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

27 UNITED STATES OF AMERICA,  
28  
29 Plaintiff,  
30  
31 v.  
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33 PACIFIC GAS AND ELECTRIC COMPANY,  
34  
35 Defendant.

Case No. 14-CR-00175-WHA

**PG&E'S RESPONSE TO BRIEFS IN  
RESPONSE TO THE COURT'S  
ORDER TO SHOW CAUSE RE  
CONDITIONS OF PROBATION**

Judge: Hon. William Alsup

1 PG&E respectfully submits this response to the Government’s January 25, 2021  
2 submission regarding the Court’s order to show cause proposing new conditions of probation  
3 (Dkt. 1282) and to Alex Cannara and Gene A. Nelson’s January 27, 2021 amicus curiae brief  
4 (Dkt. 1283).

5 The Court’s order to show cause came after the Court requested and received  
6 extensive submissions from PG&E about the nature of PG&E’s processes for determining which  
7 distribution circuits to de-energize during Public Safety Power Shutoff (“PSPS”) events. (*See*  
8 Dkts. 1250; 1265; 1271.) The issue posed by the Court’s December 29, 2020 order to show  
9 cause was whether further conditions of probation should be imposed requiring PG&E, in  
10 deciding which distribution circuits to de-energize during PSPS events, to take into account  
11 known hazard trees and limbs. (Dkt. 1277.)

12 As set forth in PG&E’s January 20, 2021 submission, PG&E agreed to take into  
13 account known hazard trees and limbs in making de-energization decisions during PSPS events,  
14 and proposed specific supplemental language to ensure that it would be clear how a PSPS event  
15 would be implemented with the use of the new, additional criteria. (Dkt. 1279.) In the  
16 Government’s January 25, 2021 filing, the Government proposed, for clarity’s sake, language  
17 modifying PG&E’s supplemented Proposed Conditions (Dkt. 1282)—language with which  
18 PG&E agrees. Thus, the Court and the Parties are in agreement on the issue that has been the  
19 focus of the filings before the Court for the past several months: PG&E taking known hazard  
20 trees and limbs into account when making de-energization decisions during PSPS events.

21 After the Court’s order to show cause concerning whether it should order  
22 additional conditions of probation on that issue, and after the Parties reached agreement on  
23 supplementing and clarifying the Proposed Conditions, amici filed a brief on January 27, 2021.  
24 (Dkt. 1283.) The brief does not seek to provide the Court with additional information or analysis  
25 that may help the Court decide whether to adopt the Proposed Conditions, but rather the bulk of  
26 the submission tries to graft onto the Court’s order to show cause four *new* proposed conditions  
27 that bear no meaningful relation to the Proposed Conditions or the Parties’ briefing. Amici’s  
28

1 submission comes without having built a record with respect to any of their proposals and  
2 without giving any acknowledgement to the disruption that the proposals, if adopted, would  
3 cause to existing safety efforts PG&E is carrying out in coordination with the Federal Monitor,  
4 the Wildfire Safety Division, the CPUC and the California Governor’s Office Operational  
5 Observer.

6 Amici’s proposals should be rejected.

7 **1. PG&E Agrees with the Government’s Reformulation of PG&E’s and the Court’s**  
8 **Proposed Conditions**

9 In the Government’s January 25 filing, it explained that it had no objection to the  
10 supplemental language proposed by PG&E for the Proposed Conditions, stating that “PG&E’s  
11 filings make clear that the models used to determine whether to engage PSPS are complex, and  
12 the competing considerations are weighty given the safety risks and other ill effects of shutting  
13 off the power”. (Dkt. 1282 at 2.) The Government also stated that “PG&E’s proposal to use  
14 experts to develop thresholds over the coming months and share them with the Court and the  
15 Monitor is reasonable”. (*Id.*)

16 For Proposed Condition 11, the Government suggested an alternative formulation  
17 so that the condition would “be more clearly worded” than PG&E’s formulation. (*Id.*) PG&E  
18 accepts the Government’s clarifying proposal and has no objection to the Court adopting the  
19 Proposed Conditions as supplemented by PG&E in its January 20 filing and clarified by the  
20 Government.<sup>1</sup>

21 Accordingly, the Parties to this proceeding agree on proposed probation  
22 conditions as set forth in Appendix A hereto, and they may be entered by the Court on an agreed  
23 basis.

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27 <sup>1</sup> As previously noted, PG&E reserves all of its rights relating to such arguments to the  
28 extent the Proposed Conditions are not adopted as supplemented. (*See* Dkt. 1279 at 3 n.2.)

1 **2. Amici’s Proposals Lack Merit**

2 Amici argue that the supplemented and clarified Proposed Conditions acceptable  
3 to both PG&E and the Government should be cast aside, and that the Court should retain its  
4 original formulations, subject to vague and unclear modifications proposed by amici  
5 themselves.<sup>2</sup> Amici’s arguments lack merit.

6 *First*, amici argue that the Court should not supplement Proposed Condition 11 to  
7 specify that the expansion of PSPS events beyond their existing footprints will be based on  
8 vegetation that is found to require remediation on a Priority 1 or Priority 2 basis. But the focus  
9 on Priority 1 and Priority 2 vegetation is fundamental to PG&E’s agreement to the Proposed  
10 Conditions to ensure that the conditions are tailored to effectively mitigate wildfire risk in light  
11 of the safety risks and disruptions that come with wider-scale blackouts. As explained in  
12 PG&E’s response to the order to show cause, PG&E’s existing PSPS protocols—which resulted  
13 in seven separate de-energization events in the fourth quarter of 2020—aim to de-energize areas  
14 that pose sufficient risk of a catastrophic fire even when vegetation is healthy and compliant with  
15 all applicable regulations. The issue here is whether those blackouts should be *expanded* to  
16 account for areas that pose less weather risk on the basis of hazard trees. It is critical that the  
17 public, PG&E’s expert regulators, and the men and women implementing PSPS events have a  
18 shared and common understanding of the triggers for these larger and longer blackouts and that  
19 those triggers be based on the presence of trees or limbs that present an elevated safety risk  
20 substantially above that posed by healthy trees. (*See* Dkt. 1279.)

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23 <sup>2</sup> Amici contend that the Court should expand the Proposed Conditions beyond the language  
24 the Court originally proposed by adding the following bolded language for vegetation that PG&E  
25 must take into account when conducting PSPS events: “trees and/or limbs bordering those lines  
26 remain in violation of Public Resources Code Section 4293, GO 95, **the California Public**  
27 **Utilities Code, the CPUC’s Orders, Decisions, or rules, FERC FAC-003-4, and/or its own**  
28 **wildfire mitigation plan as approved by the CPUC**”. (Dkt. 1283 at 2.) Amici do not explain  
why these additional provisions should be added to the Proposed Conditions or what additional  
trees or limbs it would apply to. Indeed, there is no clear articulation as to why these additions  
are necessary or appropriate, or how they would further public safety, leaving PG&E unable to  
further respond.

1 Nothing in amici's brief suggests that PG&E is drawing the line in the wrong  
2 place. Amici present no analysis or evidence that trees identified for work on a non-priority  
3 basis present a substantially elevated safety risk in a windstorm compared to other trees, nor do  
4 amici consider that greatly expanding and prolonging PSPS events on the basis of such trees  
5 would inflict serious safety risks, economic costs and other hardships on the residents and  
6 businesses of Northern California. While amici contend that it is unclear when each of Priority 1  
7 and Priority 2 designations is called for, PG&E provided the definitions of Priority 1 and  
8 Priority 2 tags in its January 20 filing. (Dkt. 1279 at 5.)

9 *Second*, amici contend that PG&E proposes to exclude from the PSPS decision-  
10 making set forth in the Proposed Conditions any outstanding vegetation management work for  
11 which there is an "access issue". (Dkt. 1283 at 26-28.) That is not PG&E's proposal. Rather,  
12 access issues were noted in PG&E's January 20 filing only in the context of explaining the time  
13 table set by PG&E's policies for completing vegetation management work and, in that context,  
14 PG&E noted that access issues—such as a customer refusal or governmental permissions—are a  
15 reason that the general time tables may not apply to a given tree. (Dkt. 1279 at 5.) To be clear,  
16 PG&E's supplemented Proposed Conditions would not exclude Priority 1 and Priority 2 trees  
17 from being taken into account for PSPS events based on whether access issues had delayed  
18 PG&E from completing the work.

19 *Third*, amici object to the July 1, 2021 effective date contained in PG&E's  
20 Proposed Conditions. (Dkt. 1283 at 24.) Amici appear to assert that, because PG&E is required  
21 to "maintain records and an auditable maintenance program", PG&E must be able to implement  
22 the conditions "immediately". (*Id.*) But simply having records of outstanding Priority 1 and  
23 Priority 2 trees—which PG&E does—does not allow PG&E to readily incorporate the Proposed  
24 Conditions into the PSPS-scoping process in the limited timeframes available for PSPS decision-  
25 making. (*See* Dkt. 1265 at 15-16.) Rather, PG&E must build, test and optimize the tools and  
26 procedures needed to make Priority 1 and Priority 2 tree data available in a manner that can be  
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1 Dated: February 1, 2021

Respectfully Submitted,

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**Appendix A**

1  
2 Proposed Condition 11: In determining which distribution lines in Tier 2 or  
3 Tier 3 to de-energize during a PSPS event, PG&E must take into account all information in its  
4 possession and in the possession of its contractors and subcontractors concerning all outstanding  
5 vegetation management work tagged “Priority 1” or “Priority 2” within PG&E’s service territory  
6 that is subject to potential de-energizations. PG&E will implement this condition by July 1,  
7 2021.

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