

State of California
Office of Energy Infrastructure Safety

Final Statement of Reasons
and
Updated Informative Digest

TITLE 14. NATURAL RESOURCES
DIVISION 17. OFFICE OF ENERGY INFRASTRUCTURE SAFETY
CHAPTER 2. INVESTIGATION AND COMPLIANCE
ARTICLE 1. REPORTING, INVESTIGATIONS, VIOLATIONS
SECTIONS 29300, 29302

OAL Notice File No. Z-2022-0418-04

JUNE 2022

Updated Informative Digest

There have been no changes in applicable laws or to the effects of the proposed regulations from those described in the Notice of Proposed Regulatory Action.

Update to the Initial Statement of Reasons

There have been no changes in applicable laws or to the effects of the proposed regulations from those described in the Notice of Proposed Regulatory Action.

Energy Safety made the proposed regulations available for public review and comment from April 29, 2022 through June 13, 2022, and conducted a public hearing on June 6, 2022.

Hearing on the Regulations

On May 27, 2022, Energy Safety received a request that Energy Safety conduct a hearing on the regulations to receive public comment. Two business days later, on May 31, 2022, Energy Safety provided notice of the hearing to occur on June 6, 2022. That original notice of that hearing did not provide an option for remote participation by members of the public.

The following day, on June 1, 2022, Energy Safety provided a revised notice of the hearing with a link which members of the public could use to participate remotely. That revised hearing notice did not change the date or time of the hearing.

On June 6, Energy Safety conducted the hearing and received comments from interested members of the public. A transcript of the hearing was created by Zoom software and is attached along with written comments provided to Energy Safety.

Summary and Response to Comments

During the initial comment period, from April 29, 2022 to June 13, 2022, Energy Safety received written comments. At the public hearing on June 6, 2022, Energy Safety received verbal comments.

Comment 1 relates to proposed section 29300(a) and was provided jointly by three companies who, acting together, submitted written comments. Those companies were Pacific Gas & Electric Company, Southern California Edison, and San Diego Gas & Electric, and in the correspondence, the companies referred to themselves together as the “Joint IOUs.” This document uses that reference in addressing the comments.

Comment 1:

As can be seen from the language above, the proposed permanent rules revise the timing of when notifications are required to be submitted under subpart (a), and the Joint IOUs greatly appreciate the revisions Energy Safety made to this portion of the requirement. The change from a 12-hour reporting requirement to a one-business day requirement prevents the utilities from having to file notifications to Energy Safety in the middle of the night, over the weekends, and on public holidays.

Response to Comment 1

Energy Safety acknowledges and appreciates the comment from Joint IOUs.

Comments 2 and 3 address the scope of the notification requirements in proposed section 29300 and make essentially the same points. For that reason, Energy Safety aggregates and responds to those comments as a group pursuant to Government Code section 11346.9(a)(3).

Comment 2 was submitted by the Joint IOUs and relates to proposed section 29300.

Comment 2:

The proposed permanent notification requirement set out in 29300(a) is substantially overbroad and requires the utilities to spend a large amount of time collecting and analyzing data that has no relationship to wildfire mitigation or utility-caused fires in general. The scope of this proposed permanent rule is the same as that of the current emergency rule and, therefore, the same amount of data will be collected under both rules. Since the implementation of the emergency rules on September 13, 2021, PG&E alone has submitted approximately 1,100 notifications pursuant to 29300(a), which constitutes over 95% of PG&E's total submitted notifications under these rules. Furthermore, the number of notifications submitted by the Joint IOUs is expected to sharply increase during fire season, and PG&E estimates that it will be required to report approximately 2,800 notifications in the year 2022 under the current or proposed rules.

Of the approximately 1,100 notifications provided by PG&E thus far pursuant to 29300(a), only 171, or 15%, are actually related to PG&E infrastructure. Thus, 85% of the fires have no relationship to PG&E's electrical infrastructure and provide no informational value to mitigating wildfires or utility-caused fires.

Consequently, gathering, analyzing, and reporting on these fires is beneficial to neither the utilities nor to Energy Safety, since no lessons can be learned from these fires. Indeed, the most common type of fire reported by PG&E under these requirements are structure fires, and it is not helpful to have the utilities continuously reporting urban or suburban kitchen or garage fires that pose no wildfire threat and just happen to take place in the vicinity of utility assets. Additionally, Energy Safety states that the reporting is beneficial to assessing the electrical corporations' WMPs and the events the WMPs are intended to prevent. However, the reporting requirement is not limited to the HFTD areas, where the WMP initiatives are focused. For instance, in 2022 alone, half of SDG&E's incident notifications have addressed ignitions outside of the HFTD areas. (To date in 2022, SDG&E has submitted 16 notifications, only 8 of which were in the HFTD areas.) Thus, is the data that is being collecting data that could potentially skew impressions of WMP initiative performance by including information on urban and non-HFTD area infrastructure.

As a result, the Joint IOUs recommend that the language of Section 29300(a) be revised to exclude non-utility caused structure fires and facility fires that do not extend beyond utility assets. This modest revision will remove approximately 75% of the total notifications reported while maintaining the incidents that are important to understanding wildfire mitigation and utility-caused fires. Proposed language illustrating this change is provided below in Section F.

Comment 3 relates to proposed section 29300 and was provided by Andrew Abranches on behalf of PG&E during the hearing on the regulations on June 6, 2022.

Comment 3:

The existing emergency regulations are very broad in scope, and as a result there's a wide of scenarios that utilities may be aware of that meet reporting requirements, but do not involve utility facilities.

This broad approach is similar to how PG&E initially approach understanding ignition risk reduction. After analyzing data and determining what is and what is not informative to understanding risk, we adjusted our scope and focused on the ignition data to further focus on risk reduction initiatives. For the time period in which the emergency regulations have been in place, PG&E has submitted approximately 1,100 ignition notifications.

More than half non-PG&E facilities fires, or PG&E facility fires that did not extend beyond PG&E assets. These incidents provide little to no valuable information as it relates to understanding, utility caused ignition, especially the ones that are non-PG&E facility fires.

It would be beneficial to review the data that has been provided, understand if it is meeting the intent of what Energy Safety intended, and then make adjustments accordingly. And we'd love to participate in that process. Similar to the adoption of the proposed regulations.

Response to Comments 2 and 3:

Energy Safety does not intend to make the adjustment proposed in the comments. Energy Safety's primary objective is to ensure utilities are reducing catastrophic wildfire risk caused by electrical lines and equipment. To reduce this risk, it is imperative that Energy Safety study and analyze data to understand the factors which drive catastrophic wildfire risk with the intent to develop solutions to mitigate that risk. While ignitions and small fires occur on a nearly daily basis, an extremely small percentage of those ignitions (far less than one percent) result in devastating catastrophic wildfires (the types of incidents and risk Energy Safety is tasked with reducing). Focusing only on that subset of ignitions with catastrophic consequences (e.g., 2018 Camp Fire) results in such small sample sizes of data that are not conducive to producing statistically meaningful analyses or developing useful solutions.

Accordingly, the purpose of the regulation is to collect data from a broader set of ignitions rather than the limited number of electrical infrastructure-related catastrophic wildfires. The manner in which a fire occurred and the circumstances surrounding that event are more instructive than the outcome. The data from an urban garage fire that may have been caused by utility infrastructure is useful for Energy Safety's purposes because it can shed light on the factors and circumstances that contributed to such an event. While the occurrence of the garage fire in an urban setting likely diminishes the probability that such a fire will spread and result in catastrophic consequences, a similar garage fire occurring in a more rural setting is far more likely to result in a catastrophic wildfire. Because catastrophic wildfire events happen infrequently (statistically and in comparison to all the other types of fires), Energy Safety must collect data from a broader dataset, instead of a limited pool, for better analytics.

Further, the fact that a fire did not extend beyond the utility assets is a matter of chance and not sufficient reason to exclude those ignitions from notification all together. There are a variety of uncontrollable, circumstantial, and temporal factors (e.g., fuel conditions, terrain, wind speed and direction, relative humidity, etc.) that contribute to whether a fire may extend beyond the utility's assets. Having those non-utility-controlled factors influence whether a notification is reportable does not align with the spirit of the regulation to better understand and prevent utility-related

ignitions (which this clearly would be) that may (not will) result in catastrophic wildfires.

Comment 4 was provided by the Joint IOUs and relates to proposed section 29300(a).

Comment 4:

The proposed notification rules also require the utilities to assign resources to fulfilling the reporting requirements of Section 29300(a) that would otherwise be used to respond to wildfire threats. During certain times of the year this reallocation may not be so critical, but during peak fire season this could be particularly harmful and would not be an appropriate use of resources. Indeed, PG&E estimates that, under the extremely broad language that requires utilities to report non-utility caused fires, PG&E alone will be required to report between 15 and 20 notifications to Energy Safety each day during fire season, when these resources should be assigned to tracking and responding to fires. While the Joint IOUs do not dispute that reporting requirements are needed, reporting dozens of non-utility related urban and suburban fires each day during wildfire season is not an efficient use of resources. The Joint IOUs, therefore, again recommend that Section 29300(a) be revised to exclude non-utility caused structure fires and facility fires that do not extend beyond utility assets, as this would reduce the number of triggering events by approximately 75%, while maintaining the incidents that are valuable to understanding wildfire mitigation.

Response to Comment 4

Energy Safety does not intend to make the adjustment proposed in the comment. Energy Safety does not agree that information about fires that begin on utility electrical equipment but do not extend beyond utility equipment is of no value to Energy Safety. The fact that the fire did not extend beyond the utility assets is a matter of chance and not sufficient reason to exclude it from notification all together. There are a variety of uncontrollable, circumstantial, and temporal factors (e.g., fuel conditions, terrain, wind speed and direction, relative humidity, etc.) that contribute to whether a fire may extend beyond the utility's assets. Having those non-utility-controlled factors influence whether a notification is reportable does not align with the spirit of the regulation to better understand and prevent utility-related ignitions (which this clearly would be) that may (not will) result in catastrophic wildfires. In addition, the fact that the outcome of the fire was not a catastrophic wildfire does not mean that information about the cause of the fire is of no value.

Regarding the notion that Energy Safety’s notification requirements would result in reallocation of staff that would otherwise provide fire response, information being provided to Energy Safety through notifications includes basic details regarding the incident that a utility would likely already collect in its efforts to track and respond to wildfire incidents. Specifically, these include details such as date, time, location, responding fire agencies, weather conditions, and utility infrastructure details.

Comment 5 relates to proposed section 29300 and was provided by Andrew Abranches on behalf of PG&E during the hearing on the regulations on June 6, 2022.

Comment 5:

The phrase “response from a fire suppression agency” is ambiguous. Fire suppression agencies respond to a wide range of scenarios.

For instance, a garage fire in the residents caused by a dryer would result in an outage and a fire suppression arriving on Site. As written, this would result in a notification. Given the broad scope of the rules as currently written, and based on 2021 and 2022 actuals, we anticipate approximately 2,800 notifications to be reported in 2022.

Further, we anticipate 10 to 15 events per day during fire season.

Response to Comment 5

Energy Safety does not intend to make the adjustment proposed in the comment. Energy Safety disagrees that “response from a fire suppression agency” is ambiguous when taken with the balance of the regulation language in section 29300. For both section 29300(a) and 29300(b), Energy Safety qualified the fires requiring a “response from a fire suppression agency” with other criteria, such as (a)(1) and (2), and the balance of (b)(1) and (b)(2). Further, the example, as provided by Mr. Abranches, indicates the utilities understand exactly what a fire requiring a “response from a fire suppression agency” means, and that the issue is PG&E believes such notification requirements would result in too many notifications.

Energy Safety also disagrees with the view that such notification requirement would result in too many notifications. The circumstances and conditions related to the ignition are more instructive than the outcome. The data from an urban garage fire that may be caused by utility infrastructure is still useful because a future wildfire in a rural area may be caused by the same issue. The idea is to use the gathered data to reduce risk of a rare event, e.g., 2018 Camp Fire. Such events happen infrequently

(statistically and in comparison to all the other types of fires) and Energy Safety needs to collect data from a broader data set, instead of a limited pool, for better analytics.

Comment 6 was submitted by the Joint IOUs and relates to proposed section 29300(a).

Comment 6:

Implementing the following drafting changes for section 29300(a) would reduce the number of incidents reported by approximately 75% while retaining the incidents that are valuable to understanding wildfire mitigation and utility-caused wildfires.

(a) A regulated entity must notify the Office within one business day after the regulated entity knows, or has reason to know, with respect to a fire requiring a response from a fire suppression agency, when:

(1) A fault, outage, or other anomaly has occurred on infrastructure that it owns or operates within six hours of the start of the fire; and

(2) The infrastructure with the fault, outage, or anomaly is within one mile of either the origin of the fire or perimeter of the fire at the time of the notification, whichever is known and closest.

(3) The above requirements exclude from notification: (i) non-regulated entity structure fires; and (ii) regulated entity facility fires that do not extend beyond the regulated entity's assets.

Response to Comment 6:

Energy Safety does not intend to make the adjustment proposed in the comment. Energy Safety does not agree that information about fires that begin on utility electrical equipment but do not extend beyond utility equipment is of no value to Energy Safety. The fact that the fire did not extend beyond the utility assets is a matter of happenstance and not sufficient reason to exclude it from notification all together. There are a variety of uncontrollable, circumstantial, and temporal factors (e.g., fuel conditions, terrain, wind speed and direction, relative humidity, etc.) that contribute to whether a fire may extend beyond the utility's assets. Having those non-utility-controlled factors influence whether a notification is reportable does not align with the spirit of the regulation to better understand and prevent utility-related ignitions (which this clearly would be) that may (not will) result in catastrophic wildfires.

In addition, the fact that the outcome of the fire was not a catastrophic wildfire does not mean that information about the cause of the fire is of no value. Further, it is unlikely for a utility to be able to determine with certainty the cause is not utility-related within the timeframe needed here.

Comment 7 was submitted by Andrew Abranches on behalf of PG&E during the hearing on June 6, 2022 and relates to section 29300.

Comment 7:

The existing emergency regulations are very broad in scope, and as a result there's a wide of scenarios that utilities may be aware of that meet reporting requirements, but do not involve utility facilities.

This broad approach is similar to how PG&E initially approach understanding ignition risk reduction.

After analyzing data and determining what is and what is not informative to understanding risk, we adjusted our scope and focused on the ignition data to further focus on risk reduction initiatives. For the time period in which the emergency regulations have been in place, PG&E has submitted approximately 1,100 ignition notifications.

In the spirit and intent of those of emergency regulations, approximately 600, more than half non-PG&E facilities fires, or PG&E facility fires that did not extend beyond PG&E assets. These in incidents provide little to no valuable information as it relates to understanding, utility caused ignition, especially the ones that are non-PG&E facility fires.

It would be beneficial to review the data that has been provided, understand if it is meeting the intent of what Energy Safety intended, and then make adjustments accordingly. And we'd love to participate in that process. Similar to the adoption of the proposed regulations.

Response to Comment 7:

Energy Safety does not agree that information about fires that begin on utility electrical equipment but does not extend beyond utility equipment is of no value to Energy Safety. The fact that the fire did not extend beyond the utility assets is a matter of happenstance and not sufficient reason to exclude it from notification all together. There are a variety of uncontrollable, circumstantial, and temporal factors (e.g., fuel conditions, terrain, wind speed and direction, relative humidity, etc.) that contribute to whether a fire may extend beyond the utility's assets. Having those non-utility-

controlled factors influence whether a notification is reportable doesn't align with the spirit of the regulation to better understand and prevent utility-related ignitions (which this clearly would be) that may (not will) result in catastrophic wildfires. In addition, the fact that the outcome of the fire was not a wildfire does not mean that information about the cause of the fire is of no value.

With respect to the comments on proposal to analyze data, Energy Safety acknowledges and appreciates these comments, but because the comments do not address the proposed regulations, Energy Safety will not address the substance of those comments here.

Comments 8 and 9 address proposed section 29300(b) and make essentially the same points. For that reason, Energy Safety aggregates and responds to those comments as a group pursuant to Government Code section 11346.9(a)(3).

Comment 8 was provided by Brian D'Agostino on behalf of San Diego Gas & Electric during the hearing on June 6, 2022, and relates to proposed section 29300(b).

Comment 8:

Regarding the reporting time, I would like to respectfully take a look at the four-hour time, frame as unnecessarily burdensome, and request that that timeframe be extended to at least 12 hours as we look at submitting these reporting.

The reason behind this is that the four-hour reporting has the potential to distract from our primary mission in those key initial hours, as we are really doing threat assessment when we do have an ignition. And our primary focus and priority at that time is keeping first responders, the public and our employees safe as we are assessing any potential incident we feel that the 4 hour time window may lead to inaccurate or incomplete notifications.

And in some cases really there's very little information that can be known in those first couple of hours as we are beginning to just initiate our data gathering on a fire incident and the potential for incomplete or inaccurate data could lead to incorrect assumptions or findings. As we are dealing with very preliminary information energy safety further requires a significant submission of information.

With these notifications as opposed to just a basic notification that there is an incident. And while SDG&E appreciates that Energy Safety has clarified that the

utilities need only share what they know. At the time of the report, maintaining that twelve-hour notification window will allow for more complete and comprehensive submissions.

At SDG&E, we do continually monitor for fires in our service territory, and greatly support the safety mission of our service territories first responders. This effort leads to the utility generally knowing a lot about fires in both the utility related and non-utility related within minutes of ignitions developing and developing appropriate responses.

Additionally, through the monitoring of an incident, radio traffic or utilization of other situational awareness tools, it's likely that SDG&E will have a reason to know if an ignition's cause has the potential to be related to utility equipment, and the four-hour time window for notification would begin gathering this information for the notification would outweigh the value that that notification made the potentially have. So greatly appreciate the opportunity to share this information with you today, and that will conclude my comments.

Comment 9 was submitted by the Joint IOUs and relates to section 29300(b).

Comment 9:

Similarly, revising the time requirement for section 29300(b) would allow for more flexibility for the less important triggering events, and improve the quality of the data reported to Energy Safety by allowing the utilities a short amount of additional time to gather information and perform quality control on that information.

(b) A regulated entity must notify the Office as soon as reasonably possible or, at the very latest within one business day of when ~~four hours after~~ the regulated entity knows, or has reason to know, that either: (1) infrastructure owned or operated by the regulated entity might have caused a fire requiring a response from a fire suppression agency, or (2) a government entity is investigating whether infrastructure owned or operated by the regulated entity caused a fire.

Response to Comments 8 and 9

Energy Safety does not intend to make the adjustment proposed in the comment. Energy Safety does not agree that the 4-hour timeframe will distract utilities from their primary mission of keeping first responders, the public, and utility employees safe at

the time of the fire. This notification requirement arises after a utility obtains certain information: either that the utility's equipment may have caused a fire or a government entity is investigating whether the utility's equipment may have caused a fire. Given the data requested in the proposed regulation and the comments provided by SDG&E, it is unlikely that utilities will not have the data.

Collecting the requested data here within the four-hour timeframe is unlikely to be a distraction because the collected information is likely already needed for other types of ignition reporting. Also, much of the information is factual and is likely already collected and should be readily available for utilities' own tracking.

Second, very little information is submitted as part of this notice. It is unlikely that data quality will suffer due to this timeframe.

Third, for the little information submitted, Energy Safety is aware that as the fire develops and as the utilities gather more information throughout the 4-hour timeframe, new data may be submitted. The proposed regulation language does not prohibit the utilities from submitting updated or additional information throughout the 4-hour timeframe.

Fourth, based on the comments provided, SDG&E does "monitor for fires in its service territory, and greatly support the safety mission of [their] service territories first responders," and "this effort leads to the utility generally knowing a lot about fires in both the utility related and non-utility related within minutes of ignitions developing and developing appropriate responses." Further, "through the monitoring of an incident, radio traffic or utilization of other situational awareness tools, it is likely that SDG&E will have a reason to know if an ignition's cause has the potential to be related to utility equipment." Therefore, based on utilities' own comments, utilities do generally know within minutes if the utilities' electrical equipment started a fire and can provide the notification/data requested.

Comment 10 was provided by the Joint IOUs and relates to proposed section 29200.

Comment 10:

As part of operationalizing the current emergency rules, Energy Safety provided the utilities with a detailed spreadsheet that is to be completed for every notification submitted. A copy of this spreadsheet is attached to these comments as Attachment A. This spreadsheet contains 46 separate columns requesting specific information about each ignition that is being reported. Although Energy Safety has advised the utilities that they need only complete

the fields for which they have the information at the time of reporting, given the abbreviated timeframe in which the utilities must notify Energy Safety, there is insufficient time to quality check the data that the utilities are able to provide—especially if Energy Safety shortens the time frame for reporting fires believed to be caused by utility infrastructure to four hours. This means that the information provided to Energy Safety may frequently be based on incomplete investigations suffering from minimal and error-prone information that can be misleading and create more problems than it solves.

In particular, the utilities are concerned about the following fields in Attachment A where they believe the information to be of relatively low quality and not beneficial to report on such a short time window: (1) rfw_status; (2) fww_status; (3) hww_status; (4) fire_investigation; (5) fire_ahj; (6) suspected_initiating_cause; (7) determination; (8) equipment_failure; (9) object_contact; and (10) facility_contacted. If Energy Safety is considering utilizing the same, or a similar, spreadsheet as part of the permanent notification rules, the Joint IOUs urge Energy Safety to consider removing these fields from the spreadsheet given the relatively low quality of data that is available in such a short response time and the inability to perform quality control on this data.

Response to Comment 10:

The spreadsheet is not part of the regulation and is not a regulatory requirement. Because the comment does not make objections or recommendations that are specifically directed at Energy Safety’s proposed action or to the procedures that Energy Safety has followed in proposing the action, Energy Safety does not address here the substance of the comment.

Comment 11 was submitted by the Joint IOUs and relates to proposed section 29300.

Comment 11:

Energy Safety arguably does not have the statutory authority to issue such a broad notification requirement as that contained in Section 29300(a). Energy Safety is the successor to, and vested with, all the duties, powers, and responsibilities of the WSD. The primary responsibility of the WSD has been to review and oversee compliance of the utilities’ WMPs. This proposed notification requirement goes well beyond the wildfire mitigation efforts set forth in the electrical corporation WMPs to include any fault, outage, or

“anomaly” occurring within one mile of a fire perimeter, including non-wildfires, and whether caused by the utility or not.

As described above, only approximately 15% of the 1,100 ignitions that PG&E has reported so far under Section 29300 are actually related to PG&E’s infrastructure. Given this discrepancy, it is not clear that the Office of Energy Infrastructure Safety has the authority to compel utilities to provide information on thousands of ignitions every year that are completely unrelated to energy infrastructure. Furthermore, the jurisdictional argument for providing this data becomes even more tenuous when the information is of questionable value to both the utilities and to Energy Safety. Given this questionable authority, the Joint IOUs urge Energy Safety to revise Section 29300(a).

Response to Comment 11:

Energy Safety does not intend to remove the notification requirement from the proposed regulations. Proposed section 29300(a) requires electrical corporations to notify Energy Safety when a fire has occurred near the corporations’ equipment and when an unplanned outage or fault has also occurred on that same equipment. The comment argues that this criteria is overly broad and that it exceeds Energy Safety’s jurisdiction. However, Energy Safety notes that, in contrast to PG&E’s 1,100 notifications (since September, 2021), San Diego Gas & Electric has submitted only 16 notifications. (Footnote 6 of the Joint IOUs’ comment letter.) The information available does not indicate that the notification criteria are necessarily overly broad in scope.

The comment also objects that the notification requirement “goes well beyond the wildfire mitigation efforts set forth” in Wildfire Mitigation Plans. However, Energy Safety’s statutory authority is not limited to Wildfire Mitigation Plans. Government Code section 15473(c)(2)(D) authorizes Energy Safety to conduct investigations, and subdivision (c)(2)(F) of the same section authorizes Energy Safety to require electrical corporations to “file an incident report ... concerning any matter regulated by the office concerning a regulated entity’s infrastructure.” There’s no question that Energy Safety is authorized to investigate, and require notifications relating to, malfunctions on infrastructure that occurred near in time and in place to fires.

Comment 12 was submitted by Peter Van Mieghem on behalf of Southern California Edison during the hearing on June 6 and relates to proposed section 29300(b).

Comment 12:

Section 29300(b) should be revised to remove “had reason to know” requirement because it is vague.

Secondly, section 29300(b)(1) one should be revised to change the term “might have caused” to “has a reasonable basis to believe it caused”, because the ‘might have caused’ language is also vague and potentially overbroad.

Response to Comment 12:

Energy Safety declines to adopt the proposed change because the phrase, “has a reasonable basis to believe it caused” is not more specific, and means substantially the same thing as, “has reason to know” in the phrase, “knows, or has reason to know”.

Comments 13 and 14 each makes substantially the same points, so Energy Safety aggregates and responds to those comments as a group.

Comment 13 was submitted by Peter Van Mieghem on behalf of Southern California Edison during the hearing on June 6 and related to proposed section 29300(c).

Comment 13:

Section 29300(c) should be revised to further clarify the definition of “anomaly.” In spite of attempts to make this definition more clear and clarify the scope. In particular, the definition still remains vague and potentially could include many events beyond what is intended by the regulation.

Comment 14 was submitted by Andrew Abranches on behalf of PG&E during the hearing on June 6, 2022 and relates to proposed section 29200(c).

Comment 14:

While the new regulations of the be more precise, that is still significant ambiguity in the notification reporting criteria. For instance, “anomaly” is defined as an unplanned condition outside of normal operating parameters. This can cover a wide range of circumstances that are natural occurrences on the system. And are not a result or a cause of an ignition, and are addressed as part of standard operations.

However, this could trigger reporting, depending on whether a fire suppression agency responded to an ignition within a mile of an anomaly.

Response to Comments 13 and 14

The definition of “anomaly” is clear. If the “circumstance” is “addressed as part of standard operations” as is being claimed here, then it would not meet the definition of “anomaly” as provided in proposed regulation language. In other words, if the “circumstance” arises and is dealt with during “standard operations,” it would not be outside of “normal operating parameters.”

Comment 15 was submitted by Peter Van Meighem on behalf of Southern California Edison during the hearing on June 6, 2022, and relates to proposed section 29300.

Comment 15:

Edison believes it's cost of implementation data should be incorporated in this record. Edison was asked to provide cost, and not cost per notification, which Edison did. Edison provided an annual estimate of 750,000 to 1 million dollars, which was based on subject matter expertise, and reflects an estimated number of additional resources to perform the associated work that concludes Edison's brief remarks on the Notification permanent regulations proposed.

Response to Comment 15:

As indicated in footnote 4 in the Initial Statement of Reasons, Southern California Edison’s cost data did not include sufficient information to derive the cost per notification to be comparable with other data. Therefore, Energy Safety did not include the data in its analysis.

Comment 16 was submitted by the Public Advocates Office of the California Public Utilities Commission and relates current emergency regulation section 29301

Comment 16:

The incident reports section (section 29301) of the current version of the regulations requires reporting of ignitions that a utility or firefighting agency suspects may have been caused by utility equipment. This section is omitted in the proposed version.

The incident reports described in section 29301 would likely contain useful information and section 29301 does not appear to be duplicative of other regulations. In particular, section 29301 requires a preliminary root cause analysis and a description of all actions taken to minimize the recurrence of ignition incidents. This information would help Energy Safety and stakeholders identify emerging or recurring safety hazards, analyze mitigation measures, and develop ideas for effective policies to mitigate wildfire risks.

Recommendation: Energy Safety should retain current section 29301 of the investigation regulations. Alternatively, if it decides to not retain the section, Energy Safety should explain in its Final Statement of Reasons its reasons for omitting this regulation and describe the alternatives it considered.

Response to Comment 16

Energy Safety removed section 29301 in the emergency regulations to avoid duplicative regulations. Energy Safety determined that the current regulation, which was adopted through the emergency process, serves essentially the same purpose as an investigation. And that Energy Safety can obtain the same information via its investigative authority when needed.

Comment 17 was submitted by Peter Woiwode on behalf of Reclaim Our Power at the hearing conducted on June 6, 2022.

Comment 17, summarized:

Since Energy Safety took over last summer, this has been a period of challenging and few opportunities for people we work with to engage in the process. Appreciate the Zoom link that came 1PM today from people who monitor this stuff. There's not been a genuine opportunity to engage with community affected. WE see the back and forth between Energy Safety and utility. WE don't think it would be good to go forward and cement plans. Days after Dixie Fire, PG&E put out a press release to underground entire operation. Just because it is a good talking point does not mean it is a good policy. It is a profit-driven move by PG&E. Appreciate Energy Safety did not approve PG&E WMP. Energy Safety needs to be able to reject plan and push PG&E to go back to the drawing board. Frustrated that this process has not given opportunities to more voices like mine.

Response to Comment 17

The comment does not make objections or recommendations specifically directed at the proposed action. Energy Safety acknowledges and thanks Reclaim Our Power for these comments.

Technical, Theoretical, or Empirical Studies or Reports

Energy Safety did not rely on any report or other document in the development of this rulemaking beyond that previously identified in the Initial Statement of Reasons.

Alternatives That Would Lessen Adverse Impacts on Small Business

No alternatives were proposed to Energy Safety would lessen any adverse economic impact on small business.

Alternatives Determination

In accordance with Government Code section 11346.9(a)(4), Energy Safety has considered proposed alternatives, and has determined that no available alternative would be more effective in carrying out the purposes for which the regulations are proposed, or would be more cost effective to affected private persons, or would be equally effective in implementing the statutory policy.

Local Mandate Determination

The proposed regulations do not impose any mandate on local agencies or school districts.

Coordination with Federal Law

Energy Safety has determined that this proposed regulatory action neither conflicts with nor duplicates any applicable federal regulation contained in the Code of Federal Regulations. There have been no changes in applicable laws related to the proposed action or to the effect of the proposed regulation from the laws and effects described in the Notice of Proposed Action.

Attachment 1

Hearing Transcript & Written Comments

WEBVTT

00:00:00.000 --> 00:00:07.000

Go ahead. I think we're ready

00:00:07.000 --> 00:00:16.000

And did you want your video on either way it's cool yeah, there we go.

00:00:16.000 --> 00:00:25.000

Thank you Alright

00:00:25.000 --> 00:00:30.000

Alright, Good afternoon. My name is devin lichenship and I'm.

00:00:30.000 --> 00:00:35.000

A public information officer with the office of energy, infrastructure, safety for energy safety.

00:00:35.000 --> 00:00:41.000

It is one Pm. On Monday, June sixth, 2,022, and we are in conference room.

00:00:41.000 --> 00:00:45.000

See the California Natural Resources Agency headquarters at 7, 1, 5 P.

00:00:45.000 --> 00:00:53.000

Street in Sacramento, California. We are here today to receive public comments on proposed ruling action by energy, safety.

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The regulation we are concerned with today is sections 2, 9, 3 0, 0, 2, 9, 3 0, 2 of title, 14 of the California Code of Regulations under the rule making provisions of the California administrative procedure Act also referred to as

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the Apa. This is the time to place set where the presentation of statements, arguments, and control, or in writing, or against this proposed rule, making the purpose of the series is only to obtain public comment on energy safety's

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proposal. energy, safety will not respond to Commons at this hearing normal energy, safety engage in a discussion about regulations of this hearing other than a seat clarification of comments presented, if necessary, Energy safety will take All the world and Written comments

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received at this hearing, under submission, to allow energy safety to thoroughly and thoughtfully evaluate, to determine how energy, safety wishes to respond in accordance with the Apa energy, saying, You will respond to all comments inviting in

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the final statement of reasons that will be made available to the public.

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Once it is completed, the hearing is being recorded and transcribed via Zoom.

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The transcript of this hearing. it all exhibits and evidence. Percentage during the brain will be part of the room meeting file.

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Please raise your hand on zoom and justin we'll call in your calling your name to speak.

00:02:09.000 --> 00:02:25.000

We ask you, Please state your name before your comments, and if you would like, please leave your contact information in the chat, so that we may contact about future world change possible possible changes after we hear from everyone who signed in we will hear

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from any late covers, or anyone else who wishes to be heard.

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Each commoner will have 10 min to provide their comment, which will appear on screening for you.

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We will now take role comments on proposal regulation in the interest of time.

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If you agree with comments made by a prior speaker please simply state that fact and add any new information that's pertinent to the issue that I will let just zoom. call the first comment.

00:02:49.000 --> 00:02:59.000

Please raise your hand

00:02:59.000 --> 00:03:06.000

Peter, i'm gonna allow you to speak now

00:03:06.000 --> 00:03:13.000

Thank you. Good afternoon. This is Peter Van Megam, senior Attorney, appearing on behalf of Southern California Edison Company.

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We appreciate energy. Safety is consideredation of comments provided from stakeholders throughout the emergency regulation process.

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Regulations have improved through that process in terms of clarity and scope.

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Now having road tests at the emergency regulations, we have additional input before the regulations are made permanent and per the format of this hearing, allowing 10 min of oral comments for participant Edison will focus on high-level

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comments and provide more detailed input and written comments.

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On June thirteenth. our comments with respect to Section 29300, are fairly brief.

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At this time. Essentially this in particular. this regulation in particular, has benefited from a great deal of stakeholder engagement, and has improved as a result.

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Yet there are still some issues that could be clarified further in Edison's view.

00:04:08.000 --> 00:04:18.000

First of all, section 29300 B should be revised. to remove the quote had reason to know close quote requirement, because it is vague.

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Secondly, section 29300 B. one should be revised to change the term.

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Quote might have caused quote to has a reasonable basis to believe it caused quote, because the might have caused language is also vague and potentially overbroad.

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Further section, 29300, c. should be revised to further clarify the definition of anomaly.

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Inspired attempts to make this definition more clear, and and clarify the scope.

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In particular, the definition still remains vague and potentially could include many events beyond what is intended by the regulation.

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Finally, Edison believes it's cost of implementation data should be incorporated in this record.

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Edison was asked to provide cost, and packs not cost per notification which Edison did.

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Edison provided an annual estimate of 750,000 to 1 million dollars, which was based on subject matter.

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Expertise, and reflects an estimated number of additional resources to perform the associated work that concludes Edison's brief remarks on the Notification permanent regulations proposed.

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And I again thank energy, safety for allowing me time to to comment.

00:05:35.000 --> 00:05:42.000

Thank you.

00:05:42.000 --> 00:05:48.000

Let me know if there's any more hands raised on your engine Justin right.

00:05:48.000 --> 00:05:56.000

I'm gonna light this feed Now

00:05:56.000 --> 00:06:01.000

Yes, thank you very much. Can I confirm that you can hear me?

00:06:01.000 --> 00:06:07.000

Yes, thank you all right. you're very good well good afternoon.

00:06:07.000 --> 00:06:13.000

Everybody. I very much appreciate the opportunity to be here today to speak with you.

00:06:13.000 --> 00:06:19.000

My name is Brian Augustino, the meteorologist, and the Director of Fire, Science and Climate adaptation for San Diego.

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Gas and electric regarding ignition reporting. I want to start by saying, Sdg.

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And you greatly appreciate the need for comprehensive and thorough ignition management programs and reporting.

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We appreciate the contributions that this data plays across many facets of our wildfire mitigation strategies.

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Though Sdg. and E would specifically like to talk to the reporting time, I would like to respectfully take a look at the four-hour time frame as unnecessarily burdensome, and request that that timeframe be extended to at

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least 12 h. as we look at submitting these recordings. The reason behind this is that the four-hour reporting has the potential to distract from our primary mission and those key initial hours, as we are really doing threat

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assessment When we do have a ignition, and our primary focus and priority at that time is keeping first responders, the public and our employees safe as we are assessing any potential incident we feel that the 4

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hour time window may lead to an accurate or incomplete notifications.

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And in some cases really there's very little information that can be known in those first couple of hours. as we are beginning to just initiate our data gathering on a fire incident and the potential for incomplete or

00:07:48.000 --> 00:07:53.000

inaccurate data could lead to incorrect assumptions or findings.

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As we are dealing with very preliminary information energy safety further requires a significant submission of information.

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With these notifications as opposed to just a basic notification that there is an incident, and while Sdg.

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And E. appreciates that energy safety has clarified that the utilities need only share what they know.

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At the time of the report, maintaining that twelve-hour notification window will allow for more complete and comprehensive submissions.

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Sdj. and E. we do continually monitor for fires in our service Territory, and greatly support the safety admission of our Service Territories.

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First responders. This effort leads to the utility generally knowing a lot of fire about a lot of fires in both the utility related and non utility related within minutes of ignitions developing and developing appropriate

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responses Additionally, through the monitoring of an incident, radio traffic or utilization of other situational awareness tools.

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It's likely that Sdg and e will have a reason to know if an ignition's cause has the potential to be related to utility equipment, and the four-hour time window for notification would begin gathering this information for the

00:09:18.000 --> 00:09:31.000

notification would outweigh the value that that notification made the potentially have so greatly. appreciate the opportunity to share this information with you today, and that will conclude my comments.

00:09:31.000 --> 00:09:50.000

Thank you.

00:09:50.000 --> 00:10:00.000

No other hands raised currently and we have looks like 2 people in person that would like to speak We would ask that you come up here test podium.

00:10:00.000 --> 00:10:13.000

We're actually zooming live so We'll get you on the record and just identify yourself. and you do have a 10 min countdown, and I can give you thank you my name is amy branches

00:10:13.000 --> 00:10:31.000

I'm senior director for wildfire. risk at this point, and the instant the So thank you for the opportunity to write the comments on the proposed phone and regulations, my comments are able to focus on the ignition

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reporting requirements existing. buncy regulations are very broad in scope, and as a result there's A.

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W. bring to scenarios. Interface may be aware of that meet reporting requirements, but do not involve utility facilities.

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This broad approach is similar to how PHD. initially approach understanding, ignition, risk reduction.

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After having analyzing data and determining what is and what is not informative to understanding risk, we adjusted us open focus on the patient data to with risk reduction conditions, initiatives for the time period which you see regulations have been in

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Place is submitted approximately 1,100 ignition, notifications in the spirit and intent of those of Us. regulations approximately 600 more than half non-pgany facilities files all featuring facility files that

00:11:30.000 --> 00:11:35.000

did not extend behind beyond beach. Any assets.

00:11:35.000 --> 00:11:48.000

These in incidents provide little to no valuable information as it relates to understanding, totally cost ignition, especially the ones, and i'm not pitch any facility.

00:11:48.000 --> 00:11:53.000

Fives. It would be beneficial to review the data that has been provided.

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Understand if it is meeting the intent of what energy safety intended, and then make adjustments.

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Accordingly, and We'd love to participate in that process similar to bribe a similar deprived to the adoption of the proposed regulations.

00:12:07.000 --> 00:12:16.000

It would be good for the utilities and energy safety to align on understanding what information exactly is being requested.

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How it is intended to be used, and what information utilize, collect, have access to thus far that has not been forthcoming, while at least not be the new regulations of the be more precise, that is still significant ambiguity

00:12:32.000 --> 00:12:42.000

in the nation reporting criteria, for instance, anomaly defined as an unplanned condition outside of normal operating parabolos.

00:12:42.000 --> 00:12:57.000

This can cover a wide range of circumstances that are natural occurrences on the system, and I'm not a resound or a cause of an ignition, and and are addressed as part of standard operations.

00:12:57.000 --> 00:13:10.000

However, this could trigger reporting, depending on whether a fire suppression agency responded to an ignition within a mile of an anomaly response from a fast suppression agency.

00:13:10.000 --> 00:13:16.000

Another area of family duty. 5 suppression agencies respond to a wide range of scenarios.

00:13:16.000 --> 00:13:24.000

For instance, a garage fire in the residents caused by a drio would result in an outage and a fire suppression.

00:13:24.000 --> 00:13:39.000

They see arriving on Site Az written. This would result in a notification given the broad scope of the rules as currently reduced and based on 21 and 22.2 actual we in this way across me 2,800 North.

00:13:39.000 --> 00:13:43.000

Patients to be reported in 2022.

00:13:43.000 --> 00:13:53.000

Further, we anticipate 10 to 15 events per day during 5 season, similar to what my colleague, Brian Atstino, from Sgde highlighted.

00:13:53.000 --> 00:13:58.000

This raises the possibility of distraction during the critical laws.

00:13:58.000 --> 00:14:08.000

After an admission that we need to pay close attention to alternatively excluding non-vi structure. Files that do not extend.

00:14:08.000 --> 00:14:17.000

The Npvs assets would reduce the number of portable events by approximately 7, 75% based on card regulations.

00:14:17.000 --> 00:14:22.000

We believe these instances are the most informative to unsatisfaction.

00:14:22.000 --> 00:14:33.000

Risk posted by utility infrastructure, and is the data most readily available, the ones that are not that that do start up yet at the Pcb.

00:14:33.000 --> 00:14:39.000

Facilities and then extend it beyond us. We have the same goals as energy.

00:14:39.000 --> 00:14:44.000

Safety to end usually cause catastrophic wildlife in California.

00:14:44.000 --> 00:14:48.000

Sharing data with energy. Safety is an important part of understanding.

00:14:48.000 --> 00:15:02.000

Mission risks posted by infrastructure however, we do want to ensure. we are providing meaningful data for the purposes that empty safety teams needed prior to the adoption of permanent rules.

00:15:02.000 --> 00:15:14.000

We believe it's imperative that the utilities and energy safety have a clear and shared understanding off the notification reporting scope and the intent of what the data is going to be used for We fully support.

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Better information, sharing sessions with energy safety. To discuss the data we have available, the criteria would apply to attorney relatingations for reporting purposes and further refining right here to ensure consistent interpretation across

00:15:28.000 --> 00:15:37.000

entities. We appreciate the progress empty safety has been in about the initial reporting criteria and the fault to further engagements.

00:15:37.000 --> 00:15:46.000

We'd be submitting more detail comments in response to the permanent rule making on June 13, , for the opportunity to provide this verbal input today.

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Thank you. Thank you very much,

00:16:00.000 --> 00:16:10.000

Any more hands raised. Justin. no other hand. Freeze

00:16:10.000 --> 00:16:23.000

Do you wanna speak as well as we just

00:16:23.000 --> 00:16:29.000

You will wait around and keep it open. In this case anyone wants to comment and raised

00:16:29.000 --> 00:16:36.000

Pete, my allow you to speak now. Hi! good afternoon.

00:16:36.000 --> 00:16:42.000

Can you hear me? Yes, great My name is Pete.

00:16:42.000 --> 00:16:57.000

Why would he? I work with the reclaim our power, utility, justice campaign, where a coalition of fire survivors and folks with disabilities so power shut ups and low income consumers whose rates are going

00:16:57.000 --> 00:17:14.000

up and loan some people this color is born the brunt of utilities that Pgm specifically that if then, profiting off of the fires and shut offs and and smoke, but we should have safe

00:17:14.000 --> 00:17:26.000

reliable, affordable energy delivered to our homes and then my my comments are I I don't have much prepared, because, frankly, I just found out about this meeting a couple of moments ago, and so I based my

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comments most mainly around that the since the office of energy infrastructure safety over the last summer.

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This has been a period of really challenging very few opportunities.

00:17:42.000 --> 00:17:54.000

Or the folks that we work with folks who are being impacted by the decisions made in these plans, and these approved and to engage with the process in a real way.

00:17:54.000 --> 00:18:02.000

And I think today's event, I appreciate that a zoom Zoom Link eventually came forward that I got at one Pm.

00:18:02.000 --> 00:18:09.000

When this meeting started venue to ask around to folks who is there day job to watch this stuff professionally in them.

00:18:09.000 --> 00:18:26.000

But there's no real there has not been a real genuine opportunity or real interest from my mind to engage in the actual communities affected by this, we obviously have seen the back and forth between infrastructure safety and the utility

00:18:26.000 --> 00:18:41.000

and that is really disheartening and that actually we don't think that that should be the reason to like approve and cement and push forward massively expensive the plans that deeply impact the people's of

00:18:41.000 --> 00:18:47.000

California's lives. We we need the voices of the people most impacted in these conversations.

00:18:47.000 --> 00:18:50.000

So just to speak briefly about Pg. and E plans.

00:18:50.000 --> 00:18:55.000

You know that days after the Dixie fire they cause the Dixie Pg.

00:18:55.000 --> 00:18:59.000

He caused the Dixie fire, put out a press release

00:18:59.000 --> 00:19:06.000

To to move their entire operation towards undergrounding and we've seen CEO patricia poppy move that direction.

00:19:06.000 --> 00:19:18.000

All along. And saying, this is the people of undergrounding let's just move it all towards underground, and well, just because it's a good talking point doesn't make it a good policy, and we I think you all are

00:19:18.000 --> 00:19:21.000

very familiar. This is A. This is a profit driven move by Pg.

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And E, and not actually in the interest of keeping people safe.

00:19:25.000 --> 00:19:39.000

What we need is a infrastructure safety and appreciate the staff and the expertise that this group has had the scramble to catch up from all of the damage that Pgn has done to our communities and you all are

00:19:39.000 --> 00:19:53.000

handling a lot to try and catch up to them. But we we need, And appreciative of some of the the the comments in the revisions of their wildfire mitigation plan asking for clarity about the undergrading plans

00:19:53.000 --> 00:19:56.000

asking for where these cost estimates have come from.

00:19:56.000 --> 00:20:08.000

But and we're appreciative that you all didn't approve this plan going forward, and our eager for the course over the course of the summer to engage with it, and figure out how we can really get them to take

00:20:08.000 --> 00:20:12.000

ownership of the damage that they've caused but also.

00:20:12.000 --> 00:20:23.000

I really want this space to hear loud and clear that what the people of California need is not just a corporation like Pgd.

00:20:23.000 --> 00:20:30.000

Being more willing to be honest about where they're cutting trees or where they're trying to put resources.

00:20:30.000 --> 00:20:44.000

We actually need more transparent institution media, which to my mind, means that infrastructure safety needs to be willing to reject the plan and and push pieces.

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You need to go back to the drawing board or have their business license revoked.

00:20:48.000 --> 00:21:02.000

And that's what the bankruptcy process led to a couple of years ago the ability to have the tool in your hands in people like your hands to say no, and say, this is not.

00:21:02.000 --> 00:21:13.000

You can no longer burn down our houses. you can no longer shut off our power, raise our rates, Give your CEO 50 million dollars while you get off the hook for causing the Dixie fighter and the king Kate fire

00:21:13.000 --> 00:21:21.000

at the about the same price we need to change the calculus and actually take the ball out of their hands and put it in the hands of the people.

00:21:21.000 --> 00:21:35.000

So i'll stop there. appreciate you having my bringing my voice in here, and deeply frustrated that we this kind of process was not transparent enough to get more voices like mine into this conversation Thank you for your

00:21:35.000 --> 00:21:49.000

time. Thank you.

00:21:49.000 --> 00:21:58.000

No! their hands raised,

00:21:58.000 --> 00:22:05.000

So we will keep the comments open for the next hour and a half, just in case you wouldn't speak feel free even.

00:22:05.000 --> 00:22:35.000

Stay here with that last time we it did end. about this time we ended up having an hour

00:24:47.000 --> 00:24:56.000

He just want to take a break in 5 min

00:24:56.000 --> 00:25:26.000

Sounds Good. Okay. Thanks.

00:29:38.000 --> 00:29:45.000

Alright. it's now 1 30 we'll take a 10 min break and be back at 1 40 in case there are any late submissions.

00:29:45.000 --> 00:30:15.000

Codes. Okay, Justin: Okay. Sounds good.

00:42:05.000 --> 00:42:10.000

Oh, me and say we're back up alright we're back from our break.

00:42:10.000 --> 00:42:40.000

If there are any comments we'll leave it open the next hour, in 20 min, Thanks,

01:58:30.000 --> 01:58:39.000

And everything was nothing stable yeah so what's this one's done.

01:58:39.000 --> 01:58:48.000

Then our question about all of the video

01:58:48.000 --> 01:59:05.000

, Thanks. appreciate it. Yeah, no problem. Are we good to close out?

June 13, 2022

BY OEIS E-FILING

Jeff Brooks
Office of Energy Infrastructure Safety
715 P Street, 20th Floor
Sacramento, CA 95814
jeff.brooks@energysafety.ca.gov

Re: **Office of Energy Infrastructure Safety Regulations to be Adopted as Permanent Regulations: Article 1; Reporting, Investigations, Violations; Sections 29300, 29302 2022 Rulemaking Docket (2022-RM)**

Dear Mr. Brooks:

Pacific Gas and Electric Company, Southern California Edison, and San Diego Gas & Electric (collectively, the “Joint IOUs”) jointly submit the following comments in response to the Office of Energy Infrastructure Safety’s (“Energy Safety”) Regulations to be Adopted as Permanent Regulations: Article 1; Reporting, Investigations, Violations; Sections 29300, 29302. Notice of these proposed regulations, to be adopted through the Office of Administrative Law’s (“OAL”) regular rulemaking process, was served on the Joint IOUs on April 27, 2022.

INTRODUCTION

Governor Gavin Newsom signed Assembly Bill 111 and established Energy Safety within the Natural Resources Agency on July 12, 2019. AB 111 provided that, on July 1, 2021, Energy Safety would become the successor to, and be vested with, all of the duties, powers, and responsibilities of the Wildfire Safety Division (“WSD”), a division of the California Public Utilities Commission (“CPUC”).¹ Prior to July 1, 2021, the WSD has been charged with reviewing, approving, or denying the wildfire mitigation plans (“WMPs”) submitted by electrical corporations as part of a coordinated effort to reduce the risk of ignition of wildfires from utility infrastructure.² Pursuant to Energy and Infrastructure Safety Act Section 15475.6, Energy Safety was instructed to use the CPUC’s Rules of Practice and Procedure until the new agency adopted its own set of rules, so as to provide the OEIS with a smooth transition and functioning rules in this interim period. Since September 13, 2021, Energy Safety has been operating under

¹ See also Govt. Code § 15475.

² See Pub. Util. Code §326; see also Govt. Code § 8386.1.

emergency rules of process and procedure relating to certain specific requirements, including ignition notifications, which are discussed below.

On April 27, 2022, Energy Safety provided notice that it proposed to adopt two separate sets of permanent regulations. These comments focus only on the regulations relating to reporting requirements for the utilities, entitled “Article 1; Reporting, Investigations, Violations, Sections 29300, 29302,” and specifically on the portion of these proposed regulations related to ignition notifications.

The Joint IOUs commend Energy Safety on its effort to advance rules and regulations to ensure clear processes when collaborating with utilities on wildfire mitigation work. The Joint IOUs share Energy Safety’s goal of eliminating the threat of catastrophic wildfires and welcome Energy Safety’s oversight of these important topics. The Joint IOUs, therefore, offer the following comments to help improve certain specific aspects of the proposed regulations relating to notification requirements.

SECTION 29300 – NOTIFICATIONS

The current emergency rules setting out Energy Safety’s ignition notification requirements, that has been in effect since September 13, 2021, state as follows:

- (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.³

The proposed permanent rules, which would replace the current emergency rules, state that:

- (a) A regulated entity must notify the Office within one business day after the regulated entity knows, or has reason to know, with respect to a fire requiring a response from a fire suppression agency, when:
 - (1) A fault, outage, or other anomaly has occurred on infrastructure that it owns or operates within six hours of the start of the fire; and

³ 14 CCR § 29300.

- (2) The infrastructure with the fault, outage, or anomaly is within one mile of either the origin of the fire or perimeter of the fire at the time of the notification, whichever is known and closest.
- (b) A regulated entity must notify the Office within four hours after the regulated entity knows, or has reason to know, that either: (1) infrastructure owned or operated by the regulated entity might have caused a fire requiring a response from a fire suppression agency, or (2) a government entity is investigating whether infrastructure owned or operated by the regulated entity caused a fire.⁴

As can be seen from the language above, the proposed permanent rules revise the timing of when notifications are required to be submitted under subpart (a), and the Joint IOUs greatly appreciate the revisions Energy Safety made to this portion of the requirement. The change from a 12-hour reporting requirement to a one-business day requirement prevents the utilities from having to file notifications to Energy Safety in the middle of the night, over the weekends, and on public holidays. However, the proposed permanent rules do not meaningfully decrease the broad scope of either section of these notification requirements. Therefore, for the benefit of all parties, the Joint IOUs urge Energy Safety to further refine the proposed permanent rules for the reasons described below.

A. The Data Being Collected Under 29300(a) Helps Neither Energy Safety nor the Utilities Mitigate Wildfires

The proposed permanent notification requirement set out in 29300(a) is substantially overbroad and requires the utilities to spend a large amount of time collecting and analyzing data that has no relationship to wildfire mitigation or utility-caused fires in general. The scope of this proposed permanent rule is the same as that of the current emergency rule and, therefore, the same amount of data will be collected under both rules. Since the implementation of the emergency rules on September 13, 2021, PG&E alone has submitted approximately 1,100 notifications pursuant to 29300(a), which constitutes over 95% of PG&E's total submitted notifications under these rules. Furthermore, the number of notifications submitted by the Joint IOUs is expected to sharply increase during fire season, and PG&E estimates that it will be required to report approximately 2,800 notifications in the year 2022 under the current or proposed rules.

Of the approximately 1,100 notifications provided by PG&E thus far pursuant to 29300(a), only 171, or 15%, are actually related to PG&E infrastructure. Thus, 85% of the fires have no relationship to PG&E's electrical infrastructure and provide no informational value to mitigating wildfires or utility-caused fires. Consequently, gathering, analyzing, and reporting on these fires is beneficial to neither the utilities nor to Energy Safety, since no lessons can be

⁴ Regulations to be Adopted as Permanent Regulations: Article 1; Reporting, Investigations, Violations; Sections 29300, 29302 at p. 1.

learned from these fires. Indeed, the most common type of fire reported by PG&E under these requirements are structure fires, and it is not helpful to have the utilities continuously reporting urban or suburban kitchen or garage fires that pose no wildfire threat and just happen to take place in the vicinity of utility assets. Additionally, Energy Safety states that the reporting is beneficial to assessing the electrical corporations' WMPs and the events the WMPs are intended to prevent.⁵ However, the reporting requirement is not limited to the HFTD areas, where the WMP initiatives are focused. For instance, in 2022 alone, half of SDG&E's incident notifications have addressed ignitions outside of the HFTD areas.⁶ Thus, is the data that is being collecting data that could potentially skew impressions of WMP initiative performance by including information on urban and non-HFTD area infrastructure.

As a result, the Joint IOUs recommend that the language of Section 29300(a) be revised to exclude non-utility caused structure fires and facility fires that do not extend beyond utility assets. This modest revision will remove approximately 75% of the total notifications reported while maintaining the incidents that are important to understanding wildfire mitigation and utility-caused fires. Proposed language illustrating this change is provided below in Section F.

B. The Vast Quantity of Data Requested under 29300(a) Is Enormously Burdensome on the Utilities, Particularly During Fire Season When Reporting Will Spike and Will Siphon Resources From Other Necessary Work

The proposed notification rules also require the utilities to assign resources to fulfilling the reporting requirements of Section 29300(a) that would otherwise being used to respond wildfire threats. During certain times of the year this reallocation may not be so critical, but during peak fire season this could be particularly harmful and would not be an appropriate use of resources. Indeed, PG&E estimates that, under the extremely broad language that requires utilities to report non-utility caused fires, PG&E alone will be required to report between 15 and 20 notifications to Energy Safety each day during fire season, when these resources should be assigned to tracking and responding to fires. While the Joint IOUs do not dispute that reporting requirements are needed, reporting dozens of non-utility related urban and suburban fires each day during wildfire season is not an efficient use of resources. The Joint IOUs, therefore, again recommend that Section 29300(a) be revised to exclude non-utility caused structure fires and facility fires that do not extend beyond utility assets, as this would reduce the number of triggering events by approximately 75%, while maintaining the incidents that are valuable to understanding wildfire mitigation.

C. The Extremely Broad Nature of the Data Requested Under 29300(a) May Exceed Energy Safety's Jurisdiction

⁵ "Initial Statement of Reasons, Reporting Investigations, Violations, Sections 29300, 29302," California Office of Energy Infrastructure Safety (April 27, 2022).

⁶ To date in 2022, SDG&E has submitted 16 notifications, only 8 of which were in the HFTD areas.

Energy Safety arguably does not have the statutory authority to issue such a broad notification requirement as that contained in Section 29300(a). Energy Safety is the successor to, and vested with, all the duties, powers, and responsibilities of the WSD. The primary responsibility of the WSD has been to review and oversee compliance of the utilities' WMPs. This proposed notification requirement goes well beyond the wildfire mitigation efforts set forth in the electrical corporation WMPs to include any fault, outage, or "anomaly" occurring within one mile of a fire perimeter, including non-wildfires, and whether caused by the utility or not.

As described above, only approximately 15% of the 1,100 ignitions that PG&E has reported so far under Section 29300 are actually related to PG&E's infrastructure. Given this discrepancy, it is not clear that the Office of Energy Infrastructure Safety has the authority to compel utilities to provide information on thousands of ignitions every year that are completely unrelated to energy infrastructure. Furthermore, the jurisdictional argument for providing this data becomes even more tenuous when the information is of questionable value to both the utilities and to Energy Safety. Given this questionable authority, the Joint IOUs urge Energy Safety to revise Section 29300(a) as set out in Section F below.

D. The Four-Hour Reporting Requirement in 29300(b) Is Unnecessary and Not Beneficial in Certain Circumstances

Section 29300(b) requires utilities to notify Energy Safety within four hours of knowing, or having reason to know, that the regulated entity might have caused a fire, or that a government entity is investigating whether infrastructure owned or operated by the regulated entity caused a fire. However, the Joint IOUs believe that a four-hour notification requirement is not always necessary or helpful to Energy Safety. Indeed, providing additional time to gather and quality verify the information will allow the utilities to provide more high quality and useful information to Energy Safety. Thus, the Joint IOUs suggest that this four-hour requirement be made more flexible, so that utilities are required to report these incidents "as soon as reasonably possible or, at the very latest, within one business day." Sample language for this proposed revision is provided below in Section F. There is minimal benefit to requiring these notifications to be to meet a rigid four-hour notification requirement at the expense of the quality of the data being submitted.

E. The Quick Turnaround Time to Provide Certain Types of Data Under 29300(a) and 29300(b) Does Not Allow the Utilities to Quality Check that Data, Making Certain Data Requested of Lower Quality and Less Valuable

As part of operationalizing the current emergency rules, Energy Safety provided the utilities with a detailed spreadsheet that is to be completed for every notification submitted. A copy of this spreadsheet is attached to these comments as Attachment A. This spreadsheet contains 46 separate columns requesting specific information about each ignition that is being reported. Although Energy Safety has advised the utilities that they need only complete the fields for which they have the information at the time of reporting, given the abbreviated timeframe in which the utilities must notify Energy Safety, there is insufficient time to quality check the data that the utilities are able to provide—especially if Energy Safety shortens the time

frame for reporting fires believed to be caused by utility infrastructure to four hours. This means that the information provided to Energy Safety may frequently be based on incomplete investigations suffering from minimal and error-prone information that can be misleading and create more problems than it solves.

In particular, the utilities are concerned about the following fields in Attachment A where they believe the information to be of relatively low quality and not beneficial to report on such a short time window: (1) rfw_status; (2) fww_status; (3) hww_status; (4) fire_investigation; (5) fire_ahj; (6) suspected_initiating_cause; (7) determination; (8) equipment_failure; (9) object_contact; and (10) facility_contacted. If Energy Safety is considering utilizing the same, or a similar, spreadsheet as part of the permanent notification rules, the Joint IOUs urge Energy Safety to consider removing these fields from the spreadsheet given the relatively low quality of data that is available in such a short response time and the inability to perform quality control on this data.

F. Proposed Language for Section 29300 – Notification

Based on the above recommendations, the Joint IOUs propose the following revisions to the language of Section 29300 of the proposed permanent rules:

- (a) A regulated entity must notify the Office within one business day after the regulated entity knows, or has reason to know, with respect to a fire requiring a response from a fire suppression agency, when:
 - (1) A fault, outage, or other anomaly has occurred on infrastructure that it owns or operates within six hours of the start of the fire; and
 - (2) The infrastructure with the fault, outage, or anomaly is within one mile of either the origin of the fire or perimeter of the fire at the time of the notification, whichever is known and closest.
 - (3) **The above requirements exclude from notification: (i) non-regulated entity structure fires; and (ii) regulated entity facility fires that do not extend beyond the regulated entity's assets.**
- (b) A regulated entity must notify the Office as soon as reasonably possible or, at the very latest within one business day of when ~~four hours after~~ the regulated entity knows, or has reason to know, that either: (1) infrastructure owned or operated by the regulated entity might have caused a fire requiring a response from a fire suppression agency, or (2) a government entity is investigating whether infrastructure owned or operated by the regulated entity caused a fire.

Implementing the above requirements for Section 29300(a) would reduce the number of incidents reported by approximately 75% while retaining the incidents that are valuable to understanding wildfire mitigation and utility-caused wildfires. Similarly, revising the time

requirement for Section 29300(b) would allow for more flexibility for the less important triggering events, and improve the quality of the data reported to Energy Safety by allowing the utilities a short amount of additional time to gather information and perform quality control on that information.

CONCLUSION

The Joint IOUs appreciate Energy Safety's efforts to ensure clear processes and guidelines for collaborating with utilities on wildfire mitigation work. The Joint IOUs respectfully submit these comments identifying potential areas of improvement in the proposed regulations and look forward to working with Energy Safety to promote wildfire safety going forward.

If you have any questions, please do not hesitate to contact Wade Greenacre at wade.greenacre@pge.com, Peter Van Mieghem at peter.vanmieghem@sce.com, or Laura Fulton at lfulton@sdge.com.

Very truly yours,

/s/ Andy Abranches

Andy Abranches on behalf of the Joint IOUs
Senior Director, Wildfire Risk Management
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June 13, 2022

VIA ELECTRONIC FILING

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**Subject: Comments of the Public Advocates Office on Proposed Rulemakings on Process and Investigation Regulations, dated April 27, 2022
Docket #: 2022-RM**

Dear Director Thomas Jacobs,

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits the following comments on the proposed permanent regulations submitted by the Office of Energy Infrastructure Safety (Energy Safety) regarding its process regulations¹ and investigation regulations.² We respectfully urge Energy Safety to adopt the recommendations discussed herein.

I. INTRODUCTION

Pursuant to recently enacted Government Code³ provisions, Energy Safety submitted to the Office of Administrative Law a Notification of Proposed Emergency Regulatory Action, with proposed process and investigation regulations, on September 3, 2021. Thereafter, the Office of Administrative Law approved and adopted the emergency regulations on September 13, 2021, and readopted the emergency regulations on March 10, 2022, and June 6, 2022 (current regulations).⁴ Energy Safety's Emergency Regulatory Action expires on September 13, 2022.

¹ Cal. Code of Regs., tit. 14, §§ 29100-29200 (Title 14. Natural Resources, Division 17. Office of Energy Infrastructure Safety, Chapter 1. Rules of Practice and Procedure) (process regulations).

² Cal. Code of Regs., tit. 14, §§ 29300-29302 (Title 14. Natural Resources, Division 17. Office of Energy Infrastructure Safety, Chapter 2. Investigation and Compliance) (investigation regulations).

³ Gov. Code §§ 11346.1, 15473(c)(2)(E), and 15475(a).

⁴ Cal. Code of Regs., tit. 14, §§ 29100-29200, 29300-29302 (readopted June 6, 2022, effective June 14, 2022).

On April 27, 2022, Energy Safety instituted two new rulemakings. Each rulemaking proposed adoption of *permanent* versions of its regulations - one on its process regulations,⁵ and one on its investigation regulations.⁶ For each rulemaking, Energy Safety provided notice of the proposed rulemaking,⁷ proposed text of the regulations,⁸ and an initial statement of reasons supporting the proposed regulations.²

Cal Advocates provides comments on the proposed rulemakings and provides recommendations on rulemakings for the future. Cal Advocates' goal is to promote robust and meaningful stakeholder participation in Energy Safety's proceedings. Cal Advocates' recommendations (further discussed in Sections II, III and IV) can be summarized as follows:

Confidentiality (Process Regulations (Cal. Code Regs., tit. 14, § 29200)):

- Energy Safety's regulations should distinguish between producers and users of information, including between utilities, government entities, and non-utility entities, in the requirements for confidential treatment of utility-provided information.
- Energy Safety's regulations should provide due process for responding to and making appeals of confidential designations.

Accessibility (Process Regulations (Cal. Code Regs., tit. 14, § 29100, 29101)):

- Energy Safety's regulations should limit the burden of complying with accessibility requirements on stakeholders who participate in Energy Safety's proceedings.

Incident Reporting (Investigation Regulations (Cal. Code Regs., tit. 14, §§ 29300-29302)):

⁵ State of California, Office of Energy Infrastructure, NOTICE OF PROPOSED RULEMAKING, Cal. Code Regs., tit. 14, §§ 29200, 29201, 29200 - E-Filing, Formatting Requirements, Submission of Confidential Information (filed April 27, 2022) (NOPR - Process Regulations, April 27, 2022).

⁶ State of California, Office of Energy Infrastructure, NOTICE OF PROPOSED RULEMAKING, Cal. Code Regs., tit. 14, §§ 29300, 29302 (filed April 27, 2022) (NOPR - Investigation Regulations, April 27, 2022).

⁷ NOPR - Process Regulations, April 27, 2022; NOPR - Investigation Regulations, April 27, 2022.

⁸ State of California, Office of Energy Infrastructure, Text of Regulations, Cal. Code Regs., tit. 14, §§ 29200, 29201, 29200 (filed April 27, 2022) (proposed process regulations); State of California, Office of Energy Infrastructure, Text of Regulations, Cal. Code Regs., tit. 14, §§ 29300, 29302 (filed April 27, 2022) (proposed investigation regulations).

² State of California, Office of Energy Infrastructure, Initial Statement of Reasons, Cal. Code Regs., tit. 14, §§ 29200, 29201, 29200 - E-Filing, Formatting Requirements, Submission of Confidential Information (filed April 27, 2022) (Initial Statement - Process Regulations, April 27, 2022); State of California, Office of Energy Infrastructure, Initial Statement of Reasons, Cal. Code Regs., tit. 14, §§ 29300, 29302 (Initial Statement - Investigation Regulations, April 27, 2022).

- Energy Safety should retain the current regulation requiring incident reports within 30 days of ignition,¹⁰ or articulate in its Final Statement of Reasons its reasons for the omission of this section and alternatives it considered.

Time Periods for Comments:

- To facilitate meaningful participation, Energy Safety’s regulations should provide for regular time frames for comments on wildfire mitigation plans (WMPs) and other submissions.

Motions/Proposals Process:

- Energy Safety’s regulations should allow for a motion process, including motions to compel and for reconsideration of Energy Safety decisions.

Discovery Process:

- Energy Safety’s regulations should provide guidelines on discovery response times and an adjudication process for disputes, for all matters and times of the year besides for WMPs and WMP periods.

Transparency in Policy Discussions:

- Energy Safety should provide regulations on notice and reporting of private discussions between Energy Safety and stakeholders, on policy matters.

Public Participation Hearings:

- Energy Safety should provide regulations that allow an opportunity for public participation hearings on policy matters.

¹⁰ Cal. Code Regs., tit. 14, § 29301.

II. PROCESS REGULATIONS

A. Confidentiality (Section 29200)

Energy Safety's provisions for submitting confidential information (in section 29200 of the Process Regulations), are burdensome and hamper stakeholder engagement. Overall, Cal Advocates recommends that Energy Safety's guidelines for confidentiality mirror those at the California Public Utilities Commission (CPUC), as provided in the CPUC's General Order (GO) 66-D.¹¹ These guidelines are comprehensive and provide for due process and efficient processing of confidentiality claims. More specifically, we offer the recommendations below.

- 1. Energy Safety's regulations should distinguish between producers and users of information, including between utilities, government entities, and non-utility entities, in its requirements for applying for confidential treatment of information.**

Proposed section 29200(a) of the process regulations requires any person who submits information and intends it to be exempt from public disclosure, to fulfill several requirements. Such requirements include identifying the statutory basis for the exemption claimed, stating the reasons why each exemption claimed applies to the information proposed to be treated as confidential, and attesting and certifying under penalty of perjury that the application for confidential designation is true, correct, and complete to the best of their knowledge.¹² These proposed regulations are similar to the requirements in the current section 29200. However, the current section 29200 distinguishes between "[a]ny private third party"¹³ and government entities,¹⁴ while the proposed regulations do not.

The current section 29200(e) notes that when another agency possesses information pertinent "to the responsibilities of [Energy Safety] that has been designated by that agency as confidential under the California Public Records Act or the Freedom of Information Act," Energy Safety may request and the agency shall submit the information to Energy Safety without an application for confidential designation and "[Energy Safety] Office shall designate this information as confidential." The proposed section 29200 omits this provision. As a result, all parties, regardless of whether they are the producer or only a user of the allegedly confidential information – including utilities, any private third parties, and government agencies -- must apply for confidential designation under proposed section 29200(a). Cal Advocates urges Energy Safety to retain and modify the aforementioned provision in current section 29200(e) so that government entities, which often are not producers of allegedly confidential information

¹¹ Available at <https://www.cpuc.ca.gov/-/media/cpuc-website/proceedings-and-rulemaking/documents/d2008031.pdf>.

¹² See Proposed Cal. Code Regs., tit. 14, § 29200(a)(1)-(8).

¹³ See Current Cal. Code Regs., tit. 14, § 29200(a).

¹⁴ See Current Cal. Code Regs., tit. 14, § 29200(e).

shared with Energy Safety, can submit that information without having to attest to the confidentiality designation.

Current section 29200(e) states that a government agency is not required to submit an application for confidential designation. Nonetheless, Energy Safety has required Cal Advocates to submit an application for confidential designation before accepting Cal Advocates' confidential filing of Comments on Pacific Gas and Electric Company's (PG&E's) quarter four update.¹⁵ This process is unnecessary as well as burdensome.

Under statutory law, Cal Advocates is required to treat as confidential any information so designated, unless the CPUC orders the information be disclosed to the public.¹⁶ Cal Advocates' confidential filing contained information received from and designated by PG&E as confidential. However, Cal Advocates was not the declarant or source of the confidential information and therefore did not have direct knowledge of the claims of confidentiality provided by PG&E. Thus, we were unable to accurately meet the requirements in proposed section 29200(a)(1)-(8). This issue is also applicable for non-utility or non-governmental stakeholders who receive but are not the producers of information that a utility designated as confidential.¹⁷

Cal Advocates urges Energy Safety to provide a more streamlined process for non-producers of confidential information, to file submissions with information designated by another source as confidential without having to submit an application for confidentiality. While a memorandum of understanding (MOU) may allow Energy Safety and other government agencies to share confidential information with each other,¹⁸ this process does not cover filings in public dockets.

¹⁵ *Comments of the Public Advocates Office on Pacific Gas and Electric Company's Quarter 4 (Q4) Quarterly Report*, Docket # 2021-QDR, February 15, 2022.

¹⁶ See Public Utilities (P.U.) Code § 583:

No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.

¹⁷ The CPUC has its own process of determining whether information is confidential and Cal Advocates could have requested a resolution from the CPUC on the confidentiality claims made by the utility regarding the information it designated as confidential, *see* CPUC GO 66-D, before submitting its application for confidential designation. However, this process would have been too long to get a CPUC resolution ruling on confidentiality within the short timeframe imposed by the deadline for the Energy Safety filing.

¹⁸ *See, e.g.*, Gov. Code § 6254.5(d); Gov. Code § 15476 ("The Public Utilities Commission and the office shall enter into a memorandum of understanding to cooperatively develop consistent approaches and share data related to electric infrastructure safety. The commission and the office shall share results from various safety activities, including relevant inspections and regulatory development."); Initial Statement – Process Regulations, April 27, 2022, pp. 16, 24.

Currently there is no process for any entity, with or without an MOU with Energy Safety, to file confidential documents to Energy Safety's dockets without an application for confidential designation.

Recommendation: Energy Safety should adopt a provision that establishes a streamlined process for confidential designation of information produced by a source other than the user-filer, where the user is relying on the declaration of the producer of information and proponent of confidentiality. For example, Energy Safety could require that the user-filer only need provide a copy of the producer-proponent's declaration as an attachment to the document it wishes to file confidentially on Energy Safety's docket.

Moreover, Energy Safety should retain and modify section 29200(e) such that it also says "or by another statute," in addition to "California Public Records Act or the Freedom of Information Act," so that it includes other pertinent statutes like P.U. Code section 583 for the case of CPUC and Cal Advocates filers. Energy Safety should also look to create a similar provision for non-government entities that seek to file information provided confidentially by a utility.

2. Energy Safety's regulations should provide due process for responding to and making appeals of confidential designations.

Current section 29200, subsection (c), of the process regulations, includes the process for Energy Safety's determinations on applications for confidentiality designation, including timeframes for Energy Safety to notify stakeholders of defects in applications and for applicants to respond to denials. However, neither the current nor the proposed version provides for challenges of confidential designations by other parties.

Recommendation: Energy Safety should include a provision that allows stakeholders to challenge confidential designations made by other stakeholders. This will facilitate engagement of all stakeholders in the proceeding by ensuring that as much pertinent information as possible is available for public review and comment.

Additionally, in the event that any entity (whether Energy Safety or a stakeholder) challenges the confidentiality of information that was originally provided and declared confidential by a utility or another source, the source should be responsible for responding to the challenge.

B. Accessibility (Sections 29100, 29101)

Energy Safety's proposed provisions in section 29100 et seq. requiring that all submissions on Energy Safety's e-filing system meet accessibility requirements, are unclear and likely to be unreasonably burdensome. Overall, Cal Advocates recommends that Energy Safety clarify and limit the specific requirements stakeholders must meet for their documents to be accepted onto Energy Safety's dockets. This will serve to encourage participation by members of the public who do not have the resources to comply with rigorous accessibility requirements.

1. Energy Safety’s regulations should limit the burden of complying with accessibility requirements, on stakeholders who participate in Energy Safety’s proceedings.

Cal Advocates understands that Energy Safety intends to follow the State of California’s policy of providing accessible electronic documents to members of the public, including those with disabilities.¹⁹ Nevertheless, holding stakeholders to complex, rigorous, and voluminous accessibility standards, including Web Content Accessibility Guidelines (WCAG) 2.0 standards,²⁰ is unduly burdensome.

Energy Safety states that non-utility entities can comply with these standards by either conforming their electronic filings to these rigorous accessibility standards, or by submitting their filings in hard copy by U.S. mail.²¹ However, this is still unduly burdensome and not tenable, for stakeholders that do not have the resources to make their electronic documents compliant with the accessibility requirements.²² Filing hard-copy documents by U.S. Mail is inefficient, slow, and not beneficial to the goal of making documents accessible, given the availability of word-searchable electronic documents.

Moreover, Energy Safety’s proposed regulations at section 29101 already set forth formatting and word searchable requirements for documents to be accepted onto Energy Safety’s docket system.²³ However, it is unclear whether or not meeting the requirements in section 29101(b)-(e) as well as in Energy Safety’s E-Filing System User’s Guide, is sufficient to meet Energy Safety’s accessibility requirements.

It is notable that another state agency, the CPUC, also aims to comply with the State of California’s policy to provide accessible content to all members of the public.²⁴ On its website, the CPUC provides guidance and resources for stakeholders to use to for accessibility purposes, including a link to Adobe Acrobat reader.²⁵ Nowhere does the CPUC require stakeholders who

¹⁹ See Proposed Cal. Code Regs., tit. 14 § 29100(c) (referring to compliance with Government Code section 7405, which references the Federal Rehabilitation Act of 1973 (Rehabilitation Act)).

²⁰ See Appendix C to Part 1194 - Functional Performance Criteria and Technical Requirements, 702.10.1 (WCAG 2.0, Web Content Accessibility Guidelines, W3C Recommendation, December 11, 2008); WCAG 2.0, Conformance Requirements, available at <https://www.w3.org/TR/WCAG20/>

²¹ See, e.g., Proposed Cal. Code Regs., tit. 14 § 29100(b); Initial Statement of Reasons – Process Regulations, April 27, 2022, p. 24.

²² It is notable that Energy Safety estimated the cost to make documents meet accessibility requirements could cost up to tens of thousands of dollars per year, based on an estimate of \$4-\$6 per page for 10,000 pages per year. See, e.g., Morris Email to Ogren, April 8, 2022.

²³ See Proposed Cal. Code Regs., tit. 14 § 29101(b), (c).

²⁴ CPUC website, “Accessibility” page available at <https://www.cpuc.ca.gov/about-cpuc/accessibility>

²⁵ CPUC website, “Accessibility” page available at <https://www.cpuc.ca.gov/about-cpuc/accessibility>

wish to participate in its proceedings to meet all the WCAG 2.0 requirements.²⁶ It is worth noting that the CPUC has similar formatting requirements as Energy Safety’s section 29101, in its Rules of Practice and Procedure.²⁷ The CPUC’s approach has been certified as providing sufficient levels of accessibility under WCAG, all without imposing WCAG standards on CPUC stakeholders.²⁸ Energy Safety can take the same approach and meet its accessibility goals without impeding the ability of stakeholders and members of the public to participate in its proceedings.

Recommendation: Energy Safety should clarify whether meeting the requirements in section 29101(b)-(e) as well as in Energy Safety’s E-Filing System User’s Guide is sufficient to meet Energy Safety’s initiative to provide accessible electronic documents to members of the public. Furthermore, Energy Safety should provide explicit guidelines in the proposed regulations or in its Energy Safety E-Filing System User’s Guide, or both, on all accessibility requirements that electronic documents should meet. Lastly, Energy Safety should *not* require stakeholders to meet the accessibility requirements of WCAG 2.0 in its entirety. To the extent that Energy Safety wishes to meet the full WCAG 2.0 requirements, then it is appropriate for Energy Safety to perform that work once it has accepted the filed documents by participating stakeholders.

III. INVESTIGATION REGULATIONS

A. Incident Reporting (Current Section 29301)

The incident reports section (section 29301) of the current version of the regulations²⁹ requires reporting of ignitions that a utility or firefighting agency suspects may have been caused by utility equipment. This section is omitted in the proposed version.

The incident reports described in section 29301 would likely contain useful information and section 29301 does not appear to be duplicative of other regulations. In particular, section 29301 requires a preliminary root cause analysis and a description of all actions taken to minimize the recurrence of ignition incidents. This information would help Energy Safety and stakeholders identify emerging or recurring safety hazards, analyze mitigation measures, and develop ideas for effective policies to mitigate wildfire risks.

Recommendation: Energy Safety should retain current section 29301 of the investigation regulations. Alternatively, if it decides to not retain the section, Energy Safety should explain in its Final Statement of Reasons its reasons for omitting this regulation and describe the alternatives it considered.

²⁶ CPUC website, “Accessibility” page available at <https://www.cpuc.ca.gov/about-cpuc/accessibility>

²⁷ See, e.g., Cal. Code Regs., tit. 20, div. 1, Ch.1 (CPUC Rules of Practice and Procedure), Rules 1.5, 1.13.

²⁸ CPUC website, “Accessibility” page available at <https://www.cpuc.ca.gov/about-cpuc/accessibility>

²⁹ Current Cal. Code Regs., tit. 14, § 29301.

IV. OTHER REGULATIONS (NOT YET PROPOSED OR ADOPTED)

Cal Advocates urges Energy Safety to promulgate additional regulations to facilitate and strengthen public participation in the processes of Energy Safety. Cal Advocates notes that the CPUC's Rules of Practice and Procedure may serve as a helpful example of rules on several topics, and that many participants in Energy Safety's proceedings are familiar with the rules for CPUC proceedings.

A. Recommended Regulations

1. Time Periods for Stakeholder Comments

Standing rules on comment periods provide predictability and fairness to regulatory proceedings. Currently, though, Energy Safety has no rules providing for regular timeframes for commenting on the various types of filings submitted to Energy Safety.

The lack of clear and predictable rules makes advance planning difficult and hampers Cal Advocates' ability to fully engage in the comment process. For example, in summer of 2021, extensive and substantively important errata and revisions of two WMPs were issued, for which there was no advance notice and, therefore, no advance notice of a response timeframe for comments. Energy Safety provided only seven calendar days for comments and six days for reply comments each.³⁰ This allowed inadequate time for Cal Advocates to provide comprehensive informed input.

Recommendation: Energy Safety should provide for regular time frames for comments and reply comments based on type of document or pleading.³¹ To provide predictability, fairness, and meaningful participation by stakeholders, the rules should provide default comment and reply periods for:

- Wildfire mitigation plans (WMPs)
- WMP errata
- WMP revisions
- Quarterly data reports and initiative updates
- Quarterly notification letters
- Draft decisions on WMPs
- Executive compensation submissions
- Safety certification requests
- Motions or proposals.

³⁰ See Wildfire Safety Division's Revision Notice for Pacific Gas & Electric Company's 2021 Wildfire Mitigation Plan Update, May 4, 2021; The Wildfire Safety Division Issuance of Revision Notice for Southern California Edison Company's 2021 Wildfire Mitigation Plan Update and Notice of Extension of WSD Determination Per Public Utilities Code 8389.3(a), May 4, 2021.

³¹ See, e.g., CPUC Rules of Practice and Procedure, Rules 2.6 (comment period for protests, responses, replies to applications).

Energy Safety should ensure that the comment period for each type of filing is proportionate to the amount of information that stakeholders receive and need to analyze. Additionally, Energy Safety should provide adequate time for stakeholders to conduct discovery, so as to provide informed, substantive recommendations to Energy Safety.

In addition, Energy Safety should allow an opportunity for supplemental comments where a utility submits errata or supplemental information after the normal deadline for comments has passed.

Finally, Energy Safety should specify all timeframes in business days so as to account for holidays. Since many staff in stakeholder organizations take vacations during the end-of-year holidays, any comment period that includes this period should be extended proportionately.³²

2. Motions/Proposal Process

Currently there is no mechanism for stakeholders to formally raise any issue before Energy Safety, outside of the comments process, or outside of requests for extensions in the WMP review period. This gap hampers due process. A motion process would be helpful to resolve issues that may not fall neatly within the scope of a scheduled set of comments. For example, as discussed earlier, there is no mechanism for stakeholders to submit a motion or proposal to reconsider a confidential designation by another party. Another example is that there is no process to compel a response to a discovery request, if the discovery dispute cannot be informally resolved between the parties. Moreover, there is no process to suggest changes to filing schedules in Energy Safety proceedings, except to the extent that Energy Safety specifically requests input on this issue.

Recommendation: Energy Safety should include regulations that allow for a motion process, including motions to compel, motions for leave to file, and motions for reconsideration.³³ This will promote stakeholder engagement in Energy Safety's proceedings by resolving issues that do not fall within the scope of existing filings.

3. Discovery Process

Currently there are no standing discovery rules at Energy Safety, except for limited guidance in the WMP guidelines that applies during the annual WMP review period.³⁴ The WMP discovery

³² Specifically, the days from Christmas through New Year's Day should be treated as holidays for purposes of calculating comment periods.

³³ See, e.g., CPUC Rules of Practice and Procedure, Rules 11.1 (motions), 11.3 (motion to compel or limit discovery), 6.3 (petition for rulemaking), 14.4 (request for review of presiding officer's decision).

³⁴ For example, the WMP guidelines provide guidance on posting WMP discovery requests on utility websites, WMP discovery response times of three days, and extension requests for WMP discovery responses beyond the three days absent an agreement by the requesting party for the data request. See Office of Energy Infrastructure Safety, *Final 2022 Wildfire Mitigation Plan (WMP) Update Guidelines*, December 15, 2021, Attachment 5: Guidelines for Submission and Review of 2022 Wildfire Mitigation Plan Updates, pp. 10-11.

guidelines do not provide any mechanism to resolve discovery disputes other than deadline issues. Moreover, Energy Safety has issued no guidance on:

- WMP-related discovery outside of the annual WMP review period
- Discovery on WMP-related filings such as quarterly data reports
- Discovery on safety certifications and related filings

The lack of a process for resolving any discovery disputes, and lack of any enforcement mechanism against unresponsive, incomplete, or untimely discovery responses, has, in some instances, left Cal Advocates with no means of remedying incomplete or tardy responses within the short time periods available for filing comments.³⁵

Recommendation: Energy Safety should provide standing rules on discovery between parties, including an adjudication process and forum for resolving discovery disputes, and rules on response times and filing motions for disputes, for all matters and times of the year.³⁶

4. Transparency in Policy Discussions

As part of its responsibilities, Energy Safety may meet with individual stakeholders in private discussions, outside of public hearings and the written submission process, on policy issues in particular proceedings or in general. Cal Advocates recommends issuing regulations that provide for public notice and transparency of such private discussions (which may be referred to as “ex parte” communications, meaning “by or for one party”).³⁷ Encouraging open policy discussions will strengthen Energy Safety’s review process by ensuring a fair process and public record of evidence used for decision-making. Moreover, it will strengthen the evidentiary record by allowing other parties to respond and provide counterarguments or supplemental information.

The California Administrative Procedure Act (APA) defines an ex parte communication as a prohibited communication, direct or indirect, during the pendency of a proceeding, regarding any issue in the proceeding, to the presiding officer of a proceeding, from a party or interested person outside the agency, without notice and opportunity for all parties to participate in the

³⁵ While Cal Advocates has statutory discovery authority and the ability to utilize the motion to compel process at the CPUC to compel production, *see* P.U. Code §§ 309.5, 314; CPUC Rule of Practice and Procedure, Rule. 11.3, this is not always an acceptable solution because the process often takes longer than the comment deadlines. In addition, other intervenors do not have the same authority or forum available for resolution of discovery issues.

³⁶ *See, e.g.*, CPUC Rules of Practice and Procedure, Rules 10.1 (scope of discovery between participants in CPUC proceedings), 11.3 (motion to compel or limit discovery process, including meet and confer process, that CPUC can rule on).

³⁷ “Ex parte” simply means “on one side only; by or for one party; done for, in behalf of, or on the application of, one party only.” Black’s Law Dictionary. Under the federal Administrative Procedures Act (APA), “ex parte communications” refers to “an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered....” 5 U.S.C. § 551 (14).

communication.³⁸ Energy Safety should follow the lead of agencies such as the California Energy Commission (CEC), California Air Resources Board (CARB), who follow the California APA, and the Federal Energy Regulatory Commission (FERC), and prohibit ex parte contacts in all contested proceedings.³⁹

One of the primary purposes of restrictions on ex parte contacts with decision-makers is to prevent a party from gaining an unfair advantage in a contested matter.⁴⁰ By not being subject to scrutiny, ex parte information generally cannot be rebutted or corrected.⁴¹ As a result, an ex parte contact may misinform the decision-making process.⁴² Accordingly, Energy Safety should require through its rules that decision-makers avoid ex parte contacts, report such communications when they do occur, and allow other parties a chance to respond. The California APA, followed by CARB and CEC, for example, requires a decision-maker to “disclose the content of the communication on the record and give all parties an opportunity to address it.”⁴³ This prohibition against undisclosed ex parte communications need not restrict the ability of Energy Safety decision-makers to hold properly noticed meetings which *all* parties can attend.

Finally, Energy Safety’s ex parte rules should provide clear explanations about what types of communications are truly procedural and thus not subject to the ex parte rules, and what communications are substantive and should be subject to ex parte rules.

Recommendation: Energy Safety should follow the majority of California agencies like the CEC and CARB, and the federal FERC by prohibiting ex parte contacts in all contested proceedings. Energy Safety should provide regulations for holding open meetings, and notice of private ex

³⁸ Gov. Code § 11430.10(a).

³⁹ One possible exception to this is legislative rulemaking proceedings where no hearings are held and no individual substantive rights are affected. Deborah Behles, Steven Weissman, *Ex Parte Requirements at The California Public Utility Commission: A Comparative Analysis And Recommended Changes* (Jan. 16, 2015) (Behles, Weissman paper), p. 4. “Contested proceedings” is defined to include, among other things, any matter that requires hearings and affects an individual entity’s substantive rights. Behles, Weissman paper, p. 4

⁴⁰ Behles, Weissman paper, p. 4.

⁴¹ Behles, Weissman paper, p. 4 (citing *Professional Air Traffic Controllers Org. v. Federal Labor Relations Auth.*, 685 F.2d 547, 563 (D.C. Cir. 1982); *Portland Audubon Society v. Endangered Species Committee*, 984 F.2d 1534, 1543 (9th Cir. 1993) (listing cases)).

⁴² Behles, Weissman paper, p. 4 (citing John Allen, *Combinations of Decision-making Functions, Ex Parte Communications, and Related Biasing Influences: A Process-Value Analysis*, 1993 UTAH LAW REVIEW 1135, 1197 (1993) (“Unchallenged evidence or arguments are more salient, more likely to be recalled by the decision maker, and more likely to carry inordinate weight in the mental process of reaching a final conclusion.”)).

⁴³ Gov. Code sections 11430.40, 11430.50.

parte discussions between stakeholders and Energy Safety on policy matters, in order to promote transparency and stakeholder engagement in Energy Safety's proceedings.⁴⁴

5. Public Participation Hearings

Energy Safety has recently conducted public hearings on the proposed rulemakings where members of the public can participate remotely and provide oral or written comments. Cal Advocates commends Energy Safety for taking this step and urges Energy Safety to continue to hold public participation hearings on all of its important matters, not just the proposed rulemakings. Such public meetings will facilitate engagement, especially from members of the public who are at highest risk of experiencing catastrophic wildfires in their areas, on whom the decisions of Energy Safety will have greatest impact. It is important that these perspectives be heard. All public meetings should have at least one means of remote participation (e.g., phone or videoconference).

Recommendation: Energy Safety should create regulations for public participation hearings on policy and important decisions before Energy Safety.⁴⁵ The regulations should provide for adequate notice, timeframes of meetings relative to final decisions, and accessibility (including remote accessibility and possibly alternative in-person locations elsewhere in the state).

V. CONCLUSION

Cal Advocates respectfully requests that Energy Safety adopt the recommendations discussed herein. For any questions relating to these comments, please contact Henry Burton (Henry.Burton@cpuc.ca.gov) or myself.

Sincerely,

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⁴⁴ See also, e.g., CPUC Rules of Practice and Procedure, Rule 8.2 (notice requirements for all-party or individual meetings with decisionmakers in a particular type of proceeding), 8.4 (notice provisions for meetings with decisionmakers for a particular type of proceeding).

⁴⁵ See, e.g., CPUC Rules of Practice and Procedure, Rule 13.1(b) (notice requirements for public participation hearings).