now considering making this successful pilot program permanent. See also PU Code § 851, which requires public utilities to obtain prior authorization from the Commission before selling, leasing, assigning or otherwise disposing of or encumbering utility property.

^{51/} An application is also required in the rare instance in which the transaction requires CPUC environmental review as a lead agency under the California Environmental Quality Act (CEQA). See Resolution ALJ-244 and P.U. Code Section 853(d)..

Thus, PG&E requests approval of the following process:

Provide PG&E with the opportunity to recover the reasonable costs prudently incurred in R.08-11-005 and tracked within PG&E's FHPMA.

If the FHPMA balance is less than \$5 million, allow PG&E to file a Tier 3 Advice Letter seeking recovery of the costs. Once approved, allow PG&E to recover these costs through PG&E's annual revenue requirement and rate consolidation process (i.e. Annual Electric True-Up filing).

If the FHPMA balance is greater than \$5 million, PG&E will seek recovery of the costs recorded in the FHPMA through an application.

The Commission's decision in this Rulemaking should also allow each of the other IOUs a similar recovery mechanism.

V. CONCLUSION

PG&E urges the Commission to adopt all the consensus rules listed in Appendix A to the *Workshop Report*. As to the MAP PRCs, PG&E urges the Commission to keep its attention focused on those rules that can make a substantial difference in mitigating the risk of catastrophic fires in California.

Finally, the Commission has acknowledged that there should be an appropriate and fair cost recovery mechanism adopted for any additional requirements imposed by new rules or rules changes. PG&E hopes that the Commission agrees that a GRC is NOT the appropriate mechanism for the recovery of costs associated with the implementation of the new or revised

rules associated with this proceeding, and urges the Commission to approve the Joint Electric Utilities PRC that provides for timely and reasonable cost recovery as discussed above.

Respectfully Submitted,

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Attorneys for
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Dated: September 17, 2010

VERIFICATION

I, the undersigned, say:

I am an officer for PACIFIC GAS AND ELECTRIC COMPANY, a corporation, am authorized pursuant to Code of Civil Procedure Section 446 and Rule 1.11 of the Commission's Rules of Practice and Procedure to make this verification for and on behalf of said corporation, and I make this verification for that reason.

I have read the foregoing "**REPLY BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY (U39E) ON PHASE 2 JOINT PARTIES' WORKSHOP REPORT FOR WORKSHOPS HELD JANUARY – JUNE 2010**" and am informed and believe that the matters therein are true, and on that ground I allege that the matters stated herein are true.

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

Executed at San Francisco, California, this 17th day of September, 2010.

/s/

Placido J. Martinez
Vice President, Asset Strategy, Planning and
Engineering
Pacific Gas and Electric Company
245 Market Street, #1064
Tele: (415) 973-9005
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CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, Post Office Box 7442, San Francisco, CA 94120.

On the **22nd day of September, 2010** I served a true copy of:

**REPLY BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) RE PHASE 2
JOINT PARTIES' WORKSHOP REPORT FOR WORKSHOPS HELD JANUARY –
JUNE 2010**

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service lists for **R.08-11-005** with an e-mail address.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service lists for **R.08-11-005** without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 22, 2010, at San Francisco, California.

/s/
JENNIFER S. NEWMAN

Exhibits

EXHIBIT A

Outage Reduction = Fire Reduction



A Targeted Approach at Specific Locations

- ❑ Analysis of the specific outage conditions within each zone is done first.
 - Tree species: i.e. tan oaks failing at greater rate than others
 - Fir and redwood branches
 - Hill sides washing out
- ❑ Clear the entire zone.



The Work is Difficult



Targeted Tree Caused Outage Reduction at Specific Locations

- ~ 50% reduction in outages
 - ❖ Average Annual Outages Before = 266
 - ❖ Average Annual Outages After = 135
 - ❖ 160,000 fewer customer outages

- Every outage is a potential fire, therefore

Outage Reduction = Fire Reduction

EXHIBIT B

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

WILLIAM R. SARALE, et al.,

Plaintiffs & Appellants,

v.

PACIFIC GAS & ELECTRIC COMPANY,

Defendant & Respondent

Appeal No. C059873

San Joaquin County Superior Court
Case No. CV033900

RICHARD G. WILBUR AS TRUSTEE OF—
THE RICHARD G. WILBUR REVOCABLE
TRUST,

Plaintiff & Appellant,

v.

PACIFIC GAS & ELECTRIC COMPANY,

Defendant & Respondent.

Appeal No. C060515

Yuba County Superior Court
Case No. YCSCCVCV080000252

**AMICUS CURIAE BRIEF OF THE
PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA
UPON REQUEST OF THE COURT OF APPEAL**

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May 17, 2010

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
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Plaintiffs & Appellants,

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Defendant & Respondent

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PACIFIC GAS & ELECTRIC COMPANY

Defendant & Respondent.

Appeal No. C060515

Yuba County Superior Court
Case No. YCSCCV080000252

**AMICUS CURIAE BRIEF OF THE
PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA
UPON REQUEST OF THE COURT OF APPEAL**

**TO THE HONORABLE PRESIDING JUSTICE ARTHUR G. SCOTLAND &
ASSOCIATE JUSTICES OF THE CALIFORNIA COURT OF APPEAL,
THIRD APPELLATE DISTRICT:**

I. INTRODUCTION

In response to this Court's Order dated March 10, 2010, the California Public Utilities Commission ("Commission") respectfully submits its amicus curiae brief at the invitation of this Court. The Court specifically requested that the Commission address the following three questions:

1. Does Public Utilities Code section 1759 deprive a superior court of jurisdiction to adjudicate a claim for damages or to grant declaratory, injunctive, or other relief in an action brought by a private landowner against a public utility based on the landowner's claim that the utility's trimming of trees (or other vegetation) around its power lines on the landowner's property exceeded the scope of the utility's easement over the property?
2. If so, how would superior court adjudication of such an action hinder or interfere with the Commission's exercise of its regulatory authority over vegetation management practices by utilities around power lines?
3. Does the Commission provide a forum for a landowner to seek a determination whether the utility's vegetation management practices exceeded the scope of the utility's easement over the landowner's property and caused the private landowner to suffer damages, such as a claim that trimming exceeded the scope of the utility's easement and rendered unproductive the fruit or nut producing trees planted within the easement? If so, what remedies can the Commission impose?

The Commission appreciates the opportunity to address these questions and provides below its analysis and discussion. The Commission's discussion is not intended to support any individual party *per se*. Nor does the Commission offer any opinion at this time on the merits of those issues in the complaints that are within the jurisdiction of the Commission. Those issues will be considered by the Commission only if the

Appellants file formal complaints before the Commission seeking review under the Commission's vegetation management program.

II. DISCUSSION

A. If The Court Finds That Tree Trimming Is Within The Scope Of The Easements, Then Public Utilities Code Section 1759 Precludes Any Further Court Adjudication Until The Commission Has Determined Whether The Trimming Exceeded Or Violated General Order 95.

The Commission's response is based on analysis of: (1) the nature of the dispute; and (2) case law interpreting the jurisdictional split under Public Utilities Code sections 1759 and 2106.¹

1. The Nature Of The Dispute

Pleadings before the Court reflect differing views regarding how to properly characterize the nature of the dispute. Appellants suggest the dispute is entirely a matter of property rights under the easement,² while Respondent contends it is no more than a vegetation management dispute.³

In the Commission's view, there is a threshold question requiring interpretation of the scope of the easements. Specifically, the question is whether the easements permit tree trimming by the utility, and if so, whether there is any explicit limit on the degree of trimming that is allowed. The Commission has traditionally left matters of easement

¹ Unless otherwise noted, all section references are to the Public Utilities Code.

² See e.g., Appellant's Reply Brief in *Sarale v. Pacific Gas & Electric Company* ("PG&E") ("Sarale ARB") at p. 1; Appellant's Opening Brief in *Wilbur v. PG&E* ("Wilbur AOB") at pp. 23-24.

³ See e.g. Respondent's Brief in *Wilbur v. PG&E* ("Wilbur RB") at p. 1.

construction and interpretation to the Courts, and it would continue to do so here.⁴

Consequently, if the Court finds that the easements preclude the action complained of, it is within the Court's jurisdiction to order injunctive or other relief.

However, if this Court finds that trimming was permissible under the easements, then the crux of the dispute shifts to whether the degree of trimming exceeded or violated any applicable Commission-approved rules. As discussed herein, this Commission has exclusive jurisdiction over public utilities, and has established an identifiable broad and continuing supervisory and regulatory program to oversee utility vegetation management. That program includes rules governing utility tree trimming practices.⁵ Consequently, the Commission respectfully submits that this second question is an issue subject to the Commission's exclusive jurisdiction. (See e.g., *San Diego Gas and Electric Company v. The Superior Court of Orange County* ("Covalt") (1996) 13 Cal.4th 893, 919 ["The PUC has exclusive jurisdiction over the regulation and control of utilities, and once it has assumed jurisdiction, it cannot be hampered, interfered with, or second-guessed by a concurrent superior court action addressing the same issue."].)

⁴ While the Commission does not attempt to resolve property right disputes, the Commission will review easements as necessary to address issues within the Commission's jurisdiction. (See e.g., *Camp Meeker Water System, Inc. v. Public Utilities Commission* (1990) 51 Cal.3d 845, 850 [Ascertaining facts regarding deeds which conveyed easements and associated water rights, as necessary to address an application for increased rates].)

⁵ See General Order 95, Rule 35 including Appendix E, and Rule 37 (Clerk's Transcript in *Wilbur v. PG&E* ("Wilbur CT"), at pp. 71, 77, 79-80.)

**2. Jurisdiction Pursuant To Public Utilities Code
Sections 1759 And 2106**

Section 1759 provides:

No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court.

(Pub. Util. Code, § 1759.)

Section 2106 provides:

Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was willful, it may, in addition to the actual damages, award exemplary damages. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person. No recovery as provided in this section shall in any manner affect recovery by the State of the penalties provided in this part or the exercise by the commission of its power to punish for contempt.

(Pub. Util. Code, § 2106.)

By its plain language, section 2106 vests the Court with authority to award damages. No statute vests the Commission with similar authority.

Although the Court may award damages, it must exercise care to not take any action that would interfere with, hinder, frustrate, obstruct, second-guess, or undermine

the Commission's authority in carrying out its own policies. (See e.g., *Waters v. Pacific Telephone Company* ("Waters") (1974) 12 Cal.3d 1, 11-12; and *Anchor Lighting v. Southern California Edison Company* ("Anchor Lighting") (2006) 142 Cal.App.4th 541, 549-550.)

Under the accepted test, section 1759 would bar Court adjudication of this dispute if: (1) it is within the Commission's authority to adopt a regulatory policy for utility vegetation management; (2) the Commission has exercised that authority; and (3) adjudication by the Court would interfere with the Commission's exercise of that authority. (See e.g., *Covalt, supra*, 13 Cal. 4th at pp. 924-936; *Hartwell Corporation v. The Superior Court of Ventura County* ("Hartwell") (2002) 27 Cal. 4th 256, 266.) This test is applied below.

**a) It Is Within The Commission's Broad
Inherent Authority To Regulate Utility
Vegetation Management Practices.**

The California Supreme Court has described the Commission's authority in the following manner:

The commission is a state agency of constitutional origin with far reaching duties, functions and powers. (Cal. Const., art. XII, §§ 1-6.) The Constitution confers broad authority on the commission to regulate utilities, including the power to fix rates, establish rules, hold various types of hearings, award reparation, and establish its own procedures. (Id., §§ 2, 4, 6.) The commission's powers, however, are not restricted to those expressly mentioned in the Constitution: "The Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to confer additional authority and jurisdiction upon the commission...." (Cal. Const., art XII, § 5.)

Pursuant to this grant of power the Legislature enacted Public Utilities Code section 701, conferring on the commission expansive authority to “do all things, whether specifically designated in [the Public Utilities Act] or addition thereto, which are necessary and convenient” in the supervision and regulation of every public utility in California. The commission’s authority has been liberally construed. (citation omitted) Additional powers and jurisdiction that the commission exercises, however, “must be cognate and germane to the regulation of public utilities....”

(*Consumers Lobby Against Monopolies v. Public Utilities Commission (“CLAM”)* (1979) 25 Cal.3d 891, 905-906.)⁶

In addition, the Court has explicitly affirmed the Commission’s authority to undertake measures related to public health and safety. For example, in *Hartwell*, the Court stated:⁷

Consistent with these constitutional mandates, the Legislature has granted PUC comprehensive jurisdiction to regulate the operation and safety of public utilities....

(*Hartwell, supra*, 27 Cal.4th at p. 256, citing to Cal. Const., art. XII, §§ 1-6 & Pub. Util. Code, §§ 701, 761, 768, & 770, subd. (a).)⁸

⁶ See also *Southern California Edison Company v. Peevey* (“*Edison v. Peevey*”) (2003) 31 Cal.4th 781, 792; *Covalt, supra*, 13 Cal.4th at p. 915.

⁷ *Hartwell* involved Commission authority to develop and apply standards for water quality, for water provided by regulated water companies. While the California Department of Health Services was found to have primary responsibility for the administration of safe drinking water laws, the Court recognized the Commission’s concurrent jurisdiction in connection with its constitutional and statutory authority and responsibilities to ensure that regulated utilities provide service that protects the public health and safety. (See *Hartwell, supra*, 27 Cal.4th at pp. 270-272.)

⁸ Section 701 provides:

The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

(footnote continued on next page)

Further, permissible regulatory functions include taking steps to determine whether a danger is posed by any utility equipment, operations, or services, and if so, to

(footnote continued from previous page)

Section 761 provides:

Whenever the commission, after a hearing, finds that the rules, practices, equipment, appliances, facilities, or service of any public utility, or the methods of manufacture, distribution, transmission, storage, or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the commission shall determine and, by order or rule, fix the rules, practices, equipment, appliances, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed. The commission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and, on proper demand and tender of rates, such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules.

Section 768 provides in pertinent part:

The commission may, after a hearing, require every public utility to construct, maintain, and operate its line, plant, system, equipment...in a manner so as to promote and safeguard the health and safety of employees, passengers, customers, and the public. The commission may prescribe...[and]...establish uniform standards of construction and equipment, and require the performance of any other act which the health or safety of its employees, passengers, customers, or the public may demand.

Section 770 provides the Commission may after a hearing:

(a) Ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished, imposed, observed, and followed by all electrical, gas, water, and heat corporations.

prescribe corrective measures.⁹ (See *Covalt, supra*, 13 Cal.4th at pp. 924-925, citing to Pub. Util. Code, §§ 451, 701, 761, 762, 768.)¹⁰

In carrying out these functions, the Commission recognized that unchecked vegetation growth near utility power lines may pose a risk to public health and safety, and could threaten reliable operation of the electric system. (See e.g., *Re San Diego Gas and Electric Company* [D.96-09-097] (1996) 68 Cal.P.U.C.2d 333, 334, 336.)¹¹ Thus, consistent with the scope of its authority, the Commission has prescribed measures to

⁹ In *Covalt* the Court found it within the Commission's authority to adopt a policy on whether electric magnetic fields ("EMFs") arising from utility power lines pose a public health risk, and determine what action, if any, utilities should take to minimize that risk. (*Covalt, supra*, 13 Cal.4th at pp. 924-925.)

¹⁰ See *ante*, fn. 8 regarding sections 701, 761, and 768.

Section 451 provides in pertinent part:

Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities...as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

Section 762 provides in pertinent part:

Whenever the commission, after a hearing, finds that...changes...ought reasonably be made...to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such...changes be made....

¹¹ For example, the Commission has stated:

Where overhead wires pass through trees, safety and reliability of service demand that a reasonable amount of tree trimming be done in order that the wires may clear branches and foliage.

(*Re San Diego Gas and Electric Company* [D.96-09-097], *supra*, 68 Cal.P.U.C.2d at p. 336.)

address utility vegetation management practices. These measures are embodied in General Order (“GO”) 95 and related decisions.

b) The Commission Has Exercised An Identifiable Broad And Continuing Supervisory And Regulatory Program For Utility Vegetation Management.

The exercise of authority is marked by the existence of an “identifiable broad and continuing supervisory and regulatory program.” (See e.g., *Covalt, supra*, 13 Cal.4th at pp. 919-920; *Hartwell, supra*, 27 Cal.4th at p. 276.) As discussed below, GO 95, in combination with the Commission's actions and related decisions demonstrate that the Commission’s vegetation management program meets this standard.

While GO 95 and its predecessor GO 64-A have been in existence since 1928, events during the 1990s brought forth the need for increased regulatory oversight of utility practices. During that time, certain power outages were determined to have been caused primarily by overgrown foliage and lax utility trimming cycles. (See *Re San Diego Gas and Electric Company* [D.96-09-097], *supra*.)

In response, the Commission determined that a more concerted effort was needed to establish uniform rules and policies for vegetation management. Standardized interim requirements were immediately adopted. (*Id.* at p. 334.) The Commission then went on to consider and develop more permanent rules. That process produced two more guiding decisions during the 1990s. (*Re San Diego Gas and Electric Company* [D.97-10-056] (1997) 76 Cal.P.U.C.2d 118.)

The Commission has continued to oversee and review the utility's practices, and has continued to refine the applicable rules. In 2001, the Commission opened a new proceeding to again revisit whether revisions to GO 95 and GO 128 were warranted.¹² The Commission held public workshops over a sixteen month period, which were attended by utilities, labor organizations, the public, and the technical staff. That process resulted in a number of revisions to the rules. (*Order Instituting Rulemaking to Revise Commission General Order Numbers 95 and 128 (Opinion Adopting Consensus Changes to General Orders 95 and 128 and Deciding Contested Rule Changes)* [D.05-01-030] (2005) __ Cal.P.U.C.3d __).¹³

More recently, Commission experienced renewed concerns regarding the need to reduce potential fire hazards attendant to utility power lines. Accordingly, it again reviewed the existing requirements and adopted additional measures. (*Order Instituting Rulemaking to Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities (Decision in Phase 1 – Measures to Reduce Fire Hazards in California Before the 2009 Fall Fire*

¹² GO 128 covers Rules for Construction of Underground Electric Supply and Communication Systems.

¹³ For the convenience of the Court, the Commission is providing a separate appendix of all Commission decisions referenced by the brief that are not available in the published "Opinions and Orders of the Public Utilities Commission of California." Thus, a copy of D.05-01-030 can be found as Exh. 1 in the Commission's Appendix ("Amicus Append.").

Season) [D.09-08-029] (2009) __ Cal.P.U.C.3d __ at pp. 26-31 (slip op.).¹⁴ This most recent proceeding (Rulemaking (R.) 08-11-005) continues to remain open and active.

Apart from these activities to set and monitor the applicable rules, the Commission exercises its authority when called upon from time to time to consider individual complaints regarding utility vegetation management practices. (See e.g., *Bereczky v. Southern California Edison Company* (“*Bereczky*”) [D.96-03-009] (1996) 65 Cal.P.U.C.2d 145; and *Morgan v. Pacific Gas and Electric Company* (“*Morgan*”) [87-09-066] 25 Cal.P.U.C.2d 393.)

Despite having established this clearly identifiable and ongoing regulatory program, certain pleadings before the Court suggest that the Commission ceded its jurisdiction over utility vegetation management. To support this claim, pleadings argue that by not adopting any maximum limit on tree trimming clearances, the Commission intentionally decided not to exercise its authority.¹⁵ The following language is cited:

The degree of tree trimming appropriate around utility lines can become a highly technical determination.... We do not need to determine what the appropriate maximum clearances should be, but we do have to determine the minimum safe clearances and a reasonable level of expense....

(D.97-01-044, *supra*, 70 Cal.P.U.C.2d at p. 697.)

This argument would have merit if the Commission had determined not to adopt any requirements. However, this language is merely a statement of what requirements

¹⁴ A copy of D.09-08-029 can be found as Amicus Append. Exh. 2.

¹⁵ See e.g., Appellants Opening Brief in *Sarale v. PG&E* (“*Sarale AOB*”) at pp. 9.

must, at a minimum, be adopted to ensure safe and reliable operation of utility power lines. It concerns only the degree of regulation deemed necessary.

Moreover, no Court has found that an exercise of authority will be recognized only when an agency adopts exhaustive, comprehensive, or maximum requirements. For example, in *Covalt*, it was deemed sufficient that the Commission adopted a "general policy" regarding permissible electric magnetic field ("EMF") levels for utility power lines. (*Covalt, supra*, 13 Cal.4th at pp. 935-936.) Notably, there too the Commission had declined to set maximum limits. Instead, the utilities were required only to take reasonable low-cost/no-cost steps to prevent unnecessary public exposure to EMFs.¹⁶ (*Id.* at pp. 928-929.)

The following language is similarly cited to suggest the Commission has declined to exercise authority:¹⁷

In recognition of this circumstance we will decline to adopt a declaration of our jurisdiction as part of our order.

(D.97-01-044, *supra*, 70 Cal.P.U.C.2d at p. 699.)

When this statement is read in context, it reveals that the statement was made in response to a specific request that the Commission declare its rules would effectively

¹⁶ See also *Waters, supra*, 12 Cal.3d at pp. 10-11 [The Commission was deemed to have exercised its authority by adopting a "general policy" of limiting utility liability for negligence. That exercise barred the Court from awarding damages for alleged utility negligence and breach of warranty.]; *Hartwell, supra*, 27 Cal.4th at p. 276 [The Commission was deemed to have exercised its authority by adopting water quality "benchmarks." That exercise barred the Court from adjudicating the adequacy of water quality standards and awarding damages.].

¹⁷ Sarale AOB, at p. 10.

trump any local tree trimming requirements. (D.97-01-044, *supra*, 70 Cal.P.U.C.2d at p. 696.) [“PG&E’s concurring comments...request a declaration of this Commission’s jurisdiction over utility tree trimming practices in California to defeat local restrictions on tree trimming.”].)

In declining that request, the Commission reasoned it would not be appropriate to make such a declaration because the Commission’s rules were not intended to represent an exhaustive scheme of rules and procedures. Further, the Commission reasoned that such a declaration could exceed the scope of the proceeding.¹⁸ (D.97-01-004, *supra*, 70 Cal.P.U.C.2d at p. 699 [“We are selecting a safe minimum standard to insure system safety and reliability, but we are not adopting comprehensive rules and procedures.... In recognition of this circumstance, we will decline to adopt a declaration of our jurisdiction.... In our view such a course would be fraught with the danger of acting outside of our authority in this proceeding.”].)

Pleadings also suggest that the Commission has clearly directed complainants to the Courts for any relief, leaving “little doubt” it is not interested in regulating utility vegetation management and admits it lacks jurisdiction to do so.¹⁹ The following language is cited:

¹⁸ The Commission’s rules require proceeding “scoping memos,” which describe, among other things, the issues to be considered in a proceeding. (See Commission Rule of Practice and Procedure 7.3; Cal. Code of Regs., tit. 20, § 7.3) The Commission is cautious not to decide issues outside the defined scope, as doing may be grounds for reversal. (See e.g., *Southern California Edison Company v. Public Utilities Commission* (2006) 140 Cal.App.4th 1085, 1104-1107.)

¹⁹ See e.g., Sarale AOB at pp. 12-14.

Even if SCE's actions could be construed as a violation of Rule 35, we have no power to award monetary damages for injury to Bereczky's property, or for emotional distress. For incidents such as this, the only monetary relief at our disposal if we find that the utility violated a Commission rule or order is a fine, which would not be payable to the complainant. This is not to say that Bereczky is without recourse for the property damage and other harm he allegedly suffered. *If there is an express easement that defines the extent of permissible use, that document may afford him a basis for relief. If not, he may nevertheless be able to seek relief under civil law. In either instance, his recourse is to the courts rather than this commission.* (emphasis added)

(*Bereczky* [D.96-03-009], *supra*, 65 Cal.P.U.C.2d at p. 147.)

Nothing in this language supports a conclusion that the Commission has not exercised its jurisdiction, or cannot exercise jurisdiction, for the purpose of interpreting and applying its own rules and decisions. The focus of this language is clearly limited to the remedies at the Commission's disposal "if we [the Commission] find that the utility violated a Commission rule or order." The statement that damages must be sought in Court is entirely consistent with section 2106. Similarly, the statement correctly notes that a determination of property rights under any easement is properly an issue for the Courts.

Finally, pleadings suggest *Koponen v. Pacific Gas and Electric Company* ("Koponen") (2008) 165 Cal.App.4th 345 is analogous, such that the instant dispute may also be fully resolved by this Court.²⁰ This argument misses an important distinction. In *Koponen*, interpretation of the scope of the easement was the only issue before the Court.

²⁰ See e.g., Wilbur AOB at pp. 24-27.

At issue was whether the utility had a right under its right-of-way easement to lease space to a third party. While, the Court acknowledged that section 1759 would bar it from acting if that would interfere with any Commission regulatory function, both the Court and this Commission agreed that no Commission function would be hindered in that instance since the Commission had no regulatory program related to utility property rights under right-of-way easements.²¹ (*Id.* at pp. 354-358.)

The instant matter differs. Here, there are two issues in dispute. One involves the scope of the easement. However, if the easement does not prevent the utility's action, then resolution requires determination of whether the trimming was excessive or unlawful under existing requirements. Those requirements are indeed the subject of a Commission regulatory program. Thus, any determination by the Court would interfere with the Commission's authority to interpret and apply its own rules, orders and decisions governing utility vegetation management.

²¹ At most, the Commission had a policy generally favoring the shared use of utility property. However, the Commission explicitly recognized that any application of its policy depended first on whether the utility had the property right under its easement that would allow it to do so. And the Commission agreed that the Court was the proper entity to make that preliminary determination. (*Koponen, supra*, 165 Cal.App.4th at pp. 356-357.) It is also relevant to note that the Court and the Commission also agreed that section 1759 would bar certain relief that the Court might fashion. That included any relief that would redirect utility revenues, as that would interfere with the Commission's ratemaking authority. (*Koponen, supra*, 165 Cal.App.4th at pp. 357, 359.)

c) Any Court Action Beyond Determining The Scope Of The Easement Would Interfere With The Commission's Policies For, And Regulation Of, Utility Vegetation Management.

This issue is embodied in the Court's second question to the Commission.

Accordingly, it is addressed in full below.

B. Court Adjudication Prior To A Commission Finding Of Utility Wrongdoing Would Interfere With The Commission's Identifiable Broad And Continuing Supervisory And Regulatory Program For Utility Vegetation Management.

As previously stated, presuming there is no violation of the easements, the complaints may succeed only if it is determined that the degree of trimming exceeded or violated any established rules. Although parties imply the Commission's rules may not go far enough, no party disputes that the Commission has indeed adopted a regulatory program to oversee utility vegetation management. Given this program, and the Commission's exclusive jurisdiction over public utilities, it is difficult to conceive how the Court could arrive at any conclusion here that would not somehow undermine, second-guess, or interfere with the Commission regulatory functions.

For example, if the Court were to determine the trimming was reasonable based on the fact the Commission's rules impose no maximum limit on clearance distances, it would presume the Commission would have come to the same conclusion in interpreting the rules. That cannot be predicted with absolute certainty. Arguably, the complaints raise a unique issue involving the trimming of commercial crops. To the Commission's knowledge, it has never directly addressed a complaint of this nature. While the rules

may not distinguish between types of vegetation, only the Commission can determine whether the trimming in question was reasonable within the spirit and intent of its own rules.²² A Court determination would interfere by depriving the Commission of any opportunity to address this issue, and would second-guess what conclusion the Commission may reach if presented with these facts.

A similar result would occur if the Court were to award damages for any alleged injury to the walnut trees. Doing so would unavoidably set (if only by implication) a new rule regarding maximum permissible trimming clearances. That result would undermine the Commission's existing Commission rules.

Further, such an award would do precisely what the Court found impermissible in *Koponen*.²³ It would undermine the Commission's policies by holding a utility liable for not doing something (not curtailing its trimming at some maximum point), which the Commission has not yet determined. (*Id.* at p. 358.)

For the above stated reasons, the Commission respectfully requests that the Court find section 1759 acts here to bar any Court adjudication beyond determining the property rights of the parties.

²² See e.g., Pub. Util. Code, § 451.

²³ See also *Ford v. Pacific Gas and Electric Company* (1997) 60 Cal.App.4th 696 [Section 1759 barred the Court from determining EMFs were dangerous, or awarding damages, because to do so would contradict the Commission's contrary findings and would hold utilities liable for not doing what the Commission determined they were not required to do.].

C. The Appellants May File A Complaint With The Commission Raising Their Claims Of Alleged Improper Utility Vegetation Management Activities.

The question posed by the Court inquired whether the Commission provides a forum for a landowner to seek a determination that the utility's actions exceeded the scope of its easement over a landowner's property. As already noted, the Commission generally defers to the Court in matters of easement interpretation and construction.

However, the Commission does have a forum for a landowner to seek a determination whether a utility's vegetation management activities were unreasonable or unlawful in connection with the Public Utilities Code and/or Commission orders, rules and decisions. To seek such a determination a landowner would file a formal complaint with the Commission.²⁴ If a complaint included an argument that the utility violated the scope of an easement, and a Court had not rendered any determination on that issue, the Commission would generally ensure to its satisfaction that the utility did in fact possess an easement to access the landowner's property to conduct the Commission regulated activity in question. It is relevant to note that in the Commission's experience, utility

²⁴ It is noted that the policy issues of the utility vegetation management can be raised before the Commission through other procedural vehicles. For example, although not an ideal forum to address issues requiring immediate action, a landowner could also request that the Commission open a proceeding to consider changes or modifications to the existing rules. Section 1708.5 permits any entity to file a petition asking the Commission to adopt, amend, or repeal a regulation.

Also, as shown in Section II.A.2.(b) above, the Commission will from time to time and on its own motion open investigations and/or rulemaking proceedings to consider changes to its rules, orders, and decisions. (See Pub. Util. Code, §§ 1708, 1701.1(c).) Any interested member of the public may intervene for the purpose of participating in, or simply following such Commission proceedings.

right-of-way easements are generally worded very broadly, so as to permit most any activity the utility may deem necessary to provide adequate service and operate its facilities in a safe and reliable manner. Complaints and associated filing procedures are governed by section 1702 and Commission Rules of Practice and Procedure 4.1 – 4.5.²⁵ Information regarding complaints, as well as electronic filing forms, can also be found on the Commission's website.²⁶

D. Remedies The Commission May Provide Include Injunctive Relief, The Imposition of Fines, And Denial Of Utility Cost Recovery. However, Pursuant To Public Utilities Code Section 2106 Only The Court May Award Damages.

The Commission derives its authority to provide remedies from the California Constitution, and the Public Utilities Code. In connection with the Commission's broad inherent powers under Article XII of the California Constitution, and section 701, the Courts have recognized that the Commission has authority to provide a number of remedies, should the Commission determine that the utility has violated the law. (See

²⁵ Section 1702 states in pertinent part:

Complaint may be made by the commission of its own motion or by any corporation or person...setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission.

See also Cal. Code of Regs., tit. 20, Article 4, §§ 4.1, 4.2, 4.3, 4.4, 4.5.

²⁶ Information and electronic complaint forms may be located at: www.cpuc.ca.gov/puc/. See main page under Consumer Information Center.

e.g., *CLAM*, *supra*, 25 Cal. 3d at p. 907.)²⁷ One of these remedies is injunctive relief.

Consistent with this authority, it is not unusual for the Commission to issue a temporary restraining order (“TRO”) to enjoin a utility from engaging in a particular action.²⁸

The Commission is also authorized to directly impose fines and penalties upon a utility, as set forth in section 2100 et seq. (See e.g., *Pacific Bell Wireless LLC v. Public Utilities Commission* (2006) 140 Cal.App.4th 718, 736-738.) For example, upon a finding that a utility violated the Public Utilities Code or any Commission rule, decision or requirement, section 2107 would enable the Commission to impose a penalty of not less than five hundred dollars (\$500), and not more than twenty thousand dollars (\$20,000) for each offense.²⁹ Additionally, the Commission could prevent a utility from recovering

²⁷ In *CLAM*, the Court noted that in connection with the Commission’s equitable jurisdiction it may require the creation of trust funds to hold potential refunds, reform utility contracts, and issue cease and desist orders. The Commission may also order utilities that charge unlawful rates to make reparation to aggrieved ratepayers pursuant to section 734. (*CLAM*, *supra*, 25 Cal.3d at p. 907.)

²⁸ In determining whether to grant a TRO the Commission applies the same test as California courts, which requires a moving party to demonstrate: (1) irreparable injury to the moving party absent the TRO; (2) no harm to the public interest; (3) no substantial harm to other interested parties; and (4) a likelihood of prevailing on the merits. (See e.g., *Application of San Diego Gas & Electric Company for Review of its Proactive De-Energization Measures and Approval of Proposed Tariff Revisions (U902E) (Decision Granting the Motion for a Temporary Restraining Order Regarding San Diego Gas & Electric Company’s Power Shut-Off Plan)* [D.09-08-030] (2009) ___ Cal.P.U.C. __; 2009 Cal. PUC LEXIS 423, *8-9. A copy of this decision can be found as Amicus Append. Exh. 3.)

²⁹ Section 2107 states:

Any public Utility which violates or fails to comply with any provision of the Constitution of this state or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in any case in which a penalty has not otherwise been provided, is subject to a

(footnote continued on next page)

in rates the costs associated with any activity deemed to be unreasonable or impermissible.³⁰

However, as already noted, the Legislature has not vested the Commission with authority to award damages to an aggrieved party. Pursuant to section 2106,³¹ the authority to award damages rests solely with the Court. Accordingly, following a Commission finding that a utility violated the Public Utilities Code, or Commission rule, regulation, order or decision, any aggrieved party seeking damages would need to proceed to the Court to request such an award.

(footnote continued from previous page)

penalty of not less than five hundred dollars (\$500), nor more than twenty thousand dollars (\$20,000) for each offense.

³⁰ See section 451, which states in pertinent part:

All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

³¹ Section 2106 states:

Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was willful, it may, in addition to actual damages, award exemplary damages. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person. No recovery as provided in this section shall in any manner affect a recovery by the State of the penalties provided in this part or in the exercise by the commission of its power to punish for contempt.

III. CONCLUSION

In this amicus brief, the Commission respectfully submits its responses to the Court's three questions. The Commission would be glad to address any additional questions the Court may have.

Dated: May 17, 2010

Respectfully submitted,

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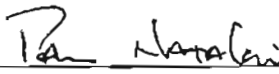
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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing Respondent's Answer is 5,874 words in length. In completing this word count, I relied on the "word count" function of the Microsoft Word program.

Dated: May 17, 2010



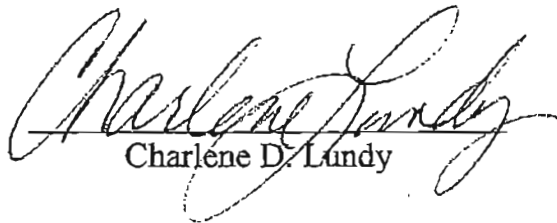
Pamela Nataloni

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I am a citizen of the United States, over the age of 18 years, with business address at 505 Van Ness Avenue, San Francisco, California and am neither a party to nor interested in *Sarale v. Pacific Gas and Electric Company* (Case No. C059873) and *Wilbur v. Pacific Gas and Electric Company* (C060515), before the Court of Appeal of the State of California, Third Appellate District.

On May 17, 2010, in San Francisco, California, I caused to be deposited by overnight mail copies of **AMICUS CURIAE BRIEF OF THE PPUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA UPON REQUEST OF THE COURT OF APPEAL** on all parties listed on the attached service list.

Each copy was enclosed in a sealed envelope and all postage thereon fully prepaid. I certify under penalty of perjury that the foregoing is true and correct.


Charlene D. Lundy

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EXHIBIT C

Required Minimum Clearances: Only a Starting Point for a Responsible and Reasonable VM Program

PG&E disagrees with CPSD's Statement:

"CPSD recommends giving the electric utilities a presumption of reasonableness of expenses incurred for trimming up to 48 inches. Beyond 48 inches, utilities should not be entitled to a presumption of reasonableness, but should be required to demonstrate why trimming beyond 48 inches is reasonable."



Current Required Legal Clearances

VOLTAGE (kV)	Minimum Clearance Distance (feet)					
	4-21	60	70	115	230	500
GO 95, Rule 35	1.5	1.5	1.5	1.6	2.6	10
Rule 35, Appendix E	4	6	6	10	10	15
PRC 4293	4	4	4	10	10	10
PG&E CAISO Agreement	4	4	4	10	10	10
NERC FAC-003-1	na	na	1.3	2.5	5.1	14.7

- Rule 35, Appendix E, Guidelines: “Vegetation Management practices may make it advantageous to obtain greater clearances than those listed...”

- NERC Standard FAC-003-1: “Transmission Owner to determine...appropriate distances to be achieved at time of ...vegetation work based on local conditions and [next] vegetation management work. ...Distances *shall* be greater than [minimum required clearances].

What Utility Inspectors Must Consider Prior to Trimming

- Tree species types and growth rates
 - Tree failure characteristics
 - Location (tree to line)
 - Anticipated tree or conductor movement
 - Line sag
 - Local climate and rainfall patterns
 - Fire risk
 - Environmental impacts
 - Customer & site history
-

All Trees Are Not The Same

■ Eucalyptus	}	Fast Growing
■ Cottonwood		
■ Walnut (all nuts)*		
■ Mulberry		
■ Pine	}	Med. Growing
■ Fur		
■ Acacia		
■ Madrone		
■ Oak	}	Slow Growing
■ Redwood		

*Walnut tree limbs can grow 18 feet in one year

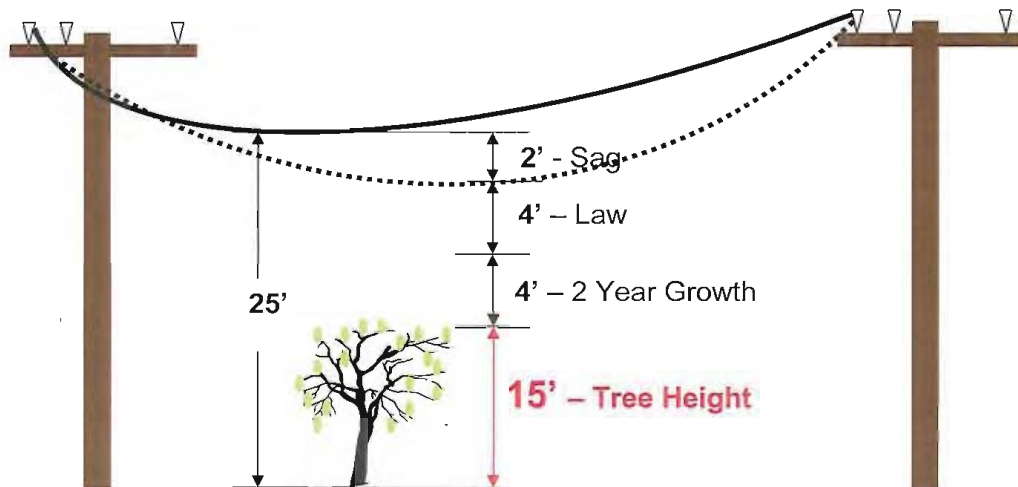
Why Utilities Remove 2-3 Years of Growth

- Reduces fire risk
- Increases electric reliability
- Ensures compliance (provides margin of error)
- Increases public safety (reduces chance of a power line contact)
- Better for the health of the tree (minimizes trauma)
- Minimizes environmental impacts
- Reduces customer impact
- Lowers costs for customers
- Easier to manage

Utilities Are Experts in Tree Evaluations for Utility Line Clearances

- Certified Arborists
- Registered Professional Foresters
- Certified Quality Assurance and Quality Control
- Apply ANSI Standards
(Integrated VM on electric utility rights of way)

Example of responsible VM clearance practice



Customers Are Satisfied

- Contractor performance is judged on customer satisfaction with tree work
- (PG&E survey) 80% of customers understand that the tree work prevents outages (& fires)
- 75% give good – excellent ratings for the work

Summary

- There are overlapping regulatory/statutory minimum clearance requirements
 - A responsible VM program must consider many factors when obtaining clearances
 - Clearance obtained at time of trim must be greater than minimum clearance requirement to ensure safety and reliability
 - Utilities use best practices to achieve effective VM programs
 - Knowledgeable professionals
 - Industry standards
 - Overall, customers understand the need for utility tree trimming and are satisfied
-

EXHIBIT D

Excerpts From Cal Fire Presentation Given in Santa Cruz
September 16, 2010



CAL FIRE and PG&E



**“Our partnership in making assets at risk
more resistant to the occurrence and effects
of wildland fire”**

Melodie Durham – *CAL FIRE*
Chief – Wildland Fire Prevention

Richard Imlach - *CAL FIRE* (retired)
Fire Prevention Bureau Chief

What's next?

- Major Woody Stem Project – PG&E has been very helpful in providing data and information.
- New database to track specifics for powerline caused fires. This will help identify specific issues to address.
- Joint Educational Outreach
- CAL FIRE (Richard Imlach) is currently updating the Powerline Fire Prevention Field Guide. We will be forwarding it to all utilities for feedback once the updates are finished.