

September 8, 2021

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SUBJECT: Office of Administrative Law File Number 2021-0903-01E

Southern California Edison Company's Comments on Proposed Emergency Process and Procedure Regulations Submitted with Proposed Emergency Rulemaking Action by the Office of Energy Infrastructure Safety to the Office of Administrative Law on September 3, 2021.

Dear Director Thomas Jacobs and Office of Administrative Law Reference Attorney:

Pursuant to California Government Code Section 11349.6(b) and 1 California Code of Regulations Section 55, Southern California Edison Company (SCE) hereby submits its comments on the Proposed Emergency Process and Procedure Regulations Noticed with the Proposed Emergency Rulemaking Action by the Office of Energy Infrastructure Safety (Energy Safety) to the Office of Administrative Law (OAL) on September 3, 2021. With the exception of proposed regulation Section 29300 "Notification" and a few other changes, the instant proposed regulations essentially mirror the July 26, 2021 version, which Energy Safety subsequently withdrew after SCE and others submitted comments but before the OAL issued a decision. SCE addresses the modifications to Energy Safety's initial proposed regulations in these comments and restates those comments that continue to apply.

INTRODUCTION

Energy Safety is a newly formed agency established under Government Code Section 15470, et seq. As Energy Safety points out, "[t]he Energy Safety 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.”¹

On July 26, 2021, Energy Safety provided notice with OAL of a Proposed Emergency Rulemaking Action with Proposed Process and Procedure Regulations. Subsequently, SCE, San Diego Gas & Electric Company (SDG&E), Pacific Gas and Electric Company (PG&E), and the Public Advocates Office timely filed comments within the 5-calendar-day public comment period for emergency rulemakings. On August 4, 2021, the day before OAL was due to issue a decision, Energy Safety withdrew its proposed regulations.

On September 3, 2021, Energy Safety noticed the instant Proposed Emergency Rulemaking Action with Proposed Emergency Process and Procedure Regulations with OAL. Most of Energy Safety’s proposed regulations remain the same as the previous, noticed and withdrawn versions. However, Energy Safety made some modifications, particularly to the Section 29300 Notification provision. SCE addresses these modifications below. To the extent Energy Safety has not changed its proposed regulations, SCE restates its previous comments.

For the most part, SCE continues to support the regulations Energy Safety proposes as the successor to WSD. That said, as with the previous versions, several of Energy Safety’s instant proposed regulations create issues regarding confidentiality designation, or developing new regulations that could cause confusion, unnecessary burden, duplication of effort, and potential jurisdictional issues. These issues would largely be resolved by continuing with existing CPUC or Commission requirements that have generally functioned well and are familiar to stakeholders rather than shifting to other regulatory models, e.g., State Energy Resources Conservation and Development Commission’s (California Energy Commission) model. Where indicated, the CPUC has in place reasonable, equally effective alternatives to the more burdensome regulations proposed by Energy Safety, but Energy Safety has not described these alternatives or explained why it has rejected them.² In such cases, the CPUC alternatives are

¹ Energy Safety Adoption of Emergency Rulemaking Action Process and Procedure Regulations, Notice of Proposed Emergency Action (Notice), p. 3. The Wildfire Safety Division (WSD), Energy Safety’s predecessor, was formed within the California Public Utilities Commission (CPUC or Commission) to “Oversee and enforce electrical corporations’ compliance with wildfire safety”, among other statutory roles. Cal. Pub. Util. Code Section 326.

² “Every agency subject to this chapter shall prepare, submit to the [Office of Administrative Law] with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:…An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement shall include, but not be limited to, all of the following: A description of reasonable alternatives to the regulation and the agency’s reasons for rejecting those alternatives. Reasonable alternatives to be considered include, but are not limited to, alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.” Government Code Section 11346.2(b)(4)(A).

established means of achieving substantially the same apparent objectives³ as the proposed regulations, and the CPUC alternatives are relatively clear and familiar to stakeholders. Although Energy Safety has authority to adopt emergency regulations under Government Code Section 15475,⁴ in the interim the rules or guidelines used by the WSD/CPUC (and familiar to stakeholders) remain in effect under Government Code Section 15474.6.⁵

In particular, SCE recommends modifications and/or clarifications to the Proposed Regulations below. Where noted, the Proposed Regulations as written appear to be in conflict with one or more of the California Administrative Procedure Act (APA)⁶ standards, e.g., inconsistent with statute (Government Code Section 11342.2); unclear (Government Code Section 11349(c)); duplicative; and/or unnecessary.

- Section 29200: Confidential Information
- Section 29201: Disclosure of Confidential Information
- Section 29300: Notification
- Section 29301: Incident Report

³ As noted below, however, the objective is not always clear based on the proposed regulations as written.

⁴ “The office shall adopt, amend, or repeal emergency regulations to implement this part in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). The adoption, amendment, or repeal of these regulations shall be deemed to be an emergency for the purpose of Section 11342.545 and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare.” Government Code Section 15475(a).

⁵ “The office shall adopt guidelines setting forth the requirements, format, timing, and any other matters required to exercise its powers, perform its duties, and meet its responsibilities described in Sections 326, 326.1, and 326.2 and Chapter 6 (commencing with Section 8385) of Division 4.1 of the Public Utilities Code at a publicly noticed meeting during which the office presents proposed guidelines or guideline amendments and allows all interested stakeholders and members of the public an opportunity to comment. Not less than 10 days' public notice shall be given of any meetings required by this section, before the office initially adopts guidelines. Substantive changes to the guidelines shall not be adopted without at least 30 days' written notice to the public and opportunity to comment. Any guidelines adopted pursuant to this section are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. Any duly adopted rules or guidelines in effect and utilized by the Wildfire Safety Division at the time of transition to the office shall remain valid and in effect as to the office pending the adoption of new or amended guidelines by the office pursuant to this section.” Government Code Section 15475.6.

⁶ Government Code Section 11340, et seq.

- Section 29302: Investigations, Notices of Defects and Violations and Referral to the Commission

In addition to providing comments on Energy Safety's proposed regulations, SCE requests that Energy Safety/OAL (1) hold a stakeholder workshop in advance of finalizing the regulations, and (2) provide an implementation period once the regulations are finalized to give the utilities sufficient time to develop protocols in compliance with the new regulations.

COMMENTS ON NOTICE AND PROPOSED REGULATIONS

1. Section 29200 Should Be Modified to Adopt CPUC Requirements Currently Used for Confidentiality Designations

Because Section 29200 contains nearly all of the same language as the previous version Energy Safety proposed, most of SCE's previous comments still apply. That said, SCE appreciates one modification that Energy Safety made, consistent with SCE's previous comments: Energy Safety removed the requirement that the applicant citing critical energy infrastructure information (CEII) as a basis for confidentiality state "whether the information would allow a bad actor to attack, compromise or incapacitate physically or electronically a facility providing critical utility service."⁷ SCE supports this modification because, as stated in SCE's previous comments, such a requirement would highlight how a bad actor could abuse the CEII, undermining the very purpose of a confidentiality process.

As a general matter, SCE stands by its proposal that Energy Safety continue to use the confidentiality designation requirements developed by the CPUC in CPUC Decisions 06-06-066 (energy procurement); 16-08-024; 17-09-023; and General Order 66-D, rather than modeling its regulatory language after 20 CCR Section 2505, "Designation of Confidential Records", the regulation used by the California Energy Commission. The CPUC's confidentiality designation requirements were developed over a series of rulemakings and reflect a considerable amount of stakeholder input and public process. Further, the CPUC's confidentiality declaration/matrix process is familiar to stakeholders in the context of the WMP and appears to have functioned well thus far through successive WMP processes. Given the potentially devastating consequences associated with inadvertent disclosure of sensitive information such as critical energy infrastructure information (CEII), it would be prudent to continue with a proven confidentiality designation process familiar to WMP stakeholders, especially in the context of a high volume of data requests with a relatively short response period.⁸

⁷ Section 29200(a)(6), Proposed Regulations, p. 4.

⁸ The Notice of Proposed Emergency Action posted on OAL's website on September 3, 2021 contains new language on pages 8-9 stating that "The information being requested related to CEII is derived

The requirement for Deputy Director (and possibly Director) review for every confidentiality request exacerbates these issues. Finally, it is unnecessarily burdensome to require two distinct processes for providing confidential material to the CPUC and Energy Safety.

In addition to this general concern, SCE restates the following specific issues with respect to Proposed Regulation Section 29200.

Section 29200(a)(7), which concerns aggregated information, is not contained either in 20 CCR Section 2505 or the CPUC's confidentiality requirements. It requires that the application "state whether the information [requested to be confidential] may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required. If the information cannot be disclosed even if aggregated or masked, the application shall justify why it cannot."⁹ SCE is not certain what this draft regulation is intended to accomplish. Energy Safety added the bracketed language to the previous version of this proposed regulation. Unfortunately, it does not clarify the issue regarding the intent of this provision that SCE restates here from SCE's previous comments. The proposed regulation could be intended to require that applicants explain why aggregation or masking of data is not an option because there is no way to aggregate or mask the data to make it non-confidential. Or it could be intended to provide confidentiality protection for information that, while in itself may not be confidential, in aggregate with other information raises confidentiality issues, e.g., separate documents with asset data that when read together show the criticality of the asset and potential impacts to the system if that asset were to be disabled. Both are sound objectives but as written the intent is unclear. SCE recommends that this provision be clarified accordingly.

Section 29200(b) provides "A deficient or incomplete application shall be returned to the applicant with a statement of its defects and a request for additional information. If the missing information, or a request for an extension of time to respond, is not submitted within fourteen days of receipt of the request, the Deputy Director may deny the application."¹⁰ This proposed regulation is a modification of 20 CCR Section

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." While this confirms that Energy Safety intends to recognize the substantive CEII categories approved by the CPUC, it does not resolve the process issues discussed herein.

⁹ Section 29200(a)(7), Proposed Regulations, p. 4.

¹⁰ Section 29200(b), Proposed Regulations, p. 5.

2505(a)(2),¹¹ which does not specifically state an application shall be denied if conditions are not met within the fourteen day period. The CPUC does not include such a provision. To avoid disclosure of confidential information in the event that the applicant does not receive timely notice from the Energy Safety or due to some other miscommunication, SCE requests that this proposed regulation be modified to require that the Deputy Director confirm receipt by the applicant of the returned application.

The Proposed Regulations do not include 20 CCR Section 2505(a)(6), which provides as follows: “Failure to request confidentiality at the time a record is submitted to the Commission does not waive the right to request confidentiality later; however, once a record has been released to the public, the record can no longer be deemed confidential. Although a record designated as confidential shall remain confidential during the application and appeal process, subject to the provisions of Section 2507(b) of this Article, the application itself is a public document and can be released.”¹² Notwithstanding whether the Energy Safety adopts the CPUC confidentiality designation approach, SCE proposes that this provision be adopted so that an applicant may preserve the right to designate material confidential prior to public disclosure.

a. The Regulations Should Provide for a “Closed Room” Approach to Temporarily Share “Security Sensitive” Confidential Information

In most instances, SCE anticipates providing sensitive utility information directly to Energy Safety, as envisioned in the preceding proposed regulations. For example, in the vast majority of instances that CPUC has sought SCE data, including sensitive data, SCE has provided it directly to CPUC. SCE anticipates doing the same with Energy Safety. However, as security risks to electric infrastructure grow and evolve, so should methods of sharing highly sensitive information between regulatory agencies and those being regulated. Based on new and emerging threats, SCE respectfully restates its request that Energy Safety to recognize a new class of data – “Security Sensitive Information” – information about a regulated utility’s infrastructure, operations or security defenses, that is so sensitive that it merits use of special handling and sharing processes, even for Energy Safety regulatory review. Such information may include, but is not limited to, information (i) relating to SCE’s critical infrastructure, (ii) physical security, and (iii) cybersecurity. Specifically, instead of requiring regulated entities to turn over Security Sensitive information directly to Energy Safety, SCE urges Energy Safety to view “Security Sensitive Information” on a temporary basis using a “closed room” approach – whether physical or virtual. For example, should Energy Safety request viewing hard-copy versions of Security Sensitive information, SCE and Energy Safety would meet at a mutually convenient location. SCE would provide the data to

¹¹ “A deficient or incomplete application shall be returned to the applicant with a statement of its defects. The record or records for which confidentiality was requested shall not be disclosed for fourteen days after return of the application to allow a new application to be submitted except as provided in Section 2507 of this Article.” 20 CCR Section 2505(a)(2).

¹² 20 CCR Section 2505(a)(6).

Energy Safety for review during a closed-room session. Upon completing that review, the information is returned to SCE. Alternatively, should Energy Safety wish to view this information electronically, then SCE would make this information available to Energy Safety for remote viewing. Although accessible from Energy Safety computers, the information would not leave SCE's systems and repositories. The same process would apply for other regulated utilities providing "Security Sensitive Information" to Energy Safety.

The security risks triggering SCE's proposal are real, raising issues of not only informational security but also of US national security. As regulatory agencies accumulate greater information about regulated entities, they become more attractive targets to adversarial, sophisticated threat actors with the resources of entire countries behind them. For example, malicious foreign nationals associated with the Republican Guard of the Nation of Iran have successfully penetrated the Federal Energy Regulatory Commission (FERC) – an attack that then-United States Attorney Geoffrey Berman considered especially concerning because FERC holds details of some of the country's most sensitive infrastructure."¹³ And the recent, highly publicized "SolarWinds" attack, shows that government agencies remain squarely within the crosshairs of malicious adversaries seeking to steal their secrets.¹⁴ This represents but the tip of the iceberg in terms of national security threats facing government and regulatory agencies.¹⁵

In order to proactively mitigate against this regulatory targeting, electric utility regulators have already started authorizing use of temporary, closed door, regulatory review of a utility's most sensitive data. For example, at the federal level, the North American Electric Reliability Corporation (NERC) faced this same issue in promulgating Critical Infrastructure Protection ("CIP") Standard No. CIP-014-1 (Physical Security).¹⁶ NERC promulgated this regulatory standard in response to the highly publicized "Metcalf Substation" shooting, where unknown assailants used high-powered rifles to incapacitate a California electric substation.¹⁷ CIP-014-1 requires utilities to create

¹³ Dustin Voltz, U.S. charges, sanctions Iranians for global cyber attacks on behalf of Tehran, Reuters (March 23, 2018), at <https://www.reuters.com/article/us-usa-cyber-iran/u-s-charges-sanctions-iranians-for-global-cyber-attacks-on-behalf-of-tehran-idUSKBN1GZ22K>.

¹⁴ Bill Whittaker, SolarWinds: How Russian Spies Hacked the Justice, State, Treasury, Energy and Commerce Departments (July 4, 2021), at <https://www.cbsnews.com/news/solarwinds-hack-russia-cyberattack-60-minutes-2021-07-04/>.

¹⁵ For more information about this issue, see Resubmission of Petition for Modification of Decision 19-01-018, CPUC Rulemaking No. R.15-06-009 (Jan. 16, 2020), at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M324/K944/324944685.PDF>

¹⁶ NERC CIP Standard CIP-014-01, at C.1.4, available at <https://www.nerc.com/pa/Stand/Reliability%20Standards/CIP-014-1.pdf>.

¹⁷ Phase I Decision on Order Instituting Rulemaking Regarding the Physical Security of Electrical Corporations, Decision D.19-01-018 (Jan. 22, 2019), at pp.3-4, at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M260/K335/260335905.docx>

highly sensitive information, such as locations of priority facilities; vulnerability assessment; and mitigation plans.¹⁸ The standard also requires utilities to share that information with NERC for regulatory audit.¹⁹

However, CIP-014-1 does NOT require utilities to send security-sensitive information directly to NERC for regulatory review. Instead, this standard specifically mandates that that such data should not leave the utility's environment.²⁰ Instead, regulated utilities provide this information temporarily to NERC for regulatory review. Since then, NERC expanded use of closed room sharing methods by permitting utilities to create virtual "Secure Evidence Lockers" to be located within each utility's online systems.²¹ Once implemented, NERC may use these secure evidence lockers to remotely view a regulated utility's highly sensitive cybersecurity information, without that information leaving that utility's systems.

In California, the Commission's Safety and Enforcement Division (SED) authorized utilities regulated by the Commission to share highly sensitive physical security-related information with SED analysts in 2020 and 2021 using virtual sharing methods such as the ones proposed in these comments.²²

For the above reasons, SCE respectfully urges Energy Safety to adopt regulations permitting use of closed room procedures – whether virtual or physical – to view a utility's most "Security Sensitive" data without that data leaving the utility's custody.

2. Section 29201 Should Be Clarified to Require Formal Agreements to Keep Material Confidential and Notice to Designating Entities in All Cases of Interagency Disclosure

SCE restates its concerns with proposed regulation Section 29201; additional authority cited by Energy Safety does not resolve these concerns. Section 29201, "Disclosure of Confidential Information", includes provisions allowing conditions under which Energy Safety "may disclose confidential information received by the Office from outside entities

¹⁸ *Id.*, supra n.14, at Section B (identifying risk assessment and mitigation process).

¹⁹ *Id.* at Section C.1.4 (identifying information security requirements).

²⁰ *Id.*

²¹ NERC, Registered Entity Maintained Secure Evidence Lockers – Functional Specification v.9, at p.1 (Jan. 298, 2021), available at <https://www.nerc.com/ResourceCenter/Align%20Documents/1-Align%20Registered%20Entity%20SEL%20Functional%20Requirements%20February%202021.pdf>.

²² Letter from Dan Bout, Director of Safety Policy Division, to Parties to Physical Security Proceeding, CPUC Proceeding No. R.15-06-009, dated Dec. 4, 2020 (authorizing regulated utilities to share physical security data with CPUC using virtual sharing platforms). This letter, and earlier versions, at <https://www.cpuc.ca.gov/about-cpuc/divisions/safety-policy-division/risk-assessment-and-safety-analytics/physical-security-of-electric-infrastructure>.

or persons.”²³ Energy Safety notes that the language of Section 29201 “is modeled from other agency regulatory language previously approved by OAL,” and cites California Code of Regulations, Title 20, section 2507.²⁴ Energy Safety cites additional authority not cited in the previous Notice, for the premise that the California Energy Commission is a central repository for the collection of data and information sharing among state government agencies “helps the relevant agencies meet the statutory directives, and support the need to prepare for wildfire events and immediate summary reliability issues.”²⁵

Under Section 2901, Energy Safety can disclose confidential material to certain of those persons that work for Energy Safety (Section 29201(a)(1) and (2)), as well as other governmental agencies (Section 29201(a)(3). However, while 29201(a)(3) specifically requires “government bodies” “agree to keep the records confidential”, subpart (b) does not explicitly require the same of the specific agencies named, i.e., the California Department of Forestry and Fire Protection, California Energy Commission, and the California Public Utilities Commission.²⁶

SCE requests that the Regulations specify that those named agencies be required to agree to keep the material confidential, as is required in the previous subsection. SCE also requests that the regulation be modified to require that confidential information providers be given notice of any interagency sharing of that provider’s confidential information. Finally, SCE requests that as a policy matter such interagency sharing of confidential information be limited as much as reasonably possible because as a practical matter, the more widely information is distributed the more likely the confidential material will be inadvertently disclosed, at great potential risk to the public. These requests are not inconsistent with the authority newly cited by Energy Safety in its Notice for the instant action—SCE is not requesting a bar on sharing of information among these agencies, only that the sensitivities and potential harm to the public related to the distribution of *confidential* information be recognized via the precautionary measures SCE has proposed.

²³ Section 29201(a), Proposed Regulations, p. 6.

²⁴ Notice, p. 10.

²⁵ “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.” Notice, p. 10.

²⁶ Proposed Regulations, p. 6.

3. The Scope of Issues Requiring Notification Under Section 29300 Should Be Clarified

Energy Safety modified proposed regulation Section 29300 most substantially from the regulations it previously noticed and withdrew:

§ 29300. Notification. [PREVIOUS VERSION]

The Director, or designee, shall be notified within *24 hours* from the time an electrical corporation becomes aware of a wildfire threat to electrical infrastructure it owns or operates. The Director, or designee, shall 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.

§ 29300. Notification. [UPDATED VERSION]

- (a) A regulated entity shall notify the Office within *12 hours* of observing:
- (1) A fault, outage, or other anomaly on infrastructure it owns or operates occurring within the vicinity of a fire *requiring a response from a fire suppression agency*; or
 - (2) A wildfire threat that poses a danger to infrastructure it owns or operates *requiring a response from a fire suppression agency*.
- (b) A regulated entity shall notify the Office within *four hours of receiving notice* that infrastructure that it owns or operates is being investigated by a governmental agency for involvement in potentially causing an ignition.²⁷

The modifications include a shortening of the notice period and the addition of the “requiring a response from a fire suppression agency” provision, for which Energy Safety provides some context in new language in the Notice: “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.”²⁸

Unfortunately, several critical terms as modified by this proposed regulation are vague and open to interpretation, e.g., “other anomaly” could include virtually any issue, “danger” is open to many interpretations and “wildfire threat” remains too vague a term. The additional criterion of “requiring a response from a suppression agency” does not resolve these issues. The shorter notice interval, reduced from 24 hours to 12 hours in subpart (a) and 4 hours in subpart (b), only serves to further exacerbate the issues.

²⁷ Proposed Regulations, p. 7 (emphasis added).

²⁸ Notice, pp. 10-11.

To resolve these issues and those raised in SCE's comments to the previous iteration of this proposed regulation, SCE proposes the following modifications to Section 29300:

- (a) A regulated entity shall notify the Office within 12 24 hours of observing:
 - (1) A fault, ~~or outage, or other anomaly~~ on infrastructure it owns or operates occurring within ~~the~~ a one-mile vicinity of a 50 acre or greater wildfire requiring a response from a governmental fire suppression agency; or
 - (2) A wildfire threat that poses a danger to infrastructure it owns or operates requiring a response from a governmental fire suppression agency.
 - (i) For a wildfire to be considered a threat under this provision it must be at least 50 acres in size.
 - (ii) For a wildfire to be deemed to pose a danger to infrastructure under this provision it must encroach within one mile of that infrastructure.
- (b) A regulated entity shall notify the Office within two hours of receiving notice during business hours, or four hours of receiving notice outside business hours, that an electric incident occurred in a high fire threat district that is attributable, or allegedly attributable, to electric utility facilities, and in which any of the following occurred: ~~infrastructure that it owns or operates is being investigated by a governmental agency for involvement in potentially causing an ignition.~~
 - (1) A fatality or injury requiring overnight hospitalization;
 - (2) Damage to property of the utility or others in excess of \$50,000;
 - (3) Significant public attention or media coverage.

4. The Scope of Reporting Under Section 29301 Should Be Clarified

SCE restates its comments regarding Section 29301, which Energy Safety has slightly modified from the previous version.²⁹ Section 29301, "Incident Report", directs regulated entities to submit an incident report within 30 days containing, among other information, factual or physical evidence related to the incident, contact information of

²⁹ Proposed Regulations, p. 7. Subpart (a) previously read "In the event that an ignition may have been started by the infrastructure owned or operated by a regulated entity, the entity shall submit an incident report within 30 days of the incident." Subpart (a) now reads "In the event that a regulated entity or fire investigation agency suspects an ignition to have been started by the infrastructure owned or operated by a regulated entity..."

any known witnesses, preliminary root cause analysis, and description of all actions taken to minimize recurrence. This provision continues to raise several concerns. First, in subpart (b)(3), “preliminary root cause” analysis is a vague term that requires clarification—“root cause” investigations have a particular meaning, completion of which often requires more than 30 days in the experience of SCE. The reference to “detailed discussion of all findings” in that subpart (emphasis added) raises issues concerning information protected by the attorney-client privilege and attorney work product doctrine. Second, the requirement in subpart (b)(4) to describe “all actions taken, if any, to minimize the recurrence of such incidents” within 30 days is an insufficient amount of time because in SCE’s experience it typically takes more time to identify appropriate mitigation measures. Third, subpart (b)(7) is vague and could be burdensome to provide within 30 days depending on what “any other information” is intended to include. Thus, this Proposed Regulation is unclear and unnecessary under the APA.³⁰ SCE recommends that Proposed Regulation 29301 be revised to require the same information SCE currently provides to the CPUC under its well-established process pursuant to Public Utilities Code Section 315.³¹ Such information includes the underlying facts of the fire as known by SCE at the time of reporting. Additionally, any proposed regulation requiring submission of incident reports should include a provision to the same effect as PUC Section 315, which provides: “Neither the order or recommendation of the commission nor any accident report filed with the commission shall be admitted as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property.”

5. The Scope of Investigations Under Section 29302 Should Be Clarified

Section 29302, “Investigations, Notices of Defects and Violations and Referral to the Commission”, would allow Energy Safety to designate investigators to, for example, investigate whether an approved WMP was followed or if failure to do so contributed to the cause of a wildfire (or conduct other investigations). This provision also would allow Energy Safety to designate a compliance officer to consider the findings of any investigation and specifies how notices of violation will be served. Finally, the provision would allow Energy Safety to recommend to the Commission that it pursue enforcement action in the event of noncompliance with an approved WMP plan.³²

Energy Safety has made some modifications to Section 29302, one of which resolves a jurisdictional issue SCE raised in the previous version of the proposed regulation: Energy Safety now specifies in subpart (a) (4) that “the Director may designate investigators to investigate the following:...Other related investigations *within the*

³⁰ Government Code Section 11340, et seq.

³¹ Public Utilities Code Section 315; Example of Section 315 letter
@<https://www.edison.com/content/dam/eix/documents/investors/wildfires-document-library/section-315-20210104-202014197.pdf>

³² Section 29302(a)(4), Proposed Regulations, p. 8.

authority of the Office, as required by the Director.”³³ SCE restates its other comments, which remain applicable.

SCE recommends that Proposed Regulation 29302 be revised to require the same information SCE currently provides to the CPUC under its well-established process pursuant to Public Utilities Code Section 315. Such information includes the underlying facts of the fire as known by SCE at the time of reporting. Creating a different set of requirements through this Proposed Regulation will likely result in duplicative processes—simultaneous investigations into the same incidents by OEIS and the CPUC—and the potential for inconsistent rulings and findings. As with Section 315, SCE asks that the following safeguards also be implemented, “Neither the order or recommendation of the commission nor any accident report filed with the commission shall be admitted as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property.”

REQUEST FOR STAKEHOLDER WORKSHOP AND IMPLEMENTATION PERIOD

Energy Safety’s proposed regulations require new reporting protocols that differ significantly in some respects from SCE’s current requirements under the CPUC that are familiar to SCE and other stakeholders (and which remain in effect under Government Code Section 15475.6 unless and until alternative regulations are approved). Consistent with that statute, SCE requests that a workshop be held prior to finalization of the proposed regulation language, to clarify the regulations and address issues raised by SCE and other stakeholders.

For the same reasons, SCE requests that Energy Safety provide a reasonable implementation period once the final regulations are approved to allow the electrical corporations to adapt their internal processes to comply with the new rules. SCE requests that stakeholder meetings among Energy Safety and the electrical corporations be held during this implementation period, so that requirements can be clarified and compliance issues avoided.

³³ Section 29302(a)(4), Proposed Regulations, p. 8 (emphasis added).

CONCLUSION

SCE appreciates the opportunity to submit its comments on Energy Safety's Notice and Proposed Regulations.

Sincerely,

//s//

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