

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

**PACIFIC GAS AND ELECTRIC
COMPANY'S 2020 WILDFIRE
MITIGATION PLAN
Service List(s): R.18-10-007**

R.18-10-007
(Filed Oct. 25, 2018)

REPLY COMMENTS OF PROFESSOR CATHERINE SANDOVAL,
DIRECTOR, INSURANCE LAW INSTITUTE @ SANTA CLARA UNIVERSITY SCHOOL
OF LAW ON THE 2021 WILDFIRE MITIGATION PLAN OF
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)

Professor Catherine Sandoval
SANTA CLARA UNIVERSITY SCHOOL OF LAW
DIRECTOR, INSURANCE LAW INSTITUTE @
SCU LAW
500 El Camino Real,
Santa Clara, CA, 95053-0513
(408) 551-1902
Email: Csandoval@scu.edu

April 13, 2021

PG&E's Wildfire Mitigation Plan, 2021

Reply Comments of Professor Catherine Sandoval

Associate Professor, Santa Clara University School of Law

Director, Insurance Law Institute @ SCU Law

Transmittal Via E-mail: wildfiresafetydivision@cpuc.ca.gov & Service List of R.18-10-007

I. Overview: Imperative of Improving PG&E's Record-keeping, Information, and Operational Management and PG&E Oversight of Its Contractors and Subcontractors as Part of PG&E's 2021 WMP.

Pursuant to the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) and Resolution WSD-011, Professor Catherine Sandoval, Director of the Insurance Law Institute @ Santa Clara University School of Law (SCU Law) submits these comments on Pacific Gas and Electric Company's (PG&E) 2021 Wildfire Mitigation Plan (WMP) updates. These comments highlight critical deficiencies in PG&E's 2021 WMP regarding record-keeping, information, and operational management gaps manifested in PG&E's poor oversight of its contractors and subcontractors. PG&E admitted in answers to the federal judge overseeing PG&E's federal criminal probation that the databases of its vegetation management contractors and subcontractors used in the post-Carr fire work do not communicate with PG&E's databases or project management systems. PG&E has created a deadly information and oversight gap that exacerbates its poor supervision of its contractors and subcontractors and puts communities at risk. These reply comments also discuss the need for more information about PG&E's analysis of vegetation management conditions proposed in PG&E's criminal probation proceeding to assess the potential for those conditions to improve public safety in PG&E's 2021 WMP.

II. PG&E's 2021 WMP Is Deficient in its Record-Keeping, Information, and Operational Management Plans as Manifested In PG&E's Poor Oversight of Its Contractors and Subcontractors.

A. PG&E Should Produce Information Relevant to the Cause of the Zogg Fire in this CPUC Docket, Data it has Provided to the Court Overseeing PG&E's Criminal Probation but not yet Publicly Produced.

PG&E's 2021 WMP skims over the gaps in its record-keeping, information, and operational management, manifested in its poor oversight of its contractors and subcontractors. This gap is deadly. It must be addressed in PG&E's WMP, GRC, and the CPUC's regulatory oversight of PG&E operations.

CAL FIRE determined on March 22, 2021 that the September-October 2020 Zogg Fire in Shasta County, near the community of Igo was caused by a pine tree contacting electrical transmission lines owned and operated by PG&E.¹ The Zogg fire "in Shasta County started on September 27, 2020 and burned a total of 56,338 acres, destroyed 204 structures and caused four civilian fatalities and one non-life-threatening injury."²

In PG&E's criminal probation case, PG&E has submitted documents to the federal district court overseeing its criminal probation, but not yet *publicly* produced documents that indicate PG&E marked trees in the area of the Zogg fire in 2018 for trimming or removal.³ PG&E did not complete that work prior to the 2020 Zogg fire, leaving a tree marked almost two years earlier for trimming or removal to fall on the line, causing the death of four people, injuries to others, property, and environmental.

¹ Cal Fire, CAL FIRE Investigators Determine Cause of the Zogg Fire (March 22, 2021), <https://www.fire.ca.gov/media/u2kh4nyd/zogg-fire-press-release.pdf>.

² *Id.*

³ PG&E Criminal Dkt. 1323, p. 3-4 (March 3, 2020) (attaching as native excel files submitted to the court overseeing PG&E's criminal probation Exhibits H-5, H-6.1, and H-7 regarding PG&E's marking of trees for trimming or removal in 2018 in the area of the 2020 Zogg fire).

In response to Judge Alsup's Question 16, in PG&E Criminal Dkt. 1327, p. 11, lines 5-17, "PG&E has stated (on November 18) that the Gray Pine of interest may have been identified for removal (but not removed) during restoration efforts following the Carr Fire in 2018, based "on certain records" recently reviewed by PG&E concerning that restoration work."

In response to Judge Alsup's question about the records regarding PG&E's actions in marking the "tree of concern" in the Zogg fire, PG&E referred to its March 3, 2021 submission (PG&E Criminal Dkt. 1323), including Exhibit H of that submission, which attaches records responsive to the Court's request. Exhibit H includes records generated by the CFVM QC [Quality Control] inspector regarding his determination to identify the two Gray Pines, including emails about his inspection results, a work order dated August 25, 2018 that lists the two Identified Gray Pines, and versions of a document titled "Carr Fire Daily Report", which PG&E understands to contain data from Mountain G's ArcGIS database, including data concerning the two Identified Gray Pines. (*See, e.g.*, Dkt. 1323-8, Exhibit H-7, "Tree Data" tab, rows 12158, 12159.) PG&E Dkt. 1323-8, Exhibit H-7 states "Native Excel File Provided to the Court on a Hard Drive."

PG&E describes those documents in PG&E Criminal Dkt. 1323, p. 3-4:

"...the CFVM inspector who performed the QC [quality control] inspection of the area of interest in August 2018 used the Collector app to identify two Gray Pines that the QC inspector determined fell within the scope of the post-Carr Fire tree work standard (the two "Identified Gray Pines"). (*See* Exhibit B.) The Identified Gray Pines have locations consistent with the location of the Gray Pine from which CAL FIRE appears to have collected sections after the Zogg Fire (the "Gray Pine of interest" or the "Subject Tree"). One of those Gray Pines identified by the CVFM inspector may have been the Subject

Tree. However, because there are three other Gray Pines in the immediate vicinity of the Subject Tree, PG&E has not yet been able to confirm whether the Subject Tree was in fact one of the two Identified Gray Pines.”

Amici in PG&E’s Criminal Probation case representing PG&E customers Alex Canarra and Gene Nelson, PG&E customers concerned about PG&E’s poor safety record [hereinafter *Amici*], observed that PG&E effectively admits it does not know whether the tree(s) identified in Dkt. 1323, Exhibits H-5, H-6.1, and H-7, are the tree(s) of concern in the Zogg fire. Professor Sandoval serves as *pro bono* co-counsel along with Michael Aguirre and Maria Severson for *Amici* Canarra and Nelson in PG&E’s criminal probation case.

Amici in PG&E’s criminal case emphasized that PG&E’s manner of submitting these crucial exhibits to the criminal court leaves the parties and the public unable to assess the basis for PG&E’s statements, analyze its compliance with this Court’s probation conditions, and respond to proposals to protect public safety and rehabilitate PG&E. PG&E has not filed those exhibits relevant to the Zogg fire in a manner publicly accessible to those commenting on its WMP or its federal criminal probation.

Remedy: These reply comments suggest that parties promptly request PG&E to publicly file in this CPUC docket PG&E Criminal Dkt. 1323, Exhibits H-5, H-6.1, and H-7, to provide critical information to analyze PG&E’s practices and WMP.

Those records are critical to public safety and to the assessment of PG&E’s WMP. Additional steps may be merited after PG&E submits those records regarding the tree of concern in the Zogg fire and the lack of PG&E follow-up to ensure that the identified work was completed in a timely fashion. PG&E has repeatedly demonstrated its failure to learn from past safety problems. PG&E’s failure to address in its 2021 WMP its lack of follow-up in the Zogg

fire and the Kincadee fire underscore the need for additional steps to make sure PG&E safety failures are transparently examined and that measures are adopted to protect public safety.

B. PG&E’s WMP Must Address the Information, Record-Keeping, and Oversight Gaps PG&E Has Created Between PG&E’s Personnel and The Company’s Contractors and Subcontractors.

PG&E’s WMP papers over the information, record-keeping, and oversight gaps PG&E has created between PG&E’s personnel and the company’s contractors and subcontractors. The CPUC has long recognized PG&E’s deficient record keeping as indicated in Condition PG&E-16 of PG&E’s 2020 WMP. Resolution WSD-003, p. 38-39 (June 2020), states that “PG&E needs to address record keeping and infrared inspections, as described below. PG&E does not adequately address whether its transition from a paper records system to a digital system will ensure that its records are accurate, especially in view of serious PG&E record keeping lapses discovered in connection with the San Bruno natural gas pipeline explosion, and gas and electric “locate and mark” records defects revealed in a separate investigation.”

CPUC condition PGE-16, Class C, determined that PG&E’s record keeping is deficient.

CPUC Resolution WSD-003, p. 40 found:

PG&E has a history of poor record keeping. PG&E is only just moving from a paper records system to digitized records. The Commission has found that PG&E’s record keeping is deficient in other contexts with serious safety implications, including records on the location of its underground natural gas and electric lines. PG&E should explain whether it has detected errors or other problems with its wildfire mitigation records.

As a condition of PG&E’s 2020 WMP, the CPUC directed in Condition (PGE-16, Class C):

In PG&E’s 2021 WMP update, PG&E shall:

Disclose any problems with its paper record keeping system described in its WMP; and
Outline any gaps (missing records), inaccuracies (inadvertent or intentional) and other
errors.

PG&E's 2021 WMP fails to acknowledge or address the gaps it has created in its oversight of its
contractor and subcontractor work.

Neither does PG&E's 2021 WMP recognize or address the lack of communication
between PG&E's databases and those used by its contractors and subcontractors. These gaps
have deadly consequences.

PG&E relies on contractors and subcontractors, overseen by PG&E, to carry out its
critical vegetation management work, and employs contractors and subcontractors in many areas
of its work. Cal Advocates commented on PG&E's 2021 WMP, p. 9, 21 identifying PG&E's
"mismanagement of contractors" as a driver of PG&E's operational and safety failures. As a
remedy, Cal Advocates recommended that "WSD should require PG&E to address its poor
contractor oversight." *Id.* at 24.

Improving PG&E's record-keeping, information, and management process for
communication and oversight of its contractors and subcontractors is critical to addressing
PG&E's poor operational and safety record. The lack of commonly accessible record-keeping,
information, and management platforms between PG&E and these workers and companies
carrying out vital work as contractors and subcontractors creates safety, reliability, and
operational hazards. PG&E's failure to acknowledge this issue in its 2021 WMP creates a deadly
gap the CPUC must promptly address.

PG&E's 2021 WMP states on pg. 711:

PG&E-16 | Class C Condition

As described in the above section, PG&E's core business processes are actively shifting to electronic systems and records. Wildfire mitigation related activities, such as PSPS, detailed inspections, enhanced vegetation management, and system hardening, have fully shifted to using electronic record-keeping systems.

PG&E's statement that its wildfire mitigation related activities have fully shifted to using electronic record-keeping systems skims over the fact that PG&E does not use common data or project management platforms for its contractors and subcontractors carrying out PG&E vegetation management work.

PG&E's 2021 WMP, p. 711 "identified some existing paper-related challenges related to (PG&E's) vegetation management program:

1. PG&E discovered that our Vegetation Management Database (VMD) system has a digital character limitation that prevented a complete input of all the information that may have been documented on the associated paper forms. A short-term mitigation has been identified to notate in the VMD when the information on the paper record exceeds the digital character limit and instructing the user to review the physical record.
2. There is a gap where formal QA/QC is not occurring for the data entered by vegetation management contractors from paper forms into the VMD system. While a fully digitized data entry solution is available, some vegetation management contractors work in remote locations with limited network connectivity. Due to the lack of connectivity, paper forms may be used. Once the contractor returns to an area with connectivity, they are required to upload the information recorded on paper forms into the VMD. Upon investigation, no formal process exists for transferring the paper forms into PG&E's custody or confirming if that is necessary. PG&E's Enterprise Records & Information Management (ERIM) team is actively working with the Vegetation Management team to resolve this.

PG&E stated that "(w)hile these challenges are being actively addressed, PG&E has not identified that they drive any limitations or "problems" for PG&E's wildfire risk mitigation Vegetation Management work. PG&E is confident that the upcoming complete shift to electronic

form capture and technical enhancements to the VMD system will alleviate the challenges outlined above. In addition, near-term mitigations are already underway to add manual procedural steps and documentation to begin addressing these known gaps before the comprehensive electronic transition can be completed.” *Id.* at 711-712.

PG&E’s WMP fails to acknowledge that its contractors and subcontractors’ databases, electronic platforms, and information management systems do not communicate with PG&E’s systems. This leaves PG&E personnel to supervise PG&E’s contractors and subcontractors through emails, excel spreadsheets sent via email, phone calls, tail gate meetings, and other methods.

Amici observed in PG&E’s criminal probation case Dkt 1333, p. 11-12:

PG&E admitted that PG&E contractor "Mountain G’s versions of ArcGIS and the Collector app do not communicate with any PG&E database systems. PG&E’s versions of ArcGIS and the Collector app do not communicate with PG&E’s Project Management Database (“PMD”) or its Vegetation Management Database (“VMD”)." (Dkt. No. 1323-14, Exhibit N-2, p. 78, lines 1-5). PG&E admits that “Carr Fire Daily Report” by its quality control contractor CFVM were periodically sent to PG&E personnel.

“PG&E’s lack of data management left its contractors and subcontractors using different data platforms that do not communicate.”⁴ None of PG&E’s vegetation management contractor or subcontractor databases are linked to or communicate with PG&E’s project management or vegetation management databases.

PG&E’s 2021 WMP fails to acknowledge that PG&E created this information, record-keeping, and management chasm. PG&E has yet to explain why it failed to follow-up with the trimming or removal determination made in 2018 for the tree that caused the 2020 Zogg fire.

⁴ PG&E Criminal Dkt 1333, p. 12, brief of Amici.

Remedy: This reply comment recommends the CPUC require PG&E's 2021 WMP, as a condition of approval of PG&E's 2021 WMP and a condition precedent to issuance of PG&E's safety certificate, to improve PG&E's oversight of its contractors and subcontractors. An important step in that process is to require that PG&E and contractors and subcontractors use common data and project platforms to improve safety, oversight, and PG&E's operations. The CPUC should require PG&E to submit to the CPUC, no later than May 15, 2020 and prior to CPUC consideration of PG&E's 2021 WMP, a plan to move PG&E's contractors and subcontractors to data and project platforms that communicate with PG&E's platforms. The CPUC should require PG&E to initiate PG&E's contractor and subcontractor data and platform migration and oversight process no later than June 30, 2021 to prepare for the 2021-2022 wildfire season and the implementation of PG&E's 2021 WMP.

Requiring the PG&E's 2021 WMP to address this deficiency will facilitate PG&E's supervision of its contractors and subcontractors and ensure follow-through on important safety and reliability work. It will also promote affordability by ensuring that work is not wasted as it falls through the information gaps PG&E created.

III. PG&E Must Operate its System in a Manner that is Safe; PG&E Power Shut-offs Will Not Double as a Result of Proposed Probation Conditions 11 & 12,

PG&E criminal probation condition 11 which would require PG&E to consider vegetation tall enough to strike a line in its decisions about deenergizations or public safety power shutoffs (PSPS) will not double PSPS. RCRC's comments about PG&E's 2021 WMP stated that it "is alarmed by the impacts PG&E's federal probation could have on PSPS—specifically that the court could potentially order them to more than double—but it is also deeply

concerning that PG&E does not appear to have updated its 2021 WMP to reflect that information.”⁵ The CPUC recanted its description of PG&E’s analysis of the effect of probation condition 11 and recognizes that it will not cause an overall doubling of PSPS.

On the morning of the March 23, 2021 hearing in PG&E’s criminal probation proceeding, the CPUC in Dkt. 1359 submitted a letter to the Court apologizing for the overstatement that proposed probation conditions 11 and 12 would have resulted in a potential doubling of PSPS. The CPUC stated:

The correct characterization of PG&E’s estimates of customer impacts as a result of implementing modified Proposed Conditions 11 and 12 is that it would have resulted in a potential doubling of PSPS events in some of the counties in PG&E’s service territory. PG&E Criminal Dkt. 1359

The CPUC’s apology letter failed to explain whether PG&E was the source of the interpretation of PG&E’s analysis as leading to a doubling of PSPS, or whether that characterization was a mistake made by CPUC staff.

Neither does the CPUC’s statement that PG&E’s analysis may lead to “a doubling of PSPS events in some of the counties in PG&E’s service territory” acknowledge the methodological flaws upon which PG&E’s analysis was based. PG&E applied proposed

⁵ Comments of the Rural County Representatives of California (RCRC), p. 6 (April 6, 2021) (citing *Comments of the Joint Local Governments on PG&E’s 2021 Wildfire Mitigation Plan Update*, pages 11-12.

Further, “PG&E has projected a “significant potential” expansion of PSPS events as a result of proposed Conditions of Probation in the proceeding *United State of America v. Pacific Gas and Electric Co.*, Case No. 14-cr-00175-WHA (N.D. Cal.), which would require PG&E to incorporate information regarding hazard trees into its de-energization models. The 2021 WMP does not appear to account for this potential significant modification in PG&E’s PSPS planning,” *Comments of the County of Santa Clara on Pacific Gas and Electric Company’s 2021 Wildfire Mitigation Plan*, page 6”).

probation conditions 11 and 12 to years 2010-2019. This methodology fails to recognize the changes in the law including the Wildfire Mitigation Plan process. Neither does it recognize the decade of work PG&E has completed since 2010 to improve vegetation management and other safety measures implemented. These flaws underscore the importance of public production of PG&E's analysis and its methodological basis.

Judge Alsup ordered PG&E to by April 16 update its analysis of PG&E's "Priority 1 and Priority 2" categories, tree priority categories PG&E created, as applied to proposed probation conditions 11 and 12 for 2020 (PG&E Criminal Dkt. 1376). The CPUC is holding a workshop on the proposed tree overstrike considerations on April 20, 2021. The information provided in this analysis will be helpful to the WMP and should be made available to this record's proceeding to determine steps appropriate to prevent wildfires, death, injury, property, and environmental damage.

IV. Conclusion

Thank you for considering these comments and recommendations submitted to improve public safety.

Dated: April 13, 2021

Respectfully submitted,

//s// Catherine J.K. Sandoval

Catherine Sandoval
Associate Professor
Santa Clara University School of Law
Director, Insurance Law Institute @ SCU Law
500 El Camino Real,
Santa Clara CA, 95053-0513
(408) 551-1902
Csandoval@scu.edu