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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
PACIFIC GAS AND ELECTRIC COMPANY,  
  
Defendant.

Case No. 14-CR-00175-WHA  
  
**MOTION TO RECONSIDER  
ORDER MODIFYING  
CONDITIONS OF PROBATION**  
  
Judge: Hon. William Alsup

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## INTRODUCTION

PG&E submits this motion to reconsider the new probation conditions imposed by the Court's April 29, 2020 Order (Dkt. 1186) ("Order"). Those conditions were imposed without the required notice and hearing. That, in turn, has resulted in conditions that rest on incorrect premises; that are neither reasonable nor necessary (and that are in some instances impossible); and that frustrate the efforts of California's legislature and its regulators to address the same issues. The risk presented by this approach is exacerbated by the fact that attempting to comply with the Court's conditions will divert attention and resources from critical ongoing safety efforts. PG&E is committed to working with its regulators to provide safe and reliable power to all Californians. It shares the goal of the public and this Court to improve wildfire safety. But the new conditions do not help that effort, and in many instances will hurt it.

There is a reason why the law requires notice and a hearing before a court may impose new probation conditions: new conditions must be grounded in evidence, and a hearing may cause the court to reconsider proposed conditions in light of the evidence presented. The factual errors in the Order show what can happen when these procedural requirements are not met. And there is a reason why the law does not permit a federal court to use its probation power to override public safety regulation that lies within the State's core police powers: courts are neither experts on such matters nor politically accountable for their decisions. California is actively legislating and regulating in this area, including through the oversight function of its new Wildfire Safety Division ("WSD"), and that process should be allowed to continue.

In fact, the new conditions may well increase wildfire risk and impose unreasonable and inefficient burdens, particularly in light of PG&E's commitments under the existing regulatory structure. One condition requires PG&E to "employ its own cadre of pre- and post- inspectors" (the "Hiring Condition") for vegetation management. (Order at 8.) But PG&E is in the midst of a comprehensive and thorough review of its wildfire safety efforts, including its vegetation management practices, overseen by its regulators. It is also enhancing its inspection approach to improve pre- and post-inspection effectiveness and to increase accountability. It is not an

1 appropriate use of the probation power to second-guess PG&E’s regulator or mandate a different  
2 approach. While the Court apparently has a preference for in-house employees over contractors,  
3 there is no evidence that bringing all pre- and post-inspectors in-house would improve the quality  
4 of the program. And the time and effort required to create a new workforce within PG&E would  
5 distract from ongoing programs that PG&E believes have a better chance of reducing risk.

6 A second condition requires PG&E to identify the “age of every item of equipment on  
7 every transmission tower and line” (the “Age Identification Condition”). (Order at 11.) Putting  
8 aside whether this is even possible (it is not), there is no evidence establishing that this would be  
9 a wise investment of time or resources. PG&E, like other utilities, makes repair and replacement  
10 decisions based on the actual condition of its facilities, not just their age. The Court’s condition  
11 will force PG&E to divert substantial and finite resources from ongoing work to concentrate  
12 instead on researching the vintage of millions of transmission-tower components, many of which  
13 are irrelevant to an assessment of wildfire risk, all for speculative safety gains. This type of  
14 unfocused, all-encompassing inquiry is directly at odds with CPUC guidance that PG&E should  
15 target its efforts on projects that have the highest probability of reducing ignition risk.

16 Another condition requires PG&E to “design a new inspection system for assessing every  
17 item of equipment on all transmission towers” (the “Inspection Condition”). (Order at 11.) The  
18 CPUC has the authority and expertise to oversee PG&E’s inspection system, and it is overseeing  
19 the execution of a new inspection program developed by PG&E in light of lessons learned from  
20 the 2019 Wildfire Safety Inspection Program (“WSIP”). Under this framework developed by  
21 subject-matter experts, inspections are risk-based, so that inspectors can focus their attention on  
22 the equipment posing the greatest risk. Requiring PG&E to overhaul its inspection program to  
23 conform to the Court’s condition would, again, exacerbate risk by forcing PG&E to change  
24 course and take its focus off the work that is truly necessary. It also disregards the ongoing  
25 regulatory review and oversight of PG&E’s inspection program, which culminated in a detailed  
26 report from PG&E’s regulator just last week that proposes a series of specific enhancements.

27 The final condition forces PG&E to require its inspection contractors “to carry insurance  
28

1 sufficient to cover losses suffered by the public should their inspections be deficient and thereby  
 2 start a wildfire” (the “Insurance Condition”). (Order at 12.) That would require tens of billions  
 3 of dollars in coverage that simply does not exist. That is why California passed legislation just  
 4 last year to ensure compensation for wildfire victims while keeping utilities solvent.

### 5 **ARGUMENT**

6 This Court is authorized to “modify [or] reduce” the conditions of probation “at any time  
 7 prior to the expiration . . . of the term of probation . . . .” 18 U.S.C. § 3563(c). It therefore has  
 8 inherent authority to reconsider an order setting terms of probation. *See, e.g., United States v.*  
 9 *Fazzini*, 414 F.3d 695, 698 (7th Cir. 2005) (“[T]he district court was free to examine the question  
 10 of [the probationer’s] alleged probation at any time prior to the expiration of the term of  
 11 probation . . . . The district court was therefore free to reconsider its decision  
 12 . . . .”).<sup>1</sup> Reconsideration is warranted because the Order rests on “clear error” and “was  
 13 manifestly unjust.” *See Nunes v. Ashcroft*, 375 F.3d 805, 807 (9th Cir. 2004) (citation omitted).

#### 14 **I. THE COURT ERRED BY IMPOSING NEW PROBATION CONDITIONS 15 WITHOUT NOTICE OR A HEARING.**

##### 16 **A. PG&E Was Entitled to Notice and a Hearing.**

17 The Federal Rules of Criminal Procedure require that “[b]efore modifying the conditions  
 18 of probation . . . the court must hold a hearing . . . at which the person has the right to counsel  
 19 and an opportunity to make a statement and present any information in mitigation.” Fed. R.  
 20 Crim. P. 32.1(c). A court meets its obligation by “hear[ing] arguments from [defendant’s]  
 21 counsel . . . on the merits of [defendant’s] objections, and receiv[ing] additional briefing from the  
 22 parties on its authority to order the proposed modifications.” *United States v. Parisi*, 821 F.3d  
 23 343, 349 (2d Cir. 2016); *see also United States v. Tulip*, 628 F. App’x 687, 691 (11th Cir. 2015).

24 \_\_\_\_\_  
 25 <sup>1</sup> The Court may alternatively construe this motion as a motion to modify probation  
 26 conditions or as a motion under 28 U.S.C. § 2255(a). *E.g., United States v. Brosnan*, 674 F.  
 27 App’x 734, 735 (9th Cir. 2017) (approving District Court’s treatment of “motion to modify a  
 28 condition of supervised release” as “motion to reconsider”); *Swangin v. Cal. State Police*, 168  
 F.3d 501, 501 n.4 (9th Cir. 1999) (finding probationers are “in custody” so may seek post-  
 conviction *habeas* relief).

1 Rule 32.1(c)'s hearing requirement is mandatory. *See United States v. Inzunza*, 108 F.3d 1387  
 2 (9th Cir. 1997) (“A defendant *is entitled* to a hearing and assistance of counsel prior to the  
 3 modification of the terms . . . of his probation . . .”) (emphasis added).<sup>2</sup> A district court abuses  
 4 its discretion by modifying probation conditions without this hearing.<sup>3</sup> Even where “[t]he court’s  
 5 modifications might well be reasonable”, the defendant still “is entitled to a hearing before . . .  
 6 unfavorable changes may be made” to its probation terms. *Colson*, 675 F. App’x at 629.

7 When a court seeks to impose a condition not listed in the U.S. Code or sentencing  
 8 guidelines, “notice is required before it is imposed, so that counsel and the defendant will have  
 9 the opportunity to address personally its appropriateness.” *United States v. Wise*, 391 F.3d 1027,  
 10 1033 (9th Cir. 2004) (vacating condition of supervised release); *see also United States v.*  
 11 *Zambrano-Ruiz*, 768 F. App’x 615, 618 (9th Cir.) (same), *cert. denied*, 140 S. Ct. 311 (2019).

12 **B. PG&E Was Not Afforded the Required Notice and Hearing.**

13 PG&E was deprived of the notice and hearing that Rule 32.1 requires. The Court’s most  
 14 recent probation hearing on February 19, 2020 concerned two proposed conditions. One  
 15 involved executive and incentive compensation. The other would have required PG&E to “hire  
 16 and train” crews and equipment to inspect, trim, and remove all vegetation to comply with state  
 17 requirements and PG&E’s Wildfire Mitigation Plan. (Dkt. 1133; Dkt. 1134.)

18 The Court did not impose those conditions. Instead, without providing notice or an  
 19 opportunity to be heard, the Court imposed four new probation conditions on PG&E.  
 20 (Dkt. 1186.) The conditions in the Order were never mentioned or explored during the Court’s  
 21 prior probation hearings. (Dkt. 1133; Dkt. 1134.)<sup>4</sup> This violates Rule 31.2(c).

22  
 23 <sup>2</sup> *See also, e.g., United States v. Colson*, 675 F. App’x 624, 627 (7th Cir. 2017); *United States*  
 24 *v. Jackson*, 697 F. App’x 159, 159-60 (4th Cir. 2017); *Parisi*, 821 F.3d at 349; *Tulip*, 628 F. App’x  
 25 at 691; *United States v. Wilson*, 707 F.3d 412, 416 (3d Cir. 2013); *United States v. Begay*, 631  
 26 F.3d 1168, 1173 (10th Cir. 2011); *United States v. Davies*, 380 F.3d 329, 331-33 (8th Cir. 2004).

27 <sup>3</sup> *See Colson*, 675 F. App’x at 627-28 (overturning district court’s “add[ition] [of] several of  
 28 its own modifications” “on its own initiative” “without giving [defendant] a chance to be  
 heard”); *Jackson*, 697 F. App’x at 159-60 (same).

<sup>4</sup> The Hiring Condition overlaps in general subject matter with one of the previously  
 proposed conditions, *see* Dkt. 1133, at 2, in that both involve in-house vegetation maintenance.

1           **C. The Conditions Are Based on Incorrect Factual Premises That PG&E Would**  
 2           **Have Disputed Had It Been Afforded Notice and a Hearing.**

3           The absence of a hearing before imposition of the conditions directly prejudiced PG&E  
 4 by eliminating its opportunity to present its objections and mitigating evidence as to the  
 5 inappropriateness of the conditions. Those issues are discussed below. It also led the Court to  
 6 base its decision that the conditions are necessary on a series of factual errors that PG&E would  
 7 have had an opportunity to address had there been a hearing.

8           1.       **The Court’s Criticism of PG&E’s Current Vegetation Management**  
 9           **Programs Lacks a Basis in the Record.**

10          The Court rests the Hiring Condition on its findings that PG&E is out of compliance with  
 11 its regulatory vegetation management obligations. But, as PG&E has repeatedly explained, it is  
 12 in substantial compliance with California vegetation management laws and regulations. (Ritter  
 13 Decl. ¶¶ 34-40.)<sup>5</sup> No program can guarantee perfect compliance. (Goodfellow Decl. ¶¶ 40-42.)  
 14 The findings that the Court relies on to conclude otherwise are wrong.

15          The Court first asserts that PG&E is “years away” from compliance. (Order at 6.) In  
 16 doing so, the Court mistakes PG&E’s enhanced vegetation management (“EVM”) efforts with  
 17 regulatory requirements. The EVM work that will take years to finish *is not a compliance issue*.  
 18 That work goes well *beyond* the basic regulations. (Goodfellow Decl. ¶ 28.) That it will not be  
 19 completed for several years is thus not a basis for the Court’s compliance concerns, particularly  
 20 given PG&E more than met its 2019 year-end EVM line mile target. (Ritter Decl. ¶ 39.)<sup>6</sup>

21          But the Hiring Condition is materially different. The earlier-proposed condition involved hiring  
 22 staff on top of PG&E’s *existing* tree-trimming contractors, (2/19/20 Hr’g Tr. 27:4-6); whereas  
 23 the Hiring Condition imposed here would require PG&E to bring its *entire* pre- and post-  
 24 inspector team in-house, in addition to hiring inspectors, (Dkt. 1186, at 8-9). The Court never  
 25 suggested it was considering a condition like the one it ultimately imposed in the Order. PG&E  
 26 mentioned at the hearing that it had begun a pilot program for inspectors, (2/19/20 Hr’g Tr. at  
 27 36:12-37:20), but that pilot program is very different from what the Hiring Condition requires.  
 28 *See infra* Part II.

26          <sup>5</sup> All instances of “[\_] Decl.” herein refer to the declarations supporting this motion, attached  
 as Exhibits A-L.

27          <sup>6</sup> Similarly, while the Court references certain findings the Monitor reported in the summer  
 of 2019, (Order at 7), the vast majority of the trees identified by the Monitor were not

1 Equally misplaced is the Court’s assertion that a “backlog” of tree work led to the 2017  
 2 North Bay Wildfires. Not one of the trees that allegedly ignited those fires was a tree that had  
 3 been identified for work in the most recent inspection but had not been completed prior to  
 4 October 7, 2017 (the date of the fires). (Ritter Decl. ¶ 41.) PG&E worked more than 1.3 million  
 5 trees in 2019, but the Order focuses on approximately 22,000 that were identified for trimming  
 6 or removal in 2019 that had not been worked as of January 15, 2020. (Order at 6-7.) As PG&E  
 7 has explained, many of these trees were identified in late 2019 and either had been or would be  
 8 completed in PG&E’s standard work completion timeframes.<sup>7</sup> (Ritter Decl. ¶ 37.) To date, over  
 9 85 percent of the outstanding trees have been worked. (*Id.* ¶ 38.) PG&E continues to work to  
 10 address the approximately 3,000 that remain, including by addressing external factors such as  
 11 permitting, environmental or technical constraints or customer refusals. (*Id.*)

12 The Court’s suggestion that PG&E’s vegetation management efforts must be inadequate  
 13 because trees and branches were blown into lines during Public Safety Power Shutoff (“PSPS”)  
 14 events is also incorrect. (Order at 6.) PG&E implemented its PSPS program in 2018 in response  
 15 to a dramatically increased wildfire risk due in large part to years of drought and climate change  
 16 causing a longer and drier fire season and more extreme weather events. (Dkt. 1140 at 3.)<sup>8</sup> A

17  
 18 compliance issues; they were trees subject to removal under the then-nascent EVM program. In  
 19 the limited cases where the exceptions identified by the Monitor did violate regulations, PG&E  
 20 addressed the issues promptly. PG&E conducted a subsequent audit after all phases of EVM  
 21 work were completed and found that 98 percent of EVM work met PG&E’s standards. (*See*  
 22 Ritter Decl. ¶ 46.) While the Court is correct that PG&E missed its 2019 WMP goal of  
 23 completing 100 percent of its CEMA inspections, PG&E has already explained that this was the  
 24 result of certain scheduling issues that have now been remedied. (*See* PG&E’s Response to  
 25 Order to Show Cause and Further Order to Show Cause, Dkt. 1140 at 9 (Feb. 12, 2020); Ritter  
 26 Decl. ¶ 40.)

27 <sup>7</sup> As PG&E explained in its January 15 and February 12 submissions, there is a lag between  
 28 the time tree work is completed and the time PG&E contractors submit paperwork confirming  
 completion such that PG&E’s records at January 15 would not reflect all completed work.

<sup>8</sup> The Court’s assertion that PG&E pushed back against adopting a PSPS program is also  
 incorrect. PG&E already had a PSPS program in place, and an expansion underway, when this  
 Court proposed adding de-energization as a probation condition. PG&E did not object to the  
 adoption of PSPS as a wildfire safety tool. Rather, it objected to this Court’s proposal requiring  
 mandatory de-energization based on criteria set by the Court, because de-energization involves a

1 large part of what makes PSPS events necessary is that healthy and compliant trees and limbs  
2 can fail and fly into lines in extreme winds. (Dkt. 1140 at 3; Wright Decl. ¶ 4; Goodfellow Decl.  
3 ¶ 40.) Indeed, the CPUC recognizes that public safety power shutoffs need to take place to guard  
4 against the risk of utility fires in extreme conditions, regardless of a utility’s compliance with  
5 regulations. CPUC Decision No. 12-04-024 (Apr. 19, 2012) at 32 (finding that equipment could  
6 still be at risk of starting fires even if it was in compliance with regulations).

7 Finally, the Court’s finding that PG&E is “skimp[ing]” on vegetation management  
8 investments is incorrect. PG&E estimates that there are tens of millions of trees adjacent to its  
9 overhead power lines with the potential to either grow or fall into those lines. (Ritter Decl. ¶ 2.)  
10 The resources devoted to managing this risk are enormous. In 2019 alone, PG&E spent over \$1  
11 billion on its vegetation management programs, including approximately \$363 million for  
12 routine patrols, \$106 million for transmission vegetation management, \$85 million for the  
13 Catastrophic Event Memorandum Account (“CEMA”) program, and \$470 million for EVM. (*Id.*  
14 ¶ 3.) In total, PG&E worked over 1.3 million trees in 2019. In 2020, this investment continues,  
15 with about \$1.3 billion budgeted for PG&E’s vegetation management programs. (*Id.*)

16 2. The Court’s Criticism of PG&E’s Transmission Inspection Program Also  
17 Lacks a Basis in the Record.

18 The remaining conditions (the Inspection Condition, the Age Identification Condition and  
19 the Insurance Condition) rest, in large part, on the Court’s finding that PG&E’s “transmission  
20 tower inspections failed to spot dangerous conditions”. (Order at 10.) But nothing in the record  
21 supports the premise that PG&E’s current inspections of transmission towers—born of a massive  
22 effort following the Camp Fire to revamp and strengthen the rigor and auditability of the  
23 inspection program using new technology, procedures and digital records—fail to spot imminent  
24 and observable threats to safety. To the contrary, the tens of thousands of conditions identified  
25 last year through these enhanced inspections provide hard evidence that they have effectively  
26 reduced risk. As PG&E builds on this program in 2020, it continues to make adjustments and

27 \_\_\_\_\_  
28 complex interplay of safety issues that are best addressed through dialogue with the expert  
regulators and the impacted public.

1 refinements based on experience and expert guidance to increase inspection efficacy.

2 In dismissing this evidence of the overall effectiveness of the enhanced inspections, the  
3 Court focuses on two incidents: the observation of worn equipment on one tower on the Cresta-  
4 Rio Oso 230 kV Transmission Line (the “Cresta-Rio Oso Line”), and the separation of a jumper  
5 cable on a tower of interest in the 2019 Kincade Fire. But neither incident justifies displacing  
6 PG&E’s inspection program. The Order also misconstrues the record with respect to a variety of  
7 other issues related to PG&E’s transmission inspections.

8 Cresta-Rio Oso Line: Referring to Tower 009/081 on the Cresta-Rio Oso Line, the Court  
9 relies exclusively on the opinion of Thomas Hylton, an individual retained by the Official  
10 Committee of Tort Claimants, to conclude that “an expert witness rated the wear at 30-50%,  
11 which would necessitate immediate replacement”. (Order at 11.) But this opinion—from which  
12 the Court concluded that PG&E’s enhanced inspection missed an imminent safety hazard—has  
13 no scientific or engineering basis, and it misstates the risk posed by the equipment. (James Decl.  
14 ¶¶ 15-17.) Mr. Hylton states that “equipment that measures between 30-50% material loss,  
15 especially on both the C-Hook and associated hanger plate, should in all instances be slated for  
16 immediate replacement, not replacement within 6-12 months.” (Dkt. 1185, Hylton Decl. ¶ 5.)  
17 Yet Mr. Hylton—who lacks an engineering degree or expertise in metallurgy—provides no basis  
18 for this opinion, even though engineering and metallurgical expertise is required to assess with  
19 accuracy the remaining life of the equipment on Tower 009/081. Quite simply, Mr. Hylton is not  
20 qualified to opine on this issue. (James Decl. ¶ 16.)

21 In fact, Mr. Hylton’s stated belief that the C-hooks and plates on Tower 009/081 were in  
22 need of “immediate replacement” is difficult to reconcile with his own actions since he first took  
23 photographs of the equipment in November 2018. As Mr. Hylton testified at the February 19,  
24 2020 hearing, he did not alert PG&E to any threat to public safety, imminent or otherwise, in  
25 November 2018 or for the next 14 months. (See 2/19/20 Hr’g Tr. 50:9-11 (“[THE COURT:] So  
26 did you point out to anyone from PG&E what you had seen in 2018? MR. HYLTON: In 2018, I  
27 did not, Your Honor.”).) Putting aside whatever opinion Mr. Hylton may hold about the

1 condition today, not even he believed it warranted immediate attention in November 2018.

2 Mr. Hylton's opinion is also refuted by the findings of PG&E's equipment testing lab and  
3 the independent expert analysis of Dr. Brad James, a senior metallurgist at Exponent, Inc.  
4 ("Exponent") whom the CPUC's Safety and Enforcement Division ("SED") previously  
5 commissioned to prepare a report on the high-priority conditions that PG&E identified on the  
6 Caribou-Palermo 115 kV Transmission Line after the Camp Fire. (Dkt. 1184 at 3; James  
7 Decl. ¶ 2.) In support of this motion, Dr. James has submitted written testimony establishing that  
8 the worn hooks and hanger plates removed from the Cresta-Rio Oso Line were below the 50  
9 percent wear threshold for an emergency condition, were not at imminent risk of failure, and did  
10 not present an immediate threat to public safety. (James Decl. ¶¶ 5, 10, 14.) Dr. James  
11 performed mechanical tests on C-hook and hanger plate assemblies that had been worn down in  
12 the lab to replicate the wear condition on the hooks and plates removed from Tower 009/081.  
13 (*Id.* ¶¶ 6-10.) Physical testing was validated through Finite Element Analysis ("FEA"), a  
14 computer modeling technique used to predict the real-world behavior of materials. Based on  
15 physical testing and the FEA, Dr. James concluded that the C-hooks and hanger plates on  
16 Tower 009/081 would not have fallen below the minimum safety factor prescribed by the CPUC,  
17 and thus required repair or replacement, for at least approximately 15 to 20 years more, and more  
18 likely for another 75 to 100 years or more, depending on the assumptions. (*Id.* ¶¶ 12-13; *see also*  
19 Dkt. 1184 at 3.) Notably, Mr. David DeCampli, an engineer and former utility executive with  
20 years of experience in transmission maintenance and asset management, is not aware of any  
21 utility whose policies would require immediate emergency replacement of C-hooks or hanger  
22 plates in the same condition as those removed from Tower 009/081. (DeCampli Decl. ¶¶ 37-38.)

23 Kincade Fire: The Court's findings with respect to the Kincade Fire also do not support  
24 the conclusion that PG&E's inspection program is fundamentally insufficient. The Court states  
25 that "*three separate inspections*—via tower climbers in February, high-resolution drone imaging  
26 in May, and ground inspectors with binoculars in July—had all failed to identify the problematic  
27 jumper cable." (Order at 10.) But the record does not support any finding that the inspectors  
28

1 missed an indication that the jumper was at risk of failure. As shown by the high-resolution  
2 drone photographs taken in May 2019, (Dkt. 1146-3; *see also* 2/19/20 Hr’g Tr. 54:19-24), and as  
3 confirmed by Mr. DeCampli, there were *no* visible signs when the tower was inspected that the  
4 jumper was at imminent risk of failure. (DeCampli Decl. ¶ 40.)

5 Camp Fire: The Court also refers to inspections *before* the Camp Fire in explaining the  
6 factual basis for the Inspection Condition. But this mixes up the record. PG&E’s fundamentally  
7 enhanced equipment inspection program—the program that the Inspection Condition requires  
8 PG&E to replace—was conceived and executed *after* the Camp Fire. While the Court’s Order  
9 describes as “enhanced” inspections certain non-routine climbing inspections that PG&E  
10 performed on the Caribou-Palermo Line *before* the Camp Fire, that is not correct. (Order  
11 at 9-10.) PG&E’s enhanced inspection program *did not exist* before the Camp Fire. In addition,  
12 the Court appears to have inferred that PG&E missed a condition on the tower that started the  
13 Camp Fire during an inspection that took place “just days before the fire”. (Order at 9.) But  
14 here again, the Court mixes up the record. While about 80 towers on the Caribou-Palermo Line  
15 were inspected in the months prior to the Camp Fire, the tower at which the Camp Fire  
16 originated (Tower :27/222) was *not* one of them. (*See* Dkt. 1078 at 13.) More fundamentally,  
17 after the Camp Fire, PG&E completely overhauled its transmission inspection program. In  
18 effect, the Court is citing misgivings about inspections conducted under PG&E’s *old* program as  
19 justification for requiring PG&E to displace its *new* program, one that has been developed with  
20 expert input and substantial investment of time and resources.

21 **II. THE NEW PROBATION CONDITIONS ARE SUBSTANTIVELY UNLAWFUL.**

22 Discretionary conditions of probation may be imposed only “to the extent that such  
23 conditions” serve the purposes laid out in 18 U.S.C. § 3553(a)(1)-(2). *United States v. Myers*,  
24 426 F.3d 117, 124 (2d Cir. 2005) (Sotomayor, J.). As relevant, those purposes are: “(A) to  
25 reflect the seriousness of the offense, to promote respect for the law, and to provide just  
26 punishment for the offense; (B) to afford adequate deterrence to criminal conduct; [and] (C) to  
27 protect the public from further crimes of the defendant.” *United States v. Lorenzini*, 71 F.3d  
28

1 1489, 1492 (9th Cir. 1995) (quoting 18 U.S.C. § 3553(a)(2)) (internal quotation marks omitted).  
 2 “A discretionary condition must be reasonably related to one or more of these goals and must  
 3 involve only such deprivations of liberty or property as are reasonably necessary to accomplish  
 4 the purposes of sentencing. If a condition of probation does not meet these requirements, it is  
 5 invalid.” *Id.* (internal citation omitted). As a result, when a district court “impose[s] a special  
 6 condition, [it] must” determine, *inter alia*: (1) “what the goal of the condition is”; (2) “whether  
 7 an adequate record can be developed to support it”; and (3) “what terms of the condition are  
 8 necessary and not a greater deprivation of any identified liberty interests than reasonable to  
 9 achieve the sentencing goal.” *Myers*, 426 F.3d at 130.

10 “[W]here a state has in place a comprehensive procedure for resolution of the condition  
 11 probation imposes, it makes good sense to defer to that established procedure.” *United States v.*  
 12 *Lakatos*, 241 F.3d 690, 695 (9th Cir. 2001) (quoting *United States v. A-Abras Inc.*, 185 F.3d 26,  
 13 34 (2d Cir. 1999)) (vacating probation condition and citing authority). Under these standards,  
 14 the new conditions are unlawful for two main reasons.<sup>9</sup>

15 **A. The Conditions Are Unreasonable Because They Interfere with California’s**  
 16 **Comprehensive Regulatory Scheme.**

17 The conditions impermissibly interfere with state regulatory authority. “[T]he federal  
 18 government has no constitutional authority to interfere with a state’s exercise of its police  
 19 power.” *United States v. Snyder*, 852 F.2d 471, 475 (9th Cir. 1988). Even where the federal  
 20 government might, in the first instance, have the power to regulate, principles of comity and  
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22 <sup>9</sup> As noted in previous filings, PG&E was convicted of obstructing an NTSB investigation  
 23 and of five violations of the federal Pipeline Safety Act concerning data gathering and  
 24 integration and integrity management concerning natural gas transmission pipelines. *See United*  
 25 *States v. Pac. Gas & Elec. Co.*, No. 14-cr-175 (N.D. Cal. Jan. 31, 2017); *see* Response to Order  
 26 to Show Cause Why PG&E’s Conditions of Probation Should Not Be Modified at 49, *United*  
 27 *States v. Pac. Gas & Elec. Co.*, No. 14-cr-175 (N.D. Cal. Jan. 23, 2019), Dkt. 976. Those  
 28 convictions concerned PG&E’s natural gas transmission business. None involved any aspect of  
 PG&E’s electric grid operations. In passing the probation statute, “Congress intended that there  
 be some connection between the proscription to be ordered by the court and the nature of the  
 crime or the degree of punishment.” *Lorenzini*, 71 F.3d at 1493. Here, there is no reasonable  
 relation between PG&E’s original offenses and the imposed probation conditions relating to its  
 electric distribution and transmission businesses.

1 federalism constrain a federal court’s discretion to intrude where, as here, a state has undertaken  
2 regulation. *See, e.g., Santa Monica Airport Ass’n v. City of Santa Monica*, 659 F.2d 100, 104-05  
3 (9th Cir. 1981). Accordingly, a “condition of probation may not circumvent another statutory  
4 scheme.” *United States v. Abushaar*, 761 F.2d 954, 960 (3d Cir. 1985). The Ninth Circuit has  
5 thus vacated probation conditions “where a state has in place a comprehensive procedure for  
6 resolution of the condition probation imposes”, reasoning that federal courts should “defer to that  
7 established procedure.” *Lakatos*, 241 F.3d at 695 (quoting *A-Abras Inc.*, 185 F.3d at 34).

8 Here, the California legislature has vested the state’s police power to regulate public  
9 utilities in the CPUC, which has broad authority over the inspection and safety programs of  
10 public utilities. *See Sable Comms. of Cal. Inc. v. Pac. Tel. & Tel. Co.*, 890 F.2d 184, 189 n.9  
11 (9th Cir. 1989); *see also Queenside Hills Realty Co. v. Saxl*, 328 U.S. 80, 82-83 (1946)  
12 (“Protection of the safety of persons is one of the traditional uses of the police power of the  
13 States. . . . It is for the legislature to decide what regulations are needed to reduce fire hazards to  
14 the minimum.”). The conditions directly impinge upon and interfere with the CPUC’s authority  
15 to oversee, review, and approve PG&E’s safety programs.

16 This regulatory framework is not simply a vestige of decisions made decades ago about  
17 how to structure the state’s electric utility oversight. To the contrary, perhaps no subject has  
18 received greater regulatory and legislative attention in California in recent years than wildfire  
19 safety. As part of comprehensive legislative reform in 2019, California enacted AB 1054 and  
20 AB 111, which impose sweeping requirements on PG&E and other electric utilities, and created  
21 a new Wildfire Safety Division (“WSD”) charged with “[o]versee[ing] and enforc[ing] electrical  
22 corporations’ compliance with wildfire safety.” Cal. Pub. Util. Code § 326(a)(1). The WSD is  
23 currently housed within the CPUC, but will move to the Office of Energy Infrastructure Safety in  
24 2021. *Id.* § 326(b). The legislation also created a Wildfire Safety Advisory Council made up of  
25 “industry experts, academics, and persons with labor and workforce safety experience.” *Id.*  
26 § 326.1(b). In so doing, the legislature expressly found that “[t]he creation of a new Wildfire  
27 Safety Division will ensure safe operations by electrical corporations and the establishment of a  
28

1 Wildfire Safety Advisory Board will ensure that broad expertise is available to develop best  
2 practices for wildfire reduction.” AB 1054 § 2(e).

3 Under AB 1054, electric utilities annually submit detailed Wildfire Mitigation Plans  
4 (“WMPs”) to the WSD. The WSD must review and may approve or reject these plans. *See* Cal.  
5 Pub. Util. Code § 8386(b) (vesting the agency with responsibility for “review and approval” of  
6 each utility’s WMP). The submitted plans *must* include, and the CPUC’s WSD *must* review, as  
7 relevant here, “[p]lans for vegetation management” and “[p]lans for inspections of the electrical  
8 corporation’s electrical infrastructure.” *Id.* § 8386(c)(8)-(9). The CPUC requires each utility to  
9 provide detailed information regarding its proposed inspection program, including “what the  
10 inspection is looking for, the number of each type of inspection conducted, the cost of each type  
11 of inspection, and a listing of the top five violations or hazards identified by each inspection  
12 program.” Guidance Decision on 2019 Wildfire Mitigation Plans Submitted Pursuant to Senate  
13 Bill 901, No. 19-05-036 (May 30, 2019) at 27-28.

14 Consistent with state law, the WSD is currently reviewing PG&E’s vegetation  
15 management and inspection plans for 2020 as part of the WMP approval process. The process is  
16 ongoing, highly technical, and designed to be nimble so that standards can be revised in light of  
17 new data and best practices. *See id.* at 36 (“[T]he annual WMP process will be iterative, and will  
18 require reporting, monitoring, evaluation and updating to ensure the electrical corporations are  
19 targeting the greatest risk with effective programs.”). The CPUC has worked with PG&E and  
20 other utilities to continue to develop and improve upon their proposed WMPs, including through  
21 workshops and regulatory data requests aimed at better understanding and identifying areas for  
22 improvement in each utility’s wildfire mitigation efforts. (Allen Decl. ¶¶ 8-19.)

23 The WSD has also conducted extensive fact-finding and discovery into PG&E’s WMP  
24 for 2020, including its vegetation management plan and equipment inspection programs. (*Id.*  
25 ¶¶ 9, 14.) PG&E has responded to WSD requests for data including “the effectiveness of  
26 electrical line and equipment inspections, including inspections performed by contractors”, and  
27 “other discretionary inspections performed on Transmission lines”. (*Id.* ¶ 9.) On May 7, 2020,  
28

1 the WSD recommended that the CPUC conditionally approve PG&E’s WMP for 2020, subject to  
2 dozens of conditions requiring modifications to the plan or PG&E’s approach to assessing the  
3 most effective and efficient risk-mitigation strategies. *See* WSD Draft Guidance Resolution on  
4 2020 Wildfire Mitigation Plans Pursuant to Public Utilities Code Section 8386 (“Resolution  
5 WSD-002”); Draft Resolution Ratifying Action of the Wildfire Safety Division on Pacific Gas  
6 and Electric Company’s 2020 Wildfire Mitigation Plan Pursuant to Public Utilities Code Section  
7 8386 (“Resolution WSD-003”, and, collectively with Resolution WSD-002, the “May 7 Draft  
8 Resolutions”). The CPUC will review and vote on these draft resolutions.

9         The California legislature delegated authority over electric utilities’ wildfire mitigation  
10 activities to its new WSD for good reason. The WSD has the subject-matter and policy expertise  
11 to work with utilities to design and implement highly technical, evidence-based programs that  
12 reduce fire risk and make responsible use of ratepayer funds. *See* Cal. Pub. Util. Code  
13 § 326(a)(2) (directing WSD to account for “economic, environmental, legal, social, and  
14 technological factors”). In fulfilling its statutory duty to review, approve, and monitor  
15 compliance with utility WMPs, the WSD engages in a comprehensive process that fosters  
16 knowledge-sharing among utilities and allows for input from subject-matter experts, the public,  
17 consumer advocacy groups, and other stakeholders. *See id.* §§ 8386(d), 8386.3(a).

18         By contrast, probation conditions are not an appropriate method for setting regulatory  
19 policy in a complex and developing field. A court exercising probation powers lacks both the  
20 regulatory expertise and the legislative mandate to enact sweeping changes to a utility’s  
21 operations. Rather than allowing the expert agencies to set regulatory policy, the Order requires  
22 PG&E to work with the CPUC to “implement” the conditions imposed by the Court. The Order  
23 thus bypasses proper agency deliberation and the California’s legislative mechanisms for public  
24 participation. The CPUC and WSD should be the ones to decide whether the potential benefits  
25 (if any) of a new inspection program justify the additional execution risk of changing course, as  
26 well as increased costs that would accrue to ratepayers through the cost recovery process. As  
27 just one example, the Order applies its new transmission record-keeping condition to “every  
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1 transmission tower and line”, and its transmission inspection condition to “all transmission  
 2 towers”. These mandates directly conflict with the WSD’s May 7 Draft Resolutions, which  
 3 directs PG&E to engage in “strategic prioritization of initiatives geographically and by ignition  
 4 driver to target the highest risk elements of PG&E’s grid” so that PG&E’s plan can “be most  
 5 effective with its finite resources.” Resolution WSD-003 at 4. The Order also forbids PG&E  
 6 from using contractors to inspect transmission towers unless they can be insured for wildfire  
 7 liability. Yet California, recognizing that wildfire liability risk is uninsurable, just passed major  
 8 legislation adopting a different approach to ensuring victim compensation.

9 The Court should defer to the comprehensive scheme California has established rather  
 10 than supplant California’s regulatory regime through probation. A court exercising its probation  
 11 power lacks the fact-gathering tools, legislative power and public accountability to play that role.

12 **B. The Conditions Are Counterproductive to the Aim of Reducing Fire Risk,**  
 13 **Impractical, Dangerous, or Impossible To Satisfy.**

14 As noted above, the record does not support the conclusions that PG&E’s vegetation  
 15 management or transmission inspection processes are fundamentally broken. PG&E recognizes  
 16 that no program, including its own, is or can be perfect, and it embraces the need for continual  
 17 improvement in coordination with its regulators. But none of the proposed conditions would  
 18 improve those processes. They are likely, instead, to lead to worse outcomes.

19 1. The Vegetation Management Condition Should Not Be Adopted.

20 With respect to vegetation management, the Order would impose, through the Hiring  
 21 Condition, a requirement that PG&E employ its own “cadre of pre- and post-inspectors on its  
 22 own payroll”. (Order at 8.) This condition should not be adopted for two reasons. *First*, there is  
 23 no evidence in the record remotely suggesting that requiring PG&E to convert existing pre-  
 24 inspection contract workers to PG&E employees would enhance safety. As PG&E has already  
 25 explained and as described in the attached Declarations of John Goodfellow and David  
 26 DeCampli—both industry experts with significant experience advising or leading utilities around  
 27 the country—using specialized vegetation management contractors for inspections and tree work  
 28 is common throughout the electric utility industry. (Goodfellow Decl. ¶ 29; DeCampli Decl.

1 ¶¶ 10-11.) And for good reason. PG&E’s vegetation management contractors are highly  
2 specialized and have expended significant resources to identify, train, manage, equip and deploy  
3 qualified personnel who can perform tree work safely and meet the line clearance needs of  
4 PG&E and other utilities. (Ritter Decl. ¶ 28; Goodfellow Decl. ¶¶ 30-31, 35; DeCampli Decl.  
5 ¶¶ 10-11.) Competition among contractors that vie for PG&E’s business also spurs innovation  
6 and improvements in efficiency and work quality, to the ultimate benefit of customers.  
7 (DeCampli Decl. ¶ 10.) The Hiring Condition would discard these benefits, despite the lack of  
8 any evidence that simply changing who employs the inspectors would have *any* impact on safety.

9         The Hiring Condition would also constitute a monumental undertaking. PG&E’s pre-  
10 inspection function requires approximately 600 people. (Ritter Decl. ¶ 30.) While PG&E has  
11 not had the opportunity to fully assess the cost of establishing an in-house pre- and post-  
12 inspection team, preliminary projections show that there would be at least \$140 million in initial  
13 startup costs, and perhaps much more. (*Id.* ¶ 30.) And, over just the first five years, PG&E  
14 estimates that it would cost at least an additional \$70 million on top of the startup figures. (*Id.*)  
15 Nearly all of the new hires would come from the existing pool of contract workers because  
16 another sizeable source of qualified new workers does not exist. (*Id.* ¶ 31; Goodfellow Decl.  
17 ¶¶ 36-37.) PG&E’s leaders would be forced to divert their attention from critical ongoing safety  
18 work to build, from scratch, a new division of the organization employing 600 people, with all  
19 the requisite work to create systems, processes, controls and policies currently managed by  
20 contractors. (Ritter Decl. ¶ 32.) This distraction from the ongoing risk-based efforts overseen by  
21 PG&E’s regulators would not have any corresponding safety benefit, and the required costs  
22 would constrain PG&E’s ability to innovate and invest in alternative programs.

23         *Second*, compliance with the Hiring Condition would directly interfere with ongoing  
24 efforts that PG&E expects actually *will* enhance the quality and accountability of the individuals  
25 performing vegetation management work. Specifically, as part of its commitment to the  
26 continuous improvement of its vegetation management program, PG&E is in the midst of  
27 implementing a “Defined Scope” model under which PG&E’s vegetation management  
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1 contractors will be assigned entire circuits and be responsible for both the pre-inspection (“PI”)  
2 and tree-trimming (“TT”) work performed on that circuit. (Ritter Decl. ¶¶ 20-26.) In the past,  
3 different contractors would often be responsible for different portions of the work on the same  
4 circuit miles, with one contractor responsible for the PI and another the TT. (*Id.* ¶ 23.) Because  
5 a single contractor will now be tasked with completing both PI and TT for the circuit miles under  
6 that contractor’s purview, the Defined Scope model will increase contractor accountability by  
7 eliminating potential process gaps between inspection and tree-work activities (*e.g.*, whether a  
8 missed tree was the fault of the pre-inspection contractor not identifying the tree or the tree  
9 trimming contractor not properly trimming the tree). (*Id.*) That is, the contractor assigned to a  
10 particular circuit will be responsible and accountable for maintaining the trees within that circuit  
11 to PG&E’s standards and guidelines throughout the course of the year. (*Id.* ¶ 20.)

12 Under this model, PG&E will also shift to year-round work verifications, in addition to  
13 quality audits of completed trimming work. (*Id.* ¶ 25.) The new work verification function will  
14 be led by a small in-house leadership team and a team of post-inspectors made up of  
15 approximately 60 percent PG&E employees and approximately 40 percent contracted employees  
16 to allow for workforce flexibility, and will be responsible for monitoring compliance with  
17 vegetation management laws and regulations. (*Id.*) This is particularly valuable because PG&E  
18 will be able to identify non-compliance incidents that arise throughout the year, rather than only  
19 in the months directly following the tree work, as is the case with traditional quality audits. (*Id.*)

20 The purpose of this new model is to more closely align the contractors’ goals and  
21 objectives with PG&E’s goals and objectives. (*Id.* ¶ 21.) More than 25 companies are  
22 competing for the work, with responses to PG&E’s Request For Proposals submitted on May 12.  
23 (*Id.* ¶ 20.) PG&E expects that the vegetation management companies will begin working under  
24 the Defined Scope model in July. (*Id.*) This is just one example of the type of improvement and  
25 innovation that would be stunted by forced compliance with the Court’s condition to focus  
26 efforts instead on bringing inspectors in-house. The condition cannot coexist with this effort,  
27 and forcing PG&E to shift course now would reduce the efficacy of its programs, not enhance it.

1 Again, while PG&E does not contend that its vegetation management programs are  
2 perfect, the Order fundamentally misconstrues the status of those programs today. As described  
3 by industry expert John Goodfellow, PG&E's routine distribution program is "complete,  
4 thorough, logical and systematic" and its CEMA and Reliability programs also comport with  
5 accepted good practice and industry standards. (Goodfellow Decl. ¶¶ 17-28.) Its EVM program  
6 exceeds industry standards and regulations by requiring a minimum of 12 feet of clearance for all  
7 trees within HFTD areas, regardless of the tree's condition, and removing overhangs even  
8 though regulations currently allow them. (*Id.* ¶¶ 25, 28.) With respect to PG&E's quality  
9 control programs, no other California utility "engage[s] in practices nearly as comprehensive or  
10 robust as those implemented by PG&E". (*Id.* ¶ 35.) PG&E's vegetation management programs  
11 as a whole are consistent with industry standards and regulations and often exceed them. They  
12 are also subject to continuous refinement. (*See Ritter Decl.* ¶¶ 3, 17-19.)

13 The record thus establishes that PG&E, working with its regulators and other  
14 stakeholders, is making continuous improvements that are demonstrating tangible results. As the  
15 Court has noted, there was not a single vegetation-caused wildfire that led to the loss of life in  
16 PG&E's service territory in 2019. There is no evidence that the Hiring Condition will make  
17 anything better, no evidence that the Hiring Condition would have any impact on any of the  
18 concerns the Court has raised, and ample evidence that it will cause unnecessary disruption, cost  
19 and loss of recognized efficiencies. It should not be sustained.

20 2. The Transmission-Related Conditions Should Not Be Adopted.

21 In response to the devastating Camp Fire of 2018, PG&E brought together internal and  
22 external subject-matter experts to fundamentally enhance asset inspections in high fire-threat  
23 areas, ultimately spending over \$800 million for the transmission portion of the program alone.  
24 (Hvistendahl Decl. ¶ 14.) The program those experts collectively developed, known as the  
25 Wildfire Safety Inspection Program ("WSIP"), adopted an entirely new, risk-based approach that  
26 improved on PG&E's prior routine inspections in numerous ways and allowed for a top-to-  
27 bottom assessment of each structure. WSIP inspections were a critical component of PG&E's  
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1 2019 Wildfire Mitigation Plan, which the CPUC reviewed and approved. (Allen Decl. ¶ 5.)

2 In contrast with industry-standard programs that focus narrowly on regulatory  
3 compliance, WSIP was based on a Failure Mode and Effects Analysis (“FMEA”) that focused  
4 attention on points of failure on electric assets that could lead to fire ignition and allowed for the  
5 development of inspection methods that could more reliably identify those conditions.  
6 (Hvistendahl Decl. ¶ 3; DeCampli Decl. ¶ 24.) Under WSIP, teams of linemen climbed  
7 transmission towers and inspected transmission poles from the ground to identify conditions in  
8 need of repair. (Hvistendahl Decl. ¶ 6.) The inspectors completed detailed digital forms that  
9 required them to photograph and grade the condition of components regardless of whether they  
10 required repair, thus generating a verifiable and auditable record that towers and poles had been  
11 inspected and the condition of the assets assessed. (*Id.* ¶ 7.)

12 As a complement to these visual inspections, drones or helicopters equipped with  
13 cameras took high-resolution photographs of steel towers and transmission poles from multiple  
14 different angles that were then reviewed by a Drone Inspection Review Team. (*Id.* ¶ 8.) At the  
15 end of the process, identified conditions were reviewed and prioritized for repair by a  
16 Centralized Inspection Review Team (“CIRT”), composed of personnel with collective  
17 experience in engineering, inspections and maintenance. (*Id.* ¶ 9.) By August 1, 2019, PG&E  
18 had completed visual inspections of almost all of the approximately 50,000 transmission  
19 structures in elevated and extreme fire-threat areas of its service territory, and had repaired over  
20 6,000 emergency or other high-priority conditions identified as a result of those inspections. (*Id.*  
21 ¶ 10.) Many of those conditions presented an unacceptable fire risk that WSIP effectively  
22 addressed before the start of fire season. By year end, the enhanced visual and aerial inspections  
23 had generated over 62,000 work orders for transmission structures, of which more than 33,000  
24 have been addressed as of this filing, including all emergency conditions. (*Id.* ¶ 12.) This is  
25 tangible evidence that PG&E’s new inspection processes are working and have reduced fire risk.

26 This redesigned inspection program also goes well beyond the compliance-driven  
27 programs of the past. As explained in the declarations of Dr. Richard Brown, an internationally  
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1 recognized expert in transmission asset management, and Mr. David DeCampli, who has  
2 developed, implemented and monitored inspection and maintenance programs for transmission  
3 lines, WSIP and the 2020 inspection program are effective programs for wildfire risk reduction.  
4 (Brown Decl. ¶ 14; DeCampli Decl. ¶ 29.) Mr. DeCampli concludes that WSIP has been  
5 effective at identifying high-priority conditions requiring repair on PG&E's lines, an opinion he  
6 formed based on the number and variety of conditions identified on equipment, including  
7 footings, tower arms, suspension hooks, hanger plates, insulators, conductors and jumpers; the  
8 advanced inspection methods employed, including climbing, drones and post-inspection review  
9 by a team of engineers and subject-matter experts; and the extensive documentation generated by  
10 the inspections, such as high-resolution photographs and detailed inspection forms. (DeCampli  
11 Decl. ¶¶ 26-29.) Mr. DeCampli also finds that PG&E's inspection plan for 2020 is similarly  
12 well-designed and evidences the learning from past experience that is the hallmark of a thorough  
13 inspection program. (*Id.* ¶ 29.) Mr. Brown's conclusions are the same. (Brown Decl. ¶ 16.)

14 The Inspection Condition puts all of this in jeopardy and introduces uncertainty into  
15 PG&E's operations. PG&E would be forced to implement changes to its transmission  
16 inspections with limited time to go before the 2020 fire season, and with little direction beyond  
17 unsupported, impractical or even dangerous directives to take video of inspections and tug on  
18 tower components. Simply put, there is no evidence that the Inspection Condition (or any of the  
19 other conditions) will enhance safety.

20 To be clear, PG&E does not claim that its inspection system is perfect. That is why it is  
21 committed to continuous refinement and improvement through experience, expert analysis and  
22 feedback from its regulator. To that end, PG&E is applying lessons learned from the 2019 WSIP  
23 to further enhance its inspections this year. The Company's inspection plan for 2020 is detailed  
24 in its WMP, which last week the WSD recommended that the CPUC conditionally approve.  
25 (Allen Decl. ¶ 15.) The plan builds on the 2019 WSIP and prioritizes the highest-risk  
26 transmission structures for more frequent and in-depth inspections. (Hvistendahl Decl. ¶ 15.)  
27 Among other improvements, the aerial inspection method for any given structure will be selected  
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1 according to its ability to evaluate components identified in the FMEA, which has been updated  
2 to incorporate failure modes identified since its last iteration in 2019. Inspections will be  
3 conducted using revised electronic forms that account for these newly identified failure modes  
4 and require inspectors to answer multiple questions relating to individual components, regardless  
5 of their condition. (*Id.* ¶ 16.) As in 2019, subject-matter experts on CIRT will review inspection  
6 findings to prioritize required repairs. To provide CIRT reviewers with more and better images  
7 of components, PG&E has revised its drone “shot sheet”, which provides guidance to drone  
8 operators on how best to photograph key components of each structure. (*Id.* ¶ 19.)

9 PG&E is also employing advanced technologies and inspection methods that will further  
10 improve identification of conditions. This year, drone reviewers and CIRT will have access to  
11 Sherlock, a web application developed by PG&E that allows for remote viewing of photographs  
12 generated from drone and helicopter inspections, as well as easy access to asset data. These  
13 teams can mark up photographs from within Sherlock to flag potential conditions. (*Id.* ¶ 21.)  
14 These markups are then fed into Waldo, an application programming interface in which  
15 computer vision models are trained to identify equipment issues using artificial intelligence  
16 (“AI”). Over time, as more images and markups are fed into Waldo, the AI will learn to  
17 automatically identify and predict issues with equipment. (*Id.*) Reviewers will then validate the  
18 issues raised, creating a positive feedback loop that improves the models. (*Id.*)

19 The Court should permit these processes and improvements to go forward rather than  
20 introduce new inspection requirements that are not supported by any evidence. Similarly, the  
21 Court should not impose the remaining transmission-related conditions, which range from  
22 impractical to impossible and risk doing more harm than good.

23 Age Identification Condition: The Court’s requirement that PG&E determine the age of  
24 every component on every transmission tower imposes a huge burden on PG&E without any  
25 measurable benefit. *First*, the Age Identification Condition assumes that age is a predominant or  
26 critical factor in asset replacement and repair decisions. That is not the case. The key  
27 determinant here is asset *condition*. (Ly Decl. ¶¶ 2-4; Brown Decl. ¶ 13; DeCampli Decl. ¶ 21.)  
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1 A condition-based methodology requires consideration of inspection and maintenance history,  
2 the physical environment in which an asset operates, and the stress equipment experiences in  
3 service, among other factors. (Ly Decl. ¶ 2.) Asset age is one relevant data point, but it is not  
4 always a reliable guide to condition. (*Id.* ¶ 3; DeCampli Decl. ¶ 21.) For example, an aging  
5 asset may not require replacement if it has recently been repaired, does not support heavy loads,  
6 and is otherwise functional. (Ly Decl. ¶ 3.) Conversely, a newer asset may need to be replaced  
7 sooner if it supports heavy loads or is subjected to conditions that accelerate the rate of wear on  
8 equipment (such as corrosive environments). (*Id.*) Ultimately, what is important is the actual  
9 condition of the asset as assessed by inspections, which provide the most up-to-date snapshot of  
10 asset condition. (*Id.*) That is precisely why PG&E has intensely focused on improving its  
11 inspections since the Camp Fire. It is also why utilities do not collect age data for all individual  
12 components. (Ly Decl. ¶¶ 8-11; Brown Decl. ¶¶ 11-12; DeCampli Decl. ¶¶ 16-18.) In short, the  
13 granular, component-level data that the condition requires PG&E to attempt to compile across  
14 the system would have no material impact on its risk assessments. (DeCampli Decl. ¶¶ 16, 22.)

15 *Second*, while the benefits that would be conferred by the condition are speculative at  
16 best, the costs are tangible and material. The condition calls for an undertaking that is enormous,  
17 unfocused in scope and entirely out of proportion to any value it might add. The approximately  
18 150,000 transmission structures in PG&E's system, comprising steel towers, steel poles and  
19 wood poles, consist of many individual components. (Ly Decl. ¶¶ 6-7; DeCampli Decl. ¶ 17.)  
20 Extrapolating to all 150,000 structures, the condition would require PG&E to research the  
21 vintage of *millions* of pieces of equipment, including, but not limited to, individual nuts and  
22 bolts, individual members, footings and foundations, anti-climbing guards, insulator strings,  
23 suspension hooks, hanger plates, guy wires, conductors, jumpers, vibration dampers, spacers and  
24 spreader brackets, connectors, clamps, sleeves, splices, armor rods, aerial marker balls and high-  
25 voltage signs. (Ly Decl. ¶ 6; DeCampli Decl. ¶¶ 17-19.) Some of these components are neither  
26 energized nor support energized equipment, and thus pose less of a fire risk. (Ly Decl. ¶ 6.)

27 Much of the effort required to determine the age of these millions of components would  
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1 also be futile. Given the age of the system, many of the records do not exist. Applicable  
2 document retention periods have long since elapsed for PG&E lines that entered into service in  
3 the early to mid-1900s. (*Id.* ¶ 10.) To determine the age of each of these millions of  
4 components, PG&E would need to assign teams of engineers to sift through and try to piece  
5 together information from many decades' worth of paper and other records. (*Id.*) The personnel  
6 assigned to this task would need *years* to sort through and analyze the data, (*id.*), all to derive  
7 information that ultimately will be incomplete and of questionable value.

8 Video Recording Requirement: The Court's video recording requirement for  
9 transmission inspections similarly lacks any evidentiary basis. (Order at 11-12.) This condition  
10 appears to be aimed at creating further documentation that inspections actually occurred, but  
11 ignores that PG&E has multiple controls in place to ensure that records accurately reflect  
12 inspection activity in the field. In particular, inspectors are required to take date- and time-  
13 stamped photographs of equipment subject to inspection (including the physical field markers on  
14 the assets being inspected), and electronic forms use GPS data to record the physical location of  
15 the inspector at the time of the inspection. (Hvistendahl Decl. ¶ 23.) It is not clear what video  
16 would add. Moreover, for post-inspection review purposes, the high-quality still images that  
17 PG&E takes by drone are far more useful than lower-resolution video. (*Id.* ¶ 24; DeCampli  
18 Decl. ¶ 34.) And, depending on how the condition is implemented, it would either tax finite  
19 resources by necessitating an additional crew member to film the inspection, or require large  
20 expenditures on body cameras for hundreds of inspectors and additional personnel to capture,  
21 store and watch 32,000 hours of video footage each inspection cycle. (Hvistendahl Decl. ¶ 25.)

22 Equipment Tugging: The Court's suggestion that PG&E "touch or tug" on energized  
23 equipment is impractical, unnecessary and dangerous. *First*, inspections are conducted while  
24 lines are energized and, as a result, inspectors do not come into physical contact with electrical  
25 components. Compliance with the condition would require frequent, year-round de-energization  
26 of lines. That is not practical. Planned outages on higher-voltage lines must be limited in scope  
27 and duration and carefully coordinated with the California Independent System Operator to  
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1 minimize impacts on customers and the interconnected electric grid. (*Id.* ¶ 28.) The many  
2 outages required for PG&E to tug on electrical equipment during its thousands of tower  
3 inspections would beget disruption to customers and the CAISO for no tangible benefit. (*Id.*;  
4 DeCampli Decl. ¶¶ 32-33.) Even if it were feasible to de-energize transmission lines on this  
5 scale, outages would last no longer than a day or two, requiring PG&E to surge hundreds of  
6 inspectors to a single line to take advantage of the clearance. (Hvistendahl Decl. ¶ 29.)

7 *Second*, touching or tugging on parts does not simulate the types of conditions that cause  
8 equipment to fail. Equipment failure generally results from the cumulative effects of vibration,  
9 wind sway or corrosion over long periods of time. (*Id.* ¶ 30; DeCampli Decl. ¶ 33; Brown Decl.  
10 ¶ 19.) Touching or tugging equipment does not replicate the range of conditions to which  
11 equipment is subjected over time, including wind gusts, vibration and galloping. (DeCampli  
12 Decl. ¶ 33.) It is unclear what, if anything, the condition would achieve and there is no evidence  
13 from any expert, regulator or industry participant that it is either practicable or beneficial.

14 *Third*, the requirement to touch or tug on equipment would create significant safety risks  
15 to the inspectors. Inspectors are required by federal and state regulations and PG&E's safety  
16 standards to maintain minimum approach distances from energized components. *See* 29 C.F.R.  
17 §§ 1910.269; 1910.269(a)(2)(ii)(C); 8 C.C.R. § 2940.2. Physical contact with equipment on  
18 energized lines requires the use of specialized procedures known as "barehand" work.  
19 (Hvistendahl Decl. ¶ 27.) Barehand-certified linemen wear Faraday suits to bring themselves to  
20 the same electric potential as the energized lines. The linemen trained and certified to perform  
21 such work are relatively few in number. (*Id.*) Even with the right personnel, the physical  
22 handling of components carries potentially fatal risks, including electrocution and falls. (*Id.*;  
23 DeCampli Decl. ¶ 32.) The Court should not impose such significant safety risks given the lack  
24 of any evidence of a corresponding wildfire safety benefit.

25 The Insurance Condition: The Court's requirement that inspection contractors carry  
26 insurance "sufficient" to cover all wildfire losses is impossible to meet and, if implemented,  
27 would impose harmful restrictions on PG&E's contractors (which are not under probation)  
28

1 without increasing the availability of liability insurance to compensate wildfire victims. The  
2 2017 and 2018 wildfires have shown that potential wildfire liability can reach into the tens of  
3 billions of dollars. In the current risk environment, insurers simply are not prepared to provide  
4 coverage for losses of that magnitude to either utilities or their contractors.

5 As an illustration of the problem, for the 2019 fire season, PG&E sought to procure at  
6 least \$620 million of new coverage for wildfire liability, in addition to coverage it had from prior  
7 multi-year policies. (Cairns Decl. ¶¶ 4-5.) After approaching more than 65 markets and widely  
8 marketing its insurance program to traditional insurance carriers, reinsurance providers and  
9 capital markets, PG&E managed to obtain just \$50 million in additional wildfire liability  
10 coverage. (*Id.*) Even that \$50 million in additional wildfire coverage came at a heavy premium  
11 cost of \$48 million, which also bought \$140 million in non-wildfire liability coverage. (*Id.* ¶ 4.)  
12 Insurance “sufficient” to cover wildfire risks is no more readily available to PG&E’s contractors,  
13 which have less financial wherewithal than PG&E and have made clear that they cannot obtain  
14 such coverage. (Coleman Decl. ¶¶ 2-3; Ball Decl. ¶ 7; *see also* Ex. M.)

15 This absence of insurance coverage led to the creation, through AB 1054, of a liquidity  
16 backstop, known as the Wildfire Fund, for compensating wildfire victims in the event that  
17 damages from a catastrophic wildfire exceed the amount of insurance a utility can obtain. In  
18 enacting AB 1054, the legislature acknowledged that insurers are reducing coverage and  
19 increasing premium costs, and in some cases refusing to provide coverage altogether. *See* Senate  
20 Committee on Appropriations, July 8, 2019, Comm. Rep. CA A.B. 1054 (July 8, 2019), at 4  
21 (“Some insurers have indicated that they do not plan to offer wildfire insurance for utilities in the  
22 coming years.”). In effect, California has recognized that traditional insurance is no longer a  
23 viable solution for insuring wildfire liability. The Insurance Condition cannot be sustained.

#### 24 CONCLUSION

25 For the reasons set forth above, PG&E respectfully requests that this Court reconsider the  
26 Order and vacate the additional conditions. PG&E is prepared to present this information at any  
27 hearing the Court may schedule.

1 Dated: May 13, 2020

Respectfully Submitted,

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