

STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

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**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

November 2, 2023

TO PARTIES OF RECORD IN CASE 22-08-004, DECISION 23-10-032:

On September 28, 2023, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 15.5(a) of the Commission's Rules of Practice and Procedure provide that the Presiding Officer's Decision becomes the decision of the Commission if no appeal or request for review has been filed within 30 days of the mailing of the Presiding Officer's Decision.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

/s/ MICHELLE COOKE

Michelle Cooke  
Acting Chief Administrative Law Judge

MLC:mph

Attachment

ALJ/POD-RIM/mph

**Date of Issuance 11/2/2023**

Decision 23-10-032

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

Wanda H. Nagel and Wopumnes  
Nisenan and Mewuk Heritage  
Preservation Society of EDC,

Complainants,

vs.

Case 22-08-004

Pacific Gas and Electric Company  
(U39E)

Defendant.

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**PRESIDING OFFICER'S DECISION DISMISSING COMPLAINT**

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## **Summary**

This Presiding Officer's Decision dismisses the instant Complaint on the grounds that each complainant has failed to prove that Pacific Gas and Electric Company (PG&E) engaged in vegetation management activities on Complainants' property, or elsewhere, that violated any Commission rule, law, general order, decision, or statute applicable to PG&E's conduct that is at the heart of this complaint. To the contrary, our review of the record leads us to conclude that in engaging in its Commission approved and/or administered vegetation management activities, PG&E has adhered to the applicable authorities that govern its conduct.

In dismissing this complaint, the Commission stresses that PG&E continues to have a paramount duty to comply with its vegetation management protocols, as well as all applicable laws, to ensure the safe maintenance of distribution lines to prevent the threat of wildfires in California. The Commission has granted PG&E the authority to engage in vegetation management spending that has been approved in PG&E's recent general rate cases. In addition, the Commission has engaged in enhanced oversight and enforcement of that has resulted in improvements to PG&E's vegetation management efforts. Thus, the dismissal of this complaint in no way excuses PG&E from its duty to zealously engage in enhanced vegetation safety measures to minimize the threat of fire.

The proceeding is dismissed with prejudice.

This proceeding is closed.

## **1. Factual and Procedural Background**

### **1.1. Factual Background**

Complainants allege that on December 17, 2018, Wanda Nagel, deed holder of 4820 Newtown Road, and Janice Eppinger, deed holder of 4901

Newton Road, both in Placerville California, recorded Conservation Easements with the El Dorado County Recorder's Office to the Wopumnes Nisenan-Mewuk Tribe of El Dorado County (Tribe). The Tribe placed the Conservation Easements into their tax-exempt nonprofit, 501(c)(3) (FEIN# 83-2671897).

Complainants alleged hearing tree cutting activities on Wanda Nagel's back five acres and, upon further investigation, determined that a company called Mountain Enterprises, working on behalf of Pacific Gas and Electric Company (PG&E), had cut down a giant "Mother and Child" cedar, the "Father and Lone Cedars," and over 30 timber pine trees of various species. Complainants claim these tree-cutting activities occurred between July 2021 and June 2022.

## **1.2. Procedural Background**

On August 9, 2022, Complainants filed this complaint and alleged that PG&E violated the following laws: Public Resources Code § 4292, *et seq.*; Public Utilities Code §§ 702; General Orders (GO) 95 and 165; Resolution (Res.) ESRB-4; creating a public and private nuisance; trespass on private property; and Health & Safety Code § 13001. Complainants ask that PG&E be ordered to conduct all ongoing future work in accordance with all applicable laws; to undertake and document all reasonable steps to obtain permission from private property owners prior to felling trees or clearing brush on privately-owned land; to compel PG&E to remove all vegetation and logs deposited on private property; to compel PG&E to comply with its Vegetation Management Plan; to engage in remediation activities required by CalFire Notices of Violation (NOV's) 1, 2, 3, and 4 (Exhibits 1, 2, 3, and 5 to Complaint), the California Coastal Commission NOV (Exhibit 4 to Complaint), and the California Water Quality Control Board NOV (Exhibit 8 to Complaint). Finally, Complainants ask for an

immediate injunction and a temporary cease tree work order on 4820 and 4901 Newton Road in Placerville California as well as on the adjacent properties on Fort Jim Court and Knobcone Lane.

Complainants also ask that the Commission take judicial notice of what they term a related case that was filed with the Commission, *County of Santa Cruz v. Pacific Gas and Electric Company*, Case 21-01-014 (County of Santa Cruz), as Complainants allege that PG&E engaged in similar “illegal timbering” activities in Santa Cruz County.

On September 19, 2022, PG&E filed its answer and raised a number of points of note. First, PG&E acknowledged that it cut trees located on properties owned by the County of El Dorado (County Property) (APN: 077-431-014-000) at 4901 Newtown Road, Placerville, and owned by Paula Davis (Davis Property) (APN: 077-017-000) at 2940 Fort Jim Court in Placerville. PG&E claims it cut down trees pursuant to the land rights it has for constructing, operating, and maintaining electric facilities on the County and Davis Properties.

Second, PG&E denies cutting trees on Complainant Wanda Nagel’s Property, which PG&E claims is south of the County Property and west of the Davis Property. PG&E argues that since Complainant Wanda Nagel does not have ownership interest in either property where the tree cutting in dispute occurred, she lacks standing to file the instant complaint and her complaint should be dismissed.<sup>1</sup>

Third, with respect to Complainant Wopumnes Nisenan and Mewuk of El Dorado (Wopumnes), PG&E admits that Wopumnes holds a Conservation Easement on the County Property but that such Conservation Easement does not

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<sup>1</sup> PG&E acknowledges that while it did perform wood management activities on the Nagel Property, these activities do not form the basis of the complaint. (Answer at 2.)

cross the Davis Property. Further, PG&E asserts that the 2018 Conservation Easement was recorded approximately 70 years after PG&E acquired rights on March 20, 1947, to the County Property for the construction, operation, and maintenance of its electric pole lines, which includes vegetation management rights.<sup>2</sup>

In essence, PG&E seeks dismissal of the instant complaint on the following grounds: (1) Complainants fail to allege a violation of any Commission administered rule, law, tariff or order by PG&E; (2) Complainant Nagel lacks standing to file the instant complaint since PG&E's tree-cutting activities did not occur on Nagel's Property; (3) Even if PG&E tree-cutting activities occurred on either Complainant's property, PG&E had the preexisting right to engage in the maintenance of its electric pole lines, which includes vegetation management activities on the County Property, including the part of the County Property where the Conservation Easement is located; and (4) PG&E asserts that even if Complainants have standing, the Commission does not have jurisdiction to enforce causes of action arising under the Forest Practice Act, the Coastal Act, the Penal Code, or the Water Code.

A prehearing conference (PHC) was held on November 4, 2022, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary.

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<sup>2</sup> The Easement Agreements creating the Conservation Easement in favor of Wopumnes are dated and recorded December 17, 2018. Copies are attached as Exhibits B and C to PG&E's *Response to Scoping Memo and Ruling*. PG&E's easement rights are granted in a document dated March 20, 1947, and is attached as Exhibit D to PG&E's *Response to Scoping Memo and Ruling*. We take official notice of Exhibits B, C, and D pursuant to Rules 13.10 of the Commission's Rules of Practice and Procedure.

On April 14, 2023, the Presiding Officer issued a ruling setting the matter for a May 12, 2023 evidentiary hearing. The parties were instructed to submit their witness lists by April 28, 2023, and their exhibit lists by May 3, 2023. PG&E complied with these deadlines. Complainants failed to do so despite being reminded that they had missed both deadlines.<sup>3</sup> At no time did Complainants seek an extension of these deadlines or explain why they failed to comply. Even though they were representing themselves, parties appearing *in pro per* are nonetheless required to follow the procedural and substantive rules as if they were represented by competent counsel.<sup>4</sup>

The evidentiary hearing was held on May 12, 2023. PG&E and Ms. Nagel appeared on time and participated. The hearing was delayed a few minutes while the parties and the Presiding Officer waited for Ms. Perdichizzi to appear on behalf of Wopumnes. She did not appear on time, so the hearing proceeded as originally noticed.<sup>5</sup> Ms. Nagel called no witnesses and did not attempt to introduce any evidence. The Presiding Officer utilized a master list of exhibits based on the exhibits PG&E had identified, along with the exhibits that were attached to the complaint.

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<sup>3</sup> E-mails from ALJ Mason dated May 4 and May 11, 2023.

<sup>4</sup> See *Securities and Exchange Commission v. Johnson* (2022) WL 17251965 at 3; *Faretta v. Cal.*, (1975) 422 U.S. 806, 834 & n.46 (self-representation is not “a license not to comply with relevant rules of procedural and substantive law”); and *Am. Ass’n of Naturopathic Physicians v. Hayurst* (9<sup>th</sup> Cir. 2000) 227 F.3d 1104, 1107-1108 (noting that a pro se defendant was not excused from complying with the procedural rules because they were “not something a pro se defendant can be expected to know.”)

<sup>5</sup> On the day of the evidentiary hearing, IT Support attempted to contact Ms. Perdichizzi without success but left her a voice mail message that the evidentiary hearing was starting. The Presiding Officer received an email or text from IT Support that Ms. Perdichizzi attempted to join the hearing around 11, when the hearing was about to conclude, so she was not invited to participate due to her tardiness.

### **1.3. Submission Date**

This matter was submitted on May 12, 2023, upon the conclusion of the evidentiary hearing.

### **2. Jurisdiction**

The Commission is a state agency of constitutional origin with far-reaching duties, functions, and powers.<sup>6</sup> It has both constitutional and statutory regulatory authority over utilities and other companies, which would include electric companies such as PG&E, to fix rates, establish rules, and examine company records to ensure that electric services are provided in a safe and reasonable manner.<sup>7</sup> The Constitution also gives the Legislature plenary power to confer additional authority and jurisdiction upon the Commission, which the Legislature did by enacting the Public Utilities Act (§ 201 *et seq.*).<sup>8</sup> The duty of Commission-regulated entities to provide safe and reasonable service is of heightened importance when we evaluate claims against PG&E, California's largest combined natural gas and electric energy company.

Accordingly, the Commission has the jurisdiction to determine both the Complainants' standing to sue, as well as the validity of their accusations against PG&E regarding its vegetation management activities in El Dorado County between July 2021 and June 2022.

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<sup>6</sup> California Constitution, Article XII, §§ 1-6.

<sup>7</sup> California Constitution, Article XII, § 6 ("The commission may fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction.") Pub. Util. Code § 451 provides, in part: "Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities...as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

<sup>8</sup> *Wilson v. Southern California Edison Company* (2015) 234 Cal.App.4<sup>th</sup> 123, 142-143.

### **3. Issues Before the Commission**

The scoping memo identified the following issues for the Commission to resolve:

1. Does Complainant Wanda Nagel have standing to file the instant complaint against PG&E for the maintenance of its electric pole lines, which includes vegetation management, that occurred between July of 2021, and June of 2022? Does Complainant Wopumnes have standing to file the instant complaint against PG&E for the maintenance of its electric pole lines, which includes vegetation management, that occurred between July of 2021, and June of 2022?
2. On whose property did PG&E's maintenance of its electric pole lines, which includes vegetation management, occur between July of 2021, and June of 2022?
3. Does the Commission have jurisdiction to determine if PG&E's maintenance of its electric pole lines, which includes vegetation management, that occurred between July of 2021, and June of 2022, violated the Pub. Resources Code (§§ 4571 and 4581), California Forest Practice Rules (14 Cal. Code of Regs. § 895, *et seq.*), Pub. Resources Code §§ 4292 to 4294, 4295.5, 4601, 4602, and 30000, *et seq.*, U.S. Clean Water Act § 301, California Water Code § 13376, Civil Code §§ 3479 to 3481, Penal Code §§ 370, 372, and 602, and/or Health and Safety Code § 13001?
4. Did PG&E's maintenance of its electric pole lines, which includes vegetation management, that occurred between July of 2021, and June of 2022, violate Pub. Util. Code §§ 451 and 702, GO's 95 and 165, and Res. ESRB-4?
5. Does this complaint have impacts on environmental and social justice communities, or does it impact the achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan?

## 4. Discussion and Analysis

### 4.1. Standing to Sue

#### 4.1.1. California Common Law

Resolving the validity of Complainants' claims requires that the Commission first address the question of standing. Standing is a legal concept which focuses on the complaining party's interest in the outcome of a lawsuit. (*Weatherford v. City of San Rafael* (2017) 2 Cal.5<sup>th</sup> 1241, 1247-1248.) It "is a threshold issue necessary to maintain a cause of action, and the burden to allege and establish standing lies with the plaintiff." (*Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5<sup>th</sup> 802, 810.) While the U.S. Constitution limits actions to those that raise a genuine "case or controversy" (U.S. Constitution Article III, § 2), California's constitution does not contain such a requirement. (*People v. Superior Court* (2018) 29 Cal.App.5<sup>th</sup> 486, 497.) Nonetheless, the standing requirement under California law serves a similar purpose: "to ensure that the courts will decide only actual controversies between parties with a sufficient interest in the subject matter of the dispute to press their case with vigor." (*Common Cause of California v. Board of Supervisors of Los Angeles County* (1989) 49 Cal.3d 432, 439.) In other words, to resolve the threshold issue of standing, we must determine if the complaining party has "some special interest to be served or some particular right to be preserved and protected over and above the interest held in common with the public at large."<sup>9</sup>

As the moving parties, Complainants bear the burden of proving that they are entitled to sue PG&E for its vegetation management activities.<sup>10</sup> The level

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<sup>9</sup> *Teal v. Superior Court* (2014) 60 Cal.4<sup>th</sup> 595, 599.

<sup>10</sup> California Evidence Code § 500 states: "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

required to establish that burden is the preponderance-of-the-evidence standard.<sup>11</sup> In other words, with the preponderance-of-the-evidence standard, once the moving party makes his or her evidentiary showing, the trier of fact must decide if “the existence of a fact is more probable than its nonexistence.” (*In re Angelia P.* (1981) 28 Cal.3d 908, 918.)

The question of whether either complainant has established standing, by the preponderance of the evidence, has been difficult considering the conflicting allegations and what was established at the evidentiary hearing. Complainants alleged that on August 10, 2021, they heard tree cutting activities on Wanda Nagel’s back five acres and, upon further investigation, determined that a company called Mountain Enterprises, working on behalf of PG&E, had cut down a giant “Mother and Child” cedar tree, and over 30 timber pine trees of various species.<sup>12</sup> At the prehearing conference, Wopumnes claimed that PG&E gained access to the Nagel property by accessing the adjacent parcel owned by Paula Davis.<sup>13</sup>

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<sup>11</sup> California Evidence Code § 115 states:

“Burden of proof” means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt.

Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

*See also Weiner v. Fleischman* (1991) 54Cal.3d 476, 483 (“[i]ssues of fact in civil cases are determined by a preponderance of testimony.”)

<sup>12</sup> Complaint at 10, ¶ 28.

<sup>13</sup> PHC Transcript 17:2-19.

At the evidentiary hearing, PG&E provided testimony and evidence that appears to rebut Complainants' claim of standing under common law. PG&E called Matthew Carpenter, its vegetation program manager, to testify regarding PG&E's activities during the July 2021 through June 2022 timeframe.

Mr. Carpenter was managing PG&E's Enhanced Vegetation Management Program and he oversaw teams of pre-inspectors and teams of tree crews in inspecting and executing for that scope of work.<sup>14</sup> Mr. Carpenter testified that PG&E has an electric line which is part of a distribution circuit that traverses the Nagel property at 4820 Newton Road.<sup>15</sup> Mr. Carpenter then testified that the electric line that is part of the distribution circuit is also on the adjacent parcel, 2940 Fort Jim Court, that is owned by Paula Davis.<sup>16</sup> Mr. Carpenter next testified that in August of 2021, PG&E engaged in vegetation management work on 2940 Fort Jim Court and described the scope of work as follows:

The scope of work was the inspection and Assessment of all trees that had the strike potential for the distribution circuit facilities. We were mitigating any trees that were growing too close to the wires, any trees that had canopy overhanging to Conductors, or any trees that had structural risk or Risk of falling – trees that have risk of falling and striking the facilities.<sup>17</sup> As part of that scope of work, PG&E investigated vegetation on the Nagel property but did not proceed with any vegetation removal because of Ms. Nagel's concerns about fire ignition risk of work, the density of work, the conservation easement, and the tribal concerns within her property.<sup>18</sup>

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<sup>14</sup> Reporter's Transcript (RT) 21:3-10.

<sup>15</sup> RT 23:17-24:3.

<sup>16</sup> RT 24:4-15.

<sup>17</sup> RT 24:22-25:4.

<sup>18</sup> RT 28:10-30:6.

Prior to the interactions with Ms. Nagel, PG&E states that it went to the Paula Davis property and explained to her that a number of trees on her property were within the Enhanced Vegetation Management's scope of work.<sup>19</sup> PG&E asserts that it notified Mrs. Davis either verbally or over the phone that PG&E needed to come on to her property, and to which Mrs. Davis did not object.<sup>20</sup> Mr. Carpenter then testified that the "Mother and Child" cedar tree that they cut was located on the Paula Davis property, which PG&E verified through their use of GPS-enabled devices in which they collected tree data.<sup>21</sup>

At the evidentiary hearing, PG&E had Mr. Carpenter identify the location of the "Mother and Child" cedar tree on the Paula Davis property with the aid of an aerial map marked as Exhibit PG&E-4.<sup>22</sup> Mr. Carpenter stated that the vegetation management on Paula Davis' property also occurred on August 12, 2021, when he was alerted by the tree crew contractors that a customer that was not Paula Davis was trying to halt the vegetation management.<sup>23</sup> Mr. Carpenter testified that he spoke with Wanda Nagel and Lisa Perdichizzi telephonically and later met with Ms. Nagel in her driveway.<sup>24</sup> He stated that he listened to the allegation that PG&E had been cutting trees on Ms. Nagel's property and the Conservation Easement and later went back and reviewed the records with the crew team and confirmed that the vegetation

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<sup>19</sup> RT 30:7-18.

<sup>20</sup> RT 30:19-31:14.

<sup>21</sup> RT 33:1-23.

<sup>22</sup> RT 34:2-4; 17-25; 35:1-19.

<sup>23</sup> RT 36:3-16.

<sup>24</sup> RT 36:16-25.

management had taken place on Paula Davis' property, and not on the Nagel property.<sup>25</sup>

Ms. Nagel then testified. She began by claiming the boundary maps indicated on Exhibit PG&E-4 were incorrect because the boundary line had been moved.<sup>26</sup> While Complainant Nagel continued to assert at the evidentiary hearing that the activities occurred on her property, she failed to introduce any evidence to substantiate either claim.

Though the Commission has a relaxed rule when it comes to following the rules of evidence, some evidence must be offered to substantiate the moving party's assertions. This is a burden (both of proof and production) that complainant Nagel failed to meet.

Complainant Wopumnes also failed to satisfy its burden of proof and production by its failure to appear at the evidentiary hearing. That conclusion is not altered by the fact that the Presiding Officer admitted into evidence on complainants' behalf two e mail from Wopumnes' representatives to PG&E dated August 13, 2021 and June 1, 2022 which asserted, in part, that the Mother and Child cedar tree was cut down from the Wopumnes' Conservation Easement.<sup>27</sup> The accusations in those emails were not corroborated by any admissible evidence as Ms. Perdichizzi failed to timely appear at the evidentiary hearing.

Thus, in considering the record as a whole, we conclude that Complainants have failed to establish, by a preponderance of the evidence, that

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<sup>25</sup> RT 37:12-38:10.

<sup>26</sup> RT 40:6-17; 41:24-42:7.

<sup>27</sup> The Presiding Officer introduced these exhibits, marked as C-9 and C-10, which were retrieved from Complainants' complaint.

they sustained any injury that would give them standing under California common law to sue PG&E.<sup>28</sup>

#### **4.1.2. Public Utilities Code**

Complainants' failure to satisfy California common law regarding standing, however, does not end our inquiry. Since Complainants have instituted a complaint before the Commission, we must also determine if there are any unique statutory elements within the Public Utilities Code that would permit Complainants to proceed with their complaint. To answer this inquiry, we quote the relevant portion of Pub. Util. Code § 1702 which sets forth the requirements for filing a complaint with the Commission:

Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or any body politic or municipal corporation, by written petition or complaint, 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.<sup>29</sup>

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<sup>28</sup> In reaching this conclusion, we are mindful of the fact that Complainants appeared *in pro per* and may not have been fully aware of the Commission's requirements for conducting themselves both prior to and at the evidentiary hearing. While Complainants chose to proceed without counsel, they were nonetheless expected to know the law and were required to adhere to the basic legal requirements for proving their case against PG&E by introducing evidence. An *in pro per* litigant cannot be given so much latitude that the rudimentary elements for establishing a claim are not followed. (*See Burnete v. LaCasa Dana Apartments* (2007) 148 Cal.App.4<sup>th</sup> 1262, 1264 [Plaintiff filed to designate expert witness and was unable to get any exhibits into evidence. In denying plaintiff's request for relief from the judgment of nonsuit, the Court noted, citing to *Rappleyea v. Campbell* (1994) 8 Cal.4<sup>th</sup> 975, "self-represented litigants are generally entitled to no special treatment."].) As in *Burnete*, Complainants had their day in court but failed to carry their burden.

<sup>29</sup> See also Rule 4.1 (a)(1).

Employing the first rule of statutory interpretation, which requires us to interpret Pub. Util. Code § 1702 by its plain meaning,<sup>30</sup> persons wishing to file a complaint must (1) submit a written document; (2) naming a public utility as a defendant; and (3) identify the act or thing that the public utility has done or omitted to be done, including any rule or charge that has been imposed on the public utility defendant.

Complainants satisfy the requirements of Pub. Util. Code § 1702. They have filed a written document,<sup>31</sup> named the public utility, PG&E, as the defendant,<sup>32</sup> and alleged that PG&E's vegetation management activities in El Dorado County on or adjacent to their properties violated various Commission and California laws.<sup>33</sup> Therefore, we need not dismiss the complaint for lack of standing.

#### **4.2. Claims of PG&E Liability**

##### **4.2.1. County of Santa Cruz and the Request for Judicial Notice**

In their pleading, Complainants expend a considerable amount of time discussing an earlier case that was filed with the Commission—*County of Santa Cruz v. Pacific Gas and Electric Company*, C.21-01-014.<sup>34</sup> Complainants assert that the alleged factual allegations and asserted violations in *County of Santa Cruz*,

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<sup>30</sup> See Decision 97-02-014, mimeo, at 41 and 49, citing to *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board* (1993) 6 Cal.4<sup>th</sup> 821, 831; *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798; and *Dyna-med, Inc. v. Fair Employment and Housing Commission* (1987) 43 Cal.3d 1379, 1386-1387.

<sup>31</sup> The Complaint was filed on August 9, 2022, following an earlier rejection by the Commission's Docket Office of a prior filing. (See Complaint at 2, 3 and 4.)

<sup>32</sup> Complaint at 10-11, 28 and 29.

<sup>33</sup> Complaint at 14, 40 (Pub. Util. Code § 451); 41-44 (Pub. Util. Code § 702, and General Orders 95 and 165); 45 and 46 (General Order 165); and 47 and 48 (ESRB-4).

<sup>34</sup> Complaint at 3-6, 6-16.

which Complainants assert is a related case, are relevant to the instant proceeding as they will assist the Commission in deciding PG&E's potential liability in the instant proceeding.<sup>35</sup> Because of the alleged related nature of the *County of Santa Cruz County* proceeding, Complainants also ask that the Commission take judicial notice of this prior proceeding.<sup>36</sup>

We decline to take judicial notice of the *Santa Cruz County* proceeding as it is unnecessary. Since the *County of Santa Cruz* proceeding was filed with the Commission, we are free to review such pleadings and filings to determine their relevancy, if any, to Complainants' proceeding.

Even if we were to take judicial notice, it would not be to the extent that Complainants would like as there are legal restraints on the degree to which a court, including this Commission, make take judicial notice. The concept of judicial notice, or official notice as provided by our Rules,<sup>37</sup> is designed to establish a matter of law or fact at issue in an action "without requiring formal proof of the matter." (*Poseidon Development v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4<sup>th</sup> 1106, 1117.) Something may be the subject to judicial notice if the subject is reasonably beyond dispute. (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4<sup>th</sup> 97 113.)

Importantly, however, judicial notice does not establish the truth of all recitals from another proceeding, nor does it make inadmissible matters from another proceeding admissible in the instant proceeding. (*Herrera v. Deutsche*

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<sup>35</sup> Complaint at 4, 10:15-17: "We would make those same arguments and legal citations as Santa Cruz because the violations are descriptions of ACTIVITIES that are the exact same violation here on our Conservations Easements."

<sup>36</sup> Complaint at 1, 1.

<sup>37</sup> See Rule 13.10: "Official notice may be taken of such matters as may be judicially notice by the courts of the State of California pursuant to Evidence Code section 450 *et seq.*"

*Bank National Trust Co.* (2011) 196 CalApp.4<sup>th</sup> 1366, 1375; and *Sosinsky v. Grant* (1992) 6 Cal.App.4<sup>th</sup> 1548, 1563-1564.) Further, judicial notice may not be taken of the truth of the allegations in pleadings or documents from another proceeding where the contents of the documents or allegations were in dispute. (*Aguila, Inc. v. Superior Court* (2007) 148 Cal.App.4<sup>th</sup> 556, 569 [“When judicial notice is taken of a document...the truthfulness and proper interpretation of the document are disputable.”]; *Gong v. City of Rosemead* (2014) 226 Cal.App.4<sup>th</sup> 363, 368, n.1 [“the court may take judicial notice of the filing and contents of a government claim, but not the truth of the claim.”].)<sup>38</sup> As such, judicial notice is appropriate only in those instances where there is no dispute as to the truthfulness concerning that which is sought to be judicially noticed. (*Unruh-Haxton v. Regents of University of California* (2008) 162 Cal.App.4<sup>th</sup> 343, 364, 365; *Cruz v. County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1134.)

Complainants fail to establish that the factual and legal allegations from *County of Santa Cruz* that they wish the Commission to take judicial notice of are undisputed. In fact, our review of the pleadings reveals that the main allegations were highly contested. First, in its answer, PG&E disputed many of the factual and legal allegations that complainant alleged.<sup>39</sup> Second, concurrently with its answer, PG&E sought to have the County of Santa Cruz’ complaint dismissed on the grounds that the Commission lacked jurisdiction to adjudicate the alleged violations, the County of Santa Cruz lacked standing, and the County of

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<sup>38</sup> Other decisions are in accord. (See *Apple Inc. v. Superior Court* (2017) 18 Cal.App.5<sup>th</sup> 222, 241; *Richtek USA, Inc. v. UPI Semiconductor* (2015) 242 Cal.App.4<sup>th</sup> 651, 660-662; *Kilroy v. State of California* (2004) 119 Cal.App.4<sup>th</sup> 140, 148; and *Lockley v. Law Office of Cantrell, Green Pekich, Cruz & McCort* (2001) 91 Cal.App.4<sup>th</sup> 875, 882.)

<sup>39</sup> See *Answer of Pacific Gas and Electric Company to Complaint of County of Santa Cruz*, filed April 29, 2021, *passim*.

Santa Cruz failed to state claims upon which the Commission could grant relief.<sup>40</sup> Third, County of Santa Cruz and PG&E negotiated a settlement agreement and stipulated to the dismissal of the complaint with prejudice.<sup>41</sup> As a settlement “does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding,”<sup>42</sup> there are no factual or legal allegations from *County of Santa Cruz* that would be the proper subject of a judicial notice request.

#### **4.2.2. Claims Against PG&E Outside the Scope of the Commission’s Regulatory Authority**

Finally, even if the Commission took judicial notice of the pleadings and allegations from *County of Santa Cruz*, it would not benefit Complainants’ complaint. Quite the opposite – it would undermine many of the legal theories contained therein. In *County of Santa Cruz*, the assigned commissioner (President Batjer) issued her scoping memo, in which the Commission declined to include a section on legal claims within the scope of the proceeding on the grounds that they included laws that were beyond the scope of the Commission’s authority to adjudicate:

Notably, this scoping memo and ruling declines to include within the scope of the proceeding the complaint’s allegations that PG&E violated several laws and regulations that are not within the Commission’s jurisdiction, including:

- Public Resources Code Sections 4571 and 4581
- California Forest Practice Rules (14 Cal. Code of Regs. Section 895, *et seq.*)
- Public Resources Code Sections 4601 and 4602
- Public Resources Code Sections 4292 to 4294

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<sup>40</sup> See *Pacific Gas and Electric Company’s Motion to Dismiss*, *passim*.

<sup>41</sup> See *Stipulation to the Dismissal of Complaint with Prejudice*, filed November 18, 2021.

<sup>42</sup> Rule 12.5.

- Public Resources Code Section 4295.5 • Public Resources Code Section 30000, *et seq.* (*i.e.*, the California Coastal Act)
- Santa Cruz County Local Coastal Program
- Central Coast Water Board’s Water Quality Control Plan for the Central Coastal Basin
- U.S. Clean Water Act Section 301
- California Water Code Section 13376
- City of Santa Cruz Municipal Code Section 16.05.100(e)
- Civil Code Sections 3479 to 3481
- Penal Code Sections 370 and 372
- Penal Code Section 602
- Health and Safety Code Section 13001.<sup>43</sup>

The scoping memo went on to explain that “[w]hile the Commission has broad authority to regulate public utilities and penalize them for violations of Commission orders or state laws that concern the Commission’s oversight of public utilities, courts have not supported the expansion of the Commission’s regulatory oversight to those laws that are normally enforced by other state agencies or courts.”<sup>44</sup> In support of this position, the scoping memo cites to *Greenlining Institute v. Public Utilities Commission* (2002) 103 Cal.App.4<sup>th</sup> 1324, 1331, in which the Court explained that while Public Utilities Code § 1702 provides that the Commission has the power adjudicates complaints against public utilities, that assertion of jurisdiction over complaints must be “germane to the subject of the regulation and control of public utilities,” (quoting *Motor Transit Co. v. Railroad Commission* (1922) 189 Cal. 573, 580). In other words, while Article XII, § 6 of the California Constitution does grant the Commission with

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<sup>43</sup> Scoping Memo at 3.

<sup>44</sup> *Id.*

judicial powers,<sup>45</sup> when utilized, the judicial power must be reasonably necessary to accomplish the Commission’s “primary, legitimate regulatory purpose.”<sup>46</sup> Thus, the Commission’s exercise of its judicial power may not be so extensive as to supplant the authority given by the California Constitution to the superior courts.<sup>47</sup>

We reach the same conclusion as the *Santa Cruz* scoping memo and provide additional reasoning to explain why that conclusion is correct. While it is true that the Commission is a state agency of constitutional origin with far-reaching duties, functions, and powers that courts have liberally construed,<sup>48</sup> it is settled law that the “Commission’s jurisdiction is limited to the powers conferred upon it by the Constitution and laws of California.”<sup>49</sup> The Commission does have various enforcement powers that the Legislature has given it. For example, the Commission can (1) enforce its orders by suit (Pub. Util. Code § 2101), or by mandamus or injunction (Pub. Util. Code § 2102); (2) impose fines (Pub. Util. Code §§ 2100, 2107, and 2108); (3) award reparations (Pub. Util. Code § 735);<sup>50</sup> (4) sue to recover fines by an action in superior court (Pub. Util. Code § 2104);

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<sup>45</sup> “The commission may fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction.”

<sup>46</sup> See *McHugh v. Santa Monica Rent Control Board* (1989) 49 Cal.3d 348, 375.

<sup>47</sup> California Constitution, Article VI, § 1 states:

The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts. . . .”

<sup>48</sup> See *Consumers Lobby Against Monopolies v. Public Utilities Commission* (1979) 25 Cal.3d 891, 905; and *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 630.

<sup>49</sup> *Mak v. PT&T Co.* (1971) 72 CPUC 735, 738.

<sup>50</sup> In *Re P.T.&T. Co.* (1971) 72 CPUC 505, 509, the Commission explained “reparatory relief is limited to a refund or adjustment of part or all of the utility charge for a service or group of related services.”

(5) punish a regulated entity with contempt (Pub. Util. Code §§ 2112 and 2113); and (6) entertain complaints against a public utility (Pub. Util. Code § 1702).

Yet, there is an important limitation on the Commission's power to entertain complaints--the complainant must allege that a public utility violated a statute, rule, order, or other directive that the Commission is tasked to enforce. Here, the complaint alleges that PG&E vegetation management activities violate the Public Resources Code §§ 4292, 4293, and 4294;<sup>51</sup> have created a public and private nuisance in violation of Civil Code §§ 3479, 3480, and 3481, along with Penal Code §§ 370 and 372;<sup>52</sup> constitute an illegal trespass in violation of Penal Code § 602;<sup>53</sup> and have constituted a misdemeanor in violation of Health & Safety Code § 13001.<sup>54</sup> Yet Complainants fail to demonstrate that the Commission has the authority to enforce any of these sections that are found in codes outside of the Public Utilities Code. They fail to cite to any language in these provisions that the Commission has the authority to enforce them or point to some legislative directive that would support their position.

Nor can Complainants perform an end run by citing to the Commission's general grant of authority to entertain complaints as the basis for the Commission to entertain any cause of action against a public utility regardless of what code section the public utility is accused of violating. Pub. Util. Code § 1702 says that a complaint may be made to the Commission against a public utility that has allegedly violated "any provision of law or of any order or rule of the commission." But the phrase "any provision of law" is not so broad to include

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<sup>51</sup> Complaint at 12-13, 35-38.

<sup>52</sup> *Id.*, 39-42.

<sup>53</sup> *Id.*, 44-47.

<sup>54</sup> *Id.*, 48-51.

any provision found in all the California Codes, as the Complainants seem to suggest. Complainants must establish a nexus between the violated code and the Commission's authority to enforce that violated code, and this is where the Complainants fail to satisfy their burden.<sup>55</sup>

Complainants' position that the Commission apparently has jurisdiction to entertain claims against a public utility for violations of the Public Resources Code, Civil Code, Penal Code, and Health & Safety Code is also undermined by the rules of statutory interpretation. Public Utilities Code § 1702 provides a general grant of authority for the Commission to adjudicate claims against public utilities. In contrast, the cited provisions in the Public Resources Code, Civil Code, Penal Code, and Health & Safety Code deal with specific instances of wrongdoing. For example, Complainants cite to Cal. Code Regs. Tit. 14 § 1252 which states: "The Director will apply PRC 4292-4296 in any mountainous land, forest, covered land, brush covered land or grass covered land within State Responsibility Areas unless exempted by 14 CCR 1255 and 1257." Director is defined by Public Resources Code § 4004 as the "Director of Forestry and Fire Protection." Under California's rules of statutory interpretation, when a specific statute and a general statute potentially cover the same subject matter, "the specific statute must be read as an exception to the more general statute." (*Salazar*

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<sup>55</sup> Complainants' request that the Commission adjudicate these claims based on the Public Resources Code, Civil Code, Penal Code, and Health & Safety Code also cannot be granted by Pub. Util. Code § 701, which states:

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.

While the language in Section 701 is indeed broad, the Commission's power is not so broad that it can be exercised contrary to other legislative directives. (*See Assembly of God. v. Public Utilities Commission* (1995) 12 Cal.4<sup>th</sup> 87, 103.) As such, Pub. Util. Code § 701 cannot be used to assert jurisdiction over statutes that are in the province of another governmental body to enforces.

*v. Eastin* (1995) 9 Cal.4<sup>th</sup> 836, 857.) Thus, the enforcement of the portions of the Public Resource Code that Complainants are citing would properly be within the province of the Director of Forestry and Fire Protection's specific grant of authority for matters arising under the Public Resources Code, rather than fall within the Commission's general grant of regulatory oversight under the Public Utilities Code for adjudicating complaints against public utilities.<sup>56</sup>

The same is true with respect to the other statutory schemes that Complainants have cited. For example, Complainants cite to Penal Code 602 and the prohibition against illegal trespass. But determining what is a trespass and how such laws should be enforced is something relegated to municipal authorities who bring such matters to superior court. (*See Batiste v. Superior Court* (1992) 4 Cal.App.4<sup>th</sup> 460, 465, review denied: "[T]respass has long been an area in which local units have legislated; such an area may involve special local problems of facilities and geography with which a state Legislature could cope only with difficulty (*In re Cox* (1970) 3 Cal.3d 205, 220.)"<sup>57</sup> Nowhere in the Penal Code does it suggest that the Commission would be the appropriate venue to enjoin a trespass claim against a public utility, and this Commission has found

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<sup>56</sup> For the same reasons, Complainants fail to establish that the Commission has the authority to enforce Public Resources Code §§ 4571 and 4581, 4601, 4602, and 30000, *et seq.*, California Forest Practice Rules (14 Cal. Code of Regs. § 895, *et seq.*), U.S. Clean Water Act 301 (federal law governing water pollution), California Water Code 13376 (duty to report discharge of pollutants). These code sections were set forth in *County of Santa Cruz* that Complainants asked this Commission to take judicial notice of but did not address directly in their complaint.

<sup>57</sup> *See also* Decision 90-12-035 (1990). In an action regarding the Los Angeles County Transportation Commission to authorize the construction of two light rail vehicle tracks, the Commission said the following safety features have been incorporated into the design to provide protection for authorized personnel: "Enforcement of trespassing laws are policed by the Los Angeles County Sheriff's Department with the objective of eliminating unauthorized access to the aerial structures and right-of-way."

previously that the opposite is true.<sup>58</sup> Moreover, even if Complainants' could assert a trespass claim, they overlook the fact that PG&E has the right to enter the Wopumnes Conservation Easement pursuant to access rights that have been in existence since 1947.

Similarly, Complainants' citation to Health & Safety Code § 13000, which speaks of "[e]very person is guilty of a misdemeanor," suggests that the proper forum is an action for damages and criminal penalties in superior court. (See Health & Safety Code § 13007 (liability for any damages to property caused by fire); 13008 (liability for allowing fire to escape to another's property); and 13009 (recovering of fire suppression and rescue costs). The forum would not be the Commission as the Commission does not award either consequential or compensatory damages.<sup>59</sup>

The same can be said for nuisance suits where the many annotations to Civil Code §§ 3479-3481 reference lawsuits brought in superior court. Such would be the appropriate first venue assuming that doing so would not otherwise interfere with or frustrate a general regulatory policy of the Commission.<sup>60</sup> Nothing in the plain language of any of the statutes suggests that

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<sup>58</sup> See *Max v. The Pacific Telephone and Telegraph Company* (1971) Decision 79468 (Conclusion of Law # 1: "The Commission has no jurisdiction to award damages herein for breach of contract, trespass or fraud.")

<sup>59</sup> See *Vila v. Tahoe South Side Water Utility* (1965) 233 Cal.App.2d 469, 479 ("The commission has no authority to award damages. That was sought in *M.L.M. Jones v. Pacific Tel. Tel. Co.* (1963) 61 Cal. P.U.C. 674, where the commission asserted its lack of jurisdiction either to make a finding concerning, or to order, damages." Other decisions are in accord. (*Max, supra*, : "The Commission has no jurisdiction to award monetary damages for tortious conduct. [citations omitted] Mak must go to court rather than the Commission to recover any damages to which she may be entitled.")

<sup>60</sup> See *San Diego Gas Electric Company v. Superior Court (Covalt)* (1996) 13 Cal.4th 893, 914, citing to Pub. Util. Code § 1759 which states:

the appropriate first step for relief would be before the Commission.<sup>61</sup> Such a conclusion would also be consistent with the rule of statutory interpretation that a statute should not be interpreted in a manner that would lead to absurd results. To accept Complainants' position that the Commission is the state agency to hear claims for violations of the Health & Safety Code, Civil Code, and the Penal Code would turn the Commission into a super enforcement agency whose power would supplant that of the superior court and other state agencies. There is nothing in the California Constitution, the Public Utilities Code, the Penal Code, or any other legislative act that would confer upon the Commission such vast jurisdictional authority.

Complainants also allege violations that do come within the scope of the Commission's regulatory authority so we must determine if Complainants have met their burden of proving any of these violations. This analysis is necessary because for a plaintiff to bring a private cause of action in superior against a public utility subject to the Commission's jurisdiction, Pub. Util. Code § 2106 requires the plaintiff to establish that the public utility has violated a

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(a) 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.

<sup>61</sup> Complainants also make repeated references to Notices of Violations that Cal Fire issued with respect to PG&E's vegetation management activities in Santa Cruz County and have attached copies of same to their complaint. (*See, e.g.*, Complaint at ¶¶3, 4, 8, 11, 16, 39, 40, and exhibits attached thereto.) Since Complainants do not assert a cause of action against PG&E in this proceeding that was the subject of the NOVs concern regarding PG&E's activities in another county, they are not relevant to this proceeding. Even if they were relevant, Complainants fail to allege and establish that the Commission has the authority to enforce a NOV issued by a different state agency as Cal Fire is part of the Department of Forestry and Fire Protection. (*See* Health & Safety Code § 13800 *et. seq.*)

Commission rule, order, or provision of the Public Utilities Code.<sup>62</sup> And as with the question of standing, Complainants bear the burden of proof which must be established by a preponderance of the evidence.

#### **4.2.3. Claims Against PG&E Within the Scope of the Commission's Jurisdiction**

##### **4.2.3.1. Pub. Util. Code § 451**

Pub. Util. Code § 451 states in relevant part:

Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in [Section 54.1 of the Civil Code](#), as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

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<sup>62</sup> Pub. Util. Code § 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 do 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 wilful, 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 a recovery by the State of the penalties provided in this part or the exercise by the commission of its power to punish for contempt.

An action can be pursued against a public utility in superior court if such suit would not hinder or interfere with the Commission's exercise of its jurisdiction. (*Hartwell Corp. v. Superior Court* (2002) 27 Cal.4<sup>th</sup> 256, 266; and *San Diego Gas & Electric Company, supra*, 13 Cal.4<sup>th</sup>, at 916.) Taken together, *Hartwell* and *Covalt* reconcile the apparent contradiction between Pub. Util. Code § 1759, cited *supra*, which prohibits suits in superior court against public utilities regulated by the Commission, and 2106, which permits such suits if certain conditions are met. That statutory reconciliation was followed more recently in *Lefebvre v. Southern California Edison Company* (2016) 244 Cal.4<sup>th</sup> 143, 154.

Complainants first allege that as documented in the NOV's, PG&E violated Pub. Util. Code § 451 by engaging in vegetation management without proper permitting, and in a manner likely to endanger the environment and health, safety, and welfare of the public and PG&E's ratepayers.<sup>63</sup> We reject this first claim because Complainants are relying on actions that PG&E engaged in in Santa Cruz County that were the subject of the NOV, and not in El Dorado County where Complainants reside.

Complainants' second argument is that PG&E had no permits to engage in vegetation management on the Conservation Easement and did not get a sign-off from Wanda Nagel or the Wopumnes.<sup>64</sup> This assertion is also factually and legally flawed. PG&E testified that it was operating pursuant to its Enhanced Vegetation Management Program.<sup>65</sup> PG&E explained that the scope of work included:

The inspection and assessment of all trees that had the strike potential for the distribution circuit facilities. We were mitigating any trees that were growing too close to the wires, any trees that had canopy overhanging to conductors, or any trees that had structural risk or risk of falling – trees that have risk of falling and striking the facilities.<sup>66</sup>

After identifying the scope of work, PG&E notifies the landowners, as it did with both Wanda Nagel and Paula Davis.<sup>67</sup> After the notification, Wanda Nagel did not authorize PG&E to perform vegetation management work on her

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<sup>63</sup> Complaint at 14, ¶ 40.

<sup>64</sup> *Id.*

<sup>65</sup> RT 21:3-14.

<sup>66</sup> RT 24:22-25:4.

<sup>67</sup> RT 25:5-7; 27:5-25; and 30:7-31:1.

property, so PG&E placed the proposed work into “do-not-work” status.<sup>68</sup> In contrast, Paula Davis did not raise any objection to PG&E’s proposed vegetation management work.<sup>69</sup>

Thus, we conclude that in performing visual inspections of vegetation to assess and address the potential risk of fire, PG&E comported itself in a manner consistent with Pub. Util. Code § 451 and applicable Commission authority. With Decision (D.) 20-05-053,<sup>70</sup> the Commission approved PG&E’s reorganization plan but also instituted a new Enhanced Oversight and Enforcement Process to supplement the Commission’s existing enforcement authority. This process allows the Commission to closely monitor PG&E’s performance in delivering safe, reliable service by prioritizing clearing vegetation on its highest-risk power lines as part of its wildfire mitigation work.

Furthermore, there is nothing in D.20-05-053, and Complainants fail to cite to any other applicable Commission authority, that would require PG&E to obtain a permit to comply with the requirements set forth in D.20-05-053 or the Enhanced Oversight and Enforcement plan. In fact, when we examine Complainants’ allegations more closely, we see that the permit requirement to which they refer is something that is required by the Public Resources Code. In the Santa Cruz NOV dated October 30, 2020, which Complainants attached as an exhibit to their complaint, Cal Fire states as follows:

On October 28, 2020, I inspected a small portion of the burned area and encountered several different contractors (listed above) operating along the powerlines. I confirmed that the

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<sup>68</sup> RT 29:7-25.

<sup>69</sup> RT 31:13-14.

<sup>70</sup> *Decision Approving Reorganization Plan.*

areas where they were working met the definition of “Timberland” under the Public Resources Code section 4526.

Per Public Resources Code §§4571 and 4581, timber operations require both a permit and a license.<sup>71</sup> As the Commission has already determined it does not have jurisdiction to enforce the Public Resources Code, Complainants may not bootstrap the Public Resources Code’s requirements into this proceeding by claiming PG&E has violated Pub. Util. Code § 451 by alleging failure to comply with the permit requirements found in the Public Resources Code.

#### **4.2.3.2. Pub. Util. Code § 702**

Pub. Util. Code § 702 states:

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.

While Complainants allege that PG&E violated Pub. Util. Code § 702,<sup>72</sup> they fail to set forth any arguments and evidence to support that claim. As such, we reject Complainants’ reliance on this Section of the Public Utilities Code. Moreover, as we will explain, PG&E’s conduct was performed in compliance with Pub. Util. Code § 702 because it followed the applicable Commission decisions and general orders.

#### **4.2.3.3. General Order 95, Rule 35**

General Order 95 sets forth the Rules for Overhead Electric Construction, with Rule 35 covering vegetation management. The first paragraph of Rule 35

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<sup>71</sup> Complaint, Exhibit B (part 1).

<sup>72</sup> Complaint at 14, line 9: “Violations of Pub. Util Code Section 702[.]”

speaks generally about the need for vegetation management and states in relevant part:

Where overhead conductors traverse trees and vegetation, safety and reliability of service *demand that certain vegetation management activities be performed in order to establish necessary and reasonable clearances, the minimum clearances set forth in Table 1, Cases 13 and 14, measured between line conductors and vegetation under normal conditions shall be maintained.*<sup>73</sup>

The second paragraph in Rule 35, which Complainants cite in their complaint, deals with the removal of rotten, dead, or diseased trees:

When a supply or communication company has actual knowledge, obtained either through normal operating practices or notification to the company, that dead, rotten or diseased trees or dead, rotten or diseased portions of otherwise healthy trees overhang or lean toward and may fall into a span of supply or communication lines, said trees or portions thereof should be removed.

In viewing these first two paragraphs in Rule 35, Complainants allege that PG&E exceeded its authority given by Rule 35 since it did more than fell dead, rotten, or diseased trees.<sup>74</sup> Further, Complainants allege that PG&E's vegetation management activities were not necessitated by an emergency, failed to satisfy the Cal Fire permitting requirements, and, therefore, results in a violation of Rule 35.<sup>75</sup>

We reject Complainants' argument because it is not supported by the applicable law. PG&E's obligation to engage in vegetation management is not

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<sup>73</sup> GO 95, III-19 (Italics added). The portion of Rule 35 in italics is what Complainants have quoted in their complaint. (Complaint at 14, 41.)

<sup>74</sup> Complaint at 14, 42.

<sup>75</sup> *Id.*, 42 and 43.

restricted to the removal of dead, rotten, or diseased trees or portions thereof. (See *Sarale v. Pacific Gas and Electric* (2010) 189 Cal.App.4<sup>th</sup> 225, 237; and Resolution WSD-021 [Wildfire Mitigation Plan Update of PG&E].) The language that Complainants cite is found in the second paragraph of Rule 35 and not the first, which uses the broader language for performing reasonable and necessary clearances, solely guided by the requirements set forth in GO 95, Rule 35. At a minimum, Resolution WSD-021 established enhanced vegetation management protocols that were enacted specifically for PG&E, and Complainants fail to establish that PG&E's actions violated these protocols.

We also reject Complainants' assertion that PG&E failed to establish an emergency that would have justified its vegetation management activities. Complainants fail to cite to any portion of GO 95, Rule 35, that PG&E's engagement in vegetation management must be precipitated by an emergency. Instead, PG&E, and other utilities with high voltage power lines, are required to engage in vegetation management to promote public safety, fire safety, and service reliability.<sup>76</sup> As the need to engage in vegetation management can arise regardless of whether there is an emergency, Complainants err in their attempt to restrict PG&E's vegetation management to emergency situations.

Finally, we reject Complainants' assertion that PG&E violated GO 95, Rule 35, when it allegedly trespassed on private property. First, the Commission does not enforce the trespass code provisions that Complainants cite. Second, the evidence established that PG&E did not engage in any trespass. PG&E entered

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<sup>76</sup> GO 95, Section 11, Purpose of Rules, states:

The purpose of these rules is to formulate, for the State of California, requirements for overhead line design, construction, and maintenance, the application of which will ensure adequate service and secure safety to persons engaged in the construction, maintenance, operation or use of overhead lines and to the public in general.

the Davis Property, and performed its vegetation management work with her knowledge and permission.<sup>77</sup> PG&E entered the Nagel property to perform its visual inspection and to engage in vegetation management as it was entitled to due pursuant to, at a minimum, GO 95, Rule 35, and Pub. Util. Code § 702, discussed *supra*. PG&E did not return to the Nagel property after she objected to PG&E's presence.<sup>78</sup>

#### **4.2.3.4. General Order 165**

General Order (GO) 165 sets forth the inspection requirements for electric distribution and transmission facilities to ensure safe and high-quality electrical service. In adopting GO 165, the Commission followed the will of the Legislature, codified in Pub. Util. Code § 364, that the Commission "adopt inspection, maintenance, repair, and replacement standards" for utility distribution equipment. In D.96-11-021,<sup>79</sup> the Commission proposed standards for electric distribution system inspections. After receiving party comments, the Commission issued D.97-03-070<sup>80</sup> which adopted final inspection cycles for wood poles and overhead, padmounted, and underground equipment of electric utility distribution systems. To ensure safe and reliable service, each utility subject to GO 165 must perform an inspection of its electric distribution and transmission

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<sup>77</sup> RT 31:5-24.

<sup>78</sup> RT 29:7-21.

<sup>79</sup> *Opinion from Commission Order Instituting Investigation into the rates, charges, services and practices of Pacific Gas and Electric Company, I.95-02-015.*

<sup>80</sup> *Id.*

lines, and the inspection can be either a “patrol inspection,”<sup>81</sup> “detailed,”<sup>82</sup> or “intrusive.”<sup>83</sup>

Complainants fail to establish that PG&E failed to meet the inspection requirements of GO 165. In fact, a review of record from the evidentiary hearing reveals just the opposite is true. PG&E’s witness testified that its workers performed visual inspections of the Nagel and Davis properties, which would fit within the definition of a “patrol inspection.” As part of its inspection of the PG&E electric line that is part of the distribution circuit for Apple Hill 2101,<sup>84</sup> PG&E performed a visual inspection of the distribution line on the Nagel and Davis properties to perform an inspection and assessment of all trees that had the strike potential for the distribution circuit facilities.<sup>85</sup> Specifically, as part of that visual inspection PG&E was “mitigating any trees that were growing too close to the wires, any trees that had canopy overhanging to conductors, or any trees that had structural risk or risk of falling – trees that have risk of falling and striking the facilities.”<sup>86</sup> In reviewing the record, it is reasonable to conclude that

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<sup>81</sup> Patrol inspection is defined as, a simple visual inspection, of applicable utility equipment and structures, that is designed to identify obvious structural problems and hazards. Patrol inspections may be carried out in the course of other company business.

<sup>82</sup> Detailed inspected is defined as, one where individual pieces of equipment and structures are carefully examined, visually and through use of routine diagnostic test, as appropriate, and (if practical and if useful information can be so gathered) opened, and the condition of each rated and recorded.

<sup>83</sup> Intrusive inspection is defined as, one involving movement of soil, taking samples for analysis, and/or using more sophisticated diagnostic tools beyond visual inspections or instrument reading.

<sup>84</sup> RT 23:17-24.

<sup>85</sup> RT 24:2-24.

<sup>86</sup> RT 24:25-25:4.

PG&E's visual inspection was performed in accordance with the requirements of GO 165.

Rather than establish a violation of GO 165, Complainants assert that "a safe and reliable electric system goes beyond the distribution and transmission lines themselves. The safety of the surrounding environment must also be considered."<sup>87</sup> While true, such a concern does not fall within the inspection definitions found in GO 165, which focus on the inspection of utility equipment and structures (patrol inspection), pieces of equipment and structures (detailed inspection), and the movement of soil for analysis (intrusive inspection). What Complainants have alleged as the proper inspection standard, even if true, does not give rise to a GO 165 violation.

#### **4.2.3.5. Resolution ESRB-4**

With California's increased concerns regarding the intersection between climate change, increased instances of drought, and resulting fires,<sup>88</sup> on June 16, 2014, the Commission issued Resolution ESRB-4 which directs IOUs to take remedial measures to reduce the likelihood of fires associated with or threatening their facilities. With Resolution ESRB-4's adoption, the Commission underscored its commitment to ensure that IOUs conduct their vegetation management activities in a responsible manner to increase the safety of the public in both forested areas and at urban-rural interfaces.

We reject Complainants' allegation that PG&E's vegetation management activities violated ESRB-4. First, Complainants reference the Cal Fire NOV's 1-4

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<sup>87</sup> Complaint at 15.

<sup>88</sup> On January 17, 2014, Governor Edmund G. Brown, Jr. proclaimed a State of Emergency and directed state officials to take actions to mitigate against conditions that could result from a drought. The Proclamation of a State of Emergency states, in part, that because of the dry conditions and lack of precipitation, "the risk of wildfires across the state is greatly increased[.]"

for the proposition that PG&E's activities increased the likelihood of fires near PG&E's transmission facilities and endangered roads necessary for the proper response to wildland fires by failing to implement proper erosion control measures.<sup>89</sup> As noted above, since the NOVs that Complainants' cite to concern PG&E's actions in Santa Cruz County, they are irrelevant to the instant proceeding which concerns PG&E's action in El Dorado County. Second, Complainants' assertion that PG&E dumped three feet of wood chips on the forest floor on the Conservation Easement was unsubstantiated at the evidentiary hearing. Even if Complainants' characterization of PG&E's vegetation management was true, it is irrelevant as the heart of their complaint was the cutting down of the "Mother and Child" cedar tree on the Davis property, which does not include the Conservation Easement.<sup>90</sup> Accordingly, Complainants fail to establish a violation of ESRB-4.

#### **4.2.3.6. Injunctive Relief**

Complainants ask that the Commission issue an injunction against PG&E and its contractors to prevent them from continuing their vegetation management work at 4820 Newton Road, 4901 Newton Road, and the adjacent properties on Fort Jim Court and Knobcone Lane.<sup>91</sup> There is no question that the Commission has the authority to grant injunctive relief, since such power is "firmly rooted in the California Constitution, the Public Utilities Code, and case law."<sup>92</sup> To obtain that relief, the moving party must show all of the following:

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<sup>89</sup> Complaint at 16, 48.

<sup>90</sup> RT 33:1-15; 45:10-21.

<sup>91</sup> Complaint at 1.

<sup>92</sup> Decision (D.) No. 09-08-030 at 6-7 (*Decision Granting the Motion for a Temporary Restraining Order Regarding San Diego Gas & Electric Company's Power Shut-Off Plan*), citing to *Consumer Lobby Against Monopolies v. Public Utilities Commission* (1979) 25 Cal.3d 891, 905.

(1) irreparable injury to the moving party without the [restraining order]; (2) no harm to the public interest; (3) no substantial harm to other interested parties; and (4) a likelihood of prevailing on the merits.<sup>93</sup>

Complainants fail to satisfy the criteria for injunctive relief. First, they have not set forth any facts that they will be irreparably harmed without an injunction. As we have demonstrated above, PG&E's vegetation management activities that are at the heart of this dispute did not occur on their property. Second, they have not demonstrated there would be no harm to the public interest and other interested parties if the injunctive relief were granted. In fact, since PG&E has been engaging in vegetation management activities consistent with Commission and statutory law to prevent the risk of fire, enjoining PG&E would create a greater risk of fire, which would be harmful to the public interest. Third, Complainants have failed to demonstrate the likelihood of prevailing on the merits of their complaint. As we have shown, the causes of action that Complainants have asserted either raise issues beyond the Commission's jurisdiction or have not been established by a preponderance of the evidence following the evidentiary hearing. Accordingly, Complainants' request for injunctive relief is denied.

#### **4.2.3.7. Other Relief**

In the closing portion of their Complaint, Complainants list numerous forms of relief that they ask the Commission to grant: (1) compel PG&E to perform all ongoing and future work in accordance with various listed Codes, General Orders, and Resolution ESRB-4; (2) compel PG&E to undertake and document all reasonable steps to obtain permission to enter private property and

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<sup>93</sup> D.09-08-030 at 7.

obtain permission prior to felling trees or clearing brush; (3) compel PG&E to remove all vegetation and logs deposited on private property; (4) compel PG&E to comply with its Vegetation Management Plan; (5) compel PG&E to engage in the remediation activities described in the CalFire NOVs 1-4; and (6) compel PG&E to comply with the Coastal Commission and Water Quality Control Board NOVs.<sup>94</sup>

We deny each of Complainants' requests. As we have explained above, PG&E has followed its Vegetation Management Plan when it engaged in vegetation management activities that are at the heart of this proceeding. Accordingly, PG&E is already engaging in the activities that Complainants' state they want PG&E to perform. We have documented what laws are within the Commission's authority to enforce, and we have found that PG&E is already in compliance. In view of the state of the record and what was established at the evidentiary hearing, Complainants' requests are factually and legally unsupported.

## **5. Environmental and Social Justice**

When we speak of environmental and social justice, we refer to the Commission's mission to regulate essential utility services to protect consumers and safeguard the environment, assuring safe and reliable access to all Californians. In accordance with the Commission's institutional values of accountability, excellence, integrity, open communication, and stewardship, the Commission has created the Environmental and Social Justice (ESJ) Action Plan to serve as both a commitment to furthering ESJ principles, as well as an

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<sup>94</sup> Complaint at 20-21, §§ 52-58.

operating framework with which to integrate ESJ considerations throughout the agency's work.

"Environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. Because the Commission regulates utility services beyond those tied to the environment, the term "environmental and social justice" or "ESJ" has been adopted to capture a broader effort and potential population. As such, we must consider if today's decision raises any environmental and social justice issues.

In reviewing the complaint's allegations, and how they have been resolved by this decision, we conclude that the disposition of the complaint will not negatively impact environmental and social justice communities nor the goals of the Commission's ESJ Plan. Here we have determined that PG&E has discharged its duty to engage in vegetation management in a way that promotes safe and reliable electrical service in accordance with applicable Commission authority. PG&E's actions have not impacted an environmental and social justice community. Instead, the goal of PG&E's actions has been to identify and eliminate potential fire risks, a goal that benefits all affected communities within PG&E's service territory.

## **6. Conclusion**

We find that the Complainants have failed to meet their burden of establishing that PG&E violated any applicable law, rule, statute, or decision when it engaged in its vegetation management activities during the time in question. Complainants did not establish that the cutting down of the "Mother and Child" tree occurred on either the Nagel property or the Wopumnes Conservation Easement. Finally, the evidence establishes that PG&E's vegetation

management activities were performed consistent with GO 95, GO 165, ESRB-4, Pub. Util. Code § 702, and applicable Commission decisions.

Accordingly, Complainants' complaint is dismissed, in its entirety, with prejudice.

## **7. Assignment of Proceeding**

John Reynolds is the assigned Commissioner and Robert M. Mason III is the Presiding Officer and assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Wanda Nagel resides at 4820 Newton Road, Placerville, California, in the County of El Dorado.
2. On December 17, 2018, Wopumnes Nisenan and Mewuk Heritage Preservation Society of EDC was granted a Conservation Easement that traverses 4820 Newton Road and 4901 Newton Road, Placerville, California, in the County of El Dorado.
3. Paula Davis resides at 2940 Fort Jim Court, Placerville, California, in the County of El Dorado.
4. The County of El Dorado owns property at 4901 Newton Road, Placerville, California, in the County of El Dorado.
5. The Conservation Easement does not cross onto 2940 Fort Jim Court.
6. On March 20, 1947, PG&E acquired the right of access to 4901 Newton Road to construct, operate, and maintain its electric pole lines.
7. PG&E has an electric line on the properties at 4820 Newton Road, 4901 Newton Road, and 2940 Fort Jim Court. The electric line is part of the distribution circuit for Apple Hill 2102.
8. In August of 2021, PG&E came to Fort Jim Court and Newton Road to engage in vegetation management work, which consisted of inspecting and

assessing of all trees that had the strike potential for the distribution circuit facilities, mitigating any trees growing too close to the wires, any trees that had canopy overhanging to the conductors, or any trees that had a risk of falling and striking the facilities.

9. PG&E notified Wanda Nagel and Paula Davis of the vegetation management work it planned to perform.

10. Wanda Nagel objected to PG&E performing vegetation management work on her property at 4820 Newtown Road.

11. As a result of Wanda Nagel's objection, PG&E did not perform vegetation management work on her property at 4820 Newton Road.

12. Paula Davis did not object to PG&E performing vegetation management work on her property at 2940 Fort Jim Court.

13. The "Mother and Child" cedar tree that PG&E cut down was located on the Paula Davis property at 2940 Fort Jim Court.

14. PG&E also performed vegetation management on the County of El Dorado property at 4901 Newton Road.

### **Conclusions of Law**

1. It is reasonable to conclude that the Commission lacks jurisdiction to adjudicate the causes of action Complainants brought under Public Resource Code §§ 4292, 4293, and 4294.

2. It is reasonable to conclude that the Commission lacks jurisdiction to adjudicate the causes of action Complainants brought under Civil Code §§ 3479, 3480, and 3481.

3. It is reasonable to conclude that the Commission lacks jurisdiction to adjudicate the causes of action Complainants brought under Penal Code § 602.

4. It is reasonable to conclude that the Commission lacks jurisdiction to adjudicate the causes of action Complainants brought under Health & Safety Code § 13001.

5. It is reasonable to conclude that Complainants failed to establish that PG&E violated Pub. Util. Code § 451 when it engaged in the complained of vegetation management activities.

6. It is reasonable to conclude that Complainants failed to establish that PG&E violated Pub. Util. Code § 702 when it engaged in the complained of vegetation management activities.

7. It is reasonable to conclude that Complainants failed to establish that PG&E violated General Order 95, Rule 35, when it engaged in the complained of vegetation management activities.

8. It is reasonable to conclude that Complainants failed to establish that PG&E violated General Order 165 when it engaged in the complained of vegetation management activities.

9. It is reasonable to conclude that Complainants failed to establish that PG&E violated Resolution ESRB-4 when it engaged in the complained of vegetation management activities.

10. It is reasonable to conclude that when PG&E engaged in its complained of vegetation management activities, it complied with Pub. Util. Code §§ 451, 702.

11. It is reasonable to conclude that when PG&E engaged in its complained of vegetation management activities, it complied with General Order 95, Rule 35.

12. It is reasonable to conclude that when PG&E engaged in its complained of vegetation management activities, it complied with General Order 165.

13. It is reasonable to conclude that when PG&E engaged in its complained of vegetation management activities, it complied with Resolution ESRB-4.

14. It is reasonable to conclude that Complainants' complaint against PG&E should be dismissed with prejudice.

**O R D E R**

**IT IS ORDERED** that:

1. The complaint of Wanda H. Nagel and Wopumnes Nisenan and Mewuk Heritage Preservation Society of EDC against Pacific Gas and Electric Company is dismissed with prejudice.
2. Complaint 22-08-004 is closed.

This order is effective today.

Dated November 2, 2023, at San Francisco, California.