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Until guilt determined, judge hesitant to give PG&E new probation conditions

The Sonoma County district attorney charged PG&E with five felonies and 28 misdemeanors in connection with the Kincade Fire. PG&E challenged 20 counts in the criminal indictment.

A federal judge appeared reluctant Wednesday to impose new probation conditions on Pacific Gas & Electric until there is a determination that it engaged in criminal activity for its role in igniting a wildfire in Sonoma County in October 2019.

The county's district attorney in April charged PG&E with five felonies and 28 misdemeanors in connection with the Kincade Fire, which seriously injured six firefighters, destroyed more than 370 buildings and forced nearly 200,000 residents to evacuate. PG&E challenged 20 counts in the criminal indictment.

U.S. District Judge William Alsup in San Francisco oversees PG&E's criminal probation stemming from the 2010 San Bruno pipeline explosion. He is considering whether to impose new terms on the utility for its equipment sparking the Kincade Fire.

PG&E has accepted findings from the Department of Forestry and Fire Protection that its equipment was the cause of the fire but has denied any criminal liability. It argued in a demurrer that the claims from the county's complaint involving air pollution should be stricken because they are not crimes.

Cal Fire investigators found that a broken piece of equipment on a transmission line that should have been de-energized started the fire.

During a Zoom hearing, an attorney representing ratepayers argued that PG&E requires additional oversight because it's falling short of its wildfire mitigation duties.

Catherine Janet Kisse-Sandoval, a Santa Clara University law professor, urged the monitor overseeing the utility's compliance with its probation to ensure that PG&E follows through with trimming trees that it identifies as hazardous. She pointed to the cause of the Zogg Fire in 2020.

"It said workers identified the tree of concern ... but in fact, two years later, it was never removed and there was a fire," she said. "What is the process to make sure tree trimming is done?"

Another area Kisse-Sandoval said needs to be addressed is what she called PG&E's lack of accountability.

In a letter to the California Public Utilities Commission, PG&E admitted that it did not inspect in 2020 nearly 55,000 utility poles as it's required to do. It blamed a "breakdown in communication" in which a senior executive ordered the inspection to be completed but was ignored.

"In a normal business, if the big boss says 'Do this' and the people don't do it, people get fired," the former member of the Public Utilities Commission said. "But yet we've seen no evidence of accountability for this not being carried out and no process to backstop it."

PG&E attorney Reid Schar of Jenner & Block responded that most of the recommendations proposed in friend of the court briefs by ratepayers are already being done.

Assistant U.S. Attorney Noah Stern said the government agreed with PG&E. "My sense is that the monitor may be doing many of the things that amici suggest," he said.

Alsup ordered the monitor to review the ratepayers' proposals to advise him which of the recommendations he should adopt. He said he similarly believes that the company's record keeping is an issue that needs to be addressed.

Ratepayers have also proposed to Alsup that he appoint a trustee to oversee the utility, but the judge indicated at a hearing in May that he is unlikely to do so because PG&E's probation term ends in January.

Alsup has imposed additional probation terms on PG&E several times as a result of the utility violating its probation by starting wildfires. *USA v. Pacific Gas & Electric Co.*, 14-cr-00175 (N.D. Cal., filed April 1, 2014); *People v. Pacific Gas & Electric Co.*, SCR-7452284 (Sonoma Super. Ct., filed April 6, 2021).

"We're in the next wildfire season," he said. "It'll be the last one for us on probation, and I know we're all hoping and praying for success this year."

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