

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



ORIGINAL 22

July 20, 1999

TO: PARTIES OF RECORD IN I.98-09-007
DECISION 99-07-029, Mailed 7/20/99

On June 18, 1999, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 8.2 of the Commission's Rules of Practice and Procedures provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

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.

Lynn T. Carew, Chief
Administrative Law Judge

LTC:tcg

Attachment

Decision 99-07-029

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own Motion
into the Operations and Practices of The Pacific
Gas and Electric Company in Connection with
Public Utilities Code Section 451, General Order
95, and Other Applicable Standards Governing
Tree-Line Clearances.

I.98-09-007
(Filed September 3, 1998)

(See Appendix B for appearances.)

O P I N I O N

Summary

By this decision the Commission adopts a settlement agreement proffered by Pacific Gas & Electric Company (PG&E), the Commission's Consumer Services Division (CSD), William Adams (Adams), and James Weil (Weil) in the Commission's investigation into PG&E's compliance with tree-line clearance standards. Under the settlement, PG&E shareholders will fund up to \$22.7 million in vegetation-related activities and programs over the next five years and make an immediate, one-time \$6 million contribution to the California general fund. The settlement also establishes various forward-looking PG&E/CSD vegetation management inspection and compliance protocols. The Commission accepts the settlement, the full text of which is set forth in Appendix A, as resolving all issues in the proceeding and makes no finding as to whether violations have occurred.

Procedural History

The Commission issued Order Instituting Investigation (OII) 98-09-007 on September 3, 1998 to look into CSD allegations that PG&E had violated the law by not meeting tree-line clearance and vegetation control requirements and by not properly recording expenditures of Pub. Util. Code § 368(e) funds as required by Decision (D.) 96-12-077. The investigation was to afford CSD a forum to advance its evidence of violations and explain information it had gathered about PG&E's vegetation management practices, and for PG&E to respond. Later, the assigned Commissioners' scoping memo more specifically defined the issues to be addressed as:

1. Has PG&E violated Pub. Util. Code § 451 by not complying with General Order 95 and other lawful requirements, including but not limited to provisions of the Public Resources Code, for tree-line clearance and/or vegetation control?
 - a. If so, what was the extent of the violations?
 - b. If there were such violations, what sanctions, if any, should the Commission impose under Pub. Util. Code §§ 2107 and 2108?
2. What utility practices led to the alleged tree-line clearance and vegetation control problems?
3. What is the current state of PG&E's tree-line clearance and vegetation control program?
4. What enforcement measures, if any, should the Commission establish to ensure PG&E will comply with applicable tree-line clearance and vegetation control standards in the future?
5. Did PG&E violate Pub. Util. Code § 702 by failing to comply with the Commission's D.96-12-077 requirement to record monthly, by Uniform System of Accounts

subaccounts, expenditures of special vegetation control and/or tree-trimming funds made available under Assembly Bill 1890?

- a. If there were such violations, what sanctions, if any, should the Commission impose under Pub. Util. Code §§ 2107 and/or 2108?

Assigned Administrative Law Judge (ALJ) McVicar was designated the presiding officer.

Evidentiary hearings began March 16, 1999 and were suspended March 22 when the parties indicated they had signed a memorandum of understanding outlining terms for a proposed settlement. On April 2, PG&E, CSD, Adams, and Weil filed a joint motion for approval and adoption of the settlement agreement. The ALJ held an additional day of hearing April 7 to receive previously-served exhibits and to provide an opportunity for testimony on the settlement. Hearings were then suspended pending receipt of comments on the settlement from other parties. No party other than the four who signed the settlement participated in the evidentiary hearings or settlement negotiations, although one, The Utility Reform Network (TURN), commented on the settlement.

On April 19, 1999, the Commission's Office of Ratepayer Advocates (ORA) filed a petition to intervene for the purpose of commenting, and concurrently ORA and TURN filed joint comments. On May 4, CSD, Adams and Weil filed joint reply comments, and PG&E filed reply comments on its own. ALJ McVicar issued a ruling on May 10 denying ORA's petition to intervene and submitting the proceeding effective May 4.

Discussion

Settlement Terms

The settlement places on PG&E shareholders up to \$28.7 million in future expenditures spread across five cost categories: (1) \$5 million over a five-year period for public safety programs and activities; (2) up to \$3.6 million over a three- to five-year period for PG&E's quality assurance program and a CSD-managed monitoring and inspection program; (3) \$14 million over a three-year period for tree removal and replacement; (4) \$6 million as a one-time contribution to the state general fund; and (5) up to \$100,000 reimbursement to CSD for consultant costs incurred in connection with this proceeding. In addition to these pecuniary provisions, the settlement establishes protocols for three different levels of tree and vegetation clearance noncompliance and requires PG&E to establish an electronic database for customers who refuse PG&E permission to trim trees on their property.

Standard of Review

Four parties have tendered an "uncontested settlement" as defined in Rule 51(f), *i.e.*, a settlement that "...is not contested by any party to the proceeding within the comment period after service of the [] settlement on all parties to the proceeding." Rule 51.1(e) requires that settlement agreements be reasonable in light of the whole record, consistent with law, and in the public interest.

In *San Diego Gas & Electric* (1992) 46 CPUC2d 538, the Commission further defined its policy as applicable to all party settlement proposals. As a precondition to approval the Commission must be satisfied that:

- a. the proposed all party settlement commands the unanimous sponsorship of all active parties to the instant proceeding;

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- b. the sponsoring parties are fairly reflective of the affected interests;
- c. no term of the settlement contravenes statutory provisions or prior Commission decisions; and,
- d. the settlement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

This settlement is tendered pursuant to Rule 51, and the settling parties aver that it conforms as well to the criteria for all party settlements in *San Diego Gas & Electric*. While we do not agree that there is complete conformity, it is still helpful to review the settlement in light of these criteria.

First, the parties signatory to the settlement are certainly the most active parties. No other party participated in the evidentiary hearings or settlement negotiations, and although TURN questions two aspects, no party has proposed the Commission not adopt the settlement as tendered. We will address in a later section TURN's request that the Commission issue clarifying language.

Second, the sponsoring parties do represent the affected interests. PG&E represents its shareholders and CSD represents the service and reliability interests of PG&E's energy customers and the safety interests of the public in PG&E's service territory. This is an enforcement proceeding and it is to CSD that we looked first to pursue the issues set forth in the OII. The OII, in fact, explicitly anticipated the possibility of a settlement involving only CSD and PG&E: "This enforcement proceeding is adjudicatory, and, absent settlement between staff and the respondent, will be set for evidentiary hearing." (OII 98-09-007 at page 4.) The interests of the public are further upheld by Adams and Weil, both of whom the ALJ in his intervenor compensation ruling found eligible as participants representing consumers. These parties served extensive testimony and exhibits setting forth and supporting their positions before evidentiary

hearings began. By agreement, that material was admitted into the record and shows all four to be vigorous and capable participants on behalf of their constituencies.

Third, the sponsoring parties assert, and we agree, that the settlement violates no statutory provision or prior Commission decision.

Fourth and last, the settlement conveys information sufficient to permit us to discharge our future regulatory obligations with respect to the parties and their interests. To that end, the settlement is forward-looking. Rather than having the parties continue to litigate whether PG&E's past conduct constituted violations, it requires PG&E to focus its energies on programs and activities designed to promote effective vegetation management practices and ensure compliance with statutory and regulatory requirements. Further, it provides CSD with the enforcement tools it needs and establishes various forward-looking PG&E/CSD vegetation management inspection and compliance protocols. Those protocols will aid both PG&E and CSD by better defining their procedures, relationships and responsibilities. The parties' joint motion seeking approval sets forth in more detail how the settlement's major provisions will help PG&E and CSD, and in turn the Commission, meet their future responsibilities.

There will no doubt be considerable interest generated by the parties' agreement to have PG&E shareholders contribute \$6 million to the state general fund. While the settlement itself is silent on the purpose of this provision, the joint supporting testimony (Exhibit J2) is explicit: it relates to the violations alleged under scoping issue (1), but the settlement does not constitute an admission of guilt or liability by any party. The settling parties urge the Commission not to examine individual elements of their settlement against the scoping issues, but rather to understand that the settlement as a whole is

intended to reflect a unified, comprehensive resolution of all issues in the proceeding.

It is neither necessary nor advisable to attempt to dissect each element of a settlement to see whether it approximates the result we might have reached had the underlying issue been prosecuted to completion. No settlement could survive such scrutiny, nor would it leave parties sufficient room for negotiating settlements. This settlement is an acknowledged compromise of strongly-held views on all sides. When examined as a total product, we find it to be reasonable in light of the whole record, consistent with law, and in the public interest. 663

TURN's Requests for Clarification

TURN (jointly with non-party ORA) was the only party to comment on the settlement. TURN expresses concern over how the following two specific settlement provisions may impact issues before the Commission in PG&E's pending general rate case (GRC). While TURN does not suggest the Commission reject the settlement or require its amendment, TURN does ask that any decision approving the settlement clarify them:

Section III.A.(6) PG&E shall expend on a tree removal/replacement program over a three year period beginning March 22, 1999, a total of \$14 million over and above that amount allowed in the 1999 GRC for a tree removal/replacement program; the \$14 million shall not be recorded as an operating expense for ratemaking and shall be funded by shareholders.

* * *

Section III.A.(8) The OII and violations alleged by CSD pertain to past events. CSD is optimistic that PG&E has developed a vegetation management program that, if properly maintained and consistently implemented, should allow it to fully comply with all applicable state standards. CSD

recognizes the development of this program involved a major commitment from PG&E, and CSD supports GRC funding appropriate to maintain and implement that program into the future.

According to TURN, PG&E proposed in its GRC a supplemental tree removal/replacement program at an annual cost of \$23.4 million in addition to its routine vegetation management program. In response to PG&E's GRC proposal, ORA (with TURN presumably in agreement) supported the supplemental program but recommended it be funded by shareholders. TURN would have the Commission clarify here that the \$14 million in Section III.A.(6) is in addition to whatever spending level is found appropriate in the GRC regardless of funding source. That is, the Commission should clarify that "allowed" in the context of Section III.A.(6) means not the level allowed in rates but that level plus any supplement the Commission in the GRC were to require PG&E shareholders to bear. Absent this clarification, TURN believes, the settling parties would effectively be resolving an issue in the GRC, contrary to Rule 51.1.

CSD, Adams and Weil were unaware of ORA's GRC recommendation when they negotiated the settlement. Because the Section III.A.(6) issue TURN raises would only mature if the Commission were to adopt shareholder funding of a supplemental tree removal/replacement program in the GRC, CSD, Adams and Weil request the Commission suspend deliberations on the settlement until that decision is made. In settlement negotiations, PG&E also did not contemplate a GRC outcome requiring its shareholders to shoulder any part of its tree removal/replacement program. PG&E strongly believes there is no confusion regarding the settlement's wording or the parties' intent and would view Commission clarification as a change or modification of the agreement triggering reconsideration by the parties pursuant to settlement Section III.B.

We decline TURN's invitation to clarify how the settlement agreement might be applied to possible future events. We believe the specific language of the agreement provides sufficient foundation for our implementation should the need arise. No party actually opposes approving the settlement and the settling parties have, in fact, reaffirmed their support. The GRC proceeding is submitted and neither this settlement nor this decision is part of that record. Accepting the settling parties' Section III.A.(6) wording without clarification will have no effect on how we decide the corresponding GRC issue and thus does not run afoul of Rule 51.1.

TURN's concern with Section III.A.(8) is to ensure that CSD's commitment to "support[] GRC funding appropriate to maintain and implement [PG&E's vegetation management program] into the future" does not prejudice vegetation management-related issues which are before the Commission in the GRC. TURN requests clarifying language to that effect. CSD, Adams and Weil's reply characterizes Section III.A.(8) as a "general statement of support for appropriate funding that does not imply support for any particular level of funding or recommendation in the GRC," but they do not object to clarifying language. PG&E's position is that "CSD's support for an appropriate level of funding will not prejudice the GRC proceeding and does not require specific clarification by the Commission." We agree with PG&E; the GRC proceeding is submitted and whatever additional clarification we might give beyond this discussion would be without effect.

Motions and Rulings

We turn next to addressing a petition and various motions still outstanding, and one ALJ Ruling:

- a. PG&E Petition for Modification of OII 98-09-007 to Move the Pub. Util. Code § 368(e) Issues into PG&E's 1999 General Rate Case Proceeding (filed December 16, 1998)
- b. PG&E Motion to Dismiss or Limit the Scope of the Investigation (filed December 22, 1998)
- c. CSD Motion to Accept Late-Filed Response (filed January 22, 1999)
- d. PG&E Motion to Strike the Rebuttal Testimony of John Sevier (filed March 12, 1999)
- e. PG&E Motion to Strike the Declaration of Jenny Ross (filed March 15, 1999)
- f. PG&E Motion to Strike a Portion of the Rebuttal Testimony of James Weil (filed March 15, 1999)
- g. PG&E Motion to Strike the Rebuttal Testimony of Siegfried Guggenmoos or, in the Alternative, for Leave to File Surrebuttal Testimony (filed March 19, 1999)
- h. PG&E Motion to Strike Portions of the Rebuttal Testimony of William Marcus or, in the Alternative, for Leave to File Surrebuttal Testimony (filed March 22, 1999)
- i. ALJ's Ruling Denying Intervention and Submitting Proceeding (Issued May 10, 1999)

The petition and motions are rendered moot by our decision to adopt the settlement. After reviewing the reasoning the ALJ set forth in denying ORA's intervention, we affirm his ruling.

Findings of Fact

1. The settlement is a compromise of strongly-held views of the sponsoring parties.
2. The settlement does not constitute an admission of guilt or liability by any party.
3. The settlement represents a reasonable resolution of all issues in this proceeding.

4. There is no known opposition to the settlement.
5. It is not necessary to clarify in this decision the interpretation to be assigned to any provision of the settlement.
6. The parties sponsoring the settlement are fairly reflective of the affected interests.
7. No term of the settlement contravenes statutory provisions or prior Commission decisions.
8. The settlement conveys to the Commission sufficient information to permit the discharge of its future regulatory obligations with respect to the parties and their interests.
9. The settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

Conclusions of Law

1. The settlement is an uncontested settlement as defined in Rule 51(f).
2. The settlement should be approved.
3. The pending petition for modification and motions listed in this decision are rendered moot by approval of the settlement.
4. The ALJ's ruling denying ORA's petition to intervene should be affirmed.
5. It is in the public interest to implement the provisions of the settlement as rapidly as possible.

O R D E R

IT IS ORDERED that:

1. The Joint Motion of Consumer Services Division, Pacific Gas & Electric Company, William Adams, and James Weil for Approval and Adoption of

I.98-09-007 ALJ/POD-JCM/tcg *

Settlement Agreement is granted. The settlement agreement attached to this decision as Appendix A is approved.

2. The Administrative Law Judge's ruling denying the Office of Ratepayer Advocates' Petition to Intervene is affirmed.

3. This proceeding is closed.

This order is effective today.

Dated July 20, 1999, at San Francisco, California.

ALJ/POD-JCM/tcg

APPENDIX A

SETTLEMENT AGREEMENT

PARTIES

The parties to this Settlement Agreement ("Settlement") are the Consumer Services Division ("CSD"), Pacific Gas and Electric Company ("PG&E"), and intervenors William Adams ("Adams") and James Weil ("Weil") (together, "Settling Parties" or "Parties").

RECITALS

1. CSD is the office of the California Public Utilities Commission ("Commission" or "CPUC") responsible for enforcing compliance with Commission orders, rules, and laws.
2. PG&E is an investor-owned public utility in the State of California and is subject to the jurisdiction of CPUC with respect to providing electric service to its CPUC jurisdictional retail customers.
3. Adams and Weil are customers of PG&E.
4. On September 3, 1998, the Commission issued an Order Instituting Investigation ("OII") (I.98-09-007) into PG&E's compliance with Public Utilities Code section 451, General Order 95, and other tree-line clearance provisions ("Investigation on the Commission's Own Motion into the operations and practices of the Pacific Gas and Electric Company in Connection with Compliance with Public Utilities Code Section 451, General Order 95, and Other Applicable Standards Governing Tree-Line Clearances").
5. CSD conducted a year-long investigation into PG&E's vegetation management practices. Special Agent Mark Clairmont ("Clairmont") headed CSD's investigation, which began in September 1997. On August 28, 1998, CSD issued an Investigative Report prepared by Clairmont. In the Investigative Report, CSD raised allegations of violations of tree-line and pole clearance provisions. CSD based its allegations on a review of internal PG&E documents along with joint inspections conducted by CSD and the California Department of Forestry ("CDF") as well as inspections conducted by Captain Kenneth Hale of CDF. The OII references the Investigative Report.
6. CSD filed a Statement of the Case and Summary of Allegations on September 3, 1998.

7. On October 7, 1998, Assigned Commissioners Henry M. Duque and Josiah L. Neeper issued the Scoping Memo for the proceeding ("Assigned Commissioners' Ruling Applying Article 2.5, SB 960 Rules and Procedures, and Denying PG&E Motion to Modify Schedule and Deny Intervention"). The Scoping Memo set forth the issues to be addressed in the proceeding as follows:

- (1) Has PG&E violated Public Utilities Code § 451 by not complying with General Order 95 and other lawful requirements, including but not limited to provisions of the Public Resources Code, for tree line clearance and/or vegetation control?
 - (a) If so, what was the extent of the violations?
 - (b) If there were such violations, what sanctions, if any, should the Commission impose under Public Utilities Code §§ 2107 and 2108?
- (2) What utility practices led to the alleged tree-line clearance and vegetation control problems?
- (3) What is the current state of PG&E's tree-line clearance and vegetation control program?
- (4) What enforcement measures, if any, should the Commission establish to ensure PG&E will comply with applicable tree-line clearance and vegetation control standards in the future?
- (5) Did PG&E violate Public Utilities Code § 702 by failing to comply with the Commission's Decision 96-12-077 requirement to record monthly, by Uniform System of Accounts subaccounts, expenditures of special vegetation control and/or tree-trimming funds made available under AB 1890?
 - (a) If there were such violations, what sanctions, if any, should the Commission impose under Public Utilities Code §§ 2107 and/or 2108?

The Scoping Memo also set forth the schedule for the proceeding. On January 20, 1999, ALJ McVicar entered an order modifying the schedule ("Administrative Law Judge's Ruling Granting Extension of Time and Accepting Supplemental Testimony").

8. Intervenors Adams and Weil entered appearances at the Prehearing Conference, which was held September 28, 1998. On November 30, 1998, Adams and Weil served their prepared direct

testimony. Intervenor's testimony set forth issues concerning PG&E's handling of customer refusals to allow tree trimming, inspection practices, the use of tree wire and rubber line hose, and also raised concerns about climbable trees. Adams and Weil served supplemental direct testimony on January 5, 1999.

9. At the Commission's direction, CSD served a Supplemental Report Regarding Violations ("Supplemental Report") on November 9, 1998. In its Supplemental Report, CSD alleged violations of Public Utilities Code section 451, predicated on alleged violations of General Order 95, Rule 35 and Public Resources Code sections 4292 and 4293 during the period 1994-1998, and also alleged one violation of Commission Decision 97-01-044. CSD also raised allegations regarding General Order 95, Rule 61.6B and Rule 31.6.

10. PG&E served its prepared responsive testimony on February 5, 1999.

11. CSD served its prepared rebuttal testimony on March 1, 1999.

12. Intervenor's served their prepared rebuttal testimony on March 1, 1999.

13. Evidentiary hearings before ALJ McVicar began on March 16, 1999, and were suspended on March 22, 1999.

III. AGREEMENT

A. SETTLEMENT TERMS

The Parties acknowledge and agree:

- (1) This settlement resolves all differences among the Parties. It does not constitute an admission of any liability or fault by any Party.
- (2) PG&E shall enact vegetation-related public safety programs and activities subject to the following:
 - (a) The programs and activities shall expire at the end of five years following March 22, 1999, or at such earlier time as PG&E and CSD mutually agree that those programs, or any one of them, have fully realized the goals intended;
 - (b) PG&E commits to expend on these Section 2 programs over the course of the five years a total of \$5 million over and above that amount allowed in the 1999 GRC for these

Section 2 programs; the \$5 million shall not be recorded as an operating expense for ratemaking and shall be funded by shareholders;

- (c) The specific elements of the programs and activities require further definition. The Parties agree to use best efforts to mutually agree within 60 days upon those elements, with the goal that all programs and activities should reduce the incidence of tree and vegetation power line clearance problems and promote public safety. One program shall be an electronic data base to monitor customer refusals, the specific elements of which require further definition;
- (d) Reporting and auditing shall be covered by Section 3 that follows; and
- (e) The programs and activities shall be adopted in consultation with CSD.

(3) PG&E and CSD shall conduct quality assurance and auditing programs as follows:

- (a) PG&E is refining a vegetation management quality assurance program (PG&E Program).

During the initial three-year period beginning 30 days after the date that a Commission decision adopting this Settlement becomes final, the following portion of the funding for the PG&E Program shall be funded by shareholders:

- (1) Year 1 - \$500,000
- (2) Year 2 - \$700,000
- (3) Year 3 - \$700,000

Unspent shareholder funds devoted to the PG&E Program shall be recorded in a one-way, interest-bearing balancing account. PG&E shall debit to the balancing account each month all actual PG&E Program costs. PG&E shall credit to the balancing account each month one-twelfth of the amount allowed in the 1999 GRC for vegetation management quality assurance programs plus one-twelfth of the annual shareholder funding amount listed above, plus monthly accrued interest at the 3-month commercial paper rate. PG&E shall file an advice letter at the end of each year to determine the disposition of any credit account balance in a way that benefits ratepayers.

PG&E may record as an annual operating expense for the purpose of determining base rates through whatever mechanism may be operative at the time all recorded PG&E Program costs up to the amount allowed in the 1999 GRC for vegetation management quality assurance programs, plus

any amounts exceeding the sum of the amount allowed in the 1999 GRC for vegetation management quality assurance programs plus the annual shareholder funding amount.

- (b) PG&E shall fund a CSD-managed independent audit (Audit Program) of the PG&E Program, which shall monitor (1) PG&E's vegetation control performance in the field (including the electronic data base referenced in Section (2)(c) above); (2) PG&E's vegetation control management; and (3) PG&E's recorded vegetation control costs. CSD shall continue this Audit Program for a period not to exceed five years beginning 30 days after the date that a Commission decision adopting this Settlement becomes final. Following the third year, PG&E and CSD agree to examine the Audit Program to determine whether it should cease at that time or continue for the entire five years. If the Parties seek any change to the Audit Program, they will seek approval from the Commission. CSD shall work with PG&E to develop a Request For Proposal (RFP) for the Audit Program and thereafter shall only seek bids from and contract with independent and experienced auditing firms. PG&E shall reimburse the funding for the Audit Program as follows: (1) Year 1 - \$500,000, (2) Years 2-5 - \$300,000 (for each year). Provided however, that in the event CSD cannot secure bids in years 2-5 at or below \$300,000, PG&E and CSD shall revisit the RFP and make good faith efforts to agree upon a reasonable funding level.
- (4) PG&E shall provide CSD with monthly summary information, and non-privileged details as requested, of all tree trimming calls, and the resolution of the same, that are made by PG&E employees to PG&E's internal Compliance and Ethics Helpline.
- (5) PG&E shareholders shall reimburse CSD for its reasonable costs of external consultants incurred in connection with this proceeding, in an amount not to exceed \$100,000.
- (6) PG&E shall expend on a tree removal/replacement program over a three year period beginning March 22, 1999, a total of \$14 million over and above that amount allowed in the 1999 GRC for a tree removal/replacement program; the \$14 million shall not be recorded as an operating expense for ratemaking and shall be funded by shareholders.

- (7) Within 30 days after the date that a Commission decision adopting this Settlement becomes final, PG&E shareholders shall make a contribution to the California General Fund of \$6 million.
- (8) The OII and violations alleged by CSD pertain to past events. CSD is optimistic that PG&E has developed a vegetation management program that, if properly maintained and consistently implemented, should allow it to fully comply with all applicable state standards. CSD recognizes the development of this program involved a major commitment from PG&E, and CSD supports GRC funding appropriate to maintain and implement that program into the future.
- (9) PG&E and CSD will abide by the following inspection and compliance protocols:
 - (a) For purposes of reporting nonconforming conditions under 9b(1) and (2) (under applicable state requirements), PG&E will operate a 7 days per week, 24 hours per day phone line (Phone Line) for use by designated CPUC Safety personnel who have received joint CPUC/PG&E tree inspection training. For purposes of reporting nonconforming conditions under 9b(3), PG&E will develop a reporting protocol to provide for reporting to the PG&E Vegetation Management Department.
 - (b) PG&E will correct all CPUC reported nonconformances as follows:
 - (1) Situations which are reported to present an immediate safety hazard - PG&E shall inspect the situation on an emergency basis and shall resolve the situation as necessary to remove the immediate hazard within a reasonable time in light of the circumstances.
 - (2) Situations where evidence of contact between vegetation and a high voltage power lines is reported, but there is no report of immediate hazard - PG&E shall inspect the situation within 24 hours, and shall trim the vegetation as necessary to clear the contact within a reasonable time in light of the circumstances. In any circumstance, the trimming shall be completed in 14 days.
 - (3) Situations where other nonconformance with clearance regulations is reported - PG&E shall inspect the situation within 7 days and shall resolve any noncompliance with clearance regulations within 30 days.

- (c) CSD will not initiate or pursue any enforcement action regarding individual violations identified under the categories in Section 9 herein, unless PG&E fails to inspect or correct reported violations within the time periods set forth above. CSD reserves the right to pursue any remedy regarding violations if PG&E fails to inspect or correct reported violations within those time periods. To the extent CSD identifies a pattern of non-conformance, it reserves the right to request that the Commission initiate an investigation. CSD shall first discuss with PG&E its concerns. The Parties shall not construe any provision of this Agreement to enlarge or diminish the Commission's authority or jurisdiction under the law.
- (d) CSD has confirmed with the Commission's Energy Division that Energy Division is the compliance arm of the Commission and plays no role in initiating or prosecuting tree trimming enforcement actions; and that Energy Division finds the protocol in Section 9(b) of this Settlement appropriate.
- (e) *Force Majeure*. If a large number of conditions, which would normally each constitute a nonconforming condition, exists as the result of *force majeure*, or by an "Act of God," the Parties contemplate that PG&E shall have a reasonable time beyond the limitations set forth herein to correct the nonconforming conditions.
- (f) The Parties recognize that PG&E may be unable to correct nonconforming conditions due to circumstances beyond PG&E's control, such as when a landowner or local agency prevents or delays a PG&E work crew from performing a task. In such an event, PG&E shall notify the CSD of the circumstances. If, despite PG&E's reasonable efforts, a task still cannot be performed within the applicable time period, then CSD will not hold PG&E responsible for failure to meet the agreed-upon time frame to correct such a nonconforming condition.
- (10) The Parties agree that the presiding officer shall mark for identification testimony and exhibits served in this proceeding or marked for identification during hearings. Exhibits will be received into evidence subject to future cross-examination, future objections to admissibility, and resolution of motions to strike.

B. ACCEPTANCE OF ENTIRE SETTLEMENT

The Parties agree to recommend that the Commission approve and adopt this Settlement in its entirety without change as a complete and full resolution of all issues of which they are aware and arising from Investigation 98-09-007. If the Commission fails to adopt the Settlement in its entirety, without change or modification as proposed herein, the Parties shall convene a settlement conference within 15 days after Commission action on this Settlement to discuss whether they can resolve issues raised by the Commission's actions. If the Parties cannot mutually agree to resolve the issues posed by the Commission orders, the Settlement shall be terminated and the Parties shall be released from their obligation to support this Settlement and may pursue any action they deem appropriate; provided, however, the Parties agree to cooperate to establish a procedural schedule.

C. GENERAL TERMS

(1) Obligation to Promote Approval

The Parties agree to use their best efforts to propose, support, and advocate adoption of this Settlement without change by the Commission. No Party to this Settlement will contest any aspect of this Settlement in this proceeding or any other forum, by contact or communication, whether written or oral in any other manner before the Commission until the Commission has acted on this Settlement. Moreover, the Parties agree to actively and mutually defend this Settlement if the adoption is opposed by any other party to the proceeding.

(2) Commission Jurisdiction

The Parties agree that the Commission shall have exclusive jurisdiction over any issues related to the interpretation of this Settlement and that no other court, regulatory agency, or other governing body shall have jurisdiction over any issue related to the interpretation of this Settlement, the enforcement of the Settlement, or the rights of the Parties to the Settlement, except for judicial review of any Commission decision in this proceeding. All rights and remedies are limited to those available before the Commission or for judicial review.

The Parties further agree that no signatory to this Settlement, nor any member of the Staff of the Commission, assumes any personal liability as a result of this Settlement.

(3) Governing Law

This Settlement shall be governed by the laws of the State of California as to all matters, including, but not limited to, matters of validity, construction, effect, performance and remedies.

(4) Headings: Interpretation

The section headings contained in this Settlement are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Settlement. All references in this Settlement to Sections are to Sections of this Settlement, unless otherwise indicated. Each of the Parties hereto and their respective counsel have contributed to the preparation of this Settlement. Accordingly, no provision of this Settlement shall be construed against any Party because that Party or its counsel drafted the provision.

(5) No Waiver

It is understood and agreed that no failure or delay by any Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege.

(6) Entire Agreement

This Settlement sets forth the entire understanding and agreement between the parties with reference to the subject matter hereof and this Settlement may not be modified or terminated except in accordance with its terms or by an instrument in writing signed by all Parties hereto. This Settlement supersedes all prior agreements, negotiations, and understandings among the parties, both oral and written related to this matter.

(7) Counterparts

This Settlement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(8) Miscellaneous

The Parties acknowledge and agree that time is of the essence to this Settlement. The Parties acknowledge, agree, and request that the Commission find that the Settlement is reasonable in light of the whole record, consistent with the law, and in the public interest, and issue an order approving and adopting the Settlement without change .

(9) Executions

In witness whereof, intending to be legally bound, the parties listed here duly execute this Settlement on behalf of the parties they represent.

Dated as of this 1st day of April, 1999

Pacific Gas and Electric Company

/s/

By: Roger J. Peters

Title: _____

California Public Utilities Commission,
Consumer Services Division

/s/

By: William R. Schulte

Title: Director, Consumer Services Division

/s/

By: William Adams

/s/

By: James Weil

(END OF APPENDIX A)

APPENDIX B

LIST OF APPEARANCES

J. Michael Reidenbach, Attorney at Law, and Stephen C. Neal, Attorney at Law, for Pacific Gas & Electric Company, respondent.

Traci A. Grundon, Attorney at Law, and Theresa Meuller, Attorney at Law, for City and County of San Francisco.

Karen Norene Mills, Attorney at Law, for California Farm Bureau Federation.

Beth A. Fox, Attorney at Law, for Southern California Edison Company.

Paul Stein, Attorney at Law, for The Utility Reform Network.

Catherine A. Johnson, Attorney at Law, and Travis Foss, Attorney at Law, for Consumer Services Division of the Commission.

William P. Adams and James Weil, for themselves.

(END OF APPENDIX B)