

1 JENNER & BLOCK LLP
2 Reid J. Schar (*pro hac vice*)
3 RSchar@jenner.com
353 N. Clark Street
Chicago, IL 60654-3456
4 Telephone: +1 312 222 9350
Facsimile: +1 312 527 0484

5 CLARENCE DYER & COHEN LLP
6 Kate Dyer (Bar No. 171891)
7 kdyer@clarencedyer.com
899 Ellis Street
San Francisco, CA 94109-7807
Telephone: +1 415 749 1800
9 Facsimile: +1 415 749 1694

10 CRAVATH, SWAINE & MOORE LLP
11 Kevin J. Orsini (*pro hac vice*)
12 korsini@cravath.com
825 Eighth Avenue
New York, NY 10019
13 Telephone: +1 212 474 1000
14 Facsimile: +1 212 474 3700

15 Attorneys for Defendant PACIFIC GAS AND ELECTRIC
COMPANY

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 UNITED STATES OF AMERICA,
20
21 Plaintiff,
22
23 v.
24 PACIFIC GAS AND ELECTRIC COMPANY,
25 Defendant.

Case No. 14-CR-00175-WHA

**PG&E’S FURTHER RESPONSE TO
ORDER TO SHOW CAUSE WHY
FURTHER CONDITION OF
PROBATION SHOULD NOT BE
IMPOSED**

Judge: Hon. William Alsup

1 Defendant Pacific Gas and Electric Company (“PG&E”) respectfully submits this
2 further response to the Court’s February 18, 2021 order to show cause as to why Probation
3 Condition 1 should not be amended. (Dkt. 1308.)

4 In PG&E’s March 4, 2021 response to the order to show cause, PG&E explained
5 that it had no objection to the Court’s proposed amendment to Probation Condition 1 (which
6 states that “the Court accepts CAL FIRE’s interpretation of Section 4293 as set forth in its
7 February 6 submission (Dkt. No. 1012)” (Dkt. 1040 at 1)), on the “understanding that the Court
8 is proposing to amend Probation Condition 1 to require PG&E to comply with CAL FIRE’s
9 interpretation of California Public Resources Code section 4293 as set forth in CAL FIRE’s
10 February 6, 2019 submission to the Court”. (Dkt. 1330 at 2.) PG&E’s response explained that
11 we “understand CAL FIRE’s February 6 submission to mean that not all trees subject to
12 section 4293 that lean towards the line constitute hazard trees that need to be abated”. (*Id.*)
13 PG&E’s understanding was confirmed by CAL FIRE and the CPUC in their March 11, 2021
14 letter to the Court, in which they stated that “CAL FIRE’s prior submission does not conclude
15 that every tree or portion of a tree that is leaning toward a line and tall enough to contact the line
16 must be removed”. (Dkt. 1335 at 5.) PG&E thus has no objection to the Court requiring PG&E
17 to comply with CAL FIRE’s interpretation of section 4293, as set forth in CAL FIRE’s
18 February 6, 2019 and March 11, 2021 submissions. (Dkts. 1012, 1335.)

19 PG&E’s March 4, 2021 response also proposed a “bright-line approach” to
20 remediating Gray Pines and Tanoaks in particular areas that lean significantly towards PG&E’s
21 distribution lines. (Dkt. 1330 at 2-3.) That proposal was made specifically “as long as
22 CAL FIRE and the CPUC do not object”. (*Id.* at 2.) The United States stated that it had no
23 specific objection to PG&E’s proposal “if [PG&E] can execute this proposal consistent with
24 California law and regulations”. (Dkt. 1334 at 3.)

25 Subsequently, both CAL FIRE and the CPUC wrote to the Court to “request that
26 the court reject PG&E’s request that the court order a change to PG&E’s vegetation management
27 practices”. (Dkt. 1335 at 6.) CAL FIRE and the CPUC stated their view that vegetation
28

1 management proposals should be considered as part of the review process for PG&E's Wildfire
2 Mitigation Plan.

3 PG&E would like to proceed with consideration of the Gray Pine and Tanoak
4 proposal, but recognizes CAL FIRE and the CPUC's point that there are complex considerations
5 involved that require the input of the state regulatory process.¹ PG&E thus commits to the Court
6 to present to the CPUC for evaluation a proposal to abate Gray Pines tall enough to fall into a
7 distribution line in an HFTD that lean more than 20 degrees towards the line in the Bay Area,
8 Central Valley, North Valley and Sierra regions and abate Tanoaks tall enough to fall into a
9 distribution line in an HFTD that lean more than 20 degrees towards the line in the Bay Area,
10 Central Coast and North Coast regions. Given that PG&E has already submitted its Wildfire
11 Mitigation Plan for 2021, PG&E will consult with the CPUC on an appropriate expedited
12 procedural vehicle to submit the proposal for the CPUC's evaluation.

13 Separately, PG&E notes that it is continuing to move forward on operationalizing
14 changes to its PSPS program as discussed in the context of the Court's Proposed Conditions 11
15 and 12. Those changes, which will significantly increase the customer impacts of PSPS events,
16 are subject to ongoing refinement and engagement with regulators. But PG&E currently
17 anticipates that the changes to its PSPS program as described for the Court in the context of
18 Proposed Conditions 11 and 12 will reduce wildfire risk and, if the fire conditions that prevailed
19 in the run-up to the Zogg Fire were to occur in 2021, would lead to the de-energization of the
20 Girvan Circuit in the area of interest. (*See* Dkt. 1310.)

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26 ¹ The Ninth Circuit has explained that "where a state has in place a comprehensive
27 procedure for resolution of the condition probation imposes, it makes good sense to defer to that
28 established procedure." *United States v. Lakatos*, 241 F.3d 690, 695 (9th Cir. 2001) (citation
omitted). (*See also, e.g.*, Dkt. 1195 at 3-6; Dkt. 1187-1 at 12-17; Dkt. 976 at 13-50.)

1 Dated: March 17, 2021

Respectfully Submitted,

2 JENNER & BLOCK LLP

3
4 By: /s/ Reid J. Schar
Reid J. Schar (*pro hac vice*)

5 CRAVATH, SWAINE & MOORE LLP

6
7 By: /s/ Kevin J. Orsini
8 Kevin J. Orsini (*pro hac vice*)

9 CLARENCE DYER & COHEN LLP

10
11 By: /s/ Kate Dyer
12 Kate Dyer (Bar No. 171891)

13 Attorneys for Defendant PACIFIC
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