From:	dan@excaliburre.com
To:	Stockton, Katherine; Wildfire Safety Advisory Board
Cc:	utility-wildfire-prevention-task-force@googlegroups.com
Subject:	Comment Letter for WSB
Date:	Monday, April 12, 2021 3:34:38 PM
Attachments:	CPUC WSB Comment Letter - DC 4-11-21.docx

I hope my comment letter isn't too late to be included with the comments.
My apologies for missing the deadline.

Sincerely,
Dan

Dan Courtney
La Jolla, CA
(858) 337-7019 cell
Dan@excaliburre.com

Dear Chair Edwards and Members of the Wildfire Safety Advisory Board,

I would like to supplement information in the draft report with a couple of items from the perspective of a private property owner in a High Fire Threat District.

Specifically, I would like to bring your attention to the culture of PG&E's Vegetation Management Division and the absence of an important legal requirement in the process pertaining to private property rights and recourse.

In the rural Counties PG&E Vegetation Management Division staff and contractors regularly ignore their requirements to provide Notice and an Opportunity to be Heard and employ mis-information and intimidation to pressure property owners to all them to cut down trees which may or may not actually be Hazard Trees.

For example, they often state they have the authority to cut down any tree tall enough to strike a power line regardless of the bounds of their Right of Ways and tell the property owner that they could be held liable for potentially millions in Damages, could have their electricity shut off and / or have law enforcement accompany their tree crews to undertake forced cuttings.

In some cases, including mine, they will enter private property despite being Noticed not to and will just cut down scores of trees and leave the logs and slash laying on the ground, creating fresh fuel which may be left for months or years, unless the property owner can afford to have this extremely flammable material removed.

Now, if they were only removing genuine Hazard Trees (traditionally defined as Dead, Dying or Diseased) this wouldn't be such a large issue. But in fact with their Enhanced Vegetation Management Program, and under the Court Order from Judge Alsup, who is overseeing their criminal probation, to remove any tree or branch capable of reaching a power line, PG&E is cutting down MILLIONS of healthy green trees.

We are concerned that PG&E is cutting down healthy trees simply because they are tall enough to reach a power line.

They are under *so much* pressure now to cut down trees that they seem to be more interested in generating high tree counts in the areas where they have active tree crews, than in cutting down the *right* trees.

PG&E is also currently lobbying the Board of Forestry and Fire Prevention / CalFire, for the freedom to mark any tall tree adjacent to a power line as a Danger Tree so they can legally clear cut wide swaths of forest and Timberland.

As backround, I am the Trustee of my late Mother Jacqueline Courtney's Trust which owns fourteen acres and a one bedroom cabin on homesteader property in timberland on the western border of Yosemite National Park. It's a beautiful, scenic property which we nicknamed Secret Meadows Retreat with meadows, year-round springs and old growth forest comprised primarily of Ponderosa Pine, Black Oak and Incense Cedar (related to the Giant Sequoias in nearby Merced Grove and Tuolumne Grove).

The property is encumbered by one PG&E 17kv distribution line and two lines which feed the other nine cabins on Sawmill Mountain, Groveland.

Over at least the past two decades PG&E has vigilantly inspected all the trees in the vicinity of their powerlines at least twice per year and lately a half dozen times per year. We have never Refused to consent to their requests and all trees along the lines have been trimmed or topped on a regular basis. PG&E contractors have also removed over two hundred dead, dying or diseased trees.

As recently as the last Inspection, on March 29th, there are no trees or branches encroaching into the minimum clearance of the power lines or poles. However, PG&E has been very aggressively demanding to cut down healthy trees on our property which are well outside their easements. In some cases they have marked completely healthy 400 to 500 year old Heritage Trees which are over one hundred feet from a line feeding a handful of small cabins.

We wondered why they were trying to cut down so many apparently healthy trees which are so far from the power lines so I hired Registered Professional Forester Glenn Gottschall, who is a retired Deputy Forest Superintendent for the U.S. Forest Service. Mr. Gottschall (bio attached) is a tree mortality expert and now serves as the President of the Hwy 108 Fire Safe Council and a member of the Tuolumne County Tree Mortality Task Force.

Mr. Gottschall inspected the marked trees and determined that less than fifteen percent could even potentially be designated as Hazard Trees.

We wondered WHY PG&E was trying to essentially clear cut what amounts to a 200 foot strip along their power lines and eventually determined it appears to be due to the high threats created by having bare, uninsulated power lines, short wooden power poles and extremely limited circuit protection running through the forest.

The more one learns about how dangerous and poorly maintained their equipment is the more we realize why PG&E representatives state that “even healthy green trees are a threat to their equipment”.

Whereas most utilities, including SDG&E and So Cal Edison, utilize “tree wire” or stronger types of insulated wires in forested and High Fire Threat Districts PG&E has mostly bare, uninsulated electrical wires running through the forest.

In some cases, as in Tuolumne County, these wires were installed over seventy years ago, as were the short wooden power poles and narrow, wooden crossarms, which maintain only four feet between these live wires.

Along mine and my neighbor’s property PG&E has bare wires with multiple splices (for example 14 splices in the span passing my cabin) and badly burnt and short wooden power poles. Some of these poles were completely charred in The Rim Fire of 2013 and **are still in use today.**

Whereas an insulated, rubber coated electrical conductor could survive a tree strike without sparking, these bare wires can break and spark from tree, branch, animal or balloon contact.

WHY is PG&E allowed to have such antiquated and dangerous equipment running through dry forests, especially with little or no practical circuit protection?

Is it a responsible use of their easement to destroy people's treasured forest properties by clearcutting wide swaths just because they have chosen to forego maintenance and modernization for the sake of great profits?

There are many studies and analysis which find that creating wide wind tunnels through forests *increases* the risks of catastrophic fast-moving wildfires as the flaming brands are propelled at higher speeds through these wind tunnels.

And we've experienced the actual impacts effects of wind shear and provide first hand evidence of the fact that the younger trees snap and fall over from the combined impact of the absence of large trees to block the wind and from having matured without flexibility as they were not previously exposed to such high winds.

For example, during The Rim Fire PG&E utilized an army of lightly trained inspectors with range finders to mark any tree tall enough to reach a power line and, the same day, had crews cut them down. This was done *during* the fire, without notice to property owners who were under evacuation orders and kept away by roadblocks.

Over the next two years we lost over one hundred more trees as the wind force along this tunnel knocked over the now un-sheltered trees which . This widened the wind tunnel and brought these higher velocity winds closer to our homes.

Then we had new tall brush and grass grow in this now sunny (and previously shaded) strip of land along the power lines, which dries and becomes very flammable in the Summer.

At this point we feel more exposed and threatened than ever, now that our big, strong, old growth trees are gone.

With a greatly reduced forest we now want to make sure that the remaining trees are only cut down if it's absolutely necessary. It seems highly questionable that healthy, vibrant big trees, some of which are centuries old and up to one hundred feet outside the easement, really need to be chopped down because of this man-made problem.

Further, clearing three large swaths right through the middle of this property will completely ruin it and destroy the ambience, privacy and natural beauty which is the essence of this "retreat" and the basis for it's value of over one million dollars.

I have even offered to contribute towards the cost of undergrounding the lines but PG&E has refused to contribute anything more than the salvage value of their old, bare spliced wire and burnt old poles. My suggestion to contribute a few years of vegetation management and winter maintenance expenses was rejected, which baffles me because those expenses will therefore continue, for decades to come.

I was told that would be a violation of their tariff, and there is no program for cost-sharing undergrounding expenses with private property owners.

There is well established law that the dominant tenant in an easement is limited to a *responsible* use of the easement and must utilize other options available to them regardless of cost. PG&E has the options of undergrounding or at least installing taller, fire resistant poles, fire resistant and wider cross arms and

insulated conductors, if not spacer cable, which is designed and manufactured for the specific purpose of being resistant to tree strikes and is being utilized by the other IOU's in California.

There is also well established law that an entity exercising eminent domain or "taking" additional property is responsible for Damages.

But currently there is not even an apparatus for a property owner to appeal to any government agency.

According to an analysis by Shute, Mihaly & Weinberger, dated November 8th, 2019:

Before tree cutting on private property under § 4295.5, the landowner is entitled to "notice and an opportunity to be heard" before the cutting occurs. This presumably means that the utility must provide advance notice to landowners of the individual trees it intends to cut, and that the landowner may contest the cutting plan via an administrative hearing, although § 4295.5 does not specify the applicable notice and hearing procedure. Courts have held that landowners who wish to contest a utility's excessive tree cutting on their private property may do so, but must first exhaust their administrative remedies by challenging the cutting before the California Public Utilities Commission (CPUC) before seeking judicial review. See Sarale v. Pacific Gas & Electric Co. (2010) 189 Cal.App.4th 225, 243–244. The CPUC has the power to issue a TRO or preliminary injunction halting tree cutting pending resolution of the administrative complaint. Id.

Further:

Courts have held that landowners who wish to contest a utility's vegetation removal on their private property may do so, but must first exhaust their administrative remedies by challenging the cutting before CPUC before seeking judicial review. See Sarale v. Pacific Gas & Electric Co. (2010) 189 Cal.App.4th 225, 243–244. The court in Sarale explained the plaintiff's available remedy for "excessive tree trimming": The plaintiffs may contest Rule 35's necessity and implementation before the commission. (See, e.g., Morgan v. Pacific Gas and Electric Company (1987) 25 Cal.P.U.C.2d 393, 394–395 [adjudicating complaint that requested penalties against PG & E and its contractors for "mutilating" trees in the Russian River area under the authority General Order 95].) Exhaustion of administrative remedies is usually the correct answer to challenge of a regulatory rule. Sarale, 189 Cal.App.4th at 243–244. The CPUC has the power to issue a TRO or preliminary injunction halting tree cutting pending resolution of the administrative complaint.

However, as far as we know, the CPUC does not have any process for a property owner to request an administration hearing and has been refusing to get involved. Please see the attached communications from my neighbor, Matt Chapman, who was trying to obtain damages of $1,500.00 in timber value.

In my case, I paid thousands of dollars last year for a report by a Registered Professional Forester with detailed analysis of each and every tree PG&E marked but I have had nowhere to send it.

The CPUC engineer who was advising me last year told me the only process for Review was by the PG&E Area Vegetation Manager, who, in my case, is the same individual who marked my trees. What kind of review process is this when one party to a dispute gets to unilaterally make the final decision?

The government agency with the most expertise in identifying Hazard Trees, the Board of Forestry and Fire Protection / CalFIRE, does not have a process for the Review and does not want to get involved in determining Damages as you can see in the attached communications.

Currently PRC 4293 assigs the authority of Hazard Tree designation as follows: “determined to be necessary by the director or the agency which has primary responsibility for fire protection of such areas”.

However, PG&E, plus other IOU’s, have been lobbying to change the Forest Practice Rules so that any person working under a Registered Professional Forester can designate any tree as a Hazard Tree and to gain other expansions of power. Indeed, last Tuesday, April 6th, PG&E representatives presented the Bureau of Forestry Management Committee with a presentation to become exempt from B o F / CalFire oversight altogether, claiming they are not required to submit Timber Harvest Plans (THP’s) for a number of “creative” reasons.

So how is a private property owner supposed to exhaust their “Administrative Remedies” when there are none?

Limiting the recourse to property owners who wish to contest the condition of their marked trees to filing a lawsuit against PG&E is like throwing them into the lions den.

Many property owners in the rural, forested counties such as Tuolumne County are elderly and / or low income, and this just isn’t fair.

Many people, such as myself and my late Mother, have strong emotional attachments to their trees and it’s quite stressful to be in a situation where you are being threatened with disconnection of power or a forced cutting with law enforcement officers.

Indeed, I have had numerous experiences when we have come up to our mountain retreat to find large, old growth and certified healthy Incense Cedars on the ground, cut into pieces, despite promises from PG&E that those trees would not be cut.

One time I found over FORTY ONE large trees cut down in our lower meadow and left to rot, despite having written promises from the PG&E Area Vegetation Manager that they would not cut down these trees until I had a chance to inspect them myself.

Last year PG&E threatened to come on my property and cut down more trees, with or without me, while refusing to identify the trees in question and the supposed defects making each a Hazard Tree, so I embarked on a ten hour solo drive from my primary residence, in La Jolla.

It’s *extremely* stressful to be put in the position of living in fear and apprehension that a powerful corporation with such wide ranging authority could be entering your property and destroying your trees without notice or permission.

At least PRC 4295.5 B) states: (b) Nothing in subdivision (a) shall exempt any person who owns, controls, operates, or maintains any electrical transmission or distribution line from liability for damages for the removal of vegetation that is not covered by any easement granted to him or her for the electrical transmission or distribution line.

However, PG&E has taken the position that this does not apply to them because they are a corporation and not a “person” (see attached letter dated from Corey Peters to Matt Chapman).

So PG&E wish’s to take the expanded authority granted to them by 4295.5 but **not** the rest of it, which makes them responsible for Damages.

I have three specific suggestions for the CPUC:

1) Create an appeal process so we can all be sure that only genuine Hazard Trees are being cut down, staffed with arborists or foresters who are qualified to review the reports and information from property owner’s experts.

2) Create a program wherein private property owners and the IOU’s can split the cost of undergrounding power lines in the High Threat Fire Districts, with the utility either paying the lion’s share, since the problem has been created due to decades of deferred maintenance and thereby greater profits, or have PG&E pay for the soft costs and the property owner pay for the construction, as PG&E’s internal costs (and likely profits) contribute such a high percentage of the total expenses.

3) Establish a process for determining and awarding Damages for work conducted by the utility outside of their Right of Way, per PRC 4295.5 b.

Sincerely,

Dan Courtney

Trustee, The Jacqueline Courtney Trust

Owner, [redacted], Groveland, CA

AKA Secret Meadows Retreat

[redacted]

BIO

Glenn Gottschall: holds a BS in Forest Management from the University of Missouri and worked for the US Forest Service in California, retiring in 2004 as a Deputy Forest Supervisor for the Stanislaus National Forest. Presently, is a California Registered Professional Forester working as a Forestry Consultant specializing in California Forest Practices application, fire safety, fuels treatment and oak woodland management. Active in the Sonora community, has served as Director and Past President of the Sonora Mountain Lions Club, Director, Vice-President and currently President of the Highway 108 Fire Safe Council since 2012. Currently, President of the Tuolumne County Alliance for Resources and the Environment (TuCARE), Resource Director for Tuolumne County Forestry Institute for Teachers (TCFIT) since 2007 and member and Past President of the 49er Chapter of the Society of American Foresters. Also is a member of the Tuolumne County Tree Mortality Task Force. In 2016, initiated a tree mortality aid program (TMAP) for seniors and disabled person's unable to handle the hazardous dead and dying trees threatening lives and property and to-date this program has removed over 300 trees. In 2017 was recognized by the Tuolumne County Chamber of Commerce as “Citizen of the Year”. Glenn and wife, Nancy, have been married 54 years. They have two children, Kristine and Michael and 5 grandchildren and have lived in Tuolumne County since 1989.


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Pacific Gas and Electric Company

Corey Peters
Vegetation Program Manager
Vegetation Management
3185 M St.
Merced, CA 95348

April 10, 2015

Matthew Chapman
[redacted]
Groveland, CA 95321

This letter contains information about necessary tree clearance work in your area

Re: Public Utility Line - Tree Clearance Work Refusal

Dear Mr. Champan:

On March 16, 2015, a PG&E representative contacted you in an effort to resolve the tree related hazard on your property at 11327 Sawmill Mountain Rd., Groveland CA. At that time, you refused to permit us to perform the tree work that is required by the State of California pursuant to Public Utilities Commission General Order 95. The purpose of this letter is to confirm your refusal to permit and to further explain the need to perform this work in the hope that you will consent.

Unless properly maintained, power lines can be dangerous where conflicts with trees are permitted to develop. To more fully explain this issue, I have enclosed copies of four publications which will provide important information about tree and power line safety: *California Homeowners & Utility Companies,* PG&E *Vegetaiton Management Program, Avoiding Tree & Utility Conflicts, and Trees + Power Lines = Disaster.* This information will further clarify why we need to perform this necessary tree work. You might find this information helpful in reconsidering your position.

As stated above, we are required by law to perform work on the trees on your property in an effort to maintain PG&E's electric facilities, to prevent power outages, fires, other property damage, or personal injury or even death should a person come in contact with energized conductors. Unfortunately, you have refused to permit us to perform our required safety work.

As stated in earlier conversations, we are willing to work with you to resolve this issue. However, until such time as you contact us to permit the work, we are forced to consider you wholly liable for any damages resulting from the hazard you are allowing to exist. This liability includes damage and repair costs to our facilities, fire suppression costs, and any other loss we or the public may incur as a result of the condition on your property.

Once again, please reconsider your position and contact me at 209/726-6306 so that we can resolve this situation.

Sincerely,

Corey Peters
Vegetation Program Manager

CRP:tdr

Enclosures

cc: California Public Utilities Commission
CDF – Tuolumne/Calaveras RU
Tuolumne County Public Works

Pacific Gas and Electric Company

Corey Peters
Vegetation Program Manager
Vegetation Management
3185 M St.
Merced, CA 95348

March 20, 2015

Matthew Chapman
[redacted]
Groveland, CA 95321

This letter contains information about necessary tree clearance work in your area

Re: Important Public Utility Line – Tree Clearance Work

Dear Mr. Chapman:

During a recent routine inspection of PG&E power lines located on your property at 30445 Sawmill Mountain Rd., Groveland, CA , we identified a potentially hazardous condition due to trees that are too close or posing a danger of falling into the high voltage electric lines. For the public's safety and the continued reliability of your Community's electric services, it is important that our tree trimming contractor is able to perform this important work as soon as possible.

Please understand that PG&E cares about trees and respects your property. However, tree conflicts with power lines pose a hazard to the safety and reliability of the power lines. They can also start fires and present both a public and worker safety problem. Thus, the work we are proposing is necessary to ensure public safety and electric reliability. To better explain this, I have enclosed three publications: *California Homeowners & Utility Companies,* PG&E *Vegetation Management Program* and *Trees + Power Lines = Disaster*. For more information regarding our Vegetation Management Program, visit our website at www.pge.com/trees. As the publications show, our vegetation management work is required by the California Public Utilities Commission (CPUC) and other authorities.

As the utility provider for your community, PG&E has an obligation to ensure delivery of electricity in a safe and reliable manner. For these critical reasons, we plan to direct our contractor to proceed with the necessary work on your property within the next two weeks.

Until such time as we are able to correct this hazard, we will be forced to consider you potentially liable for any damages resulting from the tree condition that exists on your property, including but not limited to damage and repair costs to our facilities, fire suppression costs, and any other claims that may arise from the identified tree issues.

Please be aware that trimming trees adjacent to high voltage power lines is dangerous and is not something that you should try and do yourself. The California Occupational Safety and Health Administration (Cal/OSHA) requires that persons working within certain distances of overhead power lines be qualified and trained properly. For details, see Title 8 of the California Code of Regulations, Article 37 and 38, "Electrical Safety Orders".

I sincerely appreciate your cooperation in this matter and the opportunity to serve you. If you have any questions or concerns, please contact Sky Kaufman at 209/642 - 2520. Unless we hear from you, we will assume that you recognize the need for us to proceed with the work as indicated. Be assured that all work will be performed by Cal/OSHA qualified line clearance tree trimmers.

Sincerely,

Corey Peters
Vegetation Program Manager

Matthew Chapman
[redacted]
Groveland CA 95321
[redacted]

PG&E
Corey Peters
Vegitation Program Manager
Vegitation Management
3185 M Street Merced CA 95348

Re: Timber Operation

PG&E Corey Peters,

In response to your letter ofApril 10 2015 referencing a refusal on my part to allow for "necessary tree clearance."

As to paragragh 1 of your letter, I have not refused to allow you to perform work you deem necessary, I informed you that damages would have to be paid in the amount of $1,500 in order to proceed, pursuant to Public Resource Code (PRC) 4295; as you have no easement or rights in my property at issue in your ongoing Rim Fire operation on my property; to which you asserted PRC 4295 did not apply to PG&E, as it refered to "persons" and PG&E was not a person.

> 4295. Maintenance of Clearing
> A person is not required by section 4292 or 4293 to maintain any clearing on any land if such person does not have the legal right to maintain such a clearing, nor do such sections require any person to enter upon or to damage property which is owned by any other person without the consentof the owner of the property.

I informed you take this up with superiors at PG&E. I further informed you of broader issues involved (just compensation, necessary permit to facilitate selling timber, labor expended to clean up the mess they previously created and did not clean up, timber left littering my property as not sellable without state license) further, I clairified mistatements from you regarding the history of the ongoing situation. which you were not party to.

Incident to the meeting with you (March 16 2015) contact with Sky Kaufmann at (209/ 642-2520) was initiated in my responding to a PG&E letter dated March 20 2015. In conversing with Sky Kaufman I related that I would allow the work deemed necessary by PG&E

to go forward upon receipt of a letter from PG&E articulating their position that PRC 4295 is not applicable to PG&E as the code refers to "persons" and PG&E are not persons so the code was not applicable to them.

So you see, At no time did I refuse the work, it was conditioned upon the criteria asserted at two separate incidents.

At this juncture I am currently awaiting the response of Sky Kaufman whom assured me he would get back to me on the issue, so you see again, it is not me delaying the work. As it was you Corey Peters that related me to Sky Kaufman, this should be of knowledge to you.

As to paragragh 2 of your letter referencing various pamphlets on vegitation management, none address the broader assertions on my part relating laws your pamphlets fail to involve, to which you are subject, I remind you my property is subject to PRC timberland codes and also land you do not have titled interests, in the form of an easement.

As to paragragh 3 of your letter relating your "requirement" by law to perform work you deem necessary in an effort to "maintain PG&E's electric facilities"and the inherant associated dangers; you are wrong in asserting a refusal on my part to allow performance of the required safety work. Rather it is you who have refused to treat with me on the issue of damages to my property associated with the described safety work provided and referenced within PRC 4295. It is you Corey Peters whom is intransigent on the matter and PG&E who will not spend money that is a cost of theirs in doing business, placing the public at risk by unfair business practice and intimidation.

As to paragragh 4 of your letter, despite your assertion, you apparently are not at all willing to resolve this issue pursuant to the law, only to the limit PG&E can get away with by intimidation and wanton ignorant disregard of law, and I believe it to be you wholly liable for any damages resulting from the hazard you allow to exist from your unwillingness and intransigence to treat with me on the broader issues engendering the damages associated with your ongoing actions.

It is related that your initial "Emergency Work Notice" see Appendix A. in clear language expressed assistance in dealing with the damages PG&E wrought under the heading REMOVAL AND DEBRI .... "and offers this assistance to customers:" No articulated means of assistance was provided despite this assertion. A phone number provided was of no avail as it went unanswered. Under this false pretext you proceeded to act pursuant to the expressed authority of PRC 4293 neglecting to relate the qualifying component of PRC 4295, nor referencing applicable PRC's related to timberland activity.

ASSISTANCE. Act of assisting; help; aid . The American College Dictionary

As to your assertion that PG&E is not a person pursuant to PRC4295 see Appendix B. Blacks Law Dictionary defining a person as **1.** A human being **2.** An entity(such as a corporation) that is recognized by law as having the rights and duties of a human being.
Clearly applicable to the corporate actions of the nature you're engaged.

Further related at Appendix C, is the lawful premise and precedent that the action of taking Hazard/danger trees adjacent to an existing easement/ private land is a public taking warranting just compensation for the value of the trees taken and any damage to property so associated.

At Appendix D, is the applicable form required to be submitted for timber operation pertaining to Utility easements. PG&E kept land owners ignorant of this requirement and its actions of cutting timber without revealing to the land owner this prerequisite to the sale of or conducting of timber operations unfairly transfered this responsibilty and it's consequence upon the land owner to which PG&E would otherwise have to undertake as a requirement of their responsibility <u>in cutting trees by a commercial entity for commercial purpose</u>.

At Appendix E, Is case law articulating the court ruling as to the meaning of California PRC codes pertaining to timberland timber operations articulating the ration and reason for the necessity of the codes and their interpretation beyond those proffered by the California Department of Forestry as it was the courts that ultimately determined the legislatures laws. Despite what I am told is PG&E's exuse for not filing permits "that they had no intention of selling, trading, exchanging or bartering the timber" which is incredible on its face because it has been advocated by PG&E as a remedy for their actions upon their customers; they had full knowledge that the timber they cut was destined to be sold, what did the think was going to happen to all the timber they fell? Moreover the case law clearly addresses the ammending of the PRC's applicable to lands subject to timberland activity to"Commercial purposes" <u>includes</u> but <u>not limited to</u> see footnote 15 Hewlett v Squaw Valley Ski Corp. 54 Cal.App.4 th 499. Clearly PG&E a commercial entity cut timber for the commercial purpose of maintaining their electrical facility, the timber they cut was marketable timber, there can be no excuse for the lack of their responsibilty of filing the requisite permit and consulting with the land owner in that disposition, such action would have involved California Department Forestry in the process and throttled PG&E's cutting of numerous non hazard trees and intimidating their customers to that effect. PG&E's actions make a mokery of the California Department of Forestry and the Public Resource Codes pertaining thereto.

In conclusion PG&E's actions proceed as if they were conducting vegitation management activity within a defined easement in an urban setting, they fail to adjust their normal procedure to the situation which the Rim Fire catastrophy materialized in and amongst timberland unencombered by easement. I must assume PG&E carries insurance to protect their facilities against such catastrophic events and does not have to resort to shifting their costs of doing business in maintaining their easements and electrical facilities unfairly to their costumers as they have done. PG&E was affected by the RIM FIRE, not by their customers, they should face up to that reality; If the RIM FIRE affect was subjecting PG&E,s facilities to hazard trees outside their easements that require just compensation to correct that was their loss and their burden to saddle.

Matthew Chapman

MATTHEW CHAPMAN

cc California Public Utilities Commission
CDF- Tuolumne /Calavaras RU
Tuolumne County Public Works

PUBLIC UTILITIES COMMISSION
320 W. 4th STREET, SUITE 520
LOS ANGELES, CA 90013

May 12, 2015

File No: 353969

Mr. Matthew Chapman
[redacted]
Groveland, CA 95321

Dear Mr. Chapman:

The Consumer Affairs Branch (CAB) of the California Public Utilities Commission (CPUC) received your request for assistance regarding **Pacific Gas & Electric Company (PG&E).** CAB assists consumers with resolving complaints about California investor-owned communications, electricity, gas and water utilities. The CPUC has jurisdiction over most, but not all, utility operations.

Your complaint regarding easements, claims for potential damages, and **PG&E's** assertion of your refusal to allow them access on your property for tree trimming/removal, does not fall within the jurisdiction of the CPUC and we are unable to assist you. Moreover, your request to have **PG&E** provide written affirmation that Public Resource Code (PRC) 4295 does not apply to them, is again, beyond the scope of the CPUC.

CPUC General Order 95 [Overhead Line Construction], General Order 128 [Underground Line Construction], and General Order 165 [Inspection Requirements] [Electrical Supply Only), with related sections / appendixes, particularly **Rule 35** ***[Tree Trimming]***, are the applicable General Orders and Rules of the CPUC pertaining to these issues. (See referenced General Orders / Rule enclosed - http://www.cpuc.ca.gov/nr/rdonlyres/a7fbcc1c-23d6-4327-a0b7-058aa81d7599/0/gos95128and165seminar.pdf).

As a courtesy, CAB contacted **PG&E's** Executive Office to alert them of your concerns.

We regret that we cannot be of further assistance.

Sincerely,

Greg Harris

Greg Harris
Consumer Affairs Branch
1-800-649-7570



General Orders 95, 128, & 165

Rules for Construction and Maintenance of Overhead and Underground Electric Supply and Communication Systems

Tree Trimming (Rule 35)



- Where overhead wires pass through trees, a reasonable amount of tree trimming shall be done in order that the wires may clear branches and foliage

DEPARTMENT OF FORESTRY AND FIRE PROTECTION
Tuolumne-Calaveras Unit
785 Mountain Ranch Road
San Andreas, CA 94249
(209) 754-2740
Website: www.fire.ca.gov

April 21, 2015

Matthew Chapman
[redacted]
Groveland, CA 95321

Re: PG&E – Tree Clearance Work Refusal

Dear Mr. Chapman:

On Tuesday, April 21, 2015 the California Department of Forestry and Fire Protection (CAL FIRE) received a copy of the letter sent to you by PG&E on April 10, 2015. This letter was in regards to PG&E attempting to resolve a tree related hazard to their electric facilities on your property located at 11327 Sawmill Mountain Road, Groveland CA.

CAL FIRE wishes to remind you of the following:

1- If a fire occurs, *and*
2- The cause is determined to be the result of a previously identified tree related hazard on your property which impacts a PG&E electric facility, *and*
3- You refuse to permit PG&E to maintain their facilities by removing identified hazard trees on your property, *then*
4- You may be held civilly liable for fire suppression costs.

If you have any questions, please feel free to contact Corey Peters – PG&E Vegetation Program Manager at (209) 726-6306 or myself at (209) 419-4420.

Sincerely,

Matthew Gilbert
Battalion Chief – Fire Prevention/Law Enforcement

cc: PG&E Vegetation Management

DEPARTMENT OF FORESTRY AND FIRE PROTECTION
Tuolumne-Calaveras Unit
785 Mountain Ranch Road
San Andreas, CA 95249
(209) 754-3831
(209) 754-1951 (FAX)
www.fire.ca.gov

July 8, 2015

Mr. Matthew Chapman
[redacted]
Groveland, CA 95321

RE: Hazard Tree Removal

Dear Mr. Chapman,

On April 30, 2015, Battalion Chief Matt Gilbert and I met with you on your property on Sawmill Mountain Road in Groveland to determine if the Pacific Gas and Electric Company (PG&E) violated the Public Resources Code (PRC) by felling hazard trees along a segment of electrical distribution line that crosses your property. You told us PG&E violated PRC Section 4295 by entering your property to fell the hazard trees. PG&E does not have any easement or land rights along the segment of line where the tree removal occurred. On April 24, 2015 two small Incense Cedars, and an approximate 24-inch diameter Sugar Pine were felled on your property by a contractor working for PG&E. Additionally, one Douglas-fir tree was topped by the contractor at your request.

On April 30, 2015 you told us PG&E was on your property three different times since the Rim Fire in 2013, and that you asserted Public Resources Code (PRC) Section 4295 each time. Public Resources Code Section 4295 states: "*A person is not required by Section 4292 or 4293 to maintain any clearing on any land if such person does not have the legal right to maintain such clearing, nor do such sections require any person to enter upon or to damage property which is owned by any other person without the consent of the owner of the property.*" This section does not preclude a person from maintaining any clearing if they have permission to enter upon the property to do the work. You told us that PG&E sought your permission to fell hazard trees on your property, and that they would not take no for an answer. You told us that you relinquished to their demands and permitted them to do the work.

General Order 95 Rule 35 addresses vegetation management requirements for all lines. An exception to the requirements is provided where the supply or communication company has made a "good faith" effort to obtain permission to trim or remove vegetation but permission was refused or unattainable. The exception states a "good faith" effort consists of current documentation of a minimum of an attempted personal contact and a written communication, including documentation of mailing or delivery. The written communication may include a statement that the company may seek to recover any costs and liabilities incurred by the company due to its inability to trim or remove vegetation. Based on Public Resources Code Section 4295, and General Order 95, it appears PG&E made a "good faith" effort and was not obligated to trim or remove vegetation on your property, where they did not have any property rights. PRC Section 4295 releases PG&E from the requirement to clear hazard trees from lines where

they do not have a legal right to maintain the lines and they cannot get consent from the owner. PG&E did not violate PRC Section 4295 by conducting the tree removal. Although you did so reluctantly, you did give PG&E permission to conduct the tree removal work.

In accordance with PRC 4581 "*no person shall conduct timber operations unless a timber harvesting plan prepared by a registered professional forester has been submitted for such operations to the department pursuant to this article. Such plan shall be required in addition to the license required in Section 4571.*" Your property is growing commercial tree species as defined by 14 CCR 895.1, and meets the definition of "timberland" defined by PRC 4526. Felling the hazard trees and leaving them on-site does not meet the definition of "timber operations" pursuant to PRC 4527 because the wood was not being offered for barter, sale, exchange or trade; and the land is not being converted to a use other than the growing of timber. A violation of PRC Section 4581 did not occur.

During the course of our investigation, CAL FIRE did not find that the hazard tree removal on your property violated the Public Resources Code. This remains a civil matter between you and PG&E. Please feel free to contact me if you have any further questions regarding this matter.

Sincerely,

Adam Frese
Pre-Fire Division
Tuolumne-Calaveras Unit
785 Mountain Ranch Road
San Andreas, CA 95249
(209) 754-2706

In Draker v. Iowa Electric Co. (1921) 191 Iowa 1376, 182 NW 896, stated supra, § 3, a statute authorizing condemnation proceedings by a power company in acquiring a right of way across certain lands for the erection and maintenance of the power company's transmission lines and providing that the lines should be so constructed as not to "unnecessarily interfere with the use of any lands by the occupant thereof" was held to authorize the landowner to use the land for agricultural purposes, the court saying: "It was not intended that, because the line of wires was to be suspended over agricultural land, the land under it should not be cultivated; and the statute clearly contemplates that the owner of the land reserves the right to use it for agricultural or other purposes, subject to such physical limitations as the presence and maintenance of the line entail."

And in Alabama Power Co. v. Scott (1925) 21 Ala App 27, 104 So 873, an omission to charge that the landowner had the right to cultivate the right of way, to go across it, and to use it generally in any way which did not interfere with the transmission line of the petitioner, who had secured the right of way for the erection of electric transmission lines by condemnation proceedings, was held to be prejudicial error, the court following the authority and reasoning of Alabama Power Co. v. Sides (1925) 212 Ala 687, 103 So 859.

In Collins v. Alabama Power Co. (1926) 214 Ala 643, 108 So 868, 46 ALR 1459, stated supra, § 5, it was held that the landowner had the right to use such strip of land for any purpose which did not conflict with the paramount rights of the complainant, and, subject to such rights, could cultivate the same, pass along and across it, and generally use it in any way which did not affect the rights of the power company.

In Texas Pub. Utilities Co. v. Bass (1927; Tex Civ App) 297 SW 301, stated supra, § 2, it was held that a landowner could cultivate the land consisting of a right of way condemned for electric transmission lines in ordinary farm crops, in so far as the use of the property did not interfere with the power company's operation of its equipment.

In Alabama Power Co. v. Keystone Lime Co. (1914) 191 Ala 58, 67 So 833, Ann Cas 1917C 878, stated supra, § 3, it was held that the landowner of land condemned as a right of way for the passage of electric power lines was entitled to cultivate the land, go across it, or take minerals therefrom.

In Kentucky & W. V. Power Co. v. Elkhorn City Land Co. (1926) 212 Ky 624, 279 SW 1082, stated supra, § 3, it was said: "It is elementary that the use of an easement must be as reasonable and as little burdensome to the servient estate as the nature of the easement and the object of it will permit. . . . In this case, the landowners had a perfect right to use the strip sought to be condemned in any way they saw fit, including the use of them for the removal of coal and timber from the remaining lands, in so far as such use did not interfere with the reasonable exercise or enjoyment of the easement herein sought to be acquired."

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In West Tennessee Power & L. Co. v. Shallabarger (1931) 14 Tenn App 258, stated supra, § 3, under heading "Contrary view," it was held that the right of the owner of the fee is to use what the condemner does not need. Under such limitation it would seem that the landowner would be entitled to cultivate the land, but such right would be subservient to the power company's right to exclusive use of the land in the exercise of its franchise.

C. S. Patrinelis.


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