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SUBJECT: Office of Administrative Law File Number 2022-0228-02EE
Joint IOU Comments Regarding Energy Safety's Proposed
Readoption of Emergency Regulations

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

Pursuant to the February 17, 2022 Notice of Readoption of Emergency Rulemaking Action¹ & California Government Code Section 11349.6(b) and 1 California Code of Regulations Section 55, Southern California Edison Company (SCE) hereby submits these comments on the proposed emergency action of the Office of Energy Infrastructure Safety (Energy Safety) on behalf of the investor-owned utilities: SCE, San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) (collectively, Joint IOUs).

INTRODUCTION

The Joint IOUs appreciate the opportunity to comment on Energy Safety's Proposed Readoption of Emergency Regulations, submitted to the Office of Administrative Law (OAL) on February 28, 2022. Energy Safety seeks Readoption of all the Emergency Regulations currently in effect except for Cal. Code Regs. tit. 14, Sections 29000, 29001,

29103, and 29201.¹ SCE, SDG&E and PG&E previously provided comments on the Emergency Regulations—though SCE, SDG&E and PG&E continue to support those comments they will not be reiterated here. Rather, these comments from Joint IOUs are based on their experience implementing the emergency regulations since they were adopted by OAL. This experience has revealed opportunities to clarify and improve the regulations, particularly for Sections 29200, 29201 and 29300.

I. Section 29200, “Confidential Information”

Joint IOUs have the following comments, organized by subsection, regarding Section 29200 based on “lessons learned” implementing this Emergency Regulation.

Section 29200(a)(6)(C) requires that applicants for confidentiality designations based on critical energy infrastructure information (CEII) state “whether the information has been voluntarily submitted to the Office of Emergency Services as set forth in Government Code section 6254(ab).”² Government Code Section 6254 establishes that such information may be protected from disclosure, so Joint IOUs are not clear why this is useful for the application. Further, it may not be readily apparent to Joint IOUs in some cases whether information was voluntarily submitted to the Office of Emergency Services. Therefore, this requirement creates an unnecessary burden, particularly given the 3-day data request response requirement and Joint IOUs request that it be removed.

Section 29200(a)(6)(D) requires that CEII applicants state “whether the information or substantially similar information was classified as protected critical infrastructure information by the Department of Homeland Security or Department of Energy.”³ Joint

¹ Office of Energy Infrastructure Safety, (February 17, 2022). Notice of Readoption of Emergency Rulemaking Action. Retrieved from <https://efiling.energysafety.ca.gov/Lists/DocketLog.aspx?docketnumber=2022-RM>

² 14 CCR § 29200(a), (6) & (C): “Any private third party giving custody or ownership of a record to the Office shall specify whether the record should be designated a confidential record and not publicly disclosed. An application for confidential designation shall...if the applicant believes that the record should not be disclosed because it contains critical energy infrastructure information, state...whether (C) whether the information has been voluntarily submitted to the Office of Emergency Services as set forth in Government Code section 6254(ab)”; Cal. Gov. Code § 6254(ab): “Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the Office of Emergency Services for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, “voluntarily submitted” means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.”

³ 14 CCR § 29200(a), (6) & (D): “Any private third party giving custody or ownership of a record to the Office shall specify whether the record should be designated a confidential record and not publicly disclosed. An application for confidential designation shall...if the applicant believes that the record should not be disclosed because it contains critical energy infrastructure information, state...whether the information or substantially similar information was classified as protected critical infrastructure information by the Department of Homeland Security or Department of Energy.”

IOUs have found it difficult to determine this, and are unaware of any practical means of implementation. Further, while it may be of interest, it is not necessary to demonstrate information is CEII and creates an unnecessary burden, particularly given the 3-day data request response requirement.

II. Section 29201, “Disclosure of Confidential Information”

Joint IOUs appreciate Energy Safety’s decision not to seek readoption of Section 29201, “Disclosure of Confidential Information”. Joint IOUs previously commented that this regulation was problematic in that it permitted circulation of confidential material to other agencies beyond Energy Safety without notice to the party designating the material as confidential, and at a minimum, requested notice when confidential information was shared with other parties.⁴ Joint IOUs appreciate Energy Safety’s decision to not seek readoption of this emergency regulation.

III. Section 29300, “Notification”

Section 29300 provides as follows: “Notification. (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.”⁵

Joint IOUs appreciate the clarification provided by Energy Safety that this provision requires notification of only that information known to regulated entities within the prescribed 12-hour period.⁶ In implementing this requirement, however, Joint IOUs have on occasion experienced challenges determining within 12 hours whether there has been a fire suppression agency response. In addition, providing the level of detail required by Energy Safety within the 12-hour notification period has required a significant amount of employee time consistent with previous comments regarding burdensomeness of implementation. For these reasons, Joint IOUs request that the 12-hour Notification

⁴ See PG&E Comments on 9-3-21- OEIS Rules and Regulations, pp. 4-5 (docketed September 8, 2021); SCE Comments on OEIS Proposed Emergency Process and Procedure Regulations, pp. 8-9 (docketed September 8, 2021); and SDG&E Second Comments OEIS Proposed Regulations, pp. 3-5 (docketed September 8, 2021). All available at: <https://efiling.energysafety.ca.gov/EFiling/DocketInformation.aspx?docketnumber=2021-RM>.

⁵ 14 CCR § 29300.

⁶ Energy Safety Notification & Reporting Guidance (docketed November 4, 2021). Available at <https://efiling.energysafety.ca.gov/Lists/DocketLog.aspx?docketnumber=2021-RM>.

period be extended to a single business day to allow for more practical implementation by the IOUs and to improve the quality of information that will be received by Energy Safety.

CONCLUSION

The Joint IOUs appreciate the opportunity to provide these comments.

If you have any questions, or require additional information, please contact me at Shinjini.Menon@sce.com.

Sincerely,

//s//

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