

State of California
Office of Energy Infrastructure Safety

NOTICE OF PROPOSED RULEMAKING

TITLE 14. NATURAL RESOURCES
DIVISION 17. OFFICE OF ENERGY INFRASTRUCTURE SAFETY
CHAPTER 2. INVESTIGATION AND COMPLIANCE
ARTICLE 1. REPORTING, INVESTIGATIONS, VIOLATIONS
SECTIONS 29300, 29302

The Office of Energy Infrastructure Safety (Energy Safety) proposes to adopt the regulations described below (Proposed Regulation) after considering all comments, objections, and recommendations regarding the proposed action.

Public Hearing

Energy Safety has not scheduled a public hearing on this proposed action. However, Energy Safety will hold a public hearing to accept comments if a written request is received from any interested person, or his or her authorized representative, no later than 15 days before the close of the 45-day written comment period, pursuant to Government Code section 11346.8. Submit requests to the contact person indicated below.

Written Comment Period

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to:

Comments may be submitted in the 2022 Rulemaking Docket at:

<https://efiling.energysafety.ca.gov/EFiling/DocketInformation.aspx?docketnumber=2021-RM>

For e-filing questions, contact Energy Safety at:
efiling@energysafety.ca.gov

Comments can be mailed to:

Office of Energy Infrastructure Safety
715 P Street, 20th Floor
Sacramento, California 95814

Comments can be emailed to:

info@energysafety.ca.gov

The written comment period opens on April 29, 2022 and closes on June 13, 2022. Energy Safety will only consider comments received on or before that date. When commenting, please indicate the proposed rulemaking action to which your comment refers.

Authority and Reference

Government Code sections 15473 and 15475 authorize Energy Safety to adopt the proposed regulations. The proposed regulations implement, interpret, clarify, and make specific Government Code sections 15473 and 15475.

Informative Digest & Policy Statement Overview

This rulemaking action sets forth the notification requirements for utilities in the event of a fault, outage, or other system anomaly; provides the scope of investigations; and defines notice of defect and notice of violation.

Summary of Existing Laws and Effect of the Proposed Action

Pursuant to Government Code section 15473(c)(2)(E), the Energy Safety director may adopt, amend, and repeal regulations as necessary to carry out the powers, duties, and responsibilities of the California Energy Infrastructure Safety Act, section 326 and sections 8385 to 8389, inclusive, of the Public Utilities Code, and other statutes pertaining to Energy Safety.

Under Government Code section 15475, Energy Safety may require information and data, including monitoring, verification of every regulated entity (an entity that is regulated by Energy Safety)¹ and any business that is a subsidiary or affiliate of a regulated entity with respect to or that may influence any matter concerning wildfire safety.

Under Government Code section 15473(c)(2)(D), Energy Safety can conduct investigations in any part of the state, compel information, and hold hearings, public meetings, or workshops as necessary to carry out the powers, duties, and responsibilities of the office, consistent with the exercise of its authority pursuant to the California Energy Infrastructure Safety Act. Pursuant to Government Code section 15475.1, Energy Safety may determine that a regulated entity is not in compliance with any matter under its authority. Energy Safety may investigate whether the regulated entity is noncompliant with its duties and responsibilities or whether the entity violated any law, regulations, or guidelines within the authority of the office. Under Government Code section 15475.2, Energy Safety may issue a notice of defect or violation to direct the regulated entity to correct any defect or noncompliance with the approved wildfire mitigation plan or failure to comply with any laws, regulations, or guidelines within Energy Safety's authority.

¹ There are eight entities who are regulated by Energy Safety: (1) Pacific Gas and Electric Company (PG&E), (2) Southern California Edison Company, (3) San Diego Gas & Electric Company, (4) Liberty Utilities, (5) PacifiCorp, (6) Bear Valley Electric Service, Inc. (Bear Valley), (7) Horizon West, and (8) Trans Bay Cable LLC. (See Pub. Util. Code § 8385(b) [Energy Safety shall supervise an electrical corporation's compliance with the requirements of Chapter 6, Division 4.1 of the Public Utilities Code]; Pub. Util. Code § 218 [Electrical corporation includes every corporation or person owning, controlling, operating, or managing any electrical plant for compensation within California, except where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others].)

Energy Safety's mission is to advance long-term utility wildfire safety by developing data-driven, comprehensive utility wildfire mitigation evaluation and compliance criteria, collaborating with local, state and federal agencies, and supporting efforts to improve utility wildfire safety culture and innovation. Energy Safety will ensure electrical utilities are taking effective actions to reduce utility-related wildfire risk by deploying measures to ensure an integrated, utility-related wildfire mitigation approach and to seek innovative problem solving to address utility wildfire risks.

Effect of Proposed Rulemaking

The Proposed Regulation will provide a clear framework for Energy Safety to interact with regulated entities so they understand how Energy Safety obtains information, what information is required to be provided, and how Energy Safety ensures compliance with requirements imposed on regulated entities. The Proposed Regulation sets forth the notification requirements for utilities in the event of a fault, outage, or other system anomaly; provides the scope of investigations; and defines notice of defect and notice of violation.

Objective and Anticipated Benefits of the Proposed Regulation

The overall objective of the Proposed Regulation is to provide a clear framework to interact with regulated entities through establishing notification requirement for faults, outage, and anomalies, providing the scope of Energy Safety's investigation, and defining notice of defect and notice of violation, thereby creating a clear compliance process. A clear process will assist Energy Safety with its compliance activities and will assist the regulated entities' in efficiently responding to these activities. This, in turn, will promote better wildfire safety.

Specifically, submission of this information will help Energy Safety better understand and study the types of events that Wildfire Mitigation Plans are intended to prevent. This understanding, in turn, helps Energy Safety better ensure compliance with applicable law, regulations, and guidelines and improve wildfire safety. Relatedly, a clear scope of investigation and definitions as to what "notice of defect" and "notice of violation" entail will provide a better result to the compliance process. Regulated entities will understand exactly the type of investigation they are under, what

deficiency, error, risky condition, or non-compliance Energy Safety identified, and what regulated entities need to do in response to a notice of defect or violation. This will protect the people of California and the environment from deadly wildfires that may result from regulated entities' infrastructure.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations

Energy Safety has determined that this proposed regulation is not inconsistent or incompatible with existing regulations.

After conducting a review for any regulations that would relate to or affect this area, Energy Safety has concluded that these are the only regulations that concern notification requirement for faults, outage, and anomalies for data collection and compliance purposes, scope of Energy Safety's investigation, and definitions of notice of defect and notice of violation in California.

Comparable Federal Regulations or Statutes

Energy Safety has determined that there are no comparable federal regulations or statutes.

Other Matters Prescribed by Statute Applicable to the Agency or Any Specific Regulation or Class of Regulations

Under Government Code section 15473(c)(2)(E), the Energy Safety director may adopt, amend, and repeal regulations as necessary to carry out the powers, duties, and responsibilities of the California Energy Infrastructure Safety Act, section 326 and sections 8385 to 8389, inclusive, of the Public Utilities Code, and other statutes pertaining to Energy Safety.

Under Government Code section 15475, Energy Safety may require information and data, including monitoring, verification of every regulated entity (an entity that is regulated by Energy Safety)² and any business that

² There are eight entities who are regulated by Energy Safety: (1) Pacific Gas and Electric Company (PG&E), (2) Southern California Edison Company, (3) San Diego Gas & Electric

is a subsidiary or affiliate of a regulated entity with respect to or that may influence any matter concerning wildfire safety.

Under Government Code section 15473(c)(2)(D), Energy Safety can conduct investigations in any part of the state, compel information, and hold hearings, public meetings, or workshops as necessary to carry out the powers, duties, and responsibilities of the office, consistent with the exercise of its authority pursuant to the California Energy Infrastructure Pursuant to Government Code section 15475.1, Energy Safety may determine that a regulated entity is not in compliance with any matter under its authority, and investigate as to whether the regulated entity is noncompliant with its duties and responsibilities or if the entity violated any law, regulations, or guidelines within the authority of the office. Under Government Code section 15475.2, Energy Safety may issue a notice of defect or violation to direct the regulated entity to correct any defect or noncompliance with the approved wildfire mitigation plan or failure to comply with any laws, regulations, or guidelines within Energy Safety's authority.

Disclosures Regarding the Proposed Action

Energy Safety has made the following initial determinations.

1. Mandate on local agencies or school districts: Energy Safety has determined the adoption of the Proposed Regulation will not impose a local mandate.

2. Cost or savings to any state agency: Energy Safety will absorb additional costs associated with reviewing notifications provided pursuant to section 29300 with its staff. Energy Safety estimates that the total fiscal costs to state government for reviewing all notifications will range from \$6,218.40 to \$19,358.40. Energy Safety has determined there will not be any additional costs to any state agency as associated with section 29302.

Company, (4) Liberty Utilities, (5) PacifiCorp, (6) Bear Valley Electric Service, Inc. (Bear Valley), (7) Horizon West, and (8) Trans Bay Cable LLC.

3. Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:

Energy Safety has determined that the adoption of the Proposed Regulation will not result in costs or savings for any local agency or school district required to be reimbursed pursuant to Part 7 of Division 4, commencing with section 17500 of the Government Code, or other nondiscretionary costs or savings imposed on local agencies.

4. Other nondiscretionary costs or savings imposed on local agencies:

Energy Safety has determined that the adoption of the Proposed Regulation will not result in costs or savings for any local agency or school district required to be reimbursed pursuant to Part 7 of Division 4, commencing with section 17500 of the Government Code, or other nondiscretionary costs or savings imposed on local agencies.

5. Cost or savings in federal funding to the state: Energy Safety has determined that adoption of the Proposed Regulation will not result in cost or savings in federal funding to the state. Energy Safety determined that no fiscal impact to federal funding or state programs exists.

6. Cost impacts on a representative private person or business: Energy Safety estimates the initial annual cost for the eight (8) affected regulated entities for providing notifications to Energy Safety would range from \$14,416 to \$469,374.10. Because each regulated entity varies in size and has their own business operations, Energy Safety cannot predetermine the actions a regulated entity will take in the subsequent years, such as reallocation of its staff, redistribution of work to existing staff, or consolidation of staff functions. Wildfires caused by regulated entities may also change regulated entities' internal structure and reporting needs. Therefore, Energy Safety cannot speculate as to the costs over the regulated entities' lifetime.

Energy Safety relied on its past data collection data, information provided by regulated entities, and U.S. Bureau of Labor Statistics. Due to the widely divergent responses (three³ regulated entities responded to Energy Safety's request for cost estimates), Energy Safety's analysis pulled

³ PG&E, SCE, and Bear Valley responded, but SCE's data did not include sufficient information to derive the cost per notification to be comparable with other data. Therefore, Energy Safety did not include the data in its analysis.

estimates from its past data collection and used wage estimates from U.S. Bureau of Labor Statistics for an independent analysis. Given a lack of data and many uncertainties surrounding the effort required to complete the notification process defined in the Proposed Regulation, these initial costs may be overestimated. In addition, as noted above Energy Safety cannot predetermine the actions a regulated entity will take in the subsequent years, such as change in its internal processes and reporting needs, reallocation of its staff, redistribution of work to existing staff, or consolidation of staff functions.⁴ Therefore, the cost estimates provided here are unlikely to duplicate over subsequent years.

7. Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: Although the proposed action will directly affect eight regulated entities in California, Energy Safety concludes that there will be no significant adverse economic impact, including on the ability of California businesses to compete with businesses in other states.

8. Effect of Housing Costs: Energy Safety has determined that the Proposed Regulation will have no significant effect on housing costs.

9. Effect on Small Businesses: Energy Safety has determined that no small businesses will be affected by the adoption of the Proposed Regulation. The Proposed Regulation will affect eight (8) regulated entities, and they are not small businesses.

⁴ Given the small number of notifications across multiple regulated entities that Energy Safety has received in the past pursuant to its emergency regulations, it is unlikely that regulated entities will expend the initial expenditure continuously in subsequently years. Regulated entities may consolidate work functions or reallocation staff time to cover multiple types of reporting for efficiency. For example, regulated entities report to Public Utilities Commission (CPUC) electric incidents (accidents involving electric facilities) that meets the below criteria:

- A fatality or injury involving electric facilities.
- Damage to property of the utility or others in excess of \$50,000.
- Significant media coverage.
- A major outage to at least 10% of the utilities entire service territory is experienced at a single point in time. Electric utility must report these types of incidents to CPUC within two (2) hours of their occurrence.

(See <https://www.cpuc.ca.gov/regulatory-services/safety/electric-safety-and-reliability-branch/electric-generation-safety-and-reliability/incident-investigations-for-electric-and-communication-facilities>.)

Energy Safety assessed the potential for this proposed regulation to cause adverse impacts to California businesses and individuals. Following a review of cost estimation provided by regulated entities and an economic analysis performed by its consultant, Energy Safety determined the proposed regulation is not a major regulation⁵ and is unlikely to have a significant adverse impact on business. This Economic Impact Assessment is also based on the conclusion there are only eight (8) regulated entities that meet the definition of “electrical corporation” and are currently under Energy Safety’s authority.

10. Business Reporting Requirement: Energy Safety finds that it is necessary for the health, safety, or welfare of the people of this state that proposed section 29300, which require a report, apply to regulated entities.

The reporting requirement is necessary to promote better wildfire safety. Good data submission will help Energy Safety better understand and study the types of events that Wildfire Mitigation Plans are intended to prevent. This understanding, in turn, helps Energy Safety better enforce and ensure compliance by regulated entities with applicable law, regulations, and guidelines to ensure improved wildfire safety. Relatedly, a clear scope of investigation and definitions as to what notice of defect and notice of violation entail will provide a better result to the compliance process. Regulated entities will understand exactly the type of investigation they are under, what deficiency, error, risky condition, or non-compliance Energy Safety identified, and what regulated entities need to do in response to a notice of defect or violation. This in turn will promote better wildfire safety, which in turn will protect California’s people and environment from deadly wildfires that may result from regulated entities’ infrastructure.

⁵ Major regulation: Government Code section 11342.548 defines a “major regulation” as any proposed adoption of a regulation that will have an economic impact on California businesses in an amount exceeding \$50 million dollars as estimated by the adopting agency.

11. Benefits to health and welfare, worker safety, and the environment

The primary goal of the Proposed Regulation is to ensure better wildfire safety with respect to regulated entities by ensuring better compliance through clearer parameters for data submission, investigation scope, and notice definitions. By providing clear directives to regulated entities, Energy Safety sets in motion its process to ensure regulated entities comply with applicable law, regulations, and guidelines. This will reduce future chances of wildfires from regulated entities' infrastructure and provide a safer and healthier environment to California residents and wildlife with fewer wildfires. Less wildfires will also benefit California workers, consumers, employers, and the environment.

Results of the Economic Impact Assessment

Energy Safety determined that it is:

- Unlikely that the Proposed Regulation will eliminate existing or create new businesses providing electrical power within California.
- Unlikely that the Proposed Regulation will eliminate jobs for regulated entities.
- Unlikely that the Proposed Regulation will create jobs for regulated entities to assist regulated entities in providing notifications to Energy Safety.
- Unlikely that any business in California will be expanded because of any financial impact of the Proposed Rulemaking for both Section 29300 and Section 29302.

Consideration of Alternatives

In accordance with Government Code section 11346.5, subdivision (a)(13), Energy Safety must determine that no reasonable alternative considered by Energy Safety or that has otherwise been identified and brought to the attention of Energy Safety would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Energy Safety invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

Contact Persons

Inquiries concerning the proposed action may be directed to,

Jeff Brooks
Office of Energy Infrastructure Safety
715 P Street, 20th Floor
Sacramento, California 95814
jeff.brooks@energysafety.ca.gov
(916) 926-1672

Or, if unavailable, to,

Joy Peng
Office of Energy Infrastructure Safety
715 P Street, 20th Floor
Sacramento, California 95814
joy.peng@energysafety.ca.gov
(279) 336-1768

Please direct requests for copies of the proposed text (the "express terms") of the regulation, the Initial Statement of Reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Jeff Brooks using the contact information above.

Availability of Documents

Availability of Statement of Reasons, Text of Proposed Regulation, and Rulemaking File

Energy Safety will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulation,

the Initial Statement of Reasons, and the documents relied upon. Copies may be obtained by contacting Jeff Brooks using the contact information above.

Availability of Changed or Modified Text

After holding the hearing and considering all timely and relevant comments received, Energy Safety may adopt the proposed regulation substantially as described in this Notice. If Energy Safety makes modifications which are sufficiently related to the originally proposed text it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before ENERGY SAFETY adopts the regulation as revised. Please send requests for copies of any modified text to the attention of Jeff Brooks using the contact information above. Energy Safety will accept written comments on the modified text for 15 days after the date on which it is made available.

Availability of the Final Statement of Reasons

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Jeff Brooks using the contact information above.

Availability of Documents on the Internet

Copies of this Notice, the proposed text of the regulation, and the Initial Statement of Reasons can be accessed at:

<https://efiling.energysafety.ca.gov/Lists/DocketLog.aspx?docketnumber=2022-RM>