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February 23, 2022

Via Electronic Mail
 Richard Sampson, RPF 32422
 Forest Practice Inspector
 6059 Highway 9
 Felton, CA 95018

RE: Notice of Violations #2 (Dec. 16, 2021), #3 (Dec. 21, 2021), and #4 Jan. 16, 2022) Huddart - Wunderlich Parks Monta Vista Transmission Line

Dear Mr. Sampson,

This letter is in response to your letters dated December 16, 2021, December 21, 2021, and January 16, 2022, which, we note, were not sent to PG&E until February 6, 2022 (Letters). The Letters refer to PG&E vegetation maintenance work performed during the fourth quarter of 2021 on and along its Monta Vista-Jefferson #1 and #2 230kV Transmission Line in Huddart Park and Wunderlich Park in San Mateo. The work focused upon trees that PG&E determined were hazardous to the safe and reliable operation of the Monta Vista-Jefferson #1 and #2 230kV Transmission Line. PG&E through its contractors, KDF Forestry, Wright Tree Service, and Heli-Dunn, performed this vegetation maintenance to comply with its state mandates, its North American Electric Reliability Corporation (NERC) vegetation management plan, and its Wildfire Mitigation Plan. The work at Huddart Park included removal of 378 trees at 207 locations and the trimming of 383 trees at 270 locations. The work at Wunderlich Park consisted of removal of 13 trees at 12 locations and the trimming of 18 trees at 17 locations.

We worked 792 trees total along 12 spans, including Tan Oak, Coast Oak, Madrone, Douglas Fir, Redwood, Bay, and Chinkapin species, of various heights ranging from approximately 25 feet to 120 feet high. After felling trees, we placed the wood at multiple locations, of roads to allow for safe traverse. Where possible, we chipped and broadcasted within approximately 100 feet of road access, lopped and scattered to no greater than 18" depth elsewhere. Large diameter log wood was left on site in lengths determined by contractor in contact with ground.

PG&E has granted easement rights associated with the Monta Vista-Jefferson #1 and #2 230kV Transmission Line, rights which include ingress/egress and the trimming and cutting down of trees as necessary to ensure safe operation of the line free, from interference or the risk of hazardous trees falling into its facilities.

In advance of (and during) the work, PG&E was in communication with San Mateo County's Park department; our work was coordinated with the County. We issued two Environmental Release To Construction (ERTCs), copies attached, for work within Wunderlich and Huddart Parks, both dated October 8, 2021, and included the statement of work and best

management practices. Specifically, San Mateo County approved work activities in two Site Activity Reviews (SARs), which permitted vegetation maintenance activities in Huddart Park during October 8 through December 23, 2021, and Wunderlich Park during October 7th through December 23. All vegetation maintenance activities have been performed during the permitted time periods within the SARs.

The County raised concerns on December 16, 2021, regarding the work conditions of the site. In response to these concerns and in preparation for an upcoming storm event, PG&E installed temporary Best Management Practices (BMPs) along the access roads within Wunderlich and Huddart Parks to reduce erosion. PG&E is continuing to monitor the BMPs until the roads are dry enough to be properly fixed with equipment to restore them back to their pre-existing conditions. PG&E is currently working with the County to develop a permanent road restoration plan.

PG&E returned to Huddart Park from January 26 to January 31, 2022, under an amended SAR approved by the County, to perform a final clean-up. PG&E is planning to conduct final clean-up in Wunderlich Park from February 22 through February 24 under an amended SAR approved by the County. Road restoration work is expected to take place during the dry season of 2022, after development of the road restoration plan.

After reviewing your Letters, PG&E respectfully rejects the suggestion that any of the vegetation maintenance work it performed along Monta Vista-Jefferson #1 and #2 230kV Transmission Line represents “Timber Operations” that required a harvest document, or utility right of way exemption form. The Letters lack adequate detail or evidence sufficient for PG&E to understand the basis for its allegations that PG&E or its crew were performing “Timber Operations” on “Timberlands” or doing such work for “Commercial Purposes,” as these terms are defined in the Public Resources Code.

Importantly, the obligations of Public Resources Code (PRC) Section 4581 attach only to persons or entities that “conduct timber operations.” Because PG&E’s work along Monta Vista-Jefferson #1 and #2 230kV Transmission Line did not constitute timber operations, PG&E had no obligation to file a utility right of way exemption, and therefore, did not do so. PG&E believes CalFire’s application of 14 California Code of Regulations Section 1104.1 is incorrect and inconsistent. Most importantly, we want to reiterate, as we have previously expressed, that we believe that CalFire’s interpretations of various code sections (in this case as they relate to Timber Operations and Utility Exemptions) are overreaching as they are being applied to PG&E’s vegetation maintenance work in and along existing rights of way and have interfered with or substantially impeded the ability of PG&E to complete important (and state-mandated) public safety work, including work associated with PG&E’s Wildfire Mitigation Plan, in a timely manner.

As described in greater detail below, because PG&E (and its contractors) were not performing Timber Operations on Timberlands, neither PG&E nor its contractors violated PRC sections 4621 and 4481, nor 14 CCR section 1035.3(c) by not having a harvest permit on file for the subject utility line vegetation maintenance.

1. PG&E’s Vegetation Maintenance Work on and Along Existing Utility Corridors Is Not Work Conducted on Timberlands

PRC Section 4527(a)(1) states “‘Timber operations’ means the cutting or removal, or both, of timber and other solid wood forest products, including Christmas trees, from timberlands for commercial purposes, together with all the incidental work...” (emphasis added). PRC 4526 defines “Timberland” as land that is “available for, and capable of, growing a crop of trees of a commercial species used to produce lumber and other forest products, including Christmas trees.” For land to be considered Timberland, it must not simply be capable of growing a crop of trees, but also *available* for it. PG&E’s mandated vegetation clearance obligations and its associated vegetation management activities in the rights of way must be considered when determining whether that land is “available for growing a crop of trees”.

It is not enough to suggest generally, as the Letter does, that the surrounding area where PG&E crews worked “is a dense forest of Redwood, Douglas fir and numerous hardwood species.” Rather, one must consider the specific utility right of way where PG&E’s crews were working, which, by its very nature, could not have represented a dense forest. Rather, because years ago PG&E cleared trees to construct its utility facilities and establish the right of way (and given the subsequent years of perpetual vegetation maintenance required to meet state-mandated clearance requirements and hazardous tree removal obligations), the property representing the right of way today can no longer reasonably be considered Timberland that is “available for...growing a crop of trees.” PG&E’s rights and obligations associated with ongoing vegetation maintenance and operation of the electric lines to maintain sufficient clearances are antithetical to such a characterization of an existing utility right of way.

Since the time that it established the right of way years ago, PG&E has had both the right and the obligation to remove all trees that have grown or “regenerated” (or died or decayed) and that do, or may in the future, reasonably interfere with the safe and reliable operation and maintenance of its electric lines. PG&E’s existing land rights authorizing construction, operation and maintenance of utility facilities and allowing vegetation management in and along the right of way, whether by easement, land grant, franchise agreement, or prescriptive easement, and its state-mandated clearance obligations by their very nature render the land associated with the right of way *not available for growing a crop of trees that can be commercially harvested*. PG&E’s rights of way were previously cleared of trees and are not Timberland under PRC 4526 and, consequently, PG&E’s actions to maintain its existing rights of way through its vegetation management program cannot reasonably represent Timber Operations under PRC § 4527. The location of our vegetation maintenance work along the Monta Vista line was, therefore, not performed on Timberlands.

2. PG&E’s Vegetation Maintenance is Never Performed for Commercial Purposes

Though the Letter alleges that PG&E cut trees down for “commercial purposes” (and concludes that the work was Timber Operations), it offers neither explanation nor evidence to support this conclusion. To be clear, none of PG&E’s vegetation maintenance work is performed “for commercial purposes.” PG&E is in the business of providing safe and reliable energy to its customers, and its vegetation management work is incidental to that singular utility function. PG&E is not in the business of logging forests to sell timber. “Commercial purposes”, per PRC 4527(a)(2) includes “(A) the cutting or removal of trees that are processed into logs, lumber, or other wood products and offered for sale, barter, exchange, or trade, or (B) the cutting or removal of trees or other forest products during the conversion of timberlands to land uses other than the growing of timber that are subject to Section 4621, including, but not limited to, residential or commercial developments, production of other agricultural crops, recreational

developments, ski developments, water development projects, and transportation projects.” PG&E’s cutting and felling of trees along Monta Vista-Jefferson #1 and #2 230kV Transmission Line was performed exclusively to ensure ongoing safe operation of its electric facilities, not to sell lumber.

3. Neither of the Two Criteria of PRC 4527(a)(2) Attach to the PG&E Work that Forms the Subject Matter of the Letter.

A. PG&E Did Not Offer Trees for Sale, Barter, Exchange, or Trade

Addressing PRC 4527(a)(2) (A) first, while PG&E did cut down trees in performing maintenance of its electric facilities along Monta Vista-Jefferson #1 and #2 230kV Transmission Line, neither PG&E nor its contractors cut any trees that were subsequently “processed into logs, lumber or other wood products and offered for sale, barter, exchange, or trade.” Instead, pursuant to its standard practice, PG&E trimmed or cut the trees and is in the process of hauling and disposing of them.

The sole intent of PG&E in circumstances such as these, when it is cutting down hazardous trees along an existing right of way, is always public safety and ensuring the safe and reliable operation of its electric lines. General Order 95, Rule 35 and Public Resources Code Section 4293 require PG&E, as owner of the electric line, to maintain a minimum clearance from its lines to vegetation at all times. Additionally, these regulations require PG&E to abate the hazards associated with dead trees, old decadent or rotten trees, trees weakened by decay or disease and trees or portions thereof that are leaning toward the line which may contact the line from the side or may fall on the line. CalFire’s interpretation of the Forest Practice Rules does not allow PG&E to maintain compliance with these requirements.

PG&E’s trimming and tree cutting were not performed for any commercial purpose associated with offering to sell, barter or trade the trees it felled. Even had PG&E or its contractor ended up offering the cut trees for sale, barter, exchange, or trade, it would not have been for a commercial purpose, since PG&E is not in the timber business. The intention of the cutting party at the time it is cutting is determinative with respect to whether such cutting was for commercial purposes. As described in *Hewlett v. Squaw Valley Ski Corp.*, 54 Cal.App.4th 499, 523, 63 Cal.Rptr.2d 118, 133, the intent of the party cutting the timber is material to determining whether it is cut for commercial purposes, regardless of the actual disposal of the timber. “The phrase ‘cutting ... for commercial purposes’ focuses on intent. The dictionary defines ‘purpose’ as ‘something set up as an object or end to be obtained: INTENTION.’ (Webster’s Ninth New Collegiate Dict. (1984) p. 957.) By utilizing the phrase ‘cutting ... for commercial purposes,’ the Legislature focused on a party’s intent at the time the trees were cut. Had the Legislature been more concerned with the ultimate use of the timber, it could easily have defined ‘timber operations’ as ‘the sale of cut timber.’ It did not do so.” (footnote omitted). Moreover, even if PG&E had knowledge at the time of cutting of a landowner’s intention to sell the resulting wood, the sale, barter, trade, or exchange of that wood would not be the purpose for which PG&E was cutting.

B. PG&E’s Vegetation Maintenance Work Within and Along Existing Rights of Way Does Not Convert Land to a Different Use. Rather, It Was Converted When the Right of Way Was Initially Established.

Next, we turn our focus to PRC 4527(a)(2)(B), which states that the cutting of trees from timberlands for commercial purposes includes “the cutting or removal of trees or other forest products during the conversion of timberlands to land uses other than the growing of timber that are subject to Section 4621...” Importantly, Public Resources Code Section 4621, referenced in PRC 4527(a)(2)(B), requires the owner of timberlands that are to be devoted to uses other than the growing of timber to file an application for conversion with the board. Here, with respect to the property along Monta Vista, *PG&E is not the owner of any of the lands on which it was performing vegetation maintenance*, rendering PRC 4527(a)(2)(B) inapplicable to the circumstances described in the Letter.

In any event, even though PRC 4527(a)(2)(B) does not apply here because PG&E is not the owner of the lands (or trees) in question, it is worth noting that there is no “commercial purpose” because PG&E’s ongoing vegetation management and maintenance—whether trimming or cutting trees within or adjacent to the right of way—is not a conversion of Timberlands to land uses other than the growing of timber. To the extent that the lands in question were previously Timberlands under PRC 4526, they have not been so since PG&E originally established its right of way by clearing the land to construct and protect its electric facilities and continually maintaining that right of way. Since that time, these utility rights of way have not been available for growing a crop of trees that can be commercially harvested because of PG&E’s ongoing maintenance and vegetation management activities. In fact, in establishing the original right of way, future timber harvests were prevented or became infeasible because of PG&E’s land occupancy and regular utility maintenance activities thereon. Moreover, restocking requirements associated with the applicable district forest practice rules in certain circumstances could not be met within five years after completion of the original utility construction because of the continuous nature of PG&E’s land use, which, at a minimum, included annual patrols and regular vegetation management work.

Stated another way, since their creation, PG&E’s public utility rights of way have represented a land use that is antithetical to one associated with growing timber for commercial harvest because PG&E has continuously and repeatedly removed any trees or vegetation that risked interference with the safe and reliable operation of its lines, preventing the land from reverting to Timberland. The removal of a tree or trees from, or adjacent to, an existing utility right of way does not convert the land use to something new. Rather, it maintains the current use of the land as a right of way that PG&E previously established by clearing the land originally, to allow for continued safe operation and maintenance of overhead electric facilities and to comply with regulatory clearance obligations in and along the right of way. If a conversion of Timberlands ever occurred, it happened when the right of way was originally established, and not by the incremental vegetation management work performed afterwards to maintain it as a cleared right of way.

4. No Violations of 14 CCR Sections 914.6(f), 914.7(a), 923.6(g), and 1104.1(2)(E)(1) occurred

PG&E respectfully rejects the Letters suggestion that PG&E and its contractors performing utility vegetation maintenance must submit a winter operating plan when the utility is not performing work Timber Operations on Timberlands. This requirement, associated with Utility Exemption permits, limits work during saturated soil conditions. But it does not apply to PG&E’s utility work along Monta Vista-Jefferson #1 and #2 230kV Transmission Line for the same reasons that the harvest permit is not required, as described above. Moreover, unlike

lumber companies that can pause operations during winter months, PG&E has a year-round obligation to maintain compliance with its state-mandated obligations and to perform vegetation management activities, including during saturated soil conditions. Similarly, 14 CCR Section 914.6(f) (waterbar effectiveness after storm) and 14 CCR Sections 923.6(g) and 1104.1(2)(E)(1) (restricted use of seasonal roads) only apply to Timber Operations, which the utility was not performing, and therefore, no violations occurred.

While we disagree with the assessments in the Letters on PG&E's need for a harvest permit associated with PG&E's maintenance of its existing utility facilities along Monta Vista-Jefferson #1 and #2 230kV Transmission Line, and the associated violations reflecting requirements of such a permit, PG&E wants to clearly communicate its adherence to all applicable rules and regulations relating to environmental and natural resources. We do believe continued discussion and agreement to exempt such right of way maintenance work from certain restrictive Forest Practice Rules could be a sensible approach to future utility vegetation maintenance in forested areas.

We look forward to hearing from you.

Sincerely,

/s/

Michael Koffman
Director of Vegetation Management Operations