



Meredith Allen
Senior Director
Regulatory Relations

P.O. Box 77000
San Francisco, CA 94177-0001
Mail Code B23A
(415) 973-2868
Cell: (415) 828-5765
Meredith.Allen@pge.com

July 29, 2021

BY OEIS E-FILING

Office of Energy Infrastructure Safety
300 Capitol Mall, Suite 500
Sacramento, CA 95814
info@energysafety.ca.gov

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
staff@oal.ca.gov

Re: **Office of Energy Infrastructure Safety Adoption of Emergency Rulemaking Action Process and Procedure Regulations: Notice of Proposed Emergency Action 2021 Emergency Rulemaking Docket 2021-RM**

Dear Office of Administrative Law:

Pacific Gas and Electric Company (“PG&E”) submits the following comments in response to the Notice of Proposed Emergency Regulations provided by the Office of Energy Infrastructure Safety (“OEIS”). These comments are being submitted to both the OEIS and the Office of Administrative Law (“OAL”) pursuant to Government Code Section 11349.6 and 1 California Code of Regulation (“CCR”) § 55. Pursuant to 1 CCR § 55(b)(4), PG&E is electronically submitting these comments to the OEIS in the manner instructed by the OEIS in its Notice of Proposed Emergency Action.

INTRODUCTION

On July 12, 2019, Governor Gavin Newsom signed Assembly Bill 111 and established the OEIS within the Natural Resources Agency. The bill provided that, on July 1, 2021, the OEIS would become the successor to, and vested with, all of the duties, powers, and responsibilities of the Wildfire Safety Division (“WSD”), a division of the California Public Utilities Commission (“CPUC”).¹ Prior to July 1, 2021, the WSD has been charged with reviewing, approving, or denying the wildfire mitigation plans (“WMPs”) submitted by electrical corporations as part of a coordinated effort to reduce the risk of ignition of wildfires from utility infrastructure.²

¹ See also Govt. Code § 15475.

² See Pub. Util. Code §326; see also Govt. Code § 8386.1.

On July 13, 2021, the OEIS submitted a set of proposed emergency regulations to the OAL to “provide a framework for the OEIS to interact with regulated entities and the public so that all stakeholders understand how the OEIS obtains information, what information is required to be provided, how the public can participate, and how the OEIS ensures compliance with requirements imposed on regulated entities meeting its statutory mandates.”³ The emergency regulations cover the following topics: Construction of Provisions, General Provisions, Data Access and Confidentiality, and Investigation and Compliance. OEIS proposes including the regulations in a new Division 17 within Title 14 of the Code of Regulations. All statutory references hereafter to the Code of Regulations refer to these proposed regulations unless indicated otherwise.

PG&E commends the OEIS on its effort to advance rules and regulations to ensure clear processes when collaborating with utilities on WMP work. However, PG&E has concerns, and provides comments, regarding the following proposed regulations:

Section Number	Comments
§ 29102 – Filing of Documents	PG&E requests that the proposed regulations include a statement that documents served on stakeholders by the OEIS after 5:00 p.m. be deemed served the following business day.
§ 29200 – Confidential Information	The proposed confidentiality process is overly burdensome. There will be significant overlap between documents submitted to the OEIS and the CPUC. PG&E recommends that the OEIS follow the confidentiality process used by the CPUC set forth in CPUC General Order No. 66-D to maximize efficiency and minimize confusion.
§ 29201 – Disclosure of Confidential Information	The proposed regulation may not adequately protect confidential information submitted to the OEIS. Subsection (a)(4) must clarify that the California Department of Forestry and Fire Protection (“CAL FIRE”), the California Energy Commission (“CEC”), and the CPUC be required to keep records from the OEIS confidential.
§ 29300 – Notifications	The proposed regulations are vague, overbroad, and overly burdensome. PG&E recommends that the OEIS follow the Electric Incident Reporting process used by CPUC for ignitions to promote efficiency and consistency in reporting.
§ 29301 – Incident Report	The proposed regulation is vague, overbroad, and overly burdensome. PG&E recommends that the OEIS follow the 20-day reporting process used by the CPUC and that utilities be expressly

³ OEIS, *Notice of Proposed Emergency Action*, p. 3.

Section Number	Comments
	permitted to object to investigation information requests based on privilege.
§ 29302 - Investigations, Notices of Defects and Violations and Referral to the Commission	The proposed regulation is overbroad and potentially expands the authority of the OEIS. PG&E recommends that the proposed regulation be amended to reiterate that OEIS investigations must be related to wildfire mitigation work and WMPs.

SECTION 29102 – FILING OF DOCUMENTS

OEIS proposes that all documents will be accepted as of the day of their receipt except that documents filed after 5:00 p.m., on a business day, will be deemed filed the next business day.⁴ PG&E does not oppose this process. For clarity, PG&E suggests that the regulations also include a statement indicating that documents served by the OEIS on stakeholders after 5:00 p.m. be deemed served the next business day. This will help stakeholders have clarity regarding deadlines for serving discovery responses and/or filing responsive comments.

SECTION 29200 – CONFIDENTIAL INFORMATION

The proposed regulations require that all parties providing confidential information to the OEIS submit an application with a confidentiality declaration for review by the Deputy Director. In the declaration, the parties must: identify the specific confidential information; state how long the information should be kept confidential; discuss how the Public Records Act or other laws allow the OEIS to keep the information confidential; identify any specific trade secrets or competitive advantages that would be lost by production of the confidential information; describe why any critical infrastructure information is confidential; state whether the information could be disclosed in the aggregate or with certain portions masked; and explain how the information is currently kept confidential and if it has been produced previously.⁵ Following the submission, the Deputy Director would have thirty days to determine if the application for confidential declaration should be granted, followed by a review process.⁶

This proposed confidentiality application process is overly burdensome and not well suited for the WMP-related proceedings. The OEIS based the proposed confidentiality application process on the process used to submit confidential information to the CEC.⁷ That process is not ideal for the wildfire mitigation proceeding because utilities submit a limited amount of confidential

⁴ 14 CCR § 29102(b)(2).

⁵ 14 CCR § 29200(a).

⁶ 14 CCR § 29200(c).

⁷ See 20 CCR § 2505.

information to the CEC. On the other hand, the utilities are generally required to submit a significant number of documents and tables containing confidential information materials to the OEIS as part of quarterly reporting obligations and in response to other compliance investigations. In addition, for the past two years, the utilities have been asked to respond to thousands of written discovery requests following the submission of their WMPs. The responses to these requests have been due in three business days. The CEC confidentiality process proposed by the OEIS is too cumbersome and time consuming to facilitate this level of information exchange.

PG&E recommends that the OEIS use the process established by the CPUC—and previously used by the WSD—for submission of confidential materials. In General Order 66-D, the CPUC adopted an effective process that still requires parties to designate the confidential portions of each document provided, specify the basis for confidentiality, and sign a declaration in support of the legal authority cited. However, the level of detail needed for each confidentiality declaration is less. The stakeholders to the wildfire mitigation proceeding have used this process effectively in connection with submission of the 2020 and 2021 WMPs. The additional benefit of using General Order 66-D is that it will allow the utilities to use the same standard for submitting documents to the OEIS and the CPUC. Previously, it has been very common for the utilities to have to submit similar materials to the CPUC and the WSD, given the role of each agency. If the OEIS uses a different standard for submission of confidential materials from the CPUC, the utilities will have to prepare separate confidentiality declarations to submit the same materials to the CPUC and the OEIS. This will increase the likelihood of potential errors for similar submissions and will be overly burdensome.

SECTION 29201 - DISCLOSURE OF CONFIDENTIAL INFORMATION

In the proposed regulations, the OEIS states that it may disclose confidential information it receives to “other governmental bodies that need the records to perform their official functions and that agree to keep the records confidential and to disclose the records only to those employees or contractors whose agency work requires inspection of the records.”⁸ At the same time, the OEIS states that it may share confidential information “with the California Department of Forestry and Fire Protection, California Energy Commission, and California Public Utilities Commission.... without the need for an interagency agreement.”⁹

PG&E recognizes that the OEIS may need to share documents with confidential information with other agencies like CAL FIRE, the CEC, and the CPUC to fulfill its duties. However, the proposed regulations are ambiguous as to whether the three identified agencies will be required to keep the records confidential, especially if no interagency agreements are executed. PG&E is regularly asked to produce documents with confidential customer, employee, critical infrastructure, or trade secret information in connection with the wildfire mitigation proceeding.

⁸ 14 CCR § 29201(a)(3).

⁹ 14 CCR § 29201(a)(4).

Therefore, it is crucial that the OEIS confirm that all agencies receiving confidential information from it agree to keep the information confidential prior to transmission.

PG&E recommends that the proposed regulations be amended to clarify that CAL FIRE, the CEC, and the CPUC will be required to confirm they will keep all confidential information received from the OEIS confidential. The OEIS should provide electrical corporations notice when submitting confidential information to other agencies. We also recommend that the OEIS finalize a memorandum of understanding with the CPUC to clarify the issue of sharing confidential information between agencies.¹⁰

SECTION 29300 – NOTIFICATION

The OEIS suggests that each electrical corporation be required to notify the OEIS Director within 24 hours “from the time an electrical corporation becomes aware of a wildfire threat to electrical infrastructure it owns or operates.”¹¹ In addition, the Director must be notified within 24 hours from the time a regulated entity “becomes aware of infrastructure that it owns or operates being investigated for involvement in potentially causing an ignition.”¹² PG&E addresses these two proposals separately below.

A. Notifications for Wildfire Threats

The proposed 24-hour notification requirement for wildfire threats to electrical infrastructure is unclear. The term “wildfire threat” is not defined. Therefore, it is unclear if the notification requirements apply to situations involving minor electrical arcing, active fires of any size, or simply weather conditions that increase the threat of a wildfire in a service territory. In addition, there is no standard for how a utility “becomes aware” of any such “wildfire threat.” If a troubleman were to observe—and extinguish—a spark during electrical repair work in the HFTD, would that be sufficient “awareness” of a “wildfire threat” to require notification to the OEIS within 24 hours?

The proposed notification requirement is also overly burdensome. As indicated in the 2021 WMP, over half of PG&E’s service territory lies in the High Fire Threat Districts (“HFTD”) Tiers 2 and 3, and changes in weather patterns have increased the threat over the past decade.¹³ Reporting all undefined “wildfire threats” to any electrical facility within 24 hours would be incredibly time consuming, and difficult to accomplish, especially during the fire season. The

¹⁰ Govt. Code § 15476 states that the CPUC and the OEIS “shall enter into a memorandum of understanding to cooperatively develop consistent approaches and share data related to electric infrastructure safety....”

¹¹ 14 CCR § 29300.

¹² *Id.*

¹³ 2021 Revised WMP, p. 3.

proposed notification requirement may also distract from an electrical corporation's need to quickly respond in the field to simultaneous wildfire threats.

The OEIS arguably does not have the statutory authority to issue this broad notification requirement. As indicated above, the OEIS is the successor to, and vested with, all the duties, powers, and responsibilities of the WSD. The primary responsibility of the WSD has been to review and oversee compliance of the utilities' WMPs.¹⁴ The proposed notification requirement goes beyond wildfire mitigation efforts set forth in the electrical corporation WMPs. As shown in 2020, many wildfires and wildfire "threats" are caused by circumstances unrelated to electrical infrastructure (e.g. lightning and other weather conditions).

B. Notifications for Ignition Investigations

The proposed 24-hour notification requirement for ignition investigations is too broad and overly burdensome. The proposal suggests that the Director must be notified whenever an electrical corporation becomes aware of infrastructure that it owns or operates being investigated for "potentially causing an ignition." This proposal potentially relates to an investigation into an ignition of any size, in any location, performed by any entity or individual. This goes well beyond the confines of the HFTD and the reporting requirements for utility wildfire ignitions pursuant to Decision ("D.") 14-02-015, Appendix C and Table 2 of the WMP templates. Information about an ignition outside of the HFTD that may be investigated by an individual or entity unaffiliated with a responsible agency (e.g. CAL FIRE, U.S. Forest Service, or local fire department) has no bearing on an electrical corporation's wildfire mitigation work and should not be required for reporting purposes.

In lieu of the proposed 24-hour notification requirement relating to incident investigations, PG&E recommends that the OEIS look to the thresholds set by the CPUC for reporting electric incidents described in D.98-07-097 for guidance. The CPUC requires that electric utilities report electric incidents that are attributable, or allegedly attributable, to electric utility facilities that are found to meet the following criteria within two hours during business hours (or four hours outside of business hours): a fatality or injury requiring overnight hospitalization; damage to property of the utility or others in excess of \$50,000; or significant public attention or media coverage. PG&E suggests that the OEIS use the same thresholds for determining when an electrical corporation is required to report investigations into HFTD ignitions that are attributable, or allegedly attributable to electric utility facilities. This will promote efficiency and reduce possible duplication of work.

SECTION 29301 – INCIDENT REPORT

The OEIS proposes that utilities be required to submit an incident report within 30 days "in the event that an ignition may have been started by the infrastructure owned or operated by a

¹⁴ See e.g. Pub. Util. Code, § 326(a)(1)-(3).

regulated entity.”¹⁵ The incident report would include: any factual or physical evidence related to the incident including photographs; witness information; a preliminary root cause analysis; actions taken to prevent recurrence of the incident; the identification of all incident documents; and any other information the OEIS may require.¹⁶ Electrical corporations would be required to preserve all incident evidence and documents for at least five years.¹⁷

The incident report proposal should be modified because it is overbroad and burdensome. Under the drafted regulation, electrical corporations may be required to file an incident report for every ignition, of any size, in any part of their service territory that “may have been started” by their infrastructure. It is unclear what standard should be used to determine if an ignition “may have been” started by electric facilities. Also, ignition investigations often take a significant amount of time to complete. It is common for agencies like CAL FIRE to collect physical evidence during their investigations for testing and evaluation. Thus, electrical corporations may not have access to the materials they need to complete a root cause analysis for months or longer. For this reason, it can be difficult to create a detailed corrective action plan to prevent recurrence within 30 days. The OEIS has also provided no explanation for what types of “other information” it may require in the proposed incident reports.

The proposed regulations should also be modified because they do not recognize the right to object to the production of certain documents and information in the incident reports. The OEIS proposes that electrical corporations produce all documents relating to each incident, preliminary root cause analyses, and extensive witness information. However, some of that information may be privileged from discovery under the attorney-client privilege and work product doctrine. The proposed regulations should recognize that electrical corporations do not waive these important rights by filing an incident report.¹⁸

Finally, the proposed regulation should be modified because it overlaps, and potentially interferes with, the CPUC’s reporting requirements for ignitions. As indicated in the Section 29300 – Notification analysis above, electrical corporations are required to report electric incidents to the CPUC that are attributable, or allegedly attributable, to electric utility facilities that are found to meet certain criteria, as described in D.98-07-097. Within twenty business days of the incident, the utility must provide:

A written account of the incident which includes a detailed description of the nature of the incident, its cause and estimated damage. The report shall identify the time and date of the incident, the time and date of the notice to the

¹⁵ 14 CCR § 29301(a).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ The language of CPUC General Order 95, Rule 17 is instructive. In that General Order relating to accident investigations, the CPUC has stated the following: “Nothing in this rule is intended to extend, waive, or limit any claim of attorney client privilege and/or attorney work product privilege.”

Commission, the location of the incident, casualties which resulted from the incident, identification of casualties and property damage. The report shall include a description of the utility's response to the incident and the measures the utility took to repair facilities and/or remedy any related problems on the system which may have contributed to the incident.¹⁹

To prevent duplicative work for agencies with slightly different reporting requirements, PG&E suggests that the OEIS follow the reporting requirements of the CPUC set forth above and collect 20-day reports from the utilities for all reportable ignitions as described in D. 98-07-097. This is preferred because the CPUC is the primary agency responsible for investigating electrical incidents, including ignitions, in California. The 20-day report should provide enough information to the OEIS to allow it to determine if there is a connection between a fire and any of the initiatives described in the utilities' WMPs or if additional discovery is needed.

SECTION 29302 - INVESTIGATIONS, NOTICES OF DEFECTS AND VIOLATIONS AND REFERRAL TO THE COMMISSION

In the proposed regulations, the OEIS states that the Director may designate investigators to investigate: whether an approved WMP was followed; whether failure to follow a WMP contributed to the cause of a wildfire; whether the regulated entity is noncompliant with its duties and responsibilities or has otherwise committed violations of any laws, regulations, or guidelines within the authority of the Office; and other related investigations requested by the Director.²⁰

California law does not give the OEIS the broad authority to investigate whether an electrical corporation was “noncompliant with its duties and responsibilities or has otherwise committed violations of any laws, [or] regulations” or to perform “other investigations requested by the Director.” As indicated above, under Public Utilities Code Section 326, the WSD has been responsible for reviewing, and overseeing compliance with, the WMPs. This same authority has been extended to the OEIS. However, the authority does not encompass investigations into utility compliance with all other laws or regulations implemented by other agencies that do not relate to wildfire mitigation work. The CPUC has already empowered its Safety and Enforcement Division (“SED”) to perform electric safety audits and conduct incident investigations, including wildfires. If the proposed regulations are implemented, it is likely that the SED and the OEIS will be performing simultaneous investigations into the same incidents. This creates the potential for inconsistent rulings and findings, and it duplicates the efforts of governmental agencies and utilities.

PG&E suggests that the proposed investigation regulations be amended to reiterate that OEIS investigations are to be related to wildfire mitigation work and the WMPs submitted by electrical

¹⁹ D.98-07-097, Appendix B.

²⁰ 14 CCR § 29302(a).

Office of Energy Infrastructure Safety
Office of Administrative Law
July 29, 2021
Page 9

corporations. This will help avoid duplicative investigations by State agencies and allow parties more time to investigate reportable incidents.

CONCLUSION

PG&E commends the OEIS for its effort to advance rules and regulations to ensure clear processes when collaborating with utilities on wildfire mitigation work. PG&E respectfully submits these comments and looks forward to working with the OEIS to promote wildfire safety going forward.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

/s/ Meredith Allen

Meredith Allen

MA/haj

Enclosures

cc: R 18-10-007 Service List