



Laura M. Fulton
Senior Counsel
8330 Century Park Court, CP32F
San Diego, CA 92123-1548
Tel. 858-654-1759
Fax 619-699-5027
LFulton@SDGE.com

July 30, 2021

VIA 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: 2021 Emergency Rulemaking Docket 2021-RM; Comments of San Diego Gas & Electric Company (U 902 M) In Response to Office of Energy Infrastructure Safety Adoption of Emergency Rulemaking

Dear Office of Administrative Law:

INTRODUCTION

San Diego Gas & Electric Company (SDG&E) submits these comments addressing the California Office of Energy Infrastructure Safety's (OEIS) Adoption of Emergency Rulemaking Action Process and Procedure Regulations and the Proposed Emergency Regulations (Proposed Regulations).¹ These comments are being submitted to both OEIS and the Office of Administrative Law ("OAL") pursuant to Government Code Section 11349.6 and 1 California Code of Regulation ("CCR") Section 55.²

I. Introduction and Summary

SDG&E appreciates the need for common sense processes and procedures as OEIS transitions from the Wildfire Safety Division at the California Public Utilities Commission (CPUC). Any processes and procedures that are ultimately adopted should support the safe and reliable operation of electric corporation assets and focus on OEIS's primary objective of reducing the

¹ Notice of Proposed Emergency Action; (July 6, 2021). All statutory references hereafter to the Code of Regulations refer to the Proposed Regulations unless indicated otherwise.

² SDG&E is electronically submitting these comments to the OEIS in the manner instructed by OEIS in its Notice of Proposed Emergency Action.

risk of catastrophic wildfires. While SDG&E understands OEIS's need for information and data to support wildfire safety, the creation of overly broad and administratively burdensome reporting – with insufficient time to prepare such reports – will have the perverse result of potentially diminishing wildfire mitigation efforts when the focus should be on the safe operation of infrastructure. SDG&E respectfully recommends that the Proposed Regulations be amended to provide greater clarity regarding reporting requirements and reflect the varying nature of fire investigations. SDG&E recommends that the OEIS's processes and procedures focus on accurate reporting and acknowledge the roles of the many state and local fire and utility personnel that are involved in ignition and wildfire investigations. OEIS should permit state, local, and utility personnel to focus on safety first with reporting after a reasonable investigative period that allows for preservation of applicable legal and constitutional rights.

II. Confidential Information Processes Should Follow Existing CPUC Practices and Procedures

A. Proposed Section 29200 Creates an Overly Burdensome Process for Asserting and Determining Confidentiality That May Delay Stakeholder Input

The CPUC has long-established practices and procedures for submitting and handling confidential information. The Commission addressed the process for claims of confidentiality in General Order (G.O.) No. 66-D and CPUC Decision (D) 06-06-066. To maintain consistency in the process of providing information to its regulatory bodies, SDG&E recommends that OEIS amend the proposed confidentiality processes to reflect the process that occurs at the CPUC. As currently drafted, the proposed process in Chapter 3 of the Proposed Regulations regarding applications for confidentiality is overly burdensome. While OEIS has oversight over the electrical corporations' wildfire safety efforts, many of the materials requested by OEIS will have significant overlap with information provided to the CPUC which may also correspond with materials provided in CPUC proceedings. If adopted, Chapter 3 of the Proposed Regulations will result in parties being required to submit two different confidentiality declarations to meet the differing requirements of both OEIS and the CPUC.

Moreover, these two confidentiality processes may result in inconsistent conclusions regarding confidentiality, differing processes of review, and administratively burdensome delays. As successor to the WSD, OEIS will assume oversight over the electrical corporations' WMPs and many other matters related to wildfire mitigation. And undoubtedly the WMP process will continue to involve significant data requests to facilitate input from interested stakeholders. Because of the condensed timeframe for consideration of the electrical corporations' WMPs and the expedited data request process, an overly burdensome and time-consuming confidentiality process will likely complicate and delay consideration of and discourse regarding the WMPs and other wildfire mitigation efforts. For instance, the requirement that the Deputy Director issue a

written decision within 30 days of an application for confidentiality,³ with additional time for reconsideration of decisions by the Director,⁴ leaves private parties in limbo with respect to the disclosure of their confidential information in response to data requests and other disclosures. To eliminate this inconsistent, burdensome, and time-consuming process, SDG&E recommends that OEIS adopt confidentiality regulations and guidelines that mirror the existing processes at the CPUC created by G.O. 66-D and Decision (D.)06-06-066. Namely, these processes create an initial presumption of confidentiality for information properly submitted by the party seeking confidential treatment. And upon a California Public Records Act request for information or in other relevant contexts the Commission’s Legal Division reviews the applicant’s confidentiality request to determine if it is lawfully based, with a process for appeal or reconsideration of that determination.⁵ The process established in G.O. 66-D balances the public’s interest in disclosure of records and information with the need for a streamlined process to protect confidential and sensitive information—including critical infrastructure information— while maintaining efficiency and timeliness for all parties. OEIS should revise the confidentiality process as proposed to better reflect a process consistent with the CPUC.

B. Section 29201 of the Proposed Regulations Should Be Revised to Include Notification to the Party Who Provided the Information

SDG&E understands the need for OEIS to share and disclose confidential information with its employees, representatives, contractors, or consultants, in addition to other government agency partners who require access to the records. This process will promote collaboration and hopefully reduce duplicative data requests. In order for parties to better understand who is in possession of confidential information, however, SDG&E requests that the Proposed Regulations add a requirement in Section 29201 that OEIS notify the party who provided the confidential information that its records have been disclosed and identify the party or parties who have received the information.

III. Investigation and Compliance Regulations Should Be Clear and Subject to Constitutional and Legal Rights and Privileges

A. OEIS Should Clarify Notification Requirements to Avoid Burdensome and Unnecessary Reporting

SDG&E respectfully recommends that the procedures regarding notification in Section 29300 of the Proposed Regulations be updated to clearly define the type of “wildfire threat to electrical infrastructure” that requires notification to OEIS. To avoid the potential for unnecessary over-

³ Proposed 14 CCR §29200(c).

⁴ Proposed 14 CCR §29200(c)(2).

⁵ G.O. 66-D at Section 5.5.

reporting, notifications should be limited to threats from a large or catastrophic wildfire. Depending on the circumstances, nearly every ignition—and even certain weather events—pose a potential “wildfire threat” to electrical infrastructure. So far in 2021, CAL FIRE has responded to 4,599 incidents identified as wildfires statewide; and in SDG&E’s service territory there have been an average of 70 vegetation/wildland fire dispatches per week. All these dispatches have the potential to impact utility equipment. To the extent that OEIS intends for electrical corporations to report on each of these events, it would create an overly burdensome process of reporting that would ultimately distract from the joint focus of mitigating the threat of catastrophic wildfires caused by or related to electrical infrastructure and equipment. Moreover, this level of notification is simply not necessary to meet the OEIS’s key objectives. To reduce the risk of over-notification, SDG&E recommends that the Proposed Regulations be clarified to define “wildfire threat” consistent with the definition of a large fire applied by the National Wildfire Coordination Group and the United States Forest Service.⁶ These groups and SDG&E generally define the term “wildfire” to mean a fire burning more than 300 acres.

Additionally, in order to provide OEIS the most accurate and relevant information regarding investigations of ignitions potentially caused by electrical equipment or infrastructure, the timeframe for such notifications should be extended from 24 hours to 72 hours.⁷ A 72-hour notification window allows the dual purpose of ensuring timely and accurate notification to OEIS while allowing electrical corporation personnel to support the incident objectives of the first responder agencies in the initial stages of a wildfire incident. SDG&E personnel need to be able to focus their attention on the safe operation and potential restoration of infrastructure and the pressure of immediate short-term reporting may inhibit SDG&E’s ability to ensure the safety of its electrical equipment and cooperate with first responders. Moreover, allowing 72 hours for an initial investigation to occur will eliminate excessive reporting of ignitions where electrical equipment is quickly ruled out as the cause of an ignition.

B. The Proposed Incident Reporting Requirements Should be Limited to Matters Within OEIS’ Statutory Authority and are Duplicative of the CPUC’s Incident Reporting Regulations

Section 29301 of the Proposed Regulations establish incident reporting requirements in the “event that an ignition may have been started by the infrastructure owned and operated by a

⁶ These agencies define “Large Fire” as “1) For statistical purposes, a fire burning more than a specified area of land e.g., 300 acres. 2) A fire burning with a size and intensity such that its behavior is determined by interaction between its own convection column and weather conditions above the surface.” *See*, <https://www.fs.fed.us/nwacfire/home/terminology.html#W> and <https://www.nwccg.gov/term/glossary/large-fire>.

⁷ Proposed 14 CCR §23000.

regulated entity.” While incident reporting on ignitions potentially caused by electrical infrastructure is reasonable, the Proposed Regulations are overly broad in scope and potentially infringe on the legal and constitutional rights of those involved. First, the language of the Proposed Regulations is unclear regarding the level of certainty required to rise to an incident report. In some instances, while its unlikely that a fire has been caused by electrical equipment, fire investigators and relevant agencies may not have ruled out electrical infrastructure as potential cause of an ignition. As discussed below, the proposed 30-day timeframe may not allow for a thorough investigation by fire agencies to determine the cause of an ignition. To that end, SDG&E recommends that the Proposed Regulations be changed to reflect that an incident report is required if electrical infrastructure has been identified as or is the significantly suspected cause of an ignition. This modification would eliminate the need for incident reports for ignitions where electrical equipment is not suspected as the cause of an ignition but has not yet been ruled out.

Additionally, as noted above, requiring an incident report for all ignitions is overly broad and will result in unnecessary and cumbersome reporting. SDG&E recommends that OEIS adopt reporting requirements for incidents deemed “reportable” by the CPUC in Decision (D.)06-04-055. Notably, the CPUC elected to allow the electrical corporations to stop reporting all vegetation-related incidents, including small incident fires with no associated property damage.⁸ SDG&E requests that the Proposed Regulations be changed to allow electrical corporations to send a copy of incident reports submitted to the CPUC consistent with D.06-04-055 and Resolution E-4184. This eliminates a duplicative and repetitive process and ensures all stakeholders are privy to the same information. Like the CPUC, OEIS will retain the authority to investigate any ignition, while eliminating the potentially “wasteful” use of OEIS and utility resources necessary to report each and every minor ignition.⁹

With respect to the content of ignition reports, SDG&E recommends that OEIS amend the Proposed Regulations to clarify that they remain consistent with all applicable law, including the electrical corporations’ and individuals’ rights and privileges under the United States and California Constitutions as well as available privileges. Further, some of the proposed requirements may inadvertently infringe on other investigations being performed by CAL FIRE and other fire agencies. For instance, SDG&E is willing to provide factual or physical evidence

⁸ D.06-04-055 at 6-7.

⁹ Id. at 7 (“Moreover, we agree that reporting relatively minor vegetation-related incidents are unnecessarily wasteful of utility and Commission staff and resources. Since the Commission will continue to receive reports of significant vegetation incidents under the remaining criteria and since the Commission retains authority to investigate any utility accident, the requested relief is sensible and is supported by our Energy Division staff.”)

related to the incidents,¹⁰ but can only provide the evidence known to SDG&E or in its possession. While electrical corporations may be actively involved in fire investigations, much of the information sought in the incident reports is the purview of CAL FIRE and other applicable investigative agencies. Because of the nature of fire investigations, SDG&E can attempt to, but may not be able to accurately identify whether a person or entity has taken possession of any physical evidence removed from the site of the incident.¹¹ To the extent that information is known to SDG&E, SDG&E can provide it, subject to any privacy limitations for private individuals. Similarly, SDG&E is limited in its ability to provide the names and contact information of known witnesses.¹² SDG&E can provide the names of SDG&E employees and personnel and a method of contacting those individuals, but to the extent witnesses are private individuals, they may not be known to SDGE. Moreover, SDG&E has significant privacy concerns regarding sharing the personal information of private citizens in incident reports, given that they are likely to be shared with the public. The Proposed Regulations should be modified to reflect the limitations imposed on electrical corporations and the aforementioned privacy concerns.

The incident report requirements, including the proposed “preliminary root cause analysis, including detailed discussion of all findings”¹³ and the obligation to identify “all documents related to the incident,”¹⁴ are also in conflict with OEIS’s proposed 30-day timeframe for reports. It may be possible to prepare a preliminary root cause analysis within 30 days of an event, however for many if not most events such an analysis would be incomplete due to the short turnaround. And if a preliminary root cause analysis cannot be completed, it is correspondingly impossible to describe the actions taken to minimize the recurrence of such events.¹⁵ Additionally, depending on the nature of the incident, there may be thousands of related documents, if not more. Imposing these short-term incident reporting requirements on the electrical corporations will distract from the near-term goal of investigating the incident and ensuring safe operations. The requirement to identify documents should be removed, as OEIS can request and obtain documents related to the incident after submission of the initial incident report, pursuant to its existing authority.

Moreover, the 30-day incident notification required by OEIS would be duplicative with many of the requirements for incident notification at the CPUC, resulting in a focus on overreporting rather than adequate investigation and ensuring safe service. Ignitions should be investigated and

¹⁰ Proposed 14 CCR §29301(b)(1).

¹¹ Proposed 14 CCR §29301(b)(5).

¹² Proposed 14 CCR §29301(b)(2).

¹³ Proposed 14 CCR §29301(b)(3).

¹⁴ Proposed 14 CCR §29301(b)(6).

¹⁵ Proposed 14 CCR §29301(b)(4).

reported in a way that ensures thoroughness and accuracy, and a rushed turnaround does not benefit anyone and could lead to false initial conclusions. To that end, SDG&E recommends that OEIS require incident reports that parallel those already required by the CPUC. Specifically, the CPUC's reports are required within 20 business days and are required to include "a detailed description of the nature of the incident, its cause and estimated damage."¹⁶ The CPUC incident reports require much of the same information included in the Proposed Regulations, but on a more preliminary basis.¹⁷ As SDG&E and other relevant stakeholders continue their investigations, SDG&E can then continue to update OEIS through ongoing reports as requested.

Finally, OEIS has broad authority to request documents and inspections of electrical corporations' infrastructure and equipment. That authority, however, is not unchecked by applicable law and privileges. SDG&E requests that the Proposed Regulations clarify that the requirements of Section 29301 are subject to all applicable law and privilege, including the attorney client privilege.

The incident reporting requirements also obligate electrical corporations to preserve documents or evidence related to incident investigations for at least five years. Given the breadth of the incident reporting requirements as currently drafted, this potentially obligates electrical corporations to maintain significant amounts of documents and evidence—many of which will likely be related to incidental ignitions. SDG&E requests that OEIS allow the Director, upon written request from the entity filing the incident report, to authorize the electrical corporation to dispose of the evidence within the five-year period.

IV. OEIS's Investigative and Enforcement Authority Remains Limited to its Jurisdiction

SDG&E generally does not take issue with the Proposed Regulations regarding "Investigations, Notices of Defects and Violations, and Referral to the Commission." But the proposed authority to conduct "other related investigations requested by the Director"¹⁸ should, like other sections of the Proposed Regulations, be clearly limited to matters within the jurisdiction and authority of the Office.¹⁹ As successor to the Wildfire Safety Division, OEIS is tasked with oversight and enforcement of "electrical corporations' compliance with wildfire safety pursuant to Chapter 6 [of the Public Utilities Code]," and other efforts to mitigate the risk of utility-caused catastrophic wildfires.²⁰ As OEIS solidifies its separation from the CPUC and status as a new agency under

¹⁶ D.06-04-055 at Appendix B.

¹⁷ *Id.*

¹⁸ Proposed 14 CCR §29302(a)(4).

¹⁹ *See* Proposed 14 CCR §29302(a)(3), stating that compliance investigations are limited to matters "within the authority of the Office."

²⁰ Pub. Util. Code §326.

Office of Energy Infrastructure Safety
Office of Administrative Law
July 30, 2021
Page 8

the Department of Natural Resources, it remains important to distinguish its jurisdiction over wildfire safety efforts from other matters under the jurisdiction of the CPUC. This will avoid duplicative efforts and investigations. To that end, SDG&E recommends adding that the Director's authority to request authorizations is also "subject to the authority and jurisdiction of the Office."

V. Conclusion

SDG&E appreciates the Office of Energy Infrastructure Safety's efforts to provide a clear regulatory process with procedures generally consistent with the existing practices and procedures at the California Public Utilities Commission. SDG&E respectfully encourages OEIS to consider the recommendations contained herein to clarify the proposed processes, avoid confusion, and prioritize safety and wildfire prevention in a streamlined regulatory process.

Respectfully submitted,

/s/ Laura M. Fulton

Laura M. Fulton

Attorney for:

San Diego Gas & Electric Company

cc: R.18-10-007 Service List