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VIA E-MAIL AND BY OEIS E FILING

Jeff Brooks
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RE: Joint Utility Comments on Proposed Regulations: Rules of Practice and Procedure, Proceedings (Sections 29100, 29101); and Data Collection, Data Access and Confidentiality (Section 29200)

Docket: 2022-Rulemaking (2022-RM)

Dear Mr. Brooks:

San Diego Gas & Electric (SDG&E), Pacific Gas & Electric (PG&E), and Southern California Edison (SCE) (collectively Joint Utilities), hereby provide comments in response to the Office of Energy Infrastructure Safety's ("Energy Safety") Regulations to be Adopted as Permanent Regulations: Chapter 1: Rules of Practice and Procedure, Article 2: Proceedings (Sections 29100 and 29101) and Article 3: Data Collection, Data Access and Confidentiality (Section 29200) (collectively, "Proposed Regulations"). Notice of these Proposed Regulations, to be adopted through the Office of Administrative Law's regular rulemaking process, was served on the Joint Utilities on April 27, 2022.

I. Section 29100(c) Accessibility Requirements Are Vague and Should Be Revised, Limited in Scope, or Addressed Through Guidance Applicable to Specific Submissions

The Joint Utilities share the Energy Safety's policy goals in favor of promoting access to public information by all interested parties, including those with disabilities. But extending the accessibility requirements of Section 508 of the Federal Rehabilitation Act of 1973 to all documents submitted through the Energy Safety's e-filing system would result in an unnecessary burden on all parties who participate in proceedings at the agency, is inconsistent with the practice of other state agencies, including the California Public Utilities Commission (Commission) and the courts of California, and could result in significant additional costs for stakeholders participating in Energy Safety proceedings (including the Joint Utilities). Moreover,

the vagueness of the regulation leaves all parties without clear direction regarding what constitutes compliance and facing potential rejection of filings.

Section 29100(c) of the Proposed Regulations sets forth the following:

> *(c) It is the policy of the State of California that electronic information be accessible to people with disabilities. Each person who submits information through the Office's e-filing system must ensure that the information complies with the accessibility requirements set forth in Government Code section 7405. The office will not accept any information submitted through the e-filing system that does not comply with these requirements.*

Government Code Section 7405 requires that to "increase the successful employment of individuals with disabilities … states governmental entities, in developing, procuring, maintaining or using electronic or information technology … shall comply with the accessibility requirements of Section 508 of the Federal Rehabilitation Act of 1973 [Act]." Section 508 of the Act correspondingly requires that federal departments and agencies make "information or services from a Federal department or agency" accessible to individuals with disabilities in a way that "is comparable to the access and use of the information and data by such members of the public who are not individuals with disabilities."[1]. As stated in Section 7405, the emphasis of the legislation is to promote equal access to employment of individuals with disabilities and prohibit discrimination.[2]

The Proposed Regulation puts the onus on the utilities and proceeding participants to understand what Energy Safety deems to meet accessibility requirements and threatens stakeholders with rejection of submissions if they do not meet those unspecified requirements. The vagueness of the Proposed Regulation alone merits its removal from the permanent regulation. At a minimum, the Proposed Regulation should be revised to provide greater clarity regarding compliance. Accessibility standards vary, and given the importance of timely submissions, it is not fair to stakeholders to Energy Safety proceedings to be left with so little guidance. Energy Safety should further clarify which documents these accessibility requirements will pertain to, and what types. For instance, documents created in Microsoft Word may be more easily made accessible. But Energy Safety submissions include complex files, including but not limited to Excel spreadsheets, GIS maps, and other data files. There is little to no guidance regarding the need for these submissions to be made accessible, nor how to render them so.

Further, the Proposed Regulation extends accessibility requirements beyond those that exist at most federal and state agencies. The Commission, for instance requires formatting of submissions for readability, but has no similar requirement specifically addressing accessibility. Nor do the California Courts. Rather, under California Rule of Court 1.100, accommodations are

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[1] 29 U.S.C. §794d(a)(i)(A)(ii) ("individuals with disabilities who are members of the public seeking information or services from a Federal department or agency to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.")

[2] SB 1442, Legislative Counsel's Digest (Feb. 19, 2016).

provide upon request.[3] To date, the Joint Utilities are not aware that, in the year that Energy Safety has been in operation, such a request has been made. The blanket approach mandated by the Proposed Regulation is overly broad, and ultimately will negatively impact stakeholders to proceedings by imposing unnecessary additional costs on all parties—which in the case of the utilities will be passed onto ratepayers. The Joint Utilities suggest that, to the extent a stakeholder requests additional accessibility, those requests be addressed on a case-by-case basis, rather than a universal requirement for all submissions, similar to the process in place at the Courts.

Alternatively, rather than a permanent regulation, the Joint Utilities believe that the goals of the accessibility policy may be achieved through specific guidance applicable to various submissions. For major submissions, such as the Wildfire Mitigation Plans, Energy Safety issues annual guidance establishing document content and format requirements. Energy Safety can use these same guidelines to establish formatting and accessibility requirements.

As drafted, the Proposed Regulations impose an unduly burdensome and costly requirement for all participants and stakeholders at Energy Safety. It will take significant time to prepare each document to meet the compliance standards to ensure acceptance by Energy Safety. This use of resources distracts from the utilities' ability to focus on the content of submissions. The utilities submit thousands of pages of submissions to Energy Safety annually, ranging from the Wildfire Mitigation Plans to legal comments to discovery responses. Many of these submissions occur on a highly accelerated basis due to the nature of the annual process of receiving a safety certification. Imposing the need to review and confirm accessibility of documents—perhaps by a third party—could delay these submissions and unnecessarily extend the time for review.

If these compliance standards are deemed applicable to discovery responses, the Joint Utilities ask that the three-day response period[4] for WMP case related data requests be re-addressed to allow sufficient timing to submit these documents in the appropriate format. Alternatively, similar to Southern California Edison's suggestion during the hearing on the Proposed Regulations, if accessibility requirements pertain to discovery, the data request could be submitted in accordance with the current three-day requirement, but an additional ADA compliant document be sent out to the requesting party the following business day. Allowing a slight delay to submit a second, compliant document will allow the utilities to update the document to make it accessible. If accessibility of the documents is required for larger filings, such as Wildfire Mitigation Plans (WMP) and updates, the Joint IOUs ask that Energy Safety provide additional time to transform these documents to be compliant.

In addition to the burden, Energy Safety should reconsider the Proposed Regulations on accessibility because of the unnecessary costs associated with compliance. SDG&E has yet to estimate the costs of creating compliant documentation and has difficulty doing so partially due to the vague nature of the regulation as drafted. In submitted email conversations from Energy Safety[5], PG&E estimated a potential cost for producing accessible documents would be $4/page

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[3] Rule 1.100, 2022 California Rules of Court.

[4] Energy Safety Guidelines for Submission and Review of 2022 WMP Updates, at 10.

[5] Email from Tyler Morris to Stephanie Ogren on April 8, 2022, as submitted by Energy Safety with draft proposed regulations on April 28.

for simple documents, $5/page for medium documents, and $6/page for complex documents with complex tables, much like many pages required in the WMPs. PG&E thus conservatively estimated that creating ADA compliant documents would cost $40,000 to $60,000 per year, and could increase due to manual corrections.[6] These same costs would also be imposed on non-utility stakeholders submitting their own assessments and analyses. For this reason alone, the Joint Utilities urge Energy Safety to re-evaluate the necessity creating accessible documents on a universal basis.

II. The Joint Utilities Recommend Further Clarifications and Enhancements to Proposed Confidentiality Regulations (Section 29200)

Joint Utilities appreciate Energy Safety's response to input submitted throughout the emergency regulation process, which generally has improved and clarified the Confidentiality Regulation Section 29200. That said, there are additional clarifications and enhancements that should be incorporated into the permanent regulation, as discussed below in order of proposed subpart.

A. Section 29200(a)(3) Should Be Limited to Where It Is Reasonably Possible to Comply

Section 29300(a)(3) requires confidentiality applicants to "provide both redacted and unredacted versions of documents claimed to be exempt from disclosure". For some documents, e.g., geospatial databases in spreadsheet format and lengthy documents with confidential material dispersed throughout, it is not reasonably possible to redact confidential material in a timely manner. Joint IOUs request that Section 29300(a)(3) redaction requirements be limited to "to the extent reasonably possible", consistent with Section 29200(a)(2):

> Section 29300(a): Any person who submits information to the office, and who requests that Energy maintain asserts that the information is exempt from disclosure to the public must, at the time of submission:…(3) Provide both redacted and unredacted versions of documents claimed to be exempt from disclosure to the extent reasonably possible.

B. Section 29200(b)(3) Should Be Clarified to Specify the Scope of Required Information

Section 29200(b) contains new requirements for confidentiality applications submitted on the basis of trade secrets or loss of competitive advantage. The Joint Utilities seek clarity on the scope of information required for (b)(1)-(4), which as proposed provides the following:

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[6] Email from Wade Greenacre to Melissa Semcer on January 7, 2022, as submitted by Energy Safety with draft proposed regulations on April 28.

> (b) Where a person or entity submits information to the office, and asserts that the information should not be disclosed to the public because the information contains trade secrets or because disclosure would cause a loss of a competitive advantage, then the person must, at the time of submission comply with all the requirements in subsection (a) and also:
>
> (1) Specifically identify the competitive advantage;
> (2) State how the advantage would be lost through disclosure;
> (3) State the value of the information to the applicant; and
> (4) Describe the ease or difficulty with which others could legitimately acquire or duplicate the information.

For example, "the value of the information to the applicant" is unclear. Joint IOUs recommend that the information required in the CPUC's confidentiality declaration matrix developed in CPUC Rulemaking 14-11-001 be considered sufficient to meet this provision.

C. Section 29200(c) Should Retain the 14-Day Response Period

Under Section 29200(c), where a person requests information submitted for confidential treatment and Energy Safety requests additional information, if the person does not provide the missing information or request an extension within 7 days, "the information shall not receive a confidential designation".

Under the current emergency regulation (Section 29200(b)), a party has 14 days to respond. Joint IOUs request that the 14-day response period be retained, because the 7-day period is too short to allow for delays in receipt of the request:

> Section 22900(c): If a confidential information submission is incomplete or the submitting person has failed to make any reasonable claim that the California Public Records Act or other provision of law authorizes the Office to keep the information confidential, the Office shall provide to the submitting person 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 ~~seven~~ fourteen days of receipt of the request, the information shall not receive a confidential designation.

D. Section 29200 Should Retain the Confidentiality Determination Review Process in Emergency Regulation Section 29200(c)

Emergency Regulation Section 29200(c) provides for a process and timeframe for Energy Safety determination of applications for confidential designation, as well as review of such decisions. Proposed Regulation 29200 contains no such provision. The determination and review provision in Emergency Regulation Section 29200(c) (presented below) should be retained in the permanent regulation to allow for due process where Energy Safety does not initially agree with an application for confidentiality:

> Emergency Regulation Section 29200(c):
> Deputy Director's Determination.
> (1) The Deputy Director shall determine whether to grant an application for confidential designation. An application shall be granted if the applicant makes a reasonable claim that the California Public Records Act or other provision of law authorizes the Office to keep the record confidential. The Deputy Director's determination shall be in writing and shall be issued no later than thirty days after receipt of a complete application.
> (2) If an application is denied by the Deputy Director, the applicant shall have fourteen days to request a review of that decision by the Director.
> The Director may request additional information from the applicant.
> The Director shall issue a written decision within 30 days from receipt of the request for review or from submission of the requested information, whichever is later.
> (3) After an application has been denied, the records sought to be designated confidential shall not be made public for a period of fourteen days, after which the records will become public.

E. Section 29200(d) Creates Unnecessary Ambiguity and Should Be Removed

Section 29200(d) provides new language indicating that "a confidential designation by the Office is not a guarantee that the Office will withhold the submission where it is subject to a lawful subpoena, Public Records Act Request, or where disclosure is otherwise required by law."

> Section 29200(d): A confidential designation granted by the Office is not a guarantee that the Office will withhold the submission where it is subject to a lawful subpoena, Public Records Act request, or where disclosure is otherwise required by law. In the event of a receipt of such a request for designated confidential materials, before the disclosure, the Office will make an attempt to notify the submitter of the information before the mandated disclosure, unless notification is prohibited by law.

This provision introduces unnecessary ambiguity given that some material designated by Energy Safety as confidential may be appropriately withheld, even when requested via subpoena or Public Records Act request. Further, "Disclosure otherwise required by law" is superfluous.

Section 29200(d) states Energy Safety "will make an attempt" to notify the submitter before disclosure but if Section 29200(d) is retained, this should be clarified to require a 14-day period of response consistent with Joint IOU's proposal regarding Section 29200(c).

F. Section 29200 Should Include a "Closed Room" Approach to Temporarily Share "Security Sensitive" Confidential Information

As Joint Utilities have previously proposed (reflected in the Combined Comments on Past Regulation Adoptions as part of this record), Energy Safety should 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. For example, should

Energy Safety request viewing hard-copy versions of Security Sensitive information, the utility and Energy Safety would meet at a mutually convenient location. The utility would provide the data to Energy Safety for review during a closed-room session. Upon completing that review, the information is returned to the utility.

Alternatively, should Energy Safety wish to view this information electronically, then the utility could make this information available to Energy Safety for remote viewing. Although accessible from Energy Safety computers, the information would not leave the utility's systems and repositories. The same process would apply for other regulated entities providing "Security Sensitive Information" to Energy Safety. Such information may include, but is not limited to, information (i) relating to critical infrastructure, (ii) physical security, and (iii) cybersecurity. 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, similar to the approach that has been previously authorized by the North American Electric Reliability Corporation (NERC) and the CPUC's Safety and Enforcement Division (SED).

G. Energy Safety Should Consider Joint IOUs' Recommendation to Adopt the CPUC's Confidentiality Designation Process, Which Would Resolve Nearly All Issues Raised by Parties Regarding this Proposed Regulation

The simplest means of addressing the above issues and avoiding confusion is for Energy Safety to adopt the CPUC's confidentiality designation requirements. CPUC requirements were developed over a series of rulemakings and reflect a considerable amount of stakeholder input and public process. The CPUC's confidentiality process is familiar to WMP stakeholders. It is needlessly burdensome to have two similar but distinct designation processes for confidential material submitted to CPUC and Energy Safety.

III. CONCLUSION

The Joint Utilities appreciate Energy Safety's consideration of these comments on the comments regarding the proposed regulations regarding e-filing, document formatting, and confidential information and requests that Energy Safety take these recommendations into account in the final rulemaking.

Respectfully submitted,

/s/ Laura M. Fulton
Attorney for
San Diego Gas and Electric Company