

April 20, 2021

Chairman J. Keith Gillless and Members
Board of Forestry and Fire Protection
1416 9th Street, Room 1506-14
Sacramento, CA 95814

Chairman Gillless and Members:

Pacific Gas and Electric Company (PG&E) is pleased to submit these comments on the California Board of Forestry and Fire Protection's (Board) Draft Utility and Public Agency Right-of-Way Exemption Rule Plead (the Plead). These comments detail the requested changes to the Plead that we discussed in our high-level presentation to the Board's Management Committee on April 6, 2021. They also propose additional changes to the notice provisions that were added in the last version of the Plead at Section 1114 (f) (24) that were not covered in our presentation.

As stated in our presentation to the Management Committee, PG&E and other electric utilities face unprecedented challenges to ensure the safety of our infrastructure and prevent wildfires being sparked by vegetation contacting electric conductors. The pace and scale of the work required of the utilities by legislative and regulatory mandates is breathtaking, and we urge the Board to consider the impact of this rulemaking on those efforts.

California Public Utilities Code Section 8386 (a) requires electric utilities to maintain their lines and equipment in a manner that minimizes any risk of catastrophic wildfire they may pose. Additionally, Section 8386 (b) requires PG&E and other electric utilities to submit Wildfire Mitigation Plans (WMPs) which provide specific details on how the utility will accomplish this mitigation, including but not limited to through its vegetation management program. Approved by the Wildfire Safety Division, and subsequent authorized administrators, execution by the utility to the specifics in these Wildfire Mitigation Plans is then required. In trying to implement its WMPs efficiently, PG&E has encountered conflicts with the current Forest Practice Rules, which do not contain the same urgency to mitigate catastrophic wildfire sparked by utility facilities as Public Utilities Code Section 8386 and the WMPs approved by the Wildfire Safety Division.

Viewed from another perspective, the Forest Practice Act (FPA) and Forest Practice Rules (FPR) are aimed at regulating traditional Timber Operations performed by those engaged in the sale, barter, trade or exchange of wood products rather than utility vegetation management activities. Those utility activities are predicated on one primary goal: protecting public safety by preventing catastrophic wildfires, with a secondary and complementary goal of ensuring reliability. Rules developed for resource protection in an industry focused on the sale of wood products are not a good fit for utilities providing a vital commodity to hospitals, fire stations, and critical telecommunications installations, to name just a few examples. Nor do rules developed for timber harvest operations serve well when applied to the removal of trees incident to emergency restoration of electric service following a storm or wildfire or to prevent catastrophic wildfires that may be sparked by vegetation contact with electric conductors. In some instances, FPA and/or FPR provisions slow or prevent our work (see "Critical VM Work Prohibited Under FPRs" header below for one example). We urge the Board to consider these conflicts in the course of this rulemaking.

As a point of context, PG&E is submitting these comments in an effort to be constructive. While we believe the Utility Right-of-Way Exemption process is inapplicable to our vegetation management programs for the reasons stated below, we are advocating for changes that would allow us to perform our work under the Utility Exemption in a thorough and timely manner. The issues we raise in this letter are just those implicated by this Plead, and we seek the collaboration of the Board and its staff to resolve other matters that slow or prevent our critical work.

PROPOSED CHANGES TO THE PLEAD

Timberland Definition

The proposed addition to the definition of Timberland is a negative pregnant of construction that does nothing to aid clarity in what *is* included in the definition. Furthermore, it seems to be focused on a refutation of PG&E's argument—grounded in Public Resources Code (PRC) 4526 itself—that given the recent layering of legislative mandates and regulatory orders, utility rights-of-way *are not* “available for” growing a crop of trees as required by the statute. Given PRC Sections 4292, 4293, 4295.5, and Public Utilities Code Section 8386, and California Public Utilities Commission's General Order 35, Rule 35, utilities are statutorily forbidden to allow trees to grow in their rights-of-way. To define Timberland as proposed here and ignore this prong of the definition is to treat “available for” as synonymous with “capable of,” which it is not. PG&E proposes the following changes to the Plead to reflect these mandates, and to avoid a conflict of laws (page 2, line 22):

Timberland, pursuant to PRC § 4526, means land, other than land owned by the federal government and land designated by the Board as experimental forest land, which 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. ~~Nothing in this definition precludes a determination that~~ **Pursuant to PRC §§ 4292, 4293, 4295.5, PUC § 8386 and CPUC General Order 95, Rule 35, lands subject to a utility or public agency right-of-way, as described in 14 CCR § 1114, are not “available for [...] , and capable of, growing a Crop of Trees.”**

Timber Operations Definition

Timber operations is defined in statute as the cutting or removal of timber for commercial purposes. Commercial purposes are defined as cutting or removal either (a) for sale, barter, trade or exchange, or (b) during the conversion of timberlands for other uses other than the growing of timber. (PRC 4527)

PG&E's vegetation management (VM) work is not performed for sale, barter, trade or exchange, and only the original construction (not maintenance) of utility corridors may be said to be conversion. Just as has been observed by Board members in discussions on the less-than three-acre-conversion rule plead, once a corridor has been converted, it is no longer available for growing a crop of trees, and therefore cannot be subject to conversion again.

The proposed definition of Timber Operations is not supported by the plain language of PRC 4527, particularly to the extent that it attempts to expand that definition to include *maintenance* of a utility right-of-way. It also attempts to transmute the well-defined and understood “commercial purposes” to anything with “a reasonable nexus to a commercial activity.” PG&E proposes the following changes to the definition of Timber Operations in the Plead (page 3, line 6):

Timber Operations see PRC § 4527, provided that “commercial purposes,” as inclusively described in that section, also includes the construction ~~or maintenance~~ of a right-of-way, as described in 14 CCR § 1114, ~~insofar as the cutting or removal of trees for those purposes has a reasonable nexus to a commercial activity, such as providing safe and reliable utility service or ensuring safe travel for commercial traffic along transportation corridors.~~

Changes to Timber Operations Requirements

VM Work Must Be Performed Year-round

Under the existing Utility Right-of-Way Exemption program, the use of heavy equipment is prohibited in wet conditions (page 34, line 20). This conflicts with new legislative and regulatory mandates such as the Wildfire Mitigation Plans (WMP) required by AB 1054 (Public Utilities Code Section 8386) and Rule 35 of General Order 95 of the California Public Utilities Commission, under which PG&E must work year round in order to remain in compliance and minimize the risk of utility-caused wildfires.

In light of this year-round regime and the imperative of ensuring electric conductors are clear of vegetation, if the Board believes that Utility Right-of-Way Exemptions are required for this work, PG&E urges the Board to develop best-management practices, guidelines or another approach that allows our work to be performed throughout the year.

Addition to Danger Tree Exception References

The Plead provides exceptions to the requirements for Danger Trees where the paragraph does not apply. PG&E believes these PRC sections and PUC General Order should be supplemented with Public Utilities Code Section 8386, enacted by the Legislature in AB 1054 (Chap. 79, Stats of 2019) and the CPUC-approved Wildfire Mitigation Plans that flow from it, and proposes the following changes to the Plead (page 29, line 15):

(C) This paragraph does not apply to tree topping, pruning, or other maintenance that is necessary to remediate a violation of mandatory minimum vegetation clearance requirements, such as clearance requirements for electrical transmission or distribution lines pursuant to PRC §§ 4292 and 4293, **Public Utilities Code § 8386 and CPUC-approved WMPs**, and Public Utilities Commission General Order No. 95.

Prohibition on Impairment/Notice Requirements

The Plead adds a subdivision 24 to paragraph (f) of Section 1114 that prohibits impairment of a landowner's or timber owner's ability to sell, barter, exchange or trade commercial species. PG&E recommends the following edits in recognition of 1) the wide range of easements utilities hold; 2) the importance of safety as a driver in determining how trees are felled; and 3) the variety of notification types (recorded phone messages, door hangers, person-to-person conversations), not all of which lend themselves to retention of copies as contemplated by the language of the Plead. A similar conforming change is proposed to newly added paragraph (g) (page 43) (pages 42 and 43):

(24) Except as otherwise provided by the deed of easement or by written agreement with the landowner or Timber Owner, a public or private utility who is not the Timber Owner shall, to the extent Feasible **and consistent with local operational safety considerations**, not materially impair the ability of the landowner or Timber Owner to sell, barter, exchange, or trade those commercial species felled by Timber Operations pursuant to this section. The public or private utility shall notify a landowner prior to the cutting or removal of trees of a Commercial Species located outside of the ~~deeded~~ easement. Upon the Director's request, **evidence** ~~a copy~~ of the notification shall be provided to the Director.

(page 43, line 4)

(g) ~~A copy~~ **Evidence** of the landowner notification required by PRC § 4295.5 and, if not included in that notice, documentation of the corresponding opportunity to be heard shall be provided to the Director, upon request.

Too Few LTOs for Utilities to Comply—Expand Categories

Due to the difficulty or impossibility of utilities to comply with the requirement to use Licensed Timber Operators (LTOs) given the massive volume of VM work, PG&E requests that this language be expanded to

also allow the use of utility-qualified tree-trimming contractors or qualified line clearance tree trimming contractors¹ as alternatives to LTOs in each of the following sections:

(page 33, line 11)

(e) The LTO, **utility-qualified tree-trimming contractor or qualified line clearance tree trimming contractor** shall not conduct Timber Operations until receipt of the Director's notice of acceptance. Timber Operations shall not be conducted without a valid on-site copy of the Director's notice of acceptance of operations and a copy of the notice of right-of-way exemption, as filed with the Director. [FROM 1104.1(a)(2)(G)]

(page 36, line 19)

(10) Prior to the commencement of Timber Operations, the LTO, **qualified line clearance tree trimming contractor or utility-qualified tree-trimming contractor** shall notify the Department of the actual commencement date of operations. The notification, by telephone, mail, or email, shall be directed to the appropriate CAL FIRE Unit Headquarters, Forest Practice Inspector, or other designated personnel. If the notification is provided by mail, Timber Operations may not commence until three (3) days after the postmark date of notification. [FROM 1104.1(a)(2)(K)]

Completion Deadline Inapplicable to Utility VM Work

The language at Page 37, line 1, was taken from the less-than-three-acre-conversion section, which is a discretionary, one-time action. It is inappropriate for utility VM work that is performed year-round and never “completed” as contemplated in this section. PG&E requests it be stricken, and the section reordered.

Mapping Requirements

PG&E believes requirements for right-of-way (ROW) mapping should be flexible because of the large size of the work areas. Alternative mapping requirements should be adjusted to allow for modern technology. The company is working to develop something that will be useful based on the state’s interests. We would appreciate input from the Board’s staff and CAL FIRE regarding what information would be most pertinent, and we look forward to collaborating on the topic during the formal rulemaking.

Specifically, on page 34, the language requires that the RPF or supervised designee flag the boundary of the harvest area, along with any WLPZs or ELZs.

It is not practical to flag VM work area boundaries on 15,000 miles of utility lines, especially in areas where off-road equipment will not be used. PG&E would like to work with the Board staff on more GIS-based solutions.

Registered Professional Foresters (RPFs)

Too Few RPFs to Comply—Expand Categories

The regulation requires a notice of ROW exemption be prepared by an RPF. There are not enough RPFs to fulfill this request. PG&E recommends this section be expanded to include an RPF, certified arborist or the supervised designee of either classification as follows:

(page 34, line 1)

(2) The RPF **or professionally certified arborist**, or **the** Supervised Designee **of either classification** shall flag the boundary of the Harvest Area and any applicable WLPZs and Equipment Limitation Zones. [FROM 1104.1(a)(2)(C)]

(page 38, line 24)

(19) (A) Danger Trees shall be identified and assessed for failure risk by an RPF or a professionally certified arborist, **or by the Supervised Designee of either classification**, as described in 14 CCR § 895.1.

¹ Set forth in Sec. 2951 of Title 9--CAL OSHA regulations.

[...]

(page 39, line 13)

(iii) All trees to be harvested pursuant to this subparagraph shall be marked by the RPF or arborist, **or the Supervised Designee of either classification**, prior to removal.

Certification Through Documentation or Field Verification

To assist with the shortage of qualified personnel, PG&E requests that the Board amend the Plead to allow certification of Danger Trees through field verification *or* review of documentation.

(page 39, line 3)

(B) (i) For any Danger Tree located outside of the utility or public agency right-of-way designated by 14 CCR §§ 1104.1(f)(20) and (22), the RPF or professionally certified arborist shall certify **through the review of documentation or field verification** that the Danger Tree satisfies the requirements of the definition of Danger Tree pursuant to 14 CCR § 895.1. Such certification shall be attached to the notice of conversion exemption.

Capping or Covering Archaeological Sites

The requirement of capping and covering archaeological sites (page 36, line 6) is problematic for utilities that do not own the land in question. Moreover, protection measures for significant archaeological sites should be proposed by a qualified archaeologist or a CAL FIRE-certified archaeological surveyor and may not be limited to capping and covering. PG&E recommends that Board staff consult the State Historic Preservation Office, CAL FIRE archaeologist or other experts and amend this section to recognize best practices, and to create flexible approaches.

Exemptions

PG&E recommends adding the recent legislative and regulatory mandates into the list of authorities supplementing widths in Section 1114 (page 31, line 4):

§ 1114. Utility and Public Agency Exemptions

(a) Pursuant to PRC §§ 4584 and 4628, Timber Operations conducted under this section shall be exempt from Conversion Permit and THP requirements. Timber Operations shall comply with all other applicable provisions of the Act, and Rules, and currently effective provisions of county general plans, zoning ordinances, and any implementing ordinances. The notice of right-of-way exemption timber operations (notice of right-of-way exemption) shall be considered synonymous with the term Plan as defined in 14 CCR § 895.1 when applying the operational Rules and regulations of the Board. The following types of Timber Operations are exempt: [FROM 1104.1]

(1) Construction or maintenance of a right-of-way by a public agency on its own or any other public property located on Timberland. [FROM 1104.1(b)]

(2) The clearing of trees from Timberland by a private or public utility for construction of gas, water, sewer, oil, electric, and communications (transmitted by wire, television, radio, or microwave) rights-of-way, and for maintenance and repair of the utility and right-of-way. The right-of-way, however, shall not exceed the total width specified in the Table of Normal Rights-of-Way Widths for Single Overhead Facilities and Single Underground facilities and the supplemental allowable widths. Nothing in this section shall exclude the applicable provisions of PRC §§ 4292, ~~and 4293~~, **and 4295.5, PUC § 8386, CPUC General Order 95, Rule 35**, and 14 CCR §§ 1250 through 1258, inclusive, for fire hazard clearance from being an allowable supplement to the exempt widths. [FROM 1104.1(c)]

Critical VM Work Prohibited Under FPRs

The regulation prohibits disturbing rare, threatened or endangered plants or animals, and prohibits timber operations within buffer zones of sensitive species (page 35, line 24). These prohibitions conflict with the mandates on electric utilities to make safe their electric infrastructure from sparking a wildfire due to contact with vegetation.

PG&E urges the Board to consider the critical nature of both routine and enhanced vegetation management work aimed at preventing utility-caused catastrophic wildfires *and* emergency tree removals following storms or wildfires. It cannot be that the rules written to protect natural resources should prevent utilities from either minimizing the risk of wildfires that would do far greater damage, or that customers should go without power because a tree that has severed a power line cannot be removed without disturbing rare plants.

Right-of-Way Widths for Single Overhead Facilities

Finally, PG&E urges amendment of the Plead to increase ROW widths as follows (page 39, line 21):

(20) Table of Rights-of-Way Widths for Single Overhead Facilities (A single facility for overhead electric lines means a single circuit)

Utility	Size	Width (total)
<u>Electric (Overhead Distribution and Transmission Single Circuits)</u>		
	0-33 KV	5020'
	34-100 KV	7545'
	101-200 KV	10075'
	(pole)	
	101-200 KV	12580'
	(tower)	
	201-300 KV	125'
	(tower)	
	301- KV and above	200'
	(tower)	
Telephone cable or	open wire when underbuilt	
	All	5030'

[...]

These changes will help PG&E more efficiently, safely, and expeditiously perform the vegetation management work mandated by the Legislature, the CPUC and other regulatory authorities. We look forward to working with the Board and its staff during the formal rulemaking process.

Sincerely,

Mark Krausse

Mark Krausse
Director, State Agency Relations