STATE OF CALIFORNIA

OFFICE OF ENERGY INFRASTRUCTURE SAFETY

ADOPTION OF EMERGENCY RULEMAKING ACTION

PROCESS AND PROCEDURE REGULATIONS

NOTICE OF PROPOSED EMERGENCY ACTION

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of a proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

The Office of Energy Infrastructure Safety (OEIS) intends to submit this proposed emergency rulemaking action for review on **September 3, 2021**. Upon submission, OAL will have 10 calendar days within which to review and decide on the proposed emergency rulemaking action. If approved, OAL will file the regulations with the Secretary of State, and the regulations will become effective for 180 days.

The submitted emergency action, including the specific language of the proposed emergency regulations, will appear on the list of "Emergency Regulations Under Review" on OAL's website at oal.ca.gov/emergency_regulations/emergency_regulations_under_review and is included with this notice.

Comments must be submitted in writing to both OEIS and OAL:

For OEIS:

comments should be e-filed in the 2021 Emergency Rulemaking Docket at https://efiling.energysafety.ca.gov/EFiling/DocketInformation.aspx?docketnumber=2021-RM.

For e-filing questions, contact efiling@energysafety.ca.gov.

In the alternative, comments can be mailed or emailed to:
Office of Energy Infrastructure Safety
300 Capitol Mall, Suite 500
Sacramento, CA 95814
Email: info@energysafety.ca.gov

For OAL:

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
Fax: (916) 323-6826
Email: staff@oal.ca.gov

FINDING OF EMERGENCY

On July 1, 2021, the Wildfire Safety Division (WSD) of the California Public Utilities Commission (CPUC) will become the newly created the Office of Energy Infrastructure Safety (OEIS) within the California Natural Resources Agency (CNRA) (Assembly Bill 111, Chapter 81, Statutes of 2019). To facilitate the transition from the CPUC to CNRA and ensure that the OEIS is able to continue to take actions to reduce electrical utility-related wildfire risk, the Legislature enacted and the Governor signed Assembly Bill 148, which amended Part 7.3 (commencing with Section 15470) to Division 3 of Title 2 of the Government Code. Recognizing the need for specific process and procedures to ensure compliance with electrical utilities' Wildfire Mitigation Plans following WSD's transition to the OEIS, the Legislature enacted Government Code sections 15473(c)(2)(v) and 15475(a) authorizing the OEIS to adopt, amend, or repeal emergency regulations to implement the powers, duties, and responsibilities vested in the OEIS by statute. Further, the Legislature acknowledge and confirmed that the adoption, amendment, or repeal of these regulations by the OEIS shall be deemed to be an emergency as specified by Government Code section 11342.545 and shall be considered by OAL as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Therefore, by statute, these proposed regulations are deemed an emergency and the OEIS may utilize emergency rulemaking procedures.

AUTHORITY

Government Code sections 15473 and 15475.

REFERENCE

Government Code sections 15472, 15473, 15475, 15475.1, 15475.2, 15475.3, 15475.4, 15475.5,15475.6, 15476

INFORMATIVE DIGEST

Under Assembly Bill 111, which added the California Energy Infrastructure Safety Act (Government Code sections 15470-15476), the Legislature acknowledged that the state has long recognized the critical nature of its energy and communication infrastructure, in its importance in driving the engine of the state's prosperity, in the hardships placed on the state's residents in the absence of the services the infrastructure provides, and in the devastation that can occur when the operators of the infrastructure lose operational control of the infrastructure. To ensure that the operations of energy and communication infrastructure within the state will be managed adequately, the Legislature created the OEIS.

The OEIS is the successor to, and, effective July 1, 2021, is vested with, all of the duties, powers, and responsibilities of the Wildfire Safety Division established pursuant to Public Utilities Code section 326, including, but not limited to, the power to compel information and conduct investigations. The OEIS will be housed within CNRA starting July 1, 2021. The mission of the OEIS 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.

The OEIS 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.

In order for the OEIS to be ready to perform its vital work as a new office within CNRA shortly after July 1, 2021, OEIS will need regulations that establish a process and procedures, effective immediately, that will form the structure of its operations in meeting its statutory mandates. Such process and procedures include the following categories: Construction of Provisions, General Provisions, Data Access and Confidentiality, and Investigation and Compliance.

The proposed emergency regulations will 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. The proposed emergency regulations will allow the OEIS to smoothly transition from its successor entity within the CPUC to its new office and to meet the challenges of mitigating wildfire threats from the state's electric infrastructure.

Existing laws and regulations directly related to the proposed action include the following:

Government Code section 15470 sets forth the legislative findings regarding the importance of energy infrastructure and the need for the OEIS to support the state's efforts to ensure the operations of energy infrastructure will be managed adequately. The emergency regulations implement the legislative findings.

Government Code section 15472 defines key terms related to the OEIS including *Director*, *Office* and *Regulated Entity*. These terms are use in the regulations consistent with the statutory definitions.

Government Code sections 15473 empowers the Director to exercise the powers and discharge the duties conferred or imposed by the statutory provisions, including, but not limited to: employing and prescribing the duties of staff and managing proceedings. The emergency regulations in Chapters 2, 3, and 4, implement these powers by specifying the duties of the Director, Deputy Director, and Investigators.

Government Code sections 15475-15475.5 detail the authority of the OEIS to obtain confidential data from regulated entities, investigate incidents, issue notices of defects and notices of violations. The emergency regulations in Chapters 3 and 4, detail the process and procedures to implement these statutory provisions.

Without the emergency regulations in effect, the regulated community and the public will have uncertainty on the process and procedures of the OEIS which may interrupt the ongoing evaluation of 2021 Wildfire Mitigation Plans, Safety Culture Assessments, and Safety Certifications. Other critical work of the OEIS in preparation for the late summer fire season may also be delayed, especially investigations of defects and other compliance matters. The OEIS' work also includes meeting Government Code section 15470(a)(2) which requires the coordination of functions among state entities with jurisdiction over energy service providers. The OEIS needs to be in a position as soon as possible after July 1, 2021, to coordinate with other agencies addressing the threats and impacts of wildfires on energy infrastructure.

Because OEIS is a new office, there are no existing regulations related directly to the proposed emergency rulemaking or in conflict with the proposed emergency rulemaking. Government Code sections 15470-15476 set forth the powers and duties of the OEIS and these proposed emergency regulations implement these statutory provisions but do not conflict with them. The proposed emergency regulations do not conflict with any federal requirements and the OEIS anticipates collaborating with relevant federal agencies to ensure the safety and functionality of California's electric infrastructure.

Because this is a new office, the regulations are proposed to be housed in a new division 17 contained within Title 14, of the California Code of Regulations.

OTHER MATTERS PRESCRIBED BY STATUTE

Besides Government Code sections 15470-15476, other bodies of law that govern the OEIS include, but are not limited to, the Public Utilities Code sections 326, 8385-8386.5, and 8389. As to civil administrative hearings generally, these regulations are also prescribed in part by the hearing provisions of the Administrative Procedure Act, Government Code section 11400 et seq.

LOCAL MANDATE DETERMINATION

The OEIS has determined that the proposed changes do not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

The OEIS does not anticipate any costs to state agencies as a result of this emergency rulemaking action. The proposed emergency regulations create process and procedure requirements to ensure compliance with electrical utilities' Wildfire Mitigation Plans and implement other powers, duties, and responsibilities set forth in statute. The costs associated with the creation of the OEIS and implementing its statutory duties will be funded by a Budget Change Proposal to provide the resources for the transition from the WSD's under the CPUC to the new independent OEIS under CNRA.

The proposed regulations will not result in any reimbursable costs to local government agencies, school districts, nondiscretionary costs or savings to local government agencies, or costs or savings in federal funding to the state.

NECESSITY

The following description of facts demonstrates the need for the proposed regulations to effectuate the provisions of the Government Code being implemented, interpreted, or made specific and to address the demonstrated emergency. The emergency regulations support and effectuate the Legislature's stated purpose of ensuring public health and safety benefits through the creation and authority of the OEIS and having a coordinated approach to support energy infrastructure safety. As set forth in Government Code section 15470(a):

> *The state has long recognized the critical nature of its energy and communication infrastructure, in its importance in driving the engine of the state's prosperity, in the hardships placed on the state's residents in the absence of the services the infrastructure provides, and in the devastation that can occur when the operators of the infrastructure lose operational control of the infrastructure. To ensure that the operations of energy and communication infrastructure within the state will be managed adequately, the Legislature finds and declares all of the following are necessary:*

(1) To provide for a state office to be known and referred to as the Office of Energy Infrastructure Safety, within the Natural Resources Agency, and to prescribe the powers and duties of the director of that office.

(2) To provide for the coordination of functions among state entities with jurisdiction over other functions of the state's energy and communication service providers.

(3) To authorize the establishment of such organizations and the taking of such actions as are necessary and proper to carry out the provisions of this part.

(b) It is further declared to be the purpose of this part and the policy of this state that all environmental, health, and safety functions of this state shall be coordinated as far as possible with the comparable functions of its political subdivisions, of the federal government, including its various departments and agencies, of other states, and of private agencies of every type, to the end that the most effective use may be made of all manpower, resources, and facilities in managing the environmental, health, and safety of energy and communication infrastructure in the state.

California Code of Regulations, Title 14, Division 17

Chapter 1. Rules of Practice and Procedure

Article 1. General Provisions

Section 29000. Service on the Office. This section provides necessary information on how service of process can be made on the OEIS and who service can be made on. This information is essential for the public to interact with the OEIS in the context of civil proceedings. The language identifies the officials within the OEIS appropriate to receive served documents such as subpoenas, ensuring that the documents are acted on. The language selected is modeled from other agency regulatory language previously approved by OAL. (See California Code of Regulations, Title 20, section 1002.)

Section 29001. Deputy Director. Government Code section 15473 provides authority for the Governor to appoint a Deputy Director. The regulatory language clarifies that the Director can delegate duties to the Deputy Director. The language is necessary to establish the role of the deputy and relationship between the Director and Deputy Director as this new office is created within CNRA.

Article 2. Proceedings

Section 29100. Submission of Documents for Filing. This section establishes how documents are submitted to the OEIS. Regulated entities will be filing technical data, reports, wildfire mitigation plans, incident reports and other documents so that the OEIS can perform its work. Such filings will need to occur soon after the OEIS is established within CNRA. Thus, the need for emergency regulatory language covering the filing of documents. The language is necessary to set forth clear process for

stakeholders to submit documents to the OEIS and to establish robust document management by consolidating the flow of documents to one responsible unit within the OEIS and reducing the incidences of documents the OEIS needs to act on being misdirected. The section also includes important clarity as to when a document is considered filed for the purpose of meeting deadlines and the responsibility of the filer to ensure deadlines are met. The language selected is modeled from other agency regulatory language previously approved by OAL. (See California Code of Regulations, Title 20, section 1208.)

Section 29101. Format, Content, and Other Required Characteristics of Filed Documents; Electronic Signatures. This section sets up a digital centric means to submit documents to the OEIS and ensures that the documents filed are in common formats that are compatible with both the OEIS's system and generates documents that are viewable by the public through use of commonly available software or applications. In addition, documents need to be accessible to those with visual impairments, which can be ensured through the use of commonly available software. Requiring standard formats will support public transparency and consistency with the California Public Records Act. Because filings will need to occur soon after the OEIS is established within CNRA, emergency regulatory language covering the format and other characteristics of documents is essential.

It is expected that most documents filed with the OEIS will be through electronic means, therefore, language addressing the signing of documents is necessary. To promote consistency with other agencies and to take advantage of the efficiencies and resource savings of all electronic filings, the language provides for a number of methods for documents to be signed without the need to print out the document and apply a signature. Because signed filings will need to occur soon after the OEIS is established within CNRA, emergency regulatory language covering signatures is necessary.

Overall, the language will ensure the public and stakeholders can easily communicate and submit materials to the OEIS and that internal processes are adaptable to technology changes. To accommodate those who wish to submit paper documents, language is necessary to ensure documents are legible and in a format that can be digitized by the OEIS for public posting if necessary. The language selected is modeled from other agency regulatory language previously approved by OAL. (See California Code of Regulations, Title 20, section 1208.1.)

Section 29102. Authority of the Director to Manage Proceedings. Government Code sections 15473 and 11180-11189 establish the powers of the Director. This emergency regulatory section provides a single location for the public and regulated community to understand the authority of the Director in managing the conduct of any proceeding within the OEIS. When the existing Wildfire Safety Division at the CPUC transitions to the OEIS at CNRA there may be existing ongoing proceedings that the

OEIS will be charged with continuing shortly after beginning as a new office. Thus, the need for emergency regulatory language covering the authority of the Director to manage these proceedings. As set forth in Government Code section 15473(c)(2) the Director has the authority to do other acts and things as may be necessary and incidental to the exercise of powers and the discharge of duties conferred or imposed by the provisions of the statute. This authority by necessity includes the ability to manage proceedings and for good cause, change the time periods to comply with the provisions of the regulations. The language selected is modeled from other agency regulatory language previously approved by OAL. (See California Code of Regulations, Title 20, section 1203.)

Section 29103. Notice of Public Events. This section establishes the minimum process for how the OEIS notices public events, so that consistency is ensured, confusion avoided, and one single rule appears in one place. The language provides the public and stakeholders with details on how notice is publicized so that those interested in participating in the OEIS public events can ensure they will receive notification. Because the OEIS may be carrying forth proceedings started by its predecessor at the CPUC, the OEIS may need to notice public events shortly after being established within CNRA. Thus, the need for emergency regulatory language covering how public events are noticed. The language selected is modeled from other agency regulatory language previously approved by OAL. (See California Code of Regulations, Title 20, section 1209.)

Article 3. Data Collection, Data Access and Confidentiality

Section 29200. Confidential Information. For OEIS to perform its work significant amounts of data and information will be submitted by various utilities. Some of this information may be considered confidential by the submitter. This section of the regulations is necessary to set forth the process and procedures for entities to request that submitted data be considered confidential by the OEIS. The language sets up a streamlined application process allowing the submitter to provide essential information regarding the data, how long the information should remain confidential, the basis for confidentiality and whether it can be aggregated. Because utilities may need to submit potentially confidential documents to the OEIS soon after the OEIS is established within CNRA, emergency regulatory language covering the confidentiality process is necessary to ensure OEIS staff can perform its energy infrastructure safety work.

Because OEIS will be provided with utility infrastructure information, some of the data may have federal designations of critical energy infrastructure information (CEII), which would provide a basis for confidentiality. To properly assess if this is the case, the emergency regulatory language identifies specific information required to ensure that the submitter provides adequate support for any submission based on CEII. The information being requested related to CEII is derived from Decision 20-08-031 of the

California Public Utilities Commission in the rulemaking proceeding 14-11-001 titled, *PHASE 2B DECISION ADOPTING BASELINE SHOWINGS NECESSARY TO QUALIFY FOR CONSIDERATION OF CONFIDENTIAL TREATMENT.* Thus, it is expected that utilities subject to the CPUC will already be aware of and familiar with these categories.

Subsection (b) is necessary to inform a submitter that if a submission is incomplete, it is the responsibility of the submitter to ensure additional information is provided.

Subsection (c) sets forth the approval process and is necessary to provide the regulated community with clear rules of how an application is assessed and what the process is for requesting a review of a decision not to grant confidentiality. The regulations set up a one-step review process in which the Deputy Director's decision denying an application can be reviewed by the Director. This process allows for efficient resolution of disputes and provides an opportunity for a second look to determine the merits of an application. Because utilities may need to submit potentially confidential documents to the OEIS soon after the OEIS is established within CNRA, emergency regulatory language covering the confidentiality review process is necessary to ensure procedures are in place for submitters to request review of the Deputy Director's decision.

Subsection (d) provides a streamlined process for designating submitted information that is substantially similar to data that has already been designated as confidential. Under the repeated application process, a new application is not necessary. This language is necessary to provide a mechanism for the OEIS to designate data as confidential that routinely is submitted without the need for a full application and internal review process. The language provides submitters with a clear process to take advantage of repeated submissions. Because OEIS is a successor to the Wildfire Safety Division, utilities may need to submit previously designated confidential data to the OEIS soon after the OEIS is established within CNRA. This emergency regulatory language covering repeated applications allows submitters to take advantage of the streamlined process and implements the goal of a seamless transition between the CPUC and CNRA as set forth in Government Code section 15475.

Subsection (e) is necessary to implement Government Code section 15470(a)(2) and the legislature's directive that agencies with jurisdiction over functions of the state's energy service providers coordinate their efforts. The emergency regulatory language provides for a streamlined approach for the OEIS to automatically designate confidential data received from another governmental entity as confidential. Because other agencies with jurisdiction over energy service providers may have critical information that the OEIS will need to perform its work soon after the OEIS is established within CNRA, emergency regulatory language covering the process for receiving confidential data from other governmental agencies is necessary to ensure efficient data exchange and robust coordination.

The language selected is modeled from other agency regulatory language previously approved by OAL. (See California Code of Regulations, Title 20, section 2505.)

Section 29201. Disclosure of Confidential Information. The regulatory language in this section is necessary to qualify the extent of confidentiality. While a designation of confidentiality ensures data is not public, this section sets forth who will still have access to confidential information. Staff and consultants of the OEIS will need access to perform agency work. This subsection is necessary to implement Government Code section 15470(a)(2) and the legislature's directive that agencies with jurisdiction over functions of the state's energy service providers coordinate their efforts. The emergency regulatory language provides for a preauthorization for OEIS to share confidential data with identified agencies. Because the California Energy Commission and California Public Utilities Commission perform critical state work related to energy generation, transmission and storage and reliability, it is necessary to set forth the ability to share confidential information relevant to the work of those agencies. For the OEIS to efficiently share confidential data so that staff from the OEIS can immediately work collaboratively with expert consultants and other energy agencies, emergency regulatory language allowing for the sharing of confidential data is necessary.

In addition, the Public Resources Code section 25216.5 designates the California Energy Commission as the central repository within state government for the collection of data and information on energy supply, public safety and other related subject. Public Resources Code section 25224 directs the California Energy Commission and other state agencies to the fullest extent possible exchange records, reports, materials and other information related to energy resources and power facilities and other areas of mutual concern. Including language regarding information sharing helps the relevant agencies meet the statutory directives, and support the need to prepare for wildfire events and immediate summary reliability issues.

The language selected is modeled from other agency regulatory language previously approved by OAL. (See California Code of Regulations, Title 20, section 2507.)

Chapter 2. Investigation and Compliance

Article 1. Reporting, Investigation, Violations

Section 29300 Notification. The OEIS is tasked with ensuring that electrical utilities are taking effective actions to reduce utility-related wildfire risk. For the OEIS to track and understand threats to the energy infrastructure real time reporting, by regulated entities, of these threats is necessary for the OEIS to perform its work. Subsection (a) covers the notification within 12 hours of a wildfire that threatens equipment and is also subject to fire fighting efforts. This second metric provides a level of clarity to the utility that notification under this provision is for fires that require deployment of

firefighters. The emergency regulatory language is necessary to ensure the OEIS is made aware of threats to energy infrastructure in a timely matter by utilities, who have early knowledge of pending wildfire threats, due to deployed monitoring equipment. By having early warnings of wildfires approaching energy infrastructure, the OEIS can coordinate with other agencies from a position of knowledge to minimize impacts to the people of California. 12 hours was chosen as a reasonable time for such critical notification given modern connectivity, use of remote sensors and ease of data transmission.

Subsection (b) covers notification when a utility receives notice of being investigated by another governmental authority. This notice is critical to ensure that the OEIS is aware of the investigation so that appropriate coordination with the investigating agency can commence.

Section 29301(a). Incident Report. The OEIS is tasked with ensuring that electrical utilities are taking effective actions to reduce utility-related wildfire risk. For the OEIS to determine the circumstances in which energy infrastructure may have started a wildfire, the OEIS must be provided with the details of the incident. The emergency regulatory language is necessary to implement the OEIS' authority to request and receive facts surrounding any incident so appropriate enforcement actions may be initiated and future fires prevented. Because a transmission line induced fire could happen at any time, it is essential that the incident reporting regulations be in place soon after the OEIS starts operating.

Subsection (b) sets forth specific sets of information a utility will need to provide to the OEIS so an assessment of the incident can be made, and further investigation can be commenced as appropriate. The information is necessary to provide utilities with the expected level of information needed by the OEIS to perform its work.

Subsection (c) is necessary because investigating the role of energy infrastructure in a wildfire is complex and may take some time. It is necessary to ensure that relevant documents are preserved and available to the OEIS while investigating and incident.

Section 29302(a). Notices of Defects Violations, and Referral to the Commission. Subsection (a) implements the role of the investigator to assess energy infrastructure fire events which is necessary for the OEIS to meet its mandate of addressing energy infrastructure safety and reducing infrastructure induced wildfires. The details set forth in subsection (a) provide the basis for any compliance action initiated by the OEIS.

Subsection (b) sets forth the role of the compliance officer who, after reviewing the results of the investigation, determines the appropriate enforcement action. Government Code section 15475.4 provides for the authority of the Director to designate a compliance officer. The emergency regulations identify the duties of the compliance officer to issue a notice of defects and violations. Because a transmission line induced fire could happen at any time, it is essential that the enforcement authority and process is clearly set out and in place soon after the OEIS begins operating.

Government Code section 15475.4 identifies types of enforcement actions a compliance officer may issue. Options include a notice of defect and notice of violation reflecting different levels of culpability based on case specific facts. To ensure that regulated entities understand the potential types of enforcement actions, the emergency regulatory language is necessary to set forth a description of each. It is also necessary to have different types of enforcement mechanisms to correspond to case specific issues.

Subsection (c) is necessary to identify the information required in notices of violations so that the entity subject to these enforcement actions will understand the basis for the notice of violation. The language chosen ensures core information is provided such as the underlying facts of the incident triggering the enforcement and identified mitigation to address the violation.

Subsection (d) is necessary to inform a regulated entity that the Office may refer a violation to the California Public Utilities Commission for an enforcement action as authorized by Public Utilities Code section 8389(g).