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23 COMPANY

24 UNITED STATES DISTRICT COURT  
25 NORTHERN DISTRICT OF CALIFORNIA  
26 SAN FRANCISCO DIVISION

27 UNITED STATES OF AMERICA,  
28  
Plaintiff,

v.

PACIFIC GAS AND ELECTRIC COMPANY,  
Defendant.

Case No. 14-CR-00175-WHA

**RESPONSE TO ORDER TO SHOW  
CAUSE RE CONDITIONS OF  
PROBATION**

Judge: Hon. William Alsup

1 Defendant Pacific Gas and Electric Company (“PG&E”) respectfully submits this  
2 response to the Court’s December 29, 2020 order to show cause as to why further conditions of  
3 probation should not be added that require PG&E, in deciding which distribution circuits to  
4 de-energize during Public Safety Power Shutoff (“PSPS”) events, to take into account the extent  
5 to which power lines have been cleared of hazardous trees and limbs. (Dkt. 1277.)

6 In this submission, PG&E proposes supplemental language to clarify and specify  
7 how it will implement the new conditions proposed by the Court. If this supplemental language  
8 is acceptable to the Court, PG&E agrees with the Proposed Conditions and will move  
9 expeditiously to implement them in advance of the 2021 fire season.<sup>1</sup>

10 PG&E first developed its PSPS program in response to the October 2017  
11 North Bay Wildfires. (Dkt. 976 at 29.) Through large expenditures and the efforts of many  
12 PG&E employees, PG&E has evolved it into a sophisticated and demonstrably effective program  
13 that includes, among many other things, advanced models and analytics developed alongside  
14 third-party experts and informed by deep datasets, a wildfire safety operations center, one  
15 thousand weather stations and over three hundred high-definition cameras, a multitude of new  
16 switches and sectionalizers, and training for the hundreds of employees that execute PSPS  
17 events. The program remains the subject of ongoing refinements in light of developments and  
18 experience. PG&E welcomes input from the Court, the community and its regulators as part of  
19 that ongoing evolution.

20 The Proposed Conditions will increase the scope of PG&E’s PSPS events because  
21 they add a new trigger for de-energizing lines. In other words, under the Proposed Conditions,  
22 there will be larger de-energization events than would have otherwise occurred under PG&E’s  
23 current standards. Residents and businesses of Northern California will therefore be subjected to

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24  
25 <sup>1</sup> PG&E disagrees with a number of the statements in the Court’s preamble to the Proposed  
26 Conditions. PG&E also shares the Court’s goal of accounting for known, outstanding hazard  
27 trees. Because the Court’s statements do not relate to the operational specificity that PG&E  
28 seeks in the Proposed Conditions and because PG&E believes the most important thing to do is  
work with the Court and the public to reduce wildfire risk, PG&E does not further address those  
statements in this filing.

1 more blackouts and the safety risks and disruptions that come with blackouts. As a result, PG&E  
2 believes it is critical to be transparent with its regulators and its customers about how these  
3 de-energization events will be implemented, as well as to provide the men and women who must  
4 carry out the events the operational clarity needed to adhere to the probation conditions and  
5 square them with the extensive state regulations governing PSPS events.<sup>2</sup> With those  
6 considerations in mind, PG&E sets forth below the additional requested specificity for each of  
7 the Proposed Conditions.

### 8 **1. Proposed Condition 11**

9 PG&E constructed its existing PSPS program based on the recognition that all  
10 trees near PG&E's power lines—including perfectly healthy and compliant trees—can pose a  
11 safety risk under certain conditions. PG&E's existing PSPS program requires the  
12 de-energization of distribution lines regardless of the absence (or presence) of hazard trees when  
13 the fire and wind conditions exceed certain parameters. As PG&E has described extensively in  
14 its prior submissions, the current PSPS models and the relevant de-energization thresholds  
15 produce PSPS footprints based on detailed analyses of climate conditions including a focus on  
16 off-shore wind profiles, historical fire patterns and consequences, even in the absence of hazard  
17  
18

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19 <sup>2</sup> To accord with the Due Process Clause of the Fourteenth Amendment, a probation  
20 condition must not be “so vague that it ‘fail[s] to give a person of ordinary intelligence fair  
21 notice that it would apply to the conduct contemplated’”. *United States v. Ochoa*, 932 F.3d 866,  
22 869 (9th Cir. 2019) (alteration in original) (citation omitted). We believe that without PG&E's  
additions to the Proposed Conditions, the conditions fail that standard.

23 PG&E further believes that the Proposed Conditions are objectionable for several other  
24 reasons set forth in past filings, including that there is no reasonable relation between PG&E's  
25 original offenses and the Proposed Conditions relating to its electric distribution businesses, *see*  
26 *United States v. Lorenzini*, 71 F.3d 1489, 1493 (9th Cir. 1995); the Probation Conditions  
27 interfere with California's authority to regulate PSPS events, *see United States v. Lakatos*,  
28 241 F.3d 690, 695 (9th Cir. 2001); and the Proposed Conditions are not reasonably necessary to  
accomplish the purposes of the sentencing, *see Lorenzini*, 71 F.3d at 1492. (*See also, e.g.*,  
Dkt. 1195 at 3-6; Dkt. 1187 at 12-17; Dkt. 976 at 13-50.) PG&E would accept the Proposed  
Conditions as supplemented herein, but reserves all rights relating to such arguments to the  
extent the Proposed Conditions are not supplemented.

1 trees. Those models, subject to otherwise-ongoing maturation efforts and refinements, will  
2 remain in place even after the Proposed Conditions are implemented.

3 In expanding the scope of PSPS for the 2021 fire season to account for hazard  
4 trees *outside* the footprint determined by the existing PSPS models, PG&E will need to identify  
5 those categories of trees or limbs that are subject to pending work that will be taken into account.  
6 PG&E's additional proposed language for Proposed Condition 11 is intended to prescribe with  
7 specificity the categories of trees and limbs that fit this definition so that the Court, the public  
8 and PG&E personnel have a clear and common understanding that the additional PSPS blackouts  
9 likely to result from the Proposed Conditions will be based on the presence of trees or limbs that  
10 present an elevated safety risk substantially above that posed by healthy trees. PG&E therefore  
11 proposes the following additional language (in bold) for Proposed Condition 11:

12 Proposed Condition 11: In determining which distribution lines in  
13 Tier 2 or Tier 3 to de-energize during a PSPS, PG&E must take  
14 into account all information in its possession and in the possession  
15 of its contractors and subcontractors concerning the extent to  
16 which trees and/or limbs bordering those lines remain in violation  
17 of Public Resources Code Section 4293, GO 95, FERC FAC-003-  
18 4, and/or its own wildfire mitigation plan. **In determining which  
19 distribution lines to de-energize during a PSPS event, PG&E  
20 will implement this condition by July 1, 2021 by considering  
21 the existence of all outstanding vegetation management work  
22 tagged "Priority 1" or "Priority 2" within PG&E's service  
23 territory that is subject to potential de-energizations.**

24 By way of background, as part of its various vegetation management programs,  
25 PG&E identifies vegetation for work for a variety of reasons, and in many instances these  
26 identifications do not reflect a violation of applicable regulations or a current safety hazard. For  
27 example, PG&E tags numerous trees for subsequent work that do not encroach upon the  
28 regulatory clearance zones at the time of an inspection but that could do so prior to the next  
vegetation management inspection. As another example, as part of its Enhanced Vegetation  
Management ("EVM") program, PG&E identifies for mitigation trees that are outside the  
clearance zones and healthy, but that PG&E intends to mitigate because they overhang the line

1 (*outside* the state-mandated clearance zone) or because of their overall attributes, including  
2 species, height, lean and so on.

3           Because of the diverse nature of the work that is being identified through the  
4 inspection process, PG&E uses two tags—Priority 1 and Priority 2—for priority work where  
5 trained vegetation inspectors identify trees or limbs that currently present elevated risk and must  
6 be worked on an expedited basis. Inspectors use Priority 1 tags for vegetation (i) in contact or  
7 showing signs of previous contact with a primary conductor; (ii) actively failing or at immediate  
8 risk of failing and which could strike PG&E’s facilities; or (iii) presenting an immediate risk to  
9 PG&E’s facilities. Inspectors use Priority 2 tags for vegetation that does not rise to the level of  
10 Priority 1 vegetation, but has encroached within the PG&E minimum clearance requirements or  
11 has an identifiable potential safety issue requiring expedited work. For example, during PG&E’s  
12 patrols, inspectors flag for removal trees that show signs of mortality. A declining tree can last  
13 for years before it passes and can remain sturdy for years. In high fire threat areas (*i.e.*, HFTD  
14 Tier 2 and Tier 3 areas), distribution lines are inspected approximately every six months for  
15 dying trees. Under a policy PG&E is in the process of implementing for the 2021 fire season,  
16 trees identified as dying will be removed within six months, absent access issues. But if an  
17 inspector identifies signs that the tree has the potential to strike PG&E’s facilities and  
18 demonstrates a substantially increased risk of failing within six months, then the inspector would  
19 tag such a tree for removal on at least a Priority 2 basis.

20           PG&E’s policy calls for all Priority 1 trees to be worked within 24 hours.  
21 PG&E’s policy calls for Priority 2 trees to be addressed within 30 days, absent access issues.  
22 Any trees that have not been identified by the inspector as presenting an enhanced safety risk  
23 (*i.e.*, any trees or limbs that are marked for work but not designated as Priority 1 or Priority 2)  
24 will be worked based on PG&E’s policies for non-priority vegetation management. For  
25 example, as noted above, PG&E’s policies will call for non-priority trees in high fire threat areas  
26 with strike potential that are flagged for removal because they show signs of mortality to be  
27 addressed within six months, absent access issues.

1 At any given time, PG&E's system will typically not have a significant number of  
 2 outstanding Priority 1 trees. PG&E will typically have several thousand outstanding Priority 2  
 3 trees in high fire threat areas as a result of the number of such trees and the 30-day time limit to  
 4 work those trees after they are identified. Each of these Priority 1 and Priority 2 trees will be  
 5 within the scope of the Proposed Condition 11, as well as Proposed Condition 12, discussed in  
 6 more detail below. While PG&E's current infrastructure does not provide a means by which  
 7 outstanding Priority 1 and Priority 2 trees are readily incorporated into the PSPS-scoping  
 8 process, PG&E will build the systems and tools needed to streamline the availability of Priority 1  
 9 and Priority 2 tree data to the team that is scoping PSPS events in a manner that can be integrated  
 10 with the meteorological and other tools used to scope PSPS events.

## 11 **2. Proposed Condition 12**

12 Decisions about PSPS scope need to be made in a time-compressed manner,  
 13 based on quickly changing and dynamic information, applied over a very large service territory,  
 14 sometimes by different shifts of personnel. The Proposed Conditions cannot be reasonably  
 15 implemented without a framework to analyze and define what is a "safety hazard in the event of  
 16 a windstorm" and what is a "safety issue" that warrants de-energization. Accordingly, PG&E  
 17 proposes the following additional text (in bold) for Proposed Condition 12:

18 Proposed Condition 12: To the extent that such information shows  
 19 that such trees and limbs present a safety hazard in the event of a  
 20 windstorm, PG&E must make a specific determination with  
 21 respect to that distribution line and it must de-energize it unless  
 22 PG&E finds in writing that there are specific reasons to believe  
 23 that no safety issue exists. **PG&E will implement this condition  
 24 by July 1, 2021 by developing a methodology to de-energize  
 25 line segments in areas subject to potential de-energizations that  
 26 have outstanding Priority 1 or Priority 2 vegetation  
 27 management work when forecast conditions are above  
 28 specified fire-risk thresholds, absent a documented  
 determination that de-energization is not warranted.**

26 This proposed language specifies that PG&E will, in addition to the areas  
 27 identified for de-energization under other scoping criteria for a PSPS event, develop a  
 28

1 methodology to identify areas not otherwise slated for de-energization that have outstanding  
2 Priority 1 or Priority 2 tags and de-energize those areas if the forecast conditions in those areas  
3 are above specified fire-risk thresholds. Because these thresholds will serve as an additional  
4 trigger for de-energizations of residences and businesses, the precise mechanics of calculating  
5 and setting those thresholds will be based on expert analyses over the coming months. Given the  
6 potential public safety risks posed by larger de-energizations, these analyses will need to  
7 consider how many customers may lose power in potential events and how long they may remain  
8 without power. PG&E will share those finalized thresholds and the methods for implementing  
9 them with the Court and the Monitor in the next three months.

10 \* \* \*

11 To reiterate, PG&E shares the Court's goal of taking account of known,  
12 outstanding hazard trees. PG&E has no objection to the Court adopting the Proposed Conditions  
13 as supplemented above to clarify how those conditions are to be implemented.

14 PG&E looks forward to answering any questions the Court may have at the  
15 upcoming hearing.

1 Dated: January 20, 2021

Respectfully Submitted,

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